

**Part I** ADMINISTRATION OF THE GOVERNMENT

**Title II** EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH

**Chapter 23K** THE MASSACHUSETTS GAMING COMMISSION

**Section 4** POWERS OF THE COMMISSION

Section 4. The commission shall have all powers necessary or convenient to carry out and effectuate its purposes including, but not limited to, the power to:

- (1) appoint officers and hire employees;
- (2) establish, and from time to time amend, a plan of organization that it considers expedient;
- (3) execute all instruments necessary or convenient for accomplishing the purposes of this chapter;
- (4) enter into agreements or other transactions with a person, including, but not limited to, a public entity or other governmental instrumentality or authority in connection with its powers and duties under this chapter;
- (5) appear on its own behalf before boards, commissions, departments or other agencies of municipal, state or federal government;
- (6) apply for and accept subventions, grants, loans, advances and contributions of money, property, labor or other things of value from any source, to be held, used and applied for its purposes;
- (7) provide and pay for advisory services and technical assistance as may be necessary in its judgment to carry out this chapter and fix the compensation of persons providing such services or assistance; provided, however, that in exercising its authority under this clause, the commission may receive and approve applications from a municipality to provide for reasonable costs related to legal, financial and other professional services required for the negotiation and execution of host and surrounding community agreements as provided in section 15, and to require that such costs be paid by the applicant for a gaming license;
- (8) prepare, publish and distribute, with or without charge as the commission may determine, such studies, reports, bulletins and other materials as the commission considers appropriate;
- (9) assure that licenses shall not be issued to, or held by, and that there shall be no material involvement directly or indirectly with, a gaming operation or the ownership thereof, by unqualified, disqualified or unsuitable persons or by persons whose operations are conducted in a manner not conforming with this chapter;
- (10) require an applicant for a position which requires a license under this chapter to apply for such license and approve or disapprove any such application or other transactions, events and processes as provided in this chapter;
- (11) require a person who has a business association of any kind with a gaming licensee or applicant to be qualified for licensure under this chapter;

- (12) develop criteria, in addition to those outlined in this chapter, to assess which applications for gaming licenses will provide the highest and best value to the commonwealth and the region in which a gaming establishment is to be located;
- (13) determine which applicants shall be awarded gaming licenses, gaming vendor licenses and other licenses in accordance with this chapter;
- (14) determine a suitable debt-to-equity ratio for applicants for a gaming license;
- (15) deny an application or limit, condition, restrict, revoke or suspend a license, registration, finding of suitability or approval, or fine a person licensed, registered, found suitable or approved for any cause that the commission deems reasonable;
- (16) monitor the conduct of licensees and other persons having a material involvement, directly or indirectly, with a licensee for the purpose of ensuring that licenses are not issued to or held by and that there is no direct or indirect material involvement with a licensee, by an unqualified or unsuitable person or by a person whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places as provided in this chapter;
- (17) gather facts and information applicable to the commission's obligation to issue, suspend or revoke licenses, work permits or registrations for: (i) a violation of this chapter or any regulation adopted by the commission; (ii) willfully violating an order of the commission directed to a licensee; (iii) the conviction of a criminal offense; or (iv) the violation of any other offense which would disqualify such a licensee from holding a license, work permit or registration;
- (18) conduct investigations into the qualifications of all applicants for employment by the commission and by any regulated entity and all applicants for licensure;
- (19) request and receive from the state police, the criminal history systems board or other criminal justice agencies including, but not limited to, the Federal Bureau of Investigation and the Internal Revenue Service, such criminal offender record information relating to criminal and background investigations as necessary for the purpose of evaluating employees of, and applicants for employment by, the commission and any regulated entity, and evaluating licensees and applicants for licensure under this chapter;
- (20) be present, through its inspectors and agents, at all times, in gaming establishments for the purposes of: (i) certifying revenue; (ii) receiving complaints from the public relating to the conduct of gaming and wagering operations; (iii) examining records of revenues and procedures and inspecting and auditing all books, documents and records of licensees; (iv) conducting periodic reviews of operations and facilities for the purpose of regulations adopted hereunder; and (v) exercising its oversight responsibilities with respect to gaming;
- (21) inspect and have access to all equipment and supplies in a gaming establishment or on premises where gaming equipment is manufactured, sold or distributed;
- (22) seize and remove from the premises of a gaming licensee and impound any equipment, supplies, documents and records for the purpose of examination and inspection;
- (23) demand access to and inspect, examine, photocopy and audit all papers, books and records of any affiliate of a gaming licensee or gaming vendor whom the commission suspects is involved in the financing, operation or management of the gaming licensee or gaming vendor; provided, however, that the inspection, examination, photocopying and audit may take place on the affiliate's premises or elsewhere as practicable and in the presence of the affiliate or its agent;

- (24) require that the books and financial or other records or statements of a gaming licensee or gaming vendor be kept in a manner that the commission considers proper;
- (25) levy and collect assessments, fees and fines and impose penalties and sanctions for a violation of this chapter or any regulations promulgated by the commission;
- (26) collect taxes and fees under this chapter;
- (27) restrict, suspend or revoke licenses issued under this chapter;
- (28) conduct adjudicatory proceedings and promulgate regulations in accordance with chapter 30A;
- (29) hear appeals of the bureau's suspension or revocation of a license;
- (30) refer cases for criminal prosecution to the appropriate federal, state or local authorities;
- (31) issue subpoenas and compel the attendance of witnesses at any place within the commonwealth, administer oaths and require testimony under oath before the commission in the course of an investigation or hearing conducted under this chapter;
- (32) ensure that there is no duplication of duties and responsibilities between the commission and bureau; provided, however, that the commission shall not place any restriction upon the bureau's ability to investigate or prosecute violations of this chapter or the regulations adopted by the commission;
- (33) determine which municipalities are the surrounding communities of a proposed gaming establishment; provided, however, that in making such determination, the commission shall consider factors including, but not limited to, population, infrastructure, distance from the gaming establishment and political boundaries;
- (34) establish parameters for elections under clause (13) of section 15;
- (35) maintain an official internet website for the commission;
- (36) monitor any federal activity regarding internet gaming and coordinate with the office of the treasurer and receiver general on implementing any measures necessary to protect the commonwealth's lottery and gaming interests;
- (37) adopt, amend or repeal regulations for the implementation, administration and enforcement of this chapter;
- (38) act as trustees for any gaming-related trust funds;
- (39) designate impacted live entertainment venues; provided, however, that, in making such designations, the commission shall consider factors including, but not limited to, the venue's distance from the gaming establishment, venue capacity and the type of performances offered by that venue;
- (40) provide assistance to the governor in negotiating a compact with a federally-recognized Indian tribe in the commonwealth; and
- (41) regulate and enforce section 7A of chapter 271 relating to bazaars; provided, however, that nothing in this section shall limit the attorney general's authority over public charities pursuant to the General Laws.



