



TO: Chair Jordan Maynard
Commissioner Eileen O'Brien
Commissioner Brad Hill
Commissioner Nakisha Skinner

FROM: Justin Stempeck, Deputy General Counsel
Carrie Torrissi, Chief of Sports Wagering Division
Derek Lennon, Chief Financial and Accounting Officer

DATE: October 31, 2024

RE: Potential Revisions to 205 CMR 238.12

In October 2023, the Commission adopted 205 CMR 238.12 requiring sports wagering operators to obtain a letter of credit to ensure adequate funds are available to compensate patrons in the event of the cessation of sports wagering operations. Following the adoption of 205 CMR 238.12, Commission staff reviewed whether a letter of credit is also beneficial to protect patron deposits. In the Spring of 2024, the Commission determined that it was but chose to provide sports wagering operators with the *option* of using a letter of credit to back up patron deposits, rather than requiring such a letter. The regulation was amended accordingly. To our knowledge, no other state currently requires a letter of credit to back up sports wagering accounts or wagers.

As currently written, 205 CMR 238.12 requires a sports wagering operator's liabilities (*i.e.*, money being wagered and potential winnings) to be backed up with a letter of credit but does not require that the funds in patron sports wagering accounts to be included in a letter of credit. With respect to the funds in sports wagering accounts, the regulation provides the operators with options and permits them to back up those patron funds through a letter of credit, cash reserves, or a combination thereof. It also requires patron accounts to be held in segregated accounts apart from other funds of the operator. In effect, it allows an operator to commingle funds and use such funds for operations where an operator has secured patron funds through a letter of credit but requires an operator to protect patron funds through a segregated account or cash reserves where an Operator does not utilize a letter of credit.

We have since further reviewed 205 CMR 238.12 and discussed it with both bankruptcy counsel and, through the Sports Wagering Division and Finance teams, the operators. Bankruptcy counsel has noted that although the requirement for segregated patron accounts *could* protect the funds in those accounts from being swept into the bankruptcy estate (and thus protect them for use to pay a bankrupt operator's creditors), this issue would likely be litigated in the context of a

particular bankruptcy. A letter of credit would be a safer option because it is not held by the Operator, and thus would not be made part of the bankruptcy estate. Operators prefer the current approach, which grants them greater flexibility to utilize assets as needed and does not add the costs associated with maintaining larger letters of credit.

The question at issue is whether the Commission would like to (1) require that the funds in sports wagering accounts, in addition to the operators' liabilities, be included in the letter of credit, (2) require that the funds in sports wagering accounts, and *not* the operators' liabilities, be included in the letter of credit, or (3) keep its regulation as is (requiring that the operators' liabilities, and not the funds in sports wagering accounts, be included in the letter of credit).

Based on that question, the Legal, Finance, and Sports Wagering divisions propose for consideration the following options for possible changes to 205 CMR 238.12:

1. **Maintaining the current regulation:** In this scenario, patron wagers would be protected by a letter of credit. Money in patron accounts and which is not currently being wagered would, at the operator's option, be protected by placement in a segregated account or by backup through a letter of credit or cash reserves.
2. **Expanding the Scope of the Letter of Credit Requirement:** Here, the Commission would expand the reach of the 205 CMR 238.12(1)'s letter of credit requirement to apply to money being wagered and money held in sports wagering accounts. This means that operators would have to post larger letters of credit. This approach is the most protective of patron funds but would be the most costly for operators. See attached Option 2.
3. **Revising 205 CMR 238.12 to require Letters of Credit *only* for Sports Wagering Accounts:** Under this option, the Commission would not require a letter of credit as backup for wagered funds, but only for moneys not currently being wagered. This would be less expensive for operators than the second option. It would be based on the rationale that patrons engaging in wagers are already risking the money placed on the wager but have a higher expectation of security in their account funds. See attached Option 3.