



MASSACHUSETTS GAMING COMMISSION
PUBLIC MEETING #303

May 21, 2020
10:00 a.m.

Via Conference Call Number: 1-646-741-5292
Meeting I.D. Number: 111 606 1798



Massachusetts Gaming Commission



NOTICE OF MEETING and AGENDA
May 21, 2020 – 10:00 a.m.

PLEASE NOTE: Given the unprecedented circumstances resulting from the global Coronavirus pandemic, Governor Charles Baker issued an order to provide limited relief from certain provisions of the Open Meeting Law to protect the health and safety of individuals interested in attending public meetings. In keeping with the guidance provided, the Commission will conduct a public meeting utilizing remote collaboration technology. If there is any technical problem with our remote connection, an alternative conference line will be noticed immediately on our website: MassGaming.com.

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

Thursday, May 21, 2020
10:00 a.m.

Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 606 1798

All documents and presentations related to this agenda will be available for your review on the morning of May 21, 2020 by [clicking here](#).

PUBLIC MEETING - #303

1. Call to order
2. Approval of Minutes
 - a. April 29, 2020
 - b. May 1, 2020
 - c. May 7, 2020
3. Administrative Update – Karen Wells, Interim Executive Director
4. Legal Division/IEB/Licensing Divisions – Karen Wells, Interim Executive Director; Todd Grossman, Interim General Counsel; Loretta Lillios, Chief Enforcement Counsel/Deputy Director; Joe Delaney, Construction Project Oversight Manager
 - a. Plainridge Park Casino License Renewal Status Update



Massachusetts Gaming Commission

5. Ombudsman Division – Joe Delaney, Construction Project Oversight Manager
 - a. Community Mitigation Fund Summary – Joe Delaney, Construction Project Oversight Manager; Mary Thurlow, Program Manager

6. Commissioners Update – Chair Cathy Judd-Stein
 - a. Wynn Independent Monitor 6-Month Baseline Report – Chair Cathy Judd-Stein; Commissioner Eileen O’Brien; Alejandra Montenegro Alamonte, Preston Pugh, and Ann Sultan, Members, Miller & Chevalier Chartered; Ellen Whittlemore and Jacqui Krum, Wynn Resorts and Encore Boston Harbor

7. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting.

I certify that on this date, this Notice was posted as “Massachusetts Gaming Commission Meeting” at www.massgaming.com and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us.

May 19, 2020

Cathy Judd-Stein, Chair

Date Posted to Website: May 19, 2020 at 10:00 a.m.



Massachusetts Gaming Commission



Massachusetts Gaming Commission Meeting Minutes

Date/Time: April 29, 2020 – 1:00 p.m.

Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5293
MEETING ID: 111 122 4113

Present: Chair Cathy Judd-Stein
Commissioner Gayle Cameron
Commissioner Enrique Zuniga
Commissioner Bruce Stebbins
Commissioner Eileen O'Brien

Given the unprecedented circumstances, Governor Charles Baker issued an order to provide limited relief from certain provisions of the Open Meeting Law to protect the health and safety of the public and individuals interested in attending public meetings during the global Coronavirus pandemic. In keeping with the guidance provided, the Commission conducted this public meeting utilizing remote collaboration technology.

Call to Order

1:00 p.m. Chair Cathy Judd-Stein called to order public meeting #298 of the Massachusetts Gaming Commission (“Commission”).

The Chair confirmed a quorum for the meeting with a Roll-Call Vote.

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Stebbins: Aye.

Commissioner Zuniga: Aye.

Chair Judd-Stein: Aye

Commissioners' Update

1:02 p.m. **Deadline for Independent Monitor's Submission of Baseline Report**
The Commission received a request on Friday by Wynn Resorts requesting limited relief from the April 30th deadline to comment on the independent monitor's report.

1:03 p.m. Commissioner O'Brien suggested that a reasonable solution would be to move the deadline to May 8th, then have this item on the agenda for the May 21st Commission meeting. The Chair confirmed that the timeline suggested by Commissioner O'Brien does work for the independent monitor.

The Chair added that they are working on a plan for a proper briefing and those details will come through Ms. Wells.

1:09 p.m. *Commissioner O'Brien moved that the deadline for the submission of the independent monitor of the six-month baseline report to the Commission be extended from the current date of April 30, 2020 to no later than May 8, 2020 and that the public presentation be scheduled to occur no later than May 21, 2020. Commissioner Stebbins seconded the motion.*

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Zuniga: Aye.

Commissioner Stebbins: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

1:10 p.m. *With no further business, Commissioner Stebbins moved to adjourn. Commissioner Cameron seconded the motion.*

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Zuniga: Aye.

Commissioner Stebbins: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated April 29, 2020

/s/ Bruce Stebbins
Secretary



Massachusetts Gaming Commission Meeting Minutes

Date/Time: May 1, 2020 – 10:00 a.m.

Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5293
MEETING ID: 111 651 2385

Present: Chair Cathy Judd-Stein
Commissioner Gayle Cameron
Commissioner Enrique Zuniga
Commissioner Bruce Stebbins
Commissioner Eileen O'Brien

Given the unprecedented circumstances, Governor Charles Baker issued an order to provide limited relief from certain provisions of the Open Meeting Law to protect the health and safety of the public and individuals interested in attending public meetings during the global Coronavirus pandemic. In keeping with the guidance provided, the Commission conducted this public meeting utilizing remote collaboration technology.

Call to Order

10:00 a.m. Chair Cathy Judd-Stein called to order public meeting #300 of the Massachusetts Gaming Commission (“Commission”).

The Chair confirmed a quorum for the meeting with a Roll-Call Vote.

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Stebbins: Aye.

Commissioner Zuniga: Aye.

Chair Judd-Stein: Aye.

Executive Staff Update

10:02 a.m. **Operational Status of Gaming Licensees in light of the Coronavirus**
Interim Executive Director Karen Wells remarked that the governor has extended his order to shut down businesses due to COVID-19 until May 18, 2020. She recommends that the Commission parallel this order for the three Massachusetts

gaming establishments. The Commissioners all concurred with the recommendation.

Commissioner O'Brien would like to address next steps for the summer at a future Commission meeting, as the Commission gains more clarity by the end of this month.

[10:04.m.](#) *Commissioner Cameron moved that the Commission approve the recommendation of the Interim Executive Director Karen Wells to follow the governor's extension of the order to May 18, 2020 and move the Commission's timeframe to keep casinos closed until May 18, 2020. Commissioner Stebbins seconded the motion.*

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Zuniga: Aye.

Commissioner Stebbins: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

[10:05 a.m.](#) **Operational Status of Simulcasting and Advance Deposit Wagering (ADW) In Light of the Coronavirus**

Director of Racing/Chief Veterinarian/Operations Manager Dr. Alexandra Lightbown stated that the licensees continue to agree to abide by the governor's extension of his order to May 18, 2020. She stated that they will continue to conduct online account wagering, but the simulcasting will remain closed.

Other Business

[10:06 a.m.](#) The Chair commented on the timeline for re-opening the casinos. She stated that this timeline is uncertain, however the Commission should maximize this time to establish guidelines for re-opening in collaboration with the three licensees, key stakeholders, state and local leaders, and public health experts. A small, internal Re-Start Working Group will be convened to support the work already in progress under the leadership of Ms. Wells, with the assistance of the Chair and Commissioner O'Brien. The group will help in the development of the work plan and identify issues that may arise for the Commission's consideration and preemptive action regarding key policy and regulatory matters.

[10:08 a.m.](#) Next, Ms. Wells provided a detailed description of the two primary areas that the Re-Start Working Group will focus on. First will be technical protocols, and second will be health and safety issues that need to be addressed. Ms. Wells will expound on these at the next commission meeting on May 7th.

Ms. Wells then stated that in addition to the Re-Start Working Group, staff is working on operational procedures, opening checklists, and other necessary items.

Commissioner Zuniga and Ms. Wells commended the Information Technology team for remarkably enabling the success of the agency to operate remotely.

10:16 a.m.

With no further business, Commissioner Stebbins moved to adjourn.

Commissioner Zuniga seconded the motion.

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Zuniga: Aye.

Commissioner Stebbins: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated May 1, 2020

/s/ Bruce Stebbins
Secretary



Massachusetts Gaming Commission Meeting Minutes

Date/Time: May 7, 2020 – 10:00 a.m.

Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5293
MEETING ID: 112 771 1475

Present: Chair Cathy Judd-Stein
Commissioner Gayle Cameron
Commissioner Enrique Zuniga
Commissioner Bruce Stebbins
Commissioner Eileen O'Brien

Given the unprecedented circumstances, Governor Charles Baker issued an order to provide limited relief from certain provisions of the Open Meeting Law to protect the health and safety of the public and individuals interested in attending public meetings during the global Coronavirus pandemic. In keeping with the guidance provided, the Commission conducted this public meeting utilizing remote collaboration technology.

Call to Order

10:00 a.m. Chair Cathy Judd-Stein called to order public meeting #301 of the Massachusetts Gaming Commission (“Commission”).

The Chair confirmed a quorum for the meeting with a Roll-Call Vote.

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Stebbins: Aye.

Commissioner Zuniga: Aye.

Chair Judd-Stein: Aye.

Approval of Meeting Minutes

10:01 a.m. *Commissioner Stebbins moved to approve the minutes from the Commission meeting of April 23, 2020, subject to correction for typographical errors and other nonmaterial matters. Commissioner Cameron seconded the motion.*
Roll Call Vote:

Commissioner Cameron: Aye.
Commissioner O'Brien: Aye.
Commissioner Stebbins: Aye.
Commissioner Zuniga: Aye.
Chair Judd-Stein: Aye.
The motion passed unanimously.

Administrative Update

- [10:04 a.m.](#) Interim Executive Director Karen Wells stated that staff is continuing to work remotely effectively, and are preparing for the eventual reopening of the casinos. She reported that the Commission's Restart Working Group has convened, and that process is ongoing (assisting with the development of an overall work plan, identifying issues for the Commission's consideration to facilitate nimble action on key policy and regulatory matters). Licensees have been asked to submit specific reopening plans, and the Group expects to have submissions by tomorrow. There will be a Commission meeting next week to review those plans with the licensees. The group also continues to monitor information and the mandates issued from the governor's office, including any information resulting from the state's [Reopening Advisory Board](#).
- [10:06 a.m.](#) Commissioner Zuniga stated that he would like to know if licensees have considered possibly opening available outdoor areas of properties first. He noted the early conversations the Commission had with licensees regarding the part of the statute governing smoking and mentioned a previous discussion regarding outdoor tent areas.
- [10:08 a.m.](#) Commissioner Cameron then commented to Ms. Wells and Racing Director Dr. Alexandra Lightbown that the Commission should also be considering any plans Penn National (Plainridge Park Racecourse) is considering for reopening safely.
- [10:10 a.m.](#) Construction Project Oversight Manager Joe Delaney provided the Commission with an update on the 31 Elm Street Project to construct market-rate housing. The Department of Housing and Community Development (DHCD) has approved the transfer of the property from the city to the developer. He will continue to report to the Commission the status as more details arise.
- Commissioner Zuniga recalled that the project relies on tax credits, and he wonders how this may be affected, given all the recent economic developments. Mr. Delaney will discuss this with the DHCD on this as well as other entities; however, he is confident that it is working or they would not have allowed the project to move forward.

Research and Responsible Gaming

10:15 a.m. **Six-Month Public Safety Report for Everett, Massachusetts**

Mark Vander Linden, Director of Research and Responsible Gaming, summarized the Six-Month Public Safety report for the Commission, stating that this is the first follow-up report, covering crime trends and considering baseline and historical data. He added that the report is a specific call for the link between crime and gambling. It also considers crime rates at similarly sized facilities. He then introduced Christopher Bruce, Crime Analyst Consultant to the Commission to present his analysis.

Mr. Bruce outlined his analysis and presented slides, providing crime totals for Everett and the region for the last six months. He emphasized that as this is only six-months of time, there is little data to analyze. Mr. Bruce stated that based on historical averages or trends, the basis of his work is to create an expected range of values that each crime would fall into. Mr. Bruce then described patterns to monitor; however he stated that there had been no link to Encore Boston Harbor demonstrated yet for such crimes. He did note that for traffic collision OUIs, Encore was listed four times as a “last drink” location.

Next, Mr. Bruce stated that there are only two additional months of data gathered before Encore Boston Harbor was temporarily closed. He remarked that the closures would make analysis irrelevant for March through May. Lastly, he reported that COVID-19 has affected crime rates of all types and probably will continue to have an effect once restrictions are lifted. He will be consulting experts in quantitative evaluative research for help with more sophisticated models to help control for COVID-19.

10:41 a.m. Commissioner Cameron commended the Everett Police Department’s Crime Analysis Team for working with Mr. Bruce regarding the “last drink” locations.

10:43 a.m. Commissioner Stebbins asked how he considers the population in the local community/region as part of his research when measuring Encore Boston Harbor against other casinos of the same size, and normalizing that research by the number of visitors. Mr. Bruce replied he has not determined how this information will be factored in as of yet; however, it is part of the equation.

10:45 a.m. Massachusetts State Police Captain Brian Connors concurred with Mr. Bruce’s analysis and stated that the Gaming Enforcement Unit (GEU) continues to monitor all activity and assist in any way they can to ensure that reports are accurate.

10:48 a.m. Mr. Vander Linden stated that the next step would be for Mr. Bruce to gather data for a one-year report. He stated that he looks forward to continuing to examine impacts on Everett, Springfield, and Plainville.

[10:50 a.m.](#) Commissioner O'Brien remarked that she is very impressed with Everett's crime analysts, and she hopes to obtain more data from Medford, the MBTA, and hopefully Cambridge moving forward.

Racing Division

[10:50 a.m.](#) **Plainridge Park Racecourse 2020 Live Racing Update**

The Commission's Director of Racing and Chief Veterinarian Dr. Alexandra Lightbown stated that live racing was postponed until June 1, 2020, previously, and noted that this date might not be realistic, considering the continued orders from the governor's office to extend the shutdowns. She has met with the horsemen, and the Commission's Acting General Counsel Todd Grossman, Licensing Specialist for Plainridge Racecourse Bill Egan, and Vice President of Racing for Penn National Chris McErlean have convened to try to determine the best way to reopen safely and regulate the industry. She noted that in this meeting, strategies for reopening live racing were also discussed. The Harness Horsemen's Association of New England (HHANE) presented a Risk Management Plan as a response.

Dr. Lightbown noted that there are some Thoroughbred tracks open in the country, attributed to the prescribed manner of operations for these tracks that are different from the Standardbred industry, allowing them to remain open. She noted that she is seeking guidance on the procedure from the tracks that are continuing to operate as well as the governor's Reopening Advisory Board.

[10:58 a.m.](#) Commissioner Zuniga asked about racing without spectators. Dr. Lightbown explained the circumstances and restrictions for the tracks that are operating this way and outlined the considerations for doing so.

[11:02 a.m.](#) Commissioner Stebbins stated that a critical component of the considerations for reopening would be to review the schedule for potential days of racing ahead. Dr. Lightbown noted several factors that will be considered once they have an idea of how many racing days have been missed due to postponements. Another factor will be to consider the effects the postponements have had on the purse accounts and the Race Horse Development Fund, as well as when funds will start coming back into the accounts and Fund.

Dr. Lightbown recommends that the Commission postpone live racing at Plainridge Racecourse indefinitely until the Commission is comfortable reopening the facility.

[11:05 a.m.](#) *Commissioner Cameron moved that the Commission postpone the June 1, 2020, live racing opening of Plainridge Racecourse until further notice, as described in the memorandum dated May 7, 2020, in the [Commissioners' Packet](#).*

Commissioner Stebbins seconded the motion.

Roll Call Vote:

Commissioner Cameron: Aye.
Commissioner O'Brien: Aye.
Commissioner Zuniga: Aye.
Commissioner Stebbins: Aye.
Chair Judd-Stein: Aye.
The motion passed unanimously.

11:05 a.m. **Quarterly Local Aid Payments**

Financial Analyst Chad Bourque, Chief Financial Analyst, directed the Commission to his memo entitled, "Local Aid Quarterly distribution for Q1 CY 2020". He reviewed the Commonwealth of Massachusetts Budget's portion regarding local aid payable to each city and town within which racing activities are conducted. He then verified the March 31, 2020, Local Aid Quarterly Payment in the amount of \$226,583.95 and requested authorization from the Commission to pay the appropriate cities and towns.

11:07 a.m. *Commissioner Stebbins moved that the Commission approve the Local Aid Quarterly Distribution for Q1 of 2020 in the amount of \$226,583.95 pursuant to the Commonwealth of Massachusetts Budget and Appropriation 1050-0140, and as described in the memorandum dated April 29, 2020, in the Commissioners' Packet. Commissioner Cameron seconded the motion.*

Roll Call Vote:

Commissioner Cameron: Aye.
Commissioner O'Brien: Aye.
Commissioner Zuniga: Aye.
Commissioner Stebbins: Aye.
Chair Judd-Stein: Aye.
The motion passed unanimously.

Investigations and Enforcement Bureau (IEB)

11:08 a.m. **MGM Qualifier**

IEB Enforcement Counsel Katherine Hartigan requested that the Commission approve Kevin Charles Miller, Vice President of Privacy for MGM Resorts International, Inc. as a Qualifier of MGM Springfield. She described investigators' findings on this matter and recommended that the Commission approve Mr. Miller.

11:13 a.m. *Commissioner O'Brien moved that the Commission find Kevin Charles Miller, Vice President of Privacy for MGM Resorts International, Inc., suitable as an MGM Springfield Qualifier. Commissioner Stebbins seconded the motion.*

Roll Call Vote:

Commissioner Cameron: Aye.
Commissioner O'Brien: Aye.
Commissioner Zuniga: Aye.
Commissioner Stebbins: Aye.

*Chair Judd-Stein: Aye.
The motion passed unanimously.*

Legal Division

[11:14 a.m.](#) **Final Draft of Amendments to 205 CMR 134.09: Investigation, Determination, and Appeals for Gaming Establishment Employees and Vendors**

Acting General Counsel Todd Grossman described the proposed amendments to this regulation. He stated that a hearing took place, as well as public comments being received that were discussed at the hearing.

