IN THE MISSOURI GAMING COMMISSION

In Re:	)	
	)	DC-15-166
HGI – Mark Twain, LLC	)	

PRELIMINARY ORDER FOR DISCIPLINARY ACTION

Comes now the Missouri Gaming Commission acting in its official capacity pursuant to 11 CSR 45-13.050, and states as follows:

1. The Missouri Gaming Commission (the "Commission" or "MGC") is a state commission created under Chapter 313, RSMo 2000,[1] with jurisdiction over gaming activities, including riverboat gambling activities, in the State of Missouri.

2. The Commission issued Affinity Gaming, LLC, a Class A gaming license to develop and operate Class B gaming licenses in the State of Missouri.

3. Affinity Gaming, LLC, is the parent organization or controlling entity of HGI – Mark Twain, LLC (the "Company").

4. The Commission issued a Class B riverboat gambling license to the Company to conduct games on and operate the excursion gambling boat known as *Mark Twain Casino* (the "Casino").

5. As the holder of a Class B license, the Company is subject to the provisions of §§ 313.800 to 313.850, RSMo, and the regulations promulgated thereunder by the Commission.

STATEMENT OF FACTS[2]

6. On June 24, 2014, the Casino notified the MGC that its Bally SDS system was incorrectly configured.

7. Due to the system synchronization issue experienced by the Casino on June 20, 2014, 14 days of lost system data had to be recovered from restored archive tapes.

8. As a result, backup information was not retrievable.

9. A further analysis of the data from the restored archive tapes verified that there was still missing transaction data from 8:00 a.m. until 8:55 a.m. on June 19, 2014, which had been lost and could not be recovered.

---

[1] All statutory references are to RSMo 2000, unless otherwise specified.
[2] 20140806002

LAW

10. Under § 313.805(6), RSMo, the Commission may assess any appropriate administrative penalty against a licensee, including, but not limited to, suspension, revocation, or penalties in an amount determined by the Commission.

11. Section 313.812.14, RSMo, states, in pertinent part, as follows:

> A holder of any license shall be subject to imposition of penalties, suspension or revocation of such license, or if the person is an applicant for licensure, the denial of the application, for any act or failure to act by himself or his agents or employees, that is injurious to the public health, safety, morals, good order and general welfare of the people of the state of Missouri, or that would discredit or tend to discredit the Missouri gaming industry or the state of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action. The commission shall take appropriate action against any licensee who violates the law or the rules and regulations of the commission. Without limiting other provisions of this subsection, the following acts or omissions may be grounds for such discipline.
>
> (1) Failing to comply with or make provision for compliance with sections 313.800 to 313.850, the rules and regulations of the commission or any federal, state or local law or regulations;
>
> (2) Failing to comply with any rule, order or ruling of the commission or its agents pertaining to gaming[.]

12. Title 11 CSR 45-9.060 states, in pertinent part, as follows:

> (3) Violations of the minimum internal control standards [("MICS")] by a Class A licensee or an agent or employee of a Class A licensee are deemed to be unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to administrative penalty pursuant to Section 313.805(6), RSMo, and 11 CSR 45-1 et seq.
>
> (4) Violations of the Class A licensee's internal control system [("ICS")] by the Class A licensee or an agent or employee of the Class A licensee shall be *prima facie* evidence of unsuitable conduct for which the Class A licensee and/or its agents or employees may be subject to discipline pursuant to Section 313.805(6), RSMo, and 11 CSR 45-1 et seq.

13. Title 11 CSR 45-8.020 requires licensees to "provide the commission, upon its request, with the records required to be maintained by this chapter…. [E]ach licensee shall retain all these records within Missouri for at least five (5) years after they are made. Failure to keep and provide such records is an unsuitable method of operation."

14. Title 11 CSR 45-8.040 states, in pertinent part, as follows:

(1) Each licensee shall maintain complete, accurate, legible and permanent records of all transactions pertaining to its revenues and expenses, assets, liabilities and equity. The commission, from time-to-time, may direct licensees to alter the manner in which these records are maintained.

* * *

(4) The detailed, supporting and subsidiary records shall include as a minimum the following:

(A) Detailed records identifying all revenues, expenses, assets, liabilities and equity for each licensee;

(B) Records of all investments, advances, loans and receivables due the licensee;

* * *

(H) Records which identify table drop, table win and percentage of table win to table drop for each table game, and those records accumulated for each type of table game, either by shift or other accounting period approved by the commission, and accumulated on a month-to-date and year-to-date basis;

(I) Records which identify actual tokens-in/out, drop, payouts, fills, win amounts and percentages, and differences between theoretical and actual win amounts and percentages for each electronic gaming device on a per-day basis or other accounting period approved by the commission and accumulated on a month-to-date and year-to-date basis;

* * *

(L) Records required to fully comply with all the federal financial recordkeeping requirements as enumerated in 31 CFR 103;

* * *

(N) Records required by the licensee's internal control system; and

(O) Any other records that the commission requires be maintained.

(5) If a licensee fails to maintain records used by it to compute taxes or fees due the state or any political subdivision of the state, the commission may compute and determine the amounts due on the basis of an audit conducted by

the commission, available information, statistical analysis, or a combination of these.

(6) Each licensee shall permit the commission or commission agents access to its books and records upon request.

15. Both the MICS and the Casino's ICS, Chapter S, § 8.04, require "Class B Licensees [to] test data redundancy procedures to ensure data is retrievable at least monthly. Documentation of the test shall be retained."

16. Both the MICS and the Casino's ICS, Chapter S, § 8.05, require "[t]he backup processes and procedures implemented for restoring data and application files [to] be available upon request. The job position of the employee responsible for the backup shall be included in the Internal Control System."

VIOLATIONS

17. The acts or omissions of employees or agents of the Company, as described above, constitute a failure of the Company to properly maintain, backup, and store its records, thereby violating 11 CSR 45-8.020 and 11 CSR 45-8.040, MICS, Chapter S §§ 8.04 and 8.05, and the Casino's ICS, Chapter S §§ 8.04 and 8.05.

18. The Company is therefore subject to discipline for such violations pursuant to §§ 313.805(6) and 313.812.14 (1) and (2), RSMo, and 11 CSR 45-9.060(3) and (4).

PENALTY PROPOSED

19. Under § 313.805(6), RSMo, the Commission has the power to assess any appropriate administrative penalty against the Company as the holder of a Class B license.

20. THEREFORE, it is proposed that the Commission fine HGI – Mark Twain, LLC, the amount of $5,000 for the violations set forth herein.

_____

Leland M. Shurin
Chairman
Missouri Gaming Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing to be mailed, postage prepaid, this ____ day of _____, 2015, to:

Gerry Smriga
HGI – Mark Twain, Inc., d/b/a Mark Twain Casino
104 Peirce Street
LaGrange, MO 63448

_____
Leland M. Shurin
Chairman
Missouri Gaming Commission