

1 THE COMMONWEALTH OF MASSACHUSETTS
2 MASSACHUSETTS GAMING COMMISSION
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5 DAILY FANTASY SPORTS FORUM
6 VOLUME II
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18 December 10, 2015 2:00 p.m. - 4:30 p.m.

19 HYNES CONVENTION CENTER
20 900 Boylston Street, Room 207
21 Boston, Massachusetts
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1 P R O C E E D I N G S :

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4 MR. STEMPECK: The first session we
5 have this afternoon is entitled Existing
6 Regulatory Frameworks Can They Work for Daily
7 Fantasy Sports.

8 On the panel here to today to speak
9 on this topic are a number of individuals, the
10 first of which to my left is Richard Johnston.
11 Richard is the chief legal counsel at the
12 Massachusetts Attorney General's office. As
13 the chief legal counsel, he provides legal and
14 strategic advice to Attorney General Maura
15 Healey.

16 He oversees the office of general
17 counsel and supervises many teams within the
18 office including teams concerning open
19 government, consumer protection, civil rights
20 and gaming enforcement.

21 Before joining the Attorney
22 General's office, Richard was a partner for
23 many years at WilmerHale in Boston. He spoke
24 at many conferences and has written many

1 articles, most recently speaking on corporate
2 compliance from the standpoint of a regulator.

3 Mr. Martino was introduced earlier.
4 He's from Duane Morris. He has both the
5 regulator's hat as a prior regulator as well he
6 is in private practice now in a regulatory
7 compliance framework for FanDuel.

8 To his left is Whit Askew. Whit
9 Askew is the vice president of government
10 relations for the American Gaming Association
11 where he leads the American Gaming
12 Association's congressional champion
13 development efforts and oversees the
14 association's business and public policy
15 objectives.

16 Mr. Askew joined the AGA after a
17 five-year tenure working for then U.S. House
18 Republican leader and now Speaker of the House
19 John Boehner where he served as executive
20 director of the Freedom Project. Prior to his
21 service for Speaker Boehner, Mr. Askew served
22 as a political coordinator at the Property
23 Casualty Insurance Association of America.
24 Welcome to all of you.

1 As I mentioned, the topic for our
2 particular session and we may touch on some of
3 the same issues that will be addressed later on
4 this afternoon, but it is really one of which
5 we are going to be looking at what existing
6 regulatory frameworks are out there and whether
7 any aspects from those particular frameworks
8 can be borrowed or utilized in some fashion or
9 perhaps seen as a path towards what an ultimate
10 regulatory authority can do to appropriately
11 handle daily fantasy sports.

12 And just to sort of get the
13 conversation started along those lines, I think
14 probably the easiest way to approach it is from
15 one of a regulatory philosophy. That's often
16 been characterized as a heavy versus a light
17 type of regulation.

18 This was touched on a little bit
19 earlier today, but I think it bears some
20 further conversation where often times the
21 heavy type of approach is correlated with
22 casino operators and the variety of
23 requirements and hoops they have to jump
24 through in order to operate in a particular

1 venue. Versus a light, which may be either a
2 self-regulation or a light-touch type of
3 regulation.

4 So, along those lines, I'll open the
5 discussion as to thoughts of pros and cons.
6 Why don't we start with a heavy regulation.
7 So, Stephen, why don't you start this
8 conversation since you wore that regulatory cap
9 before.

10 MR. ASKEW: So, I would say that the
11 question is not whether it's a light or a heavy
12 but is it the right one. Casino regulations
13 developed over time because there were risks at
14 play and you develop systems to mitigate those
15 risks or to promote a public good just given
16 the amount of time that industry has taken to
17 develop.

18 It may have the appearance of being
19 heavy. And as I think I said earlier, I think
20 that there is a fair amount of over regulation
21 of the brick-and-mortar casino industry. I
22 doubt that Mr. Askew is really going to dispute
23 me much on that.

24 I think what the responsibility of

1 regulators, and again whether it is through a
2 commercial gaming regulatory agency such as
3 this one or if it is through an Attorney
4 General's office or through some other agency,
5 many states have a Department of Licensing and
6 Regulation, the state of Maryland does, that
7 they find the right profile.

8 That you put together the regulatory
9 consumer protection framework that promotes the
10 transparency and the fair play that this
11 industry needs that mitigates the risks that
12 addresses the harms. Then that becomes the
13 model that you put in place. And whether
14 that's light or heavy, it should be the right
15 one.

16 I am of the opinion, I think most
17 people are of the opinion that model doesn't
18 look like a brick-and-mortar casino regulatory
19 framework. I think that's been fairly well-
20 established. But there are things that you're
21 going to have to do to regulate daily fantasy
22 sports and other emerging new technology forms
23 of entertainment in gaming that are going to
24 have to have moving pieces to them that aren't

1 involved in brick-and-mortar casino gaming or
2 pari-mutuel or even the lottery.

3 I think we can discuss those, but I
4 don't think it's light or heavy. I think it's
5 the right one to fit the industry and the needs
6 and the risks.

7 MR. ASKEW: I would say, Justin,
8 from the AGA's perspective, obviously, it's you
9 as the Commissioners and other commissions
10 where brick-and-mortar casino operations
11 proudly operate across the country to make the
12 decision, to Mr. Martino's point, as to what
13 the right regulation and what level may be
14 necessary.

15 Obviously, from the brick-and-mortar
16 casino perspective, regulation is a hallmark of
17 our industry. Because not only does it protect
18 the integrity of our business operations and
19 the games that we offer, but it also ensures
20 the integrity for our customers.

21 So, that's something we are proud
22 of. And I would just say how our piece of the
23 industry relates to the broader daily fantasy
24 sports issue is it is somewhat ironic that

1 because the casino industry is so heavily
2 regulated that our regulators have cautioned us
3 to seek greater legal clarity because of the
4 ambiguity to a degree on daily fantasy sports
5 because it is this new innovative exciting
6 product of which our industry is excited for.

7 So, I think it's important to
8 highlight from AGA's perspective whatever the
9 determination the Commission makes as to what
10 level of regulation may be necessary for daily
11 fantasy sports, we applaud that.

12 We applaud you for giving this the
13 attention that it needs because it's important.
14 And we want, the casino industry wants to be a
15 willing partner on this innovative product. We
16 just can't at this point until there is greater
17 legal clarity. And I think the regulatory
18 component does play into that clarity.

19 MR. STEMPECK: Go ahead.

20 MR. JOHNSTON: From the standpoint
21 of the Attorney General's office, we've looked
22 at it from a couple of different perspectives.
23 First, we had some concerns about things that
24 were going on with daily fantasy sports mostly

1 from the consumer protection standpoint.

2 And there were a number of policies
3 that we thought were important to implement.
4 And one of the speakers earlier this morning
5 said it is important to have policy
6 considerations, risk analysis and that
7 appropriate regulations when you balance the
8 regulations against the risk.

9 And there were clearly some policy
10 issues that we thought were very important
11 including such things as avoiding minors
12 playing the sports, having a lack of
13 association with the schools and the colleges
14 in terms of fairness of play, in terms of
15 assurances for the security of the deposits
16 that people put down, in terms of advertising
17 and in terms of data protection among other
18 things and also responsible gaming.

19 And when we surveyed the landscape,
20 we realized as Chairman Crosby has said both in
21 a prior hearing of this Commission and today
22 that the Gaming Commission doesn't have
23 statutory authority to deal with daily fantasy
24 sports.

1 On the other hand, the Attorney
2 General's office has had a long-term statutory
3 authority to deal with consumer protection
4 regulations. And we have implemented
5 regulations regarding a wide range of
6 industries and a wide range of businesses.

7 So, we then set to the task of
8 trying to figure which regulations could we
9 consider and then implement that would deal
10 with those policy areas that we thought were
11 most important.

12 And as a result, as I think most
13 people in this room know, in November the
14 Attorney General issued draft regulations,
15 which we will be hearing in a public hearing on
16 January 12. In the meantime, we are accepting
17 public comments. That period doesn't end until
18 22 January.

19 So, to the extent that any of the
20 stakeholders in this room have comments to give
21 us, by all means do so. We think that we have
22 come up with balanced regulations which deal
23 with the policy areas that we thought were
24 critical without being overly restrictive or

1 oppressive.

2 We don't think so much in terms of
3 light versus heavy. We thought in terms of
4 what are the available structures in
5 Massachusetts which we could operate within and
6 that's what we've done.

7 MR. STEMPECK: And to that point --

8 CHAIRMAN CROSBY: This was the
9 question that we all considered and want to
10 continue to consider. One way -- And this fits
11 exactly in this agenda item. One way to deal
12 with this issue of regulation is simply use
13 consumer protection regs. We do that with a
14 lot of other businesses in Massachusetts or in
15 the country. The consumer protection regs. can
16 have various degrees of specificity and the
17 Attorney General can enforce those consumer
18 protection regs.

19 Other industries we decide that they
20 need their own dedicated agency insurance,
21 banks, casinos, for example.

22 Where is DFS and all of these on-
23 line sports which are one day going to go
24 through the same process of deciding whether

1 and how they should be regulated, where does
2 that fit? Is the consumer protection regs.,
3 however they end up being approximately on the
4 lines that the AG proposes, is that enough? Or
5 is there an argument, a rationale, a need for a
6 designated agency to take it further than just
7 those regs.?

8 MR. JOHNSTON: I'll try to address
9 your question, Chairman Crosby, by saying our
10 regulations do not purport to preempt anything
11 that the Legislature might choose to do either
12 by way of additional regulation or creating
13 some sort of an agency.

14 So, we are taking care of what we
15 are statutorily empowered to take care of for
16 at the moment. We think that we are going to
17 improve for the consumers of Massachusetts the
18 experience of DFS by having substantial
19 consumer protection regulations in place. But
20 we certainly do not attempt to foreclose others
21 from looking at this issue from another
22 perspective.

23 CHAIRMAN CROSBY: I realize that.
24 I'm curious in people's judgment as to whether

1 or not it would be in the public interest to
2 take the step further or is this far enough?
3 That's the question.

4 MR. MARTINO: My sense right now
5 says the former of the two examples you
6 presented, not the latter. I don't think that
7 daily fantasy sports requires its own
8 regulator.

9 I think, and we may touch on it
10 later, is certainly there are some concerns
11 about how as laws are considered, we are
12 concerned about bumping up against PASPA and
13 exactly how that law is triggered and it's
14 going to become very specific in statutes that
15 are passed. I think clearly there doesn't need
16 to be a separate regulator for daily fantasy
17 sports or least I don't think there is.

18 I do think it is going to have to be
19 a regulator or an oversight system that again
20 the word I continue to use is supple that can
21 be flexible, willing to change and adjust,
22 because this is an industry that is born
23 largely of technology.

24 And as much as the law that allows

1 it and as much as technology changes and there
2 are new opportunities, you're going to have to
3 have a regulator that can meet those
4 challenges. I think that is one of the
5 problems that regulators have is that things
6 change, and this is certainly true in the
7 brick-and-mortar casino industry, the way they
8 do business now is different than it was five
9 years let alone 15 to 25 years. But in many
10 states regulations don't change that quickly.
11 So, you need a regulator that can adjust
12 accordingly.

13 But I don't think that it rises to
14 the need of its own regulator. I think that
15 the proposed regulations that came out from the
16 Attorney General's office are a very good first
17 step. Obviously, the industry is going to want
18 to comment on those but I'd be interested to
19 see how that proceeds.

20 COMMISSIONER MACDONALD: If I could
21 follow up on Mr. Martino. You used the phrase
22 just now of your concern about bumping up
23 against PASPA. Could you expand on that? Give
24 us the framework. What are the critical issues

1 under the legislation that would be implicated
2 by DFS.

3 MR. MARTINO: I actually brought the
4 law up here on what I think -- And I don't
5 purport to be an expert on PASPA. We have
6 those in our firm who are.

7 But specifically I think the
8 provision pretty short, it shall be unlawful
9 for a government entity to sponsor, operate,
10 advertise, promote, license or authorize by law
11 or compact a lottery, sweepstakes or other
12 betting, gambling or wagering scheme based
13 directly or indirectly on one or more
14 competitive games in which amateur or
15 professional athletes participate or are
16 intended to participate or on one or more
17 performances of such athletes in such games.

18 So, I think we need to be careful
19 that in states when they're enacting consumer
20 protection don't cage this as a lottery, a
21 sweepstakes, betting, gambling, wagering. I
22 think our advice right now and again best
23 advice would not be coming from me, but we can
24 certainly provide it, is to probably make

1 affirmative statements that in fact this is not
2 lottery, sweepstakes, betting or gambling.

3 To make it clear daily fantasy
4 sports is a form of entertainment. And this is
5 consumer protection not falling into some form
6 of regulatory compliance for gambling game.

7 COMMISSIONER MACDONALD: Would an
8 alternative way to deal with a PASPA exposure
9 being to focus on the term sponsor? So, to
10 structure whatever the regulatory and/or
11 statutory provisions pertaining to DFS as not
12 rising to the level of the sponsorship or
13 licensing?

14 MR. MARTINO: I think it could as
15 well. And I think, again that starts really
16 getting out of my depth a little bit and to
17 people who have followed the law on PASPA.
18 Really it has not been -- There's not a lot of
19 robust case law on PASPA.

