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File No. 07599-00006

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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Daniel S. Ojserkis, Esq.
Office Managing Partner

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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 Jiacopello Jones

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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.