

## CALIFORNIA GAMBLING CONTROL COMMISSION

### DESCRIPTION OF PROPOSED REGULATORY ACTION

#### APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

##### INTRODUCTION:

The California Gambling Control Commission (Commission) is proposing regulations that would establish the Commission's requirements for approving and reporting transactions and enforcing security interests. These regulations would implement various aspects of the Gambling Control Act (Act)<sup>1</sup> and provide guidance as to the procedures required to maintain and submit transactions and transaction reports. The proposed regulations would also apply the transaction requirements, as appropriate, to gambling enterprises, Third-Party Providers of Proposition Player Services (TPPPS), and Gambling Businesses.

##### BACKGROUND:

Current regulations require Commission approval for the sale, in whole or in part, of any ownership interest in a TPPPS or Gambling Business; however, the regulations do not include provisions for the sale, in whole or in part, of gambling enterprises. Current regulations also do not include security interest enforcement provisions or transaction reporting requirements. Without regulations, the monitoring of the transactional activities for these entities is limited to specific requests for documentation, the sale of a TPPPS or Gambling Business, and the information obtained through an on-site audit by the Bureau of Gambling Control (Bureau).<sup>2</sup> Without regulations, the approval of the sale of a gambling enterprise would be done without regulatory guidance.

Business and Professions Code sections 19900 through 19906 authorize the Commission to adopt regulations to approve transactions and enforce security interests for those who hold a California gambling license. Sections 19878 and 19892 also require prior Commission approval for certain transactions; and, section 19841 authorizes the Commission to adopt regulations to monitor and report transactions of the licensees.

Multiple sections in the Act include terms defined in section 19805 that refer specifically to gambling enterprises. This is due to the fact that the Act originally only addressed gambling enterprises and not TPPPS until the adoption of section 19984. Nevertheless, the Commission has the implied authority to establish the same transaction requirements for gambling enterprises to TPPPS and Gambling Businesses. TPPPS and Gambling Businesses are entities licensed to conduct gambling activities. The Commission has the authority provided by section 19984 that is deemed to be necessary to impose disclosure and approval requirements upon TPPPS. Section 19857 provides that no license shall be granted unless the Commission is satisfied with the

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<sup>1</sup> Business and Professions Code, Division 8, Chapter 5, Section 19800, *et seq.*

<sup>2</sup> In the Act, "department" refers to the Department of Justice. While the Act assigns certain powers and authority to the department, in actual practice the responsibility for fulfilling the obligations imposed upon the department is delegated to the Bureau of Gambling Control, pursuant to Business and Professions Code section 19810.

# **DRAFT**

## DESCRIPTION OF PROPOSED REGULATORY ACTION APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

business and financial arrangements of the applicant; and, section 19870 provides that the Commission shall only grant an application to an applicant qualified to hold a license. Moreover, the Commission also has broad authority over all persons or things having to do with the operations of gambling establishments under section 19811, as well as the ability to regulate any activity related to the conduct of controlled gambling under section 19841. Finally, in section 19801, the Legislature found that public trust and confidence can only be maintained by strict and comprehensive regulation of all persons, practices, associations, and activities related to the operation of gambling establishments.

Therefore, while the requirements of certain provisions of the Act do not specifically mention TPPPS or Gambling Businesses, the requirement that the business activities of gambling enterprises be regulated, coupled with the authority and legislative intent to regulate the financial activities of all entities involved in gambling activities, infers an authority and necessity to establish transactional requirements for gambling enterprises, TPPPS, and Gambling Businesses.

### **PROBLEM ADDRESSED:**

Sections 19900 through 19906 and section 19878 of the Act authorize the Commission to approve transactions and to enforce security interests, but provide no formal processes for doing so. Instead, these statutes require the formal process to be provided by regulation. There are currently no regulations that establish procedures or guidance for licensees to obtain approval for transactions or for a security interest involving a licensee to be enforced. Also, section 19841 authorizes the Commission to regulate transaction reporting and maintenance, but there are currently no regulations establishing transaction reporting or maintenance requirements.

### **EXISTING LAW:**

Business and Professions Code section 19823, subdivision (a), paragraph (2), provides that the responsibilities of the Commission include, without limitation, assuring that there is no material involvement, directly or indirectly, with a gambling operation by persons whose operations are conducted in a manner inimical to the public health, safety, or welfare.

