

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 215.00: APPLICANT AND QUALIFIER SUITABILITY DETERMINATION, STANDARDS, AND PROCEDURES

Section

215.01: Affirmative Suitability Standards for Applicants and Qualifiers

215.02: Persons Required to Be Qualified.

215.01: Affirmative Suitability Standards for Applicants and Qualifiers

(1) Durable Finding of Suitability.

(a) An Applicant or Qualifier shall have the duty to establish its suitability by clear and convincing evidence.

(b) No Applicant shall be determined to be suitable in accordance with 205 CMR 215.01(1) unless and until all Qualifiers identified in 205 CMR 215.02 have been found by the Commission suitable in accordance with 205 CMR 215.01(1).

(c) Before the Commission may determine that an Applicant or Qualifier is suitable in accordance with 205 CMR 215.01(1), the Bureau shall conduct an investigation into the qualifications and suitability of the Applicant or Qualifier, consistent with 205 CMR 115.03(1). At the completion of the Bureau's investigation, it shall submit a written report to the Commission, which will include recommendations and findings of fact relative to the suitability of the Applicant or Qualifier for a Sports Wagering License.

(d) The Commission shall make any finding of suitability in accordance with 205 CMR 215.01(1) after an adjudicatory proceeding pursuant to 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings* concerning the applicant or qualifier pursuant to 205 CMR 215.01(1)(c).

(e) After the proceedings under 205 CMR 215.01(1)(d), the Commission shall issue a written determination of suitability as follows:

1. Negative Determination. If the Commission finds that an applicant or new qualifier or existing qualifier failed to meet its burden of demonstrating its suitability, the Commission shall issue a negative determination of suitability.
2. Positive Determination. If the Commission finds that an applicant or new qualifier or existing qualifier has met its burden of demonstrating its suitability, the Commission shall issue a positive determination of suitability which may include conditions and restrictions.

(2) Preliminary Finding of Suitability. Notwithstanding any other provision of 205 CMR 215.00, the Commission, in its sole discretion, may determine in accordance with 205 CMR 215.01(5) that an Applicant or Qualifier is preliminarily suitable in accordance with 205 CMR 215.01(2) based on a certification pursuant to 205 CMR 215.01(2)(a) and an investigatory report pursuant to 205 CMR 215.01(2)(b).

(a) To be found preliminarily suitable in accordance with 205 CMR 215.01(2), the Applicant or Qualifier must certify:

1. that it understands it may be denied a Sports Wagering License or have a Sports Wagering License revoked if it has willfully, knowingly, recklessly, or intentionally provided false or misleading information to the Commission;
2. that, under pains and penalties of perjury, to the best of its reasonable knowledge and belief, it is suitable to hold a license pursuant to M.G.L c. 23N, §§ 5, 6, and 9(a), and 205 CMR 215.01(3) and (4); and
3. (for an Applicant): the Applicant certifies, under pains and penalties of perjury, that to the best of its reasonable knowledge and belief, all of its Qualifiers are also suitable to hold a license pursuant to M.G.L c. 23N, §§ 5, 6, and 9(a), and 205 CMR 215.01(3) and (4).

(b) Before the Commission may determine that an Applicant or Qualifier is preliminarily suitable in accordance with 205 CMR 215.01(2), the Bureau shall conduct an investigation into the qualifications and suitability of the Applicant or Qualifier. The investigation may be limited to a review of the Applicant or Qualifier's 205 CMR 215.01(2)(a) certification; an Applicant's self-disclosed licensing and compliance history in other jurisdictions; self-disclosed open litigation involving an Applicant; and an open-source check concerning the Applicant or, if a natural person, a Qualifier. At the completion of the Bureau's investigation, it shall submit a written report to the Commission.

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(c) Any evaluation of whether an Applicant or Qualifier is preliminarily suitable may take place during deliberations held in accordance with 205 CMR 218.06(4). The Bureau's report may be redacted consistent with the Massachusetts Public Records Law, G.L. c. 66, and other sources of law.

(d) After evaluating whether the Applicant or Qualifier is preliminarily suitable in accordance with 205 CMR 215.01(2)(c):

1. If the Commission finds the Applicant or Qualifier preliminarily suitable, and deems the relevant Applicant eligible to request a Temporary License, in accordance with 205 CMR 218.07(1)(a): the Commission shall issue a written determination of preliminary suitability for the Applicant or Qualifier. The determination may include conditions and restrictions.
2. Otherwise: the Commission may issue a negative determination of suitability.

(3) In determining whether an Applicant or Qualifier is suitable, the Commission shall evaluate and consider the overall reputation of the Applicant and its Qualifiers, if any, including, without limitation, and on the basis of a report from the Bureau, sworn attestations, or other information or evidence available to the Commission:

- (a) the integrity, honesty, good character and reputation of the Applicant and its Qualifiers;
- (b) the financial stability, integrity, and background of the Applicant and its Qualifiers;
- (c) whether the Applicant and its Qualifiers have a history of compliance with gaming and Sports Wagering licensing requirements in other jurisdictions;
- (d) whether the Applicant or any Qualifier, at the time of the request, is a defendant in litigation;
- (e) whether the Applicant or any Qualifier is ineligible to hold a license under 205 CMR 215.01(4), M.G.L. c. 23N, § 9(a), or M.G.L. c. 23N, § 6(e);
- (f) whether the Applicant or any Qualifier has been convicted of a crime of moral turpitude;
- (g) whether, and to what extent, the Applicant or any Qualifier has associated with members of organized crime and other Persons of disreputable character; and
- (h) the extent to which the Applicant and its Qualifiers have cooperated with the Bureau during the review of the Sports Wagering License Application.

