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Via Email and Mail

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Re: Collection Rates Workshop Dec. 12, 2014

Dear Wayne and Susanne:

On behalf of the California Grand Casino and Oaks Card Club, we are submitting these comments on the proposed regulations distributed October 31, 2014. Both the California Grand Casino and the Oaks Card Club take collection from every player in their player dealer games, as do all but one of the Bay Area card rooms.

Nonetheless, we object to these regulations because their formulas and ratios are damaging even to those clubs that now take collection from every player.

I.

The first problem is that some parts of the proposed regulation are not limited to player dealer games. The regulations would require every *poker* player to pay his or her own collection fee instead of just taking the collection from the common pot in poker. We do not think this is what you intended, but it nevertheless this is what the draft regulations would do.

Each option uses the term controlled games, which includes all poker games. Then in subpart (a)(2) every option states:

(A) If a fee has not been waived pursuant to approved game rules, each player shall pay a fee from his or her own funds to the gambling enterprise.

In poker games, a collection is taken from the pot before the pot is awarded. Far less commonly, players may pay a time collection (i.e., \$5 per half hour) but they do not each pay a fee for every hand or round of play.

There is no legal authority in existence or cited in the Bureau's Summary of the Proposed Regulations ("Summary") for requiring every poker player to pay collection for every hand or round of play as opposed to taking the poker collection from the pot.

II.

We oppose "Option 1" which requires in player dealer games a 1-3 ratio between the amount collected from the smallest bettor and the amount collected from the player dealer, likely to be the largest bettor. The ratio imposes an arbitrary and unlawful burden on even those clubs that now take collection. Regulations must be clear, necessary, legally valid and with factual foundation. Option 1 fails all these tests.

A.

Option 1, (a)(2) states that:

- (B) each player in a player dealer game must pay a fee each hand or round of play:
- (i) the fee assessed to each player shall not be less than one-third of the amount of the fee assessed to the player dealer, and,
 - (ii) the criteria for determining the fee must be the same for a player and player dealer.

The first part of this section would set both a minimum and a maximum rate of charge through the use of a pricing ratio that limits or caps what we can charge the player-dealer. Furthermore, the ratio is based on the amount of the fee, not the rate of charge for wagers of different sizes, which makes the ratio especially inequitable.

As noted, our clubs already charge each player in a player dealer game a fee for each hand of at least \$.50 per hand. Here is a simple collection schedule with a minimum \$.50 charge as an example:

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<u>Wager</u>	<u>Fee</u>
\$1-\$50	50¢
\$51-\$100	\$1
\$101-\$200	\$2
\$201-\$300	\$3
\$301 and up	\$4

If there are player position wagers for the following amounts: \$25, \$50, \$100 and \$250, those players would pay collection of 50¢, 50¢, \$1 and \$2. Under this schedule, if the player dealer is wagering the combined amount of \$425, he or she would pay \$4.

Under a 1- 3 ratio based on the amount of the fee actually paid, a club would either have to raise what they charge the \$25 and \$50 player from \$.50 to \$1.34, or reduce what the player dealer pays from \$4 to \$1.50.... *even though each player is making different wagers and only five rates are in use.*

The player-dealer is almost always wagering more than any one player because the player-dealer is wagering against all the other players for that hand. There is no reason to cap what the player-dealer pays with a ratio to what is paid by the person making the smallest bet. This serves no purpose except to either drive away our players by raising the rate on small bets, or to damage our revenues by limiting the maximum we can charge the player dealer.

Option 1 would force a card room to choose between raising player rates on small bets and chasing away smaller players – which will cost Tens of Millions of dollars in lost revenues statewide – or substantial cuts in the player dealer collection – which will cost Tens of Millions of Dollars in lost revenues statewide. My clients estimate that they will each lose over \$1 million per year in gross revenues if this ratio is adopted.

The option also has a disparate impact on medium and smaller clubs, that is clubs that are from 1 – 60 tables. Medium and small clubs may offer one or two tables of an approved game. Small and bigger bettors may share the same table, including a player betting as little as \$10. When very small bettors and large bettors are sharing the same table, ratios of this type are impossible to fairly apply, even in those clubs that now take collection from every player.

B.

The added requirement in the second subpart that the criteria for determining the fee must be the same for a player and player dealer is unclear. We are not sure what you mean by criteria as applied in this situation.

If this means that the player dealer cannot be charged less or a different rate than a player for a similar sized wager, then according to the Bureau's logic the regulation would discourage player dealer rotation. For example, suppose a club has the following collection rates:

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<u>Wager</u>	<u>Fee</u>
Player Wager \$1-\$50	50¢
Player Wager \$51-\$100 & Any Player Dealer Wager less than \$101	\$1
Player Wager \$101-\$200 & Any Player Dealer Wager \$101 and over	\$2
Player Wager \$201-\$300	\$3
Player Wager \$301 and up	\$4

In this schedule, the player dealer collection is capped at \$2 even if the player dealer is wagering the combined amount of \$425. This \$2 rate is a very favorable rate of charge for the player dealer.

