205 CMR 17.00: REVIEW OF A PROPOSED TRANSFER OF INTERESTS IN A RACING MEETING LICENSE

Section

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17.01: Notice

(1) Pursuant to M.G.L. c. 128A, § 11(C), no person, firm, partnership, trust, association or corporation who has been granted a license to conduct a horse or dog racing meeting, or an officer, director or the beneficial owner of ten per cent or more of the stock of a corporation holding such a license, shall sell, transfer, convey or cause to be transferred, singly or in concert with others, more than ten per cent of the value or stock of the facility or corporation so licensed without first obtaining the written approval of the commission, except in the case of a publicly held corporation. The commission shall have the same rights as to transferees as it would have with respect to original applicants for licensure.

(2) Notwithstanding 205 CMR 17.01(1), the following transactions shall not be considered transfers subject M.G.L. c. 128A, § 11(C) and do not require prior notification to or approval of the Bureau:

(a) The open market transfer of a publicly traded interest in a Racing Meeting Licensee, or holding, parent or intermediary company of a Racing Meeting Licensee where such transfer results in the transferee holding less than a 10% interest in the holding, parent or intermediary company. The Racing Meeting Licensee, applicant, or Qualifier shall however, provide notice of the transaction promptly to the Bureau upon its consummation.

(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 intention to influence or affect the affairs or operations of a Racing Meeting Licensee or applicant or Qualifier for a Racing Meeting License. The Racing Meeting Licensee, applicant, or Qualifier shall however, provide notice of the transaction promptly to the Bureau upon its consummation.

17.02: Approval

(1) Any transfer subject to M.G.L. c. 128A, § 11(C) that does not result in a new qualifier being designated in accordance with 205 CMR 15.04(5): *Persons Required to Be Qualified* may be approved by the Commission in a public meeting.

(2) Any transfer subject to M.G.L. c. 128A, § 11(C) that results in a new qualifier being designated in accordance with 205 CMR 15.04(5): *Persons Required to Be Qualified* must be approved by the Commission. Said approval shall be subject to the provisions of 205 CMR 17.04. Both the transferor and transferee shall be jointly and severally responsible for the payment of the investigatory and other fees provided for in 205 CMR 17.05.

(3) In accordance with M.G.L. c. 128A, § 11(C), the commission shall approve such sale, transfer or conveyance unless it finds that the consideration therefor is

(a) inadequate or
(b) without good cause,
(c) that the sale or transfer results in an undesirable concentration of ownership of racing facilities within the commonwealth, or
(d) that the sale or transfer has an adverse impact upon the integrity of the racing industry.

(Mass. Register #1586, 11/6/2026, emergency reg.)

17.02: continued

Without implied limitation, a transfer may be considered to have an adverse impact upon the integrity of the racing industry if the Commission determines that the proposed transferee does not satisfy the applicable considerations set forth in M.G.L. c. 128A, §§ 1, 2, or 3(i); 205 CMR 15.04: *Suitability of New and Existing Licensees, and Qualifiers*; or any other applicable provisions of M.G.L. c. 128A, M.G.L, c. 128C or 205 CMR, or if the transferee does not satisfy the provisions of 205 CMR 17.04. A prospective transferee shall establish its individual qualifications for licensure to the commission by clear and convincing evidence.

(4) The Commission shall not approve the transfer of a Racing Meeting License for one year after the initial issuance of the license unless one of the following occurs:

(a) the parent, holding company, or intermediary company of the Racing Meeting Licensee experiences a change in ownership resulting in a change of control;

(b) the Racing Meeting Licensee fails to maintain suitability; or

(c) the Commission determines that other circumstances exist which affect the Racing Meeting Licensee's ability to conduct racing operations successfully.

