



**NOTICE OF MEETING/ADJUDICATORY HEARING and AGENDA**  
July 25, 2013 Meeting

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

Thursday, July 25, 2013  
9:30 a.m.

**Boston Convention and Exhibition Center**  
415 Summer Street, Room 102-B  
Boston, Massachusetts

**PUBLIC MEETING - #72**

1. Call to order
2. Approval of Minutes
  - a. July 11, 2013
3. Administration – Rick Day, Executive Director
  - a. Licensing Director Introduction
  - b. Evaluation Coordinator Recommendation
  - c. Consultant Contract Recommendation
  - d. Procurement Chart
  - e. Master Schedule Update
4. Racing Division – Jennifer Durenberger, Director
  - a. Administrative Update
5. Investigations and Enforcement Division – Karen Wells, Director
  - a. Adjudicatory Hearing
    - i. Ourway Realty, LLC
6. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting

I certify that on this date, this Notice was posted as "Gaming Commission Meeting" at [www.massgaming.com](http://www.massgaming.com) and emailed to: [regs@sec.state.ma.us](mailto:regs@sec.state.ma.us), [melissa.andrade@state.ma.us](mailto:melissa.andrade@state.ma.us), [brian.gosselin@state.ma.us](mailto:brian.gosselin@state.ma.us).

7/22/2013  
(date)

Stephen P. Crosby  
Stephen P. Crosby, Chairman

**Date Posted to Website:** July 22, 2013 at 4:00 p.m.



Massachusetts Gaming Commission



## Meeting Minutes

**Date:** July 11, 2013

**Time:** 9:30 a.m.

**Place:** Boston Convention and Exhibition Center  
415 Summer Street, Room 102-B  
Boston, MA 02210

**Present:** Commissioner Stephen P. Crosby, Chairman  
Commissioner Gayle Cameron  
Commissioner James F. McHugh  
Commissioner Bruce Stebbins  
Commissioner Enrique Zuniga

**Absent:** None

Clicking on the time posted in the margin will link directly to the appropriate section of the video.

### Call to Order

See transcript page 2.

9:34 a.m. Chairman Crosby opened the 71st public meeting.

### Approval of Minutes

See transcript pages 2-3.

9:35 a.m. Commissioner McHugh stated that the minutes for the June 27 meeting are ready for approval with one technical correction.

*Motion made by Commissioner McHugh that the minutes of June 27, 2013 be accepted with one technical correction. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

### Administration

Report by Executive Director Day. See transcript pages 3-32.

- 9:36 a.m. Executive Director Day provided an overview of administrative matters. He stated that at the next public meeting the Commission will continue reviewing applicant suitability and will publically introduce the new Director of Licensing. Executive Director Day also discussed working with the Collins Center on best practices, hearing presentations on problem gambling, acquiring additional office space, and issuing the document management RFR.
- 9:38 a.m. The Commission is currently in the process of forming teams to review the RFA-2 applications. The Commission is reviewing the seven responses received regarding the financial advisor RFR. The Commission has scheduled a bidders' conference on August 2 for building and site design consultants. Responses to the economic development RFR are due August 12. The project manager RFR responses are due today. Commissioner McHugh requested that the staff create a short chart with all the relevant due dates and provide it to the Commissioners.
- 9:42 a.m. Commissioner Zuniga summarized the chart of money received from applicants and money spent on investigations. Negative balances show that the Commission has not issued an invoice to applicants as of the date of the chart, but all invoices have now been issued. The Commission will refund any positive balance after completing investigations and paying all costs.
- 9:48 a.m. At the last meeting, the Commission requested a recommendation from staff regarding whether the Commission should set a deadline for the addition of qualifiers to an application. Executive Director Day stated that staff recommended against implementing a deadline after which applicants may not submit new qualifiers without Commission approval. All changes to qualifiers will be examined on a case-by-case basis. The Commission agreed.
- 9:56 a.m. The Commission discussed the master schedule. The Commission will review suitability reports for Category 2 applicants in two parts: applicants who have requested waiver of the adjudicatory hearing will present today, and the remaining applicants will present at the adjudicatory hearings scheduled after the next public meeting.
- 9:58 a.m. The Commission considered whether to review Category 1 suitability reports on an as completed basis or in groups by region. The Commission agreed that reviewing suitability reports as they are completed would be the best approach, but wanted to emphasize that the order of completed investigations provides no inference of the suitability of an applicant. The Commission will request comments from applicants regarding any prejudice that may arise from reviewing suitability on a rolling basis. The first suitability report for Category 1 is expected to be completed in mid-August.
- 10:06 a.m. Executive Director Day reviewed several additional administrative matters. Jill Griffin, the new Director of Workforce and Supplier Development, will be starting

on July 29. The Commission is currently negotiating the extension of the gaming consultant contracts.

### **Racing Division**

Report by Director Durenberger. See transcript pages 32-54.

10:07 a.m. Director Durenberger reported on racing matters. All problems reported to the Commission at the last meeting regarding the financial software have been resolved. The Racing Division is also working on the crossover to the new software. Director Durenberger anticipates requiring a third and fourth phase of rulemaking, with both scheduled for completion prior to the 2014 racing season. The third phase will focus on controlled therapeutic medications and penalty guidelines; tote wagering and account wagering; and licensing and security best practices. Director Durenberger will bring draft language for the third phase before the Commission in early to mid-August. The fourth phase involves the duties of licensees and the occupational licenses as well as other administrative issues that arose during the racing season. She will bring draft language for the fourth phase before the Commission in November or December.

10:17 a.m. Director Durenberger discussed the overall operations of the Racing Division and how the feedback the Division has been getting was very positive. Commissioner Zuniga pointed out the importance of integrating racing and gaming as much as possible, because many of the topics that the Commission is discussing regarding gaming, such as problem gambling, are equally applicable to racing.

10:19 a.m. Director Durenberger provided detailed information on the state withholding tax for pari-mutuel winnings, including the types of laws in other states and the significant increase in documentation required of licensees after the Commonwealth lowered the withholding threshold. The Commission will reach out to the Department of Revenue to request that someone from the Department come and speak about the change in the law. The Commission also considered raising this tax law issue in the Commission's annual report to the legislature because of the law's effect on both racing and gaming.

10:29 a.m. The commission took a brief recess.

### **Qualifier Suitability**

Report by Director Wells. See transcript pages 54-69.

10:39 a.m. Chairman Crosby introduced the suitability hearing and Director Wells provided background on the procedures leading up to the suitability reports. Director Wells was joined by Robert Carroll and Bernie Murphy from Michael & Carroll. Director Wells commended the tremendous effort from the consultants and the State Police in completing the investigations quickly and thoroughly. She clarified that the suitability reports provide a snapshot of the applicants' activities, and the IEB will continue reviewing applicants and licensees after the reports are complete. The IEB

encourages the public to provide the IEB with any information it may have to assist in the ongoing investigations.

- 10:50 a.m. Director Wells stated that the suitability reports can contain recommendations on both conditions to the license and conditions to suitability. All licensees will have conditions on their gaming license, but some of the applicants may require conditions for becoming suitable to participate in the RFA-2 process. She also stated that the suitability reports only consider information available at this time. Certain aspects of the application that are not yet finalized, such as the specific details of the applicant's financing plans, will be reviewed during the RFA-2 process.
- 10:56 a.m. Chairman Crosby provided an overview of the suitability hearing procedures and stated that the burden is on the applicants to prove their suitability by clear and convincing evidence.

### **Mass Gaming & Entertainment LLC Suitability Hearing**

See transcript pages 69-165.

- 10:57 a.m. Mr. John Donnelly, representing the applicant Mass Gaming & Entertainment LLC, provided background information on the applicant's history and current Massachusetts application.
- 11:11 a.m. Director Wells, along with Mr. Carroll and Mr. Murphy, presented the IEB's suitability report to the Commission.
- 11:38 a.m. The Commission discussed certain issues regarding Mass Gaming & Entertainment LLC including underage gambling, the efficacy of the audit committee, the construction issue with Sugar House Casino, and the financial vulnerability of key employees.
- 12:40 p.m. The Commission deliberated on the suitability of Mass Gaming & Entertainment LLC. All Commissioners agreed that Mass Gaming & Entertainment LLC is suitable to continue to the RFA-2 process.
- 12:47 p.m. *Motion made by Commissioner McHugh that the Commission, with the assent of Mass Gaming & Entertainment LLC and PPE Casino Resorts MA LLC, waive all regulatory and statutory requirements for an adjudicatory proceeding on the question of Mass Gaming & Entertainment LLC's and PPE Casino Resorts MA LLC's suitability to proceed to the RFA-2 application process. Motion seconded by Commissioner Stebbins. The motion passed unanimously.*
- 12:49 p.m. *Motion made by Commissioner McHugh that the Commission adopt the finding of suitability for Mass Gaming & Entertainment LLC in the form contained in the two-page document distributed to the Commissioners, summarized during the hearing*

*and included with the minutes of this hearing. Motion seconded by Commissioner Cameron. The motion passed unanimously.*

12:54 p.m. The Commission took a recess until 2pm.

**PPE Casino Resorts MA LLC Suitability Hearing**

See transcript pages 166-219.

2:08 p.m. Mr. Joseph Weinberg, representing the applicant PPE Casino Resorts MA LLC, provided background information on the applicant's history and current Massachusetts application.

2:13 p.m. Director Wells, along with Theodore Grove from the Spectrum Gaming Group, presented the IEB's suitability report to the Commission.

2:26 p.m. The Commission discussed certain issues regarding PPE Casino Resorts MA LLC including the applicant's ability to finance the project, the debt load of the Indiana project, the experience of the applicant in terms of gaming, regulatory actions, minutes of committee meetings, compliance and audits, and certain transfers involving Cordish Family II, LLC.

3:05 p.m. The Commission deliberated on the suitability of PPE Casino Resorts MA LLC. All Commissioners agreed that PPE Casino Resorts MA LLC is suitable to continue to the RFA-2 process.

The Commission has already waived all regulatory and statutory requirements for an adjudicatory proceeding on the question of PPE Casino Resorts MA LLC's suitability to proceed to the RFA-2 application process at 12:47 p.m.

3:09 p.m. *Motion made by Commissioner McHugh that the Commission adopt the finding of suitability for PPE Casino Resorts MA LLC in the form contained in the two-page document distributed to the Commissioners, summarized during the hearing and included with the minutes of this hearing. Motion seconded by Commissioner Zuniga. The motion passed unanimously.*

3:12 p.m. Meeting adjourned.

**List of Documents and Other Items Used at the Meeting**

1. Massachusetts Gaming Commission July 11, 2013 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission June 27, 2013 Meeting Minutes
3. Massachusetts Gaming Commission Financial Status Report
4. Massachusetts Gaming Commission 6-18-2013 Summary Schedule Update

5. July 3, 2013 Massachusetts Gaming Commission Memorandum Regarding Suitability Investigation for Mass Gaming and Entertainment, LLC, Applicant for a Category 2 Gaming License
6. Investigative Report for the Massachusetts Gaming Commission: Applicant: Mass Gaming and Entertainment, LLC
7. July 3, 2013 Massachusetts Gaming Commission Memorandum Regarding Suitability Investigation for PPE Casino Reports MA, LLC, Applicant for a Category 2 Gaming License
8. Investigative Report for the Massachusetts Gaming Commission: Applicant: PPE Casino Resorts MA, LLC
9. Resolution adopting the finding of suitability for Mass Gaming and Entertainment LLC
10. Resolution adopting the finding of suitability for PPE Casino Resorts MA LLC

/s/ Catherine Blue  
Catherine Blue  
Assistant Secretary





**MASSACHUSETTS GAMING COMMISSION  
COMMISSION MEETING  
JULY 11, 2013**

- WHEREAS;** On January 15, 2013, Massachusetts Gaming and Entertainment LLC ("MGE") filed an RFA 1 application for a Category 2 license which application included Business Entity Disclosure Forms ("BEDs"), Multi-Jurisdictional Personal History Forms ("MJPHFs") and MA Supplemental Forms ("MA Supp") for the entities and individuals who are part of the MGE RFA 1 application; and
- WHEREAS;** MGE paid all fees required by 205 CMR 114.01; and
- WHEREAS;** The Investigations and Enforcement Bureau ("IEB") conducted a thorough investigation of MGE's suitability for a category 2 license, all as more fully described in the report entitled "Investigative Report for the Massachusetts Gaming Commission Applicant: Massachusetts Gaming and Entertainment LLC dated May 31, 2013 ("Suitability Report") and made a part of the Commission's records and incorporated by reference into this resolution; and
- WHEREAS;** The IEB recommends that the Commission issue a positive determination of suitability to MGE, and include the addition of certain license conditions if a category 2 license is eventually awarded to MGE as more fully described in the letter from Karen Wells Director of the Investigation and Enforcement Bureau dated July 3, 2013 ("Wells Letter") and made a part of the Commission's records and incorporated by reference into this resolution and that the Commission allow MGE to proceed to file an RFA 2 application for a category 2 license with the Commission for the Commission's review and evaluation in accordance with the M.G.L. c. 23K and the Commission's regulations; and





**WHEREAS;**

The Commission agrees with the IEB's recommendation to issue a positive determination of suitability to MGE and the inclusion of the license conditions as described in the Wells Letter and to allow MGE to proceed to file an RFA 2 application for a category 2 license.

**NOW IT IS  
HEREBY RESOLVED;**

That the Commission finds after review of the Suitability Report based upon the IEB's investigation of MGE and the entities and individuals that make up MGE's RFA 1 application, the Wells Letter and the receipt of information at the public hearing held on July 11, 2013, that MGE meets the requirements of M.G.L. c.23K and the Commission's regulations for suitability as an applicant for a category 2 license; and

**RESOLVED;**

That the Commission hereby issues a positive determination of suitability to MGE and agrees that certain license conditions be included in a license if one is eventually granted to MGE; and

**RESOLVED;**

That MGE is deemed suitable to proceed to file an RFA 2 application for a category 2 license for the Commission's review and evaluation pursuant to M.G.L. c 23K and the Commission's regulations; and

**FURTHER RESOLVED;**

That the Commission will continue to review MGE's ongoing suitability as it proceeds through the RFA 2 process and may request additional information from MGE as needed to ensure MGE's continuing suitability.



**MASSACHUSETTS GAMING COMMISSION  
COMMISSION MEETING  
JULY 11, 2013**

- WHEREAS;** On January 15, 2013, PPE Casino Resorts MA LLC ("PPE") filed an RFA 1 application for a Category 2 license which application included Business Entity Disclosure Forms ("BEDs"), Multi-Jurisdictional Personal History Forms ("MJPHFs") and MA Supplemental Forms ("MA Supp") for the entities and individuals who are part of the PPE Casino Resorts MA LLC RFA 1 application; and
- WHEREAS;** PPE paid all fees required by 205 CMR 114.01; and
- WHEREAS;** The Investigations and Enforcement Bureau ("IEB") conducted a thorough investigation of PPE's suitability for a category 2 license, all as more fully described in the report entitled "Investigative Report for the Massachusetts Gaming Commission: Applicant PPE Casino Resorts MA LLC dated June 18, 2013 ("Suitability Report") and made a part of the Commission's records and incorporated by reference into this resolution; and
- WHEREAS;** The IEB recommends that the Commission issue a positive determination of suitability to PPE, and include the addition of certain license conditions if a category 2 license is eventually awarded to PPE as more fully described in the letter from Karen Wells Director, Investigation and Enforcement Bureau to the Commission dated July 3, 2013 ("Wells Letter") and made a part of the Commission's records and incorporated by reference into this resolution and that the Commission allow PPE to proceed to file an RFA 2 application for a category 2 license with the Commission for the Commission's review and evaluation in accordance with the M.G.L. c. 23K and the Commission's regulations; and



**WHEREAS;**

The Commission agrees with the IEB's recommendation to issue a positive determination of suitability to PPE and the inclusion of the license conditions as described in the Wells Letter and to allow PPE to proceed to file an RFA 2 application for a category 2 license.

**NOW IT IS  
HEREBY RESOLVED;**

That the Commission finds after review of the Suitability Report based upon the IEB's investigation of PPE and the entities and individuals that make up PPE's RFA 1 application, the Wells Letter and the receipt of information at the public hearing held on July 11, 2013, that PPE meets the requirements of M.G.L. c.23K and the Commission's regulations for suitability as an applicant for a category 2 license; and

**RESOLVED;**

That the Commission hereby issues a positive determination of suitability to PPE and agrees that certain license conditions be included in a license if one is eventually granted to PPE; and

**RESOLVED;**

That PPE is deemed suitable to proceed to file an RFA 2 application for a category 2 license for the Commission's review and evaluation pursuant to M.G.L. c 23K and the Commission's regulations; and

**FURTHER RESOLVED;**

That the Commission will continue to review PPE's ongoing suitability as it proceeds through the RFA 2 process and may request additional information from PPE as needed to ensure PPE's continuing suitability.

3.a

**David Acosta**

**EDUCATION**

STOCKTON STATE COLLEGE, Pomona, NJ 08024  
BA Political Science/Public Administration

Department of Personnel & Fairleigh Dickinson  
Certified Public Manager (CPM)

**EXPERIENCE**

Nov 12 - present

**Director of Licensing**

Ohio Casino Control Commission  
Columbus, OH 43215

Responsible for the administration of all tasks of the License Division. This includes the receipt, processing and licensing of all applications for key and gaming employee licenses as well as gaming vendors and operating companies. Ensures that all applicable fees are collected and accounted for. Advises the Executive Director and the Commission via reports and other means of communication that the applicant has met the requirements of the Ohio Revised Code and Regulations. Utilizes expertise in identification and fingerprint matters to assure integrity in the license process.

Jan 12 - Nov 12

**Manager Employee Licensing**

Ohio Casino Control Commission

Supervises the unit that accepts and processes gaming and key employee license applications. This includes the development of the data system to electronically capture information provided on licensing applications. Develops processes to ensure collection of application fees. Coordinates efforts with the Divisions of: Investigations; Enforcement; Legal; and Compliance to ensure conformity with the Ohio Revised Codes and regulations. Trains staff to be able to address the needs and requirements of the receipt and processing of applications.

Dec 93 - Dec 11

**Program Supervisor 2**

New Jersey Casino Control Commission  
New Jersey Division of Gaming Enforcement  
Atlantic City, NJ 08401

Supervises the units that accept and process casino and key employee applications and casino service employee registrations, prepares statistical, progress reports, and operating budgets. By the use of Spanish/English and American Sign Language translation ensures that services to the public are provided in an efficient and courteous manner. Reviews Division of Gaming Enforcement (Division) letter reports and prepares summary for the review of the Commissioners for consideration before public hearings.

Oct 87 - Dec 93

**Principal Applications Analyst**

Supervises the operations of the Intake, Initial, and License Information Unit. Responsibilities include accepting applications and fees, processing applications and forwarding to the Division for investigations. Reviews letter reports from the Division.

**David Acosta**

Feb 85 - Oct 87      **Senior Applications Analyst**

Reviews jobs compendium and tables of organization submissions to ensure compliance with the Casino Control Act and regulations. Notifies the Division of non-compliance cases. Responds to inquiries from the public regarding Commission policy on employee licensing.

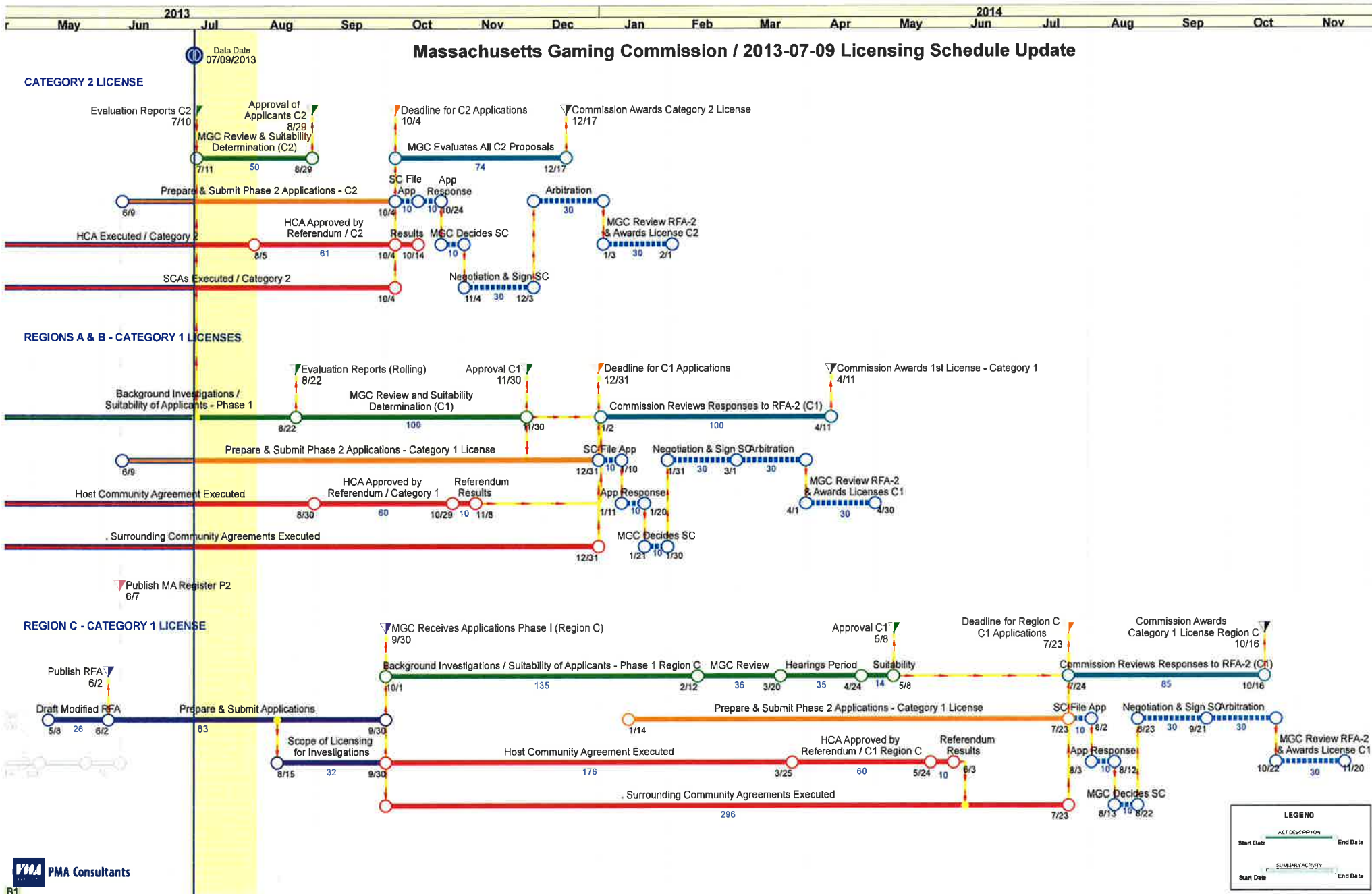
Jan 81 - Feb 85      **State Director**

New Jersey Rural Opportunities  
Vineland, NJ 08360

Responsible for the operation of a private non-profit organization that administers a USDOL employment and training program. This responsibility also includes preparing budgets, reports, funding proposals, and needs analysis.

