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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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Daniel S. Ojserkis, Esq.  
Office Managing Partner

File #11726-471

March 31, 2008

**VIA E-MAIL, HAND DELIVERY AND FEDERAL EXPRESS**

Paul Resch, Secretary  
Pennsylvania Gaming Control Board  
5th Floor, Verizon Tower, Strawberry Square  
303 Walnut Street  
Harrisburg, PA 17101  
Attention: Public Comment on Regulation No. 125-82

Re: Chester Downs and Marina, LLC  
Public Comment on Regulation No. 125-82 (proposed 58 Pa. Code § 441a.24)

Dear Mr. Resch:

We represent Harrah's Chester Downs Management Company, LLC, manager of Chester Downs and Marina, LLC ("Chester Downs"), the holder of a Category 1 Slot Operator license approved and issued pursuant to 4 Pa. C.S.A. § 1302, License No. F-1368. On behalf of Chester Downs, we are submitting the following comments to Regulation No. 125-82 (proposed regulation 58 Pa. Code § 441a.24 entitled "Independent Audit Committee") ("Reg 125-82").

As proposed by the Pennsylvania Gaming Control Board (the "Board"), Reg 125-82 establishes requirements for independent audit committees applicable to slot machine licensees that are not publicly traded corporations or whose holding or intermediary companies are not publicly traded corporations. Chester Downs does not object to the introduction of a regulation relating to the composition of independent audit committees, particularly in the context of privately-held firms. However, Chester Downs submits that any such regulation must recognize the appropriate limited function of audit committees generally, and resist layering responsibilities on such committees that are either inappropriate for non-management personnel or duplicative of independent functions carried out by better-qualified, third parties. Measured against such a standard, Reg 125-82 is unsupportable.



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Paul Resch, Secretary  
Pennsylvania Gaming Control Board  
March 31, 2008  
Page 2

**1. The role of the independent audit committee proposed by Reg 125-82 far exceeds the traditional or appropriate role of independent audit committees and is unnecessarily broad in light of regulatory safeguards already in place.**

The intended beneficiaries of the work of independent audit committees are the shareholders of the subject company. The primary shortcoming of Reg 125-82 lies in its effort to position the audit committee as an adjunct of the Commonwealth's regulatory system rather than as an instrumentality designed to protect shareholders. While the proposed regulation does recognize the traditional role of the audit committee as receiving the direct report of the supervisors of the surveillance and internal audit departments on matters of policy, purpose, responsibility and authority, the regulation goes much further in declaring the general purpose of the audit committee "to monitor and report to the Board on the operations and financial control of the slot machine licensee." Proposed 58 Pa. Code § 441a.24(1). Chester Downs respectfully submits that these are not appropriate functions for an audit committee.

The broad functions cited in Reg 125-82 (the "Mount Airy standards") represent extreme measures employed by the Board in a unique case in which a managerial and reporting buffer was required between operators and equity owner. While Chester Downs acknowledges that in that instance the resultant committee has been referred to as an "audit committee," a review of the standard function of audit committees (including under New York Stock Exchange ("NYSE") and United States Securities and Exchange Commission ("SEC") standards) discloses that matters of so clear an operational and managerial nature are not within the audit committee's purview.

An audit committee should be limited to its traditional role of providing a non-managerial reporting base for supervisors in the surveillance and internal audit departments on matters of policy, purpose, responsibility and authority. To provide otherwise would place operational and managerial authority over casino operations in the hands of a body likely inexperienced and ill-equipped to address such matters.

Adequate safeguards exist to address the concerns implicit in Reg 125-82. The Pennsylvania Race Horse Development and Gaming Act, 4 Pa. C.S.A. § 1101 *et. seq.*, (the "Act") and the regulations promulgated thereunder (the "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. C.S.A. § 1323. The Act and Regulations



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ATTORNEYS AT LAW

Paul Resch, Secretary  
Pennsylvania Gaming Control Board  
March 31, 2008  
Page 3

also require audited annual financial statements by an independent public accountant or, when appropriate, an independent registered public accounting firm, licensed to practice in the Commonwealth, and such financials must include a report on the internal controls. 4 Pa. C.S.A. § 1207; 58 Pa. Code § 465a.5. In light of these requirements and safeguards, the imposition of the Mount Airy standards on non-public licensees is inappropriate and will impose an unreasonable burden on all such licensees.

