

Alert | Gaming



May 2020

Nevada’s Preliminary Finding of Suitability for New Gaming Market Entrants

For an entity or individual considering an investment in the Nevada gaming market, the Nevada Gaming Control Act (Act) has a process by which the potential investor can commence the licensing investigation and regulatory review in advance of identifying and securing an investment opportunity – the “preliminary finding of suitability” (PFS).

Advantages and Purpose of a PFS

Because the Nevada gaming licensing process can be time-consuming, the Nevada Legislature, with the support of the Nevada Gaming Control Board (Board) and the Nevada Gaming Commission (Commission), amended the Act to allow for an entity or individual to file an application for a PFS.

Historically, an applicant had to have a definitive agreement before it could submit an application to the Board. However, the Act has been amended to allow those who are considering entering the Nevada gaming market to file a PFS application. Once a person applies for a PFS, the Board can commence an investigation in the absence of any transaction. Thus, the PFS allows the gaming regulatory investigative process to commence with the intended goal of allowing the new market participant to be licensed faster once an opportunity has been secured.

The main limitation imposed is that an entity or individual that has been granted a PFS shall not, while possessing the PFS approval, “seek or in any way engage in a corporate acquisition [of a Nevada gaming licensee] opposed by management.”

Standard of Review for PFS

When an entity or individual applies for a PFS, the Board conducts a full investigation of the person to determine whether such person is suitable to hold a non-restricted license. The standard of review and investigation for the PFS is the same as if the person was applying for a non-restricted gaming license.

Process

To illustrate, the PFS approval process would be as follows (assuming suitability of the applicants):

1. A company looking to enter the Nevada gaming market applies for a PFS.
2. The Board investigates the applicants in its ordinary course.
3. The company and its executives (the applicants) are granted a PFS by the Commission.
4. When the company enters into a transaction for which a Nevada gaming license is required, the company and executives submit the applications required to consummate such transaction.
5. The Board investigates the applicants. Because the company and its executives have a PFS, the time for the Board’s investigation of the transaction and the Commission’s consideration of the transaction is substantially reduced.

If a transaction is secured during the course of the PFS investigation, the PFS application can be amended to include the necessary approvals and licenses for such transaction.

The PFS is valid for two years and can be extended for additional periods of two years following an update investigation and administrative approval from the Board Chair.

For an entity looking to enter the Nevada gaming market, the PFS application allows for a means to kickstart the licensing process and will ultimately reduce the time it takes for Commission’s approval of the eventual transaction.

Authors

This GT Alert was prepared by:

- [Mark A. Clayton](#) | +1 702.599.8006 | claytonm@gtlaw.com
- [Erica L. Okerberg](#) | +1 702.599.8073 | okerberge@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.~ Houston. Las Vegas. London.* Los Angeles. Mexico City.+ Miami. Milan.* Minneapolis. Nashville. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.* Warsaw.^ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¢Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2020 Greenberg Traurig, LLP. All rights reserved.*