

# ARTICLE 5. TRANSFER OF OWNERSHIP

## Rule 1. Publicly Traded Companies

### 68 IAC 5-1-1 Approval required

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 1. (a) This rule applies to:

- (1) applicants;
- (2) casino licensees, casino license applicants, and supplier licensees that are publicly traded corporations; and
- (3) casino licensees, casino license applicants, and supplier licensees owned directly or indirectly by a publicly traded corporation, whether through a subsidiary or intermediary company thereof;

where the ownership interest directly or indirectly is, or will be upon approval by the commission, five percent (5%) or more of the entire casino licensee, casino license applicant, or supplier licensee.

(b) The following definitions apply throughout this rule:

(1) "Applicant" means a person who is seeking permission from the commission to obtain an ownership interest in a casino licensee, casino license applicant, or a supplier licensee.

(2) "Publicly traded corporation" means the following:

(A) Any person, other than an individual, that:

(i) has one (1) or more classes of voting securities registered under Section 12 of the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(ii) issues securities and is subject to Section 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

(iii) has one (1) or more classes of voting securities exempted from the registration requirements of Section 5 of the Securities Act of 1933 (15 U.S.C. 78a et seq.) due to an exemption contained in Section 3(a)(10), 3(a)(11), or 3(c) of the Securities Act of 1933 (15 U.S.C. 78a et seq.);

or any other company required to file under the Securities and Exchange Act of 1934.

(B) Any person, other than an individual, created under the laws of a foreign country that:

(i) has one (1) or more classes of voting securities registered on that country's securities exchange or over-the-counter market; and

(ii) the commission has determined that the business entity's activities are regulated in a manner that protects the investors and Indiana.

The term includes any person, other than an individual, that has securities registered or is an issuer under this definition solely because it guaranteed a security issued by an affiliate under a public offering and is considered by the Securities and Exchange Commission to be a co-issuer of a public offering of securities under Rule 140 of the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(c) A direct or indirect ownership interest of five percent (5%) or more in a casino licensee, a casino license applicant, or a supplier licensee that is a publicly traded corporation may only be transferred in accordance with this rule. (*Indiana Gaming Commission; 68 IAC 5-1-1; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1030; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

### 68 IAC 5-1-2 Procedure for approval of transfer

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 2. (a) An applicant must complete and submit the appropriate forms prescribed by the commission.

(b) Application procedures are as follows:

(1) An applicant is seeking a privilege and assumes and accepts any and all risk of adverse publicity, notoriety, embarrassment, criticism, or other action or financial loss that may occur in connection with the application process or the

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public disclosure of information requested. The applicant expressly waives any claim for damages that may result from the application process.

(2) Any misrepresentation or omission made with respect to the application may be grounds for denial of the application.

(3) An applicant must submit the fully-executed original application for transfer of an ownership interest.

(4) An applicant must submit a completed Personal Disclosure Form 1 under 68 IAC 2-3-4(d) for each of the applicant's substantial owners, key persons, or other persons deemed necessary by this rule or by the commission to allow the commission to ensure that the applicant meets the statutory criteria for licensure set forth in IC 4-33, IC 4-35, and this title.

(5) The commission will consider an application to be filed when the commission has received the completed application forms, including the following:

(A) Required documents, materials, and photographs.

(B) The application fee under section 3 of this rule.

The commission will not initiate a background investigation into the applicant until the commission receives a complete application.

(6) The applicant must file its completed application in the commission's office in Indianapolis, Indiana.

(7) An applicant is under a continuing duty to disclose any changes in the information submitted to the commission.

(c) An applicant to receive an interest in a casino licensee or a casino license applicant must present evidence that it meets or possesses the standards, qualifications, or criteria under 68 IAC 2-1-5(c). The applicant bears the burden of proving its qualifications.

(d) An applicant to receive an interest in a supplier licensee must present evidence that it meets or possesses the standards, qualifications, or criteria under 68 IAC 2-2. The applicant bears the burden of proving its qualifications.

