



## Competing in the New York Resort Casino Market

*Presented by Goodwin Procter LLP's Gaming, Gambling and Sweepstakes Practice*

April 29, 2014

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## Competing in the New York Resort Casino Market

*Nuts and Bolts of the New York RFA Response Process*

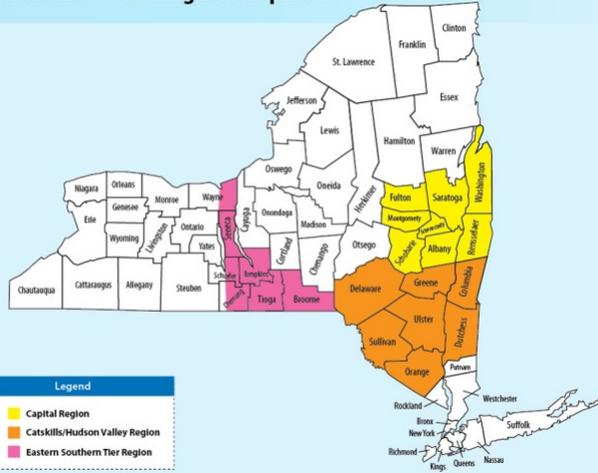
**Robert M. Crawford, Jr.**  
**David L. Perechocky**

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## New York – Casino Development Regions

### Regions For Casino Gaming Development



*One new casino license proposed in each of these regions*

*– One region to get two casino licenses*

*– Two video gaming facilities on Long Island*

*– Casino licenses are valid for 10 years from opening of gaming facility*

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## Timeline of NY Casino Selection

- January 1, 2014 – New York Gaming Economic Development Act of 2013 authorizing development of up to four casinos becomes effective
- March 12, 2014 – New York State Gaming Commission appoints the three-member New York State Gaming Facility Location Board (the “**Board**”) to oversee application and selection process
- March 31, 2014 – Request for Applications issued
- April 11, 2014 – Applicant’s first questions due
- April 23, 2014 – Board responses to first questions, and deadline for submitting \$1M application fee
- April 30, 2014 – Mandatory applicant conference held at 10:00 a.m. at Empire State Plaza, Albany
- May 7, 2014 – Applicant’s second questions due by 4:00 p.m. ET
- May 14, 2014 – Board responses to second questions
- **JUNE 30, 2014 – APPLICATIONS DUE BY 4:00 p.m. ET**
- On or after July 21, 2014 – Oral presentations of applications
- Early fall, 2014 – License winners announced
- Early fall, 2016 – Gaming operations to begin within 2 years following award of license

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## Current Applicants

- 1. Caesars Entertainment
- 2. Capital Region Gaming, LLC
- 3. Concord Kiamesha LLC and Mohegan Gaming New York LLC
- 4. CRCR Enterprises, LLC by The Cordish Companies
- 5. Empire Resorts
- 6. Florida Acquisition Corp. by Clairvest
- 7. Greenetrack, Inc.
- 8. Grossinger Development Corporation
- 9. Howe Caves Development LLC
- 10. Hudson Valley Gaming, LLC
- 11. Nevele-R, LLC by Nevele Resort, Casino & Spa
- 12. NYS Funding, LLC by Och-Ziff Real Estate
- 13. OCCR Enterprises, LLC by The Cordish Companies
- 14. PNK Development 33, LLC by Pinnacle Entertainment
- 15. Rolling Hills Entertainment
- 16. RW Orange County LLC
- 17. Saratoga Harness Racing Inc. (I)
- 18. Saratoga Harness Racing Inc. (II)
- 19. Tioga Downs Racetrack LLC
- 20. Trading Cove New York, LLC
- 21. Traditions Resort & Casino
- 22. Wilmot Casino & Resort by Wilmore, Inc.

*By the April 23 deadline, the above entities had submitted the \$1 million application fee.*

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## Proposed Resort Casino Locations



Source: NY Times, April 24, 2014  
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## The “Croupiers”

- New York State Gaming Facility Location Board Members:
  - › Paul Francis, Business Executive, Founder and Managing Partner of Cedar Street Group, LLC
  - › Stuart Rabinowitz, President, Hofstra University
  - › William C. Thompson, Jr., Chief Administrative Officer and Senior Managing Director at Siebert Brandford Shank & Company L.L.C.
  
