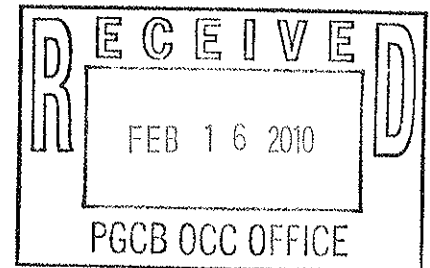


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February 16, 2010

VIA HAND DELIVERYRichard Sandusky
Director of Regulatory Review
Pennsylvania Gaming Control Board
303 Walnut St., Strawberry Square
Verizon Tower, 5th Floor
Harrisburg, PA 17106Re: Comments to Temporary Table Game Rulemaking Nos. 125-110 and 125-111

Dear Mr. Sandusky:

Downs Racing, L.P., t/d/b/a Mohegan Sun at Pocono Downs ("MSPD"), Greenwood Gaming and Entertainment, Inc., t/d/b/a Parx Casino ("GGE"), and Sands Bethlehem ("Sands") (collectively the "Operators") respectfully submit the following comments in response to the Pennsylvania Gaming Control Board's ("PGCB" or the "Board") Temporary Table Game Rulemaking Nos. 125-110 and 125-111 (collectively the "Rulemakings"). The Rulemakings, *inter alia*, address conditional licensure of table game device manufacturers, manufacturer designees and suppliers, establish rules for conducting the games of Roulette, Big Six-Wheel, Craps, and Blackjack, and set forth certain general provisions including the administrative process for the review and approval of operator's house rules and proposed rules variations. These comments are intended to provide the Board with the perspective of experienced gaming operators related to the practical implications of various aspects of the Board's Rulemakings and to suggest improvements and efficiencies that would maximize revenue performance for both certificate holders and the Commonwealth.

I. INTRODUCTION

The Operators commend the PGCB for the overall quality of the Rulemakings. The Board once again finds itself in the position of having to oversee and regulate the development of an entirely new market segment in the gaming industry. Moreover, the industry, the public, impacted local communities and the Commonwealth all desire that the Board accomplish this task and initiate table gaming in Pennsylvania with all due haste. In the face of these pressures, the Board has promulgated a first batch of temporary regulations that are thoughtful, comprehensive and, overall, appropriate for the public and the industry. GGE, MSPD and Sands appreciate the substantial effort of the Board and its staff.

A substantial portion of the Board's temporary regulations related to the Rules of the Games parallel provisions of the administrative regulations adopted by the New Jersey Casino Control Commission. *See, e.g.*, N.J.A.C. §19:46-1.10 (Physical characteristics of blackjack table). While it is understandable that the Board would draw upon the experience of a neighboring jurisdiction – particularly a jurisdiction from which many of the table game amendments to the Pennsylvania Race Horse Development and Gaming Act (“Gaming Act”) were modeled – it is important to recognize that, in several instances, the proposed rules do not reflect current industry and regulatory trends.

Though periodically amended, many of the New Jersey regulations, upon which the Board's rules are based, were originally adopted over 25 years ago. As a consequence, several portions of the Board's proposed regulations do not incorporate recent technologies which have permitted operators to implement more efficient business practices. New advances in surveillance systems, game efficiencies, card reading devices, automated features in roulette and craps tables, plaque and chip accounting systems, and player rating programs, not only make certain portions of the regulatory mandates obsolete, but underscore the importance of permitting each operator to implement new technologies and practices intended to save money and increase revenue potential for the benefit of both the operator and the Commonwealth.

Gaming operations are competitive. As neighboring jurisdictions increase their gaming markets and new venues open in Pennsylvania, competition will increase. While the tax rate applied to Gross Table Game Revenue is lower than that applicable to slot machine revenue, Pennsylvania certificate holders still must compete with operators in neighboring jurisdictions that enjoy lower tax rates – such as those in New Jersey. Operators strive daily for market share and seek to gain a business advantage in providing a high quality entertainment product to customers at a lower operating cost. In order to maintain a successful and viable business operation (as statutorily mandated by the Gaming Act (4 Pa. C.S. § 1313(e))), operators are under intense pressure to make ongoing modifications to their business practices in order to find new efficiencies. Accordingly, regulations related to table gaming operations must be crafted in a manner that permits each operator the flexibility to implement timely changes in gaming practices and rules in order to meet the individual needs of each operator.

