

BASIS AND PURPOSE FOR RULE 4.5

The purpose of Rule 4.5 is to establish specific reporting procedures and approval requirements for transfers of interests and other involvement with publicly traded corporations directly or indirectly involved in gaming in Colorado. The statutory basis for Rule 4.5 is found in sections 12-47.1-201, 12-47.1-203, 12-47.1-302, 12-47.1-504, 12-47.1-511, and 12-47.1-801, C.R.S. (1991).

RULE 4.5 PUBLICLY TRADED CORPORATIONS AND PUBLIC OFFERINGS OF SECURITIES

47.1-4.500 Incorporation by reference

- (1) The Commission adopts as part of Rule 4.5 of the Colorado Gaming Regulations certain federal rules and forms referred to in this Rule 4.5. Such federal rules and forms are published by the Office of the Federal Register National Archives and Records Administration in full in the Code of Federal Regulations in 17 CFR 200-399 (Chapter II Securities and Exchange Commission 4-1-02 Edition). These federal rules and forms were promulgated pursuant to the following federal statutes: The Securities Act of 1933, 15 U.S.C.S. sections 77a-77bbbb; and the Securities Exchange Act of 1934, 15 U.S.C.S. Sections 78a-78pp. References are also made to the following federal statutes: The Investment Advisers Act of 1940, 15 U.S.C.S. Sections 80b-1 through 80b-21; and the Employee Retirement Income Security Act of 1974, 29 U.S.C.S. Sections 1001 through 1461. This regulation does not include amendments to or later editions of the incorporated federal rules and forms found in the 4-1-02 edition of the Code of Federal Regulations.
- (2) Certified copies of the complete text of the material incorporated are maintained at the Colorado Division of Gaming, 17301 West Colfax Ave., Suite 135, Golden, Colorado 80401, and may be inspected by contacting the Records Custodian at that address during normal business hours. The incorporated material may also be examined at any state publications depository library. Certified copies shall be provided at cost upon request.

47.1-4.501 Definitions.

As used in this Rule 4.5, the following terms shall have the meaning ascribed to them herein:

- (1) "Affiliated company" means a subsidiary company, holding company, intermediary company or any other form of business organization that:
 - (a) Controls, is controlled by or is under common control directly or indirectly with a licensee; and
 - (b) Is involved in gaming activities in this state or involved in the ownership of property in this state upon which gaming is conducted.
- (2) "Current market price" means the average of the daily closing prices for the 20 consecutive trading days immediately preceding the date of such transaction or the closing price on the day immediately preceding the date of such transaction, whichever is higher. For the purpose of this definition, the closing price for each day shall be the last reported sale price, regular way, or in case no such reported sale takes place on such date, the average of the last reported bid and asked prices, regular way, in either case on the principal national securities exchange registered under the Securities Exchange Act of 1934, as amended (the "1934 Act"), on which such security is admitted to trading or listed, or if not listed or admitted to trading on any national securities exchange, the closing price of such security, or in case no reported sale takes place, the average of the closing bid and asked prices, on NASDAQ or any comparable system, or if such security is not listed or quoted on NASDAQ or any comparable system, the closing sale price, or in case no

reported sale takes place, the average of the closing bid and asked prices, as furnished by any member of the National Association of Securities Dealers, Inc., selected from time to time by the issuer for that purpose.

(3) "Holding company" means any corporation, firm, partnership, trust, limited liability company or other form of business organization not a natural person which, directly or indirectly:

- (a) Owns;
- (b) Has the power or right to control; or
- (c) Holds with power to vote,

all or any part of the stocks, interest or other voting security of a business entity which holds or applies for a state gaming license; provided that the term "holding company" does not include any broker-dealer registered with the United States Securities and Exchange Commission (the "SEC"), any securities clearinghouse or nominee thereof or any entity insured by the Federal Deposit Insurance Corporation or regulated by a national or state banking regulator, if such person or entity holds such stocks, interest or other voting securities for an unaffiliated third party and does not exercise any vote over any such securities (other than in a fiduciary capacity at the direction of the beneficial owner of such stocks, interest or other voting securities or in accordance with the rules and regulations of any self-regulatory organization having jurisdiction over such person or entity).

