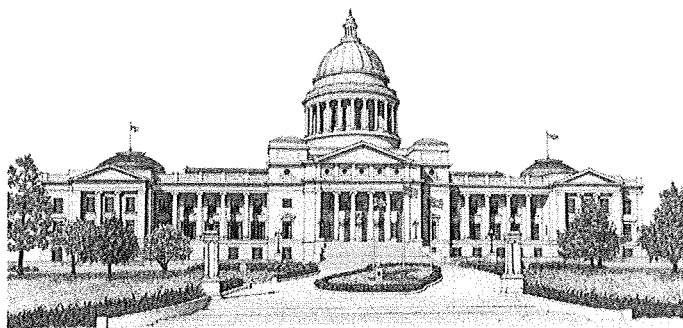


# ARKANSAS REGISTER

## Transmittal Sheet

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**For Office**

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Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas Racing Commission

Department Department of Finance and Administration

Contact Byron Freeland (attorney) E-mail bfreeland@mwlaw.com Phone 501-688-8810

Statutory Authority for Promulgating Rules Amendment 100 to Arkansas Constitution

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Byron Freeland

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Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Byron Freeland  
Signature

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Title

03-01-19

Date

**RULE 15**  
**LIMITED-LIABILITY COMPANY LICENSEES**

- 15.010 Definitions.**
- 15.030 Powers of Commission.**
- 15.040 Burden of proof.**
- 15.060 Prohibition with respect to ownership of limited-liability company licensees.**
- 15.065 Registration of certain members of limited-liability companies.**
- 15.070 Institutional investor.**
- 15.110 Required provisions in articles of organization.**
- 15.120 Public offerings by limited-liability company licensees and holding companies.**
- 15.130 Assignment of interest in a security.**
- 15.140 Procedure for obtaining approval for transfer of interests.**
- 15.150 Persons who may be determined to be unsuitable.**
- 15.160 Limited-liability company non-compliance.**
- 15.170 Approval by Commission required for all issues or transfers by a holding company of its securities.**
- 15.180 Commission approval required for dispositions of outstanding securities issued by holding companies.**
- 15.190 Licensing of managers and members of limited-liability company holding companies.**
- 15.200 Certain payees required to be found suitable, licensed, or approved.**
- 15.210 Delayed licensing for members.**
- 15.220 Eligibility for delayed licensing.**
- 15.225 Application for delayed licensing by individual members.**
- 15.230 Procedure for consideration of application for delayed licensing.**
- 15.240 Information to be provided by applicant for delayed licensing.**
- 15.250 Effect of the Commission's ruling on a limited-liability company's application for delayed licensing.**
- 15.260 Standards.**
- 15.270 Post-approval monitoring after approval of delayed licensing.**
- 15.280 Powers of the Commission after delayed licensing approval.**
- 15.290 Non-transferability of delayed licensing approval.**
- 15.300 Exclusion of public limited-liability companies.**
- 15.310 Waiver of requirement of Rule.**

**15.010 Definitions.** As used in Rule 15:

1. "Articles of organization" means the articles of organization filed with the secretary of state for the purpose of forming a limited-liability company pursuant to Title 4, Chapter 32 of the Arkansas Code Annotated.

2. "Capital account" as reflected on the books of the limited-liability company shall mean the member's initial and any subsequent contributions to the limited-liability company; as increased by the member's pro rata share of net income of the limited-liability company; and decreased by the member's pro rata share of net losses incurred by the limited-liability company, as well as any draws or distributions to a member of any kind or nature.

3. Unless otherwise specified, “Commission” means the Arkansas Racing Commission or the Commission’s designee.

4. “Contribution” means anything of value which a person contributes to the limited-liability company as a prerequisite for or in connection with membership, including cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services.

5. “Control,” including the term “controlling,” “controlled by” and “under common control with,” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

6. A “controlled affiliate” of a specified person is another person which, directly or indirectly, is controlled by the person specified.

7. A “controlling affiliate” of a specified person is another person which, directly or indirectly, controls the person specified.

8. “Delayed licensing” means the approval granted by the Commission to a member of a limited-liability company licensee, enabling the member to receive a share or percentage of revenues derived from the conduct of gaming prior to the member being licensed.

9. “Holding company” means, in addition to any corporation, firm, partnership, limited partnership, limited-liability company, trust or other form of business organization not a natural person which, directly or indirectly: (a) owns; (b) has the power or right to control; (c) holds with power to vote any part of the limited partnership interests, interests in a limited-liability company or outstanding voting securities of a corporation which holds or applies for a license, a limited-liability company that owns or has the power or right to control all or any part of the outstanding securities of a limited-liability company that holds or applies for a state Casino license.

10. “Interest in a limited-liability company” means a member’s share of the profits and losses of a limited-liability company and the right to receive distributions of the company’s assets. The definition provided within this subsection is not intended to be a definition of “Interest” for use in this or any Rule or statute.