20 But of course, there is a pending
21 Third Circuit rehearing on the New Jersey
22 challenge. So, I think people are going to be
23 very interested to see what comes up there.

24 I will say, since I'm in

1 Massachusetts, we have noted some of the
2 comments that have come out of the
3 Massachusetts state lottery about wanting to
4 engage in daily fantasy sports. And we have a
5 hard time understanding or squaring -- And I
6 think I'm talking probably more from folks
7 inside my law firm who are looking at this not
8 so much my client. -- how a state lottery could
9 launch a daily fantasy sports game and not
10 trigger a sponsor, operate, advertise, promote
11 or license since that's really what state
12 lotteries do.

13 COMMISSIONER MACDONALD: I can't
14 remember who it was this morning who made that
15 comment that those jurisdictions which have
16 actually moved towards the licensing of daily
17 fantasy sports are directly exposing themselves
18 to PASPA.

19 MR. STEMPECK: Commissioner
20 Macdonald, the PASPA issue is one that
21 internally at the Gaming Commission we've
22 looked at a little bit. And we're going to
23 speak in-depth with Counsel from the various
24 DFS operators about this going forward, because

1 as Stephen mentioned there is a lot of
2 ambiguity about those verbs that were in the
3 statute itself and how they are interpreted.
4 They're not defined within the statute.

5 So, the exposure and what does it
6 mean if you authorize one of these endeavors.
7 It is not entirely clear. That's why we have
8 to be cautious in terms of any recommendations
9 that are made as it applies to state action.
10 So, I think it was well said by Stephen though.

11 CHAIRMAN CROSBY: You were going to
12 say?

13 MR. ASKEW: I was just going to kind
14 of piggyback on the point you make,
15 Commissioner. The uniqueness of Nevada which
16 has as I think going down the road you were
17 alluding to in allowing for licensed daily
18 fantasy sports, it's unique there because PASPA
19 is not an issue within the state of Nevada.
20 So, if a daily fantasy sports operator wants to
21 go through the licensing process there, it
22 would be done so running no of afoul to PASPA.

23 But to the points that Mr. Martino
24 and Justin just made as well, as other states

1 beyond the Commonwealth here make their
2 determinations and their interpretations of
3 their existing gaming walls, it could create
4 other scenarios that do bring PASPA into play
5 that otherwise because there is not much case
6 law at this point, it has not been the
7 forefront of the narrative.

8 It won't necessarily happen here,
9 but it could happen in other places which makes
10 it a critical element for you to keep an eye on
11 for sure.

12 MR. STEMPECK: It should be noted as
13 well that both Kansas and Maryland have laws on
14 the books legalizing fantasy sports. And those
15 are at least a few years old. And neither one
16 of them has been challenge, a so-called PASPA
17 challenge. So, it's been relatively quiet on
18 one of those challenges arising. But certainty
19 is certainly something we want to look for
20 here.

21 MR. JOHNSTON: Most of the legal
22 commentators who have looked at the issue have
23 said that the sort of consumer protection
24 regulations, which we have promulgated in draft

1 form would be permissible under PASPA.

2 COMMISSIONER MACDONALD: And Nevada
3 is not involved because it is subject to a
4 specific carve out; is that right?

5 MR. ASKEW: I'm sorry. Say that one
6 more time, Sir.

7 COMMISSIONER MACDONALD: Nevada is
8 not implicated in it because it is subject to a
9 specific carve out in the legislation; is that
10 right?

11 MR. ASKEW: They were one of the
12 four states that were grandfathered but for all
13 intents and purposes, they have full-scale
14 sports betting obviously in Nevada.

15 MR. STEMPECK: Just circling back to
16 our own state's focus on the consumer
17 protections, and I address this question to
18 Rich, is that in the process by which you came
19 up with your regulations can you perhaps walk
20 us through the process? What led to how you
21 evaluated the priorities of the specific
22 consumer protection aspects that you focused on
23 and how you decided those were going to be the
24 ones -- the regulations would focus or whether

1 there was any that I guess didn't match up or
2 didn't rise to a high enough level?

3 MR. JOHNSTON: Let me start by
4 saying that when we first began looking at
5 daily fantasy sports, we did hear claims from
6 individual companies that the individual
7 companies felt that they could self-regulate.
8 And if they couldn't self-regulate then there
9 would be regulation in the form of an
10 industrywide association, which would impose
11 its own we'll call them regulations.

12 And there was an argument that
13 because the companies knew their customers and
14 knew what it would take to be successful that
15 they could be the best people to be able to
16 evaluate and then regulate themselves.

17 And we didn't agree with that sort
18 of philosophy for a number of reasons. One of
19 which is that the profit motive always is in a
20 bit of a tension with the need to protect
21 consumers. And we felt that in order to
22 appropriately protect consumers, it required
23 outside regulation to avoid that sort of
24 tension.

1 Second of all, I think everybody
2 knows that the industry is heavily dominated by
3 two players. And whether they regulated
4 themselves or operated through an association,
5 their dominance of the association meant that
6 it wasn't quite clear that the regulations
7 would end up reflecting either the interest of
8 everybody in the industry or the interest of
9 consumers.

10 Another piece of our thinking was
11 that in order for us to be able to enforce what
12 we consider to be consumer protection
13 violations, it would be important for us to
14 have our own regulations in place because if
15 they were voluntary regulations on the part of
16 the industry, we wouldn't really have much of a
17 handle to be able to enforce.

18 And another aspect is that if you
19 have an industry with a number of players and
20 an association and go with some sort of
21 association regulation, you never know for sure
22 that the next party -- First of all, you don't
23 know that everybody in the industry is joining
24 the association. Then if new players join the

1 industry a week later or a month later, you
2 don't know that they will sign on for the
3 industry regulations either.

4 Whereas if we promulgate
5 regulations, they apply to everybody who is
6 doing business in Massachusetts or allowing
7 Massachusetts consumers to play their games.

8 And finally, doing it by way of
9 public regulation means that lots of
10 stakeholders have an input. The operators have
11 an input. The associations have an input.
12 Consumers have an input. The groups who are
13 concerned about responsible gaming have an
14 input.

15 And essentially, anybody who wants
16 to register a comment or attend our hearing in
17 January has the ability to have input into our
18 regulations. And at this point, they are draft
19 regulations. They will become final at some
20 point probably in the winter, but the public
21 has plenty of input in the meantime.

22 So, we felt as though the format
23 should be regulations from the Attorney
24 General's office.

1 In terms of what the priorities were
2 for us, well, conceivably based on the
3 discussions we've heard this morning there are
4 a million things that might have been
5 regulated. But we pick the things that the
6 Attorney General's office felt were at the
7 highest level from a priority standpoint. And
8 I identified most of those earlier on but I can
9 go through them again in a little bit more
10 detail.

11 One is minors. The Attorney
12 General's office has concluded that consistent
13 with what is done in casinos that people under
14 21 should not be permitted to play daily
15 fantasy sports. That is different from what is
16 the current status quo.

17 As we understand it, most of the
18 companies allow people between 18 and 21 to
19 play. We believe very strongly that that was a
20 bad policy in part because of the fact that we
21 see students staggering under burdensome debt,
22 and it didn't seem as though it would be
23 appropriate to have them exposed to the
24 possibility of adding to that debt by

1 registering large accounts on DFS.

2 For another thing, we are
3 substantially concerned, as I think was
4 indicated from one of the scientific comments
5 earlier today that people in the age bracket 18
6 to 21 are more susceptible to addictions than
7 are older people. And we wanted to make sure
8 that those people who may be susceptible to
9 debt problems but also susceptible to addiction
10 problems are not faced with a double whammy
11 that DFS might pose.

12 And for some of the same reasons, we
13 felt that it would be important not to have
14 daily fantasy sports focusing on college
15 sports. We want to see college sports remain
16 as uncommercialized as possible. And I
17 understand that they already are greatly
18 commercialized, but we didn't see a reason to
19 expand upon that.

20 So, we have basically advanced on
21 both sports related things in college and also
22 advertising at colleges or advertising in a way
23 that it makes it look as though college people
24 are participating.

1 Another thing that is very, very
2 important to us is responsible gaming. And
3 we've imposed a couple of proposed regulations
4 for that. One is the ability to self-exclude.
5 That was discussed earlier this morning.

6 But anyone who feels that he is in
7 danger, she is in danger can self-exclude with
8 the DFS companies under our proposed
9 regulations. And they cannot then sign up for
10 an account. They also can't be targeted by
11 advertising by the DFS companies because that
12 would be pretty much antithetical to the self-
13 exclusion.

14 We have some protections in place
15 for the accounts themselves. We have heard
16 problems that people have had where they
17 deposit money into an account and then they
18 have difficulty getting the account -- the
19 money out of the account later on. So, we want
20 to see procedures to make sure that people when
21 they are no longer interested in playing can
22 get their money out quickly.

23 We also want to make sure, and it
24 was alluded to earlier this morning, we want to

1 make sure that the money in the accounts is
2 safe. We want to make sure that if I deposit
3 money on account, it's not commingled with my
4 brethren up here at the table, but I have my
5 own account at the end of the day so that when
6 I ask for it back, I can get it back.

7 We want to make sure that there are
8 provisions that the company is not commingling
9 our money with their operating money.

10 And then there are another series of
11 regulations with respect to fairness in
12 advertising so that people know what they are
13 getting when they play a game. We want to make
14 sure that there are certain provisions for
15 fairness in play. And by that we mean a level
16 playing field.

17 There was a lot of discussion about
18 that before lunch, but we would like to see
19 regulations in place that would require
20 identification of highly experienced players
21 and exclusion of highly experienced players
22 from certain contests, not from all contests,
23 of course, but that there would be some
24 contests that would be only for beginners.

1 Other contests, it would be for beginners and
2 middling players. And then others that would
3 be open to anyone.

4 That's really to make it open for
5 the people who are just starting out to have
6 some possibility of winning against other
7 people of similar background to not get swamped
8 by the people who have much more sophisticated
9 skill levels and much more sophisticated
10 techniques.

11 We also do propose in the
12 regulations that there be a prohibition on what
13 was referred to earlier as scripts, which are
14 software applications which might enable people
15 to have operational speed that people without
16 the scripts wouldn't have.

17 And those are the principal sorts of
18 regulations. As I said, there are other things
19 we might have considered putting into the
20 regulations, some we did consider. But these
21 are the ones that we thought were the most
22 important and will be hearing people about in
23 January.

24 COMMISSIONER STEBBINS: Richard,

1 talking about the money, getting money in and
2 money out, would a daily fantasy sports company
3 be subject to say the same provisions or
4 regulations that a bank has. Wherein an
5 inactive account or the player dies, what
6 happens to that money?

7 MR. JOHNSTON: Well, we're looking
8 for the companies to propose specific
9 guidelines or protections. And we will be
10 evaluating them as they come in.

11 But certainly some of the things
12 that banks have are probably analogous to here,
13 whether they would comport one for one is still
14 open to question. But that's a good question
15 on your part, thanks.

16 MR. STEMPECK: Just circling back,
17 with the understanding that our state Attorney
18 General has promulgated these regulations, it's
19 thus known that there will be some regulation.
20 So, what can we learn from the regulation of
21 casinos that can be applied or shouldn't be
22 applied to potential regulation of the DFS
23 industry?

24 Are there certain things perhaps

1 that really have no or are too heavy-handed for
2 DFS? I know there's, I think, what was brought
3 up a little bit earlier was the background
4 check, the lengthy and thorough background
5 checks that we have in the casino industry. Is
6 that something that can be applied to the DFS
7 industry?

8 Are there other elements of the
9 casino industry that are perhaps too heavy or
10 too onerous for a nascent industry like the DFS
11 industry to bear at least at this point?

12 MR. ASKEW: I'll yield to Mr.
13 Martino on some of that just given his unique
14 expertise of understanding as a chief gaming
15 regulator, but also in his role today.

16 I can speak to the incredible levels
17 of regulation that casinos do have to go
18 through. Mr. Johnston actually did touch on
19 some of those things, whether it be age
20 verification or responsible gaming tools, self-
21 exclusion. There are a lot of similarities
22 there that I heard in some of the baseline
23 regulation that you went through.

24 But then to your point Justin, there

1 is obviously extensive background licensing
2 procedures tied to casino employees at all
3 types of levels, not just at the top. So,
4 there are significant things that my members in
5 the U.S. casino industry does have to go
6 through.

7 I'm not here to say whether all of
8 those or what variation of those applies or
9 translates properly to the daily fantasy sports
10 market. But clearly, it's at least a good
11 baseline to look at from the Attorney General's
12 office or gaming commissions across the
13 country. But I'll yield to Mr. Martino. He
14 may have additional thoughts on that.

15 MR. MARTINO: So, as a regulator, we
16 like background investigations. They're good.
17 They tell you who is in the industry. I know
18 for 10 years I enjoyed them. I enjoyed the
19 fact that you knew with precision, I think, who
20 was operating in your jurisdiction, what their
21 history was.

