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**STATE OF FLORIDA
DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING**

IN RE: PETITION FOR DECLARATORY STATEMENT

BALLY GAMING, INC., d/b/a Bally Technologies
(proposed "Blackjack" slot game),

Petitioner,

(AND)

IGT, INC.,

Intervenor.

DS 2008-045

(2008038720)

DECLARATORY STATEMENT

Petitioner BALLY GAMING, INC. ("Petitioner" or "Company"), filed a Petition for Declaratory Statement with the Division of Pari-Mutuel Wagering (Division) regarding whether a slot machine with a visual game theme known as "Blackjack" is permitted for use at licensed slot machine facilities in Florida pursuant to Chapter 551, Florida Statutes (F.S.).

1. Petitioner is a slot machine manufacturer licensed pursuant to Chapter 551, Florida Statutes. Its address is 6601 S. Bermuda Road, Las Vegas, NV 89119. On June 30, 2008, Petitioner filed a Petition for Declaratory Statement seeking a determination of compliance with Chapter 551, Florida Statutes, and Chapter 61D-14, Florida Administrative Code (F.A.C.), as it relates to a particular type of slot machine game which incorporates a visual presentation of Blackjack to display winning and losing outcomes (the "Machine"). On September 9, 2008,

IGT, Inc., a manufacturer of slot machines who has also filed petitions for declaratory statement with respect to similar machines, intervened in this proceeding.

2. On September 18, 2008, the Division conducted a public hearing at which time the Division personnel inspected the Machine and Petitioner demonstrated its operations. On September 19, 2008, the Division held a public hearing regarding the petition at which time sworn testimony was offered by Petitioner regarding the Machine.

3. Petitioner has standing to initiate this proceeding by virtue of its licensure as a slot machine manufacturer and its interest in selling slot machines to slot machine licensees who are also licensed under Chapter 551, Florida Statutes.

FINDINGS OF FACT

By virtue of the Division's inspection of the game, the representations in the Petition for Declaratory Statement, and the sworn testimony offered by Petitioner, the Division makes the following findings of fact on which it bases this Declaratory Statement.

4. The Machine resembles a "Las Vegas" slot machine utilizing a freestanding slot machine cabinet. The cabinet is identical to other of the Company's cabinets in use in Florida and complies with the specifications found in Rules 14.023 & 14.026, F.A.C.

5. The Machine requires a patron to insert tickets, currency, coupons or vouchers to activate the slot machine game. The Machine houses the terminal monitor, magnetic card reader, speaker system, random number generator (RNG), mechanical meters, drop boxes and ticket/bill acceptors within the cabinet. The main display area provides a LCD panel with touch screen. It contains a backlit graphics panel for displaying game information and instructions for the player. A two-tiered light is attached to the top of the Machine and is used to indicate jackpots or other predetermined events to slot machine licensee personnel. All of the electronic components are

housed inside the Machine behind the main display area in accordance with Chapter 61D-14, F.A.C.

6. The Machine meets all requirements of Florida's slot machine regulations and can be tested and certified for such compliance to the following standards set forth in Chapter 61D-14, F.A.C.:

- a. the location and specifications for the logic compartment meet the requirements set forth in Rule 14.024;
- b. the currency compartment is configured in accordance with Rule 14.025;
- c. the touch screen has been certified to meet the specifications of Rule 14.030;
- d. the bill acceptor similarly meets the standards of Rule 14.031;
- e. the Machine is capable of being linked to a computer ticket validation system in accordance with Rule 14.040;
- f. the Machine possesses the requisite meters set forth in Rule 14.042 and is capable of retaining the requisite data pursuant to Rule 14.043;
- g. the Machine is capable of detecting and displaying error conditions and illuminating its tower light in accordance with Rule 14.044; and
- h. the Machine will be certified by an independent testing laboratory that it creates the requisite message digest and meets the internal testing requirements, integrity checks, and other operational standards set forth in Rule 14.044.

