

## **Resolution #2001-02 (Adopted 2/13/01) - Waiver of Eligibility and Suitability Requirements for Institutional Investors**

A Board Resolution Stating the Board's Policy Regarding Waiver of Eligibility and Suitability Requirements for Institutional Investors

WHEREAS, the Michigan Gaming Control Board ("the Board") is specifically empowered by the Michigan Gaming Control and Revenue Act, as amended, Public Act 69 of 1997; MCL 432.201 et. seq. ("the Act") to adopt standards for licensing of all persons [MCL 432.204a(1)(e)], and to promulgate Rules as may be necessary to implement, administer, and enforce the Act [MCL 432.204(17)(d)]; and,

WHEREAS, in addition to the foregoing powers and duties specified in the Act, the Act has also generally granted the Board broad discretion and all other powers necessary and proper to fully and effectively execute and administer the Act for purposes of licensing, regulating, and enforcing the system of casino gambling established under the Act [MCL 432.204(1) and MCL 432.204a(1)]; and,

WHEREAS, the Act in Section 6(3); MCL 432.206(3), requires the Board to establish and apply the licensing standards provided in the Act to evaluate the eligibility and suitability of all applicants in a consistent and uniform manner; and,

WHEREAS, the Board has promulgated Rules regarding the persons required to be qualified for issuance and renewal of casino and supplier licenses, Rule 304,

MR 432.1304; and,

WHEREAS, the Act defines the term "institutional investor" in Section 2(z); MCL 432.202(z), and provides for a waiver of eligibility and suitability requirements for institutional investors holding specified percentage interests under certain conditions set forth in Section 6c(1); MCL 432.206c(1); and,

WHEREAS, Section 6c(2) of the Act, MCL 432.206c(2), authorizes the Board to provide for waivers of eligibility and suitability requirements for institutional investors holding a higher percentage of securities than those specified in Section 6c(1); upon a showing of good cause is the conditions in Section 6 c(1) are met; and,

WHEREAS, Part 5 of the Rules promulgated by the Board regarding the transfer of ownership in casino and supplier licensees or applicants provides for waivers of eligibility and suitability requirements for institutional investors holding a total interest of not more than 15% in a person that has applied for or holds a casino license or supplier license; and,

WHEREAS, there is current uncertainty as to the availability of institutional investor waivers in circumstances where the securities held are not those of a publicly traded company, or where the issuer of the securities is the applicant or licensee and not an affiliate or affiliated company; and,

WHEREAS, the availability of institutional investor financing to all casino and supplier licensees is in the public interest and advances the purposes of the Act and Rules by providing a source of funds at competitive market rates from highly regulated entities; and,

WHEREAS, the Board has plenary authority under Rule 223, MR 432.1223, to waive or alter in writing, any requirement or procedure set forth in the Rules, if the Board determines that the requirement or procedure is impractical or burdensome, that the waiver or alteration is in the best interest of the public and the gaming industry, and that the waiver or alteration is not outside the technical requirements necessary to serve the purpose of the requirement or procedure; and,

WHEREAS, it is not necessary to protect the public interest or accomplish the policies and purposes of the Act to require a demonstration of eligibility or suitability for institutional investors holding not more than a 15% direct or indirect debt or equity interest in a casino or supplier licensee or applicant, where the investment held is passive in nature and there is no indication of an intent or purpose on behalf of the institutional investor to direct or cause the direction of the management or policies of the licensee or applicant or otherwise to influence or affect the affairs of the licensee or issuer; and,

WHEREAS, the Board, accordingly, believes it is necessary and appropriate to clarify its policy under the Act and Part 5 of its rules regarding waivers for institutional investors that hold, directly or indirectly, debt or equity interests in a casino or supplier licensee or applicant, so that all licensees and applicants have equal access to the capital market provided by regulated institutional investors; NOW THEREFORE,

IT IS HEREBY RESOLVED, as follows:

An institutional investor as defined by MCL 432.202(z) that does not otherwise meet the conditions for waiver of eligibility and suitability requirements set forth in MCL 432.206c may apply to the Board for a waiver of said requirements, provided that the institutional investor:

- Holds not more than a 15% direct or indirect interest in the licensee or applicant.
- Does not hold securities representing a percentage of the outstanding debt of the licensee or applicant exceeding 20%, or a percentage of any issue of the outstanding debt of the licensee or applicant exceeding 50%.
- Certifies that it holds the interest for investment purposes only.
- Demonstrates good cause for waiving the eligibility and suitability requirements of the Act and Rules by showing that a determination of its qualification is not necessary to protect the public interest or accomplish the policies and purposes of the Act.

An institutional investor that is a chartered or licensed financial institution may apply to the Board for a waiver of eligibility and suitability requirements in the manner and form prescribed by the Board, establishing that it is subject to applicable federal and state banking laws and that its investment is held in the ordinary course of its business as a chartered or licensed financial institution, and meets other requirements of the Board.

