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

Section

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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 I 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;

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(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-1 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 1 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*. Additionally, such an investigation may be conducted at any time after a qualifier is granted a positive determination of suitability to ensure that they continue to meet the suitability standards.

(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/or of any new qualifiers or existing qualifiers.

115.04: Phase 1 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 qualifier and the Commission shall initiate a process for an adjudicatory proceeding.

(2) Adjudicatory Proceeding. When 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 or qualifier pursuant to 205 CMR 115.03(2).

115.05: Phase 1 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 or existing 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 or existing 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

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(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.