

OHIO CASINO CONTROL COMMISSION

RESOLUTION 2018-25 (AMENDED)

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

WHEREAS, Article XV, Section 6(C)(4) of the Ohio Constitution created the Ohio Casino Control 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 R.C. 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 debt-acquiring transaction by the operator concerning a casino facility totaling \$500,000 or more;

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:

- (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 (“Division”) reviewed Penn’s request to approve the debt-transaction proposal, including the supplied documentation, and filed a comprehensive, due-diligence report, dated July 11, 2018, captioned *Consideration of Penn National Gaming, Inc.’s Debt-Transaction Proposal in connection with the Acquisition of Pinnacle Entertainment, Inc.* (“Report”);

WHEREAS, the Report analyzed the proposal, concluded that it does not negatively impact Penn’s financial suitability, and recommended that the Commission approve the transaction subject to certain conditions;

WHEREAS, the Commission considered the matter at its public meetings held on July 18 and August 15, 2018, and conditionally approved the proposal through adoption of Resolution 2018-25;

WHEREAS, on August 31 and September 4, 5, and 7, 2018, Penn updated the Commission regarding certain changes to the conditionally approved proposal that, if deemed substantial (as to form) or material (as to substance), necessitated further Commission consideration and approval;

WHEREAS, the Division reviewed Penn’s updates and filed an addendum to the Report, dated September 12, 2018 (“Addendum”);

WHEREAS, the Addendum summarizes the proposed changes to the conditionally approved transaction and recommends approval thereof, if determined by the Commission to be substantial or material;

WHEREAS, the Commission considered the matter at its public meeting held on September 19, 2018.

NOW, THEREFORE, BE IT RESOLVED, by the Commission that the proposed modifications to Penn's conditionally approved debt transaction are considered **SUBSTANTIAL** and **MATERIAL** changes thereto and therefore require further approval.

BE IT FURTHER RESOLVED, that the proposed modifications do not negatively impact Penn's financial suitability and thus are **APPROVED** as part of Penn's conditionally approved debt transaction, subject to the following conditions:

- (A) Penn shall close all related transactions in a substantially similar form and without any material changes to the terms or documentation provided in support thereof, as determined by the Commission, no later than October 17, 2018, and provide executed copies of all related documents within 10 days of execution; if the transaction closes in a substantially different form or with one or more material changes, as determined by the Commission, or does not close by October 17, 2018, approval thereof is null and void, unless further approved by the Commission;
- (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 May 30 and 31, June 28, and September 4, 5, and 7; if either so exceeds at the time of borrowing, approval of the transaction is null and void, unless further approved by the Commission;
- (C) Penn must immediately notify the Commission upon drawing any revolving-credit-facility funds; 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 February 22, 2018, and updated February 24, March 5, 12, April 24, May 18, 30, 31, June 28, August 31, and September 4, 5, and 7, 2018; 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;

- (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, agreed upon, or executed 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 quarterly reports regarding Penn's compliance with the payment terms.

BE IT FURTHER RESOLVED, that Resolution 2018-25 (Amended) 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 2018-25 (Amended) 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: August 15, 2018

Amended: September 19, 2018