

## ARTICLE 4. CORPORATIONS

### Rule 1. Publicly Traded Corporations

#### 68 IAC 4-1-1 Definitions

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-4-21

Affected: IC 4-33-5; IC 4-33-6; IC 4-33-9

Sec. 1. The following definitions apply throughout this rule:

(1) "Current market price" means the average of the daily closing prices for the twenty (20) consecutive trading days immediately preceding the date of such transaction or the closing price on the day immediately preceding the date of the transaction, whichever is higher. For the purpose of this definition, the closing price shall be determined as follows:

(A) If the security is admitted to trading or listed on the principal national securities and exchange, the closing price for each day shall be:

(i) the last reported sale price, regular way; or

(ii) in case no such reported sale takes place on such day, the average of the last reported bid and asked prices, regular way.

In either case, the closing price on the principal national securities and exchange registered under the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.) on which such security is admitted to trading or listed.

(B) If the security is not listed or admitted to trading on any national securities exchange, the closing price for each day shall be:

(i) the closing price of such security; or

(ii) in case no reported sale takes place, the average of the closing bid and asked prices on NASDAQ or any comparable system.

(C) If the security is not listed or quoted on NASDAQ or on any comparable system, the closing price for each day shall be:

(i) the closing sale price; or

(ii) 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.

(2) "Holding company" means any corporation, firm, partnership, trust, limited liability company, or other form of business entity that meets the following criteria:

(A) Directly or indirectly:

(i) owns;

(ii) has the power or right to vote or control; or

(iii) holds with the power to vote;

all or any part of the stock, interest, or other voting security of a business entity that holds or has applied for an Indiana riverboat owner's license or a supplier's license.

(B) Indirectly holds, holds, or owns any power, right, or security if it does so through any interest in a subsidiary or successive subsidiary, however, many such subsidiaries may intervene between the holding company and the holder or applicant for a riverboat owner's license or a supplier's license.

(3) "Intermediary company" means any corporation, firm, partnership, trust, limited liability company, or other form of business entity that meets the following criteria:

(A) Is a holding company of a holder or an applicant for a riverboat owner's license or a supplier's license.

(B) Is a subsidiary with respect to any holding company.

(4) "Public offering" means a sale of voting securities that is subject to the registration requirements of Section 5 of the Securities Act of 1933 (15 U.S.C. 78a et seq.), or that is exempt from such requirements solely by reason of an exemption contained in either:

(A) Section 3(a)(10), 3(a)(11), or 3(c) of the Securities Act of 1933 (15 U.S.C. 78a et seq.); or

(B) Regulation A or Regulation D adopted under Section 3(b) of the Securities Act of 1933 (15 U.S.C. 78a et seq.).

(5) "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

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Act of 1934 (15 U.S.C. 78a et seq.);

- (ii) issues securities and is subject to Section 15(d) of the Securities 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.).

(6) "Security" has the meaning set forth in IC 23-2-1-1(k) [*IC 23-2-1 was repealed by P.L.27-2007, SECTION 37, effective July 1, 2008.*].

(7) "Subsidiary" means any firm, partnership, trust, limited liability company, or other form of business organization, all or any interest of which is:

- (A) owned;
- (B) subject to a power or right of control; or
- (C) held with power to vote;

directly, indirectly, or in conjunction with a holding company or intermediary company.

(8) "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.

*(Indiana Gaming Commission; 68 IAC 4-1-1; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1026; readopted filed Dec 1, 2003, 9:45 a.m.: 27 IR 1295)*

**68 IAC 4-1-2     Applicability**

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-4-21

Affected: IC 4-33-5; IC 4-33-6; IC 4-33-9

Sec. 2. (a) This rule applies to publicly traded corporations holding riverboat owners' licenses, certificates of suitability, or supplier licenses in Indiana and riverboat licensees, riverboat license applicants, or supplier licensees owned directly or indirectly by a publicly traded corporation, whether through a subsidiary or intermediary company thereof, where such ownership interest directly or indirectly is, or will be upon approval by the commission, five percent (5%) or more of the entire riverboat licensee, riverboat license applicant, or supplier licensee.

