

PENN NATIONAL GAMING INC  
Form SC 13E3/A  
November 02, 2007

**United States**

**Securities and Exchange Commission**

Washington, D.C. 20549

**SCHEDULE 13E-3**

**(Amendment No. 2)**

(RULE 13E-100)

**Rule 13e-3 Transaction Statement**

**Under Section 13(E) of the Securities Exchange Act of 1934**

**PENN NATIONAL GAMING, INC.**

*(Name of the Issuer)*

**Penn National Gaming, Inc.**

**FIG LLC**

**Centerbridge GP Investors, L.L.C.**

**PNG Acquisition Company Inc.**

**PNG Merger Sub Inc.**

**Peter M. Carlino**

*(Name of Person(s) Filing Statement)*

**Common Stock, Par Value \$0.01 Per Share**

*(Title of Class of Securities)*

**707569109**

Edgar Filing: PENN NATIONAL GAMING INC - Form SC 13E3/A

*(CUSIP Number of Class of Securities)*

**Jordan B. Savitch, Esq.**

*Sr. Vice President and General Counsel*

**Penn National Gaming, Inc.**

**825 Berkshire Blvd., Suite 200**

**Wyomissing, Pennsylvania 19610**

**(610) 373-2400**

*Copies to:*

**DANIEL A. NEFF, ESQ.**

**THOMAS M. CERABINO, ESQ.**

**BARRY M. ABELSON, ESQ.**

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**Pepper Hamilton LLP**

**Wachtell, Lipton, Rosen & Katz**

**Willkie Farr & Gallagher LLP**

**3000 Two Logan Square**

**51 West 52nd Street**

**787 Seventh Avenue**

**Eighteenth and Arch Streets**

**New York, New York 10019**

**New York, New York 10019**

**Philadelphia, Pennsylvania 19103**

**(212) 403-1000**

**(212) 728-8000**

**(212) 808-2700**

**(Name, Address, and Telephone Number of Person Authorized**

*to Receive Notices and Communications on Behalf of the Person(s) Filing Statement)*

This statement is filed in connection with (check the appropriate box):

- a.  The filing of solicitation materials or an information statement subject to Regulation 14A, Regulation 14C, or Rule 13e-3(c) under the Securities Exchange Act of 1934.
- b.  The filing of a registration statement under the Securities Act of 1933.
- c.  A tender offer.
- d.  None of the above.

Check the following box if the soliciting materials or information statement referred to in checking box (a) are preliminary copies:  x

Check the following box if the filing is a final amendment reporting the results of the transaction:  "

**CALCULATION OF FILING FEE**

<b>Transaction valuation*</b>	<b>Amount of filing fee</b>
\$6,093,097,163	\$187,058

\* **For purposes of calculating the amount of the filing fee only.** The filing fee was based upon the sum of (a) 86,074,187 shares of Company common stock (including shares of restricted Company common stock) multiplied by the merger consideration of \$67.00 per share, plus (b) 8,056,488 options of company common stock multiplied by \$40.48 (which is the difference between \$67.00 and the weighted average exercise price of \$26.52 per share), the amount expected to be paid upon cancellation of outstanding options. In accordance with Section 14(g) of the Securities Exchange Act of 1934, as amended, the filing fee was determined by multiplying 0.0000307 by the sum of the preceding sentence.

x Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$187,058

Form or Registration No.: Schedule 14A Preliminary Proxy Statement

Filing Parties: Penn National Gaming, Inc.

Date Filed: August 21, 2007

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## INTRODUCTION

This Amendment No. 2 to Rule 13e-3 Transaction Statement on Schedule 13E-3, together with the exhibits hereto (this Schedule 13E-3), is being filed with the Securities and Exchange Commission pursuant to Section 13(e) of the Securities Exchange Act of 1934, as amended (the Exchange Act) by Penn National Gaming, Inc. (the Company), FIG LLC (Fortress), Centerbridge GP Investors, L.L.C. (Centerbridge), PNG Acquisition Company Inc. (Parent), PNG Merger Sub Inc. (Merger Sub) and Peter M. Carlino (together with Fortress, Centerbridge, Parent and Merger Sub, the Filing Parties and each a Filing Party). This Schedule 13E-3 relates to the Agreement and Plan of Merger (the Merger Agreement), dated June 15, 2007, by and among the Company, Parent and Merger Sub.