<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title II</b>	EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
<b>Chapter 23K</b>	THE MASSACHUSETTS GAMING COMMISSION
<b>Section 12</b>	INVESTIGATION INTO SUITABILITY OF APPLICANT FOR GAMING LICENSE

Section 12. (a) Upon receipt of an application for a gaming license, the commission shall instruct the bureau to commence an investigation into the suitability of the applicant. In evaluating the suitability of the applicant, the commission shall consider the overall reputation of the applicant including, without limitation:

- (1) the integrity, honesty, good character and reputation of the applicant;
  - (2) the financial stability, integrity and background of the applicant;
  - (3) the business practices and the business ability of the applicant to establish and maintain a successful gaming establishment;
  - (4) whether the applicant has a history of compliance with gaming licensing requirements in other jurisdictions;
  - (5) whether the applicant, at the time of application, is a defendant in litigation involving its business practices;
  - (6) the suitability of all parties in interest to the gaming license, including affiliates and close associates and the financial resources of the applicant; and
  - (7) whether the applicant is disqualified from receiving a license under section 16; provided, however, that in considering the rehabilitation of an applicant for a gaming license, the commission shall not automatically disqualify an applicant if the applicant affirmatively demonstrates, by clear and convincing evidence, that the applicant has financial responsibility, character, reputation, integrity and general fitness as such to warrant belief by the commission that the applicant will act honestly, fairly, soundly and efficiently as a gaming licensee.
- (b) If the bureau determines during its investigation that an applicant has failed to: (i) establish the applicant's integrity or the integrity of any affiliate, close associate, financial source or any person required to be qualified by the commission; (ii) demonstrate responsible business practices in any jurisdiction; or (iii) 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, the bureau shall cease any further review and recommend that the commission deny the application.
- (c) If the bureau has determined that an applicant is suitable to receive a gaming license, the bureau shall recommend that the commission commence a review of the applicant's entire application.



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<b>Section 35</b>	ORDER OF BUREAU TO CEASE AND DESIST ACTIVITIES WHICH VIOLATE CHAPTER, REGULATION OR ANY LAW RELATED TO GAMING; PENALTY FOR NONCOMPLIANCE; ACTION FOR INJUNCTION; TEMPORARY ORDER OF SUSPENSION

Section 35. (a) The bureau may issue orders requiring persons to cease any activity which violates this chapter, a regulation adopted hereunder or any law related to gaming in the commonwealth. The bureau may, in its order, require compliance with such terms and conditions as are reasonably necessary to effectuate the purposes of this chapter.

(b) If the bureau finds that a person is not in compliance with any order issued under this section, it shall assess a civil administrative penalty. The penalty may be assessed whether or not the violation was willful. In determining the amount of the civil penalty, the bureau shall consider: (i) the nature of the violation; (ii) the length of time the violation occurred; (iii) the risk to the public and to the integrity of gaming operations created by the conduct of the person; (iv) the seriousness of the conduct of the person; (v) any justification or excuse for such conduct by the person; (vi) the prior history of the particular person involved with respect to gaming activity; (vii) any corrective action taken by the person to prevent future misconduct; and (viii) and other relevant factors.

(c) In addition to collecting any civil penalties recoverable under this chapter or any other general or special law, the bureau may bring an action in the superior court to restrain, prevent or enjoin any conduct prohibited by this chapter or to compel action to comply immediately and fully with any order issued by the bureau. Except in cases of emergency where, in the opinion of the court, immediate abatement of the unlawful conduct is required to protect the public interest, the court may in its decree fix a reasonable time during which the person responsible for the unlawful conduct may abate and correct the violation. The expense of the proceeding shall be recoverable from the subject of the proceeding.

(d) Upon a recommendation from the bureau, the commission shall issue orders to condition, suspend or revoke a license or permit issued under this chapter.

(e) The bureau shall issue an order to cease and desist any activity if the bureau finds that a licensee has engaged in or is about to engage in an act or practice which constitutes a violation of this chapter or any other laws of the commonwealth and may take such affirmative action to effectuate the order. If the bureau finds that the licensee is engaged in an act or practice that would cause irreparable harm to the security and integrity of the gaming establishment or the interests of the commonwealth in ensuring the security and integrity of gaming under this chapter, the bureau may issue a temporary suspension of the license.

(f) Any licensee who has been issued a temporary order of suspension by the bureau shall be entitled to a hearing before the commission on such suspension within 7 days after the order was issued. At the conclusion of the hearing, the commission may issue a final order to condition, suspend or revoke the license in question.

(g) A licensee shall have the right to an adjudicatory hearing on an order issued by the bureau under chapter 30A.



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<b>Section 36</b>	ASSESSMENT OF CIVIL ADMINISTRATIVE PENALTIES FOR FAILURE TO COMPLY WITH PROVISIONS OF CHAPTER OR ANY REGULATION OR ORDER OF THE COMMISSION

Section 36. (a) The bureau may assess a civil administrative penalty on a licensee or registrant who fails to comply with any provision of this chapter or any regulation or order adopted by the commission; provided, however, that the noncompliance shall have occurred after the bureau had given such person written notice of the noncompliance and the time stated in the notice for coming into compliance had elapsed; provided further, that the bureau may assess a penalty without providing written notice if the failure to comply: (i) was part of a pattern of noncompliance and not an isolated instance; (ii) was willful or neglectful and not the result of error; (iii) resulted in a significant breach to the integrity of the gaming establishment or gaming laws of the commonwealth; and (iv) consisted of failure to promptly report to the commission any knowledge of evidence or circumstances that would cause a reasonable person to believe that a violation of this chapter had been committed. The civil administrative penalty shall be in addition to any other civil penalty that may be prescribed by law.

(b) For the purpose of determining whether such noncompliance was part of a pattern of noncompliance and not an isolated instance, the bureau shall consider, without limitation: (i) whether the bureau had previously notified the person of such noncompliance on more than 1 occasion during the previous month or of any noncompliance with the same provision of a law, regulation, order, license or approval as the current noncompliance during the previous 6-month period; or (ii) whether the current and previous noncompliances, considered together, indicate a potential threat to the integrity of the gaming establishment and gaming in the commonwealth or an interference with the commission's ability to efficiently and effectively regulate gaming in the commonwealth and enforce any regulation, license or order. If a licensee or registrant who has received a notice of noncompliance fails to come into compliance within the time period stated in the notice, the civil administrative penalty may be assessed by the bureau upon the licensee or registrant from the date of receipt of such notice.