Underscoring the objectives of modernizing the regulations that will govern the advent of table gaming in Pennsylvania and providing additional latitude for individual operators to adopt modifications to the game rules, the following comments reflect the collective experience of each of GGE, MSPD and the Sands.

II. COMMENTS REQUESTING IMMEDIATE ACTION

The Operators recognize that the Board faces a significant challenge in promulgating all of the temporary regulations necessary to enable the commencement of table game operations in Pennsylvania in a timely fashion. Given this challenge, the Board has understandably expressed hesitancy to revisit or revise its temporary rulemakings, opting instead to consider comments submitted by interested parties primarily for future use in fashioning the permanent rulemakings. Nonetheless, while the Operators' view all of the comments raised herein as worthy of prompt consideration, GGE, MSPD and the Sands respectfully submit that the following comments require immediate action by the PGCB.

- § 549.2(c); § 549.13(b) and (c) – (Dealer Standing on 17s). The temporary regulations remove the flexibility of operators to adopt the practice of requiring dealers to hit on a “soft” 17 without seeking a variance from the regulations. While it is agreed that the house rule on dealer standing or hitting should be clearly inscribed on the table surface, it should be each operator's option to adopt a rule requiring the dealer to hit on a “soft” 17. This is an important issue. Hitting on a “soft” 17 provides a modest house advantage within the context of a disciplined basic strategy player. As Blackjack is one of the lowest statistical operator-advantage games, the ability of the house to adopt a game rule that requires the dealer to draw an additional card when dealt a “soft” 17 is an important business practice that directly impacts the revenue potential of the gaming operation. Without such flexibility, operators will be unable to maximize Gross Table Game Revenue. House policies, such as dealers standing or hitting on a “soft” 17, are more appropriately set by the operator to meet market conditions, not administrative regulation. As the Board will retain its ability to approve an operator's rule and ensure compliance under Section 521.2 of the Rulemaking, it is not necessary to resolve this matter through regulation. Fundamentally, the business decision to permit the dealer to hold or hit on a “soft” 17 is the type of practice that is best left to each operator --and, ultimately, an operator's decision will be heavily influenced by player response.

- §549.5; § 549.6(h) – (Opening of table for gaming). There is no accommodation in the Board’s temporary regulations for the use of pre-shuffled cards. Pre-shuffled cards – cards that are shuffled at the manufacturing plants by a random-number-generator automatic shuffler – arrive at each operator immediately ready to be presented for use at a table. Typically, opening the box of cards, inspecting the deck, washing the cards and manually shuffling is inefficient and takes time away from play – thus reducing potential revenue to the Commonwealth. The practice of using pre-shuffled cards has not only been in the industry for over 10 years, but has become standard in baccarat and is growing in popularity for Blackjack. Changing the temporary regulations to permit the use of pre-shuffled cards would eliminate steps described in various subsections of Section 549.5 (such as (b) and (c)), as well as Section 549.6(h). Notably, Section 549.6(a) appears to acknowledge the use of pre-shuffled cards. However, there is no explicit authorization or exception for the use of pre-shuffled decks that would otherwise avoid the processes described in Sections 549.5 and 549.6(h). This regulatory accommodation is necessary to enable operators to efficiently manage their gaming tables in a manner that speeds play and therefore maximizes revenue potential.
- §549.13(f) – (Discard holders). Tracking New Jersey regulations, this section of the Board’s temporary regulations mandates the placement of a discard rack / holder placed on top of the gaming table. *See*, N.J.A.C. §19:46-1.10(h). The requirement that the discard rack / holder be placed on top of the table deprives operators of placing the rack / holder on the side or within the table. As a result of operating experience, most gaming jurisdictions now permit the discard rack to be taken off the top of baccarat tables. Extending this practice to Blackjack tables would permit the table game supervisor to have a better view of the table and reduce the opportunities for card counting, shuffle tracking and card stealing. The Operators respectfully submit that this is a particularly

important common-sense approach that permits operators to maintain better security control of their gaming tables.

