

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 2.00: RACING MEETING LICENSING

Section 2.01: Authority and Definitions

Section 2.02: Racing Meeting License Application

Section 2.03: Evaluation of Application and Decision

Section 2.04: Suitability of New and Existing Licensees, and Qualifiers

Section 2.05: Advance Deposit Wagering; Licensure, Review and Authorization (RESERVED)

Section 2.06: Licensing, Registration, and Fees for Owners, Trainers, Stable Employees,
Authorized Agents, Vendors and Racing Officials (RESERVED)

Section 2.07: Financial Payments, Outs, and Requests for Capital Improvement or
Reimbursement (RESERVED)

Section 2.08: Additional Information and Cooperation of Racing Meeting Applicants and
Licensees

Section 2.09: Withdrawal of Application For License To Hold Or Conduct A Racing Meeting

2.01 Authority and Definitions

(1) Authority. 205 CMR 2.00 is issued pursuant to G.L. c. 128A, § 9, and G.L. c. 128C, § 8.

(2) Definitions. As used in 205 CMR 2.00, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise. Words and phrases not defined below shall have the meaning given to them in G.L. c. 128A, § 1 or G.L. c. 128C, § 1, 205 CMR 202.02, or 205 CMR 102.00, if any, unless the context clearly requires otherwise. In the event of any conflict between those provisions, any definition in G.L. c. 128A, § 1 shall be given priority, followed by G.L. c. 128C, § 1, 205 CMR 202.02, and 205 CMR 102.00, in that order, unless the context clearly requires otherwise.

Applicant means an applicant for a racing meeting license.

Application means an application for a racing meeting license.

Application deadline means the first day of October of the calendar year preceding the calendar year for which the application requests a license to be issued.

Authorized individual means, if the applicant is an individual, such individual; if two or more individuals or a partnership, one of such individuals or by a member of such partnership, as the case may be; if a trust, a trustee of such trust; and, if an association or corporation, by the president or vice president thereof.

205 CMR: MASSACHUSETTS GAMING COMMISSION

BED means a Business Entity Disclosure Form by an authorized individual as described in 205 CMR 111.02: Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies.

License means a racing meeting license.

Licensee means a racing meeting licensee. A licensee shall be considered a licensee through the full calendar year in which its license permits it to host racing meetings regardless of the date of its last scheduled racing meeting.

Mass. Supp. means Massachusetts Supplemental Form as described in 205 CMR 111.04.

MJPHD means a Multi-jurisdictional Personal History Form as described in 205 CMR 111.03: Multi-jurisdictional Personal History Form.

Scoping survey means an Operator and Vendor Scope of Licensing – Initial Survey.

Racing meeting license means a license to conduct a live racing meeting.

Qualifier means a person whose qualification must be established in evaluating the suitability of an applicant in accordance with the standards and criteria set forth in M.G.L. c. 128A and 205 CMR 2.04.

2.02 Racing Meeting License Application

(1) Required Materials. An applicant must submit a fully executed original application to the Commission on or before the application deadline. All application materials shall be submitted in accordance with the instructions included in the relevant form or online. The Commission shall have no obligation to accept or review an incomplete application. Applicants shall, at a minimum, submit the following completed materials as part of their application:

(a) If the applicant is not currently a licensee:

- (i) a scoping survey;
- (ii) For each designated entity qualifier: a BED;
- (iii) For each designated individual qualifier:

- (a) An MJPHD; and
- (b) A Mass. Supp.

(b) A racing meeting license application form, in accordance with 205 CMR 2.02 and consistent with M.G.L. c. 128A and M.G.L. c. 128C, signed and sworn to by an authorized individual;

(c) A \$300 licensing fee pursuant to M.G.L. c. 128A, § 4;

205 CMR: MASSACHUSETTS GAMING COMMISSION

- (d) A certified check or bank draft, or electronic equivalent, payable to the Commission, weekly in advance for the full amount of the license fee required by G.L. c. 128A;
- (e) A bond payable to the Commission in the amount of \$125,000 with a surety or sureties approved by the Commission conditioned upon the payment of all sums which may become payable to the commission under this chapter.