(c) Whenever the bureau seeks to assess a civil administrative penalty on a licensee or registrant, the bureau shall cause to be served upon the licensee or registrant, either by service in hand or by certified mail, return receipt requested, a written notice of its intent to assess a civil administrative penalty which shall include a concise statement of the alleged act or omission for which such civil administrative penalty is sought to be assessed, each law, regulation, order, license or approval which has not been complied with as a result of such alleged act or omission, the amount which the bureau seeks to assess as a civil administrative penalty for each alleged act or omission, a statement of the licensee's or registrant's right to an adjudicatory hearing on the proposed assessment, the requirements the licensee or registrant shall comply with to avoid being deemed to have waived the right to an adjudicatory hearing and the manner of payment thereof if the person elects to pay the penalty and waive an adjudicatory hearing. After written notice of noncompliance or intent to assess a civil

administrative penalty has been given, each day thereafter during which noncompliance occurs or continues shall constitute a separate offense and shall be subject to a separate civil administrative penalty if reasonable efforts have not been made by the licensee or registrant to promptly come into compliance.

(d) Whenever the bureau seeks to assess a civil administrative penalty on a licensee or registrant, the licensee or registrant shall have the right to an adjudicatory hearing under chapter 30A, the provisions of which shall apply except when they are inconsistent with the provisions of this chapter.

(e) A licensee or registrant shall be deemed to have waived its right to an adjudicatory hearing unless, within 21 days of the date of the bureau's notice that it seeks to assess a civil administrative penalty, the licensee or registrant files with the bureau a written statement denying the occurrence of any of the acts or omissions alleged by the bureau in the notice, or asserting that the amount of the proposed civil administrative penalty is excessive. In an adjudicatory hearing authorized under chapter 30A, the bureau shall, by a preponderance of the evidence, prove the occurrence of each act or omission alleged by the bureau.

(f) If a licensee or registrant waives the right to an adjudicatory hearing, the proposed civil administrative penalty shall be final immediately upon such waiver. If a civil administrative penalty is assessed at the conclusion of an adjudicatory hearing, the civil administrative penalty shall be final upon the expiration of 30 days if no action for judicial review of the decision is commenced under chapter 30A.

(g) A licensee or registrant who institutes proceedings for judicial review of the final assessment of a civil administrative penalty shall place the full amount of the final assessment in an interest-bearing escrow account in the custody of the clerk or magistrate of the reviewing court. The establishment of an interest-bearing escrow account shall be a condition precedent to the jurisdiction of the reviewing court unless the party seeking judicial review demonstrates in a preliminary hearing held within 20 days after the filing of the complaint either the presence of a substantial question for review by the court or an inability to pay. Upon such a demonstration, the court may grant an extension or waiver of the interest-bearing escrow account or may require, in lieu of such interest-bearing escrow account, the posting of a bond payable directly to the commonwealth in the amount of 125 per cent of the assessed penalty. If, after judicial review, in a case where the requirement for an escrow account has been waived, and in cases where a bond has been posted in lieu of such requirement, the court affirms, in whole or in part, the assessment of a civil administrative penalty, the commission shall be paid the amount thereof together with interest at the rate provided in section 6C of chapter 231. If, after such review in a case where an interest-bearing escrow account has been established, the court affirms the assessment of such penalty, in whole or in part, the commission shall be paid the amount thereof together with the accumulated interest in the interest-bearing escrow account. If the court sets aside the assessment of a civil administrative penalty in a case where the amount of such penalty has been deposited in an interest-bearing escrow account, the licensee or registrant on whom the civil administrative penalty was assessed shall be repaid the amount so set aside, together with the accumulated interest thereon.

(h) Each licensee or registrant who fails to timely pay a civil administrative penalty and each person who issues a bond under this section and who fails to timely pay to the commission the amount required hereunder, shall be liable to the commonwealth for up to 3 times the amount of the civil administrative penalty, together with costs, plus interest from the time the civil administrative penalty became final and attorneys' fees, including all costs and attorneys' fees incurred directly in the collection thereof. The rate of interest shall be the rate provided in section 6C of chapter 231. The bureau shall be authorized to require that the amount of a civil administrative penalty imposed under this section exceed any economic benefit realized by a person for noncompliance.



205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 112.00: REQUIRED INFORMATION AND APPLICANT COOPERATION

Section

- 112.01: Additional Information
- 112.02: Obligation to Cooperate
- 112.03: Obligation to Provide Truthful Information

112.01: Additional information

(1) The commission, the bureau or their agents and employees may request additional information and documents from an applicant for a gaming license including all qualifiers, key gaming employee license, gaming employee license, gaming service employee registration, any vendor license or registration, or any other license or registration required in accordance with M.G.L. c. 23K or 205 CMR throughout the application review process including after the application has been deemed administratively complete under 205 CMR 111.00: *Phase I Application Requirements* and 205 CMR 118.03: *RFA-2 Administrative Completeness Review*. Failure by the applicant to timely submit the additional information as requested by the commission, the bureau or their agents and employees may be grounds, in the discretion of the commission, for denial of the application.

(2) All applicants, licensees, registrants and qualifiers under M.G.L. c. 23K and 205 CMR shall comply with all requests of the commission, the bureau and their agents and employees for information and documents as authorized by M.G.L. c. 23K and 205 CMR.

112.02: Obligation to Cooperate

(1) Applicants, licensees, registrants and qualifiers shall respond within ten days or within the time specified in an information request by the commission, the bureau and their agents and employees under 205 CMR 112.01 to said information request.

(2) All applicants, licensees, registrants and qualifiers under M.G.L. c. 23K shall have a continuing duty to provide all information and documents requested by the commission, bureau, and their agents and employees and to cooperate in any investigation or hearing conducted by the commission, bureau, and their agents and employees, as authorized by M.G.L. c. 23K. Without limitation, an applicant, licensee, registrant and qualifier shall have a continuing duty to provide updated information to the commission, the bureau and their agents and employees in connection with the Phase 1 investigation by the bureau pursuant to 205 CMR 115.03: *Phase 1 Investigation and Recommendations by the Bureau*, the Phase 2 application review conducted in accordance with 205 CMR 118.00: *Phase 2 Administrative Proceedings*, an investigation commenced after submission of an application for licensure or registration in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations* and any hearing by the commission or the bureau pursuant to 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

(3) If the commission determines that an applicant, licensee, registrant, or qualifier has knowingly withheld information, knowingly failed to provide information or documents requested by the commission, bureau, or their agents and employees, or knowingly failed to cooperate with any investigation or hearing conducted by the commission, bureau, or their agents and employees, the commission may, with respect to such person:

- (a) Find that person ineligible to hold a license or registration or be qualified in connection with a license;
- (b) Suspend the relevant license, registration or qualification; or
- (c) Revoke the relevant license, registration or qualification.

