

OHIO CASINO CONTROL COMMISSION

RESOLUTION 2017-02

CONSIDERATION PENN NATIONAL GAMING, INC.'S PROPOSED DEBT TRANSACTION

WHEREAS, Article XV, Section 6(C)(4) of the Ohio Constitution created the Ohio Casino Control Commission (“Commission”) to ensure the integrity of casino gaming by, among other things, licensing and regulating all gaming authorized by Article XV, Section 6(C) of the Ohio Constitution;

WHEREAS, R.C. 3772.03 authorizes the Commission to adopt regulations as are necessary for completing the functions of licensing, regulating, investigating, and penalizing casino operators, management companies, and holding companies;

WHEREAS, R.C. 3772.03(D)(1) and (28) mandate that the Commission prescribe rules to prevent practices detrimental to the public and provide for any other thing necessary and proper for successful and efficient regulation of casino gaming under Chapter 3772, respectively;

WHEREAS, R.C. 3772.28(A) and (B) and Ohio Adm. Code 3772-29-01(B) require a licensed casino operator to obtain Commission approval before entering into a debt transaction, which is any transaction by the operator concerning a casino facility totaling \$500,000.00 or more in which the operator acquires debt;

WHEREAS, R.C. 3772.28(A) and Ohio Adm. Code 3772-29-01(B)(3) require the casino operator’s debt-transaction approval request to include, at a minimum, the following supporting documentation:

- (A) The names and addresses of all parties to the debt transaction;
- (B) The amount of the funds involved;
- (C) The type of debt transaction;
- (D) The source of the funds to be obtained;
- (E) All sources of collateral, including, but not limited to, all assets pledged by the operator as security for the debt transaction;
- (F) The purpose of the debt transaction;
- (G) The terms of the debt transaction;
- (H) All filings and documents that must be submitted to any regulatory agency in association with the debt transaction;
- (I) An executive summary of the debt transaction, including, but not limited to: (i) all material terms of the debt transaction; (ii) an explanation of the projected debt to equity ratio after entering into the proposed debt transaction; (iii) an explanation of the terms and procedures in case of default by the casino operator; (iv) an explanation of the process used to select the persons involved

in the debt transaction; (v) a list of prior debt transactions between the casino operator and the persons involved in the debt transaction; and (vi) an explanation of the due diligence conducted, including supporting documentation, as required by Ohio Adm. Code 3772-29-01(C);

- (J) All documents that memorialize the terms, conditions, and/or covenants of the debt transaction, including any supporting documents referenced therein;
- (K) A certification that the casino operator holds a direct or indirect ownership or leasehold interest in the casino facility; and
- (L) Any other information deemed necessary by the Commission;

WHEREAS, Ohio Adm. Code 3772-29-01(B)(1) requires that the approval request and all supporting documentation be submitted to the Commission no later than 30 days before the proposed debt transaction will be considered by the Commission, unless otherwise waived or modified by the Commission;

WHEREAS, Ohio Adm. Code 3772-29-01(B)(2) requires the presence of a representative from the requesting casino operator to answer any questions posed by the Commission;

WHEREAS, Penn National Gaming, Inc., the parent company of and on behalf of its licensed casino operators—Central Ohio Gaming Ventures, LLC, and Toledo Gaming Ventures, LLC—(collectively, “Penn”) submitted to the Commission a timely request for approval of and documentation related to a proposed debt transaction;

WHEREAS, the Division of Licensing and Investigations reviewed Penn’s request to approve the debt-transaction proposal, including the supplied documentation, and filed a comprehensive, due-diligence report, dated January 12, 2017, captioned *Consideration of Penn National Gaming, Inc.’s Debt-Transaction Proposal* (“Report”);

WHEREAS, the Report analyzes the proposal, concludes that it is commercially reasonable, and recommends that the Commission approve the transaction subject to certain conditions;

WHEREAS, Penn had representatives present to answer any questions during and the Commission considered the matter at the January 18, 2017 public meeting.

NOW, THEREFORE, BE IT RESOLVED by the Commission that Penn’s proposed debt transaction is **APPROVED**, subject to the following conditions:

- (A) Penn shall close all related transactions without any material changes to the terms or documentation provided in support thereof, as determined by the Commission, no later than February 15, 2017, and provide executed copies of all related documents within 10 days of execution; if the transaction closes with one or more material changes or does not close by February 15, approval thereof is null and void, unless each change or an extension is approved by the Commission, as applicable;

- (B) At the time of borrowing, neither the total funded debt amount nor the blended interest rate shall exceed the figures provided by Penn to the Commission as of January 11, 2017; if either so exceeds at the time of borrowing, approval of the transaction is null and void;
- (C) Penn must immediately notify the Commission upon drawing any revolving-credit-facility funds that exceed the amount provided to the Commission by Penn as of January 11, 2017; each notification must include a description of the amount drawn, the purpose for the draw, and when Penn anticipates repayment of the drawn funds;
- (D) Penn's certification that the proceeds obtained in connection with the transaction will be used by Penn as represented in its proposal submission, filed December 2, 2016, and updated December 16, 19, and 22, 2016, and January 3, 5, 7, 10, and 11, 2017; any proposed deviation from the certified uses requires Penn to immediately notify the Commission in writing and receive Commission approval before implementation;
- (E) The transaction documents must provide that the lender, noteholder, and/or secured party agrees that all liens, claims, and interests in favor of the state of Ohio have priority over any lien, claim, or interest in favor of the lender, noteholder, and/or secured party and any of their heirs, executors, affiliates (e.g., entities under common ownership directly or indirectly), administrators, legal representatives, predecessors, successors, and assigns;
- (F) Within 15 days of closing, and periodically thereafter if requested by the Commission, Penn must file with the Commission a list of all of the initial lenders and/or noteholders as applicable;
- (G) Concurrently with submitting any periodic financial reports or compliance certificates as required by the transaction documents, Penn must provide copies thereof to the Commission;
- (H) Penn must immediately notify the Commission upon the removal or resignation of any administrative agent, indenture trustee, or the like under the transaction documents;
- (I) Penn must immediately notify the Commission upon any known event of a breach of a representation, warranty, or covenant, or of a default, acceleration, breach, or similar matter;
- (J) Penn must provide the Commission copies of any proposed amendments and agreed upon amendments to the transaction documents; any material change, as determined by the Commission, to the transaction documents requires Commission approval;
- (K) Penn must cooperate with the Commission and its employees and agents and must produce any documentation as may be further requested with respect to this transaction or any modification thereto; and
- (L) Penn must provide, upon approval of this transaction, quarterly reports regarding Penn's compliance with the payment terms.

BE IT FURTHER RESOLVED, that Resolution 2017-02 does not in any way affect, negate, or otherwise absolve Penn, and any of its holding companies or subsidiaries, from their obligations to comply with R.C. Chapter 3772 and the rules adopted thereunder and all other conditions imposed by the Commission through resolution or otherwise.

BE IT FURTHER RESOLVED, that Resolution 2017-02 does not restrict or limit the Commission's future exercise of authority and discretion with respect to imposing additional conditions or taking further action with respect to Penn, and any of its holding companies or subsidiaries, under R.C. Chapter 3772 and the rules adopted thereunder.

Adopted: January 18, 2017