For the purposes of this section, in addition to any other reasonable meaning of the words used, a holding company "indirectly" has, holds or owns any power, right or security if it does so through any interest in a subsidiary or successive subsidiaries, however many such subsidiaries may intervene between the holding company and the licensee or applicant.

(4) "Institutional investor" means:

- (a) A bank as defined in Section 3(a) (6) of the Federal Securities Exchange Act of 1934, as amended;
- (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 adviser registered under Section 203 of the Investment Advisers Act of 1940, as amended;
- (e) Collective trust funds as defined in Section 3(c) (11) of the Investment Company Act of 1940, as 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 licensed or an intermediary or holding company licensee which directly or indirectly owns five percent or more of a licensee.
- (g) A state or federal government pension plan.
- (h) A group comprised entirely of persons specified in (a) through (g) of this definition

Notwithstanding the foregoing provisions of subsections (a) through (h), in order 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 by the SEC in Rule 144A under the Securities Act of 1933, as amended (the “1933 Act”).

- (5) “Intermediary company” means any corporation, firm, partnership, trust, limited liability company or other form of business organization other than a natural person which:
 - (a) Is a holding company with respect to a business entity which holds or applies for a state gaming license; and
 - (b) Is a subsidiary with respect to any holding company.
- (6) “Public offering” means a sale of voting securities that is subject to the registration requirements of section 5 of the 1933 Act, or that is exempt from such requirements solely by reason of an exemption contained in section 3(a) (10), 3(a) (11) or 3(c) of said Act or Regulation A or Regulation D adopted pursuant to section 3(b) of the 1933 Act.
- (7) (a) “Publicly traded corporation” means:
 - (i) Any corporation, firm, partnership, trust, limited liability company or other form of business organization not a natural person which:
 - (A) Has one or more classes of voting securities registered pursuant to section 12 of the 1934 Act; or
 - (B) Is an issuer subject to section 15(d) of the 1934 Act; or
 - (C) Has one or more classes of voting securities exempted from the registration requirements of section 5 of the 1933 Act, solely by reason of an exemption contained in section 3(a) (10), 3(a) (11) or 3(c) of the 1933 Act.
 - (ii) Any corporation, firm, partnership, trust, limited liability company or other form of business organization created under the laws of a foreign country:
 - (A) Which has one or more classes of voting securities registered on that country’s securities exchange or over-the-counter market; and
 - (B) Whose activities have been found by the Commission to be regulated in a manner which protects the investors and the State of Colorado.
- (b) The term “publicly traded corporation” does not include any corporation, firm, partnership, trust, limited liability company or other form of business organization not a natural person which has securities registered or is an issuer pursuant to subparagraph (a) of this definition solely because it:
 - (i) Guaranteed a security issued by an affiliated company pursuant to a public offering; or
 - (ii) Is considered by the SEC to be a coissuer of a public offering of securities pursuant to Rule 140 under the 1933 Act.
- (8) “Security” shall have the meaning of the term set forth in section 11-51-201(17) of the Colorado Securities Act of 1990, Title 11, Article 51, C.R.S.

- (9) "Subsidiary" means any firm, partnership, trust, limited liability company or other form of business organization not a natural person, all or any interest in which is:
- (i) Owned;
 - (ii) Subject to a power or right of control; or
 - (iii) Held with power to vote directly, indirectly or in conjunction with a holding company or intermediary company.
- (10) "Voting security" means a security the holder of which is entitled to vote generally for the election of a member or members of the board of directors or board of trustees of a corporation or a comparable person or persons in the case of a partnership, trust or other form of business organization other than a corporation.

47.1-4.502 Application of Rule.

