

AMENDMENTS TO
NEVADA GAMING COMMISSION REGULATION 16

**REQUIREMENTS AND PROCEDURES RELATING TO THE FILING OF AN
APPLICATION FOR A FINDING OF SUITABILITY BY A PERSON
ENGAGING IN CERTAIN PROSCRIBED ACTIVITIES**

Adopted By NGC: 11/21/2019

PURPOSE STATEMENT: To amend Nevada Gaming Commission (“NGC” or “Commission”) Regulation 16 to adopt the regulations mandated by Section 10.6 of Senate Bill No. 73 from the 80th (2019) session of the Nevada Legislature; to adopt regulations setting forth procedures by which a person, before engaging in certain proscribed activities, directly or indirectly, to materially influence or affect the affairs of a publicly traded corporation that is registered with the Commission, must file an application for a finding of suitability pursuant to Nevada Revised Statute (NRS) 463.643; to adopt regulations setting forth provisions that determine which corporate activities, in addition to those described in subsection 6 of NRS 463.643, influence or affect the affairs of a corporation in such a way that the Commission would require a person to file an application for a finding of suitability pursuant to NRS 463.643; to adopt regulations that provide provisions that ensure that a person is not unduly prohibited from lawfully exercising any of his or her voting rights derived from being a shareholder of a publicly traded corporation; and to take such additional actions as may be necessary and proper to effectuate this stated purpose.

EFFECTIVE DATE: 1/1/2020.

EXPLANATION: Matter in *blue italics* is new language; and matter between ~~red brackets with single strikethrough~~ is material to be omitted.

REGULATION 16

**PUBLICLY TRADED CORPORATIONS AND PUBLIC OFFERINGS OF
SECURITIES**

16.010 Definitions. As used in Regulation 16:

[Subsection 1-13 remain unchanged.]

14. “Institutional investor” means:

(a) A bank as defined in Section 3(a)(6) of the Federal Securities Exchange Act;

1 (b) An insurance company as defined in Section 2(a)(17) of the Investment
2 Company Act of 1940, as amended;

3 (c) An investment company registered under Section 8 of the Investment
4 Company Act of 1940, as amended;

5 (d) An investment advisor registered under Section 203 of the Investment
6 Advisors Act of 1940, as amended;

7 (e) Collective trust funds as defined in Section 3(c)(11) of the Investment
8 Company Act of 1940, amended;

9 (f) An employee benefit plan or pension fund that is subject to the Employee
10 Retirement Income Security Act of 1974, as amended, excluding an employee
11 benefit plan or pension fund sponsored by a publicly traded corporation registered
12 with the Commission;

13 (g) A state or federal government pension plan;

14 (h) A group comprised entirely of persons specified in (a) through (g); or

15 (i) Such other persons as the Commission may determine for reasons consistent
16 with the policies expressed in NRS 463.0129 and 463.489.

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

20 15. *“Pension or employee benefit plan” has the meaning ascribed to it under*
21 *Section 1.3 of Senate Bill 73 of the 80th Session (2019) of the Nevada Legislature.*

22 16. “Plan of recapitalization” means a plan proposed by the board of directors to
23 the security holders of a publicly traded corporation that is an affiliated company,
24 which plan:

25 (a) Contains recommended action in response to a corporate acquisition opposed
26 by management, which acquisition cannot be consummated until approval has been
27 obtained pursuant to section 16.200, and which acquisition has not been
28 consummated, withdrawn or terminated;

29 (b) Involves either a cash dividend to voting securities or an exchange of voting
30 securities held by security holders in return for a payment of cash or the issuance of

1 securities of the issuer or a combination of cash and securities of the issuer, with an
2 aggregate value in excess of 50 percent of the aggregate current market price of the
3 voting securities of the company on the day of the public announcement of the plan
4 of recapitalization; and

5 (c) Is financed in substantial part by borrowings from financial institutions or
6 the issuance of debt securities.

