

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: WYNN, PA's PETITION FOR BOARD ORDER PERMITTING
THE FILING OF AN INSTITUTIONAL INVESTOR NOTICE OF
OWNERSHIP FORM

* * * * *

PUBLIC INPUT HEARING

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BEFORE: WILLIAM RYAN, CHAIRMAN

Gregory C. Fajt, James B. Ginty, Annmarie
Kaiser, Keith R. McCall, Anthony C.

Moscato, John J. McNally, III, Members;

Christopher Craig, Representing Robert M.
McCord, Robert Coyne, Representing

Secretary to Department of Revenue Daniel
P. Meuser and Matthew Meals, Representing

Secretary of Agriculture George Greig

HEARING: Wednesday, March 13, 2013

LOCATION: Strawberry Square Complex

2nd Floor

Harrisburg, PA 17106

WITNESSES: Samantha Stewart, Daniel Schulter

Reporter: Jennifer T. Alves

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NONE OFFERED

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CHAIRMAN:

The next hearing will be Wayne, PA's
Petition for a Board Order Permitting the Filing of an
Institutional Investor Notice of Ownership Form in
Lieu of a Principal Entity Application by Waddell and
Reed Financial, Inc. My colleague informs me that I
said Wayne. I live in Wayne. I meant Wynn obviously.
All right. Are all of the witnesses present?

ATTORNEY DIGIACOMO:

Yes.

CHAIRMAN:

Any non-attorney witnesses who will
testify I would ask to be sworn.

ATTORNEY DIGIACOMO:

Yes, we have two.

CHAIRMAN:

Okay. Can they please stand and each
state your name for the record? Spell your last name.

MS. STEWART:

Samantha Stewart from Wynn Resorts.
S-T-E-W-A-R-T.

CHAIRMAN:

Thank you.

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MR. SCHULTE:

Daniel Schulte, Waddell and Reed.

S-C-H-U-L-T-E.

WITNESSES SWORN EN MASSE:

ATTORNEY DIGIACOMO:

Good morning, Mr. Chairman.

CHAIRMAN:

Good morning.

ATTORNEY DIGIACOMO:

Frank DiGiacomo from Duane Morris on behalf of the Petitioner Wynn, Pennsylvania. It's D-I-G-I-A-C-O-M-O. I have with me today, as they just introduced themselves, Mr. Dan Schulte from Waddell and Reed and Samantha Stewart from Wynn Resorts Limited.

CHAIRMAN:

You may proceed.

ATTORNEY DIGIACOMO:

Thank you, Members, Chair. Commissioner McNally, welcome.

MR. MCNALLY:

Thank you.

ATTORNEY DIGIACOMO:

1 We are here today seeking this Board's
2 order to grant Waddell and Reed institutional investor
3 status as set forth under the Act in its regulations.
4 Waddell and Reed is an investor in Wynn Resorts
5 Limited, which is the publicly traded holding company
6 of the Category 2 Applicant Wynn Pennsylvania.
7 Waddell and Reed meets all the criteria of an
8 institutional investor as defined in the Board's
9 regulations with the sole exception of its percentage
10 of ownership. Waddell and Reed owns approximately 15
11 percent of the outstanding shares of Wynn Resorts
12 Limited and the current regulation sets forth a cap of
13 ten percent with regards to the Board granting
14 institutional investor status.

15 So we will proceed with --- I will ask
16 Mr. Schulte questions with regards to Waddell and
17 Reed's role in that investment and how --- the role it
18 plays in connection with this investment in Wynn
19 Resorts. We did submit a certification with the
20 petition. Office of Enforcement Counsel (OEC)
21 responded essentially leaving us to our proofs,
22 although the assertions in the certification were not
23 rebutted in any substantive way, but we'll proceed to
24 the extent we're duplicative in connection with that
25 evidence. I apologize.

1 -----
2 DANIEL SCHULTE, HAVING PREVIOUSLY BEEN SWORN,
3 TESTIFIED AS FOLLOWS:

4 -----
5 DIRECT EXAMINATION
6 BY ATTORNEY DIGIACOMO:

7 Q. Mr. Schulte, can you please describe for the
8 Board your title and your role with Waddell?

9 A. Sure, sure. Daniel Schulte. I'm general Counsel
10 and legal officer for all the Waddell and Reed
11 entities, which basically means that I'm in charge of
12 all the legal governance and compliance functions for
13 the organization.

14 Q. What does Waddell and Reed do?

15 A. Waddell and Reed is an asset manager, an
16 institutional asset manager, investor. Been in the
17 business since 1937. We currently have \$110 billion
18 under management and we basically manage money for
19 mutual funds institutional investors.

