APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

CGCC-GCA-2014-0#-R

COMMENTS AND RESPONSES FOR PROPOSED REGULATIONS

WORKSHOP WRITTEN COMMENTS

The following written comments were received regarding the proposed text prior to the regulations workshop scheduled for February 26, 2014. The descriptions of the affected regulations and proposed changes to those regulations, as well as the descriptions of the proposed new regulations, are based on the regulation text dated October 16, 2013.

A. The following comments were submitted for the proposed regulation text[1] in its entirety.

1) **Comment/Suggestion:** The Department of Justice's Indian and Gaming Law Section (IGLS) comments that transactions may be structured to engage in activities that are contrary to the policies and purposes of the Gambling Control Act (Act). The Commission has broad jurisdiction over "all persons and things having to do with the operations of gambling establishments"[2] and the Bureau has broad powers to carry out its responsibilities under the Act.[3] Based upon observations and Act provisions, IGLS suggests that six categories of transactions should be regulated: affiliate transactions, financing transactions, ownership transactions, personal property leasing transactions, premises transactions, and other transactions.

   Affiliate transactions should be the regulation of all transactions between two or more licensees, between a licensee and his, her, or its affiliates, and between the affiliates of two or more licensees. The Commission has the authority to regulate affiliate transactions in accordance with sections 19824, 19853, 19857, 19984, 19901. Every affiliate transaction should be reviewed by the Bureau and submitted to the Commission for approval when appropriate.

   Financing transactions should be the regulation of when a licensee is extended credit, borrows money, or becomes obligated to pay an indebtedness. The Commission has the authority to regulate financing transactions in accordance with sections 19824, 19852, 19853, 19900, 19901. All financing transactions should be reviewed and approved by the Commission. IGLS suggests a single agreement to expedite the review and analysis of financing transactions through boilerplate terms that are affirmatively acknowledged and agreed to by the parties should be included.

[1] The descriptions of the affected regulations are based on the regulation text dated October 16, 2013. The proposed changes to those regulations, as well as the descriptions of the proposed new regulations, are based on the text dated January 30, 2014.
[2] Business and Professions Code section 19811.
[3] Business and Professions Code section 19826 and 19827.

Ownership transactions should be the regulation of when a transaction involves the sale, assignment, transfer, pledge, or other disposition of an ownership interest in a licensee. Premises transactions should regulate when a transaction involves the sale, assignment, transfer, pledge, or other disposition of the real property, improvements, or fixtures of a gambling establishment. The Commission has the authority to regulate ownership and premises transactions in accordance with sections 19824, 19852, 19853, 19892, 19901, 19902, 19904, and 19984. The current regulations should be expanded to incorporate more than simply the sale of an ownership interest or premises.

Personal property leasing transactions should be the regulation of those transactions involving the leasing of personal property. The Act appears to contemplate the potential regulation of personal property leasing transactions in sections 19901 and 19902. Each personal property leasing transaction requires review by the Bureau. While not defined in the regulations, the proposed regulations adequately provide for this process.

Other transactions should be the regulation of transactions that do not fall into the above categories. The proposed regulations adequately provide for this process.

IGLS suggested definitions to incorporate these categories and other suggestions into the proposed regulation.

Recommended Response: These comments are accepted in part.

The Bureau has the investigative authority under the Act to "monitor the conduct of all licensees and other persons having a material involvement, directly or indirectly, with a gambling operation or its holding company."[4] Therefore, many of the suggestions offered were incorporated in various provisions of these proposed regulations.

Affiliate agreements and financing transactions have been merged into the proposed text dated January 30, 2014 [pg. 1, line 16 through pg. 2 line 17; pg. 8, lines 1-14 and pg. 8, line 25; pg. 11, lines 13-14].[5] Ownership and premises transactions were intended to be included within "interested transactions" or "gaming collateral" as appropriate, and so these terms were expanded to better incorporate the suggestions provided [pg. 3, lines 14-24; pg. 3, line 27 through pg. 4, line 12; pg. 4, lines 24-27].

The proposed regulations do not limit leases to personal property leases, but rather they apply to all leases over seven days in duration. As discussed further below, this is in response to the research findings of other states' regulations and statutes. Leasing for real property creates a similar relationship as leasing for personal property, and can consist of higher monetary values without raising suspicion, so real property leases should not be excluded.

2) **Comment/Suggestion:** IGLS suggested that sanctions be included in the proposed text for failure to disclose either an affiliate transaction or a party with direct or indirect interest in the transaction that is an affiliate or a licensee. The suggestion included that the failure to disclose would be presumed intentional. Such a presumption would shift

[4] Business and Professions Code section 19826(b).
[5] All page and line references refer to the regulation text dated January 30, 2014, unless otherwise specified.

the burden to the licensee to prove that the non-disclosure was not intentional. The licensee would be assessed costs under section 19930 for failing to meet that burden.

Recommended Response: This suggestion was considered but was not incorporated. It is not clear that there is a legal authority to shift the burden of proof to the licensee. If the accusation process is used to prosecute violations for failing to disclose affiliate transactions, then the Bureau may request, and an administrative law judge may order, the payment to the Bureau of its reasonable costs of investigation and prosecution of the case.

Article 2. Approval of Transactions.

B. Add Section 12320 - Definitions.

The meaning of the words and terms in this article may not be consistent with the meaning of similar words or terms used in other existing regulations. As a result, these definitions are necessary to ensure that the proposed regulations are clear, concise and easy to understand in the context of this article. Section 12320 would provide definitions of the following words and terms:

1) The following suggestion was submitted for this section in its entirety:

   a) **Comment/Suggestion:** IGLS suggested various terms and definitions to be incorporated into this section.

      Recommended Response: These comments are accepted in part and amendments are made to the terms and definitions.

      Additionally, the definitions of both Article 2 and Article 3 have been merged together and moved to the beginning of the proposed regulation text in an undesignated section, Section 12XXX [pg. 1, line 13 through pg. 5, line 23]. This adds to clarity and understanding for the whole chapter and eliminates duplicative definitions. This also better reflects the organization of the other chapters of the Commission regulations, where definitions for the Chapter are included in the first article of the chapter.

2) Subsection (a) – "Consulting agreement" would mean a contract or agreement to receive the advice or the benefit of the expertise of another for compensation.

   b) **Comment/Suggestion:** Multiple cardroom representatives comment that this definition [pg. 2, lines 20-21] is overly broad, and the definition should be limited to consulting on matters directly related to the gaming operation. Additionally, consulting agreements would include contracts with attorneys, violating Evidence Code section 954 and Business and Professions Code section 6149 which protect attorney client privilege, including privileged fee agreements.

      Recommended Response: These comments were considered but were not incorporated.

The Commission is vested with the authority to regulate all persons or things having to do with the operation of gambling establishments.[6] This includes confirmation that there is no material involvement by disqualified persons or persons the Commission deems to be in a position requiring a finding of suitability.[7] Consulting agreements create a relationship between a licensee and the consultant for the purposes of advice, and the consultation may result in reliance. Moreover, parties are usually consulted due to their expertise. As discussed in public meetings, this pool of expertise specific to the gambling industry may be rather small and intertwined. The Commission wishes to review the relationship to confirm that it is appropriate.

In reference to attorney-client privilege, subsection (b) of section 19828 provides that if any document or communication provided is privileged pursuant to the Evidence Code "or any other provision of law," that privilege is not waived or lost. Subsection (c) of section 19828 provides that the department, the Commission, their agents and their employees shall not release or disclose this information without the prior written consent of the holder of the privilege.

3) Subsection (b) – "Formal approval" would mean the completion of the formal approval process specified in Sections 12323 and 12324.

   a) **Comment/Suggestion:** A cardroom representative comments that this term [pg. 3, lines 13-14] is unnecessary as the word "formal" adds no meaning. Industry suggests the term should be "approval."

   Recommended Response: This comment was considered but was not incorporated. Within these regulations there are several types of "approval." First, there is "formal approval" [pg. 11, line 3 through pg. 12, line 3], where an examination by the Bureau and the Commission's review are needed prior to the approval being given. Then there is "shelf approval" [pg. 23, line 14 through pg. 24, line 11], where one may have his or her proposed concept tentatively approved. "Notice" [pg. 7, lines 26-27; pg. 9, line 17 through pg. 10, line 16], is a type of informal approval, allowing the Bureau to be aware of the activities of the licensee and confirm they are in compliance with the Act.[8] Finally, licensing approval is referenced in the proposed Section 12323 [pg. 11, line 19 through pg. 12 line 3]. Therefore, "formal approval" is clarified and defined.

4) Paragraph (c)(1) – "Interested transaction" would mean any transaction where the transaction may include or otherwise entitle a party to any portion of the gambling enterprise, third-party provider of proposition player services, or gambling business, including an equity or ownership interest; an interest in the revenue, earning, profits or receipts derived from gambling operations; repayment calculated by or based on a percentage of the revenues, earnings, profits, or receipts derived from gambling operations; the ability to exercise a significant influence over gambling operations.

[6] Business and Professions Code section 19811, 19824, 19841.
[7] Business and Professions Code sections 19823, 19853.
[8] Business and Professions Code section 19826.

a) **Comment/Suggestion:** A cardroom representative comments that the term "interested transaction" [pg. 3, line 27 through pg. 4, line 9] is very confusing. The term is not familiar and has no inherent meaning, as "interested" is not related to financial interest, yet the term "transaction" alone is very broad. This cardroom representative suggests the phrase "transfer of a financial interest in or managerial control of the business."

Recommended Response: This comment was considered but was not incorporated. This term was introduced at the October 25, 2012 roundtable. Also discussed at that roundtable and the May 16, 2012 roundtable, "transaction" is a very broad term and not easily corralled to the needs of transaction regulation. However, the creation of a term that attempts to limit the definition is not unprecedented. Throughout California, federal, and other state laws, terms that seek to define what types of transactions are being sought are common. Examples include "insurance transaction," [9] "debt transaction," [10] or "eligible rollup transaction." [11] "Interested transaction" provides the illustration of what the definition is designed to capture, namely those transactions more related to the functions or operations of the gambling entity than other transactions. The definition provides the context and direction for the term to minimize interference with the common usage of the word "transaction."