112.03: Obligation to Provide Truthful Information

(1) No applicant, licensee, registrant or qualifier shall knowingly provide materially false or misleading information to the commission, the bureau, or their agents and employees.

205 CMR: MASSACHUSETTS GAMING COMMISSION

112.03: continued

(2) If the commission determines that an applicant, licensee, registrant, or qualifier has knowingly provided materially false or misleading information to the commission, the bureau, or their agents and employees, the commission shall, with respect to such person:

- (a) Find that person ineligible to hold a license or registration or be qualified in connection with a license;
- (b) Suspend, condition or revoke the relevant license, registration or qualification.

REGULATORY AUTHORITY

205 CMR 112.00: M.G.L. c. 23K, §§ 4(37), 5, and 13.

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 115.00: PHASE 1 AND NEW QUALIFIER SUITABILITY DETERMINATION, STANDARDS, AND PROCEDURES

Section

- 115.01: Phase 1 and New Qualifier Determination Standards
- 115.02: Phase 1 and New Qualifier Procedures
- 115.03: Phase 1 and New Qualifier Investigation and Recommendations by the Bureau
- 115.04: Phase 1 and New Qualifier Proceedings by the Commission
- 115.05: Phase 1 and New Qualifier Determination by the Commission

115.01: Phase 1 and New Qualifier Determination Standards

- (1) **Phase 1 Determination Standards.** The Commission shall not issue an affirmative determination of suitability for any Category 1 or Category 2 applicants unless:
  - (a) The applicant meets the standards in M.G.L. c. 23K, §§ 12, 16, 46 and 47.
  - (b) The applicant complies with the provisions of 205 CMR 111.00: *Phase 1 Application Requirements* and 205 CMR 115.00.
  - (c) The Commission has determined that the applicant has demonstrated financial stability pursuant to 205 CMR 117.00: *Phase 1 Determination of Financial Stability*.
  - (d) All qualifiers under 205 CMR 116.02: *Persons Required to be Qualified* have been determined to be suitable by the Commission or received a waiver under 205 CMR 116.03: *Waivers*.
- (2) **Burden of Proof.** All applicants for a Phase 1 suitability determination must establish their qualifications by clear and convincing evidence.
- (3) **New Qualifiers.** Subsequent to the issuance of a positive determination of suitability in accordance with 205 CMR 115.05(3) relative to a gaming licensee or applicant for a gaming license, if a new person is designated by the bureau as a person required to be qualified in accordance with 205 CMR 116.02: *Persons Required to be Qualified*, they shall submit a completed application to the bureau. An entity qualifier shall submit to the bureau a *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies* in accordance with 205 CMR 111.02. An individual qualifier shall submit to the bureau a *Multi-jurisdictional Personal History Disclosure Form* in accordance with 205 CMR 111.03 and a *Massachusetts Supplemental Form* in accordance with 205 CMR 111.04. A new qualifier designated in accordance with 205 CMR 116.02: *Persons Required to be Qualified* must establish their qualifications and meet the standards in M.G.L. c. 23K, §§ 12 and 16 by clear and convincing evidence and shall be subject to all applicable procedures contained in 205 CMR 115.00.
- (4) **Continuing Duty.** Once issued a positive determination of suitability, the gaming licensee and all qualifiers shall have a continuing duty to maintain suitability in accordance with 205 CMR 115.01(1) and (2). The gaming licensee and each qualifier shall have a continuing duty to notify and update the IEB, in writing, within ten days of the occurrence, unless an alternative filing time is authorized by the executive director, or where applicable, gaining knowledge of the following:
  - (a) Any denial, suspension or revocation by a government agency in any jurisdiction of a gaming related license, registration, certification, permit or approval held by or applied for by the gaming licensee or qualifier;
  - (b) Any discipline, including a fine or warning, related to gaming operations imposed upon the gaming licensee or qualifier by any government agency in any jurisdiction;
  - (c) Any fine related to gaming operations assessed on any gaming entity owned or operated by the parent to the gaming licensee by any government agency in any jurisdiction.
  - (d) Any arrest, indictment, charge or criminal conviction of any qualifier in any jurisdiction;
  - (e) Any complaints, allegations, or notice of investigation thereof made or known to be contemplated by a gaming regulator or other governmental agency against the gaming licensee, qualifier, or any gaming entity owned or operated by the parent to the gaming licensee, of which the gaming licensee or qualifier is or should reasonably be aware, involving conduct that if substantiated could reasonably lead to potential revocation or suspension of the license or approval held by the gaming licensee, qualifier, or gaming entity owned or operated by the parent to the gaming licensee, in that jurisdiction and/or imposition of a fine of \$50,000 or greater;