In addition to all other requirements of the Colorado Gaming Regulations, this Rule 4.5 shall impose additional requirements on publicly traded corporations holding gaming licenses in the state, and gaming licensees in the state owned directly or indirectly by a publicly traded corporation, whether through a subsidiary or intermediary company. These requirements shall automatically apply to any ownership interest held by a publicly traded corporation, holding company or intermediary company thereof, where such ownership interest directly or indirectly is, or will be upon approval by the Commission, 5 percent or more of the entire licensee. In any event, if the Commission determines that a publicly traded corporation, or a subsidiary, intermediary company or holding company thereof has the actual ability to exercise influence over a licensee, regardless of the percentage of ownership possessed by said entity, the Commission may require that entity to comply with the regulations contained in this Rule 4.5. Should any requirement in this Rule 4.5 conflict with any other regulation in the Colorado Gaming Regulations, this Rule 4.5 shall apply.

47.1-4.503 Public Offerings.

A licensee or affiliated company or controlling person thereof commencing a public offering of voting securities must notify the Commission, with regard to a public offering to be registered with the SEC, no later than ten (10) business days after the initial filing of a registration statement with the SEC, or, with regard to any other type of public offering, no later than ten (10) business days prior to the public use or distribution of any offering document, if:

- (1) If the licensee, affiliated company or a controlling person thereof intending to issue the voting securities is not a publicly traded corporation; or
- (2) If the licensee, affiliated company or a controlling person thereof intending to issue the voting securities is a publicly traded corporation, and if the proceeds of the offering, in whole or in part, are intended to be used:
 - (a) To pay for construction of gaming facilities in Colorado to be owned or operated by the licensee;
 - (b) To acquire any direct or indirect interest in gaming facilities in Colorado;
 - (c) To finance the operation by the licensee of gaming facilities in Colorado; or
 - (d) To retire or extend obligations incurred for one or more purposes set forth in subsection a, b or c of this regulation.

47.1-4.504 Notification of Public Offering.

A person notifying the Commission of a public offering pursuant to this Rule 4.5 shall, to the extent practical, disclose the following information:

- (1) A description of the voting securities to be offered.
- (2) The proposed terms upon which the voting securities are to be offered.
- (3) The anticipated gross and net proceeds of the offering, (Including a detailed list of expenses.
- (4) The use of proceeds.
- (5) The name and address of the lead underwriter.
- (6) The forms of the underwriting agreement, the agreement among underwriters, if any, and the selected dealers agreements, if any.
- (7) A statement of intended compliance with all applicable federal, state, local and foreign securities laws.
- (8) The names and addresses of the applicant's counsel for such public offering, independent auditors, and special consultants on the offering.
- (9) If any voting securities to be issued are not to be offered to the general public, the general nature of the offerees and the form of the offering.
- (10) Any other offering material filed with the SEC which is required to be submitted pursuant to the direction of the Division or Commission.

47.1-4.505 Fraudulent and Deceptive Practices Prohibited.

It is grounds for disciplinary action under the Colorado Limited Gaming Act and Colorado Gaming Regulations if any person, in connection with the purchase or sale of any security issued by a licensee or affiliated company or a controlling person thereof, is found guilty of, or pleads nolo contendere to, or is subject to a final cease and desist order with respect to, or order of permanent injunction issued on the basis of, or is the subject of a similar final action taken on the basis of, a violation of Rule 10b-5 promulgated by the SEC under Section 10(b) of the 1934 Act or section 11-51-501 of the Colorado Revised Statutes:

47.1-4.506 Submission of Proxy and Information Statements.

Each publicly traded corporation which is licensed as an operator, retailer or slot machine manufacturer or distributor under the Act, shall, within 5 days after distributing any proxy statement subject to Regulation 14A of the SEC or any information statement subject to Regulation 14C of the SEC to its security holders, submit such proxy statement or information statement to the Division.

47.1-4.507 Reporting Requirements.