This term is designed to capture means by which a party may become more intimately connected with the licensed entity than general transactions. This is not limited to strictly "financial interests" or "managerial control" as the comment suggests. Managerial control may attempt to reach those with influence that "financial interests" do not include, but could be interpreted as those with an actual position of control rather than a great influence from outside the pool of direct control.

Interested transactions are those that create a direct link with the licensed entity through ownership rights, profits or other earnings, or the ability to exercise significant control over the operation. The profits and ability to exercise control over the entity is not limited to strictly ownership rights. The Commission wishes to approve these transactions because they directly involve confirming that those materially involved with a licensed entity are qualified in accordance with section 19823, and that the transactions are conducted in conformance with the Act and Commission regulations.

Finally, it was the intention of the term "interested transaction" to include the ownership, financing and premises transaction categories and definitions offered by IGLS, and therefore the definition has been expanded [pg. 3, line 27 through pg. 4, line 9].

[9] California Insurance Code section 792.02
[10] Ohio Revised Code section 3772-29-01.
[11] California Corporations Code section 25014.7.

b) **Comment/Suggestion:** A cardroom representative comments that the use of the phrase "may include" for what qualifies as an interested transaction creates confusion.

Recommended Response: This comment was accepted and amendments were made to the text [pg. 3, line 27].

c) **Comment/Suggestion:** IGLS comments that the definition does not include pledges or options, which are expressly mentioned in the Act.

Recommended Response: This comment was accepted and amendments were made to the text [pg. 4, lines 22 and 25].

5) Subparagraph (c)(1)(B) provides that an interested transaction would include interest in the revenue, earnings, profits, or receipts derived from gambling operations.

a) **Comment/Suggestion:** A cardroom representative comments that this subparagraph is unclear. This cardroom representative comments that any promise to pay a fixed fee would result in an indirect interest in the revenue, earnings or profits. This cardroom representative suggests the language reflect percentage payments. This cardroom representative also suggests that this subparagraph should have language added which recognizes revenues as the source of repayment. The explanation is that every vendor or contracting party has an "interest" in the licensed activity as that is the source from which payment is made.

Recommended Response: This comment is open for discussion. This provision was moved to Section 12XXX(b)(11)(A)4. [pg. 4, line 5].

No changes are made at this time; this language mirrors the language of the Act. Specifically, section 19850 uses the phrasing "Every person who…receives, directly or indirectly,... any percentage or share of the money or property played, for keeping, running, or carrying on any controlled game in this state." Section 19853 uses the phrasing "Any person who furnishes any services or any property to a gambling enterprise under any arrangement whereby that person receives payments based on earnings, profits, or receipts from controlled gambling." Neither of these statutes limits the Commission's authority to monitor payments or other uses of indirect interest in revenue, earnings or profits.

6) Subparagraph (c)(1)(C) provides that an interested transaction would include repayment calculated by or based on a percentage of revenues, earnings profits or receipts derived from gambling operations.

a) **Comment/Suggestion:** A cardroom representative comments that this subparagraph is incorrect. This cardroom representative comments that repayment is for loans and debts. If the amount owed is a fixed amount, then this is not a profit interest, and if the payment is based on a percentage then it is not a repayment. IGLS comments that this subparagraph is limited to repayment and does not include "payment" as specified in the Act.

Recommended Response: This comment was considered but was not incorporated. A repayment could be based upon a percentage of profits if this is how the agreement

is drafted. Subparagraph (B) involves payments without a debt obligation and subparagraph (C) involves payments with a debt obligation. These provisions have been moved to Section 12XXX(b)(18)(A)4. and 5. [pg. 4, lines 5-6]

7) Subparagraph (c)(1)(D) which provides that an interested transaction would include the ability to exercise a significant influence over gambling operations.

   a) **Comment/Suggestion:** A cardroom representative comments that this subparagraph is unclear. It is asked if this subsection would include, "for example, financial covenants which limit a gambling establishment's uses of its financial resources or provide a lender with the right to restrain the use of such resources in certain circumstance[s]?"

      Recommended Response: This comment was noted. Financial covenants which would limit or restrain uses of financial services would be included as an ability to exercise a significant influence over the gambling licensee.

   b) **Comment/Suggestion:** IGLS comments that this subparagraph is "unworkable" as it leaves the preliminary determination as to the "power to exercise a significant influence" to the applicant or the parties to the transaction.

      Recommended Response: This comment was considered but was not incorporated. It is impossible to identify every possible scenario in which "significant influence" could arise. This is also a catch-all, mirroring the Act. The licensee is put on notice that these types of agreements are required to be disclosed and required to be formally approved. Failure to do so places the licensee at risk for violation of the regulations if discovered by the Bureau. In addition, the licensee would be at risk of denial for failure to comply.

8) Paragraph (c)(2) – "Interested transactions" would not include security interests in real or personal property that create an ownership interest held as collateral. These security interests involve the potential transfer of ownership rights to entities involved in gambling or gambling equipment and therefore are handled separately.

   a) **Comment/Suggestion:** Two cardroom representatives comment that security interest transactions should be limited to ownership interests in a licensee, and should not extend to ownership interests in any collateral. Multiple cardroom representatives comment that it is not clear why this paragraph is included. IGLS comments that this paragraph is unclear.

      Recommended Response: These comments were accepted. Special approval and enforcement of security interests should be limited to gaming collateral, and the text was amended to better reflect this limitation and to make clear that such security agreements will be approved and enforced in accordance with Article 3. This provision was moved to Section 12XXX(b)(11)(B) [pg. 4, lines 10-12]. The purpose of this paragraph was to exclude security interests in gaming collateral so that those transactions may be regulated separately due to their separate natures. While a security interest in gaming collateral is a specific type of interested transaction in that

it involves ownership rights, security interests in gaming collateral are to be processed in accordance with the provisions of Article 3.

b) **Comment/Suggestion:** A cardroom representative suggests that this paragraph specifically exclude transfers of ownership interests that occur by reason of death.

Recommended Response: This comment was considered but was not incorporated. Transfers of ownership by death and the corresponding transactions are provided for in Section 12349, in accordance with section 19841(s).

9) Subsection (d) – "Licensee" would mean "owner licensee" as defined in Business and Professions Code section 19805(ad) and also encompass those possessing a third-party provider of proposition player services (TPPPS) or gambling business license or registration. This definition would allow clarity throughout the Article that the regulations apply to gambling enterprises, third-party providers of proposition player services and gambling businesses.

a) **Comment/Suggestion:** A cardroom representative comments the sentence is grammatically incorrect, in that it defines an owner licensee as a TPPPS or gambling business "license or registration" instead of "licensee or registrant."

Recommended Response: These comments were accepted. The phrase "holder of" was omitted in error, and the text has been amended to include this phrase [pg. 4, line 16].

10) Subsection (e) – "Licensing agreement" would mean a contract or agreement for the rights to use another party's product.

a) **Comment/Suggestion:** A cardroom representative comments that this definition is overly broad and should be limited to licensed games.

Recommended Response: This comment was considered but was not incorporated. The Commission has broad regulatory authority over all persons or things having to do the gambling industry in sections 19811, 19824, 19853, and 19984, and not just licensed games. Recent issues regarding licensing agreements have included management programs, software licensing, and cardroom operations. This provision was moved to Section 12XXX(b)(14) [pg. 4, lines 18-19].

11) Subsection (f) – "Proprietary agreement" would mean a contract or agreement for the rights to use the concepts or ideas of another.

a) **Comment/Suggestion:** A cardroom representative comments this definition is overly broad and should be limited to licensed games.

Recommended Response: This comment was considered but was not incorporated. Again, the Commission has broad regulatory authority over all persons or things having to do with the gambling industry, and not just licensed games. This provision was moved to Section 12XXX(b)(18) [pg. 4, line 27 through pg. 5, line 1].

C. Add Section 12321 – General Transaction Provisions.

Section 12321 (renumbered Section 12320 in the revised text dated January 30, 2014) would adopt regulations to except certain transactions from the prohibitions imposed by section 19901. To fully encompass the day-to-day transactions of a licensee but also allow for closer review and approval of certain transactions, this section develops a series of reporting triggers. These would allow the Bureau the opportunity to review the transactions of the licensee and require Commission approval of the transaction when appropriate.

1) The following comment is in regards to Business and Professions Code section 19901, which states:

> "It is unlawful for any person to sell, purchase, lease, hypothecate, borrow or loan money, or create a voting trust agreement or any other agreement of any sort to, or with, any licensee in connection with any controlled gambling operation licensed under this chapter or with respect to any portion of the gambling operation, except in accordance with the regulations of the commission."

a) **Comment/Suggestion:** A cardroom representative comments that this statute is "largely unintelligible." This cardroom representative comments, "Effectively, we are left with a prohibition on lenders from loaning money to licensees except in accordance with regulations."

Recommended Response: This comment was noted. However, it is not the Commission but the Legislature that is vested with the authority to enact laws. Regulations are to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.[12] Here, section 19901 provides express authority to adopt regulations to carry out the provisions of transaction approval over a broad range of transactions. The regulations adopted to interpret and implement this statute must be consistent with the statute[13] regardless of complexity. The statute effectively states that any of the delineated transactions or "any other agreement of any sort to, or with any [Commission] licensee" will be "unlawful" unless in "accordance with the regulations of the Commission." Transactions that are not authorized in accordance with the regulations will be deemed "unlawful," thus rendering the agreement between the licensee and the other party voidable.

2) The introductory paragraph would provide the intention and authority of the following provisions.

a) **Comment/Suggestion:** Several cardroom representatives and IGLS comment that the introductory paragraph does not correctly summarize Business and Professions Code section 19901. A cardroom representative suggests the statement should "more closely track the language of section 19901" or be deleted.