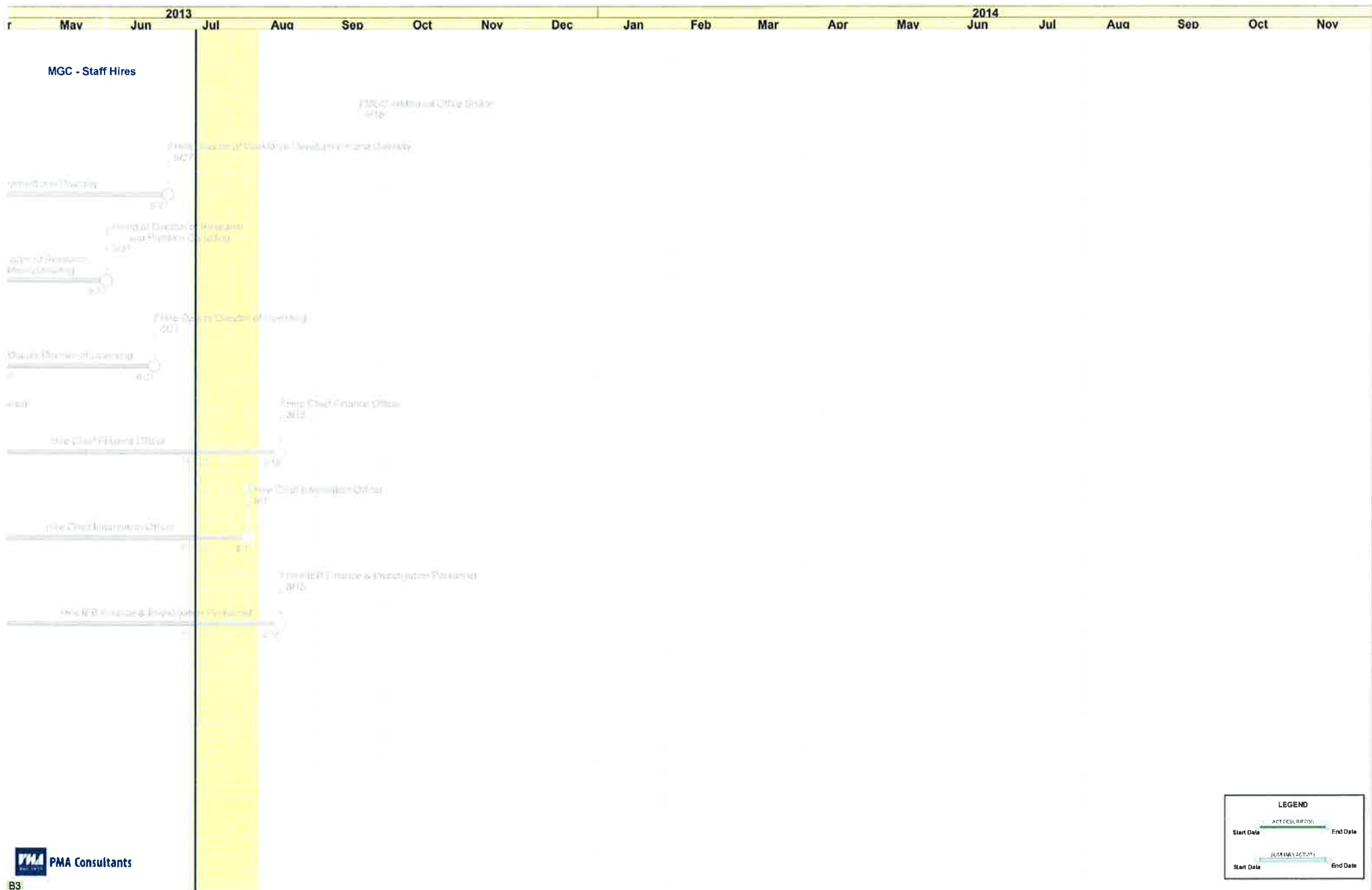
Jul-13

|                                   | draft started | Date Posted | Draft started | Date Posted | Bidders<br>Conference | Questions<br>Due/Posted  | Responses Due | Phase 1 Review<br>and Distribution | Phase II Scoring | Oral<br>Presentations | Phase III/cost<br>review | BAFO      | Formal<br>Recommendation<br>to the Commission |
|-----------------------------------|---------------|-------------|---------------|-------------|-----------------------|--------------------------|---------------|------------------------------------|------------------|-----------------------|--------------------------|-----------|---|
| Financial Advisor                 | 4/21/2013     | 5/20/2013   | 4/21/2013     | 5/20/2013   | 5/28/2013             | 5/31/2013                | 6/28/2013     | 7/1/2013                           | 7/15/2013        | 7/22/2013             | 7/19/2013                | 7/19/2013 | 8/22/2013                                     |
| Project Coordinator               | 6/9/2013      | 6/14/2013   | 6/9/2013      | 6/14/2013   | n/a                   | 6/19-21/2013             | 7/11/2013     | 7/12/2013                          | 7/17/2013        | 7/24/2013             | 7/24/2013                |           | 7/25/2013                                     |
| Building, Site Design, Mitigation | 5/15/2013     | 6/21/2013   | 5/15/2013     | 6/21/2013   | 7/1/2013              | 7/12/2013 -<br>7/22/2013 | 8/2/2013      | 8/5/2013                           | 8/13/2013        | 8/20-21/2013          | 8/28/2013                |           | 9/5/2013                                      |
| Economic Development              | 6/22/2013     | 6/28/2013   | 6/22/2013     | 6/28/2013   | 7/9/2013              | 7/22/2013                | 8/7/2013      | 8/8/2013                           | 8/15/2013        | 8/27/2013             | 8/28/2013                |           | 9/5/2013                                      |
| Document Management               | 4/15/2013     | 7/12/2013   | 4/15/2013     | 7/12/2013   | 7/29/2013             | 7/24/2013                | 8/19/2013     | 8/15/2013                          | 9/9/2013         | 8/28-9/4/2013         | 9/11/2013                | 9/12/2013 | 9/19/2013                                     |
|                                   |               |             |               |             |                       |                          |               |                                    |                  |                       |                          |           |   |









LEGEND

ACTIVITY

Start Date

End Date

SUMMARY

Start Date

End Date



July 10, 2013

John Grogan, President  
Ourway Realty, LLC  
301 Washington Street  
Plainville, MA 02762

&

Kevin C. Conroy, Esq.  
Foley Hoag LLP  
Seaport West  
155 Seaport Boulevard  
Boston, MA US 02210-2600

### NOTICE OF ADJUDICATORY PROCEEDING

Dear Mr. Grogan and Attorney Conroy:

Pursuant to 205 C.M.R. 101.03 (*Special Procedures for Hearings Before the Commission*), 205 CMR 115.04(3) (*Phase 1 Adjudicatory Proceedings by the Commission*), and 801 CMR 1.01 (*Formal Rules*, as supplemented and superseded by 205 CMR 101.03), the Massachusetts Gaming Commission (the "Commission") will hold an Adjudicatory Proceeding beginning **on Thursday, July 25, 2013 at 9:30 a.m.**, in the Boston Convention and Exhibition Center, Room TBD, 415 Summer Street, Boston, MA 02210 concerning the Application of Ourway Realty, LLC (the "Applicant") and its qualifiers for a Phase 1 Suitability Determination for a Category 2 (Slots Only) Gaming License. The Commission may continue the Adjudicatory Proceeding from day-to-day thereafter, as needed.

At the Adjudicatory Proceeding the Applicant must "establish by clear and convincing evidence both its affirmative qualification for licensure and the absence of any disqualification for licensure." 205 C.M.R. 101.03(c). At the Adjudicatory Proceeding the applicant should be prepared to discuss, and the Commission and representatives of its Investigations and Enforcement Bureau (the "Bureau") may inquire about, any issue, concern, fact or condition identified in the "Suitability Investigation For Ourway Realty, LLC, Applicant For A Category 2 Gaming License" prepared by the Commission's Investigations and Enforcement Bureau (IEB) dated July 3, 2013,



Massachusetts Gaming Commission

84 State Street, 10th Floor, Boston, Massachusetts 02109 | TEL 617.979.8400 | FAX 617.725.0258 | [www.massgaming.com](http://www.massgaming.com)

and the accompanying Executive Summary and Investigative Report dated June 18, 2013, including without limitation the following:

1. Whether the Applicant historically lacked effective corporate governance and internal controls as detailed in the Investigative Report (e.g. at pages 37-43), and the nature, source, cause, duration and effects of, responsibility for, and correction of those problems.
2. Whether the Applicant has instituted, or immediately will institute, comprehensive, effective oversight, internal controls, financial and accounting practices, recordkeeping, personnel selection, and other methods and procedures necessary for the proper financial management and accounting required for a Category 2 gaming establishment.
3. Attestation that the measures implemented and to be implemented by the Applicant, will conform to standards to be determined by the Commission, will be effective for the proper financial management and accounting required for a Category 2 gaming establishment, and will prevent the recurrence of lax or inappropriate practices that are historically alleged to have occurred at the Applicant's pre-existing business establishment.

Further, the Applicant should be prepared to produce any documents relevant to these issues. At the Adjudicatory Proceeding, the Applicant and individual qualifiers may be represented by counsel and may call any witnesses or present any evidence they desire in an effort to meet their burden of proof. The Applicant must ensure, at a minimum, that John M. Grogan and Timothy A. Petersen are present to provide testimony and respond to any questions concerning the forgoing issues. A redacted copy of the Investigative Report, a copy of which was forwarded to the Applicant along with an unredacted copy on July 3, 2013, will be introduced into evidence at the hearing.

There will be a Pre-Hearing Conference among counsel for the Commission, the Bureau and the Applicant on **Monday, July 15, 2013 at 2 p.m.** at the Commission Offices, 84 State Street, 7<sup>th</sup> Floor, Boston, Massachusetts. The Applicant should attend the Pre-Hearing Conference through its counsel. The Pre-Hearing Conference will serve to lay out the anticipated procedure for the Adjudicatory Proceeding and afford counsel the opportunity to discuss issues for the Adjudicatory Proceeding as described in this Notice.

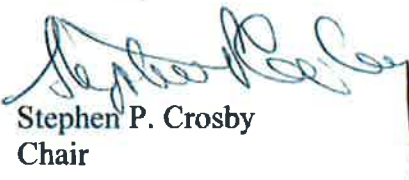


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If the Applicant has any questions or concerns with respect to this Notice, please contact Commission General Counsel, Catherine Blue at (617) 979-8434, at your earliest convenience.

Sincerely,



Stephen P. Crosby  
Chair

cc: Catherine Blue, General Counsel (by email only)  
Karen Milne Wells, Director of IEB (by email only)  
Stephen D. Anderson, Anderson & Kreiger, LLP (by email only)  
David S. Mackey, Anderson & Kreiger, LLP (by email only)



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5.a.



July 3, 2013

Stephen P. Crosby, Chairman  
Gayle Cameron, Commissioner  
James McHugh, Commissioner  
Bruce Stebbins, Commissioner  
Enrique Zuniga, Commissioner

Massachusetts Gaming Commission  
84 State Street, Suite 720  
Boston, MA 02109

**RE: SUITABILITY INVESTIGATION FOR OURWAY REALTY, LLC,  
APPLICANT FOR A CATEGORY 2 GAMING LICENSE**

Dear Chairman Crosby and Commissioners,

Ourway Realty, LLC ("Ourway") has applied to the Massachusetts Gaming Commission ("MGC") for a Category 2 (Slots) license pursuant to M.G.L. Ch. 23K.

Pursuant to M.G.L. Ch. 23K section 12, the Investigations and Enforcement Bureau (IEB) of the MGC was tasked with conducting a suitability investigation of each applicant for a gaming license. The MGC recognized that these types of investigations are unprecedented in Massachusetts and that it would be impractical to staff these investigations internally under the expected time frames for licensure. Accordingly, recognizing the need for expertise in this area, the MGC posted a Request for Response (RFR) in order to obtain the services of expert gaming investigators to work with the IEB in this process. 205 CMR 115.03(1) There were two responses received by the MGC and the Commission made the award to the joint application from the consulting firms of Spectrum Gaming and Michael & Carroll. The Ourway investigation was assigned to the Michael and Carroll team.

Michael & Carroll is a New Jersey based law and consulting firm with extensive experience in the area of gaming investigations. The principals, Guy Michael and Robert Carroll, have personally conducted and/or supervised thousands of gaming applicant background investigations over the last 30 years. The Michael and Carroll investigative group features a structured team of 19 investigators including retired FBI, State Police,



Massachusetts Gaming Commission



state investigators, gaming financial specialists, gaming attorneys and other support personnel who have all worked on highly complex investigations for decades.

Over the past several months, the IEB has supervised the contract investigative personnel and the Massachusetts State Police (MSP) Gaming Enforcement Unit while they worked together to conduct the statutorily required suitability and background investigations. The process commenced with “scope of licensing determinations,” based on each applicant’s organizational structure. The interested parties were permitted to submit briefs and memoranda detailing the entities and individuals they believed were required qualifiers, along with those they felt were statutorily eligible to be waived from qualification.

The IEB, MSP and investigative staff participated in various meetings with the applicant, Ourway, to determine which entities and individuals required qualification as part of the RFA Phase I licensing process. After careful review of materials and discussions with Ourway representatives, the entities and individuals identified in this investigative report were required to qualify in accordance with the filing requirements as established at M.G.L. c.23K Section 14 and 205 CMR 116.02. It should also be noted that the applicant was given the opportunity to object to these determinations, and after review, the IEB finalized the list of Ourway qualifier persons and entities. This final determination was accepted by the applicant. Each qualifying entity or qualifying individual natural person was then subject to the full statutorily required background investigation conducted by the IEB.

The criteria utilized by the IEB in the determination of Ourway’s qualifiers are set forth in the relevant statutory provisions governing the scope of licensing issues, that is, M.G.L. c.23K Section 14(a), (b), (c), (g), and (h). Additionally the IEB applied all relevant sections of the MGC’s own regulations, specifically, 205 CMR 116.01 – 116.03, inclusive. After the initial scope of licensing was determined, Ourway then complied with the submission of the required application materials, privacy and liability waivers, application fee, and all information requested during the course of the comprehensive investigation of each qualifier.

It should also be emphasized that the initial scope of licensing determinations made herein do not prejudice nor limit the IEB and Commission’s right to include any person or entity as a qualifier at any time, should it be deemed necessary in the best interest of the Commonwealth. 205 CMR 116.03(3). Indeed, any initial waiver of a person or entity does not exclude those persons or entities from scrutiny. The IEB may, and in fact did, investigate anyone that it determined had a bearing on the evaluation of the suitability of Ourway and its qualifiers. 205 CMR 116.03(3).





Finally, the IEB has also advised the applicant that it is required to establish the suitability of all financial sources relating to the gaming establishment. All of these financial sources may not be known at this juncture and any additional financial sources will need full disclosure, background and suitability investigation and evaluation when identified by the applicant, if the Commission approves the applicant's advancement to the Phase II processes.

In order to achieve Phase I suitability, an applicant for a casino gaming license and any person or entity deemed a qualifier pursuant to M.G.L. c.23K §14 and 205 CMR 116 et seq must provide all required application materials set forth in 205 CMR 111 relevant to Phase I evaluations, as well as satisfy the relevant statutory suitability criteria as set forth in M.G.L. c.23K §12 and §16 of the Act. The standard for satisfaction of the suitability criteria requires each applicant/qualifier to establish its qualification for licensure to the commission by clear and convincing evidence (M.G.L. c.23K §13(a)). The various statutory criteria with appropriate annotations are listed below.

## **RELEVANT PHASE 1 STATUTORY CRITERIA**

Has applicant/qualifier been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury?

M.G.L. c.23K §16(a)(i)

Has the applicant/qualifier submitted an application for a gaming license which contains false or misleading information?

M.G.L. c.23K §16(ii)

Has the applicant/qualifier committed prior acts which have not been prosecuted or in which the applicant/qualifier was not convicted but form a pattern of misconduct that makes the applicant unsuitable for a license under this chapter?

M.G.L. c.23K §16(iii)

Does the applicant/qualifier have 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 in awarding a gaming license to the applicant?

M.G.L. c.23K §16(iv)

Does the applicant/qualifier demonstrate integrity, honesty, good character and reputation?

M.G.L. c.23K §12(a)(1)



Massachusetts Gaming Commission

Does the applicant/qualifier demonstrate financial stability, integrity and background?  
M.G.L. c.23K §12(a)(2)

Do the business practices and the business ability of the applicant/qualifier demonstrate the capacity to establish and maintain a successful establishment?  
M.G.L. c.23K §12(a)(3)

Does the applicant/qualifier have an adverse history of compliance with gaming license requirements in other jurisdictions?  
M.G.L. c.23K §12(a)(4)

Is the applicant/qualifier a defendant in litigation involving its business practices?  
M.G.L. c.23K §12(a)(5)

Are all the parties in interest, including, but not limited to, affiliates, close associates and financial sources suitable to hold or participate in the gaming license?  
M.G.L. c.23K §12(a)(6)

Is the applicant/qualifier disqualified from receiving a license under M.G.L.c.23K section 16?  
M.G.L. c.23K §12(a)(7)

Has the applicant/qualifier failed to establish their integrity or the integrity of any affiliate, close associate, financial source or any person required to be qualified by the commission?  
M.G.L. c.23K §12(b)(i)

Has the applicant/qualifier failed to demonstrate responsible business practices in any jurisdiction?  
M.G.L. c.23K §12(b)(ii)

Has the applicant/qualifier failed to overcome any other reason, as determined by the commission, as to why it would be injurious to the interests of the Commonwealth in awarding the applicant a gaming license?  
M.G.L. c.23K §12(b)(iii)

Has the applicant/qualifier made any political contributions prohibited by M.G.L. c.23K?  
M.G.L. c.23K §46, §47 and 205 CMR 108



## INVESTIGATIVE PROCESS

Outlined below are the various steps taken in evaluating each applicant, qualifying entity and qualifying individual's suitability. While the following items contain specific areas of inquiry, such information is gleaned from many different and diverse databases. These services were initially focused on specific areas (for example, civil litigations, criminal conviction information, real estate and title records etc.), and then expanded as needed depending on the results. If information was revealed, then it was accumulated, cross-referenced, and compiled into workable summaries for careful evaluation by analysts. Thereafter, from this mass of information, a database report was derived on each applicant/qualifier, and was then reviewed by a supervisor and field investigator. Follow-up verifications of relevant important data (for example, licenses, compliance histories etc.) and areas of concern were then the subject of follow-up investigative activities. Qualifiers were interviewed in person, and that interview included an opportunity to provide clarification of any issues in the event derogatory information was found during the investigation. Next, an attorney review of the investigative results was conducted, followed by a detailed consultation between both the legal and investigative teams. The material was then digested into the suitability report, which was submitted for final review to the IEB Director, Massachusetts State Police and staff. The subject areas of this investigation have included the following:

1. Public Record Database checks which included, but were not limited to, the following:
  - a. Searches for incorporation papers and corporate filing for incorporation in other states have been conducted for the identified privately held companies.
  - b. The intended Plainville location of the gaming facility, the applicant company and its owners and affiliated entities and individual qualifiers have been verified through address verifications and other companies operating from the same location(s) have been identified.
  - c. Verification of business information and credit profiles on all qualifiers through Dun & Bradstreet.
  - d. Searches for national fictitious business name and "doing business as".
  - e. Civil litigation searches relative to liens, bankruptcies and judgments in the state of incorporation and all other states or commonwealths that have such information online.



- f. Nationwide bankruptcy searches on the entity and individual person qualifiers have been conducted.
  - g. Searches for all UCC filings to determine secured parties and banking affiliations.
  - h. National media searches on all entity and individual person qualifiers, as well as relevant affiliations.
  - i. Federal District Court Docket Summary searches for all states.
  - j. Business assets searches.
  - k. Limited Liabilities Company searches and Limited Partnership searches.
2. The status of all current and expired licenses, especially gaming licenses, disclosed by the entity or individual person qualifiers has been verified.
3. The compliance history of the applicant and/or owners, parent company or gaming related affiliates or subsidiaries in all gaming jurisdictions in which they operate has been examined and evaluated.
4. The company website and affiliated websites have been examined and evaluated.
5. As relevant, copies of stock certificates verifying each beneficial owner of the company as well as (again, if relevant) copies of the stock registry from the corporate secretary/registered agent have been obtained. Verifications of the various qualifier entities and individual person qualifiers' ownership interests have been verified.
6. A certified public investigative accountant has conducted financial integrity and stability analysis of applicant owners and specific applicant affiliated entities relevant to the new applicant entities creation and formation. A critical review of the owner's annual financial statements and tax was also conducted. In addition:
- a. A review of the applicant individual person qualifiers' financial statements was conducted.
  - b. If financial statements were not audited, an analysis of three years of reviewed, compiled and/or internally prepared financial statements was conducted.



c. If financial statements were audited, the contact name and number of the independent CPA firm's audit manager was obtained.

d. Available management letters or internal control letters issued by the independent CPA for the past three years were evaluated.

e. The applicant entity and all entity and individual person qualifiers' tax compliance histories were reviewed and evaluated.

f. Documentation/information of the owners and entity and individual person qualifier historical line(s) of credit and long term debt (mostly related intra-family party debt or debt to/from a related entity) balances were obtained, reviewed and evaluated.

g. A comprehensive list of the entity's bank accounts (domestic and foreign) with copies of complete bank statements for past three years was obtained, reviewed and evaluated by financial investigators and accountants.

h. A letter from the banks (domestic and foreign) listing all entity and qualifiers' bank accounts and indicating the most current balance for each account along with a list of authorized signatories for each account was obtained.

i. A listing of all-gaming-related licenses applied for by the applicant company, including the date and disposition, was obtained and reviewed. Each individual licensing agency was contacted and the applicant's status and licensure was verified.

j. While minutes of relevant Board of Directors meetings for the past three years were requested for review, none have been received. We note that the qualifying entities herein are all LLCs and thus do not require Board of Directors minutes.

k. All relevant applicant qualifier compliance, due diligence and audit investigations conducted during the past five years were obtained and reviewed. Additionally, a copy of the applicant current compliance practices in existing licensing jurisdictions was obtained and reviewed.

l. Income analysis, net worth and asset evaluation were conducted for all individual person qualifiers.

7. Compliance with Foreign Corrupt Practices Act (FCPA) and Anti-Money Laundering (AML) policy and protocol was reviewed on all relevant qualifier entities and individual person qualifiers. Applicable policies and procedures, as well as a sampling of internal and/or external investigations or relevant compliance hypothetical scenarios,





were included as subjects of personal interviews with key owners/qualifiers and were evaluated.

For publicly traded companies, a review of all above noted checks and critical Securities and Exchange Commission (SEC) filings, including quarterly filings and annual reports filed by the company for the past three years, was conducted. A check with the SEC and state security officials as to the applicant and any investigations conducted by these agencies over the past seventeen-year period was performed.

For international companies and/or subsidiaries, steps were taken to replicate the investigatory steps taken for domestic entities, and were executed to the extent possible. The beneficial ownership of the entity was determined and, if applicable, a copy of the stock registry from the company's registered agent was secured. A media search in the country where the applicant is incorporated and headquartered, as well as within the major countries where the company engages in business activity, was conducted.