11. “Limited-liability company” means a limited-liability company organized and existing pursuant to the terms of Title 4, Chapter 32 of the Arkansas Code Annotated.

12. “Manager” means a person elected by the members of a limited-liability company to manage the company pursuant to Title 4, Chapter 32.

13. “Member” means a person who owns an interest in a limited-liability company.

14. “Member’s interest” means a member’s share of the profits and losses of a limited-liability company and the right to receive distributions of the limited-liability company’s assets. The definition provided within this subsection is not intended to be a definition of “Interest” for use in this or any Rule or statute.

15. “Operating agreement” means any valid written agreement of the members as to the affairs of a limited-liability company and the conduct of its business.

16. “Own,” “hold” and “have” mean the possession of a record or beneficial interest in a limited-liability company.

17. “Sale” or “sell” includes every contract of sale or, contract to sell, or disposition of, a security or interest in a security whether or not for value. “Sale” or “sell” includes any exchange of an interest or securities and any material change in the rights, preferences, privileges or restrictions of or on outstanding interest or securities.

18. The term “security” means any stock; membership in an incorporated association; partnership interest in any limited or general partnership; interest in any limited-liability company; bond; debenture or other evidence of indebtedness; investment contract; voting trust certificate; certificate of deposit for a security; or, in general, any interest or instrument commonly known as a “security”; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing. All of the foregoing are securities whether or not evidence of indebtedness reported under these Rules is a security.

**15.030 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 these Rule, or any application therefor, or to take other disciplinary action for any cause deemed reasonable by the Commission.

**15.040 Burden of proof.** The burden of proof with respect to the granting of any approval required or permitted by these Rules 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.

**15.060 Ownership of limited-liability company licensees.** Except as otherwise provided by law, no person shall acquire any interest in or equity security issued by a limited-liability company licensee or a holding company, become a controlling affiliate of a limited-liability company licensee or a holding company, become a holding company of a limited-liability licensee or of a holding company without first obtaining the prior approval of the Commission in accordance with these Rules.

**15.065 Registration of certain members of limited-liability companies.**

1. All members with a 5 percent or less ownership interest in a limited-liability company licensee must register in that capacity with the Commission and affirmatively state in writing that they submit to the Commission’s jurisdiction. Such registration must be made on forms prescribed by the Commission. A member who is required to be registered by this section shall

apply for registration before the member obtains an ownership interest of 5 percent or less in a limited-liability company licensee.

2. If the Commission finds a member unsuitable, denies an application of the member, or revokes an approval of the member, the member and the limited-liability company shall comply with the following:

- a) If at any time the Commission finds that a member is unsuitable to hold an interest in a limited-liability company, the Commission shall immediately notify the limited-liability company of that fact. The limited-liability company shall, within 10 days after it receives the notice from the Commission, return to the member, in cash, the amount of the member's capital account as reflected on the books of the company.
- b) Except as otherwise provided in subsection 2(a), beginning on the date when the Commission serves notice of a determination of unsuitability pursuant to subsection 2(a) upon the limited-liability company, it is unlawful for the unsuitable member:
  - i. To receive any share of the distribution of profits of the limited-liability company or any payments upon dissolution of the company;
  - ii. To exercise any voting right conferred by the member's interest in the limited-liability company;
  - iii. To participate in the management of the limited-liability company; or
  - iv. To receive any remuneration in any form from the limited-liability company, for services rendered or otherwise.

3. An application for registration with the Commission shall:

- (a) Include a completed application for registration form as prescribed by the Commission;
  - (b) Include fully executed waivers and authorizations as determined necessary by the Commission to investigate the registrant;
  - (c) Include an affirmative statement that the registrant submits to the jurisdiction of the Commission;
  - (d) Include an affirmative statement that the registrant has no intent to exercise control over the licensee other than (i) to vote the registrant's shares in the ordinary course; and (ii) if applicable, to take action in another licensed capacity under Commission Rules that are not prohibited by any Commission Rule;
  - (e) Include the fingerprints of the registrant for purposes of investigating the registrant's criminal history. Such fingerprints shall be provided in a form and manner acceptable to the Commission. The Commission, in the Commission's sole and absolute discretion, may waive this requirement upon a written request which specifically sets out the reasons for the request for waiver;
  - (f) Be accompanied by a fee to cover registration investigation costs as follows:
    - (1) For registrations related to 2 or fewer restricted licenses, an investigative fee in the amount of [\$550.00]; and
    - (2) For all other registrations, an investigative fee in the amount of [\$2,500.00].
- ☐ This fee does not include the application fee or investigation costs should the Commission require the registrant to apply for licensure; and
- (g) Include such other information as the Commission may require.

4. The Commission may require a member who is required to be registered by this section to apply for licensure at any time in the Commission's discretion by sending notice through the United States Postal Service to the registrant at the address on the registrant's registration on file

with the Commission and to the limited-liability company at the address on file with the Commission. A member shall apply for licensure as required by the Commission within 40 days of the member's receipt of notice. The notice shall be deemed to have been received by the member 5 days after such notice is deposited with the United States Postal Service with the postage thereon prepaid.