7. In accordance with Rule 14.041, the Machine possesses an internal RNG which is statistically independent from any other device; conforms to the random distribution values specified in the slot machine's PAR sheet; passes statistical tests such as the chi-squared test or

random distribution analysis test; is cycled continuously in the background between games and during game play; and randomly determines the first seed number. The Machine uses communication protocols that protect the RNG and random selection process from influence by associated equipment.

8. Each possible permutation or combination of the game elements that produces a winning or losing game outcome is available for random selection at the initiation of each play and the Machine will not make a variable secondary decision after selection of the game outcome.

9. The Machine operates as a stand-alone game and is not linked to other player terminals in a communal fashion.

10. The Machine operates off of the Company's Alpha Video Gaming Platform that has received prior approval for at least 143 separate game themes in Florida. This slot machine game platform has been tested and certified by an independent testing laboratory licensed by the state for each separate game theme currently offered to Florida slot machine licensees. The certification provides confirmation that the Alpha Video Gaming Platform meets or exceeds all requirements of Chapter 551, F.S. and Chapter 61D-14, F.A.C., and a list of the approved game themes was provided to the Division as Exhibit A to the Petition for Declaratory Statement.

11. The Machine has been approved in over 30 jurisdictions as an approved slot machine. The Machine is currently in use at the casinos operated in Florida by the Seminole Tribe of Florida.

12. The game operated on the Machine possesses a payout and retention (PAR) sheet from the Company and is capable of being tested and subject to certification from an independent testing laboratory to ensure a probable minimum payout percentage of greater than

85 percent pursuant to Sections 551.103(1)(h) & 551.104(4)(j), F.S., and Rule 61D-14.038, F.A.C. A copy of a draft of the verification letter to be issued by Gaming Laboratories, Inc., was included with the Petition for Declaratory Statement. The payout percentage for the Machine is approximately 97 percent.¹

13. In order to use the Machine, a player must add credits to the Machine via the insertion of cash, tickets, coupons, or other authorized medium. A player initiates the game using a start button that triggers the operation of the RNG to determine the outcome of the game. The outcome of the game is displayed via a correlation between the RNG value and a video display of a combination of symbols correlating to a hand or hands of blackjack dealt from a traditional 52-card deck. The player commits credits for play at the initiation of the game and the credit meters are decremented accordingly.

14. A player is allowed to make a determination of whether to “stand pat” based on the visual display or “take a hit”. If a player chooses to “take a hit”, the RNG provides additional outcomes which again correlate to symbols commonly recognized as playing cards. Once a player has decided to “stand pat”, the game will display the win or loss visual that correlates to the pay table value as determined by the RNG. The win or loss outcome will be displayed via a representation of a dealer’s hand or a player hand or hands with a value of higher than 21 (a “bust”).

15. If the outcome is a loss for the player, the game enters a “game over” state and adjusts hard and soft meters accordingly. If the displayed outcome is a win for the player, the Machine awards credits based on a predetermined pay table established in the game’s rules that are available for display to the player by the Machine.

¹ All payout percentages are subject to certification by an independent testing laboratory.

16. Credits are displayed and accounted for via the hard and soft meters which are reported to the facility based monitoring system like any other slot machine. Credits are capable of being discharged via the play of the game or redeemed via a ticket printing system in accordance with state law.

17. There is no bank nor is there an implication of a bank within the game.

18. The slot machine licensee has no ability to manipulate the payout percentage by adjusting the rules of the game such as limiting the splitting of displayed card representations or the ability for a player to double a wager.

19. The Machine can be configured to provide patrons with information regarding the number of random numbers from which the Machine selects possible outcomes. This information also can include the fact that the random number generator cycles after each game. To the player this information can be conveyed analogous to the number of decks in a blackjack "shoe" and the fact that the "cards are shuffled" after every game.

20. Significant differences between the Machine and the actual game of Blackjack exist which include:

- a. Payout percentages do not equate to the standard table game of Blackjack. Traditional Blackjack ranges from 75–91 percent; the Machine payout percentage is approximately 97 percent.
- b. Traditional blackjack does not shuffle the cards after every game played.
- c. Card counting is not available as a strategy for play.