8. Motor vehicle registrations, driver's licenses and driving history records were examined and verified.
9. The investigative team also examined the applicant and its qualifiers' past business practices and business ability as well as the qualifiers' demonstrated history to launch and maintain a successful gaming establishment.
10. The applicant qualifiers' history of compliance with gaming regulations was assessed.
11. The applicant qualifiers' litigation history was assessed.
12. The applicant qualifiers' record of political contributions in Massachusetts and, if relevant, other jurisdictions was assessed.
13. The Massachusetts State Police conducted thorough federal, state, and commonwealth criminal history inquiries based on the applicant qualifiers' submissions and also processed fingerprint examinations on all natural person qualifiers.
14. An inquiry was conducted to determine if any credible information existed in any databases, online or available from law enforcement, and regulatory sources regarding any applicant or qualifier involvement or affiliation with any organized criminal groups or persons with criminal histories.



15. Each individual person qualifier's educational background was examined and verified.
16. Each individual person qualifier's employment history was examined and verified as necessary.
17. All personal references for individual person qualifiers were contacted and interviewed.
18. All professional licenses of applicant qualifiers were examined and verified, including specific verification of any gaming industry related licenses, permits or suitability determinations.
19. Applicant's business affiliations for applicant entities and individual person qualifiers were examined and evaluated.

## RECOMMENDATION

The findings of fact relative to this investigation can be found in the attached report. Specifically, those findings of fact are listed in section II of the Executive Summary and in sections III and IV of the report and the attached exhibits.

On the basis of the investigation to date and as supported by the findings of fact as described therein, the IEB advises the Commission that based on the criteria listed in the gaming laws and regulations in Massachusetts, including Mass. Gen. Laws ch. 23K, § 12, 13, 14 and 16, it has not discovered any disqualifying factors that would preclude the Applicant from being issued a Category 2 Gaming (Slot) License. As stated in 205 CMR 115.03 – 115.05, the IEB is only providing a recommendation and the final determination of suitability rests within the Commission's sound discretion.

**The IEB recommends that the Commission find the applicant, Ourway Realty, LLC, suitable for licensing subject to the following condition:**

The attached report details concerns regarding the lack of historical corporate governance and effective internal controls under the former president. The new controls and corporate governance, which the applicant indicates either have been, or will be, implemented by new management, does confirm the applicant's recognition of the past shortcomings and further reflects an acknowledgement that new and more comprehensive oversight, internal financial controls, recordkeeping and experienced personnel selection

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will be necessary if casino gaming were to be undertaken. The applicant has pledged its commitment to such improvements. The IEB recommends that the Commission require that the applicant institute these new internal controls immediately and that the applicant present evidence of adoption of and adherence to these procedures to the satisfaction of the Commission.

The IEB suggests that if the applicant is awarded a Category 2 license, the Commission consider adding the following conditions to the license:

1. As with all other applicants, the IEB recommends that Ourway Realty, LLC be required to promptly report any changes relating to their ownership, members, managers and/or directors; any new owners, members, managers and/or directors be required to submit a PHD or BED form to the Commission; and that any owners, members, managers and/or directors must be found suitable by the Commission;
2. The Bank Secrecy Act of 1970 ("BSA," or otherwise known as the Currency and Foreign Transactions Reporting Act) requires US financial institutions to assist US government agencies to detect and prevent money laundering. Specifically, the BSA requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000 (daily aggregate amount), and to report suspicious activity indicative of money laundering, tax evasion, or other criminal activities. Originally applied only to financial institutions such as banks, reporting requirements have since broadened to include businesses such as casinos and check-cashing agencies. In that regard, a licensed casino qualifies as a "financial institution" subject to those filing requirements if it has more than \$1,000,000 in annual gross gaming revenue.<sup>1</sup> This is a threshold any licensed gaming operation in Massachusetts should meet. As with all other applicants, the IEB recommends that Ourway Realty, LLC be required to submit and adhere to a Plan for compliance with the United States Currency and Foreign Transactions Reporting Act satisfactory to the Commission; and
3. Ourway Realty be required to submit to the Commission, on a quarterly basis (30 calendar days from the end of each calendar quarter), copies of any additional internal control processes and procedures established or revised, notification of experienced personnel hired, and copies of any audits conducted with respect to the applicant's compliance with its internal control processes and procedures.

<sup>1</sup> see CFR 103 §1010.100(t)(5)(i) and (6)(i).



This report reflects the findings of the IEB as of this date. The Bureau will continue to investigate the background and qualifications of all applicants and ultimately, all licensees. Should any additional information be gleaned from further inquiry, it will be appropriately reported to the Commission for further review.

It should also be understood that any determination of suitability that might be made by the Commission based on this and other suitability reports during this Phase I process will not constitute the final analysis of those matters. This suitability report will become part of the material considered during Phase II of the evaluation process as the Commission is empowered to also consider the relative suitability of applicants when it makes its final license decision at the end of Phase II.

Respectfully submitted,



Karen Wells  
Director  
Investigations and Enforcement Bureau  
Massachusetts Gaming Commission



Massachusetts Gaming Commission



**OURWAY REALTY, LLC  
EXECUTIVE SUMMARY**

**A. INTRODUCTION**

After receipt of the required application materials and responses to supplemental information requests, a thorough, yet expedited, due diligence and background investigation of Ourway Realty, LLC, a Limited Liability Company ("Ourway"), and applicant for a Category 2 gaming license, was conducted. This suitability investigation constitutes a key component of Phase 1 of the MGC's casino licensee evaluation and selection process and specifically focuses on this applicant's background in terms of good character, honesty, integrity and financial responsibility.

As an applicant for a gaming license in the Commonwealth of Massachusetts, Ourway has the affirmative obligation to demonstrate its qualifications by clear and convincing evidence as required by M.G.C. c. 23K § 13(a). Likewise, the applicant is also required to establish the qualifications of all of the entities and individuals identified by the IEB as qualifiers. The Report of Suitability submitted by investigators contains the detailed factual findings and analysis of those elements of the applicant's background critical for the IEB and MGC to make a future informed decision regarding the suitability of Ourway.

In specific regard to this applicant, this investigative team initially confirmed that Ourway declared itself to be an applicant for a Massachusetts Category 2 gaming license. The investigation confirmed that Ourway was established as a domestic Massachusetts Limited Liability Company on February 22, 2000 for the purpose of acquiring ownership of the Plainridge Racecourse in Plainville, MA, which currently is the only remaining harness racetrack in the Commonwealth. Ourway is currently the sole owner and operator of the Plainridge

Racecourse and has held the Norfolk County harness racing license to operate this racecourse since 2004.

More specifically, the investigation conducted a comprehensive in-depth inquiry into all of those persons and entities whose qualifications are a statutory and regulatory pre-condition to the suitability of the applicant (that is “qualifiers”). In this applicant’s case, in addition to the examination conducted with respect to the Plainridge Racecourse operation and Ourway, three entity qualifiers and eight individual qualifiers were the subject of investigation. During the course of the within suitability inspection, one of the qualifiers, Gary Piontkowski (“Piontkowski”) who was an owner, the President and the Managing Member of Ourway and Manager for entity qualifier, Anchor Partners, LLC (“Anchor Partners”) resigned from all positions and divested himself of all interest in the applicant. As a result, John Grogan (“Grogan”), who had been a consultant and the primary contact designated for the processing of applicant’s Category 2 gaming application, was appointed President of Ourway. As such, Grogan was identified as an additional qualifier and became the subject of examination as part of this applicant’s suitability investigation. Additionally, in connection with the inspection of one of the entity qualifiers, an additional entity was identified as an additional entity qualifier, which also became the subject of examination in connection with this suitability investigation.

To investigate these qualifiers, the investigative team utilized a wide variety of investigative resources and techniques to request, accumulate and evaluate, the voluminous amounts of information necessary to provide the IEB, and eventually the Commission, with sufficient data for those bodies to make a fully informed decision. The entire scope and methodology is detailed in the body of the Ourway Suitability Report.

## **B. GENERAL OVERVIEW OF APPLICANT**

If applicant is successful in being awarded a Category 2 gaming license, the gaming facility which Ourway plans to construct will be located at the existing Plainridge Racecourse facility site at 301 Washington Street, Plainville, MA 02762.

Ourway is owned by a small group of investors with the two largest owners being Stanley Fulton ("Fulton") and Alfred Ross ("Ross"). Fulton was the founder and owner of Anchor Coin, which subsequently was acquired by Anchor Gaming, a publicly traded company also founded by Fulton, which was later acquired by IGT. Fulton is currently the owner of Sunland Park Racetrack and Casino ("Sunland Park") in Sunland Park, NM. Ross has been involved in the pari-mutuel racing industry since 1941. He was an owner and operator of three dog tracks in Colorado, a dog and horse track in South Dakota, and held an ownership interest and operated Lincoln Downs in Rhode Island.

Collectively, Fulton and Ross beneficially hold an [REDACTED] ownership interest in Ourway. The three additional owners who have been deemed individual qualifiers hold [REDACTED]. The remaining owners, who are not qualifiers for purposes of this suitability investigation, each hold very small ownership interests in the applicant, with several holding less than one percent. A complete chart of the ownership of applicant is contained in the body of the accompanying Suitability Report.

None of the owners are or have been actively involved in the day to day management of applicant's racetrack operation. Their roles are for the most part as passive investors. Ross is the current Managing Member of Ourway and Anchor, having recently assumed that role in light of the resignation of Piontkowski. As noted above, John Grogan is the current President of Ourway. As of the submission date of this report, this applicant has not identified the key operational employees who will be responsible for the day-to-day operation of the applicant's proposed Category 2 gaming facility. The applicant has advised that it is conducting searches for

experienced gaming management and is in the process of reviewing resumes and applications in this regard. However, such personnel has not yet been identified or vetted.

## **C. FINDINGS**

As previously set forth, investigators conducted an extensive review of the applicant and all of its qualifiers. The information found was analyzed in light of the Commonwealth's applicable statutory and regulatory standards. The detailed investigative findings are contained in the body of the accompanying Suitability Report for Ourway. A summary of those findings is as follows:

### **1. Financial stability, integrity and responsibility**

The financial suitability of all of the qualifiers was reviewed. The investigation did not find any information that would render the applicant disqualified on these grounds. There are issues that arose with regard to some of the qualifiers that are described in the report that required explanation and more focused concern. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The financial condition of applicant Ourway, for the period subject to examination in this investigation reflects steadily declining revenues and negative earnings (before interest, taxes,

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depreciation and amortization) and negative cash flow from operations. The applicant depends on cash infusions from its Members to satisfy its obligations and thereafter it is unable to repay those infusions which are considered to be loans, for which neither principal nor interest is repaid. It is recognized, however, that declining revenues, unfortunately, has been the fate of all racetracks in the Commonwealth. The financial viability of racetracks within the Commonwealth was, in part, an impetus for the passage of the Expanded Gaming Act.

In terms of financial resources, the applicant Ourway raises capital and borrows funds from its Members and a related company, Anchor Partners. It has little to no third-party borrowings from financial institutions, such as banks or other licensed lending institutions. Fulton and Ross are the sole members of Anchor Partners, which is the applicant's second largest financial source. Fulton is currently the applicant's [REDACTED] financial source. In addition to having made contributions of capital, Fulton has lent, and continues to lend, significant amounts to Ourway. Aside from the amount lent to Ourway by Fulton to date, Fulton has committed, in writing, to lend that which is needed to fund the construction of the Ourway's proposed Category 2 gaming facility. To date, Fulton has provided the financing necessary for construction of the parking garage at the Plainridge Racecourse site.

Based upon the analysis of Fulton's financial status, this investigation confirmed that Fulton is indeed a wealthy man, having adequate assets to fund applicant's proposed Category 2 gaming facility. The financial investigation further confirmed that Ross too has significant assets and is in a position to make an additional contribution to applicant, if required.

[REDACTED]



If, however, any yet unidentified third party funding sources are called upon, any such new investors will be required to be fully vetted in accordance with the statutory standard mandating the integrity of financial backers and investors, before participation is allowed by the MGC.

## **2. Good character, honesty, integrity and reputation**

The investigation disclosed no material issues with respect to applicant and its current qualifiers. There are no regulatory or criminal histories concerning any of the qualifiers that would prevent a finding of suitability in this case. Likewise, the investigation did not establish any credible information from any sources that the applicant or its qualifiers are involved or associated with any person or entity involved in any organized criminal activities or with any person or entity with known criminal history or who may pose an injurious threat to the interests of the Commonwealth in awarding a gaming license to the applicant. There is also no record of any prohibited political contributions or civil litigation history that would be adverse to these qualifiers being found suitable.

Fulton has been licensed and/or found suitable in numerous gaming jurisdictions in connection with his former ownership and involvement with Anchor Coin and Anchor Gaming. Fulton is currently licensed in connection with his ownership of Sunland Park. No derogatory information was found concerning any of the licenses or findings of suitability for Fulton. The regulatory compliance record for Sunland Park was also reviewed as part of this investigation. Acting Executive Director Baca of the New Mexico Gaming Control Board ("NMGCB") confirmed in writing that Fulton has never been the subject of any type of disciplinary action by the NMGCB and has further confirmed that in the view of the NMGCB, Sunland is one of the better run and managed facilities in New Mexico and that this casino has a long history of compliance and cooperation with the NMGCB.

Ross has also been licensed in numerous racing jurisdictions in connection with his ownership of race horses and race tracks. No derogatory information was found concerning any of the licenses held by Ross.

As part of this investigation, Massachusetts State Police investigation reports from 1997 through 2007 concerning the past racing regulatory compliance record of Plainridge Racecourse during former President Piontkowski's tenure were reviewed. Although these investigations did not lead to the imposition of any formal regulatory sanctions or criminal prosecution, the involvement and/or continued presence of some of the individual persons involved in the investigations, and the nature of some of the allegations, were deemed relevant and are thus discussed in the Suitability Report for Ourway.

Also discussed in the report is the practice by former President and owner, Piontkowski, of routinely, almost on a daily basis, withdrawing small amounts of cash from the Plainridge racetrack "money room." These direct cash withdrawals were recorded as monies owed by Piontkowski and when this money was not repaid, it was re-characterized at the end of each year as a "distribution" to Piontkowski. Overall, the investigation confirmed that these yearly withdrawals amounted to a rather large sum of money. It was reported by applicant that these money room withdrawals taken by Piontkowski, which became the focus of questioning during this investigation, resulted in applicant internal discussions about the need for better internal controls and proper corporate governance. The resignation of Piontkowski and appointment of John Grogan as President then followed. The terms of separation and divestiture of Piontkowski interests in applicant are also detailed in the Ourway Suitability Report.

Fulton and Ross have both voiced confidence in Grogan's ability to implement immediate measures to improve the corporate governance and internal control environment of applicant due to Grogan's former experience in the investment banking business. During the latter part of the investigation, Grogan supplied documentation evidencing a better defined internal administrative and organizational system with improved checks and balances. A more

detailed explanation of the improved processes is also detailed in the accompanying Ourway Suitability Report.

The new controls and corporate governance which the applicant indicates either have been, or will be, implemented by new management, does confirm the applicant's recognition of the past shortcomings and further reflects an acknowledgement that new and more comprehensive oversight, internal financial controls, recordkeeping and experienced personnel selection will be necessary if casino gaming were to be undertaken. The applicant has pledged its commitment to such improvements. Any finding of suitability should be conditioned on a formal commitment to such improvements.

### **3. Sufficient business ability and experience**

Fulton's history of founding and operating Anchor Gaming, as well as his current ownership and successful operation of Sunland indicates that Fulton has demonstrated the business ability to establish and maintain a successful gaming establishment. Ross also has a long history of developing and successfully operating a number of racetracks over the years; thereby demonstrating the business ability to establish and maintain a successful gaming establishment.

Although the investigation disclosed that the applicant made regular distributions of significant capital amounts to Piontkowski, while not making any such distributions to other owners, or making payments towards its loan obligations, this practice has ceased with the resignation of Piontkowski. As indicated above, the current President, John Grogan, has implemented new internal controls and corporate governance practices and procedures in recognition of the past shortcomings in the applicant operation. Grogan has demonstrated a credible history of investment banking and financial consulting experience and a history of regulatory compliance. Based upon the records examined, the interviews conducted, his many years of experience in the investment banking business, and a review of his recent efforts in

establishing, on behalf of applicant, the corporate governance expected of any gaming operation, illustrate that Grogan demonstrates the business ability to oversee the establishment of the proposed Ourway gaming facility project.

#### **D. CONCLUSION**

While, of course, the final decision on suitability rests within the sound discretion of the Commission, the report that follows confirms that the applicant and its affiliated owners, entities and individual qualifiers have the requisite financial stability, integrity and responsibility, the availability of suitable financial resources, have demonstrated sound business experience, good character, and personal integrity. The investigation report that follows does not raise any issues that would preclude or disqualify Ourway Realty, LLC or any of its qualifiers from being issued a Category 2 gaming license pursuant to the criteria set forth in M.G.L c.23K.

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**INVESTIGATIVE REPORT**  
**FOR THE**  
**MASSACHUSETTS GAMING COMMISSION**

**APPLICANT:**

**OURWAY REALTY, LLC**

**INDIVIDUAL QUALIFIERS**

**Stanley E. Fulton**

**Alfred S. Ross**

**George L. Chimento**

**Richard L. Tuch**

**Fred L. Chanowski**

**John M. Grogan**

**Timothy A. Petersen**

**June 18, 2013**

**CATEGORY 2 GAMING (SLOTS) LICENSE**

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## Contents

|   |    |
|---|----|
| I. INTRODUCTION .....   | 5  |
| II. SCOPE AND METHODOLOGY .....   | 6  |
| III. IDENTIFICATION OF APPLICANT, PROPOSED LOCATION AND SHORT HISTORICAL CONTEXT OF APPLICANT'S GAMING INDUSTRY PARTICIPATION ..... | 13 |
| A. IDENTIFICATION OF APPLICANT .....  | 13 |
| B. APPLICANT SITE .....   | 14 |
| C. APPLICANT BACKGROUND .....   | 14 |
| IV. APPLICANT CORPORATE OWNERSHIP AND STRUCTURE .....   | 19 |
| A. VISUAL DEPICTION OF OWNERSHIP OF APPLICANT ENTITY .....  | 20 |
| B. DESCRIPTION AND EXPLANATION OF APPLICANT'S OWNERSHIP .....   | 21 |
| C. LIST OF QUALIFIERS .....   | 21 |
| 1. OURWAY REALTY, LLC ("OURWAY") .....  | 22 |
| 2. MASS WAY, LLC ("MASS WAY") .....   | 23 |
| 3. MY WAY MANAGEMENT, INC. ("MY WAY MANAGEMENT") .....  | 23 |
| 4. ANCHOR PARTNERS LLC ("ANCHOR PARTNERS") .....  | 23 |
| D. STRUCTURE OF OURWAY AND ENTITY QUALIFIERS .....  | 23 |
| 1. OURWAY REALTY, LLC ("Ourway" or "applicant") .....   | 23 |
| 2. MASS WAY, LLC ("Mass Way") .....   | 24 |
| 3. MY WAY MANAGEMENT, INC. ("My Way Management") .....  | 25 |
| 4. ANCHOR PARTNERS, LLC ("Anchor Partners") .....   | 25 |
| E. MANAGEMENT OF OURWAY, LLC .....  | 28 |
| F. ADDITIONAL RELEVANT INFORMATION TO APPLICANT OWNERSHIP OR MANAGEMENT .....   | 31 |
| 1. SUNLAND RACETRACK AND CASINO ("SUNLAND") .....   | 31 |
| 2. RECENT HISTORY OF FINANCIAL SUPERVISION OF PLAINRIDGE RACETRACK OPERATIONS .....   | 31 |
| V. APPLICANT SUITABILITY .....  | 32 |
| A. LICENSING AND COMPLIANCE HISTORY .....   | 32 |
| 1. Massachusetts Racing License Compliance History .....  | 32 |
| 2. [REDACTED] Investigation .....   | 34 |
| 3. Piontkowski Money Room Practices .....   | 37 |
| 4. Applicant Internal Controls and Corporate Governance/Remedial Actions .....  | 40 |
| 5. SUNLAND PARK RACETRACK AND CASINO .....  | 43 |
| 6. Compliance Summary .....   | 45 |
| B. LITIGATION .....   | 45 |
| C. CRIMINAL HISTORY .....   | 48 |
| D. POLITICAL CONTRIBUTIONS .....  | 48 |
| VI. FINANCIAL RESPONSIBILITY EVALUATION .....   | 49 |

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|   |    |
|---|----|
| A. FINANCIAL OPERATING RESULTS .....                  | 49 |
| VII. APPLIANT ENTITY AND INDIVIDUAL PERSON QUALIFIERS |    |
| SUITABILITY SUMMARY OF FINDINGS .....                 | 53 |
| A. ENTITY QUALIFIERS.....                             | 53 |
| 1. Mass Way, LLC .....                                | 53 |
| 2. My Way Management, Inc.....                        | 55 |
| 3. Anchor Partners.....                               | 56 |
| B. INDIVIDUAL PERSON QUALIFIERS .....                 | 58 |
| 1. Stanley Fulton .....                               | 58 |
| 2. Alfred S. Ross .....                               | 65 |
| 3. Fred L. Chanowski .....                            | 69 |
| 4. George Chimento .....                              | 72 |
| 5. Richard Tuch.....                                  | 74 |
| 6. John Grogan .....                                  | 77 |
| 7. Timothy Alan Petersen.....                         | 81 |

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## I. INTRODUCTION

After a formal public Request for Proposals in approximately October 2012, the firm of Michael and Carroll, PC ("M&C") and its agents and affiliated professionals were selected and then retained by the Massachusetts Gaming Commission ("MGC") to assist the Commission's Investigations and Enforcement Bureau ("IEB") in conducting thorough, yet expedited, due diligence and background investigations of numerous entities and individual qualifiers for each respective assigned applicant. In order to meet these requirements, M&C utilized the services of field investigators, financial investigators, certified public accountants, database specialists, attorneys with extensive experience in gaming regulation and other support professionals. This staff included former FBI agents and supervisors, former State Police from other jurisdictions, former Attorney General's investigators, former state and tribal regulatory officials and former criminal prosecutors. This experienced staff was teamed with investigative personnel from the Massachusetts State Police assigned to the Gaming Enforcement Unit, and the IEB Director and staff. These suitability investigations constitute Phase 1 of the Commission's casino selection process and focus on this applicant's background in terms of good character, honesty, integrity and financial responsibility. This report contains the factual findings and analysis of those elements of the applicant's background critical for MGC to make an informed decision regarding suitability.

As of the date of this report, this applicant's origin, ownership and table of organization are discussed below in detail. While we reasonably believe that this applicant has made a significant effort to confirm that this is the final organizational framework for the applicant's company that will oversee its planned gaming facility construction and operational logistics, M&C's long experience in the gaming industry and in government suggests that some variation may still occur. Any material deviation that could affect the suitability of the applicant or any of its individual person qualifiers will be immediately identified and closely monitored. As warranted, the IEB will take all appropriate action to assure that any potential deviations from the applicant's present intention are fully vetted to the established statutory and regulatory standards. Moreover,

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if the applicant does advance in the established MGC project suitability and evaluative processes, additional investors and financial participants will, in our considered view and in conjunction with the Director of the IEB, also be added and identified. Any such new participants in the applicant's project will likewise be vetted to the appropriate established standards and law.

Finally, in addition to the applicant and related qualifying entities, we have also reported herein on all of the qualifying individuals. The specific sections of this report pertaining to such persons are summaries of our investigational findings. The voluminous information from which these summaries are prepared will be retained by the IEB Director and the Massachusetts State Police. Any issues that arose in the course of any of those individuals' investigations and which bear upon the suitability of this applicant are addressed in this report. Summaries of and detailed versions of the financial analyses of the applicant entity and individual qualifiers can be found in Exhibits 3 through 10 attached to this report.