One comment was discussed pertaining to the use of information relevant to juvenile delinquency matters, as opposed to the topic of the use of sealed or expunged records that was up for discussion. Mr. Grossman recommended that this issue be separated from the amendments brought to the Commission today. It was not part of the noticing of this matter, but Mr. Grossman noted it is important and should be handled on its own.

Mr. Grossman requested approval for the Small Business Impact Statement as well as for the draft of the regulation with amendments.

[11:18 a.m.](#) Commissioner Stebbins made remarks regarding the hearing that took place and stated that stakeholders had provided clarification. He said this change would allow for proper access to paths in this industry for Massachusetts residents. He concurred with Mr. Grossman that the Commission should review the suitability for the use of juvenile delinquencies in this process separately, at a later date.

[11:21 a.m.](#) The Chair stated that the Commission must be fully compliant with the law regarding the issue of considering juvenile delinquencies in suitability investigations. Ms. Wells replied that the IEB had done this initially and that Chief Enforcement Counsel Loretta Lillios is going to consult the record in response to the comment, to ensure that the Commission is compliant with the law. The Chair then stated that the Commission will keep Greater Boston Legal Services informed, should any changes be made to the regulation in that context.

[11:22 a.m.](#) *Commissioner Cameron moved that the Commission approve the Amended Small Business Impact Statement for 205 CMR 134.09: Investigation, Determination, and Appeals for Gaming Establishment Employees and Vendors, as included in the Commissioners' Packet. Commissioner Stebbins seconded the motion.*

Roll Call Vote:

*Commissioner Cameron: Aye.
Commissioner O'Brien: Aye.
Commissioner Stebbins: Aye.
Commissioner Zuniga: Aye.
Chair Judd-Stein: Aye.*

The motion passed unanimously.

Commissioner Cameron further moved that the Commission adopt the version of amendments to 205 CMR 134.09: Investigation, Determination, and Appeals for Gaming Establishment Employees and Vendors as included in the Commissioners' Packet and authorized the staff to take all steps necessary to finalize the regulation promulgation process. Commissioner Stebbins seconded the motion.

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Stebbins: Aye.

Commissioner Zuniga: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

[11:24 a.m.](#)

Final Draft of Amendments to 205 CMR 133.04: Duration of Exclusion and Removal from the List

Associate General Counsel Carrie Torrisi described the proposed amendments to this regulation. She stated that a hearing took place, and no public comments were received regarding the changes. She requested that the Commission approve the Small Business Impact Statement and the draft of the regulation with amendments.

[11:26 a.m.](#)

Commissioner O'Brien moved that the Commission approve the Amended Small Business Impact Statement for 205 CMR 133.04: Duration of Exclusion and Removal from the List, as included in the Commissioners' Packet. Commissioner Cameron seconded the motion.

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Zuniga: Aye.

Commissioner Stebbins: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

Commissioner O'Brien further moved that the Commission adopt the version of amendments to 205 CMR 133.04: Duration of Exclusion and Removal from the List as included in the Commissioners' Packet and authorized the staff to take all steps necessary to finalize the regulation promulgation process. Commissioner Cameron seconded the motion.

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Zuniga: Aye.

Commissioner Stebbins: Aye.

*Chair Judd-Stein: Aye.
The motion passed unanimously.*

11:27 a.m. **Review of the draft of 205 CMR 109.01: Authority of the Commission to Act in an Emergency Situation**

Ms. Torrisi stated that staff had reached out to the licensees for comments on this new regulation, and has received feedback. Based on this feedback, edits were made to the regulation, and Ms. Torrisi explained the changes that were made for the Commission.

11:29 a.m. There was discussion around the Commission's authority to act immediately concerning the procedure of notice in connection with the IEB.

11:31 a.m. Ms. Torrisi requested that the Commission adopt this regulation by emergency, allowing it to become effective immediately. Commissioner O'Brien added that the circumstances for promulgating by emergency are to be able to implement this regulation in reopening and shutting down.

11:34 a.m. *Commissioner O'Brien moved that the Commission approve the Small Business Impact Statement for 205 CMR 109.01: Authority of the Commission to Act in an Emergency Situation, as included in the Commissioners' Packet. Commissioner Stebbins seconded the motion.*

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Zuniga: Aye.

Commissioner Stebbins: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

Commissioner O'Brien further moved that the Commission adopt by emergency the version of 205 CMR 109.01: Authority of the Commission to Act in an Emergency Situation as included in the packet, and authorized the staff to take all steps necessary to commence the regulation promulgation process.

Commissioner Cameron seconded the motion.

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Zuniga: Aye.

Commissioner Stebbins: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

11:36 a.m. **Licensee Quarterly Reports Discussion**

Ms. Wells stated that this item is on the agenda to provide feedback to Commissioners, guidance for staff after discussing with the licensees regarding

quarterly reports. Much of the information found in the quarterly reports is no longer being generated, so there is nothing that can translate into a quarterly report currently. Licensees are asking for relief from the requirements for quarterly reporting.

[11:38 a.m.](#) Mr. Delaney spoke with the licensees, and they have requested not to make a public presentation, as they do not have staff resources to do so, and because there is no data to report.

[11:39 a.m.](#) Mr. Grossman provided a broad overview of the legal requirements that pertain to the situation. He noted [G.L. c. 23K, § 5](#) that pertains to quarterly reports. He then cited [205 CMR 139.06](#), the regulation that is governed by this statute, stating that it requires a written report and a certification by the licensees Chief Financial Officer as to the truth of the statements made in the report.

[11:42 a.m.](#) The Chair would defer that the statutorily required report could be made to the Commission at a reasonable time in the future. However, she expressed concern over not having access to some information that could prove to be critical at this time as well.

[11:44 a.m.](#) Commissioner Zuniga would like a one or two-page report that reflects certifications relative to the maintenance of bankroll, taxes, fees, and the ability to defer capital expenditures. He then stated that he is in favor of discussing the timing of this compliance.

[11:47 a.m.](#) The Chair recommended that the Commission consider granting some relief; however, due to the regulations in place, some information must be reported. The Commission is primarily interested in being informed in some way, fulfilling the purpose of the regulation.

[11:50 a.m.](#) Commissioner Stebbins recommended that the commission and our licensees continue their work on a new format for quarterly reporting moving forward. Commissioner O'Brien stated that she would like the public acknowledgment to continue for quarterly reporting. The Chair concurred.

Commissioners' Updates

[11:53 a.m.](#) Commissioner Cameron reported that the International Association of Gaming Regulators (IAGRA) and the International Masters of Gaming Law (IMGL) has officially been postponed from September of 2020 to September of 2021. There is a negotiation with Marriott Copley Place for new dates for September 2021.

[11:57 a.m.](#) *With no further business, Commissioner Zuniga moved to adjourn.
Commissioner Stebbins seconded the motion.*

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.
Commissioner Zuniga: Aye.
Commissioner Stebbins: Aye.
Chair Judd-Stein: Aye.
The motion passed unanimously.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated May 1, 2020
2. Draft Commission Meeting Minutes dated April 23, 2020
3. PowerPoint Presentation: Assessing the Impact of Gambling on Public Safety in Massachusetts
4. Report: Assessing the Influence of Gambling on Public Safety in Massachusetts Cities and Towns, dated April 10, 2020
5. Memorandum re: Postponement of June 1 Live Racing Opening at Plainridge
6. Letter re: 2020 Racing Schedule & Resumption of Live Racing Protocol dated April 30, 2020
7. Letter re: Plainridge Park Race Track/Possible Opening of Race Track with Strict Covid-19 Guidelines & No Fans dated May 1, 2020
8. HHANE Risk Management Plan
9. Memorandum re: Local Aid Quarterly Distribution for Q1 CY 2020
10. Amended Small Business Impact Statement for 205 CMR 134.09
11. Regulation Cover Sheet for 205 CMR 134.09
12. Draft regulation 205 CMR 134.09
13. Public Comments re: 205 CMR 134.09
14. Amended Small Business Impact Statement for 205 CMR 133.04
15. Regulation Cover Sheet for 205 CMR 133.04
16. Draft regulation 205 CMR 133.04
17. Small Business Impact Statement for 205 CMR 109.01
18. Regulation Cover Sheet for 205 CMR 109.01
19. Draft regulation 205 CMR 109.01

/s/ Bruce Stebbins
Secretary



TO: Chair Judd-Stein, Commissioners Cameron, O'Brien, Stebbins and Zuniga

FROM: Joseph E. Delaney

CC: Karen Wells, Interim Executive Director

DATE: May 21, 2020

RE: 2020 Community Mitigation Fund Update

This memorandum provides an update on the status of the 2020 Community Mitigation Fund applications (CMF). Included in this update are the comment letters received through MGC comments, MassDOT and Plainridge Park. The Review Team provided an extension of time for the licensees to comment on the applications until May 22, 2020 due to the turmoil Covid-19 has caused.

APPLICATIONS AND GRANT CATEGORIES

Applications for the 2020 CMF were received on or before February 1, 2020. Thirty-seven (37) applications were received totaling \$13.4 million. As outlined in the 2020 CMF Guidelines, \$11.5 million is available for grants, with a maximum of \$6 million targeted for Region A, \$5 million targeted for Region B and \$0.5 million targeted towards the Category 2 facility and Tribal Reserve. The Guidelines established that the funds generated in the Regions would remain with the Regions for a period of three years. Only the Community Mitigation Funds generated through December 31, 2019 were included for use in the 2020 CMF.

Broken down by Regions, MGC received the following applications:

Region A	\$9,192,400
Region B	\$3,935,927
Category 2	\$82,467
Tribal Reserve	\$200,000

Based on the distribution of applications alone, it becomes apparent that the Review Team will need to make some difficult recommendations and the Commission will need to make



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some difficult choices. Region A is particularly problematic where the available funds have been oversubscribed by more than 50%. Also, simply because Region B is undersubscribed does not mean that all of the projects automatically get funded. The Review Team still needs to conduct rigorous reviews of the applications to verify the appropriate nexus to the casino and that each project meets eligibility requirements.

Attached to this memo is a spreadsheet that identifies each grant by Community, Region, Grant type and project cost. It also includes the project title and a brief description of each project.

When developing the 2020 CMF Guidelines, targeted amounts were established for several of the grant categories. Although the Commission extended the use of the Reserves for another year, no applications were submitted for that type of Grant. The following is the breakdown of the applications received by grant category:

<u>Grant Type</u>	<u>Target Amount</u>	<u>Applications Received</u>
Specific Impact Grant	No Target	\$4,181,634
Transportation Planning Grant	\$1,000,000	\$2,050,000
Non-Transportation Planning Grant	No Target	\$550,000
Transportation Construction Grant	\$3,000,000	\$5,729,160
Workforce Development Grant	\$800,000	\$900,000

As the above chart demonstrates, each of the categories that have established target amounts is oversubscribed. The Workforce Development grants are only oversubscribed by a little over 12%, but the Transportation Planning and Transportation Construction Projects grants are oversubscribed by over 100% and nearly 91% respectively.

It is the intent of the Review Team to present to the Commission recommendations that are constrained by the amounts targeted in the 2020 Guidelines as well as regional allocations. Based on these dual constraints, coming up with final recommendations will be a delicate balancing act.

APPLICATION REVIEW STATUS

The Review Team consists of the following members:

Commissioner Bruce Stebbins
Carrie Torrisi
Kate Muxie-Hartigan
Joe Delaney
Mary Thurlow

Commissioner Enrique Zuniga
Jill Griffin
Crystal Howard
Teresa Fiore
Tania Perez

As a reminder to the Commission, our process for receipt and review of the applications is as follows:

- Applications are received by February 1, 2020 and routed to the review team;
- Applications sent to licensees and MassDOT for review and comment;
- Applications are posted on the website;
- Each application is assigned a primary reviewer based on area of expertise (work force, public safety, transportation, etc.);
- Review Team has weekly meetings to discuss applications;
- Meetings are held with each applicant to discuss project and questions generated by the Review Team;
- Letters to applicants sent outlining follow-up questions that need to be answered;
- Written responses from applicants received;
- Review Team prepares recommendations to Commission taking into account the application, applicant responses to questions, licensee input and MassDOT comments (as applicable); and
- Commission meets to discuss and vote on applications.

To date, the Review Team has conducted their reviews of the applications and will complete meetings with the applicants by the end of this week. Final response letters from the applicants are due back by June 5, 2020. Written comments from licensees are due back at the end of this week and comments from MassDOT have already been received.

Over the next few weeks, the Review Team will meet several times to develop the recommendations to the Commission.

The Commission is currently scheduled to review the applications at the Commission meetings on June 18 and June 25, 2020.

2020 Summary of Community Mitigation Fund Grants

Applicant	Grant Type	Region	Project Name	Project Description	Amount Requested
Boston	TPG	A	Sullivan Square/Rutherford Ave Design	Reconfiguration of Sullivan Square/Rutherford Avenue in Charlestown.	\$ 200,000
Boston	TCG	A	Connecting the Lost Village	Geometric changes to the intersection of Brighton Street and Cambridge Street in Charlestown, to create safer crossings and better line of sight for turning vehicles, as well as a fiber connection from Sullivan Square to the Park Street intersection.	\$ 533,900
Chelsea	SIG	A	Beacham/Williams Transportation Corridor Project	The City proposes the comprehensive reconstruction of Beacham and Williams Streets, from Spruce Street to the City's boundary with Everett. This project consists of roadway and utility reconstruction, intersection upgrades, and the installation of pedestrian and bicycle facilities. The project will mitigate adverse transportation impacts attributable to casino activities.	\$ 500,000
Chelsea	TCG	A	Beacham/Williams Transportation Corridor Project	The City proposes the comprehensive reconstruction of Beacham and Williams Street, from Spruce Street to the City's boundary with Everett. This project consists of roadway and utility reconstruction, intersection upgrades, and the installation of pedestrian and bicycle facilities. The project will mitigate adverse transportation impacts attributable to casino activities.	\$ 1,000,000
Everett	TPG	A	Broadway Gondola Feasibility Study	To evaluate the feasibility of using the alignment of Broadway for an aerial rope way system that would connect Encore Boston Harbor in Everett to Everett City Hall. The aerial connection would serve pedestrians, bicycles, and other non-motorized modes. It would serve as an extension of the proposed aerial tramway currently being studied and proposed by Encore from Assembly Row to the Encore resort.	\$ 200,000
Everett	SIG	A	Data-Driven Strategies in Marketing and Economic Development	Using the latest data-mining techniques reveals behavioral patterns when people are in the City of Everett. This data will allow the City to make much more informed and nuanced decisions when developing marketing and economic development strategies, both to maximize the positive economic development impacts of the Encore facility and to mitigate the negative impacts on certain local businesses. Data-collection and analysis will allow the City to measure the impact of development strategies going forward.	\$ 150,000
Everett	SIG	A	Fire Department Supplemental Personnel and Operational Funds	The City of Everett Fire Department seeks funding through the Specific Impact Grant to supplement the additional personnel and operational costs incurred as a result of the increased staffing levels and service calls in response to the Encore's operations.	\$ 629,456
Everett	SIG	A	Police Department Supplemental Personnel and Operational Funds	The City of Everett Police Department seeks funding through the Specific Impact Grant to supplement the additional personnel and operational costs incurred as a result of the increased staffing levels, equipment and service calls in response to the Encore's operations.	\$ 183,784
Everett	NTPG	A	Everett's Designated Port Area Study	This planning initiative will look at the large industrial district that straddles the Everett/Chelsea line in order to understand the impact of the district on the local and regional economy, especially as it relates to the abutting Entertainment District.	\$ 100,000
Everett	TCG	A	Northern Stand Community Trail Extension	Extension of the Northern Strand Community Trail to the Mystic River.	\$ 1,000,000
Everett/Somerville	TPG	A	Silver Line Extension Planning and Design	Advancement of engineering design for city-owned streets and infrastructure to accommodate the MBTA Silver line and other overlapping bus/BRT services	\$ 425,000
Foxborough/Cat. 2	SIG	Cat-2	Police Department Traffic Mitigation Vehicle	Acquire a full size pickup truck and assorted traffic safety equipment (cones/barrier/signs)	\$ 82,467
Hampden DA	SIG	B	Hampden District Attorney Mitigation Grant	The proposed funding will be used for personnel to mitigate the additional burdens in caseloads that are created directly and indirectly by the influx of people into the downtown area due to the casino presence.	\$ 75,000
Hampden Sheriff	SIG	B	Hampden Sheriff Department Community Mitigation	HCSO in its fifth of a ten year lease due to the relocation of Western Massachusetts Recovery and Wellness Center (WMRWC) from 26 Howard Street to 155 Mill Street Springfield, MA. HCSO has experienced a significant lease offset due to this forced move to make way for the MGM Casino.	\$ 400,000

