

205 CMR: MASSACHUSETTS GAMING COMMISSION
205 CMR 139.00: CONTINUING DISCLOSURE AND REPORTING OBLIGATIONS OF
GAMING LICENSEES

Section

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139.01: Records regarding company ownership

A gaming licensee and its holding companies shall maintain up to date records regarding the equity structure and ownership of the gaming licensee, including, at a minimum:

- (1) Certified copies of incorporation and formation documents and any amendments thereto.
- (2) By-laws, shareholders agreements, operating agreements, partnership agreement, intercompany transactions, joint venture agreements, merger and acquisition agreements, and other relevant corporate documents.
- (3) Current listing of officers, directors, members, partners.
- (4) Minutes of all meetings of shareholders, directors or members.
- (5) Current list of all equity owners, stockholders and stockholders of affiliates.
- (6) Detailed records regarding all capital contributions.
- (7) Detailed records regarding distributions to all equity holders.
- (8) Detailed records regarding all remuneration paid to officers, directors, partners and members.

- (9) Detailed records regarding any equity transfers.
- (10) Detailed records regarding all record holders of any or all classes of publicly traded securities issued by any holding company or by any other affiliated entity which is required to qualify as a financial source in connection with the gaming licensee's gaming license.
- (11) Any other records as the commission deems appropriate.

139.02: Accounting system

(1) Each gaming licensee shall maintain and submit to the commission for approval, in accordance with 205 CMR 138.02, a system of financial accounting that results in the licensee accurately reporting its assets, liabilities, equity, income and expenses.

(2) The system of financial accounting shall comply with generally accepted accounting principles and shall provide adequate detail so as to allow the commission to fully understand the gaming licensee's statement of condition and results of operations. To this extent, the gaming licensee shall submit a proposed full chart of accounts which shall be maintained and updated with the commission within 30 days of any changes.

(3) The gaming licensee's system of financial accounting shall provide a level of detail so as to allow it to accurately compute gross gaming revenue in accordance with 205 CMR 140.02 and to report the gaming licensee's drop, win, and hold percentage for each form of gaming activity, the value of complimentary goods or services and promotional play issued during the accounting period, and any other information necessary to allow the commission to understand the licensee's results of operations.

(4) The gaming licensee shall maintain detailed information and documentation to support all amounts reported to the commission as being the gaming licensee's assets, liabilities, equity, income and expenses.

139.03: Financial and statistical reports

(1) Each gaming licensee shall file the following reports electronically, on a set of standard reporting forms to be prescribed by the commission, or in any other manner prescribed by the commission:

(a) Pursuant to M.G.L. c. 23K, § 21(a)(12), a detailed annual statistical report on the number, job titles, benefits and salaries of employees hired and retained in employment at the gaming establishment.

(b) Pursuant to M.G.L. c. 23K, § 21(a)(24), a detailed annual statistical report on the total dollar amounts contracted with and actually paid to minority business enterprises, women business enterprises and veteran business enterprises in:

- (1) Design contracts;
- (2) Construction contracts; and

(3) Contracts for every good and service procured by the gaming establishment.

The annual statistical report shall also identify the amounts so contracted as a percentage of the total dollar amounts contracted with and actually paid to all firms.

- (c) Pursuant to M.G.L. c. 23K, § 21(a)(23), on a quarterly basis, a detailed statistical report, on the number, gender and race of individuals hired to perform labor as part of the construction of the gaming establishment.
- (d) Pursuant to M.G.L. c. 23K, § 21(a)(15), on an annual basis, and at other times as directed by the commission, aggregate demographic information with respect to the gaming licensee's customers in a format provided by the commission.
- (e) Pursuant to M.G.L. c. 23K, § 23(a), on an annual basis, and at other times as directed by the commission, a report explicitly stating the gaming licensee's progress on meeting each of the stated goals and stipulations put forth in its RFA-2 application.
- (f) Pursuant to M.G.L. c.23K, §28(b), on a quarterly basis, and at other times as directed by the commission, a report covering all complimentary services offered or engaged in by the gaming licensee during the immediately preceding quarter. The reports shall identify regulated complimentary services and the costs of those services, the number of people who received each service or item and such other information as the commission may require. The report shall also document any services or items valued in excess of \$2,000 that were provided to patrons, including detailed reasons as to why they were provided. Valuation shall be performed in accordance with M.G.L. c.23K, §28(c).
- (g) Pursuant to M.G.L. c.23K, §29, a gaming licensee who has implemented a player card/ rewards card program in accordance with 205 CMR 138.13, or cashless wagering system, shall annually report to the commission the amount of money spent and lost by patrons who have been issued a player card or rewards card or who participated in a cashless wagering system, aggregated by zip code.
- (g) Reports prescribed in accordance with 205 CMR 138.05(2) relative to registered and licensed employees;
- (h) The Disbursement Report relative to vendors in accordance with 205 CMR 138.06(2);
- (i) Counter check and slot counter check information maintained in accordance with 205 CMR 138.43(2)(l)-(n).
- (j) Pursuant to St. 2011, c. 194, §97, as directed by the commission, customer tracking data collected or generated by loyalty programs, player tracking software, player card systems, online gambling transactions or any other information system.
- (k) Daily remittance report required in accordance with 205 CMR 140.03.