5. Upon receipt of a completed application for registration with the Commission, the application shall be placed on an agenda for consideration by the Commission not later than the first regular monthly Commission agenda following the expiration of 120 days after the Commission receives the completed application for registration with the Commission.

(a) At the meeting in which the Commission considers the application, it shall register the person with the Commission, decline to register the person with the Commission, or refer the application back to staff. At the meeting in which the Commission considers the application, it may also recommend the Commission require the person required to be registered by this section to apply for licensure. If the Commission declines to register a person pursuant to this subsection, such action in so declining to register a person with the Commission shall not be considered a denial under the act.

(b) A person who has the person's application for registration with the Commission declined or referred back to staff may file an application for licensure even if not required to do so by the Commission.

6. If a member of a limited-liability company licensee is a holding company and is required to register with the Commission under this section, the member is not also required to register with the Commission as a subsidiary unless the Commission requires the member to apply for licensure.

7. In enacting this Rule, the Commission finds that waiver is appropriate to the extent required by this section. In making this waiver, the Commission finds such waiver is consistent with the state policy because such waiver is for purposes including but not limited to fostering the growth of the gaming industry which is vitally important to the economy of the State and the general welfare of its inhabitants and broadening the opportunity for investment in gaming. The Commission further finds such waiver does not diminish the Commission's roles in strictly regulating gaming and effectively controlling the conduct of gaming by business organizations because the Commission still require, at a minimum, registration with the Commission of all persons involved with gaming and may call such persons subject to registration with the Commission forward for licensure, registration with the Commission, or findings of suitability.

8. Upon the Commission requiring a member who is required to be registered by this section to apply for licensure, the member does not have any right to the granting of the application. Any license hereunder is a revocable privilege, and no holder acquires any vested right therein or thereunder.

#### **15.070 Institutional investor.**

1. An institutional investor that intends to become subject to Rules 15.060 and 15.190 as a result of its ownership of an interest in or equity security issued by a limited liability company licensee or a holding company, may apply to the Commission for a waiver of the requirements of Rules 13.585.7-4, 13.585.7-5, 15.060 and 15.190 with respect to the ownership of the interest in or equity securities issued by the limited liability company licensee or a holding company if such

institutional investor intends to and does hold the interest or equity securities for investment purposes only. An institutional investor shall not be eligible to receive or hold a waiver if the institutional investor will own, directly or indirectly, more than a 15 percent interest in or of the equity securities issued by the limited liability company licensee or a holding company on a fully diluted basis where any such interest or securities are to be acquired other than through a debt restructuring. Limited liability company interests or securities acquired before a debt restructuring and retained after a debt restructuring or as a result of an exchange or conversion, after a debt restructuring, of any securities issued to an 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 ownership interest in or of the equity securities issued by a limited liability company meets the limitations set forth above.

2. An institutional investor shall not be deemed to hold an interest in or equity security issued by a limited liability company licensee or a holding company, for investment purposes only unless the interest or equity securities were acquired and are held in the ordinary course of business as an institutional investor, does not give the institutional investor management authority, and does not, directly or indirectly, allow the institutional investor to vote for the appointment of a manager, cause any change in the articles of organization, operating agreement, other organic document, management, policies or operations of the limited liability company licensee or the holding company, or cause 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 an interest or equity securities for investment purposes only:

(a) Serving as a member of any committee of creditors or security or interest holders in connection with a debt restructuring;

(b) Nominating any candidate for election or appointment to a Commission or the equivalent in connection with a debt restructuring;

(c) Making financial and other inquiries of management of the type normally made by securities analyst for informational purposes and not to cause a change in its management, policies or operations; and

(d) Such other activities as the Commission may determine to be consistent with such investment intent.

3. An application for a waiver must include:

(a) 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 section 11 of this Rule.

(b) A certification made under oath and the penalty of perjury, that:

(1) The interest in or equity securities of the limited liability company licensee or the holding company will be acquired and held for investment purposes only as defined in these Rules and a statement by the signatory explaining the basis of the signatory's authority to sign the certification and to bind the institutional investor to its terms.

(2) The applicant agrees to be bound by and comply with the Amendment and the Rules adopted thereunder, to be subject to the jurisdiction of the courts of Arkansas, and to consent to Arkansas 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) The applicant agrees that it shall not grant an option to purchase, or sell, assign, transfer, pledge or make any other disposition of any interest in or equity security issued by the limited liability company licensee or the holding company without the prior approval of the Commission.

(c) A description of all actions, if any, taken or expected to be taken by the institutional investor relating to the activities described in these Rules.

(d) 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 direct control over the institutional investor's holdings of an interest in or equity securities of the limited liability company licensee or the holding company.

