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BILL ANOATUBBY
GOVERNOR

August 15, 2011

Ms. Tracie Stevens, Chairwoman
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, DC 20005

Dear Chairwoman Stevens:

Included with this letter are comments from the Chickasaw Nation on the preliminary drafts of the following regulations:

- 25 C.F.R. Part 537 – Background Investigations for Persons or Entities With a Financial Interest In, or Having Management Responsibility For, a Management Contract (Group 4)
- 25 C.F.R. Part 556 – Background Investigations For Primary Management Officials and Key Employees (Group 4)
- 25 C.F.R. Part 558 – Gaming Licenses for Key Employees and Primary Management Officials (Group 4)
- 25 C.F.R. Part 571 – Monitoring and Investigations (Group 4)
- 25 C.F.R. Part 573 – Enforcement (Group 2)
- 25 C.F.R Part 518 – Self Regulation of Class II Gaming

This opportunity for the Chickasaw Nation to participate in the National Indian Gaming Commission (NIGC) regulatory review process is appreciated. We look forward to continued cooperation and coordination in the spirit of the government-to-government relationship and in accordance with federal law and policy.

Sincerely,

Bill Anoatubby

Bill Anoatubby, Governor
The Chickasaw Nation

Enclosures (6)

cc: Ms. Steffani A. Cochran, Vice-Chairperson
Mr. Daniel Little, Associate Commissioner

COMMENTS OF THE CHICKASAW NATION ON THE NATIONAL INDIAN GAMING COMMISSION'S PRELIMINARY DRAFT OF 25 C.F.R. PART 537 – BACKGROUND INVESTIGATIONS FOR PERSONS OR ENTITIES WITH A FINANCIAL INTEREST IN, OR HAVING MANAGEMENT RESPONSIBILITY FOR, A MANAGEMENT CONTRACT

AUGUST 10, 2011

The Chickasaw Nation is pleased to submit the following comments on the National Indian Gaming Commission's (NIGC) Preliminary Draft regulations on background investigations of management contractors, as provided in 25 C.F.R. Part 537. The Chickasaw Nation appreciates the important role the NIGC plays in alerting tribes of potentially unsuitable persons or entities through its background investigations and commends the NIGC for its efforts to improve its investigation process and minimize unnecessary duplication and costs. It is our hope that our comments below are helpful to the NIGC during this regulatory review process.

The Chickasaw Nation strongly supports NIGC proposal to reduce the background investigation and the scope of information required for tribal and wholly tribally owned entities. However, we are concerned with regard to the relaxation of the rules in relation to commercial entities and "institutional investors," and we urge caution with regard to this concept. We note that the proposed § 537.1(d) refers to "institutional investor" but does not include a regulatory definition of the term. Without such a definition, the term "institutional investor" could be interpreted to encompass too broad a range of companies offering investment services. We do not view it wise to proceed with this revision in the absence of clear definition, including appropriate parameters.

In closing, thank you again for undertaking this regulatory review of 25 C.F.R. Part 537 and allowing the Chickasaw Nation to present its views on the proposed changes. We respectfully request your consideration of our comments as you proceed with your deliberations on this important matter.

COMMENTS OF THE CHICKASAW NATION ON THE NATIONAL INDIAN GAMING COMMISSION'S PRELIMINARY DRAFT OF 25 C.F.R. PART 556 – BACKGROUND INVESTIGATIONS FOR PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES

AUGUST 10, 2011

The Chickasaw Nation is pleased to submit the following comments on the National Indian Gaming Commission's (NIGC) preliminary draft of its regulations on background investigations for primary management officials and key employees. Efforts on the part of the NIGC to meaningfully engage tribes in government-to-government consultation to ensure that its regulations are consistent with the purposes and goals of the Indian Gaming Regulatory Act (IGRA) and respectful of tribal sovereignty are appreciated. The Chickasaw Nation views the licensing of primary management officials and key employees as one of the most important tribal regulatory functions. The following comments are respectfully submitted to assist the NIGC as it considers further revisions to the regulation.

The Chickasaw Nation is highly supportive of the NIGC's proposal to convert the NIGC pilot program into a regulatory process that will replace the current licensing process outlined in 25 C.F.R Parts 556, 558. The licensing process under the pilot program has proven to be much less burdensome and more cost-effective in processing license applications than the process currently outlined in NIGC regulations. By eliminating the submission requirements of employment applications and investigative reports to the NIGC, the pilot program is more consistent with the IGRA, which vests tribal governments with licensure authority and entrusts the NIGC with an important oversight role over tribal gaming operations. As such, the Nation does not see a need for any substantive changes to the process or substance of the pilot program as drafted.