## **II. SCOPE AND METHODOLOGY**

The entity applicant, Ourway Realty, LLC ("Ourway" or "applicant") and all individual persons identified by the IEB as "qualifiers" were required by both statutory law and the MGC's Phase 1 regulations to complete detailed application forms and various informational tables and appendices. These initial forms are based upon the universally utilized "Multi-Jurisdictional Personal History Disclosure" ("PHD") and "Business Entity Disclosure" ("BED") forms used in many domestic gaming jurisdictions and are designed to reveal significant and material historical and biographical information about the applicant entity and individual person qualifiers. In addition to the PHDs and BEDs, the MGC also required the submission of a special additional form set entitled the Massachusetts Supplement ("Mass. Supp") and which contains numerous more focused Commonwealth specific questions as well as significant comprehensive liability waiver and personal information privacy release forms so as to enable the

thorough and efficient investigation in all relevant jurisdictions. All qualifiers, both entity and individual persons, have completed their respective required materials and have been examined by the M&C and IEB investigative team professionals. Additionally, supplemental requests have been issued for further specific information as each respective investigation dictates. All materials were examined and evaluated utilizing the criteria and standards in the Massachusetts Gaming Act and attendant Regulations promulgated by the MGC, that is, M.G.L. c. 23K §12, §16, §17, §46, and §47 and 205 CMR §108 and §115. Further, all materials were also reviewed using the general regulatory standards practiced in the gaming industry, thus comprehensively evaluating each qualifier's requisite integrity, honesty, good character and reputation, financial stability and background as required by the aforementioned statute and regulations. In addition, each qualifier's financial suitability and responsibility were examined, and where the qualifier will be in an ownership, managerial or other operational role in proposed Ourway operation, the qualifier's specific business experience, past business practices and business ability was reviewed in order to establish whether that qualifier can be expected to maintain a successful gaming establishment. This review also included an analysis of the qualifier's history of compliance with gaming regulations, litigation history, criminal record inquiry and political contributions all as required by M.G.L. c.23K § 12.

M&C attorneys and investigators and Massachusetts State Police personnel also conducted in-person interviews with all key qualifying personnel in the applicant's project organization. Each respective qualifier's individual history and identified issues, if any, were also examined under oath, documented as to content and memorialized in formal certified transcripts.

Also, as will be discussed below, Commonwealth and other jurisdictions' regulatory agencies have previously investigated certain of the qualifier entities and individuals as well as the other key operational qualifier employees. Our investigation specifically inquired into whether those qualifiers have been confirmed as qualified and/or duly licensed and are in good standing. Further, our investigation also determined

whether any regulatory disciplinary actions have been filed against any of the entity or individual person qualifiers by any other regulatory agency. Where relevant, law enforcement agencies were also contacted for verifications or information. Among the jurisdictions and agencies contacted and from which important verifications or other information was received included: Massachusetts, Wisconsin, Nevada, and New Mexico.

More specifically, the M&C and IEB investigative personnel have performed the following investigative steps in pursuance of the investigation:

1. Public Record Database checks which included, but were not limited to, the following:

- a. Searches for incorporation papers and corporate filing for incorporation in other states have been conducted for the identified privately held companies.

- b. The intended Plainville location of the gaming facility, the applicant company and its owners and affiliated entities and individual qualifiers have been verified through address verifications and other companies operating from the same location(s) have been identified.

- c. Verification of business information and credit profiles on all qualifiers through Dun & Bradstreet.

- d. Searches for national fictitious business name and “doing business as”.

- e. Civil litigation searches relative to liens, bankruptcies and judgments in the state of incorporation and all other states or commonwealths that have such information online.

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f. Nationwide bankruptcy searches on the entity and individual person qualifiers have been conducted.

g. Searches for all UCC filings to determine secured parties and banking affiliations.

h. National media searches on all entity and individual person qualifiers, as well as relevant affiliations.

i. Federal District Court Docket Summary searches for all states.

j. Business assets searches.

k. Limited Liabilities Company searches and Limited Partnership searches.

2. The status of all current and expired licenses, especially gaming licenses, disclosed by the entity or individual person qualifiers has been verified.

3. The compliance history of the applicant and/or owners, parent company or gaming related affiliates or subsidiaries in all gaming jurisdictions in which they operate has been examined and evaluated.

4. The company website and affiliated websites have been examined and evaluated.

5. As relevant, copies of stock certificates verifying each beneficial owner of the company as well as (again, if relevant) copies of the stock registry from the corporate secretary/registered agent have been obtained. Verifications of the various qualifier entities and individual person qualifiers ownership interests have been verified.

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6. A certified public investigative accountant has conducted financial integrity and stability analysis of applicant owners and specific applicant affiliated entities, relevant to the new applicant entities creation and formation. A critical review of the owner's annual financial statements and tax was also conducted. In addition:

a. A review of the applicant individual person qualifiers' financial statements was conducted.

b. If financial statements were not audited, an analysis of three years of reviewed, compiled and/or internally prepared financial statements was conducted.

c. If financial statements were audited, the contact name and number of the independent CPA firm's audit manager was obtained.

d. Available management letters or internal control letters issued by the independent CPA for the past three years were evaluated.

e. The applicant entity and all entity and individual person qualifiers tax compliance histories were reviewed and evaluated.

f. Documentation/information of the owners and entity and individual person qualifier historical line(s) of credit and long term debt (mostly related intra-family party debt or debt to/from a related entity) balances were obtained, reviewed and evaluated.

g. A comprehensive list of the entity's bank accounts (domestic and foreign) with copies of complete bank statements for past three years was obtained, reviewed and evaluated by financial investigators and accountants.

h. A letter from the banks (domestic and foreign) listing all entity and qualifiers' bank accounts and indicating the most current balance for each account along with a list of authorized signatories for each account was obtained.

i. A listing of all-gaming-related licenses applied for by the applicant company, including the date and disposition, was obtained and reviewed. Each individual licensing agency was contacted and the applicant's status and licensure was verified.

j. While minutes of relevant Board of Directors meetings for the past three years were requested for review, none have been received. We note that the qualifying entities herein are all LLCs and thus do not require Board of Directors minutes.

k. All relevant applicant qualifier compliance, due diligence and audit investigations conducted during the past five years were obtained and reviewed. Additionally, a copy of the applicant current compliance practices in existing licensing jurisdictions was obtained and reviewed.

l. Income analysis, net worth and asset evaluation were conducted for all individual person qualifiers.

7. Compliance with Foreign Corrupt Practices Act (FCPA) and Anti-Money Laundering (AML) policy and protocol was reviewed on all relevant qualifier entities and individual person qualifiers. Applicable policies and procedures, as well as a sampling of internal and/or external investigations or relevant compliance hypothetical scenarios, were included as subjects of personal interviews with key owners/qualifiers and were evaluated.

For publicly traded companies, a review of all above noted checks and critical Securities and Exchange Commission (SEC) filings, including quarterly filings and annual reports

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filed by the company for the past three years, was conducted. A check with the SEC and state security officials as to the applicant and any investigations conducted by these agencies over the past seventeen-year period was conducted.

For international companies and/or subsidiaries, steps were taken to replicate the investigatory steps taken for domestic entities, and were executed to the extent possible. The beneficial ownership of the entity was determined and, if applicable, a copy of the stock registry from the company's registered agent was secured. A media search in the country where the applicant is incorporated and headquartered, as well as the within the major countries where the company engages in business activity, was conducted.

8. Motor vehicle registrations, driver's licenses and driving history records were examined and verified.

9. The investigative team also examined the applicant and its qualifiers' past business practices and business ability as well as the qualifiers' demonstrated history to launch and maintain a successful gaming establishment.

10. The applicant qualifiers' history of compliance with gaming regulations was assessed.

11. The applicant qualifiers' litigation history was assessed.

12. The applicant qualifiers' record of political contributions in Massachusetts, and if relevant, other jurisdictions was assessed.

13. The Massachusetts State Police conducted thorough federal, state, and commonwealth criminal history inquiries based on the applicant qualifiers' submissions and also processed fingerprint examinations on all natural person qualifiers.

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14. An inquiry was conducted to determine if any credible information existed in any databases, online or available from law enforcement, and regulatory sources regarding any applicant or qualifier involvement or affiliation with any organized criminal groups or persons with criminal histories.

15. Each individual person qualifier's educational background was examined and verified.

16. Each individual person qualifier's employment history was examined and verified as necessary.

17. All personal references for individual person qualifiers were contacted and interviewed.

18. All professional licenses of applicant qualifiers were examined and verified, including specific verification of any gaming industry related licenses, permits or suitability determinations.

19. Applicant's business affiliations for applicant entities and individual person qualifiers were examined and evaluated.

### **III. IDENTIFICATION OF APPLICANT, PROPOSED LOCATION AND SHORT HISTORICAL CONTEXT OF APPLICANT'S GAMING INDUSTRY PARTICIPATION**

#### **A. IDENTIFICATION OF APPLICANT**

The applicant's BED and related submissions indicated, and our investigation confirmed, that the specific entity seeking a Category 2 casino gaming license in the Commonwealth is:

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**OURWAY REALTY, LLC (“Ourway” or “applicant”) d/b/a Plainridge Racecourse**

Business Address: 301 Washington Street, Plainville, MA 02762. The location of the company through address verification has also been confirmed via investigation.

Telephone No. 508-643-2500

Formation of Company: Research has confirmed that Ourway was established as a domestic Massachusetts Limited Liability Company in 2000. The Massachusetts Secretary of State’s Office confirmed registration of this entity with filing number 2212340 specifically on February 22, 2000, and the company is currently listed as active.

The Registered Agent is: J. Owen Todd, 28 State Street, Boston, MA 02109.

**B. APPLICANT SITE**

The applicant has presently designated that it is seeking to acquire the sole Category 2 slot machine gaming license that is statutorily available in M.G.L. c.23K. The proposed facility will be located in the host community of Plainville, MA. The facility which the applicant plans to construct will be located at and within the existing Plainridge Racecourse (“Plainridge”) facilities and appurtenant areas. Plainridge is the only remaining harness racetrack in Massachusetts. Specific details relating to the proposed slot facility design, development and construction will be appropriately addressed in the Phase 2 investigation and evaluation if the applicant satisfies the required standards for Phase 1 suitability, and thus are beyond the scope of this report. This investigation confirmed that Ourway holds title to the Plainridge property and has owned said property since May 17, 2000.

**C. APPLICANT BACKGROUND**

A short summary of the history of the Plainridge and Ourway’s acquisition of Plainridge will enable a fuller understanding of the applicant’s history and evolution

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leading to the submission of the instant Massachusetts Category 2 license application. The investigation herein has documented the following information:

In March 1999, Plainridge opened as a harness horse racing track in Massachusetts. Currently, live harness horse racing is offered from April through December each year. In addition to live harness horse racing, Plainridge provides for pari-mutuel betting on live simulcasting from various domestic and international racetracks offering harness, thoroughbred and greyhound racing events. Ourway is currently the sole owner and operator of Plainridge and has held the Norfolk County harness racing license to operate Plainridge since 2004.<sup>1</sup> This license was issued by the Massachusetts Racing Commission which has now been operationally merged into the MGC. The investigation also confirmed that the former licensee and operator of Plainridge was the Plainville Racing Company, LLC (“PRC”), which held the license from 1999 through 2003. PRC is currently inactive.

Ourway is owned by a small group of investors, some of whom were also involved as investors in PRC. The two largest beneficial holders of an ownership interest in Ourway are Stanley Fulton (“Fulton”) and Alfred Ross (“Ross”).

Fulton is also the founder and owner of Anchor Coin, which subsequently was acquired by Anchor Gaming, a publicly traded company also founded by Fulton. Anchor Gaming, later acquired by IGT, is an industry-leading global gaming company specializing in the design, development, manufacture and marketing of gaming equipment and gaming system products and services, including slot machines. Fulton has since sold all of his interest in Anchor Gaming and no longer has any affiliation with IGT.

Fulton is also the owner of Sunland Park Racetrack and Casino (“Sunland”) in Sunland Park, NM. Fulton acquired ownership of Sunland and is the sole beneficial holder of the Sunland ownership interest. This latter holding is discussed further below.

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<sup>1</sup> During this investigation the applicant provided investigators with copies of its racing licenses from 2004 to present to verify the years in which Ourway has held the racing license for Plainridge Racecourse. It is to be noted that in attempting to verify the existence of these licenses, Investigators were advised by the Racing Division that the annual reports of the Massachusetts Racing Commission for 2004, 2005 and 2006 incorrectly list Plainville Racing Company as the license for those years instead of applicant.



Ross has been involved in the pari-mutuel racing industry since 1941, when he began working for his uncle, [REDACTED], who purchased and reopened Taunton (MA) Greyhound Park, at that time a defunct non-functional racetrack. Ross eventually became an owner and operator of three dog tracks in Colorado, a dog and horse track in South Dakota, and held an ownership interest and operated Lincoln Downs in Rhode Island. Ross has since sold all his interest in these racetracks, having done so over 24 years ago in 1989. Ourway is currently the only racetrack in which Ross presently maintains any ownership interest.

Ross was one of the initial investors in PRC, along with George L. Chimento ("Chimento"), Richard L. Tuch ("Tuch"), and Fred L. Chanowski ("Chanowski"), investors who also have been deemed individual qualifiers for this applicant. PRC was formed by Gary Piontkowski ("Piontkowski") in 1998 to apply for the Norfolk County harness racing license to operate Plainridge. In or around 1997, Piontkowski joined forces with Louis Giuliano, a Rhode Island real estate developer, to establish a harness racetrack in Plainville, MA. The property on which Plainridge resides was formerly owned by Pacella Development Corporation. Giuliano, through his company, GTWO, LLC-MA, represented, at the time, that he had obtained financing from Realty Financial Partners ("RFP") and had purchased the property to construct the track. Piontkowski solicited Chimento's interest in the investment and Chimento became one of the original investors in PRC. Piontkowski had known Chimento as a result of some legal work Chimento had performed for him. At that time, Piontkowski was introduced to Ross by a mutual associate within the racing industry. Chimento and Piontkowski, along with Giuliano, met with Ross, who had been involved with venture capital financing along with Chanowski and Tuch. Piontkowski, Chimento and Giuliano presented a plan to open a harness racecourse in Plainville in light of the closing of the Foxboro racecourse at that time. Based upon review of the plans and projections, coupled with the potential for legalized gambling within the Commonwealth of Massachusetts, Ross, Chanowski and Tuch made the decision to also become investors in PRC. Notably, several of these

original PRC participants subsequently evolved into investors of the current Ourway project.

PRC, as tenant, and GTWO, LLC-MA, as landlord, entered into a [REDACTED] lease for the Plainridge track [REDACTED]. In November 1998, PRC was awarded the Norfolk County harness racing license to operate Plainridge for calendar year 1999. However, in reality, another company, GTWO, LLC-RI was formed, which was owned by RFP, and it was that entity which actually took title to the property. When it became known that Giuliano and his company GTWO, LLC-MA did not own the property, the applicant herein, Ourway, was formed, led by Ross and the original PRC investors, for the purpose of purchasing the racecourse property.

Ross then sought out Fulton, whom he did not know personally. Ross knew that Fulton owned Anchor Gaming, a supplier of pari-mutuel wagering equipment to PRC. Knowing that Anchor Gaming was also a slot machine company, Ross, along with Chimento, met with Fulton to solicit his interest in the venture circa 1999-2000. Fulton agreed, on behalf of Anchor Gaming, to speculatively invest in anticipation of Massachusetts legalizing gaming at some point in the future. In consideration for Anchor Gaming's investment, certain exclusive business rights with respect to the provision of gaming equipment were agreed to by and among the parties. These business "rights" have been evaluated in this investigation and are discussed later in this report.

Anchor Partners was formed in March 2000 to provide the financing to Ourway to purchase the property. Anchor Gaming, not Fulton personally, made the initial investment to Anchor Partners, along with Ross and Tuch. Anchor Partners initially contributed [REDACTED] in mortgage financing to Ourway for the purchase of the Plainridge property. Subsequently, [REDACTED] of the mortgage debt was converted to a [REDACTED] equity interest in Ourway as follows: [REDACTED] Anchor Gaming (Fulton); [REDACTED] Ross; and [REDACTED] Tuch. After this conversion of debt to equity, only Ross and Fulton were left as the remaining individual Members in Anchor Partners. PRC leased the racetrack from Ourway and held the racing license to operate Plainridge through the 2003 racing season. In 2004, Ourway applied for and was granted as the

licensee for the Norfolk County harness racing license to operate Plainridge, which it continues to operate up until present.

As a result of the acquisition of Plainridge by Ourway, GTWO, LLC-RI and Giuliano filed a lawsuit contesting the purchase of the track by Ourway. The case persisted in litigation until March 2005, when all claims by GTWO, LLC-RI and Giuliano were judicially dismissed. This lawsuit is discussed in more detail in the section addressing litigation involving Ourway.

It is noted that from approximately 2004 through April 3, 2013, the management and control of Ourway operations was vested exclusively in Piontkowski. Piontkowski was, for the last several years, the public “face and voice” of Plainridge and had been responsible for leading Ourway’s pursuit of a Category 2 gaming license for Plainridge. Gary Piontkowski had been the President of Plainridge Racecourse since it first obtained a license in 1999. He was President of Plainridge during the time Plainville Racing Company operated the racecourse and also assumed this role when Ourway became the licensee and operator of Plainridge. Piontkowski was also appointed Manager of Ourway in July 2008 after Tuch resigned from that position. Gary Piontkowski also became the Manager of Anchor Partners in January 2012 when Tuch resigned from that position.

Prior to Piontkowski’s development of Plainridge Racecourse, our investigation confirmed that Piontkowski was previously the Chairman of the Massachusetts’s Racing Commission from 1991 to 1993.

The investigation herein established that during the years of Piontkowski’s leadership of Plainridge, numerous significant and reportable events occurred. These events are documented and discussed later in this report, but during the pendency of this investigation, an unanticipated change in the leadership of Plainridge and indeed, the applicant Ourway, occurred.

More specifically, the investigative team was notified telephonically by John Grogan (“Grogan”), via media announcement and then in writing, that Piontkowski resigned his previously long-held positions. Notably, Grogan was, up until April 3, 2013, serving Ourway and Piontkowski as a business and financial consultant for Ourway.

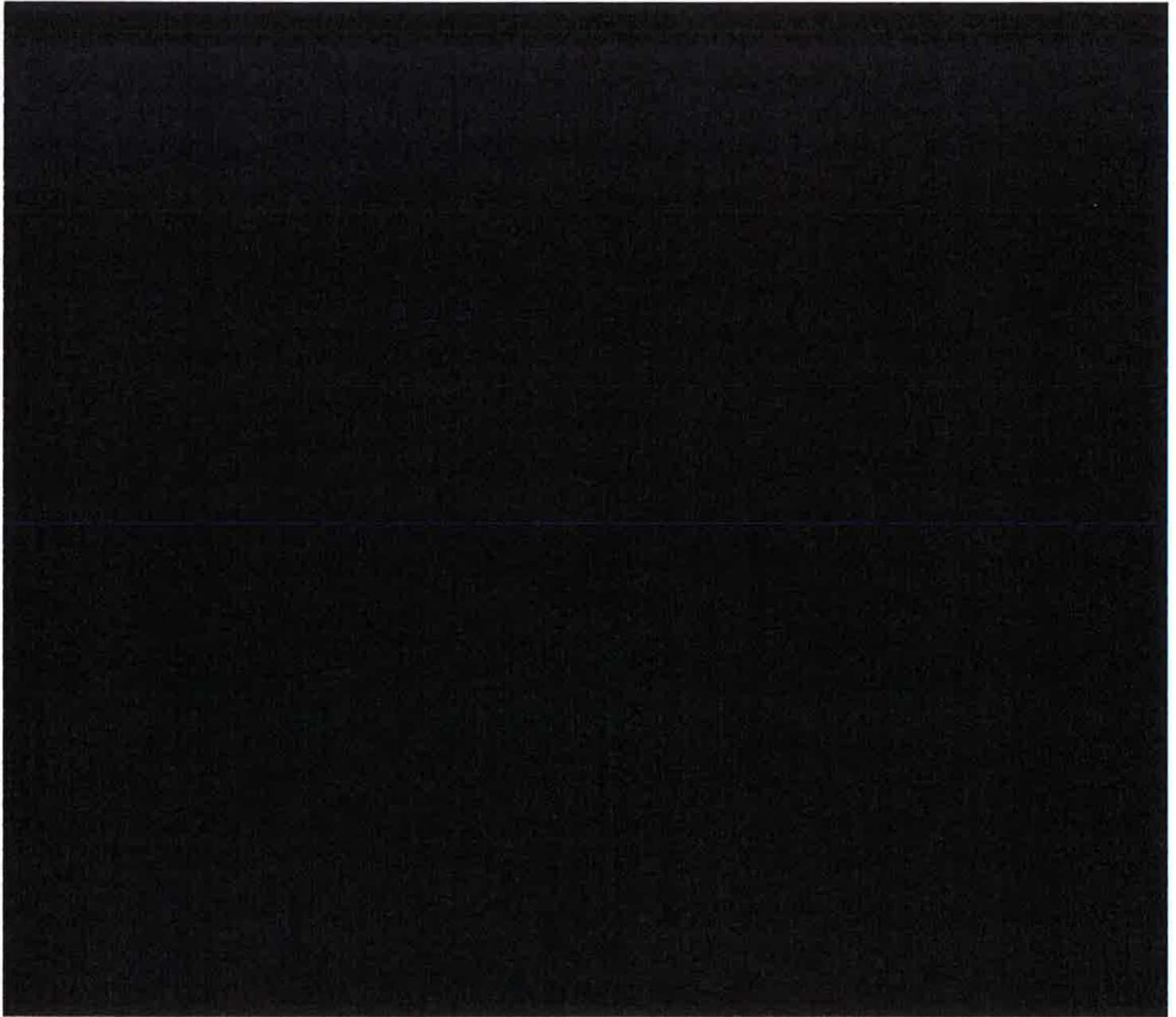
Indeed, during Ourway's initial participation in the MGC Category 2 Phase 1 process, Grogan was the primary IEB contact for the preparation of the Phase 1 application materials. Grogan is now the current President of Ourway and has been identified as the lead qualifier and contact for the continued processing of the Ourway application. The investigation confirmed, via documentation, Piontkowski's divestiture of all ownership interest in Ourway and resignation from all positions formerly held. Further documentation submitted also confirmed that Grogan replaced Piontkowski as the President of Ourway effective April 3, 2012. The investigation also confirmed via documentation that Ross has now assumed the position of Manager of both Ourway and Anchor Partners. Further documentation was submitted evidencing that Piontkowski sold back his [REDACTED] interest in Ourway to Fulton and Ross. Ourway has represented that Piontkowski has severed all ties with this applicant.