2020 Summary of Community Mitigation Fund Grants

Applicant	Grant Type	Region	Project Name	Project Description	Amount Requested
Holyoke CC	WFG	B	Work Ready 2021	Work Ready 2021 – an effort of Holyoke Community College, Springfield Technical Community College, Springfield Public Schools, MGM Springfield, and workforce development system, which provides Adult Education, work readiness, and occupational skills training to connect the un/underemployed to opportunities, including MGM’s need for line cooks, dealers and hospitality workers.	\$ 450,000
Lynn	TCG	A	Citywide Traffic Signal Upgrades at Various Locations	The project will include traffic signal upgrades associated with CMF planning grant that inventoried traffic signals citywide. Work will include retiming of signals, optimizing traffic operations, repairing and/or replacing equipment, including 53 intersections with damaged or missing equipment and 17 intersections requiring new cabinet equipment, vehicle detection or both.	\$ 750,260
Lynn	TPG	A	Western Avenue Design Work	The City of seeking funding to continue the traffic analysis and conceptual design of infrastructure improvements along Western Avenue within the City of Lynn to mitigate the impacts of the additional casino related traffic within the City’s borders.	\$ 200,000
Malden	TPG	A	Malden Transit Action Plan/Transportation Planner	The funds from this Transportation Planning Grant will be used to develop a Transit Action Plan (\$150,000) for the City of Malden and to subsidize the salary of the City’s new Transportation Planner (\$50,000) over two years.	\$ 200,000
Malden	SIG	A	Malden Fire Department Public Safety Upgrade	Malden is seeking to purchase a new fire engine equipped with a built-in, automatic, rapidly deployed firefighting foam system to extinguish flammable liquid fire. This equipment would improve Malden’s response time in a HazMat situation in a densely populated region which has experienced strong economic growth resulting from Encore’s opening.	\$ 500,000
Masshire	WFG	A	Metro Boston Regional Gaming and Hospitality Consortium	MBRGHC is a regional project aimed at addressing the workforce needs of the hospitality sector impacted by the Encore Boston Harbor gaming facility. A consortium of partners will provide career and employment services, ESOL and occupational skills training to prepare local residents for high quality hospitality careers.	\$ 450,000
Medford	TCG	A	Wellington Greenway Phase IV	This grant will construct the last phase of the Wellington Greenway, a 0.3-mile path that will connect local residents/employees to the Encore Resort via waterfront paths along the Mystic and Malden Rivers.	\$ 945,000
Medford	NTPG	A	Creation of a Local Business Technical Assistance Program	Contract consultant services to create and launch a program to assist businesses to access funds and benefits designated through the Surrounding Community Agreement for the benefit of Medford businesses.	\$ 100,000
Northampton	NTPG	B	"northampton.live" Marketing Program 2020	This application seeks funding to continue the “northampton.live” marketing web platform which is the City’s first marketing program and has proven to be an informative web site messaging thousands of viewers near and far as well as using social media sites to target visitors. Northampton’s entertainment and retail attractions attract over 1.4 million people annually supporting hundreds of jobs and generating over \$8 million in annual state and city tax revenues.	\$ 100,000
Revere	NTPG	A	Hospitality Advocate	With MGC NTP funds the City of Revere will establish and sustain for 18 months, a new position in the Department of Strategic Planning and Economic Development to coordinate and facilitate business to business connections between Revere hospitality venues, regional travel and tourism and the Encore Boston Harbor Casino.	\$ 100,000
Revere & Saugus	TCG	A	Design and Construction of Limited Improvements to Route 1 North	Revere and Saugus seek this MGC construction grant to undertake limited improvements to the Route 1 north right of way just beyond the planned relocation of exit and entrance ramps to Salem Street in the Overlook Ridge development. This project grown out of previous MGC Joint Transportation Planning grant results.	\$ 500,000
S.E. Reg. Planning & Eco. Dev. District	TPG	Tribal	Technical Assistance	SRPEDD will provide technical assistance to communities affected by the operation of the potential Tribal Gaming facility.	\$ 200,000
Saugus	NTPG	A	Casino Related Business Development Specialist	Saugus will use these funds to create a business development specialist position in the Planning and Development Department. The staffer will be responsible for growing business connections between Encore Boston Harbor. The grant will fund the position for two years; it will then be included in the Town budget.	\$ 100,000

2020 Summary of Community Mitigation Fund Grants

Applicant	Grant Type	Region	Project Name	Project Description	Amount Requested
Revere & Saugus	TPG	A	Advanced Planning and Design of Route 1 Traffic Improvements	The City of Revere and the Town of Saugus seek funding to continue development of Route 1 improvements plans, including the surrounding transportation network impacted by the operation of the Encore Boston Harbor Casino. The effort will build upon valuable information and planning tools realized through prior Joint MGC Grants.	\$ 425,000
Springfield	SIG	B	Implementation of Blueprint 2020 Priority Initiative Advancement	Building on initial efforts from 2019, the project will focus on advancing the most critical and pressing catalytic economic development initiatives in downtown to mitigate the lack of new private investment due to the unexpected inflation, speculation, and degradation of real estate in downtown surrounding MGM Springfield.	\$ 500,000
Springfield	SIG	B	City Stage Capital Improvements and System Upgrades	Performing significant capital improvements and system upgrades to the City Stage Unit located in downtown Springfield. City Stage is a publically-owned, multi-use cultural and entertainment venue, that includes a Main (approx. 500 seat) Theater and a Black Box studio theater.	\$ 300,000
Springfield	SIG	B	Springfield Fire Department - TAC Unit Implementation	Funding will enable us to keep TAC Unit (tactical emergency response vehicle) in service with two firefighters 24/7.	\$ 436,602
Springfield	SIG	B	Springfield Police Department	Equipment for Springfield Police Department's Metro Unit.	\$ 124,325
Springfield - Revenue Rec.	SIG	B	Springfield Parking Authority - Revenue Recovery to Conduct Updated Parking Demand and Feasibility Studies	Using recovered parking revenue to conduct updated parking demand the feasibility studies downtown, in furtherance of solutions that reestablish sources of revenue for the Parking Authority, and more effectively locate shared, convenient and proximate parking in areas of high demand, while freeing up current abundant open land for critical redevelopment.	\$ 100,000
West Springfield	SIG	B	Police and Fire/EMS Direct Impact	Funding for additional Police and Fire/EMS personnel hired to increase staffing for the impact to municipal services resulting from the opening of the MGM casino in Springfield, MA	\$ 200,000
West Springfield	TPG	B	Main Street Complete Streets Project	This project will design a Complete Streets roadway for the Main Street corridor which connects the Merrick Neighborhood to the two primary travel routes through West Springfield to the MGM Casino. This will include improved and safer access to public transit, pedestrian circulation bicycling accommodations and traffic calming.	\$ 200,000
West Springfield	TCG	B	Park Street/Park Avenue Complete Streets	Complete Street Transportation Improvements to the Park Avenue (Rte 20) and Park Street (Rte 20) corridors from the Elm Street (Rte 20)/Union Street intersection to the North End Rotary.	\$ 1,000,000
West Springfield	NTPG	B	Marketing Video Campaign	Create a series of videos to market West Springfield's Attractions, Businesses and Amenities.	\$ 50,000

\$ 13,410,794

Legend

SIG - Specific Impact Grant

TPG - Transportation Planning Grant

TCG - Transportation Construction Grant

NTPG - Non-Transportation Planning Grant

WFG - Workforce Grant

***Carry Forward - Not new dollars**

(\$200,000)

\$ 13,210,794

**2020 Transportation-Related Applications
Community Mitigation Fund Program
Massachusetts Gaming Commission**

**Transportation Planning Grants
MassDOT Review Comments**

Boston - *Sullivan Square/Rutherford Avenue*

MassDOT supports the City of Boston's request for \$200,000 for costs associated with the redesign of Sullivan Square/Rutherford Avenue. The City had previously developed a design for the reconstruction of this area, but the development of the Casino necessitated a new design that could accommodate the additional anticipated traffic. The total cost of the full redesign is \$11,000,000. A large portion of the project is federally funded. This grant supplements the amount that the City must contribute.

MassDOT notes that the City has received \$650,000 in CMF grants in previous years for the ongoing redesign work being conducted by their hired consultant. However, the City provides little detail in the application regarding the progress that has been made thus far. The application would be much stronger if such information was included.

Everett/Somerville - *Silver Line Design*

MassDOT supports the Cities of Everett and Somerville's request for \$425,000 for the advancement of engineering design for city-owned streets and infrastructure to accommodate an extension of the MBTA's Silver Line and other transit services. However, we question the timing of the request. MassDOT has authorized a planning study for an extension of the Silver Line through the same area proposed in the application. The study will identify alignment alternatives and develop concept designs for the extension. This study would serve as the basis for any future design work. The planning study is scheduled to begin this spring and will take 18 months to complete. MassDOT is concerned about the utility of any detailed design work completed for a Silver Line extension before the planning study's completion. We view as most efficient for any design work conducted through this grant to be done after the planning study's completion.

Everett - *Gondola*

MassDOT has reservations regarding the City of Everett's request for \$200,000 to evaluate the feasibility of constructing a gondola along Broadway from the casino to Everett City Hall. The Encore Casino is separately studying the feasibility of using a gondola to serve as a means to cross the Mystic River instead of the originally proposed pedestrian bridge. This study would consider the feasibility of a gondola north of the casino to address the need for additional transit infrastructure in this area. While this is an innovative idea, MassDOT believes that there may be more cost-effective investments to improve or expand existing transit options in the area.

Lynn - *Western Avenue Reconstruction*

MassDOT supports the City of Lynn's request for \$200,000 to continue the traffic analysis and conceptual design of infrastructure improvements along Western Avenue. The study area includes 1.3 miles of Western Avenue between Centre Street and Chestnut Street. The work completed with this grant would be an extension of work conducted using CMF grant funding awarded in 2017. MassDOT initiated the Western Avenue Rehabilitation Project in Lynn in 2018. The City is responsible for funding the design of this project. This grant would allow them to complete a 25% design submission to MassDOT.

**2020 Transportation-Related Applications
Community Mitigation Fund Program
Massachusetts Gaming Commission**

Malden - *Transit Action Plan and Planner*

MassDOT supports the City of Malden's request for \$200,000 for the development of a Transit Action Plan and to subsidize the cost of hiring a new Transportation Planner. The Transit Action Plan would build upon a planning study completed using a CMF grant awarded in 2016. The previous study indicated a need for increased parking supply in Malden, but the City would like to seek alternative solutions. MassDOT supports Malden's intention to investigate transit improvements versus new parking. The application describes the Transportation Planner's duties adequately and the scope of the Transit Action Plan appears to be comprehensive. The City should coordinate with MassDOT and the MBTA as appropriate in the development of proposed transit improvements.

Saugus/Revere - *Route 1 Improvement*

MassDOT has reservations on the Saugus and Revere's request for \$425,000 to continue the development of improvements to Route 1. This work would be a continuation of efforts completed through prior CMF grants awarded in 2017, 2018, and 2019, but would focus on transportation improvements that can be made in the near future. The application demonstrates that progress has been made using the 2017 and 2018 grants, though some funds still remain available from those grants. For the 2019 grant, scope elements do not appear to have been started yet. The applicant should demonstrate that work is underway using the 2019 award before additional funds are awarded.

West Springfield - *Complete Streets on Main Street*

MassDOT supports the request of the Town of West Springfield for \$200,000 to design a Complete Streets roadway along the Main Street corridor. This corridor connects local neighborhoods with a direct travel route to the casino. The design will include improved and safer access to public transit, better pedestrian circulation, bicycling accommodations, and traffic calming. The application included proposals from consultants that seem reasonable and indicate the Town's commitment to completing the study. The funds will allow West Springfield to make a 25% design submittal to MassDOT. This work supports MassDOT's Complete Street Policy and overall goal to provide improved pedestrian and bicycle facilities.

**2020 Transportation-Related Applications
Community Mitigation Fund Program
Massachusetts Gaming Commission**

**Transportation Construction Grants
MassDOT Review Comments**

Boston - Brighton and Cambridge Street Reconstruction

MassDOT supports the City of Boston's request for \$533,900 to reconstruct the intersection of Brighton Street and Cambridge Street in Charlestown. The City seeks to create safer crossings for pedestrians and bicyclists, as well as better sight lines for turning vehicles. This project is consistent with MassDOT's goal to improve multimodal transportation. The City submitted a consultant scope and budget for the work, indicating that it can be done in a timely manner and within the proposed funding amount. This project location is very close to MassDOT's Rutherford Avenue Reconstruction Project. The proposed project could enhance this project and further improve safety in the project area.

Chelsea - Beacham and Williams Street Reconstruction

MassDOT supports the City of Chelsea's request for \$1,000,000 to reconstruct Beacham Street and Williams Street, from Spruce Street to the City of Everett border. In addition to roadway reconstruction, the project will include intersection upgrades and the installation of pedestrian and bicycle facilities. The grant would supplement several other funding sources for the project, as the total project cost is approximately \$11,800,000. This project was originally included in the MassDOT Complete Streets Prioritization Plan, and the project was subsequently reviewed and approved by the Boston MPO in their Transportation Improvement Program (TIP).

Since that time, the City of Chelsea Planning & Development Department secured a \$3 million grant for this project from the Federal Economic Development Agency. As a result, the City decided to combine this money with other funding sources to complete the project and requested to have the project removed from the Boston MPO's TIP. The City is covering \$7,300,000 of the project cost, leaving a gap in about \$1,500,000 in necessary funding. The City has also applied for \$500,000 of funding through the CMF's Specific Impact Grant.

The application included a comprehensive consultant project scope and budget. The detailed quote seems representative of the project description and demonstrates a commitment to completion of the project on behalf of the City. This project is based on a planning study that was conducted using funds from a CMF Transportation Planning Grant awarded in 2018.

Everett - Northern Strand

MassDOT supports the City of Everett's request for \$1,000,000 for the extension of the Northern Strand Community Trail to the Mystic River and other existing paths. This project would extend the existing shared use path from Wellington Street in Everett to the Mystic River, providing a safer means of walking and bicycling from the Casino area to the Gateway Shopping Center and the City of Boston. This travel is currently completed via Lower/Upper Broadway and Sweetser Circle, which is challenging for active transportation users. Planning and design for this project was partially funded by a CMF Transportation Planning Grant awarded in 2016. This project is consistent with the aims of MassDOT to improve multimodal transportation.

**2020 Transportation-Related Applications
Community Mitigation Fund Program
Massachusetts Gaming Commission**

The application provides a consultant design and budget, showing a total construction cost of \$3,900,000. The developer of the Gateway Shopping Center is providing \$2,300,000 in accordance with its Chapter 91 requirements. The City has allocated an additional \$1,200,000 towards the project in its Capital Investment Plan (CIP). While this leaves only a \$400,000 gap in funding, the applicant is asking for \$1,000,000 to cover anticipated overages. Given that this grant program is limited to a certain funding total and there are many applicants, the City should better detail the need for funding above what has been budgeted by their consultant.

Lynn - Traffic Signals

MassDOT has reservations on the City of Lynn's request for \$750,260 for signal upgrades at up to 53 intersections. The work will include retiming of signals, optimizing traffic operations, and repairing or replacing equipment at various locations. The proposed project builds upon a planning study conducted using a CMF Transportation Planning Grant in 2017. As specified in the application, although Lynn does not directly surround the casino, the community is home to many casino employees that add strain to the transportation network in addition to actual patrons. The construction funds would be used in part for the design and preparation of bid documents. Although an order of magnitude budget is provided, the application does not provide any detailed design or budget from a consultant. Without this, it is difficult to know whether the requested funding is enough to complete the proposed project, or whether project construction can begin by the MGC's June 30, 2021 deadline. Finally, two MassDOT projects are currently programmed in Lynn, which involve the reconstruction of two intersections. The proposed work has the potential to enhance the improvements being implemented through these projects. Lynn should coordinate with the MBTA on this project, as several bus routes utilize these roadways.

Medford - Wellington Greenway

MassDOT supports the City of Medford's request for \$945,000 to complete the Wellington Greenway. The project would fill the 0.3 mile gap that comprises the last phase of the greenway. It would connect local residents and employees to the casino via waterfront paths. The applicant provided a schedule and consultant design which indicated the project could be completed promptly and within the proposed budget. Medford has already submitted the necessary Notices of Intent (NOI) with the Medford Conservation Commission, demonstrating commitment to completing the project. The City is providing \$250,000 of its own funds to complete the project. The proposed project aligns with MassDOT's commitment to the improvement of bicycle and pedestrian facilities. The City would need to coordinate with MassDOT and the MBTA as appropriate, given the vicinity of the MBTA Orange Line Wellington Station.

Revere/Saugus - Right-of-Way improvements on Route 1

MassDOT supports Revere and Saugus's joint request for \$500,000 to make improvements to the Right-of-Way along a portion of Route 1. The project would provide pedestrian improvements and curb management solutions on Route 1 northbound between Linehurst Street and Lark Avenue. Taken together, the effort intends to alleviate the bottleneck that occurs during peak hours at this location. The sidewalk infill proposed as a part of this project is consistent with MassDOT's aim to improve pedestrian facilities. It should be noted that the provided schedule shows construction beginning after the MGC's deadline of June 30, 2021. All proposed work should be coordinated with MassDOT and a permit will be required.

**2020 Transportation-Related Applications
Community Mitigation Fund Program
Massachusetts Gaming Commission**

West Springfield - Complete Streets on Route 20

MassDOT supports the Town of West Springfield's request for \$1,000,000 to be used for Complete Streets improvements to the Park Avenue and Park Street (Route 20) corridors. The project would extend from the Elm Street (Route 20)/Union Street intersection to the North End Rotary. Specific project elements include signal improvements, a multi-use path, a relocated bus stop, and roadway milling/resurfacing. The total project cost is \$3,161,000. West Springfield plans to cover the remaining \$2,160,000 project costs with other funding sources; though no specific sources have been secured at this time. Design for this project was conducted using funding from a CMF grant awarded in 2018. The project would address casino-related traffic while encouraging mode shifts to transit, walking, and bicycling.

The project area is listed in both MassDOT's 2019 Bicycle Plan and 2019 Pedestrian Plan as "Highest Potential for Everyday Biking" and "Highest Potential for Walkable Trips". The project also adheres to MassDOT's Complete Streets Policy. MassDOT District 2 provided a Letter of Acknowledgment of these multimodal improvements to the Town on January 31, 2020. The proposed work builds on multimodal improvements MassDOT made at various rotaries along Route 5 and other multimodal improvements made by the MGM Casino along Route 20 in Springfield.

Specific Impact Grants

Chelsea - Beacham and Williams Street Reconstruction

MassDOT supports the City of Chelsea's request for \$500,000 to reconstruct Beacham Street and Williams Street, from Spruce Street to the City of Everett border. In addition to roadway reconstruction, the project will include intersection upgrades and the installation of pedestrian and bicycle facilities. As discussed above, the City has also applied for \$1,000,000 of funding for this project through CMF's Transportation Construction Grants.