7 *17. "Proscribed activity" has the meaning ascribed to it under Section 1.5 of*
8 *Senate Bill 73 of the 80th Session (2019) of the Nevada Legislature.*

9 ~~16.~~ 18. "Public offering" means a sale of securities that is subject to the
10 registration requirements of section 5 of the Federal Securities Act, or that is
11 exempt from such requirements solely by reason of an exemption contained in
12 section 3(a)10, 3(a)11 or 3(c) of said Act or Regulation A adopted pursuant to section
13 3(b) of said Act.

14 ~~17.~~ 19. "Purchase rights" means a security or contractual right in securities
15 issued or issuable on the exercise of options, warrants or other beneficial interest in
16 securities obtained for value upon the issuance of securities, or on conversion of
17 other securities.

18 ~~18.~~ 20. "Speculative securities" means:

19 (a) Securities, the value of which depends substantially upon proposed or
20 promised future promotion or development rather than on material existing assets,
21 conditions or operating results; or

22 (b) Securities, an investment in which involves an extraordinary risk of loss to
23 the investor.

24 ~~19.~~ 21. "Tender offer" means a public offer by a person other than the issuer to
25 purchase voting securities of a publicly traded corporation that is an affiliated
26 company, made directly to security holders for the purpose of acquiring control of
27 the affiliated company.

28 ~~20.~~ 22. "Voting security" means a security the holder of which is entitled to
29 vote for the election of a member or members of the board of directors or board of
30 trustees of a corporation or a comparable person or persons in the case of a

1 partnership, trust, or other form of business organization other than a corporation.

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3 **16.432 Corporate activities deemed to influence or affect the affairs of a**
4 **corporation in such a way that requires a person to file an application for**
5 **finding of suitability pursuant to NRS 463.643.** *A person or plan sponsor of a*
6 *pension or employee benefit plan who acquires or holds voting securities of a publicly*
7 *traded corporation registered with the Commission as described in subsection 6 of*
8 *NRS 463.643, and who has the intent to engage in a proscribed activity, as defined*
9 *in subsection 17 of section 16.010, is deemed to be engaged in an activity that*
10 *influences or affects the affairs of a corporation and must therefore comply with the*
11 *notice and filing requirements set forth in subsection 1 of section 16.433.*

12 **16.433 Submission of notice and filing of application for finding of**
13 **suitability of person intending to engage in proscribed activities to**
14 **materially influence or affect the affairs of a publicly traded corporation**
15 **registered with the Commission.**

16 *1. A person who seeks to engage in proscribed activities, as defined under*
17 *subsection 17 of section 16.010, directly or indirectly, with the intent to materially*
18 *influence or affect the affairs of a publicly traded corporation registered with the*
19 *Commission, must, prior to engaging in the proscribed activity:*

20 *(a) Notify the Chair of the Board in writing within two days after possession of*
21 *such intent, as required under paragraph (a) of subsection 6 of NRS 463.643.*

22 *(b) Within 30 days of notifying the Chair of the Board under paragraph (a), file*
23 *an application for a finding of suitability with the Commission, as required under*
24 *paragraph (b) of subsection 6 of NRS 463.643; and*

25 *(c) Together with the filing of the application under paragraph (b), deposit with*
26 *the Board such sums of money required under paragraph (c) of subsection 6 of NRS*
27 *463.643.*

28 *2. A person who is found unsuitable by the Commission shall immediately cease*
29 *engaging in the proscribed activities described in subsection 1 and shall no longer*
30 *engage in such activities thereafter.*

1 3. *The violation of this section is a gross misdemeanor as provided under*
2 *subsection 10 of NRS 463.643.*

3 ***16.434 Lawful exercise of voting rights not to be unduly prohibited.***

4 1. *Subject to the requirements set forth in section 16.433, a person shall not be*
5 *unduly prohibited from lawfully exercising any of his or her voting rights derived*
6 *from being a shareholder of a publicly traded corporation.*

7 2. *A person who has submitted an application pursuant to section 16.433 may*
8 *exercise his or her voting rights while the application is pending.*