21. Mechanized games exist that attempt to replicate the table game Blackjack. Some games utilize mechanical shufflers and actual playing cards while others utilize random number

generators which utilize a communal set of numbers allowing other players to influence the result of another.

22. The Machine is not a viable alternative to the traditional table game of Blackjack nor does it offer the same gaming option to a skillful blackjack player.

23. Testing protocols by independent gaming testing laboratories perform different testing processes for table games and slot machines. Table game testing involves the rendering of a math analysis of the game and its payout percentages as well as a legal opinion as to whether the game's rules and basic strategy are similar to those elements of the game it purports to be. Slot machine testing differs in that it involves a host of mechanical and analytical testing of a number of attributes set forth by a jurisdiction for legal slot machines which include meter accuracy, communication protocol verification, critical memory checks, control program checks, and testing of ticket issuance and acceptance processes. In making a determination of whether a machine is a slot machine or a table game, a testing lab compares the attributes of a proposed device to that of a slot machine, as set forth in a jurisdiction's regulations, to those commonly associated with the table game.

OPERATIVE STATUTES AND RULES

24. Section 551.101, F.S., states:

Slot machine gaming authorized. -- Any licensed pari-mutuel facility located in Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during calendar years 2002 and 2003 may possess slot machines and conduct slot machine gaming at the location where the pari-mutuel permitholder is authorized to conduct pari-mutuel wagering activities pursuant to such permitholder's valid pari-mutuel permit provided that a majority of voters in a countywide referendum have approved slot machines at such facility in the respective county. Notwithstanding any other provision of law, it is not a crime for a person to participate in slot machine gaming at a pari-mutuel facility licensed to possess slot machines and conduct slot machine gaming or to participate in slot machine gaming described in this chapter.

25. Section 551.102(8), F.S., states:

"Slot machine" means any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central server system, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration whatsoever, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually. The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device. Slot machines may use spinning reels, video displays, or both. A slot machine is not a "coin-operated amusement machine" as defined in s. 212.02(24) or an amusement game or machine as described in s. 849.161, and slot machines are not subject to the tax imposed by s. 212.05(1)(h).

26. Section 551.102(11), F.S., states:

"Slot machine licensee" means a pari-mutuel permitholder who holds a license issued by the division pursuant to this chapter that authorizes such person to possess a slot machine within facilities specified in s. 23, Art. X of the State Constitution and allows slot machine gaming.

27. Section 551.111, F.S., states:

Notwithstanding any provision of law to the contrary, a slot machine manufactured, sold, distributed, possessed, or operated according to the provisions of this chapter is not unlawful.

28. Section 849.086(2), F.S., states:

(b) "Banking game" means a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers or in which the cardroom establishes a bank against which participants play.

29. Section 849.08, F.S., states:

Whoever plays or engages in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

30. Rule 61D-14.022(2) and (3), F.A.C., "Slot Machine Requirements," states:

(2) No slot machine game shall be certified for play in this state by a licensed independent test laboratory if it operates a program of play that replicates a game that is prohibited under Section 849.08, Florida Statutes, unless the slot machine game contains a player skill component and is not based on a banking game.

(3) Prior to the sale or delivery of a slot machine for play in this state, a slot machine manufacturer shall provide certification in writing to the division from a licensed independent testing laboratory that each of the slot machines it intends to offer for sale in this state meet all criteria for operation contained in Chapter 551, F.S., and Rule 61D-14, F.A.C. All testing of slot machines to be offered for play in this state is the responsibility of the manufacturer.

31. Rule 61D-14.041(4), F.A.C., "Randomness Requirements and Game Play Auditing," states in pertinent part:

The slot machine shall not make a variable secondary decision after selection of the game outcome. ...

