205 CMR 229.00: REVIEW OF A PROPOSED TRANSFER OF INTERESTS

229.03: Interim Authorization

(1) Contractual Transfers. Whenever any person contracts to transfer a Sports Wagering License or an ownership interest in a Sports Wagering Licensee or its parent, holding or intermediary company, or any property relating to a sports wagering operation, under circumstances which require that the transferee obtain licensure or be found qualified pursuant to 205 CMR 215.00: *Applicant and Qualifier Suitability Determination, Standards, and Procedures* ~~and/~~or M.G.L. c. 23N, the contract shall not specify a closing or settlement date which is earlier than 121 days after the submission of a completed transfer application. Said application shall consist of:

(a) For the transferee, the survey described at 205 CMR 211.01(1)(a);

(b) For the transferee and each new qualifier, the materials described at 205 CMR 211.01(1)(c) through(e), as appropriate;

(c) For the transferee and each new qualifier, any attestation forms required by the Bureau;

(d) A fully executed trust agreement in accordance with 205 CMR 229.03(6) which shall be subject to Commission approval. Any contract provision which specifies a closing or settlement date sooner than 121 days after submission of the transfer application shall be void for all purposes.

(2) Transfers of Publicly Traded Securities. Whenever any Person, as a result of a transfer of publicly traded securities of a Sports Wagering Licensee or its parent, holding or intermediary company, is required to be qualified under 205 CMR 215.02: *Persons Required to Be Qualified* ~~and/~~or M.G.L. c. 23N, the Person including all related qualifiers shall, within 30 days after a Schedule 13D or 13G is filed with the U.S. Securities and Exchange Commission, or after the Bureau notifies the Person that qualification is required, or within such additional time as the Bureau may for good cause allow, file a completed transfer application as described in 205 CMR 229.03(1). No extension of the time for filing a completed transfer application shall be granted unless the Person submits a written acknowledgement recognizing the jurisdiction of the ~~commission~~ Commission and the obligations imposed by M.G.L c. 23N and 205 CMR. If a proposed transferee, including all related qualifiers, fails to timely file a complete transfer application, such failure shall constitute a ~~per se~~ negative finding of suitability to continue to act as a security holder, and the Commission shall take appropriate action including requiring divestiture by the transferee or redemption of the securities by the transferor.

(3) Request for Interim Authorization. If a prospective transferee files a ~~complete~~ transfer application in a timely manner the Commission may then request that the Bureau produce an interim authorization report under 205 CMR 229.03(5). Within 30 days after the Bureau's submission to the Commission of the interim authorization report, the Commission shall hold a hearing in accordance with 205 CMR 101.01(2)(d) and render a decision on the interim authorization of the proposed transferee ~~within 120 days after such filing or, if it is a contractual transfer, prior to the proposed closing or settlement date~~. If interim authorization is approved for a transfer governed by 205 CMR 229.03(1) then the closing or settlement may occur, and the prospective transferee may hold the securities or interests subject to the provisions of 205 CMR 229.03(4) until a final determination of suitability is made by the ~~commission~~Commission. If interim authorization is approved for a transfer governed by 205 CMR 229.03(2) then the prospective transferee may continue to hold the securities or interests subject to the provisions

of 205 CMR 229.03(4) until a final determination of suitability is made by the Commission.

(4) Effect of Denial of Interim Authorization. If~~,~~ the Commission does not request that the Bureau produce an interim authorization report or if, after a hearing, the Commission denies interim authorization, there shall be no closing or settlement of a contract to transfer an interest governed by 205 CMR 229.03(1) until the Commission makes a final determination on the suitability of the transferee in accordance with 205 CMR 215.01(1). If the Commission denies interim authorization for a proposed transfer subject to 205 CMR 229.03(2), all securities and interests subject to the transfer shall be promptly transferred into the trust. If the commission grants interim authorization for any transfer, it may at any time thereafter order all securities and interests subject to the transfer transferred into the trust if it finds reasonable cause to believe that the proposed transferee may be found unsuitable. If a prospective transferee fails or refuses to timely transfer securities and interests into the trust upon direction from the Commission said transferee shall be issued a negative determination of suitability.

(5) Bureau Investigation. After determining that a person is required to be qualified in accordance with 205 CMR 215.02: *Persons Required to Be Qualified*, the Bureau shall commence an investigation into the suitability of the transferee, which may be limited to a review of the information required to be reviewed in an investigation undertaken in accordance with 205 CMR 215.01(2)(b). ~~The~~ If the Commission so requests pursuant to 205 CMR 229.03(3), the Bureau shall produce and forward to the Commission an interim authorization report no later than 90 days after the date that a complete transfer application is submitted by the proposed transferee, or such later date as the Commission may allow. ~~The~~ Following a hearing, the ~~commission~~ Commission may approve interim authorization if it finds that:

(a) The transferee has submitted a complete transfer application;

(b) The transferee has submitted a fully executed trust agreement in accordance with 205 CMR 229.03(6);

(c) The trustee or trustees required under 205 CMR 229.03(6) have satisfied the qualification criteria applicable to qualifiers;