(2) Sequence of submissions. An applicant who is not currently a licensee:

- (a) may submit the scoping survey prior to and separately from any other required materials; and
- (b) may submit any BEDs, MDJPHDs, and Mass. Supps. required by 205 CMR 2.02(1)(a)(ii)-(iii) prior to and separately from the materials required under 205 CMR 2.02(1)(b)-(f).
- (c) An applicant who submits any forms prior to and separately from other application materials in accordance with 205 CMR 2.02(2)(a) or (b) must also submit an attestation signed and sworn to that the applicant intends in good faith to submit a fully executed original application on or before the application deadline, and acknowledging that if the applicant fails to do so without good cause, the Commission may charge the applicant for any administrative and investigatory costs incurred in evaluating those application forms the applicant did submit. Only one such attestation shall be required per application regardless of the volume or nature of forms submitted early.

(3) Racing Meeting License Application Form requirements.

- (a) For any applicant, the racing meeting license application form shall require the following:
 - (i) The name of the applicant;
 - (ii) The post office address of the applicant, and if a corporation or corporate entity, the name of the state under the laws of which it is incorporated or formed, the location of its principal place of business and the names and addresses of its directors and stockholders, members, or directors;
 - (iii) The location of the racetrack where it is proposed to hold or conduct such meeting;
 - (iv) An explanation of the ownership of the real property on which the race track is proposed to be constructed or operated, and the applicant's rights to construct or operate the race track on said real property;
 - (v) Documentation sufficient to demonstrate that the applicant has received:
 - (c) municipal approval pursuant to M.G.L. c. 128A, § 13A; and

205 CMR: MASSACHUSETTS GAMING COMMISSION

- (d) an affirmative county vote pursuant to M.G.L. c. 128A, § 14;
 - (vi) The calendar year in which the applicant anticipates conducting the meeting, and the specific days on which it intends or anticipates holding or conducting such a meeting;
 - (vii) The hours of each day between which it is intended to hold or conduct racing at such meeting subject to the restrictions described in M.G.L. c. 128A;
 - (viii) An attestation signed and sworn to that the applicant will comply, in case such license be issued, with all applicable laws and with all applicable rules and regulations prescribed by the Commission, and that the applicant shall have an affirmative obligation to abide by every statement made in the application to the Commission should it be awarded a license;
 - (ix) An attestation signed and sworn to that the applicant will comply, in case such license shall be issued, with all affirmative representations, promises or inducements made to governing bodies, government officials of the host and surrounding communities or local organizations and any mitigation agreements, formal or informal; and
 - (x) Such other information or certifications as the Commission may require.
- (b) For any applicant who proposes to hold a racing meeting at a race track where the applicant has not previously held a racing meeting, the racing meeting license application form shall also require the following:
- (i) A summary of the project and racing facilities including a description of the proposed financing and source(s) of capital;
 - (ii) Submission of feasibility, viability, economic impact/development studies including projected revenues, purses, handles, tax payments, attendance, and employment figures;
 - (iii) Submission of designs, traffic, and environmental impact studies, including information relative to the safety and security of patrons, employees, occupational licensees, and horses;
 - (iv) A detailed description of the race track that will be constructed and an indication of the type of grounds the horses will be raced upon, whether dirt, turf or synthetic, including a timeline for completion and the name and qualifications of the entity or individual overseeing construction;
 - (v) Information relative to the public interest and benefits associated with the conduct of the proposed racing meeting including the existence of, or the applicant's plan to execute, a purse agreement with a representative horsemen's organization; any support or opposition to the proposal has received from the host and nearby

- communities; and the applicant's plan to attract and employ a diverse workforce in both construction and operational phases of the proposal, including through use of vendors.
- (vi) Information or a statement as to whether the applicant plans on entering into a Project Labor Agreement(s);
 - (vii) Information relative to the proposed pari-mutuel wagering plan for live racing, simulcasting, and advance account deposit wagering;
 - (viii) Information relative to the proposed responsible gaming initiatives to be offered on the premises;
 - (ix) Information relative to the applicant's plans to seek or not seek a Category 2 Sports Wagering license;
 - (x) Any agreements, written or otherwise, that the applicant has made or executed with racing governing bodies, the municipality where the applicant proposes to hold racing meetings, other municipalities, or any other entities; and
 - (xi) Such other information or certifications as the Commission may require.
- (c) For any applicant who is not currently a licensee, or who has not previously been found durably or temporarily suitable in accordance with this 205 CMR to hold a license, the racing meeting license application form shall also require the following:
- (xii) An attestation signed and sworn to that if the form described in 205 CMR 2.02(1)(a)(i) is not deemed administratively sufficient by May 1, the applicant acknowledges the Commission may not have adequate time to assess the applicant's suitability, and that this may result in denial of the application;
 - (xiii) An attestation signed and sworn to that if the forms described in 205 CMR 2.02(1)(a)(ii)-(iii) are not deemed administratively sufficient by August 1, the applicant acknowledges the Commission may not have adequate time to assess the applicant's suitability, and that this may result in denial of the application; and
 - (xiv) Such other information or certifications as the Commission may require.