#### **IV. APPLICANT CORPORATE OWNERSHIP AND STRUCTURE**

The applicant's fundamental ownership structure has been confirmed and is visually depicted in the below table of organization as follows:

**A. VISUAL DEPICTION OF OWNERSHIP OF APPLICANT ENTITY**

**TABLE 1**



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## **B. DESCRIPTION AND EXPLANATION OF APPLICANT'S OWNERSHIP**

The investigation confirmed that Ourway is owned by the following entities or individuals:

### **QUALIFIER**

1. Mass Way, LLC (an entity [REDACTED] owned by Stanley E. Fulton), [REDACTED]
2. Alfred S. Ross, [REDACTED]
3. George L. Chimento, [REDACTED]
4. Richard L. Tuch, [REDACTED]
5. Fred L. Chanowski, [REDACTED]

### **NON-QUALIFIER**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## **C. LIST OF QUALIFIERS**

As a result of the examination of the above corporate ownership structure and organization, it was determined by the IEB that the following persons and entities were deemed as "qualifiers," i.e., those persons and entities whose suitability is a necessary precondition to the suitability of the applicant as required by M.G.L. c. 23K §12, §14, and §16 and 205 116.02. It should be noted, however, that our investigation was not necessarily limited to qualifiers and that M&C investigators have also looked into any



persons or entities whose involvement with the applicant may have been relevant to our suitability inquiry.

As part of the investigation, M&C also confirmed that the non-qualifier passive investors listed above have no active management role in the proposed Category 2 gaming operations, now or in the future.

The investigation further confirmed that none of the individuals or entities involved in the applicant's submission have been documented by the Massachusetts State Police as having criminal records which would subject them to regulatory disqualification from participation in this project.

The individual qualifiers ("Individual Qualifiers") in connection with the applicant's within application for a gaming license are specifically identified as follows:

1. **Stanley E. Fulton** ("Fulton") Owner of Ourway through [REDACTED] Mass Way, LLC
2. **Alfred S. Ross** ("Ross") Owner of Ourway
3. **George L. Chimento** ("Chimento") Owner of Ourway
4. **Richard L. Tuch** ("Tuch") Owner of Ourway
5. **Fred L. Chanowski** ("Chanowski") Owner of Ourway
6. **John M. Grogan** ("Grogan") President of Ourway (no ownership interest)
7. **Timothy A. Petersen** ("Petersen") Chief Financial Officer of Ourway (no ownership interest)

It should also be noted that former Ourway President Piontkowski withdrew his application as a qualifier due to his resignation from Ourway. Regardless, the investigation revealed certain circumstances relevant to the operation of Plainridge during Piontkowski's tenure that are relevant to the entities' suitability evaluation and thus are necessarily discussed later in this report. However, Piontkowski's personal suitability is not addressed in this report.

The entity qualifiers ("Entity Qualifiers") in connection with Ourway's within application for a gaming license are as follows:

#### **1. OURWAY REALTY, LLC ("OURWAY")**

Ourway is the applicant herein.

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## **2. MASS WAY, LLC (“MASS WAY”)**

Mass Way is a holding company for the ownership and investment interests of Fulton in Ourway.

## **3. MY WAY MANAGEMENT, INC. (“MY WAY MANAGEMENT”)**

In pursuance of the investigation of Mass Way, it was learned by the investigators that My Way Management is the non-economic Member and Manager of Mass Way. As such, My Way Management was deemed an additional entity qualifier in this matter.

## **4. ANCHOR PARTNERS LLC (“ANCHOR PARTNERS”)**

Anchor Partners is Ourway’s [REDACTED] creditor, [REDACTED]. As an investor/financial source, Anchor Partners is thus an entity qualifier in connection with the applicant’s submission.

The specific owners of each of the above entities are depicted in Table 1 above and are discussed in further detail below.

# **D. STRUCTURE OF OURWAY AND ENTITY QUALIFIERS**

## **1. OURWAY REALTY, LLC (“Ourway” or “applicant”)**

The applicant Ourway was formed on February 22, 2000. The investigation has confirmed Ourway’s address as 301 Washington Street, Plainville, MA 02762. The company is confirmed as a Massachusetts domestic limited liability company. The Massachusetts Secretary of State’s Office confirmed registration of this entity with filing number 2212340 specifically on February 22, 2000, and the company is currently listed as active. The Registered Agent is listed as J. Owen Todd, 28 State Street, Boston, MA 02109.

The applicant’s formation documents, all amendments thereto, and the Amended and Restated Operating Agreement dated May 16, 2000, have been reviewed as part of this investigation. Upon a review of the documents provided and based upon the

interviews conducted, it has been confirmed that Tuch was the Manager of Ourway from February 22, 2000, until July 23, 2008. Upon the resignation of Tuch, Piontkowski was appointed Manager of Ourway and held that position until April 3, 2013. Ross is currently the Manager of Ourway.

The investigation has confirmed that Fulton, through Mass Way, is the actual holder of record of [REDACTED] interest in Ourway and Ross individually holds a [REDACTED] interest in Ourway. It is to be noted that as of April 3, 2013, the ownership interests of Fulton and Ross were increased as set forth above as a result of their respective buy-out purchases of Piontkowski's [REDACTED] interest in Ourway [REDACTED]

In addition to Fulton and Ross, the following owners of record have also been deemed individual qualifiers in connection with Ourway's application and hold the below-noted documented membership interests:

- George L Chimento [REDACTED] ("Chimento")
- Richard L Tuch [REDACTED] ("Tuch")
- Fred L. Chanowski [REDACTED] ("Chanowski")

## **2. MASS WAY, LLC ("Mass Way")**

Mass Way, LLC, is the holding company for Fulton's interest in Ourway. The investigation confirmed Mass Way's address as 5738 Hedgehaven Court, Las Vegas, NV 89120. Investigational research has confirmed that Mass Way was established in 2005. The Nevada Secretary of State's Office registered this entity, on November 2, 2005, filing number E0742252005-5. The company is confirmed as a Nevada domestic limited liability company. Jeffrey Burr, Ltd. is listed as the registered agent at the registered office address of 2600 Paseo Verde Parkway, Suite 200, Henderson, NV 89074. The Operating Agreement of Mass Way, dated October 20, 2005, has been reviewed by investigators. The agreement is by Fulton, individually and My Way Management. The agreement identifies Fulton as a Member and My Way Management is identified as the non-economic Member and Manager. The investigation confirmed

that Mass Way is a single Member LLC and is viewed as a “disregarded entity” by the IRS and its financial activities flow directly to Fulton’s personal tax return.

Mass Way was formed as an investment vehicle to hold Fulton’s investment in Ourway. It is to be noted that Fulton initially held his interest in Ourway, through My Way Holdings, LLC that is the holding company that currently holds his interest in Sunland in New Mexico. In 2005, Mass Way was formed and Fulton’s interest in Ourway was transferred from My Way Holdings, LLC, to Mass Way.

Mass Way has no ongoing operations and its sole purpose was confirmed to be a holding company for Fulton’s interest in Ourway.

### **3. MY WAY MANAGEMENT, INC. (“My Way Management”)**

My Way Management is a non-economic Member and Manager of Mass Way. The investigation confirmed My Way Management’s address is also 5738 Hedgehaven Court, Las Vegas, NV 89120. Research has confirmed that My Way Management was established in 2003. The Nevada Secretary of State’s Office registered this entity on June 11, 2003, filing number C14068-2003. The company is listed as a Nevada domestic corporation. Jeffrey Burr, Ltd. is listed as the registered agent at the registered office address of 2600 Paseo Verde Parkway, Suite 200, Henderson, NV 89074.

My Way Management is an S corporation and Fulton is listed as the Director, President, Secretary and Treasurer of this entity. My Way Management is also the Manager of My Way Holdings, LLC, which operates Sunland Park and Casino in New Mexico. My Way Management does not have any ongoing operations with respect to Mass Way since Mass Way is functioning only as a holding company with no ongoing operations.

### **4. ANCHOR PARTNERS, LLC (“Anchor Partners”)**

Anchor Partners, LLC, is a qualifier herein because it is a lender to Ourway. Anchor Partners is owned, [REDACTED], by Fulton [REDACTED] and Ross [REDACTED] [REDACTED] who are the two largest owners of Ourway. The investigation confirmed the

business address of Anchor Partners, as 181 Wells Avenue, Suite 301, Newton, MA 02459, this being the office location for the accounting firm utilized by Ross. The Commonwealth of Massachusetts Secretary of State's Office registered this entity on March 23, 2000, filing number 043509440. The company is listed as a Massachusetts limited liability company. Charles Wry, Esq., is listed as the registered agent at the registered office address of 1601 Trapelo Rd. Brown & Pendelton, Waltham, MA 02451.

The investigation herein has examined the Certificate of Limited Liability which was filed on February 5, 2001 by Anchor Partners with the Commonwealth of Massachusetts. This Certificate provides that the stated purpose of Anchor Partners is "to purchase, or otherwise acquire, hold, and exercise all rights ... And sell, exchange or otherwise dispose of a convertible promissory note of Ourway Realty, LLC." From its inception until January 1, 2012, the Manager for Anchor Partners was qualifier Tuch. On January 12, 2012, Piontkowski was appointed Manager and held that position until most recently on April 3, 2013, when he resigned and sold back all of his interest in Ourway. Ross is now the Manager of Anchor Partners.

As indicated previously in this report, it was the Anchor Gaming entity which made the initial enabling investment in Anchor Partners. The documents concerning the formation of Anchor Partners were reviewed by investigators. By agreement dated May 16, 2000, between and among Ourway, Anchor Gaming, and Anchor Partners, certain business rights were provided to Anchor Gaming in connection with its investment in Anchor Partners. Specifically, the agreement provides that Anchor Gaming "would not have made the investment in Anchor Partners (thereby assisting Ourway in its financing) unless it were assured of certain business rights with respect to any gaming and pari-mutuel operations conducted now or in the future on the Premises." The agreement provides that if gaming is legalized at the facility, Anchor Gaming shall be entitled to the exclusive rights to provide all gaming management technologies and related operational services [REDACTED]

[REDACTED] The terms of this agreement between and among [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The investigation herein confirmed that IGT, the successor in interest to Anchor Gaming, retained its interest in Anchor Partners, until December 2007. Specifically, on December 31, 2007, IGT agreed to sell its rights and interests in Anchor Partners for [REDACTED], leaving Members Ross and Fulton owning [REDACTED] Anchor Partners, with Fulton owning [REDACTED] shares.

Nonetheless, the agreement raises the question of whether IGT (through Anchor Gaming, Anchor Coin or Fulton) has an expectation or right to “receive the exclusive rights to provide all gaming management technologies and related operational services” at Ourway’s gaming venue, or whether Ourway has an expectation that IGT alone will provide the gaming equipment at its proposed slot facility. Although IGT previously sold its interest to Fulton, the language is explicit about there being the right to be the exclusive provider of “all gaming management technologies and related operational services.” IGT may still have this expectation since Fulton, as an individual, is not equipped to provide these technologies and operational services.

[REDACTED]

[REDACTED]



[REDACTED]

As such, the exact status and legal effect of the agreement and the specific intent of the parties is presently unknown. Neither Fulton nor Grogan, the majority owner and Ourway President, respectively, could clarify the document's ultimate legal effect during their interviews.

In summary, regarding this issue, it is still unclear whether it is IGT, Anchor Gaming or Anchor Coin that, if anyone, has any exclusive rights regarding the Plainridge facility [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] It is recommended that, if this applicant's suitability is determined during the Phase 1 process, then this issue would be best addressed during the Phase 2 review and evaluation process relating to the operational plans and agreements of the applicant.

#### **E. MANAGEMENT OF OURWAY, LLC**

As stated previously, up until his recent resignation on April 3, 2013, the management and control of Plainridge operations was, well over a decade ago, vested exclusively in Piontkowski. Further, in 2007, Piontkowski was appointed Manager of Ourway and subsequently in January 2012 he was appointed Manager of Anchor. The investigation indicated that Piontkowski's authority had been exercised with little or no documented input from the majority membership. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Grogan advised the investigators and the IEB that several changes would take place under his presidency. In this regard, Grogan stated that, as President, he will solicit the Member's consent and involvement in all decisions and provide them with operating budgets and financial statements. He also indicated that he would form a Board of Advisors which will also consist of independent outside advisers with respect to the project. The implementation of several of the changes promised by Grogan is discussed later in this report.

The investigation established further information regarding the ascendancy of Grogan. Grogan had been serving as an independent consultant for Ourway, since 2009 with respect to Ourway's development plan for and in pursuit of a Massachusetts Category 2 gaming license. His role also included being the primary contact on behalf of the applicant regarding the initial provision of information to the MGC in connection with applicant's Category 2 gaming license application.

By way of background, Grogan came to be involved with the applicant through his professional relationship with Piontkowski. Grogan advised [REDACTED] that he first met Piontkowski 25 years ago when he assisted Piontkowski in obtaining financing in connection with his purchase of a textile mill. As a result, the two men stayed in touch professionally over the years. Grogan also stated that Piontkowski called upon him for financial advice during the time he (Piontkowski) was Chairman of the Massachusetts Racing Commission. When Piontkowski initially opened Plainridge Racecourse, Piontkowski again called upon Grogan to assist with certain of the operation's financial matters. Then, in 2009, when the legislature for the Commonwealth of Massachusetts began seriously considering the legalization of casino gaming, Grogan

began consulting for Ourway concerning Ourway's pursuit of a gaming license. However, when the legislation was not initially signed by the Governor of Massachusetts, Grogan stated that he temporarily discontinued his consulting arrangement with Ourway. When the Massachusetts legislature resumed its debate with respect to expanded gaming in Massachusetts, Grogan again was contacted by Piontkowski in June 2011 to return and continue provision of his consulting services with respect to Ourway's proposed gaming facility plan.

Almost at the outset of this suitability investigation, facts and materials were developed which caused a focus on certain business practices of Piontkowski. Of particular concern at the outset were Piontkowski's personal cash withdrawals from the "money room" at Plainridge Racecourse. During interviews with applicant principals, Fulton and Grogan, both independently indicated that after the IEB inquiry regarding these areas they (Fulton and Grogan) immediately commenced discussions concerning the need for better financial and compliance controls and corporate governance. After Piontkowski's resignation (discussed in III C) Grogan was then asked by Ross and Fulton to become Ourway's President, which Grogan agreed to do in the interests of continuing to move Ourway's application for a Category 2 gaming license forward. Fulton and Ross have both indicated that they are very confident in Grogan's abilities to oversee the applicant's proposed gaming venture.

Importantly, it is to be noted that, as of the submission date of this report, this applicant has not identified the key operational employees who will be responsible for the day-to-day operation of the applicant's proposed Category 2 gaming facility. The applicant has advised that it has engaged the services of a newly identified "Silverton Casino" ("Silverton"). The latter company is identified by the applicant as a gaming consultant to assist Ourway with its planning and development efforts for its proposed Category 2 gaming facility. At present Silverton is acting purely in a consulting capacity, but will, if necessary and at the appropriate time, apply for the proper vendor license with attendant vetting. Grogan reported that Silverton will advise Ourway concerning security, surveillance, internal controls and slot floor layout. However, it is to be pointed out that

Fulton, in his sworn interview, also indicated that he will be involved in any decisions, especially those concerning slot operations.<sup>4</sup>

[REDACTED]

[REDACTED]

[REDACTED] The applicant has advised that it is conducting searches for experienced gaming management and is in the process of reviewing resumes and applications in this regard. However, such personnel has not yet been identified or vetted.

## **F. ADDITIONAL RELEVANT INFORMATION TO APPLICANT OWNERSHIP OR MANAGEMENT**

### **1. SUNLAND RACETRACK AND CASINO ("SUNLAND")**

While Fulton is the documented owner of Sunland in New Mexico, the applicant has advised that Sunland management personnel will not be involved in the management of Ourway nor provide any consulting services concerning Ourway's proposed Massachusetts gaming operation. Sunland is described to our investigators as a small track with approximately 725 slot machines. The applicant indicated and the investigation has confirmed that the Sunland operation is similar to the proposed Ourway project. However, the new project will be different in size, scope and amenities from that being proposed by Ourway. The historical regulatory compliance history of Sunland is discussed further below.

### **2. RECENT HISTORY OF FINANCIAL SUPERVISION OF PLAINRIDGE RACETRACK OPERATIONS**

Petersen ("Petersen") is also an individual qualifier in this matter, and holds the position of Chief Financial Officer for Ourway. Petersen also held this same title/position with PRC when PRC operated Plainridge from 1999 through 2003. Petersen has known Ross for 40 years. He worked for Ross's greyhound tracks in South Dakota, Taunton,

[REDACTED]

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MA, and Colorado. In 1976, Petersen became employed with a CPA firm in Sioux City, SD, which was engaged as the auditor for Ross's racetracks. As a result, Petersen and Ross stayed in touch over the years, with Ross subsequently employing Petersen again in October 1983 at Lincoln Greyhound Park as Chief Financial Officer. Petersen remained in this position at Lincoln Greyhound Park until that track was sold in September 1992. Thereafter, Petersen spent time as a self-employed accountant and also was employed as Chief Accountant for a record company until Ross contacted Petersen again; this time offering him an employment opportunity with Plainridge.

Although Petersen holds the title of Chief Financial Officer ("CFO"), both Grogan and Petersen, during their sworn interviews, stated that Petersen's position is more like that of a "Controller" as opposed to a traditional CFO for the company. Particularly, Petersen is not, and has not, been involved in any of the high level executive discussions concerning the finances of the company. Those matters were always left to Piontkowski, as President, and now will be performed by Grogan. Petersen's duties and responsibilities are with respect to racetrack day-to-day financial matters. [REDACTED]

[REDACTED]

[REDACTED]

## **V. APPLICANT SUITABILITY**

### **A. LICENSING AND COMPLIANCE HISTORY**

#### **1. Massachusetts Racing License Compliance History**

As noted in this report, qualifier Fulton is licensed in New Mexico in regard to the Sunland operation. Further, Fulton is obviously a Principal/Member/Owner of two other qualifiers herein, Mass Way and My Way Management, as well as a Principal in Anchor Partners, the qualifier financial investor in the Ourway project. Additionally, qualifier Ross holds multiple race horsing licenses in different jurisdictions, all of which have been disclosed and evaluated as required during this investigation. With the exception of qualifiers Fulton and Ross, the aforementioned entities and the Ourway applicant, no



other individual or entity qualifier for the applicant currently holds any casino gaming-related licenses in any jurisdiction. Fulton and his gaming interests are also more fully discussed later in this report.

In regard to the horse racing activities at Plainridge, the investigation confirmed that the Massachusetts Racing License is now held by Ourway and is in good standing. Under the pre-existing Commonwealth law, all investigations of suspected criminal and regulatory misconduct were conducted by the Massachusetts State Police (“MSP”) and the Massachusetts Racing Commission, respectively. As noted earlier in this report, with the passage of M.G.L. c. 23K, the regulatory duties and responsibilities of the Racing Commission have now been subsumed into and under the authority of the Massachusetts Gaming Commission. The criminal investigative responsibilities of the MSP remain the same, albeit now in conjunction with the MGC. Prior inquiries and investigations relating to the racing license are set forth below.

First, in order to assess the past racing regulatory compliance record of Plainridge during Piontkowski’s presidency, this investigation, [REDACTED] conducted a review of relevant [REDACTED] investigation reports from 1997 through 2007. This inquiry revealed a record of certain incidents, allegations, and conduct that was investigated. Although these investigations did not lead to the imposition of any formal regulatory sanctions or criminal prosecution, and indeed, most occurred during the PRC ownership period which preceded Ourway involvement, the involvement and/or continued presence of some of the individual persons involved in the investigations, and particularly the nature of some of the allegations, clearly merits reporting to the MGC and are so detailed below.

Second, the individual qualifier owners advised the investigators that they were not aware of the details of these [REDACTED] investigations and thus unable to offer any explanations concerning these incidents. Most asserted this lack of knowledge due to their not being involved in the day-to-day operations of Plainridge. Likewise, Grogan, not having been involved with Plainridge racetrack operations during the time of these earlier investigations, also could not provide any explanation concerning these events. While



qualifier Petersen was somewhat aware of certain of these [REDACTED] investigations as he is a “carryover” key employee from the Piontkowski administration, he appeared during our interviews also not to have any specific recollection of these particular matters. These [REDACTED] investigations are relevant to any assessment of the suitability of the applicant and its qualifiers and thus a recital of the incidents appear below.

## **2. [REDACTED] Investigation**

A. This investigation confirmed that in 2000 the [REDACTED] conducted a lengthy investigation into alleged unlawful interstate telephone wagering. This involved numerous large bets made during the span of a year by a New York commodities broker who subsequently admitted to having placed these bets through an employee of Plainridge. Many of the Plainridge pari-mutuel clerks were aware of the betting and they advised the [REDACTED] investigators of these bets. The [REDACTED] investigators uncovered numerous checks from Plainridge to this New York commodities broker, which were listed on the check register as being for “promotional activities” and “services provided.” These promotional payments were addressed and discussed at a Massachusetts Racing Commission hearing in October 2001. Former qualifier and President Piontkowski was also a subject of this inquiry. Although Piontkowski testified before the Racing Commission that he would further provide information about these checks, nothing was ever produced and the nature of the checks was never explained by anyone at the track.

Significantly, during the current investigation, qualifier Petersen was questioned about his having signed off on several of these irregular checks. During Petersen’s recent sworn interview, Petersen professed to have very little recollection about these events. He recalled some investigation where it was being alleged that Piontkowski was accepting wagers by telephone, but he does not recall that this allegation was substantiated. Petersen indicated that the checks to the subject commodities broker were prepared at President Piontkowski’s direction and he was told by Piontkowski that these payments were for promotional services. Petersen issued these checks without being provided with any backup invoices substantiating the promotional services claimed to have been

performed by this individual. Petersen further indicated that if Piontkowski directed him to write the checks and further indicated that the payments were for promotional services, Petersen testified he felt he (Peterson) was not in a position to question his boss's instructions. Although the above activities raised substantial issues of potential misconduct, no further regulatory or law enforcement action was deemed supported at that time.

B. In 2003, the [REDACTED] conducted another investigation concerning the activity of "Ten Percenting [sic]." This is the process whereby a pari-mutuel clerk obscures a winning bettor's identification by using the name and Social Security Number of another person for completion of the IRS W-2 G forms to report the winning to the IRS for tax purposes. This "other person," rather than the actual winner, takes the reported winnings as income and receives a ten percent commission. The actual winner thus avoids taxation. Several pari-mutuel clerks at Plainridge who were interviewed by the [REDACTED] confirmed, at that time, that the ten percent activity was ongoing and widespread. The investigation culminated in July 29, 2003, when the [REDACTED] appeared at Plainridge and took possession of W-2 G forms to examine the signatures to identify the alleged "10 percenters." After the W-2 G forms were provided to the [REDACTED], an attorney for Plainridge called the Massachusetts Racing Commission ("Racing Commission") the same day, asking for return of the W-2 G forms. Although, at the time, there was no claim by Plainridge track management that the W-2 G forms were illegally obtained [REDACTED], one of the Racing Commissioners ordered that the [REDACTED] return the W-2 G forms to Plainridge, which was done. As a result, without this documentary evidence, the [REDACTED] was unable to further pursue this investigation.