205 CMR: MASSACHUSETTS GAMING COMMISSION

115.01: continued

- (f) Any reports, complaints, allegations, or material legal proceedings made, commenced, or known to be contemplated by a governmental agency against the gaming licensee or qualifier, of which the gaming licensee or qualifier is or should reasonably be aware, involving conduct that if substantiated could reasonably lead to potential criminal charges including, but not limited to, allegations of theft or embezzlement;
- (g) Any information known or that should reasonably be known to the gaming licensee or qualifier, including by way of receipt of a subpoena, that the gaming licensee or qualifier is or may be the subject of a criminal investigation by a law enforcement or regulatory agency;
- (h) Any exclusion or barring of a qualifier from any casino, gaming establishment or gambling/gaming related entity in any jurisdiction;
- (i) The termination, suspension from employment, or other discipline of any key gaming employee licensed in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations* or qualifier;
- (j) Any material pending legal proceedings required to be reported in accordance with 17 CFR 229.103 - (Item 103) Legal proceedings. For purposes of 205 CMR 115.01(4)(j) the registrant referred to in 17 CFR 229.103 - (Item 103) shall be both the gaming licensee and the parent company of the gaming licensee as determined by the IEB. Additionally, the gaming licensee and each qualifier shall provide notice of any pending legal proceeding which includes any allegation of fraudulent conduct by the gaming licensee or a qualifier, that may reasonably threaten the economic viability of the gaming licensee or a qualifier, or that alleges a pattern of improper conduct by the gaming licensee or a qualifier over a sustained period of time;
- (k) Any significant financial event related to a gaming licensee or entity qualifier. For purposes of 205 CMR 115.01(4)(k), a significant financial event means a merger, acquisition, consolidation, debt restructuring, material change in debt rating by major credit rating agencies (US/International), legal entity change, material ownership change, the assessment of a fine or penalty of \$250,000 or greater by the SEC or international equivalent, restatement of previously issued financial statement(s), late filing of financial statement(s) with the SEC or international equivalent, US or international equivalent bankruptcy petition, default of financial debt covenants and receivership, disposal of a material business segment or asset, or adverse action(s) taken by the IRS;
- (l) Issuance of an "Adverse" or "Qualified" audit opinion, or the international equivalent, by an independent accountant to the gaming licensee or qualifier;
- (m) A change in accounting firm engaged to perform attestation and/or assurance services for the gaming licensee or qualifier; and
- (n) Issuance of a delisting notice from a United States or international stock exchange relative to the gaming licensee or qualifier.

115.02: Phase 1 and New Qualifier Procedures

- (1) When a completed RFA-I application, *Multi-jurisdictional Personal History Disclosure Form, Massachusetts Supplemental Form, or Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies* is filed, the application shall be referred by the Commission to the bureau for a determination of completeness and investigation.
- (2) **Determination of Administrative Completeness.** After receiving the application containing the information required by 205 CMR 111.02: *Business Entity Disclosure Form - Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies* or 205 CMR 111.03: *Multi-jurisdictional Personal History Disclosure Form* and 205 CMR 111.04: *Massachusetts Supplemental Form*, the bureau will either determine that the application is sufficiently complete for purposes of initiating substantive review or request additional information from the applicant.
- (3) **Notice.** After the bureau has determined that an application is administratively complete, in accordance with 205 CMR 115.02(2), it shall notify the applicant or new qualifier of such determination.

115.03: Phase I and New Qualifier Investigation and Recommendations by the Bureau

(1) The bureau shall conduct an investigation into the qualifications and suitability of all applicants and qualifiers, as provided for in M.G.L. c. 23K, §§ 12 and 16. The bureau may conduct the investigation, in whole or in part, with the assistance of one or more contractor investigators pursuant to 205 CMR 105.10: *Authority to Retain and Utilize Contractor Investigators*.

(2) At the completion of the bureau's investigation, it shall submit a written report to the Commission. At a minimum, this report will include: recommendations pursuant to M.G.L. c. 23K, §§ 12, 14(i) and 16 and findings of fact pursuant to M.G.L. c. 23K, § 17(f), as required, relative to the suitability of the applicant for a gaming license and of any new qualifiers.

115.04: Phase I and New Qualifier Proceedings by the Commission

(1) After the Commission has received the bureau's report under 205 CMR 115.03(2) it shall provide a copy to the applicant or new qualifier and the Commission shall determine whether it shall initiate a process for a public hearing or adjudicatory proceeding. However, the Commission may only utilize the public hearing process with the qualifier's consent.

(2) **Adjudicatory Proceeding.** If the Commission determines that an adjudicatory proceeding shall be held, the Commission shall conduct an adjudicatory proceeding pursuant to 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings* on the report by the bureau concerning the applicant pursuant to 205 CMR 115.03(2). The Commission will issue a public notice in advance of the adjudicatory proceeding stating the date, time and place of the hearing.

(3) **Public Hearing.** If the Commission determines that a public hearing should be held, the Commission shall review the bureau's suitability report in a public hearing, subject to redaction of confidential and exempt information described in 205 CMR 103.02(1) through (5). The Commission will issue a notice in advance of the public hearing stating the date, time and place of the hearing and the form (oral or written) and conditions pursuant to which the Commission will receive public comments.

115.05: Phase I and New Qualifier Determination by the Commission

(1) After the proceedings under 205 CMR 115.04, the Commission shall issue a written determination of suitability pursuant to M.G.L. c. 23K, §§ 4(15), 12 and 17.

(2) **Negative Determination.** If the Commission finds that an applicant or new qualifier failed to meet its burden of demonstrating compliance with the suitability standards in M.G.L. c. 23K and 205 CMR 115.00, the Commission shall issue a negative determination of suitability.

(3) **Positive Determination.** If the Commission finds that an applicant or new qualifier has met its burden of demonstrating compliance with the suitability in M.G.L. c. 23K and 205 CMR 115.00, the Commission shall issue a positive determination of suitability which may include conditions and restrictions.

(4) The Commission shall not entertain a Phase 2 application for any applicant unless and until the Commission has issued a positive suitability determination on that applicant.

(5) **No Appeal from Commission's Determination of Suitability.** Pursuant to M.L.G. c. 23K, § 17(g), the applicant or qualifier shall not be entitled to any further review.

(6) A host community may not hold an election in accordance with M.G.L. c. 23, § 15(13) until the Commission has issued a positive determination of suitability to the applicant, in accordance with 205 CMR 115.05(3) unless the following conditions are satisfied:

- (a) Prior to the request by the applicant for an election, in accordance with 205 CMR 124.02(1): *Request for an Election*, the governing body of the community formally approves of holding the election prior to a positive determination of suitability having been issued to the applicant by the Commission; and



205 CMR: MASSACHUSETTS GAMING COMMISSION

115.05: continued

(b) At the expense of the applicant, prior to the election the community has conducted a process for informing the community about the Commission's determination of suitability standards and procedures, which shall include, but not be limited to, the provision of a notice designed to be received by voting households within the community informing such households that an election is to be held for which the applicant has yet to be issued a positive determination of suitability, that the Commission will make its determination of suitability after completing a thorough background investigation of the applicant, its principal operating officers and investors, and that the Commission will not permit the applicant or its principal operating officers or investors to proceed with the application unless it determines that they are suitable to operate a gaming facility in Massachusetts. The content of the notice shall be forwarded to the Commission for approval prior to dissemination. A description of other methods to so inform the community about the Commission's determination of suitability standards and procedures shall also be forwarded to the Commission prior to holding of the election. Any failure to issue the notice to one or more voting households shall not be deemed by the Commission to be a failure to meet the requirements of 205 CMR 115.05(6), provided that a community demonstrates reasonable efforts to comply with the requirements of 205 CMR 115.05(6).

