



May 26, 2004

Robert A. Luciano  
President, Sierra Design Group  
300 Sierra Manor Drive  
Reno, NV 89511

Re: Sierra Design "Mystery Bingo" Game Classification Opinion

Dear Mr. Luciano:

This letter is in further response to the letter of April 7, 2004, from Joseph Webster, Esq., on behalf of Sierra Design, requesting our advice on whether certain specified changes to the manner of play of "Mystery Bingo" would affect our determination that the game qualifies as Class II gaming under the Indian Gaming Regulatory Act. Mr. Webster's letter of April 29, 2004, provided additional information and justification for the proposed changes.

We provided an advisory classification opinion letter regarding "Mystery Bingo" on September 26, 2003. In a letter dated April 2, 2004, we agreed to changes in the "Mystery Bingo" prize structure. In a subsequent letter dated May 7, 2004, we agreed that a change restoring the free space in the middle of the card and providing three balls in the first release rather than four balls would not affect our determination that the game was Class II. We also informed you that we were still reviewing the other proposed change. Having concluded that review, we believe that the second change proposed in Mr. Webster's letter of April 7, 2004, would significantly impact our classification determination. This change would place "Mystery Bingo" outside the parameters of Class II, as that term is defined in the Indian Gaming Regulatory Act (IGRA) and NIGC regulations.

#### Change proposal

The proposed change provides that the electronic draw and release of all the balls necessary for consolation prizes will be accomplished in the same set of the balls drawn and released to award the winning prize. This means that the game would always be completed after two sets of balls were drawn and released unless the winning player or a consolation prize winner slept the bingo.

In the "Mystery Bingo" version we reviewed for the September 26, 2003, advisory opinion letter, the first winning pattern is achieved following the electronic draw and release of two sets of balls. The first set contains three balls, following the change approved in our letter of April 2, 2004. The second set contains only the number of balls necessary for a player to obtain the winning pattern. Following the release of the second set, a winning player daubs and claims the prize and the game ends for that player. If the player sleeps the bingo, a third set of balls is electronically drawn and released. This set consists of the balls necessary to achieve the next straight-line winning bingo pattern. A player achieving this pattern daubs and claims the win. Unless that player sleeps the bingo, the game ends for that winning player, and so on. Consolation prizes are awarded in some but not all Mystery Bingo games.<sup>1</sup> These prizes are awarded based on the play of bingo using subsequent electronically drawn sets of balls. Prizes are given to players who obtain and successfully daub the straight-line bingo pattern after the winning player obtains and successfully daubs the pattern.

### Discussion

In the September 26, 2003, advisory opinion letter, I pointed to the importance of the second statutory criterion within the IGRA bingo definition providing that bingo is a game "in which the holder of the card covers such numbers or designations **when** objects, similarly numbered or designated are drawn or electronically determined...." 25 U.S.C. § 2703(7)(A). We interpret this requirement to mean that the winning cardholder must cover at the point the winning ball is released. Permitting other prizes to be awarded based on balls drawn in the same set but after the ball that completes the winning pattern is drawn and released would not be in keeping with that requirement. Releasing balls in excess of the game winning ball compromises one of the fundamental characteristics of bingo.<sup>2</sup> The winning player would not be covering "when" the balls were drawn and released but "after" other balls were released. We recognize that under the proposed change, this electronic draw and release of additional balls in the same set is nearly instantaneous with the electronic draw and release of the winning ball, given the fast rate of play of the game, so our interpretation is not strictly based on time measurement. Rather, it is the fact that in bingo a player wins at the winning ball, and the player must

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<sup>1</sup> The specific provisions for award of consolation prizes in "Mystery Bingo" is considered confidential proprietary information at the request of Sierra Design Group and is not discussed in detail in this opinion.

<sup>2</sup> In the MegaMania game, balls were released in sets of three until a winner daubed and declared. A player could win in a specific set with any of the three balls drawn, and the game paid ties. Release of a specific number of balls—three at a time—was a design feature. In the proposed change for Mystery Bingo, the number of balls to be released in the second set would be unpredictable, enhancing the possibility that other players will win, and the so-called "winner" may not be the first person to cover. The release of additional balls past the number required to win the game was not addressed specifically in the MegaMania opinions. See U.S. v 103 Electronic Gambling Devices, 223 F.2d 1091 (9<sup>th</sup> Cir. 2000) and U.S. v 162 MegaMania Gambling Devices, 231F.3d 713 (10<sup>th</sup> Cir. 2000).