**2. The definition of “independent” is overly broad as relates to the constituent members of the independent audit committee of a privately-held company.**

As noted above, the intended beneficiaries of the protections provided by independent audit committees are the shareholders of the subject company. In the publicly traded context, requirements regarding the composition of these committees are imposed by a combination of the SEC and the exchanges on which such companies' shares trade. In an effort to better ensure transparency and sound corporate governance (ultimately redounding to the benefit of the shareholders), standards for “independence” have evolved which are closely echoed by Reg 125-82. However, in the context of privately-held companies, these standards are overly broad.

Without belaboring the point, representatives of the ultimate owners of Chester Downs are the very entities for whose benefit an audit committee would typically be established. But under Reg 125-82, the relationship of such owners of Chester Downs would likely result in the disqualification of any representatives of such owners from serving on the audit committee. Chester Downs suggests that in the privately-held context, independence from the operator and management is a sufficient degree of separation to ensure unfettered reporting. At worst then, at least the majority of the representatives on the audit committee could be representatives of or have a relationship to Chester Downs' sponsoring entities. Chester Downs would be amenable to a requirement that at least one member of the independent audit committee be “independent” under SEC/NYSE standards.

**3. The responsibilities imposed upon members of the independent audit committee proposed by Reg 125-82 far exceed the traditional or appropriate responsibilities imposed upon members of independent audit committees of privately-held companies.**

Reg 125-82 requires, among other things, that:



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ATTORNEYS AT LAW

Paul Resch, Secretary  
Pennsylvania Gaming Control Board  
March 31, 2008  
Page 4

- (a) one member of the independent audit committee must be an "audit committee financial expert" as that term is defined by the SEC under Sarbanes-Oxley Act;
- (b) members of the independent audit committee must review financial and statistical reports required under 58 Pa. Code § 465a.4;
- (c) members of the independent audit committee must each provide what amounts to an auditor's certification of the annual audit prepared by an independent, third party auditor under 58 Pa. Code § 465a.5; and
- (d) members of the independent audit committee have direct reporting responsibilities to the Board.

Each of these functions is either appropriately vested in some operational position far better suited to perform the task or in the independent, third-party auditor required by the Act and the Regulations. The benefits that would be realized by this transfer or truncation of responsibility cannot justify the resultant duplication of effort, questionable expertise applied, presumed imposition of liability on audit committee representatives and cost of compliance.

#### **Conclusion.**

Chester Downs respectfully submits that in the privately-held context:

- (1) The audit committee should remain a non-managerial reporting base for supervisors in the surveillance and internal audit departments on matters of policy, purpose, responsibility and authority;
- (2) Independence of audit committee members from the operator and management is a sufficient degree of separation to ensure unfettered reporting. Having said this, Chester Downs would be amenable to a requirement that at least one member of the independent audit committee be "independent" under SEC/NYSE standards; and
- (3) Those proposed functions of the audit committee which are currently vested in operational positions far better suited to perform the task or in the independent, third-party auditor required by the Act and the Regulations, should not be assigned to the members of the audit committee.



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ATTORNEYS AT LAW

Paul Resch, Secretary  
Pennsylvania Gaming Control Board  
March 31, 2008  
Page 5

In consideration of the foregoing, Chester Downs suggests that Reg 125-82 would impose an unnecessary and unreasonable burden on licensees and should be withdrawn. Chester Downs would be more than willing to make its representatives available for conference with appropriate members of the Board and its staff on these matters. Thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "William J. Downey".

William J. Downey

WJD/te