(e) The casino licensee, casino license applicant, or supplier licensee that is attempting to transfer an ownership interest to an applicant must submit any information that the commission deems necessary to ensure compliance with IC 4-33, IC 4-35, and this title. (*Indiana Gaming Commission; 68 IAC 5-1-2; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1030; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

### **68 IAC 5-1-3 Application fees**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 3. (a) An applicant shall submit all fees to the commission in the form of a certified check or cashier's check made payable to the state of Indiana.

(b) An applicant must pay an investigation fee in the same amount as the application fee under 68 IAC 2-1-2(b) or 68 IAC 2-2-2(b), whichever is applicable.

(c) The commission will use the investigation fee to conduct the background investigation of the applicant. An additional investigation fee may be assessed to the extent that the cost of the background investigation of the applicant exceeds the investigation fee submitted under subsection (b). The executive director may direct the applicant to remit an amount that the executive director has determined is necessary to complete the investigation. Once an applicant is directed to submit an investigation fee in excess of the amount set forth in subsection (b), the investigative team conducting the investigation on that applicant shall not finalize the report on the applicant's suitability nor submit that report to the commission for consideration until the applicant has paid the additional investigation fee.

(d) In the event an assessed investigation fee exceeds the final cost of the investigation, the commission shall refund the excess investigation fee. (*Indiana Gaming Commission; 68 IAC 5-1-3; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1031; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

### **68 IAC 5-1-4 Publicly traded corporations**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

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Sec. 4. (a) A person (other than an institutional investor who complies with subsection (c)) who, individually or in association with others, acquires, directly or indirectly, the beneficial ownership of five percent (5%) or more of:

- (1) a class of voting securities of a publicly traded corporation that is required to contain the charter provisions set forth in 68 IAC 4-1-8; or
- (2) the beneficial interest in a casino licensee, casino license applicant, or supplier licensee, directly or indirectly, through a class of voting securities of a holding or intermediary company of a casino licensee, casino license applicant, or supplier licensee;

shall apply to the commission for a finding of suitability within forty-five (45) days after acquiring the securities. A casino licensee or supplier licensee shall notify each person who is subject to this section of its requirements, provided that the obligations of the person subject to this rule are independent of, and unaffected by, the corporation's failure to give notice.

(b) An institutional investor who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of five percent (5%) or more of:

- (1) a class of voting securities of a publicly traded corporation that is required to contain the charter provisions set forth in 68 IAC 4-1-8; or
- (2) the beneficial interest in a casino licensee, casino license applicant, or supplier licensee through a class of voting securities of a holding company or intermediary company of a casino licensee, casino license applicant, or supplier licensee;

must notify the commission within thirty (30) business days after the person acquires the securities.

(c) An institutional investor who would otherwise be subject to subsection (a) shall, within forty-five (45) days after acquiring the interests set forth in subsection (b), submit a registration document in a form and manner prescribed by commission staff.

(d) An institutional investor who, individually or in association with others, acquires, directly or indirectly, the beneficial ownership of fifteen percent (15%) or more of:

- (1) a class of voting securities of a publicly traded corporation that is required to contain the charter provisions set forth in 68 IAC 4-1-8; or
- (2) the beneficial interest in a casino licensee, casino license applicant, or supplier licensee directly or indirectly, through any class of voting securities of a holding company or intermediary company of a casino licensee or supplier licensee;

shall apply to the commission for a finding of suitability within forty-five (45) days after acquiring the securities. A casino licensee or supplier licensee shall notify each person who is subject to this section of its requirements, provided that the obligations of the person subject to this rule are independent of, and unaffected by, the corporation's failure to give notice.

(e) The commission may require that an applicant for an ownership interest apply for a finding of suitability in accordance with this rule if the commission deems the finding of suitability necessary to ensure compliance with IC 4-33, IC 4-35, and this title.

