

**MINIMUM INTERNAL CONTROL STANDARDS (MICS) FOR GAMBLING  
ESTABLISHMENTS**

**PHASE III; GAMBLING FLOOR OPERATIONS & HOUSE RULES**

CGCC-GCA-2011-02-R

**WRITTEN COMMENT SUMMARY FOR PROPOSED REGULATIONS**

**45-DAY COMMENT PERIOD ENDING SEPTEMBER 19, 2011**

The following written comments/objections/recommendations were received regarding the proposed action during the 45-day comment period that commenced August 5, 2011 and ended September 19, 2011:

**A. ADOPT SECTION 12391. GAMBLING FLOOR OPERATIONS.**

This proposed action would establish new Section 12391 within Article 3. Section 12391 would require cardrooms to adopt specified minimum policies and procedures that relate to the operation of the gambling floor.

1. Subsection (a), paragraph (1) would require cardrooms to have a policy stating that their gambling floor must be *open to the public*. This proposed regulation also provides for exceptions to this *open-to-the-public* rule should the provisions of Business and Professions Code section 19861 apply to any cardroom in the state. This proposed regulation would allow for additional exceptions when any of the following Business and Professions Code sections apply:

- Section 19844 (Exclusion or Ejection of Individuals from Gaming Establishment)
- Section 19845 (Removal of Persons from Licensed Premises; Reasons)
- Section 19921 (Persons Under 21; Areas of Access)

**a. David Fried – California Gaming Association (CGA):** Section 19921 of the Act does not allow any person under 21 to enter a gambling establishment, except for specified areas like pathways, bathrooms or restaurants. However, under the Act, a club may exclude underage persons from the premises altogether to provide more effective control on underage entry or gambling.

We want to clarify that this regulation will not require that a licensee afford all members of the public, including underage persons, access to parts of the club other than the gambling floor. In some clubs, the “restaurant,” pathway or lounge might be right on top of the gambling floor. We wish to add this caveat in case a plaintiff asserts that this regulation now requires all clubs to allow underage persons in the premises. The present statement of reasons (at page 4) refers to allowing the general public in the card room consistently state wide. But we should allow clubs at their option to exclude from the entire premises all underage persons, without mandating the same rule for every club.

2. Subsection (a), paragraph (2) would require a cardroom to have policies and procedures that place conditions on the use of “house prop players” and “public relations players.” When playing controlled games, house prop players and public relations players would be required to:
  - (A) Hold a valid work permit or key employee license, and wear their work permit or key employee badge;
  - (B) Comply with all house and game rules applicable to the game being played;
  - (C) Comply with all laws and regulations applicable to the play of controlled games;
  - (D) Not accept the deal when playing a California Game;
  - (E) Not use house funds to wager bets;
  - (F) Not be the house dealer for the game being played; and
  - (G) Leave the table when a waiting list exists for the game being played.

**a. Andrew Schneiderman – Commerce Casino:** Commerce Casino objects [to] the requirements that proposition players must wear their work permit badge and leave the table when a waiting list exists for the game being played. Requiring proposition players to wear a badge runs counter to the culture of poker rooms in all other gaming jurisdictions and serves no game integrity or control purpose. Similarly, although most poker rooms require proposition players to give up their seats when a non-employed player is waiting, mandating this practice by regulation would be disruptive to the operation of the poker room, is not necessary, and serves no game integrity or control purpose.

Requiring proposition players to wear a work permit badge violates the generally accepted practice in poker rooms across the world and United States that proposition players are treated as normal players, without special privilege or obligation during the play of a game, and do not wear badges. Permitting proposition players to wear a work permit badge would give the false appearance that they have authority to make a decision in a game.

Although the business function of a proposition player is to help start and keep games going, there are many situations where forcing a proposition player to leave a table when there is a waiting list would be disruptive to the gaming operations. Players on the waiting list board may not be immediately available to join the table because they are eating, smoking a cigarette, on the telephone, etc. Players on the waiting list board may be sitting at a different table and forcing the proposition player to leave the game would only result in a shuffling of players between tables.

Based on the foregoing facts, and the comments submitted by the California Gaming Association [see comment 2-b., below], Commerce Casino proposes the following alternative approach that would be as effective as and less burdensome to affected private persons than the proposed regulation.

Section 12391(a)(2):

*(2) When on-duty and playing a controlled game on the premises of the gambling establishment for which he or she is employed, a "house prop player" or "public relations player" shall:*

*(A) Hold a valid work permit or key employee license, and ~~prominently display~~ have on his or her person, the work permit or key employee badge issued by the Commission or a local jurisdiction;*

*(B) Comply with all house and game rules applicable to the game being played;*

*(C) Comply with all laws and regulations applicable to the play of controlled games; and*

*(D) ~~Not accept the deal in any controlled game with a rotating player-dealer position;~~*

*(E) ~~Not use house funds to wager bets in the play of controlled games;~~*

*(F) ~~Not be the house dealer for the game being played; and~~*

*(G) ~~Leave the table when a waiting list exists for the game being played.~~*

**b. David Fried – California Gaming Association (CGA):** The conditions and restrictions on the use of “house prop players” and “public relations players” should apply only to on-duty employees.

