



BRYAN P. SCHROEDER
VICE PRESIDENT OF REGULATORY AFFAIRS &
CHIEF COMPLIANCE OFFICER

DIRECT DIAL: 267-223-3828
FAX: 215-639-0337
E-MAIL: bschroeder@parxcasino.com

January 30, 2018

VIA E-MAIL & FEDERAL EXPRESS

R. Douglas Sherman, Chief Counsel
PA Gaming Control Board
303 Walnut Street, Strawberry Square
10th Floor, Commonwealth Tower
Harrisburg, PA 17101

Laura R. Burd, Senior Counsel
Pennsylvania Gaming Control Board
303 Walnut Street, Strawberry Square
5th Floor, Commonwealth Tower
Harrisburg, PA 17101

RE: Comments on Interactive Gaming Temporary Regulations

Dear Mr. Sherman and Ms. Burd:

With the Pennsylvania Gaming Control Board (“PGCB” or “the Board”) working to implement interactive gaming in the Commonwealth, we, at Greenwood Gaming and Entertainment, Inc. (“GGE”), submit this correspondence in order to share our position on the issues addressed herein. GGE respectfully requests that the Board consider these comments as it promulgates its temporary regulations governing interactive gaming.

- I. ***The Board should establish a limitation on the number of interactive gaming skins an Interactive Gaming Certificate Holder (“Certificate Holder”) may operate, and that limitation should be one skin per Certificate Holder, with the different categories of interactive games the Certificate Holder is authorized to offer on that single skin limited to the different categories of interactive games approved in its Interactive Gaming Certificate(s).***

While Act 42 of 2017 does not impose an explicit limitation on the number of interactive gaming skins (“skins”) Certificate Holder may operate in Pennsylvania, the intention of Chapter 13B of the Pennsylvania Race Horse Development and Gaming Act (“Gaming Act”) and the regulatory structure imposed on interactive gaming by the Legislature make clear that such a limitation is needed and is within the Board’s authority and discretion to establish. The contrary scenario – whereby a Certificate Holder can have unlimited skins with it bestowing the ability to operate with any number of Interactive Gaming Operators (“IGOs”), some perhaps in partnership with third-party Qualified Gaming Entities and utilizing that third party’s brand – creates a sublicensing regime that essentially transfers licensing authority from the PGCB to the Certificate Holder.

For a number of reasons, such a scenario is contrary to Act 42. First, the Act establishes the Board as the sole licensing authority for interactive gaming. 4 Pa.C.S. §§ 13B02, 13B12.

Second, under the Act, Certificate Holders, not IGOs, are the entities that are entitled to conduct interactive gaming in this Commonwealth. Certificate Holders are the entities that may offer interactive games to registered players. 4 Pa.C.S. § 1103 (definition of “Interactive gaming”). Certificate Holders implement the formal electronic system for recording a player’s interactive gaming activity that constitutes an interactive gaming account. *Id.* (definition of “Interactive gaming account”). Interactive gaming account agreements are entered into by, and govern relations between, registered players and Certificate Holders. *Id.* (definition of “Interactive gaming account agreement”).

Further, and significantly, Certificate Holders are the entities that pay an enhanced license fee (\$3-\$4 million/certificate) in order to gain full market access for interactive gaming. 4 Pa.C.S. § 13B51. In contrast, IGOs, which pay a lesser fee (\$1 million) for an interactive gaming license, are statutorily designed to be service providers to Certificate Holders. Under Act 42, IGOs may only operate interactive games or interactive gaming systems “*on behalf of*” Certificate Holders. 4 Pa.C.S. § 1103 (definitions of “Interactive gaming operator” and “Interactive gaming agreement”) (emphasis added). Act 42 affords non-slot machine licensees (*i.e.*, qualified gaming entities) an opportunity for full market access. 4 Pa.C.S. § 13B12(a.1). However, that opportunity for full market participation is in the form of becoming a Certificate Holder, and not as an IGO.