Business and Professions Code section 19824, subdivision (c), provides that the Commission shall have all powers necessary and proper to approve or disapprove transactions, events, and processes as provided in the Act.

Business and Professions Code section 19824, subdivision (d), provides that the Commission shall have all powers necessary and proper to take actions deemed to be reasonable to ensure that no ineligible, unqualified, disqualified, or unsuitable persons are associated with controlled gambling activities.

Business and Professions Code section 19841, subdivision (d) provides the Commission the authority to adopt regulations that require owner licensees to report and keep records of transactions involving cash or credit.

# DRAFT

## DESCRIPTION OF PROPOSED REGULATORY ACTION APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

Business and Professions Code section 19841, subdivision (h) provides the Commission the authority to adopt regulations that prescribe minimum procedures for licensees to exercise effective control over their internal fiscal and gambling affairs. This shall include, but not be limited to, the safeguarding of assets and revenues; prescribing the manner in which compensation from games and gross revenues shall be computed and reported; and providing reliable records, accounts, and reports to be submitted to the Department of Justice (Department)<sup>3</sup>.

Business and Professions Code section 19841, subdivision (k) provides the Commission the authority to adopt regulations that specify standard forms for reporting financial conditions, results of operations, and other relevant financial information.

Business and Professions Code section 19841, subdivision (m) provides the Commission the authority to adopt regulations that prescribe the intervals at which information in subdivision (k) shall be furnished to the Department.

Business and Professions Code section 19841, subdivision (o) provides the Commission the authority to restrict, limit, or otherwise regulate any activity related to the conduct of controlled gambling that is consistent with the purposes of the Act.

Business and Professions Code section 19855 provides that every person who is required to hold a state license shall obtain the license prior to engaging in the activity or occupying the position with respect to which the license is required.

Business and Professions Code section 19878 provides that an owner licensee must obtain Commission approval prior to entering into any contract or agreement with any person who, or any person under the control of another who, has been denied a license, has had a license suspended or revoked, or has had an application withdrawn without prejudice by the Commission. This section also requires Commission approval prior to employing any person in any capacity for which he or she is required to be licensed if the person has been denied a license, or if his or her license has been suspended or revoked after the notice of action has been received by the Commission.

Business and Professions Code section 19892 requires prior Commission approval for the sale, assignment, transfer, pledge, or other disposition of any interest, or “the grant of an option” to purchase the interest, in a partnership or Limited Liability Company (LLC) that holds a gambling license.

Business and Professions Code section 19900 provides the Commission the authority to adopt regulations to establish the procedure for the enforcement of security interests that involve the securities of a licensed business.

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<sup>3</sup> In the Act, “department” refers to the Department of Justice. While the Act assigns certain powers and authority to the department, in actual practice the responsibility of fulfilling the obligations imposed upon the department is delegated to the Bureau of Gambling Control, pursuant to Business and Professions Code section 19810.

# **DRAFT**

## DESCRIPTION OF PROPOSED REGULATORY ACTION APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

Business and Professions Code section 19901 declares unlawful any sale, purchase, lease, hypothecation, borrowing or lending of money, creation of a voting trust agreement, or any other agreement of any sort to, or with, any licensee in connection with a licensed gambling operation, unless performed in accordance with the Commission's regulations.

Business and Professions Code section 19902 provides that a contract to sell or lease any property or interest in property that requires approval or licensing by the Commission shall not specify a closing date that is prior to the Commission granting of approval.

Business and Professions Code section 19903 requires a provision that is acceptable to the Commission in each contract for the sale or lease of any property or interest in property which requires the approval or licensing of the Commission. This provision would address any fees due as a result of any deficiency determinations made by the Commission or the Department.

Business and Professions Code section 19904 provides the Commission the authority to approve in advance the disposition or option to purchase a security issued by a corporation that holds a gambling license. Without prior approval by the Commission, the disposition or option shall be void.

Business and Professions Code section 19905 provides the Commission the authority to regulate the extension or redemption of credit and the documentation to be maintained and submitted as evidence of compliance.

