



Via Electronic Mail

November 8, 2012

Patrick Martin
Director of Regulatory Compliance

Hannah Smith
Assistant General Counsel

Ohio Casino Control Commission
10 West Broad Street, 6th floor
Columbus, Ohio 43215

Re: Proposed Rules for November 14, 2012 meeting

Dear Mr. Martin and Ms. Smith,

I write on behalf of Rock Ohio Caesars Cleveland, L.L.C. to submit our comments and proposed revisions to the draft Rules that will be considered at the November 14, 2012 Ohio Casino Control Commission meeting. Thank you for the opportunity to provide comments and for your consideration of same.

Rule 1: Passive Investor (3772-3-06)

Our proposed changes to Rule 1 primarily concern clarifying what would not constitute a violation of the passive investor requirements, consistent with the Casino Control Law (which clearly provides that voting is acceptable) and other gaming jurisdictions. We further propose the deletion of Subsection (A)(3), because we are unclear as to what conduct would be prohibited, rendering the Rule vague and ineffective. Indeed, as written, this Rule could result in the prohibition of conduct that is entirely unrelated to the investment, much less whether it is owned passively and does not appear rationally related to the purposes sought to be served. Moreover, the discretion granted the Commission in Subsection (A)(4) allows for an expansion of the existing prohibitions to address any future conduct that the Commission deems inconsistent with a passive investment, rendering Subsection (A)(3) entirely unnecessary. Our specific proposed revisions are set forth in redlined format below:

3772-3-06 Passive investor.

(A) Any investor in a casino operator, management company, holding company, or gaming-related vendor licensee or applicant that falls below the threshold to be considered an institutional investor shall not:

- 1) Exercise influence over the affairs of the casino operator, management company, holding company, or gaming-related vendor applicant or licensee;

- 2) Exercise influence over the affairs of a holding, intermediate, subsidiary or parent company of the casino operator or management company applicant or licensee;
 - 3) Participate in any other conduct related to the operation of casino gaming that the commission considers inconsistent with passive institutional investment status.
- (B) Any investor failing to comply with subsection (A) shall no longer have the status as a passive institutional investor.
- (C) The following conduct is deemed consistent with ownership on a passive basis and will not constitute a violation of subsection (A):
- 1) 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;
 - 2) Serving as a member of any committee of creditors or security holders formed in connection with a debt restructuring;
 - 3) Nominating any candidate for election or appointment to the board of directors in connection with a debt restructuring;
 - 4) 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.
 - 5) 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
 - 6) Such other activities that the commission determines is consistent with such investment intent.

Rule 2: Key employee license temporary credential and Rule 3: Casino gaming employee license temporary credential (3772-5-06 and 3772-8-06)

The proposed changes to Rule 2 are not substantive and merely delete language that appears to be duplicative and adds language to provide consistency, as redlined below:

3772-5-06 Key employee license temporary credential.

- (A) Every key employee licensee shall possess and prominently display a key employee license credential while on duty at their employer's property.
- (B) Each casino operator licensee's internal control system shall include procedures for the issuance of a temporary key employee license credential for misplaced, forgotten, or lost key employee license credentials, including any procedures the commission deems necessary for the issuance of temporary key employee license credentials.
- (C) Each casino operator licensee shall maintain a log documenting the issuance of temporary key employee license credentials.
- (D) A temporary key employee license credential shall expire three days after the date of issuance.

3772-8-06 Casino gaming employee license temporary credential.

- (A) Every casino gaming employee licensee shall possess and prominently display a casino gaming employee license credential while on duty at their employer's property.

- (B) Each casino operator licensee's internal control system shall include procedures for the issuance of a temporary casino gaming employee license credential for misplaced, forgotten, or lost casino gaming employee license credentials, including any procedures the commission deems necessary for the issuance of temporary casino gaming employee license credentials.
- (C) Each casino operator license shall maintain a log documenting the issuance of temporary casino gaming employee license credentials.
- (D) A temporary casino gaming employee license credential shall expire three days after the date of issuance.

Rule 4: Casino operator or casino operator applicant's organization (3772-10-03):

Our comments to draft Rule 4 primarily concern limiting the scope of that which the regulatory compliance department and, specifically, the regulatory compliance officer (RCO), are responsible for to *gaming-related* rules and regulations. Requiring the RCO to be responsible for the casino's "compliance with federal, state and local law" is well beyond the scope of the RCO's duties and is already monitored by multiple other departments. The RCO, who is generally not an attorney, provides advice to the casino on compliance with internal controls, rules and regulations relating to gaming in Ohio. Indeed, it is industry practice that the RCO be the internal expert on gaming-related requirements *only*. Compliance with other areas of the law should be within the purview of the departments most intimately familiar with such laws (such as the human resources department or the attorneys). Indeed, it is unrealistic to require the RCO, who is not an attorney, to not only be knowledgeable about, but responsible for compliance with, every federal, state and local law and regulation with which the casino must comply, including employment, building and safety laws, ordinances, environmental regulations, liquor laws, etc.