REGULATORY AUTHORITY

205 CMR 115.00: M.G.L. c. 23K, §§ 4(37), 5, 12, 13, 14(i), 16, 17, 46 and 47.

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 116.00: PERSONS REQUIRED TO BE LICENSED OR QUALIFIED

Section

- 116.01: Persons Required to be Licensed
- 116.02: Persons Required to be Qualified
- 116.03: Waivers
- 116.04: Notification of Anticipated or Actual Changes in Directors, Officers or Equivalent Qualifiers
- 116.05: Notification of New Financial Sources
- 116.06: Notification Concerning Certain New Qualifiers of Holding, Intermediary or Subsidiary Companies and New Qualifying Entities
- 116.07: Qualification of New Qualifiers
- 116.08: Notice
- 116.09: Approval
- 116.10: Interim Authorization
- 116.11: Unsuitable Qualifiers

116.01: Persons Required to be Licensed

No Category 1 or Category 2 license shall be issued by the commission or shall remain in effect unless and until the applicant and all qualifiers identified in 205 CMR 116.00 have been found by the commission to meet all standards necessary for a Phase 1 determination of suitability under 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determination, Standards and Procedures.*

116.02: Persons Required to be Qualified

(1) The following persons shall be required to qualify as part of the Phase 1 or new qualifier determination for a Category 1 or Category 2 license:

- (a) If the applicant is a corporation:
  - 1. Each officer
  - 2. Each director
  - 3. In the judgment of the commission in accordance with this M.G.L. c. 23K:
    - a. each shareholder holding 5% or more of the common stock of the company
    - b. each lender
    - c. each holder of evidence of indebtedness
    - d. each underwriter
    - e. each close associate
    - f. each executive
    - g. each agent
    - h. each employee
- (b) If the applicant is a limited liability corporation:
  - 1. Each Member
  - 2. Each transferee of a Member's interest
  - 3. Each Director
  - 4. Each Manager
  - 5. In the judgment of the commission in accordance with M.G.L. c. 23K:
    - a. each lender
    - b. each holder of evidence of indebtedness
    - c. each underwriter
    - d. each close associate
    - e. each executive
    - f. each agent
- (c) If the applicant is a limited partnership:
  - 1. Each General Partner
  - 2. Each Limited Partner
  - 3. In the judgment of the commission in accordance with this M.G.L. c. 23K:
    - a. each lender
    - b. each holder of evidence of indebtedness
    - c. each underwriter
    - d. each close associate
    - e. each executive
    - f. each agent

205 CMR: MASSACHUSETTS GAMING COMMISSION

116.02: continued

- (d) If the applicant is a partnership:
  - 1. Each Partner
  - 2. In the judgment of the commission in accordance with this M.G.L. c. 23K:
    - a. each lender
    - b. each holder of evidence of indebtedness
    - c. each underwriter
    - d. each close associate
    - e. each executive
    - f. each agent
    - e. In all cases, any person who, in the opinion of the commission, can exercise control or provide direction to a gaming licensee or applicant for a gaming license or holding, intermediary or subsidiary companies thereof.

(2) **Other Qualifiers.** The commission may, at its sole discretion, require other persons or companies that have a business association of any kind with the applicant or gaming licensee to undergo a Phase 1 or new qualifier review and determination process under 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determination, Standards and Procedures*. These affiliated companies or persons include, but are not limited to, holding, intermediary or subsidiary companies of the applicant.

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 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.

205 CMR: MASSACHUSETTS GAMING COMMISSION

116.03: continued

(3) Any person may seek a waiver under 205 CMR 116.03(l) 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 1 and New Qualifier Suitability Determination, Standards and Procedures* for said party.

116.04: Notification of Anticipated or Actual Changes in Directors, Officers or Equivalent Qualifiers

(1) Each Category 1 and Category 2 applicant or licensee shall notify the commission, in writing, as soon as it becomes aware, of the proposed appointment, appointment, proposed nomination, nomination, election, intended resignation, resignation, incapacitation or death of any qualifier.

(2) Upon receipt of a notice under 205 CMR 116.04(1), the commission shall refer the matter to the bureau for appropriate handling including, but not limited to, a notice to the new qualifier requiring the filing of an appropriate application and the subsequent investigation of that application.

116.05: Notification of New Financial Sources

(1) Each Category 1 and Category 2 applicant or licensee shall immediately notify the commission, in writing, as soon as it becomes aware that it intends to enter into a transaction bearing any relation to its gaming establishment project that may result in new persons involved in the financing of the gaming establishment.

(2) Upon receipt of a notice under 205 CMR 116.05(1), the commission shall refer the matter to the bureau for appropriate handling, including, but not limited to, a notice to the new financial source requiring the filing of an appropriate application and the subsequent investigation of that application.

116.06: Notification Concerning Certain New Qualifiers of Holding, Intermediary or Subsidiary Companies and New Qualifying Entities

(1) Each Category 1 and Category 2 applicant or licensee shall immediately notify the commission, in writing, as soon as it becomes aware of any new persons required to be qualified in connection with the holding, intermediary or subsidiary company of that Category 1 or Category 2 applicant or licensee in accordance with M.G.L. c. 23K.

(2) Upon receipt of a notice under 205 CMR 116.06(1), the commission shall refer the matter to the bureau for appropriate handling, including, but not limited to, a notice to the new person requiring the filing of an appropriate application and the subsequent investigation of that application.

116.07: Qualification of New Qualifiers for Gaming Licensees

- (1) No person requiring qualification pursuant to 205 CMR 116.02(1) may perform any duties or exercise any powers relating to the position that said qualifier is seeking to assume unless the individual notifies the Bureau in writing within 30 days of appointment to the position. Such notification shall be accompanied by a completed Multi Jurisdictional Personal History Disclosure Form and Massachusetts Supplement Form. Following such notification and submission of the completed Forms, the person may continue to perform duties and exercise powers relating to the position pending qualification.
- (2) A person with reason to believe that his or her new position may require qualification pursuant to 205 CMR 116.02(1) shall notify the Bureau in writing within 30 days of appointment to the position. Such notification shall be accompanied by a summary of the responsibilities and/or features of the position. The Bureau shall determine whether the person shall be designated a qualifier pursuant to 205 CMR 116.02(1) and shall notify the person of such designation in writing. Within 30 days of designation as a qualifier, the person shall submit a completed Multi Jurisdictional Personal History Disclosure Form and Massachusetts Supplement Form. Following submission of the completed Forms, the person may continue to perform duties and exercise powers relating to the position pending qualification.
- (3) The Bureau shall review the Forms submitted by the new qualifier, as well as such other information that the Bureau may request, and, upon completion of its investigation, shall make a recommendation to the Commission in accordance with 205 CMR 116.01 whether the new qualifier meets the standards for suitability under 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determination, Standards, and Procedures*.
- (4) Upon notification by the Bureau that reasonable cause exists to believe the qualifier may not ultimately be found suitable, a gaming licensee shall promptly remove the qualifier from his or her position until such time as the commission makes its determination on suitability.

