

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #5

Do Not Mark In This Box

**FILED**

2005 MAR 24 P 4:03

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: STATE LOTTERY COMMISSION TITLE NUMBER: 179

CITE AUTHORITY: W.Va. CODE 29A-3-4

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE \_\_\_\_\_

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

\_\_\_\_\_

AMENDMENT TO AN EXISTING RULE: YES X NO \_\_\_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

TITLE OF RULE BEING AMENDED: LOTTERY INTERPRETIVE RULE


\_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

\_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS APRIL 23, 2005

  
Authorized Signature

#3.60

TITLE 179  
INTERPRETIVE RULE  
WEST VIRGINIA LOTTERY  
SERIES 7

FILED  
2005 MAR 24 P 4: 03  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

LOTTERY INTERPRETIVE RULE

**§179-7-1. General.**

1.1. Scope and Purpose. - The purpose of this interpretive rule is to disclose how the State Lottery Commission will interpret, clarify and explain provisions of either the Racetrack Video Lottery Act codified in W.Va. Code §29-22A-1 et seq., or the Limited Video Lottery Act codified in W.Va. Code §29-22B-101 et seq., or in both acts.

1.2. Authority. - W. Va. Code - §29A-3-4

1.3. Filing Date. - March 24, 2005

1.4. Effective Date. - April 23, 2005

**§179-7-2 Interpretation of terms and words found in the Limited Video Lottery Act.**

2.1. "Monitor," as the term is found in W.Va. Code §29-22B-702, means that the licensed premises must be staffed at all times when limited video lottery games are being played. This interpretation means that a person who views the video lottery licensed premises on a video screen in a place outside the premises described in the licensee's license from the Alcohol Beverage Control Administration and the license from the State Lottery Commission is not monitoring "...video lottery terminals to prevent access or play by persons who are under the age of twenty-one years or who are visibly intoxicated," as required by section 702(8) of the Act. This interpretation is also in keeping with W.Va. Code §29-22B-1201(c) that says, "Personnel of the limited video lottery retailer shall be present during all hours of operation at each video lottery terminal location. These personnel shall make periodic inspections of the restricted access adult-only facility in order to provide for the safe and approved operation of the video lottery terminals and the safety and well-being of the players."

**§179-7-3. Interpretation of terms and words found in the Racetrack Video Lottery Act.**

3.1. As used in W.Va. Code §29-22A-8(1), the word "voids" in the sentence that says, *The sale of more than five percent of a license or permit holder's voting stock, or more than five percent of the voting stock of a corporation which controls the license or permit holder or the sale of a license or permit holder's assets, other than those bought and sold in the ordinary course of business, or any interest therein, to any person not already determined to have met the qualifications of section seven of this article voids the license unless the sale has been approved in advance by the commission*, means that the license is void after due process has been afforded to the licensee or permit holder and a final order has been entered. In that same sentence, the word "person" does not include acquisition of common stock of a licensee or permit holder by a state or federally licensed banking institution, nor does it include acquisition of licensee or permit holder's stock by an institutional investor such as a pension fund or a mutual fund registered with the United States Securities and Exchange Commission, as well as a registered investment company, a registered investment advisor, a collective trust fund or a qualified insurance company as those entities are defined in the Investment Company Act of 1940 and the Investment Advisors Act of 1940, that is holding the stock only as an investment and not for purposes of control of the licensee or permit holder.

**AMENDMENT TO THE  
WEST VIRGINIA INTERPRETIVE RULE  
WEST VIRGINIA LOTTERY  
TITLE 179  
SERIES 7  
2005**

*Lottery Interpretive Rule*

**A STATEMENT of CIRCUMSTANCES REQUIRING THE AMENDING  
OF THIS AMENDED INTERPRETIVE RULE:**

During the thirty-day comment period for the amendment to this Interpretive Rule, the Commission received a comment letter from Sandra McKinley, Senior Compliance Analyst for International Game Technology. One of this company's subsidiaries – IGT – is a regulated manufacturer under the Racetrack Video Lottery Act. Ms. McKinley urged the Commission to consider expanding the definition of “institutional investors” in the rule amendment to include “registered investment companies, registered investment advisors, collective trust funds and qualified insurance companies as those entities are defined in the Investment Company Act of 1940 and the Investment Advisors Act of 1940.”

