

205 CMR 116.00: PERSONS REQUIRED TO BE LICENSED OR QUALIFIED

116.03: Waivers

(1) The commission may in its discretion waive qualification requirements for the following persons under the following conditions:

- (a) In the case of applicant corporations and holding, intermediary and subsidiary corporations, those persons holding less than 5% of the common stock of the company;
- (b) In the case of institutional investors, if the institutional investor holds ~~less than~~ up to 15% of the stock of the applicant, holding, intermediary or subsidiary company;
- (c) In the case of persons involved in the financing of the gaming establishment provided:
 - 1. A lender to an applicant or licensee that is obtaining financing for the construction or operation of a Category 1 or Category 2 facility shall be required to be licensed unless the following apply:
 - a. The lender is in the business of providing debt or equity capital to individuals or entities;
 - b. The loan is in the ordinary course of the lender's business; and
 - c. The lender does not have the ability to control or otherwise influence the affairs of the applicant or licensee.
 - 2. A lender that is required to be licensed may lend to an applicant or licensee if the lender has filed a completed application in accordance with 205 CMR and has received lender authorization from the commission or bureau.
 - 3. A person that acquires a debt instrument issued by an applicant or licensee in a public or exempt private offering shall not be required to be licensed if:
 - a. The person does not have any right or ability to control or influence the affairs of the licensee; and
 - b. The person's acquisition of the debt instrument is in the ordinary course of business and is not part of a plan or scheme to avoid the requirements of this section.
 - 4. Notwithstanding any provision to the contrary in 205 CMR 116.00, the commission may require the licensure of any person that holds a debt instrument issued by an applicant or licensee if the commission has reason to believe that the person would not satisfy the requirements of 205 CMR or M.G.L. c. 23K; or

(d) In the case of any person that, in the opinion of the commission cannot exercise control or provide direction to a gaming licensee or applicant for a gaming licensee or a holding, intermediary or subsidiary company thereof.

(2) In determining whether to waive qualification requirements under 205 CMR 116.03(1), the commission shall consider whether the person seeking the waiver obtained its interest for investment purposes only and does not have any intention to influence or affect the affairs of the applicant or any affiliated companies thereof.

(3) Any person may seek a waiver under 205 CMR 116.03(1) by filing a petition with the Commission pursuant to 205 CMR 102.03(4): *Waivers and Variances*; provided, however, that the commission or the bureau may require the submission of any such information deemed necessary to act on the request for a waiver or, at any time, if the commission or the bureau has reason to believe that the person would not satisfy any of the requirements of 205 CMR or M.G.L. c. 23K.

(4) Any party granted a waiver under 205 CMR 116.03 which subsequently anticipates engaging in any activity that will or could influence or affect the affairs or operations of the applicant or the holding, intermediary or subsidiary company thereof, shall provide not less than 30 days' notice to the commission of such intent and the party shall not exercise any influence or effect on the affairs or operations of the applicant or the holding, intermediary or subsidiary company thereof unless and until the commission issues a determination of suitability under 205 CMR 115.00: *Phase I and New Qualifier Suitability Determination, Standards and Procedures* for said party.