Business and Professions Code section 19906 provides the requirement in a contract for the sale of the gambling enterprise to state provisions for outstanding gaming chips. This section provides the Commission the authority to require evidence that the outstanding chip liability is safeguarded and that seller has provided notice to the patrons of the gambling enterprise of the opportunity to redeem any outstanding gaming chips. This section also provides the Department the authority to determine the amount of the outstanding gaming chip liability prior to any action by the Commission on the contract.

Business and Professions Code section 19984, subdivision (b) provides the Commission the authority to establish criteria for any person or entity that provides proposition player services to gambling establishments, including disclosures, approvals, conditions, or limitations as it deems necessary.

Business and Professions Code section 19984, subdivision (c), provides the Department the authority to perform background checks, financial audits, and other investigatory services as needed, pursuant to Commission regulations, to assist the Commission in regulating third-party providers of proposition player services.

# DRAFT

## DESCRIPTION OF PROPOSED REGULATORY ACTION APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

### **PURPOSE OF THE PROPOSED REGULATIONS:**

This proposed action has been drafted to establish transaction review and approval procedures as well as procedures to enforce security interests. These regulations provide clear direction by adopting currently established procedures for the review of documentation, and ensure clarity and uniformity.

### **ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS:**

These proposed regulations would have the benefit of providing specified procedures to be followed when approving transactions and the enforcement of security interests and would have the benefit of establishing transaction reporting procedures to monitor a licensee's compliance with the Act. The specified procedures will assure the public that only those who have Commission approval will be permitted to conduct business within the gambling industry through consistent review and approval processes, and would provide transparency, clarity and uniformity.

### **PROPOSED ACTION:**

This proposed action will make changes within Chapter 5, Division 18, Title 4 of the California Code of Regulations. The proposed changes are to adopt the following sections as follows:

#### Add Article 2. Transactions.

Creating "Article 2" would organize the transaction provisions in Chapter 5, Accounting and Transaction Provisions, for gambling enterprises, TPPPS, and Gambling Businesses.

#### Adopt Section 12321. General Provisions.

Section 12321 would establish general provisions in Article 2, which would provide a written documentation threshold, specify transactions required to be approved, and enumerate those parties generally excluded from licensure as a condition of transaction approval. Section 12321 would also require that these transaction requirements apply, as appropriate, to gambling enterprises, TPPPS, and Gambling Businesses.

- Subsection (a) – This subsection would provide that the term "transaction" refers, as applicable, to contracts, agreements, and any other business activities in which goods, services, or monies are exchanged. The use of this term is consistent with the Act, specifically sections 19801, 19805, 19824, 19841, and 19931, to apply even when individual sections of the act may refer to a contract, agreement, etc. Using one term throughout the regulations is necessary to provide simplicity and clarity.
- Subsection (b) – This subsection would require that any individual transaction or series of transactions with the same party in an amount greater than or equal to \$2000 must be evidenced by a writing and maintained by the licensee. This provision would allow the Bureau to have a paper trail of business activities for audit purposes and would create a

# DRAFT

## DESCRIPTION OF PROPOSED REGULATORY ACTION APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

minimum procedure for licensees to exercise effective control over their internal fiscal and gambling affairs in accordance with Business and Professions Code section 19841. This subsection would provide examples of acceptable documentation for clarity. Finally, this provision would exempt individual patron chip transactions from this documentation as unnecessary. Other regulations require the documentation of chip balances.

- Subsection (c) – This subsection would list the licensee transactions that require prior approval by the Commission in accordance with the Act and current practice. It is necessary to consolidate multiple provisions of the Act and current practice into the paragraphs of this subsection in order to provide clear and simple compliance requirements and to apply the requirements, when appropriate, to TPPPS and Gambling Businesses. The prior approval of these transactions is also necessary to not only comply with the Act, but also to allow the Commission and the Bureau to be aware of and monitor transactions creating obligations with others directly connected with gambling activities.
- Subsection (c), paragraph (1) – The sale, in whole or in part, of any ownership interest in a gambling enterprise, TPPPS or Gambling Business would require prior approval. Business and Professions Code section 19892 requires prior approval for the sale of a gambling enterprise that is either LLC or a partnership, and section 19904 requires prior approval for the sale of a gambling enterprise corporation. These sections do not include the sale of sole proprietorships for gambling enterprises, TPPPS or Gambling Businesses. This provision is necessary to encompass sole proprietorships.
- Subsection (c), paragraph (2) – Security interests in which the rights of ownership or control are held as collateral to secure the performance of an obligation would require prior approval. Section 19900 authorizes the Commission to adopt the regulations necessary to establish a procedure to enforce a transaction involving a security interest. The Commission would approve the security interest enforcement provisions when approving the transaction.
- Subsection (c), paragraph (3) – The sale, assignment, transfer, pledge, or other disposition of any security of a corporation, licensed partnership, or LLC, or the grant of such an option, would require prior approval in accordance with Business and Professions Code section 19892 and 19904.
- Subsection (c), paragraph (4) – Prior Commission approval is required when the Commission requires a purchaser or lessee to be licensed in accordance with section 19853. This provision is in accordance with Business and Professions Code section 19902.
- Subsection (c), paragraph (5) – Prior Commission approval is required when a licensee enters into a transaction with a person who has been denied a Commission license, had a Commission license suspended or revoked, or has had an application for Commission approval withdrawn with prejudice, in accordance with Business and Professions Code section 19878. This would allow the Commission to monitor transactions with those

