

## ORDER 2008-140

### AN ORDER RATIFYING THE PREVIOUSLY AWARDED INTERIM WAIVER AND APPROVAL OF PENN NATIONAL GAMING, INC.'S ISSUANCE OF MANDATORILY REDEEMABLE PREFERRED STOCK VALUED AT \$1.25 BILLION

Pursuant to IC 4-33-4-21 and 68 IAC 5-3-2, the Indiana Gaming Commission ("Commission") reviews proposed debt transactions to analyze the financial health of riverboat licensees and to ensure that a riverboat owner's license is not leased or hypothecated, or that money is not borrowed or loaned against a riverboat owner's license.

The Commission has considered the following factors:

1. Penn National Gaming, Inc. ("Penn"), through counsel, has requested that the Commission approve a debt transaction associated with the termination of a merger agreement that would have transferred ownership of Penn to certain affiliates of Fortress Investment Group, LLC and Centerbridge Partners, L.P.
2. Specifically, Penn sought authorization to issue preferred equity securities with a face value of \$1.25 billion that are mandatorily redeemable in 2015 ("Stock Transaction").
3. In accordance with Resolution 2008-74, after analyzing Penn's proposal, consulting with Commission financial analyst Dr. Charlene Sullivan, and receiving the requisite concurrence from Chairman Barrett, Executive Director Yelton issued an interim approval and waiver of 68 IAC 5-3-2, via letter dated October 23, 2008.
4. Subject to certain enumerated and continuing conditions, the October 23<sup>rd</sup> letter authorized Penn to close the Stock Transaction without receiving prior approval from the full Commission and without satisfying the "two meeting requirement" of 68 IAC 5-3-2(b)(2) and (3).
5. Resolution 2008-74 requires that Executive Director Yelton's interim approval and waiver be reported to the full Commission at the next business meeting held under 68 IAC 2-1-5. Additionally, 68 IAC 5-3-7 requires that such waiver be reported to the Commission in order that it may have the opportunity to direct the Executive Director to take additional or different action.

### COMMISSION ACTION

Based on the foregoing, the Commission hereby **RATIFIES** the Executive Director's October 23, 2008 interim approval and waiver. The Commission's ratification is subject to Penn's continuing compliance with the terms and conditions included in the October 23<sup>rd</sup> letter. Should Penn willfully fail to abide by said terms and conditions, the Commission reserves the right to withdraw this ratification; require Penn to obtain additional approval(s); and/or take other appropriate disciplinary action.

**IT IS SO ORDERED THIS THE 13<sup>TH</sup> DAY OF NOVEMBER, 2008.**

THE INDIANA GAMING COMMISSION:

  
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**William Barrett, Chair**

ATTEST:

  
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**Thomas Swihart, Secretary**