20 Q. And currently approximately what percentage of
21 Wynn Resorts Limited does Waddell and Reed own?

22 A. Currently almost 15 percent.

23 Q. Does Waddell hold those shares directly or
24 through subsidiaries?

25 A. They're held through subsidiaries. There are two

1 investment advisor subsidiaries holding officially on
2 behalf of our accounts.

3 Q. And those are?

4 A. Waddell and Reed Investment Company and IV
5 Investment.

6 Q. With regard to Waddell and Reed Investment
7 Company and IV Investment, are they registered with
8 the SEC in any way?

9 A. Yes, both are registered with the SEC as a
10 financial institutional advisor.

11 Q. Is Waddell and Reed Financial itself registered
12 with the SEC?

13 A. Waddell and Reed Financial is a publicly traded
14 company that owns all its subsidiaries, and we're
15 registered both as a 33 and 34 Act registrant with the
16 SEC. Correct.

17 Q. In connection with its holdings in Wynn Resorts
18 Limited, does Waddell and Reed file any documents with
19 the Securities and Exchange Commission?

20 A. Yes. We're required annually to file our
21 holdings, so we file both on behalf of all the
22 subsidiaries and the ultimate public company our
23 holdings in Wynn Resorts every February or more often
24 if it's required.

25 Q. Is that filing made by way of what's called a

1 Schedule 13G?

2 A. Yes, it's a 13G, which basically says we're a
3 passive investor in the entity. Correct.

4 Q. The registration with the Securities and Exchange
5 Commission requires Waddell to actually affirmatively
6 represent that they're a passive investor; correct?

7 A. Yes. Yes, we do so on the form as well.

8 Q. When we filed this petition that was prior to the
9 most recent filing of the 13G, which was made several
10 weeks ago; right?

11 A. Correct.

12 Q. February 7th I believe?

13 A. I believe that's right, yes.

14 Q. And in that most recent 13G what was the
15 ownership percentage of Wynn Resorts?

16 A. I think it took it to 15 percent total.

17 Q. Does Waddell and Reed have any voting rights with
18 regards to Wynn, Pennsylvania?

19 A. No.

20 Q. Does it have any ability to control or influence
21 Wynn, Pennsylvania?

22 A. No.

23 Q. Were Waddell and Reed's shares in Wynn Resorts
24 acquired in the ordinary course of Waddell's business?

25 A. Yes, starting in early 2000s up through now.

1 Absolutely.

2 Q. You referred to the representation in 13G with
3 regards to Waddell being a passive investor. Does
4 Waddell and Reed understand that it cannot influence
5 or affect the affairs of Wynn Resorts or Wynn,
6 Pennsylvania other than through voting in shares?

7 A. That's our understanding, yes, and our belief.
8 And that's the way we operate. Correct.

9 ATTORNEY DIGIACOMO:

10 Mr. Chairman, I'd also represent that
11 following the filing of this petition the OEC through
12 its financial investigative unit did request
13 supplemental information, which we provided on a
14 confidential basis. So, there have been supplemental
15 requests for information, which we have provided to
16 the OEC with respect to this petition. A few more
17 questions.

18 BY ATTORNEY DIGIACOMO:

19 Q. Is Waddell currently waived by the Nevada Gaming
20 Commission?

21 A. Yes. We actually do monthly and quarterly
22 reports to support that waiver in Nevada.

23 Q. Has there ever been any regulatory issues or
24 difficulties in connection with your filing before the
25 Nevada Gaming Commission?

1 A. No.

2 Q. Has Waddell continued to cooperate with any
3 requests it's received from Nevada ---

4 A. Absolutely.

5 Q. --- in that regard?

6 A. Yes.

7 Q. Will you represent here today that you will
8 cooperate with any request made by this Board or the
9 OEC?

10 A. Absolutely.

11 ATTORNEY DIGIACOMO:

12 Thank you. Mr. Chairman, I also have
13 with me Samantha Stewart who's the vice president of
14 investor relations for Wynn Resorts.

15 -----

16 SAMANTHA STEWART, HAVING PREVIOUSLY BEEN SWORN,
17 TESTIFIED AS FOLLOWS:

18 -----

19 DIRECT EXAMINATION

20 BY ATTORNEY DIGIACOMO:

21 Q. Ms. Stewart, good morning.

22 A. Good morning.

23 Q. Can you please briefly describe for the Board
24 your duties in your role as VP of investor relations?

25 A. Absolutely. I'm the main spokesperson on behalf

1 of Wynn Resorts for both Wynn Resorts Limited and Wynn
2 Macau as the person who answers questions and
3 interacts with Wall Street community in general, which
4 includes investors, potential shareholders, investors
5 such as Waddell and also Wall Street analysts and
6 Southside analysts.

7 Q. Are you familiar with the Waddell and Reed
8 investment in Wynn Resorts?

9 A. I am, yes.

10 Q. Do they get to vote as any other shareholder
11 would?

12 A. They do.

13 Q. Does Waddell and Reed --- or have they attempted
14 in the past to exercise any influence other than as a
15 voting shareholder?