Recommended Response: This comment was accepted. The introductory paragraph has been deleted [pg. 7, lines 2-5].

[12] Government Code section 11342.600.
[13] Government Code section 11342.2.

b) **Comment/Suggestion:** Multiple cardroom representatives comment that the final sentence is unclear. It states that the Section does not apply to transactions that are not security interests or do not require formal approval, but in subsection (b)(1), a transaction that does require Commission approval is included.

Recommended Response: This comment was accepted. The introductory paragraph has been deleted [pg. 7, lines 2-5].

3) Subsection (a) would require that all agreements over $2000 shall be in writing to establish a paper trail for documentation and audit purposes.

a) **Comment/Suggestion:** Several cardroom representatives comment that this requirement is overly broad, including agreements not involved in gaming. Industry comments that this requirement is burdensome in that "the company cannot have some landscaping work without a written contract," and would require an extraordinary amount of additional reporting. Two cardroom representatives request clarification as to what suffices as a "writing" to satisfy this requirement. A cardroom representative suggests that purchase orders, bills, invoices, receipts, etc., be acceptable to meet the writing requirement. Another cardroom representative further suggests that a time frame, such as one year, be added "to measure material agreements."

Recommended Response: These comments are accepted in part. The requirement did not specify "contract." The term "writing" was used to mean "not an oral agreement." Purchase orders, invoices, contracts, or other forms of writing used in the normal course of business to document the transaction and create a "paper trail" is acceptable. The text has been amended to reflect these changes [pg. 7, lines 2-5]. The suggestion that a time frame be added was considered but was not incorporated.

b) **Comment/Suggestion:** IGLS comments that this requirement is too narrow in that some transactions, such as those involving voting rights, may not have a monetary value and yet still need to be in writing.

Recommended Response: This comment was accepted. The terms have been amended to clarify that all interested transactions and security interests in gaming collateral must be in writing [pg. 7, lines 6-10], which would include voting rights or other forms of non-monetary consideration that create an interested transaction but do not have a monetary value.

c) **Comment/Suggestion:** A cardroom representative comments it is unclear how the $2000 threshold was created.

Recommended Response: This comment was noted. This specific value is a starting point for a further discussion. This threshold represents a balance of the regulatory need to confirm that there is evidence of a licensee's transactions for audit purposes without imposing a burden upon each licensee to maintain every transaction in writing.

4) Subsection (b) would require all transactions to be noticed to the Bureau. To avoid being overly burdensome to the industry or the Bureau, the subsequent paragraphs would create exemptions to this rule and specify which transactions would be submitted individually.

   a) **Comment/Suggestion:** Several cardroom representatives comment that the organization and interpretation of this subsection is unclear. They suggest that this subsection should be broken up into different sections or titled for clarity.

      Recommended Response: This comment was considered and changes were made to the text [pg. 7, line 2 through pg. 9, line 12]. The text has been edited to better organize and explain what is to be submitted. The text has been amended to reflect that all transactions that are interested transactions or security interests in gaming collateral shall be in writing and approved as appropriate [pg. 7, lines 6-10]. Then, transactions conducted with businesses offering products and services with terms available to the public would not be triggered by subsection (d) unless otherwise requested by the Bureau [pg. 7, lines 11-16]. Next, transactions not already provided to the Bureau would be reported as required in paragraphs (1), (2), and potentially (3) [pg. 7, lines 17-18]. Paragraph (3) is an option to allow for quarterly reporting of those transactions triggered solely by a monetary threshold [pg. 8, lines 23-27]. Transactions consolidated within a detailed statement of operations would be deemed lawful, except as required in paragraphs (2) and potentially (3) [pg. 7, lines 21-25]. Paragraph (2) would list the transactions that would be triggered for notice to the Bureau within 30 days of execution [pg. 7, line 26 through pg. 8 line 14]. The suggestion for titling subsections for clarity and organization was not incorporated as that is not accepted formatting or style. The suggestion for separating out the provisions into different sections was not incorporated as the information needs continuity.

   b) **Comment/Suggestion:** Multiple cardroom representatives comment that this paragraph is unclear and that this paragraph should be clarified and narrowed. A cardroom representative notes the terms of section 19901 can be interpreted to include every single transaction a licensee performs. A cardroom representative asks if the notice requirement is met through the submission of financial statements, even though that would be after the fact and would not provide advance notice? Also, the financial statements may not disclose individual transactions.

      Recommended Response: This comment was noted. Industry is correct in its interpretation that section 19901 could be inclusive of all transactions and in its assessment that detailed annual profit and loss statements will be utilized as notice for all but those transactions that trigger a different response. Advanced notice for these transactions was not included in this provision nor was it intended to be included.

      As discussed above, section 19901 is very broad, and the regulations need to accommodate that breadth. There seems to be agreement that the submission and review of every single transaction would be overly burdensome. The suggestion to utilize documents already submitted by licensees was proposed at the October 25, 2012 roundtable. A review of the annual financials determined that most groups of

income reporting already submit profit and loss statements with categories sufficiently detailed to understand how the entity was conducting business. Even the federal tax forms have satisfactory break-downs.

Because most or almost all licensees are currently providing profit and loss statements and because all entity licensees have the capability of providing profit and loss statements (or the federal tax form, as appropriate), this was chosen as the means by which all but specified transactions could be deemed acceptable under section 19901 without requiring submissions, reviews, approvals, and delays in business functions.

However, the Commission may not wish to deem approval of all transactions conducted by a licensee. Thus several reporting triggers were selected for heightened levels of review, as discussed below.

5) Paragraph (b)(1) would remove interested transactions from the procedures contained in this section. Interested transactions include involvement with gaming equipment or operations which may require licensure and therefore require the approval of the Commission.

   a) **Comment/Suggestion:** Several cardroom representatives comment that this provision is unnecessary and adds to the confusion of the Section.

      Recommended Response: This comment was accepted. This subsection was rewritten for clarity, including the organization of this paragraph, as detailed in the response to the subsection (b) comment above [pg. 7, lines 6-10].

6) Paragraph (b)(2) would provide the most inclusive transaction reporting method, through the annual submission of financial statements that are already required pursuant to Section 12403, when the submissions included documents with sufficient detail to view the transaction activities of the licensee.

   a) **Comment/Suggestion:** A cardroom representative comments that the paragraph references subsection (c) which does not relate to this paragraph.

      Recommended Response: This comment was accepted. The paragraph was meant to reference paragraph (b)(3), and the reference to subsection (c) was in error. With the deletion of paragraph (1), this paragraph is now renumbered as paragraph (1) [pg. 7, lines 19-25] and references the reporting exceptions in paragraph (2) [the reference is located on page 7, line 21; paragraph (2) is located on page 7, lines 26-27].

   b) **Comment/Suggestion:** IGLS comments that this paragraph is problematic in that it refers to a non-existent Section 12314.

      Recommended Response: This comment was noted [pg.7, line 22]. Accounting and Financial Reporting regulations are being promulgated and are expected to be in place prior to the completion of these regulations. It is to the Accounting and Financial Reporting regulations that the Section 12314 refers. These will require the submission of annual financials for gambling establishments, TPPPS and gambling businesses. This is especially important because this paragraph uses those

submissions to approve the transactions of those entity licensees. The current section providing for annual financial submissions is Section 12403, which only applies to gambling enterprises. The section number is highlighted on the draft so that information will be adjusted accordingly if the transactions regulations proceed before the Accounting and Financial Reporting regulations.

7) Paragraph (b)(3) would specify four types of transactions the licensee would need to submit to be in compliance with the section. The submission would be made within 30 days of execution and include a summary of the transaction or related transactions and a copy of the documents. For ease of both submission and receipt, these could be made by mail, facsimile, or email. These transactions include any lease lasting more than 7 days, any proprietary agreement, any licensing or consulting agreement over $10,000 and any transaction over a specified dollar amount tiered by income level. These types of transactions cause the most concern relating to the integrity of controlled gaming, and so have been singled out for submittal. Exempted from the dollar amount submittals are payments made to otherwise regulated agencies, departments, or entities, and contracts with third-party providers of proposition player services, which are approved by the Bureau.

   a) **Comment/Suggestion:** A cardroom representative comments it is unclear how paragraph (b)(3) differs from the statement of (b), and if (b)(2) trumps (b)(3)?

      Recommended Response: This comment was accepted. This goes to the organization of the section discussed above and was amended in the text [pg. 7, line 17 through pg. 8, line 27].

   b) **Comment/Suggestion:** A cardroom representative comments that notice must be provided within 30 days of execution, but nothing requires that these transactions be in writing and that the writing be executed.

      Recommended Response: This comment was noted. If the transaction is more than $2000 pursuant to subsection (a) [pg. 7, lines 6-9] it is required to be in writing. The text has been amended to include that any interested transaction or security interest in gaming collateral must be in writing [pg. 7, lines 6-10]. However, nothing in this paragraph requires a writing if the amount is less than $2000 and not an interested transaction or security interest in gaming collateral. In that case, the licensee may submit what is applicable.

   c) **Comment/Suggestion:** Several cardroom representatives comment that notice should consist of other elements. This cardroom representative suggests notice should consist of a summary, a copy of all transaction documents, and a statement by the licensee that the other party is not related or affiliated with the licensee or other connections. Another cardroom representative also suggests notice should consist of a summary of the transaction sufficient to identify the parties, the subject matter and the amount, with the Bureau being able to request the full and complete documentation if needed.

Recommended Response: This comment was accepted in part, and a separate section, Section 12321, dedicated to the requirements of notice has been added [pg. 9, line 17 through pg. 10, line 16]. The notice requirements in this Section were drafted to reflect more detail of what needs to be included: the identification of the type of document, what information is to be included in the summary, identification and contact information of all parties, how the party is affiliated if appropriate, and the copy of the final document if applicable.

d) **Comment/Suggestion:** Three cardroom representatives comment that proprietary agreements already provided to the Bureau in conjunction with the game review process should be excluded.