C. A third investigation commenced on or about June 16, 2003, when it was reported [REDACTED] that a loaded syringe (which was found by a track safety officer at the track) had been turned over to [REDACTED] on June 2, 2003. However, in contravention of Racing Commission regulations, [REDACTED] was found to have retained this loaded syringe in his office for a period of two weeks instead of immediately providing it to the [REDACTED] investigators. It was not until the [REDACTED] investigator

questioned him about the syringe, which was found to contain a banned drug, Lasix, that it was surrendered to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] He has not been licensed as a harness racing driver since his accident in 1999. When questioned about Gary Piontkowski, [REDACTED] told investigators that Piontkowski had “a lot of input” in decisions and was aware of everything that happened at the track. [REDACTED] stated that Piontkowski gave him orders not to speak with the State Police assigned to the track and that if he did speak with a trooper, he was approached by Piontkowski and was questioned as to the contents of the conversation. [REDACTED] also stated that Piontkowski also directed him to “never write anything down.” [REDACTED] told investigators that he recalled one year (specific year unknown) where the track was operating in the red, but had done better than other years, and yet Piontkowski still received the same financial support from investors. [REDACTED] said that he now feels as if he let Ross down by not going to him about that situation.

[REDACTED] was also asked about his involvement in fine assessment at the racetrack. [REDACTED] stated that he has in the past personally assessed drivers for driving violations, but only to the sum amount of approximately \$150 to \$200. In past years, [REDACTED] said, he had asked the judges to “get after them” for violations such as excessive whipping and kicking, but the judges neglected to perform those duties. [REDACTED] explained the importance of assessing these fines to maintain control and prevent drivers from conducting these offenses. [REDACTED] stated, he is able to assess fees, but rather than formally fine the drivers, he would have them donate their fines to the Lion’s Club Food Basket Drive or the American Cancer Society. [REDACTED] was asked if he ever kept the money he collected or if he ever turned the money over to Piontkowski and [REDACTED] replied, “No”, to each. The decision to assess these fines was,

as stated by [REDACTED], his own decision and was not influenced nor directed by Mr. Piontkowski. It is recommended that a process be put in place to maintain records of the monies collected as fines at the racetrack. Additionally, notification of these fines should be made to the Commission.

**D.** A fourth investigation commenced on or about January 12, 2004. The [REDACTED] investigated a circumstance whereby a [REDACTED] telephone line at Plainridge was found to also be connected or “split” to a computer modem associated with a laptop located in the office occupied by Plainridge’s then President, Piontkowski. The splitting and suspected interceptions concerning the [REDACTED] telephone line and its alleged receiving point in the President’s Office was referred to the Office of the Attorney General by the [REDACTED] for subsequent investigation. The Office of the Attorney General, however, did not find any evidence of violation of the wiretap law or any other criminal statute. As such, the investigation was closed.

### **3. Piontkowski Money Room Practices**

During this investigation it was learned that Piontkowski routinely, almost on a daily basis, withdrew small amounts of cash from the Plainridge racetrack “money room.” These direct cash withdrawals were recorded by Petersen as monies owed by Piontkowski. When this money was not repaid, it was re-characterized at the end of each year as a “distribution” to Piontkowski. Overall, the investigation confirmed that these yearly withdrawals amounted to a rather large sum of money. These withdrawals have been described by some of the Members of the applicant as well as Grogan as an “accommodation” to Piontkowski. Investigators confirmed that from 2004 through 2011, the total reported distributions to Piontkowski amounted to over [REDACTED].

When questioned further in the current IEB investigation about these withdrawals, Petersen again stated that he did not feel that, at the time of their occurrence, it was his place to bring this practice to the attention of Ourway majority owners Ross or Fulton. Petersen indicated that Piontkowski was the President and thus his (Petersen’s)

supervisor and he trusted that Piontkowski had received the approval of Fulton and Ross. However, Petersen also advised investigators that, in approximately 2006 and due to his concerns about the money room practices, he (Petersen) requested the Plainridge outside auditor to prepare a letter each year listing the annual withdrawals taken by Piontkowski and request approval of the majority Members, Fulton and Ross, to treat as a distribution to Piontkowski.

As part of this investigation, the outside auditor for applicant was questioned concerning this annual money withdrawal letter. Petersen, however, may have been mistaken with respect to the year when these annual money withdrawal letters actually began being prepared by the outside auditor. The outside auditor indicated that the first letter prepared was for calendar year 2008. Each year these letters were submitted to Piontkowski in his capacity as the Manager for Ourway. However, the outside auditor indicated that although these letters were submitted to Piontkowski each year, it was not until February 2012 when he actually received the letter back signed by Fulton and Ross. The February 2012 letter listed the advances made to Piontkowski for calendar year 2011. The 2012 letter also now reported the previous advances made to Piontkowski for calendar years 2004 through 2010. [REDACTED]

[REDACTED]

During Grogan's sworn interview, he indicated that the money room withdrawals taken by Piontkowski, which were questioned during this investigation, resulted in internal discussions about the need for better internal controls and proper corporate governance. [REDACTED]

[REDACTED] As such, it was decided by Fulton and Ross that Grogan was better suited to step in and put the proper procedures in place due to his former experience in the investment banking business.

During Ross's interview [REDACTED], he stated that he realized that there was a need for better internal controls and that he also realized that there had been too much control vested in Piontkowski. Ross had stated also that Grogan had been engaged by Piontkowski in 2009 when the applicant began exploring the



proposed expansion of its operation into gaming and that he was confident that Grogan would put immediate measures in place to improve the corporate governance and internal control environment of the applicant.

[REDACTED]

[REDACTED] Fulton stated that after his first interview with IEB investigators, he immediately began to more closely review the job responsibilities and the business practices of Piontkowski. In particular, the additional distributions Piontkowski was receiving over and above his compensation and which were cross-referenced to the periodic "money room" withdrawals were now examined by Fulton. Although the investigation confirmed that such money room distributions did occur, it could not definitively confirm whether such distributions were knowingly approved by Fulton. In fact, in his first interview, Fulton denied having any recollection of having approved these distributions. Fulton stated that after the first investigational interview, he met with Grogan and other highly trusted business associates and after reviewing the conduct of Piontkowski, they decided that it was not in the company's best interests to have Piontkowski remain as President of Ourway. [REDACTED]

[REDACTED]



[REDACTED]

#### **4. Applicant Internal Controls and Corporate Governance/Remedial Actions**

Earlier in this investigation, when questioned about the applicant's compliance plan and internal controls, Grogan reported that Ourway operates a small harness racing business and not a full-blown gaming operation. As such, it was represented that Ourway does not maintain a compliance committee and does not have a current compliance plan. It was further represented that all issues regarding compliance were elevated to and handled by former President Piontkowski. Ourway also reported that it has no formal anti-money laundering policy ("AML Policy"). The applicant did report that, consistent with applicable federal law, it does file the appropriate Currency Transaction Reports ("CTRs") when transactions are \$10,000 or greater. From our experience in the gaming industry, we are aware that some smaller non-casino operations do not always have thorough and effective compliance plans and/or functional committees. However, due to the various past investigations that evidenced questionable money room transactions, and apparently limited ownership awareness of the actual businesses practices being utilized at the Plainridge facility, the lack of an effective compliance and internal control structure represented a significant operational deficiency.

As this investigation developed, additional information was requested by investigators with respect to internal control procedures. In this regard, during Petersen's sworn interview, he did indicate that money handling/control procedures are in fact in place for the pari-mutuel windows. Petersen explained various processes in place which pari-mutuel clerks are required to follow with respect to the daily reconciliation and settlement of their windows, including procedures for opening and closing windows,

turning in bankrolls, punching tickets, completion of overage/shortage sheets, and verification of funds by secondary money room count. When questioned why there were no written internal procedures for the money room operations at Plainridge, Petersen stated that there are only four people in the money room, two of which have 60 years of experience between them. Therefore, he did not feel it was necessary to document the processes which were in place. Petersen indicated that if new employees were hired, it would be at that point he would feel it appropriate to institute written procedures. Petersen also stated that at one point he attempted to develop an employee handbook with policies and procedures, but President Piontkowski was not supportive of such an effort. Petersen did convey at least a general awareness that if the applicant was awarded a Category 2 gaming license, substantial additional financial, internal control and other industry standard money handling policies and procedures would need to be implemented and documented.

Petersen also advised the investigators of the security measures which were implemented as a result of the November 8, 2002, robbery of \$100,000 from Plainridge's money room. Specifically, the perpetrator disguised himself as a Brinks armored guard in order to gain entry into the money room. Petersen indicated that after this incident the following steps to guard against such an incident from reoccurring were taken: [REDACTED]

[REDACTED]

More recently, during the latter part of this investigation, and after Grogan's appointment, the investigative team was supplied with new documentation consisting of Ourway's new written internal controls with respect to the Plainridge operation. Specifically, the new internal control standards implemented by applicant involve enhanced controls over authorization, accountability, safekeeping, the use of paper

document safeguards, electronic records, physical premise and employee safekeeping, and more stringent human oversight and reporting requirements. The applicant also provided documentation evidencing a better defined internal administrative and organizational system with improved checks and balances. Examples of the improvements include the separation of the positions of Manager and President; implementation of additional signature controls, petty cash approvals, personal expense reimbursement procedures, Ourway Manager approval for the President's expense account, two signature requirements for checks over certain amounts; prohibition of employee betting at track; revising and refining of pari-mutuel teller policies and procedures; and development of a new employee personnel handbook.

Grogan has also provided documents entitled Ourway Realty, Management Systems and Internal Plan dated May 2, 2013, which provides for the creation of an Advisory Board. The Advisory Board shall consist of three Members of Ourway and will also include at least one outside Member with specific expertise in finance. The Advisory Board Members are available, on an as requested basis, and will meet on a quarterly basis. Grogan has explained that the Advisory Board is intended to expand the viewpoints and perspectives that would be considered by the Managers and President in connection with strategic operating decisions. The one outside Member with expertise in finance will, with the other Members of the Advisory Board, serve in the capacity of an audit sub-committee which will provide a quarterly review of the company's financial position and an annual review of the company's financial audit reports and audit letter. The Advisory Board will also provide useful oversight of and input on the company's operations. Grogan has represented that this new management plan was instituted in anticipation of the increased complexity in the business operations of the applicant should it obtain a Category 2 gaming license. While the Advisory Board has no authority to make decisions for or exercise control over any part of Ourway's operations, the applicant further has represented that "... being able to draw on the expertise of Advisory Board Members and creating a process that would require company management to prepare and defend its strategic analysis, prepare and execute a viable operating plan, and

prepare and review operating budgets on a regular basis, is of great value to the Company.”<sup>5</sup>

It is to be further noted that certain of the individuals who sit on the Advisory Board are in fact individual qualifiers of applicant. However, those who are not individual qualifiers, such as any minority Member and the outside advisors who comprise the Advisory Board, shall serve in this capacity pursuant to a consulting contract, [REDACTED]

[REDACTED]. The consulting contract provides that the individual is serving in an advisory capacity only and shall have no authority to make decisions, commitments or representations for or on behalf of the company. The consulting contract further provides that the position on the Advisory Board is unpaid although the company may, in its discretion, reimburse the consultant for any reasonable administrative costs he or she may incur in connection with their services. Furthermore, the Member may at any time resign from the Advisory Board by providing written notice to the President or Manager. Similarly, Ourway may terminate the Member’s appointment to the Advisory Board at any time by delivering written notice to the Member. Because of this contractual relationship, should the applicant be ultimately licensed, the advisors will be required to be appropriately licensed as vendors.

## **5. Sunland Park Racetrack and Casino**

The investigation undertaken in this matter was not limited to only the qualifiers and the qualifying entities. In order to gain a better understanding of the owner Fulton’s history of regulatory compliance and gaming/racetrack operational prowess, the investigators also contacted the New Mexico Gaming Control Board as well as the New Mexico Alcohol & Gaming Division with respect to the compliance records of Sunland. This racetrack and slot machine facility is [REDACTED] owned by Fulton through a holding company, My Way Holdings, LLC. Although the applicant’s representatives have indicated that Sunland management will not perform an active role in the

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<sup>5</sup> Ourway Corporate Governance Document dated May 2, 2013.

management of Ourway's proposed Massachusetts gaming facility, given Fulton's ownership of the Sunland facility and its similar size, scope and nature to what is statutorily anticipated in the Commonwealth's Category 2 license award, the investigative team concluded that it would be of assistance to the IEB to examine the regulatory record of Sunland.

The investigation confirmed that Sunland received its New Mexico gaming license in 1999 and is licensed and regulated by the New Mexico Gaming Control Board ("NMGCB"). As part of this investigation, the IEB investigators were provided with a May 6, 2013, letter from Frank A. Baca, Acting Executive Director/General Counsel for the NMGCB. The Acting Executive Director for the NMGCB has confirmed that Fulton has been found suitable in connection with his ownership of Sunland.

As noted below, there have been certain gaming regulatory violations that have been documented in New Mexico concerning Sunland. However, these violations are minor and typical of the type and frequency that is common in the casino gaming industry. Those violations are summarized below.

During the last five years, two of the violations against Sunland involved having minors below the age of 21 on the casino floor. The first citation in January 2010 resulted in payment of a fine by Sunland of \$100 and the second citation in July 2010 resulted in payment of a fine by Sunland of \$1,000. Additionally, in June 2011, Sunland was cited for having alcohol in the casino, which is prohibited by regulation, and this resulted in the payment of a \$1,000 fine. This investigation also revealed two charges brought against Sunland by the New Mexico Alcohol & Gaming Division ("NMAGD") in June 2010 in connection with the sale of alcohol to minors. This resulted in a fine of \$1,000 per incident and the suspension of alcohol sales for two separate days. In sum, the above violations are of a like and kind not uncommon in the casino gaming industry in North America. In fact, only three gaming-related violations and two alcohol-related violations of this type over a span of five years does not represent a pattern of non-compliance and/or disregard for gaming regulators or regulation. Equally important, these violations were self-reported by the gaming property manager to the regulatory agency and have



been addressed with remedial actions. The two incidents of alcohol sales to a minor were the result of an undercover sting operation. Remedial action which was taken included the termination of the bartender and additional training to the property staff. Acting Executive Director Baca has confirmed in writing that Fulton has never been the subject of any type of disciplinary action by the NMGCB and has further confirmed that in the view of the NMGCB, Sunland is one of the better run and managed facilities in New Mexico and that this casino has a long history of compliance and cooperation with the NMGCB.

## **6. Compliance Summary**

Finally, in regard to regulatory compliance, the investigation revealed no significant issues that would prevent a finding of suitability for applicant. However, the lack of historical corporate governance and effective internal controls under the former president is cause for concern. The new controls and corporate governance which the applicant indicates either have been, or will be, implemented by new management, does confirm the applicant's recognition of the past shortcomings and further reflects an acknowledgement that new and more comprehensive oversight, internal financial controls, recordkeeping and experienced personnel selection will be necessary if casino gaming were to be undertaken. The applicant has pledged its commitment to such improvements. Any finding of suitability should be conditioned on a formal commitment to such improvements.

## **B. LITIGATION**

The investigation has reviewed all documented civil litigation for applicant and the entity qualifiers and has requested and been provided explanations by the applicant for each material and relevant action. The specific cases are identified and described in the individual and entity qualifier reports. After review and evaluation of the matters and the applicant explanations and other relevant materials as needed, the specified litigation, with the exception of the litigation referred to below as the "Giuliano Litigation," appear



to be those that would be ordinarily expected in the course of a typical business. It is to be noted, however, that the Giuliano Litigation also involved Plainville Racing Company, the former licensee for the Plainridge Racecourse, and Piontkowski. Although there were allegations of fraud and deceptive practices by both sides, the Giuliano Litigation ultimately was resolved in favor of applicant and the other defendants. As such, the litigation in which applicant has been involved cannot be said to demonstrate conduct evidencing any unacceptable business practices on behalf of the applicant or any of the qualifiers herein.

The case of Louis J. Giuliano, et al v. Gary T. Piontkowski SUCV2003-01629 (“Giuliano Litigation”) was the subject of a number of derogatory articles, as well as much interest by the Massachusetts Racing Commission. This litigation involved a dispute with respect to the ownership of the Plainridge Racecourse which was briefly alluded to earlier in this report. A review of the voluminous case material was conducted as part of this investigation. This case began in April 7, 2003, in the Suffolk Superior Court and moved to the Massachusetts Court of Appeals after Giuliano was unsuccessful in the lower court. There was also a concurrent civil case filed by Giuliano in the Federal District Court in Boston, MA. This case was a “Civil RICO<sup>6</sup>” case, where Giuliano made similar allegations of a regular, ongoing practice of deception, fraud, conspiracy, deceit, interference with business relations, and abuse of process by Piontkowski and others. There was also a counterclaim filed by defendants for fraud and interference with contractual relations. This litigation lasted until approximately March 2005 when all claims by GTWO and Giuliano were dismissed and judgment was awarded in favor of defendants.

As set forth earlier in this report, in 1997 Piontkowski and Giuliano joined forces to develop a harness racing facility in Plainville. The parties located approximately 92 acres in Plainville, MA and set in motion a plan to purchase the land, obtain a racing license from the Commonwealth of Massachusetts and open a horse racing operation on the site. It was at this point that Piontkowski, in March 1998, formed Plainville Racing

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<sup>6</sup> 18 USC §1961 *et seq.*

Company (“PRC”) to purchase the property, obtain the Massachusetts Racing License and operate the track. Piontkowski was having trouble securing the necessary financing at which point Giuliano stepped in to assist with the financing. It was later agreed that Giuliano would be the owner of the property through his company, GTWO, LLC-MA and PRC would take a long term thirty-year lease on the property and operate the track. Giuliano was to receive stock in the track from another company formed by Piontkowski, Management Acquisition Corporation (“MAC”). Giuliano made representations to Piontkowski and others that he, through his company, GTWO, LLC-MA, obtained financing and owned the property. In reality, Giuliano had formed another company, GTWO, LLC-RI, and that company and Giuliano entered into an agreement to finance the property with Realty Financial Partners (“RFP”) in November 1998. The deal was structured, however, that RFP would actually own the property, not Giuliano and GTWO, LLC-MA as was being represented by Giuliano. The deal fell apart when it became known that Giuliano and his company GTWO, LLC-MA did not own the property. PRC was able to take over management and ownership of the track by virtue of having a lease for the property with an option to purchase. It was at this point that applicant Ourway was formed and led by Ross and the original PRC investors for the purpose of purchasing the racecourse property.

This litigation involved claims by both sides that the other committed fraud and misled the Massachusetts Racing Commission, which claims, after years of testimony, were never proven. One of the major issues in the case was whether Giuliano’s assertion that a portion of the leasing agreement which enabled Piontkowski to take control of the track was actually signed by Giuliano. This alleged “forged” document was used by Piontkowski to help secure a license from the Massachusetts Racing Commission. However, the court did not find sufficient evidence that the document was not signed by Giuliano.

Another case which generated some negative media attention was the recent case, Ourway Realty, LLC vs. Thomas Keen NOCV2012-3536 filed in Suffolk Superior Court. This case was explained by the applicant as being the result of defendant Keen having

established a website dedicated to opposing the expanded gaming at the Plainridge Racecourse. Included in the site was a link to a Facebook page which depicted a criminal-looking individual with a caption that stated “if you are looking for this guy, go to the track.” This was in relation to multiple break-ins at the home of Keen in Plainville. The applicant sent a letter to Keen to remove the picture and caption. Keen removed the caption but the picture remained. The applicant then filed suit for defamation after asking multiple times to have the offensive material removed. Keen filed a so-called SLAPP motion claiming that the applicant was trying, through the suit, to inhibit his ability to “petition” against expanded gaming at the track. The applicant has denied this allegation. The SLAPP motion was heard and the applicant argued that there was no “petitioning” activity, as defined by Massachusetts law, in the picture or caption. Instead, the applicant claimed that defendant’s publication was actionable as defamation. The judge ruled against the applicant without an explanation or decision citing law or precedent. The applicant appealed. The appeal and entire matter was recently dismissed after an agreement was reached between the parties. The applicant indicated that it decided not to pursue this matter so it could continue to focus on its efforts in pursuing a Category 2 gaming license.

### **C. CRIMINAL HISTORY**

[REDACTED]

### **D. POLITICAL CONTRIBUTIONS**

No political contributions by Ourway prohibited by M.G.L. c. 23K §46 and §47 were revealed during this investigation.

Unauthorized disclosure, distribution or copying of this report is prohibited and is a violation of M.G.L. c. 23K, the Commission’s regulations promulgated in 205 CMR, and the public records law in M.G.L. c. 66 and c. 4.

## VI. FINANCIAL RESPONSIBILITY EVALUATION

The applicant Ourway raises capital and borrows funds from its Members and a related company, Anchor Partners. It has little to no third-party borrowings from financial institutions, such as banks or other licensed lending institutions.

Anchor Partners is a related party to Ourway for the reason that it is owned, [REDACTED], by Fulton [REDACTED] and Ross [REDACTED], who are the two largest owners of Ourway. Anchor is Ourway's [REDACTED] creditor, it being owed [REDACTED] in principal at December 31, 2011 [REDACTED]. With accrued (unpaid) interest, the actual amount owed to Anchor has grown to [REDACTED].

In addition to Ourway Realty and Anchor Partners, other qualifying entities include **Mass Way** and **My Way Management**. The former is the actual owner of a [REDACTED] Ourway Realty. As Mass Way is [REDACTED] owned by Fulton, for practical purposes, Fulton and Mass Way are one and the same. Mass Way has no purpose and no activities other than to hold Fulton's interest in Ourway Realty.

My Way Management is a Nevada corporation formed on June 11, 2003. Its [REDACTED] Member is Fulton. This corporation was formed to manage the activities of Mass Way and that of another entity affiliated with and wholly owned by Fulton, My Way Holdings, LLC. This entity, My Way Holdings, LLC, owns and operates Sunland. In return for its management services to My Way Holdings, LLC, My Way Management receives an annual management fee. However, My Way Management does not receive a fee from Mass Way. My Way Management pays Fulton an annual salary from the management fee that it receives from My Way Holdings, LLC. [REDACTED]  
[REDACTED]  
[REDACTED]

### A. FINANCIAL OPERATING RESULTS

Ourway's gross income, consisting of income from live and simulcast racing activities, has steadily declined over the past six years. During this time, the applicant

Ourway has consistently reported losses and negative cash flow from operations, causing its Members and individual creditors to advance funds to Ourway in the form of capital contributions and additional loans to enable the company to satisfy its operating expenses. As a result of its losses from operations and negative cash flows, Ourway has been unable to make payments toward its debt obligations, either principal or interest, resulting in the interest owed continuing to accrue.

From 2007 to 2011, the company's current liabilities (those obligations that are due within a year) exceeded its current assets (those being liquid assets or assets that are easily converted to liquid assets). This was not the case in 2012, but only because the company's largest owner and creditor (Fulton) advanced funds to the company, in the form of a loan, for the purpose of allowing the company to begin funding its gaming-related projects.

Despite its declining revenues, losses from operations, negative cash flows, inability to make payments towards its debt, and negative working capital, Ourway made yearly distributions of capital to Piontkowski, the amounts of which were significant.

As noted above, Grogan, the recently hired President has, among other things, begun to evaluate Ourway's systems of internal accounting controls with the intent of making improvements thereto, and has explored [REDACTED]

[REDACTED]

[REDACTED] Insofar as these efforts have just begun, it is premature to conclude, with certainty, whether internal controls have been improved [REDACTED]

[REDACTED]

In summary, the financial condition of applicant Ourway, for the period subject to examination in this investigation reflects the following areas of concern. Specifically,

- It has steadily declining revenues.



- While current efforts are being made to improve the company's system of internal controls, the adequacy of its system of internal accounting controls for the periods examined by M&C is mostly unknown since its independent auditor has not issued letters in which it gives an opinion as to the internal control environment.