PLAINRIDGE PARK
CASINO

April 14, 2020

SENT VIA E-MAIL

Mary S. Thurlow, Program Manager
Massachusetts Gaming Commission
101 Federal Street, 23rd Floor
Boston, MA 02110

Re: 2020 Community Mitigation Fund Applications

Ms. Thurlow,

As requested, we have reviewed the application for funding from the 2020 Community Mitigation Fund (the "Application") from the City of Foxboro. The Application makes claims about the impact of Plainridge Park Casino on traffic related accidents, congestion, disabled and wayward motorists in the Town of Foxboro. We have not independently assessed these claims and, thus, take no position on them. As you are aware, Plainville Gaming and Redevelopment, LLC ("PGR") has conducted a series of impact studies, including traffic studies, pursuant to its host and surrounding community agreements (the "Impact Studies"). The findings set forth in these studies have confirmed that PGR has been under the projected traffic counts through 2019 and the number of accidents/crashes at the Route 1/ Route 152 intersection have decreased with road improvements. We therefore refer you to the findings set forth in the Impact Studies.

Please do not hesitate to contact me with any questions.

Sincerely,

Lisa McKenney
Compliance Manager

[508] 576-4409

lisa.mckenney@pngaming.com

From: [Stacy Amaral](#)
To: [MGCcomments \(MGC\)](#)
Subject: Community Mitigation Fund Applications
Date: Tuesday, February 25, 2020 2:46:38 PM

To Whom It May Concern;

As a resident of Admiral's Hill here in Chelsea I frequent Beacham and William Streets both as a pedestrian and a driver.

I want to encourage the improvements on these roads as they are quite dangerous to all. The traffic which includes big trucks often makes it difficult for residents to walk, to cross the streets and to drive.

Thank you for your attention,
Stacy Amaral
50 Boatswains Way, #401, Chelsea

Forwarded to Mary T. on February 25, 2020

From: [Mayra Balderas](#)

To: [MGCcomments \(MGC\)](#)

Subject: I support the 20/20 Community Mitigation Fund application for me is important to get the fund to make the changes for the student safety. THANK YOU! Mayra Balderas.

Date: Thursday, February 27, 2020 4:01:50 PM

From: [Mimi Callum](#)
To: [MGCcomments \(MGC\)](#)
Subject: Reconstruction of Beacham and Williams Streets from intersection with Spruce Street in Chelsea to Everett City line
Date: Wednesday, February 26, 2020 11:45:30 AM

Good morning,

I am a Chelsea resident as well as a member of Chelsea Greenroots, living on Admiral's Hill in Chelsea. Spruce Street is close to my home and i travel by car onto Beacham Street to access the bank and post office that are located on Beacham Street. I used to try walking along the road on Beacham Street, but it is a scary prospect, where the 18+ wheeled trucks are alongside of the pedestrian. And now, the trucks are even longer and appear as their weight is more uneven. The road is uneven; no sidewalks; flooding so driving a car when it rains or after, you cannot see the potholes!

There is a need for significant **pedestrian and cycling improvements** through construction funding to finance reconstructing: **drainage to increase capacity and add small, local tide gates; sewer rehabilitation; water system improvements; roadway reconstruction; installation of sidewalks and a multi use path; and intersection modifications.** This would help to mitigate flooding in the area and improve safety for all users.

Thus, whatever monies you can allocate to this project would be greatly appreciated. Thank you.

Mimi L. Callum
28 Boatswains Way
Chelsea, MA 02150

Forwarded to Mary T. on February 26, 2020



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877-GETS-JOE

Executive Vice- President

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Colwen Hotels

Beth McDougal
McDougal Architects

Paul Nowicki
Chelsea Housing Authority

Kelina Orlando
*Beth Israel Deaconess Medical
Center*

6 March 2020

Cathy Judd-Stein, Chair
Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, Massachusetts 02110

Re: *City of Chelsea 2020 Community Mitigation Fund Application*

Dear Chairperson Judd-Stein and Honorable Commissioners,

On behalf of the Chelsea Chamber of Commerce, I'm writing to express strong support for the City of Chelsea's application to the Transportation Construction Grant and Specific Impact Grant Programs for the comprehensive reconstruction of the Beacham/Williams Corridor in Chelsea, MA.

The Beacham/Williams Corridor is a critical thoroughfare that spans Chelsea and leads directly to the Encore Casino. A designated freight route, the corridor underpins the region's economy and local employment. Notably, it carries significant truck traffic associated with the New England Produce Center, the second largest produce distribution facility in the United States and a key employment anchor for the region. Nearby commercial districts and residential neighborhoods also heavily rely on this corridor as a connection to the region.

Since Encore Casino opened, the City has experienced adverse impacts from casino related traffic along this corridor. The Corridor contains a dense concentration of food-related distributors and manufacturers, as well as an array of smaller distribution businesses. Since the opening of the casino, the City has witnessed a sharp uptick in traffic and congestion. The growth in traffic has accelerated the deterioration of the roadway, further stressing this overburdened corridor. Moreover, it has delayed commutes for employees and negatively affected business operations. The conditions that have emerged, if left unaddressed, will hamper the local economy and degrade the quality of life in Chelsea.

Consequently, the City has sought funding from the Transportation Construction Grant Program and Specific Impact Program to mitigate these adverse effects of the casino through a comprehensive infrastructure reconstruction program. We strongly support this critical transportation effort to rebuild the Beacham/Williams Corridor.

Sincerely,

Rich Cuthie, MBA, MSF, IOM
Executive Director
Chelsea Chamber of Commerce

From: [Daisy Gonzalez](#)
To: [MGCcomments \(MGC\)](#)
Subject: 2020 Community mitigation fund application
Date: Friday, February 21, 2020 12:30:39 PM

Good afternoon,

I am emailing you in support of having streets, roads, sewer, and water system in excellent condition to live and safer and better community, if we take care of roads, sidewalks, and drainage the city will require less maintenance and less water waste, community will be safer when riding a bike or when walking, I am a resident of Chelsea for the past 30 years. Thank you,

Best regards,

Daisy Gonzalez
Immigration and Citizenship Coordinator
Chelsea Collaborative
318 Broadway
Chelsea, MA 02150
[617-889-6080](tel:617-889-6080) x 112
daisyg@chelseacollab.org

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Forwarded to Mary T. on February 25, 2020

From: [Nelson Hoffman](#)
To: [MGCcomments \(MGC\)](#)
Subject: 2020 Community Mitigation Fund applications
Date: Wednesday, February 26, 2020 10:39:50 PM

Sent from my iPhone

> On Feb 26, 2020, at 10:38 PM, Nelson Hoffman <nelsonghoffman@yahoo.com> wrote:

>

> Hello:

> As a Chelsea resident, every day bike rider and bike commuter that works in Cambridge, I travel on Williams and Beacham Streets a few times a day.

> The roads and surrounding infrastructure desperately needs reconstruction. Planning and reconstruction of these facilities would be a great invest for Chelsea and the neighboring communities.

> Thank you.

>

> Nelson Hoffman

> 175 Cottage St. U607

> Chelsea, MA

>

> Sent from my iPhone

Forwarded to Mary T. on February 27, 2020

From: [Maltez, Fidel](#)
To: [MGCcomments \(MGC\)](#)
Subject: 2020 Community Mitigation Fund Applications
Date: Tuesday, February 25, 2020 2:32:39 PM

To whom it may concern,

I am writing to express my support for the application submitted by the City of Chelsea through the Mass Gaming Commission's Transportation Construction Program for the critical project that the City will be undertaking on Beacham Street.

Beacham Street is currently dangerous and not welcoming to cyclists. However, this corridor can be an important link for cyclists to reach neighboring communities and the greater Boston area. The City will undertake a project that will include installation of a protected bike path, which will promote cycling and will have a long term impact on traffic and the environment by taking vehicles off the road.

For many years, this beautiful area on Beacham Street has also not been inviting to pedestrians. This area that currently houses a boat yard, Island End River and our Island River Park, should be a beautiful greenspace available to our residents. The City is planning to install a pedestrian path that will allow residents to enjoy our waterfront and will have long term improvements to our public health.

As a resident and employee of the City of Chelsea, I urge the Mass Gaming Commission to approve the Grant for Beacham Street in Chelsea.

Fidel Maltez | Commissioner

Department of Public Works | Chelsea City Hall
500 Broadway, Room 310 | Chelsea, MA 02150
Office: 617-466-4204 | Fax: 617-466-4210

FMaltez@chelseama.gov

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Forwarded to Mary T. on February 25, 2020

From: [Sandy Maynard](#)
To: [MGCcomments \(MGC\)](#)
Subject: 2020 Community Mitigation Fund Application
Date: Tuesday, February 25, 2020 3:52:35 PM

I live in Chelsea and would very much like to see funding given for ALL of the following:

1. The reconstruction of Beacham and Williams streets from the intersection with Spruce Street to the Everett City Line. This is very much needed for pedestrian and cycling improvements for safety.
2. Financing funding for reconstructing drainage to increase capacity and add small, local tide gates which are just as important as the larger tide gates.
3. Sewer rehabilitation, water system improvements and roadway reconstruction is also integral to community health.
4. Installation of sidewalks and multi-use paths and intersection modifications are also necessary!

As a community member of Chelsea we are in much need of the above to continue our efforts in mitigation of flooding in the area and improving the safety for all users.

Respectfully submitted,
Sandy Maynard
52 Chester Ave.
Chelsea, MA
202.486.8901

Forwarded to Mary T. on February 26, 2020

From: [Dinanyili Paulino](#)
To: [MGCcomments \(MGC\)](#)
Subject: 2020 fund mitigation application
Date: Friday, February 21, 2020 8:34:22 AM

Hello

The chelsea Collaborative is in full support of the City of Chelsea application to the Mass Gaming Commission' transportation grant program.

This project will improve our community! thanks

--

Dinanyili Paulino
Chief Operating Officer
Chelsea Collaborative
617.889.6080 ext 111

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¡Aquí Estamos y Contamos!

Forwarded to Mary T. on February 25, 2020

From: [Sylvia Ramirez](#)
To: [MGCcomments \(MGC\)](#)
Cc: [Dinanyili Paulino](#); [Allen, Karl](#)
Subject: 2020 Community Mitigation Fund applications
Date: Friday, February 21, 2020 1:27:31 PM

To whom it may concern:

I am sending this email in support of the City of Chelsea request of funding request. As a long time resident of the City, a parent and a community organizer I see the tremendous need of the improvements on Beacham and Williams Streets, specifically intersecting with Spruce.

As you know Chelsea is a very small city, residents and visitors can walk almost everywhere. Any improvements are necessary for the safety of all pedestrians.

Please consider funding the City of Chelsea.

Thanks in advance for your consideration and your time.

Sylvia Ramirez

Sylvia Ramirez

Pronouns: she/her/hers



¡Aquí Estamos y Contamos!

Workforce Development Manager

Chelsea Collaborative

617.889.6080 x106

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Chelsea gets ready: transforming lives through teaching and guiding towards a future full of opportunities for economic advancement.

Forwarded to Mary T. on February 25, 2020

From: [John Valinch](#)
To: [MGCcomments \(MGC\)](#)
Subject: 2020 Community Mitigation Fund applications
Date: Wednesday, February 26, 2020 11:50:24 AM

Dear Mass Gaming Commission,

I'm writing to communicate my support for the City of Chelsea's application for the Mass Gaming Commission's Transportation Construction Grant Program and Specific Impact Grant Program. Chelsea is an environmental justice community, which means that its people have historically had to bear the burden of industrial development and underinvestment, contributing to deleterious health impacts . As a lifelong resident, I know that it takes hours of hard work and commitment to build our city to achieve the renaissance the city is enjoying today. With the financial support of the Mass Gaming Commission, Chelsea could continue to build a vibrant, thriving, and dynamic city that is more responsive to the ongoing impact of climate change on our city. Please help us make that a reality.

Thank you for your consideration,

--

John Valinch *MPP, MBA*
(617) 716-9987

Forwarded to Mary T. on February 26, 2020

From: [Gladys Vega](#)
To: [MGCcomments \(MGC\)](#)
Subject: 2020 Community Mitigation Fund Applications
Date: Tuesday, March 3, 2020 6:17:46 PM

Dear Mitigation Committee:

I am writing to inform that the Chelsea Collaborative is in full support for the grant proposal put forth by the City of Chelsea.

The Chelsea Collaborative is the only Latino-led organization in Chelsea. We implement a collection of community initiatives – developed and led by residents – to address persistent issues of inequity, which negatively impact the well-being of Chelsea residents, particularly those most vulnerable among us such as children, immigrants, and refugees.

For us is very important that we address the significant pedestrian and cycling improvements through construction funding. In order to finance reconstructing. This key as many of our members do not own their own vehicles and most likely will walk or ride a bike to work.

Also, the increased capacity sewer rehabilitation; water system improvements; roadway reconstruction; installation of sidewalks and a multi-use path; and all intersection modifications are key in order for us to improve Chelsea antiquated infrastructure.

This is a necessary first step in our efforts to mitigate flooding in the area and improve safety for all users. The Chelsea Collaborative is very committed to working with the City as all these projects are necessary for well being of City and our people many who are pedestrians.

Currently, we are partners in many of community enhancement efforts and would truly love for our city to maximize their Chelsea's land-use opportunities, improve our walkways and have a sidewalk that can be used as part of recreational spaces, we need to create all forms of environmental and scenic resources. It is clear that in order to meet this goal, it is imperative to work with the City of Chelsea to get this Mitigation Fund approved.

Mil Gracias!!! Gladys Vega, Directora de La Collaborativa



¡Aquí Estamos y Contamos!

Gladys-Cell# 857-334-5925. Office#617.889.6080 x101

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Forwarded to Mary T. on March 4, 2020

Miller & Chevalier

Independent Compliance Monitor Summary of Baseline Assessment Report

Alejandra Montenegro Almonte
(with Preston L. Pugh and Ann K. Sultan)

May 21, 2020

Agenda

- Introduction
 - Goals of baseline assessment
 - Summary of review and testing activities
 - Overall observations
- Company's risk profile
- Findings by compliance hallmark
- Concluding observations
- Q&A

Goals of Baseline Assessment

- Assessment of whether the Company's Human Resources Compliance Program (HRCP) is designed to prevent, detect, and respond to harassment and discrimination risks that threaten the well-being, safety, and welfare of Company
- To this end, the Monitor Team evaluated the HRCP based on the following well-established hallmarks of an effective compliance program:
 - Culture of Compliance and Conduct at the Top
 - Property Authority, Oversight, and Independence
 - Policies and Procedures
 - Third Party Relationships
 - Training and Guidance
 - Internal Reporting and Investigation
 - Incentives and Discipline
 - Risk-Based Review
 - Monitoring and Testing
 - Controls Environment

Summary of Review and Testing Activities

- **Documents.** The Monitor Team reviewed over 300 documents provided by the Company
- **Interviews.** The Monitor Team conducted 27 onsite interviews of Company personnel in Boston and Las Vegas
- **Focus Groups.** The Monitor Team conducted 32 employee focus groups (totaling 200 employees) across a variety of departments and shifts in Boston and Las Vegas and asked focus group participants to complete an anonymous survey of their perceptions of the Company's HRCP

Overall Observations

- The Monitor Team observed a sincere commitment to HR compliance, including with respect to harassment and discrimination
- The Company's HRCP comprises each of the elements required for an effective program
- However, the program is not yet fully tailored to the Company's specific operations and risk profile, nor is it fully aligned to relevant enforcement guidance

Company's Risk Profile

- EEOC Risk Factors

- Workplaces that rely on customer service or client satisfaction
- Coarsened social disclosure outside the workplace
- Workplaces with significant power disparities
- Workplace cultures that tolerate or encourage alcohol consumption
- Cultural and language differences in the workplace
- Isolated workplaces

- Company-specific Risk Factors

- Past conduct
- Crisis management
- Economic factors

Culture of Compliance and Conduct at the Top

- A meaningful shift in culture and commitment to HR compliance evidenced at the highest levels of the Company
 - Personnel staffing
 - Investment in program enhancements
 - Increased transparency in reporting and handling of harassment and discrimination allegations
- Opportunities remain to more effectively communicate that cultural shift throughout the organization
- Larger casino industry presents unique challenges as the Company tries to reset what is acceptable behavior

Proper Authority, Oversight, and Independence

- Reconstitution of Compliance Committee with members who are not employees or otherwise affiliated with the Company
 - Certain factors could jeopardize Committee members ability to exercise independent judgment and oversight, although no evidence of that occurring at this juncture
- Enhanced HR organization through the creation of new Corporate-level positions
- Layers of HRCP oversight requires clarity of roles and responsibilities, particularly with respect to the Compliance Department, HR, and Legal

Policies and Procedures

- Updated sexual harassment and discrimination policy and other related policies
- Opportunities to enhance certain existing policies and its policy environment overall by adopting more detailed policies addressing other areas critical to HR compliance
- Opportunities to improve roll-out, dissemination, and communication of HR policies

Third Party Relationships

- Patrons
 - Offending behavior by Patrons presents the highest risk factor for harassment and discrimination
 - Exacerbated by larger casino industry culture and Company focus on client service
 - Policies address interactions with Patrons, but do not go to the heart of the risks identified through the Monitor Team's review
- Vendors and service providers
 - Background investigations take into account "materially derogatory information," which may include risks related to harassment
 - Anti-harassment and anti-discrimination obligations passed down through contractual provisions
- External counsel
 - Deconfliction policy issued for the avoidance of conflicts for external counsel
 - Guidance does not adequately address the possibility of conflicts between the Company and its own personnel
 - Review and approval of legal engagements not formally documented in written procedures

Training and Guidance

- Considerable resources dedicated to HR training program
- Mandatory training program covering anti-harassment, anti-discrimination, and diversity and inclusion
 - Surveys and focus groups suggest training has been well-received but additional training is required
- To ensure the effectiveness of its training program, the Company should also identify methods to test its training program

Internal Reporting and Investigation

- Various reporting channels available for employees and third parties to report suspected violations of HRCP
 - Reporting channels work and are used by employees in Boston and Las Vegas
 - Opportunities for more effective communication and promotion of reporting channels, particularly in Boston
- Investigations protocol guides response to and investigation of harassment and discrimination complaints
 - Opportunities to enhance guidance to ensure investigations are conducted effectively, consistently, and in line with elements that the EEOC and MCAD have prioritized

Incentives and Discipline

- Measures in place to discipline employees who violate Business and Personal Codes of Conduct and HR policies
- Monitor Team has seen evidence of such discipline, including of senior personnel
- Opportunities to enhance formal guidance to avoid inconsistency and lack of uniformity in disciplinary decisions
- Several programs in place to promote values and standards of behavior
- Formal performance management procedures underway to drive desired behaviors

Risk-Based Review

- Reporting channel and investigations review processes offer the on-going visibility into HR-specific risk factors as they materialize
- However, no formal HR risk assessment process focused on detecting harassment and discrimination factors from the bottom-up
- Opportunities to leverage risk physical security assessments to conduct security assessment focused on identifying conditions that could expose employees to heightened risks of sexual harassment and assault
- Internal Audit annual risk assessment includes certain HR processes and factors such as integrity and ethical values and may also be leveraged to help identify HR-related risks

Monitoring and Testing

- Weekly reporting of harassment allegations elevated to the General Counsel and external counsel
- Quarterly reporting of harassment and discrimination allegations elevated to Compliance Committee along with aggregated data to help analyze trends
- No systemic monitoring or testing of other HRCP elements to ensure that it is designed and implemented effectively

Controls Environment

- Litigation settlements
 - Settlement Memorandum issued in September 2019 announced that confidentiality provisions in settlements with the Company cannot restrict claimants of sexual harassment and other sexual offenses from discussing the factual allegations underlying their claims
 - Standard legal settlement agreement includes modified confidentiality provision
 - Changes only partially remediate the issues identified by the MGC
 - Opportunities to enhance control environment around the use of settlement agreements
- Management of external counsel
 - Opportunities to enhance control environment around the engagement of external counsel as well as review and approval of external counsel invoices

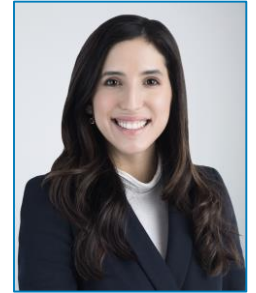
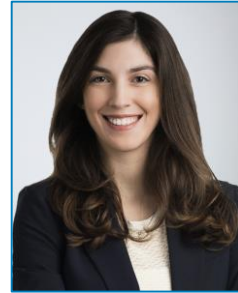
Concluding Observations

- The Monitor Team commends the Company for its commitment and investment in its HRCP
- The current HRCP already includes key elements of an effective compliance program
- Recommendations are designed to help the Company enhance, formalize, and mature its current structure to ensure that is tailored to the Company's specific operations and risk profile.