Finally, Act 42 restricts the number of Interactive Gaming Certificates that may be granted by the Board. Section 13B12(a.2) authorizes a maximum number of certificates that is equal to one certificate per Category 1, 2 and 3 slot machine licensee for each of the three types of interactive gaming certificates. The General Assembly was even careful to ensure that the maximum number was calculated correctly by clarifying that certificates applied for in the first 90 days of the application period, which authorize all three types of interactive gaming in a single certificate, will be counted as one of each kind of certificate.

With the Legislature having established a maximum number of interactive gaming certificates, and with the licensing scheme making it clear that interactive gaming is conducted by, and full market participation is afforded to, Certificate Holders *only*, it would be contrary to Act 42 to allow Certificate Holders to sublicense their authority and full access to an unlimited number of IGOs and third-party Qualified Gaming Entities all operating under different skins or brands. Such a scenario would improperly evade the statutory maximum on certificates, essentially transfer licensing authority to the Certificate Holders, and enable IGOs and third-party Qualified Gaming Entities who license skins from Certificate Holders to participate fully in the market for a fraction of the certificate licensing fee established in the Act.

Accordingly, the Board should establish a limitation on the number of skins a Certificate Holder, or an IGO on its behalf, may employ.¹ The Board's plenary authority to regulate interactive gaming certainly affords it the discretion to promulgate such a limitation. Considering the statutory scheme, in which up to three different types of certificates may be held by an eligible entity, a limitation of one skin per Certificate Holder, where the different categories of interactive games the Certificate Holder is authorized to offer on that single skin is limited to the different categories of interactive games approved in its Interactive Gaming Certificate(s), would represent a statutorily-based regulation that would be reasonable and neither arbitrary nor an abuse of discretion.

II. *The Board should require that any branding associated with a skin match, or be predominantly the same, as the brand of the Certificate Holder as noted on the Interactive Gaming Certificate.*

In addition to placing a limitation on the number of skins a Certificate Holder may utilize, the Board should require that any branding associated with those skins match the brand of the Certificate Holder's commercial casino operating under its PGCB slot machine license. As noted above, Act 42 empowers Certificate Holders to conduct interactive gaming. IGOs may offer interactive games or operate interactive gaming systems only on behalf of, and thus for, a Certificate Holder. As such, any activity undertaken by an IGO, and any skin utilized by them to make available interactive games, should be required to be done under the brand of the Certificate Holder's commercial casino.

III. *The Board should require Interactive Gaming Employees and Interactive Gaming Devices and Associated Equipment to be located within Pennsylvania.*

The legislative intent of the General Assembly in authorizing interactive gaming is to ensure the sustainability and competitiveness of the gaming industry *in this Commonwealth*. See 4 Pa.C.S. § 1102(12.2). The Board should reinforce the intent of Act 42 as it promulgates temporary regulations on interactive gaming. To that end, GGE urges the Board ensure that interactive gaming devices and associated equipment, as well as key interactive gaming employees, be located within the Commonwealth.²

¹ New Jersey, when it launched interactive gaming, imposed a limitation of five skins per licensee and specified "each permit holder [Certificate Holder] was only permitted one platform provider [IGO] to facilitate the completion of all the required licensing and technical reviews by the November launch date." (See, January 2, 2015 Letter of the New Jersey Division of Gaming Enforcement, <http://www.nj.gov/oag/ge/2015news/Internetgamingletter.pdf>. It should be noted, however, that only brick-and-mortar casinos in Atlantic City are allowed to be Internet gaming permit holders in New Jersey. Therefore, the only way for IGOs or third-party "qualified gaming entities" to secure full online market access in New Jersey is by licensing a skin from an Internet gaming permit holder. In Pennsylvania, however, Act 42 allows "qualified gaming entities" to secure full online market access by acquiring an Interactive Gaming Certificate directly so replicating New Jersey's multi-skin regime is unnecessary.

