

RULE 16
PRIVATE INVESTMENT COMPANIES

RECEIVED
JAN 16 2019
BUREAU OF
LEGISLATIVE RESEARCH

- 16.010 Definitions.**
- 16.020 Powers of Commission.**
- 16.030 Burden of proof.**
- 16.040 Exemptions from certain requirements.**
- 16.050 Private investment companies owning or controlling applicant or licensee; duties and power of Commission and Commission to investigate.**
- 16.060 Individual licensing of key executives and employees; removal from position if found unsuitable or if license is denied or revoked; suspension of suitability by Commission.**
- 16.070 Suitability of persons acquiring beneficial or record ownership of any economic security or debt security in private investment company; report of acquisition; application; penalty.**
- 16.080 Remuneration, contracts and employment prohibited for certain unsuitable or unlicensed persons.**
- 16.090 Powers of Commission.**
- 16.100 Required reports and statements; income tax return; documents filed with the Commission.**
- 16.200 Approvals required for dividends and distributions.**
- 16.210 Administrative approval required for certain transfers of economic securities in private investment companies.**
- 16.220 Reporting required for certain transfers and changes affecting economic securities in private investment companies.**
- 16.230 Commission approval required for transfers by the beneficial owners of voting securities of private investment companies.**
- 16.240 Commission approval required to issue voting securities.**
- 16.300 Penalties for noncompliance with laws and Rules.**
- 16.310 Fraudulent and deceptive practices prohibited.**
- 16.400 Exemptions.**

16.010 Definitions. As used in Rule 16:

1. "Private investment company" means any privately held legal entity except a natural person which holds or applies for a license, or owns, directly or indirectly, a beneficial interest in any corporation, firm, partnership, limited partnership, limited-liability company, trust or other form of business organization which holds or applies for a license, and which has the following characteristics:

(a) 100% of the economic securities of the company are held, directly or indirectly, by (i) one or more private investment funds that are managed by an investment manager or managers, which investment manager or managers collectively have more than one billion dollars in assets under management or (ii) one or more institutional investors as defined in these Rules that each has assets of more than one billion dollars;

(b) 100% of the voting securities of the company are held by one or more legal entities that is controlled by one or more controlling persons or key executives of the investment managers or institutional investors; and

(c) The company is not a “publicly traded corporation” or has received Commission approval to convert its registration from a publicly traded corporation to a private investment company.

The Commission may waive or modify one or more of the characteristics above for reasons consistent with these Rules.

2. “Affiliate” or “affiliated company” means a subsidiary company, holding company, intermediate company or any other form of business organization that controls, is controlled by or is under common control with a private investment company.

3. “Control,” when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of management and policies of a person, and when used as a verb means to possess, directly or indirectly, such power.

4. “Controlling person” means, with respect to a private investment company, each person who controls the private investment company.

5. “Economic security” means a non-voting interest which entitles the holder to the economic benefits, without the right to control or vote, of a corporation, firm, partnership, limited partnership, limited-liability company, trust or other form of business organization.

6. “Holding company” defined.

(a) “Holding company” means any corporation, firm, partnership, limited partnership, limited-liability company, trust or other form of business organization not a natural person which, directly or indirectly:

(1) Owns;

(2) Has the power or right to control; or

(3) Holds with power to vote, any part of the limited partnership interests, interests in a limited-liability company or outstanding voting securities of a private investment company

(b) For purposes of this section, in addition to any other reasonable meaning of the words used, a holding company “indirectly” has, holds or owns any power, right or security mentioned in subsection (a) if it does so through any interest in a subsidiary or successive subsidiaries, however many such subsidiaries may intervene between the holding company and the private investment company.

7. “Intermediary company” means any corporation, firm, partnership, limited partnership, limited-liability company, trust or other form of business organization other than a natural person which:

(a) Is a holding company with respect to private investment company; and

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

8. “Key executive” means any person performing a principal business or policy making function for a business organization, as determined by the Commission on a case by case basis.

9. “Person” means any natural person, corporation, firm, partnership, limited partnership, limited-liability company, trust or other form of business organization, whether or not a legal entity.

10. "Private investment fund" means a business entity exempted from registration under 15 USC § 80a-3(c).