(e) 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 rights as a holder of the interest in or equity securities of the limited liability company licensee or the holding company.

(f) The name of each person that beneficially owns more than 5 percent of the institutional investor's voting securities or other equivalent.

(g) A list of the institutional investor's affiliates.

(h) A list of all regulatory agencies with which the institutional investor or any affiliate that owns any voting or equity securities or any other interest in a company which is licensed or registered with the Arkansas Racing 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.

(i) 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, and 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.

(j) Any additional information the Commission may request.

4. The Commission shall consider all relevant information in determining whether to grant a waiver requested pursuant to subsection 1, including but not limited to:

(a) Whether the waiver is consistent with the policy set forth in these Rules; and

(b) Any views expressed to the Commission by the limited liability company licensee or affiliate thereof.

5. Any waiver granted pursuant to this section may be limited or conditioned in any respect by the Commission, including, but not limited to, requiring a certification, made under oath and the penalty of perjury, which contains the following:

(a) A statement attesting that the institutional investor holds and/or has held the interest in or equity securities issued by the limited liability company licensee or the holding company for (1) investment purposes only, and (2) in the ordinary course of business as an institutional investor and not for the purpose of (A) causing, directly or indirectly, the appointment of any manager(s), or (B) effecting any change in the articles of organization, operating agreement, other organic document, management, policies or operations of the limited liability company licensee or any of its affiliates.

(b) A statement that the institutional investor has not engaged in any activities inconsistent with the holding of an interest in or equity securities of a limited liability company licensee for investment purposes only in accordance with the provisions of section 2 hereof.



(c) The name, title and telephone number of the persons having direct control over the institutional investor's holdings of an interest in or equity securities issued by the limited liability company licensee or the holding company.

(d) A statement of all complaints, arrests, indictments or convictions of any officer or director of the institutional investor regarding the rules and regulations of the Securities and Exchange Commission and any regulatory agency of any State where it conducts business, or any offense which would constitute a gross misdemeanor or felony if committed in the State of Arkansas. The name, position, charge, arresting agency, and a brief description of the event must also be included in the statement.

(e) A statement indicating any change to the structure and/or operation of the institutional investor which could affect its classification as an institutional investor as defined within these Rules.

6. An institutional investor that has been granted a waiver of licensing, registration or finding of suitability as required by these Rules and that subsequently intends not to hold its interest in or equity securities issued by the limited liability company licensee or the holding company 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 Commission in writing of the change in its investment intent. The Commission may then take such action under these Rules, or any other provision of the Amendment or Rules of the Commission as the Commission deems appropriate.

7. A waiver that has been granted pursuant to this section and these Rules shall subject the institutional investor to requirements similar to those found within these Rules, as applicable, in that any purported sale, assignment, transfer, pledge or other disposition of any interest in or equity security issued by the limited liability company licensee or the holding company, or the granting of an option to purchase such an interest or equity security, shall be void unless approved in advance by the Commission.

8. The institutional investor shall be entitled to whatever economic advantage, including, but not limited to, distributions of profits, that may flow from ownership of the interest or equity securities as though it has been licensed, registered or found suitable.

9. If the Commission finds that an institutional investor has failed to comply with the provisions of this section, or should be subject to licensing, registration, finding of suitability or any approval to protect the public interest, the Commission may, in accordance with these Rules or any other provision of the Amendment or Rules of the Commission the Commission deems appropriate, require the institutional investor to apply for licensing, registration or a finding of suitability. The institutional investor affected by the action taken by the Commission 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 Commission 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 Commission, or remand the matter to the Commission for such further investigation and reconsideration as the Commission may order. While the application for licensure, registration or a finding of suitability review of the Commission'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 limited liability company licensee or the holding company.

10. The limited liability company licensee or the holding company shall immediately notify the Commission of any information about, fact concerning or actions of, an institutional investor holding any interest in or equity securities of the limited liability company licensee or the holding company, that may materially affect the institutional investor's eligibility to hold a waiver under this section.

11. For purposes of this Rule "institutional investor" shall have the meaning set forth in these Rules and "debt restructuring" shall have the meaning set forth in these Rules.

**15.110 Required provisions in articles of organization.** The following provisions must be included in the articles of organization of every limited-liability company that receives a state Casino license:

1. A purpose clause containing language substantially as follows:  
The character and general nature of the business to be conducted by the limited-liability company is to operate, manage, and conduct gaming in a gaming casino on or within the premises known as \_\_\_\_\_ and located at \_\_\_\_\_.
2. The articles of organization shall include language substantially as follows:  
Notwithstanding anything to the contrary expressed or implied in these articles, the sale, assignment, transfer, pledge or other disposition of any interest in the limited-liability company is ineffective unless approved in advance by the commission. If at any time the commission finds that a member who owns any such interest is unsuitable to hold that interest, the commission shall immediately notify the limited-liability company of that fact. The limited-liability company shall, within 10 days from the date that it receives the notice from the commission, return to the unsuitable member the amount of the unsuitable member's capital account as reflected on the books of the limited-liability company. Beginning on the date when the commission serves notice of a determination of unsuitability, pursuant to the preceding sentence, upon the limited-liability company, it is unlawful for the unsuitable member: (a) To receive any share of the distribution of profits or cash or any other property of, or payments upon dissolution of, the limited-liability company, other than a return of capital as required above; (b) To exercise directly or through a trustee or nominee, any voting right conferred by such interest; (c) To participate in the management of the business and affairs of the limited-liability company; or (d) To receive any remuneration in any form from the limited-liability company, for services rendered or otherwise.
3. The articles of organization shall include language substantially as follows:  
Any member that is found unsuitable by the commission shall return all evidence of any ownership in the limited-liability company to the limited-liability company, at which time the limited-liability company shall within 10 days, after the limited-liability company receives notice from the commission, return to the member in cash, the amount of the member's capital account as reflected on the books of the limited-liability company, and the unsuitable member shall no longer have any direct or indirect interest in the limited-liability company.

**15.120 Public offerings by limited-liability company licensees and holding companies.** No limited-liability company licensee and no holding company shall make a public offering of interests or securities of a limited-liability company licensee or of a holding company except as is permitted by, and in accordance with, these Rules.

**15.130 Assignment of interest in a security.** The purported sale, assignment, transfer, pledge, exercise of an option to purchase, including any transfer, whether or not for value, of any interest in the profits or proceeds realized from the holding or disposition of a security, or other disposition of any interest in a limited-liability company which holds a state gaming license or which is a holding company or an intermediary company for an entity that holds a state gaming license is void unless approved in advance by the Commission.

**15.140 Procedure for obtaining approval for transfer of interests.** The provisions of these Rules shall govern all transfers for which approval is required.

**15.150 Persons who may be determined to be unsuitable.** If at any time the Commission finds that an individual owner of any such interest is unsuitable to hold that interest, the Commission shall immediately notify the limited-liability company of that fact. The limited-liability company shall, within 10 days after the date that it receives the notice from the Commission, return to the unsuitable owner, in cash, the amount of the unsuitable owner's capital account as reflected on the books of the company. Without in any manner limiting the foregoing, the following persons may be determined to be unsuitable:

1. Any person who, having been notified by the member, the Commission, or the Commission of the requirement that such persons be licensed, fails, refuses, or neglects to apply for such licensing within 30 days after being requested to do so by the Commission.
2. Any record holder of a security issued by a limited-liability company licensee or a holding company who fails, refuses, or neglects, upon request of the Commission, to furnish to the Commission within 30 days after such request, full, complete, and accurate information as to the owner of any beneficial interest in such security.
3. Any record owner of a security that is beneficially owned, in whole or in part, by a person determined to be unsuitable by the Commission.

**15.160 Limited-liability company non-compliance.** Whenever the Commission determines that the public interest will be served by requiring any or all of the limited-liability company's lenders, holders of evidences of indebtedness, underwriters, key executives and agents, employees or other persons dealing with the limited-liability company and having the power to exercise a significant influence over decisions by the limited-liability company to be licensed, the Commission shall serve a notice of such determination upon the limited-liability company either personally or by certified mail. If the person or entity that is the subject of such determination shall not have, within 30 days following the receipt of such notice, applied for a license, the limited partnership may be deemed to have failed to comply.

**15.170 Approval by Commission required for all issues or transfers by a holding company of its securities.** No holding company shall issue or transfer any security or member's interest of which it or its controlled affiliate is the issuer without the prior approval of the Commission. As used herein, the terms "issue or transfer" extend to transactions involving any type of ownership referred to in these Rules.

**15.180 Commission approval required for dispositions of outstanding securities issued by holding companies.** No person other than the issuer shall sell, assign, transfer, pledge or make any other disposition of any interest in or security issued by any holding company without prior approval of the Commission. As used herein, the terms “sale, assignment, transfer, pledge or other disposition” extend to dispositions of any type of ownership referred to in these Rules.

**15.190 Licensing of managers and members of limited-liability company holding companies.**

1. Except as otherwise provided in this section, each manager of a limited-liability company holding company must be licensed. Each member of a limited-liability company holding company must be licensed if the member owns more than 5 percent of any licensee owned by the limited-liability company holding company, except to the extent delayed licensing is approved by the Commission. For the purposes of this section, “own” means the possession of a record or beneficial interest in any business organization.

2. All members which own 5 percent or less of any licensee owned by the limited-liability company holding company must register in that capacity with the Commission and affirmatively state in writing that they submit to the Commission’s jurisdiction. Such registration must be made on forms prescribed by the Commission. A member who is required to be registered by this section shall apply for registration before the member obtains an ownership interest in the limited-liability company holding company.