22 In many cases, you have statutory
23 requirements that you have to hold that
24 background investigation up to. I was five

1 years in the state of Kansas. If you had been
2 convicted of a felony in your life in the state
3 of Kansas, you couldn't have a gambling
4 license.

5 If you go to Maryland, if you had
6 been convicted of crime of moral turpitude any
7 time in your life, you couldn't have a gaming
8 license. Gaming licenses are really expensive
9 -- gaming investigations are really expensive
10 to conduct.

11 So, on one hand, I certainly
12 understand the desire or perhaps the desire
13 particularly of gaming regulators, if that's
14 where it goes, to have those kinds of devices.
15 But you have to balance out one against the
16 risk. And two, is there a different way, is
17 there another way to achieve the same policy
18 goal of ensuring integrity and transparency
19 without having to put every individual who
20 works for a DFS company through some form of
21 regulation.

22 Maryland and Kansas require every
23 person on the casino floor even if you're
24 working in the kitchen or environmental

1 services up to the general manager to have a
2 background. I do some work in Ohio. They
3 don't require any of their, what I would
4 consider, nongaming employees, people who work
5 food service to get licensed. So, a completely
6 different approach.

7 The expense comes from putting some
8 of these really significant oversight features
9 into place. I am just not sure that it is
10 necessarily warranted. I don't think I've seen
11 any evidence yet, even if I wasn't in the seat
12 -- the relationship I have with FanDuel now
13 that I would advocate for it.

14 But that doesn't mean that it's not
15 a responsibility of the industry to make sure
16 that they're hiring the right people. So, it's
17 probably a little bit of dancing around that
18 I'm not exactly sure how it's going to shake
19 out. I think again, the consumer protection
20 approach that has been taken in Massachusetts
21 seems to me without endorsing everything that's
22 been put forward in draft form by the Attorney
23 General's office --

24 MR. JOHNSTON: You may endorse them

1 if you'd like.

2 MR. MARTINO: I think we are on
3 camera. I think there's a court reporter over
4 here. That would be good for me to do. But I
5 think that that approach again is a distinction
6 of how you -- maybe what we are talking about
7 here in providing consumer protection
8 regulatory compliance for this industry doesn't
9 necessarily square up with what the traditions
10 and hats have been for the regulation of brick-
11 and-mortar casino especially in its most
12 expensive forms of oversight that quite frankly
13 this is just not an industry given in its
14 growth cycle is still quite young, not
15 developed and not profitable.

16 COMMISSIONER CAMERON: Mr. Martino,
17 you mentioned risk. In your mind, in your
18 opinion, your expert opinion, the different
19 risks between casino employees, the risk they
20 may pose and an employee at a company here in
21 Boston or New York or wherever else.

22 MR. MARTINO: So, I am not sure if
23 you've got appropriate consumer protection
24 compliance systems in place. I think this is

1 to me probably almost certainly going to
2 include some kind of third-party verification.

3 Perhaps, he's no longer here, but
4 Kevin Mullally, GLI using them. They work for
5 regulators. They work for states. There'd be
6 some relationship between who potentially the
7 Attorney General's office of Massachusetts or
8 the Massachusetts Gaming Commission coming in
9 and doing audits to verify to make sure that
10 the systems are fair that what position any one
11 employee of a daily fantasy sports company can
12 do if you can certify the integrity of those
13 systems from the things that were discussed all
14 of the way going back to this Commission's
15 October meeting such as lineup locking, player
16 collusion.

17 I think that given the technological
18 nature of this industry, there are a lot of
19 things you can do there that you simply cannot
20 do at the brick-and-mortar casino level where
21 you've got perhaps thousands of machines and
22 tables and dealers coming in and out. You've
23 got tens and hundreds of thousands of all cash
24 transactions happening very rapidly with no

1 receipt.

2 I think as Kevin Mullally pointed
3 out today, you've got technological systems in
4 place that can allow for a trail. And I think
5 you can rely on that more than you need to
6 necessarily any one employee and making sure
7 that there's appropriate auditing and
8 safeguarding that can be done without having to
9 impose these background investigations on every
10 employee.

11 MR. STEMPECK: Whit, did you have
12 something to say?

13 MR. ASKEW: Just going to really
14 highlight in going through the parallels
15 between casino regulation versus what may be
16 warranted for daily fantasy sports, I would be
17 remiss if I didn't mention the casino industry
18 is obviously an economic engine for this
19 nation. And while there are incredible
20 consumer protection integrity assurances within
21 our heavy regulation, which is again a hallmark
22 of our industry, we also want to be an
23 innovative industry.

24 And that will call for in the future

1 to ensure the sustainability of our industry,
2 of the casino to have more flexible more nimble
3 regulations of which perhaps will make some
4 sense for daily fantasy sports and over time
5 may also make some good sense for the brick-
6 and-mortar casinos operating in this country.

7 MR. STEMPECK: One of the things
8 that we at the Gaming Commission have heard as
9 we sort of built up today in meeting with and
10 speaking with our experts and industry has been
11 this sort of urge for consistency and
12 legitimacy. That people want to know that what
13 they're doing as far as the operators are is
14 okay.

15 And having a regulatory body or the
16 regulations in place could give some of those
17 assurances. Setting aside the PASPA issue for
18 a moment, but one thing that's been proposed I
19 think in some other states has been a licensure
20 scheme.

21 Is something like that, again, I
22 know PASPA is lurking in the hallway, but is
23 something like licensure would that be an
24 appropriate mechanism for DFS?

1 MR. ASKEW: From my perspective, I
2 think each state and/or their gaming
3 commissions or Attorney General's office will
4 make that determination. And in some cases
5 perhaps it will, and in some cases it won't
6 similar to a variance of gaming regulations
7 that exist across the country.

8 I think it will probably be
9 dependent on each state's interpretation of
10 their laws. But that's just my view. I can't
11 tell you whether one is right or one is wrong.

12 MR. STEMPECK: One of the things
13 that Kevin Mullally mentioned earlier today,
14 which I thought was an interesting approach as
15 far as when we are talking about the
16 flexibility of regulation, and some possibility
17 for that would be this red, yellow, green
18 approach, where you have this third-party
19 verification, auditor, whatever you want to
20 call it.

21 It is sort of builds in the option
22 for other product iterations to come down and
23 be vetted. And then through perhaps lighter
24 regulation be then introduced to the populace.

1 Is that something that seems like a viable
2 strategy from your perspective experiences?

3 MR. JOHNSTON: I'll start with that.
4 Regulations are always subject to being amended
5 as time and experience shows a need for either
6 enhancement or modification. These draft
7 regulations which we have promulgated as I've
8 said, aren't final yet and may have some
9 modifications between now and when they finally
10 get promulgated based on things that we here at
11 the hearings or through comments.

12 But even after they're promulgated
13 in final form that doesn't stop them from being
14 modified later on if DFS alters in some
15 significant way or if it appears as though
16 additional sorts of regulations are needed to
17 protect against things that we hadn't
18 envisioned in the first place.

19 MR. STEMPECK: Anybody else?

20 MR. MARTINO: Again, I think we are
21 looking to put together the best fabric of
22 consumer protection regulatory compliance that
23 works.

24 If I recall, what his comment was

1 kind of the red, yellow, green almost like in
2 some ways you walk into a restaurant and
3 they've got the sign in the window right in
4 front A, B or C. It's what the health
5 inspectors put up there to indicate how clean
6 the facilities are.

7 It's a symbol or a sign to the
8 public that the appropriate state official has
9 looked at this and this is where it stands. I
10 don't know if you can walk into one of those
11 restaurants that got an F on it or not. F may
12 get you shut down, but if you've got a C then
13 you kind of -- you bear the risk.

14 I don't think that that's where this
15 industry would want to go. We'd want everyone
16 to be in the green, which is why I think
17 creating the clarity on the regulations and the
18 standards to which they're going to be held to,
19 realizing that that's going to differ on state-
20 by-state basis just as it does for brick-and-
21 mortar casinos is important.

22 Obviously, brick-and-mortar casino
23 industry, daily fantasy sports would like to
24 see as much commonality as possible.

1 As much as we talk about regulatory
2 reform, I think it's just as important -- The
3 industry, in my sense, having served as a
4 regulator is to get some regulatory
5 consistency. When you have to apply one rule
6 or meet one standard in one state and it's
7 completely different in the other that becomes
8 challenging. And therein lies a lot of
9 expense.

10 So, as much as we can get around and
11 identify what are the really important pieces
12 to make sure that we have an industry that is
13 transparent is I think where we want to go to.

14 MR. STEMPECK: Whit, do you have any
15 comments? You're with a national agency on
16 efforts to try to work towards what Steve was
17 just mentioning as far as national or some sort
18 of consistency in regulation from state to
19 state, but to make the best regulation we can
20 make as well as to give some type of a level
21 playing field for the operators themselves so
22 they don't have to change their standards when
23 they cross the border.

24 MR. ASKEW: Yes. It's interesting

1 because if you look at the U.S. gaming
2 industry, it's an incredibly pro-state rights
3 industry in the sense that each gaming or each
4 gaming jurisdiction and the regulations that
5 govern it and what's allowed is determined at
6 the state level.

7 That decision was made decades ago.
8 And that's the way that the industry has
9 obviously operated under. That said, and
10 certainly some consistency is critically
11 important. I would argue that consistency even
12 just for brick-and-mortar casino gaming is
13 critically important, before even talking about
14 other potential outlets whether it's DFS or
15 others, but certainly the same logic would
16 apply.

17 At the same time, the states' angle
18 to this as I mentioned a moment ago, you can't
19 just throw that off the cliff either. So,
20 there is some balancing act, I would imagine.
21 But it also does create opportunities through
22 these types of discussions to get to, really
23 focus on what that next generation policy --
24 gaming policy might need to look like, which

1 gets backs to the sustainability for the long
2 term for brick-and-mortar gaming and for daily
3 fantasy sports or the next innovative product
4 that we don't even know about yet.

5 So, these forums help to put
6 spotlight on need for greater clarity, need for
7 next-generation gaming regulatory policies.
8 And move on from there.

9 MR. STEMPECK: If we're looking at
10 the actual model of the DFS operation, and we
11 touched on this a little bit earlier in terms
12 of the vast amount of information it generates
13 and how that information can be utilized for
14 good or for ill, is there an argument to be
15 made that because of that large amount of
16 information there might obviate the need for
17 some types of regulation if there's a public
18 disclosure of that information?

19 Such as, one of the panelists, I
20 forget who it was who was saying if you - It
21 may have been Chris Grove. -- if you disclose
22 that information, you could essentially use the
23 population as a whole. They are going to be
24 going through it and doing lots of different

1 things with it. They may assist in the
2 regulatory process by simply disclosing
3 information. Is that a possibility as we look
4 ahead as to what's coming down?

5 MR. JOHNSTON: It's probably an
6 assist but not a substitute for effective
7 regulation in the first place. And there are
8 certainly some portions of our draft
9 regulations where we rely heavily on disclosure
10 of information.

11 For example, if we require the DFS
12 operators to disclose who are the highly
13 experienced players, somebody who is less
14 experienced can choose to play against those
15 players or not.

16 We are not requiring that every
17 single contest be paired up with one player or
18 another player. But there's a certain amount
19 of discretion on the part of the players once
20 they have the information to make those
21 choices.

22 MR. MARTINO: I'm not sure -- See
23 how responsive this is to your question.
24 There's comment made. There was I think at

1 some point some discussion, and this really
2 even predates my involvement, of a self-
3 regulatory model.

4 And even since I've been engaged,
5 the trade association, the FSTA, Fantasy Sports
6 Trade Association, announced some kind of self-
7 regulatory or regulatory group appointed head
8 of that. I do think that everybody realizes
9 that that ship has sailed.

10 Self-regulation is not something
11 that the industry is advocating for or at least
12 it's not what my client is advocating for. As
13 Cory Fox mentioned this morning, the CEO of
14 FanDuel, Nigel Eccles issued a letter or a
15 report to all of the players, participants who
16 play on the FanDuel platform embracing some
17 form of government oversight.

18 Obviously, there's a lot for us to
19 argue about there. And no doubt that we'll
20 have disagreements. I think the notion that
21 this industry can move forward and achieve what
22 it wants to through some self-regulatory model
23 is certainly not something that we are
24 promoting or believe is probably even

1 appropriate.

2 What we want to do is find the right
3 level of oversight from whoever the appropriate
4 government operator is going to be in each
5 state to kind of achieve those goals of
6 promoting transparency, fair play. Whether
7 self-reporting is part of that and limits or
8 alleviates some of the need on the part of the
9 government actor to do something that might be
10 to the better. I think maybe that's what Chris
11 Grove was talking about and certainly would not
12 disagree with that.

13 I have not found an issue that has
14 come up in my representation where we talked
15 about being more transparent and the client
16 said no.

17 So, I think there's been a bit of a
18 disconnect even in the media that because of
19 all of the background noise and maybe even some
20 in the front, the noise in front from all of
21 the advertisements that were run in early
22 September and then then issue with the employee
23 from Draft Kings who put out the information
24 that this was an industry that was trying to

1 evade any kind of form of compliance -- And I
2 can just tell you I think one of the reasons
3 why I was retained with my background was they
4 wanted to promote and get out ahead of these
5 issues.