Next Steps

- Monitoring of implementation of Baseline Recommendations
- Continued monitoring and testing focused on risks and opportunities identified in Baseline Assessment
- Testing of areas not fully covered in Baseline Assessment

Monitor Team



Alejandra Montenegro Almonte
International Dept.
Vice Chair
Independent Monitor

Preston L. Pugh
Member
Deputy Monitor

Ann Sultan
Member

Katherine E. Pappas
Counsel

Aiysha S. Hussain
Counsel

Nicole Gökçebay
Associate

WYNN RESORTS, LIMITED AND WYNN MA, LLC INDEPENDENT COMPLIANCE MONITOR BASELINE ASSESSMENT REPORT

May 8, 2020

Alejandra Montenegro Almonte

Miller & Chevalier

900 16th Street NW
Washington, DC 20006
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LIST OF SELECTED TERMS

CEO	Chief Executive Officer.
CFO	Chief Financial Officer.
CGCO	Chief Global Compliance Officer.
Code of Business Conduct	Code of Business Conduct and Ethics.
Commission or MGC	Massachusetts Gaming Commission.
Company	Wynn Resorts, Limited and its affiliates Wynn MA, LLC and Wynn Las Vegas, LLC.
Compliance	Compliance Department.
Covered Entities	All vendors, consultants, lobbyists, independent hosts, independent agents, gaming promoters, and key gaming employees.
Decision and Order	Massachusetts Gaming Commission’s April 30, 2019 Decision and Order, In the Matter of Wynn MA, LLC.
DOJ	U.S. Department of Justice.
EBH	Encore Boston Harbor.
EEOC	U.S. Equal Employment Opportunity Commission.
Encore Report	Company’s February 2019 submission to the MGC, Wynn Resorts and Encore Boston Harbor: Continuous Suitability and Commitment to the Commonwealth.
ER	Employee Relations Department.
GC	General Counsel.
HR	Human resources or the Human Resources Department.
Human Resources Compliance Program or HRCP	Human resources policies, procedures, and corporate governance structures.
IEB	Massachusetts Gaming Commission’s Investigations and Enforcement Bureau.
Investigative Report	March 2019 Investigative Report Regarding Ongoing Suitability of Wynn, MA LLC.
Legal	Legal Department
Macau	Macau Special Administration Region of the People’s Republic of China.
MCAD	Massachusetts Commission Against Discrimination.
Monitor	The Independent Compliance Monitor for Wynn MA, LLC, Alejandra Montenegro Almonte.
Monitor Team	Alejandra Montenegro Almonte and other Miller & Chevalier attorneys with responsibility for the monitorship include Deputy Monitor Preston L. Pugh, as well as Ann K. Sultan, Katherine E. Pappas, Aiysha S. Hussain, and Nicole D. Gökçebay.
PAD	Public Area Department.

Patron	An individual who visits a Wynn Resorts property for various entertainment-related activities, including use of facilities or staying as an overnight guest.
RFR	Request for Response for the Independent Monitor.
SPI	Suspension Pending Investigation.
SVP	Senior Vice President.
SVP of HR	SVP of HR-North America
VP	Vice President.
Wynn Las Vegas	Wynn Las Vegas and Encore Las Vegas.
Wynn MA	Wynn MA, LLC.
Wynn Resorts	Wynn Resorts, Limited.

I. Introduction and Overview

Alejandra Montenegro Almonte of Miller & Chevalier Chartered, the independent compliance monitor (the “Monitor”)¹ for Wynn MA, LLC (“Wynn MA”) and its parent Wynn Resorts, Limited (“Wynn Resorts”) (collectively, the “Company”), and her team from Miller & Chevalier Chartered, submit this baseline assessment (the “Baseline Assessment”) pursuant to the requirements of the Massachusetts Gaming Commission (the “Commission” or the “MGC”) as set forth in its April 30, 2019 Decision and Order, *In the Matter of Wynn MA, LLC* (the “Decision and Order”) and in the Request for Response for the Independent Monitor (the “RFR”).² The MGC appointed the Monitor as a condition of the Company’s licensing in Massachusetts in connection with the Company’s operation of Encore Boston Harbor (“EBH”).

The Baseline Assessment details the steps taken by the Monitor Team to review and evaluate the Company’s Human Resources policies, procedures, and corporate governance structures (together, the “Human Resources Compliance Program” or “HRCP”) and summarizes the Monitor Team’s observations and recommendations for enhancements to the HRCP. Consistent with the Work Plan submitted to the MGC on October 4, 2019, the primary goal of the Monitor Team is to assess whether the HRCP is designed to prevent, detect, and respond to allegations of actions that threaten the well-being, safety, and welfare of Company employees, as well as actions that violate applicable laws and breach public trust. An integral part of that requires an assessment of the adequacy of the Company’s control environment as it relates to matters identified in the Decision and Order.

Since 2018, the Company has taken a number of steps to bolster its HRCP, including making significant changes to its executive team and its Board of Directors, revising existing policies, designing new policies, and enacting organizational changes related to oversight and management of the HRCP.³ The MGC’s Investigations and Enforcement Bureau (the “IEB”) acknowledged these remedial measures in the investigative report it submitted to the Commission.⁴ The Commission also recognized the “multitude of policy and organizational changes [made by the Company] to address employee safety and training,” but at the same time, acknowledged that “[w]hile there is evidence of the reformed and improved business practices, more is required, and close monitoring will be necessary to ensure that there always remains clear and convincing evidence that sound business practices are in place to help ensure the Company workforce is provided with a safe environment.” Decision and Order at 42-43.

In the Baseline Assessment, the Monitor Team notes various observations regarding both areas of strength in the Company’s HRCP and areas requiring continued improvement. Detailed observations and recommendations can be found in the body of the Baseline Assessment, but some key issues bear discussion here.

¹ Other Miller & Chevalier attorneys with responsibility for the monitorship include Deputy Monitor Preston L. Pugh, as well as Ann K. Sultan, Katherine E. Pappas, Aiysha S. Hussain, and Nicole D. Gökçebay (collectively, the “Monitor Team”). The team receives significant support from paralegals, primarily Alexis C. Zhao and Sara El Hashem, and Miller & Chevalier attorneys Kathryn Cameron Atkinson and Mary Lou Soller act in an advisory capacity for the Monitor Team.

² RFR#MGC-2019-Wynn/COMMBUYS bid# BD-19-1068-1068C-1068L-39534.

³ EBH, *Wynn Resorts and Encore Boston Harbor: Continuous Suitability and Commitment to the Commonwealth*, MGC at 10 (Feb. 12, 2019), <https://massgaming.com/wp-content/uploads/Wynn-Resorts-White-Paper-2.12.19.pdf> (the “Encore Report”).

⁴ MGC, *Investigative Report Regarding Ongoing Suitability of Wynn MA, LLC*, Wall Street J. at 4–5, 197–98 (Mar. 15, 2019), <https://www.wsj.com/edition/resources/documents/print/A.%20FINAL%20REPORT%20-%20FINAL%20REDACTED%20VERSION%203.29.19.pdf> (the “Investigative Report”).

Culture of Compliance and Conduct at the Top. Overall, the Monitor Team has seen evidence of a meaningful shift in culture at the highest levels of the organization. Senior leaders and Board members expressed a sincere commitment to human resources (“HR”) compliance generally and to the Company’s HRCP specifically. That commitment is reflected in some of the changes already implemented at the Company and in the Company’s demonstrated willingness to continue to build upon those changes. Commitment by senior leadership is particularly important in this case, where the misconduct and Company policy violations underlying the Decision and Order occurred at the highest levels of the Company and because of the larger casino industry in which the Company operates. That culture presents unique challenges for the Company as it tries to reset what is acceptable behavior, not only from its employees, but from those who visit its establishments (“Patrons”). Senior leadership acknowledges these challenges and continues to seek ways to propel its HRCP. The changes that the Company has begun to make—and the changes recommended by the Monitor Team—will, in a sense, require the Company to swim against a strong cultural tide. The Company must therefore work with focus and intention to shape the culture and expectations within its doors and to communicate unequivocally to employees that their safety and well-being takes priority above all else.

Proper Authority, Oversight, and Independence. The cultural and programmatic changes that the Company has already implemented, and the changes recommended in this Baseline Assessment require an uncompromised implementation of policies and procedures driven by independent governance and oversight of the Company’s HRCP. The Monitor Team has seen evidence of these structural changes starting to take shape. In 2018, the Company revised its Compliance Plan, reconstituted its Compliance Committee with independent members who are not employees or otherwise affiliated with the Company, and enhanced its Human Resources (“HR”) structure by creating new positions at the corporate level. With respect to the Compliance Committee, the Monitor Team has identified factors that could jeopardize the Committee’s independence as currently constituted and in the longer term. It will be important for the Company to review the selection process for future Compliance Committee members to ensure their independence from the Company not only in financial terms—as is required by the Compliance Plan—but also in more informal and personal ways that could interfere with the Compliance Committee’s ability to exercise independent judgment and oversight. It will also be important for the Company to add to the Compliance Committee a member with specific and significant expertise in implementing and directly overseeing a human resources program. With respect to the overall oversight of the Company’s HRCP, the Company will need to calibrate the delicate balance of responsibilities between the Compliance Committee, the Compliance Department (“Compliance”), HR, and the Legal Department (“Legal”) so that all functions have clear delineation of responsibility.

Policies and Procedures. The Company’s policy and procedure landscape aptly illustrates the Company’s progress and challenges. Prior to the appointment of the Monitor, the Company spent considerable time and resources enhancing its policies and procedures. Despite this considerable progress, the Monitor Team has identified some policy gaps and resulting opportunities to enhance the Company’s policy environment by adopting more detailed policies addressing other areas critical to HR compliance. Such changes include, for example, modifying the Company’s existing policies on religious and disability accommodations, clarifying aspects of the Personal Relationships Policy, and creating a pregnancy accommodation policy.

Third Party Relationships. The Company has numerous third party relationships that could impact its HRCP and which were therefore reviewed by the Monitor Team. Third parties include vendors, service providers, Patrons, and external counsel, each of which present varying degrees of risk to the Company. It is notable that focus groups and interviews identified Patrons as the principle source

of harassment and discrimination risk within the Company. The Company does have in place policies addressing interactions with Patrons, but those policies do not go to the heart of the risks identified through the Monitor Team's review and they therefore require enhancements. With respect to traditional third party relationships (e.g. vendors and service providers), the Company mitigates compliance risk—including to some extent the sexual harassment and discrimination risk—through background investigations that take into account “materially derogatory information,” which may include information on past sexual harassment and discrimination claims. The Company also passes down anti-harassment and anti-discrimination obligations through contractual provisions. A central focus for the Monitor Team was the Company's management of external counsel. The Company has issued guidance on the avoidance of conflicts for external counsel but that guidance does not yet include a specific procedure for deconfliction and for Legal review of engagements.

Training and Guidance. The Company has devoted considerable resources to its training program, including in a refreshed program covering anti-harassment, anti-discrimination, and diversity and inclusion. Surveys and focus groups conducted during the Baseline Assessment suggest that this training has been well-received, but that additional training is required, particularly function-specific training for roles and functions with responsibility for implementing or enforcing key aspects of the HRCP. To ensure that its training program effectively communicates its policies, procedures, and compliance expectations, the Company should identify methods to test its training program.

Internal Reporting and Investigation. The Company has made various reporting channels available for employees and third parties to report suspected violations of the HRCP. The Monitor Team has seen evidence that the reporting channels work and are used by employees in Boston and Las Vegas to report HR-related issues, including sexual harassment and discrimination. However, the Monitor Team noted opportunities for the Company to communicate and promote the reporting channels, including to increase employee awareness of how reporting channels work and that reports can be made anonymously and confidentially. The Company also developed an investigations protocol to respond to and investigate complaints of sexual harassment and discrimination. That protocol, however, falls short of providing the degree of guidance necessary for investigations to be conducted adequately and consistently. Additionally, the Company must develop metrics for tracking complaints from their initiation through resolution in order to more effectively perform root-cause analyses, identify trends, and take a data-driven risk-based approach to investigations. The Monitor Team makes recommendations based on applicable Equal Employment Opportunity Commission (“EEOC”) and Massachusetts Commission Against Discrimination (“MCAD”) guidance that will improve the manner in which the Company conducts investigations.

Incentives and Discipline. The Company has in place measures to discipline employees who violate the Company's Business and Personal Codes of Conduct and HR policies and procedures. The Monitor Team has seen evidence of such discipline, including of senior personnel, but notes a need for formal guidance to mitigate the risk of inconsistency and lack of uniformity in its disciplinary actions. The Company has also begun to develop formal performance management procedures, which can be powerful tools to drive desired behaviors. These procedures will include formal goal setting and evaluation procedures, which it plans to implement first at the top of the organization. The Monitor Team will continue to evaluate the Company procedures as they develop and will recommend integration of compliance-focused goals and performance metrics as a way to further embed the HRCP.

Risk-Based Review. The Company does not have in place a formal HR risk review procedure, but senior leadership has demonstrated to the Monitor Team a broad sensitivity to and understanding of the operational conditions that may create sexual harassment and discrimination risk. In order to

effectively prevent, detect, and respond to harassment and discrimination, the Company must further its efforts to assess HR risks from the bottom-up, examining the specific job-related conditions that may expose their employees to risks of harassment and discrimination. To maximize its efforts, the Monitor Team encourages the Company to leverage other functions, such as Security and Internal Audit, who may already be conducting risk assessments that could include HR factors.

Monitoring and Testing. The Company does not yet engage in systemic monitoring or testing of its HRCP to ensure that it is designed and implemented effectively. However, the Monitor Team has seen indications that the Company understands the importance of monitoring and testing activities and is investing in personnel and tools to facilitate those activities. For example, since the appointment of the General Counsel (“GC”), the Company has monitored harassment and discrimination allegations at a case-by-case level through weekly and quarterly reports created by HR. The weekly reports include all sexual harassment allegations. The quarterly reports include both harassment and discrimination allegations. While these reports provide detail and transparency to the GC (who receives the weekly and quarterly reports) and the Compliance Committee (which receives the quarterly reports), interviews indicated that the reports consume valuable resources and may not be sustainable in the long term. The Company recently has also begun to aggregate internal data that allows it to analyze trends and other important information points. Although, according to interviewees, the Company currently aggregates data manually, the Monitor Team understands that the Company will be investing in systems that permit automated analyses. The Monitor Team welcomes this initiative and will continue to evaluate the Company’s monitoring efforts. The Monitor Team also encourages the Company to test its HRCP, including through testing of the Company’s training programs and the effectiveness of its policies.

Controls Environment. In evaluating the Company’s controls environment, the Monitor Team focused on the Company’s controls as they apply to the approval of litigation settlements and the oversight and management of outside counsel. Consistent with the MGC’s mandate, the Monitor Team specifically evaluated whether the Company has in place policies and procedures related to the use of confidentiality clauses in its settlement agreements and the Company’s use of external counsel. As previously reported by the Company, it has updated its standard confidentiality clause to permit individual parties to enter settlements related to sexual harassment and discrimination to discuss facts related to their claims. The Company, however, has not formalized procedures or controls for the review and approval of settlement agreements to ensure that they incorporate the Company’s modified confidentiality clause and are otherwise appropriately used. With respect to the oversight and management of outside counsel, the Company’s purchasing matrix will need to be updated to reflect the Company’s current practices and authority levels. Overall, the Monitor Team notes room for improvement in the Company’s control environment in these respects.

II. Background

This Section sets forth the events giving rise to the Commission’s requirement of an independent compliance monitor for the Company, provides an overview of the Company’s business operations and risk profile, and describes the Monitor Team’s activities during this initial period of review.