Recommended Response: This comment was accepted and incorporated into the text through the exemption in subsection (d) [pg. 7, lines 17-18] of submitting any document already submitted to the Bureau.

e) **Comment/Suggestion:** IGLS comments that affiliate agreements, premises transactions and personal property leasing transactions should be included.

Recommended Response: This comment was generally accepted and incorporated in various ways throughout the text. These terms are defined [pg. 1, line 16 through pg. pg. 2, line 17; pg. 4, lines 13-14; pg. 4, lines 24-26], and premises transactions are incorporated into interested transactions to be handled as such [pg. 4, line 3]. Affiliate transactions are incorporated with the monetary thresholds [pg. 8, lines 11-12, or optionally pg. 9, lines 11-12]. Leases remain applicable to both real property and personal property, however, and the text was amended to specify that all leases of gambling equipment must be submitted [pg. 8, lines 2-4].

8) Subparagraph (b)(3)(A) would require the submittal of any lease for real or personal property of more than seven days in duration.

a) **Comment/Suggestion:** A cardroom representative comments that this provision is overly broad and should apply only to property directly used for gaming.

Recommended Response: This comment is open for discussion at the workshop. The provision is now renumbered as Section 12320(d)(2)(A) [pg. 8, lines 2-4].

At the October 25, 2012 roundtable, industry suggested the Commission staff should review the requirements of other states for guidance. Several states require the submission of leases. Colorado requires the submission of all leases, but we mirrored the states that requested leases of more than seven days. The Mississippi Gaming Commission's Director of Compliance was interviewed and she provided further perspective. At the time of the research, Mississippi required the submission of leases over $30,000 in value, but they were considering revising their regulations to include all leases. They have discovered that leases are especially vulnerable to money laundering, yet leases are not so frequent as to be burdensome for submission or review.

b) **Comment/Suggestion:** A cardroom representative comments that the report should be on the making of the lease and not the lease as one is the transaction and the other is the document generated in the transaction.

Recommended Response: This comment was noted, and is open for discussion at the workshop. Paragraph (b)(3), renumbered as (d)(2) [pg. 7, lines 26-27], requires the summary and supporting documents in the creation of the document in question, and the lease itself is also to be submitted.

9) Subparagraph (b)(3)(B) would require the submittal of any proprietary agreement.

a) **Comment/Suggestion:** A cardroom representative comments that there should be a minimum monetary threshold to trigger the submission of a proprietary agreement since "every piece of software, no matter how inconsequential, requires that the user agree to terms and conditions thereby causing the creation of a proprietary agreement."

Recommended Response: This comment was open for discussion.

In July 2013, a survey of the industry was conducted. This survey was sent to every cardroom, third-party provider of proposition player services, and gambling business. While not scientific, it was the most efficient and confidential means by which we could request information from the industry to determine reporting thresholds. All members of the industry were given multiple opportunities to respond and were highly encouraged to participate. We received responses from each income category for both the cardroom and the TPPPS/gambling business surveys.

Every single respondent reported entering into approximately zero to five proprietary agreements a year. The definition used in the survey is the same as in these regulations.

b) **Comment/Suggestion:** A cardroom representative comments that the report should be on the making of the proprietary agreement and not the agreement itself as one is the transaction and the other is the document generated in the transaction.

Recommended Response: This comment was noted, and is open for discussion at the workshop. Paragraph (b)(3), renumbered as (d)(2) [pg. 7, lines 26-27], requires the summary and supporting documents in the creation of the document in question, and the proprietary agreement itself also to be submitted.

10) Subparagraph (b)(3)(C) would require the submittal of any licensing or consulting agreement, or any series of collateral agreements of this type totaling $10,000 or more in any consecutive 12-month period.

a) **Comment/Suggestion:** Multiple cardroom representatives and IGLS comment that this provision is unclear. Two cardroom representatives comment that clarification is needed as to what is meant by a series of collateral agreements.

Recommended Response: This comment was accepted and the text was amended to refer to "a series of related" agreements [pg. 8, lines 6-7].

b) **Comment/Suggestion:** Multiple cardroom representatives comment that this provision is unreasonable and the monetary threshold is too low, resulting in a burdensome requirement.

Recommended Response: This comment is open for discussion [pg. 8, lines 6-8].

This provision was also based on the results of the July 2013 survey. Every single respondent reported entering into ten agreements or less in a year for both licensing and consulting agreements.

The total monetary amount of all licensing agreements and all consulting agreements in a year was also requested in the survey. The bulk of the responses indicated a range of $10,000 or less for both agreement types, but the other ranges, including "greater than $100,000," were also reported.

Even though ten agreements a year did not seem overly burdensome, requesting all consulting and licensing agreements seemed unnecessary. The $10,000 threshold was chosen to minimize the reporting to only those that would be the most useful to review.

c) **Comment/Suggestion:** A cardroom representative comments that the report should be on the making of the agreement and not the agreement itself as one is the transaction and the other is the document generated in the transaction.

Recommended Response: This comment was noted, and is open for discussion at the workshop. Paragraph (b)(3), renumbered as (d)(2) [pg. 7, lines 26-27], requires the summary and supporting documents in the creation of the document in question, and the agreement itself is also to be submitted.

11) Subparagraph (b)(3)(D) would require the submittal of any transaction or series of related transactions totaling $30,000 or more for Group I licensees, $20,000 or more for Group II licensees, or $10,000 or more for Group III and Group IV licensees, in any consecutive 12-month period.

a) **Comment/Suggestion:** Multiple cardroom representatives comment these monetary thresholds are too low, and would create burdensome reporting. Suggestions include varying thresholds with the following ranges: $100,000 – $200,000 for Group 1, $50,000 – $100,000 for Group 2, $10,000 – $50,000 for Group 3. No additional support for these particular thresholds was provided. IGLS commented that these thresholds may need some "fine tuning" after discussions at the next workshop.

Recommended Response: This comment is open for discussion. The provision has been renumbered to (d)(2)(D) [pg. 8, lines 11-14] or optionally as (d)(3) [pg. 8, lines 23-27].

Monetary thresholds were discussed at the October 25, 2013 roundtable. Industry suggested that the reporting requirements of other states be reviewed. Several states were sampled. Reporting requirements ranged from the submission of all transactions

over $10,000, to the submission of certain types of transactions over a $5 million threshold. However, there was a direct correlation found between how high these threshold levels were and how often financials were submitted. The states with the higher thresholds require monthly, quarterly, and annual financials, with the quarterly and annual financials prepared by a licensed CPA. New Jersey even required daily reporting of bankrolls. Those states with lower reporting levels submitted only annual financials. Currently, licensees in California are only required to file annual financials. Instead of changing the frequency of submission of financial documents, we decided to look at adjusting monetary values.

Several states with annual financial submissions had reporting requirements for transactions with $30,000 or $50,000 monthly payments, or a related series of transactions that totaled, in the aggregate, $300,000 or $500,000 in a year. However, as industry has pointed out, California does not allow publically held corporations to hold gambling licenses, unlike many of the sampled states. So Commission staff needed a method to determine if any of these thresholds, or perhaps thresholds closer to one of the extremes, would be appropriate.

Again, the July 2013 survey results guided this provision. No respondent reported entering into more than 10 contracts in a year with a value greater than $50,000.

The rest of the information gathered indicated that no one monetary value threshold would be appropriate for all groups. More than $10,000, and Groups III and IV would not be reporting. A threshold of $10,000 would also create an incredible burden upon Groups I and II as well as the Bureau. Using the survey results, the ranges and limitations presented in text were generated.

As the industry is aware, Commission staff will need to support the thresholds. Any suggestions made or reviewed must have more basis than an arbitrary number. Therefore, the suggestions are not incorporated into the text, but are open for discussion at the workshop.

b) **Comment/Suggestion:** Two cardroom representatives comment that the phrase "any transactions or series of related transactions" is unclear.

Recommended Response: This comment was considered but no changes, other than to add references to affiliate transactions, have been made [pg. 8, lines 11-12; optionally pg. 8, line 25]. When thresholds are created, it opens a loophole to create multiple transactions just under the reporting thresholds. A "series of related transactions" is not uncommon language to address this issue.

12) Subsection (c) would require the Bureau to review the documents submitted for compliance with the Act and any license conditions that may exist, and allows a method of Commission approval if the Bureau determines formal approval is necessary.

a) **Comment/Suggestion:** Several cardroom representatives comment that the subsection fails to provide guidance to the Bureau or licensees to determine if formal approval is necessary.

Recommended Response: This comment was accepted, and amendments were made to the text [pg. 9, lines 1-10]. The Bureau may require formal approval if a noticed transaction is actually an interested transaction or creates a security interest in gaming collateral, is a violation of a licensee's conditions, or otherwise indicates to the Bureau that formal approval is necessary.

b) **Comment/Suggestion:** Several cardroom representatives comment that this subsection, coupled with subsection (d), is unreasonable, as it seems to require that a licensee insert in virtually every contract a caveat that the Bureau can cancel or reform the contract. This will cause tremendous inefficiencies and perhaps lost opportunities.

Recommended Response: This comment is open for discussion. The provisions have been renumbered as subsections (e) and (f) [pg. 9, lines 1-12].

As discussed above, section 19901 is very broad and states those transactions must be in compliance with the regulations of the Commission, or they are unlawful. Throughout the Act, transactions and the interactions of a licensee are to be in compliance with the Act and Division 18 or can be terminated, as this is a closely regulated industry.

13) Subsection (d) would allow the licensee to continue to conduct business while the documents are reviewed unless performance is specifically required to cease.

a) **Comment/Suggestion:** A cardroom representative comments that there is no guidance given as to when the Bureau or Commission will not allow a transaction to proceed. This cardroom representative also suggests the text be changed to "…unless the Bureau or the Commission issues a letter to cease and desist."

Recommended Response: This comment was generally accepted [pg. 9, lines 11-12]. This provision was drafted to provide that the default position is to allow the transaction to proceed, as requested by industry at the October 25, 2012 roundtable. However, the Bureau needs to be able to stop a transaction that is illegal, unlawful, or highly inappropriate on a case-by-case basis as determined by the facts surrounding the transaction and the applicant. This method is also important as these transactions will not be pre-approved. However, greater guidance for the Bureau was incorporated into the text [pg. 9, lines 7-10].