6 It will be done in a little bit
7 different way, but self-regulation is just not
8 something that I think is really on the table
9 now.

10 COMMISSIONER CAMERON: Steve, can I
11 speak to, and I think you have a background in
12 this as well, there was a need in racing, horse
13 racing to standardize because of shorter meets,
14 horses moving from one state to another to
15 standardize medication, to standardize
16 penalties.

17 And I know interstate compacts as
18 well as Racing Commissioners International have
19 come out with standards. And they're really,
20 really encouraging states to get on board.

21 Do you see something like that being
22 helpful, something similar here?

23 MR. MARTINO: We really haven't
24 spoken about compacting between states. To the

1 extent that that would create some regulatory
2 uniformity, consumer protection I think that's
3 something we would be very much in support of.
4 Certainly would want to engage in that
5 conversation.

6 I think it is also part of the --
7 Obviously, people could look at this and say
8 boy, it would be great if you had one set of
9 rules that you could apply. That's going to
10 require the Congress to do something. I think
11 for a whole host of reasons that Mr. Askew can
12 go into better than I can that that's probably
13 not going to happen.

14 MR. ASKEW: But I won't.

15 MR. MARTINO: So, that's not where
16 we are at. You're right. A lot of that has
17 taken place in the racing area. But again you
18 still have an imposition of a state regulator.
19 You still have a racing commission in each
20 state that is imposing.

21 I think that there is, to my
22 recollection, I haven't regulated racing in a
23 while, you've still got a significant amount of
24 tweaking on the sides of each state. You've

1 got some standards that are out there.

2 But to the extent that there could
3 be some compacting where states could talk to
4 one another -- Again, I'm not sure it's that
5 heavy of a lift. Right now I'm not sure the
6 industry necessarily rises to that level, but
7 if you could, I think uniformity, trying to
8 apply the same as much as we can the same
9 standards across the board would be enormously
10 helpful for the industry.

11 COMMISSIONER ZUNIGA: Can I be on
12 the analogy to the racing industry. My
13 understanding of the DFS is that the industry
14 migrated to a 10 percent, if you will, standard
15 of takeout from the contest and the entry fees.
16 And that perhaps happened very organically.

17 Whereas the racing industry, the
18 states regulate that -- actually legislate that
19 more often than not. Just reaction from the
20 panel towards that. How do you see that from
21 the industry perspective, sustainability
22 consumer fairness?

23 MR. JOHNSTON: Well, that is not
24 something that we have paid a great deal of

1 attention to perhaps in part because we see
2 that it is somewhat still evolving.

3 We certainly would take a look at it
4 if it looked as though it was excessively high.

5 MR. MARTINO: There are probably
6 others here who can probably opine a little bit
7 better on the economics of the industry. I
8 would just point out that roughly at 10 percent
9 takeout really is not that far off of what you
10 see at most casinos.

11 Obviously, you've got a lot more
12 volume, but in Maryland we had a 90 percent
13 requirement payout for the slot machines on the
14 floor. So, it's right in that same
15 neighborhood. No doubt the industry wants to
16 put as much back in prizes as they can because
17 they're trying to acquire customers.

18 MR. STEMPECK: Just jumping back to
19 one of the points that Stephen made about
20 transparency and reporting. Obviously, we have
21 reporting requirements for our licensees here.
22 By way of example, we get reports from the
23 licensees about number of perhaps minors that
24 attempt to get onto the casino floor to gamble

1 that type of thing.

2 Rich, is there anything in the AG's
3 proposed regs. that requires the DFS operators
4 to report to the Commonwealth? I haven't read
5 them recently. So, I wasn't sure if there was
6 any type of self-reporting requirements by way
7 they'd report data to you about be it fraud or
8 any other concerns they may have?

9 MR. JOHNSTON: There are various
10 portions of the regulations that require them
11 to develop procedures. So, we'll be looking at
12 procedures as they come online.

13 MR. STEMPECK: I guess we've sort of
14 looked at the brick-and-mortar casinos.
15 There's a few states that also have Internet
16 gaming. So, they have existing gaming
17 frameworks.

18 Are there lessons to be learned from
19 those states and their approaches to Internet
20 gaming that could be equally applied to daily
21 fantasy sports?

22 MR. ASKEW: I would imagine the
23 answer to that is yes. Obviously, and I will
24 give you full disclosure, the AGA is neutral on

1 the issue of Internet gaming and its merits of
2 regulation versus restoring the Wire Act.

3 But you're exactly right. There are
4 three states that offer some form of legal
5 regulated online gaming. Nevada is poker. And
6 then Delaware and New Jersey offer full-scale
7 games of chance. The regulatory oversight
8 looks a little bit different in terms of the
9 lottery overseeing in Delaware versus the
10 gaming control boards in New Jersey and in
11 Nevada.

12 But I would imagine there could be
13 some things just given that daily fantasy
14 sports is delivered via the Internet online.
15 There could be some similar applications when
16 you look at age verification or geolocation or
17 some other things that those three states also
18 have to account for to allow for their legal
19 regulated online gaming.

20 MR. STEMPECK: Right. You hit right
21 where I was trying to think why reinvent the
22 wheel if we don't need to. I believe a lot of
23 those know your customer things that we had
24 touched on in the earlier panels have already

1 been developed by some of these states and
2 could be adopted in a fairly wholesale way in
3 the event that we wanted to look at a model
4 then go our own way with the regulations here
5 in the Commonwealth.

6 CHAIRMAN CROSBY: Justin, could I
7 interrupt for a second? I'm not quite sure
8 where this fits in today's panel, but you just
9 mentioned games of chance. Something I've been
10 wrestling with. Why is it that we make in at
11 least in some distinctions this distinction
12 about games of chance versus games of skill?

13 If it's a game of chance, you will
14 regulate it. Maybe that makes it gambling, but
15 in any event it gets regulated. It's presumed
16 to be regulated. If it's a game of skill maybe
17 that makes it not gambling. It's sort of
18 presumed not to be.

19 What is it about chance versus skill
20 that has anything to do with whether or not
21 something should be regulated?

22 MR. ASKEW: Go with that from a
23 legal perspective?

24 CHAIRMAN CROSBY: Even before the

1 legal, in policy, in commonsense, where did
2 that come from?

3 MR. JOHNSTON: Let me try to put
4 aside the legal distinctions because there's
5 been a lot of debates in a lot of academic
6 circles, a lot of legal circles, a lot of
7 judicial circles over this whole issue of skill
8 versus chance.

9 And from our standpoint, what really
10 mattered I think was that there's an industry
11 that had a bunch of consumer protection
12 concerns. We were more interested in dealing
13 with the consumer protection concerns
14 frontally.

15 So, I think our principal focus has
16 been on the policy issues that mattered to us
17 in terms of Massachusetts consumers and where
18 could we best intervene to protect those
19 interests.

20 I may be sidestepping your question,
21 but I think the principal issue for us is what
22 are the policies, what are the needs of
23 Massachusetts consumers that need to be
24 protected.

1 CHAIRMAN CROSBY: Under the AG's
2 regs., I guess it is not relevant whether it is
3 construed as gambling or not or whether it's a
4 game of chance or skill. It doesn't matter.
5 You're just sort of bypassing that and just
6 going to the heart of the matter which is are
7 there consumer protection issues and if so,
8 let's try to figure out a way to address them.

9 MR. JOHNSTON: I think it's fair to
10 say as the Attorney General said when she
11 announced the draft regulations she had
12 concluded that the best thing that our office
13 can do, given that consumer protection is one
14 of the core areas of our office is to deal with
15 consumer protection regulations in an industry.
16 And that's what we've done.

17 CHAIRMAN CROSBY: Do you see
18 anything about why does skill versus chance
19 make any difference in whether you regulate
20 something?

21 MR. MARTINO: I'm not a legal
22 historian on gambling. But I think it would be
23 rooted in that fact that in almost every state
24 usually embedded in the constitution was a

1 prohibition on gambling.

2 That then started being chiseled
3 away through constitutional amendments,
4 lotteries, commercial casino gaming. So, the
5 distinction of skill and chance in many states
6 is important because if it's a game of skill
7 then it's not covered under the overarching
8 constitutional prohibition on gambling because
9 of course gambling is defined as prize, chance
10 and consideration.

11 Obviously, this is I will assert
12 very clearly a game of skill. It may have
13 elements of chance in it, but it is
14 predominately overwhelmingly a game of skill
15 because of how the rosters are constructed.
16 That distinction is obviously important because
17 in many states if you're engaging in a game of
18 chance that hasn't been prescribed through some
19 kind of either legislative or constitutional
20 amendment, then you would be engaging in
21 illegal activity.

22 CHAIRMAN CROSBY: Yes. That's
23 interesting. Thank you.

24 MR. STEMPECK: Just jumping back to

1 looking at the model of Internet regulation and
2 gambling. One of the things by way of example
3 that New Jersey, I believe, does is when
4 there's a dispute between a player and an
5 operator, they have it regulated and set forth
6 in their regulations approach to dispute
7 regulation.

8 Is that something that could or
9 should be adopted when we are looking at DFS in
10 terms of state action? I'll pose that to you
11 Steve.

12 MR. MARTINO: I felt the
13 conversation in that last panel was interesting
14 about dispute. I know that we had one panelist
15 who was very concerned about class-actions and
16 the amount of money and not being able to
17 afford a lawyer.

18 I would I think adopt almost
19 entirely what Kevin Mullally said about this.
20 I think that disputes of this size in an
21 appropriately regulated jurisdiction with good
22 consumer protection are going to be handled by
23 the regulator.

24 And the more transparency you have,

1 and I think the door swings both ways on this,
2 the less unresolvable disputes you're not going
3 to have. Quite frankly, these companies as
4 with most gaming -- I really think all gaming
5 companies that I have dealt with have an
6 interest in seeing the consumer, the patron
7 made whole in a fair way.

8 Obviously, no one wants to be abused
9 or taken advantage of. But if there's a good
10 faith dispute, I don't think you're dealing
11 with at least with the two largest companies
12 that would really want to engage in some kind
13 of litigious manner not to make players whole
14 in a good faith dispute.

15 So, I think with good consumer
16 protection in place, you're going to see this
17 taken care of through, certainly not through
18 the court system and not through some kind of
19 arbitration alternative dispute but really
20 through the engagement of the regulator and the
21 company.

22 MR. JOHNSTON: Our regulations do
23 deal with the front-end of that process. We
24 require the companies to have dispute

1 resolutions for dealing with disputes that
2 arise from consumers with reports to the
3 Attorney General's office. We also have
4 provisions for them that have to deal with
5 disputes that we may refer over that come to us
6 initially.

7 So, there certainly is the hope that
8 many of the disputes will be dealt with at the
9 non-court, non-arbitration level.

10 MR. STEMPECK: Some of the proposed
11 legislation and regulation options I've seen
12 would actually tie the DFS activity in a given
13 state to a brick-and-mortar casino. I think
14 that might be what is being proposed in
15 Pennsylvania and a few others.

16 Maybe Whit this is a good question
17 for you. Obviously, I can see how the casino
18 licensees would be interested in something like
19 that for the perspective. I'll pose it to
20 Steve and to Whit. Can we look at the pros and
21 cons to that approach?

22 I can imagine DFS operators would
23 not want to have their hands tied in that
24 manner because of the Internet nature of their

1 product and the fact that they don't -- they
2 operate kind of all around us and not tied to a
3 brick-and-mortar location. Any thoughts on
4 those particular ideas?

5 MR. ASKEW: From my introductory
6 comments where the casino industry needs the
7 legal clarity in order to make more informed
8 business decision along those lines. That's
9 separate and apart obviously from varying
10 legislation that's introduced in the states.

11 That said, I am sure that if the
12 rules of the road are made very clear that
13 there would be some of my members and others
14 within the casino industry who would love to
15 have some type of partnership with daily
16 fantasy sports. But until that clarity is
17 provided very clearly, we're kind of stuck on
18 the sidelines, which is why we want to be a
19 willing partner to seek that clarity, not
20 necessarily defining or suggesting what that
21 clarity should be, or how it's defined to your
22 point, Chairman.

23 But by getting that it will create
24 those opportunities for us to partner with or

1 to have ventures that today we cannot from the
2 casino side.

3 MR. MARTINO: I think those
4 proposals that I've seen have come out of the
5 Legislature. There is one or has been one
6 kicked around in Pennsylvania. You are right
7 about that. There may be a couple of other
8 states where it's been mentioned.

9 My sense in talking to a number of
10 people from the casino industry is that their
11 interest, just as Whit said, is focused from my
12 perspective what I've been told not in offering
13 daily fantasy sports because I'm not sure that
14 it's really a game that complements what they
15 are trying to do from a revenue perspective on
16 their floor.

17 It's a low velocity game. It really
18 only runs at a very small period of time.
19 There's a lot of time put into developing your
20 lineups. As far as people coming in and
21 playing that doesn't really happen.

22 But what I think they are keenly
23 interested in is in developing marketing
24 relationships. Quite frankly, I think that the

1 core daily fantasy sports player is one that is
2 attractive to the casino industry. Skewing
3 younger more fluent, better educated.