- (1) Whenever any filing on Form 10-Q, Form 10-K, Form 8-K, Form 1-A, Registration Statement SB-2, Registration Statement 10-SB, Report 10-KSB, Report 10-QSB, Schedule 13e-3 or Schedule 14D-9 or required by Rule 14f-I promulgated pursuant to the 1934 Act is filed with the SEC or with any national or regional securities exchange by a publicly traded corporation which is licensed as an operator, retailer or slot machine manufacturer or distributor under the Act, such publicly

traded corporation shall, within 5 business days after the filing with the SEC, electronically notify the Division that such filing has taken place, (amended perm. 11/30/03)

- (2) Whenever a publicly traded corporation which is licensed as an operator, retailer or slot machine manufacturer or distributor under the Act receives any material document filed with the SEC by any other person relating to such publicly traded corporation, it shall, within 10 days following such receipt, electronically notify the Division that such document receipt has occurred. (amended perm. 11/30/03) Page 19.05
- (3) Each publicly traded corporation which is licensed as an operator, retailer or slot machine manufacturer or distributor under the Act shall file with the Division annually at the time of license renewal a list of the recordholders and beneficial owners (to the extent the later is known) of its voting securities or more frequently as such list is prepared.
- (4) Each licensee shall promptly report to the Division, on the form prescribed by the Division, the election or appointment of any director, any executive officer or other officers of such licensee (or holding company or intermediary company thereof) actively and directly engaged in the administration or supervision of the gaming activities of the licensee.
- (5) Whenever a publicly traded corporation which is licensed as an operator, retailer or slot machine manufacturer or distributor under the Act is informed that any person determined by the Commission to be a controlling person in respect of such publicly traded corporation has disposed of any of such publicly traded corporation's voting securities, such publicly traded corporation shall thereupon promptly report such information to the Division.
- (6) Each licensee and intermediary or holding company thereof shall file promptly with the Division such other documents within its control as the Division or Commission may lawfully request.

47.1-4.508 Required Charter Provisions.

The following provisions must be included in the articles of organization or similar chartering documents of every entity licensed as an operator, retailer or slot machine manufacturer or distributor under the Act:

The [corporation] [partnership] [limited liability company] shall not issue any voting securities or other voting interests except in accordance with the provisions of the Colorado Limited Gaming Act and the regulations promulgated thereunder. The issuance of any voting securities or other voting interests in violation thereof shall be void and such voting securities or other voting interests shall be deemed not to be issued and outstanding until (a) the [corporation] [partnership] [limited liability company] shall cease to be subject to the jurisdiction of the Colorado Limited Gaming Control Commission, or (b) the Colorado Limited Gaming Control Commission shall, by affirmative action, validate said issuance or waive any defect in issuance.

No voting securities or other voting interests issued by the [corporation] [partnership] [limited liability company] and no interest, claim or charge therein or thereto shall be transferred in any manner whatsoever except in accordance with the provisions of the Colorado Limited Gaming Act and the regulations promulgated thereunder. Any transfer in violation thereof shall be void until (a) the [corporation] [partnership] [limited liability] shall cease to be subject to the jurisdiction of the Colorado Limited Gaming - Control Commission, or (b) the Colorado Limited Gaming Control Commission shall, by affirmative action, validate said transfer or waive any defect in said transfer.

If the Colorado Limited Gaming Control Commission at any time determines that a holder of voting securities or other voting interests of this [corporation] [partnership] [limited liability company] is unsuitable to hold such securities or other voting interests, then the issuer of such voting securities or other voting interests may, within sixty (60) days after the finding of unsuitability, purchase such voting securities or other voting interests of such unsuitable person at the lesser of

(i) the cash equivalent of such person's investment in the [corporation][partnership][limited liability company], or (ii) the current market price as of the date of the finding of unsuitability unless such voting securities or other voting interests are transferred to a suitable person (as determined by the Commission) within sixty (60) days after the finding of unsuitability. Until such voting securities or other voting interests are owned by persons found by the Commission to be suitable to own them, (a) the [corporation] [partnership] [limited liability company] shall not be required or permitted to pay any dividend or interest with regard to the voting securities or other voting interests, (b) the holder of such voting securities or other voting interests shall not be entitled to vote on any matter as the holder of the voting securities or other voting interests, and such voting securities or other voting interests shall not for any purposes be included in the voting securities or other voting interests of the [corporation] [partnership] [limited liability company] entitled to vote, and (c) the [corporation] [partnership] [limited liability company] shall not pay any remuneration in any form to the holder of the voting securities or other voting interests except in exchange for such voting securities or other voting interests as provided in this paragraph.

47.1-4.509 Suitability Requirements.