*Subparagraph (D):*

The Gambling Control Act expressly prohibits owners and key employees from taking the player dealer position. Because the law is so specific, it precludes adding other categories of persons to the prohibition on occupying the player dealer position. We incorporate by reference our extensive comments on this issue submitted December 17, 2010 regarding the legal effect of a statute containing a specific listing of persons.

In addition, the policy should be that we should treat proposition players while they are playing and using their own money no better or worse than any other player. This section should say that proposition players are not *required* to take the player-dealer position. But we should not put proposition players using their own funds at a disadvantage to every other player.

Furthermore, while now most clubs have third party proposition players, so this is not a pressing issue for many clubs, we still wish to preserve this present right to have proposition players in player dealer games. There are small clubs that may not have third party services available and need proposition players to start games. There also is the risk that something could happen to a particular third party provider or something would change that whole industry, which would affect every club.

*Subparagraph (E):*

This should be limited to player-dealer games, where by law owners and key employees are not allowed to occupy the player-dealer position. But there is no player dealer position in a poker game. Some clubs may need to stake poker props if they cannot find a sufficient number of self funded poker props.

This issue of staking players also was raised and resolved (we thought) twice before. In 1990s, the Bureau went to court with the third party prop services and argued that staking another person to play was illegal. The Bureau lost. Then in 2006 the Bureau issued an advisory regarding *house* staking of players based on the same analysis, but after we submitted legal authorities, the Bureau withdrew its game staking advisory.

Simply put, there is no legal prohibition on staking proposition players in poker games. The law only prohibits house banking and percentage games and does not rule out any other interest in a game. Poker is not a banking or percentage game. A “banking” game is where a person or entity participates as “one against the many.” *Hotel Employees & Rest. Employees Int’l. v. Davis*, 21 Cal.4th 585, 592 (1999) (“*HERE*”) (citations omitted). In poker, there is no player-dealer position, so poker is not a banking game. *HERE*, 21 Cal.4th at 593. Poker is a “round” game where wagers are made into a common pot. A player does not “take on all comers” and is not required to “pay all winners.” *Id.*, at 608.

*Subparagraph (G):*

The house practice now is that poker props are directed in and out of games by the floor personnel on duty. For various reasons, they may be left in a game for some period of time even after a name is on the board.

For instance, if a customer signs up for the 3/6 and 6/12 games, and we know that we are about to start a new 6/12 game (with some of the players on the list for 6/12 coming out of the 3/6 game), we would not immediately call a prop player out of that 3/6 game.

To do so would require that we cash out the prop player in the 3/6 game, seat the new player, sell the new player \$1 denomination chips, then remove the same new player to play 6/12, change their \$1 chips for \$2 denomination chips, and then reseal the prop player in the 3/6 game, and possibly re-sell the prop player the correct denomination chips. It would cause a lot of operational problems to restrict our flexibility.

In addition, a person on the wait list may also pass but remain on the list if they are eating, outside smoking, talking to someone or waiting to see if the 6/12 game starts. We do not want to force someone to sit before they want to even if they are on the list. Many clubs also allow you to put your name on the list by phone, so the person on the list may not be at the club yet.

Our mission is customer service. Our patrons have lots of choices about how to spend their money or where to play. We are not going to drive patrons away by having them wait around while a proposition player plays absent some valid business reason for not calling the patron right away. Anytime a patron feels that they are not treated fairly, they do not return.

3. Subsection (a), paragraph (3) would require owners and employees of cardrooms to comply with house and game rules and the applicable laws and regulations when playing controlled games on the premises of their own cardroom.

**a. Bureau of Gambling Control:** The Bureau believes that these same provisions (§ 12391 (a)(2)(A)-(G)) should extend to all cardroom personnel who wish to participate in poker games at the gambling establishment if it is the Commission’s intention to permit all persons associated with the cardroom to play poker games at the gambling establishment they are affiliated with. We believe that the industry would support these measures in an effort to prove to the constituents of California that the gambling industry supports an environment ensuring fair and honest play.

