

REGULATION 16

PUBLICLY TRADED CORPORATIONS AND PUBLIC OFFERINGS OF SECURITIES

PROPOSED AMENDMENTS TO REGULATION 16

PURPOSE: To amend the definition of “institutional investor;” to increase from 15 percent to 25 percent the amount of voting securities an institutional investor that has been granted a waiver of the requirements of NRS 463.643(4), may beneficially own, directly or indirectly, for investment purposes only; to increase from 19 percent to 29 percent the amount of voting securities of a publicly traded corporation registered with the commission an institutional investor that has been granted a waiver pursuant to subsection 1 may beneficially own as the result of a stock repurchase program, upon certain conditions; to allow an institutional investor that is subject to the requirements of NRS 463.643(4) and that has not been granted a waiver pursuant to subsection 1 to beneficially own more than 10 percent, but not more than 11 percent, of the voting securities of a publicly traded corporation registered with the commission, only if such additional ownership results from a stock repurchase program conducted by such publicly traded corporation and upon the same conditions provided in 16.430(2)(a) and (b); and to take such additional action as may be necessary and proper to effectuate these stated purposes.

(DRAFT DATE: July 2, 2009)

16.010(14) Definitions.

14. “Institutional investor” means:

- (a) A bank as defined in Section 3(a)(6) of the Federal Securities Exchange Act;
- (b) An insurance company as defined in Section 2(a)(17) of the Investment Company Act of 1940, as amended;
- (c) An investment company registered under Section 8 of the Investment Company Act of 1940, as amended;
- (d) An investment advisor registered under Section 203 of the Investment Advisors Act of 1940, as amended;

- (e) Collective trust funds as defined in Section 3(c)(11) of the Investment Company Act of 1940, amended;
- (f) An employee benefit plan or pension fund that is subject to the Employee Retirement Income Security Act of 1974, as amended, excluding an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the commission;
- (g) A state or federal government pension plan;
- (h) A group comprised entirely of persons specified in (a) through (g); or
- (i) Such other persons as the commission may determine for reasons consistent with the policies expressed in NRS 463.0129 and 463.489. **Consistent with the provisions of this subsection, for persons who are not otherwise included in the definition of institutional investor but who seek a waiver pursuant to the provisions of Regulation 16.430, it is the policy of the Commission to liberally construe the definition of institutional investor.**

To qualify as an institutional investor, a person other than a state or federal pension plan must meet the requirements of a “qualified institutional buyer” as defined in Rule 144A of the Federal Securities Act.

16.430 Institutional investor.

1. An institutional investor that becomes or intends to become subject to NRS 463.643(4) as a result of its beneficial ownership of voting securities of a publicly traded corporation registered with the commission may apply to the commission for a waiver of the requirements of NRS 463.643(4) with respect to the beneficial ownership of the voting securities of such publicly traded corporation if such

institutional investor holds the securities for investment purposes only; provided, however, that an institutional investor shall not be eligible to receive or hold a waiver if the institutional investor beneficially owns, directly or indirectly, except as otherwise provided in subsection 2, more than ~~45~~ **25** percent of the voting securities and if any of the voting securities were acquired other than through a debt restructuring. Voting securities acquired before a debt restructuring and retained after a debt restructuring or as a result of an exchange, exercise or conversion, after a debt restructuring, of any securities issued to the institutional investor through a debt restructuring, shall be deemed to have been acquired through a debt restructuring. A waiver granted under this section shall be effective only as long as the institutional investor's direct or indirect beneficial ownership interest in such voting securities meets the limitations set forth above, and should the institutional investor's interest exceed such limitations at any time, it shall be subject to NRS 463.643(4).

2. An institutional investor that has been granted a waiver pursuant to subsection 1, may beneficially own more than ~~45~~ **25** percent, but not more than ~~49~~ **29** percent, of the voting securities of a publicly traded corporation registered with the commission, only if such additional ownership results from a stock repurchase program conducted by such publicly traded corporation, upon the conditions that:

(a) Such institutional investor does not purchase or otherwise acquire any additional voting securities of the publicly traded corporation that would result in an increase in the institutional investor's ownership percentage, and

(b) Such institutional investor reduces its ownership percentage of the publicly traded corporation to ~~45~~ 25 percent or less within one year from the date the institutional investor receives constructive notice that it exceeded the ~~45~~ 25 percent threshold, based on any public filing by the publicly traded corporation with the Securities and Exchange Commission. The one-year time period may be extended for a reasonable time upon administrative approval by the chairman of the board.

3. An institutional investor shall not be deemed to hold voting securities for investment purposes only unless the voting securities were acquired and are held 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 members of the board of directors, any change in the corporate charter, bylaws, management, policies or operations of the publicly traded corporation registered with the commission or any of its gaming affiliates, or any other action which the commission finds to be inconsistent with investment purposes only. The following activities shall not be deemed to be inconsistent with holding voting securities for investment purposes only:

(a) 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 such voting securities;

(b) Serving as a member of any committee of creditors or security holders formed in connection with a debt restructuring;

(c) Nominating any candidate for election or appointment to the board of directors in connection with a debt restructuring;

(d) 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;

(e) Making financial and other inquiries of management of the type normally made by securities analysts for informational purposes and not to cause a change in its management, policies or operations; and

(f) Such other activities as the commission may determine to be consistent with such investment intent.

4. An application for a waiver must include:

(a) A description of the institutional investor's business and a statement as to why the institutional investor is within the definition of "institutional investor" set forth in Regulation 16.010(14).