III. COMMENTS TO TEMPORARY TABLE GAME RULEMAKING No. 125-110

A. General Provisions

1. Definitions.

- § 521.1; § 537.1 – (Floorperson / Box person). The Board’s temporary regulations define and appear, at least implicitly, to require the use of “floorpersons” and “box persons” for specific duties and functions. Though there is no objection to the inclusion of these gaming positions within table gaming operations or necessary references to them in the temporary regulations, there is particular concern that, as the Board develops such regulations and requirements, those requirements will unreasonably restrict operators’ flexibility in devising staffing models and ability to assign different duties to particular positions in order to accommodate each operator’s business model. Accordingly, the Operators request that the Board preserve the maximum flexibility for operators on staffing issues (as to types of positions, complement, assignment of duties, etc.), and, where necessary, include language in the temporary regulations permitting each operator to utilize facility-based staffing plans to deviate from strict regulatory assignments for table game employees and facilitate each operator’s individual business organization and structure. Each of the Operators has developed and perfected operating models that ensure adequate security, yet are implemented in a manner that is both efficient and saves operating costs. The temporary regulations should not impede the deployment of such models.

2. Rules Submissions.

- §521.2 – (Table Game Rules Submission). The accompanying comments of the Board describe the purpose of this section as providing operators with the “flexibility” to tailor

table games to patron preferences and market demands. While the Operators strongly support this objective, the provisions detailing the Rules Submission process are written in a manner that could be interpreted to be limited to the initial submission of table game rules prior to approval of table gaming operations. *See, e.g.*, 58 Pa.Code § 521.2(b) (discussing the “initial” Rules Submission). If this process is to be used as an ongoing means through which certificate holders may seek approval of rule changes and thereby address operating efficiencies – then this section should be clarified to expressly indicate its continuing nature and include a faster review and implementation period.

Further, while such a rules amendment process is definitely worthwhile, it is not an adequate remedy for underlying regulations that are either too restrictive or outdated. As the following comments illustrate, several provisions of Rulemaking No. 125-110 continue outdated practices that are better left to the discretion of operators – and not an administrative regulation which would require, at a minimum, a 30 day process through which a rule departure may be permitted.

B. Rules of the Games

The Operators offer the following comments regarding the Blackjack Rules.

- §549.2(d) – (Placement of drop and tip boxes). This provision states that the drop and tip boxes must be on the same side of the Blackjack table, but “on opposite sides of the dealer.” The Operators believe that the regulation may be properly read to require both boxes to be placed together on the same side of the table, but on a side that is opposite of the dealer. With all of the equipment used on Blackjack tables, particularly shufflers, it is not practical to place drop and tip boxes on the dealer side of the table, on “opposite sides [or each side] of the dealer.” Ultimately, the Board is urged to simply require that the drop and tip boxes be attached to each non-electric gaming tables, and afford operators the flexibility to place the boxes wherever they will fit given varying table dynamics.

- §549.13(e) – (Card reader device). Though section 549.13 mirrors N.J.A.C. §19:46-1.10, it deviates in one particularly important aspect – the mandated use of a card reader. The New Jersey regulations provide that an operator “may” attach a card reading device to the gaming table. *See*, N.J.A.C. §19:46-1.10(g). In contrast, the Board’s temporary regulation provides that such a device “shall” be attached to the gaming table. 58 Pa.Code §549.13(e). The problem with mandating the use of the device is that it assumes that the dealer will be dealt a card with its face down. Under such circumstances, the mandated use of a card reading device is appropriate. However, operators may prefer to dispense with the hole card and have both cards dealt to the dealer with their face up (with the “hole” card being dealt after all players have acted on their hands). Such a practice is more secure and speeds up play. Accordingly, the Operators suggest that the regulation should be revised to only mandate the use of a card reader device when the game is played with the dealer being dealt a hole card. Otherwise, such a mandate is unnecessary, and the regulation should follow New Jersey’s permissive approach.
- §549.3(d); §549.15 – (Cards; number of decks). The Board’s temporary regulations mandate the use of “at least two decks of cards” if an automated card shuffling device is utilized. 58 Pa.Code §549.3(d). Unfortunately, this section does not account for the recent trend of operators using a continuous shuffler that requires only one deck – not two. Though section 549.15 of the Board’s regulations does permit the use of a continuous shuffler, section 549.3(d) has not been (and should be) updated to reflect the use of continuous shufflers.
- §549.7 – (Procedure for dealing cards). This temporary regulation presents several issues that constrain the operating flexibility of the certificate holder. First, subsection (a) mandates that all cards to be dealt are to originate from a shoe – precluding the dealer from dealing the cards from hand. Operators may wish to exercise the option of dealing