A. Procedural History

Following an initial determination of suitability in December 2013, on September 17, 2014, the MGC awarded the resort-casino license for Eastern Massachusetts (Region A) to the Company.⁵

On January 26, 2018, the *Wall Street Journal* published an article detailing allegations of workplace sexual misconduct and sexual harassment by Mr. Wynn, who was the then-Chief Executive Officer (“CEO”) and Chairman of the Board of Wynn Resorts.⁶ Shortly after the publication of the article, the MGC launched an investigation, which was conducted by the IEB.

Specifically, the IEB investigated: (1) the suitability of individuals who potentially had knowledge of allegations of sexual misconduct by Mr. Wynn; (2) any action taken by senior or executive level management upon learning of the alleged misconduct; (3) Wynn MA’s response following January 2018 press reports on the alleged misconduct; and (4) the potential impact of the allegations upon the financial stability of Wynn MA. Investigative Report at 1–2. The IEB’s investigation culminated in a March 2019 Investigative Report Regarding Ongoing Suitability of Wynn, MA LLC, which it submitted to the MGC on March 15, 2019. Thereafter, the MGC held an adjudicatory hearing spanning from April 2 through April 4, 2019. On April 30, 2019, the MGC entered its Decision and Order confirming the suitability of Wynn MA and its license qualifiers, including CEO Matthew Maddox, Chief Financial Officer (“CFO”) Craig Billings, GC Ellen Whittemore, shareholder Elaine Wynn, and Board members Philip G. Satre, Patricia Mulroy, Betsy S. Atkins, Richard J. Byrnes, Margaret J. “Dee Dee” Myers, and Winifred “Wendy” Webb. The Decision and Order imposed upon the Company a number of conditions, including the appointment of an independent compliance monitor for the Company.⁷ We focus on that requirement here.

The Decision and Order states that the MGC shall select an independent monitor with the Company's full cooperation and at the Company's expense. It directs that the independent monitor shall “conduct a baseline assessment that will include, *without limitation*, a full review and evaluation of all policies and organizational changes adopted by the Company, as described by the Company, to the Commission as part of the Adjudicatory Record and the following business practices”:

- (a) Implementation of and compliance with all human resource or “HR” policies that reflect current best practices;
- (b) Use of retractions, mandatory arbitration provisions, gag orders, confidentiality clauses, and non-disparagement provisions of all employees, with particular attention to the use of such measures and their impact on non-executive employees;

⁵ MGC Commc’ns, *VIDEO: MassGaming takes final vote to designate Wynn MA, LLC as the designee for the Region A resort-casino license*, MGC (Sept. 17, 2014), <https://massgaming.com/blog-post/video-massgaming-takes-final-vote-to-designate-wynn-ma-llc-as-the-designee-for-the-region-a-resort-casino-license-new/>.

⁶ Alexandra Berzon, Chris Kirkham, Elizabeth Bernstein & Kate O’Keeffe, *Dozens of People Recount Pattern of Sexual Misconduct by Las Vegas Mogul Steve Wynn*, *Wall Street J.*, Jan. 27, 2018, <https://www.wsj.com/articles/dozens-of-people-recount-pattern-of-sexual-misconduct-by-las-vegas-mogul-steve-wynn-1516985953>.

⁷ MGC Commc’ns, *MGC Issues Decision and Order Regarding Suitability of Wynn Resorts and Wynn MA, LLC*, MGC (Apr. 30, 2019), <https://massgaming.com/blog-post/mgc-issues-decision-and-order-regarding-suitability-of-wynn-resorts-and-wynn-ma-llc/>.

(c) Adequacy of internal reporting and communication channels throughout the Company and their alignment with up-to-date organizational charts and reporting structures; and

(d) Use of outside counsel and maintenance of and adherence to de-conflicting policies and procedures.

Decision and Order at 50–51. The Decision and Order further states that the Monitor shall “recommend to the Company such measures and other changes necessary to correct any deficiencies identified through [the] baseline assessment” and requires the Company to comply with the recommendations, unless otherwise determined by the Commission. *Id.* at 51. The Decision and Order sets out the metrics for success of the monitorship as: “the overall wellbeing, safety, and welfare of the employees” and “the importance of compliance and communication with the regulator.” *Id.* at 50.

In May 2019, the Commission initiated the competitive bidding process to select an independent monitor. The Monitor Team submitted a response to the MGC’s RFR in June 2019. After a formal interview and hearing, it was appointed by unanimous vote of the Commission at its August 15, 2019 Open Meeting.

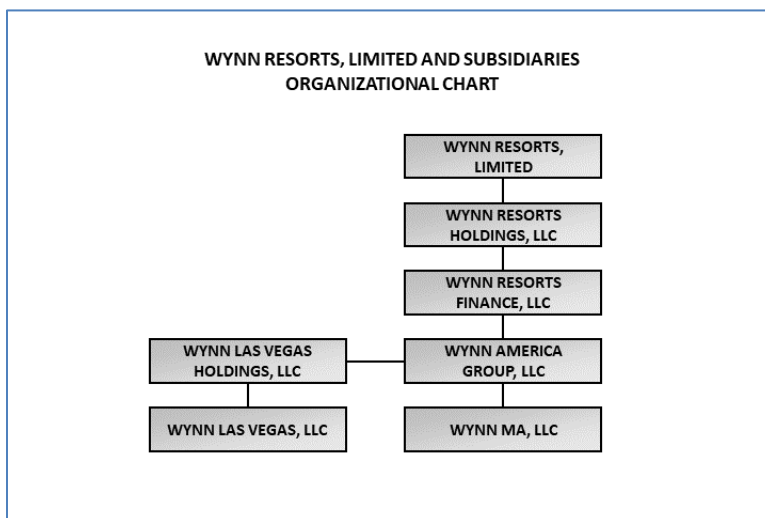
B. Overview of Company Business and Risk Profile

1. Overview of Company Business

Wynn Resorts is a Nevada-incorporated and headquartered public company that is traded on the Nasdaq Global Select Market under the symbol “WYNN” and forms part of the S&P 500 Index. Incorporated on June 3, 2002, Wynn Resorts made an initial public offering on the Nasdaq on October 25, 2002.

Wynn Resorts is a developer and operator of hotels and casinos in Massachusetts (EBH), Nevada (Wynn Las Vegas and Encore (collectively, “Wynn Las Vegas”)), and the Macau Special Administration Region of the People’s Republic of China (“Macau”) (Wynn Macau and Wynn Palace).

The Company’s current ownership structure is as follows:



According to filings with the Securities and Exchange Commission, Wynn Resorts considers itself the “preeminent designer, developer, and operator of integrated resorts” that integrate “luxury hotel rooms, high-end retail space, an array of dining and entertainment options, meeting and convention facilities, and gaming, all supported by an unparalleled focus on our guests, our people, and our community.”⁸ In its July 2019 Analyst and Investor Day presentation, Wynn Resorts listed its core values as: “[s]ervice [d]riven,” “[e]xcellence,” “[a]rtistry,” and “[p]rogressive.”⁹

For the 2019 calendar year, Wynn Resorts reported total operating revenues of \$6.61 billion and a net income of \$123 million. Of the Company’s operating revenue, \$4.6 billion (approximately 69.8%) was derived from operations in Macau, \$1.6 billion (approximately 24.7%) from operations in Las Vegas, and \$364 million (approximately 5.5%) from EBH. The Company has approximately 30,200 employees, of whom 16,400 are located in the United States and 13,800 are located in Macau.

a. Massachusetts

EBH opened its doors on June 23, 2019. The property comprises 3.1 million total square feet and includes 3,158 slot machines, 143 gaming tables, 88 poker tables, 671 luxury hotel rooms and suites, as well as non-gaming amenities such as 12 dining options, a spa and salon, shops, and business and special event facilities. EBH is headed by an executive team consisting of Brian Gullbrants (President), Frank Cassella (Chief Financial Officer (“CFO”)), and Jacqui Krum (Senior Vice President (“SVP”) and GC). Mr. Gullbrants assumed his position in October 2019, after the departure of prior President Robert DeSalvio.

There has been significant turnover in the individuals that the Company put forward as qualifiers for its Massachusetts license. The below graphic, based on the Company’s own submission to the MGC, illustrates those changes, including the onboarding of seven individuals to senior leadership and/or Board positions at Wynn Resorts. These individuals were either not with the Company or not in such senior positions in January 2018, when the allegations of misconduct by Mr. Wynn were reported by the *Wall Street Journal* (the seven individuals appear in darker boxes in the image below).

⁸ Wynn Resorts, Ltd., Annual Report (Form 10-K) 3 (Feb. 28, 2020) (“2019 Annual Report”).

⁹ *Analyst and Investor Day*, Wynn Resorts, Ltd. at 11 (July 2019), <https://wynnresortslimited.gcs-web.com/static-files/b5782973-5a07-4a4f-9379-a0edcc250175>.

	Jan. 2018	Mar. 2020
CEO	Stephen Alan Wynn	Matthew Maddox
CFO	Matthew Maddox	Craig Billings
General Counsel	Kimmarie Sinatra	Ellen Whittemore
Board Members	Stephen Alan Wynn (Chair)	Philip G. Satre (Chair)
	John J. Hagenbuch	Betsy S. Atkins
	Dr. Ray R. Irani	Richard J. Byrne
	Jay L. Johnson	Jay L. Johnson
	Governor Robert J. Miller	Matthew Maddox*
	Patricia Mulroy	Patricia Mulroy
	Clark T. Randt, Jr.	Margaret J. "Dee Dee" Myers
	Alvin V. Shoemaker	Clark T. Randt, Jr.
	John Edward Virtue	Winifred "Wendy" Webb
	D. Boone Wayson	

*Matthew Maddox is a new member of the Board of Directors, but is not highlighted because of his previous senior position with the Company

2. Risk Profile

The Company—primarily because of the casino industry in which it operates—has a workplace at high risk for harassment and discrimination. Specifically:

- ▶ **Workplaces that Rely on Customer Service or Client Satisfaction.** The EEOC has found greater harassment risk at workplaces where “an employee’s compensation may be directly tied to customer satisfaction or client service.”¹⁰ By way of example, the EEOC points to tipped workers who may “feel compelled to tolerate inappropriate and harassing behavior rather than suffer the financial loss of a good tip” and managers who may “tolerate harassing behavior rather than intervene on the workers’ behalf” to ensure customer satisfaction. *Id.* This risk factor applies to the hospitality industry at-large, and, in the Monitor Team’s assessment, emerges as the highest harassment and discrimination risk facing the Company. Indeed, in focus groups, certain employees stated that the Company’s laser focus on the “guest experience” as a paramount value has created a perception that employees must tolerate certain types of offending behavior from Patrons—especially high-value Patrons. Certain employees stated that their perception stems from the Company’s emphasis on employees being “Service Driven” and providing the highest level of service.¹¹ Some employees told the Monitor Team that the emphasis of service is unintentionally “disempowering” and leads to certain Patron behaviors going unreported by employees, especially if the offending employee is a high-value Patron. Many employees in focus groups at both properties expressed a shared view that the Company sometimes does not

¹⁰ Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace*, EEOC at 28 (June 2016), https://www.eeoc.gov/sites/default/files/migrated_files/eeoc/task_force/harassment/report.pdf (“EEOC 2016 Report”).

¹¹ Press Release, Wynn Las Vegas, Wynn Las Vegas Named the Largest Five-Star Resort in the World (Feb. 12, 2020), <https://press.wynnlasvegas.com/PRESS-RELEASES/wynn-las-vegas-named-the-largest-five-star-resort-in-the-world/s/147b9241-2342-47a3-a6f1-c490311460d8>.

effectively address offensive behavior by high-value Patrons, which only reinforces their perception that service is paramount.

- ▶ **Coarsened Social Discourse Outside the Workplace.** According to the EEOC, the environment outside a workplace can make harassment inside a workplace “more likely or perceived as more acceptable.” EEOC 2016 Report at 27. As discussed further in Section III.A.3, Las Vegas is seen as a destination where individuals can behave outside of otherwise socially-acceptable norms. This behavior does not get checked at the door. Employees at both properties, but particularly in Las Vegas, described conduct that indicates an increased risk of harassment because of the overall atmosphere in the city. Employees in focus groups confirmed this sentiment to the Monitor Team, noting that Patrons bring coarsened behaviors and attitudes with them into the Wynn Resorts properties.
- ▶ **Workplaces with Significant Power Disparities.** The EEOC recognizes that significant hierarchical power disparities create added harassment risk, specifically in workplaces where there are gendered power disparities (such as when low-ranking employees are female). According to the EEOC, this can create situations where low-ranking employees are more likely to be taken advantage of and less likely to understand complaint channels. Indeed, the issues underlying the IEB investigation and the Decision and Order were the result of a significant power imbalance. While the Monitor Team has not seen any indication that a similar situation could recur at the Company, significant gendered power disparities remain and those disparities create inherent risk of harassment, particularly in certain departments, such as Public Area Department (“PAD”) and the Food and Beverage Department.
- ▶ **Workplace Cultures that Tolerate or Encourage Alcohol Consumption.** It is unsurprising that the EEOC found that employees in “[w]orkplaces where alcohol is consumed by clients or customers” and where “client entertainment is a central component of the job” are at a higher risk of harassment since alcohol “reduces social inhibitions and impairs judgment.” *Id.* at 29. The casino industry provides alcohol to Patrons (of legal drinking age) as an amenity. Although the Company monitors alcohol consumption at its properties and trains employees on the responsible service of alcohol, alcohol consumption at casinos is prevalent and some employees reported leads to increase in the risk of harassment.
- ▶ **Cultural and Language Differences in the Workplace.** According to the EEOC, workplaces that have “significant ‘blocs’ of workers from different cultures” face a higher risk of harassment. *Id.* at 26–27. Both EBH and Wynn Las Vegas have a richly diverse population of employees and have experienced incidents of harassment and discrimination as a result. In addition to general cultural and language differences present in a diverse workforce, in the case of EBH specifically, the employee population reflects a significant number of employees who have come to work at the property from various other states and properties, where there are different workplace norms and often different regulations.
- ▶ **Isolated Workplaces.** The EEOC found that isolated workplaces—where employees perform functions alone or have few opportunities to interact with others—can increase the risk of harassment because harassers have easy access to employees where there may be no witnesses. At the Company, this risk particularly applies to housekeepers, in-room dining attendants, and others who work largely on their own in more secluded areas of the properties. The Company has taken certain steps to protect these workers, including

providing emergency safety buttons, as discussed further in Section III.E, but should continue to focus on addressing risks particular to those positions.

In addition to the above EEOC risk factors, the following factors contribute to Wynn Resorts' risk profile for purposes of evaluating the Company's HRCP:

- ▶ **Past Conduct.** The conduct giving rise to the current Monitorship involved allegations of improper behavior by the founder and violations of Company policies and procedures by other senior executives at the Company, including failures to report and investigate the alleged improper conduct by the founder. An important part of this Baseline Assessment has included assessing whether the Company's HRCP is designed to mitigate the risk of past conduct recurring.
- ▶ **Crisis Management.** Since 2018, the Company has been in leadership, public relations, and regulatory crises stemming from sexual harassment allegations that emerged in January 2018. The Company has also been focused on multiple law suits, some of which continue. A focus of the Monitor Team during this initial Baseline Assessment period has been to evaluate whether the Company's changes to its HRCP have been strategic responses to those crises or whether they stem from a sincere commitment to HR compliance.
- ▶ **Economic Factors.** EBH fell short of revenue expectations in 2019, bringing in \$364 million in seven months, out of an expected \$800 million over the course of its first full year. The Monitor Team evaluated—and will continue to evaluate—whether and how the economic pressures faced by the Company affect the Company's investments in the HRCP, especially as the Company emerges from the economic losses suffered as a result of the COVID-19 pandemic.

The Monitor Team reviewed each element of the HRCP against the backdrop of these risks to evaluate whether it is designed to mitigate these risks. Overall, the Monitor Team believes that while the Company has taken important steps to address the general risk of harassment and discrimination, it must continue to tailor its policies, procedures, and controls to prevent, detect, and respond to these risks more effectively.

C. Summary of Review and Testing Activities

The Decision and Order requires the Monitor to conduct a Baseline Assessment that will include, “without limitation, a full review and evaluation of all policies and organizational changes adopted by the Company” and certain business practices. Decision and Order at 50. To that end, the Monitor Team conducted interviews and reviewed documentation to understand the Company's corporate structure and operations to identify the Company's specific HR risk areas. Relying on compliance guidance from applicable sources, as well as our own expertise, the Monitor Team reviewed and evaluated the Company's compliance culture and the design and implementation of the Company's current HRCP as it relates to the Company's risk profile. With the Company's cooperation, the Monitor Team engaged in an extensive review of documents and materials and conducted onsite individual interviews and employee focus groups at both EBH and Wynn Las Vegas.

Documents and Materials Examined. The Monitor Team reviewed approximately 300 documents and materials provided by the Company. Categories of documents reviewed included but were not limited to:

- ▶ The Company's HRCP-related policies and procedures, including the Company's Compliance

Plan and other documentation describing the Compliance Committee function and mandate;

- ▶ Information on the Company’s channels for reporting suspected compliance violations and documentation on the Company’s internal investigations of reported issues;
- ▶ HR training materials;
- ▶ Policies and procedures applicable to the hiring and onboarding of employees and external counsel; and
- ▶ Policies, procedures, guidance, and communications governing the use of retractions, mandatory arbitration provisions, gag orders, confidentiality clauses, and non-disparagement provisions.

Interviews Conducted. The Monitor Team conducted 27 onsite interviews of Company personnel in Boston and Las Vegas, including Board and Compliance Committee members, executives, and senior management at each property and of Wynn Resorts. The Monitor Team also interviewed personnel in functions with HRCP oversight or implementation responsibilities, including Legal, Compliance, HR, Internal Audit, Compensation and Benefits, Security, Crisis Management, and Diversity and Inclusion.