3. A manager of a limited-liability company holding company is not required to be licensed and must register in that capacity with the Commission if the limited-liability company holding company is not, directly or indirectly, a general partner or manager of any licensee and does not control any licensee. A manager who is required to be registered by this section shall apply for registration within 30 days after the manager assumes office.

4. If the Commission finds a member or manager unsuitable, denies an application of the member or manager, or revokes an approval of the member or manager, the member, manager, and the limited-liability company holding company shall comply with the following:

- a) If at any time the Commission finds that any person owning, controlling or holding with power to vote any part of any class of security of, or any interest in, any holding company or intermediary company is unsuitable to be connected with a licensed gaming enterprise, it shall so notify the unsuitable person, the holding company or intermediary company, or both. The unsuitable person shall immediately offer the security to the issuing corporation, or the interest to the firm, partnership, trust or other business organization, for purchase. The corporation shall purchase the security so offered, or the firm, partnership, trust or other business organization shall purchase the interest so offered, for cash at fair market value within 10 days after the date of the offer.
- b) Beginning upon the date when the Commission serves notice of a determination of unsuitability, it is unlawful for the unsuitable person:
  - i. To receive any dividend or interest upon any such securities, or any dividend, payment or distribution of any kind from any holding company or intermediary company;
  - ii. To exercise, directly or indirectly or through any proxy, trustee or nominee, any voting right conferred by such securities or interest; or

- iii. To receive any remuneration in any form from the corporation, partnership, limited partnership, limited-liability company or other business organization holding a license or from any holding company or intermediary company with respect thereto, for services rendered or otherwise.

If any officer, employee, director, partner, principal, manager, member, trustee or direct or beneficial owner required to be found suitable fails to apply for a finding of suitability or a gaming license within 30 days after being requested so to do by the Commission, is not found suitable or is denied a license 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 holding company or intermediary company, or both, shall immediately remove that person from any position in the administration or supervision of, or any other significant involvement with, the activities of a licensee. If the Commission suspends the suitability or license of any officer, employee, director, partner, principal, manager, member, trustee or owner, the holding company or intermediary company, or both, shall, immediately and for the duration of the suspension, suspend the person from performing any duties in administration or supervision of the activities of the licensee and from any other significant involvement therewith.

5. An application for registration with the Commission shall:

- (a) Include a completed application for registration form as prescribed by the Commission;
  - (b) Include fully executed waivers and authorizations as determined necessary by the Commission to investigate the registrant;
  - (c) Include an affirmative statement that the registrant submits to the jurisdiction of the Commission;
  - (d) Include an affirmative statement that the registrant has no intent to exercise control over the licensee other than (i) to vote the registrant's shares in the ordinary course; and (ii) if applicable, to take action in another licensed capacity under Commission Rules that are not prohibited by any Commission Rule;
  - (e) Include the fingerprints of the registrant for purposes of investigating the registrant's criminal history. Such fingerprints shall be provided in a form and manner acceptable to the Commission. The Commission, in the Commission's sole and absolute discretion, may waive this requirement upon a written request which specifically sets out the reasons for the request for waiver;
  - (f) Be accompanied by a fee to cover registration investigation costs as follows:
    - (1) For registrations related to 2 or fewer restricted licenses, an investigative fee in the amount of [\$550.00]; and
    - (2) For all other registrations, an investigative fee in the amount of [\$2,500.00].
- ☐ This fee does not include the application fee or investigation costs should the Commission require the registrant to apply for licensure; and
- (g) Include such other information as the Commission may require.

6. The Commission may require a member or manager who is required to be registered by this section to apply for licensure at any time in the Commission's discretion by sending notice through the United States Postal Service to the registrant at the address on the registrant's registration on file with the Commission and to the limited-liability company holding company at the address on file with the Commission. A member or manager shall apply for licensure as required by the Commission within 40 days of the member or manager's receipt of notice. The notice shall be deemed to have been received by the member or manager 5 days after such notice is deposited with the United States Postal Service with the postage thereon prepaid.

7. Upon receipt of a completed application for registration with the Commission, the application shall be placed on an agenda for consideration by the Commission not later than the first regular monthly Commission agenda following the expiration of 120 days after the Commission receives the completed application for registration with the Commission.

(a) At the meeting in which the Commission considers the application, it shall register the person with the Commission, decline to register the person with the Commission, or refer the application back to staff. At the meeting in which the Commission considers the application, it may also recommend the Commission require the person required to be registered by this section to apply for licensure. If the Commission declines to register a person pursuant to this subsection, such action in so declining to register a person with the Commission shall not be considered a denial under the act.

(b) A person who has the person's application for registration with the Commission declined or referred back to staff may file an application for licensure even if not required to do so by the Commission.

8. If a member or manager of a limited-liability company holding company is also a holding company and is required to register with the Commission under this section, the member or manager is not also required to register with the Commission as a subsidiary unless the Commission requires the member or manager to apply for licensure.