(b) A certification made under oath and the penalty of perjury, that the voting securities were acquired and are held for investment purposes only as defined in subsection 2 and a statement by the signatory explaining the basis of his authority to sign the certification and to bind the institutional investor to its terms. The certification shall also provide that the applicant agrees to be bound by and comply with the Nevada Gaming Control Act and the regulations adopted thereunder, to be subject to the jurisdiction of the courts of Nevada, and to consent to Nevada as the choice of forum in the event any dispute, question, or

controversy arises regarding the application or any waiver granted under this section.

(c) A description of all actions, if any, taken or expected to be taken by the institutional investor relating to the activities described in subsection 2.

(d) 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 that have direct control over the institutional investor's holdings of voting securities of the publicly traded corporation registered with the commission.

(e) The name, address, telephone number and social security 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 publicly traded corporation registered with the commission.

(f) The name of each person that beneficially owns more than 5 percent of the institutional investor's voting securities or other equivalent.

(g) A list of the institutional investor's affiliates.

(h) A list of all securities of the publicly traded corporation registered with the commission that are or were beneficially owned by the institutional investor or its affiliates within the preceding year, setting forth a description of the securities, their amount, and the date of acquisition or sale.

(i) A list of all regulatory agencies with which the institutional investor or any affiliate that beneficially owns voting securities of the publicly traded corporation registered with the commission files periodic reports, and the name, address, and

telephone number of the person, if known, to contact at each agency regarding the institutional investor.

(j) A disclosure of all criminal or regulatory sanctions imposed during the preceding 10 years and of any administrative or court proceedings filed by any regulatory agency during the preceding 5 years against the institutional investor, its affiliates, any current officer or director, or any former officer or director whose tenure ended within the preceding 12 months. As to a former officer or director, such information need be provided only to the extent that it relates to actions arising out of or during such person's tenure with the institutional investor or its affiliates.

(k) A copy of the institutional investor's most recent Schedule 13D or 13G and any amendments thereto filed with the United States Securities and Exchange Commission concerning any voting securities of the publicly traded corporation registered with the commission.

(l) A copy of any filing made under 15 U.S.C. 18a with respect to the acquisition or proposed acquisition of voting securities of the publicly traded corporation registered with the commission.

(m) Any additional information the board or the commission may request.

5. The board and commission shall consider all relevant information in determining whether to grant a waiver requested pursuant to subsection 1, including but not limited to:

(a) Whether the waiver is consistent with the policy set forth in NRS 463.0129, 463.489, and 463.622;

(b) The factors set forth within Regulation 16.060; and

(c) Any views expressed to the board and commission by the publicly traded corporation or any licensed affiliate thereof.

6. An institutional investor that has been granted a waiver of a finding of suitability and that subsequently intends not to hold its voting securities of the publicly traded corporation for investment purposes only, or that intends to take any action inconsistent with its prior intent shall, within 2 business days after its decision, deliver notice to the chairman in writing of the change in its investment intent. The chairman may then take such action under the provisions of NRS 463.643 as he deems appropriate.

7. A waiver of the requirements of NRS 463.643(4) that has been granted pursuant to this section and NRS 463.489(2) shall not be construed as a waiver of or exemption from the prior approval requirements of Regulation 16.200. An institutional investor that intends to apply for a waiver of the requirements of NRS 463.643(4) pursuant to this section must also simultaneously apply to the commission for an exemption from the prior approval requirements of Regulation 16.200 if the proposed acquisition would give the institutional investor, directly or indirectly, the power to direct or cause the direction of the management and policies of the publicly traded corporation.

8. If the chairman finds that an institutional investor has failed to comply with the provisions of this section, or should be subject to a finding of suitability to protect the public interest, the chairman may, in accordance with NRS 463.643, require the institutional investor to apply for a finding of suitability. The institutional

investor affected by the action taken by the chairman may request a hearing on the merits of such action. The hearing shall be included on the agenda of the next regularly scheduled commission meeting occurring more than 10 working days after the request for hearing. Upon good cause shown by the institutional investor, the commission chairman may waive the 10-day requirement and place such hearing on an earlier commission agenda. The commission, for any cause deemed reasonable, may by a majority vote, sustain, modify or reverse the decision of the chairman, or remand the matter to the chairman for such further investigation and reconsideration as the commission may order. While the application for a finding of suitability or commission review of the chairman's action requiring the filing of such application is pending, the institutional investor shall not, directly or indirectly, cause or attempt to cause any management, policy, or operating changes in the publicly traded corporation or any gaming affiliate.

9. Any publicly traded corporation registered with the commission or any registered or licensed subsidiary thereof shall immediately notify the chairman of any information about, fact concerning or actions of, an institutional investor holding any of its voting securities, that may materially affect the institutional investor's eligibility to hold a waiver under this section.

10. An institutional investor that is subject to NRS 463.643(4) as a result of its beneficial ownership of voting securities of a publicly traded corporation registered with the commission and that has not been granted a waiver pursuant to subsection 1, may beneficially own more than 10

percent, but not more than 11 percent, of the voting securities of such publicly traded corporation, only if such additional ownership results from a stock repurchase program conducted by the publicly traded corporation, upon the same conditions as provided in subsection (2)(a) and (b). Unless otherwise notified by the chairman, such an institutional investor is not required to apply to the commission for a finding of suitability, but shall be subject to reporting requirements as prescribed by the chairman.