116.08: Notice

- (1) No person shall transfer, or enter into an agreement to transfer, a gaming license, a direct or indirect interest in the gaming license, or a gaming establishment including the structure, real property, premises, facility, personal interest or pecuniary interest under a gaming license or enter into an option contract, management contract or other agreement or contract providing for such transfer in the present or future, or enter into an agreement granting the retention of a security interest in property delivered to the gaming licensee without prior notification to the bureau.
- (2) Notwithstanding 205 CMR 116.08(1), the following transfers do not require prior notification to the bureau:
  - (a) The open market transfer of a publicly traded interest in a gaming licensee, or holding, parent or intermediary company of a gaming licensee where such transfer results in the transferee holding less than a 5% interest in the holding, parent or intermediary company.
  - (b) The granting of a security interest in return for financing to a *bona fide* banking institution, as defined in M.G.L. c. 167A, § 1, or a commercial financial institution as defined in M.G.L. c. 63, § 1, so long as the *bona fide* banking institution or the commercial financial institution does not, by virtue of its security interest, possess the ability or intention to influence or affect the affairs or operations of a gaming licensee or applicant or qualifier for a gaming license. The gaming licensee, applicant, or qualifier shall at a minimum, however, provide notice of the transaction promptly to the bureau upon its consummation.

116.09: Approval

- (1) Any transfer for which notice is required under 205 CMR 116.08 that results in a new qualifier being designated in accordance with 205 CMR 116.02 must be approved by the commission in accordance with 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determination, Standards, and Procedures* which approval shall be subject to the satisfaction of 205 CMR 129.01: *Review of a Proposed Transfer of Interests*. Notwithstanding the provisions of M.G.L. c. 23K, § 21(b)(ii), the commission shall not assess a payment representing the Commonwealth's share of the increased value for the transferred licenses, property or interest, but a transferor or transferee shall be responsible for the payment of all investigatory and other fees provided for in 205 CMR 114.00: *Fees*.

205 CMR: MASSACHUSETTS GAMING COMMISSION

116.09: continued

(2) The commission may reject any transfer requiring approval pursuant to 205 CMR 116.09(1) that it finds would be disadvantageous to the interests of the Commonwealth of Massachusetts. A transfer may be considered disadvantageous to the interests of the Commonwealth if the commission determines that the proposed transferee does not satisfy the applicable considerations set forth in M.G.L. c. 23K, §§ 12, 15, 16, and/or 18, as applicable, 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determination, Standards, and Procedures*, or any other applicable provisions of M.G.L. c. 23K or 205 CMR, and/or the transferee does not satisfy the provisions of 205 CMR 129.01: *Review of a Proposed Transfer of Interests*.

(3) Pursuant to M.G.L. c. 23K, § 20(e), the commission shall not approve the transfer of the category 2 gaming license for five years after the initial issuance of the license unless one of the following has occurred:

- (a) the parent, holding company, or intermediary company of the gaming licensee experiences a change in ownership resulting in a change of control;
- (b) the gaming licensee fails to maintain suitability; or
- (c) the commission determines that other circumstances exist which affect the gaming licensee's ability to operate the gaming establishment successfully.

(4) The commission shall not approve of any transfer that would result in the transferee having a financial interest in more than one gaming license issued by the commission.

116.10: Interim Authorization

(1) **Contractual Transfers**. Whenever any person contracts to transfer a gaming license or a ownership interest in a gaming licensee or its parent, holding or intermediary company, or any real property relating to a gaming establishment, under circumstances which require that the transferee obtain licensure or be found qualified pursuant to 205 CMR 116.02 and/or M.G.L. c. 23K, the contract shall not specify a closing or settlement date which is earlier than 121 days after the submission of a completed RFA-1 application as described in 205 CMR 111.00: *Phase 1 Application Requirements*. Such RFA-1 application shall be accompanied by a fully executed trust agreement in accordance with 205 CMR 116.10(6) which shall be subject to commission approval. Any contract provision which specifies a closing or settlement date sooner than 121 days after submission of the RFA-1 application shall be void for all purposes.

(2) **Transfers of Publicly Traded Securities**. Whenever any person, as a result of a transfer of publicly traded securities of a gaming licensee or its parent, holding or intermediary company, is required to be qualified under 205 CMR 116.02 and/or M.G.L. c. 23K, the person including all related qualifiers shall, within 30 days after a Schedule 13D or 13G is filed with the U.S. Securities and Exchange Commission, or after the bureau notifies the person that qualification is required, or within such additional time as the bureau may for good cause allow, file a completed RFA-1 application for such licensure or qualification as described in 205 CMR 111.00: *Phase 1 Application Requirements*. Such RFA-1 application shall be accompanied by a fully executed trust agreement in accordance with 205 CMR 116.10(6) which shall be subject to commission approval. No extension of the time for filing a completed RFA-1 application shall be granted unless the person submits a written acknowledgement recognizing the jurisdiction of the commission and the obligations imposed by M.G.L. c. 23K and 205 CMR. If a proposed transferee, including all related qualifiers, fails to timely file a complete RFA-1 application, such failure shall constitute a *per se* negative finding of suitability to continue to act as a security holder, and the commission shall take appropriate action including requiring divestiture by the transferee or redemption of the securities by the transferor.

(3) If a prospective transferee files a complete RFA-1 application in a timely manner the commission shall hold a hearing in accordance with 205 CMR 115.04: *Phase 1 and New Qualifier Proceedings* by the Commission and render a decision on the interim authorization of the proposed transferee within 120 days after such filing or, if it is a contractual transfer, prior to the proposed closing or settlement date. If interim authorization is approved for a transfer governed by 205 CMR 116.10(1) then the closing or settlement may occur, and the prospective transferee may hold the securities or interests subject to the provisions of 205 CMR 116.10(4) until a final determination of suitability is made by the commission. If interim authorization is approved for a transfer governed by 205 CMR 116.10(2) then the prospective transferee may continue to hold the securities or interests subject to the provisions of 205 CMR 116.10(4) until a final determination of suitability is made by the commission.