9. In enacting this Rule, the Commission finds that waiver is appropriate to the extent required by this section. In making these waivers, the Commission finds such waivers are consistent with state policy because such waivers are for purposes including but not limited to fostering the growth of the gaming industry which is vitally important to the economy of the State and the general welfare of its inhabitants and broadening the opportunity for investment in gaming. The Commission further finds such waivers do not diminish the Commission's roles in strictly regulating gaming and effectively controlling the conduct of gaming by business organizations because the Commission still require, at a minimum, registration with the Commission of all persons involved with gaming and may call such persons subject to registration with the Commission forward for licensure, registration with the Commission, or findings of suitability.

10. Upon the Commission requiring a member or manager who is required to be registered by this section to apply for licensure, the member or manager does not have any right to the granting of the application. Any license hereunder is a revocable privilege, and no holder acquires any vested right therein or thereunder.

**15.200 Certain payees required to be found suitable, licensed or approved.** The Commission may require any person who receives payments from a limited-liability company holding company computed on the basis of earnings or profits of the holding company or on the basis of receipts from gaming of the subsidiary limited-liability company licensee of such holding company to be found suitable, licensed or approved.

**15.210 Delayed licensing for members.** Pursuant to the provisions of these Rules, the Commission may waive licensing of members and, in lieu thereof, grant approval of delayed licensing for any member.

**15.220 Eligibility for delayed licensing.**

1. A limited-liability company that has filed an application to be registered with the Commission may file an application for approval of delayed licensing of its members.

2. Only members whose aggregate effective ownership percentage in the limited-liability company is no more than 10 percent will be considered for delayed licensing approval. For purposes of determining aggregate effective ownership percentage, a natural person who is part of a legal entity that is a member shall be deemed to have the percentage ownership interest held by the legal entity.

3. Neither a member having management authority or responsibility nor a manager is eligible for delayed licensing.

4. A limited-liability company seeking delayed licensing of its members shall apply for a ruling from the Commission, upon recommendation from the Commission, that it is eligible for delayed licensing of its members. Such application may be made at the same time that the limited-liability company applies for state Casino license or registers with the Commission, and must include the information from members required by these Rules.

**15.225 Application for delayed licensing by individual members.** Once a limited-liability company has been held eligible for delayed licensing pursuant to these Rules, each member seeking delayed licensing shall file an application for delayed licensing pursuant to these Rules. A member may file an application for delayed licensing prior to the Commission's ruling on the eligibility of the limited-liability company, but the application will not be considered by the Commission until the Commission rules that the limited-liability company is eligible for delayed licensing.

**15.230 Procedure for consideration of application for delayed licensing.** Any application for delayed licensing, whether by the limited-liability company pursuant to these Rules, or by any individual member pursuant to these Rules, shall be made to the Commission on forms furnished by the Commission and in accordance with these Rules. The Commission shall investigate the applicant and act upon the application pursuant to these Rules.

**15.240 Information to be provided by applicant for delayed licensing.** In addition to filing a completed personal history record and personal financial questionnaire, along with all required releases and fingerprint cards, each member applying for approval of delayed licensing shall provide the following information:

1. A listing of any other business interest between the applicant and a manager existing prior to, at the time of, or after the formation of the limited-liability company.

2. Whether the applicant has a familial relationship, either by blood, marriage or adoption, with a manager of the limited-liability company.

3. A certification that the applicant does not have and will not have a material relationship to, or a material involvement with, a manager of the limited-liability company with respect to the gaming operations of the limited-liability company, except in another licensed capacity under Commission Rules in accordance with Commission Rules. A person may be deemed to have a

material relationship to, or a material involvement with, a manager if the person is a stockholder, controlling person or key employee of a legal entity that is a manager, or if the person, as an agent, consultant, advisor or otherwise, exercises a significant influence upon the management or affairs of such manager.

**15.250 Effect of the Commission's ruling on a limited-liability company's application for delayed licensing.** If the Commission rules that a limited-liability company is eligible for delayed licensing of its members, the Commission shall direct the Commission, based upon such investigation as the Commission deems appropriate, to recommend to the Commission which of the members who have applied for delayed licensing, if any, should be granted delayed licensing.

**15.260 Standards.** The Commission shall consider all relevant material facts in determining whether to grant an approval of delayed licensing to a limited-liability company, and thereafter to a member, as permitted by this Rule. The Commission may consider the effects of the action or approval requested by the applicant, the benefits to the State of Arkansas, and whatever other facts are deemed relevant, including, but not limited to, the following:

1. Whether the applicant, either individually or in conjunction with other members, has any direct or indirect control or significant influence over a manager or over the management of the limited-liability company's business or gaming operations, or the ability to acquire such control. The limited-liability company's operating agreement will be scrutinized to determine if it has clear and specific provisions covering the following:

- (a) Restricting the priority rights with respect to income, losses, or other distributions, whether during the term of the limited-liability company or upon its dissolution, of members seeking delayed licensing;

- (b) Vesting the managers or the members with the sole and exclusive right to manage and control the limited-liability company's business;

- (c) Defining the scope of the manager's authority and any limitations thereon;

- (d) Restricting the right of members to remove or elect managers, except to the extent necessary to elect a manager pursuant to state or federal law, or these Rules, or upon the retirement, death or disability of a manager who is a natural person; and

- (e) Whether any additional assessment or capital contribution can be required of the members.