- (1) Each person (including an institutional investor) who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of (i) 5 percent or more of any class of voting securities of a publicly traded corporation which is required to contain the charter provisions set forth in this Rule 4.5, or (ii) 5 percent or more of the beneficial interest in a licensee directly or indirectly through any class of voting securities of any holding company or intermediary company of a licensee, shall notify the Division within ten (10) days after such person acquires such securities and shall provide such additional information and be subject to a finding of suitability as required by the Division or Commission. A licensee shall notify each person who is subject to this regulation of its requirements as soon as such corporation becomes aware of the acquisition; provided that the obligations of the person subject to this regulation are independent of, and unaffected by, such corporation's failure to give such notice.
- (2) Each person (other than an institutional investor which complies with subsection (4) below) who, individually or in association with others, acquires, directly or indirectly, the beneficial ownership of (i) 10 percent or more of any class of voting securities of a publicly traded corporation which is required to contain the charter provisions set forth in this Rule 4.5, or (ii) 10 percent or more of the beneficial interest in a licensee directly or indirectly through any class of voting securities of any holding company or intermediary company of a licensee, must apply to the Commission for a finding of suitability within forty-five (45) days after acquiring such securities. A licensee shall notify each person who is subject to this regulation of its requirements as soon as such corporation becomes aware of the acquisition; provided that the obligations of the person subject to this regulation are independent of, and unaffected by, such corporation's failure to give such notice.
- (3) Each institutional investor who, individually or in association with others, acquires, directly or indirectly, the beneficial ownership of (i) 15 percent or more of any class of voting securities of a publicly traded corporation which is required to contain the charter provisions set forth in this Rule 4.5, or (ii) 15 percent or more of the beneficial interest in a licensee directly or indirectly, through any class of voting securities of any holding company or intermediary company of a licensee, must apply to the Commission for a finding of suitability within forty-five (45) days after acquiring such securities. A licensee shall notify each person who is subject to this regulation of its requirements; provided that the obligations of the person subject to this regulation are independent of, and unaffected by, such corporation's failure to give such notice.
- (4) (a) An institutional investor which otherwise would be subject to subsection (2) of this regulation must, within forty-five (45) days after acquiring the interests set forth in subsection (2), submit to the Division the following information:

- (i) 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 set forth in this regulation.
- (ii) A certification made under oath and the penalty of perjury that the voting securities were acquired and are held for investment purposes only and were acquired and are held in the ordinary course of business as an institutional investor and not for the purposes of causing, directly or indirectly, the election of a majority of the board of directors, any change in the corporate charter, bylaws, management, policies, or operations of a licensee or affiliated company. The signatory also shall explain the basis of his authority to sign the certification and to bind the institutional investor to its terms. The certification also shall provide that the institutional investor is bound by and shall comply with the Colorado Limited Gaming Act and the regulations adopted thereunder, is subject to the jurisdiction of the courts of Colorado, and consents to Colorado as the choice of forum in the event any dispute, question, or controversy arises regarding the application this regulation.
- (iii) 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 licensee or affiliated company.
- (iv) 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 licensee or affiliated company.
- (v) The name of each person that beneficially owns 5 percent or more of the institutional investor's voting securities or other equivalent.
- (vi) A list of the institutional investor's affiliates.
- (vii) A list of all securities of the licensee that are or were, directly or indirectly, 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.
- (viii) A list of all regulatory agencies with which the institutional investor or any affiliate that beneficially owns voting securities of the licensee or affiliated company files periodic reports, and the name, address, and telephone number of the person, if known, to contact at each agency regarding the institutional investor.
- (ix) A disclosure of all criminal or regulatory sanctions imposed during the preceding ten (10) years and of any administrative or court proceedings filed by any regulatory agency during the preceding five (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 twelve (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.
- (x) A copy of any filing made under 16 U.S.C § 18a with respect to the acquisition or proposed acquisition of voting securities of the licensee or affiliated company.