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daub and claim the prize at that point, not later after other balls are electronically drawn and released.<sup>3</sup>

We also do not think that playing the "Mystery Bingo" game under the change proposed meets the third statutory criterion that bingo is a game "won by the first person covering a previously designated arrangement of numbers or designations on such cards...." In "Mystery Bingo" the common pattern for all prizes is a straight line covering five spaces on the bingo card. If played as proposed, it is likely that in many games a player who will only win a consolation prize will "daub" before the actual winner daubs. Under "Mystery Bingo" rules, the first player to actually "daub" or "cover" the game-winning pattern would not necessarily be declared the winner.

IGRA provides that "other games similar to bingo" may also be Class II gaming, but does not define that term. Under recently adopted NIGC regulations, the term was defined as "any game played in the same location of bingo (as defined in 25 U.S.C. § 2703(7)(A)(i)) constituting a variant on the game of bingo provided that such game is not house banked and permits players to compete against each other." 25 C.F.R. § 502.9.

Pending further regulatory guidance, we are not prepared to conclude that the modification proposed for "Mystery Bingo" falls within the permissible Class II variants of bingo. These are games that do not necessarily meet each of the elements specified in the statutory definition of bingo.<sup>4</sup> As noted in the September 26, 2003, advisory opinion however, some aspects of bingo are so important to the play of the game that they must be present even in the play of a game said to be "an other game similar to bingo."<sup>5</sup> The proposed change to "Mystery Bingo" compromises two of the three statutory elements of IGRA's definition for bingo. When played as proposed, the game would not meet the second statutory criterion, that the "**holder of the card covers when... numbers are**

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<sup>3</sup> In another advisory game opinion issued on September 22, 2003, we did conclude that a game awarding *interim* prizes enroute to the *gaming-ending* (*winning*) bingo pattern could award the interim prize(s) in the same set of electronically determined balls which yielded the game-ending (*winning*) pattern. The difference is that the secondary prize-winning pattern at issue in Mystery Bingo comes after, not before, the game-ending (*winning*) pattern based on balls drawn in the same set.

<sup>4</sup> In comments to the new definition, the adopting Commissioners indicated their view that " 'other games similar to bingo' constitute a 'variant' on the game and do not necessarily meet each of the elements specified in the statutory definition of bingo." This leaves open the possibility that some of the statutory elements of bingo are so essential that departure from them means the game cannot even be "similar" to bingo. See 67 Fed. Reg. 41171.

<sup>5</sup> The September 26, 2003, advisory opinion stated "We find that covering numbers as they are called is an essential ingredient to the play of the game of bingo or a variant of that game. We conclude that a game offered as class II bingo or a "game similar to bingo" must provide a "daub" or "cover" requirement for all players after the bingo numbers are announced and not just for winning players." See page 13 of 22. This requirement was also addressed in NIGC Bulletin 03-03 that discussed games with "pre-drawn numbers."

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drawn or electronically determined," and would not meet the third statutory element that the game must be "**won by the first person covering**, a pre-designated arrangement of numbers ...on such cards." See 25 U.S.C. § 2703(7)(A). By avoiding both the "cover when" and "first person win" requirements, the proposed change for the "Mystery Bingo" game does not provide the participation and competition requirements inherent to the game of bingo. Games not meeting these requirements cannot be considered Class II, and are therefore Class III. (See 25 U.S.C. § 2703(8).) Accordingly, we do not find that "Mystery Bingo" qualifies as "an other game similar to bingo" as the term is defined for purposes of Class II gaming under IGRA.

### Conclusion

Mystery bingo, if played in the manner described in the change proposal discussed above, would not be a Class II game. The "Mystery Bingo" version determined to be Class II is the version described in the advisory opinion letter of September 26, 2003, as modified by the letters approving changes dated April 2, 2004, and May 7, 2004. The revised description was provided as an attachment to the May 7, 2004, letter.

Sincerely,



Penny J. Coleman  
Acting General Counsel

Copy to:  
Joseph Webster, Esq.