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Via E-mail and Overnight Mail

Paul Resch, Secretary
Pennsylvania Gaming Control Board
303 Walnut Street, Verizon Building
Harrisburg, PA 17106-9060

**Re: Public Comment on Regulation No. 125-82
Proposed PGCB Regulation 58 Pa. Code 441a.24
(Independent Audit Committee)**

Dear Mr. Resch:

Enclosed please find comments of HSP Gaming, LP with regard to the referenced proposed regulation.

Very truly yours,


MICHAEL D. SKLAR

MDS/ch
Enclosures

cc: Greg Carlin
Bob Sheldon

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INDEPENDENT REGULATORY
REVIEW COMMISSION

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE	03/31/2008	ADDRESS 1	3030 Atlantic Avenue
SECTION # OR SUBJECT	Section 441a.24	ADDRESS 2	
FIRST NAME	Michael	CITY	Atlantic City
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COMMENTS

Please see attached comments on behalf of HSP Gaming, L.P.

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**

In re: Regulation No. 125-82	:	HSP Gaming, L.P.
Proposed 58 Pa. Code 441a.24	:	Docket #1356
	:	
	:	

**COMMENTS OF HSP GAMING, LP TO
PROPOSED PENNSYLVANIA GAMING CONTROL BOARD
REGULATION #125-82 (Proposed 58 Pa. Code 441a.24)**

Pursuant to the Independent Regulatory Review Process, HSP Gaming, L.P. ("HSP") respectfully submits the following comments to the Pennsylvania Gaming Control Board's ("Gaming Board") proposed Regulation No. 125-82 published in the *Pennsylvania Bulletin* at 38 Pa. B. 1039 on March 1, 2008.

The Gaming Board proposed the enactment of the referenced regulation with the stated objective of requiring non-publicly traded slot machine licensees to establish an independent audit committee. In the "Explanation of Amendments," the Gaming Board stated that the intent of the Proposed Independent Audit Committee Regulation ("Proposed Regulation") was to require non-publicly traded companies to meet the requirements placed on publicly traded companies by the Sarbanes-Oxley Act of 2002 ("SOX"). Accordingly, the Board noted that the Proposed Regulation will only impact three existing slot machine licensees as the other licensees are publicly traded and thus, are subject to the audit committee requirements under SOX. Thus, the criteria required under the Proposed Regulation are intended to parallel the existing

requirements for publicly traded licensees. Publicly traded casino licensees would not be subject to the requirements under the Proposed Regulation.

In fact, the Proposed Regulation goes far beyond requirements applicable to publicly traded corporations and accordingly, places an unfair and unwarranted burden on non-publicly traded casino licensees.

As a starting point, the purpose of an audit committee under SOX, and by extension, the Proposed Regulation, should be examined. SOX requires that an audit committee or equivalent body must be established by and among the Board of Directors of a company "for the purpose of overseeing the accounting and financial reporting processes of the [company] and audit of the financial statements of the [company]." 15 U.S.C. §7201(3). Thus, an audit committee's function under SOX is one of oversight.

The Proposed Regulation contains requirements well outside its stated purpose and the purpose of SOX. Rather than creating a parallel system, the Proposed Regulation unfairly imposes substantially more onerous and, thus more costly, requirements on non-publicly traded casino licensees.

For example, under the Proposed Regulation, the independent audit committee is not only charged with the oversight function but also is given extensive obligations to review numerous reports and file various reports together with certifications regarding a wide range of issues not required under SOX. The Proposed Regulation provides that "the independent audit committee is established with the general purpose and duty to monitor and report to the Board on the operations and financial control of the slot machine licensee." See

58 Pa. Code §441a.24(1) (emphasis added). No such obligation is imposed on publicly traded companies covered by SOX. Additionally, the Proposed Regulation has severely more restrictive requirements as to the composition of the audit committee.

The examples set forth above are just two of the many distinctions between the treatment of SOX-governed companies and those to be governed by the Proposed Regulation. The chart below contrasts the requirements under the Proposed Regulation and that which is required of audit committees under SOX.

Criteria	Sarbanes - Oxley	Proposed Regulation
General Purpose	Oversee the accounting and financial reporting processes audits of financial statements of company - §7201(3)	Monitor and report to PGCB on operations and financial controls of licensee - §465a.24(1)
Charter	No comparable requirement	Charter must outline purpose, objectives and organization - §465a.24(2)
Number of Members	No minimum or maximum number; one member must be audit committee financial expert - §7265	Must be 3 – 5 members, one of whom is an audit committee financial expert - §§465a.24(4), (19)

Criteria	Sarbanes - Oxley	Proposed Regulation
Independence	Members may not: (a) accept any consulting, advisory or other compensatory fee; (b) be an affiliated person - §78j-1(m)(3)	Members must: (a) be independent in character and judgment; (b) have no ownership interest in licensee; (c) have no material relationship with licensee; materiality exists if: (i) receives compensation (ii) employee of licensee within last 3 years (iii) executive officer of business engaged by licensee with last 3 years (iv) employee of company that did over \$1M in business with licensee within last 3 years - §§465a.24(5)-(7)
Retention	No comparable requirement	Fixed term contracts and termination only for good cause - §465a.24(8)
Funding	Funded by company – §78j-1(m)(6)	Funded by company - §465a.24(10)
CPA firm retention	Audit Committee directly responsible for appointment, compensation and oversight of CPA firm - §78(j)- 1(m)(2) CPA firm: (a) prohibited from providing non-audit services (b) barred if company executive worked for CPA within one year - §§78j-1(g), (l)	Audit Committee directly responsible for appointment, compensation and oversight of CPA firm. CPA firm must be: <ul style="list-style-type: none"> ▪ Independent ▪ Nationally recognized ▪ Gaming experience - §465a.24(11)
Review of reports	No comparable requirement (review and certification of annual audit required of CEO and CFO <u>not</u> audit committee - §724a(1)	Each member must: (a) review all financial and statistical reports under §465a.4; (b) certify as to accuracy of annual audit - §465a.24(12)