32. Hoyle's Modern Encyclopedia of Card Games describes Blackjack as follows:

The author describes the various aspects of the game. In Blackjack, the game is played with a standard 52 card deck with suits disregarded and each card valued numerically. One player acts as a banker and deals a single card face down to each player, including himself. Each [player] looks at his card and bets up to an agreed limit. The dealer does not bet but may double the amounts; if he does, any other player may redouble individually, but if any player is unwilling to go double, the dealer wins that player's original stake. . . . See Walter B. Gibson, Hoyle's Modern Encyclopedia of Card Games, 32-35 (Doubleday 1974).

CONCLUSIONS OF LAW

33. The Division is authorized to regulate the pari-mutuel slot machine industry and administer the provisions of Chapter 551, F.S., pursuant to Section 551.103, F.S.

34. Sections 120.565(1) & (2), F.S., provide as follows:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

35. The purpose of a declaratory statement is to allow a petitioner to select a proper course of action in advance. *Novick v. Dep't of Health, Bd. of Medicine*, 816 So. 2d 1237 (Fla. 5th DCA 2002). The Supreme Court of Florida, in *Florida Dep't of Bus. & Prof. Reg., Div. of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach*, 747 So. 2d 374 (Fla. 1999), recognized that by enacting Section 120.565, F.S., the Legislature gave citizens a right to get a clear, binding answer from the agency on how the agency's statute and rules apply. In *Investment Corp of Palm Beach*, the Court also recognized the unique nature of the gambling industry with limited participants who would almost invariably have an interest in a declaratory statement. The Court further found that changes to the Florida Administrative Procedure Act allow for the issuance of declaratory statement even though the interest of persons who are not a party may be affected. *Id.* 747 So. 2d at 378 & 385.

36. Additionally, in *Lennar Homes, Inc. v. Dep't of Bus. & Prof. Reg.*, 888 So. 2d 50, 53-54 (Fla. 1st DCA 2004), the court held that the authority to issue a Declaratory Statement is limited by Section 120.565, F.S., to a determination "as to the applicability of a statutory provision ... to the petitioner's particular set of circumstances." However, in that same opinion the court also cited *Investment Corp.*, 747 So.2d at 385 for the proposition that an agency can issue a declaratory statement dealing with a petitioner's "particular set of circumstances," while at the same time announcing its intention to initiate rulemaking on the same subject. In that case, the court reasoned:

It must be observed that under circumstances such as those presented in this case, involving such a unique industry having very limited participants engaged in almost identical operations, declaratory statements as to one would almost invariably be of interest to others in the very limited group. We are not aware of any rule of law that precludes an agency from simultaneously pursuing both courses of action. Further, such an approach to these issues does not appear to harm the rights of "[a]ny substantially affected person[(s)]." *Id.*

37. Florida law essentially defines a slot machine as a device which contains three basic elements. First, it must operate via the insertion of some object; second, the device must operate with some element of chance; and third, it must render some form of prize, directly or indirectly. *See* Sections 849.16 & 551.102(8), F.S., *see also Kirk v. Morrison*, 146 So. 215 (Fla. 1933). Based on the information presented in the petition, the testimony presented at the hearing, and the demonstration of the Machine at issue, there is no question that the device meets the statutory and common law test of a slot machine, the possession of which would subject an individual to possible criminal prosecution.

38. Having established the threshold issue of its basic operation, the question remains whether the Machine meets the criteria established in Chapter 61D-14, F.A.C., which would authorize its possession by a licensed slot machine facility in Florida. Having taken testimony regarding the components of the device and the factual assertions that the Machine, if evaluated by an independent testing laboratory, would possess the established attributes for a legal slot machine, the sole remaining issue is whether the Machine complies with the restrictions set forth in 61D-14.022(2), F.A.C., which states: “No slot machine game shall be certified for play in this state by a licensed independent test laboratory if it operates a program of play that replicates a game that is prohibited under Section 849.08, Florida Statutes, unless the slot machine game contains a player skill component and is not based on a banking game.” In order to sufficiently evaluate this issue a predicate must be laid as to the basics of the table game of “Blackjack”.