The Chickasaw Nation is especially supportive of the notification of results procedure because it allows for some flexibility, particularly in the way notices are submitted to the Regional offices in the proposed § 556.7. Since the proposed § 556.6(b)(2) already includes the minimum information required in the notification of results, the Chickasaw Nation believes that any additional future proposed changes to the submission requirements under the pilot program should be in the form of guidance and not a regulation to allow for maximum flexibility.

While we are highly supportive of the NIGC's change to formalize the pilot program, a few issues remain in the draft regulation that we believe would benefit from additional clarification. For instance, this preliminary draft includes the Privacy Act and Federal False Claims Act notice requirements. In previous comments to the NIGC, the Chickasaw Nation has objected to the requirement of the Privacy Act and Federal False Claims Act notices as exceeding the NIGC's authority under the IGRA. In those comments, the Chickasaw Nation argued that the two federal statutes did not apply to tribal governments and that the NIGC lacked the authority to require that tribal ordinances cover these new requirements. Nothing in the IGRA grants the NIGC authority to direct tribal governments to enact any particular law or

amend their tribal ordinances. Then and now, such requirements are legally unsupportable and beyond the NIGC's authority under the IGRA.

As a related matter, the Chickasaw Nation would also like to suggest revising § 556.8 to clarify that ordinances submitted after the regulation's effective date do not have to be amended to come into compliance with the new regulations in 25 C.F.R Part 556. As noted above, the Chickasaw Nation does not believe the NIGC has the authority to require tribes to amend their gaming ordinances. Such mandate in an NIGC regulation interferes with the sovereign authority of tribal governments and is beyond the NIGC's statutory authority in approving tribal ordinances. Moreover, the Chickasaw Nation does not believe the tribal ordinance requirement in § 556.8 is necessary since tribes are required to follow the procedures in the regulation regardless of whether such procedures are included in their gaming ordinances.

In closing, thank you again for undertaking this regulatory review of 25 C.F.R. Part 556 and allowing the Chickasaw Nation to present our views on the NIGC's proposed changes. It is our hope that you will give meaningful consideration to our comments as you proceed with your deliberations.

COMMENTS OF THE CHICKASAW NATION ON THE NATIONAL INDIAN GAMING COMMISSION'S PRELIMINARY DRAFT OF 25 C.F.R. PART 558 – GAMING LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

AUGUST 10, 2011

The Chickasaw Nation is pleased to submit the following comments on the National Indian Gaming Commission's (NIGC) proposed revisions to the licensing regulations contained in 25 C.F.R. Part 558. Efforts on the part of the NIGC to meaningfully engage tribes in government-to-government consultation to ensure that its regulations are consistent with the purposes and goals of the Indian Gaming Regulatory Act (IGRA) and respectful of tribal sovereignty are appreciated. The following comments are respectfully submitted to assist the NIGC as it considers further revisions to the regulation.

As primary regulators of their gaming operations, tribal governments are responsible for implementing regulatory duties prescribed under the Indian Gaming Regulatory Act (IGRA), including functions related to the licensing of primary management officials and key employees. As part of its licensing duties, § 2710(b) of the IGRA specifically provides that tribal governments have to notify the NIGC of an applicant's background investigation results and the tribe's issuance of gaming licenses. In light of these two notification requirements under the IGRA, the Chickasaw Nation does not find the NIGC's proposal to require notice of licenses issued in § 558.2 objectionable and believes that such notice requirements are properly within the NIGC's statutory authority.

In addition, the Chickasaw Nation supports the NIGC's change in § 558.2(c)(2) to allow for the forwarding of denied suitability determinations to the NIGC for inclusion in the Indian Gaming Individuals Record System. Information on an applicant's prior gaming licenses, and any revocations and suspensions of previously held licenses can be helpful to tribal governments in determining the suitability of an applicant. Among other benefits, the information can help the tribe verify the information provided in a license application. The Chickasaw Nation also supports the NIGC's proposed language in § 558.2(a), which makes explicit the tribe's authority to issue a license following the submission of the notification of results. We believe that such language affirms the licensure authority in tribal governments under the IGRA.