(4) The Commission shall determine that an Applicant is unsuitable if the Applicant or one of its Qualifiers:

- (a) has knowingly made a false statement of a material fact to the Commission;
- (b) has had a license revoked by any Governmental Authority responsible for regulation of gaming or Sports Wagering activities;
- (c) has been convicted of a felony or other crime involving embezzlement, theft, fraud, perjury or a gambling-related offense;
- (d) has not demonstrated to the satisfaction of the Commission financial responsibility sufficient to adequately meet the requirements of the proposed enterprise;
- (e) has Affiliates or Close Associates that would not qualify for a Sports Wagering License or whose relationship with the Applicant may pose an injurious threat to the interests of the Commonwealth.

215.02: Persons Required to be Qualified.

(1) The following Persons shall be required to qualify as part of the Sports Wagering License review:

- (a) If the Applicant is a corporation:
  1. Each officer;
  2. Each inside director;
  3. Any Person owning, or having another beneficial or proprietary interest in, 10% or more of the common stock of the Applicant, or a holding, intermediary or subsidiary company of such company; and
  4. In the judgment of the Division of Licensing after consultation with the Bureau, any Person with significant and substantial responsibility for the Applicant's Business under the jurisdiction of the Commission or having the power to exercise significant influence over decisions concerning the Applicant's operations in the Commonwealth.
- (b) If the Applicant is a limited liability corporation:
  1. Each member;
  2. Each transferee of a member's interest;

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3. Any other holder of a beneficial or proprietary interest of 10% or more in the Applicant;
  4. Each manager; and
  5. In the judgment of the Division of Licensing after consultation with the Bureau, any Person with significant and substantial responsibility for the Applicant's Business under the jurisdiction of the Commission or having the power to exercise significant influence over decisions concerning the prospective Applicant's operations in the Commonwealth.
- (c) If the Applicant is a partnership:
1. Each partner;
  2. Any other holder of a beneficial or proprietary interest of 10% or more in the Applicant; and
  3. In the judgment of the Division of Licensing after consultation with the Bureau, any Person with significant and substantial responsibility for the Applicant's Business under the jurisdiction of the Commission or having the power to exercise significant influence over decisions concerning the Applicant's Operations in the Commonwealth.
- (2) Other Qualifiers. The Commission may, in its sole discretion, require other Persons that have a Business association of any kind with the Applicant to undergo a Qualifier review and determination process. These Persons may include, but are not limited to, holding, intermediary or subsidiary companies of the requestor.
- (3) Waivers and Persons Deemed Qualified.
- (a) Waivers. In addition to any other exception or exemption under 205 CMR 215.00, upon written petition, the Commission may waive the requirement to be qualified as a Qualifier under 205 CMR 215.02 for:
1. Institutional investors holding up to 15% of the stock of the Applicant, or holding, intermediary or subsidiary company thereof, upon a showing by the Person seeking the waiver that it purchased the securities for investment purposes only and does not have any intention to influence or affect the affairs or operations of the Applicant or holding, intermediary or subsidiary company thereof. Provided, however, any institutional investor granted a waiver which subsequently determines to influence or affect the affairs or operations of the Applicant, or a holding, intermediary or subsidiary company thereof shall provide not less than 30 days' notice to the Commission of such intent and shall file an application and may be subject to the licensing requirements of 205 CMR 210.00 through 218.00 before taking any action that may influence or affect the affairs of the Applicant or a holding, intermediary or subsidiary company; or
  2. Any Person who, in the opinion of the Bureau or the Commission, cannot exercise control or provide direction to an Applicant or a holding, intermediary or subsidiary company thereof.
- (b) Persons Deemed Qualified. Any Person previously qualified pursuant to M.G.L. c. 23K or 205 CMR 116.00: *Persons Required to Be Licensed or Qualified* may be deemed qualified for purposes of M.G.L. c. 23N and 205 CMR 105: *Investigations and Enforcement Bureau* without an additional finding of suitability pursuant to 205 CMR 215.00.
- (4) Qualification of New Qualifiers.
- (a) No Person requiring qualification pursuant to 205 CMR 215.02(1) and (2) may perform any duties or exercise any powers relating to the position that said Qualifier is seeking to assume for a Sports Wagering Operator unless the Person notifies the Bureau in writing within 30 days of appointment to the position. Such notification shall be accompanied by the applicable Business entity or personal disclosure form specified by the Bureau. Following such notification and submission of the completed form, the Person may continue to perform duties and exercise powers relating to the position pending qualification.
- (b) A Person with reason to believe that his or her new position with a Sports Wagering Operator may require qualification pursuant to 205 CMR 215.02(1) and (2) 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 215.02(1) and (2) and shall notify the Person of such designation in writing. Within 30 days of designation as a Qualifier, the Person shall submit a completed personal disclosure form. Following submission of the completed form, the Person may continue to perform duties and exercise powers relating to the position pending qualification.

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(c) 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 in accordance with 205 CMR 215.01(1)(c) whether the new Qualifier meets the standards for suitability.

(d) Upon notification by the Bureau of a determination that reasonable cause exists to believe the Qualifier may not ultimately be found suitable, an Applicant shall promptly remove the Qualifier from his or her position until such time as the Commission makes its final determination on suitability.

(5) Internal Review of Determinations. An Applicant may ask for review of any determination made by the Bureau in accordance with either 205 CMR 215.02(1) through (3) or 205 CMR 215.02(4)(b) to the Commission, by filing a petition on a form prescribed by the Commission. The Commission shall decide the question at a public meeting on the matter at which it may allow representatives of the petitioner and Bureau to testify.

#### REGULATORY AUTHORITY

205 CMR 215.00: M.G.L. c. 23N, § 4.