Concurrently with the filing of this Schedule 13E-3, the Company is filing with the Securities and Exchange Commission a revised preliminary proxy statement (the Proxy Statement) under Regulation 14A of the Exchange Act, relating to a special meeting of the stockholders of the Company at which the stockholders of the Company will consider and vote upon a proposal to adopt the Merger Agreement. The adoption of the Merger Agreement requires the affirmative vote of a majority of the votes cast by the holders of shares of Company common stock present in person or by proxy at the special meeting who are entitled to vote (assuming a quorum is present).

The cross-references below are being supplied pursuant to General Instruction G to Schedule 13E-3 and show the location in the Proxy Statement of the information required to be included in response to the items of Schedule 13E-3. Pursuant to General Instruction F to Schedule 13E-3, the information contained in the Proxy Statement, including all annexes thereto, is incorporated in its entirety herein by this reference, and the responses to each item in this Schedule 13E-3 are qualified in their entirety by the information contained in the Proxy Statement and the annexes thereto. Capitalized terms used but not defined in this Schedule 13E-3 shall have the meanings given to them in the Proxy Statement. As of the date hereof, the Proxy Statement is in preliminary form and is subject to completion or amendment.

All information contained in this Schedule 13E-3 concerning any of the Filing Parties has been provided by such Filing Parties and no other Filing Party, including the Company, takes responsibility for the accuracy of any information not supplied by such Filing Party.

The filing of this Schedule 13E-3 shall not be construed as an admission by any Filing Parties or by an affiliate of a Filing Party that the Company is controlled by any Filing Party or that any Filing Party is an affiliate of the Company within the meaning of Rule 13(e)-3 under Section 13(e) of the Exchange Act.

### ***Item 1. Summary Term Sheet*** **Regulation M-A Item 1001**

The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

### ***Item 2. Subject Company Information*** **Regulation M-A Item 1002**

(a) The information set forth in the Proxy Statement under the caption THE PARTIES TO THE MERGER AGREEMENT Penn National Gaming, Inc. is incorporated herein by reference.

(b)-(d) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

MARKET PRICES OF THE COMPANY COMMON STOCK

THE SPECIAL MEETING Record Date, Quorum and Voting Power

(e) Not applicable.

(f) The information set forth in the Proxy Statement under the caption SPECIAL FACTORS Related Party Transactions is incorporated herein by reference.

**Item 3. Identity and Background of Filing Person**  
**Regulation M-A Item 1003**

(a)-(c) The information set forth in the Proxy Statement under the caption THE PARTIES TO THE MERGER AGREEMENT is incorporated herein by reference.

**Item 4. Terms of the Transaction**  
**Regulation M-A Item 1004**

(a)(1) Not applicable.

(a)(2) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

THE SPECIAL MEETING Required Vote; Voting Procedures

SPECIAL FACTORS Background of the Merger

SPECIAL FACTORS Recommendation of Our Board of Directors; Reasons for the Merger

SPECIAL FACTORS Purposes and Reasons of Mr. Carlino

SPECIAL FACTORS Purposes and Reasons of Parent, Merger Sub and Fortress/Centerbridge

SPECIAL FACTORS Certain Effects of the Merger

SPECIAL FACTORS Material U.S. Federal Income Tax Consequences

(c) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

SPECIAL FACTORS Certain Effects of the Merger

SPECIAL FACTORS Interests of Our Directors and Executive Officers in the Merger



(d) The information set forth in the Proxy Statement under the caption NO RIGHTS OF APPRAISAL OR DISSENTERS RIGHTS is incorporated herein by reference.

(e) The information set forth in the Proxy Statement under the caption PROVISIONS FOR UNAFFILIATED STOCKHOLDERS is incorporated herein by reference.

(f) Not applicable.

**Item 5. Past Contacts, Transactions, Negotiations and Agreements**  
**Regulation M-A Item 1005**

(a) The information set forth in the Proxy Statement under the caption SPECIAL FACTORS Related Party Transactions is incorporated herein by reference.