2.03 Evaluation of Application and Decision

- (1) Pre-Application Consultation. The Commission or its designees may conduct one or more consultation meetings or information sessions with an applicant or prospective applicant to provide guidance on application procedures, including the requirements of G.L. c. 128A or 128C, or 205 CMR 2.00. In addition, the Commission may use other methods to respond to inquiries regarding the application process, such as publishing responses to questions submitted by any applicant.

205 CMR: MASSACHUSETTS GAMING COMMISSION

(2) Administrative Sufficiency Review. The Division of Licensing will review application materials for administrative sufficiency as they are submitted.

(a) Administrative sufficiency review – how undertaken.

(i) When determining whether the application materials to be reviewed at any stage are administratively sufficient, the Division of Licensing shall review the forms and determine whether all information or materials required to be provided in response to each question or request have been submitted.

(ii) If any application materials to be reviewed in a stage are determined to be insufficient:

(a) The Licensing Division shall notify the applicant in writing by email or first-class mail. The notification shall specify the deficiencies within the materials.

(b) Until the application deadline passes, the applicant shall have the right to submit corrected materials to cure the deficiencies.

(c) After the application deadline passes, the applicant must request leave from the Commission or its designee to submit corrected materials to cure the specified deficiencies, and must submit any corrected materials within the time allowed by the Commission or its designee.

(d) The Commission or its designee shall not grant leave to submit proof of approvals required under G.L. c. 128A, §§ 13A and 14.

(b) Positive determination of administrative sufficiency – significance. A positive determination of administrative sufficiency shall not constitute a finding with respect to the accuracy of the information submitted and shall not bar a request for further information by the Commission, the Bureau or their agents and employees with respect to the application.

(3) Review Procedures. In reviewing the merits of the application, the Commission may, at such times and in such order as the Commission deems appropriate, take some or all of the following actions:

(a) Refer the application, or any parts thereof, for advice and recommendations, to any or all of the following:

(i) The Executive Director;

(ii) The Bureau;

(iii) Any office, agency, board, council, commission, authority, department, instrumentality, or division of the commonwealth;

205 CMR: MASSACHUSETTS GAMING COMMISSION

- (iv) Commission staff; and
 - (v) Any consultant retained by the Commission to aid in the review of the application;
- (b) Retain, or authorize the Executive Director or the Executive Director's designee to retain such professional consultants (including without limitation financial and accounting experts, legal experts, racing experts, contractor investigators, and other qualified professionals) as the Commission in its discretion deems necessary and appropriate to review the request and make recommendations; and
- (c) Require or permit, in the Commission's discretion, the applicant to provide additional information and documents.

(4) Public Meetings Regarding Applications

- (a) Pursuant to G.L. c. 128A, § 3, the Commission shall not issue the license without holding at least one public meeting in the municipality where the applicant proposes to hold a racing meeting.
- (b) The Commission may conduct one or more other meetings to:
- (i) receive public feedback on the application;
 - (ii) allow the applicant to make a presentation; and
 - (iii) allow the applicant to respond to questions or public comments.

(5) Evaluation of the Application by the Commission. Once an application is deemed administratively sufficient, the Commission shall commence a substantive evaluation of its contents. The Commission may utilize any technical or expert assistance it deems necessary to aid in its review.

- (a) The Commission shall analyze the factors and considerations set out in 205 CMR 2.01, and G.L. c. 128A, § 3(i) in no particular order, and giving any particular weights, to any factor in order to make a determination as to whether a license awarded to the applicant would benefit the Commonwealth. These factors include but are not limited to:
- (i) Whether the application meets the requirements of G.L. c. 128A;
 - (ii) Whether the applicant has adequately answered the questions in the application;
 - (iii) Whether the application meets the factors set out in G.L. c. 128A, § 3(i):
 - (a) The applicant's financial ability to successfully operate a race track;
 - (b) The impact of the application on the maximization of state revenues;