**b. Bureau of Gambling Control:** As with poker games, the Bureau continues to have concerns with employees and licensees playing in their own clubs, from the standpoint of the integrity of the games and public perception. Throughout the drafting of this regulation, many members of the cardroom industry expressed their support of prohibiting employees and licensees from participating in any controlled game that includes a player-dealer position (i.e., “California games”). In addition, recent regulatory and enforcement activities have highlighted the reasons for the Bureau’s concerns with any employee or licensee participating in California games. As such the Bureau suggests the following be incorporated into the Commission’s MICS III regulation:

*“A gambling establishment employee, key employee, or licensee may not play any controlled game that includes a player-dealer position, whether on or off duty, on the premises of the gambling establishment for which he or she is employer, work permitted for, or licensed.”*

4. Subsection (a), paragraph (8) would require that the purchase or redemption of chips be transacted only by designated cardroom employees who have received the training required by section 103.64 of Title 31 of the Code of Federal Regulations. The policies and procedures put in place regarding this regulation must also ensure compliance with Section 12404 in Article 4, which also regulates these types of transactions.

**a. Bureau of Gambling Control:** As expressed throughout the drafting of this regulation, the Bureau is not only concerned with appropriate safeguards to ensure compliance with suspicious activity and cash transaction reporting, but also with overall security issues related to the flow of money on the cardroom floor. The more transactions are assigned to personnel away from the cage, and dispersed physically in satellite locations in the cardroom away from the cage, the greater the prospect for money laundering, loan sharking, skimming, embezzlement, and other cash-related crimes.

The Bureau recognizes the operational benefit cardrooms realize utilizing chip runners in their establishments, providing the convenience and quality customer service the patrons enjoy in the sale of chips at the gaming tables. Even with the requirement that these designated gambling enterprise employees receive the necessary training in suspicious activity and cash transaction reporting, the Bureau continues to strongly believe that the redemption of chips should occur only at the cage and not from a chip runner on the gambling floor or at a satellite cage. There is currently a loophole in the Commission regulation pertaining to cage function, Section 12386 (a)(6), which permits the purchase and redemption of chips by a patron to “occur at the cage or from a designated gambling

establishment employee on the gambling floor.” That regulation should be amended to eliminate this deficiency.

*Note: This comment and recommendation is not germane to the proposed action. While the recommendation to amend Section 12386 was considered in the workshops that were conducted during the preliminary development of this regulation, the Commission chose not to include that change in the formally noticed proposed action. Since the amendment of Section 12386 was not addressed in the Notice of Proposed Action, the recommended amendment would not be a sufficiently related change, as defined in Title 1, CCR, § 42, and would not qualify as a 15-day change under Title 1, CCR, § 44.*

9. Subsection (a), paragraph (9) would prohibit a licensee from providing house funds to any person for the purposes of playing a controlled game, except when extending credit, pursuant to Section 12388, and when providing payment to a third-party provider of proposition player services, in accordance with a contract approved by the Bureau pursuant to Section 12200.9.

**a. David Fried – CGA:** As explained above, staking poker proposition players can be regulated in poker games rather than prohibited.

While the Bureau has argued this will lead to unfair or biased decisions, the house has no interest in driving away players with unfair or biased decisions. Every time your staff renders a decision on the floor applying a game rule, the person against whom the decision goes is disposed to feel unfairly treated unless the decision is neutral on its face, fair and correctly explained. The card rooms teach employees to make and communicate the decisions in that way.

Every business knows that it costs much less to keep an existing customer than acquire a new one. The business cannot succeed unless a player wants to and does come back. If a cardroom advertised and brought in players, but the players did not return, the card room would fail. As in Nevada where staked players are allowed, the game rules will answer what happens if there is a misdeal or other issue during a hand. Nevada has allowed staked players by regulation for the last 32 years.

10. Subsection (b) would require Tier III through V cardrooms to have at least one owner-licensee or key employee on duty during all hours of operation to supervise gambling operations and ensure compliance with the Act and its regulations.

**a. Bureau of Gambling Control:** The Bureau has expressed throughout the drafting of this proposed regulation its concern relative to key employee staffing levels. The absence of any specific key employee to table ratio may result in a lack of adequate supervision, thus resulting in multiple problems on the gaming floor. This concern is not just the Bureau’s alone, as indicated in a recent article in a trade publication, *VEGASINC*.<sup>1</sup>

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<sup>1</sup> Benston, Liz (July 20, 2011). VEGASINC/Casinos cutting back on floor supervisors, whose jobs evolving. <http://www.vegasinc.com/news/2011/jul/20/casinos-cutting-back-floor-supervisors-who-see-the/>

We suggest that the issue of key employee to table staffing ratios be vetted out more extensively and that the Commission proposes a set of minimum staffing ratios in its next release of this proposed regulation.

#### 11. Complimentary Items.

**a. Bureau of Gambling Control:** Throughout the drafting of MICS III, the Bureau has suggested that language pertaining to the issuance and accounting of complementary items be included. However, the proposed regulation no longer has any provision related to complementary items. The Bureau respectfully requests that this area be included, suggesting that the language as proposed by the Bureau related to the August 26, 2010 distribution of the draft regulation be included.

