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INDEPENDENT REGULATORY
REVIEW COMMISSION

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December 8, 2008

VIA EMAIL AND REGULAR MAIL

Richard Sandusky

Director of Regulatory Review

Pennsylvania Gaming Control Board

P.O. Box 69060

Harrisburg, Pennsylvania 17101 - 9060

Re: Public Comment on Regulation No. 125-92
§441a.25 Proposed Smoking Regulation

Dear Mr. Sandusky:

Please accept the following comments to the proposed Regulation on behalf of HPS Gaming, L.P. and Holdings Acquisition Co, L.P.

1. We believe that the title of this subsection should be changed to reflect that the Regulation only addresses smoking on the gaming floor, not the entire casino facility:

"§441a.25. Smoking in licensed facilities on gaming floor."

2. We believe that the exception in subsection (a) should reference 35 P.S. § 637.11(q) to make it clear that a city of the first class may amend its current local ordinance regarding smoking.

"(a) Beginning on September 11, 2008, ~~a slot machine licensee, except as provided in 35 P.S. §637.11, a slot machine licensee whose licensed facility is located in a city of the first class that has prohibited smoking in public places,~~ may permit smoking on up to 25% of the square footage of the gaming floor. A slot machine licensee may increase the area of the gaming floor where smoking is permitted to a maximum of 50% of the square footage of gaming floor in accordance with the procedures in

subsections (b)--(e)."

3. We believe that an example should be included in subsection (d) to make the provision clearer:

"(d) When a report from the Department indicates that the average gross terminal revenue per slot machine unit in the designated smoking areas exceeds the average gross terminal revenue per slot machine unit in the designated nonsmoking areas, the slot machine licensee may, after verification by the Board's Executive Director, increase the square footage of the gaming floor designated for smoking in proportion to the percentage difference in revenue. By way of example, if a slot machine licensee permits smoking on 25% of the square footage of the gaming floor and the Department report shows that the average gross terminal revenue per slot machine unit in the designated smoking areas is \$300 per unit and \$200 per unit in the designated non-smoking areas (50% more generated in the smoking areas), then, after verification by the Board's Executive Director, the slot machine licensee may increase the square footage of the gaming floor designated for smoking to 37.5% (i.e., the smoking portion of the gaming floor was increased by fifty percent from 25% to 37.5%). The designated smoking areas may at no time exceed 50% of the square footage of the gaming floor."

4. We believe that there should be a time period within which the Executive Director must make a determination regarding a Slot Machine Licensee's notice of intent to modify the square footage of the gaming floor designated for smoking.

(e) A notice of intent to increase, decrease or reconfigure the square footage of the gaming floor designated for smoking shall be submitted to the Board's Executive Director in writing and include a revised gaming floor plan. The Executive Director will review the revised gaming floor plan to verify compliance with the Clean Indoor Air Act (35 P.S. §§ 637.1—637.14) and this part. A slot machine licensee may not implement the increase, decrease or reconfiguration until compliance is verified. The Executive Director shall make a determination regarding compliance within 30 days of receipt of notice from the slot machine licensee.

Slot Machine Labeling

You have also asked for comments regarding labeling each slot machine as smoking or non-smoking. We believe labeling each machine is unnecessary. The signage required under subsection (g) will advise patrons that smoking is permitted only in designated areas. Smoking areas are typically segregated in sections of the gaming

floor, clearly identified with signage as patrons approach them. Additionally many of the rows and/or banks of slot machines in the smoking section will have a smoking permitted sign(s) identifying it as such. The gaming floor will also be patrolled by security officers and other casino personnel who will assist patrons to smoking and non-smoking areas.

Moreover, we believe that signage on each slot machine would be ineffective since a tremendous amount of information currently exists on the machines. The smoking designation would just get lost in the many messages already on the machine, such as game information, marketing, payouts, instructions for bill acceptor, slot club card, and ticket printer.

Respectfully submitted,



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