205 CMR 116.00: PERSONS REQUIRED TO BE LICENSED OR QUALIFIED

Section

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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

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(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 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 205 CMR 116.00.
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(l) , 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.

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(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*.

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(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 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 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 negative finding of suitability to continue to act as a security holder, and the commission shall take appropriate action including requiring divestiture by the transferee or redemption of the securities by the transferor.

(3) Request for Interim Authorization. If a prospective transferee files an RFA-1 application in a timely manner the commission may then request the bureau to produce an interim authorization report under 205 CMR 116.10(5). Within 30 days after the bureau's submission to the commission of the interim authorization report, the commission shall hold a hearing in accordance with 205 CMR 115.04: *Phase 1 and New Qualifier Proceedings* by the Commission and render a decision on the interim authorization of the proposed transferee. If interim

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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.

(4) Effect of Denial of Interim Authorization. If, the commission does not request the bureau to produce an interim authorization report, or, 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) Bureau Investigation. 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*. If the commission so requests pursuant to 205 CMR 116.10(3), 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, or such later date as the commission may allow, 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. Following a hearing, 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.

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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, 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*. If the commission denies interim authorization, or no interim authorization is requested, the commission and bureau shall proceed with the qualification process pursuant to 205 CMR 116.07, and shall complete that process within 13 months of the submittal of a completed RFA - 1 application, which 13-month period may be further extended 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.

(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) Power of Trustee. The trustee of the trust shall exercise all rights incident to the ownership of the property subject to the trust, and shall be vested with all powers, authority and duties necessary to the unencumbered exercise of such right, and the transferee shall have no right to participate in the earnings of the 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) Termination of Trust Agreement. 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) Effect of Negative Determination of Suitability. 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

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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.