(d) There is no preliminary evidence of anything that would serve to disqualify the transferee from licensure in accordance with ~~M.G.L. c. 23N,~~ M.G.L. c. 23N, §§ 5, 6, and/or 9(a) or 205 CMR 215.00: *Applicant and Qualifier Suitability Determination, Standards, and Procedures*, nor is there any other reason known at the time why a positive determination of suitability may not ultimately be achieved;

(e) The transfer would not violate 205 CMR 229.02(3) or (4);

~~(e)~~(f) The transferee has certified that they are unaware of any reason why the transferee would not be found qualified pursuant to M.G.L. c. 23N, §§ 5, 6, and/or 9(a) or 205 CMR 215.00. (If the transferee is not an individual, the certification shall be made by the chief executive officer or like individual);

~~(f)~~(g) It is in the best interests of the Commonwealth for the Sports Wagering Operation to continue to operate pursuant to interim authorization; and

~~(g)~~(h) If the transfer will result in a change of control, the transferee has agreed in writing in accordance with 205 CMR 229.04 to comply with all of the transferor's existing license obligations or has otherwise petitioned the Commission for modification or elimination of one or more of those obligations.

If the Commission approves interim authorization, during the period of interim authorization, the Bureau shall continue its suitability investigation as may be necessary for a determination of the suitability of the person granted interim authorization. Within nine

months after the interim authorization decision, which period may be extended by the Commission ~~for one three-month period~~, the Commission shall hold a hearing and render a determination on the suitability of the applicant in accordance with 205 CMR 215.01(1). If the Commission denies interim authorization or interim authorization is not requested, the Commission and Bureau shall proceed with the qualification process pursuant to 205 CMR 215.00 and shall complete that process within 13 months of the submittal of a completed transfer application, which 13-month period may be further extended by the Commission.

(6) Trust Agreements. A trust agreement required to be submitted with a transfer application in accordance with 205 CMR 229.03(1) and (2) shall be fully executed upon submission and contain, at a minimum, the following:

(a) A provision for the transfer and conveyance to the trustee of all of the transferee's proposed present and future right, title and interest in the sports wagering licensee, or its parent, holding or intermediary company, including all voting rights in securities upon the occurrence of an event described in 205 CMR 229.03~~3~~(4) or if otherwise directed to do so by the Bureau in its discretion, pending a final suitability determination by the Commission.

(b) A provision consistent with the provisions of 205 CMR 229.03 for the distribution of any trust res upon a positive determination of suitability, negative determination of suitability, or at the direction of the Commission in accordance with 205 CMR 229.03(8).

(c) A provision identifying the trustee(s) and requiring the trustee to timely submit the materials described in 205 CMR 211.01(1)(c) through(f), as applicable, in order to be found qualified by the Commission in accordance with 205 CMR 215.01(1).

(d) A provision identifying the compensation for the service, costs and expenses of the trustee(s), which shall be made subject to the approval of the Commission.

(e) A mechanism by which the trustee may effectuate divestiture or redemption of securities, or a like process, in the event of a negative determination of suitability being issued to the transferee.

(f) Any additional provisions the Commission deems necessary and desirable.

(7) Power of Trustee. The trustee of the trust shall exercise all rights incident to the ownership of the property subject to the trust, and shall be vested with all powers, authority and duties necessary to the unencumbered exercise of such right, and the transferee shall have no right to participate in the earnings of the Sports Wagering Licensee or receive any return on its investment or debt security holdings during the time the securities or interest are in the trust. Earnings may, however, accrue to or into the trust.

(8) Termination of Trust Agreement. The trust agreement shall remain operative until the Commission issues the transferee a positive determination of suitability in accordance with 205 CMR 215.01(1)(e) (and in the event the interest has been placed into the trust, the trustee distributes the trust res) or the Commission issues the transferee a negative finding of suitability and the trust res is disposed of in accordance with 205 CMR 229.03(9). The trust shall otherwise only be revocable prior to a determination of suitability being issued upon Commission approval at the request of the settlor. In the event of such a request the Commission may direct the trustee to dispose of the trust res in accordance with 205 CMR 229.03(9).

(9) Effect of Negative Determination of Suitability. If the Commission issues a negative determination of suitability in accordance with 205 CMR 215.01(1)(e)1., a contract for the transfer of interests shall thereby be terminated for all purposes without liability on the part of

the transferor. In the event of such negative determination, where the subject interests have been transferred into a trust in accordance with 205 CMR 229.03(4), the trustee shall endeavor and be authorized to attempt to sell, assign, convey or otherwise dispose of all trust res in accordance with the means established in accordance with 205 CMR 229.03(6)(e) or as otherwise directed by the ~~commission~~Commission. Any subsequent transferee must be appropriately licensed or qualified in accordance with 205 CMR 229.00. The disposition of trust res by the trustee shall be completed within 120 days of the denial of qualification, or within such additional time as the Commission may for good cause allow. The proceeds of such disposition shall be distributed to the unsuitable transferee only in an amount not to exceed the lower of the actual cost of the assets to such unsuitable transferee, or the value of such assets calculated as if the investment had been made on the date the assets were transferred into the trust, and any excess remaining proceeds shall be paid to the Massachusetts Sports Wagering Control Fund in accordance with M.G.L. c. 23N, § 15.