4 And they want to have those
5 partnerships, but because of some in ambiguity
6 in law in different states that's why clarity
7 was sought because of course in many cases and
8 may be the case in Massachusetts, I don't know,
9 these partnerships have to be approved by the
10 state regulators and regulators were reticent
11 in approving partnerships with an enterprise
12 whose legal status was uncertain.

13 So, I think again moving towards
14 clarity, a lot of this legislation that you're
15 going to see in the states' consumer protection
16 laws is going to give confidence to the casino
17 industry that they can partner with daily
18 fantasy sports in many ways just like in the
19 NFL, the NBA, Major League baseball has.

20 MR. STEMPECK: Just jumping back to
21 licensure for a moment. One of the
22 justifications for licensure and the heavy fees
23 associated with it in the casino industry is
24 that it essentially provides a monopoly to a

1 casino operator at least in a particular area.

2 Is a monopoly or at least a monopoly
3 between the two top operators, is that
4 something that is seen as necessary in the DFS
5 industry? Or I guess Steve do you see the room
6 for competition there? I know there's 85 to 90
7 percent of the market share between your client
8 and Draft Kings.

9 Is being able to say we have
10 captured the whole market, is that something
11 that is necessary for the continued vitality of
12 the growth of the company?

13 MR. MARTINO: I think they are
14 interested in having a dynamic marketplace.
15 That is why they are looking for some certainty
16 and clarity from a consumer protection
17 perspective. They want to go out and do the
18 best job they can, maximizes relationships to
19 bring folks in.

20 But I don't think that they would
21 want certainly the regulatory consumer
22 protection process in some ways to be wielded
23 as a sword against potential competition. They
24 want to create a fair playing field and they'll

1 go out and do the best job they can. And if
2 that means more people come in and it overall
3 grows the entire market then that's probably so
4 much the better.

5 But they're not looking to carve
6 certain exceptions or rules that would just
7 leave exclusively to their benefit.

8 MR. STEMPECK: Whit, given your
9 expertise with the AGA and kind of getting a
10 sense of the national casino industry, do you
11 see any examples of lessons learned in the
12 casino industry and regulation that could have
13 application as to the Legislature and other
14 decision-makers in the Commonwealth are
15 thinking about what to do with DFS and other
16 emerging tech?

17 MR. ASKEW: I think probably the
18 common theme would be just finding the right
19 balance between solid consumer protection
20 safeguards but also allowing for flexibility to
21 be innovative to meet the rapidly evolving
22 consumer demands.

23 That's certainly a challenge that
24 the brick-and-mortar casino industry faces is

1 sometimes the regulations that we have to
2 adhere to in our various jurisdictions don't
3 allow us to be as quickly moving in our product
4 offerings as consumer demand may call for.

5 So, some of those things may be
6 applicable to pursue of daily fantasy sports
7 oversight. Again, I think we call for that.
8 We want regulation to be sound but allow us the
9 ability to provide a first-class entertainment
10 experience I'm sure the same way that Mr.
11 Martino's clients want.

12 MR. STEMPECK: Steve, I believe you
13 mentioned this earlier but I think it bears
14 repeating just because some of the
15 legislative frameworks that I've seen that
16 have been proposed have fairly high fees for
17 DFS operators to operate in a particular state.
18 They're proposed. I understand they're in the
19 pipeline.

20 But would your client be able to
21 even react to something like that or is that a
22 stop sign on participation in a given state if
23 the fees get too excessive?

24 MR. MARTINO: I think that that gets

1 into a level that I'm not engaged in now.
2 Certainly, no one wants more fees than they
3 need.

4 I think that they are interested in
5 having a framework for oversight in consumer
6 protection that allows them certainty that
7 provides clarity for the consumer,
8 transparency, promoting fair play, which really
9 are the same standards, should be the same
10 standards that any regulator would seek
11 through, frankly, most forms of regulation and
12 certainly in my experience in brick-and-mortar
13 casino, pari-mutuel industries.

14 MR. STEMPECK: We're reached the end
15 of the topics I had. If the Commissioners had
16 anything, feel free. I think we have a few
17 more minutes before we have to switch topics
18 again.

19 Otherwise, I'll let our panelists
20 go. Thank you very much. We will take a 15-
21 minute break before we start the next panel.

22

23 (A recess was taken)

24

1 MR. CONNELLY: We've been very
2 fortunate. I want to maybe just take this
3 opportunity and I will again at the end to
4 thank everyone who helped get today together.

5 It was a tremendous amount of
6 planning as these events always are. Janice
7 Reilly, where are you? Did you already step
8 out? My timing is impeccable. We'll do this
9 -- There she is. I was just thank you, Janice,
10 for all the work in getting this set up. She's
11 by far not the only one.

12 Also, all of the panelists
13 throughout the day, many of whom have left,
14 some of whom have not. You can't do an event
15 like this without really engaged, well-prepared
16 panelists who come with a serious intent to
17 discuss issues very deeply. And we want to
18 thank you for that.

19 We're still waiting on our final
20 panelist, but I think maybe we'll get it kicked
21 off. Because I know the structure of the panel
22 is such that his opportunity will come a bit
23 later.

24 So, this is our final panel but our

1 penultimate event of the day. It's titled
2 Approaches to Regulation Moving Forward which
3 is frankly a little bit undersells the topic.

4 We've heard clearly today that there
5 is desire from a number of people who are in
6 the industry and around industry for clarity,
7 clarity regarding what the future might hold.

8 As we attempt in whatever shape or
9 form to gain that clarity, mindful approach
10 needs to anticipate the future. And anticipate
11 forms of games that may also fall under
12 whatever potential rubric we are creating.
13 I've heard a number of different ways to
14 describe it today.

15 The Chairman started out by talking
16 about an omnibus approach. At other times,
17 I've heard the adjectives nimble, supple,
18 flexible. I think that's the first time we've
19 talked about regulation that way.

20 But I think again what it speaks to
21 is a very mindful, thoughtful approach that
22 will carry us into the future as opposed to
23 becoming rigid the moment the ink dries on
24 paper. So, we have three panelists or we'll

1 shortly have three panelists to speak to this
2 issue.

3 I want to start however -- The other
4 two been introduced previously. And I want to
5 take the opportunity to introduce the third
6 panelist today. To those of us on the
7 Commission, he needs no introduction, James
8 McHugh, because he is a valued member of our
9 team even though he has since retired.

10 James McHugh is a former of
11 Commissioner with the Massachusetts Gaming
12 Commission who provided leadership and counsel
13 on any number of issues but importantly
14 including leading the Commission in its
15 consideration of Internet gaming and other
16 emerging gaming models, which makes him a
17 perfect panelist for our discussion today.

18 Prior to joining the Commission,
19 Judge McHugh came from the Massachusetts
20 appeals court where he served as the special
21 advisor to trial court Chief Justice for
22 Administration and Management on the trial
23 court's automated case management project.

24 The National Center for State Courts

1 named Justice McHugh as the 2011 recipient of
2 the William H. Rehnquist award for judicial
3 excellence in recognition of his many
4 achievements over his 26-year judicial career
5 including his tireless efforts and success in
6 achieving improvements in the Massachusetts
7 court system for the public and for those who
8 work in the courts on issues ranging from
9 information technology and case flow management
10 to judicial ethics.

11 Judge McHugh retired from the
12 appeals court on February 29, 2012. We were
13 extremely fortunate to have him as part of the
14 Commission. And we are extremely fortunate to
15 have him here with us today.

16 I know that Judge McHugh has, as I
17 said, done a lot of thinking on the issues
18 around Internet gaming, in particular emerging
19 models, DFS as we started to consider it. And
20 he has a number of thoughts.

21 What I would like to do is kick it
22 to Judge McHugh to start to lay the foundation
23 with his thoughts on both where we are now and
24 an approach moving forward and those issues

1 that we need to be mindful of. With that Judge
2 McHugh if you wouldn't mind leading the
3 dialogue for this final panel.

4 THE HON. JAMES MCHUGH: All right,
5 Paul. Thank you very much and thanks for that
6 very generous introduction.

7 One of the benefits of speaking last
8 is you get to repeat what everybody else has
9 said and sound very learned. And I'm going to
10 do some of that. But we have as a Commission
11 thought about, as all commissions have the
12 impact of Internet gaming on the traditional
13 forms of gambling and gaming that have been in
14 existence almost forever. Casino gambling and
15 horse racing, basically have been the two
16 stalwarts. They haven't changed a lot over the
17 years until recently.

18 The Internet of course is a game
19 changer. And it's a game changer not only for
20 the kind of casino gaming that we see in New
21 Jersey and Delaware and to a lesser extent to
22 Nevada that has potential for spreading to
23 other jurisdictions, but also for the new forms
24 of gaming that are proliferating, one of which

1 has occupied the entire day until this moment.

2 And that's the fantasy sports.

3 But it's not the last. It's going
4 to continue, as we all know, to change perhaps
5 at an ever-increasing pace. Horse racing is
6 now being affected by it. The advanced deposit
7 wagering system, which is essentially putting
8 in your pocket an off-track betting facility is
9 widespread. The general model is you go to a
10 racetrack and you watch a race and you bet on a
11 race.

12 But there are others. There's a
13 website called Derby Jackpot that aggregates
14 races from various tracks. And you get a new
15 race every five minutes but it otherwise
16 operates the same. And there'll be others as
17 well.

18 Sports betting is going to come in
19 one form or another. Daily fantasy is a
20 version of it. The New Jersey lawsuit -- the
21 lawsuit that has been brought against New
22 Jersey by the professional leagues is, as one
23 of the panelists said earlier today, on for
24 rehearing before the full panel of the Third

1 Circuit. Anybody who has read the underlying
2 opinion of both the District Court and the
3 three-judge panel which was split will be very
4 interested in how that comes out.

5 MR. WALLACH: With a different
6 result this time, right?

7 THE HON. JAMES MCHUGH: Well, it may
8 well be. The interest asserted may make it
9 something very different. Others know better
10 than I whether the Wire Act will still prevent
11 that from immediately going onto the Internet,
12 but it's likely to come.

13 eSports are going to be here next
14 year. eSports are this new form of gambling --
15 a new form of game that I must say I don't
16 fully understand. I've watched a few of these.
17 I can't understand what they're talking about.
18 I can't understand what they're doing, but
19 people are betting on it and so are 100 million
20 viewers across the world.

21 And next year Turner Broadcasting
22 will have a 10-week tournament and they will
23 broadcast live on Friday nights one of these
24 games, which has a color person and a play-by-

1 play commentator and has betting opportunities
2 as well.

3 Social gaming is a huge industry
4 now. Nobody talks about regulating social
5 gaming at least to the extent that the money
6 and the winnings are left in the game. But to
7 the extent that casinos use social gaming as an
8 attraction medium, there is a regulatory
9 interest there someplace.

10 Skill-based gaming exists now.
11 There is, for example, a website called Skillz
12 on which you can go and play various games that
13 look very much like they're entirely skill-
14 based.

15 I played a bowling game and the ball
16 will spin down the alley the way you intend it
17 to. But behind that is the algorithm that
18 determines what pins are knocked down. You can
19 play against another person. You have the same
20 questions that we discussed at some length so
21 thoughtfully this morning about who your
22 opponent is and whether you're on the same
23 level.

24 And there are other forms that we

1 haven't really thought about. There's a
2 website called PredictIt that now allows you to
3 get basically a futures contract on a future
4 political event. You can buy one side of a yes
5 or no question, get somebody else to buy the
6 other side of a yes or no question.

7 And then when the question is
8 finally answered, will Secretary Clinton be the
9 Democratic nominee is the kind of question
10 you'd find there. You get, whoever is on the
11 winning side of that question gets the entire
12 amount of the contract.

13 The maximum amount now permitted on
14 that website is \$850. It's of really no
15 regulatory interest that I can see. They've
16 gotten their clearance from the Commodities
17 Futures Trading Commission to do this.

18 But there'll be others that will
19 come along in forms that we can't now predict.
20 And when these new things come along, the first
21 question we tended to ask is is it gambling?
22 We've done that here. We've done that
23 elsewhere. Other people are looking at that.
24 It turns out that (A) that's a very hard

1 question to answer. And (B) the answer doesn't
2 really determine much of anything.

3 In some jurisdictions, it is an
4 on/off switch. But in other jurisdictions, the
5 fact that it's gambling doesn't necessarily
6 determine what the outcome is because as it is
7 true in Massachusetts gambling can be defined,
8 but what's prohibited by the criminal laws is
9 not necessarily all gambling. So, it doesn't
10 tell us how we have to deal with this entity.

11 And it won't tell us assuredly and
12 rapidly and quickly how we have to deal with
13 various forms of this kind of activity that are
14 going to come up in the future.

15 And I wonder therefore, and I have
16 no answers but I have questions whether the
17 better question to ask is whether it's a form
18 of economic activity that needs regulation.

19 And that gets back to the kind of
20 risk-based assessment that both Stephen Martino
21 and Kevin Mullally talked about this morning.
22 If you view it that way, if you ask that
23 question then it's gambling and it's banned is
24 simply one form of regulatory activity rather

1 than an end in and of itself.

2 But if there is no ban and if it
3 doesn't have to be banned because it's so
4 dangerous that we just simply can't have it
5 abroad in the land, then there are other
6 questions that have to be asked, it seems to
7 me, about do we need to regulate it? And if
8 so, how and why?

