

**PENN NATIONAL**  
GAMING, INC.

## Memorandum

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**To:** Pennsylvania Gaming Control Board

**From:** John deGrasse

**Date:** June 1, 2006

**RE:** Comments: Draft Regulations

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The following are Mountainview Thoroughbred Racing Association's comments to the recently issued draft regulations:

### 513.2(a)

Applicant recognizes that the legislation prohibits anyone under 18 years of age from being in the area where slot machines are operated. However, the proposed regulation broadens this prohibition to the entire gaming floor. Depending on the structure of the facility, access to the racetrack, restaurants or other non-gaming venues may require entrance onto the casino floor. The Board should allow itself the latitude to permit access to the gaming floor so long as a person under the age of 18 can do so without coming within close proximity to the slot machines.

### 513.4(a)

It is inappropriate to prohibit a licensee from raising a legitimate defense in response to an administrative action. There are many instances where a licensee may reasonably believe that an individual is at least 21 years of age. Through this provision, the Board is creating a *per se* standard that establishes culpability on the part of the licensee no matter what efforts the licensee makes to determine the age of the patron. However, if a licensee has taken every possible measure to ascertain a patron's age (including obtaining the opinion of the Board agent assigned to the property) and in the end is wrong due to misrepresentation by the individual, what purpose is served by imposing a sanction against the licensee? Similar to other gaming jurisdictions, licensee should be allowed to present as its defense the efforts it made to ascertain the age of a patron. The sufficiency of those efforts and the reasonableness of the licensee's belief would then be assessed by the hearing officer or the Board.

## DRAFT REGULATIONS COMMENT FORM

**Please complete all of the fields below before printing:**

DATE	06/01/2006	ADDRESS 1
SECTION # OR SUBJECT	Underage gaming	ADDRESS 2
FIRST NAME	John	CITY
LAST NAME	deGrasse	STATE
ORGANIZATION NAME	Mountainview Thoroughbred Racing Ass'n.	ZIP CODE
EMAIL ADDRESS		COUNTY
		TELEPHONE
COMMENTS		

Dino A. Ross

RECEIVED

JUN 05 2006

June 1, 2006

Attn: Public Comment  
Pennsylvania Gaming Control Board  
P.O. Box 69060  
Harrisburg, PA 17106-9060

Re: Comments to Draft Regulations Under Title 58 of the PA  
Code, Chapter 513

Dear Sir/Madam:

On behalf Downs Racing, L.P. and its parent company, the Mohegan Tribal Gaming Authority, we are filing the enclosed comments to temporary regulations under title 58 of the Pa. Code, Chapter 513.

Please direct any questions or comments to me.

Sincerely,



Dino A. Ross

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DAS/jls  
Enclosures

HAR:66185.1/MOH005-222463

## DRAFT REGULATION COMMENT FORM

Please complete all of the fields below before printing:

DATE	06/1/06	ADDRESS 1
SECTION # OR SUBJECT	Proposed Chapter 513	ADDRESS 2
FIRST NAME	Dino	CITY
LAST NAME	Ross	STATE
ORGANIZATION NAME	Wolf, Block, Schorr and Solis-Cohen LLP	ZIP CODE
EMAIL ADDRESS		COUNTY
		TELEPHONE

### COMMENTS

See attached comments submitted on behalf of Downs Racing, L.P. and its parent company, the Mohegan Tribal Gaming Authority.

Comments may be submitted to the Board by U.S. Mail at the following address:

Pennsylvania Gaming Control Board  
P.O. Box 69060  
Harrisburg, PA 17106-9060  
Attn: Public Comment

**BEFORE THE  
PENNSYLVANIA GAMING CONTROL BOARD**

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In re: Promulgation of Temporary  
Regulations Under Title 58 of the  
Pennsylvania Code, Chapter 513

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**COMMENTS TO DRAFT TEMPORARY  
REGULATIONS OF DOWNS RACING AND MTGA**

Downs Racing, L.P. ("Downs Racing") and its parent company, the Mohegan Tribal Gaming Authority ("MTGA"),<sup>1</sup> respectfully submit these comments to the Pennsylvania Gaming Control Board ("Board") in regard to its publication of the draft Chapter 513 regulations on May 19, 2006. These regulations are intended to implement the provisions of the Pennsylvania Race Horse Development and Gaming Act (the "Act"), 4 Pa. C.S. §1101 et seq., and address underage gaming.