*Note: This comment and recommendation is not germane to the proposed action. While the recommendation to include provisions related to complementary items was considered in the workshops that were conducted during the preliminary development of this regulation, the Commission chose not to include that subject in the formally noticed proposed action. Since the subject of complementary items was not addressed in the Notice of Proposed Action, the suggested amendment would not be a sufficiently related change, as defined Title 1, CCR, § 42, and would not qualify as a 15-day change under Title 1, CCR, § 44.*

#### **B. ADOPT SECTION 12392. HOUSE RULES.**

This proposed action would also establish new Section 12392 within Article 3. Section 12392 would require cardrooms of all tiers to adopt specified minimum policies and procedures regarding house rules.

1. Subsection (a) would require cardrooms to adopt and implement house rules, written in English, which promote the fair and honest play of controlled games and gaming activity. This section would also require that the house rules:
  - (1) Allow for the play of only those games that are permitted by local ordinances and state and federal laws and regulations;
  - (2) Address player conduct, etiquette and other general rules so as to promote the orderly conduct of controlled games and gaming activities;
  - (3) Include provisions that discourage players from, during the play of a hand, speaking in a language, or using any other form of communication, that is not understood by all persons at the table;
  - (4) Not conflict with Bureau-approved *game rules*; and
  - (5) Address the following situations as they may apply during the play of a controlled game or gaming activity:
    - (A) Customer conduct,
    - (B) Table policies,
    - (C) Betting and Raising,

- (D) “Misdeals,”
- (E) Irregularities,
- (F) “The Buy-In,”
- (G) “Tied Hands,”
- (H) “The Showdown,”
- (I) “House Way,”
- (J) Player Seating and Seat Holding, and
- (K) Patron Disputes.

a. **David Fried – CGA:** Paragraph (2) overlaps with subparagraph (A) of paragraph (5) which follows, and which also requires rules that address customer conduct.

Also, is it necessary that the government mandate the adoption of house rules to address etiquette and conduct either at the table or throughout the whole facility? That is something naturally the clubs want to do because we don’t want a rude player driving away other players, or a game to get a reputation for being bad-mannered. But should the government require etiquette rules?

*Also, by putting this in a regulation and requiring specific rules or procedures it can expose the club to a problem. When it comes to behavior, Clubs need a lot of flexibility to determine what is appropriate, what is not, and how best to respond to those situations.*

Accordingly, if a requirement that we adopt conduct rules is really needed, we would like to construe this section to require only general rules, and not have the Commission or Bureau later insist that very specific rules are required. Take this example:

A poker player is acting rudely to other players in subtle ways. After he wins a pot, he does not say: “You are a dumbshit for playing that hand” (which violates a specific rule regarding language) but instead he says: “Did you think the 6 on the river helped me?” “Not everyone would have called with that hand.” When another player is thinking about acting, this player also tries to judge the first player’s reaction by stacking chips as if he will re-raise, or the player exposes a single card but not both hole cards. Maybe the player sometimes throws his cards into dealer muck when he does not like the cards, or when the dealer pushes the pot to him he reaches out and scratches the dealer’s hand sometimes. Was it an accident or part of a pattern? The proper response may be for the shift manager to make a judgment call about the situation and informally talk to the player. Or, greater action may be needed.

We cannot think of every situation that will arise or every phrase that may be uttered. There will have to be judgment calls made about not only what conduct is inappropriate, but whether the correct remedy is to talk to the patron or suspend them. But if there are specific house rules required by regulation, we open ourselves to patron claims that any action we take violates the rules mandated by regulation.

**b. David Fried – CGA:** After a great deal of consideration, we think the best approach in paragraph (3) is not to refer to speaking a language or the need for everyone to understand the same language, which is often not the case. This might be impossible to realize. We think this paragraph should just state: “Include provisions that discourage collusion, including provisions addressing player communication during a hand.”

**c. Alan Titus – Artichoke Joe’s:** Players may be racially and culturally very diverse, and at times there may be no common language among them. Many were born in foreign countries, and some do not understand much, if any, English. There can be times when one player does not understand English but not all the other players understand his or her language.

It is not necessary that all players understand the same language to prevent collusion and cheating. Rather, it is important that cardrooms be able to prohibit players from communicating in a foreign language not understood by everyone. Therefore, we think that cardrooms should be allowed to designate a certain language to be spoken at the table, and we suggest the following alternative language:

*“(3) Allow a licensee to designate a language to be spoken at a table during the play of a hand.”*

There were no further written comments, objections or recommendations received within the initial 45-day public comment period regarding the proposed action.