- Gaming industry consultants to the New York State Gaming Facility Location Board:
  - › Taft, Stettinius & Hollister LLP, law firm
  - › Christiansen Capital Advisors, financial advisory firm
  - › Houlihan Lokey Capital, Inc., investment bank
  - › Macomber International, Inc., gaming facility consultant

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## Selection Criteria

**70%**

### **Economic activity and business development factors**

*Includes:*

- › ability to meet minimum capital investment and fully finance the gaming facility
- › maximizing state and local revenues
- › job growth
- › value to patrons
- › efficiency of construction
- › quality of the facility
- › general benefits to the local markets
- › demonstrating experience in developing and operating a gaming facility

**20%**

### **Local impact and siting factors**

*Includes:*

- › mitigating potential negative impact on local communities
- › gaining public support for the plan, including obtaining a resolution from the local legislative body of the host municipality in support of the project (required prior to submitting application)
- › partnering with and promoting local hotels, restaurants and retail facilities
- › supporting local entertainment venues that may be impacted

**10%**

### **Workforce enhancement factors**

*Includes:*

- › entering into an agreement with and gaining the support of organized labor unions including hospitality services
- › implementing an affirmative action and equal employment opportunities hiring plan
- › utilizing sustainable development and conservation principles including obtaining green energy and design certifications
- › purchasing domestically manufactured slot machines where possible

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*Note: List of factors not exhaustive. See RFA for more details.*

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## Minimum Capital Investment\*

- **Minimum Capital Investment *includes*:**
  - › Construction of facility, including hotel, gaming area, restaurants, convention space, back-of-house and other amenities
  - › Site preparation, including demolition, excavation, grading, abatement
  - › Remediation of environmental conditions or hazardous materials
  - › Infrastructure improvements or construction **inside the property boundaries**, including drainage, utility support, roadways, parking, sewers, landscaping, public transportation
  - › Pre-opening purchase of furniture, fixtures, equipment, gaming equipment, information technology
  - › Design costs including building, interior and exterior site design
  - › Professional and management fees related to developing the property, including engineers, architects, developers, contractors or operators
- **Minimum Capital Investment *excludes*:**
  - › **Purchase or lease or optioning of land including appraisals, transfer taxes and title insurance**
  - › Carried interest and other financing costs
  - › Mitigating impacts on host and nearby municipalities
  - › Infrastructure improvements or construction **outside the property boundaries**
  - › Legal fees
  - › Promotional, communications and marketing costs related to obtaining support for the gaming facility, including costs to obtain local support
  - › Payments to the Board or the Commission including the application fee, investigation fees and other fees paid to municipalities
  - › Costs related to workforce development and safety
  - › Consulting and due diligence costs to fund traffic, environmental, engineering and other mitigation studies
  - › Applications for Federal, state or local permits

***\*To be announced within 10 business days after the April 30 applicant conference.***

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## Significant Fees (start counting/saving your chips...):

- **\$1 million application fee** – refunded less any costs incurred if application not submitted.
- **Licensing fee** payable within 30 days after the award of a license. Fees range from **\$20M - \$70M** depending on location of gaming facility and if another license is awarded in the region.
- **Annual license fee of \$500 per slot machine and table game**, which may be adjusted annually for inflation after five years.
- **Minimum Capital Investment** requirement (to be released within 10 business days after the April 30 conference). *Note: excludes land acquisition or leasing costs.*
- Racing industry support payments.
- **Tax on gross gaming revenues** (*gaming revenues after prize payouts (excluding free merchandise) but before expenditures*) in the following amounts, to be paid monthly:

Region	Gross Gaming Revenue from slot machines	Gross Gaming Revenue from all other sources
Catskills	39%	10%
Albany	45%	10%
Southern Tier	37%	10%

