



## **REGULATORY PRACTICE WHITE PAPER**

**JUNE 16, 2014**

This document contains the views of the staff of the New York State Gaming Commission on how commercial gambling in New York State should be appropriately regulated under the Upstate New York Gaming Economic Development Act of 2013 [UNYGEDA].

The Commission staff believes that casinos should be regulated based on the intent of the State Legislature in passing the UNYGEDA. The Legislature recognized that the State has not fully capitalized on the economic development potential of legalized commercial casino gaming, finding that four upstate casinos could boost economic development, create thousands of well-paying jobs and provide added revenue to the State. The Legislature commanded that commercial casino gaming be tightly and strictly regulated to guarantee public confidence and trust in the credibility and integrity of all commercial casino gaming in the state and to prevent organized crime from any involvement in the casino industry. The Legislature also identified the need for strict regulatory controls of all persons, locations, practices and associations related to the operation of gaming licensees, gaming vendors and related service providers.

The legislative goals and expectations are not contradictory. Tight, effective regulatory control is a foundation of the commercial gaming industry. Patrons require confidence that the games are fair; host municipalities need assurances that Gaming Facility operators and owners are trustworthy; and the State must be confident that all monies are properly accounted for and scrutinized. Tight and strict regulation need not be overly burdensome. Regulations should not be promulgated simply for the sake of promulgating regulations. Each regulation needs to be appropriately and prudently examined to ensure it serves an important and necessary function, and then regularly reexamined to determine whether its proper purpose is being served.

- I. **Regulatory approach.** The elements of effective commercial casino regulation include various operational controls and licensing of those companies and individuals who participate in the gaming industry. It is imperative that criminal elements are kept out of the ownership, operation and service of Gaming Facilities, and that otherwise unqualified companies and individuals do not receive a casino license.

Additionally, from an operational perspective, the goal of commercial casino regulation is to ensure that all monies are accounted for and that the games are operated fairly.

- A. Operational Control. Commission staff anticipates that the Commission will monitor and regulate commercial casino gaming operations. A large element of this regulation will be to ensure that each licensee maintains effective operational control over the Gaming Facility. This will be accomplished through the promulgation of regulations to address insular aspects of gaming operation. Among the regulations anticipated to be recommended by the Commission staff are minimum accounting and other internal controls and uniform rules for games and surveillance standards.
- B. Problem Gambling. The Commission, the N.Y. Office of Alcoholism and Substance Abuse Services and the New York Council on Problem Gambling have formed the Responsible Play Partnership to address problem gambling issues in New York State. The Responsible Play Partnership considers a variety of issues surrounding problem gambling, including venue compliance with rules and regulations, outreach measures, self-exclusion policies and considering the best ways to advance New York's long-term commitment to prevent and treat compulsive gambling. The Commission staff anticipates that the recommendations and practices of the Responsible Play Partnership will form the basis for regulation of the social aspects of commercial gaming. Additionally, the Commission is engaged in fact finding to examine the best practices in the fields of addiction recovery and commercial gaming.

Commission staff believes that patrons must have access to information regarding signs of problem gambling and problem

gambling treatment. The Commission staff will recommend rules requiring this information,

- C. Regulatory Structure. It should be expected that the Commission will undertake a variety of activities including an ongoing review of daily operations, auditing revenue and licensing.
  - 1. Onsite. It should be expected that the Commission will provide for onsite regulatory personnel sufficient to illustrate a frequent presence on the gaming floor, accessible to the public and visible to facility employees. The Commission has a similar attendance at class III tribal gaming facilities and has endeavored to reduce both the operational intrusion and cost of such presence.
  - 2. Offsite. It should be expected that the majority of the Commission's operational activities relative to commercial casino gaming will be conducted offsite. These functions are likely to include licensing, financial analysis and auditing.
- D. Cost and Budgeting. Commission staff anticipates that Gaming Facility licensees will, collectively, bear the cost of industry regulation and, individually, bear the cost for background investigations and fingerprint history reviews for all employees and casino service providers doing business with or at their facility. A licensee will, however, be permitted to recoup such costs from their employees and vendors.

Relevant statutes regarding regulatory investigatory fees and additional regulatory costs may be found at N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §§ 1349 and 1350.

**III. Identified regulatory concerns.** Based on the concerns of potential RFA respondents, the Commission staff offers the following non-binding regulatory guidance on topics of applicant interest.

- A. Term of License Renewal. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311 establishes the duration of an initial license to be ten (10) years. That same statute provides that the term of renewal is to be determined by the Commission. The Commission staff recognizes

that license terms vary widely from annual reviews in Indiana and Michigan to indeterminate length in Nevada and New Jersey.

The Commission staff is cognizant of the resources dedicated to any licensing process, both for the license Applicant and the licensing body. Highly detailed financial and personal information must be gathered, checked, assembled and submitted in a prescribed format. Interviews and background investigations of individuals must be performed.

