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Via Email and First Class Mail

Chad W. Zimmermann  
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Pennsylvania Gaming Control Board  
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RE: Comments on Sports Wagering – Proposed Permanent Regulations;  
Regulation #125-234

Dear Mr. Zimmerman:

On behalf of Downs Racing, L.P., d/b/a Mohegan Sun Pocono (“MSP”), we would like to thank the Pennsylvania Gaming Control Board (“PGCB” or “the Board”) for the opportunity to comment on the regulation of sports wagering in the Commonwealth of Pennsylvania. MSP respectfully requests that the Board consider these comments as it promulgates its permanent sports wagering regulations.

**I. The Board Should Clarify Conflicting Language on Satellite Sports Wagering Areas**

Section 13C21 of the Pennsylvania Race Horse Development and Gaming Act<sup>1</sup>, 4 Pa. C.S. § 13C21, establishes the authorized locations for the conduct of sports wagering. Section 13C21 provides that a sports wagering certificate holder may conduct sports wagering at “a licensed facility, a temporary facility authorized under subsection (b), an area authorized under subsection (c) [a nonprimary location] or through an Internet-based system.” 4 Pa. C.S. § 13C21(a). Consistent with the Gaming Act, Section 1401a.5(b) of the proposed permanent regulations provides that sports wagering may only be offered to players as follows:

- (1) At a designated, clearly identified sports wagering area, at the sports wagering certificate holder’s licensed facility.

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<sup>1</sup> 4 Pa. C.S. § 1101 *et seq.* (the “Gaming Act”)



- (2) At a temporary facility that is physically connected to, attached to or adjacent to the sports wagering certificate holder's slot machine licensed facility for a period not to exceed 18 months.
- (3) At a nonprimary location of a Category 1 slot machine licensee under 3 Pa.C.S. Chapter 93 (relating to race horse industry reform).
- (4) At a Category 4 licensed facility, if the holder of the Category 4 slot machine license also holds a Category 1, 2 or 3 slot machine license and has acquired a sports wagering certificate under that Category 1, 2 or 3 license.

While Section 1401a.5(b) is consistent with the Gaming Act, Section 1401a.9 of the proposed permanent sports wagering regulations appears to conflict with the Gaming Act as well as Section 1401a.5(b) of the proposed permanent regulations. The conflicting language that MSP suggests the Board clarify is set forth below:

A sports wagering area shall be a single area of dedicated public space with clearly established walls or defined borders. Satellite sports wagering areas shall also be permitted upon approval by the Board.

Section 1401a.9(b). The phrase "satellite sports wagering areas" is not defined and lacks clarity. Moreover, the reference to the sports wagering area as a "single area" seems to conflict with the subsequent sentence that provides for "satellite sports wagering areas." We offer the following clarifying language that would align Section 1401a.9(b) with the language in Section 1401a.5(b) and the Gaming Act. The language shown in underline below reflects the language MSP proposes be added to Section 1401a.9(b) for clarification purposes:

A sports wagering area shall be a single area of dedicated public space with clearly established walls or defined borders. Satellite sports wagering areas located within a permitted location under § 1401a.5(b)(1)–(4) shall also be permitted upon approval by the Board.

The recommended clarification will appropriately implement the Gaming Act and provide clear regulatory guidance to certificate holders as they develop their business plans and operations.



**II. The Board Should Clarify the Proposed Physical Characteristics for Sports Wagering Areas to Ensure Seamless Integration of Sports Wagering and Horse Racing at Nonprimary Locations**

MSP encourages flexibility in the interpretation of the proposed requirements for physical characteristics of sports wagering areas in the context of nonprimary locations. The first proposed physical characteristic of a sports wagering area that requires some flexibility in nonprimary locations is the following: “A sports wagering area shall be a single area of dedicated public space with clearly established walls or defined borders.” Section 1401a.9(b)(emphasis added). As nonprimary locations may integrate racing and sports wagering, MSP recommends that either the language be clarified to reflect that established walls or defined borders are not required for sports wagering areas in nonprimary locations or that the PGCB exercise some flexibility in its interpretation of the proposed language.

The second provision of concern is the requirement that “[w]indows...be fully enclosed and designed to prevent direct access to the materials stored and activities performed therein.” Section 1401a.9(c)(2)(iii). Current PGCB approved operations at nonprimary locations permit window tellers to accept racing wagers and sports wagers. We encourage the Board to allow this practice to continue and interpret or clarify the language in Section 1401a.9(c)(2)(iii) to not prohibit a single employee from accepting racing wagers and sports bets. MSP also encourages the Board to clarify or interpret the language to permit racing employees to have access to the space behind the windows that are designed to prevent access from the public.

As the Gaming Act and the State Horse Racing Commission encourage integration of horse racing and sports wagering operations at nonprimary locations, the Board should clarify the required physical characteristics for sports wagering areas for seamless application to nonprimary locations. Or, at the very least, the Board should interpret the provisions to permit integration of sports wagering and horse racing operations at nonprimary locations.