Location of Gaming Facility:	Licensing Fee:
<b><u>Region 1 (Catskills)</u></b>	
Dutchess or Orange Counties	\$70M
If no license awarded in Dutchess or Orange Counties, then remaining portion of Region 1 (Columbia, Delaware, Green, Sullivan and Ulster Counties)	\$50M
If license awarded in Dutchess or Orange Counties, then remaining portion of Region 1	\$35M
<b><u>Region 2 (Albany)</u></b>	
Broome, Chemung, Schuyler, Tioga or Tompkins Counties	\$35M
Wayne or Seneca Counties	\$50M
If license awarded in Wayne or Seneca Counties, then remaining portion of Region 5	\$20M

- The licensee may agree to increase its tax rate or licensing fee as part of its application, in which case it will be bound to the increased rates.

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## Application Fee Details / Refund Options

- \$1M application fee was due on April 23, 2014
- Stated purpose: defray costs of an applicant's investigation
- Application fee will be **fully refunded** if applicant withdraws within 5 business days following Board's release of minimum capital investment guidance.
- **Refund will be less any reasonable costs** the Commission already incurred related to processing, **including overhead and administrative expenses**.
- Ultimate charge of the application process depends on the **actual costs** of the investigation.
- An applicant applying for multiple licenses was allowed to submit only one application fee if identical structure.

## Requirements for Background Investigation Forms

- Gaming Facility License Application Form **required** for each of:
  - > (i) the Applicant;
  - > (ii) any direct and indirect parent entity of the Applicant including any holding company;
  - > (iii) any Manager;
  - > (iv) any entity having a beneficial or proprietary interest of five (5) percent or more in an Applicant or a Manager; and
  - > (v) any other entity that may be designated by the Commission.
- Multi Jurisdictional Personal History Disclosure Form and New York Supplemental Form **required** for each **natural person** who is:
  - > (i) a director, manager, general partner or person holding an equivalent position with the Applicant, a Manager or any direct or indirect parent entity of the Applicant;
  - > (ii) a Casino Key Employee;
  - > (iii) a person having beneficial or proprietary interest of five (5) percent or more of an Applicant or a Manager; or
  - > (iv) designated by the Commission.
- Additional parties **may** be required to submit to a background check at the Board's discretion.
- Applicants must make a **good faith effort** to determine who must submit background investigation forms.

## Submitting the Application

Due by June 30, 2014 at 4:00 p.m. ET

- Application format:
  - › Hard copies must be submitted in 3-ring binders, with at least 3 sub-binders:
    - **Primary Binder: EXECUTIVE SUMMARY and APPLICANT INFORMATION**
    - **Sub-Binder 1: ECONOMIC ACTIVITY AND BUSINESS DEVELOPMENT**
      - FINANCE AND CAPITAL STRUCTURE
      - ECONOMICS
      - LAND, CONSTRUCTION AND DESIGN OF PHYSICAL PLANT
      - INTERNAL CONTROLS AND SECURITY SYSTEMS
    - **Sub-Binder 2: LOCAL IMPACT AND SITING FACTORS**
      - ASSESSMENT OF LOCAL SUPPORT AND MITIGATION OF LOCAL IMPACT
      - REGIONAL TOURISM AND ATTRACTIONS
    - **Sub-Binder 3: WORKFORCE ENHANCEMENT FACTORS**
      - MEASURES TO ADDRESS PROBLEM GAMBLING
      - WORKFORCE DEVELOPMENT
      - SUSTAINABILITY AND RESOURCE MANAGEMENT
- Applicant must submit:
  - › 20 hard copies.
  - › 10 electronic copies in PDF format via 10 separate USB flash drives.
  - › 10 additional USB flash drives or sets of flash drives containing interactive electronic versions of each model, projection or table presented.
  - › 2 sets of high-quality files and 2 sets of medium-quality files of each architectural or site layout, on USB flash drives.
  - › If the application contains information exempt from FOIL, submit a letter stating the grounds for exemption, 2 redacted hard copies and 2 redacted electronic copies.
  - › Original executed copies of the Affirmation, Addendum Acknowledgement Form and the Waiver.
  - › 2 hard copies and 2 electronic PDF copies of each Background Information Form.