So if the club has to have the same “criteria” for collection on a player and player dealer hand, this regulation would prevent the club from charging a fixed amount to the player dealer that is less than the top rate charged for player wagers.

Using the Bureau’s specious logic that higher collection rates for the player dealer position discourages rotation, to comply with this second subpart of the regulation the clubs would have to raise the player dealer collection fee which (according to the Bureau) could discourage rotation, or lower the player fees for larger player wagers, which (according to the Bureau) negatively impacts player dealer rotation by making large player wagers cheaper.

This is not an imaginary example. Both the California Grand Casino and Oaks have and use approved collection rates where the player dealer’s top rate is capped at less than the player’s top rate or actual collection.

C.

These proposed “ratio” and “criteria” rules are illegal in several ways.

1. The ratio unfairly impacts medium and smaller card rooms, conflicting with the Gambling Control Act, section 19840, which provides:

To the extent appropriate, regulations of the commission and the department shall take into consideration the operations differences of large and small establishments.

Here, the regulations fail to recognize that small and large bettors share the same tables in Tier 1 – Tier IV card rooms. The imposition of a 1-3 ratio unfairly impacts those clubs with limited tables where small and large bettors are at the same table and a club needs to use one of its five permitted rates to accommodate smaller bets.

2. There is no legal analysis or factual material in the Summary prepared by the Bureau which supports a ratio – or this 1-3 ratio – which is arbitrary.

The Summary states there are three bases for the regulations: (1) the need to assure compliance with collection rate limits in statute, (2) to provide a better likelihood that the players will accept the player dealer position, and (3) to better identify the criteria on which a collection waiver is based. (Summary pages 2-3).

Obviously, the 1-3 collection ratio is unrelated to the first and third claims. The first claim is that the Bureau has to assure that only 5 rates are used in each schedule. The ratio has no relationship to that task. The third claim is that the Bureau has to identify the criteria upon which a fee waiver is based. The 1-3 ratio is irrelevant to the waiver of a fee.

With regard to rotation of the player dealer position, the Summary states that “one way” to better ensure that the position rotates is to have more equality in the collection rates. There are three problems with this claim.

a. The first deficiency in the Bureau’s rotation argument is mathematical. The player dealer position provides a statistical edge in game odds. Using the Bureau’s argument, if the collection rate is less than the edge, then the collection rate for the player dealer is not a disincentive to rotation. If the player dealer edge is 1.5%, then any player dealer collection rate that equates to less than 1.5% is favorable to rotation. For example, a \$2 rate on a \$425 wager equates to four tenths of one percent.

In fact, using the Bureau’s logic, you could address rotation just by adjusting the game rules and increasing the player dealer edge without addressing collections at all. Or, alternatively, if the Bureau’s legal arguments were correct (and they are not), the Bureau could require in regulation that the clubs waive all player dealer collection. But the Bureau lacks authority for regulations eliminating or diminishing player dealer collection, including regulations with arbitrary formulas and ratios.

b. The second problem with the Bureau’s reasoning is embedded in the language of the Bureau’s argument.

The Bureau argues that collection rates are “one way” to encourage rotation. But the Bureau has no authority to legislate by regulation only one way to encourage or provide for rotation. In fact, the Penal Code requires that the Bureau review game rules on a case by case basis. The case law approving player dealer games does not specify a single means of ordering game rules and rotation rules, nor does Penal Code §330.11.

There are four court of appeal decisions approving of the play of player dealer games. *Sullivan v. Fox*, 189 Cal.App.3d 673, 678; *Bell Gardens v. City of Los Angeles*, (1991) 231 Cal.App.3d 1563, 1568, *Huntington Park v. County of Los Angeles*, (1988) 206 Cal.App.3d 241, 250; *Walker v. Meehan*, (1987) 194 Cal. App. 3d 1290.

In these four cases, the practice was to offer the player-dealer position every two hands in clockwise order to each player position with an active player. There is no statement in any of these cases that every player must take the player-dealer position, nor that the player-dealer position always in fact rotated every two hands without returning to the same person. Nor did any of these courts state that “two hands” was the magic maximum number required by law before the player-dealer position was offered in rotation; it was just the number that was used in the game rules in those cases and has been customarily used since. Even *Oliver v. County of Los Angeles*, (1998) 66 Cal.App.4th 1397, 1409, did not prescribe what constitutes a person occupying the player dealer position for “a long time.” The legal standards from these five cases including *Oliver* are at best indeterminate.

After *Oliver*, Penal Code §330.11 was adopted in AB 1416. *As proposed*, AB 1416 would have provided that no player could hold the player-dealer position for more than two hands in a row. (*See e.g.*, Senate versions, March 23, 2000 – May 16, 2000). *However*, in the Senate Amendments dated July 5, 2000, that language was removed. So the Legislature *deliberately* did not require an actual rotation of the player dealer position every two hands. Under the decided cases and in view of the legislative history of section 330.11, a person may occupy the player dealer position for more than two consecutive hands.