17.03: Interim Authorization

(1) Contractual Transfers. Whenever any person contracts to transfer a Racing Meeting License or an ownership interest in a Racing Meeting Licensee, as defined in 205 CMR 15.01: *Authority and Definitions*, or its parent, holding or intermediary company, or any property relating to a racing operation, under circumstances which require that the transferee obtain licensure or be found qualified pursuant to 205 CMR 15.04: *Suitability of New and Existing Licensees, and Qualifiers* and/or M.G.L. c. 128A, the contract shall not specify a closing or settlement date which is earlier than 121 days after the submission of a completed transfer application. Said application shall consist of:

(a) For the transferee, the survey described at 205 CMR 15.02(1)(a)1.;

(b) For the transferee and each new qualifier, the materials described at 205 CMR 15.02(1)(a)2. and 3., as appropriate;

(c) For the transferee and each new qualifier, any attestation forms required by the Bureau;

(d) For the transferee, the materials described at 205 CMR 15.02(1)(c) through (e), as appropriate

(e) Application for Racing License Transfer form as provided by the Commission;

(f) A fully executed trust agreement in accordance with 205 CMR 17.03(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 transfer 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 Racing Meeting Licensee or its parent, holding or intermediary company, is required to be qualified under 205 CMR 15.04(5): *Persons Required to Be Qualified*, 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 transfer application as described in 205 CMR 17.03(1). No extension of the time for filing a completed transfer 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. 128A and 205 CMR. If a proposed transferee, including all related qualifiers, fails to timely file a complete transfer 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.

17.03: continued

(3) If a prospective transferee files a complete transfer application in a timely manner the Commission may then request the bureau to produce an interim authorization report. 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 101.01(2)(d) and render a decision on the interim authorization of the proposed transferee. If interim authorization is approved for a transfer governed by 205 CMR 17.03(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 17.03(4) until a final determination of suitability is made by the commission. If interim authorization is approved for a transfer governed by 205 CMR 17.03(2) then the prospective transferee may continue to hold the securities or interests subject to the provisions of 205 CMR 17.03(4) until a final determination of suitability is made by the Commission.

(4) 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 17.03(1) until the Commission makes a final determination on the suitability of the transferee in accordance with 205 CMR 15.04(1): *Durable Suitability Determinations*. If the Commission denies interim authorization for a proposed transfer subject to 205 CMR 17.03(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 15.04(5): *Persons Required to Be Qualified*, the Bureau shall commence an investigation into the suitability of the transferee, which may be limited to the information required in accordance with 205 CMR 15.04(2)(b). If the Commission so requests pursuant to 205 CMR 17.03(3), the Bureau shall produce and forward to the Commission an interim authorization report no later than 90 days after the date that a complete transfer application is submitted by the proposed transferee, or such later date as the Commission may allow. Following a hearing, the commission may approve interim authorization if it finds that:

(a) The transferee has submitted a complete transfer application;

(b) The transferee has submitted a fully executed trust agreement in accordance with 205 CMR 17.03(6);

(c) The trustee or trustees required under 205 CMR 17.03(6) have satisfied the qualification criteria applicable to qualifiers;

(d) There is no preliminary evidence to disqualify the transferee from licensure in accordance with M.G.L. c. 128A, §§ 2, 3i, 5C, M.G.L. c. 128C or 205 CMR 15.04: *Suitability of New and Existing Licensees, and Qualifiers*, 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 17.02(3) or (4);

(f) It is in the best interests of the Commonwealth for the Racing Meeting Operation to continue to operate pursuant to interim authorization; and

(g) If the transfer will result in a change of control, the transferee has agreed in writing in accordance with 205 CMR 17.04 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, the Commission shall hold a hearing and render a determination on the suitability of the applicant in accordance with 205 CMR 15.04(1): *Durable Suitability Determinations*. 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 117.00: *Phase 1 Determination of Financial Stability* and shall complete the process within thirteen months of the submittal of a completed Racing License Transfer application, which 13 month period may be further extended by the Commission.

17.03: continued

(6) Trust Agreements. A trust agreement required to be submitted with a transfer application in accordance with 205 CMR 17.03(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 racing meeting licensee, or its parent, holding or intermediary company, including all voting rights in securities upon the occurrence of an event described in 205 CMR 17.03(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 17.03 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 17.03(8).

(c) A provision identifying the trustee(s) and requiring the trustee to timely submit the materials described in 205 CMR 15.02(1)(a), as applicable, in order to be found qualified by the Commission in accordance with 205 CMR 15.04(1): *Durable Suitability Determinations*.