(b) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

SPECIAL FACTORS Background of the Merger

SPECIAL FACTORS Interests of Our Directors and Executive Officers in the Merger

SPECIAL FACTORS Related Party Transactions

THE MERGER AGREEMENT

ANNEX A Agreement and Plan of Merger by and among the Company, Parent and Merger Sub

(c) The information set forth in the Proxy Statement under the caption SPECIAL FACTORS Background of the Merger is incorporated herein by reference.

(e) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

THE PARTIES TO THE MERGER AGREEMENT Penn National Gaming, Inc.

SPECIAL FACTORS Interests of Our Directors and Executive Officers in the Merger

SPECIAL FACTORS Related Party Transactions

THE MERGER AGREEMENT

**Item 6. Purposes of the Transaction and Plans or Proposals**  
**Regulation M-A Item 1006**

(b) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

SPECIAL FACTORS Certain Effects of the Merger

SPECIAL FACTORS Interests of Our Directors and Executive Officers in the Merger

THE MERGER AGREEMENT Merger Consideration

THE MERGER AGREEMENT Treatment of Restricted Shares, Stock Options and Other Stock-Based Awards

THE MERGER AGREEMENT Procedure for Receiving Merger Consideration

ANNEX A Agreement and Plan of Merger by and among the Company, Parent and Merger Sub

(c)(1)-(8) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

SPECIAL FACTORS Background of the Merger

SPECIAL FACTORS Certain Effects of the Merger

SPECIAL FACTORS Plans for the Company After the Merger

SPECIAL FACTORS Financing by Parent of Merger and Related Transactions

SPECIAL FACTORS Interests of Our Directors and Executive Officers in the Merger

THE MERGER AGREEMENT

ANNEX A Agreement and Plan of Merger by and among the Company, Parent and Merger Sub

**Item 7. Purposes, Alternatives, Reasons and Effects**  
**Regulation M-A Item 1013**

(a)-(c) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

SPECIAL FACTORS Background of the Merger



SPECIAL FACTORS Purposes and Reasons of Mr. Carlino

SPECIAL FACTORS Purposes and Reasons of Parent, Merger Sub and Fortress/Centerbridge

SPECIAL FACTORS Recommendation of Our Board of Directors; Reasons for the Merger

SPECIAL FACTORS Position of Mr. Carlino Regarding the Fairness of the Merger

SPECIAL FACTORS Position of Parent, Merger Sub and Fortress/Centerbridge Regarding the Fairness of the Merger

SPECIAL FACTORS Plans for the Company After the Merger

(d) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

SPECIAL FACTORS Background of the Merger

SPECIAL FACTORS Recommendation of Our Board of Directors; Reasons for the Merger

SPECIAL FACTORS Certain Effects of the Merger

SPECIAL FACTORS Plans for the Company After the Merger

SPECIAL FACTORS Interests of Our Directors and Executive Officers in the Merger

SPECIAL FACTORS Material U.S. Federal Income Tax Consequences

SPECIAL FACTORS Fees and Expenses

THE MERGER AGREEMENT

NO RIGHTS OF APPRAISAL OR DISSENTERS RIGHTS

ANNEX A Agreement and Plan of Merger by and among the Company, Parent and Merger Sub

***Item 8. Fairness of the Transaction***

**Regulation M-A Item 1014**

(a)-(b) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

SPECIAL FACTORS Recommendation of Our Board of Directors; Reasons for the Merger

SPECIAL FACTORS Purposes and Reasons of Mr. Carlino



SPECIAL FACTORS Purposes and Reasons of Parent, Merger Sub and Fortress/Centerbridge

SPECIAL FACTORS Position of Mr. Carlino Regarding the Fairness of the Merger

SPECIAL FACTORS Position of Parent, Merger Sub and Fortress/Centerbridge Regarding the Fairness of the Merger

(c) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

MERGER AGREEMENT

(d) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SPECIAL FACTORS Background of the Merger

SPECIAL FACTORS Recommendation of Our Board of Directors; Reasons for the Merger

(e) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

SPECIAL FACTORS Background of the Merger

SPECIAL FACTORS Recommendation of Our Board of Directors; Reasons for the Merger

(f) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SPECIAL FACTORS Background of the Merger

SPECIAL FACTORS Recommendation of Our Board of Directors; Reasons for the Merger

***Item 9. Reports, Opinions, Appraisals and Certain Negotiations***  
**Regulation M-A Item 1015**

(a)-(c) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SPECIAL FACTORS Background of the Merger

SPECIAL FACTORS Opinion of Lazard Frères & Co.

