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July 31, 2008

VIA Email & Federal Express

Richard M. Sandusky, Director of Regulatory Review
Pennsylvania Gaming Control Board
Attn: Public Comment on Regulation No. 125-82
303 Walnut Street
P. O. Box 69060
5th Floor, Verizon Tower
Harrisburg, PA 17101-9060

Re: Washington Trotting Association, Inc.
Public Comment on Draft Final-Form of Regulation No. 125-82 - Independent Audit
Committees

Dear Mr. Sandusky:

As you know, we represent Washington Trotting Association, Inc. ("WTA"), the holder of a Category 1 Slot Operator license approved and issued pursuant to 4 Pa. C.S.A. § 1302, License No. F-1316. On behalf of WTA, we submitted comments to proposed regulation 58 Pa. Code § 441a.24 entitled "Standards for Independent Audit Committees" (the "Proposed Regulation") dated March 28, 2008.

We are in receipt of the Draft Final-Form of the Proposed Regulation (the "Revised Proposed Regulation") and would like to thank the Pennsylvania Gaming Control Board ("Board") staff for considering our prior comments and making certain revisions to the proposal. However, WTA reasserts its comments and concerns with the proposed regulation that were set forth in the March 28, 2008 correspondence, a copy of which is attached for your reference.

WTA still believes that the cost of such an audit committee will far exceed the \$250,000 set forth in the proposal, that there is no additional regulatory benefit for imposing such a requirement on a private company and if the Board believes there is a concern with a company they could impose such a committee as a condition of the specific entities license.

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The actual annual cost for the independent audit committee will far exceed the estimated \$250,000 based on the fact that Revised Proposed Regulation (as did the Proposed Regulation) requires at least four new compensated positions. The independent audit committee must be comprised of at least three members, one of which must be an "audit committee financial expert" as defined by the Securities and Exchange Commission under the Sarbanes-Oxley Act of 2003, the act of July 30, 2002 (Pub. L. No. 107-204, 116 Stat. 745), which expert must have significant financial experience.¹ Additionally, the independent audit committee is directly responsible for the appointment and compensation of an independent certified public accountant.

The Revised Proposed Regulation (as did the Proposed Regulation) also requires that the independent audit committee have the resources, as determined by the committee, funded by the slot machine licensee, necessary to fully execute its powers and duties established in the charter. As a result, in addition to the four new compensated positions, the slot machine licensee will be responsible for the costs incurred by the independent audit committee. Those costs will most likely include office space, staffing, separate counsel for the committee, and possibly separate counsel for each of the members.

Notwithstanding the real costs to slot machine licenses of an independent audit committee, there is no additional regulatory benefit for imposing such a requirement. The Pennsylvania Race Horse Development and Gaming Act, 4 Pa. C.S.A. § 1101 *et seq.* (the "Act") and the existing regulations thereunder, 58 Pa. Code § 401a.1 *et seq.* (the "Regulations"), already provide sufficient protections. The Act and the Regulations already require that each slot machine licensee have in place internal controls and audit protocols.² The Act and the Regulations also require audited annual financial statement by an independent public accountant or, when appropriate, an independent registered public

¹ Pursuant to Sarbanes-Oxley an "audit committee financial expert" is a person who has (i) an understanding of financial statements and generally accepted accounting principles; (ii) an ability to assess the general application of such principles in connection with accounting for estimates, accruals and reserves; (iii) experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities; (iv) an understanding of internal controls and procedures for financial reporting; and (v) an understanding of audit committee functions.

² The internal controls and audit protocols cover every aspect of the slot machine licensee's business and provide the for the safeguard of assets and revenues; provide reliable records, accounts, and reports; and ensure that each slot machine licensee directly communicates all required activities and financial details to the central computer under 4 Pa. C.S.A. § 1323.



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accounting firm, licensed in the Commonwealth, and such financials must include a report on the internal controls. 4 Pa. C.S.A. § 1207; 58 Pa. Code § 465a.5.

The Board has thoroughly reviewed the qualification of WTA and has sufficient Board enforcement and operational personnel on site. WTA is compliant with the Act and regulations and there are regulatory complaints filed against WTA. Based on the mechanisms already in place, and the Board's thorough investigation and ongoing involvement with WTA, there is no reason to place this expensive additional burden on WTA. WTA never contemplated this additional expensive burden when it decided to invest in the Commonwealth. No estimate has been included for it in WTA's financial projections used by its lenders to evaluate debt and no estimate has been included in WTA's budgets. It is unfair to now place this additional cost on WTA, especially when the Board, if need be, has the discretion as a condition on a slot machine licensee to require an independent audit committee.