Focus Groups. The Monitor Team also conducted 32 employee focus groups across a variety of departments and covering all shifts in Boston and Las Vegas. Participating departments included: Food and Beverage, PAD, Table Games, Slots, In-Room Dining, Housekeeping, Horticulture, Security and Surveillance, Employee Relations (“ER”), Front Desk, Valet, Marketing, and Spa and Salon. The Monitor Team requested that focus group participants complete an anonymous survey regarding their perceptions of the Company’s HRCP. In total, the Monitor Team spoke with 113 employees at EBH and 87 employees in Las Vegas. Focus group discussions and survey results were critical to the Monitor Team’s assessment of the effectiveness of the Company’s HRCP. For purposes of this Baseline Assessment, we relied on and incorporated employee comments that emerged as prevalent themes across focus groups or which were particularly meaningful in the Monitor Team’s own review of the HRCP.

III. Observations

For each area covered by this review, this Section summarizes (1) key compliance guidance; (2) testing processes; (3) key observations; and (4) the Monitor Team’s recommendations.

A. Culture of Compliance and Conduct at the Top

Informed by events preceding this monitorship, the Monitor Team heavily scrutinized the efforts of the Company’s current leadership to set the right tone and culture across its Boston and Las Vegas properties. In this Baseline Assessment, the Monitor Team focused on the tone and conduct of top and mid-level managers at the Company, to assess whether management has provided credible, strong, explicit, and visible support and commitment to the HRCP, including clearly articulating the specific behaviors that are not tolerated. The observations and recommendations below reflect the Monitor Team’s views of the steps the Company has taken and can continue to take to strengthen compliance governance, and to improve the visibility and impact of the Board’s and management’s commitment.

In this Baseline Assessment, we considered not just the facts of certain anti-harassment and anti-discrimination messaging, but also the authenticity of the messaging and the “why” behind it. As with every program that is maturing, especially under such a tight regulatory framework, on the heels of crisis, and on the public stage, messages can appear to be inauthentic. It is our evaluation that the Company is overall motivated by the right reasons, but the Company’s commitment needs to be more visible to employees and Patrons.

1. Compliance Guidance

An effective compliance program requires a values-driven culture that permeates the whole of an organization. This requires active commitment and support from the organization’s most senior leaders, as well as from management throughout all levels of the organization. Indeed, the EEOC states that “effective harassment prevention efforts, and workplace culture in which harassment is not tolerated, must start with and involve the highest level of management of the company,” and emphasizes that “the importance of leadership cannot be overstated.” EEOC 2016 Report at *preface v.*

Leadership commitment to compliance can be demonstrated through active communication on harassment and discrimination issues, as well as through the following broad categories:

- ▶ “Leadership has allocated sufficient resources for a harassment prevention effort”;
- ▶ “Leadership has allocated sufficient staff time for a harassment prevention effort”; and
- ▶ “Leadership has assessed harassment risk factors and has taken steps to minimize those risks.”

Id. at 79.

The U.S. Department of Justice (“DOJ”) has also issued relevant guidance in its April 2019 guidance document entitled “Evaluation of Corporate Compliance Programs.” According to the DOJ, “[t]he effectiveness of a compliance program requires a high-level commitment by company leadership to implement a culture of compliance from the top. The company’s top leaders—the board of directors and executives—set the tone for the rest of the company.”¹² When evaluating compliance programs, the DOJ will “examine the extent to which senior management have clearly articulated the company’s ethical standards, conveyed and disseminated them in clear and unambiguous terms, and demonstrated rigorous adherence by example. . . .” *Evaluation of Corporate Compliance Programs* at 9; *see also* U.S.S.G. § 8B2.1(b)(2)(A)–(C) (the company’s “governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight” of it; “[h]igh-level personnel . . . shall ensure that the organization has an effective compliance and ethics program.” (emphasis added) *Id.* at § 8B2.1(b)(2)(A) and (B)). The DOJ will also examine how middle management, in turn, have reinforced those standards and encouraged employees to abide by them. Among the questions that the DOJ will ask are:

- ▶ “What types of information have the board of directors and senior management examined in their exercise of oversight?”
- ▶ “What compliance expertise has been available on the board of directors?”

¹² U.S. Dep’t of Justice, Criminal Div., *Evaluation of Corporate Compliance Programs* at 9 (Apr. 30, 2019), <https://www.justice.gov/criminal-fraud/page/file/937501/download>.

Evaluation of Corporate Compliance Programs at 10.

In keeping with these compliance expectations, the Decision and Order requires the Monitor to conduct “a full review and evaluation of all policies and organizational changes adopted by the Company,” including significant leadership changes in the positions of the CEO/Chairman of the Board, other Board members, and the GC, which the Company represented were aimed, at least in part, to create a culture at the Company that promotes HRCP compliance. Decision and Order at 50. As the Company wrote in its February 12, 2019 submission on suitability,

[t]he . . . changes have not been made solely to separate the Company of the future from the past, but also to ensure that the Company is governed by independent thought leaders, each with a proven and diverse track record, to help in the continued transformation of Wynn Resorts, particularly in regard to its corporate governance.

Encore Report at 10.

Notably, the Decision and Order specifically draws attention to the importance of the Board of Directors and requires the Monitor to “assess the structure and effectiveness of the Compliance Committee (and related Compliance Program and Plan), the Audit Committee, and training programs for new and current members.” Decision and Order at 51.

Nevada statute and case law, as well as case law from other jurisdictions in the United States, requires Directors to exercise a fiduciary duty to their companies. Nevada statute states: “The fiduciary duties of directors and officers are to exercise their respective powers in good faith and with a view to the interests of the corporation.” Nev. Rev. Stat. § 78.138(1). The Nevada statute includes a presumption that Directors act “in good faith, on an informed basis and with a view to the interests of the corporation.” *Id.* § 78.138(3).

2. Testing

To assess the commitment of the Board of Directors and management to the HRCP, the Monitor Team undertook the following:

- ▶ Reviewed communications from senior EBH management to EBH employees;
- ▶ Reviewed written HR compliance guidance to employees from EBH and Wynn Resorts;
- ▶ Interviewed certain members of the Wynn Resorts Board of Directors;
- ▶ Interviewed all members of the Wynn Resorts Compliance Committee;
- ▶ Interviewed certain EBH and Wynn Las Vegas executives and senior managers; and
- ▶ Conducted focus groups with employees across departments at EBH and Wynn Las Vegas.

3. Observations

In the two years since Mr. Wynn was publicly accused of inappropriate personal conduct,¹³ the Company has been on an intentional path towards transformation away from founder-led governance. The Company has installed new leadership in key roles (including the Chairman of the Board, CEO, GC,

¹³ Berzon, Kirkham, Bernstein & O’Keeffe, *supra* note 6.

and President of Wynn Las Vegas), replaced six Directors on its Board, and created a Compliance Committee of independent members. The Company has also created new senior level positions that further reflect a commitment to HR compliance, including Chief Global Compliance Officer (“CGCO”) and SVP of HR-North America (“SVP of HR”). The Monitor Team spoke to many of those individuals and heard from them a commitment to create a corporate culture free from sexual harassment and discrimination.

In the same vein, the Company has made significant strides to define its brand in the collective message to employees that they are part of the Wynn community. For example, the Company in 2018 launched the “We are Wynn” campaign which broadcast to employees that together they are the Wynn brand and that they are each valued and respected. The Company has also launched initiatives for various identity groups within the Company, such as veterans and women.

However, companies do not exist in bubbles and Wynn Resorts is no exception. Las Vegas recently changed its slogan phrase from “What happens in Vegas stays in Vegas” to “What happens here only happens here.” The commercial promoting the new phrase notably advertises “Here, you don't need permission from anyone except yourself.”¹⁴ A milieu in which Patrons feel that they can depart from acceptable behavior creates added challenges for organizations seeking to engender a culture that promotes HRCF compliance. Company management acknowledged to the Monitor Team the challenges posed by the overall casino and societal culture in which the Company operates, but the Monitor Team has not yet seen a vision for how management intends to specifically address those challenges as it promotes a culture of HRCF compliance at Wynn Resorts.

It is against this backdrop that we evaluate the Company’s culture of compliance and its management’s conduct.

a. Corporate Values—Ties to Compliance and Communication

One of the first official initiatives of the new leadership at the Company was to launch revised Core Values for the Company: “Service Driven”; “Excellence”; “Artistry”; and “Progressive.”¹⁵

Based on our interviews, we understand that, through these values, the Company sought to demonstrate a deliberate move away from its founder-led origins and to promote a culture of HRCF compliance. Those values are promoted through various ways. The Company defines these values further on its online web portal called *The Wire* as follows:

- ▶ Service Driven: We provide the highest quality of service to everyone and everything, including our guests, our coworkers, and our community.
- ▶ Excellence: We always find room for improvement. If it’s good, make it outstanding. If it’s outstanding, make it spectacular.
- ▶ Artistry: We look at every detail of our jobs as a blank canvas awaiting our creativity and magic. Whether setting a guest room or setting food on a plate, we find a way to make it artful.
- ▶ Progressive: We always look to the future, continuing to innovate and elevate the

¹⁴ See Visit Las Vegas, What Happens Here, Only Happens Here: Key of Vegas, YouTube (Jan. 30, 2020), <https://www.youtube.com/watch?v=KMIsN41PMv0>.

¹⁵ See Presentation, *supra* note 9, at 11.

experiences we provide our guests, our employees, and our community.

The Company also updated the “Core Behaviors” that accompany its Core Values:

- ▶ “Care about everyone and everything.”
- ▶ “Treat everyone with dignity and respect.”
- ▶ “Take personal responsibility for every detail.”
- ▶ “Approach everything we do as if it’s a work of art.”
- ▶ “Create unforgettable experiences.”
- ▶ “Always strive to be better.”

Defining and disseminating corporate values is an important step in defining a compliance culture. However, it is the Monitor Team’s view that the Company’s promotion of, and to an extent, the Core Values themselves, miss the mark in that they promote a service- and brand- focused message as the paramount value to the exclusion of any HR compliance-focused values such as respect, integrity, or tolerance. While those principles are captured in the Core Behaviors, and to some extent in the definitions of the Core Values, the headline one-word Core Values are most known to employees.

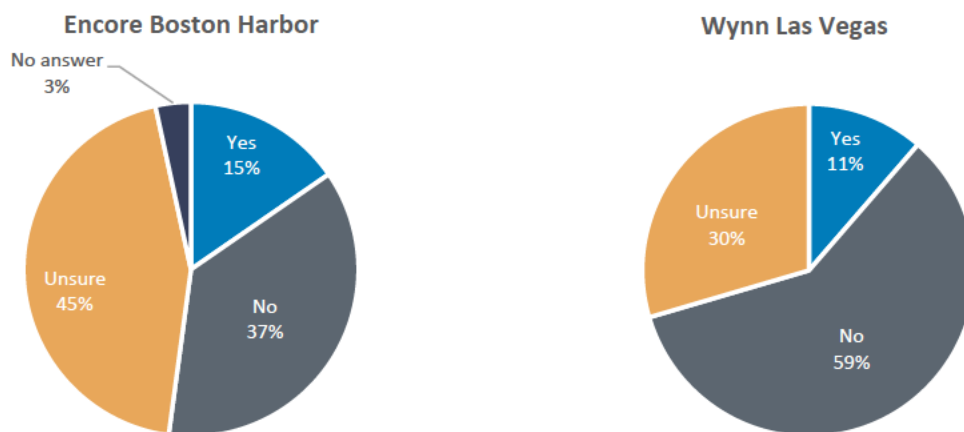
Through interviews and focus groups, the Monitor Team tested the effectiveness of the Company’s communication of its Core Values and Core Behaviors and how the Company connects those Core Values and Core Behaviors to messaging against harassment and discrimination. Overall, employees with whom we spoke expressed familiarity with the Company’s Core Values, indicating that the Company has generally succeeded in communicating its headline values. However, when asked whether the Core Values communicated themes or messaging against harassment and discrimination, employees stated that they did not. Even though the messaging is captured in various policies and procedures, including the Company’s Code of Business Conduct and Ethics (“Code of Business Conduct”), these employee responses signal that the Company has not effectively linked its value system to principles that help promote an environment free from harassment and discrimination as a paramount value for the organization as a whole.¹⁶

The disconnect between the Company’s values and its messaging on anti-harassment and anti-discrimination impacts how managers address harassment and discrimination against employees by Patrons. Focus group participants in both Boston and Las Vegas noted a lack of clarity in the Company’s messaging on anti-harassment and anti-discrimination as it relates to offending behavior by high-value Patrons. Focus group participants spoke of a “grey area” of inappropriate Patron behavior—generally verbal—that is tolerated by managers even when employees complain. These employees expressed a belief that managers give more leeway to high-value Patrons who act inappropriately toward employees than they give to average-spending Patrons. Employees expressed to the Monitor Team that this belief was based on both implicit and explicit messaging. Implicitly, because employees have witnessed managers treat offending high-value Patrons differently, they have been left with the impression that they too must tolerate such behavior (e.g., foul language, inappropriate sexual comments) from high-value Patrons for the good of the business (and certain employees agreed with this approach in favor of their own financial gain from tips) (further discussed in Sections III.D. and III.F.). Some employees with

¹⁶ Despite this, as discussed further in Section III.F.1.a.i., survey respondents did indicate a general comfort in reporting instances of harassment and discrimination.

whom we spoke, including in management and supervisory roles, also stated that the Company has separate explicit protocols for handling high-spending Patrons who behave inappropriately. These protocols dictate that employees should first contact an out-of-line high-spender’s casino “host” (a casino employee whose responsibilities include personalized marketing to high-spending Patrons) to help ease the situation or deliver the message regarding the inappropriateness of the Patron’s behavior “differently.” The Monitor Team probed whether the differing treatment for high-spending Patrons included unwanted physical contact or interaction. Importantly, the employees stated that the “grey area” was largely limited to unwelcome verbal rather than physical interaction and expressed an understanding that the Company would not tolerate Patrons engaging in inappropriate physical behavior.

The Monitor Team’s anonymous survey also tested this. When asked whether there are categories of people at either EBH or Wynn Las Vegas, such as Patrons, managers, or senior executives, “who could (or do) get away with harassment and discrimination,” survey participants responded as follows:



During focus group discussions, the Monitor Team asked questions to unpack these responses, and zoom in on the categories. For example, when the Monitor Team asked whether any employees felt that managers or senior executives could “get away” with harassment and discrimination, fewer than a handful of employees responded affirmatively, and none expressed concrete reasons to support that statement other than the Company’s recent history. A larger number of employees indicated that they were “unsure” as to whether managers or senior executives “could get away with harassment and discrimination.” The vast majority of employees participating in focus groups who stated that they answered “yes” or “unsure” indicated in comment boxes included in the survey that their answers were prompted by the Company’s treatment of high-spending Patrons. Both the double-digit percentages of “yes” answers and the high percentage of focus group employees who responded that they were “unsure” underscore the need for the Company to undertake values-based messaging on this subject. That messaging should be designed to give employees confidence that the Company takes this facet of HRCF compliance seriously regardless of who the offending party.

As discussed further in Sections III.G.3.a.ii. and III.I.3.a.iii., the Company has participated for the last two years in an employee engagement survey: the Great Place to Work® (“GPTW”) survey (though the survey was not administered at EBH in 2019). For that survey, respondents are asked to rank their agreement with each of 60 prompts on a scale of one to five. At the Company’s request, the GPTW survey incorporated additional questions, including a prompt similar to the one discussed directly above

in the Monitor Team's survey: "I believe the company will take appropriate action in response to incidents of sexual harassment." The Company received a score of 86 on that question. The Monitor Team commends the Company for its high result in this respect, but notes that the question posed assumes that an incident has been reported and does not allow room for respondents to qualify their responses.

The Monitor Team observed ample opportunities for the Company to link its values to issues related to harassment and discrimination. For instance, employees at both EBH and Wynn Las Vegas indicated that during pre-shifts, supervisors sometimes remind employees to treat each other with respect, but do not expressly provide messaging on harassment or discrimination. Indeed, at EBH, nearly 30% of respondents in our anonymous focus group survey indicated that they have not received messaging from their managers on EBH's policy on anti-harassment and anti-discrimination since their training (generally conducted at hiring) or that they have received such messaging less than once per month. At Wynn Las Vegas, the percentage of employees with a similar answer was even higher at 53%. The Company should leverage its existing pre-shift sessions to instruct employees that the Company's Core Behavior to "treat everyone with dignity and respect," means not engaging in harassing or discriminatory behaviors, and stopping and reporting such behaviors. The Monitor Team recommends that senior management develop a corporate communications plan designed to increase the frequency of messaging around HRCP issues, specifically addressing key risk areas touched on within this report and identified by Legal and HR through their functions.

b. Board of Directors

With respect to the Board of Directors, the Monitor Team reviewed the composition of the Board as well as the Board's governance, training, and communications. The following Section summarizes the Monitor Team's observations on the tone and culture set by the Company's Board of Directors on HRCP compliance.

i. *Composition and Selection*

The Corporate Governance Guidelines of Wynn Resorts requires that the Board be composed of between seven and 13 Board members and states that "[t]his range permits diversity of backgrounds and experience without hindering effective discussion or diminishing individual accountability." The Corporate Governance Guidelines notes that, in assessing the desired qualifications of the Board, the Nominating and Corporate Governance Committee, should consider "the benefits of diversity on the Board," that members should have "a reputation for honest and ethical conduct in both personal and professional activities," and that the Board should "represent a diversity of backgrounds." As a meaningful public step in demonstrating its commitment to gender diversity, Wynn Resorts in 2018 added three new female Directors.

According to the Corporate Governance Guidelines of Wynn Resorts, the Board is elected by the Company's stockholders. In the next phase of the Monitor Team's review, we will focus on the Board selection process in greater detail.

ii. *Governance*

In August 2018, the Board of Directors adopted this statement on the Board's Commitment to Diversity, Inclusion, and Respect:

The Board is committed to maintaining a respectful, courteous workplace in which employees are able to perform their jobs free from harassment, discrimination or retaliation. The Company does not tolerate sexual or other unlawful harassment or discrimination by any employee, volunteer, vendor, contractor, consultant, guest, customer, or visitor. The Board has directed Company management to adopt, implement, and update as appropriate, policies that are consistent with this commitment, as well as applicable law.

