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## INDEPENDENT REGULATORY REVIEW COMMISSION

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

March 25, 2009

Frank Donaghue, Acting Executive Director  
Pennsylvania Gaming Control Board  
Strawberry Square  
Verizon Tower, 5th Floor  
Harrisburg, PA 17106-9060

Re: Regulation #125-93 (IRRC #2723)  
Pennsylvania Gaming Control Board  
Rules of Practice and Procedures

Dear Mr. Donaghue:

The Independent Regulatory Review Commission disapproved your regulation on March 19, 2009. Our order is enclosed and will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

Within 40 days of receipt of our order, Section 7(a) of the Regulatory Review Act requires you to select one of the following options: (1) proceed with promulgation under Section 7(b); (2) proceed with promulgation under Section 7(c); or (3) withdraw the regulation. If you do not take any action within this period, the regulation is deemed withdrawn.

If you or your staff have any questions, please contact me at 783-5506.

Sincerely,

Kim Kaufman  
Executive Director

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Enclosure

cc: Honorable Jane M. Earll, Chair, Senate Community, Economic and Recreational Development Committee

Honorable Wayne D. Fontana, Chair, Senate Community, Economic and Recreational Development Committee

Honorable Dante Santoni, Jr., Chair, House Gaming Oversight

Honorable Curt Schroder, Chair, House Gaming Oversight

**INDEPENDENT REGULATORY REVIEW COMMISSION  
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held March 19, 2009

Arthur Coccodrilli, Chairman  
George D. Bedwick  
Nancy Sabol Frantz, Esq.  
Karen A. Miller

Regulation No. 125-93 (#2723)  
Pennsylvania Gaming Control Board  
Rules of Practice and Procedures

On September 24, 2008, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Pennsylvania Gaming Control Board (Board). This rulemaking amends 58 Pa Code Chapters 401a, 403a, 405a, 491a, 493a, 494a, 495a, 497a, 499a and 511a. The proposed regulation was published in the October 4, 2008 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on February 11, 2009.

This final-form regulation amends existing regulations relating to practice and procedure before the Board. In the Regulatory Analysis Form accompanying the regulation, the Board explained it intended this rulemaking to improve clarity, conform to current practice and simplify some existing requirements. A primary change to existing regulations is the Board's proposal to shift the trigger date for responsive filings from the date of service to the date of filing.

The Regulatory Review Act requires this Commission to determine whether a final-form regulation is in the public interest. 71 P.S. § 745.5b(a). To make that determination, we must weigh, among other factors, "[t]he clarity, feasibility and reasonableness of the regulation...by considering the following: (i) Possible conflict with or duplication of statutes or existing regulations. (ii) Clarity and lack of ambiguity. (iii) Need for the regulation." 71 P.S. § 745.5b(b)(3). We question the reasonableness of and need for this regulation for two reasons.

First, the regulation appears to serve the interests of the Board at the expense of the regulated community. Under existing Board regulations, timelines are calculated from the time of service. 58 Pa. Code §§ 493a.5 (Answers to complaints, petitions, motions and other filings requiring a response); 493a.10 (Motions for summary judgment and judgment on the pleadings); 493a.12 (Intervention); and 494a.6 (Reopening of record). When service is accomplished by post, service occurs at the time of mailing. 1 Pa. Code 33.34. According to the Board, calculating timelines from the time of filing will protect the most frequent responding party, the Board's own Office of Enforcement Counsel, from diminished response periods due to postal delays. However, the Board agrees that the regulation fails to protect responding parties other than the Office of Enforcement Counsel from the consequences of the similar delays. Therefore, we conclude this regulation unreasonably disadvantages the regulated community.

Second, we believe the regulation is likely to create confusion amongst the regulated community. Section 491a.1(c) states, "[p]leadings or other documents that require a filing fee will not be deemed filed until the Board receives the required fee." A scheme that calculates

timelines from the time of filing, which is not deemed to have occurred until the Board is paid, strips responding parties (other than the Board's Office of Enforcement Counsel) of the consistency and predictability of process necessary for fair and transparent administrative proceedings. Additionally, by the Board's own admission, no other court or administrative forum in this Commonwealth calculates timelines from the time of filing, rather than the time of service. Therefore, we conclude that portions of this regulation are both unnecessary and unduly confusing.

Therefore, based upon the information presented to us and after considering the criteria of the Regulatory Review Act discussed above, we find that promulgation of this regulation is not in the public interest.

**BY ORDER OF THE COMMISSION:**

This regulation is disapproved.



A handwritten signature in black ink, appearing to read "Kim Kaufman".

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Kim Kaufman, Executive Director