**Modification:**

After discussing the suggested modification in a meeting open to the public and advertised as such, held March 23, 2005, the Commission agreed to the suggested modification that will now appear as part of the amended Interpretive Rule:

***§179-7-3. Interpretation of terms and words found in the Racetrack Video Lottery Act.***

*3.1. As used in W.Va. Code §29-22A-8(l), the word “voids” in the sentence that says, The sale of more than five percent of a license or permit holder's voting stock, or more than five percent of the voting stock of a corporation which controls the license or permit holder or the sale of a license or permit holder's assets, other than those bought and sold in the ordinary course of business, or any interest therein, to any person not already determined to have met the qualifications of section seven of this article voids the license unless the sale has been approved in advance by the commission, means that the license is void after due process has been afforded to the licensee or permit holder and a final order has been entered. In that same sentence, the word “person” does not include acquisition of common stock of a licensee or permit holder by a state or federally licensed banking institution, nor does it include acquisition of licensee or permit holder's stock by an institutional investor such as a pension fund or a mutual fund registered with the United States Securities and Exchange Commission, as well as a registered investment company, a registered investment advisor, a collective trust fund or a qualified insurance company as those entities are defined in the Investment Company Act of 1940 and the Investment Advisors Act of 1940, that is holding the stock only as an investment and not for purposes of control of the licensee or permit holder.*



VIA FACSIMILE

RECEIVED  
FEB 24 2005  
WV LOTTERY

February 24, 2005

Mr. John C. Musgrave  
Director, West Virginia Lottery  
PO Box 2067  
Charleston, WV 25327

Dear Mr. Musgrave,

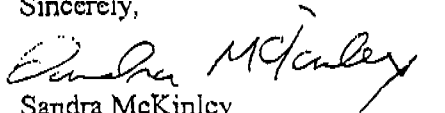
Thank you for your letter dated February 4, 2005 concerning our notice regarding the acquisition of 5.002% of IGT's common stock by T. Rowe Price. Our firm appreciates the Commission's recent action to amend Interpretive Rule 179 CSR 7 in order to recognize the unpredictability of legitimate investment stock trades. We have reviewed the proposed amendment and respectfully seek clarification on the items that follow.

We respectfully request the Commission further define the term *institutional investor*. In other jurisdictions this term includes "registered investment companies, registered investment advisors, collective trust funds, and qualified insurance companies" as defined federally in the Investment Company Act of 1940 and Investment Advisors Act of 1940. This clarification broadens the scope to include those entities that routinely hold and trade public stock such as IGT for investment purposes only.

In addition, many jurisdictions have opportunities whereby an institutional investor can seek a waiver of the licensing and/or suitability requirements if certain provisions are met. For example, Nevada gaming law requires all shareholders holding a greater than 10% interest to file for a finding of suitability, however, the gaming law also allows institutional investors to seek a waiver of this requirement if stock ownership is 15% or less. Please advise at what level of stock acquisition the Commission may consider the need to approve an institutional investor as suitable.

If you have any questions or need additional information please do not hesitate to contact me. I can be reached by telephone at (702) 492-3274 or by email at [sandra.mckinley@igt.com](mailto:sandra.mckinley@igt.com).

Sincerely,

  
Sandra McKinley  
Sr. Regulatory Compliance Analyst

**International Game Technology**

**Regulatory Compliance**  
1085 Palms Airport Drive  
Las Vegas, NV 89119-3749  
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VIA FACSIMILE

RECEIVED  
MAR 21 2005  
WV LOTTERY

March 18, 2005

Mr. John C. Musgrave  
Director, West Virginia Lottery  
PO Box 2067  
Charleston, WV 25327

Dear Mr. Musgrave,

At the request of the Commission IGT has prepared the following clarification regarding our response to the Commission's recent action to amend Interpretive Rule 179 CSR 7.

In our letter dated February 24, 2005, we respectfully requested the Commission further define the term *institutional investor* to include "... collective trust funds, and qualified insurance companies" as defined federally in the Investment Company Act of 1940 and Investment Advisors Act of 1940. Collective trust funds typically handle investments for 401K's and retirement funds, while insurance companies invest to increase funds collected by way of premiums to ensure adequate funds are available to pay out policy holder claims.

Both entities engage in the business of investing, reinvesting, holding, or trading in securities to build assets often thru vehicles such as mutual funds managed by investment companies that routinely include public stock such as IGT. The potential then exists for these entities to also attain or exceed the established threshold. We believe by including collective trust funds and qualified insurance companies to the definition, the proposed change will more completely cover those businesses that hold and trade stock for investment purposes only.