(f) The following activities are consistent with being an institutional investor under this section:

- (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 the voting securities.
- (2) Serving as a member of a committee of creditors or security holders formed in connection with a debt restructuring.
- (3) Nominating a 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 information purposes and not to cause a change in its management, policies, or operations.
- (6) Other activities that the commission determines to be consistent with an investment intent.

(g) A person who acquires beneficial ownership of any voting security in a casino licensee, casino license applicant, supplier licensee, holding company, or intermediary company of a casino licensee, casino license applicant, or supplier licensee created under the laws of a foreign country shall file the reports that the commission may prescribe and is subject to a finding of suitability under IC 4-33, IC 4-35, and 68 IAC 2-1-5(c).

(h) A person whose application was denied by the commission:

- (1) may not hold, directly or indirectly, the beneficial ownership of any voting security of a casino licensee, casino license applicant, supplier licensee, holding company, or intermediary company thereof beyond that period of time prescribed by the commission; and

(2) must be removed immediately from a position as a director, officer, or employee of the casino licensee, casino license applicant, supplier licensee, holding company, or intermediary company thereof.

(i) Subsections (a), (b), and (d) do not apply to an underwriter during the first ninety (90) days of the underwriting. (*Indiana Gaming Commission; 68 IAC 5-1-4; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1031; errata filed Nov 30, 1995, 1:00 p.m.: 19 IR 1140; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

#### **68 IAC 5-1-5 Denials; request for hearing**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 5. (a) If the commission denies the application to transfer an ownership interest, it shall direct the executive director to issue a notice of denial to the applicant.

(b) A casino licensee, a casino license applicant, or a supplier licensee who is served with a notice of denial under this rule may request a hearing under 68 IAC 7-1.

(c) If the casino licensee, casino license applicant, or supplier licensee does not request a hearing within the time requirements of 68 IAC 7-1, the notice of denial becomes the final order of the commission.

(d) Unless specifically stated to the contrary, a notice of denial of an application for transfer under this rule does not constitute a finding that the applicant is not suitable for licensure. (*Indiana Gaming Commission; 68 IAC 5-1-5; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1033; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

#### **68 IAC 5-1-6 Repurchase of interest in publicly traded corporation**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 6. (a) Within thirty (30) calendar days of the earlier of either:

(1) failure of a casino licensee, a casino license applicant, or a supplier licensee to request a hearing under 68 IAC 7-1 after receiving a notice of denial; or

(2) the exhaustion of the hearing or appellate process;

the casino licensee, casino license applicant, or supplier licensee shall purchase all of the interests held by the applicant who was served with the notice of denial. The applicant who was served with the notice of denial shall sell all of its interest in the license to the casino licensee, the casino license applicant, or the supplier licensee within thirty (30) days.

(b) The ownership interest being sold under this section shall be sold at the lesser of the:

(1) market price of the ownership interest; or

(2) price at which the applicant purchased the ownership interest.

(*Indiana Gaming Commission; 68 IAC 5-1-6; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1033; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

#### **68 IAC 5-1-7 Proscribed activities with respect to unsuitable persons**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 7. (a) In refusing to grant approval for the transfer of an interest or other involvement with a casino licensee, a casino license applicant, or a supplier licensee, the commission may determine that a person is unsuitable for licensure under IC 4-33, IC 4-35, and 68 IAC 2-1.

(b) After the commission serves a notice of denial to a casino licensee, a casino license applicant, or a supplier licensee, the casino licensee, casino license applicant, or supplier licensee may not do the following:

(1) Pay, to a person whose application was denied, a dividend or interest upon any voting securities, or a payment or distribution of any kind whatsoever except as permitted by subdivision (4).

(2) Recognize the exercise, by a person whose application was denied, directly or indirectly, or through any proxy, trust, or nominee, of a voting right conferred by securities or interest in securities.

(3) Pay, to a person whose application was denied, remuneration in any form for services rendered.