9 And in looking at that I've looked
10 at the statutes that we have in existence now
11 in Massachusetts, not dissimilar from those
12 that are in existence in other areas and it
13 occurred to me or it seemed to me, at least
14 that there were five regulatory interests that
15 those statutes reflected at least in broad
16 form. There may be others, but there were at
17 least five.

18 One was the prevention of criminal
19 or other undesirable conflict. That's
20 reflected in the statutes that call for
21 background investigations for banning people,
22 patrons and others from casinos, racetracks and
23 the like for law-enforcement powers being given
24 to gambling regulators and for a variety of

1 other anti-criminal, anti-crime measures.
2 That's one regulatory interest that clearly
3 exists.

4 Another and a huge one and the one
5 we talked about at great length is consumer
6 protection. And that is an interest that is
7 reflected in a host of provisions of almost
8 every gambling statute. It deals with such
9 things as disclosure of odds, minimum age,
10 security of deposits, content of advertising,
11 use of non-public information, grouping of
12 skill levels.

13 All of which have dimensions, and we
14 spun out in this very interesting discussion
15 this morning about the issues embedded in
16 knowing your opponent, grouping by skill level,
17 what the pros and the cons of doing that were.
18 So, all of these things, although lumped in the
19 area of consumer protection themselves pose a
20 variety of interesting and difficult sometimes
21 choices.

22 A third regulatory interest, and
23 it's a regulatory interest as well as another
24 interest is the revenue generation for the

1 state. That's where the taxing comes in. But
2 the taxing also has, the rate of taxation and
3 the form of taxation also has a significant
4 impact on what is -- on how the business
5 operates and what business models can be
6 tolerated by the taxing scheme.

7 Job creation and economic
8 development, prevention of cannibalization to
9 existing jobs and the like. That's another
10 interest. And mitigation of adverse
11 consequences is the fifth that I identified.
12 That's problem gambling. That is a host of
13 other undesirable effects that may flow from
14 gambling activity.

15 So, the question is if those are the
16 regulatory interests then how do you deal with
17 them? We've already identified, I think, a
18 couple of models. One has been described as
19 heavy. That's the full-blown commission kind
20 of operation. The other has been defined as
21 light.

22 And it seems to me light comes in
23 two flavors. One is game specific regulation
24 of the type that the Attorney General has

1 promulgated for fantasy sports. But the other,
2 which is even lighter is simply relying on
3 existing consumer protection regulations and
4 statutes. You can't defraud people. You can't
5 do a variety of things that apply to every
6 business and industry.

7 The real question, it seems to me
8 when you get to the end of that is who decides
9 what form of regulation is going to apply to
10 each of these forms of gambling as they come
11 along?

12 And there it seems to me there are
13 two potential models. One is to go game by
14 game and let the Legislature go do it. And I
15 don't mean game by game in terms of what one
16 type of slot machine versus another, but online
17 casino gaming, fantasy sports and the like.
18 And do it in that fashion. There are some
19 benefits to that.

20 The Legislature is the legislative
21 body. There are lots of policy questions
22 embedded in the answer to all of these
23 questions. It may well be that that is the
24 proper place to decide. And that those

1 regulatory interests ought to be the ones that
2 are recommended to the Legislature to think
3 about when they're thinking about how to
4 regulate or not to regulate the new forms of
5 gambling activity.

6 But we also have talked about the
7 need for a nimbleness and fluidity in a rapidly
8 changing environment. And this is going to
9 continue to change in a very rapid fashion.

10 In order to take advantage of it, in
11 order to protect consumers, in order to advance
12 the regulatory interest, those that I ticked
13 off and others, it occurred to me that it might
14 be worthwhile thinking about a statutory scheme
15 that of course would have to be originated by
16 the Legislature that gave to some body or some
17 group the power to make that decision and apply
18 the appropriate form of regulation that Stephen
19 Martino and others talked about today.

20 The appropriate form of regulation
21 to each form of gaming as it came along based
22 on an in-depth analysis that that group has an
23 opportunity to perhaps uniquely to take of the
24 risks and dangers and rewards that the new form

1 of economic activity provides.

2 And then the question becomes how do
3 you define what's the charge for this body?
4 How do you decide whether whatever it is is in
5 its wheelhouse? And it seems to me that you
6 might do that by focusing not on is it gambling
7 or not gambling, or is it a game of one kind or
8 not, but on the question I posed a minute ago.

9 And that is is it a form of
10 otherwise unregulated economic activity that
11 needs to be regulated? And use that as the
12 background. And perhaps define the area that
13 this group would be charged with enforcing as,
14 and this is simply a concept, anytime there is
15 a payment to obtain a reward based on the
16 outcome of a future event that is not otherwise
17 regulated, would be the charge of this body.

18 So, I throw that out as an approach
19 to the future. Whether that's the right
20 approach or another approach is a preferable
21 one, it seems to me that we do have to think
22 about the future. We do have to think about
23 the speed and cleverness of the developers of
24 the activity we are going to be watching in the

1 future.

2 And we do have to be prepared as a
3 society and as regulators, as interested
4 citizens in coming up with an effective,
5 timely, flexible way of dealing with those
6 kinds of things that we are sure to see.

7 So, I just throw that out as some
8 reflections of both what we heard today and
9 things that I've been thinking about for some
10 time.

11 MR. CONNELLY: That lays out a clear
12 framework, I think, to discuss the issue. I
13 would ask your fellow panelists if after
14 hearing Judge McHugh's outline, what's your
15 reaction to that framework.

16 MR. GROVE: Let's do that.
17 Seriously, it removes some of the questions
18 that seem to attract the most attention and the
19 most friction, but ultimately the resolution of
20 which don't lead us any closer to an effective
21 regulation of the product from a consumer point
22 of view or an industry point of view.

23 There is an inordinate amount of
24 time spent debating whether or not this is a

1 form of gambling, but I'm not sure that that
2 necessarily brings us any closer to an optimal
3 solution for protecting the players that use
4 this product or for ensuring that from an
5 industry perspective those who would like to
6 take part in this can take part in this
7 industry. And can rely on it being a
8 predictable industry, and can rely on it having
9 certain protections and certain standing with
10 regulators and policymakers.

11 So, I think there's a clear argument
12 to be made for any structure. And certainly
13 the one that Judge McHugh described sounds like
14 this kind of structure to me that removes those
15 questions that are distractions, and focuses
16 more on how can we bring the broadest cross-
17 section of products that do require attention
18 from a regulatory perspective under the
19 regulatory umbrella in a way that best suits
20 the individual needs of those products as
21 opposed to trying to apply a one-size-fits-all
22 solution to every product.

23 Trying to apply a casino solution to
24 a fantasy product when certainly some elements

1 of that solution may be germane and certainly
2 some elements of that solution may be
3 productive, but it's still an awkward fit.
4 It's still a square peg/round hole to a degree.

5 So, for the removal of friction and
6 the increase in flexibility for regulators
7 alone, I think it's preferable to the status
8 quo.

9 COMMISSIONER MACDONALD: Can I ask
10 my predecessor to clarify something? I was
11 trying to take notes Jim.

12 The phrase that you used for the
13 jurisdictional hook here, payment for award
14 contingent on a future event is what I
15 scribbled down. Was that the phrase? I just
16 want to make sure I have the phrase right.

17 COMMISSIONER MCHUGH: That was the
18 phrase, but it's a concept.

19 COMMISSIONER MACDONALD: I just want
20 to make sure I had it right.

21 CHAIRMAN CROSBY: Payment for a
22 chance to win an award. Was that what you
23 said?

24 THE HON. JAMES MCHUGH: No, because

1 that takes skill out of it.

2 COMMISSIONER ZUNIGA: Right, where
3 the outcome is undetermined.

4 THE HON. JAMES MCHUGH: Payment to
5 obtain a reward based on the outcome of a
6 future event or payment intended to or
7 something along those lines.

8 But it seems to me the fact that
9 it's skill-based doesn't remove the need for an
10 inquiry. It may dictate after the inquiry what
11 the outcome is but it doesn't remove the need
12 for an inquiry.

13 MR. CONNELLY: Judge McHugh can I
14 just ask, this may be too basic a question, but
15 the shift --

16 THE HON. JAMES MCHUGH: I doubt
17 that.

18 MR. CONNELLY: -- shift in the model
19 that you present is taking off the table these
20 tricky terms and putting it into frankly
21 understandable English, form of economic
22 activity that needs regulation. So, by
23 definition it is currently unregulated economic
24 activity.

1 As you thought through this, can you
2 give some analogs to unregulated economic
3 activity that currently is going on? And
4 regulated economic activity that would really
5 mirror what we're talking about in this
6 environment?

7 THE HON. JAMES MCHUGH: I use that
8 term as sort of a broad question. There is a
9 lot of unregulated economic activity. We live
10 in a free market economy. So, there's huge
11 amounts of unregulated economic activity except
12 for this deep background regulation that's
13 embodied in the criminal statutes against fraud
14 and bribery and some of the other things that
15 apply to all forms of economic activity.

16 And then there is activity that is
17 regulated because of a variety of specific
18 problems. Real estate brokers are regulated
19 and licensed. The commodities exchanges are
20 regulated. The stock exchanges are regulated.
21 There's a host of those.

22 And so, the definition of what this
23 group's charge would be would have to be more
24 narrowly circumscribed even though that was the

1 underlying concept. That's why I chose a
2 payment for a future -- reward based on a
3 future event.

4 That's the narrower concept that I
5 came up with. I'm not sure that's exactly
6 where this comes out, but it seems to me
7 approximates where it comes out.

8 MR. GROVE: It makes a lot of sense
9 to me. I think a lot of this debate, like I
10 said, gets caught up in this strange verbal
11 contortion and policy contortion around
12 gambling/not gambling. And in some ways the
13 need or the desire to engage that kind of
14 contortion linguistically or policy wise is
15 steering us away from the best policy, and is
16 steering us away from considering the optimal
17 policy approaches.

18 And steering us more toward
19 considering approaches that fit within this
20 almost surreal landscape of a product that is
21 gambling/not gambling. That ends up again just
22 evolving into that debate about what is
23 gambling and what isn't, when that debate is
24 really germane necessarily to the best way to

1 regulate the product.

2 CHAIRMAN CROSBY: Even to whether or
3 not it should be regulated.

4 MR. GROVE: Right.

5 CHAIRMAN CROSBY: It becomes
6 abstract. It's are you gambling not do you do
7 something which needs to be regulated.

8 MR. GROVE: Exactly.

9 MR. CONNELLY: I think, Chairman, to
10 your point, when you opened this morning, you
11 talked about the historical nature of how we've
12 approached gambling and the puritanical roots,
13 and just a general, I think it's fair to say,
14 unease with the concept.

15 And that when we approach anything
16 that looks like it that sounds like it that we
17 approach it very differently than if this were
18 stripped of all of that language, and we just
19 saw it as economic activity, how would we view
20 it? And how would we just say look, there are
21 some potential policy, public policy
22 implications and just address them. And really
23 remove a lot of the atmospheric and sturm und
24 drangs, so to speak, around the issue.

1 MR. GROVE: I think if we were in a
2 world where we could imagine as a thought
3 experiment a world in which what you said was
4 the case where it was stripped from all of the
5 connotations or associations with gambling, we
6 wouldn't be sitting here having this forum
7 today.

8 We would probably have a fantasy
9 sports product that was regulated a lot like
10 securities trading, commodities trading, other
11 financial instruments. I feel we probably
12 would have logically just gravitated to that
13 solution because it is in many ways a market.
14 It's not a perfect parallel.

15 Like I said, there is no one daily
16 fantasy sports product. But a lot of those
17 connotations and cultural associations, I
18 think, have shifted the conversation away from
19 what is the best policy toward how do we treat
20 this product without necessarily stigmatizing
21 it, destigmatizing it whatever. Those again
22 aren't necessarily going to get you to the best
23 regulatory outcome.

24 MR. WALLACH: I'm not sure that that

1 stigmatizes the product to refer to it as
2 gambling. Ultimately, whatever policies or
3 regulations are promulgated, we need an
4 overseer. We need a regulatory body.

5 And there are obvious similarities
6 and parallels to other gambling products. We
7 have a Gaming Commission. These regulations
8 whenever they are enacted, whatever they do
9 look like are not going to be administered in a
10 vacuum by some generic regulatory body.

11 This calls for very specific
12 expertise. There is so many sharp parallels
13 and direct parallels to the issues and concerns
14 that arise in the gaming industry, the gambling
15 industry that how we label it isn't as
16 important as drawing the parallels to the kinds
17 of consumer protection issues that also exist
18 within the gambling industry.

19 The need to segregate funds,
20 verification minors, all of these issues are
21 also in play in casino gambling, online
22 gambling that the semantics are not just for
23 purposes of stigmatization but to identify what
24 the appropriate framework would be for

1 addressing the problem.

2 There's nothing wrong with gambling.
3 We are all here because we believe that this
4 product whether or not it is gambling should
5 become legal, should be clarified, should be
6 regulated. And having it associated with --

7 CHAIRMAN CROSBY: Dan why do you say
8 there is nothing wrong with gambling? We have
9 law after law after law that says gambling is
10 illegal unless given certain kinds of
11 exemptions.