We further submit that it is unwise and impractical to require the RCO to report directly to the corporate chief compliance officer of a large organization with thousands of employees and properties in multiple jurisdictions. It is more logical, provides the specific property with the attention it deserves and better serves the purpose of this Rule to have a person to whom the RCO reports who is readily available to both the RCO and the Commission. We therefore suggest that it be within the corporate chief compliance officer's discretion to determine to whom the RCO reports to, given the particular circumstances and practical realities of a given organizational structure.

Finally, we submit that with respect to Subsection (D), the timing requirements are in certain regards impractical. We suggest that rather than requiring the licensee to inform the Executive Director "immediately" of a vacancy in certain supervisory positions, three business days more appropriately provides time to ensure that all necessary stakeholders are made aware of the vacancy and a determination can be made as to whom within the organization is best equipped to take on the additional responsibilities in the interim. Likewise, on most occasions it will take more than 60 days to fill these higher level positions, possibly requiring someone to relocate and certainly requiring time to locate and interview appropriate candidates. We suggest that 90 days is the minimum time frame given the nature of the positions at issue. Rushing the hiring process will inhibit our ability to recruit the best candidates. Finally, three business days should be adequate time to notify the Executive Director once the position has been filled; there is no need for urgency or an "immediate" notification.

Our specific suggestions for revision are set forth below:

3772-10-03 Casino operator or casino operator applicant's organization.

(9)A regulatory compliance department supervised by a regulatory compliance officer located at the casino. The regulatory compliance department shall be responsible for advising the casino with regard to compliance with Ohio gaming laws as well as

commission approved internal controls. The regulatory compliance officer shall report directly to one of the following regarding matters of policy, purpose, responsibility, and authority, and the following shall also control the hiring, termination, and salary of the compliance officer's position:

- (a) The casino operator licensee's corporate chief compliance officer or other compliance supervisory position within the chief compliance officer's organizational structure; or
- (b) Another position or entity as approved by the executive director or his/her designee:

(C)The casino operator licensee's or applicant's personnel shall be trained in all policies, procedures, and internal controls relevant to each employee's individual function. The casino operator licensee or applicant shall develop special instructional programs in addition to any on-the-job instruction sufficient to make each member of the department knowledgeable about the requirements and performance of all transactions relating to that employee's functions.

(D)If a vacancy in any of the casino operator licensee's mandatory department supervisory positions required by this chapter occurs or if written notice is received that such a vacancy will occur in the future, the casino operator licensee shall:

- (1) Notify the executive director within three (3) business days in writing of the vacant position;
- (2) Designate an appropriately likened person or persons to assume the duties and responsibilities of the vacant position on a temporary basis;
- (3) Fill the positions on a permanent basis within ninety (90) days after the effective date of the vacancy. An extension of the temporary appointment to the position may be granted at the discretion of the executive director or his/her designee; and
- (4) Notify the executive director within three (3) business days in writing upon the filling of the vacancy.

Rule 7: Advertising; promotion of responsible gaming (3772-13-02)

We implore you to reconsider the proposed change to Subsection (D) that would require Ohio casino operators to provide to the Commission a copy of all advertisements "at least five business days in advance" rather than five business days following public dissemination. Such a requirement would necessarily push back all of our mailings, thereby adversely impacting guest response rates, guest play, revenue and taxes, etc. Casinos often decide to advertise at the last minute based on a myriad of factors, including current market conditions, availability of marketing opportunities that could be taken by other advertisers, conduct of our competitors, weather factors, etc. Indeed, we routinely advertise to increase the numbers for an event that may have fewer reservations than expected a couple of days before the scheduled event. Requiring us to provide advance notice of all advertisements unnecessarily interferes with our ability to conduct routine business operations. This requirement would also place us at a competitive disadvantage with casinos located in jurisdictions that do not impose such an onerous requirement.

We appreciate the opportunity to provide our proposed changes and comments and welcome the opportunity to discuss or answer any questions you may have regarding this matter, please feel free to contact me at (702) 407-6228.

Sincerely,



Susan Carletta

Vice President, Compliance and Deputy Chief Regulatory & Compliance Officer