# DRAFT

## DESCRIPTION OF PROPOSED REGULATORY ACTION APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

persons deemed by the Act to be inappropriate to participate directly in gambling activities.

- Subsection (c), paragraph (6) – Prior Commission approval is required when a licensee employs a person who has been denied a Commission license, has had a Commission license suspended or revoked, or who has had an application for Commission approval withdrawn with prejudice, in accordance with subsection (b) of Business and Professions Code section 19878. This would allow the Commission to monitor the employment of those persons deemed by the Act to be inappropriate to participate directly in gambling activities.
- Subsection (d) – This subsection would exempt institutional investors from licensure when they are parties to a transaction requiring approval. Institutional investors are defined in Business and Professions Code section 19805, and consist of lending and investment persons otherwise regulated by law. Requiring that these persons obtain another license in order to transact with an individual would be unnecessary and burdensome; and, therefore would unnecessarily limit the licensees' ability to transact with otherwise-regulated persons. Minimizing unnecessary obstructions for a licensee to transact with institutional investors would aid the public health, safety, and welfare by encouraging the licensee to transact with persons licensed and regulated by agencies with the appropriate specialty.

### Adopt Section 12322. Required Terms.

Section 12322 would set forth specific terms or conditions required to be included, as applicable, in transactions requiring Commission approval. It is necessary to consolidate multiple provisions of the Act and current practice into this section in order to provide clear and simple compliance requirements and to apply the requirements, when appropriate, to TPPPS and Gambling Businesses. These terms are also necessary to not only comply with the Act, but also to ensure that all parties to a transaction connected with controlled gambling are appropriately informed of the responsibilities and regulating authorities for controlled gambling.

- Subsection (a) – This subsection would require all parties to a transaction to be advised of the Act, the Commission and the Bureau. This is necessary to inform parties not already involved in controlled gambling of the laws and regulating authorities that control a transaction with a person holding a gambling registration or license.
- Subsection (b) – In accordance with Business and Professions Code section 19902, transactions to sell or lease property cannot specify a closing date that is prior to the approval of the transaction when the Commission requires the purchaser or lessee to be approved or licensed pursuant to section 19853.
- Subsection (c) – In accordance with Business and Professions Code section 19903, transactions to sell or lease property must contain a provision for the payment of any fees for any subsequent deficiency determination when the Commission requires the purchaser or lessee to be approved or licensed pursuant to section 19853.

# DRAFT

## DESCRIPTION OF PROPOSED REGULATORY ACTION APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

- Subsection (d) – Subsection (d) requires a transaction for the sale of a gambling enterprise to comply with Business and Professions Code section 19906, which will set forth outstanding chip liability.
- Subsection (e) – Subsection (e) requires that any proceeds derived from continuing operations during a sale of a gambling enterprise, TPPPS, or Gambling Business that would be payable to the new owner that is yet unlicensed must be placed in an escrow account. Business and Professions Code section 19855 provides that a license is required prior to engaging in controlled gambling activity. However, if responsibilities must transfer to the new owner while licensing is still in progress, placing the proceeds in escrow is necessary to allow new owners to eventually receive the income that they are entitled to without violating section 19855.
- Subsection (f) – Subsection (f) sets forth the legend that must appear on any certificate or other document evidencing an ownership interest in a gambling enterprise, TPPPS, or Gambling Business. This is necessary to conform to current practice, and this legend summarizes for all parties the need for Commission approval before the certificate changes possession.

