

*Rule 8.23 Institutional Investors*

(a) "Institutional investor" means:

1. A bank as defined in Section 3(a)(6) of the Federal Securities Exchange Act;
2. An insurance company as defined in Section 2(a)(17) of the Investment Company Act of 1940, as amended;
3. An investment company registered under Section 8 of the Investment Company Act of 1940, as amended;
4. An investment advisor registered under Section 203 of the Investment Advisors Act of 1940, as amended;
5. Collective trust funds as defined in Section 3(c)(11) of the Investment Company Act of 1940, amended;
6. 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 corporation registered with the Commission;
7. A state or federal government pension plan;
8. A group comprised entirely of persons specified in (1) through (7); or
9. Such other persons as the Commission may determine for reasons consistent with the policies expressed in the Mississippi Gaming Control Act. To qualify as an institutional investor, a person other than a state or federal government pension plan must meet the requirements of a "qualified institutional buyer" as defined in Rule 144A of the Federal Securities Act.

(b) An institutional investor that becomes or intends to become subject to Mississippi Code Annotated §75-76-263(3) as a result of its beneficial ownership of voting securities of a corporation licensed or registered with the Commission may apply to the Executive Director for a waiver of the requirements of Mississippi Code Annotated §75-76-263(3) with respect to the beneficial ownership of the voting securities of such corporation if such institutional investor holds the securities for investment purposes only; provided, however, that an institutional investor shall not be eligible to receive or hold a waiver if the institutional investor beneficially owns, directly or indirectly, except as otherwise provided in subsection (c), more than ~~15-25~~ percent of the voting securities and if any of the voting securities were acquired other than through a debt restructuring. Voting securities acquired before a debt restructuring and retained after a debt restructuring or as a result of an exchange, exercise or conversion, after a debt restructuring, of any securities issued to the institutional investor through a debt restructuring, shall be deemed to have been acquired through a debt restructuring. A waiver granted under this section shall be effective only as long as the institutional investor's direct or indirect beneficial ownership interest in such voting securities meets the limitations set forth above, and should the institutional investor's interest exceed such limitations at any time, it shall be subject to Miss. Code Ann. §75-76-263(3), and the institutional investor shall apply within thirty (30) days thereof and without any request by the Executive Director, as otherwise provided in Miss. Code Ann. § 75-76-263(5), for a finding of suitability.

(c) An institutional investor that has been granted a waiver pursuant to subsection (b), may beneficially own more than ~~15-25~~ percent, but not more than ~~19-29~~ percent, of the voting securities of a publicly traded corporation licensed or registered with the Commission, only if such additional ownership results from a stock repurchase program conducted by such publicly traded corporation, and upon the condition that such institutional investor does not purchase or otherwise acquire any

~~additional voting securities of the publicly traded corporation that would result in an increase in the institutional investor's ownership percentage, that:~~

~~1. Such institutional investor does not purchase or otherwise acquire any additional voting securities of the publicly traded corporation, and (2) Such institutional investor reduces its ownership percentage of the publicly traded corporation to 15 percent or less within one year from the date the institutional investor receives constructive notice that it exceeded the 15 percent threshold, based on any public filing by the publicly traded corporation with the Securities and Exchange Commission.~~

(d) An institutional investor shall not be deemed to hold voting securities for investment purposes only unless the voting securities were acquired and are held in the ordinary course of business as an institutional investor and not for the purpose of causing, directly or indirectly, the election of a majority of the members of the board of directors, any change in the corporate charter, bylaws, management, policies or operations of the corporation licensed or registered with the Commission or any of its gaming affiliates, or any other action which the Commission finds to be inconsistent with investment purposes only. The following activities shall not be deemed to be inconsistent with holding voting securities for investment purposes only:

1. 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;
2. Serving as a member of any committee of creditors or security holders formed in connection with a debt restructuring;
3. Nominating any candidate for election or appointment to the board of directors in connection with a debt restructuring;
4. 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;
5. Making financial and other inquiries of management of the type normally made by securities analysts for informational purposes and not to cause a change in its management, policies or operations; and
6. Such other activities as the Commission may determine to be consistent with such investment intent.

(e) A request for a waiver must include:

1. A description of the institutional investor's business and a statement as to why the institutional investor is within the definition of "institutional investor" set forth in subsection (a) above.
2. A certification made under oath and the penalty of perjury, that the voting securities were acquired and are held for investment purposes only as defined herein and a statement by the signatory explaining the basis of his authority to sign the certification and to bind the institutional investor to its terms. The certification shall also provide that the applicant agrees to be bound by and comply with the Mississippi Gaming Control Act and the regulations adopted thereunder, to be subject to the jurisdiction of the courts of Mississippi, and to consent to Mississippi as the choice of forum in the event any dispute, question, or controversy arises regarding the application or any waiver granted under this section.
3. A description of all actions, if any, taken or expected to be taken by the institutional investor relating to the activities described in subsection (d).
4. 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

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direct control over the institutional investor's holdings of voting securities of the corporation licensed or registered with the Commission.