12 New York is all about is this
13 gambling or not. And if it's gambling, it's
14 bad. There's clearly a patina that gambling is
15 bad inherently unless it comes under certain --

16 MR. WALLACH: Specifically
17 authorized.

18 CHAIRMAN CROSBY: Right. What
19 Commissioner McHugh is trying to do is to get
20 it outside of that prior bias that there's
21 something intrinsically wrong with gambling per
22 se. And instead come up with a set of social
23 values that might trigger some kind of ongoing
24 regulation.

1 But trying to tie it to some social
2 value or economic value -- some value structure
3 that has assignable merit, an accessible merit
4 rather than sort of an intrinsic bias from
5 years gone by.

6 MR. WALLACH: I could agree with
7 that. The label, I don't mean to say there's
8 nothing wrong with gambling. Obviously, if
9 it's gambling it raises questions as to
10 legality.

11 But we are assuming that the
12 Legislature and regulators and the policymakers
13 in this state want to see this product remain
14 or be a legal and regulated product. And how
15 to get there is the charge of why we are all
16 here.

17 I personally don't see that the
18 label or the definition is as important as how
19 to address it and properly regulate it. I just
20 see parallels to the online gaming industry.
21 And all of these values that we are talking
22 about and all of these issues whether it's
23 segregation or age verification, all of these
24 ills or potential issues that could come up

1 have precedent in other places. And all of
2 those other places seem to start with gaming
3 and gambling.

4 And there's nothing wrong with
5 drawing upon those experiences. So, I'm not
6 afraid of tackling that word or recognizing the
7 reality. I think we are all in the mood to
8 have this be a legal product. How we get there
9 is really -- How we properly regulate it is
10 more important than how we assign the label or
11 the term to it. That's not up to me.

12 But I think we are proceeding on the
13 assumption that we are going to be having this
14 legal and regulated.

15 COMMISSIONER ZUNIGA: But to answer
16 the question from Judge McHugh that it is
17 economic activity that does indeed need to be
18 regulated.

19 MR. WALLACH: 100 percent.

20 MR. CONNELLY: You mentioned that it
21 draws a number of universal aspects from other
22 existing forms of activity like Internet
23 gaming. As we move forward, how does this
24 approach help us achieve the omnibus approach,

1 achieve that supple, flexible, nimble approach
2 that we've discussed today? How does this help
3 us achieve that?

4 MR. GROVE: I think the primary way
5 that it helps you to achieve that is by giving
6 you the opportunity to assign some priority to
7 activity specifically that occurs over the
8 Internet.

9 And when you are talking about those
10 priorities in the context of this product,
11 you'll recognize that some of those priorities
12 are going to flow very cleanly through to
13 almost any product that you are talking about
14 bringing under the regulatory umbrella.

15 I would say at the top of that list
16 is the concept of know your customer, is the
17 concept of a firm regulatory structure that
18 ensures technological solution and a compliance
19 with that solution that to a reasonable degree
20 of certainty you know exactly who the person
21 that you as an operator are transacting with as
22 your customer.

23 So, I think in that sense in terms
24 of identifying the core components of the

1 structure for regulating an online product such
2 as daily fantasy sports, and then understanding
3 that there's a prioritization involved in those
4 components, you are building the template for
5 regulating any number of products that come
6 after.

7 Because regardless of the form
8 factor, regardless of the interaction there's
9 still going to be those core concerns of --
10 really to me it comes down to that one core
11 concern of know your customer. Every other
12 policy, every other regulatory concern to me
13 tracks back to that foundation.

14 Because if you don't have that firm
15 foundation, there really is no age
16 verification. There really are no consumer
17 protections. There's really not any sort of
18 credible ability to fight fraud. There's
19 really not any sort of credible ability to
20 answer anti-money laundering concerns.

21 It all comes down to that core
22 question of do you know the customer that
23 you're transacting with? And if you can answer
24 that question affirmatively, a lot of the other

1 questions get much simpler.

2 That's a long answer. The simple
3 answer to your question is if you focus on the
4 abstract level of what knowledge do we need to
5 have, what protections, what confidence do we
6 need to have to feel like we can regulate this
7 product with certainty and confidence, then
8 you're by definition answering the questions
9 that will come with subsequent products. They
10 will differ in detail, but the foundation I
11 think primarily will remain similar.

12 MR. CONNELLY: You clearly
13 identified and I happen to agree on the know
14 your customer being central to all of this.
15 Are there others?

16 I ask the panel are there other kind
17 of essential elements of potential regulation
18 that would be necessary to include as
19 foundational building blocks?

20 I think let's just agree for the
21 sake of argument now at least between the two
22 of us because we tend to agree on this, know
23 your customer is central to that. And a lot
24 flows out. Is there anything else that's truly

1 at the heart of trying to achieve this omnibus
2 approach?

3 THE HON. JAMES MCHUGH: As I think
4 about it, I don't think a priority there
5 necessarily is. Because if you gave this body
6 -- And by the way, let me just say that I
7 listed five regulatory interests. And I
8 suggested that they all be given to this body,
9 whatever it is.

10 Taxation, I just want the
11 Legislature to understand I understand can't be
12 given to some regulatory body. So, I'm not
13 proposing that we have a dramatic shift in the
14 way we raise revenues in the Commonwealth, but
15 the other four we certainly can.

16 But getting back to the question a
17 priority, it seems to me that the power of this
18 body to investigate anything falling within its
19 broad Internet mandate, gives it the
20 opportunity to take a look at the activity and
21 say existing consumer protection regulations
22 are fine for this. There is no risk.

23 Therefore, we're not going to have
24 any add-on. You go ahead and do this. And

1 we'll watch you. And periodically we may ask
2 you to come in, probably will, and talk to us
3 again.

4 But if you continue to go forward
5 and nothing untoward turns up, we don't need to
6 impose any more regulation on you. At least
7 that's I conceive it might well work.

8 And I do think of something like
9 PredictIt in that fashion and some other things
10 that may be relatively small amounts
11 interesting. It's a .org I think. So, it's a
12 different kettle of fish but it would fit
13 within this envelope, but you would I think say
14 simply go ahead and do it and we'll talk with
15 you periodically.

16 CHAIRMAN CROSBY: Paul, I think this
17 is really, really interesting, and really well
18 and interestingly phrased. I'm wrestling with
19 what Commissioner Macdonald referred to as the
20 tripwire that would bring an economic activity
21 under the umbrella.

22 You hazarded the possibility there
23 might, I don't have the words quite right, but
24 payment for an opportunity to win an award

1 based on an undetermined event or whatever that
2 was.

3 That brings with it the historic
4 residues sort of of the betting, the gambling.
5 You don't use those words. And you're taking
6 the skill chance thing out and so forth. But
7 it's a residue of that lingering basically
8 moral judgment.

9 I wonder whether could you fashion a
10 tripwire in an assessment of those five
11 criteria that you talked about? Or at least if
12 there's enough risk of bad guys getting
13 involved, if the risk to the consumer and the
14 demand for consumer protection is above and
15 beyond the norm and the same with your other
16 criteria, it would be some kind of an
17 assessment of those values, those issues that
18 would determine whether an economic activity
19 came under this umbrella.

20 THE HON. JAMES MCHUGH: That may be.
21 And as I say, I don't know that that is exactly
22 the right tripwire. But what I was trying to
23 do as I was thinking about this is think about
24 how you could give to a group that had an

1 expertise in a gambling like area gambling like
2 activities.

3 So, you don't get into this
4 regulatory umbrella that people who are trading
5 orange futures over the Internet or the people
6 who are selling used cars over the Internet
7 based on some future inspection verifying it.

8 Keeping it within something that
9 looks like, in a very, very broad sense, looks
10 like gambling so that the body could develop
11 some expertise as to where the risks are, what
12 risks need to be assessed in what way.

13 CHAIRMAN CROSBY: That's really
14 good. Maybe we can't totally leave behind the
15 historic roots, but we clean it up an awful
16 lot.

17 MR. GROVE: In some ways it's funny.
18 It almost bring us back around full circle.
19 And it makes the euphemistic use of gaming a
20 relative concept. It really does bring that
21 idea of gaming which as was used somewhat
22 euphemistically by the AGA and any number of
23 people.

24 It brings it back to the realm of

1 being truly descriptive in the class of
2 activities that are covered as opposed to a
3 more palatable way to say gambling. I think
4 we're describing a structure that would bring
5 under it both things we traditionally associate
6 as gambling and the things as you said are like
7 gambling or share a certain amount of
8 characteristics with gambling or whatever the
9 connection needs to be.

10 There's something to me that's
11 compelling about that because it more
12 realistically describes the spectrum of
13 activities that we engage in culturally that
14 involve the risking of money on some outcome
15 that is in the future and to some degree
16 outside of our control.

17 COMMISSIONER MACDONALD: I don't
18 want to derail this discussion because I think
19 that what Jim has conceptualized here could be
20 extremely worthwhile to pursue.

21 But I do want to state that I'm not
22 sure that I would agree necessarily with Dan's
23 statement that we are all here in agreement
24 that we want what is currently operating as

1 daily fantasy sports to be legalized.

2 Just speaking for myself, I am kind
3 of old school and still stuck in this mode,
4 sort of definitional mode of whether or not
5 this activity in fact is legal or not legal. I
6 haven't gained sufficient knowledge on this to
7 be able to make that judgment yet although
8 today's discussions, particularly in the first
9 part of this morning, significantly advanced my
10 own understanding of that issue.

11 I think that important consequences
12 do occur depending upon whether or not the
13 activities as currently pursued in the daily
14 fantasy sports environment are objectively
15 against the law as presently exist.

16 That's not the end of the
17 conversation for me as a member of the
18 Commission, but I feel that I've got to go
19 through that, get a comfort level before I then
20 take the next step on participating or making
21 -- participating in a set of institutional
22 recommendations as to what we do with this
23 industry.

24 I really welcome Jim's formulation

1 here. I do think that it does flow naturally
2 from at least certain statutory language that
3 I'm familiar with that would be considered to
4 be part of the traditional definition of
5 gambling. But that it reflects this movement
6 of what is going on within this traditional
7 definition that has departed from what the
8 public, I think, has recognized as kind of
9 classic gambling.

10 This may just be a situation of what
11 I was referring to this morning in one of my
12 comments and questions of a shift in the moral
13 view -- or the view of the moral implications
14 of the conduct that we are confronting here.

15 In any event, I'm struggling in
16 steps toward an ultimate resolution. But the
17 way that Jim has defined this category of
18 economic activity I think could be a
19 tremendously significant step forward in
20 permitting kind of a comprehensive reevaluation
21 of what the public interest requires in the
22 regulation or in the response, the government's
23 response to this kind of activity. So, I think
24 it's a big step forward.

1 MR. CONNELLY: So, I think I have a
2 question, the government's response to this
3 activity, kind of a small thought experiment.
4 Obviously, there's tremendous focus right now
5 on what's happening in New York. I would
6 assume that most of us who are aware of the
7 fact pattern and the standard in New York have
8 somewhere deep inside an opinion as to if they
9 were in that position what they would say given
10 the opportunity.

11 But do we feel differently about DFS
12 depending on how the judge rules? Now
13 notwithstanding the fact that the law is the
14 law. And they will either be allowed to
15 continue to operate or not. But to kind of go
16 back to the language and the atmosphere around
17 the words, do you think we feel different
18 depending on -- regardless of our internal
19 calculus, does that decision make us feel
20 better if it goes one way, worse if it goes
21 another way irrespective of how we feel?

22 MR. WALLACH: It shouldn't have any
23 impact because the New York Attorney General is
24 charged with interpreting and enforcing New

1 York law which is radically -- not radically
2 but substantially different than Massachusetts
3 law on the same subject and which is shared
4 only by a handful of other states.

5 So, this is not a national
6 referendum on the legality of daily fantasy
7 sports.

8 MR. CONNELLY: Agreed, and it
9 obviously doesn't have standing in
10 Massachusetts. But the concept of someone
11 definitively saying it's something, it is or is
12 not gambling, do we feel differently about it?
13 Because does that kind of get at the heart of
14 how we approach it and really speak to the
15 model that Judge McHugh is proposing, to try
16 and again divorce it from some of the context.

17 MR. GROVE: If it would make you
18 feel differently, I would be surprised simply
19 because Nevada already did that a couple months
20 ago. And five states prior to Nevada, while
21 not saying so the matter is definitive and as
22 specifically as Nevada, made it clear this is a
23 product that probably couldn't be offered
24 legally under their statute.

1 So, I don't see the sea change.
2 Obviously, there's quite a bit more media
3 attention around New York. And it's an issue
4 that's gone through the court as opposed to
5 Nevada's process which was just through the
6 regulatory body and the Attorney General.

7 But to me the world is the same the
8 day before and the day after or at least it
9 ought to be. Of course, it will have some
10 impact. It's news. It's information. It will
11 alter how we think, but the world should not be
12 any different regardless of the decision.

13 MR. WALLACH: It does have an
14 impact. We are talking about despite the
15 different legal standard, a finding by a court
16 of illegality. And that has repercussions.
17 That could have repercussions criminally, U.S.
18 Attorney, potential criminal sanctions.