The submission of an instruction in writing by the Bureau as suggested was incorporated into the text [pg. 9, line 12]. Reference to the Commission was removed [pg. 9, line 12], as the Commission may approve or disapprove, but enforcement is the role of the Bureau in accordance with section 19931.

D. Add Section 12322 – Interested Transaction Conditions.

Interested transactions include transactions that involve another party taking a role in a licensee's activities. Interested transactions include the sale of property or a business

involved in gambling. For this reason, Section 12322 would provide mandatory licensure requirements for certain interested transactions.

1) Subsection (a) would require all interested transactions to receive formal approval.
   a) **Comment/Suggestion:** A cardroom representative repeats comments regarding the term "formal approval" and offers suggested language. "Formal approval" should be "approval" and "transaction approval period" should be "review period."

      Recommended Response: This comment was discussed in the Section 12320 responses but was not incorporated. Therefore the suggested language was also considered here but was not incorporated.

2) Subsection (b) would provide that the transferor in an interested transaction must have a valid license issued by the Commission before an interested transaction approval request will be accepted. This license must remain active for the duration of the transaction approval period; however the entity itself does not need to remain in operation.
   a) **Comment/Suggestion:** A cardroom representative comments that this section requires the security interest holder to be a licensee.

      Recommended Response: This comment was considered but was not incorporated. The license requirement refers to the current licensee [pg. 10, lines 22 and 25], who is the transferor or seller [pg. 10, lines 24-25], not the other party in the transaction who may or may not need to be licensed, who is the transferee or buyer. If the other party needs to be licensed, then the party with the current licensee must keep the license active until the other party has been licensed [pg. 10, lines 25-26]. Finally, this section is not limited to a security interest holder, but any transaction when an entity may change hands, including a direct sale.

   b) **Comment/Suggestion:** A cardroom representative comments that use of the word "transferor" is misleading as some of the transactions which would create an interested transaction as defined in Section 12320 do not include a transfer or conveyance.

      Recommended Response: This comment was accepted, and the text was amended [pg. 10, line 24] to refer also to "seller."

   c) **Comment/Suggestion:** A cardroom representative comments that it is unclear why a "transferor's" license remains active for the duration of the transaction approval process. "Even if a licensee loses its license it is possible for another party to obtain its own license and acquire the previous interest."

      Recommended Response: This comment was noted [pg. 10, lines 24-28]. The seller or transferor must hold a license until the other party is licensed as necessary so that there is not a point where there are unlicensed parties or no parties at all which are in control of an entity, profits, equipment, etc. controlled under the Act. Additionally, under the section 19963 moratorium provisions, the Commission may not issue a gambling license for a gambling establishment not licensed to operate on December 31, 1999, as specified. If the entity's license is allowed to lapse, a new license cannot

be issued. Therefore, the seller or transferor must remain licensed until the other party is licensed.

E. Add Section 12323 – Requirements for Formal Approval of Transaction Requests.

Section 12323 would provide the submission requirements of formal approval, including the fee, the documents to be submitted, and the provisions that must be included in the agreement.

1) The following comment relates to Section 12323 in its entirety:

   a) **Comment/Suggestion:** A cardroom representative comments that it is unclear to what transactions this provision of formal approval refers. This cardroom representative suggests this section should state which transactions it applies.

      Recommended Response: This comment was accepted. The text was amended to specify that formal approval is necessary when the transaction is an interested transaction or a transaction deemed to require approval by the Bureau [pg. 11, lines 4-7].

2) Subsection (a) would list the fees and documents to be submitted. This includes the information needed for an unlicensed party to apply for a license or registration, as appropriate. This would also make clear that licensure for institutional investors is unnecessary. An interested transaction that requires licensure cannot be approved until all parties possess either a temporary or regular license, so that the transaction documents and licensure requests will be handled concurrently.

   a) **Comment/Suggestion:** A cardroom representative comments that it is unclear why there is a fee to process the formal approval when all that the applicant is doing is applying for a gambling license and paying the usual license application fees. "In fact, once the applicant is licensed it would not need formal approval of an interested transaction since it would be the holder of an owner's license and thereby permitted itself to engage in the transactions included within the definition of an interested transaction."

      Recommended Response: This comment was noted [pg. 11, line 9]. The approval of the transaction would generate workload for processing, reviews, etc. This fee is provided in accordance with section 19826 to process any applications for approvals and collect all related fees, and in the Commission's regulations in accordance with 19841, subsections (a) and (c), to set the manner and method of application and implement the provisions of the Act related to approvals.

      Formal approval of interested transactions is required by the Commission. The approval is of the transaction itself. Sections 19902 and 19904 specifically provide that prior approval of the sale or lease of property or interest in property and the sale, assignment, transfer, pledge or other disposition of a security or an option to purchase

a security is required. Section 19901, discussed above, makes a transaction unlawful unless performed in accordance with Commission regulations. In addition, Section 19824 provides the Commission with the authority to require any person to apply for approval pursuant to the Act or regulations. The Commission will approve these transactions. The fact that parties are current licensees does not dismiss the need to have the transaction itself approved.

3) Paragraph (a)(2) would require a cover sheet with a summary of the transaction, a copy of the final documents, and a copy of any supporting documentation to be submitted.

   a) **Comment/Suggestion:** A cardroom representative comments that the requirement includes submission of a copy of all final transaction documents, but nothing requires the transaction to be in writing. This cardroom representative suggests the addition of "if any" to the provision.

      Recommended Response: This comment was considered but was not incorporated. The text has been amended to require interested transactions to be in writing [pg. 7, lines 6-10]. Additionally, subsection (a) [pg. 7, lines 2-5] of Section 12321 (renumbered as Section 12320) requires all transactions over $2000 to be in writing.

4) Paragraph (a)(3) lists the instructions for those who are not licensed but will need to be licensed prior to the approval of the transaction. Subparagraph (D) lists those entities that are institutional investors that are otherwise regulated and therefore generally do not require licensure for the transaction to proceed.

   a) **Comment/Suggestion:** Multiple cardroom representatives comment that this list should be moved to its own section.

      Recommended Response: This comment was accepted. Subparagraph (D) has been moved to Section 12XXX under the term "institutional investor" for simplicity [pg. 3, lines 25-26].

   b) **Comment/Suggestion:** Several cardroom representatives comment that the intent of this subparagraph is unclear. A cardroom representative asks if transactions with institutional investors require formal approval or do not require formal approval.

      Recommended Response: The comment was accepted, and the text was amended to specify that an institutional investor does not require licensure unless directed to be licensed by the Commission [pg. 12, lines 1-3]. If the party is an institutional investor, the licensing documents do not need to be included for that party; however, this does not relate to the transaction approval process. If the transaction is an interested transaction or otherwise directed to receive formal approval, then the transaction itself will still require formal approval.

   c) **Comment/Suggestion:** Two cardroom representatives comment that the term "generally" should be removed.

      Recommended Response: This comment was accepted and the text was amended [pg. 12, line 1]. This is further discussed in the response to the comment below.

d) **Comment/Suggestion:** A cardroom representative comments that there is no basis to exempt these entities, as "otherwise regulated." These institutions may not be regulated in a way that protects the public health, safety and welfare, as evidenced by the actions of financial entities that resulted in the 2008 economic crisis. IGLS also comments that these investors may not perform sufficient background checks or may have policies and purposes that are "not necessarily congruent with those underlying the Act." Additionally, IGLS comments, if the entity wishes to become an owner they do need to be licensed.

Recommended Response: The comment was noted [pg. 12, lines 1-3]. Industry has commented previously on the need for the Commission to prevent the creation of barriers to institutional investors providing funding to the industry. To require licensure would effectively bar these entities from entering into agreements with licensees. Not only would these entities likely decline to transact with the licensee instead of apply for licensure, but the process to license the entity would be needlessly overwhelming. However, this comment supports the deliberate drafting of the provision to protect the Commission's authority to license entities if necessary on a case-by-case basis. Examples may be, as IGLS suggested, if one of these entities wished to become an owner.

It is not within the scope of these regulations to unnecessarily regulate entities that already have state or federal oversight, or to regulate other regulatory agencies to determine if they are protecting the public's health, safety and welfare. Additionally, it is not the role of the Commission to regulate activities that have other government oversight and are only incidentally gambling related, such as the standardization of conventional loans and the stability of the national economy. As an illustration, a loan by these entities has regulated lending requirements regardless of whether a party is a licensee or not.

It is within the scope of these regulations to provide oversight for current licensees and licensee activity. It is also within the scope of the Commission's authority to require any person to apply for a license or approval. This is why the Commission's authority to license these entities was intentionally drafted to not be limited. For clarity of this point, however, the text was amended to exempt licensing unless required by the Commission [pg. 12, lines 1-3].

5) Subsection (b) would list the provisions that must be present in an interested transaction agreement before that agreement will be approved. These provisions put all parties on notice, even those not currently involved in the gambling industry, of the obligations required by the Act and the Commission.

a) **Comment/Suggestion:** A cardroom representative comments that it is unclear why the disclosure statements need to be included in the transaction documents when everyone involved will ultimately hold an owner's license except those whom the Commission does not require to be licensed.

Recommended Response: This comment was noted. The disclosure statements have been incorporated into a new section, Section 12324 [pg. 13, line 26 through pg. 21, line 5].

The disclosure statements need to be included to inform all parties prior to the execution of the agreement of the required responsibilities and approvals that will need to take place. This is of particular importance to a party that is not already involved in or familiar with the gambling industry.

b) **Comment/Suggestion:** IGLS would like terms to be included in a separate attachment to the contract, with the terms affirmatively acknowledged and agreed to by the parties.

Recommended Response: This suggestion was accepted, and the proposed text was changed to reflect a separate document shall be used for disclosures [pg. 14, line 1 and pg. 15, line 28].

c) **Comment/Suggestion:** IGLS suggests terms to be specifically used in financing transactions.