(l) Quarterly and annual gross gaming revenue reports required in accordance with 205 CMR 140.04.

(m) Any other report or information requested by the commission or IEB.

(2) The reports shall be attested to by any of the following: the Chief Executive Officer, Chief Gaming Executive, Chief Financial Officer, Treasurer, Financial Director, Controller, or their functional equivalent.

(3) Annual reports to the commission shall be based on a calendar year, beginning January 1, and ending December 31; Quarterly reports shall be based on calendar quarters ending March 31, June 30, September 30, and December 31 and Monthly reports shall be based on calendar months.

(4) Each report to the commission shall be made in a format acceptable to the commission and electronically filed not later than the following applicable filing date unless the gaming licensee makes a written request for an extension and the extension is granted to the gaming licensee in writing by the commission. The commission may request that any report be provided at any time notwithstanding any specific timing requirement. Any filing date that falls on a Saturday, Sunday, or Federal or State holiday shall be extended until the next business day. The filing dates shall be as follows:

(a) Monthly gross gaming revenue tax reports shall be due not later than 9:00 a.m. on the 10th calendar day following the end of the month.

(b) All quarterly reports for the quarters ended March 31, June 30, and September 30 shall be due not later than the 15th calendar day of the second month following the end of the quarter.

(c) All quarterly reports for the quarter ended December 31 shall be due not later than March 31 of the following year.

(d) All annual reports shall be due not later than March 31 of the following year.

(5) To the extent possible, any adjustments resulting from the annual audit required in accordance with 205 CMR 139.06 shall be recorded in the accounting records of the year to which the adjustment relates. In the event the adjustments were not reflected in the licensees' quarterly report for the quarter ended December 31 and the commission concludes the adjustments are significant, a revised quarterly report for the quarter ended December 31 may be required from the gaming licensee. The revised filing shall be due within 30 calendar days after notification to the licensee, unless an extension is granted by the commission.

139.04: Monthly and quarterly financial statements

(1) Each gaming licensee shall submit monthly internal financial statements that at a minimum provide detailed income and expense statements within five days of completion and in no event later than the end of the subsequent month.

(2) Each gaming licensee shall submit quarterly financial reports of the gaming licensee when

prepared and in no event later than the 15th calendar day of the second month following the end of the quarter.

(3) Each gaming licensee shall submit annual internal budgeting documents and monthly updates.

139.05: Financial stability filings by a gaming licensee

(1) Each gaming licensee shall file with the commission a statement that the gaming licensee is in compliance with 205 CMR 139.05(1)(a) through (e); which statement shall accompany each quarterly financial report filed pursuant to 139.04(2):

- (a) Maintenance of a gaming bankroll or equivalent provisions adequate to pay winning wagers to gaming patrons when due. A gaming licensee shall be deemed to have met this standard if it maintains, on a daily basis, a gaming bankroll, or a gaming bankroll and equivalent provisions, in an amount which is at least equal to the average daily minimum gaming bankroll or equivalent provisions, calculated on a monthly basis, for the corresponding month in the previous year. For any gaming licensee which has been in operation for less than a year, such amount shall be determined by the commission based upon the gaming licensee's projections, which may take into consideration levels maintained by gaming licensee in comparable properties in other jurisdictions.
- (b) Ability to achieve positive Earnings Before Interest, Taxes and Amortization (EBITA), measured on an annual basis.
- (c) The ability to pay, as and when due, all local, state and federal taxes, including the tax on gross gaming revenues imposed by M.G.L. c.23K, §55 and any fees imposed under M.G.L. c.23K or 205 CMR.
- (d) The ability to make annual capital expenditures to its gaming establishment in a minimum aggregate amount equal to 3.5 per cent of the net gaming revenues derived from the establishment or in accordance with a multi-year capital expenditure plan approved by the commission pursuant to 205 CMR 138.27.
- (e) The ability to pay, exchange, refinance or extend debts, including long-term and short-term principal and interest and capital lease obligations, which will mature or otherwise come due and payable during the license term, or to otherwise manage such debts and any default with respect to such debts.