11. "Subsidiary" means: any corporation, firm, partnership, limited partnership, limited-liability company, trust or other form of business organization not a natural person, any interest in which is:

- (a) Owned;
- (b) Subject to a power or right of control; or
- (c) Held with power to vote, by a holding company or intermediary company.

12. "Voting security" means an interest which entitles the holder to vote for the election of a member or members of the Commission of directors or Commission of trustees of a corporation or a comparable person or persons in the case of a partnership, limited-liability company, or other form of business organization.

16.020 Powers of Commission. The Commission shall have full and absolute power and authority, to the extent permitted by law, to recommend the granting, denial, limitation, conditioning, restriction, revocation, or delay of any license, registration, approval, or finding of suitability required or permitted by this Rule, or any application therefor, or to recommend other disciplinary action for any cause deemed reasonable by the Commission. The Commission shall have full and absolute power and authority, to the extent permitted by law, to grant, deny, condition, restrict, revoke, suspend, or delay any license, registration, approval, or finding of suitability required or permitted under this Rule, or any application therefor, or to take other disciplinary action for any cause deemed reasonable by the Commission.

16.030 Burden of proof. The burden of proof with respect to the granting of any approval required or permitted by Rule 16 is at all times upon the person applying for such approval. Each applicant shall satisfy the Commission, as the case may be, that the granting of an approval is consistent with the state policies regarding gaming set forth in these Rules.

16.040 Exemptions from certain requirements. Except as otherwise set forth herein, private investment companies are exempt from the requirements of these Rules. However, the legal entities that own the voting securities of the private investment company shall be registered and found suitable by the Commission as holding companies and shall be subject to Rules 7, 13.585.7-1 to 13.585.7-7, 14.170 to 14.190, and 15.170 to 15.190.

16.050 Private investment companies owning or controlling applicant or licensee; Duties and power of Commission to investigate.

1. If a corporation, partnership, limited partnership, limited-liability company or other business organization applying for or holding a state Casino license is, or becomes owned or controlled, in whole or in part, by a private investment company, or if a private investment company applies for or holds a state Casino license, the private investment company shall:

(a) Maintain a ledger in its principal office or the principal office of its subsidiary which is licensed to conduct gaming in this state, which must:

(1) Reflect the ownership of record of each holder of economic securities and voting securities in the private investment company; and

(2) Be available for inspection by the Commission and their authorized agents at all reasonable times without notice.

(b) Subject to subsection (d) below, register with the Commission and provide the following information to the Commission:

(1) The organization, financial structure and nature of the business of the private investment company, including the names of all key executives and employees actively and directly engaged in the administration or supervision of the activities of the Casino licensee, and the names, addresses and percentage ownership interest held of record by each economic security holder and each voting security holder;

(2) The rights and privileges accorded the holders of different classes of its authorized economic securities and voting securities;

(3) The terms on which its economic securities and voting securities are to be, and during the preceding three years have been, offered by the private investment company to the public or otherwise initially issued by it;

(4) The terms and conditions of all its outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security device, directly relating to the gaming activities of the Casino licensee;

(5) The extent of the economic securities and voting securities of record in the private investment company held by all key executives and any employees, and any payment received by any such persons from the private investment company for each of its three preceding fiscal years for any reason whatever;

(6) Remuneration exceeding [\$100,000] per annum to persons other than key executives and employees who are actively and directly engaged in the administration or supervision of the gaming activities of the Casino licensee;

(7) Bonus and profit-sharing arrangements of the private investment company directly or indirectly relating to the gaming activities of the Casino licensee;

(8) Management and service contracts of the private investment company directly or indirectly relating to the gaming activities of the Casino licensee;

(9) Options existing or from time to time created in respect of its economic securities and voting securities;

(10) Balance sheets, certified by independent public accountants, for at least the three preceding fiscal years, or if the private investment company is less than three years old, balance sheets from the time of its formation;

(11) Profit and loss statements, certified by independent certified public accountants, for at least the three preceding fiscal years, or, if the private investment company is less than three years old, profit and loss statements from the time of its formation;

(12) A description of the private investment company's affiliated companies and intermediary companies, and the various Casino licenses and approvals obtained by those entities; and

(13) Any further information within the knowledge or control of the private investment company which either the Commission may deem necessary or appropriate for the protection of this state, or licensed gambling, or both. The Commission may make such investigation of the private investment company or any of its key executives, interest holders or other persons associated therewith as it deems necessary.