Recommended Response: This suggestion was accepted. The text was amended to include a separate regulation section that will provide direction as to what disclosures are required to be included [pg. 15, line 27 through pg. 21, line 5]. Disclosures for transactions that are not financial transactions are included [pg. 13, line 29 through pg. 15, line 8] to confirm that every party, especially a party not already involved in the gambling industry, is aware of the Commission, the Bureau, the Act, and the authority of the Commission in regards to the agreement being created. Disclosures necessary for a sale of a gambling entity, including those required by sections 19903 and 19906, are to be included as appropriate [pg. 15, lines 9-26]. Finally, the disclosures suggested by IGLS for financing transactions are included, and intended to be attached to the financing transaction exactly as provided [pg. 15, line 27 through pg. 21, line 5]. Minor changes to the suggested language have been made in accordance with discussions with IGLS to make this a more self-contained disclosure statement by clarifying terms, and applying these provisions to TPPPS and gambling businesses as well as gambling enterprises.

6) Paragraph (b)(1) would spell out the term to be included in the agreement to advise the parties that the Commission's approval is not a certification that the contract is enforceable and that the Commission is not liable for any consequence arising from a denial, approval, or the processes of reviewing an agreement.

a) **Comment/Suggestion:** A cardroom representative comments that this paragraph is not a disclosure but is instead an advisory of the effect of the Commission approvals and a disclaimer of liability. The Commission should insert such advisories and disclaimers into the approval. Additionally, this cardroom representative comments that there is no statutory authority for this provision.

Recommended Response: This comment was considered but was not incorporated. Subsection (b) (renumbered as subsection (a) of Section 12324) [pg. 13, lines 27-28]

requires an affirmative acknowledgement of each disclosure, including this one. Both parties should be made aware of this and the other provisions listed in this subsection when reviewing the terms of the agreement, and not at the approval stage.

This provision, like the others in this subsection, is a disclosure by the licensee to the other party of the existence, requirements, and abilities of the Commission that are incorporated into the agreement in light of the fact that the agreement falls within a regulated industry and with a regulated party. To confirm that the other party is aware of the Commission and its role in the agreement, part of the approval process will be to review that the other party has affirmatively acknowledged each disclosure.

This particular provision is not uncommon. It is within the authority of the Commission to determine if the contract complies with the dictates of the Act and Division 18, but it is the authority of the courts to determine enforceability of a contract. Also, the other party should be aware from the introduction of the terms that the Commission does not assume liability while carrying out the review processes or upon rendering a decision.

7) Paragraph (b)(2) would specify in the clause to be included in the agreement that the approval of a license is not an approval of the agreement.

   a) **Comment/Suggestion:** A cardroom representative comments that this paragraph is a term referring to security interests, and as not all transactions are security interests this term is unnecessary and overly broad.

      Recommended Response: This comment was considered but was not incorporated.

      This should be a disclosure to the other party in case there is an undisclosed, unclear or unintended consequence of a security interest. This is also discussed in the comments for Article 3. Additionally, the other party may examine the agreement for modification at a later date, and the information regarding the creation of a security interest option would be available to them in this way. This provision is renumbered to Section 12324(b)(5) [pg. 14, line 26 through pg. 15, line 1].

8) Paragraph (b)(3) would specify in the clause to be included in the agreement that a person whose interest is derived from a secured credit transaction shall not have the right to enforce that security interest without the prior approval of the Commission.

   a) **Comment/Suggestion:** A cardroom representative comments that this paragraph is a term referring to security interests, and as not all transactions are security interests this term is unnecessary and overly broad. Also, this term is the unauthorized practice of law.

      Recommended Response: This comment is open for discussion.

      In reference to the disclosure involving security interests, this was answered in the previous response.

      This provision is not an unauthorized practice of law. First, it is a statement based on section 19900, and is not applied to any particular facts or situation. Second, the

Commission is vested with the authority to adopt regulations to interpret and implement the law, as discussed above. However, the terms have been placed in quotes when reasonable to be used by a licensee exactly as written and has been renumbered as Section 12324(b)(3) [pg. 14, lines 16-21] and (d) [pg. 17, line 28 through pg. 20, line 12].

9) Paragraph (b)(4) would specify that the assignment of a security interest or other rights under an approved transaction shall require the prior approval of the Commission unless expressly exempted.

   a) **Comment/Suggestion:** A cardroom representative comments that this paragraph is unnecessary and constitutes the unauthorized practice of law.

      Recommended Response: This comment has been answered in the responses to the previous comments.

10) Subsection (c) would require, in a contract for an interest in or the sale or lease of any property requiring licensure, the inclusion of a provision addressing the responsibility for any delinquency payments in accordance with Business and Professions Code section 19903.

   a) **Comment/Suggestion:** A cardroom representative comments that this subsection does not add anything to section 19903 and thus seems unnecessary.

      Recommended Response: This comment was considered but was not incorporated. The inclusion of this provision is to delineate what information is required to be present for formal approval for simplicity and clarity. This subsection was renumbered to Section 12324(c)(1) [pg. 15, lines 12-15].

   b) **Comment/Suggestion:** IGLS comments that these proposed regulations do not require licensure, and the proposed regulations do not require automatic licensure in connection with a personal property leasing transaction or a transaction involving the gambling premises. IGLS notes that section 19853(a) does not require licensure. IGLS comments that if the Commission requires registration, a suitability finding or a license, the criteria to be applied would be interest in the premises or real property used by the licensed gambling establishment or grossly disproportionate compensation, in accordance with section 19853(a), paragraphs (2) and (5).

      Recommended Response: This comment was noted. While subsection (a) of section 19853 provides guidelines, it states that the Commission "may" require a party to apply for a registration, a finding of suitability, or a license. This is also seen in the language of Section 19903 with the use of the phrase "under circumstances that require the approval or licensing of the purchaser or lessee." This subsection applies that language. It is for the Commission to determine if and when a party is to be licensed, or when licensure is unnecessarily burdensome or simply irrelevant. The regulations cannot impose required licensure when this determination is at the will of the Commission based upon specific facts.

11) Subsection (d) would provide for proceeds derived during the pendency of a sale of a gambling business that would be payable to a new owner to be held in escrow until the new owner has been approved for licensure by the Commission.

a) **Comment/Suggestion:** A cardroom representative comments that this provision is unnecessary, and suggests it should be revised to provide that no disbursements can be made to or for the new owners until they have been approved. This cardroom representative also comments that this provision is "unfair to the current owners, who should be entitled to distribute profits to themselves."

Recommended Response: This comment was considered but was not incorporated. An escrow account is common practice when one party is in current possession but another party is entitled to the monies being generated. The current owners cannot just "disperse the profits to themselves" when it is the rightful property of the new owners. But the new owners cannot receive the profits from a gambling entity under the Act until they have been licensed. The suggestion that the disbursements are just "not made" does not answer where the monies go and who would be responsible for them until the new owners are licensed. This subsection was renumbered to Section 12324(c)(2) [pg. 15, lines 16-22].

12) Subsection (e) would require sale agreements to specify the provisions made for outstanding chip liability, in accordance with section 19906.

a) **Comment/Suggestion:** A cardroom representative comments that this regulation does not add anything to section 19906 and thus seems unnecessary.

Recommended Response: This comment was considered but was not incorporated. The inclusion of this provision is to delineate what information is required to be present for formal approval for simplicity and clarity. This subsection was renumbered to Section 12324(c)(3) [pg. 16, lines 23-26].

F. Add Section 12324 – Transaction Formal Approval Processing Times.

Section 12324 (renumbered as Section 12325 in the text dated January 30, 2014) would provide the steps to be taken to process the transaction approval.

1) Subsection (a) would inform the licensee that the request of formal approval shall be submitted at least 120 days prior to the proposed closing date of the transaction to allow the Bureau time to review the documents and the Commission to render a decision.

a) **Comment/Suggestion:** A cardroom representative comments that 120 days is reasonable when a party needs to be licensed, but "extremely long" for a standard loan with a commercial lender or to another licensed party. This cardroom representative suggests the processing times differ for those that require less lead time from those that require greater processing.

Recommended Response: This comment is open for discussion [pg. 21, line 24 through pg. 22, line 10]. An option for a shortened review period of 90 days for instances in which all parties are licensed or do not need to be licensed was drafted into the proposed text for consideration at the workshop [pg. 21, line 12 through pg. 22, line 22].

b) **Comment/Suggestion:** A cardroom representative suggests that transactions between existing owner-licensees in good standing require only notice the Bureau rather than formal approval.

Recommended Response: This comment was considered but was not incorporated. The Commission has expressed the intention to formally approve these transactions [pg. 7, lines 6-10].

2) Subsection (b) would provide the processing timeframes and instructions of the Bureau to process the request.

a) **Comment/Suggestion:** A cardroom representative suggests that the mandated abandonment of uncured deficient documents in paragraph (2) be changed to a permissive one, to account for unavoidable delays.

Recommended Response: This comment was considered but was not incorporated. This represents language commonly used throughout the regulations. Additionally, the language of this paragraph states "if the licensee does not respond within 30 days of any request…" [pg. 21, line 17-21] If the licensee responds to the Bureau's request by explaining the reasonable delay, this is still a response by the licensee to the Bureau. This paragraph requires reasonable communication to the Bureau, so that the Bureau does not waste time and resources on an application that is no longer being pursued.

b) **Comment/Suggestion:** A cardroom representative suggests language be added to identify from when the 90 days processing period is measured, i.e., from the date the request is deemed complete by the Bureau.

Recommended Response: This comment was accepted and the text was amended [pg. 21, lines 22-23].

c) **Comment/Suggestion:** IGLS comments this language should reflect that the Bureau shall provide an opinion regarding the potential for default, matching the language of Section 12332.