(2) Prior to the end of each calendar year, a gaming licensee shall file with the commission financial projections for the upcoming calendar year in a format acceptable to the commission which will, at a minimum, provide a statement of income, balance sheet, and statement of cash flows.

(3) At the end of each calendar year, each gaming licensee shall file with the commission a detailed analysis with respect to its compliance with subsection 205 CMR 139.05(1) (a) through (e) and provide such other information as the commission shall deem material to a showing of financial stability.

(4) A gaming licensee shall file with the commission copies of any compliance certificates when provided to lenders pursuant to any loans or debt instruments of each gaming licensee, affiliate, or holding company thereof.

(5) A gaming licensee shall file with the commission essential details of any loans, covenants, borrowings, installment contracts, guarantees, leases, capital contributions, or any other debt no later than 10 days after the end of the month in which the transaction or event occurs.

(6) Any event of default, or potential default event, related to any debt obligation maintained by the gaming licensee, affiliate, or holding company thereof shall be immediately reported to the commission, in writing, along with any plans to address or cure such default.

(7) In the event that the commission determines that a gaming licensee has failed to demonstrate financial stability, the commission may take such action as is necessary to protect the public interest, including, but not limited to:

- (a) establishing an appropriate cure period;
- (b) imposing reporting requirements in excess of those otherwise mandated by M.G.L. c.23K and 205 CMR;
- (c) placing such restrictions on the transfer of cash or the assumption of liabilities as is necessary to insure future compliance with the standards set forth in subsections 205 CMR 139.05(a)(1) through (5);
- (d) requiring the maintenance of reasonable reserves or the establishment of dedicated or trust accounts to insure future compliance with financial stability standards;
- (e) impose additional license conditions; and/or
- (f) revoking the gaming licensee's gaming license.

139.06: Annual audit and other reports

(1) A gaming licensee shall submit to the commission, at its own expense, an annual audit of its fiscal year prepared in accordance with generally accepted auditing standards within the United State by an independent certified public accountant attesting to the financial condition of the gaming licensee and disclosing whether the accounts, records and control procedures examined are maintained by the gaming licensee as required M.G.L. c.23K and 205 CMR. To ensure the independence of the annual audit, a gaming licensee shall rotate accounting firms/partners at least every five years.

(2) The annual financial statements shall be prepared on a comparative basis for the current and prior calendar year, and present the financial position and results of operations in conformity with generally accepted accounting principles in the United States.

(3) The annual financial statements shall include footnotes reconciling and explaining any differences between the financial statements included in the gaming licensee's quarterly financial report for the quarter ended December 31 and the audited financial statements, with such footnote, at a minimum, disclosing the effect of such adjustments on:

- (a) Gaming revenues.
- (b) Revenues net of complimentary services.
- (c) Total costs and expenses.
- (d) Income before extraordinary items.
- (e) Net income.
- (f) Large book to tax differences or reconciliations.

(4) The annual financial statements shall include a study of the gaming licensee's system of internal accounting control, as designed, conducted by the independent certified public accountant, for the purpose of expressing an opinion as to the adequacy of said internal controls, and for the purpose of conducting compliance tests to determine whether material aspects of the system of internal control are in place and being followed. The gaming licensee's independent certified public accountant shall issue a written report, or opinion, as to the adequacy of the licensee's system of internal accounting control, and as to the gaming licensee's level of compliance therewith. In the event that the gaming licensee's independent certified public accountant makes recommendations to improve the system of internal accounting control, or to increase the gaming licensee's level of compliance, the gaming licensee's Chief Financial Officer shall respond, in writing, to the recommendations of the independent certified public accountant and provide the commission with a copy of its response.

(5) One copy of the audited financial statements, together with the management letter or report prepared thereon by the gaming licensee's independent certified public accountant, shall be filed with the commission by April 30 following the end of the calendar year or the end of the quarter following the end of a fiscal year.

(6) In the event the gaming licensee's independent certified public accountant shall resign or be removed as the gaming licensee's principal accountant or auditor, the gaming licensee shall submit a written report to the commission within 20 days of such resignation or removal, signed by its Chief Financial Officer and Chairman of its Audit Committee, outlining the cause or nature of the resignation or removal, stating whether the resignation or removal was related to material differences between the parties as to financial statement presentation issues, disclosures, or the adequacy of the gaming licensee's system of internal accounting control and, if so, a complete and detailed description of the differences for consideration by the commission. The gaming licensee shall submit as an exhibit to this report a letter from the former independent certified public accountant stating whether he or she agrees with the statements made by the gaming licensee in the report submitted to the commission.