If applicant is awarded a Category 2 gaming license, Grogan has represented that a plan for [REDACTED] will be presented to the Ourway membership for approval. The applicant estimates that the total gaming facility project cost will be approximately [REDACTED] consisting of \$125,000,000 for construction, \$25,000,000 for licensing fees, and [REDACTED] for working capital and pre-opening expenses. [REDACTED]



[REDACTED]. The applicant estimates that, if it is awarded a Category 2 gaming license by the end of 2013, existing debt and accrued interest will total nearly [REDACTED] by the time it will be in a position to open its gaming facility. Accordingly, the applicant estimates that the company's total debt will be approximately [REDACTED] consisting of [REDACTED] for the gaming facility project and [REDACTED] of pre-existing debt.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Fulton and Ross each have represented that they will provide additional funds if needed to complete and fund applicant's gaming facility project should applicant be awarded a Category 2 gaming license. Based upon a review of the financial stability of both Fulton and Ross, as further detailed in the individual qualifier reports appended to this report, this investigation has confirmed that both Fulton and Ross have the financial means to contribute a significant amount of cash to applicant's operations should additional capital be required.

The applicant retained the Innovation Group to conduct a gaming market assessment, economic impact analysis, and community impact analysis for a proposed Category 2 gaming facility. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

**VII. APPLICANT ENTITY AND INDIVIDUAL PERSON QUALIFIERS  
SUITABILITY SUMMARY OF FINDINGS**

**A. ENTITY QUALIFIERS**

**1. Mass Way, LLC**

Mass Way was formed on November 2, 2005, as an investment vehicle to hold Fulton's investment in Ourway, LLC. The investigation confirmed Mass Way's address as 5738 Hedgehaven Court, Las Vegas, NV 89120. The company is confirmed as a Nevada domestic limited liability company. Jeffrey Burr, Ltd. is listed as the registered agent at the registered office address of 2600 Paseo Verde Parkway, Suite 200, Henderson, NV 89074.

The Operating Agreement of Mass Way dated October 20, 2005, has been reviewed by investigators. The agreement is by Fulton, individually and My Way Management. The agreement identifies Fulton as a Member and My Way Management is identified as the non-economic Member and Manager.

This investigation has confirmed that Mass Way has no ongoing operations and its sole purpose is confirmed as being a holding company for Fulton's interest in Ourway. During the investigation it was learned that Mass Way has also been referred to as "Mass Way Holdings, LLC." Mass Way Holdings, LLC, and Mass Way have been used interchangeably. The investigation confirmed that Mass Way is a single-Member

LLC and is viewed as a “disregarded entity” by the IRS and its financial activities flow directly to Fulton’s personal tax return. As such, Mass Way does not file tax returns nor is it required to do so. Essentially, Fulton and Mass Way are one and the same. Mass Way reported and this investigation confirmed that Mass Way does not maintain any bank accounts.

[REDACTED]

Further, there has been no reported non-compliance with any regulatory agency in any jurisdiction.

No negative civil litigation was revealed during this investigation.

No political contributions by Mass Way prohibited by M.G.L. c. 23K §46 and §47 were revealed during this investigation.

In regard to the proposed Massachusetts project that is the subject of this report, Mass Way is documented as having a [REDACTED] direct ownership interest in applicant entity Ourway. Mass Way itself will not be involved in any operational or managerial activities relating to the gaming operation, but will be confined to an investor/ownership role on behalf of Fulton.

The investigation also conducted a thorough media search regarding Mass Way and has confirmed no material negative information.

The investigation did not establish any information that would indicate that Mass Way does not possess the requisite good character, honesty or integrity to be found suitable to participate in the applicant entity’s project herein.

## **2. My Way Management, Inc.**

My Way Management, Inc. was formed on June 11, 2003, to manage the activities of Mass Way and that of another entity affiliated with and wholly owned by Fulton, My Way Holdings, LLC. The investigation confirmed My Way Management's address as 5738 Hedgehaven Court, Las Vegas, NV 89120. The company is confirmed as a Nevada domestic corporation. Jeffrey Burr, Ltd. is listed as the registered agent at the registered office address of 2600 Paseo Verde Parkway, Suite 200, Henderson, NV 89074.

My Way Management is an S corporation and Fulton is listed as the sole shareholder thereof. Fulton is also listed as the Director, President, Secretary and Treasurer of this entity.

My Way Management is a non-economic Member and Manager of Mass Way and My Way Holdings, LLC. This entity, My Way Holdings, LLC, owns and operates Sunland. In return for its management services to My Way Holdings, LLC, My Way Management receives an annual management fee. However, My Way Management does not receive a fee from Mass Way. My Way Management pays Fulton an annual salary from the management fee that it receives from My Way Holdings, LLC. My Way Management has no other source of income and its annual expenses (payroll and related taxes) equal the annual management fee received from My Way Holdings, LLC.

This investigation has confirmed that My Way Management has no ongoing operations other than serving as the Manager for Mass Way and My Way Holdings, LLC.

[REDACTED]

During this investigation, the bank accounts of My Way Management were also reviewed. Very little bank activity was discovered which is consistent with the

representation that My Way Management has only one source of income and one category of expenses.

[REDACTED]

Further, there has been no reported non-compliance with any regulatory agency in any jurisdiction,

No negative civil litigation was revealed during this investigation.

No political contributions by My Way Management prohibited by M.G.L. c. 23K §46 and §47 were revealed during this investigation.

Although My Way Management is the Manager for Mass Way and since Mass Way itself will not be involved in any operational or managerial activities relating to the gaming operation, the role of My Way Management will similarly be confined to an investor/ownership role.

The investigation also conducted a thorough media search regarding My Way Management and has confirmed no material negative information.

The investigation did not establish any information that would indicate that My Way Management does not possess the requisite good character, honesty or integrity to be found suitable to participate in the applicant entity's project herein.

### **3. Anchor Partners**

Anchor Partners was formed on March 23, 2000, for the sole purpose of lending money to applicant Ourway. The investigation confirmed Anchor Partner's address as 181 Wells Avenue, Suite 301, Newton, MA, this being the office location for the accounting firm utilized by Ross. In this regard, Anchor Partners does not maintain a business location. This address is simply utilized for purposes of receiving any mail



addressed to the company. The company is confirmed as a Massachusetts domestic limited liability company. Charles Wry, Esq. is listed as the registered agent at the registered office address of 1601 Trapelo Rd. Brown & Pendelton, Waltham, MA 02541.

The Certificate of Formation for Anchor Partners, dated May 16, 2000, and filed with the Commonwealth of Massachusetts on February 5, 2001, has been reviewed by investigators. The stated purpose contained within its formation documents is to purchase or otherwise acquire, hold, and exercise all rights to a convertible promissory note of Ourway. Anchor Partners is owned [REDACTED] by Fulton [REDACTED] and Ross [REDACTED]. Ross is the Manager of Anchor Partners, having recently replaced Piontkowski upon Piontkowski's resignation from Ourway on April 3, 2013.

This investigation has confirmed that Anchor Partners has no ongoing operations and its sole purpose is confirmed as being a lender to Ourway. Anchor is Ourway's [REDACTED] creditor, it being owed [REDACTED] in principal at December 31, 2011 [REDACTED]. Anchor has not loaned additional funds since the initial loan made to Ourway in 2000. However, because applicant Ourway has not made payments on the Anchor Partners loan, with accrued (unpaid) interest, the actual amount owed to Anchor Partners has grown to [REDACTED].

[REDACTED]  
[REDACTED]  
[REDACTED]. During this investigation, the bank accounts of Anchor Partners were also reviewed. Very little bank activity was discovered which is consistent with the representation that Anchor Partners has no activity other than that of a lender to Ourway.



Further, there has been no reported non-compliance with any regulatory agency in any jurisdiction.

No negative civil litigation was revealed during this investigation with respect to Anchor Partners other than the Giuliano Litigation which has been discussed previously. Although there were allegations of fraud and deceptive practices by both sides, the Giuliano Litigation ultimately was resolved in favor of applicant and the other defendants. As such, the litigation in which Anchor Partners was named as a party cannot be said to demonstrate conduct evidencing any unacceptable business practices on behalf of Anchor Partners.

No political contributions by Anchor Partners prohibited by M.G.L. c. 23K §46 and §47 were revealed during this investigation.

Anchor Partners is a financial source, as well as a related party to applicant Ourway for the reason that it is owned, [REDACTED], by Fulton [REDACTED] and Ross [REDACTED], who are the two largest owners of Ourway. Anchor Partners will not be involved in any operational or managerial activities relating to the gaming operation.

The investigation also conducted a thorough media search regarding Anchor Partners and has confirmed no material negative information.

The investigation did not establish any information that would indicate that Anchor Partners does not possess the requisite good character, honesty or integrity to be found suitable to participate in the applicant entity's project herein.

## **B. INDIVIDUAL PERSON QUALIFIERS**

### **1. Stanley Fulton**

Stanley Fulton ("Fulton") is the key principal in the proposed Ourway gaming facility proposal. He has a long history in the gaming industry, the majority of which involved his ownership, or operation or affiliation with gaming equipment and service companies. The following is a summary of the investigations findings regarding this individual.

The investigation has confirmed that Fulton is [REDACTED] years old. The investigation of database information confirmed that Fulton is currently linked to [REDACTED], address, which is in accordance with what he provided on his personal history disclosure form. Additional public records research indicates that Fulton is also linked with additional addresses in [REDACTED]

In regard to his educational background, Fulton reported that he attended Cornell University in Ithaca, NY in 1949 and thereafter, throughout 1950 to 1951, he attended University of Maryland in College Park, MD. As Fulton indicates that no degrees were attained, there is no record of database verification, however, this attendance was also confirmed through sworn interviews.

Fulton indicated on his PHD that he previously served in the United States Air Force from February 8, 1952, to June 12, 1956, and was designated service serial number [REDACTED] with a rank of First Lieutenant in December 1965 and has provided his record of such enlistment [REDACTED]

Fulton has a long and diversified career in the gaming industry. Although Fulton has been involved with numerous businesses and commercial entities during his long career, only certain such businesses are materially relevant to this suitability investigation. Further, Fulton's other commercial interests have been disclosed by the applicant and/or this investigation, and documented in the records of the IEB. After evaluation, the following current specific business interests are highly relevant to the suitability determination of this subject. During the period required for reporting herein (ten years), he has reported and it has been confirmed through investigation that he has been employed by the following two companies:

- My Way Holdings, LLC  
Dates of Employment: September 2000-present  
Position: Sole Member/Manager
- IGT  
Dates of Employment: January 2002-2012  
Position: Consultant

As noted in other sections of this report, Fulton is the key financial source for the Plainridge racetrack and will continue this support position if this applicant is successful in acquiring the Massachusetts Category 2 gaming license. [REDACTED]

[REDACTED] The following information, in pertinent part, is presented in the Fulton financial analysis report, but is useful in this summary in understanding Fulton's business history and business relationship in relation to Ourway and its various other investors and ownership interests.

As introduced above, Fulton is an experienced businessman, with most of his experience being in the gaming business or with affiliated service entities, including those which manufacture and distribute slot machines. At present, Fulton is the [REDACTED] Owner/Member of Ourway through the single-member limited liability company (Mass Way) and [REDACTED] creditor. Besides his ownership interest and direct loans to Ourway, Fulton is also the largest owner of Anchor Partners, Ourway's [REDACTED] creditor. In its simplest terms, the future financial success of Ourway is dependent, in large part, on Fulton.

In addition to having made contributions of capital, Fulton has lent, and continues to lend, significant amounts to Ourway. Besides the amount lent by Fulton to Ourway to date, Fulton has committed, in writing, to lend that which is needed to fund the construction of the proposed slot parlor at Plainridge Racecourse. Despite his historical level of investment in Ourway, Fulton indicated that he was not actively involved in its day-to-day management. Instead, he relied on his Massachusetts management team to conduct the daily operations.

In regard to his personal financial stability, the investigation has confirmed that Fulton has significant income and very significant net worth. His net worth and, in particular, his liquid assets are of a level that would enable him to fund the construction of Ourway's proposed slots parlor.

On an annual basis, Fulton's primary source of income is from profits generated at Sunland Park Racetrack & Casino in New Mexico. Fulton owns this entity through My Way Holdings, LLC. [REDACTED]

In addition to a substantial amount of income from the Sunland/My Way Holdings, LLC, Fulton also receives a high level of dividend and interest income from his investment portfolio and a salary from My Way Management, a corporation (of which he is sole owner) that manages the activities of My Way Holdings, LLC and which is identified as being the investment oversight entity of Mass Way, the Fulton Massachusetts entity.

As noted above, Fulton is Ourway's [REDACTED] creditor and the [REDACTED] owner of an entity that is Ourway's [REDACTED] creditor. To date, he has assisted Ourway's efforts to remain financially solvent by deferring the repayment of interest (and principal) and by continuing to lend additional funds. [REDACTED]

[REDACTED], the critical role of Fulton in enabling the Ourway/Plainridge project to be consummated cannot be overstated.

In summary of his financial analysis, Fulton is a wealthy man, having adequate assets to fund the proposed slot parlor at Plainridge Racecourse. Furthermore, it should be noted that Fulton is a philanthropically generous man, having reported significant amounts of charitable contributions in each year examined in this investigation.

[REDACTED] The investigation thoroughly evaluated Fulton's submissions, inclusive of his financial materials and tax returns and records as well as his general financial history. It was confirmed that Fulton's reported assets and net worth are consistent with his reported levels of income and expenses. The investigation did not establish any adverse findings or information that would indicate that he does not possess the requisite financial integrity, responsibility and financial stability to be found suitable to participate in the proposed project. No other issues of a financial nature indicate that Fulton is not financially responsible or stable within the applicable statutory and regulatory criteria.

Fulton has reported, and the investigation has confirmed, that he has held or currently holds gaming licenses from, or been found suitable by, the following gaming regulatory agencies:

- Current Key & Affiliated Person license for My Way Holdings, LLC, d/b/a Sunland Park Racetrack & Casino with New Mexico Gaming Control Board, no. KA000175 (active);
- Current Dispenser License for My Way Holdings, LLC, d/b/a Sunland Park Racetrack and Casino with New Mexico Alcohol and Gaming Division, no. 0273 (active);
- Missouri Gaming Commission (inactive)
- Nevada Gaming Commission (inactive)
- Colorado Gaming Commission (inactive)
- Florida Department of Pari-Mutuel Wagering (inactive)
- Mississippi Gaming Commission (inactive)
- New Jersey Gaming Commission (inactive)
- Wisconsin Division of Gaming (inactive)

Fulton has reported, and the investigation has confirmed, that he has held or currently holds racing licenses from, or been found suitable by, the following agencies:

- New Mexico Racing Commission (active)
- Minnesota Racing Commission (inactive)
- Illinois Racing Commission (inactive)
- New York Racing Commission (inactive)
- Texas Racing Commission (inactive)
- Virginia Racing Commission (inactive)
- Pennsylvania Racing Commission (inactive)
- Arkansas Racing Commission (inactive)
- Louisiana Racing Commission (inactive)
- California Racing Commission (inactive)
- Delaware Racing Commission (inactive)

Investigators requested information about this qualifier. In response, none of the aforementioned agencies and jurisdictions reported any derogatory information.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fulton's personal civil litigation history has been examined and evaluated. Civil litigations involving Anchor Gaming, Anchor Partners, Anchor Coin interests and Plainridge/Ourway have been disclosed and evaluated by the IEB investigative team. The specific cases are numerous and investigation revealed they are substantially all related to his various commercial businesses. [REDACTED]

[REDACTED] One of the more relevant cases involved the Giuliano Litigation concerning the Plainridge ownership dispute in which Fulton and his associates ultimately prevailed. The Giuliano Litigation is discussed in more detail earlier in this report. Although these many litigation matters relating to Fulton's companies have been



recorded, the investigation did not reveal any credible information from such litigation that would substantiate a finding that this qualifier is not suitable to participate in the applicant project.

The investigation further confirmed that certain companies in which Fulton had an ownership, investment or other business interest had been subject to typical commercial operation related regulatory violations. The investigation did not reveal that Fulton himself has been personally cited with any regulatory violations in any gaming jurisdiction. None of the reported violations are of a nature that would adversely affect the suitability of Fulton for participation in the Ourway project.

[REDACTED]  
[REDACTED]  
[REDACTED] these inquiries did not reveal that Fulton had made any prohibited political contributions in Massachusetts that violate M.G.L. c.23K §46 or 205 CMR 108. [REDACTED]  
[REDACTED]

Based upon the comprehensive investigation of Fulton, the investigation did not reveal any information that would preclude a finding that he does not possess the requisite integrity, honesty, and good character that are statutorily mandated in M.G.L. c.23K §12(c). Further, the review of all submitted materials, independent investigation, comprehensive database searches, sworn personal interviews, Fulton's history of founding and operating Anchor Gaming, as well as his current ownership of Sunland, his successful maintenance in good standing of multi-jurisdictional licensing or qualification as confirmed by our regulatory agency verification, review of his financial records and responsibility, indicates that Fulton has demonstrated the business ability to establish and maintain a successful gaming establishment as mandated by M.G.L. c.23K §12(a)(3) as well as general history of compliance with applicable gaming regulation as required by M.G.L. c.23K §12.

## **2. Alfred S. Ross**

The investigation has confirmed that Alfred Sumner Ross ("Ross"), age [REDACTED], is currently linked to [REDACTED] address. He is the second-largest owner of applicant Ourway, holding a [REDACTED] interest. Ross also holds a [REDACTED] interest in entity qualifier Anchor Partners making him its second largest owner. As reported previously, Fulton is the largest owner of both Ourway and Anchor Partners.

Ross is currently the Manager of Ourway, having assumed this role effective April 3, 2013, upon the resignation of Piontkowski. On April 3, 2013, Ross also assumed the position of Manager of Anchor Partners. However, Ross is not involved in overseeing day-to-day operations and he does not anticipate that he will be actively involved in the operational management of applicant's proposed gaming operation. Ross is and will be involved in the strategic decisions with respect to the financing, management and operation of the proposed gaming facility.

Ross has been involved in the pari-mutuel racing industry for decades. He began his career in the racing industry at Taunton Greyhound Park, a defunct racetrack at that time, which was purchased and reopened by his uncle, Joseph Linsey, in 1941. Over the years, Ross worked his way up through the ranks at Taunton Greyhound Park and eventually became an owner and operator of several racetracks. He owned and successfully operated three dog tracks in Colorado, namely, the Mile High Kennel Club in Loveland and the Interstate Kennel club in Byers, as well as Pueblo Greyhound Park, which Ross established as the first winter racing track in Colorado. Ross also owned and operated Sodrak Park in No. Sioux City, SD, which consisted of both a dog and horse track. Ross also held an ownership interest and operated Lincoln Downs in Rhode Island.

Ross has since sold all of his interests in these racetracks, having done so in 1989. Ourway is currently the only racetrack in which Ross presently maintains an ownership interest. Ross was one of the initial investors in Plainville Racing Company ("PRC"), which was the former licensee and operator of Plainridge Racecourse prior to Ourway. PRC is currently inactive.

Ross has disclosed, and it has been confirmed, that he has an ownership interest in approximately [REDACTED] other entities and according to financial and tax records reviewed by our financial investigators/accountants, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ross disclosed that throughout 1949 and 1950 he attended and completed courses at George Washington University. Ross also disclosed that from September 1950 to January 1952 he attended and completed courses at Brandeis University. It is to be noted that confirmation of Ross's attendance at these universities could not be verified due to the fact that only verification of degrees can be obtained.

[REDACTED]

[REDACTED] The investigation thoroughly evaluated Ross's submissions, inclusive of his financial materials and tax returns and records as well as his general financial history. The investigation did not establish any adverse findings or information that would indicate that he does not possess the requisite financial integrity, responsibility and financial stability to be found suitable to participate in the proposed project.

Ross has also held or currently holds licenses from the following racing commissions: Colorado as Manager/Owner of tracks (inactive); Florida race horse owner (not active); Maryland thoroughbred owner in good standing (active); New York harness owner in good standing from 1999 to present, New York thoroughbred owner from 1987-1994 (inactive); Pennsylvania harness owner 2000-present (active); Pennsylvania

thoroughbred owner (inactive); Virginia race horse owner (not active); Massachusetts race horse owner, 1999 to 2012 (inactive); Maryland thoroughbred owner (active); New Jersey race horse owner (active). Although Ross indicated that he also held licenses in South Dakota, Delaware, Rhode Island, and Arizona, these jurisdictions were unable to locate any records. Additionally, Ross also indicated that he held race horse owner licenses in Maine and New Hampshire. These jurisdictions did not respond to inquiries. The investigation carefully reviewed and evaluated Ross's submitted materials, database information, and where necessary, confirmatory agency records relating to the current license holdings and there are no material findings adverse to Ross's suitability.

[REDACTED]

This investigation reviewed a certain article which appeared in the *Milwaukee Journal Sentinel*, dated May 19, 2007, which stated that Ross was a business associate of [REDACTED] in a Kenosha, WI, dog track operation. These media reports state that in the late 1980s, [REDACTED] and his partners in Kenosha Gateway Development ("Kenosha") thought they had a dog track license "in the bag," in part because they had promised political contributions to the then Governor Tommie Thompson. [REDACTED] was later indicted and convicted of federal corruption charges in 2007 for which he received a probationary sentence.

During Ross's final interview, Ross was questioned regarding this association. Ross stated that in the late 1980s, he had been contacted by Joe Madrigano, an attorney from Kenosha, who owned a Miller Beer distributorship. Madrigano requested Ross's expertise in connection with a dog track license application presentation. Ross stated that Madrigano's associates in this venture were local investors in Bear Realty, a company

which included [REDACTED] and three others. Ross advised that he agreed to get involved and attended two or three meetings. Ross said Kenosha Gateway Development was not successful in being awarded the dog track license. [REDACTED]

Ross has kept in touch with Madrigano and he learned of [REDACTED] legal problems through Madrigano. Ross stated that he has had no contact with [REDACTED] since the late 1980s.

As part of this investigation, on March 12, 2013, Michael McClure of the Wisconsin Division of Gaming was contacted regarding Ross and his association with [REDACTED] in connection with the 1980 Kenosha Gateway dog track license application. McClure confirmed that in 1989, Ross and [REDACTED] were investors in Kenosha Gateway, a company which applied for a dog track license in Kenosha. McClure further confirmed that the racing license was awarded to another applicant in 1990. McClure indicated that no derogatory information had been obtained concerning Ross or [REDACTED] at that time. [REDACTED] problems arose subsequent to his association with Ross.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ross's personal civil litigation history has been examined and evaluated. Other than being personally named in the Giuliano Litigation, which involved several parties and was eventually resolved in favor of applicant and the other defendants, the investigation did not reveal any civil litigation involving this subject qualifier or any litigation that is adverse to his suitability

The investigation has also confirmed that Ross has not made any prohibited political contributions in Massachusetts that violate M.G.L. c.23K §46 or 205 CMR 108.

The investigation has confirmed that Ross has a credible history of developing and successfully operating a number of racetracks over the years. His maintenance of



several jurisdictional racing licenses in good standing demonstrates a history of regulatory compliance. This investigation has further confirmed that based upon a review of Ross's net worth, he has the financial stability to contribute a significant amount of cash to the operation of the applicant should a contribution of capital be required. Furthermore, during his interview, Ross indicated his commitment to contributing additional capital if requested.