from a single-deck or double-deck dealt from the dealer's hand instead of using a shoe – depending on customer preference. This regulation removes such an option. Secondly, subsection (b) appears to leave the dealer vulnerable by requiring the use of his right hand when dealing all non-hit cards – in particular, the first two betting positions. While this may not be what the regulation intends, it appears to require the use of the right hand when dealing non-hit cards to the first two betting position, thereby forcing the dealer to turn his back to the fifth and sixth betting positions. Lastly, subsection (i) continues the outdated practice of requiring the dealer to announce “dealer's card” on every hand. This regulatory holdover from New Jersey serves no purpose other than to annoy players.

- §549.12(a) – (Splitting pairs). There is some confusion concerning this section of the Board's temporary regulations. Though section 549.12(a) clearly indicates that players may split a hand of two cards of identical value, the term used in this section “splitting of pairs” has traditionally a more narrow meaning – only splitting two identical cards (e.g., splitting two queens or two kings, as opposed to splitting two cards of identical value, a queen and a jack, or a ten of spades and a king of clubs). The majority of state gaming jurisdictions permit, as subsection (a) appears to suggest, the splitting of any two cards of identical value. The Operators urge the Board to clarify this provision to make clear that it addresses splitting cards of identical value – not just pairs.
- §549.12(c)(1) – (2 splits). Most state jurisdictions permit players to split three times – for a total of four hands. The temporary regulation only allows two splits (“one more pair”) for a total of three hands. Again, this is a regulatory mandate that removes the flexibility of operators to meet customer demands, and thus should be changed.
- §549.12(c)(2) – (Splitting aces). Section 549.12(c)(2) of the Rulemaking sets forth the standard rule that a player who splits aces may only be dealt one card to each ace, but then adds that the player “may not elect to receive additional cards.” For clarification,

the Operators interpret that this additional clause simply reaffirms the one card/ace rule, and does not imply that a player may not resplit aces. Accordingly, the Operators interpret the interplay between Section 549.12(c)(1) and (2) as follows: a player may resplit aces up to the permitted maximum number or times, but on each split ace the player may only be dealt one card.

III. COMMENTS TO TEMPORARY TABLE GAME RULEMAKING No. 125-111

A. Conditional Licenses

- §529.1(b)(2) – (Conditional Licenses). The Operators applaud the Board for anticipating operator needs and developing a conditional licensure process for manufacturers of table game devices, manufacturer designees, and suppliers. The new process will both facilitate a timely implementation of table gaming and enable certificate holders to have a broader selection of product and product suppliers for table game devices. A key requirement for conditional licensure is that the applicant be licensed in good standing in another jurisdiction in the United States or Canada that the Board has determined to have licensing standards that are comprehensive and thorough and that provide similar adequate safeguards to those in Pennsylvania. The Operators urge the Board to apply this requirement at the jurisdictional level and (as the provision’s text suggests) not require that the other jurisdiction’s regulatory scheme be *identical* to Pennsylvania’s as to standards or form of authorization (*e.g.*, licensure/registration) required in relation to a particular table game device.

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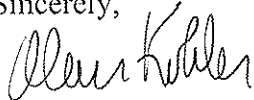
IV. CONCLUSION

For all of the foregoing reasons, GGE, MSPD and the Sands request that the Board revise Temporary Table Game Rulemaking No. 125-110, as necessary, to account for the comments identified above involving Sections 521.2, 549.2, 549.3, 549.5, 549.6, 549.7, 549.12, and 549.13, and otherwise apply the Rulemakings in a manner consistent with the interpretations set forth in these comments.

The Operators specifically request that the Board make the necessary revisions regarding dealers standing on 17s (§§ 549.2(c), 549.13(b)-(c)), the use of pre-shuffled cards (§§ 549.5, 549.6(h)), and the placement of discard holders (§ 549.13(f)) immediately so that such revisions will be in place prior to the commencement of table game operations in Pennsylvania.

Thank you for considering the comments of the GGE, MSPD and the Sands in regard to Temporary Table Game Rulemaking Nos. 125-110 and 125-111.

Sincerely,



Alan C. Kohler

cc: Robert DeSalvio
Robert Green
Robert Soper
Mike Bean
Tom Bonner, Esq.
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AK/lww