An institutional investor, other than a chartered or licensed financial institution, applying for a waiver pursuant to this Resolution must submit an application form under oath on forms prescribed and provided by the Board. The application form shall contain all information required by the Board, including but not limited to the following:

- A description of the institutional investor's business and a statement as to why the institutional investor is within the definition of institutional investor, as defined by the Act.
- A detailed description of the securities involved in the transaction and the amount of the investment in the securities as a percentage of the institutional investor's total assets.
- The name, address, telephone number, and social security number of the officers and directors, or their equivalent, of the institutional investor as well as those persons who have direct control over the institutional investor's holdings of voting securities of the licensee or applicant in which the institutional investor has acquired the interest.
- The name, address, telephone number, and social security number or federal tax identification number of each person who has the power to direct or control the institutional investor's exercise of its voting rights as a holder of voting securities of the licensee or applicant in which it has acquired the interest.
- To the extent known by the institutional investor, the name of each person who beneficially owns more than 5% of the institutional investor's voting securities or other equivalent.
- To the extent known by the institutional investor, a list of the institutional investor's affiliates that have more than a 5% interest in the institutional investor.
- A list of all equity securities of the licensee or applicant in which the institutional investor has acquired an interest that are or were, directly or indirectly, beneficially owned by the institutional investor or its affiliates within the preceding 1 year period. This list shall set forth a description of the securities, the amount of the securities, and the date of the acquisition or sale, or both.
- A list of all regulatory agencies with which the institutional investor or any of its affiliates that beneficially own equity securities of the licensee or applicant in which it has acquired an interest files periodic reports, and the name, address, and telephone number of the person, if known, to contact at each agency regarding the institutional investor.
- To the extent known, a disclosure of all criminal sanctions imposed against the institutional investor, its affiliates, and any of its current or former officers or directors during the preceding 10 years; and, a disclosure of all regulatory sanctions imposed during the preceding 10 years and of any administrative or court proceedings filed against the institutional investor, its affiliates, or any of its current officers or directors in the preceding 5 years, or any former officer or director whose tenure ended within the preceding 12 months.

- A copy of any filing made under 15 U.S.C. § 18a with respect to the acquisition or proposed acquisition of securities of the person in which it has acquired the interest subject to this Resolution.

In addition to the above, the institutional investor applying for a waiver pursuant to this Resolution shall submit a certification under oath and subject to the penalty of perjury that the interest held, or proposed to be held, is for investment purposes only in the ordinary course of business as an institutional investor and not for the purpose of causing, directly or indirectly, the election of a majority of the Board of directors or any change in the corporate charter, bylaws, management, policies, or operations of the person in which the institutional investor has acquired the interest. The signatory shall further:

- Certify that the institutional investor has no current intention to influence or affect the affairs of the person in which it has acquired the interest.
- Explain the basis of his or her authority to sign the certification and to bind the institutional investor to its terms.
- State that the institutional investor agrees to be bound by, and comply with, the Act and the Board rules, resolutions and orders, is subject to the jurisdiction of the courts of Michigan, and consents to Michigan as the choice of forum if a dispute, question, or controversy arises regarding the application of this Resolution.

Any waiver granted pursuant to this Resolution may be limited or conditioned in any respect by the Board or its executive director, including, but not limited to, requiring:

- Notice of all complaints, arrests, indictments, convictions or sanctions of any officer or director of the institutional investor regarding the rules and regulations of the Securities and Exchange Commission and any regulatory agency of any jurisdiction where it conducts business, or any offense which would constitute a misdemeanor involving gambling, fraud, theft or dishonesty, or felony if committed in the State of Michigan. The name, position, charge, arresting agency, and a brief description of the event must also be included in the statement.
- Notice of any change to the structure and/or operation of the institutional investor that could affect its classification as an institutional investor as defined in the Act.

To the extent that the interest held by the institutional investor is a voting or equity security, the following activities will be deemed consistent with holding such voting or equity securities for investment purposes only:

- Voting, directly or indirectly, through the delivery of a proxy furnished by the Board of directors, on all matters voted on by the holders of the voting securities.
- Serving as a member of a committee of creditors or security holders formed in connection with a debt restructuring.
- Nominating a candidate for election or appointment to the Board of directors in connection with a debt restructuring.
- Accepting appointment or election as a member of the Board of directors in connection with a debt restructuring and serving in that capacity until the conclusion of the member's term.
- Making financial and other inquiries of management of the type normally made by securities analysts for information purposes and not to cause a change in its management, policies, or operations.

- Other activities that the Board or its executive director determines to be consistent with the investment intent.

In addition to the requirements and limitations placed upon the institutional investor granted a waiver pursuant to this Resolution, the licensee, applicant or an affiliate or affiliated company of the licensee or applicant shall immediately notify the Board of any information concerning an institutional investor holding its equity or debt securities which may impact the eligibility and suitability of the institutional investor for a waiver under this Resolution.

If the Board finds that an institutional investor holding any security of a licensee or applicant or its affiliated company that is related in any way to the financing of the licensee fails to comply with the requirements of the Act, Rules or this Resolution, or if at any time the Board finds that, by reason of the extent or nature of its holdings, an institutional investor is in a position to exercise a substantial impact upon the controlling interests of a licensee or applicant, the Board may take any necessary action to protect the public interest, including requiring this institutional investor to satisfy the eligibility and suitability requirements of the Act and Rules. If an institutional investor changes its investment intent or if the Board finds that the institutional investor may be found unqualified, the Board or its executive director may immediately revoke the institutional investor waiver granted pursuant to this Resolution and no action other than divestiture of the security holdings shall be taken until there has been full compliance with the licensing requirements of the Act and Rules.

The Executive Director is delegated and empowered by this Resolution to act for and on behalf of the Board in determining, granting, and denying requests for institutional investor waivers, under MCL 432.206(c), Part 5 of the Board's Administrative Rules and the provisions of the Resolution. Decisions by the Executive Director regarding such institutional investor waiver requests shall be subject to review by the Board on its own motion or the written petition of any person whose waiver request is denied.