205 CMR: MASSACHUSETTS GAMING COMMISSION

- (c) The suitability of the racing facilities for operation at the time of the year for which dates are assigned;
 - (d) The circumstance that large groups of spectators require safe and convenient facilities;
 - (e) The interest of members of the public in racing competition honestly managed and of good quality;
 - (f) The necessity of having and maintaining proper physical facilities for racing meetings; and
 - (g) The economic interest and investments of those who in good faith have provided and maintain such facilities;
- (iv) Whether the Applicant is financially responsible, able to meet obligations to the Commonwealth, has suitable and safe facilities for the service of patrons, and is likely to conduct racing in accordance with approved practices and in a manner consistent with the public safety, health, morals, and welfare, including the suitability of the Applicant and its leadership to hold or conduct a racing meeting;
 - (v) The reputation for honest dealing, and the gaming, racing, or sports wagering history of the Applicant and its qualifiers;
 - (vi) Whether granting the application would result in an undesirable concentration of ownership of racing facilities within the Commonwealth;
 - (vii) Whether the application would have an adverse impact upon the integrity of the racing industry;
 - (viii) The applicant's proposed measures related to responsible wagering, including:
 - (a) The Applicant's responsible wagering policies;
 - (b) The Applicant's advertising and promotional plans; and
 - (c) The Applicant's history of demonstrated commitment to responsible wagering;
 - (ix) The Applicant's willingness to foster racial, ethnic, and gender diversity, equity, and inclusion, including:
 - (a) Within the applicant's workforce;
 - (b) Through the applicant's supplier spend; and
 - (c) In the applicant's corporate structure;
 - (x) any other relevant considerations the Commission deems appropriate, per M.G.L. c. 128A, § 2.

(b) The Commission shall deliberate on license applications in an adjudicatory proceeding pursuant to 205 CMR 101.01: *Hearings Before the Commission*.

(6) Determinations on Applications.

205 CMR: MASSACHUSETTS GAMING COMMISSION

- (a) After evaluating an application in accordance with 205 CMR 2.03(5), the Commission may:
- (i) Award the applicant a license, subject to conditions in accordance with G.L. c. 128A and 128C, and 205 CMR; or
 - (ii) Deny the application for any of the reasons set out in G.L. c. 128A and 128C, and 205 CMR.
- (b) The Commission shall not award a license without first having found the applicant durably suitable in accordance with 205 CMR 2.04(1) within the current or prior four calendar years, or having found the applicant temporarily suitable in accordance with 205 CMR 2.04(2) within the last calendar year; provided, the Commission may make either finding simultaneously with the decision to award a license in accordance with 205 CMR 2.03(6)(a)(i).

(7) Provisions Applicable to All Licensing Determinations. Upon granting an application, the Commission shall prepare and file its decision, and shall issue a statement of the reasons for the grant, including specific findings of fact, and noting any conditions of licensure imposed pursuant to G.L. c. 128A, or 128C.

- (a) Upon denial of an application, the Commission shall prepare and file its decision and, if requested by the applicant, shall further prepare and file a statement of the reasons for the denial, including specific findings of fact.
- (b) For purposes of 205 CMR and G.L. c. 128A, or 128C, the award of a Racing Meeting License shall be deemed to have occurred immediately upon a majority vote by the Commission to issue the license, unless otherwise determined by the Commission.

(c) License conditions.

- (i) All licenses shall be issued subject to the following conditions:
 - (a) That the licensee comply with all terms and conditions of its license;
 - (b) That the licensee comply with G.L. c. 128A, c. 128C, and all rules and regulations of the Commission; and
 - (c) That the licensee, and its qualifiers, not become, or be found, unsuitable.
- (ii) The Commission may impose any other appropriate condition on a license.

2.04 Suitability of New and Existing Licensees, and Qualifiers

(1) Durable suitability determinations.

205 CMR: MASSACHUSETTS GAMING COMMISSION

- (a) An applicant or qualifier shall have the duty to establish its durable suitability by clear and convincing evidence.
- (b) No applicant shall be determined to be durably suitable in accordance with 205 CMR 2.04(1)(a) unless and until all qualifiers identified in 205 CMR 2.04(6) have been found by the Commission durably suitable in accordance with 205 CMR 2.04(1)(a) within the current or prior four calendar years.
- (c) Investigation. Before the Commission may determine that an applicant or qualifier is durably suitable in accordance with 205 CMR 2.04(1), the Bureau shall conduct an investigation into the qualifications and suitability of the applicant. At the completion of the Bureau's investigation, it shall submit a written report to the Commission, which will include recommendations and findings of fact relative to the suitability of the applicant or qualifier.
- (d) The Commission shall make any finding of durable suitability in accordance with 205 CMR 2.04(1) after an adjudicatory proceeding pursuant to 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.
- (e) After the proceedings under 205 CMR 2.04(1)(d), the Commission shall issue a written determination of durable suitability as follows:
 - (i) Negative Determination. If the Commission finds that an applicant or qualifier failed to meet its burden of demonstrating its durable suitability, the Commission, in its sole discretion, shall either:
 - (a) issue a negative determination of suitability; or
 - (b) request that the applicant or qualifier submit a certification in accordance with 205 CMR 2.04(2)(b) and, as appropriate, that the Bureau conduct an investigation in accordance with 205 CMR 2.04(2)(c), and thereafter consider whether the applicant or qualifier is temporarily suitable in accordance with 205 CMR 2.04(2).
 - (ii) Positive Determination. If the Commission finds that an applicant or qualifier has met its burden of demonstrating its durable suitability, the Commission shall issue a positive determination of durable suitability which may include conditions and restrictions.