Instead, in Penal Code § 330.11 the Legislature charged the Bureau with reviewing game rules and making an *individual* determination about the adequacy of the game rules. Game rules may use a variety of tools to address rotation, including prescriptions tied to offering the position in turn, those tied to the number of hands, time periods, wager limits, game odds or other means. One club may address the issue one way and another club may use another means. There are operational differences between card rooms, different rules for different games and differences in how each club may offer the same game. As a consequence, Penal Code §330.11 does not impose a one size fits all solution.

Neither the Penal Code nor the Gambling Control Act authorizes the Bureau to enact a one size fits all regulation rather than reviewing individual games and rules as Penal Code §330.11 requires. There is nothing in the codes which authorizes the Bureau to enact collection rate ratios or authorizes an arbitrary ratio. There is nothing that requires or authorizes the “same criteria” for collection fees on player and player dealer wagers.

c. The third problem with the Bureau’s argument is that there is no evidence or analysis in the Summary that supports the use of ratios or equivalence rules and empirically shows that they encourage rotation. In fact, under the Bureau’s reasoning, the opposite is true. Under the proposed regulations, the Oaks and the Grand – which already take player collection -- would now be forced to raise their player dealer collection rates or lower their player rates.

3. Last but not least, the statutes preclude the Bureau from this type of legislative action. Penal Code §337(j)(f) is dispositive of the law of collection rates. That law states the card rooms may charge five rates without any limitation, save that percentage rates cannot be used. Section 19826(g) of the Gambling Control Act does not give the Bureau authority to regulate collection rates under the guise of approving game rules.

III.

We oppose Option 2. Option 2 would establish a peculiar requirement that collection rates can only increase by an increment established by the lowest rate. The only reason offered for this restriction is that this would reduce the cost of the player dealer position, but that reasoning is flawed. Under any number of scenarios Option 2 imposes an arbitrary limitation unrelated to player dealer rotation. In many cases, the only effect of this regulation is to cap what player position wagers are charged.

Under Option 2, if a club's collection schedule had a rate of \$.50 for the smallest wagers, they could charge no more than \$2.50 to the player dealer or a player. This is so even if the smallest player wager actually made on a particular hand is charged at the second lowest \$1 rate, and even if another player wagers \$300 or if the player dealer is covering \$700 in wagers. Like Option 1, this regulation would require either that the club raise the player rate or lower the player dealer rate, but without meaningful impact on rotation. Instead of a 1-3 ratio between the fees actually collected, this Option imposes a 1-5 ratio on rates which for any given hand could mean a 1-2.5 ratio between the smallest and largest fees actually collected.

What is more, there is a very poor fit between the stated purpose of this regulation and its actual operation. If the club sets a player dealer flat collection rate capped at \$2, then this option regulating the incremental change between rates is relevant only to the player rates. This means the only effect of Option 2 would be to cap what can be charged for large player wagers, which (according to the Bureau's argument) would have the effect of discouraging rotation by charging large player wagers comparatively less.

Consequently Option 2's only effect is punitive on any club that wants to accommodate in their collection rates players who place smaller wagers. This option therefore unfairly impacts medium and smaller card rooms where small and large bettors share the same tables, conflicting with the Gambling Control Act, section 19840.

There also is no legal analysis or factual material in the Summary prepared by the Bureau which supports this arbitrary limitation on the rate of difference between the five different collection rates permitted by law. As noted above, if a player dealer collection rate is usually less than the statistical edge provided by game odds, then there is no disincentive to rotation.

We incorporate here all the legal arguments related to Option 1, which given the poor fit between the stated purpose of Option 2 and how Option 2 operates, apply with even greater force to this option.

IV.

We oppose Option 3. Option 3 combines two aspects of Options 1 and 2. Option 3 would require that collection rates can only increase by an increment established by the lowest rate and would require the same rate of charge for the same wager levels for players and player dealers. The legal and operational fallacies of both of these proposals are addressed in detail above.

V.

This proposed regulation does not merely require collection charges, but with its use of ratios and proportionality rules, the regulation is a direct attack on card room games and revenues at those clubs that now already charge every player a collection fee in player dealer games.

The financial impacts of this proposed regulation are drastic and entirely unaccounted for in the Bureau Summary. The “pro” and “con” statements in the Summary do not include all the “con” effects of the proposed regulation. In addition, the legal reasoning in the Summary is inadequate to support the specific proposals in this draft. The types of ratios and formulas proposed are not within the Bureau’s authority.

The card room industry employs over 20,000 people statewide. The vast majority of these jobs are living wage jobs open to people without college educations and in communities where such jobs are scarce. Most card rooms also pay significant local taxes in municipalities that need those tax revenues for police, fire and other public services. The Department of Justice should not be proposing regulations that attack card room revenues and kill jobs, and on flawed grounds.

We urge you to abandon this arbitrary ratio and formula approach to micro-managing collection rates.

Sincerely,

/s/

David M. Fried

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