(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) A mechanism by which the trustee may effectuate divestiture or redemption of securities, or a like process, in the event of a negative determination of suitability being issued to the transferee.

(f) 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 Racing meeting 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 in accordance with 205 CMR 15.04(1)(e) (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 17.03(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 17.03(9).

(9) If the Commission issues a negative determination of suitability in accordance with 205 CMR 15.04(1)(e)1., 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 17.03(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 established in accordance with 205 CMR 17.03(6)(e) or as otherwise directed by the commission. Any subsequent transferee must be appropriately licensed or qualified in accordance with 205 CMR 17.00. 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 Commission.

17.04: Review of a Proposed Transfer of Interests

(1) If a proposed transfer of interests is subject to M.G.L. c. 128A §11(C), the proposed transferee shall, as a condition of the transfer, unless otherwise allowed by the Commission in accordance with 205 CMR 17.01(2), provide the Commission with a written agreement to assume all obligations of the Racing Meeting License including, but not limited to, commitments made in the Application for Racing License Transfer, all terms and conditions contained in the Racing Meeting License, Operation Certificate, and all permits, licenses, and other approvals issued by any federal, state, and local governmental agencies. Additionally, the written agreement shall include an attestation from the transferor and transferee, accompanied by relevant supporting documentation, that said transfer comports with all applicable terms and conditions of the aforementioned instruments.

(2) Prior to submitting the written agreement referenced in 205 CMR 17.04(1), a proposed transferee may petition the Commission to allow for the modification of any terms, conditions, or agreements applicable to the Racing Meeting License held by the transferor, provided that the modifications are not inconsistent with any applicable provisions of M.G.L. c. 128A, M.G.L. c. 128C, 205 CMR, and St. 2025, c. 73 §§ 58 through 67, 69 through 70, 73, 74 and 180.

(3) Notwithstanding 205 CMR 17.04(1):

(a) The Commission may in its discretion require submission of any additional application material as described in 205 CMR 15.02: *Racing Meeting License Application,* and 15.04: *Suitability of New and Existing Licensees, and Qualifiers* to assist in its determination as to whether to allow a modification in accordance with 205 CMR 17.04(2) and/or approve a transfer of interests in accordance with 205 CMR 17.02.

(b) A proposed transferee shall have the same duty to cooperate with such requests for information as does an Applicant under 205 CMR 15.08: *Additional Information and Cooperation of Racing Meeting Applicants and Licensees.*

17.05: Fees for Review of Transfer

(1) The transferor shall be responsible for paying to the Commission all costs incurred by the Commission, directly or indirectly, for reviewing any transfer that requires prior notification to the Bureau, in accordance with 205 CMR 17.02(2).

(2) For purposes of 205 CMR 17.05, the costs associated with reviewing the transfer shall include, without limitation:

(a) All costs for conducting an investigation into any new qualifiers, the transferee, the trustee, and any other person subject to the jurisdiction of the Commission under M.G.L. c. 128A relating to the transfer in question; and

(b) All fees for services, disbursements, out of pocket costs, allocated overhead, processing charges, administrative expenses, professional fees, and other costs directly or indirectly incurred by the Commission, including without limitation all such amounts incurred by the Commission to and through the Bureau, the Division, the Gaming Enforcement Unit, the Gaming Liquor Enforcement Unit, and any contract investigator.

(3) If, the Commission establishes a schedule of fees, wages, and other charges for the cost of investigating applicants, said schedule shall also govern the assessment of costs under 205 CMR 17.04.

(4) The Commission shall assess to the transferor all other costs paid by or for the Commission, directly or indirectly, to any other Person for conducting an investigation into a transferor plus an appropriate percent for overhead, processing and administrative expenses.

(5) Other Requirements for Review Fees.

(a) All required review fees pursuant to 205 CMR 17.05 shall be non-refundable, due and payable notwithstanding the withdrawal, abandonment, or denial of any transfer application.

(b) The transferor and the transferee shall be jointly and severally liable for any amounts chargeable to the transferor pursuant to 205 CMR 17.05.

REGULATORY AUTHORITY

205 CMR 17.00: M.G.L. c. 128A, §§ 2, 3(i), 5C and 11C; and M.G.L. c. 128C.