(2) Temporary suitability determinations.

- (a) Notwithstanding any other provision of 205 CMR 2.04, the Commission, in its sole discretion, may deem an applicant or qualifier temporarily suitable, until the end of the calendar year in which the applicant proposes to hold a racing meeting, after an adjudicatory proceeding pursuant to 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*, based on a certification pursuant to 205 CMR 2.04(2)(b) and an investigatory report pursuant to 205 CMR 2.04(2)(c).

205 CMR: MASSACHUSETTS GAMING COMMISSION

- (i) No applicant shall be determined to be temporarily suitable in accordance with this 205 CMR 2.04(2)(a) unless and until all qualifiers identified in 205 CMR 2.04(6) have been found durably suitable in accordance with 205 CMR 2.04(1)(b) or temporarily suitable in accordance with this 205 CMR 2.04(2)(a).
 - (b) To be found temporarily suitable in accordance with 205 CMR 2.04(2), the applicant or qualifier must certify:
 - (i) that it understands it may be denied a license or have a license revoked if it has willfully, knowingly, recklessly, or intentionally provided false or misleading information to the Commission;
 - (ii) that, under pains and penalties of perjury, to the best of its reasonable knowledge and belief, it is suitable to hold a license pursuant to G.L. c. 128A and 205 CMR 2.04; and
 - (iii) an applicant certifies, under pains and penalties of perjury, that to the best of its reasonable knowledge and belief, all of its qualifiers are also suitable to hold a license pursuant to G.L. c. 128A, and 205 CMR 2.04.
 - (c) Before the Commission may determine that an applicant or qualifier is temporarily suitable in accordance with 205 CMR 2.04(2), the Bureau shall conduct an investigation into the qualifications and suitability of the applicant or qualifier. The investigation may be limited to a review of the applicant or qualifier's 205 CMR 2.04(2)(b) certification; an applicant's self-disclosed licensing and compliance history in other jurisdictions; self-disclosed open litigation involving an applicant; and an open-source check concerning the applicant or, if a natural person, a qualifier. At the completion of the Bureau's investigation, it shall submit a written report to the Commission. The Bureau's report may be redacted consistent with the Massachusetts Public Records Law, M.G.L. c. 66, and other sources of law.
 - (d) After evaluating whether the applicant or qualifier is temporarily suitable in accordance with 205 CMR 2.04(2)(d):
 - (i) If the Commission finds the applicant or qualifier temporarily suitable: the Commission shall issue a written determination of temporary suitability for the applicant or qualifier. The determination may include conditions and restrictions.
 - (ii) Otherwise: the Commission may issue a negative determination of suitability.
- (3) In determining whether a person is suitable, the Commission shall evaluate and consider the overall reputation of the person, including, without limitation, and on the basis of a report from the Bureau, sworn attestations, or other information or evidence available to the Commission:

205 CMR: MASSACHUSETTS GAMING COMMISSION

- (a) the person's integrity, honesty, good character and reputation;
 - (b) the person's financial stability, integrity, and background;
 - (c) whether the person has a history of compliance with racing or other gaming or sports wagering requirements in other jurisdictions;
 - (d) whether the person, at the time of the request, is a defendant in litigation;
 - (e) whether the person is ineligible to hold a license under 205 CMR 2.04(4), or M.G.L. c. 128A;
 - (f) whether the person has been convicted of a crime of moral turpitude;
 - (g) whether, and to what extent, the person has associated with members of organized crime and other persons of disreputable character;
 - (h) whether the person has failed to demonstrate responsible business practices in any jurisdiction;
 - (i) whether awarding a license to the applicant would have an adverse impact upon the integrity of the racing industry;
 - (j) whether awarding a license to the applicant would have an adverse impact on the interest of members of the public in racing competition honestly managed and of good quality; and
 - (k) the extent to which the person have cooperated with the Bureau during the review of the Racing Meeting License Application.
- (4) The Commission shall determine that an applicant is unsuitable if the applicant or one of its qualifiers:
- (a) has knowingly made a false statement of a material fact to the Commission or IEB;
 - (b) has had a license revoked by any governmental authority responsible for regulation of racing or associated pari-mutuel wagering activities or gaming or sports wagering activities;
 - (c) has been convicted of a felony or other crime involving embezzlement, theft, fraud, perjury or a gambling-related offense;
 - (d) has not demonstrated to the satisfaction of the Commission financial responsibility sufficient to adequately meet the requirements of the proposed enterprise;
 - (e) has affiliates or close associates that would not qualify for a license, or whose relationship with the applicant may pose an injurious threat to the interests of the Commonwealth.
- (5) Persons Required to be Qualified. The following persons shall be qualifiers for any application:
- (a) If the applicant is a corporation:
 - (i) Each officer;
 - (ii) Each inside director;
 - (iii) Any person owning, or having another beneficial or proprietary interest in, 10% or more of the common stock of the applicant, or a

205 CMR: MASSACHUSETTS GAMING COMMISSION

holding, intermediary or subsidiary company of such company;
and

- (iv) In the judgment of the Division of Licensing after consultation with the Bureau, any person with significant and substantial responsibility for the applicant's business under the jurisdiction of the Commission, or having the power to exercise significant influence over decisions concerning the applicant's operations in the Commonwealth.

(b) If the applicant is a limited liability corporation:

- (i) Each member;
- (i) Each transferee of a member's interest;
- (ii) Any other holder of a beneficial or proprietary interest of 10% or more in the applicant;
- (iii) Each manager; and
- (iv) In the judgment of the Division of Licensing after consultation with the Bureau, any person with significant and substantial responsibility for the applicant's business under the jurisdiction of the Commission or having the power to exercise significant influence over decisions concerning the prospective applicant's operations in the Commonwealth.

(c) If the applicant is a partnership:

- (i) Each partner;
- (ii) Any other holder of a beneficial or proprietary interest of 10% or more in the applicant; and
- (iii) In the judgment of the Division of Licensing after consultation with the Bureau, any person with significant and substantial responsibility for the applicant's Business under the jurisdiction of the Commission or having the power to exercise significant influence over decisions concerning the applicant's operations in the Commonwealth.

(6) Other Qualifiers. The Commission may, in its sole discretion, require other persons that have a business association of any kind with the applicant to undergo a qualifier review and determination process. These persons may include, but are not limited to, holding, intermediary or subsidiary companies of the applicant.

(7) Waivers. In addition to any other exception or exemption under 205 CMR 2.04, upon written petition, the Commission may waive the requirement to be qualified as a qualifier under 205 CMR 2.04(5)-(6) for:

- (a) Institutional investors holding up to 15% of the stock of the applicant, or holding, intermediary or subsidiary company thereof, upon a showing by the person seeking the waiver that it purchased the securities for investment

205 CMR: MASSACHUSETTS GAMING COMMISSION

purposes only and does not have any intention to influence or affect the affairs or operations of the applicant or holding, intermediary or subsidiary company thereof. Provided, however, any institutional investor granted a waiver which subsequently determines to influence or affect the affairs or operations of the applicant, or a holding, intermediary or subsidiary company thereof shall provide not less than 30 days' notice to the Commission of such intent and shall file an application and may be subject to the licensing requirements of 205 CMR 2.00, 3.00 and 4.00 respectively before taking any action that may influence or affect the affairs of the applicant or a holding, intermediary or subsidiary company; or

- (b) Any person who, in the opinion of the Bureau or the Commission, cannot exercise control or provide direction to an applicant or a holding, intermediary or subsidiary company thereof.

(8) Persons Deemed Suitable.

- (a) Any person may be deemed durably suitable for purposes of M.G.L. c. 128A and 205 CMR without an additional finding of suitability pursuant to CMR 2.04 if they were previously:

- (i) qualified pursuant to M.G.L. c. 23K or 205 CMR 116.00; or
- (ii) found suitable pursuant to 205 CMR 215.01(1).

- (b) Any person may be deemed temporarily suitable for purposes of M.G.L. c. 128A and 205 CMR without an additional finding of suitability pursuant to CMR 2.04 if they were previously found preliminarily suitable pursuant to 205 CMR 215.01(2).