While the NIGC's draft amendments significantly improve the overall legitimacy and effectiveness of this regulation, we believe a few issues remain that warrant closer scrutiny. First, as a preliminary matter, we request that the NIGC to consider replacing all references to "eligibility determinations" with "suitability determinations." The Chickasaw Nation believes that "suitability determination" is a more appropriate term since the licensing process is designed to verify the suitability of the applicant to obtain a gaming license. Second, we ask the NIGC to consider amending the sentence in § 558.2(c) to clarify that tribes will be subject to the notice requirement if a license application is *denied*, rather than when a license is not issued, as there are non-suitability related reasons for not issuing a license, including the applicant's withdrawal of his or her application. Third, in § 558.2(c)(2), rather than having to choose between a

mandatory and permissive requirement with "shall forward copies" and "may forward copies," we suggest the following language: "The tribe shall notify the Commission; and *provide* copies…." Fourth, we suggest excluding eligibility determinations from the 3-year record retention requirements in § 558.2(e). Under the NIGC's proposed regulations formalizing the pilot program in 25 C.F.R. Part 556, proposed § 556.6(2)(iv) requires tribes to submit a notification of results that includes a copy of the eligibility determination made under 25 C.F.R. § 556.5. Since the NIGC is already requiring an eligibility determination in the notification of results, the Chickasaw Nation does not believe that such determinations should be subject to the 3-year retention requirement. And finally, we request that the NIGC consider removing the tribal ordinance compliance requirement in § 558.6. The Chickasaw Nation has objected to such requirements in previous comments on the basis that the NIGC lacks authority to direct tribal governments to amend their gaming ordinances. In those comments, the Chickasaw Nation has questioned the need for such requirements given that tribes are required to follow the licensing procedure set out in the NIGC's regulations, regardless of whether the procedure is incorporated into the tribe's gaming ordinance.

In closing, thank you again for undertaking this regulatory review of 25 C.F.R. Part 558. It is our hope that you will give meaningful consideration to our comments as you proceed with your deliberations.

COMMENTS OF THE CHICKASAW NATION ON THE NATIONAL INDIAN GAMING COMMISSION'S PRELIMINARY DRAFT OF 25 C.F.R. PART 571 – MONITORING AND INVESTIGATIONS

AUGUST 10, 2011

The Chickasaw Nation is pleased to submit the following comments on the National Indian Gaming Commission's (NIGC) proposed revisions to 25 C.F.R. Part 571 – Monitoring and Investigations. Efforts on the part of the NIGC to meaningfully engage tribes in government-to-government consultation to ensure that its regulations are consistent with the purposes and goals of the Indian Gaming Regulatory Act (IGRA) and respectful of tribal sovereignty are appreciated. The following comments are respectfully submitted to assist the NIGC as it considers further revisions to the regulation.

The Chickasaw Nation understands that the proposal to issue investigation closure letter may be beneficial to some tribes in documenting the termination of an investigation. The overall benefits of receiving such a letter, however, are brought into question by the proposed language which allows the NIGC to re-open an investigation and pursue further action even after a closure letter has been issued. Assuming that NIGC intent in issuing the closure letter is to provide notice to interested parties that an NIGC investigation has closed, we believe language should be added clarifying that further investigative action following the issuance of a closure letter will be taken only if new information is discovered that was previously unknown to the NIGC at the time of the investigation. In addition, if the NIGC is going to re-open an investigation, we believe there should be a notice procedure for notifying the tribe of NIGC intent to re-open its investigation. This would help minimize the risk of confusion that may otherwise result from the re-opening of a closed investigation and put the tribe on notice that further investigative action may be taken by the NIGC.

While the NIGC's proposed changes clarifying its investigative authority over *persons* is not necessarily inconsistent with its authority under the Indian Gaming Regulatory Act (IGRA), the Chickasaw Nation believes there are certain terms and definitions that require additional clarification. As written, the definition of "person" encompasses *any* individual, Indian tribe, corporation, partnership, or other organization or entity. We request that the NIGC consider amending the definition of "person" to include only those individuals, tribes, corporations, partnerships, organizations or entities that possess records relating to a tribal gaming operation by way of their involvement in managing, operating, or providing services to a tribal gaming operation. In addition, we ask the NIGC to consider amending § 571.5(b) to clarify that official identification will be presented upon entering a gaming operation or other *related* facility. Such changes will help ensure that NIGC investigative powers are carried out in a manner that is consistent with the IGRA and respectful of the role of tribal governments as primary regulators of their gaming operations.