We hope this provides the clarification the Commission is seeking to our comments of February 2, 2005. If you have any questions or need additional information please do not hesitate to contact me. I can be reached by telephone at (702) 492-3274 or by email at [sandra.mckinley@igt.com](mailto:sandra.mckinley@igt.com); you may also speak with Sue Carletta, Regulatory Compliance Manager, at (702) 896-8755.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra McKinley", is written over the typed name.

Sandra McKinley  
Sr. Regulatory Compliance Analyst

**International Game Technology**

**Regulatory Compliance**  
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**AMENDMENT TO A  
WEST VIRGINIA INTERPRETIVE RULE  
WEST VIRGINIA LOTTERY  
TITLE 179  
SERIES 7  
2005**

*Lottery Interpretive Rule*

**REASON FOR THE AMENDING OF THIS AMENDED INTERPRETIVE  
RULE:**

The Commission recognizes the substantial funds derived from the operation of licensed pari-mutuel racetracks by the State of West Virginia due to video lottery terminals. The Commission further recognizes that the requirement of W.Va. Code §29-22A-8(i) to automatically void the license or permit of a regulated company when more than five percent of its stock is acquired by a person not already deemed to have met the requirements of the Racetrack Video Lottery Act is a measure to prevent the acquisition of control of the entity by elements of organized crime.

The Commission has proposed this interpretive rule to show the public how it interprets the word "person" in the operation of subsection (i) of section eight by saying generally that an institutional investor does not constitute a "person" that would trigger the automatic voiding of a license. Such a voided license could be restored by the Commission, but the intervening time period could cost the State millions of dollars in lost revenues.

During the thirty-day comment period for the amendment to this Interpretive Rule, the Commission received a comment letter from Sandra McKinley, Senior Compliance Analyst for International Game Technology. One of this company's subsidiaries – IGT – is a regulated manufacturer under the Racetrack Video Lottery Act. Ms. McKinley urged the Commission to consider expanding the definition of "institutional investors" in the rule amendment to include "registered investment companies, registered investment advisors, collective trust funds and qualified insurance companies as those entities are defined in the Investment Company Act of 1940 and the Investment Advisors Act of 1940." The Commission has added these suggested terms to the rule because the members believe the addition more fully demonstrates the type of innocuous investing it is seeking to exclude from the void license provision.

APPENDIX B  
**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 179 CSR 7 - LOTTERY INTERPRETIVE RULE

Type of Rule:  Legislative  Interpretive  Procedural

Agency: STATE LOTTERY COMMISSION

Address: 312 MacCORKLE AVENUE  
CHARLESTON WV 25314

Phone Number: 304 558 0500 Email: jmelton@wvlottery.com

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The interpretation of part of W.Va. Code §29-22A-8(l) involving the transfer of 5% or more of the common stock of a regulated racetrack or video lottery terminal manufacturer is intended to exclude regulated institutional investors from the calculation of a 5% stock acquisition and to afford any licensee or permit holder standard due process before its license or permit becomes void.

This interpretation has no direct effect on revenues, either positively or negatively.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: 179 CSR 7 - LOTTERY INTERPRETIVE RULE

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

The term being interpreted in the amended rule is done so for the information and convenience of licensees and permit holders.

The interpretation will not change the expenses born by the Commission.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

West Virginia Code 29-22A-8(l) says, The sale of more than five percent of a license or permit holder's voting stock, or more than five percent of the voting stock of a corporation which controls the license or permit holder or the sale of a license or permit holder's assets, other than those bought and sold in the ordinary course of business, or any interest therein, to any person not already determined to have met the qualifications of section seven of this article voids the license unless the sale has been approved in advance by the commission. This provision, in the opinion of the Commission, exists to prevent criminals from participating in Racetrack Video Lottery Act activities. At the same time, regulated institutional investors such as banks, mutual funds and pension systems may from time to time acquire positions greater than 5% in one or more of the publicly traded license or permit holder corporations in pursuit of financial returns rather than to control the permit or license holder. Such positions may be short term or of longer duration. The regulated licensee or permit holder may not even realize the stock acquisition occurred before part of the stock was re-sold and the 5% position of the stockholder no longer existed. In addition, the automatic void language in the subsection does not provide a licensee or permit holder with any legal due process.

The interpretation of this part of W.Va. Code §29-22A-8(l) is intended to exclude regulated institutional investors from the calculation of a 5% stock acquisition and to afford any licensee or permit holder standard due process before its license or permit becomes void.

Date: February 4, 2005

Signature of Agency Head or Authorized Representative