Establishment of a lengthy license or renewal license term does not restrict a regulator's discretion. Once licensed, a Gaming Facility performs under close scrutiny. Regulators monitor financial results, auditing practices, surveillance and security activities and personnel changes. A licensee generally has an ongoing obligation to maintain its suitability. If cause emerges to revoke a license, a regulatory body does not have to wait until the end of a license term; it can act appropriately against the licensee at any time.

The Commission staff anticipates a license renewal period to be proposed for no less than ten (10) years.

- B. Standardization of Applications. As part of the package of materials adopted in the Request For Applications process, the Commission selected the International Association of Gaming Regulators Multi-Jurisdictional Personal History Disclosure Form for use by principals and key management of potential bidders. The Commission has previous experience utilizing such form in Indian and video lottery gaming.

The Commission operates three (3) divisions wherein gaming vendors may seek to operate. Each of these divisions presently utilizes differing application forms. Commission staff anticipates that the Commission will endeavor to establish a licensing process that reduces duplicative licensing applications. To this end, Commission staff anticipates that the Commission pledges to work with the various Indian nations and tribes, the video lottery gaming facilities and the Gaming Facilities in an effort to simplify the efforts and reduce the costs of doing business in New York State.

- C. Compatibility of occupational and service industry licenses. In a similar vein, commercial casino gaming, Indian gaming and video lottery gaming all employ similar categories of employees and use many of the same service industry vendors. At present, a service industry vendor undertaking business with each gaming component within the Commission would require separate filings. Commission staff anticipates that the Commission will seek to reduce these duplicative filings and establish a single fungible vendor license wherein approval under one gaming component would afford an ability to undertake business with any component. This would, however, require the consent of the various Indian nations and tribes with Gaming Facilities.

Likewise, commercial casino gaming, Indian gaming and video lottery gaming all employ similar categories of employees. An individual moving from a racetrack to an Indian gaming facility to a video lottery gaming facility would require separate application filings for employment that is largely identical among industries. Commission staff anticipates that the Commission will seek to reduce these duplicative filings and establish a single fungible occupational license wherein approval under one industry would allow employment in another upon employer notification. This too, however, would require the consent of the various Indian nations and tribes with Gaming Facilities.

- D. Institutional Investor Waiver. Suitability-based licensing of those who own gaming companies is central to modern gaming regulation. As gaming companies have grown in size and scope, and increasingly are public companies, the character of their ownership has changed. Today, gaming companies may be owned in substantial part by institutional investors such as investment companies, pension plans, hedge funds, and other large financial institutions. Many of these owners are passive investors; not managing the business except in unusual circumstances such as business reorganization.

Accordingly, many states allow the waiver of licensing and other regulatory requirements for institutional investors who own a non-controlling interest in the gaming companies. The threshold for this waiver, however, varies widely. In Missouri, the Executive Director of

the Missouri Gaming Commission may grant an exemption for institutional investors owning up to ten (10) percent of a licensee; the full membership of the Missouri Gaming Commission has the power to grant such exemptions for ownership of up to twenty (20) percent. In New Jersey and Nevada, an exemption can apply to institutional investors holding up to a twenty five (25) percent interest in a licensee.

A higher threshold increases the number of potential purchasers for shares in gaming licensees and therefore allows significantly greater financing flexibility. By facilitating the participation of institutional investors in the commercial gaming industry, regulators can improve licensees' access to the capital markets. Commission staff anticipates that the Commission will retain discretion to deny waivers when specific circumstances warrant closer regulatory scrutiny.

The Commission staff anticipates a rulemaking wherein automatic waivers of licensing and registration requirements for certain institutional investors may occur. The automatic threshold, perhaps up to a fifteen (15) percent interest in licensees, and a permissive threshold for those holding up to a twenty-five (25) percent interest in licensees, may be considered.

E. Pre-Approval for Debt Transactions.

Several states pre-approve debt transactions of casino licensees through advance review and approval of proposed borrowing. Such a pre-approval allows a licensee to conclude a debt transaction at any future point certain. The advantage to the licensee is substantial, allowing it to wait for the best credit opportunity in the capital markets. When the markets turn favorable to borrowers, the licensee with a shelf approval can strike quickly. Without pre-approval, a licensee could miss the best market opportunities while waiting for regulatory action. Pre-approvals give casino licensees the flexibility that most businesses enjoy: to respond to changing market conditions. As a safeguard, pre-approvals can include conditions on the structure of a transaction prudent to protect a licensee's solvency. Thus, such approvals can be granted without compromising regulatory responsibility.

The Commission staff commits to offering a rulemaking that would provide for pre-approval of casino licensee's debt transactions.

The Commission welcomes the opportunity to share its views on the proper scope of regulation with prospective casino licensees, host communities, and the general public. Any and all comments on this white paper are welcome and will be considered seriously and thoughtfully by the Commission.

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