In addition, the Chickasaw Nation believes that NIGC investigative powers should be carefully limited when applied to persons located off Indian lands. By using the word "shall" in § 571.6(d), the NIGC imposes a mandatory requirement on persons to make available to the

NIGC their papers, books, and records. We request that the NIGC consider replacing "shall" with "may voluntarily" to impose a less mandatory, and more permissive requirement on such persons. Since the NIGC has subpoena authority under the IGRA, which includes the authority to require the production of all books, papers, and documents relating to any matter under consideration or investigation, we do not believe such a change will significantly hamper or impede the NIGC's ability to carry out its investigation.

In closing, thank you again for undertaking this major revision of the monitoring and investigations regulations contained in 25 C.F.R. Part 571. It is our hope that you will give meaningful consideration to our comments as you proceed with your deliberations.

COMMENTS OF THE CHICKASAW NATION ON THE NATIONAL INDIAN GAMING COMMISSION'S PRELIMINARY DRAFT OF 25 C.F.R. PART 573 – ENFORCEMENT

AUGUST 10, 2011

The Chickasaw Nation is pleased to submit the following comments on the National Indian Gaming Commission's (NIGC) preliminary draft of enforcement regulations. Efforts on the part of the NIGC to meaningfully engage tribes in government-to-government consultation to ensure that its regulations are consistent with the purposes and goals of the Indian Gaming Regulatory Act (IGRA) and respectful of tribal sovereignty are appreciated. The proposed amendments to the NIGC's enforcement regulations reflect new direction from the NIGC toward a more collaborative and complementary relationship with tribal governments. The following comments are respectfully submitted to assist the NIGC as it considers further revisions to the regulation.

The Chickasaw Nation strongly supports the NIGC's proposal to adopt a voluntary compliance approach to enforcement that would provide tribes with notice and an opportunity to correct any regulatory deficiencies before any official enforcement action is taken by the NIGC. In our previous comments on the NIGC's Notice of Inquiry, dated November 18, 2010, the Chickasaw Nation "encourage[d] the NIGC to adopt a voluntary compliance model that would defer to tribal regulatory agencies on enforcement matters in the first instance and provide a notice and opportunity to cure before an enforcement action is taken by the NIGC." The proposed language contained in § 573.2 incorporates our comments and is consistent with our view that in enacting the IGRA, Congress intended to accord tribal governments the primary regulatory role over tribal gaming activities while entrusting the NIGC with an important oversight function. Also, we were particularly pleased by the inclusion of the statement in § 573.1 declaring voluntary compliance as the goal of the NIGC. We believe that such a statement sends a positive message to Indian Country and is reflective of the NIGC's respect for the inherent sovereignty of tribal governments. It also reinforces the notion that official legal enforcement action should only be taken as a measure of last resort and only after the tribe has had an opportunity to address the identified issue of non-compliance.

While the incorporation of the voluntary compliance procedure is a marked improvement over the existing regulation, we believe a few issues remain that would benefit from additional clarification. First, it is unclear from the regulation whether the NIGC can issue a notice of violation (NOV) without first offering tribes the opportunity to come into voluntary compliance. We ask the NIGC to clarify whether letters of concern and/or non-compliance notice will always be issued before NOVs, or whether certain circumstances will warrant the immediate issuance of an NOV. If there are certain compliance issues that will not be subject to the voluntary compliance process, then those issues should be identified here. Second, we ask the NIGC to consider adding a "good faith exception" to § 573.2(c), which will provide tribes with additional time to come into voluntary compliance so long as the tribe has made a good faith effort to complete the corrective action within the specified time period. As noted above, official NIGC enforcement actions such as an NOV should be a measure of last resort and should not be used

punitively to penalize tribes that are taking measures to come into compliance but are unable to do so for reasons outside their control.

The Chickasaw Nation was also pleased that the NIGC included language in § 573.5 making explicit the NIGC's authority to withdraw an NOV. We agree that there may be circumstances warranting the withdrawal of an NOV, and suggest that the NIGC include a procedure for withdrawing an NOV that will provide tribes and agency staff with clear guidance on the withdrawal process.

In closing, thank you again for undertaking this major revision of the enforcement regulations contained in 25 C.F.R. Part 573. It is our hope that you will give meaningful consideration to our comments as you proceed with your deliberations.

COMMENTS OF THE CHICKASAW NATION ON
25 C.F.R. PART 518 –
SELF REGULATION OF CLASS II GAMING

AUGUST 10, 2011

Although the NIGC has not yet posted a draft of proposed changes to 25 C.F.R. Part 518 – Self Regulation of Class II Gaming, the Chickasaw Nation would like to take this opportunity to submit comments in hope that the NIGC will consider and implement such comments when considering possible changes to the regulation.