(c) Upon request of the Commission, furnish to the Commission a non-interference letter, in a form acceptable to the Commission, which provides that the investment managers and institutional investors described in these Rules will not take any action to influence the controlling persons or key executives described in these Rules, as applicable, in the exercise of their management or

voting rights in respect of the gaming activities of the private investment company or any of its affiliated, intermediary or subsidiary companies, and that such controlling persons or key executives, as applicable, are authorized to exercise such rights independently of, and without consultation with, the investment managers and institutional investors.

(d) A private investment company registered with the Commission as a publicly traded corporation will be considered registered for purposes of this section and will not be required to re-register under subsection (b) above following the submission to the Commission and an approval by the Commission of an application to convert the registration to that of a private investment company.

2. If the private investment company is a foreign legal entity, it must also qualify to do business in this state.

16.060 Individual licensing of key executives and employees; removal from position if found unsuitable or if license is denied or revoked; suspension of suitability by Commission.

1. Each key executive and employee of a private investment company who the Commission determines is or is to become actively and directly engaged in the administration or supervision of, or have any other significant involvement with, the gaming activities of the private investment company or any of its affiliated, intermediary or subsidiary companies must be found suitable therefor and may be required to be licensed by the Commission. Any person who has a relationship to a private investment company of a type described in these Rules with respect to publicly traded corporations shall file an application for finding of suitability and may be required to be licensed.

2. If any key executive or employee of a private investment company required to be licensed or found suitable pursuant to subsection 1 fails to apply for a Casino license or finding of suitability within 30 days after being requested to do so by the Commission, or is denied a license or is not found suitable by the Commission, or if his or her license or the finding of his or her suitability is revoked after appropriate findings by the Commission, the private investment company shall immediately remove that key executive or employee from any office or position wherein the key executive or employee is actively and directly engaged in the administration or supervision of, or has any other significant involvement with, the gaming activities of the private investment company or any of its affiliated or intermediary companies. If the Commission suspends the finding of suitability of any key executive or employee, the private investment company shall, immediately and for the duration of the suspension, suspend that key executive or employee from performance of any duties wherein the key executive or employee is actively and directly engaged in administration or supervision of, or has any other significant involvement with, the gaming activities of the private investment company or any of its affiliated or intermediary companies.

16.070 Suitability of persons acquiring beneficial or record ownership of any economic security or debt security in private investment company; report of acquisition; application; penalty.

1. Each person who acquires beneficial ownership or record ownership of any direct or indirect interest in any economic security in a private investment company which is registered with the Commission may be required to be found suitable in the discretion of the Commission.

2. Each person who acquires beneficial or record ownership of any direct or indirect interest in any debt security in a private investment company which is registered with the Commission may be required to be found suitable in the discretion of the Commission.

3. Any person required by the Commission or by this section to be found suitable shall:

(a) Apply for a finding of suitability within 30 days after the Commission requests that the person do so; and

(b) Together with the application, deposit with the Commission a sum of money which, in the opinion of the Commission, will be adequate to pay the anticipated costs and charges incurred in the investigation and processing of the application, and deposit such additional sums as are required by the Commission to pay final costs and charges.

4. Any person required by the Commission or this section to be found suitable who is found unsuitable by the Commission shall not hold directly or indirectly the beneficial or record ownership of any economic security or debt security.

5. As used in this section, "debt security" means any instrument generally recognized as a corporate security representing money owed and reflected as debt on the financial statement of a legal entity.

16.080 Remuneration, contracts and employment prohibited for certain unsuitable or unlicensed persons. If any person who is required, pursuant to this Rule, to be licensed or found suitable because of the person's connection with a corporation, partnership, limited partnership, limited-liability company or other business organization holding a license, or a holding company or intermediary company, including a private investment company, fails to apply for a license or a finding of suitability after being requested to do so by the Commission or is denied a license or a finding of suitability, or if the person's license or finding of suitability is revoked, the corporation, partnership, limited partnership, limited-liability company, business organization, holding company, intermediary company or any person who directly or indirectly controls, is controlled by or is under common control with the corporation, partnership, limited partnership, limited-liability company, business organization, holding company or intermediary company shall not, and any licensee or an affiliate of the licensee shall not, after receipt of written notice from the Commission:

1. Pay the person any remuneration for any service relating to the activities of a licensee, except for amounts due for services rendered before the date of receipt of notice of such action by the Commission. Any contract or agreement for personal services or the conduct of any activity at a licensed gaming establishment between a former employee whose employment was terminated because of failure to apply for a license or a finding of suitability, denial of a license or finding of suitability, or revocation of a license or a finding of suitability, or any business enterprise under the control of that employee and the licensee, holding or intermediary company or private investment company is subject to termination. Every such agreement shall be deemed to include a provision for its termination without liability on the part of the licensee upon a finding by the Commission that the business or any person associated therewith is unsuitable to be associated with a gaming enterprise. Any failure to include expressly such a condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement;

2. Enter into any contract or agreement with the person or with a business organization that the licensee knows or under the circumstances reasonably should know is under the person's control which involves the operations of a licensee, without the prior approval of the Commission; or

3. Employ the person in any position involving the activities of a licensee without prior approval of the Commission.

16.090 Powers of Commission. The Commission may determine, upon recommendation of the Commission, at the time of initial application by a private investment company, or at any time thereafter, that the public interest and the purposes of the Act require that any person who has a material relationship to, or material involvement with, a private investment company, affiliated company or a licensee that is subject to the jurisdiction of the Act should apply for a finding of suitability or licensing. A person may be deemed to have a material relationship to, or material involvement with, a private investment company, affiliated company or licensee if the person is a controlling person or key executive of the private investment company, affiliated company or licensee, or if the person, as an agent, consultant, advisor or otherwise, exercises significant influence upon the management or affairs of the private investment company, affiliated company or licensee. The foregoing powers of the Commission are not limited to persons having a formal and direct involvement or relationship with a private investment company, affiliated company or licensee, nor to persons who are beneficial owners of any stated percentage of the outstanding economic securities of a private investment company, affiliated company or licensee.

16.100 Required reports and statements; income tax return; documents filed with Commission.

1. After a private investment company has registered pursuant to this chapter, and while the private investment company or any of its affiliated, intermediary or subsidiary companies holds a Casino license, the private investment company shall:

(a) Report promptly to the Commission, in writing, any change in its key executives or employees who are actively and directly engaged in the administration or supervision of the gaming activities of the private investment company or any of its affiliated, intermediary or subsidiary companies;

(b) Within 45 days after the close of the quarter to which they relate, furnish to the Commission a quarterly profit and loss statement and a balance sheet of the private investment company;

(c) Each year furnish to the Commission a profit and loss statement and a balance sheet of the private investment company as of the end of the year, certified by independent certified public accountants, and, upon request of the Commission therefor, a copy of the private investment company's federal income tax return within 30 days after the return is filed with the Internal Revenue Service. All profit and loss statements and balance sheets must be submitted within 120 days after the close of the fiscal year to which they relate;

(d) Report promptly to the Commission, in writing, any changes that would result in the private investment company no longer having one or more of the characteristics of a private investment company as described in these Rules, unless such characteristic has been waived or modified by the Commission;

(e) Establish and maintain a gaming compliance program for the purpose of, at a minimum, performing due diligence, determining the suitability of relationships with other persons, and to review and ensure compliance by the private investment company, its subsidiaries and any affiliated companies, with the Act, as amended, the Rules, as amended, and the laws and regulations of any other jurisdictions in which the private investment company, its subsidiaries and any affiliated entities operate. The gaming compliance program, any amendments thereto, and the members of the compliance committee, at least one such member who shall be independent and knowledgeable of the Act and the Rules, shall be administratively reviewed and approved by the Commission or the Commission's designee. The private investment company shall amend the gaming compliance program, or any element thereof, and perform such duties as may be assigned by the Commission or the Commission's designee, related to a review of activities relevant to the continuing qualification of the private investment company, its subsidiaries and any affiliated companies under the provisions of the Act and the Rules;

(f) Fund and maintain with the Commission a revolving fund in such amount as the Commission shall determine for the purpose of funding investigative reviews by the Commission for compliance with the Act and the Rules and any conditions imposed upon the private investment company by the Commission. Without limiting the foregoing, the Commission shall have the right, without notice, to draw upon the funds of said account for the payment of costs and expenses incurred by the Commission and its staff in the surveillance, monitoring, and investigative review of the private investment company and its subsidiaries, and their affiliated companies; and

2. In addition to the requirements set forth in subsection (1), upon request of the Commission, the private investment company shall provide any other documents, papers, reports, or other information deemed relevant by the Commission.