(4) Fail to pursue all lawful efforts to require the person whose application was denied to relinquish the voting securities, including, if necessary, the immediate purchase of the voting securities by the casino licensee or supplier licensee.

(c) The commission may initiate a disciplinary action under 68 IAC 13 against a casino licensee, a casino license applicant, or a supplier licensee who violates subsection (b). (*Indiana Gaming Commission; 68 IAC 5-1-7; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1033; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

#### **68 IAC 5-1-8 Deviation from provisions**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 8. (a) The executive director or the commission may approve deviations from the provisions of this rule if the executive director or the commission determines that the:

(1) procedure or requirement is impractical or burdensome; and

(2) alternative means of satisfying the procedure or requirement:

(A) fulfill the purpose of the rule;

(B) are in the best interest of the public and the gaming industry in Indiana; and

(C) do not violate IC 4-33 or IC 4-35.

(b) If a licensee wishes to request a deviation from the provisions of this rule, the licensee must do so in writing. (*Indiana Gaming Commission; 68 IAC 5-1-8; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1034; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

### **Rule 2. Persons other than Publicly Traded Corporations**

#### **68 IAC 5-2-1 Approval required**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 1. (a) This rule applies to the following:

(1) Applicants.

(2) Casino licensees, casino license applicants, and supplier licensees that are persons other than publicly traded corporations.

(b) The following definitions apply throughout this rule:

(1) "Applicant" means a person who is seeking permission from the commission to obtain a transfer or approval of a transfer of an ownership interest in a casino licensee, casino license applicant, or a supplier licensee.

(2) "Publicly traded corporation" has the meaning set forth in 68 IAC 5-1-1(b)(2).

(c) A person that is not a publicly traded corporation may transfer a direct or indirect ownership interest of five percent (5%) or greater in a casino licensee, a casino license applicant, or a supplier licensee only in accordance with this rule.

(d) The commission may require that an applicant for an ownership interest apply for a finding of suitability in accordance with this rule if the commission deems the finding of suitability necessary to ensure compliance with IC 4-33, IC 4-35, and this title.

(e) The organizational documents of casino licensees and casino license applicants that are persons other than publicly traded corporations must contain a provision that transfers of ownership interest in the person may only be made in accordance with this

rule. A casino license applicant must comply with this subsection prior to the issuance of the interim compliance period.

(f) The organizational documents of supplier licensees that are persons other than publicly traded corporations must contain a provision that transfers of ownership interest may only be made in accordance with this rule. A supplier licensee must comply with this subsection within forty-five (45) days of receiving a permanent supplier's license under 68 IAC 2-2. A supplier licensee must file one (1) copy of the amended organizational documents within fifty (50) days of receiving a permanent supplier's license. (*Indiana Gaming Commission; 68 IAC 5-2-1; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1034; errata filed Apr 9, 1996, 12:15 p.m.: 19 IR 2044; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

#### **68 IAC 5-2-2 Procedure for approval of transfer**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 2. (a) An applicant must complete and submit the appropriate forms prescribed by the commission. The commission must approve the transfer prior to the applicant obtaining an ownership interest in a casino licensee, a casino license applicant, or a supplier licensee.

(b) Application procedures are as follows:

(1) An applicant is seeking a privilege and assumes and accepts any and all risk of adverse publicity, notoriety, embarrassment, criticism, or other action or financial loss that may occur in connection with the application process or the public disclosure of information requested. The applicant expressly waives any claim for damages that may result from the application process.

(2) A misrepresentation or omission made with respect to the application may be grounds for denial of the application.

(3) An applicant must submit the fully-executed original application for transfer of an ownership interest.

(4) An applicant must submit a completed Personal Disclosure Form 1 under 68 IAC 2-3-4(d) for each of the applicant's substantial owners, key persons, or other persons deemed necessary by this rule or by the commission to allow the commission to ensure that the applicant meets the statutory criteria for licensure set forth in IC 4-33, IC 4-35, and this title.