16 A. No.

17 Q. You heard Mr. Schulte's testimony here today. Do
18 you agree with that?

19 A. Absolutely. Yes.

20 ATTORNEY DIGIACOMO:

21 No further testimony. Just a brief
22 summary. As noted in the petition Waddell meets all
23 the other criteria set forth in the regulations with
24 the sole exception of ownership percentage. The OEC
25 in their Answer to our petition has set forth several

1 conditions, which we will certainly agree to and, in
2 fact, offered such conditions in our original
3 petition. Those conditions include --- bear with me.
4 Those conditions include that Waddell and Reed
5 Financial along with any of its subsidiaries shall not
6 control or influence the operation of Wynn Resorts
7 Limited or Wynn, Pennsylvania.

8 The second condition is that should
9 Waddell and Reed or any of its subsidiaries determine
10 that it will seek to influence to affect the operation
11 of Wynn Resorts sometime in the future it shall
12 provide the OEC and the Bureau of Licensing with 30
13 days notice of such intention. And additionally
14 Waddell and Reed, as it has already done, agrees to
15 cooperate in connection with any further requests from
16 Licensing or the Bureau of Enforcement Counsel.

17 CHAIRMAN:

18 Okay. Thank you, Counselor. Does the
19 OEC have any questions of Wynn's witnesses?

20 ATTORNEY ROLAND:

21 We do, Mr. Chairman. Michael Roland,
22 R-O-L-A-N-D, assistant enforcement counsel with the
23 OEC.

24 -----
25 DANIEL SCHULTE, HAVING PREVIOUSLY BEEN SWORN,

1 TESTIFIED AS FOLLOWS:

2 -----

3 CROSS EXAMINATION

4 BY ATTORNEY ROLAND:

5 Q. First of all, I have to go to this percentage of
6 ownership because that seems to be one of the big
7 sticking points that we have. We've heard a bunch of
8 numbers in the past, we've heard two separate numbers
9 that are relatively close today. And they're all
10 approximates. Is there a reason why that is?

11 A. Yeah. Just because our ownership does change
12 based on the selling and rebalancing of our
13 portfolios. It's as simple as that.

14 Q. How frequently can that happen?

15 A. It can happen daily, but it won't happen --- it
16 won't be that big of a range in terms of ---. It
17 might move --- depending on the account, it might be
18 100 accounts on the shares that might move tenths of a
19 percentage. Not very often, but it could happen.

20 Q. Okay. So your testimony today is that the
21 percentage of ownership of Wynn, PA is just below 15
22 percent?

23 A. Correct.

24 ATTORNEY DIGIACOMO:

25 Another clarification. There was a

1 question about I guess a more materials change in
2 ownership historically and that dealt with the
3 redemption of one of the larger shareholders of Wynn
4 Resorts, Mr. Okada. There was a --- Wynn exercised
5 its option to redeem a significant portion of the
6 shares, which did change the ownership percentage
7 temporarily. But other than that the fluctuations are
8 more along the lines with what Mr. Schulte
9 represented.

10 BY ATTORNEY ROLAND:

11 Q. Okay. Would you be able to provide the Board
12 with an idea of what the lowest --- the percentage of
13 ownership has been versus what the highest percent
14 ---? I mean, is there a range that we're in here?

15 A. Yeah. I mean, depending on how far back you go.
16 We've been around a 14 to an 18 percent range of
17 ownership in the last two years probably.

18 Q. And, again, what was the highest percentage of
19 ownership has been?

20 A. Eighteen (18).

21 Q. Eighteen (18)?

22 A. Right.

23 Q. Eighteen (18) even?

24 A. Roughly. I can get you the exact numbers, but
25 it's roughly 18 percent, yes.

1 Q. You had testified that Waddell and Reed is waived
2 in the State of Nevada?

3 A. Correct.

4 Q. It's true that their percentage of ownership is a
5 bit different than Pennsylvania. It's actually 25
6 percent; correct?

7 A. Yeah. As part of our exemption in Nevada we are
8 limited that we can't go or approach 25 percent. We
9 can't go above 25 percent.

10 Q. I think the last question I have is regarding
11 voting rights. You testified that there are no voting
12 rights right now. Do you see in the future or
13 anticipate any chance that there might be voting
14 rights?

15 A. Of Wynn, PA?

16 Q. Yes.

17 A. No, we don't foresee that at all, no.

18 ATTORNEY ROLAND:

19 I don't believe we have any additional
20 questions, Mr. Chairman.

21 CHAIRMAN:

22 Okay. Does the OEC have a presentation?

23 ATTORNEY ROLAND:

24 We don't actually have a presentation.

25 We do have a brief statement of position if that's

1 permissible.