As a preliminary matter, the Chickasaw Nation notes that only two tribes have successfully petitioned for and obtained certificates of self-regulation. The burdensome submission requirements and limited benefits of the self-regulation process, as discussed in further detail below, discourage many tribes from completing the self-regulation process. It is our hope that the comments included below will assist the NIGC in revising the current regulation in a manner that will encourage more tribes to apply for self-regulation status.

Under § 518.3, tribes applying for a certificate of self-regulation are required to submit, among other things, a brief history of the operation, including the opening dates and whether it has ever closed voluntarily or involuntarily; copies of its gaming facility license; a tribe's constitution and governing documents; a tribe's revenue allocation plan, if applicable; and the tribe's current set of regulations. We believe these submission requirements are not only unnecessary, but in violation of the intended purposes of the Paperwork Reduction Act, which are to minimize the paperwork burden resulting from the collection of information by the Federal Government, and to coordinate, integrate, and make uniform Federal information resources management policies and practices as a means of reducing collection burdens on the public. The NIGC already receives facility license and environmental and public health and safety information pursuant to its facility licensing regulations, and maintains the Indian Lands Database, which records and tracks all Indian lands opinions and decisions. The NIGC is also in receipt of a tribe's Internal Control Standards (TICS) since TICS are evaluated against the NIGC's MICS in a yearly audit submitted to the NIGC.

In particular, there are a few requirements in § 518.3(a) that we believe need additional clarification. Section 518.3(a)(1)(vii) requires tribes to submit a sworn statement and a report explaining how tribal net gaming revenues were used in accordance with the IGRA. Because the annual self-regulation report already covers the proper use of net gaming revenues, both the sworn statement and supporting documentation regarding this topic are superfluous and should be removed from the regulations as they are redundant and comprise an unnecessary burden on the submitter. Also, the NIGC should seriously reconsider § 518.3(a)(2)(iii), which requires "[a] description of the system(s) at both the gaming operation and the tribe that account for the flow of the gaming revenues from receipt to their ultimate use . . . ." The Chickasaw Nation views this requirement to be well outside of NIGC statutory authority. The IGRA already requires that all tribes, including those with certificates of self-regulation, submit annual independent audits of their gaming operation's financial statements. Rather than forcing the tribal applicant to describe its gaming operation accounting system, the NIGC could instead rely on two years of clean

financial audits or unqualified audits with minimal findings on non-material issues as presumptively establishing that the tribe has an adequate accounting system in place.

In addition, the Chickasaw Nation requests that the NIGC revise its regulatory approach to be more consistent with Congressional intent to grant self-regulating tribes minimal NIGC oversight, enforcement and supervision. Section 518.9 provides that, "[s]ubject to the provisions of 25 U.S.C. § 2710(c)(5)(A), the Commission retains its investigative and enforcement authority over self-regulating tribes. The referenced section of IGRA, § 2710(c)(5)(A), expressly provides that a self-regulating tribe shall not be subject to the monitoring, inspection, and investigative authority set forth in § 2706(b). NIGC retention of investigative and enforcement authority over tribes is problematic because it is not possible for the NIGC to retain investigative rights pursuant to a section that exempts self-regulating tribes from NIGC investigative authority. The regulations thus violate IGRA's specific exemption of agency investigatory authority to tribes with certificates of self-regulation.

As discussed above, once a tribe has obtained a certificate of self-regulation for Class II gaming, the NIGC has no authority to monitor, inspect and examine the gaming facility; conduct background investigations; or demand access to books and records regarding the gaming activity. Despite this statutory exemption, § 518.7 of the NIGC regulations mandate that as a condition to maintaining self-regulatory status, a tribe must submit a self-regulation report annually to the NIGC. The report must contain a sworn statement, signed by an authorized tribal official, which explains how tribal net gaming revenues were used in accordance with IGRA. The NIGC already has enough information from annual outside CPA financial and MICS audits, and regularly receives background investigation reports and suitability determinations for licensing decisions. Submitting an annual report on the tribe's usage of its own monies to the federal government is overly intrusive and an affront to tribal sovereignty.

In closing, thank you for this opportunity to comment on self-regulation provisions contained in 25 C.F.R. Part 518. We look forward to working closely with the NIGC during this regulatory review process in advancing our mutual interests in the effective regulation of tribal gaming.