139.07: Tax return filings

If requested by the commission, a gaming licensee, holding company, intermediary company, qualifying subsidiary or entity qualifier thereof, shall provide the commission with copies of its Federal and/or State Tax Returns and any related forms.

139.08: Minutes of meetings of board and committees

(1) A gaming licensee or holding company thereof shall file with the commission copies of the minutes of all board of directors or equivalent governing authority meetings and committee meetings including, without limitation, the audit and compliance committee, by no later than 45 days of the meeting regardless of formal adoption and that upon formal adoption of previously-submitted board and committee minutes, a copy of such final minutes shall be filed with the commission.

(2) A gaming licensee or holding company thereof shall file, with the commission, the schedule for its board and committee meetings on an annual basis.

139.09: Governing documents

A gaming licensee or holding company thereof shall file with the commission copies of any amendments to, restatements of, or superseding versions of the governing documents of the gaming licensee or holding company within seven days of formal adoption.

139.10: Compliance plan

A gaming licensee or holding company thereof shall file with the commission copies of any amendments to its written compliance plan within seven days of formal adoption.

139.11: Securities filings

If requested by the commission, a gaming licensee, holding company, intermediary company, qualifying subsidiary and entity qualifier thereof, shall file with the commission copies of any securities filings submitted to Federal, State, or other domestic or foreign securities regulatory authorities, regarding any of the securities, either in existence or proposed, including, but not limited to, forms S-1, 8-K, 10-Q and 10-K, proxy or information statements and all registration statements filed at the time of filing with such authority.

139.12: Audit of gaming licensee operations by Commission

In accordance with M.G.L. c.23K, §65 the commission shall audit on an annual basis, and at other times the commission determines necessary the accounts, programs, activities, and functions of a gaming licensee and/or any aspect of the gaming establishment. To conduct the audit, authorized officers and employees of the commission shall be given access by the gaming licensee to such accounts at reasonable times and may require the production of books, documents, vouchers and other records relating to any matter within the scope of the audit; provided however, that a gaming licensee's tax returns will not be audited by the commission. All audits shall be conducted in accordance with generally accepted auditing standards established by the American Institute of Certified Public Accountants and the standards established by the Public Company Accounting Oversight Board. In any audit report of the accounts, funds, programs, activities and functions of a gaming licensee issued by the commission containing adverse or critical audit results, the commission may require a response, in writing, to the audit results. The response shall be forwarded to the commission within 15 days

of notification by the commission.

138.13: Capital expenditure plan

A gaming licensee shall make, or cause to be made, capital expenditures to its gaming establishment in a minimum aggregate amount equal to 3.5 per cent of the net gaming revenues derived from the gaming establishment; provided, however, that a gaming licensee may make capital expenditures in an amount less than 3.5 per cent per year as part of a multi-year capital expenditure plan approved by the commission. For purposes of 205 CMR 138.13, net gaming revenue means gross gaming revenue as calculated in accordance with 205 CMR 140.02 minus taxes remitted to the commonwealth in accordance with 205 CMR 140.03. If the gaming licensee intends to make capital expenditures as part of a multi-year capital plan, the plan shall be submitted to the commission as part of its system of internal controls in accordance with 205 CMR 138.02. Provided, however, such plan shall provide for the establishment of and contribution to a capital reserve account.

138.14: Access to premises and production of records

- (1) No gaming licensee shall neglect or refuse to produce records or evidence or to give information relative to the gaming establishment upon proper and lawful demand by the commission, the IEB, or a designee, or shall otherwise interfere, or attempt to interfere, with any proper and lawful efforts by the commission, the IEB, or any designee to procure such information.
- (2) A gaming licensee shall immediately make available for inspection by the commission, IEB, or a designee all papers, books and records produced or maintained by the gaming licensee and all portions of the gaming establishment and its systems. The commission, IEB, or designee shall be given immediate access to any portion of the gaming establishment for the purpose of inspecting or examining any records or documents required to be kept by such licensee in accordance with 205 CMR.
- (3) Access to the gaming establishment shall be granted to the commission, IEB, or a designee who displays proper commission issued credentials.

REGULATORY AUTHORITY

205 CMR 138: M.G.L. c. 23K, §§4(28), 4(37), 5