5. 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 corporation licensed or registered with the Commission.

6. The name and address of each person that beneficially owns more than 5 percent of the institutional investor's voting securities or other equivalent, together with the percentage ownership of each such person.

7. A list of the institutional investor's affiliates.

8. A list of all securities of the corporation licensed or registered with the Commission that are or were 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.

9. A list of all regulatory agencies with which the institutional investor or any affiliate that beneficially owns voting securities of the corporation licensed or registered with the Commission files periodic reports, and the name, address, and telephone number of the person, if known, to contact at each agency regarding the institutional investor.

10. A disclosure of all criminal or regulatory sanctions imposed during the preceding 10 years and of any administrative or court proceedings filed by any regulatory agency during the preceding 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 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.

11. A copy of the institutional investor's most recent Schedule 13D or 13G and any amendments thereto filed with the United States Securities and Exchange Commission concerning any voting securities of the corporation registered with the Commission.

12. A copy of any filing made under 15 U.S.C. 18a with respect to the acquisition or proposed acquisition of voting securities of the corporation registered with the Commission.

13. Any additional information the Executive Director or the Commission may request.

(f) The Commission shall consider all relevant information in determining whether to grant a waiver requested pursuant to subsection (b), including but not limited to:

1. Whether the waiver is consistent with the policy set forth in Mississippi Code Annotated §§ 75-76-3 and 245;

2. The factors set forth within ~~Regulation H-H, Section 413 Miss. Admin. Code Pt. II, R. 8.4~~; and

3. Any views expressed to the Commission by the corporation or any licensed affiliate thereof.

(g) An institutional investor that has been granted a waiver of a finding of suitability and that subsequently intends not to hold its voting securities of the corporation for investment purposes only, or that intends to take any action inconsistent with its prior intent shall, within 2 business days after its decision, deliver notice to the Executive Director in writing of the change in its investment intent. The Executive Director may then take such action under the provisions of Miss. Code Ann. § 75-76-263(3) as he deems appropriate.

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(h) A waiver of the requirements of Miss. Code Ann. § 75-76-263(3) that has been granted pursuant to this section and Miss. Code Ann. § 75-76-201(2) shall not be construed as a waiver of or exemption from the prior approval requirements of ~~Regulation II. H. Section 4213~~ Miss. Admin. Code Pt. II, R. 8.12. An institutional investor that intends to apply for a waiver of the requirements of Miss. Code Ann. § 75-76-263(3) pursuant to this section must also simultaneously apply to the Commission for an exemption from the prior approval requirements of ~~Regulation II. H. Section 4213~~ Miss. Admin. Code Pt. II, R. 8.12 if the proposed acquisition would give the institutional investor, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation.

(i) If the Executive Director finds that an institutional investor has failed to comply with the provisions of this section, or should be subject to a finding of suitability to protect the public interest, the Executive Director may, in accordance with Miss. Code Ann. § 75-76-263(3), require the institutional investor to apply for a finding of suitability. The institutional investor affected by the action taken by the Executive Director may request a hearing on the merits of such action. The hearing shall be included on the agenda of the next regularly scheduled Commission meeting occurring more than 10 working days after the request for hearing. Upon good cause shown by the institutional investor, the Executive

Director may waive the 10-day requirement and place such hearing on an earlier Commission agenda. The Commission, for any cause deemed reasonable, may by a majority vote, sustain, modify or reverse the decision of the Executive Director, or remand the matter to the Executive Director for such further investigation and reconsideration as the Commission may order. While the application for a finding of suitability or Commission review of the Executive Director's action requiring the filing of such application is pending, the institutional investor shall not, directly or indirectly, cause or attempt to cause any management, policy, or operating changes in the corporation or any gaming affiliate and shall not purchase or otherwise acquire any additional voting securities of the corporation.

(j) Any corporation licensed or registered with the Commission or any registered or licensed subsidiary thereof shall immediately notify the Executive Director of any information about, fact concerning or actions of, an institutional investor holding any of its voting securities, that may materially affect the institutional investor's eligibility to hold a waiver under this section. (Adopted: 11/20/2002.)

Source: *Miss. Code Ann. § 75-76-263*