ANNEX B Opinion of Lazard Frères & Co.

**Item 10. Source and Amounts of Funds or Other Consideration**  
**Regulation M-A Item 1007**

(a)-(b) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

SPECIAL FACTORS Financing by Parent of Merger and Related Transactions

THE MERGER AGREEMENT Financing; Our Cooperation

(c) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SPECIAL FACTORS Conduct of the Company's Business if the Merger is Not Completed

SPECIAL FACTORS Fees and Expenses

THE MERGER AGREEMENT Termination of the Merger Agreement

THE MERGER AGREEMENT Termination Fees

(d) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

SPECIAL FACTORS Financing by Parent of Merger and Related Transactions

**Item 11. Interest in Securities of the Subject Company**  
**Regulation M-A Item 1008**

(a) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SPECIAL FACTORS Interests of Our Directors and Executive Officers in the Merger

SECURITY OWNERSHIP OF PRINCIPAL SHAREHOLDERS AND MANAGEMENT

(b) The information set forth in the Proxy Statement under the caption SPECIAL FACTORS Related Party Transactions is incorporated herein by reference.

**Item 12. The Solicitation or Recommendation**  
**Regulation M-A Item 1012**

(d) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

THE SPECIAL MEETING Share Ownership of Directors and Executive Officers

SPECIAL FACTORS Certain Effects of the Merger

SPECIAL FACTORS Recommendation of Our Board of Directors; Reasons for the Merger

SPECIAL FACTORS Interests of Our Directors and Executive Officers in the Merger

(e) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

SPECIAL FACTORS Background of the Merger

SPECIAL FACTORS Recommendation of Our Board of Directors; Reasons for the Merger

SPECIAL FACTORS Position of Mr. Carlino Regarding the Fairness of the Merger

***Item 13. Financial Statements***

**Regulation M-A Item 1010**

(a) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

INFORMATION ABOUT PENN NATIONAL Selected Financial Data

INFORMATION ABOUT PENN NATIONAL Ratio of Earnings to Fixed Charges

INFORMATION ABOUT PENN NATIONAL Net Book Value

WHERE YOU CAN FIND ADDITIONAL INFORMATION

The audited financial statements set forth in the Company's Annual Report on Form 10-K for the year ended December 31, 2006 and the unaudited financial statements set forth in the Company's Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2007 and June 30, 2007 are incorporated by reference herein.

***Item 14. Persons/Assets, Retained, Employed, Compensated or Used***

**Regulation M-A Item 1009**

(a) The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

SUMMARY

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

THE SPECIAL MEETING Expenses of Proxy Solicitation

SPECIAL FACTORS Fees and Expenses



***Item 15. Additional Information***  
**Regulation M-A Item 1011**

(b) The information contained in the Proxy Statement, including all annexes thereto, is incorporated herein by reference.