39. Blackjack is a mixed game of chance and skill played with a standard 52-card deck of playing cards. *See In re Advisory Opinion to the Governor*, 856 A.2d 320, 328 (R.I. 2004); *Score Family Fun Center, Inc. v. County of San Diego*, 225 Cal.App.3d 1217, 1222-1223 (Cal.App. 4 Dist., 1990); 65 Ops. Cal. Atty. Gen. 123, 1982 WL 156041 (Cal.A.G.). The game

can be either a banked game (funded by the house) or a non-banked game (funded in a pari-mutuel manner by the players). *Sutter's Place, Inc. v. Kennedy*, 84 Cal.App.4th 674 (Cal.App. 2 Dist., 1999); *Oliver v. County of Los Angeles*, 66 Cal.App.4th 1397 (Cal.App 2 Dist., 1998); and *St. Petersburg Kennel Club v. DBPR*, DOAH Case Nos. 97-0031, 97-0376, and 97-1667, p. 13.

The basic premise of Blackjack involves a competition as to which playing position the dealer or the player can get closest to a score of 21 in a single deal of cards without going over. In Blackjack, the cards are valued as follows:

- An Ace can count as either 1 or 11. The player need not specify the value of the Ace as it is always granted the value that makes the best hand.
- The cards from 2 through 9 are valued as indicated on their face.
- The 10, Jack, Queen, and King are all valued at 10.
- The suits of the cards do not have any meaning in the game.

The game begins with the deal of two cards to the player and the dealer. Traditionally, the player's cards are dealt face up, and the dealer's cards are dealt one card up and one card down. The player is offered the first choice to build a hand by choosing to either take additional cards or stand pat. Once a player has decided to stand pat, the dealer is required based on the rules set by the house to take additional cards or stand pat depending on the score of the dealer's hand. Once the dealer's hand is completed in accordance with the house rules, the winning hand is determined by which hand is closer to 21 without going over. Ties are dealt with according to the house rules.

40. The house has the ability to make variations to the rules of the game which change the odds of winning (the theoretical payout percentage) for the player. Some of these changes to the game which can alter the theoretical player pay out percentage are: manipulating

the payout for a player score of 21 (Blackjack), restricting a player's ability to "double down", changing rules for when a dealer must take an additional card, changing the rules for tie hands, offering "insurance" to the player if a dealer displays an Ace in its hand, increasing or decreasing the number of decks from which the game is dealt, and shuffling the cards intermittently.

41. The element of chance is naturally attributed to the randomness of a deal of cards. The player skill component is attributed to the decision making of the player as to whether to take an additional card or stand pat. A skillful player can reduce the payout percentage of the game if the player adheres to probability-based strategies or engages in card counting. *Score Family Fun Center, Inc. v. County of San Diego*, 225 Cal.App.3d 1217, 1222-1223 (Cal.App. 4 Dist., 1990). Skillful card counting can radically alter the payout percentage of the game and shift the advantage of game from the house to the Player. *Chen v. Nevada State Gaming Control Board*, 994 P.2d 1151 (Nev. 2000); *Doug Grant, Inc. v. Greate Bay Casino Corporation*, 232 F.3d 173 (3d Cir. 2000).

42. According to at least one expert, Shawn McGhie who is experienced in gaming and gaming probability theory, the "hold percentage" computed for the traditional game of Blackjack is the amount the casino retains in win at the end of play.² Mr. McGhie has evaluated Blackjack probability theory and identified three variants that impact the hold percentage in the game. Those variants are the average bet in the game, the speed of the game, and the length of the game. The general range of hold percentage identified by Mr. McGhie for Blackjack is 15.6% (when playing 50 hands per hour) to 25% (when playing 80 hands per hour). However, in that computation in which he varied hands per hour, the other variables considered in Blackjack

² See "Hold Percentage For Twenty-One Games", A Research Paper, by Shawn McGhie, Casino Management, University of Nevada, undated, available on <http://www.macrocap.com/Nevada-Gaming-Statistics/Hold-Percentage-Twenty-One.htm>. Copy part of record of these consolidated declaratory statement proceedings.

