

MEMO# 2519

February 5, 1991

LEGISLATION INTRODUCED TO AMEND NEW JERSEY CASINO CONTROL ACT

February 5, 1991 TO: SEC RULES COMMITTEE NO. 10-91 INVESTMENT ADVISERS COMMITTEE NO. 5-91 RE: LEGISLATION INTRODUCED TO AMEND NEW JERSEY CASINO CONTROL ACT _____ As we previously informed you, in 1989 the New Jersey Casino Commission ruled that institutional investors that hold five percent or more of a New Jersey related casino stock must file for qualification under the New Jersey Casino Control Act. Previously, the Casino Commission and the Division of Gaming Enforcement recognized that the presumption of control set forth in the statute could be rebutted by an institutional investor upon a showing that the securities were being held for investment purposes on behalf of unrelated clients and not for the purpose of affecting or influencing control of the issuer. Consequently, waivers from the qualification process were routinely available to most institutional investors. (See Memorandum to SEC Rules Committee No. 36-90 and Investment Advisers Committee No. 22-90, dated June 29, 1990.) Last year the Casino Commission held hearings to consider whether the Casino Control Act should be amended to exempt or waive certain "institutional investors" from having to submit to the qualification process. The Institute submitted a comment letter to the Casino Commission that recommended that given the detailed and stringent reporting requirements institutional investors are subject to pursuant to the provisions of the Securities Exchange Act of 1934, the Casino Control Act could be amended to allow investment by passive institutional investors of up to 10% of a class of equity securities and 20% of a class of debt securities of publicly-held casino companies without sacrificing the integrity of the casino licensing process. (See Memorandum to SEC Rules Committee No. 39-90 and Investment Advisers Committee No. 24-90, dated July 30, 1990.) The Institute has been advised that legislation has been introduced to amend the Casino Control Act as follows: 1. A new section defining "institutional investor" as "[a]ny federal, state, or local retirement fund; mutual fund; closed end investment trust; ... investment adviser registered under the Investment Advisors Act of 1940; and such other persons as the commission may determine for reasons consistent with the policies of the 'Casino Control Act,'" has been added to the Act. 2. Section 5:12-84(b) waives institutional investors from the casino license application process. 3. Section 5:12-85(f) grants a waiver of qualification for an institutional investor holding either (1) less than 10% of the equity securities of a casino licensee's holding or intermediary companies, or (2) less than 20% of the debt securities of a casino licensee's holding intermediary companies, provided that such securities were purchased for investment purposes only and the institutional investor, upon request of the commission, files a certified statement to the effect that it has no intention of influencing or affecting the affairs of the issuer. This section further provides that the commission may grant a waiver of qualification to an institutional investor holding a higher percentage of the equity or debt securities of a casino licensee upon a showing of

good cause. Moreover, should an institutional investor change its investment intent, or the commission find reasonable cause to believe that the institutional investor may be found unqualified, no action other than divestiture need be taken by the institutional investor with respect to its security holdings. 4. Section 5:12-85(g) provides that if at any time the commission finds that an institutional investor fails to comply with the provisions of subsection (f), or if at any time an institutional investor is in a position to exercise a substantial impact upon the controlling interests of a licensee that qualification of the institutional investor is necessary to protect the public interest, the commission may require the institutional investor to submit to the qualification process. * * * A copy of the foregoing proposed amendments is attached. We will keep you advised of further developments. Patricia Louie Assistant General Counsel Attachments

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