(b) 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 riverboat licensee or supplier licensee, regardless of the percentage of ownership possessed by the entity, the commission may require the entity to comply with this rule. *(Indiana Gaming Commission; 68 IAC 4-1-2; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1027; readopted filed Dec 1, 2003, 9:45 a.m.: 27 IR 1296)*

**68 IAC 4-1-3     Public offerings**

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-4-21

Affected: IC 4-33-5; IC 4-33-6; IC 4-33-9

Sec. 3. A riverboat licensee, riverboat license applicant, supplier licensee, affiliate, or controlling person thereof commencing a public offering must notify the commission, with regard to a public offering to be registered with the Securities and Exchange Commission, no later than ten (10) business days after the initial filing of a registration statement with the Securities and Exchange Commission, 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) the riverboat licensee, supplier licensee, affiliate, or controlling person thereof intending to issue the voting securities is not a publicly traded corporation; or
- (2) the riverboat licensee, supplier licensee, affiliate, or 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 the construction of a gambling operation to be owned or operated by the licensee in Indiana;
  - (B) to acquire any direct or indirect interest in a gambling operation located in Indiana or a supplier licensee;
  - (C) to finance the operation of a gambling operation in Indiana by the licensee; or
  - (D) to retire or extend obligations incurred for one (1) or more purposes set forth in clause (A), (B), or (C).

*(Indiana Gaming Commission; 68 IAC 4-1-3; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1027; readopted filed Dec 1, 2003, 9:45 a.m.: 27 IR 1296)*

**68 IAC 4-1-4 Notice of public offering**

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-4-21

Affected: IC 4-33-5; IC 4-33-6; IC 4-33-9

Sec. 4. A person notifying the commission of a public offering shall 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 the proceeds.
- (5) The name and address of the lead underwriter.
- (6) The forms of the underwriting agreement, the agreement 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 riverboat licensee or supplier licensee's counsel for such public offering, independent auditors, and special consultants for 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 Securities and Exchange Commission that is required to be submitted pursuant to the direction of the Securities and Exchange Commission.

*(Indiana Gaming Commission; 68 IAC 4-1-4; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1027; readopted filed Dec 1, 2003, 9:45 a.m.: 27 IR 1296)*

**68 IAC 4-1-5 Fraudulent and deceptive practices prohibited**

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-4-21

Affected: IC 4-33-5; IC 4-33-6; IC 4-33-9

Sec. 5. A disciplinary action may be initiated under 68 IAC 13 if any person, in connection with the purchase or sale of any security issued by a riverboat licensee, supplier licensee, affiliate, or controlling person thereof is:

- (1) found guilty of;
- (2) pleads nolo contendere to;
- (3) is the subject of a final cease and desist order with respect to;
- (4) is subject to an order of permanent injunction issued on the basis of; or
- (5) is the subject of a similar final action taken on the basis of;

a violation of Rule 10b-5 promulgated by the Securities and Exchange Commission under Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a violation of IC 23-2-1 [*IC 23-2-1 was repealed by P.L.27-2007, SECTION 37, effective July 1, 2008.*]. *(Indiana Gaming Commission; 68 IAC 4-1-5; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1028; readopted filed Dec 1, 2003, 9:45 a.m.: 27 IR 1297)*

**68 IAC 4-1-6 Submission of proxy and information statements**

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-4-21

Affected: IC 4-33-5; IC 4-33-6; IC 4-33-9

Sec. 6. Each publicly traded corporation that is a riverboat licensee or supplier licensee shall, within ten (10) business days after distributing any:

(1) proxy statement subject to Regulation 14A of the Securities and Exchange Commission; or

(2) information statement subject to Regulation 14C of the Securities and Exchange Commission;

to its security holders, submit such proxy statement or information statement to the commission. (*Indiana Gaming Commission; 68 IAC 4-1-6; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1028; readopted filed Dec 1, 2003, 9:45 a.m.: 27 IR 1297*)

**68 IAC 4-1-7 Reporting requirements**

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-4-21

Affected: IC 4-33-5; IC 4-33-6; IC 4-33-9

Sec. 7. (a) A publicly traded corporation that is a riverboat licensee, a riverboat license applicant, or a supplier licensee which files:

(1) Form 10;

(2) Form 10-Q;

(3) Form 10-K;

(4) Form 8-K;

(5) Form 1-A;

(6) Registration Statement S-1;

(7) Registration Statement SB-2;

(8) Registration Statement 10-SB;

(9) Report 10-KSB;

(10) Report 10-QSB;

(11) Schedule 13e-3;

(12) Schedule 14D-9; or

(13) any filing required by Rule 14f-1 promulgated under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); shall, within ten (10) business days of filing the document with the Securities and Exchange Commission, file three (3) copies of such document with the commission.

(b) A publicly traded corporation that is a riverboat licensee or supplier licensee that receives any material document filed with the Securities and Exchange Commission by any other person relating to such publicly traded corporation shall, within ten (10) business days following such receipt, file one (1) copy of such document with the commission.

(c) A publicly traded corporation that is a riverboat licensee or supplier licensee shall file a list of recordholders and beneficial owners of its voting securities with the commission annually.

(d) A publicly traded corporation that is a riverboat or supplier licensee shall report to the commission the election or appointment of any director, executive officer, or any other officer of the licensee, holding company, or intermediary company thereof who is actively and directly engaged in the administration or supervision of the riverboat gambling operation or the supplier licensee.