² This position is bolstered by Section 13B21 of Act 42 of 2017 which states that "all wagers made through interactive gaming shall be deemed to be initiated, received or otherwise made within the geographic

Act 42 establishes that devices and equipment relating to interactive gaming used by an interactive gaming certificate holder or an IGO licensee to facilitate interactive gaming may be located, with Board approval, in: (1) an interactive gaming restricted area on the premises of the licensed facility; (2) in an interactive gaming restricted area within the geographic limits of the county in this Commonwealth where the licensed facility is situated; or (3) in any other area approved by the Board. 4 Pa.C.S. § 13B31. Significantly, both of the specifically identified locations at which interactive gaming devices and equipment are permitted to be housed by Section 13B31 are sites that will be located within Pennsylvania. The inclusion of a discretionary catch-all provision for additional locations is not an invitation to, and does not authorize the Board to, approve a location outside of the Commonwealth. Rather, the provision is included in Section 13B31 out of necessity due to the potential for qualified gaming entities to hold an Interactive Gaming Certificate and the fact the specifically identified locations would not be applicable to such qualified gaming entities.

Beyond this textual reason, GGE submits that, while the Act provides the Board discretionary authority to approve the location of interactive gaming devices and equipment, the intent of the Act is for interactive gaming equipment and devices to be housed within the Commonwealth. Accordingly, the Board should make clear in its temporary regulations that interactive gaming devices and associated equipment must be located in the Commonwealth. Such a position would advance the intent and purpose of the Act, as further explained below.

The presence of key interactive gaming employees and interactive gaming devices and associated equipment in Pennsylvania is critical to the Board's ability to maintain its regulatory control over interactive gaming in this Commonwealth. See 4 Pa.C.S. § 1102(11). If the Board declines to require that key interactive gaming employees and interactive gaming devices and associated equipment be located within the state, the Board may not have meaningful access to interactive gaming restricted areas and redundancy facilities to carry out its duties.

Interactive Gaming Certificate Holders are required to maintain all books, records and documents related to the Certificate Holder's interactive gaming activities in a location within the Commonwealth. 4 Pa.C.S. § 13B02(a)(15)(ix). Act 42 also requires that all books, records and documents be immediately available for inspection during all hours of operation. 4 Pa.C.S. § 13B02(a)(15)(ix). This provision clearly reveals the intent of the legislature for key interactive gaming employees and interactive gaming devices and associated equipment

boundaries of this Commonwealth. The intermediate routing of electronic data associated or in connection with interactive gaming shall not determine the location or locations in which a bet or wager is initiated, received or otherwise made." 4 Pa.C.S. § 13B21. This indicates that, while intermediate routing of electronic data may occur outside the Commonwealth, the legislature envisioned interactive gaming devices and associated equipment necessary for the placement and receipt of wagers to be located within the Commonwealth.

to be located in Pennsylvania. If the Board permits interactive gaming employees and interactive gaming devices and associated equipment to be located outside of Pennsylvania, GGE anticipates that the Board will have difficulty inspecting books, records and documents as contemplated in the Act.

The legislature authorized interactive gaming to not only increase revenues to the Commonwealth, but also to provide new employment opportunities in the Commonwealth. 4 Pa.C.S. § 1102(2.1). GGE encourages the Board to adopt temporary regulations to reflect that interactive gaming employees are to be present in the Commonwealth. This will ensure that interactive gaming benefits Pennsylvanians and promotes the creation of employment opportunities in the Commonwealth. The New Jersey Casino Control Commission has required that key interactive gaming employees be physically present in New Jersey, presumably to maintain adequate regulatory control over interactive gaming and to bolster its economy. See N.J. Admin. Code § 13:69O-1.2(w). The Board should follow suit to maintain appropriate regulatory control of interactive gaming and to generate employment opportunities in the Commonwealth.

IV. *The Board should permit Certificate Holders and IGOs to enter into revenue sharing arrangements with providers of interactive gaming content.*

Revenue sharing arrangements are an effective mechanism for compensating interactive game providers for their content. Such arrangements are common in the New Jersey iGaming market. Without the ability to enter into revenue sharing deals, Certificate Holders and IGOs in Pennsylvania will need to pay daily lease fees on the provider's entire game portfolio, which will increase cost and financial risk to operators.