19 This is not an academic argument as
20 to whether daily fantasy sports should continue
21 to exist in New York. It's about the
22 consequences of operating illegally,
23 potentially illegally. That's also in play.
24 And I think this is a significant battleground

1 for the entire industry. But it shouldn't
2 shape or shift or impact the discussion in this
3 state.

4 CHAIRMAN CROSBY: Actually, I think
5 the way that we have -- Actually, you'll notice
6 that there is nowhere on the agenda is fantasy
7 sports, is daily fantasy sports legal or not.
8 We're not into that question.

9 The Attorney General, I think, we
10 have said we agree with, there is no really
11 perfect straightforward law. Our position is,
12 and I disagree with what Dan originally said
13 too, Lloyd. I wasn't going to bring it up, but
14 we are not here to say that fantasy sports
15 should be legal. Let's figure out how to get
16 there.

17 The Legislature's first decision has
18 to be whether or not they want daily fantasy
19 sports to be legal in Massachusetts. The issue
20 of whether it's legal or not under some old
21 laws 150-year-old case law is kind of
22 irrelevant. The Legislature has to figure out
23 do we want this to be legal or not.

24 Then we're saying if you do then

1 should it be regulated and how are you going to
2 go about regulating it? We're not presuming to
3 make a judgment not do we have a judgment as a
4 Commission at all about either whether it's
5 legal now or whether it should be legal.

6 It's simply for the Legislature must
7 decide so that the businesses can operate and a
8 bunch of others like them can operate
9 understanding what the rules are. And then if
10 you do determine that it's legal, you've got to
11 figure out a regulatory environment that works.

12 MR. GROVE: Separate but related,
13 you asked the question of whether New York
14 would impact Massachusetts. I don't
15 necessarily know that it should.

16 But what I do know and I feel quite
17 confident about is that the decision that
18 Massachusetts makes on this front will
19 absolutely impact other states.

20 And I think that's a result of the
21 fact that there is a clear vacuum on this issue
22 in multiple states. And you don't have to look
23 any further to the myriad legislative
24 approaches that are playing out, each distinct

1 and different. California's is different than
2 Illinois'. Illinois' is different than
3 Minnesota's. Minnesota's is different than
4 Florida's. And Florida's is different than New
5 Jersey's.

6 And I really think if a rational
7 policy position, a rational policy structure is
8 articulated out of Massachusetts on this
9 product office or this class of products or a
10 way forward class on this products that will
11 resonate and not indirectly.

12 I do think that there are a number
13 of states, there are a number of commissions,
14 there are a number of policymakers that are
15 looking for reasoned articulated answers on
16 these questions and they're in short supply.
17 There really hasn't been, and that's why I was
18 so quick to say let's do that.

19 Because it is seriously the best
20 articulation of a way forward that appeals to
21 all stakeholders industry, existing gaming
22 operators and consumers along with policymakers
23 and the state that I've heard so far. There is
24 an absence of those solutions.

1 And whatever solution is settled
2 upon by Massachusetts, if one is settled upon
3 -- I won't go so far as to say it will be the
4 template for the nation, but it will certainly
5 be the starting point of the conversation in
6 multiple states.

7 And given the way that policy is
8 typically made and the way gambling policy has
9 historically been made, there's a good chance
10 that broad components will be borrowed,
11 possibly even unedited from Massachusetts
12 approach in other states. That is at once a
13 great opportunity but also a reality that I
14 think provides some reason for pause in the
15 discussion as well.

16 MR. CONNELLY: And I think something
17 you've already seen based on the comments on
18 the Attorney General's draft regulations, at
19 least as far as I've seen, a lot of commentary
20 around the nature of the regs., the quality of
21 the regs., the content of the regs.

22 And I think at least in what I have
23 read since then has clearly shifted kind of the
24 dialogue to a framework without calling it

1 that. So, there is clearly room for leadership
2 when it's smart leadership.

3 MR. GROVE: It's easy to made the
4 mistake. FanDuel and Draft Kings control so
5 much of the market, it's easy to almost slip
6 into by accident the mindset of regulating
7 FanDuel and Draft Kings. It's almost what you
8 end up doing by default because they are almost
9 -- They're almost like Xerox for photocopies.
10 You don't even realize you're using it
11 autonomously.

12 But that's not what's happening
13 here. This isn't an attempt to regulate daily
14 fantasy sports. To Judge McHugh's point that's
15 not even what's happening here.

16 What's happening here is more of an
17 articulation of a way forward to regulate
18 products that are like daily fantasy sports
19 that are delivered online that have
20 characteristics of gambling that touch on
21 similar consumer protection concerns and
22 requires similar technological solutions as
23 we've seen deployed in regulated gambling
24 markets.

1 So, I think it's easy to ask the
2 micro question without realizing that that's
3 the problem you're trying to solve. But what
4 is going on here I believe personally is an
5 answer to that much broader question of how do
6 we address from a regulatory perspective these
7 products that can be conceptualized and then
8 deployed to a mass-market in a matter of days.
9 That's obviously at an extreme but it's not
10 pure hyperbole.

11 You and I could conceptualize a new
12 gambling product development and take it to a
13 development team and turn it around in a couple
14 of weeks on a budget of a few thousand dollars
15 and have it in the app store a month later.
16 That's the pace of things at this particular
17 point in time.

18 And I think that's the underlying
19 question here is how in the hell do we deal
20 with that pace of development and deployment
21 when the tools at your disposal are less nimble
22 are less able to be deployed in a rapid fashion
23 and are reactive as opposed to proactive.

24 MR. CONNELLY: Chris to that point

1 there is -- FanDuel and Draft Kings are far
2 from the only ones in the market nor are they
3 the only model.

4 There is an entire subset in the
5 industry of white box solutions where if the
6 four of us decided we wanted to open our own
7 online DFS site, we could essentially buy the
8 infrastructure and customize it to our own
9 design.

10 And it probably wouldn't take much
11 to create a set of rules that could be
12 substantially different and may fall out of
13 some other definition. That's well within the
14 consumer possibility.

15 MR. GROVE: The barriers to access
16 for a mass-market gambling product have
17 plummeted in the last three years, just
18 plummeted. Maybe that isn't even strong enough
19 of a word. They've been obliterated. In terms
20 of what you needed to bring a gaming product
21 for real money to a truly mass-market audience
22 in 2005 versus 2015, they are not just distinct
23 worlds, they are separate.

24 And I think that that is

1 underpinning a lot of this conversation is how
2 do you deal with that changing reality from a
3 policymaker's perspective.

4 DFS is almost a proxy for that
5 question. And I think that's a correct way to
6 conceptualize it as well, because otherwise we
7 are back here next year talking about daily --

8 MR. WALLACH: -- eSports.

9 MR. GROVE: Exactly. Or something
10 that is not even sporting related, predictive
11 markets. The iterations will come faster than
12 the ability to respond to them. That's always
13 been the case I think for regulations.

14 And now it's just hyper accelerated
15 that by the time you're learning about the last
16 thing you're interested in regulating, it's no
17 longer a viable consumer product and the next
18 class has come up and taking its place.

19 THE HON. JAMES MCHUGH: The flipside
20 of that is preventing the calcification that
21 Steve Martino talked about in terms of giving
22 whatever body has charge over an area like
23 this, the flexibility, rather than having
24 things embedded in statutes, the flexibility to

1 loosen things up, to change them to deal with
2 the change that's going to come across all
3 platforms as we move forward.

4 MR. GROVE: I couldn't agree more.
5 And eSports isn't a thing that's coming next
6 year. eSports is a thing that's here now.
7 Draft Kings offers fantasy eSports
8 competitions. FanDuel owns a fantasy eSports
9 site. We've done quite a bit of research on
10 eSports betting which I think I've shared with
11 the Commission, but I'll certainly forward a
12 copy just in case I haven't.

13 And we put the number for total
14 handle on eSports betting globally at around a
15 quarter billion dollars in 2015. If you look
16 at a different form of eSports wagering in
17 which players don't use cash but use game
18 items, items that can be used within the game
19 that have value for them, we're looking at a
20 handle number that's in the billions not in the
21 hundreds of millions.

22 So, this is an activity that is
23 already -- It's not just taking root, it's just
24 a matter of how quickly will it grow in what

1 particular direction.

2 MR. CONNELLY: We have somehow come
3 down to our final 10 minutes of the day in
4 terms of the panels. But what I wanted to make
5 sure I did was reserve those final 10 minutes
6 for anyone who has any kind of closing
7 statements or thoughts.

8 You've been incredibly helpful all
9 day. And I want to make sure that if there is
10 anything left on the table that we didn't get
11 to that you take an opportunity now. And
12 obviously, Judge McHugh that includes you,
13 please.

14 THE HON. JAMES MCHUGH: I think I've
15 said my piece.

16 MR. CONNELLY: Excellent.

17 MR. GROVE: I would just echo the
18 concern that everyone should have about the
19 underlying definitional issue when you're
20 having this question. I think it's very
21 important to not slip into the mode of a
22 specific definition of what daily fantasy
23 sports is to you and then being rigid in that
24 definition as you approach the regulatory

1 process or the policy process.

2 Even now in its relative infancy,
3 daily fantasy sports is a classic product that
4 spans dozens of iterations, most of which are
5 peer to peer but some of which house banked.
6 Most of which are incredibly complex and skill-
7 based, but some of which such as a pitch that
8 came across my desk a few weeks ago was
9 advertised as one-click daily fantasy sports.

10 So, it's important before any other
11 question to just appreciate that we're not
12 talking about a homogenous product here. We're
13 talking about a class of products. Even within
14 that class, the contours of that class have yet
15 to be fully tested and defined even on what's a
16 commercially viable product, let alone what is
17 going to be acceptable from a regulatory view
18 or a policymaker point of view.

19 I would just caution against falling
20 into the trap of believing that daily fantasy
21 sports is what's offered by FanDuel or Draft
22 Kings or falling into the trap of thinking that
23 daily fantasy sports is a very limited class of
24 activity that can be narrowly defined because

1 at least at this stage of the game, it's
2 anything but.

3 MR. CONNELLY: Again, I wanted to
4 thank our panel, not to particularly point out
5 the two of you, but you have been present
6 throughout the day and thank you very much for
7 your input. I'm going to turn it over to
8 Chairman Crosby for some closing remarks.

9 CHAIRMAN CROSBY: You know it's time
10 to leave when the mice are running around the
11 floor. We've just been seeing the mice running
12 around under the table. So, it's time.

13 I want to particularly thank two
14 people, Justin Stempeck and Paul Connelly have
15 really done a terrific job. They have been
16 leading the research that has gone behind this.
17 They have identified the experts. There's the
18 mouse. He's cute though. Don't worry.

19 They did a great job of setting up
20 these panels. We've all been to panel
21 discussion where they're discombobulated and
22 not well coordinated. These were really well
23 done. So, you guys just have done a great job.
24 Commissioner Cameron, wherever you are, thank

1 you very much for making this happen.

2 Last, to you who are in the room and
3 to you who are watching, we will be working now
4 quickly on this white paper trying to put
5 together our recommendations, our advice
6 without formal portfolio to the Legislature on
7 how this might be approached.

8 These issues about whether these
9 technologies, not just DFS, but these
10 technologies should be regulated. If so, how
11 should they be regulated? Does the notion of
12 some kind of an omnibus legislative approach
13 that we discussed today, does that make sense?
14 If so, how might it work?

15 Anybody that has things they would
16 like to contribute to that conversation, I hope
17 you will get to us either by phone or better
18 yet in writing ASAP. We would tremendously
19 value it.

20 Having said that thanks to all of
21 you who watched and who attended. Thanks to
22 all of our panelists. Thanks again to the
23 staff. Have a good evening. Thank you.

24 (Forum adjourned at 4:30 p.m.)

1 GUEST SPEAKERS:

2 Whit Askew, American Gaming Association

3 Richard Johnston, Office of Massachusetts

4 Attorney General

5 Stephen Martino, Duane Morris

6

7 Chris Grove, Legal Sports Report

8 The Honorable James McHugh, Massachusetts

9 Gaming Commission

10 Dan Wallach, Becker & Poliakoff

11

12

13 MASSACHUSETTS GAMING COMMISSION:

14 Chairman Stephen Crosby

15 Commissioner Gayle Cameron

16 Commissioner Lloyd Macdonald

17 Commissioner Bruce Stebbins

18 Commissioner Enrique Zuniga

19 The Honorable James McHugh, Former Commissioner

20 MODERATORS:

21 Paul Connelly, Director of Licensing

22 Justin Stempeck, Staff Attorney

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C E R T I F I C A T E

I, Laurie J. Jordan, an Approved Court Reporter, do hereby certify that the foregoing is a true and accurate transcript from the record of the proceedings.

I, Laurie J. Jordan, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Laurie J. Jordan, further certify I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken and further that I am not financially nor otherwise interested in the outcome of this action.

Proceedings recorded by Verbatim means, and transcript produced from computer.

WITNESS MY HAND this 13th day of December, 2015.



LAURIE J. JORDAN
Notary Public

My Commission expires:
May 11, 2018