(5) The commission will consider an application to be filed when the commission has received the completed application forms, including:

(A) the required documents, materials, and photographs; and

(B) the application fee under section 3 of this rule.

The commission will not initiate a background investigation into the applicant until the commission receives a complete application.

(6) The applicant must file its completed application in the commission's office in Indianapolis, Indiana.

(7) An applicant is under a continuing duty to disclose changes in the information submitted to the commission.

(c) An applicant to receive an interest in a casino licensee or a casino license applicant must present evidence that it meets or possesses the standards, qualifications, or criteria under 68 IAC 2-1-5(c). The applicant bears the burden of proving its qualifications.

(d) An applicant to receive an interest in a supplier licensee must present evidence that it meets or possesses the standards, qualifications, or criteria under 68 IAC 2-2. The applicant bears the burden of proving its qualifications.

(e) The casino licensee, casino license applicant, or supplier licensee that is attempting to transfer an ownership interest to an applicant must submit any information that the commission deems necessary to ensure compliance with IC 4-33, IC 4-35, and this title. (*Indiana Gaming Commission; 68 IAC 5-2-2; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1034; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

#### **68 IAC 5-2-3 Application fees**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

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Sec. 3. (a) An applicant shall submit all fees to the commission in the form of a certified check or cashier's check made payable to the state of Indiana.

(b) An applicant must pay an investigation fee in the same amount as the application fee under 68 IAC 2-1-2(b) or 68 IAC 2-2-2(b), whichever is applicable.

(c) The commission shall use the investigation fee to conduct the background investigation of the applicant. An additional investigation fee may be assessed to the extent that the cost of the background investigation of the applicant exceeds the investigation fee submitted under subsection (b). The executive director may direct the applicant to remit an amount that the executive director has determined is necessary to complete the investigation. Once an applicant is directed to submit an investigation fee in excess of the amount set forth in subsection (b), the investigative team conducting the investigation on that applicant shall not finalize the report on the applicant's suitability nor submit that report to the commission for consideration until the applicant has paid the additional investigation fee.

(d) In the event an assessed investigation fee exceeds the final cost of the investigation, the commission shall refund the excess investigation fee. (*Indiana Gaming Commission; 68 IAC 5-2-3; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1035; errata filed Apr 9, 1996, 12:15 p.m.: 19 IR 2044; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

### **68 IAC 5-2-3.2 Institutional investors**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 3.2. (a) An institutional investor who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of five percent (5%) or more of the beneficial interest in a casino licensee, casino license applicant, or supplier licensee, where the licensee is not a publicly traded corporation, must notify the commission within thirty (30) business days after the institutional investor acquires the interest.

(b) An institutional investor who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of fifteen percent (15%) or more of the interest in a riverboat licensee, riverboat license applicant, gambling game licensee, gambling game license applicant, or supplier licensee, where the licensee is not a publicly traded corporation, must apply to the commission for a finding of suitability within forty-five (45) days after acquiring the interest. A riverboat licensee, gambling game licensee, or supplier licensee must notify each person who is subject to this section of its requirements, provided that the obligations of the person subject to this rule are independent of, and unaffected by, the entity's failure to give notice.

(c) The following activities are consistent with being an institutional investor under this section:

(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 the interest.

(2) Serving as a member of a committee of creditors or security holders formed in connection with a debt restructuring.

(3) Nominating a 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 information purposes and not to cause a change in its management, policies, or operations.

(6) Other activities that the commission determines to be consistent with investment intent.

(d) Subsections (a) and (b) do not apply to an underwriter during the first ninety (90) days of the underwriting. (*Indiana Gaming Commission; 68 IAC 5-2-3.2; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

### **68 IAC 5-2-4 Denials; request for hearing**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 4. (a) If the commission denies the application to transfer an ownership interest, the commission shall direct the executive director to issue a notice of denial to the applicant.

(b) A casino licensee, a casino license applicant, or a supplier licensee who is served with a notice of denial under this rule may request a hearing under 68 IAC 7-1.