**Item 16. Exhibits**  
**Regulation M-A Item 1016**

- (a)(1) Preliminary Proxy Statement filed with the Securities and Exchange Commission on August 21, 2007, incorporated herein by reference to the Schedule 14A filed with the Securities and Exchange Commission on August 21, 2007.
- (a)(2) Preliminary Proxy Statement filed with the Securities and Exchange Commission on September 21, 2007, incorporated herein by reference to the Schedule 14A filed with the Securities and Exchange Commission on September 21, 2007.
- (a)(3) Preliminary Proxy Statement filed with the Securities and Exchange Commission on October 29, 2007, incorporated herein by reference to the Schedule 14A filed with the Securities and Exchange Commission on October 29, 2007.
- (a)(4) Preliminary Proxy Statement filed with the Securities and Exchange Commission on November 1, 2007, incorporated herein by reference to the Schedule 14A filed with the Securities and Exchange Commission on November 1, 2007.
- (a)(5) Preliminary Proxy Statement filed with the Securities and Exchange Commission on November 2, 2007, incorporated herein by reference to the Schedule 14A filed with the Securities and Exchange Commission on November 2, 2007.
- (a)(6) Form of Proxy Card, filed with the Securities and Exchange Commission along with the Schedule 14A filed with the Securities and Exchange Commission on November 2, 2007.
- (a)(7) Press Release dated June 15, 2007, incorporated herein by reference to Exhibit 99.1 of the Current Report on Form 8-K filed by Penn National Gaming, Inc. with the Securities and Exchange Commission on June 15, 2007.
- (b)(1) Project Prize Commitment Letter from Deutsche Bank Securities Inc., Deutsche Bank AG, Wachovia Bank, National Association, Wachovia Bank Investment Holdings, LLC and Wachovia Capital Markets, LLC to PNG Acquisition Company Inc., dated as of June 15, 2007.\*
- (c)(1) Opinion of Lazard Frères & Co., attached as Annex B to the Schedule 14A filed by Penn National Gaming, Inc. with the Securities and Exchange Commission on November 2, 2007.
- (c)(2) Financial analysis presentation materials, dated June 15, 2007, prepared by Lazard Frères & Co., for the Board of Directors of Penn National Gaming, Inc.\*
- (d)(1) Agreement and Plan of Merger, dated as of June 15, 2007, by and among Penn National Gaming, Inc., PNG Acquisition Company Inc. and PNG Merger Sub Inc., attached as Annex A to the Schedule 14A filed by Penn National Gaming, Inc. with the Securities and Exchange Commission on November 2, 2007.
- (d)(2) Letter Agreement by and between Peter M. Carlino and PNG Holdings LLC Dated June 15, 2007, incorporated herein by reference to Exhibit C to Schedule 13D filed by Mr. Carlino with the Securities and Exchange Commission on June 25, 2007.
- (d)(3) Employment Agreement dated May 26, 2004 between Penn National Gaming, Inc. and Peter M. Carlino, incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q filed by Penn National Gaming, Inc. for the quarter ended June 30, 2004.
- (d)(4) Form of Trust Agreement of Peter D. Carlino, Peter M. Carlino, Richard J. Carlino, David E. Carlino, Susan F. Harrington, Anne de Lourdes Irwin, Robert M. Carlino, Stephen P. Carlino and Rosina E. Carlino Gilbert, incorporated by reference to Registration Statement on Form S-1 filed by Penn National Gaming, Inc., File #33-77758, dated May 26, 1994.
- (f) Not applicable.
- (g) None.

\* Filed as an exhibit to the Schedule 13E-3 filed with the Securities and Exchange Commission on October 29, 2007.



SIGNATURE

After due inquiry and to the best of my knowledge and belief, each of the undersigned certifies that the information in this statement is true, complete and correct.

Dated: November 2, 2007

**PENN NATIONAL GAMING, INC.**

By: /s/ Peter M. Carlino  
Name: Peter M. Carlino  
Title: Chairman and Chief Executive Officer

Dated: November 2, 2007

**PNG ACQUISITION COMPANY INC.**

By: /s/ William Doniger  
Name: William Doniger  
Title: Vice President

Dated: November 2, 2007

**PNG MERGER SUB, INC.**

By: /s/ William Doniger  
Name: William Doniger  
Title: Vice President

Dated: November 2, 2007

**FIG, LLC**

By: /s/ David Brooks  
Name: David Brooks  
Title: General Counsel

Dated: November 2, 2007

**CENTERBRIDGE GP INVESTORS, L.L.C.**

By: /s/ Mark Gallogly  
Name: Mark Gallogly  
Title: Managing Principal

Dated: November 2, 2007

**PETER M. CARLINO**

/s/ Peter M. Carlino

-14-

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**EXHIBIT INDEX**

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- (d)(4) Form of Trust Agreement of Peter D. Carlino, Peter M. Carlino, Richard J. Carlino, David E. Carlino, Susan F. Harrington, Anne de Lourdes Irwin, Robert M. Carlino, Stephen P. Carlino and Rosina E. Carlino Gilbert, incorporated by reference to Registration Statement on Form S-1 filed by Penn National Gaming, Inc., File #33-77758, dated May 26, 1994.
- (f) Not applicable.
- (g) None.

\* Filed as an exhibit to the Schedule 13E-3 filed with the Securities and Exchange Commission on October 29, 2007.