(e) A publicly traded corporation that is a riverboat licensee or supplier licensee shall advise the commission, in writing, that a key person or substantial owner of the publicly traded corporation has disposed of any of such publicly traded corporation's voting securities by the fifteenth day of the month following the transaction.

(f) A riverboat licensee, supplier licensee, intermediary, or holding company thereof shall file any other document requested by the commission to ensure compliance with the Act or this title within thirty (30) days or such other time established by the commission. (*Indiana Gaming Commission; 68 IAC 4-1-7; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1028; readopted filed Dec 1, 2003, 9:45 a.m.: 27 IR 1297*)

**68 IAC 4-1-8 Required charter provisions**

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-4-21

Affected: IC 4-33-5; IC 4-33-6; IC 4-33-9

Sec. 8. (a) The following provisions, or similar provisions approved by the executive director in accordance with subsection (d), must be included in the articles of incorporation, or similar organization documents, of each publicly traded riverboat licensee or supplier licensee: "The [corporation] [partnership] [limited liability company] shall not issue five percent (5%) or greater of any voting securities or other voting interests to a person except in accordance with the provisions of the Indiana Riverboat Gambling Act (IC 4-33) and the rules promulgated thereunder (68 IAC). 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 one (1) of the following occurs:

(1) The [corporation] [partnership] [limited liability company] shall cease to be subject to the jurisdiction of the Indiana Gaming Commission.

(2) The Indiana Gaming 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 of five percent (5%) or greater therein or thereto shall be transferred in any manner whatsoever except in accordance with the provisions of the Indiana Riverboat Gambling Act (IC 4-33) and rules promulgated thereunder (68 IAC). Any transfer in violation thereof shall be void until one (1) of the following occurs:

(1) The [corporation] [partnership] [limited liability company] shall cease to be subject to the jurisdiction of the Indiana Gaming Commission.

(2) The Indiana Gaming Commission shall, by affirmative action, validate said transfer or waive any defect in said transfer.

If the Indiana Gaming Commission at any time determines that a holder of voting securities or other voting interests of this [corporation] [partnership] [limited liability company] shall be denied the application for transfer, then the issuer of such voting securities or other voting interests may, within thirty (30) days after the denial, purchase such voting securities or other voting interests of such denied applicant at the lesser of:

(1) the market price of the ownership interest; or

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

unless such voting securities or other voting interests are transferred to a suitable person (as determined by the commission) within thirty (30) days after the denial of the application for transfer of ownership.

Until such voting securities or other voting interests are owned by persons found by the commission to be suitable to own them, the following restrictions must be followed:

(1) 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.

(2) 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.

(3) 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 as provided in this paragraph."

(b) A riverboat license applicant must be in compliance with subsection (a) prior to the commission issuing the riverboat owner's license under 68 IAC 2-1.

(c) A supplier licensee must be in compliance with subsection (a) within forty-five (45) days of receiving a permanent supplier's license under 68 IAC 2-2. Each supplier licensee must file one (1) copy of the amended articles of incorporation or similar organization documents within fifty (50) days of receiving a permanent supplier's license.

(d) A riverboat license applicant, riverboat licensee, or supplier licensee must submit similar charter provisions to the executive director at least thirty (30) days prior to the public offering for approval. The executive director shall notify the riverboat license applicant, riverboat licensee, or supplier licensee, in writing, that the charter provisions are acceptable. (*Indiana Gaming Commission; 68 IAC 4-1-8; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1028; readopted filed Dec 1, 2003, 9:45 a.m.: 27 IR 1298*)

**68 IAC 4-1-9 Consequences of violation of rule**

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-4-21

Affected: IC 4-33-5; IC 4-33-6; IC 4-33-9

Sec. 9. If the commission determines that a riverboat licensee, a riverboat license applicant, or a supplier licensee has violated or is in violation of this rule, the commission may initiate an investigation, a disciplinary action, or both, under 68 IAC 13. (*Indiana Gaming Commission; 68 IAC 4-1-9; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1029; readopted filed Dec 1, 2003, 9:45 a.m.: 27 IR 1299*)

**68 IAC 4-1-10 Waiver, alteration, or restriction of requirements**

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-4-21

Affected: IC 4-33-5; IC 4-33-6; IC 4-33-9

Sec. 10. The commission may waive, alter, or restrict any requirement or procedure set forth in this rule if the commission determines that the requirement or procedure is impractical or burdensome and the waiver, alteration, or restriction is in the best interest of the public and the gaming industry and is not outside the technical requirements necessary to serve the purpose of the requirement or procedure. (*Indiana Gaming Commission; 68 IAC 4-1-10; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1029; readopted filed Dec 1, 2003, 9:45 a.m.: 27 IR 1299*)

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