analysis were held constant. When the average bet is increased in Mr. McGhie's theoretical model, the hold percentage may range from 15.6% for \$5 bets to 78.1% for \$25 bets. Consequently, according to at least one expert, increasing the bet to \$25 from \$5 shifts the hold percentage from 15.6% to 78.1%. Deviations in the hold percentage have also been substantiated by authors Robert C. Hannum and Anthony C. Cabot in their book *Casino Math* which documents many casino games and how payout percentages can be manipulated by a casino via adjustments in house rules. Their work suggests a "typical hold" for a Las Vegas casino for Blackjack at 13% but outlines a host of changes to house rules which can significantly affect that number.³ While it is difficult to estimate hold percentage as a matter of certainty for Blackjack due to the variables in rules of play, average wager and skill of the players, some gaming jurisdictions do report such information. For example, the Mississippi Gaming Commission reported at the time of the filing of the Petition that the Blackjack hold for its Central gaming region was 19.79% with its Southern gaming region holding 9.83% for the month of April.

43. Competent testimony was offered and accepted that the Machine differs in many ways from the table game of Blackjack. There is no deck of cards being dealt on which the game is based. The graphics of the game are merely showing a win or loss outcome format which is determined by a RNG and the pre-determined pay table set for the game. The expression of a win or loss instead of being displayed in typical slot machine format such as a row of "7"s, cherries, gold bars and the like is being portrayed as a hand of cards. Additionally, the payout of the game is not determined as a ratio to the player's wager but instead is tied to a pay table which

³ See *Casino Math*, Robert C. Hannum and Anthony N. Cabot, Institute for the Study of Gambling and Commercial Gaming, 2005, pp. 125-140. Copy part of record of these consolidated declaratory statement proceedings.

correlates to the possible outcomes determined by the RNG. Unlike the table game of Blackjack, the Machine does not allow the payout percentage to be manipulated by the player or house as discussed above. Due to the continuous cycling of the random number generator and the fact that no prior card is eliminated by the play of a prior player, "card counting" is not a possible strategy. Finally, the table game of Blackjack can be subject to influence by the play of others. A typical casino blackjack table has 7 stations. Multiple players can play a single deal of a hand with the strategies of other players impacting the success or failure of another player's game. A single deal can result in some players winning and other players losing. The Machine does not offer any of these possibilities. The game on the Machine is not a communal game and therefore is not capable of multi-player strategies.

44. The *American Heritage Dictionary* defines the term "replicate" as follows: "To duplicate, copy, reproduce, or repeat." The win/loss outcomes are not determined by a deal of cards and rules set by the House; nor are they subject to manipulation by card counting strategies or the play of other players. In addition, the Machine does not allow for communal play or the influence of the game's outcome by another. Other jurisdictions, in evaluating whether electronic games which create the appearance of the table game Blackjack but involve random selection to determine results without allowing for skill-based strategies, have deemed such devices as not to be the table game of Blackjack but instead mere illusions of the game and as such slot machine devices subject to prosecution. See *Score Family Fun Center, Inc. v. County of San Diego*, 225 Cal.App.3d 1217 (Cal.App. 4 Dist.,1990); 65 Ops. Cal. Atty. Gen. 123, 1982 WL 156041 (Cal.A.G.). As a result, the game being played cannot be said to be a duplicate, copy, reproduction or repeat (a "replica" or "replication") of Blackjack.

45. The game being played is operated in the same cabinet, possesses the same components, and utilizes the same game logic as at least 143 other slot machine games in the Bally Alpha game platform approved for sale and use in Florida. The Machine submitted by the Petitioner for approval herein is capable of being evaluated by independent testing laboratories for compliance with all attributes of a slot machine established by Chapter 551, F.S., and the Division's administrative rules, Chapter 61D-14, F.A.C. The Machine is capable of displaying to players the differences between the Machine and the table game Blackjack. The Machine possesses a greater number of slot machine attributes as defined by Florida's laws and the Division's rules than those of the traditional table game of Blackjack. Its use at the casinos operated by the Seminole Tribe of Florida and its use in at least 32 other regulated gaming jurisdictions as an approved "slot machine" also offer significant evidence that the Petitioner's proposed machine meets all requirements for slot machine certification in the state and does not replicate the play of Blackjack.

