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August 25, 2008

VIA EMAIL AND FEDERAL EXPRESS

Mickey Kane, Acting Board Secretary
Pennsylvania Gaming Control Board
P. O. Box 69060
303 Walnut Street, Strawberry Square
Verizon Tower, 5th Floor
Harrisburg, PA 17106-9060

Re: Washington Trotting Association, Inc., License No.: F-1316
Comments to Proposed Rulemaking 125-91

Dear Acting Secretary Kane:

Please be advised that we represent Washington Trotting Association, Inc. ("WTA"), a Category 1 slot operator licensee. On behalf of WTA, we are submitting the following comments to the proposed amendments to regulations 58 Pa. Code §§ 434a.7, 434a.8, and 434a.12 ("Proposed Rulemaking No. 125-91").

By way of general comment to the Proposed Rulemaking No. 125-91, WTA submits that it is unnecessary for a slot machine licensee to be involved in an onsite shopkeeper's application to the Pennsylvania Gaming Control Board (the "Board") for certification. It is the onsite shopkeeper's burden to prove to the Board that it is suitable for certification. This burden rests solely with the applicant. A slot machine licensee should not be required to become involved in an independent, unaffiliated entity's application to the Board.

• **Section 434a.7**

Proposed regulation 58 Pa. Code § 434a.7 intends to require an onsite shopkeeper's petition to conduct business with a slot machine licensee prior to certification be accompanied by a certification from the slot machine licensee that the slot machine



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licensee has performed due diligence on the onsite shopkeeper. WTA respectfully submits that, as an applicant for certification, the onsite shopkeeper has the burden to prove to the Board that it should be permitted to conduct business prior to certification. That burden should remain with the applicant and not shift to a slot machine licensee. Accordingly, the requirement for a slot machine licensee to conduct due diligence on an onsite shopkeeper be removed.

In the alternative, if the proposed regulation remains, WTA submits that the proposed regulation is vague as to the requirements of performing due diligence. Therefore, WTA seeks clarification as to the type of due diligence required.

- **Section 434a.8(a)**

Proposed regulation 58 Pa. Code § 434a.8(a) intends to impose the requirement that the slot machine licensee investigate the background and qualifications of applicants for onsite shopkeeper certification that intend to operate at the licensed facility.

WTA respectfully submits that investigating the background and qualifications of applicants for onsite shopkeeper certification is an onerous responsibility for a single slot machine licensee to bear. The Pennsylvania Race Horse Development and Gaming Act (the "Act") grants the Board the authority to investigate the backgrounds of applicants for certification. See generally 4 Pa.C.S. § 1202. The Commonwealth of Pennsylvania granted this power to the Board in order to carry out the intent of the Act and to protect the integrity of gaming. This legislative-granted authority and vast responsibility should not be borne by a single slot machine licensee, as a slot machine licensee does not have such broad authority or investigative powers.

WTA would like to emphasize the fact that a slot machine licensee does not have the Board's capability or expertise in conducting background investigations. A slot machine licensee also does not have access to the resources available to the Board that enable it to conduct thorough and complete investigations. For instance, the Board has the authority to require applicants to consent to the release of confidential information, which allows the Board to obtain information otherwise not available to the general public. Simply put, a slot machine licensee does not have such authority or access to such tools; therefore, a slot machine licensee has an extremely limited ability to investigate an applicant for onsite shopkeeper certification. Of course WTA acknowledges that it does research entities with which it desires to enter into business arrangements; however, such



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an investigation solely is for the purpose of making a sound business decision and is not nearly as comprehensive as an investigation to determine suitability for licensure. Such investigative duties and responsibilities should remain with the Board, as it is equipped to conduct thorough investigations, and should not shift to a slot machine licensee.

Further, WTA submits that the proposed regulation is vague as to the extent of the investigation that is required to be conducted by a slot machine licensee. The regulation fails to provide a standard to which a slot machine licensee will be held for the investigation of the applicant, thereby creating the possibility that a slot machine licensee be held accountable to the Board for any shortcomings the Board may find in a slot machine licensee's investigations. This leads to the possibility that the Board may penalize a slot machine licensee if the Board decides that the investigation was not satisfactory. Without an articulated standard for a slot machine licensee to follow in conducting its investigation, the Board should not have the ability to hold a slot machine licensee accountable for its investigative findings. However, the proposed regulation creates this possibility. WTA submits that a slot machine licensee should not bear any accountability to the Board for investigations into the backgrounds and qualifications of applicants for onsite shopkeepers, especially in light of the fact that a slot machine licensee does not have the caliber of investigative authority over an independent, unaffiliated entity as granted to the Board.

Accordingly, WTA respectfully requests that the proposed regulation not be adopted. Alternatively, if the proposed rulemaking is adopted, WTA suggests that the regulation be revised to include specific parameters or standards as to what the Board will require of a slot machine licensee's investigation and the consequences for failing to comply with the standards.

- **Section 434a.12**

Proposed regulation 58 Pa. Code § 434a.12 intends to require a slot machine licensee to file with the Board a fully signed copy of all written agreements or a written description of any oral agreement with a person which involve or may involve payments of \$500,000 or more per year to a slot machine licensee.

WTA respectfully submits that, as the proposed regulation currently is written, the provision seems to encompass a broad class of arrangements, including, *e.g.*, financing agreements or agreements for the sale of assets. WTA respectfully request that the



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Board specify to which agreements this requirement pertains. If it is the Board's intention that this proposed regulation apply specifically to all agreements with onsite shopkeepers, WTA respectfully suggests that the proposed regulation should indicate same.

Further, WTA submits that for the sake of conformity and consistency, if the Board intends to impose this requirement upon slot machine licensees, the same requirement should be indicated under 58 Pa. Code § 441a.12, which pertains, generally, to a slot machine licensee's duty to maintain and file agreements.

Thank you for considering the comments of WTA to the proposed regulations

Very truly yours,



Mariel Giletto

MJG:bb

cc: Arthur Cocodrilli, Chairman, Independent Regulatory Review Commission
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