2 CHAIRMAN:

3 Certainly. Go ahead.

4 ATTORNEY ROLAND:

5 Initially OEC objected because really
6 neither the Gaming Act nor the Board's regulations
7 make a provision for an institutional investor with
8 more than ten percent of outstanding voting
9 securities. It's just not available to us. So, the
10 ten percent has kind of been the sticking point.
11 Enforcement Counsel is aware that there is a proposed
12 amended regulation, which would affect 433(a)(5) that
13 could potentially, if it passes and it goes through,
14 would really make today not necessary.

15 In light of that --- because it would
16 change the percentage of ownership requirement. In
17 light of that --- in light of the documentation that
18 Waddell and Reed has provided, as Mr. DiGiacomo has
19 mentioned, in light of the testimony today, OEC would
20 really have no objection if the Board should allow
21 Waddell and Reed to file an institutional investor
22 notice rather than a principle entity application.

23 The only thing we would request is it be
24 subject to the three conditions that were outlined in
25 our Answer and we'd ask to make one verbal condition

1 today. And that is if the percentage of ownership
2 should reach 19 percent, which would potentially flirt
3 with the new percentage if the proposed amendment
4 should go through to 433(a)(5), that Waddell and Reed,
5 Wynn, PA contact the Board and simply notify us that
6 they're, for lack of a better term, in a danger zone.
7 That would be the only other condition we ask that be
8 placed on them today.

9 CHAIRMAN:

10 Counsel?

11 ATTORNEY DIGIACOMO:

12 We're prepared to provide that notice
13 should the ownership percentage reach 19 percent.

14 CHAIRMAN:

15 Okay. Thank you. Anything else?

16 ATTORNEY ROLAND:

17 Nothing further. Thank you, Mr.

18 Chairman.

19 CHAIRMAN:

20 Does the Board have any questions?

21 MR. FAJT:

22 I have a quick question.

23 CHAIRMAN:

24 Greg?

25 MR. FAJT:

1 Thank you, Mr. Chairman. As a 15
2 percent owner of Wynn Resorts where does that rank in
3 the number of high ownership? I mean, I assume Mr.
4 Wynn may or may not be the number one shareholder, but
5 at 15 percent are your two, three, top five?

6 MS. STEWART:

7 One actually.

8 MR. FAJT:

9 One?

10 MS. STEWART:

11 We actually own above Mr. Wynn and Ms.
12 Wynn. They own 15 followed by about 10 percent
13 holders.

14 MR. FAJT:

15 Thank you. And one other clarification.
16 Mr. DiGiacomo, if I heard you correctly you had in
17 your examination of your witnesses said that Waddell
18 and Reed has full voting rights as to matters
19 regarding Wynn Resorts. Is that correct?

20 ATTORNEY DIGIACOMO:

21 Right. If I misstated that ---.

22 MR. FAJT:

23 No, you did say that. And my point is
24 as to Wynn, PA they have no voting rights?

25 ATTORNEY DIGIACOMO:

1 That is absolutely correct.

2 MR. FAJT:

3 Thank you. Thank you, Mr. Chairman.

4 CHAIRMAN:

5 Okay. Questions, Ex Officio members?

6 MR. CRAIG:

7 Just one question, Mr. Chairman.

8 CHAIRMAN:

9 Chris?

10 MR. CRAIG:

11 This may not be terribly relevant, but I
12 just kind of want to better understand the type of
13 investment. The investment that you have with Wynn
14 Resorts, is that part of a structured fund that you
15 then offer investors or people that hire Waddell and
16 Reed to invest and manage their money.

17 A. Correct. There are probably at least 50 accounts
18 that are different funds, structured funds, that ---.

19 MR. CRAIG:

20 That have bits and pieces of ---?

21 A. Correct. And then it gets distributed up to the
22 subsidiary and up the chain. Correct.

23 MR. CRAIG:

24 Do you typically have contracts with
25 institutional investors? I'm specifically curious as

1 to whether or not PA Treasury or any of the two
2 pension funds in the Commonwealth are maybe indirectly
3 invested.

4 A. No, they're not. The only, I think,
5 institutional account we have in Pennsylvania is with
6 SCI.

7 MR. CRAIG:

8 Okay.

9 A. We run about a billion dollars for them, but in
10 terms of public funds, no.

11 MR. CRAIG:

12 Thank you. Thank you, Mr. Chairman.

13 CHAIRMAN:

14 Okay. Thank you, ladies and gentlemen.

15 The matter is now closed. The Board will be
16 considering this petition under Chief Counsel's
17 portion of the agenda.

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HEARING CONCLUDED

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CERTIFICATE

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I hereby certify that the foregoing proceedings,
hearing held before Chairman Ryan was reported by me
on 3/13/2013 and that I Jennifer T. Alves read this
transcript and that I attest that this transcript is a
true and accurate record of the proceeding.



Court Reporter