(c) If the casino licensee, casino license applicant, or supplier licensee does not request a hearing within the time requirements of 68 IAC 7-1, the notice of denial becomes the final order of the commission.

(d) Unless specifically stated to the contrary, a notice of denial of application for transfer under this rule does not constitute a finding that the applicant is not suitable for licensure. (*Indiana Gaming Commission; 68 IAC 5-2-4; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1035; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

#### **68 IAC 5-2-5 Proscribed activities with respect to unsuitable persons**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 5. (a) In refusing to grant approval for the transfer of an interest or other involvement with a casino licensee, a casino license applicant, or a supplier licensee the commission may determine that a person is unsuitable for licensure under IC 4-33, IC 4-35, and 68 IAC 2-1.

(b) After the commission serves a notice of denial to a casino licensee, a casino license applicant, or a supplier licensee that person may not do the following:

(1) Pay, to a person found to be unsuitable, any payment or distribution of any kind whatsoever.

(2) Recognize the exercise by an unsuitable person, directly or indirectly, of ownership or control over the casino licensee, the casino license applicant, or the supplier licensee.

(3) Pay to an unsuitable person remuneration in any form for services rendered.

(c) The commission may initiate a disciplinary action under 68 IAC 13 against a casino licensee, a casino license applicant, or a supplier licensee who violates subsection (b). (*Indiana Gaming Commission; 68 IAC 5-2-5; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1036; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

#### **68 IAC 5-2-6 Deviation from provisions**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 6. (a) The executive director or the commission may approve deviations from the provisions of this rule if the executive director or the commission determines that the:

(1) procedure or requirement is impractical or burdensome; and

(2) alternative means of satisfying the procedure or requirement:

(A) fulfill the purpose of the rule;

(B) are in the best interest of the public and the gaming industry in Indiana; and

(C) do not violate IC 4-33 or IC 4-35.

(b) If a licensee wishes to request a deviation from the provisions of this rule, the licensee must do so in writing. (*Indiana Gaming Commission; 68 IAC 5-2-6; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1036; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

### **Rule 3. Debt Acquisition**

#### **68 IAC 5-3-1 General provisions**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35; IC 5-14



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Sec. 1. (a) This rule applies to casino licensees, casino license applicants, or affiliates thereof.

(b) A casino licensee, casino license applicant, or affiliate thereof may enter into debt transactions that total one million dollars (\$1,000,000) or more only in accordance with this rule.

(c) As used in this rule, "debt transaction" means a transaction in which the casino licensee, casino license applicant, or affiliate thereof issues, incurs, or assumes debt, including, but not limited to, the following:

- (1) Bank financing.
- (2) Private debt offerings.
- (3) Any other transaction that results in the encumbrance of the assets.

(d) The casino licensee or casino license applicant must stamp or otherwise mark each page of its debt transaction documents that it submits to the commission with the word "CONFIDENTIAL" if the documents submitted are not subject to disclosure under IC 4-33, IC 4-35, or IC 5-14, or a combination thereof. The casino licensee or casino license applicant shall, at the request of the executive director or the commission, provide a justification explaining the confidential nature of the policies and procedures. The commission or the executive director may determine that the information marked confidential is subject to disclosure under IC 4-33, IC 4-35, or IC 5-14, or a combination thereof. (*Indiana Gaming Commission; 68 IAC 5-3-1; filed Jul 18, 1996, 8:55 a.m.: 19 IR 3300; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

### **68 IAC 5-3-2 Notification and approval**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33-4-21; IC 4-35

Sec. 2. (a) A casino licensee, casino license applicant, or affiliate thereof may not enter into a debt transaction without receiving the approval of the commission.

(b) A casino licensee, casino license applicant, or affiliate thereof shall submit, in writing, a request for approval of a debt transaction that includes the following:

(1) The request for approval must be submitted at least ten (10) days before a scheduled meeting of the commission. The executive director shall place the request for approval of a debt transaction on the agenda of the commission meeting to be held under 68 IAC 1-2-5.

