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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 22, 2009

Patrick J. Stapleton, III, Chairman
Pennsylvania Liquor Control Board
502 Northwest Office Building
Harrisburg, PA 17124

Re: Regulation #54-63 (IRRC #2613)
Pennsylvania Liquor Control Board
License Application and Management Contracts

Dear Chairman Stapleton:

In our review of this regulation, we noted drafting errors, provisions that should be clarified and insufficient information in the Preamble. We discussed these issues with your staff on September 17, 2009. Based upon these conversations, we recommend that you consider tolling the review period for the following reasons:

1. Our comments submitted on the proposed rulemaking requested more detailed information pertaining to fiscal impact and cost benefit analysis in the Regulatory Analysis Form and the Preamble. The final-form regulation provides minimal additional details and therefore still does not fully allow us the opportunity to determine whether the regulation is in the public interest. We request that the Board provide more detailed information that would allow us to determine if the regulation is in the public interest.
2. In several sections of the final regulation, the Board addresses our comments by simply "withdrawing" the language in question or entire sections all together. (See §§ 1.1 (definition of "merchant"); 3.8(a); 3.142(a)(2); and 11.144). In the Preamble to the final-form regulation, the Board needs to explain their reasons for these deletions.
3. The numbering of some sections in the final-form regulation conflicts with the numbering in the *Pennsylvania Bulletin* version of the proposed regulation (see 37 Pa.B. 3418 (July 21, 2007)). For example, Section 3.140 in the final-form regulation is Section 3.141 in the *Pennsylvania Bulletin*. The numbers for the various sections in the final-form regulation should be consistent with the numbering of the proposed regulation as published in the *Pennsylvania Bulletin*.¹

¹ For purposes of this tolling letter, we refer to the numbering as listed in the version of the final-form regulation we received from the Board on August 20, 2009.

4. We have two concerns with the revised definition of “pecuniary interest” found in § 1.1. First, it describes the interest as one that “*sounds in*” the attributes of proprietorship. While this phrase comes from relevant case law, it alone does not adequately explain what a “pecuniary interest” is. Also, the definition includes a 10% threshold for a rebuttable presumption of this interest, but the Board never explains the rationale for the percentage. A more detailed explanation of changes made to this definition should be included in the Preamble to the final-form regulation.
5. The title of § 3.1 is capitalized in the final-form regulation. However it has not changed from the title of the existing regulation. Also, there should be a period after the “1” in 3.1. We recommend that these formatting errors be corrected in the final-form regulation.
6. In our comments on § 3.142(c) of the proposed rulemaking, we questioned whether any modification to a management contract, even a change of address, would require full payment of the \$350 fee. After discussing this matter with the Board, it is our understanding that minor modifications to a management contract would not require a fee of \$350. In the Preamble to the final-form regulation, we recommend that the Board explain that minor modifications would not require payment of the \$350 fee and provide examples of the types of changes that would not require payment. The language in the final-form regulation itself should also be clarified to advise the regulated community that minor modifications will not require payment of a \$350 fee.
7. In our comments on § 3.144 (listed as § 3.143 in the Board’s Comment and Response Document), we asked the Board when a licensee would be notified of the Board’s decision regarding approval of a management contract. However, the final-form regulation does not provide a time frame for Board notification or an adequate explanation of why such a time frame was not included in the final-form regulation. We also asked for further information on what “facts” the Board could use to refuse a person’s involvement in a management contract. Language was added to the regulation but no response to our comment was included in the final-form regulatory package. In addition, the new language was not formatted correctly. We recommend that the Preamble be amended to address these concerns and also that the new language in the final-form regulation be formatted correctly.
8. We have several concerns with § 5.51. The final-form regulation includes the term “definition” in the title of the section. Unless this section deals specifically with definitions, it is not standard procedure to put it in the title. We recommend that “definition” be deleted from the title of the section. Also, the text of Subsections (a) and (c)(1) needs to be formatted correctly. Finally, the Board’s response to our comments on the proposed rulemaking states that a copy of a memo from the Department of Health is attached; however, it was not included in the final-form regulatory package. A copy of the memo should be included in the revised final-form regulatory package.

Honorable Patrick J. Stapleton, III, Chairman

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9. There is an extraneous period in the last line of § 5.53, between the words “contaminant” and “SUCH.” It should be deleted from the final-form regulation.

If you choose to toll the review period, your agency must deliver written notice to both the Standing Committees and the Commission on the same day. The written notice must be delivered before either Committee takes action on the regulation, or before the end of the Committees’ review period on September 30, 2009, whichever occurs first.

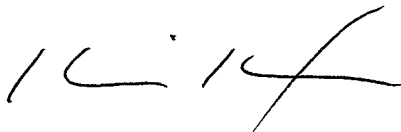
As required by Section 307.5 of our regulations, written notice must include:

1. A citation to the section(s) the Department is considering revising,
2. A description of the revisions the agency is considering, and
3. An explanation of how the revisions will satisfy the concerns listed above.

If your written notice includes revisions that are beyond the scope of our recommendations, the Commission may object to tolling the review period. We are required to notify you and the Committees within two business days after receipt of your tolling notice if we object. If the Commission objects to your tolling notice, the review period will not be tolled and your regulation will be considered by the Commission at our public meeting on October 1, 2009. If the Commission does not object, the review period is tolled for up to 30 days beginning with receipt of your letter and ending on the day you resubmit the regulation.

Please contact me if you have any questions.

Sincerely,



Kim Kaufman
Executive Director

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cc: Honorable John C. Rafferty, Jr., Majority Chairman, Senate Law and Justice Committee
Honorable Sean F. Logan, Minority Chairman, Senate Law and Justice Committee
Honorable Robert C. Donatucci, Majority Chairman, House Liquor Control Committee
Honorable John J. Taylor, Minority Chairman, House Liquor Control Committee
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James F. Maher, Esq., Assistant Counsel, PA Liquor Control Board