Recommended Response: This comment is open for discussion [pg. 21, lines 22-24]. The language of this paragraph reflects the common language used throughout the regulations in regards to various approvals. The language of 12332 [pg. 28, lines 19-21] is different because the risk of default affects the decision if licensure is required for the secured party, and therefore the need to license the other party is information the Commission will need in order to proceed with the approval of the transaction.

3) Subsection (c) would explain the completion of the interested transaction approval request process.

a) **Comment/Suggestion:** A cardroom representative suggests that the Commission be afforded leeway to approve a transaction and the licenses for one or more of the persons involved without waiting for all Bureau reports to be completed.

Recommended Response: This comment was considered but was not incorporated. All of the facts of the transaction will need to be used to determine approval.

G. Add Section 12325 – Transaction Amendments or Subsequent Assignments.

Section 12325 (renumbered as Section 12326 in the text dated January 30, 2014) would provide that any amendment or subsequent assignment, pledge, sale, or transfer of an approved interest or transaction document shall require notification or formal approval in accordance with this article as though it was a new transaction.

a) **Comment/Suggestion:** Two cardroom representatives comment that there is no guidance as to when the full approval procedure will be required. "If a party to an approved transaction wants to change the contact information included in the contract, will simple notice to the Bureau suffice? If the parties to an approved transaction want to extend the term or renew the agreement, does the licensee need to begin the entire approval process again?" A cardroom representative suggests that non-substantive changes to the contract or even extensions to an approved agreement with no term changes require only notification to the Bureau. Another cardroom representative also suggests a mechanism whereby notification is sufficient when an amendment or series of amendments to an existing contract do not exceed a certain percentage of the contract's value or involve non-material changes to an approved transaction. The Bureau can then determine if the change is material and thus requires Commission approval.

Recommended Response: This comment was accepted. The issue that "substantive" or "material" changes should be segregated from "non-substantive" and "non-material" has come up and been discussed before, bringing with it complications in defining these terms. Even in these comments, industry suggests that those contracts without changes in the terms should only be noticed, and gives an example of the contract being extended or renewed. Typically the dates of the contract validity period are contained within a term of the contract, which would require a change in a contractual term. We also note that the courts also wrestle with a definition for "material" and "substantive."

However, the text has been amended to include a method to submit notice to the Bureau of non-substantive changes with the direction that substantive changes are those that would grant, deny, expand or diminish any rights or obligations under the agreement [pg. 22, line 28 through pg. 23, line 9].

H. Add Section 12326 – Shelf Approval.

Section 12326 (renumbered as Section 12327 in the text dated January 30, 2014) would provide an option of shelf approval, which is a means by which a licensee could submit for review a concept for the sale of a gambling entity, in whole or in part, with the Commission so that a licensee may effectively budget resources and time. This is also a method to provide guidance for any lending source to approve a loan with confidence that the Commission is aware and conditionally accepts the transaction.

1) The following comment relates to this section in its entirety.

   a) **Comment/Suggestion:** IGLS comments that this provision should be clarified as to its applicability. It appears to be limited to ownership transactions, in which case it should include the disclosures of Section 12323.

      Recommended Response: This comment is open for discussion. As written, shelf approval is limited to ownership transactions [pg. 23, lines 15-20]. However, it is only the concepts that are being discussed. At this stage, there may not yet be another party with whom to provide the disclosures.

2) Subsection (d) would provide the time period for which the shelf approval would be valid.

   b) **Comment/Suggestion:** A cardroom representative comments that shelf approval is an option and not a requirement, so the language "a new request for approval must be submitted" is not appropriate.

      Recommended Response: This comment was accepted and the text was amended to indicate resubmission of a request for shelf approval will be required if shelf approval is still needed [pg. 24, line 8].

3) Subsection (f) would provide the requirement for the licensee to proceed as appropriate for a general transaction, interested transaction, or security interest in personal property gaming collateral once the concept has generated a transaction. This subsection also allows the Commission to dictate actions specific to the particular transaction, if necessary.

   a) **Comment/Suggestion:** A cardroom representative comments that shelf approval is an option, so it would not be uncommon for the parties to determine not to proceed with the transaction. This cardroom representative comments it should be up to the licensee to determine if and when to submit the transaction documents.

      Recommended Response: This comment was accepted and this subsection was deleted [pg. 24, lines 12-13].

I. Add Section 12328. Confidentiality Agreements.

Section 12328 would adopt regulations to assist in the investigation of gambling activity. This regulation would prohibit licensees from entering into, or requiring another to enter into, a confidentiality agreement which prevents communication and cooperation with law enforcement and the Commission. Section 12328 would deem any confidentiality agreement that prohibits communication with law enforcement or the Commission to be void and unenforceable as against the Gambling Control Act's purposes and policies. Finally, any confidentiality agreement connected with a licensee or an affiliate must reference this regulation.

a) **Comment/Suggestion:** IGLS provided the suggestion and text to include a prohibition against confidentiality agreements that prevent communication and cooperation with the Commission, the Bureau, the Department of Justice, or local law enforcement for consideration.

Recommended Response: This suggestion was included in the proposed text as an option for discussion at the workshop [pg. 24, lines 19-28].

Article 3. Security Interests in Gaming Collateral.

A. The following comment is for Article 3 in its entirety.

a) **Comment/Suggestion:** Two cardroom representatives and IGLS comment that several of the comments made in Article 2 are to be mirrored in Article 3.

Recommended Response: This comment was noted. Responses will be the same as provided in Article 2 unless otherwise noted.

b) **Comment/Suggestion:** IGLS comments that Article 3 appears to cover security interests in general as well as enforcement. The approval of these transactions should be approved in Article 2.

Recommended Response: This comment was considered but was not incorporated. Security interests need to be approved as any other interested transaction, but, due to the unique situation a security interest in gaming collateral creates, approval will need different parameters, precautions, determinations, and processes. Specifically, security interests in gaming collateral allow for a potential delay or complete dismissal of licensure for the other party as the other party may never need licensure. Instead, the requirement for a Live Scan is included [pg. 26, lines 23-27]. This is completely different from the process for an interested transaction and therefore was placed in Article 3. The balance being struck regarding this separate article is discussed in greater detail in the responses to comments regarding paragraph (6) of subsection (c) of Section 12331.

c) **Comment/Suggestion:** IGLS comments that a security interest may result from a judgment and the Commission will have no part in the litigation leading up to judgment.

Recommended Response: This comment was noted, and is open for discussion.

B. Add Section 12330 – Definitions.

The meaning of the words and terms in this Article may not be consistent with the meaning of similar words or terms used in other existing regulations. As a result, these definitions are necessary to ensure that the proposed regulations are clear, concise and easy to understand in the context of this article.

Section 12330 was incorporated into Section 12XXX to reduce duplicate definitions and maintain consistency throughout the chapter [pg. 1, line 13 through pg. 5, line 23].

1) Subsection (d)(1) – "Gaming collateral" would mean property subject to a security interest that consists of a security issued by a corporation, partnership, limited partnership, or limited liability company that is a holder of a gambling license in this state; a security issued by a holding company that is not a publically traded corporation; an equity or ownership interest in a gambling enterprise, third-party provider of proposition player services or a gambling business; interest in the revenue, earning, profits or receipts derived from gambling operations; repayment calculated by or based on a percentage of the revenues, earnings, profits, or receipts derived from gambling operations; the ability to exercise a significant influence over gambling operations; any equipment, devices or supplies used or intended for use in the play of any controlled game, including, but not limited to, playing cards, tiles, dice, dice cups, card shufflers, gaming tables, etc. These types of security interests would require the secured holder to be licensed prior to enforcing the security interest.

   a) **Comment/Suggestion:** A cardroom representative comments that subparagraphs (D), (E), and (F) would never be collateral or considered "property" for the purposes of a security interest, and therefore these three subparagraphs do not make sense.

      Recommended Response: This comment was considered but was not incorporated. Research of this issue has found circumstances in which courts have ruled that both a percent of income and interest in payments were a security interest or the equivalent of a security interest. Additionally, the provisions for the enforcement of security interests in other states also contain these categories, including the ability to exercise a significant influence over gambling operations.

      Finally, parties may contract for any benefit. These are the types of security interests that need to receive prior approval, regardless of whether they would result in a security interest supported by law. The term "gaming collateral" was renumbered as Section 12xxx(b)(9) [pg. 3, lines 14-24].

2) Subsection (f) – "Security" would mean any stock; membership in an incorporated association; bond; debenture or other evidence of indebtedness; investment contract; voting trust certificate; certificate of deposit of a security; any interest or instrument commonly known as a "security;" or any certificate of interest or participation in,

temporary or interim certificate for, receipt for, or warrant, or right to subscribe to or purchase, any of the foregoing.

a) **Comment/Suggestion:** A cardroom representative comments that the definition should be more fully expressed as "any shares of stock in a corporation." This cardroom representative comments that there is no similar provision for partnerships and limited liability companies.

Recommended Response: This comment was accepted. The definition for security has been amended to include various means of evidencing a security, including any shares of stock and provisions for partnerships and limited liability companies. The term "security" is renumbered as Section 12xxx(b)(21) [pg. 5, lines 6-17].

3) Subsection (h) – "Security interest" would mean an interest in property held as collateral for the payment or performance of an obligation or judgment.

a) **Comment/Suggestion:** Two cardroom representatives comment that this definition is for all security interests and not limited to "gaming collateral" or other such limitation.

Recommended Response: This comment was noted. While it is true that this definition is not limited, this was done in an attempt to aid in understanding what can be a complicated area. Rather than defining "security interest in gaming collateral," the ability to understand each part of this term is important. This is especially important because "security interest" is a commonly applied term in finance and "gaming collateral" is a new term specific to these regulations. While Article 3 is concerned with the approval and enforcement of a security interest in gaming collateral, a "security interest" in collateral that is not gaming collateral may be created in a financing transaction. In other words, a "security interest" is not always limited to gaming collateral, and so it was not defined with that limitation. The effective creation of the security interest will require use of other California statutes, specifically the Commerce Code, and trying to tweak this definition to fit the needs of these regulations will add confusion. However, the term "security interest in gaming collateral" is added to the text for clarity [pg. 5, lines 22-23]. The term "security interest" is renumbered as Section 12xxx(b)(23) [pg. 5, lines 20-21].