(9) Qualification of New Qualifiers. No person requiring qualification pursuant to 205 CMR 2.04 may perform any duties or exercise any powers relating to the position that said qualifier is seeking to assume for a licensee unless the person notifies the Bureau in writing within 30 days of appointment to the position. Such notification shall be accompanied by an applicable business entity or personal disclosure form, specified by the Bureau. Following such notification and submission of the completed form, the person may continue to perform duties and exercise powers relating to the position pending qualification.

- (a) A person with reason to believe that their new position with an applicant or licensee may require qualification pursuant to 205 CMR 2.04 shall notify the Bureau in writing within 30 days of appointment to the position. Such notification shall be accompanied by a summary of the responsibilities and/or features of the position. The Bureau shall determine whether the person shall be designated a qualifier pursuant to 205 CMR 2.04(5) – (6) and shall notify the person of such designation in writing. Within 30 days of designation as a qualifier, the person shall submit a completed personal disclosure form. Following submission of the

205 CMR: MASSACHUSETTS GAMING COMMISSION

- completed form, the person may continue to perform duties and exercise powers relating to the position pending qualification.
- (b) The Bureau shall review the forms submitted by the new qualifier, as well as such other information that the Bureau may request, and, upon completion of its investigation, shall make a recommendation in accordance with 205 CMR 2.04(1)(c) whether the new qualifier meets the standards for suitability.
 - (c) Upon notification by the Bureau of a determination that reasonable cause exists to believe the qualifier may not ultimately be found suitable, an applicant shall promptly remove the qualifier from his or her position until such time as the Commission makes its final determination on suitability.
- (10) Internal Review of Determinations. An applicant or qualifier may request review of any determination made by the Bureau in accordance with either 205 CMR 2.04(5)-(7) or 205 CMR 2.04(9) to the Commission, by filing a petition on a form prescribed by the Commission. The Commission shall decide the question at a public meeting on the matter at which it may allow representatives of the petitioner and Bureau to testify.
- (11) Unsuitable qualifiers. An unsuitable qualifier may not hold an interest in a license. A licensee's articles of organization or other document governing the sale or transfer of securities or other interests shall contain provisions in a form approved by the Commission stating that the sale, assignment, transfer, pledge or other disposition of any security issued by it is conditional and shall be ineffective if disapproved by the Commission. Further, a licensee shall have a mechanism approved by the Commission in place by which it may effectuate divestiture or redemption of securities, or a like process, in the event of a negative determination of suitability being issued to a person required to be qualified.
- (12) Transfers of interest in licenses and licensees. Prior to giving written approval to a sale, transfer, or conveyance of a beneficial or legal interest in a license or licensee in accordance with G.L. c. 128A, § 11C, the Commission must find the transferee durably or temporarily suitable in accordance with 205 CMR 2.04 as though the transferee was an applicant or qualifier for a new license.

REGULATORY AUTHORITY
M.G.L. c. 128A, §§ 2, 3(i), 5C; and M.G.L. c. 128C.

2.05: Advance Deposit Wagering; Licensure, Review and Authorization (RESERVED)

2.06: Licensing, Registration, and Fees for Owners, Trainers, Stable Employees, Authorized Agents, Vendors and Racing Officials (RESERVED)

2.07: Financial Payments, Outs, and Requests for Capital Improvement or Reimbursement (RESERVED)

PAGE LEFT INTENTIONALLY BLANK

DRAFT

2.08: Additional Information and Cooperation of Racing Meeting Applicants and Licensees