- (xi) Any additional information the Division or the Commission may request.
- (b) The following activities shall not be deemed to be inconsistent with holding voting securities for investment purposes only pursuant to (a) (ii) of this regulation:
 - (i) 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;
 - (ii) Serving as a member of any committee of creditors or security holders formed in connection with a debt restructuring;
 - (iii) Nominating any candidate for election or appointment to the board of directors in connection with a debt restructuring;
 - (iv) 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;
 - (v) 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; and
 - (vi) Such other activities as the Commission may determine to be consistent with such investment intent.
- (5) A person who acquires beneficial ownership of any voting security in a licensee or holding company or intermediary company of any licensee created under the laws of a foreign country shall file such reports as the Commission may prescribe and is subject to such a finding of suitability.
- (6) Any person found unsuitable by the Commission shall not hold directly or indirectly the beneficial ownership of any voting security of a licensee or holding company or intermediary company thereof beyond that period of time prescribed by the Commission, and must be removed immediately from any position as a director, officer or employee of such licensee or holding company or intermediary company thereof.
- (7) The provisions of subsections (1), (2) and (3) of this regulation shall not apply to any underwriter during the course of an underwriting, but no longer than 90 days after the beginning of such underwriting.

47.1-4.510 Powers of Commission.

The Commission may determine, upon its own motion or the recommendation of the Division, at the time of initial application for licensure or for any direct or indirect ownership interest in a licensee, or at any time thereafter that the public interest and the purposes of the Colorado Limited Gaming Act require that any individual who has a material relationship to, or material involvement with, a licensee or affiliated company thereof must apply for a finding of suitability by the Commission or apply for a key employee license. A person may be deemed to have a material relationship to, or material involvement with, a corporation if he is a director, officer, controlling person or key employee of the corporation, or if he, as an agent, consultant, advisor or otherwise, exercises a significant influence upon the management or affairs of the corporation. The foregoing powers of the Commission are not limited to individuals having a formal and direct involvement or relationship with a licensee nor to individuals who are beneficial owners of any stated percentage of the securities of a publicly traded corporation.

47.1-4.511 Prescribed Activities with Respect to “Unsuitable” Persons.

- (1) In refusing to grant approval for the transfer of an interest or other involvement with a licensee, the Commission may determine that an individual or person is unsuitable. In reviewing an application for licensure, the Commission may determine that an individual or person is unsuitable.
- (2) The Commission may determine a licensee or affiliated company thereof to be unsuitable, or take other disciplinary action, if the licensee or affiliated company thereof, after the Commission serves notice to the licensee or affiliated company thereof, that a person is unsuitable to be a stockholder or to have any other direct or indirect relationship or involvement with such licensee or affiliated company thereof:
 - (a) Pays to any person found to be unsuitable any dividend or interest upon any voting securities or any payment or distribution of any kind whatsoever except as permitted by Paragraph (d) of this regulation;
 - (b) Recognizes the exercise by any such unsuitable person, directly or indirectly, or through any proxy, trustee or nominee, of any voting right conferred by any securities or interest in any securities;
 - (c) Pays to any such unsuitable person any remuneration in any form for services rendered; or
 - (d) Fails to pursue all lawful efforts to require such unsuitable person to relinquish all voting securities including, if necessary, the immediate purchase of said voting securities by the licensee.

47.1-4.512 Exemptions.

- (1) The Commission may, either generally or specifically, exempt a person, a security, a transaction, or any portion thereof, from the application of Rule 4.5 or any portion thereof if the Commission determines that such exemption is consistent with the purposes of the Colorado Limited Gaming Act.
- (2) The Commission may by order or Rule, from time to time, delegate to the Division the power to grant exemptions from the application of this Rule 4.5 to the extent, and within the scope, specified in such order or Rule.

47.1-4.513 Effective Date.

Regulation § 47.1-4.508 shall not apply to any licensee which has submitted any application to the Division or Commission prior to the effective date of this Rule 4.5. Notwithstanding the foregoing, the provisions of Regulation § 47.1-4.508 shall apply to all licensees on June 30, 1994, or such later date as the Commission may prescribe.

47.1-4.514 Definition of ownership interest.