**I. Introduction**

Downs Racing appreciates the opportunity to submit these comments to the Board and participate in the process of creating rules and regulations under which Pennsylvania's future licensed gaming entities will operate. Chapter 513 of the proposed regulations governs underage gaming and sets forth certain requirements that each licensee must follow.

MTGA, through its gaming entities in other jurisdictions, possesses a wealth of experience with the development and implementation of exclusion criteria in the context of underage gaming. MTGA and Downs Racing's comments to the proposed regulations stem from and reflect that experience and are offered in the hope that the Board will consider the

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<sup>1</sup> MTGA also owns and operates the Mohegan Sun Casino in

modifications detailed herein with the understanding that they reflect the extensive experience of MTGA in the gaming industry.

## **II. Specific Comments**

### Section 513.2.

Section 513.2(a) prohibits any individual under the age of 18 from being on the gaming floor of a licensed facility while Section 513.2(b) prohibits persons under the age of 21 from playing a slot machine in a licensed facility. A literal reading of these two provisions allows persons between the ages of 18 and 21 to be physically present on the gaming floor while at the same time being prohibited from operating a slot machine. This circumstance presents a concern for Downs Racing with regard to effective monitoring of the gaming area. Unfortunately, it is inevitable that some of the individuals in this 18 - 21 age bracket may attempt to participate in gaming activities in violation of the law, and extreme vigilance would be required on the part of the licensee to attempt to prevent such unlawful activity. Given the number of patrons expected to be present in the gaming area at one time and given the frequency of patrons filtering in and out of the gaming area, such a task is unreasonably difficult and burdensome. This is especially troublesome since administrative sanctions can be imposed on the licensee if a person engages in conduct that violates §§513.2(a) and (b) (See §513.3(b)). Moreover, it is respectfully submitted that allowing patrons between the ages of 18 to 21 in the gaming area invites, to some extent, underage participation in gaming activity in contravention of the Act.

Downs Racing requests a simple clarification of Section 513.2 to eliminate the aforementioned problem. Each licensee should be permitted to exercise its business discretion as to how it will implement §513.2(a) so long as the licensee complies with the Act and the regulation itself. Specifically, Downs Racing submits that a licensee, if it so chooses, be permitted to adopt an internal rule prohibiting any individuals under the age of 21 from being

present on the gaming floor. This clarification request is entirely consistent with the Act and §513.2(a) and §513.2(b) of the regulations as they now stand. Section 1518(a)(13) of the Act, 4 Pa. C.S. §1518(a)(13), which identifies certain enumerated prohibitions and provides the statutory predicate for the regulation, provides only that it is unlawful for any person under the age of 18 to be permitted in the gaming area.<sup>2</sup> This section does not prohibit a licensee from adopting a stricter rule that restricts access to the gaming area to persons under the age of 21. The same is true of §513.2(a) of the regulations as it now stands. While it is clear that an individual licensee can not adopt a rule that allows individuals under the age of 18 on the gaming floor, it is equally as clear that a licensee can adopt a rule for its casino which prohibits persons under the age of 21 from being on the gaming floor.

Additionally, from a policy perspective, Downs Racing submits that making this clarification and allowing casinos, if they choose, to prohibit persons under the age of 21 in the gaming area, furthers the goal of inhibiting underage gambling.

### **III. Conclusion**

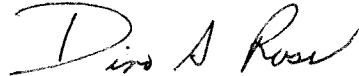
MTGA and Downs Racing commends the Board on all of its work in establishing gaming in Pennsylvania, and its effort to benefit from and incorporate the experience of other jurisdictions. MTGA and Downs Racing appreciates the opportunity to share the perspective of a gaming operator and its experience in casino operations.

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<sup>2</sup> Section 1207(8) of the Act, 4 Pa. C.S. §1207(8), prohibits persons under the age of 21 from operating slot machines.

Wherefore, MTGA and Downs Racing respectfully request that the Pennsylvania Gaming Control Board include the clarifications discussed above in its final Chapter 513 regulations.

Respectfully submitted:



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Alan C. Kohler, Esquire  
Dino A. Ross, Esquire  
Volf Block Schorr and Solis-Cohen LLP

Michael J. Ciacco, Esquire  
Mohegan Tribal Gaming Authority

Counsel for Downs Racing, L.P. and The  
Mohegan Tribal Gaming Authority

Date: June 1, 2006