- (1) The Commission, the Bureau or their agents and employees may request additional information and documents from an applicant or its qualifiers, or any other person associated with the applicant whose licensure or registration is required under M.G.L. c. 128A and 128C or 205 CMR, throughout the application review process. Failure by the applicant, qualifier, or other person to timely submit the additional information as requested by the Commission, the Bureau or their agents and employees may be grounds for denial of the application.
- (2) All applicants, licensees, registrants, qualifiers, or other person whose licensure or registration is required under M.G.L. c. 128A and 128C, or 205 CMR shall comply with all requests of the Commission, the Bureau and their agents and employees for information and documents as authorized by M.G.L. c. 128A and 128C, and 205 CMR.
- (3) Applicants, licensees, registrants, and qualifiers, and other persons shall respond within ten days or within the time specified in an information request by the Commission, the Bureau, and their agents and employees, under 2.08(1) and 2.08(2), to said information request.
- (4) All applicants, licensees, registrants, qualifiers and other persons shall have a continuing duty to provide all information and documents requested by the Commission, Bureau, and their agents and employees and to cooperate in any investigation or hearing conducted by the Commission, Bureau, and their agents and employees, as authorized by M.G.L. c. 23K section 7.
- (5) Once issued a positive determination of suitability, all licensees and qualifiers shall have a continuing duty to maintain suitability in accordance with 205 CMR 2.04. Each licensee or qualifier shall have a continuing duty to notify and update the Bureau, in writing, within ten days of the occurrence, unless an alternative filing time is authorized by the executive director, or where applicable, after gaining knowledge of the following:
 - (a) Any denial, suspension or revocation by a governmental authority in any jurisdiction of a racing-, gaming, or sports-wagering-related license, registration, certification, permit or approval held by or applied for by the licensee or qualifier;
 - (b) Any discipline, including a fine or warning, related to racing, imposed upon the licensee or qualifier by any governmental authority in any jurisdiction;
 - (c) Any fine related to racing assessed on any entity owned or operated by the parent to the licensee by any governmental authority in any jurisdiction.
 - (d) Any arrest, indictment, charge or criminal conviction of any qualifier in any jurisdiction;

205 CMR: MASSACHUSETTS GAMING COMMISSION

- (e) Any complaints, allegations, or notice of investigation thereof made or known to be contemplated by a governmental authority against the racing meeting licensee, qualifier, or any racing entity owned or operated by the parent to the licensee, of which the 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 licensee, qualifier, or racing entity owned or operated by the parent to the 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 authority against the licensee or qualifier, of which the 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 licensee or qualifier, including by way of receipt of a subpoena, that the 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, or race track in any jurisdiction; however, this shall not include exclusions or barring of a qualifier which stem solely from the interest in, or position they hold with, the licensee;
- (i) The termination, suspension from employment, or other discipline of any qualifier or racing employee licensed in accordance with 205 CMR;
- (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 212.01(5)(j) the registrant referred to in 17 CFR 229.103 - (Item 103) shall be both the licensee and the parent company of the licensee as determined by the Bureau. Additionally, the licensee and each qualifier shall provide notice of any pending legal proceeding which includes any allegation of fraudulent conduct by the licensee or a qualifier, that may reasonably threaten the economic viability of the licensee or a qualifier, or that alleges a pattern of improper conduct by the licensee or a qualifier over a sustained period of time;
- (k) Any significant financial event related to a licensee or entity qualifier. For purposes of 205 CMR 2.08(5)(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 Racing Meeting Licensee or qualifier;

205 CMR: MASSACHUSETTS GAMING COMMISSION

- (m) A change in accounting firm engaged to perform attestation and/or assurance services for the licensee or qualifier; and
 - (n) Issuance of a delisting notice from a United States or international stock exchange relative to the licensee or qualifier.
- (6) If the Commission determines that an applicant, licensee, registrant, or qualifier has knowingly withheld information, knowingly failed to provide information or documents requested by the Commission, Bureau, or their agents and employees, knowingly provided materially false or misleading information to the Commission, the Bureau or their agents and employees, or knowingly failed to cooperate with any investigation or hearing conducted by the Commission, Bureau, or their agents and employees, the Commission may, with respect to such person:
- (a) Find that person ineligible to hold a license or registration or be qualified in connection with a license;
 - (b) Suspend the relevant license, registration or qualification; or
 - (c) Revoke the relevant license, registration or qualification.

DRAFT

2.09 Withdrawal of Application For License To Hold Or Conduct A New Racing Meeting

- (1) Except as provided in 205 CMR 2.09(2), a written notice of withdrawal of an application may be filed by an applicant or qualifier at any time prior to final Commission action thereon.
- (2) Withdrawal requests submitted in accordance with 205 CMR 2.09(2) shall be permitted without the need for Commission approval except that if a hearing on suitability, temporary suitability, or an application has been requested by a party or directed by the Bureau or Commission, no withdrawal will be allowed without express Commission approval upon a finding of good cause:
- (3) If the Commission agrees to grant withdrawal under 205 CMR 2.09(2), the Commission may condition that withdrawal with appropriate terms it deems necessary, including, but not limited to, a period of time within which the applicant or qualifier may not re-apply.
- (4) The provisions of 205 CMR 111.05(4) governing the surrender of credentials shall govern the surrender of any credential issued under M.G.L. c. 128A and 128C, or the sections of 205 CMR governing racing.