Based upon the comprehensive investigation of Ross, the investigation did not reveal any information that would preclude a finding that he possesses the requisite integrity, honesty, and good character that are statutorily mandated in M.G.L. c.23K §12(c). Further, the review of all submitted material, independent investigations, comprehensive database searches, regulatory agency verifications, personal interviews and past business practices indicate that Ross has demonstrated a business ability to establish, participate in, and maintain a successful gaming establishment as mandated by M.G.L. c.23K §12(a)(3) as well as general history of compliance with applicable gaming regulation as required by M.G.L. c.23K.

### **3. Fred L. Chanowski**

The investigation has confirmed that Fred Chanowski ("Chanowski"), age [REDACTED], is currently linked to an address in [REDACTED]. The investigation record verification also revealed another property owned by Chanowski, that is located in F [REDACTED] [REDACTED]. Chanowski owns a [REDACTED] ownership in Ourway.

In regard to education, Chanowski disclosed that from September 1968 through May 1970, he attended and completed courses at the University of Massachusetts, Amherst, but did not attain a degree.

Chanowski did not identify, nor did the investigation reveal, any previous employment on his PHD which falls within the employment reporting requirement. Chanowski reiterated during his personal interview that he has been essentially retired since May 1990. During his interview Chanowski indicated he stays relatively active with philanthropic work which includes fundraising for hospitals, building a temple and



involvement with other charitable causes. Aside from his ownership of Ourway, LLC, discussed below, he indicated, and the investigation confirmed, that he does not have any ownership interest in any other racing or gaming operations

[REDACTED]

[REDACTED]

[REDACTED]

In regard to Chanowski's relationship to Ourway, he has reported and the investigation has confirmed that he holds a [REDACTED] ownership interest in Ourway. As with his other holdings, Chanowski's involvement in Ourway is that of essentially a passive investor. He does not oversee day-to-day operations and it is not anticipated that he will be actively involved in any operational aspects of the proposed slot machine gaming facility. He previously was a passive investor in the predecessor to Ourway, Plainridge Racing Company ("PRC").

[REDACTED]

[REDACTED]

[REDACTED]

Chanowski also reported he was a Board Member of Congregation Mishkan Tefilah (synagogue) from May 2009 to May 2010. Research and supplemental documents requested did not identify any information inconsistent with information provided by Chanowski.

Other than his identification as an owner of Ourway, the investigation of Chanowski did not disclose, nor did the investigation reveal, any gaming licenses or non-gaming professional licenses for Chanowski. Further, he has not been personally cited with any regulatory violation in any gaming jurisdiction.

In regard to his financial suitability and responsibility, the investigation herein has not revealed any issues that would lead to conclude that Chanowski does not possess the financial integrity and responsibility as it relates to financial stability.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

His personal civil litigation history has been examined and evaluated. Civil litigations in which he has been involved in connection with any of his commercial interests has also been disclosed and evaluated by the IEB investigative team. The investigation did reveal, consistent with Chanowski's PHD disclosure, that he was involved with the aforementioned Giuliano Litigation against Plainridge and Piontkowski. During his interview, Chanowski identified that his only involvement with the suit was as an investor involved in negotiation with Giuliano in an attempt to settle the dispute. [REDACTED]

[REDACTED]. The investigation also revealed a 1998-1999

lawsuit against Chanowski relating to an unpaid bill for legal services which was confirmed as dismissed. In addition to the aforementioned lawsuits, Chanowski provided a detailed list of numerous lawsuits and complaints against Ourway Realty, LLC, but none of which involved Chanowski personally. The investigation, his interview and document verification confirmed Chanowski's disclosures and all civil litigation involving his investments, developments and commercial interests, including Ourway, LLC, in which he was involved have also been disclosed, documented in the investigative files of the IEB and evaluated by the IEB investigative team and none are of a nature that would be adverse to a determination of Chanowski's suitability.

The investigation also confirmed that Chanowski has not made any prohibited political contributions in Massachusetts that violate M.G.L. c.23K §46 or 205 CMR 108.

Based upon the comprehensive investigation of Chanowski, the investigation did not reveal any information that would preclude a finding that he does not possess the requisite integrity, honesty, and good character that are statutorily mandated to be found suitable pursuant to M.G.L. c.23K §12(c). Further, the review of all submitted materials, independent investigation, comprehensive database searches, personal interviews, review of his financial records and responsibility, indicates that Chanowski has demonstrated a business ability to establish and maintain a successful gaming establishment as mandated by M.G.L. c.23K §12(a)(3) as well as general history of compliance with applicable gaming regulation as required by M.G.L. c.23K.

#### **4. George Chimento**

The investigation has confirmed that George L. Chimento ("Chimento"), age [REDACTED], is currently linked to an address in [REDACTED]. He is currently a Member of applicant Ourway. As of December 31, 2012, Chimento owned [REDACTED] Ourway.

Chimento is an attorney. Over the past ten years, he has been employed as a partner in the firms of Brown, Rudnick, Freed & Gesmer from June 1996 through March 2004; Rackerman, Sawyer & Brewster from March 2004 through May 2008; and Davis, Malm & D'Agostine from May 2008 through the present.

Chimento attended Brown University, where he obtained a Bachelor of Arts degree in history in 1970. He then attended law school at the Boalt Hall Law School, part of the University of California at Berkeley. He graduated there with a Juris Doctor degree in 1973.

In his capacity as an investor in Ourway, Chimento will play a passive role. He will not be involved in the operation of the facility.

[REDACTED]

[REDACTED]. The investigation thoroughly evaluated Chimento's submissions, inclusive of his financial materials and tax returns and records as well as his general financial history. It was confirmed that Chimento's reported assets and net worth are consistent with his reported levels of income and expenses. The investigation did not establish any adverse findings or information that would indicate that he does not possess the requisite financial integrity, responsibility and financial stability to be found suitable to participate in the proposed project.

Chimento is an active Member of the Bar of the States of Rhode Island and New Hampshire and the Commonwealth of Massachusetts. He has never been disciplined by any of those legal organizations.

Chimento also has held gaming licenses from the New York Racing and Wagering Board as a Thoroughbred Race Horse Owner; the New Hampshire Racing and Charitable Gaming Commission as a Thoroughbred Race Horse Owner, and from the Massachusetts State Racing Commission as both a Thoroughbred Race Horse and Harness Race Horse Owner. No disciplinary actions were taken against Chimento in these capacities. The investigation carefully reviewed and evaluated Chimento's submitted materials, database information, and where necessary, confirmatory agency records and there are no material findings adverse to Chimento's suitability.

Chimento's personal civil litigation history has been examined and evaluated. The investigation did not reveal any civil litigation involving this subject qualifier that would be adverse to a determination of Chimento's suitability. He was named in the Giuliano Litigation that is otherwise explained in other sections of this report.

The investigation has also confirmed that Chimento has not made any prohibited political contributions in Massachusetts that violate M.G.L. c.23K §46 or 205 CMR 108.

[REDACTED]

The investigation has confirmed based on the records examined, the interviews conducted, and Chimento's general background, Chimento demonstrates the qualities necessary for suitability to participate in his investment role in the operation of the proposed Ourway gaming facility project.

Based upon the comprehensive investigation of Chimento, the investigation did not reveal any information that would preclude a finding that he possesses the requisite integrity, honesty, and good character that are statutorily mandated in M.G.L. c.23K §12(c). Further, the review of all submitted material, independent investigations, comprehensive database searches, regulatory agency verifications, personal interviews and past business practices indicate that Chimento has demonstrated the business ability to establish, participate in, and maintain a successful gaming establishment as mandated by M.G.L. c.23K §12(a)(3) as well as general history of compliance as required by M.G.L. c.23K.

## **5. Richard Tuch**

The investigation has confirmed that Richard L. Tuch ("Tuch"), age [REDACTED], resides in [REDACTED], and is currently a Member of applicant Ourway. As of December 31, 2012, Tuch owned [REDACTED] of Ourway. He was a Manager of the entity until 2008.



Tuch has been retired for approximately ten years. Prior to his retirement, other than Ourway, Tuch was involved in a number of businesses, including:

1. Leisure Time Marketing: Tuch founded this company in May 1975 and remained with the company until April 1992. The company was engaged in the distribution of electronic games and equipment. Its most profitable line was the Nintendo electronic game and accessories. In 1992, Tuch retired from the company.

2. Venture Management Consultants 1, 2, 3, LLC: This company was referred to as the "Newton Group," consisting of Tuch, Ross and Chanowski and, later, Chimento. The firm started in the mid-1990s. Its function was to fund various projects under the Venture Management umbrella. Venture Management 1, 2, 3 were single-purpose groups formed for individual investments. [REDACTED] Tuch advised that he has not been involved with this company for years.

3. LRF (Linsey Ross Freeman) Investments: This was a group in which Tuch stated he was a [REDACTED] investor. He explained that the purpose of his investment was in order to obtain health benefits.

Tuch was one of the original investors in Plainville Racing Company. Tuch was also one of the original investors, along with Ross and Anchor Gaming (Fulton), in Anchor Partners. Anchor Partners, as previously discussed, provided Ourway with mortgage financing for the purchase of the Plainridge property. Subsequently, [REDACTED] of the mortgage debt was converted to a [REDACTED] interest in Ourway. This resulted in Anchor Gaming (Fulton), Ross and Tuch receiving their respective equity interests in Ourway. From 2000 to 2008, Tuch was the Manager of Ourway. Although Tuch was the Manager of Ourway, Piontkowski was the President of Plainridge Racecourse and managed all aspects of the racing operation. Tuch left his position as Manager of Ourway [REDACTED] in 2008. [REDACTED]  
[REDACTED]  
[REDACTED]



The investigation disclosed that the bulk of Tuch's income is now derived from his investments in "flow-through" entities such as limited liability companies, partnerships, Sub-Chapter S corporations or trusts. Flow-through entities allow the income or losses to be attributed to the owners rather than the entity. The tax obligation rests on those owners. The entities in which Tuch is involved include real estate development companies, investment companies and Ourway. Tuch's present income from these investments is modest. [REDACTED]

This investigation confirmed that Tuch attended the University of Massachusetts, Amherst. He was awarded a Bachelor of Business degree in Management on February 1, 1968.

In his capacity as an investor in Ourway, Tuch will play a passive role. He will not be involved in the operation of the facility.

[REDACTED] The investigation thoroughly evaluated Tuch's submissions, inclusive of his financial materials and tax returns and records as well as his general financial history.

Although not contained in his submitted application materials, the investigation indicated that Tuch held a Massachusetts racing license from 2004 to 2007. No derogatory information was revealed relating to this individual.

This investigation further has confirmed that Tuch does not hold any casino gaming or professional licenses.

Tuch has never been personally cited with any regulatory violations in any jurisdiction. The investigation carefully reviewed and evaluated Tuch's submitted materials, database information, and where necessary, confirmatory agency records, and there are no material findings adverse to Tuch's suitability

Tuch's personal civil litigation history has been examined and evaluated. While Tuch or companies in which Tuch has had an interest have been involved in a number of lawsuits, they appear to be of a nature not atypical to standard business experience. [REDACTED]

[REDACTED] The investigation did not reveal any civil litigation involving this subject qualifier

that would be adverse to a determination of his suitability. Tuch was named in the Giuliano Litigation that is otherwise explained in other sections of this report.

The investigation has also confirmed that Tuch has not made any prohibited political contributions in Massachusetts that violate M.G.L. c.23K §46 or 205 CMR 108.

[REDACTED]

The investigation has confirmed, based on the records examined, the interviews conducted, and Tuch's general background, Tuch demonstrates the qualities necessary for suitability to participate in his investment role in the operation of the proposed Ourway gaming facility project.

The investigation of Tuch did not reveal any information that would preclude a finding that he possesses the requisite integrity, honesty, and good character that are statutorily mandated in M.G.L. c.23K §12(c). The review of all submitted material, independent investigations, comprehensive database searches, regulatory agency verifications, personal interviews and past business practices indicate that Tuch has demonstrated the business ability to establish, participate in, and maintain a successful gaming establishment as mandated by M.G.L. c.23K §12(a)(3) as well as general history of compliance as required by M.G.L. c.23K.

## **6. John Grogan**

The investigation has confirmed that John M. Grogan ("Grogan"), age [REDACTED], is linked to an address in [REDACTED]. He is currently employed as President of applicant Ourway.

Grogan was appointed President of Ourway on April 3, 2013, [REDACTED]

[REDACTED] Grogan formerly was an independent consultant and primary contact for the applicant in connection with its pursuit of a Category 2 gaming license.

With respect to how Grogan came to be involved with the applicant, Grogan advised in his sworn interview that he first met Piontkowski 25 years ago when he assisted Piontkowski in obtaining financing in connection with the purchase of a textile mill. As a result, the two men stayed in touch professionally over the years. Grogan also stated that Piontkowski called upon him for financial advice during the time Piontkowski was Chairman of the Massachusetts Racing Commission. When Piontkowski initially opened Plainridge Racecourse, again Piontkowski called upon Grogan to assist with certain of the operation's financial matters. Then, in 2009, when the legislature for the Commonwealth of Massachusetts began seriously considering the legalization of casino style gaming, Grogan began consulting for Ourway concerning Ourway's pursuit of a gaming license. However, when the legislation was not signed by the Governor of Massachusetts, Grogan stated that he temporarily discontinued his consulting arrangement with Ourway. When the Massachusetts legislature resumed its debate with respect to expanded gaming in Massachusetts, Grogan again was contacted by Piontkowski to return and continue his consulting services with respect to Ourway's proposed gaming facility plan. Grogan stated that this was approximately in June 2011.

This investigation confirmed that Grogan attended Harvard College, Cambridge, MA, from September 1975 until he graduated on June 7, 1979, earning an A.B. degree in Biochemical Sciences. Grogan also attended Harvard Business School, Boston, MA, from September 1982 until he graduated on June 7, 1984, earning a Masters in Business Administration.

Upon graduating from Harvard Business School, Grogan entered the field of investment banking, where he was employed at Paine Webber. Thereafter, Grogan accepted employment with Shawmut Bank, where he assisted in the creation of the bank's investment banking business, for which department he became primarily

responsible. After leaving Shawmut Bank, Grogan formed his own consulting business, Corporate Finance Advisors, Inc., Boston, MA, which focused on the middle market investment banking. Grogan operated this four person business until approximately 2005 when he made the decision to close the business. He then was solely engaged as an independent consultant, providing financial consulting for various clients.

Grogan also held the position of Vice Chairman for the [REDACTED] Finance Commission, the finance commission of the town in which he resides, from September 2008 until June 2012. Grogan indicated that this was an appointed position and that he believed that he was able to provide solid advice to the town based upon his financial background and detail to regulations.

In his capacity as President of Ourway, Grogan will oversee the development of the proposed gaming project at Plainridge Racecourse which is the subject of this report. In addition to his former experience in and knowledge of the regulated banking industry, this investigation has established the following additional information relevant to Grogan's suitability with respect to oversight of a gaming operation. Since taking over as President of Ourway, as promised during his April 4, 2013 sworn interview, Grogan has overseen the documentation of several policies and procedures and instituted new policies and procedures, copies of which have been provided to investigators as part of this investigation. Grogan has also sought to establish better corporate governance by: (i) implementing separation of duties between Ourway's Manager (Managing Member) and the President of the operation; (ii) establishing of a Board of Advisors consisting of two outside advisors; and (iii) the establishing of an Audit subcommittee to the Board of Advisors.

[REDACTED]  
[REDACTED]. The investigation thoroughly evaluated Grogan's submissions, inclusive of his financial materials, tax returns and records as well as his general financial history. It was also confirmed that Grogan's reported assets and net worth are consistent with his reported levels of income and expenses. The investigation did not establish any adverse findings or information that would indicate that he does not possess the requisite financial

integrity, responsibility and financial stability to be found suitable to participate in the proposed project.

This investigation has confirmed that Grogan does not hold any gaming, racing or professional licenses.

Grogan has never been personally cited with any regulatory violations in any jurisdiction. The investigation carefully reviewed and evaluated Grogan's submitted materials, database information, and where necessary, confirmatory agency records relating to the current license holdings and there are no material findings adverse to Grogan's suitability.

Grogan's personal civil litigation history has been examined and evaluated. The investigation did not reveal any civil litigation involving this subject qualifier other than one case filed in 1999 wherein Grogan's former company, Corporate Finance Advisors, and Grogan were named as defendants. The case was ultimately dismissed with no adverse ruling against Grogan or his company. This civil litigation has been disclosed, documented [REDACTED] and evaluated by the IEB investigative team and it is not of a nature that would be adverse to a determination of Grogan's suitability.

The investigation has also confirmed that Grogan has not made any prohibited political contributions in Massachusetts that violate M.G.L. c.23K §46 or 205 CMR 108.

The investigation has confirmed that Grogan has credible history of investment banking and financial consulting experience and has demonstrated a history of regulatory compliance. Based upon the records examined, the interviews conducted, his many years of experience in the investment banking business, a review of his recent efforts in establishing, on behalf of applicant, the corporate governance expected of any gaming operation, review of his financial records and responsibility all illustrate that Grogan demonstrates the qualities necessary for suitability to participate in the operation of the proposed Ourway gaming facility project.

Based upon the comprehensive investigation of Grogan, the investigation did not reveal any information that would preclude a finding that he possesses the requisite

integrity, honesty, and good character that are statutorily mandated in M.G.L. c.23K §12(c). Further, the review of all submitted material, independent investigations, comprehensive database searches, regulatory agency verifications, personal interviews and past business practices indicate that Grogan has demonstrated a business ability to establish, participate in, and maintain a successful gaming establishment as mandated by M.G.L. c.23K §12(a)(3) as well as general history of compliance with applicable gaming regulation as required by M.G.L. c.23K.

## **7. Timothy Alan Petersen**

The investigation has confirmed that Timothy Alan Petersen ("Petersen"), age [REDACTED], of [REDACTED], is the Chief Financial Officer ("CFO") of applicant Ourway. Petersen has held the CFO position with Plainridge Racecourse since its opening in 1999. In this regard, Petersen also held the same position of CFO for Plainville Racing Company, the former licensee which operated Plainridge Racecourse up until 2003.

Petersen attended the University of South Dakota in Vermillion, SD, where he was awarded a Bachelor of Science degree in Business Administration on May 11, 1974. Petersen held a Certified Public Accountant License in State of Iowa which was issued in August 1982 and expired on June 30, 2003.

During and after he graduated college, Petersen spent time working for several of Ross's racetracks, including Sodrak Park in South Dakota, Taunton (MA) Greyhound Racetrack, and Interstate Kennel Dog Track in Colorado. In 1976, Petersen became employed with a CPA firm in Sioux City, SD, and was engaged as the auditor for Ross's racetracks. As a result, Petersen and Ross stayed in touch over the years, with Ross subsequently employing Petersen at Lincoln Greyhound Park as Chief Financial Officer which position Petersen held from October 1983 until the track was sold in September 1992.

Thereafter, Petersen spent time as a self-employed accountant and also was employed as Chief Accountant for a record company until Ross contacted Petersen concerning employment with Plainridge.



Petersen's primary source of income is from the wages he earns as CFO of Ourway. [REDACTED]

Although Petersen holds the title of CFO, both Grogan and Petersen, during their sworn interviews, stated that Petersen's position is that of a "controller" as opposed to a traditional CFO. Particularly, Petersen is not and has not been involved in any of the high executive level discussions concerning the finances of the company. Petersen's duties and responsibilities are with respect to racetrack day-to-day financial matters. [REDACTED]

[REDACTED] The investigation thoroughly evaluated Petersen's submissions, inclusive of his financial materials and tax returns and records as well as his general financial history. It was also confirmed that Petersen's reported assets and net worth are consistent with his reported levels of income and expenses. The investigation did not establish any adverse findings or information that would indicate that he does not possess the requisite financial integrity, responsibility and financial stability to be found suitable to participate in the proposed project.

Petersen held a track employee license with the Massachusetts Racing Commission in 2000. No derogatory information was reported with respect to Petersen. This investigation further has confirmed that Petersen does not currently hold any gaming licenses.

The investigation confirmed that Petersen held a Certified Public Accountant License in the State of Iowa, license number of 004277. Petersen was licensed in Iowa on August 2, 1982, but because he was no longer practicing in Iowa, he allowed his

license to lapse on June 30, 2003. No disciplinary actions were reported pertaining to Petersen.

Petersen has never been personally cited with any regulatory violations in any jurisdiction. The investigation carefully reviewed and evaluated Petersen's submitted materials, database information, and where necessary, confirmatory agency records relating to any licenses held and there are no material findings adverse to Petersen's suitability.

During this investigation, Petersen was questioned concerning his role in issuing checks labeled in the check register as payments for promotional services which the 2000 [REDACTED] investigation concluded were payments for winning wagers in connection with illegal telephone wagering. Petersen stated in his sworn interview that his boss, President Piontkowski, advised him that these payments were for promotional services. Based upon the [REDACTED] investigation, records examined, and Petersen's sworn interview, this investigation did not find any credible information that would contradict Peterson's explanation or that Petersen had any knowledge that these payments represented payments for illegal telephone wagering.

As was previously reported, Piontkowski took a number of withdrawals from the money room and Petersen was questioned with respect to this practice. Again, Petersen testified, in a credible fashion, that he was uncomfortable with this practice but was assured by Piontkowski that he (Piontkowski) would clear this with Fulton and Ross. Petersen and the outside auditor prepared a letter every year in an attempt to ensure that the Members were made aware of the amounts of money room withdrawals which were being recharacterized each year as distributions to Piontkowski. During the course of this investigation it became very clear that Piontkowski, as President and Manager of Ourway, was vested with exclusive authority and control in connection with the operation of Ourway. Petersen was aware of the trust that both Fulton and Ross placed in Piontkowski. [REDACTED]

[REDACTED] This level of trust was evident in the fact that Fulton and Ross consented to Piontkowski also serving as the Manager of Anchor Partners, the second largest creditor

of Ourway. Based upon the records examined, interviews with the outside auditor and Petersen's sworn interview, this investigation found that Petersen testified in a credible fashion that he was uncomfortable with this particular business practice of his boss, tried to bring it to the attention of the Members through the audit letters but was not in a position to stop this practice.

[REDACTED]

Petersen's personal civil litigation history has been examined and evaluated. The investigation did not reveal any civil litigation involving this subject qualifier or any litigation that is adverse to his suitability.

The investigation has also confirmed that Petersen has not made any prohibited political contributions in Massachusetts that violate M.G.L. c.23K §46 or 205 CMR 108.

The investigation has confirmed that Petersen has a credible history of accounting experience and has demonstrated a history of regulatory compliance. Based upon the records examined, the interviews conducted, his many years of experience in the pari-mutuel racing business, and review of his financial records and responsibility, the evidence illustrates that Petersen demonstrates the qualities necessary for suitability to participate in the operation of the proposed Ourway gaming facility project.

Based upon the comprehensive investigation of Petersen, the investigation did not reveal any information that would preclude a finding that he possesses the requisite integrity, honesty, and good character that are statutorily mandated in M.G.L. c.23K §12(c). Further, the review of all submitted material, independent investigations, comprehensive database searches, regulatory agency verifications, personal interviews and past business practices indicate that Petersen has demonstrated a business ability to

establish, participate in, and maintain a successful gaming establishment as mandated by M.G.L. c.23K §12(a)(3) as well as general history of compliance with applicable gaming regulation as required by M.G.L. c.23K.