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## Contact Information

- **Robert M. Crawford, Jr.** is Counsel in Goodwin Procter LLP's Technology Transactions Practice and Technologies Companies Group. His practice encompasses a broad range of commercial transactions and technology and intellectual property matters, including technology licensing and transfers; joint venture, collaboration, strategic alliance and joint development transactions; counseling in mergers, acquisitions, venture capital and private equity transactions; and counseling of clients on compliance with sweepstakes, Internet marketing and promotional laws. Mr. Crawford is co-chair, along with David Apfel, of Goodwin's Gaming, Gambling & Sweepstakes ("GG&S") Practice Group. For more information regarding our GG&S practice, please visit our blog <http://goodwingaming.com>, or follow us on Twitter [@GoodWinGaming](https://twitter.com/GoodWinGaming).

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## Competing in the New York Resort Casino Market

### *Lessons Learned from Massachusetts Tripwires to be Avoided*

**E. Abim Thomas**

April 29, 2014

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## Overview

- Strength of partnerships
- Disclosure requirements
- Conflicts of interest
- Background checks
- Costs and fees
- Evaluation of application
- Repeal effort underway in Massachusetts

## Strength of Partnerships

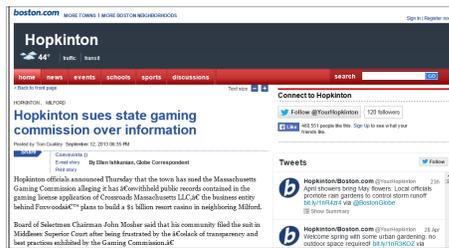
- Leverage collective resources and expertise
- Provide greater assurance to the Board
- Massachusetts saw similar partnerships
- Examples include:
  - > Foxwoods Massachusetts
  - > Suffolk Downs

## Disclosure Requirements

- Applications will be public records
- Applications include personal and professional information
- Only certain information will be kept confidential
  
- ❖ It is the applicant's initial responsibility to protect that confidential information

## Disclosure Requirements

- Disputes over the confidentiality of information in applications can include:
  - Disagreements between the applicant and the Board about what should be redacted
  - Lawsuits brought by outside parties challenging the redaction of information



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## Disclosure Requirements

### LESSONS:

- ❖ Be conscious of what's being included
- ❖ Be strategic about protecting confidential and proprietary information
- ❖ Be prepared for disputes over the release of information

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## Conflicts of Interest

### The 2 Sides of the Conflict:

#### Government Entities

- New York State Gaming Commission members or staff
- New York State Gaming Facility Location Board members
- Consultants to the Facility Location Board
- Any state or municipal leaders

#### Applicant

- Anyone having a direct or indirect interest in the business
- Anyone having any perceived ties to the business

## Conflicts of Interest

Massachusetts conflicts of interest included:

- Alleged conflict between the Massachusetts Gaming Commission Chairman and a landowner who stood to benefit from the Wynn project
- Alleged conflicts between applicants and consultants hired to evaluate applications



## Conflicts of Interest

### LESSONS:

- ❖ Check your ties
- ❖ Detect any connections early
- ❖ Disclose all connections
- ❖ Disassociate from potential conflicts where possible
- ❖ Have a strategy for resolving any conflict accusations

Note: The responsibility is on the government employee to disclose the conflict

## Background Checks

Thorough background checks will be conducted on:

- Applicant
- Any direct and indirect parent of applicant
- Any manager
- Any entity having a beneficial or proprietary interest of 5% in applicant
- Any director, manager, general partner or person holding an equivalent position with applicant, manager, or parent
- Any other entity that may be designated by the Board

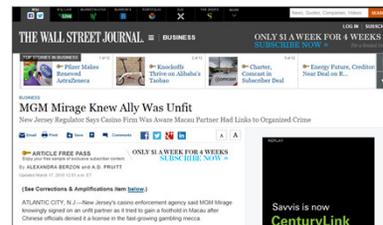
Thorough background checks may be conducted on:

- Related parties, affiliates, close associates and financing sources

## Background Checks

Examples of background checks investigations in Massachusetts that uncovered troubling issues included:

- Allegations of Caesars' ties to Russian organized crime
- Concerns over Caesars' financial stability
- MGM's relationship with Pansy Ho, the daughter of Stanley Ho, a gambling mogul in Macau allegedly linked to organized crime
- Concerns that were discovered early on in that process that caused certain partners to withdraw from the venture



## Background Checks

### LESSONS:

- ❖ Understand that approval in one jurisdiction may not necessarily dictate approval in another jurisdiction
- ❖ Require full disclosure from potential partners
- ❖ Perform your own due diligence on partners who are likely to get backgrounded

## Costs and Fees- Application Fee

- Application fee
  - \$1 million, plus any additional costs incurred by the Gaming Commission in reviewing the application

### LESSON:

- Anticipate and budget for additional costs beyond the \$1 million fee if the structure is complicated or involves many partners

## Costs and Fees- Annual Assessments

- Annual assessments:
  - \$500 per year for each slot machine and table game, with annual inflation adjustments after five years
  - Regulatory costs distributed pro rata among the casinos based on number of employees

### LESSON:

- Anticipate and budget for annual assessments, including undetermined regulatory costs based on number of employees

## Costs and Fees- Minimum Capital Investment

- Minimum capital investment amount will be determined by May 14.
- Minimum capital investment excludes:
  - › Purchase or lease or optioning of land
  - › Carried interest and other financing costs
  - › Mitigating impacts on host and nearby municipalities
  - › Infrastructure improvements outside the property boundaries
  - › Applications for federal, state or local permits
  - › Other costs that applicants would have liked to have seen included in the amount

### LESSON:

- Once it is set, evaluate the minimum capital investment amount and the costs excluded from that amount alongside the tax rate to determine whether the project is economically viable.

## Evaluation of Application- Site Design

- Application evaluation criteria include:
  - › designs for the proposed gaming facility
  - › descriptions of ancillary entertainment services and amenities to be provided
  - › the number of hotels and rooms, restaurants and other amenities located at the proposed gaming facility and how they measure in quality to other area hotels and amenities

### LESSONS:

- ❖ Plan out elements of contemplated projects early
- ❖ Include an integrated design approach
- ❖ Be as specific as possible

## Evaluation of Application- Construction Timeline

- Each applicant must provide detailed descriptions of its development plans, including:
  - > a detailed timeline of the stages of construction, and
  - > descriptions of any expected infrastructure improvements.

### LESSONS:

- ❖ Consult with contractors, builders, zoning boards and permitting agencies
- ❖ Coordinate permitting and construction to avoid any delays

## Evaluation of Application- Community Support

- Applications must include market studies examining the project's impact on the host and surrounding communities
- Applicants must commit to a community mitigation plan to help defray costs to the host community
- Applicants must gain support for the plan, including obtaining a resolution from the local legislative body of the host municipality in support of the project

### LESSONS:

- ❖ Begin communications with local leadership early
- ❖ Consider holding community meetings
- ❖ Consider investing in the community's interests

## Evaluation of Application- Working with Local Businesses

- Applicants must also agree to promote and partner with local hotels, restaurants and shopping facilities
- Applicants must agree to support nearby entertainment facilities that may be impacted

### LESSONS:

- ❖ Connect with local planning and neighborhood boards
- ❖ Participate in a regional economic development plan
- ❖ Enter into memoranda of understanding with specific local partners

## Repeal Effort Underway in Massachusetts

- Casino opponents in Massachusetts petitioning for the repeal of the Massachusetts gaming law
- Petition was originally rejected by the Massachusetts Attorney General as unconstitutional
- Casino opponents are challenging that decision before the Massachusetts Supreme Judicial Court
- Decision expected in May; petition could be on the ballot in November

### LESSONS:

- ❖ Passage of gaming legislation does not guarantee operating casinos
- ❖ Engage with anti-casinos groups to work to mitigate their concerns





# Questions?



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