As to the actual revisions in the Revised Proposed Regulation, although WTA believes that they resolve certain concerns such as the removal of the certifications, certain other concerns still exist should the Board proceed with the proposal. Despite the fact that the Revised Proposed Regulation attempts to expand who may serve as a member of the independent audit committee, it will still be difficult for slot machine licensees to find experienced and qualified individuals to serve. The Revised Proposed Regulation prohibits an individual from serving who has received compensation from the slot machine licensee or any of the slot machine licensee's principals in an amount exceeding \$100,000 within any 12-month period during the three years prior to becoming a member of the independent audit committee. The term "compensation", however, is not defined. If the term includes indirect compensation, the potential individuals who could serve as a member of the independent audit committee become narrower. Based on other provisions of the Proposed Regulation (which were also included in the Proposed Regulation), compensation appears to mean only direct compensation.³ The Board, as a result, should consider defining the term "compensation" to mean "direct" compensation.

Another concern is that even though the Revised Proposed Regulation does not require a slot machine licensee to obtain Board approval to terminate a member of the independent

³ Proposed 58 Pa Code § 441a.24(a)(7)(v) provides that an individual cannot serve as a member of the independent audit committee if he or she is or has within the last three years been employed by any company that has made payments to or received payments from the slot machine licensee or any of the slot machine licensee's principals, or any affiliated company with the slot machine licensee or any affiliated company's principals exceeding \$1 million in any of the last three years.



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audit committee (as was required in the Proposed Regulation); the licensee must provide detailed notice to the Board as to the termination or resignation of a member.⁴ The notice for termination must describe the cause for termination and the notice for resignation must describe any disagreements the member had with the slot machine licensee's operations, policies or practices. The slot machine licensee is also required to request the terminated or resigning member to provide a letter to the Board stating whether he or she agrees with the statements made by the licensee in the notice.

Although WTA understands the need for some form of notice to be provided to the Board, it is the detail that is an issue. The detailed notice requirements may have an impact on any action that a member could file, or may have filed, against the slot machine licensee for any wrongful discharge or breach of contract.⁵ The notice in essence forces the slot machine licensee to state its position in detail on the termination or resignation, which could latter be used by the member in any such potential or pending litigation against the licensee. Similarly, if the terminated or resigning member submits a letter to the Board, such letter could latter be used by the slot machine licensee in defending any such potential or pending litigation. The Board as a result should consider deleting the detailed notice requirements or insert in the Revised Proposed Regulation that the notice and letter shall be placed under seal.

As set forth above (and in the prior comments to the Proposed Regulation) WTA asserts that requiring an independent audit committee is an unnecessary, expensive, unanticipated burden on the licensees, and serves no additional regulatory benefit. Should the Board proceed with the Revised Proposed Regulation, it should include additional revisions such as defining "compensation" to mean direct with respect to whom may serve as member and deleting the detailed notice requirements as to the termination or resignation of a member or place the notice and letter under seal.

⁴ The Revised Proposed Regulation (as did the Proposed Regulation) requires that the members of the independent audit committee shall have contracts for fixed terms and may only be terminated for "good cause". However, the term "good cause" is not defined. The Board should consider defining the term.

⁵ The detailed notice may also cause embarrassment to the terminated or resigning member as well as create issues for the member in seeking other employment.



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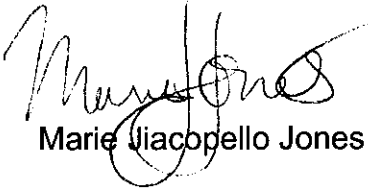
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Thank you for considering these comments of WTA as to Revised Proposed Regulation.

Very truly yours,



Marie Giacopello Jones

MJJ/te

cc: Guy Hillyer, Executive Vice President (via email)
Michael Graninger, Vice President & General Manager (via email)



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March 28, 2008

VIA Email & Federal Express

Paul Resch, Secretary
Pennsylvania Gaming Control Board
Attn: Public Comment on Regulation No. 125-82
303 Walnut Street
P. O. Box 69060
5th Floor, Verizon Tower
Harrisburg, PA 17101-9060

Re: Washington Trotting Association, Inc.
Public Comment on Regulation No. 125-82 - Audit Committees

Dear Mr. Resch:

Please be advised that we represent Washington Trotting Association, Inc. ("WTA"), the holder of a Conditional Category 1 Slot Operator license approved and issued pursuant to 4 Pa. C.S.A. § 1302, License No. F-1316. On behalf of WTA, we are submitting the following comments to proposed regulation 58 Pa. Code § 441a.24 entitled "Standards for Independent Audit Committees" ("Proposed Regulation 125-82") which requires slot machine licensees that are non-publicly traded corporations to establish an independent audit committee. The requirement to establish an independent audit committee by private companies is unnecessary as there already are sufficient controls and checks and balances in place. It is also an unanticipated costly burden on the licensee, significantly exceeding the \$250,000 estimated cost that would only provide limited additional regulatory benefits.

