

SUBCHAPTER 4. FINANCIAL STABILITY OF CASINO LICENSEES AND APPLICANTS

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19:43-4.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Affiliate" is defined at N.J.A.C. 19:40-1.2.

"Capital and maintenance expenditures" means expense items related to the approved casino hotel which are incurred in connection with furniture, fixtures, equipment and facilities, and capitalized costs. Such term shall include acquisition; replacement; repairs; refurbishment; renovation; improvements; maintenance, including public area housekeeping, and labor.

"Casino bankroll" means cash maintained in the casino, excluding any funds necessary for the normal operation of the casino, such as change banks, slot hopper fills, slot booths, cashier imprest funds and redemption area funds.

"Equivalent provisions" means lines of credit, parent company guarantees, or other arrangements approved by the Commission through which funds can be accessed on a timely and as needed basis.

"Gross operating profit" means net revenues less operating expenses, as reflected on the casino licensee's or applicant's Casino Control Commission Statement of Income.

"Material debt" means debt of \$25,000,000 or more, whether in a single transaction or cumulative transactions during any 12 month period, or such other amount as the Commission may, at the time of licensure or license

renewal, determine is appropriate to ensure the continued financial stability of a casino licensee or applicant.

"Operating expenses" means the total of cost of goods and services; selling, general and administrative expenses, and the provision for doubtful accounts as indicated on the casino licensee's or applicant's Casino Control Commission Statement of Income.

Effective: 12/21/92

As amended, effective: 07/06/93

19:43-4.2 Financial stability

(a) Each casino licensee or applicant shall establish its financial stability by clear and convincing evidence in accordance with section 84(a) of the Act and this subchapter.

(b) The Commission may consider any relevant evidence of financial stability; provided, however, that a casino licensee or applicant shall be considered to be financially stable if it establishes by clear and convincing evidence that it meets each of the following standards:

1. The ability to assure the financial integrity of casino operations by the maintenance of a casino bankroll or equivalent provisions adequate to pay winning wagers to casino patrons when due. A casino licensee or applicant shall be found to have established this standard if it maintains, on a daily basis, a casino bankroll, or a casino bankroll and equivalent provisions, in an amount which is at least equal to the average daily minimum casino bankroll or equivalent provisions, calculated on a monthly basis, for the corresponding month in the previous year. For any casino licensee or applicant which has been in operation for less than a year, such amount shall be determined by the Commission based upon levels maintained by a comparable casino licensee;

2. The ability to meet ongoing operating expenses which are

essential to the maintenance of continuous and stable casino operations. A casino licensee or applicant shall be found to have established this standard if it demonstrates the ability to achieve positive gross operating profit, measured on an annual basis;

3. The ability to pay, as and when due, all local, State and Federal taxes, including the tax on gross revenues imposed by subsection 144(a) of the Act, the investment alternative tax obligations imposed by subsection 144(b) and section 144.1 of the Act, and any fees imposed by the Act and Commission rules;

4. The ability to make necessary capital and maintenance expenditures in a timely manner which are adequate to ensure maintenance of a superior first class facility of exceptional quality pursuant to subsection 83(i) of the Act. A casino licensee or applicant shall be found to have established this standard if it demonstrates that its capital and maintenance expenditures, over the five-year period which includes the three most recent calendar years and the upcoming two calendar years, average at least five percent of net revenue per annum, except that any casino licensee or applicant which has been in operation for less than three years shall be required to otherwise establish compliance with this standard; and

5. The ability to pay, exchange, refinance or extend debts, including long-term and short-term principal and interest and capital lease obligations, which will mature or otherwise come due and payable during the license term, or to otherwise manage such debts and any default with respect to such debts. The Commission also may require that a casino licensee or applicant advise the Commission and Division as to its plans to meet this standard with respect to any material debts coming due and payable within 12 months after the end of the license term.

Effective: 12/21/92

As amended, effective: 03/18/96

19:43-4.3 Continuing assessment of financial condition

(a) No casino licensee shall consummate a material debt transaction which involves the following without the prior approval of the Commission. Any transaction not specified in this subsection shall not require prior Commission review and approval with regard to the financial stability standards set forth in this subchapter.

1. An agreement which provides for any borrowing for a purpose other than capital and maintenance expenditures; or
2. A guarantee of the debt of an affiliate, whether by cosignature or otherwise; an assumption of the debt of an affiliate, or an agreement to place any encumbrance on its approved casino hotel facility to secure the debts of an affiliate.

(b) In reviewing any transaction pursuant to (a) above, the Commission shall consider whether the transaction would deprive the casino licensee of financial stability, as defined by N.J.A.C. 19:43-4.2, taking into account the financial condition of the affiliate and the potential impact of any default on the licensee.

(c) Any subsequent use of the proceeds of a transaction previously approved by the Commission pursuant to (a) above, including subsequent drawings under previously approved borrowings, shall not require further Commission approval.

(d) The Commission may restrict or prohibit the transfer of cash to, or the assumption of liabilities on behalf of, an affiliate if, in the judgment of the Commission, such transfer or assumption would deprive the casino licensee of financial stability as defined by N.J.A.C. 19:43-4.2.

Effective: 12/21/92

19:43-4.4 Financial stability reporting requirements

(a) Each casino licensee shall file with the Commission and Division the following:

1. A statement of compliance with the criteria in N.J.A.C. 19:43-4.2(b), which shall be included in the quarterly reports filed by the casino licensee pursuant to N.J.A.C. 19:45-1.6;
2. At the end of each calendar year:
 - i. An annual forecast by calendar quarters of the operating and financial performances of the casino licensee for the upcoming calendar year, including statement of income and balance sheet, which shall be submitted in the standard format prescribed by the Commission or such other format approved by the Commission; and
 - ii. A detailed analysis of compliance with N.J.A.C. 19:43-4.2(b)4; and
3. Such other information as the Commission or Division shall deem material to a showing of financial stability for a particular casino licensee.

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19:43-4.5 Failure to demonstrate financial stability

In the event that a casino licensee or applicant fails to demonstrate financial stability, the Commission may take such action as is necessary to fulfill the purposes of the Act and to protect the public interest, including but not limited to: issuing conditional licenses, approvals or determinations; establishing an appropriate cure period; imposing reporting requirements in excess of those otherwise mandated by these regulations; placing such restrictions on the transfer of cash or the assumption of liabilities as is necessary to insure future compliance with the standards set forth in N.J.A.C. 19:43-4.2(b); requiring the maintenance of reasonable reserves or the establishment of dedicated or trust accounts to insure future compliance with

the standards set forth in N.J.A.C. 19:43-4.2(b); denying licensure; appointing a conservator pursuant to section 130.1 et seq. of the Act.

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