- (1) For purposes of Section 12-47.1-808, C.R.S., a person shall not be deemed to have an “ownership interest” in a retail licensee because (a) such person has less than a five percent (5%) ownership interest in an institutional investor, which institutional investor has an ownership interest in a publicly traded retail licensee or in a publicly traded affiliated company of a retail licensee, (b) such person has five percent (5%) or more of an ownership interest in an institutional investor, which institutional investor has less than a five percent (5%) ownership interest in a publicly traded retail licensee or in a publicly traded affiliated company of a retail licensee.

licensee, (c) such person is an institutional investor which has less than a five percent (5%) ownership interest in a publicly traded retail licensee or in a publicly traded affiliated company of a retail licensee, (d) such person is an institutional investor and possesses voting securities of a publicly traded retail licensee or in a publicly traded affiliated company of a retail licensee in a fiduciary capacity and not for its own account (unless such person exercises voting rights with respect to five percent (5%) or more of such publicly traded company's outstanding voting securities), (e) such person is a broker or dealer registered under the 1934 Act and possesses voting securities of a publicly traded retail licensee or of a publicly traded affiliated company of a retail licensee for the benefit of customers and not for such person's own account and does not exercise voting rights with respect to five percent (5%) or more of such publicly traded company's voting securities, (f) such person is a broker or dealer registered under the 1934 Act and has an ownership interest in voting securities of a publicly traded retail licensee or of a publicly traded affiliated company of a retail licensee as a market maker in such voting securities (unless such person exercises voting rights with respect to five percent (5%) or more of such outstanding voting securities), (g) such person is an underwriter of voting securities of a publicly traded retail licensee or of a publicly traded affiliated company of a retail licensee and has an interest in such voting securities during the course of an underwriting (unless such person exercises voting rights with respect to five percent (5%) or more of such publicly traded company's outstanding voting securities), but no longer than 90 days after the beginning of such underwriting, or (h) such person possesses voting securities of a publicly traded retail licensee or of a publicly traded affiliated company of a retail licensee in such person's capacity as a book-entry transfer facility (unless such person exercises voting rights with respect to five percent (5%) or more of such publicly traded company's outstanding voting securities). For the purpose of this Rule 47.1-4.514(1), a person shall be considered an institutional investor, whether or not such person is a "qualified institutional buyer" as defined by Rule 144A under the 1933 Act, as long as such person otherwise qualifies as an "institutional investor" as defined in Rule 47.1-4.501(4).

- (2) For purposes of Section 12-47.1-808, C.R.S., a person shall not be deemed to have an "ownership interest" in a retail licensee if such person's sole ownership interest in such retail licensee is through the ownership of less than five percent (5%) of the voting securities of (a) such retail licensee if such retail licensee is publicly traded, or (b) a publicly traded affiliated company of such retail licensee.
- (3) For purposes of Section 12-47.1-835, C.R.S., a person shall not be deemed to have a "substantial interest" in a manufacturer, distributor, operator or retailer licensee if such person's sole ownership interest in such licensee is through the ownership of less than five percent (5%) of the voting securities of (a) such licensee if such licensee is publicly traded, or (b) a publicly traded affiliated company of such licensee (unless such person exercises voting rights with respect to five percent (5%) or more of such publicly traded company's outstanding voting securities).
- (4) Nothing in this Rule 47.1-4-514 shall limit the authority of the Division or Commission to investigate or require a finding of suitability for any person involved directly or indirectly in limited gaming.

47.1-4.515 Definition of interest.

For purposes of Section 12-47.1-401, C.R.S., a person shall not be deemed to have an "interest" in a licensee because (a) such person has less than a five percent (5%) ownership interest in an institutional investor, which institutional investor has an ownership interest in a publicly traded licensee or in a publicly traded affiliated company of a licensee, or (b) such person has five percent (5%) or more of an ownership interest in an institutional investor, which institutional investor has less than a five percent (5%) ownership interest in a publicly traded licensee or in a publicly traded affiliated company of a licensee. For purposes of this Rule 47.1-4.515, a person shall be considered an institutional investor, whether or not such person is a "qualified institutional buyer" as defined by Rule 144A under the 1933 Act, as long as such person otherwise qualifies as an "institutional investor" as defined in Rule 47.1-4.501(4).