46. While having found that the Machine at issue is not replicating the play of Blackjack, it is worth noting that the court cases mentioned earlier have found that the table game Blackjack is a mixed game of chance and skill which is capable of being played in a non-banked manner. As a result, to the extent the Machine's game play were to more closely mimic the actual table game in terms of strategy, method of play, and payout percentage, it still could be authorized under Rule 61D-14.022(2), F.A.C., by falling into the safe harbor found in this provision for a slot machine game containing a player skill component and not based on a banking game.

CONCLUSION

The conclusions regarding the matters addressed in this Declaratory Statement are based upon the facts and specifics provided by the Petitioner and articulated in this Declaratory

Statement and in sworn testimony from the public hearing. Any alteration in the facts as presented either in the petition or in the presentation of the proposed machine from those described herein nullifies this Declaratory Statement and will require a new analysis upon which to base the issue of any future Declaratory Statement. The Petitioner has demonstrated its standing to request determination as to the legality of the Machine at issue.

In sum, the play of Blackjack on Petitioner's Alpha Video Gaming Platform varies from the actual play of live Blackjack as played in a casino. Further, the following factors are significant in the Division's reaching its determination that Machine does not replicate Blackjack as prohibited by Rule 61D-14.022(2), F.A.C.:

1. Randomness of the game is determined by a random number generator (RNG);
2. Each terminal is operated by a single player, and therefore no player on any other machine influences the outcome of the player operating the Machine;
3. Each terminal complies individually with the requirements of Chapter 551, F.S., and Chapter 61D-14, F.A.C., confirmation of which is ultimately subject to certification by an independent testing laboratory; and
4. Each terminal is separately metered and reports individually to the facility monitoring system.

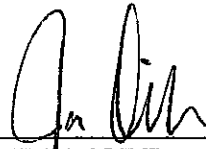
Finally, Rule 61D-14.022(2), F.A.C., is currently in rule making. These proceedings have demonstrated a need to clarify, through the rule-making process, those factors which the Division has considered in making its determination that the slot machine game herein addressed is not prohibited by Rule 61D-14.022(2).

Accordingly, based on the findings of fact herein and those set forth in the Petition for Declaratory Statement, the Machine at issue, which allows the play of Blackjack themed games,

meets the threshold elements for a slot machine under Florida law and is not otherwise prohibited by Rule 61D-14.022(2), F.A.C., for use at licensed slot machine facilities, provided it is certified by an independent testing laboratory to meet all other technical elements of a slot machine set for in the statutes and rules administered by the Division.

THEREFORE, the Division affirms that the Machine described herein is a slot machine which may be subject to testing and certification for use at Florida licensed slot machine facilities pursuant to Chapter 551, F.S., and Chapter 61D-14, F.A.C.

DONE AND ORDERED this 10th day of OCTOBER, 2009, in Tallahassee, Florida.



JOE DILLMORE
Interim Director
Division of Pari-Mutuel Wagering
Dept. of Business & Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1035

NOTICE OF RIGHT TO APPEAL

Any party to this proceeding has the right to seek its judicial review under Section 120.68, Florida Statutes, by the filing of a notice of appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Agency Clerk, 1940 North Monroe Street, Tallahassee, Florida 32399-2202, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed (received) in the Office of the Agency Clerk within thirty days after the date this Order is filed with the Clerk.

CERTIFICATE OF SERVICE

I hereby certify this 7th day of October, 2009, that true copies of

the foregoing "Order" have been served by U.S. Mail and telefax [or email] upon:

MARC W. DUNBAR, ESQ.

Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.


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