



New Market Entrants in Nevada –
A “One Size Fits All” Approach?

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Following the historic, unprecedented closure of gaming in Nevada, there have been many questions regarding the future of gaming. Discussions range from the consideration and adoption of new technologies to the implementation of ever-changing federal, state, and local health and safety guidelines; multi-property mergers; and tavern sales.

The new economic conditions could lead new investors or new operators to consider entering the Nevada market, either to supplement an existing operation or

to seek to acquire it. Pursuant to the traditional model of market entry, an investor would: identify a target, evaluate licensing requirements, establish an appropriate corporate structure, negotiate to acquire the proposed interest in target, prepare and submit gaming applications, and then 12-18 months later, the transaction could close. In other words, *after* an investor identified a target and had a deal, it would need to wait at least 12 months before acquiring its interest and realizing the economic benefits thereof.

One wishing to shorten that timeline may wish to consider seeking a preliminary finding of suitability (“PFS”). The PFS is a flexible means by which a person (entity or individual) may undergo the application and investigation process in Nevada *before* having identified a target and entering into a deal. While the ultimate amount of time required for the application and investigation process will not be shortened, the amount of time between entering into a deal and closing can be shortened significantly.

Although a PFS can be, and has been, used under normal economic conditions and ordinary circumstances, its utility for new potential investors seriously considering the Nevada market is undeniable. It would allow the investors to start the process while evaluating potential opportunities, but ultimately minimize the time between deal signing and closure so they can start to realize the economic benefits of the deal and/or exercise the control over the investment more quickly after closing.

Overview & Standard

A company that is considering entering the Nevada gaming market can apply for a PFS. Assuming the applications are approved, when the company enters into a transaction, the time for the Nevada Gaming Control Board (“Board”) to investigate the transactional application is substantially reduced given that the entity and its executives were already reviewed and approved by the Nevada Gaming Commission (“Commission”). If a transaction is secured during the course of the PFS investigation, the PFS application can be amended to include the necessary approvals and licenses for such transaction.



When a person applies for a PFS, the Board will conduct a full investigation of the person (entity or individual) to determine whether the person is suitable to hold a license.¹ Specifically, the standard for the PFS investigation and approval is the same as if the person was applying for a nonrestricted gaming license.

Applications Required

To apply for a PFS, a person must prepare and file the same application forms required of an applicant for a nonrestricted license (though there is a PFS-specific version of the initial application form). If the person applying for a PFS is a publicly traded corporation (“PTC”), the PTC and the following individuals must file certain application forms:²

- **President/Chief Executive Officer;**
- **Chief Financial Officer;**
- **Chief Information Officer/Chief Technology Officer;**
- **Chairman of the Board of Directors;**
- **Chairman of the Audit Committee;**
- **Any director who is the beneficial owner of more than 5% of the voting securities; and**
- **Any non-institutional investor who owns more than 10% of the voting securities.**

Each entity and individual application must be accompanied by an application fee.³ Additionally, PTC will be required to pay upfront any investigative fees and costs, the deposit for which the Board will determine after reviewing the applications.⁴

Validity & Limitations

After the investigation is complete, and if the Commission approves the PFS application, the PFS will be valid for two years.⁵ The PFS can be administratively extended for additional periods of two years following an update investigation and administrative approval from the Board Chair.⁶

The main limitation imposed upon a PFS holder is that such person “will not seek or in any way engage in a corporate acquisition [of a Nevada gaming licensee] opposed by management.”⁷

Summary of Process

Assuming that the applicants are suitable, below is an example of how the PFS approval process may be utilized by a new market entrant.

1. A company or investor considering entering the Nevada gaming market applies for a PFS.
2. The Board investigates the applicants in the ordinary course.
3. The applicants (the company and designated individuals) are each granted a PFS by the Commission. Steps 1-3 have a rough timeline of 12-18 months, depending on various factors, such as the complexity of the company's or individuals' backgrounds.
4. The company enters into a transaction for which a Nevada gaming license is required.
5. The company and designated individuals submit applications required to consummate the transaction.
6. The Board investigates the applicants and the transaction. Steps 5 and 6 have a much shorter timeline than they would if the applicants had not already secured a PFS – depending on the transaction and how much time has passed since the PFS was granted, the timeline could decrease to a few months.



As noted above, if the company identifies a transaction while the Board is investigating the PFS applications, the company and its individual applicants can amend their applications to instead focus on the specific transaction. In any case, because the company and the individuals either have a PFS or have started the investigative

process, the time (or remaining time) for the Board's investigation of the transaction and the Commission's consideration of the transaction is substantially reduced.

Takeaway

As the economic landscape across the country evolves, potential investors may seek to expand or diversify their assets, including by entering the gaming market. Although the timeline of a transaction involving gaming regulatory approvals can be challenging for some investors, the PFS can help to mitigate some of the challenges. It allows a company seeking to enter the Nevada gaming market to initiate the licensing process while it evaluates potential transactions. The PFS is a valuable tool that may help to reduce the time between the signing and closing of the transaction, allowing investors to more quickly realize the economic benefits of the transaction.



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¹ Nev. Gaming Comm'n Reg. 4.100(3).

² *Id.* 4.100(5); *id.* 16.410(3); *id.* 16.415(3).

³ *Id.* 4.070(3) (eff. Aug. 1, 2020); *id.* 4.100(6).

⁴ *Id.*

⁵ *Id.* 4.100(9).

⁶ *Id.*

⁷ *Id.* 4.100(11).