116.10: continued

(4) If, after a hearing, the commission denies interim authorization, there shall be no closing or settlement of a contract to transfer an interest governed by 205 CMR 116.10(1) until the commission makes a final determination on the suitability of the transferee in accordance with 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determination, Standards, and Procedures*. If the commission denies interim authorization for a proposed transfer subject to 205 CMR 116.10(2), all securities and interests subject to the transfer shall be promptly transferred into the trust. If the commission grants interim authorization for any transfer, it may at any time thereafter order all securities and interests subject to the transfer transferred into the trust if it finds reasonable cause to believe that the proposed transferee may be found unsuitable. If a prospective transferee fails or refuses to timely transfer securities and interests into the trust upon direction from the commission said transferee shall be issued a negative determination of suitability.

(5) After determining that a person is required to be qualified in accordance with 205 CMR 116.02, the bureau shall commence an investigation into the suitability of the transferee in accordance with 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determination, Standards, and Procedures*. The bureau shall produce and forward to the commission an interim authorization report no later than 90 days after the date that a completed RFA-1 application is submitted by the proposed transferee that indicates whether after initial inquiry into the transferee's suitability any apparent disqualifiers have been revealed or there is any other known reason why a positive determination of suitability may not ultimately be achieved. The commission may approve interim authorization if it finds that:

- (a) The transferee has submitted all RFA-1 applications as required by 205 CMR 115.01(3): *New Qualifiers*;
- (b) The transferee has submitted a fully executed trust agreement in accordance with 205 CMR 116.10(6);
- (c) The trustee or trustees required under section 205 CMR 116.10(6) have satisfied the qualification criteria applicable to a Key gaming employee-executive in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises*;
- (d) There is no preliminary evidence of anything that would serve to disqualify the transferee from licensure in accordance with M.G.L. c. 23K, §§ 12 and 16 nor is there any other reason known at the time why a positive determination of suitability may not ultimately be achieved;
- (e) The transfer would not violate 205 CMR 116.09(3) or (4);
- (f) The transferee has certified that they are unaware of any reason why the transferee would not be found qualified pursuant to M.G.L. c. 23K, §§ 12 and 16. (If the transferee is other than an individual, the certification shall be made by the chief executive officer or like individual);
- (g) It is in the best interests of the Commonwealth for the gaming establishment to continue to operate pursuant to interim authorization; and
- (h) If the transfer will result in a change of control, the transferee has agreed in writing in accordance with 205 CMR 129.01: *Review of a Proposed Transfer of Interests* to comply with all of the transferor's existing license obligations or has otherwise petitioned the commission for modification or elimination of one or more of those obligations.

If the Commission approves interim authorization, during the period of interim authorization, the bureau shall continue its suitability investigation as may be necessary for a determination of the suitability of the person granted interim authorization. Within nine months after the interim authorization decision, which period may be extended by the commission for one three-month period, the commission shall hold a hearing and render a determination on the suitability of the applicant in accordance with 205 CMR 115.04: *Phase 1 and New Qualifier Proceedings by the Commission*.

(6) **Trust Agreements.** A trust agreement required to be submitted with an RFA-1 application in accordance with 205 CMR 116.10(1) and (2) shall be fully executed upon submission and contain, at a minimum, the following:

- (a) A provision for the transfer and conveyance to the trustee of all of the transferee's proposed present and future right, title and interest in the gaming licensee, or its parent, holding or intermediary company, including all voting rights in securities upon the occurrence of an event described in 205 CMR 116.10(4) or if otherwise directed to do so by the bureau in its discretion, pending a final suitability determination by the commission.

205 CMR: MASSACHUSETTS GAMING COMMISSION

116.10: continued

(b) A provision consistent with the provisions of 205 CMR 116.10 for the distribution of any trust res upon a positive determination of suitability, negative determination of suitability, or at the direction of the commission in accordance with 205 CMR 116.10(8).

(c) A provision identifying the trustee(s) and requiring the trustee to timely submit an application for qualification as a Key Gaming Employee-Executive and be found qualified by the commission in accordance with M.G.L. c. 23K, § 30 and 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*.

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

(e) Any additional provisions the commission deems necessary and desirable.

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

(8) The trust agreement shall remain operative until the commission issues the transferee a positive determination of suitability (and in the event the interest has been placed into the trust, the trustee distributes the trust res) or the commission issues the transferee a negative finding of suitability and the trust res is disposed of in accordance with 205 CMR 116.10(9). The trust shall otherwise only be revocable prior to a determination of suitability being issued upon commission approval at the request of the settlor. In the event of such a request the commission may direct the trustee to dispose of the trust res in accordance with 205 CMR 116.10(9).

(9) If the commission issues a negative determination of suitability in accordance with 205 CMR 115.05: *Phase 1 and New Qualifier Determination by the Commission*, a contract for the transfer of interests shall thereby be terminated for all purposes without liability on the part of the transferor. In the event of such negative determination, where the subject interests have been transferred into a trust in accordance with 205 CMR 116.10(4), the trustee shall endeavor and be authorized to attempt to sell, assign, convey or otherwise dispose of all trust res in accordance with the means approved in accordance with 205 CMR 116.11 or as otherwise directed by the commission. Any subsequent transferee must be appropriately licensed or qualified in accordance with 205 CMR 116.00. The disposition of trust res by the trustee shall be completed within 120 days of the denial of qualification, or within such additional time as the commission may for good cause allow. The proceeds of such disposition shall be distributed to the unsuitable transferee only in an amount not to exceed the lower of the actual cost of the assets to such unsuitable transferee, or the value of such assets calculated as if the investment had been made on the date the assets were transferred into the trust, and any excess remaining proceeds shall be paid to the Massachusetts Gaming Control Fund in accordance with M.G.L. c. 23K, § 57.

116.11: Unsuitable Qualifiers

An unsuitable qualifier may not hold an interest in a gaming license. A gaming licensee's articles of organization or other document governing the sale or transfer of securities or other interests shall contain provisions in a form approved by the commission stating that the sale, assignment, transfer, pledge or other disposition of any security issued by it is conditional and shall be ineffective if disapproved by the commission. Further, a gaming licensee shall have a mechanism approved by the commission in place by which it may effectuate divestiture or redemption of securities, or a like process, in the event of a negative determination of suitability being issued to a person required to be qualified.

REGULATORY AUTHORITY

205 CMR 116.00: M.G.L. c. 23K, §§ 4(37), 5, 12, 14, and 16.