(2) A representative of the riverboat licensee, riverboat license applicant, or affiliate thereof shall be present at the commission meeting to answer questions posed by the commission or the executive director.

(3) The approval of the debt transaction will be discussed, and a decision issued by the commission, at the next business meeting of the commission held under 68 IAC 1-2-5.

(c) The request for approval of a debt transaction shall contain, at a minimum, the following information:

(1) The names and addresses of the parties to the debt transaction.

(2) The maximum amount of the funds involved.

(3) The type of debt transaction.

(4) The source of the monies obtained by the casino licensee, casino license applicant, or affiliate thereof.

(5) Sources of collateral.

(6) The purpose of the debt transaction.

(7) The terms of the debt transaction.

(8) The projected interest rate of the material debt transaction.

(9) Filings that must be submitted to a regulatory agency in connection with the debt transaction.

(10) An executive summary of the debt transaction.

(11) A legal opinion that the debt transaction does not violate IC 4-33-4-21.

(12) Any other information that the executive director deems necessary to ensure compliance with IC 4-33, IC 4-35, and this title.

(*Indiana Gaming Commission; 68 IAC 5-3-2; filed Jul 18, 1996, 8:55 a.m.: 19 IR 3300; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Sep 30, 2004, 11:05 a.m.: 28 IR 526; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

**68 IAC 5-3-3 Due diligence**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 3. The casino licensee, casino license applicant, or affiliate thereof shall perform due diligence to ensure that a person with whom the casino licensee, casino license applicant, or affiliate thereof enters into a debt transaction is suitable for licensure under IC 4-33, IC 4-35, and this title. (*Indiana Gaming Commission; 68 IAC 5-3-3; filed Jul 18, 1996, 8:55 a.m.: 19 IR 3300; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

**68 IAC 5-3-4 Denial**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 4. If the executive director or commission denies approval of a debt transaction, the casino licensee, casino license applicant, or affiliate thereof may not enter into the debt transaction. (*Indiana Gaming Commission; 68 IAC 5-3-4; filed Jul 18, 1996, 8:55 a.m.: 19 IR 3301; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

**68 IAC 5-3-5 Violation of rule**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 5. If a casino licensee, casino license applicant, or affiliate thereof fails to comply with this rule, the commission may initiate a disciplinary action under 68 IAC 13-1. (*Indiana Gaming Commission; 68 IAC 5-3-5; filed Jul 18, 1996, 8:55 a.m.: 19 IR 3301; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

**68 IAC 5-3-6 Deviation from provisions**

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 6. (a) The executive director or the commission may approve deviations from the provisions of this rule if the executive director or the commission determines that the:

- (1) procedure or requirement is impractical or burdensome; and
- (2) alternative means of satisfying the procedure or requirement:
  - (A) fulfill the purpose of the rule;
  - (B) are in the best interest of the public and the gaming industry in Indiana; and
  - (C) do not violate IC 4-33 or IC 4-35.

(b) If a licensee wishes to request a deviation from the provisions of this rule, the licensee must do so in writing. (*Indiana Gaming Commission; 68 IAC 5-3-6; filed Jul 18, 1996, 8:55 a.m.: 19 IR 3301; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

**68 IAC 5-3-7 Reports by the executive director**

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33

Sec. 7. The executive director shall report any action he or she has taken or contemplates taking under this rule with respect

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## TRANSFER OF OWNERSHIP

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to debt transactions at the next meeting held under 68 IAC 1-2-5. The commission may direct the executive director to take additional or different action. (*Indiana Gaming Commission; 68 IAC 5-3-7; filed Jul 18, 1996, 8:55 a.m.: 19 IR 3301; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Sep 30, 2004, 11:05 a.m.: 28 IR 527; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA; readopted filed Nov 24, 2014, 10:49 a.m.: 20141224-IR-068140402RFA*)

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