**III. The Restrictions on Ownership of Sports Wagering Certificate Holders and Sports Wagering Operators Should be Clarified**

The prohibitions on ownership of a certificate holder or sports wagering operator set forth in Section 1401a.7(c) lack clarity and should be refined. Section 1401a.7(c) provides as follows:



An athlete or person who holds a position of authority or influence sufficient to exert influence over the participants in a sporting event, or a person professionally connected to a sporting event or governing body including coaches, managers, handlers, athletic trainers, team physicians or other physicians providing medical consultation or treatment of an athletic participant or a person with access to certain types of exclusive information on any sporting event overseen by the governing body is prohibited from having a 10 percent or more direct or indirect ownership interest in or control of a sports wagering certificate holder or a sports wagering operator.

The language is broadly written such that it is not apparent whether an affiliate of a certificate holder or sports wagering operator that owns an athletic team would be prohibited from owning a 10 percent or more ownership interest in a certificate holder or operator. The prohibitions on ownership explicitly apply to a litany of individuals such as coaches, athletic trainers, team physicians, etc. However, the following phrases lack clarity: (1) "person who holds a position of authority or influence to exert influence over the participants in a sporting event"; (2) "person professionally connected to a sporting event"; and (3) "person with access to certain types of exclusive information on any sporting event." A logical interpretation of Section 1401a.7(c), when read in conjunction with Section 1401a.7(d), is that it does not apply to an affiliate of a certificate holder or sports wagering operator that owns an athletic team.

Section 1401a.7(d) establishes the prohibitions for certificate holders and sports wagering operators that have an ownership interest in an athletic team, governing body, etc. The provision prohibits certificate holders and sports wagering operators from holding a 10 percent or more ownership interest in an athletic team, governing body, etc. upon which they accept wagers. It follows that certificate holders and sports wagering operators may hold a 10 percent or more ownership interest in an athletic team if the certificate holder or operator does not accept wagers on the team.

To clarify Section 1401a.7(c) and to marry up 1401a.7(c) and (d), MSP recommends that the Board clarify or interpret Section 1401a.7(c) to not cover affiliates of a certificate holder or sports wagering operator. Alternatively, MSP recommends that the Board except affiliates of a certificate holder or sports wagering operator from Section 1401a.7(c) if the certificate holder or operator does not accept wagers involving the team owned by its affiliate.



**IV. The PGCB Should Exercise its Discretion to Permit Wagering on eSports**

MSP supports the PGCB's proposed modifications to Section 1401a.6 (permitted sports wagering activities) that would provide the PGCB additional discretion with regard to the type of sporting events that may be wagered on in the Commonwealth. By way of background, the Gaming Act defines "sports wagering," in pertinent part, as follows:

The business of accepting wagers on sporting events or on the individual performance statistics of athletes in a sporting event or combination of sporting events by any system or method of wagering, including over the Internet through websites and mobile applications.

4 Pa. C.S. § 13C01. While the Gaming Act does not define the term "sporting event," Section 1401a.2 of the proposed permanent regulations suggests that the term be defined as "a professional or collegiate sports or athletic event or a motor race event." The PGCB's proposed modifications to Section 1401a.6 (permitted sports wagering activities) would expand the list of sporting events that the Board may permit a certificate holder or sports wagering operator to offer wagering on. The proposed language in Section 1401a.6(b) would include a catchall for "any other sporting events as approved by the Board." MSP supports this proposed language, which provides the Board flexibility and discretion as the sports industry continues to evolve.

MSP encourages the Board to exercise its discretion to permit certificate holders and sports wagering operators the opportunity to offer wagers on eSports. MSP submits that the Board should construe the definition of "sports wagering" in the Gaming Act to include eSports and utilize its discretion to authorize wagering on eSports. eSports events occur under sanctioning self-regulatory bodies similar to the governing bodies that regulate more common types of professional sports. The expeditious growth of the eSports industry has demonstrated its economic growth value. The Board should construe "sporting events" to include eSports to advance potential revenue generation in the Commonwealth and fully develop the sports wagering industry in Pennsylvania.

**V. Sports Wagering Certificate Holders and Sports Wagering Operators Should Not Be Required to Share Information Regarding Unusual or Suspicious Wagering Activity With Sports Governing Bodies/Leagues**

MSP supports the PGCB's proposed removal of language from Section 1408a.9(b) that had required certificate holders and sports wagering operators to share information



regarding unusual or suspicious wagering activity with sports governing bodies/leagues. MSP supports removal of the requirement as it is unnecessary in light of the requirement to share information regarding unusual or suspicious wagering activity with other certificate holders, operators and the Board. In sum, MSP views the integrity monitoring requirement set forth in Section 1408a.9(b) of the proposed permanent regulations as appropriate and in the public interest.

We thank the PGCB for its consideration of these comments. We look forward to having a continuing voice in the development of sports wagering in the Commonwealth.

Sincerely,



Ron Chrzan  
Director of Compliance  
Mohegan Sun Pocono

cc: R. Douglas Sherman, Chief Counsel (via email)  
Susan Hensel, Esq., Director of Bureau of Licensing (via email)  
Anthony Carlucci, President, Mohegan Sun Pocono (via email)

