

ARCI-004-044

C. Licensing Key Individuals of Each SPMO and Consent to SPMO Contracts

- (1) No SPMO shall be authorized or permitted to accept or transmit simulcast signals of or accept wagers on horse races conducted within, or to transmit wagering information into track pools regulated within, Our State unless an occupational SPMO license has been issued to each of its key individuals. An occupational SPMO license shall be issued to a key individual only upon submission of a satisfactory application using forms prescribed by Our Racing Commission, a demonstration by the applicant of the suitability of the affiliated SPMO, and a determination by Our Racing Commission that the licensing criteria have been met.
- (2) For an applicant to demonstrate that the affiliated SPMO is suitable, the SPMO's suitability must be subjected to a "due diligence" review by Our Racing Commission, its designee, or by a racing compact or trade association to which Our Racing Commission belongs, which includes at least:
 - (a) visits to the SPMO sites, an inspection and analysis of computer systems and records to verify accounting records and business practices, thorough examination of computerized records and operational systems on the SPMO's computers, facility inspection with complete access including to all equipment, activities, structures, and other property, and forensic review by accountants of the financial books and operational records; which review shall include repetition of the foregoing as needed to investigate possible material changes, alteration or renewal of its status, or any other purpose, and shall include such other actions and disclosure as may be needed;
 - (b) full and timely disclosure of all requested information and full access to all facilities, documents, papers, records, and property, including but not limited to computers, equipment, structures, bank records, financial books and records, wagering records, the identity of each account holder, records identifying beneficial participants in wagers by account holders, and operating records, which shall include but not be limited to:
 - (A) the identity of each executive, manager, officer, director, and owner of a beneficial interest or a source-of-funding of 1% or more (based on entity percentages being also attributed to controlling interests);
 - (B) any actions or anticipated actions of the SPMO and its key individuals that are relevant to whether a material change or has occurred or might occur; and
 - (C) each bettor, account holder, or beneficial interest in wagers, that participates, directly or indirectly, in 5% or more (by amount or number) of the pari-mutuel wagers accepted by the SPMO in any calendar month (a trade secret exempt from disclosure or use except for licensing, regulatory, or law enforcement purposes);
 - (c) a determination of suitability every two years and as needed, based on newly discovered information, falsity in application, suspicious activity or associations, failure to cooperate with regulatory or investigating body directives or conditions or requests, material changes in the SPMO, or any other relevant factor;
 - (d) that all SPMO key individuals having made satisfactory application for an SPMO individual occupational license to Our Racing Commission, including an interstate compact to which it belongs, and are qualified to receive such a license subject to SPMO suitability.
- (3) For an applicant to demonstrate that the affiliated SPMO is suitable, the applicant must show that the affiliated SPMO, and each of its key individuals, meets the following criteria:

- (a) Character must be consistent with the public interest, convenience and necessity and the best interests of racing generally, including but not limited to:
- (A) Criminal Record: Neither the SPMO entity nor its key individuals shall have, as a principal, accessory, or conspirator, in any jurisdiction at any time, pleaded guilty or nolo contendere to, been found guilty or been convicted of, forfeited bail or been fined for, or have currently pending a criminal accusatory instrument that includes any charge for, any offense that; after due consideration of the specific duties, responsibilities, and/or influence of the applicant at the SPMO, the bearing of the offense on fitness and ability, rehabilitation or good conduct, the need to protect others, the defendant's age, offense's seriousness, and time elapsed; bears a direct relation to the integrity and performance of the SPMO and/or poses an unreasonable risk to property, safety, or welfare of specific persons or to the general public. Crimes of special concern include:
 - (i) any offense involving organized crime, extortion, racketeering, money laundering, loan sharking, illegal drugs, fraud, misrepresentation, forgery, false documents or instruments, illegal gambling, gaming misconduct, touting, pool-selling, bet solicitation, bookmaking, race-fixing or other effort to pre-determine the outcome of a race, moral turpitude, and similar misconduct;
 - (ii) felonies; and
 - (iii) more than two (2) misdemeanor criminal incidents within the preceding five (5) years.
 - (B) Fraud and Misrepresentation: Neither the SPMO entity nor its key individuals shall have, in any jurisdiction or forum at any time, been found to have engaged in fraud or misrepresentation, or have currently pending a civil action or proceeding (including administrative or arbitration), that includes a charge for or allegation of such misconduct.
 - (C) Associations: Neither the SPMO entity nor its key individuals shall be known associates of or be involved with (including as unindicted co-conspirator) any activity or person that is disreputable, such as involved in organized crime, extortion, racketeering, money laundering, loan sharking, illegal drugs, fraud, misrepresentation, forgery, false documents or instruments, illegal gambling, gaming misconduct, touting, pool-selling, bet solicitation, bookmaking, race-fixing or other effort to pre-determine the outcome of a race, moral turpitude, or similar misconduct. Associates may include significant SPMO account holders and beneficial participants in their wagers.
 - (D) Good standing: The SPMO entity and its key individuals shall currently be in good standing in all gaming, wagering, and pari-mutuel racing jurisdictions and with the agency or other entity regulating such activities in any jurisdiction, including no current suspension or revocation of any licenses and currently welcome to apply in each jurisdiction.
- (b) Fitness and experience must be consistent with the public interest, convenience and necessity and the best interests of racing generally. With regard to the SPMO, this shall include but not be limited to that it:
- (A) shall meet general industry standards for business and financial practices, procedures, and controls;

- (B) shall have a wagering system that ensures that all wagering information is transmitted to and calculated in the appropriate host track pool;
 - (C) the SPMO shall utilize a totalisator system that meets wagering-industry standards and certification criteria;
 - (D) shall meet general industry standards for physical security of computerized wagering systems, business records, facilities, and patrons;
 - (E) shall have no indications of improper manipulation of its wagering system (including software);
 - (F) shall have policies and procedures that ensure its key individuals have applied and are eligible for all required occupational licenses;
 - (G) shall have an annual independent audit with no audit opinion qualifications that reflect adversely on integrity;
 - (H) shall have a system that verifies the identity of all bettors and requires them to disclose all beneficial interests in wagers it accepts;
 - (I) shall have a real-time system Independent Monitoring System to monitor wagering activity to detect suspicious patterns including any that might indicate criminal activity or regulatory violations, which system shall verify all transactions performed by the totalisator system and provide expeditious notice of any discrepancies or suspicious activity to the host track, wagering site, due-diligence investigating body, and any affected regulatory agencies;
 - (J) shall have a satisfactory record of customer relations including no excessive unresolved patron complaints concerning its business practices;
 - (K) shall hold all requisite business or other permits, licenses, certifications or the like that may be required by any jurisdiction;
 - (L) shall have sufficient measures in place to protect customer funds;
 - (M) shall publicize and provide a sufficient program for customer self-exclusion and wagering limitation; and
 - (N) shall have expertise in pari-mutuel wagering and be technologically capable of participating in simulcast and wagering activities.
- (c) Financial responsibility must be consistent with the public interest, convenience and necessity and the best interests of racing generally, including but not limited to:
- (A) the SPMO and its key individuals shall not be in default or have a history of defaulting in the payment of and financial obligation, including the payment of taxes, due to any jurisdiction, or on the payment of any gaming, wagering, or pari-mutuel racing related financial obligations; and shall not be four (4) or more months in arrears in any child support that is ordered or approved by a court in any jurisdiction within the United States; and
 - (B) the SPMO and its owners and sources of funds shall have sufficient financial means to participate in simulcast and wagering activities, including sufficient assets and means to pay industry-related debts and obligations and to fund the operations of the SPMO; and