### Adopt Section 12323. Required License or Registration Maintenance.

Section 12323 would require all licenses and registrations to remain current during a sale or ownership transfer of a gambling enterprise, TPPPS or Gambling Business, and would allow a former owner that becomes a security interest holder during the sale or transfer to be endorsed on the purchaser's or transferee's license.

- Subsection (a) – This provision would require all licensees and registrations to continue to be renewed during the approval period of a sale or ownership transfer. This provision is necessary to ensure that at all times the entity remains licensed or registered, and that a responsible person is licensed or registered during the approval process.
- Subsection (b) – This provision would allow a seller or transferor that maintains a security interest during the sale or transfer to be endorsed on the purchaser's or transferee's license as a security interest holder. This provision is necessary as current regulation does not allow this option, and this option would allow for a smoother transfer of ownership process if the security interest must be enforced and the security interest holder is reestablished as an owner.

### Adopt Section 12324. Processing Requests for Transaction Approval.

Section 12324 would set forth the process to request a transaction approval.

- Subsection (a) – This subsection would provide that the non-refundable processing fee for a transaction approval would be \$500, which is necessary to fund the processing of the request. This fee is set as the same fee to process a registration approval request, as the processing of a transaction approval request is substantially similar.

# DRAFT

## DESCRIPTION OF PROPOSED REGULATORY ACTION APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

- Subsection (b) – This subsection would require a cover letter with a summary of the transaction. This cover letter is necessary for the Bureau to clearly understand the transaction and as an aid in the processing and investigation of the transaction.
- Subsection (c) – This subsection would require that a copy of all final transaction documents and any supporting documents be included with the request in order for the Bureau and Commission to fully review the transaction for approval. These documents are necessary to the request for approval to ensure that the provisions that are required by Section 12322 are included, as applicable, and that the final transaction is in compliance with the Act and the regulations of the Commission and the Bureau.
- Subsection (d) – This subsection requires documents showing the sources of all monies used to fund the lending activity to be included for persons lending money that are not institutional investors. This is necessary for the Bureau to know that the funding is adequately supported through legitimate means.
- Subsection (e) – This subsection would require that the appropriate application be submitted with the request for transaction approval for each party that requires licensure or registration. If a party requires licensure or registration to participate in the transaction, it is necessary to include the appropriate application so that both the transaction and the license/registration application can be processed and approved simultaneously.

### Adopt Section 12325. Transaction Formal Approval Processing Times.

Section 12325 would establish the processing times for a transaction approval request.

- Subsection (a) – This subsection would set forth the submission timelines for a formal approval request.
- Subsection (a), paragraph (1) – When any party to the transaction requires licensure or registration, this paragraph would utilize the appropriate licensing or registration timeline. This is necessary to confirm that all parties requiring licensure/registration are appropriate to participate in controlled gambling when approving a transaction. The most efficient means to license/register the parties and approve the transaction is to perform the approvals for each concurrently. Therefore it is necessary that the timeline to approve a transaction is adjusted to match the applicable license or registration timeline.
- Subsection (a), paragraph (2) – If all parties to the transaction are either currently licensed or registered or do not require licensure or registration, this paragraph would require the licensee to submit the transaction approval request at least 150 days prior to transaction's proposed closing date. This time period is necessary to allow the Bureau to review and investigate the transaction and for the Commission to place the matter on a noticed Commission hearing agenda.
- Subsection (b) – This subsection would set forth the processing timelines for a transaction formal approval request.