Criteria	Sarbanes - Oxley	Proposed Regulation
Department Head Hiring	No comparable requirement.	Hire supervisors of internal audit and surveillance who report directly to Audit Committee for policy issues - §§465a.24(13), (14)
Internal Controls	No comparable requirement (Management and CPA firm required to evaluate and assess internal controls <u>not</u> audit committee - §7262)	Approve internal controls and monitor compliance - §465a.24(15)
Anonymous Complaints	Establish procedures for receiving complaints regarding accounting and internal controls, including confidentiality, anonymous submissions – §78j-1(m)(4)	Establish procedure for direct handling of complaints regarding compliance and internal controls, including, anonymous complaints - §465a.24(17)
Annual Report	No comparable requirement.	Must file report evaluating committee's adherence to its charter - §465a.24(18)
Annual Certification	No comparable requirement.	Each member must certify: (a) meets independence standards (b) in compliance with code of conduct - §465a.24(19)

Some of the more significant differences set out in the Chart are as follows:

- Under the Proposed Regulation, members of the audit committee may not include directors or owners of the company. Under SOX, the members of the independent audit committee must be members of the Board of Directors of the company and may include owners as long as such owner is not the

beneficial owner of more than 10% of any class of voting equity securities. Thus, while the SOX requirements recognize the value of having audit committee members familiar with the entire scope of the company's business, the Proposed Regulation requires that the job be done by those without benefit of such knowledge.

2. Under the Proposed Regulation, the independent audit committee must have between three and five members. Under SOX, the independent audit committee may consist of any number of members, from one to as many persons that sit on the company's Board of Directors. There is no magic to the arbitrary numbers of three to five. Each casino licensee should be permitted to determine the ideal number, subject to Gaming Board regulatory oversight, to allow audit committee size to reflect the needs of the licensee.

3. Under the Proposed Regulation, the independent audit committee "is directly responsible for the appointment or approval of the appointment, compensation, retention and oversight of the department heads of the departments of internal audit and surveillance". These department heads are required to report directly to the independent audit committee for matters of policy, purpose, responsibility and authority." Under SOX, there is no comparable requirement.

4. Under the Proposed Regulation, each member of the independent audit committee must individually review all of the standard financial and statistical reports of the licensee and individually prepare a statement to accompany the annual audit certifying that the independent audit committee

"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 a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading 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 as of, and for, the periods presented." Under SOX, there is no comparable requirement.

As is evident from the foregoing, the Proposed Regulation treats non-public companies completely different from publicly-treated companies. There is no rational basis for this distinction. Indeed, the disparate treatment between publicly traded and non-publicly traded companies raises due process and equal protection issues under the United States Constitution and the Constitution of the Commonwealth of Pennsylvania.

In addition to the comments on the disparate treatment under the Proposed Regulation, HSP further submits that a SOX-style audit committee is not necessary for casino licensees in the Commonwealth of Pennsylvania. Numerous layers of protection exist to insure company accountability and checks and balances are in place to prevent accounting irregularities. SOX was adopted, in large part, because most publicly traded companies are nowhere near as highly regulated as Pennsylvania slot machine licensees. Casino licensees in Pennsylvania operate in a cashless environment in which the slot machines are based on a ticket in/ticket out system. Moreover, each slot

machine is directly linked to the state-controlled central computer system. See 4 Pa. C.S. §1323. Each casino licensee is required to have an internal audit department charged with auditing the licensee's operations. Each licensee is required to develop thorough internal controls, which must be approved by the Gaming Board and must be tested annually by the external auditor. Each licensee is required to file extensive monthly financial reports with the Gaming Board. Each licensee is required to submit to an annual audit of its financial statements by an external certified public accounting firm. Finally, the Gaming Board's financial task force regularly reviews and examines the financial operations of each casino licensee. Nonetheless, HSP recognizes that certain aspects of the SOX audit committee requirements may be appropriate.

We respectfully submit that the Proposed Regulation must, at a minimum, insure equality of treatment between publicly traded and non-publicly traded casino licensees. Thus, the Proposed Regulation should be revised to require each licensee to establish a committee comprised of individual(s) who cannot be senior management executives or employees of the casino licensee or accept any consulting, advisory or other compensatory fee. The committee should be granted the following authority:

1. Complete access to the licensee's independent certified public accounting firm and directors of internal audit and surveillance;
2. The authority and funding to engage independent counsel and other advisors as it deems necessary to carry out its duties; and

3. The authority to establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters and establish a system for receiving confidential, anonymous submissions by employees regarding accounting or auditing matters.

For the foregoing reasons, HSP submits the Proposed Regulation should be revised as set forth above.


Respectfully Submitted,

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