The Pennsylvania Race Horse Development and Gaming Act, 4 Pa. C.S.A. § 1101 *et. seq.*, (the "Act") and the existing regulations thereunder, 58 Pa. Code § 401a.1 *et. seq.* (the "Regulations") already provide sufficient protection to the integrity of gaming in the Commonwealth making the independent audit committee unnecessary. The Act and Regulations require that each slot machine licensee have in place approved internal controls and audit protocols. 4 Pa. C.S.A. § 1322. These internal controls and audit protocols cover every aspect of the licensee's business and provide for the safeguard of assets and revenue; provide reliable records, accounts and reports; and ensure that each slot machine directly communicates all required activities and financial details to the central computer under 4 Pa.

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C.S.A. § 1323. The Act and Regulations also require audited annual financial statements by an independent public accountant or, when appropriate, an independent registered public accounting firm, licensed to practice in this Commonwealth, and such financials must include a report on the internal controls. 4 Pa. C.S.A. § 1207; 58 Pa. Code § 465a.5.

In addition to the approved internal controls, the Board has thoroughly reviewed the qualification of WTA and has sufficient Board enforcement and operational personnel on site at WTA. WTA is compliant with the Act and Regulations and there has been no regulatory complaints filed against WTA. Based on the mechanisms already in place and the Board's thorough investigation and ongoing involvement with WTA, there is no reason to place this expensive additional burden on WTA when the additional regulatory benefit to both the Board and WTA of such a committee is limited.

The Board, if need be, has the discretion to impose as a condition on a slot machine licensee an independent audit committee if the Board believes that based on qualification concerns, or the operational behavior of a licensee, such a committee is necessary. It is unfair and inequitable to impose the additional requirements of an independent audit committee on a licensee when the Board has no specific concern with the licensee.

Proposed Rule 125-82 references specific requirements under the Sarbanes-Oxley Act of 2002, the Act of July 30, 2002 (Pub. L. No. 107-204, 116 Stat. 745) (the "Sarbanes-Oxley Act") and has similar language and provisions to those contained in the Sarbanes-Oxley Act. For example, Proposed Rule 125-82 requires that one of the members of the independent audit committee must be an "audit committee financial expert" as that term is defined by the SEC under Sarbanes-Oxley Act. However, the requirements of Sarbanes-Oxley Act, and other SEC requirements were enacted in order to protect the interests of investors. They further the public interest in the preparation of informative, accurate and independent audit reports (which the Act and Regulations already require) for companies the securities of which are sold to, and held by and for, public investors.¹ Inserting similar language and provisions from the Sarbanes-Oxley Act into Proposed Rule 125-82 create substantial and unexpected costs to non-publicly traded licensees in order to attempt to provide additional protection where sufficient protection already exists.

¹ Most of the focus of the Sarbanes-Oxley Act is with respect to the registration of accounting firms who prepare or issue or participate in the preparation or issuance of any audit report with respect to publicly traded corporations. In addition to registration, Sarbanes-Oxley Act provides the auditing standards, quality control standards, and ethics standards that such public accounting firms must follow in the preparation and issuance of audit reports.



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The Regulatory Analysis Form estimates the cost for the Proposed Rule 125-82 as \$250,000 based upon an existing slot machine licensee that already has an independent audit committee in place. The Regulatory Analysis Form, however, does not provide any detail as to what that estimate includes. WTA believes the cost would far exceed \$250,000. The cost to retain three independent members alone would cost close to \$250,000. WTA believes this estimate does not include the cost of establishing, licensing and maintaining the audit committee, nor does it include the cost of the need for committee members to retain their own professionals to be able to certify to the audited financials as required in proposed section 441a.24(12).² The cost of establishing and maintaining such a committee is an unanticipated expensive burden on the licensee and outweighs the incremental additional regulatory benefit.

As set forth above, the proposed regulation requiring an independent audit committee is an unnecessary, expensive, unanticipated burden on the licensees. Thank you for considering these comments of WTA as to Proposed Rule 125-82.

Very truly yours,

Marie Jiapello Jones

MJJ/te

cc: Guy Hillyer, Executive Vice President (via email)
Michael Graninger, Vice President & General Manager (via email)

² Proposed Rule 125-82 requires that each of the members of the independent audit committee prepare a statement to accompany the annual report certifying, in part, that the member has reviewed the audit and, based on the member's knowledge, the audited financial statements do not contain any untrue statement of a material fact or omission of material fact and the financial statements in the audit fairly present in all material respects the financial condition, results of operations, and cash flows of the slot machine licensee. The individuals who are willing to serve, in executing such certifications, are in all likelihood going to want the assistance of their own certified public accountants and attorneys. The additional costs for same will ultimately be the responsibility of the slot machine licensee. Requiring such a certification may, from a practical standpoint, make it extremely difficult for the slot machine licensee to find individuals willing to serve as members of the independent audit committee because of concerns with respect to liability.