# DRAFT

## DESCRIPTION OF PROPOSED REGULATORY ACTION APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

- Subsection (b), paragraph (1) – This paragraph would provide that the Bureau shall have 30 days to notify the licensee in writing of any deficiencies in the submissions for the transaction approval request and how to fix the deficiencies. This process is consistent with other approval processes, and is necessary to allow the licensee an opportunity to correct any deficiencies in order to maintain an efficient process for both the licensee and the Bureau.
- Subsection (b), paragraph (2) – This paragraph would provide that if the licensee does not respond within 30 days to any request by the Bureau to cure deficiencies, the Bureau may deem the request abandoned. This process is consistent with other approval processes, and is necessary to allow the Bureau to manage its workload by being able to abandon a request if the licensee is unresponsive.
- Subsection (b), paragraph (3) – This paragraph would provide that the receipt of all documents and fees deems the transaction approval request complete and sets forth the time limit the Bureau will have to investigate the request. This provision is necessary to establish a simple and clear processing timeline.
- Subsection (b), paragraph (3), subparagraph (A) – This paragraph would provide that if a license or registration is required for any party to the transaction, the processing time period shall match the time period for the appropriate license or registration procedure. The transaction must be reviewed for approval concurrently with the licensing or registration to determine if all parties are appropriate to participate in a transaction connected with controlled gambling. The licensing timeline would also provide the Bureau enough time to review both the license/registration application and the transaction. Because the timeline to complete the licensing or registration and the transaction is concurrent, the timeline to approve the transaction utilizes the applicable license or registration timeline.
- Subsection (b), paragraph (3), subparagraph (B) – If all parties to the transaction are either currently licensed or registered or do not require licensure or registration, this paragraph would provide that the Bureau shall have 60 days to forward the request to the Commission. This time period is necessary to balance the time needed to review the transaction and the licensee's need to conduct the transaction in a timely manner.
- Subsection (b), paragraph (4) – This paragraph would provide that the Bureau may include a recommendation pursuant to subdivision (a) of Business and Professions Code section 19826. This provision is necessary to clearly state what information is optional for the Bureau to provide to the Commission upon the conclusion of the investigation.
- Subsection (c) – This subsection would provide that the Commission shall review and approve, condition, or deny the transaction and any licensure or registration applications once the Bureau's background reports have been received. This provision is necessary to clearly state the Commission's portion of the processing timeline.

# DRAFT

## DESCRIPTION OF PROPOSED REGULATORY ACTION APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

### Adopt Section 12326. Transaction Amendments or Subsequent Assignments.

Section 12326 would establish the provisions for any amendments or subsequent assignments to an approved transaction.

- Subsection (a) – This subsection would require that any substantive amendment or any subsequent assignment to an approved transaction shall require the amendment or assignment to be processed in accordance with these regulations as if it were a new transaction. This is necessary to evaluate the substantive amendments or new parties in light of the transaction as a whole.
- Subsection (b) – This subsection would define a substantive amendment as one that significantly grants, denies, expands, or diminishes any rights or obligations under the transaction. This is necessary to allow those changes that do not rise to the level of substantive to be handled more efficiently than requiring approval for all changes. If a licensee is unclear if an amendment is substantive, the Bureau shall make that determination. This is necessary to cure any question or dispute that may arise over an amendment.
- Subsection (c) – This subsection would provide that terms in a renewed transaction that are substantially similar to those in the previously approved transaction, or transactions required by law, will be considered non-substantive. This is necessary to allow licensees to continue to conduct business and to minimize the workload on the Bureau when a transaction is an annually renewed transaction or a transaction required by law.

### Adopt Section 12327. Annual Transactions Report.

Section 12327 would establish a report of licensee transactions to be submitted to the Bureau. This report would be a tool to determine whether each licensee is conducting business in compliance with the regulations, and would aid in audit and enforcement procedures. This report would also serve as a supplement to the annual financial reports if needed.

Currently, Section 12327 consists of a series of options to generate discussion on the best means to construct this report. The options are categorized by topic.

- **TRANSACTION LIST OPTIONS:** These options would establish the monetary threshold for the inclusion of a transaction on the report.
  - **OPTION 1:** Subsection (a) would require that all transactions, or series of transactions entered into with the same party, with an aggregate value of \$25,000 or more within a licensee's fiscal year shall be reported on an annual basis. This threshold amount is consistent with current requirements in the Tribal-State Gaming Compacts. This threshold would provide a means to review a licensee's business transactions at a level deemed to be appropriate to balance both the need to regulate transactions for inappropriate activity and minimize the burden upon the licensee. While licensees with greater gross incomes would have a larger number of entries on the report, these licensees would also have the resources to

# DRAFT

## DESCRIPTION OF PROPOSED REGULATORY ACTION APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

generate this report. Finally, this provision also creates a minimum procedure for licensees to exercise effective control over their internal fiscal affairs in accordance with Business and Professions Code section 19841.