For these reasons, the Board should make clear that such revenue sharing arrangements in the interactive gaming context are permitted and do not result in the game provider being deemed a principal of the Certificate Holder or its related slot machine licensee. GGE's understanding of Section 1317.1 of the Gaming Act, as amended by Act 42, is that game providers would be considered to be manufacturers. As a manufacturer, game content providers would not be able to be considered a slot machine licensee. While nothing in the definition of the term "principal" in the Gaming Act addresses parties to a revenue sharing arrangement, the Board's regulations deem an individual or entity that receives a share of gaming receipts to be a principal of the slot machine licensee. 58 Pa. Code §§ 433a.3(a)(3) and 433a.4(a)(3). As such, an issue could arise under Section 1317.1 that would preclude manufacturers of interactive games from entering into revenue sharing arrangements with Certificate Holders.

Given the unique market aspects attendant to interactive gaming, and considering that the principal designation for recipients of gaming revenue does not stem from the Gaming Act, the Board should exercise its discretion to carve out an exception to its principal regulations in the context of interactive gaming, and make clear that revenue sharing arrangements with interactive game content providers are permitted.

V. *The Board should establish a synchronized start date for the commencement of interactive gaming operations by Certificate Holders that apply within a particular application window.*

In determining how interactive gaming operations will actually commence across the Commonwealth, the Board should (whether by temporary regulation or administrative order) establish a synchronized start date for all Certificate Holders (and any IGOs they may engage) that apply within a particular application window. A fixed launch date will ensure that all Certificate Holders within a specific application segment will start on a level playing field and facilitate the proper administration of the roll out of interactive gaming by the PGCB.

A synchronized start date for operations would be consistent with the provisions and construct of Act 42. As you know, Section 13B16, entitled “Timing of initial interactive gaming authorizations,” directs the Board to set a single opening date for the filing of petitions to secure authorization to conduct interactive gaming, and requires the Board to rule on said petitions within 90 days of receipt. At the same time, Section 13B12(a.1) establishes three windows within which eligible applicants may apply for an Interactive Gaming Certificate: (i) within 90 days of the petition authorization date; (ii) between 90 days and 120 days from that date; and (iii) after 120 days from the authorization date. Applicants filing within these windows, whose applications must be ruled upon within a set time parameter, should be grouped together for a synchronized start date for operations.

Such an approach is similar to that employed by the Board in relation to the commencement of table game operations. In that instance, the Board directed a staged and synchronized roll out of operations by region in order to ensure that each new certificate holder was afforded a fair and equal start in the new gaming market. Notably, Section 13A18 of the Gaming Act (relating to Timing of initial table game authorizations) is remarkably similar to, and appears to have been a model for, Section 13B16 and its dictates for the timing of initial interactive gaming authorizations. Given this parallel, the Board’s adoption of a parallel approach to the synchronized commencement of interactive gaming operations is reasonable and appropriate.³

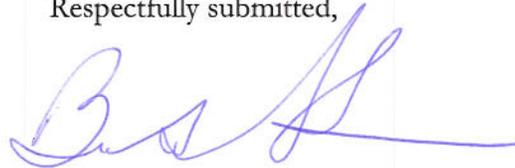
³ While Section 13B02(a)(2) appears to authorize an abbreviated certification and licensure process for slot machine licensees and IGO applicants that are licensed in other states or jurisdictions deemed by the Board to have adequate licensure safeguards, this provision and said abbreviated process does not and should not be employed to provide such applicants with a head start on interactive gaming operations. The text of Section 13B02(a)(2) is clearly focused on “the information” that such applicants must provide, and thus the relief provided to the applicants goes to the burdensomeness of the PGCB’s review and not to the speed to market. An approach that affords a head start for gaming operations to certain applicants would be demonstrably unfair and is inconsistent with the structure of Act 42 and the Board’s table games roll out precedent.

R. Douglas Sherman
Chief Counsel
Page 7

Laura R. Burd
Senior Counsel

Thank you for your consideration of GGE's positions on these matters. Should you have any questions on these comments, please feel free to contact me.

Respectfully submitted,



Bryan P. Schroeder
Vice President of Regulatory Affairs &
Chief Compliance Officer
Greenwood Gaming & Entertainment, Inc.

cc: Susan Hensel, Esq., Director of Bureau of Licensing (via email)
Robert Green (via email)
Anthony Ricci (via email)
Thomas C. Bonner, Esq. (via email)
Donald Ryan (via email)