- (d) Responsible conduct: the SPMO must be fully cooperative and act in good faith with all disclosure and other duties involved in the due-diligence investigation; voluntarily submit to regulatory and investigating body oversight; permit inspection of all business records upon request by any regulatory authority or investigating body; promptly honor regulatory or investigating body requests for wagering patterns or other information; and on reasonable notice permit full access to all facilities and property by any regulatory authority or investigating body.
- (e) Waivers:
 - (A) the due diligence investigation may rely upon investigations and oversight that it determines provide comparable assurances of integrity;
 - (B) provided that the SPMO is timely and fully cooperating and acting in good faith in all respects, including payment of fees and costs and voluntary submission to regulatory oversight:
 - (i) any fitness and experience criterion may be temporarily waived for an SPMO that has insubstantial volume, no past or present affiliation with any other SPMO entity or key individual, no dominating betting interest, and operates in only a small market, to the extent that the SPMO could not otherwise operate and the resulting integrity risk is offset by the advantages of regulatory oversight;
 - (ii) the fitness requirements relating to host track pooling and a totalisator system may be waived to the extent an SPMO's legal environment prohibits it, its alternative operations are documented and lawful, and it serves the best interests of racing; and
 - (iii) SPMO suitability may be recognized on a conditional and temporary basis based upon the preliminary findings of an ongoing due diligence investigation.
- (4) The occupational license applicant must meet each foregoing criterion that relates to individual integrity.
- (5) Each application must be accompanied by a nonrefundable application fee in the amount of FEE AMOUNT. In addition, the applicant shall pay the costs of the background investigation performed by the Our Racing Commission or its designee to determine whether the applicant has demonstrated that his or her affiliated SPMO is suitable. Our Racing Commission may estimate these costs and require a deposit to be paid by the applicant in advance as a condition precedent to beginning or continuing an investigation. The application may be denied if the applicant has failed or refuses to pay all application and investigative fees and costs.
- (6) Definitions:
 - (a) *Key Individual* means each executive, manager, officer, director, owner of a beneficial interest of 5% or more, or an owner and source-of-funding whose combined percentage interests are 5% or more, in the SPMO entity. An entity's ownership or funding shall also be fully attributed to its controlling person, family, or other entity. Our Racing Commission, however, after full disclosure by the applicant and SPMO, may determine that:
 - (A) an entity not controlled by a person, family, or other entity has no key individuals despite its percentage of equity or funding, and

- (B) any given bettor, account holder, or beneficial interest in wagers, directly or indirectly, possesses such a dominating position as to constitute a Key Individual.
- (b) *Material change* means any change in business property or practices that would require an independent analysis in the review process (including after initial review); any change in key individuals; and any change in any account holder, or beneficial interest in any account-holder wagers, that participates, directly or indirectly, in 5% or more (by amount or number) of the pari-mutuel wagers accepted by the SPMO in any calendar month.
- (c) *Secondary Pari-Mutuel Organization* (“SPMO”) means any person or entity that seeks to accept or transmit simulcast signals, accept wagers, or transmit wagering information with regard to pari-mutuel horse races conducted within or track pools regulated by Our State, including affiliates and anyone who offers the simulcast signals or wagering opportunities to potential customers of the SPMO; excluding, however, simulcast and wagering conducted;
 - (A) on-site at the premises of an entity licensed to conduct horse races for the purposes of pari-mutuel wagering within its state borders,
 - (B) on-site at a government entity that is authorized to participate in wagering on horse races conducted for the purposes of pari-mutuel wagering within its state borders or
 - (C) off-site by either provided that the entire simulcast and wagering service is operated within its state borders by such racetrack or government entity alone.
- (d) *Simulcast* means to telecast or distribute wagering information, audio and/or video signals of a horse race for the purposes of pari-mutuel wagering.
- (7) Our Racing Commission shall not consent to the acceptance of any interstate off-track wager by an SPMO that has not been determined, as set forth in this Rule, to be suitable.
- (8) Confidential intellectual property or information held by an SPMO, including on behalf of its customers, should be identified as such by the SPMO and Our Racing Commission shall use all reasonable efforts to defend it from disclosure to others and shall not disclose it to other parties except as may be required by law.