This subsection would also exclude individual patron chip transactions, extensions of credit, and check cashing, unless otherwise provided in statute or regulation. This subsection would also list the information to be provided in the report for each transaction and require any applicable independent contractor transactions to be included. This report would be submitted concurrently with the annual financial statement for simplicity and convenience to the licensees and the Bureau.

- OPTION 2: Subsection (a) would require that all transactions, or series of transactions entered into with the same party, be reported when the transaction reaches an aggregate value that is set by income group. Setting the thresholds by income group would limit the reported transactions to those most likely to be subject to inappropriate activity, while decreasing the number of transactions that would need to be reported by the larger cardrooms. This provision also creates a minimum procedure for licensees to exercise effective control over their internal fiscal affairs in accordance with Business and Professions Code section 19841.

This subsection would exclude individual patron chip transactions, extensions of credit, or check cashing, unless otherwise provided in statute or regulation. This subsection would also list the information to be provided in the report for each transaction and require any applicable independent contractor transactions to be included. This report would be submitted concurrently with the annual financial statement for simplicity and convenience to the licensees and the Bureau.

- **TRANSACTION EXEMPTION OPTION:**

- OPTION 3: This option would allow a licensee to exclude utilities regulated by the California Public Utilities Commission in order to minimize the burden upon the Bureau to review transactions otherwise regulated.
- Subsection (b) – This subsection would list the disclosures to be included in the report, including the affiliation of any person listed on the report to the licensee, any known joint ownership between the persons listed on the report and the licensee, the identification of any employee performing services beyond those reasonably related to the employee's position or classification, and the aggregate earnings for real property designated as parking. These disclosures are necessary to monitor activities connected with controlled gambling that create the greatest risk of corruptive elements.
- **PAYROLL LIST OPTIONS:** These options would establish employee payroll information that would need to be included in the report so that the Bureau may review the employment activity of a licensee for compliance with the Act.
  - OPTION 4: Subsection (c) would require a licensee to list all employees and include each employee's name, position or classification, and total annual

# DRAFT

## DESCRIPTION OF PROPOSED REGULATORY ACTION APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

earnings. This would create a comprehensive list with clear compliance instructions. This would allow the Bureau to be aware of all persons employed by a licensee, even those not in positions requiring a work permit, license, or registration.

- OPTION 5: Subsection (c) would require a licensee to list all employees with the following annual earnings: 1) at or above \$25,000, or 2) at or above the reporting threshold designated by income group, depending on whether Option 1 or Option 2 is selected. The licensee would include each employee's name, position or classification, and total annual earnings. This would allow each licensee to minimize the number of entries on the report. This would also minimize the Bureau workload and allow the Bureau to focus on employees with incomes more susceptible to inappropriate activity.
- OPTION 6: Subsection (c) would require the licensee to list the four highest paid employees regardless of total earnings for the year and all employees earning \$100,000 or more. The list would include each employee's name, position or classification, and total annual earnings. This would limit the list to those persons paid at incomes most susceptible to inappropriate activity, and would minimize the workload for both the Bureau and the licensee.
- **EARNINGS DEFINITION OPTIONS:** These options would set forth concepts for the definition of "earnings" for clarity on what information a licensee should calculate and identify.
  - OPTION 7: This provision would define earnings as wages, tips and other compensation paid to each employee. This language is consistent with the information required to be reported on an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, in Box 1. As this information needs to be determined and reported on an annual basis in order to comply with federal tax law, this would be the simplest computation for "earnings" for the Bureau and the licensees.
  - OPTION 8: This provision would define earnings as any bonus paid in addition to wages, tips, and other compensation. The phrase "wages, tips, and other compensation" is consistent with the information required to be reported on an IRS Form W-2, Wage and Tax Statement, in Box 1, and is therefore a calculation already required by federal law to be reported by the licensee to the IRS on an annual basis. The inclusion of bonuses would require the licensee to designate not only bonuses paid in monetary form, but also in other forms, including the use of real or personal property. This would provide the Bureau with a more complete picture of the compensation provided to each reported employee.
  - OPTION 9: This provision would define earnings as wages, tips, and other compensation paid and tips not included on the IRS Form W-2. The phrase "wages, tips, and other compensation" is consistent with the information required to be reported on an IRS Form W-2, Wage and Tax Statement, in Box 1, and is

# DRAFT

## DESCRIPTION OF PROPOSED REGULATORY ACTION APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

therefore a calculation already required by federal law to be reported by the licensee to the IRS on an annual basis. This provision would require a licensee to include any tips not included on the W-2, which would be tips self-reported by an employee. This would provide the Bureau with a more complete picture of the compensation provided to each reported employee.