16.200 Approvals required for dividends and distributions. Without the prior approval of the Commission, neither the private investment company, nor any of its affiliated, intermediary or subsidiary companies who have been found suitable by the Commission pursuant to Rule 16.070, shall declare any dividends or distributions on any class of securities to any person who has not been licensed or found suitable by the Commission; provided, however, that any of the foregoing entities may, with the prior administrative approval of the Commission or the Commission's designee, pay dividends and make distributions to their direct or indirect equity owners who have not been licensed or found suitable by the Commission for the purpose of defraying tax liabilities and tax-related expenses of such direct or indirect equity owners that arise directly out of such direct or indirect ownership interest, and further provided that any of the foregoing entities may, upon five days prior written notice to the Commission, make distributions to their direct or indirect equity owners who have not been licensed or found suitable by the Commission for the purpose of the payment of debt service by such direct or indirect equity owners for debt incurred in connection with the acquisition of any licensed subsidiary or the assets comprising a licensed establishment.

16.210 Administrative approval required for certain transfers of economic securities in private investment companies. Each person who acquires beneficial ownership or record ownership of any direct interest in any economic security in a private investment company which is registered with the Commission shall not, without the prior administrative approval of the Commission, sell, assign, transfer, pledge or otherwise dispose of any economic security of such private investment company, or any other security held by it that is convertible or exchangeable into an economic security of the private investment company.

16.220 Reporting required for certain transfers and changes affecting economic securities in private investment companies. A private investment fund and any of its affiliates and subsidiaries who acquire beneficial ownership or record ownership of any indirect interest in any economic security in a private investment company which is registered with the Commission, shall report quarterly to the Commission, in writing: (i) the sale, assignment, transfer, pledge or other disposition of any interest in the private investment fund, affiliate or subsidiary; and (ii) the addition of any new members, partners, shareholders, trustees or beneficiaries in the private investment fund, affiliate or subsidiary, excluding persons that are holders of publicly traded securities issued by those entities. The Commission may require the private investment company to provide such additional information regarding any of the aforesaid transactions as it deems necessary.

16.230 Commission approval required for transfers by the beneficial owners of voting securities of private investment companies. Each person who acquires beneficial ownership or record ownership of any direct or indirect interest in any voting security in a private investment company which is registered with the Commission, and who has been found suitable by the Commission shall not, without the prior approval of the Commission, sell, assign, transfer, pledge or otherwise dispose of any voting security of such private investment company, or any other security held by it that is convertible or exchangeable into a voting security of the private investment company.

16.240 Commission approval required to issue voting securities. A private investment company which is registered with the Commission shall not issue voting securities, or any other security that is convertible or exchangeable into a voting security, without the prior approval of the Commission.

16.300 Penalties for noncompliance with laws and Rules. If any corporation, partnership, limited partnership, limited-liability company or other business organization holding a license is owned or controlled by a private investment company subject to the provisions of this chapter, or that private investment company, does not comply with the laws of this state and the Rules of the Commission, the Commission may in its discretion do any one, all or a combination of the following:

1. Revoke, limit, condition or suspend the license of the licensee; or
2. Fine the persons involved, the licensee or the private investment company in accordance with the laws of this state and the Rules of the Commission.

16.310 Fraudulent and deceptive practices prohibited. It is grounds for disciplinary action if any person, in connection with the purchase or sale of any security issued by a private investment company or an affiliated company or in connection with any document required to be filed pursuant to these Rules or the Amendment:

1. Employs any device, scheme or artifice to defraud;
2. Makes any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;
3. Engages in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or

4. Causes any document, correspondence, filing or statement containing materially untrue, incorrect or misleading information to be made or filed with the Commission, regardless of whether said information has been made or filed with another regulatory agency.

16.400 Exemptions.

1. The Commission may, either generally or specifically, exempt a person, a security, a transaction, or any portion thereof, from the application of these Rules or any portion thereof if the Commission determines that such exemption is consistent with the purpose of the Amendment.

End – Rule 16