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Advisory Memorandum 2018-01

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To: Tribal Gaming Regulators

From: State Gaming Compliance Unit

Date: August 28, 2018

Re: NIGC Bulletin No. 2018-3 Guidance on the Class III Minimum Internal Control Standards

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*What impact does the modification of any part of 25 C.F.R Part 542 have on the Minimum Internal Control Standards required by Part 5(B) of the Model Tribal Gaming Compact?*

Part 5 of the Model Tribal Gaming Compact (“Compact”) relates to rules, regulations, and minimum requirements for operations. More specifically, Part 5 addresses minimum internal control standards and provides:

All enterprises and facilities shall comply with, and all covered games approved under the procedures set forth in this Compact shall be operated in accordance with the requirements set forth in this Compact, including, but not limited to, those set forth in subsections C and D of this Part. In addition, all enterprises and facilities shall comply with tribal internal control standards that provide a level of control that equals or exceeds those set forth in the National Indian Gaming Commission's Minimum Internal Control Standards (25 C.F.R., Part 542).<sup>1</sup>

It is therefore each tribe’s responsibility to ensure that its internal control standards equal or exceed those set forth by the National Indian Gaming Commission (“NIGC”) in Part 542.<sup>2</sup> The minimum internal control standards in Part 542 are applicable to facilities operating pursuant to the Compact. Part 542 is subject to modification and may change from time to time. If changes to Part 542 occur, the tribe’s minimum internal controls may need modification to ensure compliance. Nothing shall prevent the tribe from enacting more stringent internal controls or from keeping additional requirements that have been removed.

*How should tribes reconcile the Minimum Internal Control Standards in 25 C.F.R. Part 542 and NIGC Bulletin No. 2018-3 Guidance on the Class III Minimum Internal Control Standards?*

As discussed above, tribes should have minimum internal controls that meet or exceed those in Part 542. There may be instances, however, that Part 542 and NIGC Bulletin No. 2018-3 Guidance on the Class III Minimum Internal Control Standards are inconsistent or in conflict. Although the State

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<sup>1</sup> 3A O.S. § 281, Part 5, Section B.

<sup>2</sup> 3A O.S. § 281, Part 5, Section A.

Compliance Agency (SCA) cannot require a tribe to promulgate rules or regulations, the SCA may propose rules or regulations for the tribal regulators to consider.<sup>3</sup> Accordingly, it is the recommendation of the SCA that, where Part 542 and NIGC Bulletin No. 2018-3 Guidance on the Class III Minimum Internal Control Standards are inconsistent or in conflict, the tribe consider adopting the standard it believes is the more stringent of the two. NIGC Bulletin No. 2018-3 Guidance on the Class III Minimum Internal Control Standards reiterates this sentiment “This guidance is not intended to modify or amend any terms in a state compact.”<sup>4</sup> “Tribes are free to adopt any of the NIGC guidance it finds useful, but the tribal-state compact must be followed in any conflicts.”<sup>5</sup>

It is therefore the opinion of the SCA that:

**For compliance with Part 5(B) of the Compact, all enterprises and facilities operating pursuant to the Compact should maintain a level of control that equals or exceeds those in 25 C.F.R. Part 542.**

*\*\*\*This advisory memorandum is for informational purposes only and does not constitute legal advice, nor does it create an attorney-client relationship with the reader or recipient. This memorandum does not purport to relieve or excuse any obligations that might otherwise exist pursuant to state, federal, or tribal law, including regulations promulgated by the National Indian Gaming Commission.\*\*\**

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<sup>3</sup> 3A O.S. § 281, Part 5, Section A.

<sup>4</sup> NIGC Bulletin No. 2018-3 Guidance on the Class III Minimum Internal Control Standards

<sup>5</sup> NIGC Bulletin No. 2018-3 Guidance on the Class III Minimum Internal Control Standards