- OPTION 10: This provision would define earnings as wages, tips, and other compensation paid, tips received by the employee not reported on the W-2, and the noting of any bonus paid. The phrase “wages, tips, and other compensation” is consistent with the information required to be reported on an IRS Form W-2, Wage and Tax Statement, in Box 1, and is therefore a calculation already required by federal law to be reported by the licensee to the IRS on an annual basis. The inclusion of bonuses would require a licensee to designate not only bonuses paid in monetary form, but also in other forms, including the use of real or personal property, and the inclusion of tips would require the licensee to report any tips not encompassed on the W-2, which would be tips self-reported by an employee. This would provide the Bureau the most comprehensive picture of the compensation to each reported employee.

- **PAYROLL EXCLUSION OPTION:**

- OPTION 11: This provision would exclude employees already reporting financial information to the Bureau for initial and renewal license requests. As this information is already provided, and the Bureau may communicate with the individual directly for more information as needed, the inclusion of these persons in the report would be unnecessarily duplicative and burdensome.

### Adopt Section 12329. Shelf Approval.

Section 12329 would provide an option for shelf approval, which is a means by which a licensee could 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 of and conditionally accepts the transaction.

- Subsection (a) – This subsection would establish the parameters of the option of shelf approval in that the approval is not a final approval of the transaction, but rather a preliminary approval of the concept. This information is included for clarity, and is necessary to differentiate a shelf approval from the final approval of the transaction.
- Subsection (b) – This subsection would set forth the submission requirements and information to be included in a request for shelf approval, including the contact information for all parties to the transaction and the terms, conditions, and support for the transaction. This material is necessary to allow the Bureau to investigate the concept and for the Commission to provide shelf approval for the concept.

# DRAFT

## DESCRIPTION OF PROPOSED REGULATORY ACTION APPROVAL OF TRANSACTIONS AND ENFORCEMENT OF SECURITY INTERESTS

- Subsection (c) – This subsection would provide for Bureau review and submission to the Commission for approval. This provision is necessary to clearly set forth the review process.
- Subsection (d) – This subsection would provide the time period that a granted shelf approval would be valid. This subsection would also provide that if the shelf approval expires and is still needed, a new request for shelf approval must be submitted. This provision is necessary to clearly set forth the requirements when a shelf approval expires.
- Subsection (e) – This subsection would provide that the Commission may rescind a shelf approval due to any changed circumstances that may occur within the 12-month validity period. This provision is necessary for clarity and to make the licensee aware that a shelf approval is not permanent or final, and is granted subject to the discretion of the Commission.

### Adopt Section 12330. Compliant Transactions Deemed Lawful.

Section 12330 provides protection for lawful transactions conducted by a licensee that are not itemized in these regulations. Business and Professions Code section 19901 states that it is “unlawful” for various transactions to be conducted with any licensee in connection with any controlled gambling operation except in accordance with the regulations of the Commission. Therefore, for the purposes of section 19901, this regulation is necessary to deem lawful transactions included in the annual financial reporting and not otherwise prohibited by the Act or the regulations of the Commission or the Bureau.

## CHAPTER 2.1. THIRD-PARTY PROVIDERS OF PROPOSITION PLAYER SERVICES: REGISTRATION; LICENSING.

### ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

#### Repeal Section 12200.15. Transfers and Sales.

Section 12200.15 regulates the transfers and sales of an ownership interest, in whole or in part, of a TPPPS. This section will be replaced with the provisions of Article 2, and would therefore be repealed as unnecessarily duplicative.

## CHAPTER 2.1. GAMBLING BUSINESSES: REGISTRATION; LICENSING.

### ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

#### Repeal Section 12220.15. Transfers and Sales.

Section 12200.15 regulates the transfers and sales of an ownership interest, in whole or in part, of a Gambling Business. This section will be replaced with the provisions of Article 2, and would therefore be repealed as unnecessarily duplicative.