

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 115.00: PHASE 1 AND NEW QUALIFIER SUITABILITY DETERMINATION,
STANDARDS, AND PROCEDURES

115.01: Phase 1 and New Qualifier Determination Standards

- (1) Phase 1 Determination Standards. The commission shall not issue an affirmative determination of suitability for any Category 1 or Category 2 applicants unless:
- a) The applicant meets the standards in M.G.L. c. 23K, §§ 12, 16, 46 and 47.
 - b) The applicant complies with the provisions of 205 CMR 111.00: *Phase 1 Application Requirements* and 205 CMR 115.00.
 - c) The commission has determined that the applicant has demonstrated financial stability pursuant to 205 CMR 117.00: *Phase I Determination of Financial Stability*.
 - d) All qualifiers under 205 CMR 116.02: *Persons Required to be Qualified* have been determined to be suitable by the commission or received a waiver under 205 CMR 116.03: *Waivers*.
- (2) Burden of Proof. All applicants for a Phase 1 suitability determination must establish their qualifications by clear and convincing evidence.
- (3) New Qualifiers. Subsequent to the issuance of a positive determination of suitability in accordance with 205 CMR 115.05(3) relative to a gaming licensee or applicant for a gaming license, if a new person is designated by the bureau as a person required to be qualified in accordance with 205 CMR 116.02: *Persons Required to be Qualified*, they shall submit a completed application to the bureau. An entity qualifier shall submit to the bureau a *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies* in accordance with 111.02. An individual qualifier shall submit to the bureau a *Multi-jurisdictional Personal History Disclosure Form* in accordance with 205 CMR 111.03 and a Massachusetts Supplemental Form in accordance with 205 CMR 111.04. A new qualifier designated in accordance with 205 CMR 116.02: *Persons Required to be Qualified* must establish their qualifications and meet the standards in M.G.L. c. 23K, §§ 12 and 16 by clear and convincing evidence and shall be subject to all applicable procedures contained in 205 CMR 115.00.
- (4) Continuing duty. Once issued a positive determination of suitability, the gaming licensee and all qualifiers shall have a continuing duty to maintain suitability in accordance with 205 CMR 115.01(1) and (2). The gaming licensee and each qualifier shall have a continuing duty to notify and update the IEB, in writing, within ten days of the occurrence, or where applicable, gaining knowledge of the following:
- (a) Any denial, suspension or revocation by a government agency in any jurisdiction of a gaming related license, registration, certification, permit or approval held by or applied for by the gaming licensee or qualifier;

- (b) Any discipline, including a fine or warning, related to gaming operations imposed upon the gaming licensee or qualifier by any government agency in any jurisdiction;
- (c) Any fine related to gaming operations assessed on any gaming entity owned or operated by the parent to the gaming licensee by any government agency in any jurisdiction.
- (d) Any arrest, indictment, charge or criminal conviction of any qualifier in any jurisdiction;
- (e) Any complaints, allegations, or notice of investigation thereof made or known to be contemplated by a gaming regulator or other governmental agency against the gaming licensee, qualifier, or any gaming entity owned or operated by the parent to the gaming licensee, of which the gaming licensee or qualifier is or should reasonably be aware, involving conduct that if substantiated could reasonably lead to potential revocation or suspension of the license or approval held by the gaming licensee, qualifier, or gaming entity owned or operated by the parent to the gaming licensee, in that jurisdiction and/or imposition of a fine of \$50,000 or greater;
- (f) Any reports, complaints, allegations, or material legal proceedings made, commenced, or known to be contemplated by a governmental agency against the gaming licensee or qualifier, of which the gaming licensee or qualifier is or should reasonably be aware, involving conduct that if substantiated could reasonably lead to potential criminal charges, including but not limited to allegations of theft or embezzlement;
- (g) Any information known or that should reasonably be known to the gaming licensee or qualifier, including by way of receipt of a subpoena, that the gaming licensee or qualifier is or may be the subject of a criminal investigation by a law enforcement or regulatory agency;
- (h) Any exclusion or barring of a qualifier from any casino, gaming establishment or gambling/gaming related entity in any jurisdiction;
- (i) The termination, suspension from employment, or other discipline of any key gaming employee licensed in accordance with 205 CMR 134.00 or qualifier;
- (j) Any material pending legal proceedings required to be reported in accordance with 17 CFR 229.103 - (Item 103) *Legal proceedings*. For purposes of 205 CMR 115.01(4)(j) the registrant referred to in 17 CFR 229.103 - (Item 103) shall be both the gaming licensee and the parent company of the gaming licensee as determined by the IEB. Additionally, the gaming licensee and each qualifier shall provide notice of any pending legal proceeding which includes any allegation of fraudulent conduct by the gaming licensee or a qualifier, that may reasonably threaten the economic viability of the gaming licensee or a qualifier, or that alleges a pattern of improper conduct by the gaming licensee or a qualifier over a sustained period of time;
- (k) Any *significant financial event* related to a gaming licensee or entity qualifier. For purposes of 205 CMR 115.01(4)(k) a *significant financial event* means a merger, acquisition, consolidation, debt restructuring, material change in debt rating by major credit rating agencies (US/International), legal entity change, material ownership change, the assessment of a fine or penalty of \$250,000 or greater by the SEC or international equivalent, restatement of previously issued financial statement(s), late filing of financial

statement(s) with the SEC or international equivalent, US or international equivalent bankruptcy petition, default of financial debt covenants and receivership, disposal of a material business segment or asset, or adverse action(s) taken by the IRS;

- (l) Issuance of an “Adverse” or “Qualified” audit opinion, or the international equivalent, by an independent accountant to the gaming licensee or qualifier;
- (m) A change in accounting firm engaged to perform attestation and/or assurance services for the gaming licensee or qualifier; and
- (n) Issuance of a delisting notice from a United States or international stock exchange relative to the gaming licensee or qualifier.

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