C. Add Section 12331 – Approval of a Security Agreement for Personal Property Gaming Collateral.

Section 12331 provides the details of submission of an approval of a security agreement for personal property gaming collateral, including fees and documentation to be required.

1) Subsection (c) would provide the required clauses and language approved by the Commission that shall be included in the security agreement.

a) **Comment/Suggestion:** A cardroom representative repeats their comments for paragraphs (1), (2) and (3) that were provided in Section 12323(b).

Recommended Response: This comment was answered in the responses to the comments for the appropriate paragraphs for subsection (b) of Section 12323 (renumbered as 12324). All provisions required by subsection (b) have been replaced by the provisions provided by IGLS and renumbered Section 12324(d) [pg. 15, line 27 through pg. 21, line 5].

2) Paragraph (c)(4) would require a clause to be included in the agreement specifying that the enforcement of the security interest is contingent upon the approval of any necessary licensure by the Commission.

a) **Comment/Suggestion:** A cardroom representative repeats the comments for the other provisions of Section 12323(b). The provision is not a disclosure, the Commission can advise the party in its approval, and this constitutes an unauthorized practice of law.

Recommended Response: This response was detailed in the responses to Section 12323(b) comments. This provision is a disclosure to the other party so the inclusion of this disclosure in the terms and conditions of the agreement is more appropriate than disclosure during the approval stage. This is not an unauthorized practice of law for the same reasons as stated above. All provisions of subsection (b) have been replaced by Section 12324(d) [pg. 15, line 27 through pg. 21, line 5]. Additionally, please see the response to the comment for paragraph (c)(6) of Section 12331.

3) Paragraph (c)(6) would provide that a clause to be included requiring all parties to submit notice to the Bureau when an event of default occurs, and that the secured party is to submit a statement to the Bureau identifying the act of default by the debtor that is the basis for seeking to enforce the security interest.

a) **Comment/Suggestion:** A cardroom representative comments that this requirement is impractical. This cardroom representative states there is no reason to provide the Bureau with notice of an event of default until a default has not only occurred, but the secured party seeks remedy. "A lender might declare a default just to push the debtor to pay, with no intent to seek remedies. Until the secured party seeks to enforce the remedy, there is no action of regulatory significance."

Recommended Response: This comment was considered but was not incorporated. This provision was renumbered to Section 12324(d) [pg. 18, line 15-19].

Commission staff seeks to strike a balance between unnecessarily licensing entities holding a security interest that are not current licensees and unnecessarily causing a delay in a legal remedy. With a security interest in gaming collateral, there is a party in possession of rights to a licensed entity that may be acted upon under the terms of the security agreement. This party cannot take possession until licensed. However, if the terms of the agreement are completed without the need to enforce the security interest, then the holder of the security interest would not need to be licensed.

To license every holder of a security interest in gaming collateral would be unacceptable for multiple reasons. First, these parties may not wish to become licensed and therefore refuse to enter into an agreement with the licensee. This would eliminate funding sources to the licensee. Second, the Bureau would need to process the license and conduct background investigations on that party to confirm that this party is in compliance with the Act as a licensee even though the party is not currently conducting licensed activities. For example, if the party is licensed as an owner licensee of a cardroom, this entity would need to submit annual financials for their particular business, for which the Bureau would have no need or ability to process.

If the licensing process does not begin until the party is otherwise entitled to the remedy of possession, this could result in a lengthy delay to that party's rights. Although the party is aware of the need to be licensed through the disclosures, this is unnecessarily burdensome upon that party. This again creates a situation where the party may wish to not enter into the agreement at all.

Therefore, this provision was drafted as a middle ground to begin to review licensure needs when an event has occurred that could result in the right of the secured party to exercise enforcement of the security interest, rather than after that right has fully matured and will require delay while review for licensure begins. The secured party must be made aware that they are responsible to alert the Bureau of a default event and its basis when the event occurs. In this way, the Bureau can speak to the parties to determine the nature and resolution of the default and determine what investigatory actions need to be taken or if the Commission needs to review licensure.

As discussed above, it is within the authority of the Bureau to monitor the conduct of licensees, including their financial conduct. The Commission is vested with the authority to create regulations to prescribe minimum procedures for licensees to exercise effective control over their internal fiscal affairs.[14] An event of default may indicate a failure by the licensee to exercise effective control over fiscal matters, and may be an area of conduct the Bureau would need to review. However, neither the Commission nor the Bureau can be aware of this situation if there is no means to be informed of an issue.

Finally, it is not the intent of these regulations to limit the authority of the Commission to require a finding of suitability at any time it deems appropriate. Allowing licensure only when a remedy is to be enforced would constitute an inappropriate limit on Commission authority.

[14] Business and Professions Code section 19841(h), 19984.

D. Add Section 12332 – Processing and Review of a Security Agreement for Gaming Collateral.

Section 12332 would provide the timing required to process and review a security agreement in gaming collateral.

1) The following comment relates to Section 12332 in its entirety.

a) **Comment/Suggestion:** IGLS comments that this provision is unnecessary, and properly covered by the transaction approval regulations in Article 2.

Recommended Response: This comment is open for discussion at the workshop. [pg. 28, line 8 through pg. 29, line 4].

E. Add Section 12333 – Enforcement of Security Agreement for Gaming Collateral.

Section 12333 provides the steps and requirements if there is a breach of the security agreement and the secured party would become entitled to enforce the security agreement. This section allows the Bureau to become aware of any concern and to forward any issues that may establish a need for licensure to the Commission. Upon review, the Commission could require as necessary any unlicensed party to submit a license application.

1) Subsection (b) would require that prior to enforcement of a security interest in gaming collateral, the secured party must possess a temporary or regular license in accordance with Business and Professions Code sections 19853 and 19858.

a) **Comment/Suggestion:** IGLS comments that the references to the sections of the Act in this subsection may not be correct as they refer to possible registration, finding of suitability or licensing and that a party shall be deemed unsuitable if involved with any form of gambling prohibited by Penal Code section 330. IGLS suggests referring to Section 12349 which provides for interim licenses.

Recommended Response: This comment was considered but was not incorporated. Section 12349 is a procedure by which the Commission may direct the party to apply for licensure, but it is not the statutory authority to require that a secured party possess a temporary or regular license.

Section 19900 provides that a security interest shall not be enforced without the prior approval of the Commission and the Commission shall provide that procedure in regulations. Prior to enforcement, the Commission may determine that a party needs to apply for registration, a finding of suitability or a license, as provided in section 19853.

As discussed above in the comments for subsection (c) of Section 12323, section 19853 does not provide mandatory licensure. However, when a secured party may potentially own a gambling establishment, section 19858 provides for a definitive reason to find the secured party unsuitable.

Because section 19853 provides the authority for the Commission to license the secured party and section 19858 provides a basis to deem a person unsuitable to hold a license, these sections were referenced in this subsection [pg. 29, lines 24-26].

2) Subsection (c) would require all parties to notify the Bureau once an event of default occurs. Prior to enforcement of any security interest, typically the secured party documents actions to confirm the other party's default, attempts to resolve the default and remind the other party of the consequences if the default is not resolved. The Bureau, as the investigative agency, must be included in these notices to be aware of an issue with the security agreement.

   a) **Comment/Suggestion:** A cardroom representative comments that this section is duplicative of Section 12331(c)(6) and so one of them should be deleted.

      Recommended Response: This comment was considered but the suggestion was not incorporated. Section 12331(c)(6) (incorporated into the IGLS provisions and renumbered to Section 12324(d) [pg. 15, line 27 through pg. 21, line 5]) is a requirement that a clause expressing this provision be included in the agreement and acknowledged by the parties. This regulation [pg. 29, lines 15-20] is the actual requirement that the clause is based upon, and not just disclosure in the agreement.

   b) **Comment/Suggestion:** A cardroom representative comments that the term "immediately" is ambiguous and should be replaced with a definite time period. This cardroom representative suggests that only those defaults which, if not cured, would cause the secured party to foreclose on the gaming collateral should be reportable to the Bureau.

      Recommended Response: This comment was noted. Two alternatives of 24 hours and 5 business days [pg. 29, line 15] have been incorporated into the text for further discussion at the workshop.

      All defaults could result in the secured party seeking remedy if the default is not cured, or if it is not cured within an acceptable timeframe.

3) Subsection (d) would require the Bureau to investigate the event of default to determine the status of the default. If the default has been or is being resolved to the satisfaction of the secured party and no other issues are noted, the security agreement may proceed. If the event of default is not being resolved or the Bureau notes any issue, the Bureau shall forward the security agreement to the Commission for further review as appropriate.

   a) **Comment/Suggestion:** A cardroom representative comments that the burden to seek permission to enforce the security agreement should be placed upon the secured party.

      Recommended Response: This comment is open for discussion [pg. 29, lines 21-23].

4) Subsection (e), (numbered subsection (d) in error), would provide that the Commission could require at any time the licensure of any unlicensed party to the security agreement.

   a) **Comment/Suggestion:** A cardroom representative comments that this subsection refers to a general security interest and not specifically to a security interest in gaming collateral, which causes confusion.

      Recommended Response: This comment was accepted. The subsection was deleted [pg. 30, lines 3-5], as a security interest not including gaming collateral would be a financing transaction and therefore approved as an interested transaction [pg. 11, lines 4-7], and a security interest in gaming collateral would make this provision irrelevant.

   b) **Comment/Suggestion:** A cardroom representative comments that if the secured party is not licensed, what regulatory authority does the Commission or the Bureau have over that party?

      Recommended Response: This comment is noted. The Commission and the Bureau have statutory authority under section 19901 to require Commission-approval prior to enforcement of a security interest. Also, through the inclusion of the terms in Section 12331 (replaced by Section 12324(d) [pg. 15, line 27 through pg. 21, line 5], the party agrees to the obligations placed by the Commission and the Bureau.