2. Whether the applicant has, or has had, a material relationship with a manager. Applicants who have a familial relationship, either by blood, marriage or adoption, to a manager, may be deemed to have such a material relationship.

3. The communality of other business interests between a manager and any member prior to, or existing at, formation of the limited-liability company.

4. Whether the applicant had a key role in forming the limited-liability company.

5. The relative level of risk for each manager.

6. The business probity of each manager, in gaming or otherwise.

7. The presence or absence of restrictions on the members.



8. Whether a substantial portion of the assets of the limited-liability company were owned by only one or more members prior to formation of the limited-liability company.

9. Whether substantial proportion of the depreciable assets involved in the proposed gaming operation will be owned by the limited-liability company.

10. The number of persons and entities involved in the limited-liability company. The Commission will not ordinarily grant delayed licensing status to a limited-liability company with fewer than 25 members.

11. The various percentage ownership interests in the limited-liability company.

12. Whether any member has obligated his or her personal assets as a guaranty for the limited-liability company or made any loans to the limited-liability company in any manner whatsoever.

13. The terms of any agreement that provides for a buyout of a member's interest in the event that a member is found unsuitable for licensing.

14. The presence or absence of any tax benefit to the member.

**15.270 Post-approval monitoring after approval of delayed licensing.** The operating agreement of a limited-liability company that seeks delayed licensing must contain language to the effect that the licensing of any member granted delayed licensing may be activated at any time pursuant to this Rule. The granting of delayed licensing to a member by the Commission shall be a revocable approval. The Commission shall not relinquish jurisdiction. Any member receiving approval for delayed licensing from the Commission has no legal vested right or privilege inherent in that approval, nor shall the members that have been granted delayed licensing accrue any privilege from the licensing of the limited-liability company.

**15.280 Powers of the Commission after delayed licensing approval.** The Commission may exercise, without limitation, any of the following powers.

1. After the granting of delayed licensing to a member, the Commission may at any time activate the licensing process for any member granted delayed licensing if it determines that:

(a) A member has thereafter developed a material relationship with or to a manager;

(b) A member, individually or in conjunction with other members, has acquired the ability to exercise significant control or influence over the management of the limited-liability company's gaming operations or business affairs;

(c) A member, individually or in conjunction with other members, has exercised, for any reason, significant control or influence over the management of the limited-liability company's gaming operations, either directly or indirectly, even if such control is contemplated or authorized by the operating agreement;

(d) There is reason to believe that a member cannot demonstrate his or her suitability;

(e) The aggregate effective ownership percentage held by a member granted delayed licensing has increased to more than 10 percent;

- (f) There is a change in the manager, except upon the retirement, death or disability of a manager who is a natural person; or
- (g) Any other cause it deems reasonable.

2. The Commission may activate the licensing process for any member granted delayed licensing at any time.

3. The Commission may delegate to its Director or staff the authority to activate, without Commission approval, the licensing process for a particular member who has been granted delayed licensing.

4. The Commission may issue an order requiring escrow of the funds, profits, or other moneys due any member granted delayed licensing from the licensed limited-liability company for any cause deemed reasonable. Any such escrow ordered by the Commission automatically terminates at the conclusion of the next regular Commission meeting unless:

(a) The Commission recommends that the Commission activate the licensing process for the member that is the subject of the order;

(b) The Commission continues discussion of whether it should recommend that the licensing process be activated to a future meeting at the request of the member that is the subject of the order; or

(c) The Commission activates the licensing process pursuant to a delegation of authority from the Commission under these Rules.

5. Any escrow ordered by the Commission pursuant to subsection 4 automatically terminates if the Commission decides not to activate the licensing process for the member that is the subject of the order or if the Commission licenses the member.

**15.290 Non-transferability of delayed licensing approval.** Delayed licensing approval shall be personal to the limited-liability company or member granted delayed licensing. An interest in a limited-liability company that is held under delayed licensing may not be transferred, assigned, encumbered or hypothecated in any manner without the prior approval of the Commission, upon recommendation of the Commission.

**15.300 Exclusion of public limited-liability companies.** This Rule shall not apply to an interest in a limited-liability company or securities of, nor other interest in, any limited-liability company holding company that has been permitted to comply with public limited-liability companies, inclusive, nor to its managers, members, agents, employees, underwriters, lenders, and other holders of evidence of indebtedness, as such.

**15.310 Waiver of requirement of Rule.** The Commission may waive one or more requirements of this Rule if it makes a written finding that such waiver is consistent with state policy.

**End – Rule 15**