The Company is an equal opportunity employer committed to complying with all state and federal laws, as well as maintaining a workforce that reflects the diversity of the community. The Board believes in and supports equal opportunity in employment to all persons regardless of race, color, national origin, sex, actual or perceived sexual orientation or gender identity/expression, age, religion, veteran status, genetic information, disability, history of disability or perceived disability.

The Monitor Team welcomes an articulation of the Board's commitment in corporate governance documentation and will continue to evaluate how the Board carries out that commitment with respect to its oversight of the Company's HRCP.

iii. Training

Since at least 2018, the Wynn Resorts Board has received annual training from external counsel on preventing discrimination, harassment, and retaliation. Company records indicate that all Board members attended the trainings conducted in 2018 and 2019. The training materials reviewed by the Monitor Team were comprehensive as to the main substantive aspects of discrimination, harassment, and retaliation, by outlining the contours of each. The Monitor Team understands from the Company that Board members also received privileged legal advice as to their duty of care with respect to the HRCP. In the next phase of this review, the Monitor team intends to engage with Board members regarding their substantive understanding and oversight of the Company's HRCP, including the Company's risk profile as it relates to harassment and discrimination (discussed further in Section III.H.). Additional observations on the Board training are discussed in Section III.B.

iv. Communications and Conduct

Based on interviews conducted of Board members and other personnel, the Monitor Team overall views the current Board members' personal commitments to HRCP compliance as credible. Board members spoke candidly about the Company's challenges, including the challenges of promoting a culture free from harassment in the gaming industry. The Chair of the Board specifically articulated a need for the Company to express its values internally and externally in order to promote a culture of compliance. Indeed, the Monitor Team understands that it was the Chair of the Board who prompted the CEO to develop a booklet promoting the Company's Core Values. That booklet is now provided to new employees as part of their onboarding process. The Board itself has made an intentional decision not to have a loud voice in the Company's cultural transformation and not to issue many direct messages to employees letting senior management drive those changes.

As noted above, the DOJ guidance provides that "[t]he company's top leaders—the board of directors and executives—set the tone for the rest of the company." Evaluation of Corporate Compliance Programs at 9. Consistent with that guidance the Monitor Team will continue to assess the

ways in which the Board promotes compliance and, importantly, how it holds senior management accountable for its management and implementation of the HRCP. At this juncture, the Monitor Team recommends that the Board identify appropriate channels to issue directed messages to employees to promote HRCP compliance.

c. Compliance Committee

As with the Board of Directors, the Monitor Team focused on the composition, training, governance role, and communication of the Compliance Committee. This Section reviews the Monitor Team's observations on the tone and culture set by the Company's Compliance Committee with respect to HRCP compliance.

i. *Composition*

The Compliance Plan requires that the Compliance Committee have between three and five members who are appointed by the Board. The Monitor Team understands that, at the GC's suggestion, the Company modified the Compliance Plan to require that Compliance Committee members be independent—meaning that they may not be directors, officers, or employees of the Company. That change reflects an important step in ensuring the independence of the Company's compliance function overall, especially for a company transitioning away from a founder-led culture. The Compliance Plan also requires that at least one member must be knowledgeable about the Massachusetts gaming regime and one member must be knowledgeable about relevant Nevada gaming processes and regulations. In the absence of such members, the Compliance Committee may rely on the advice and counsel of a knowledgeable external attorney. Unlike the Corporate Governance Guidelines, the Compliance Plan does not make affirmative statements regarding the need for diversity in the Compliance Committee's membership. The Compliance Committee currently has three members who are independent (Michelle Chatigny, Thomas Peterman, and former Boston Police Commissioner Edward F. Davis III), as well as two *ex officio* members (Philip G. Satre and Patricia Mulroy).

ii. *Governance*

The Compliance Committee is governed by the Company's Compliance Plan, which outlines the Committee's role and responsibilities. The Compliance Plan provides that "[t]he [Compliance] Committee is not intended to displace the Board or the Company's Executive Officers with decision-making authority but is intended to serve as an advisory body to enhance the Company's goals of avoiding Unsuitable Situations and relationships with Unsuitable Persons remains satisfied." Rather, the Compliance Plan further states, in addition to satisfying the Company's obligations from the Massachusetts and Nevada Gaming Authorities, "the Committee is an important tool to assist the Company in implementing its strict policy to conduct its business with honesty and integrity, and in accordance with high moral, legal, and ethical standards." To that end, the Compliance Plan charges the Compliance Committee with "oversee[ing] procedures to enhance the likelihood that no activities of the Company or any Affiliate would impugn the reputation and integrity of the Company, any of the specific jurisdictions in which the Company maintains gaming operations, or the gaming industry in general."

The Compliance Committee meets at least quarterly to review information subject to its review. That information includes HR complaints – both substantiated and unsubstantiated.

The Monitor Team has heard from relevant interviewees that Compliance Committee members arrive prepared for meetings and are engaged in discussions on HRCP-related matters, which occupy a significant proportion of each meeting. The Monitor Team intends to observe Compliance Committee

meetings in future phases of this assessment to further gauge the effectiveness of Compliance Committee members at meetings.

iii. *Training*

Based on our interviews, we understand that none of the Compliance Committee members is an expert in HR management (although multiple members have managed large numbers of employees, and have overseen HRCP-related issues in prior roles) and the Compliance Committee does not receive regular substantive or process-oriented training on HRCP topics. The Monitor Team recommends that the Compliance Committee receive additional enhanced training on HRCP matters, including the Compliance Committee's responsibilities, and that it engage in discussions similar to that outlined above for the Board. Training is discussed further in Section III.E.

iv. *Communications and Conduct*

The Monitor Team observed credible individual commitments to HRCP compliance from each Compliance Committee member. The Monitor Team understands that the Compliance Committee has not actively communicated with Company employees, which is appropriate given the Compliance Committee's independence. However, the Compliance Committee occupies a unique position as an independent committee with in-depth visibility into the Company's HRCP. The Monitor Team recommends that the Compliance Committee, in its advisory capacity, help the Company propel the HRCP compliance message throughout the organization.

d. *Communications from and Conduct of Wynn Resorts Senior Leadership, and Their Effectiveness*

On April 3, 2018, newly-appointed CEO Matthew Maddox sent a message to all employees announcing the Company's Special Committee investigation into the allegations against Mr. Wynn and a review of Wynn Resorts' internal policies and procedures. In that communication, he wrote:

I am committed to providing a safe and respectful workplace for our 25,000 dedicated employees. . . . We have already taken measures to improve gender equality and foster a culture of mutual respect, and last week we launched a new department of Culture and Community Development that will coordinate our Women's Leadership Forum, focused on pay and job equality, sexual harassment, work place safety and diversity, and training.

The Company has made notable progress on these commitments. On April 3, 2018, Mr. Maddox announced the launch of the Culture and Community Department, which was given the goal "to support diversity and inclusion and address overall issues of gender equality and fair treatment in the workplace, and the expansion of employee charitable efforts in their communities." Encore Report at 6. After the departure of the department's Vice President ("VP"), it was moved under HR and the effort has been headed by the Executive Director of Culture and Diversity, whose current main focus is on leadership and development, employee engagement, and diversity and inclusion initiatives and programs. The Company has similarly committed to increase diversity in its leadership (as announced by Mr. Maddox in April 2018 upon the appointment of three new female independent directors to the Wynn Resorts

Board)¹⁷ and has established the Women’s Leadership Forum. Notably, all of the Company’s current female Board members (Betsy S. Atkins, Margaret J. “Dee Dee” Meyers, Patricia Mulroy, and Winifred “Wendy” Webb) have publicly participated in the Forum, which has been held in Las Vegas and streamed to Massachusetts and Macau.

Unfortunately, the commitments at the highest levels of the Company may not be evident to lower level employees. During focus group discussions at both EBH and Wynn Las Vegas, employees were not able to identify any significant HRCP messaging from the highest levels of the Company, nor were they able to identify significant HRCP messaging from their managers, aside from general communications on the need to respect each other. We note, however, that more senior employees at the Company did express to the Monitor Team an appreciation for the CEO’s candor regarding the executive coaching that he has received (as required by the Decision and Order). Although not directly on the subject of HRCP, this sort of communication appears to have helped to set an appropriate tone at the Company with regard to transparency and openness, especially when taken together with perceptions of the CEO’s other efforts to interact with employees throughout the organization.

One factor complicating EBH employee perceptions of commitment from senior leadership may be messages regarding the financial performance of EBH. Specifically, the Monitor Team observed both expressions of frustration from leaders of Wynn Resorts, regarding EBH’s financial performance in its first few months of operations and certain EBH employees expressing feelings that corporate leadership is not standing behind the property to the extent that it should. Despite multiple EBH leaders noting clearly that Mr. Maddox specifically has been generous with his time and Company resources in support of initiatives to assist EBH, the sentiment of EBH not being valued by the larger organization is palpable to the Monitor Team. This is an issue on which the Monitor Team will continue to focus in future phases of our assessment, including as to resource allocation for HRCP-related functions at EBH.

e. Communications from and Conduct of EBH Management, and Its Effectiveness

Employees at EBH reported that senior leadership at the property communicates often with employees. Most employees at EBH are required to attend a “pre-shift” or “WE SHIFT” meeting at the start of each of their shifts. The “pre-shift” includes daily practical information, specific information from managers at their discretion, and a message from EBH President Brian Gullbrants, which employees affectionately called “BG’s message.” Employees reported to the Monitor Team that they welcome and appreciate Mr. Gullbrants’s daily messages, and that many employees find the messages inspiring and uplifting. In the sample messages that we reviewed (those provided by the Company as well as those on display during our visits to the property), Mr. Gullbrants’s messages often focused on how employees could perform their jobs better to enhance the Patron experience at EBH. In these messages, Mr. Gullbrants also touched on topics relevant to the current assessment, including encouraging employees to treat each other professionally and with respect. For example, in his August 25, 2019 message to employees, Mr. Gullbrants wrote: “And just as important as working safely, we all need to work professionally with one another too. That means that we must be respectful, friendly, and professional whenever interacting with others. We should never raise our voices, use profanity, or use physical contact during any interaction.” Mr. Gullbrants has also at least once attached a copy of a corporate policy to his message (the Gambling Policy for Employees was included with the pre-shift for

¹⁷ Press Release, Wynn Resorts, Wynn Resorts Appoints Three New Independent Directors (Apr. 18, 2018), https://wynnresortslimited.gcs-web.com/news-releases/news-release-details/wynn-resorts-appoints-three-new-independent-directors?field_nir_news_date_value%5bmin%5d=.

July 30, 2019). Because “pre-shifts” are well-regarded and disseminated widely to employees, they present a ripe opportunity for emphasizing the Company’s commitment to HRCP compliance and could also be used to increase employee familiarity with HR policies and procedures. For example, pre-shifts could cover relevant policies, such as the Code of Business Conduct, review HRCP-related policy updates when needed, include general messaging promoting HRCP compliance (e.g., statements regarding leadership’s lack of tolerance for any harassment or discrimination, statements against retaliation), and provide substantive reminders about points from trainings (e.g., what an employee should do if he or she believes they have witnessed discrimination). Notably, over 26% of EBH respondents to our anonymous survey indicated they had not reviewed the Company’s Code of Business Conduct, despite a corporate requirement that all employees review the Code of Business Conduct at their hiring and corporate records, according to the Company, show employee acknowledgements of the Code of Business Conduct. This issue is further discussed in Section III.C.3.b.ii.

Employees expressed feeling connected to Mr. Gullbrants—who is known for frequently walking the casino floor and interacting with employees—and others in senior leadership positions at EBH. Employees in relevant positions expressed appreciation for support received from Legal and the property GC, as well as from the previous Employment and Litigation Counsel, who left EBH in January 2020.

With respect to the behavior of senior management at EBH, the Monitor Team is aware of at least one instance in which employees complained to the Company regarding behavior by a member of senior management that they felt was inappropriate. The Company investigated the behavior and reprimanded and coached the senior manager.

More generally, our anonymous surveys showed that roughly 70% of survey participants at EBH indicated that they believed that the Company lived by its values. As discussed below, the percentage for similar responses was higher in Las Vegas. We note that some of the disparity in these numbers across locations may be the result of the newness of the Company’s operations in Boston and the short time period the Company has had to impress its commitment on local employees. Importantly, numerous employees with whom the Monitor Team spoke reported specifically that the EBH and Wynn Resorts GCs operated with high integrity and ethical standards.

Related to the lack of an HRCP-rooted value, discussed above, however, is that many Company employees with whom we spoke—but disproportionately those at EBH—expressed to the Monitor Team that the Company’s emphasis on the value of the highest level of customer service (“Five-Star” service) hinders employees from effectively managing Patrons acting out of line. Some EBH employees reported that they felt they could not adequately react to inappropriate behavior from Patrons because of the Company’s emphasis on always providing the best service to Patrons.

In addition to the Monitor Team’s value-based recommendation above, the Monitor Team also recommends that leadership at EBH, together with Legal and Human Resources, develop an EBH communications plan designed to increase the frequency of messaging around HRCP issues, specifically addressing key risk areas touched on within this report and identified by Legal and HR through their functions.

f. Communications from and Conduct of Wynn Las Vegas Senior Management, and Its Effectiveness

The Monitor Team understands that senior leadership at Wynn Las Vegas, including the President and Chief Operating Officer, was closely involved in the property’s roll-out of the Company’s

Core Values. The Company conducted multiple trainings for managers and above, including on how those individuals should roll the Core Values down to their teams.

In addition, the President of Wynn Las Vegas has made a concerted effort to reach out to more employees in the 12,000-employee organization. Since June 2019, she has released weekly videos—sometimes featuring other employees as well—that are sent to Wynn Las Vegas employee phones (if they sign up to receive the messages) and broadcast in employee areas at the property. The Monitor Team understands that the weekly messages are designed to increase employees’ trust in leadership at Wynn Las Vegas and to encourage employees in their “discretionary” effort.

Overall, focus group participants expressed a positive sense of management and its commitment to principles of honesty, integrity, and excellence expressed in the Company’s Code of Business Conduct. Ninety-one percent of 87 respondents to our anonymous survey in Las Vegas indicated that they believed the Company did live by those principles.

Employees with whom we spoke on the topic viewed the weekly communications from the President of Wynn Las Vegas positively and perceived her to be credible. Some employees particularly appreciated that the President of Wynn Las Vegas solicits questions from employees by providing a box in which employees can submit written questions on cards. A number of employees requested the option to submit questions anonymously—indicating that they did not know this was permitted. The Monitor Team recommends that the Company leverage the President’s positive messaging and credibility in order to promote HRCP culture. The Monitor Team also recommends that the weekly communications at times feature messages geared towards increasing HRCP compliance and demonstrating the Company’s commitment to HRCP compliance to help set the tone on this topic throughout the organization.

g. Support for Relevant Functions, Including Employee Relations, Compliance, and Legal

Employees in both the Legal (at EBH and Wynn Resorts) and Compliance Departments expressed that they feel adequately resourced and supported by senior management. The notable exception is that EBH currently lacks an Employment Counsel, after the departure of its previous counsel in January 2020. The Monitor Team understands that the Company is in the process of filling this position, and the position should be filled as soon as possible. With respect to ER, employees reported to the Monitor Team that investigations by ER can take months to complete, and were concerned that ER was not open to assist with issues during convenient hours for the many employees who work overnight or during weekends. We understand that ER has been juggling an unexpectedly high volume of investigations and reporting obligations, though the Company is considering recalibrating its internal reporting on investigations. As discussed further in Sections III.E. and III.F., the Monitor Team recommends that ER investigations team members at EBH receive additional training on investigations. The Monitor Team also notes that negative employee perceptions of ER—especially driven by lack of availability, resources, or necessary skills—can cause significant harm to an organization’s HR compliance culture. In future phases of our assessment, the Monitor Team will continue to review resource allocations for HRCP-critical functions throughout the organization.

4. Recommendations

Based on our testing, the Monitor Team recommends:

CCCT 1	Develop Corporate and property-specific communications plans designed to promote HRCPP knowledge, compliance, and culture throughout the organization. Communication should come from all levels of leadership, including the Board, and address the risk-areas discussed in this report as well as those that emerge from the Company's Legal and HR functions based on their monitoring of HRCPP issues. Consider leveraging existing communication channels from the Presidents to employees.
CCCT 2	Develop and conduct training for the Compliance Committee on the Company's HR obligations, the HRCPP, and members' oversight responsibilities with respect to the HRCPP.

B. Proper Authority, Oversight, and Independence

The Decision and Order notes multiple instances of oversight failures—when Company leadership, including the Board and senior leaders did not document or conduct investigations, contrary to the Company's own HR policies. Since 2018, the Company has made significant changes to its corporate governance, its HRCPP, and its compliance function, including through the creation of the CGCO and the SVP of HR positions, and reconstituting its Compliance Committee with independent members. In this Section, we assess how the new compliance framework fits into the overall structure of the Company to test whether it is enabled to function effectively within the organization, that there is oversight of the function, and also that it has sufficient independence in order to execute its responsibilities. As discussed below, the Monitor Team observed that the Company has made notable changes towards ensuring proper authority, oversight, and independence for its HRCPP, but work remains to be done to define the ownership structure of the HRCPP. The Monitor Team reviewed information related to these programmatic elements and interviewed Company personnel responsible for overseeing and implementing the HRCPP.

1. Compliance Guidance

The EEOC requires that "leadership [] ensure that any team or coalition leading the effort to create a workplace free of harassment is vested with enough power and authority to make such change happen." EEOC 2016 Report at 34. This requirement aligns with the DOJ's guidance on the Evaluation of Corporate Compliance Programs, which states that an effective compliance structure requires "those charged with a compliance program's day-to-day oversight to act with adequate authority and stature." Evaluation of Corporate Compliance Programs at 10. Specifically, a successful compliance program requires structure and that personnel within the compliance function have:

- ▶ "[S]ufficient seniority within the organization;"
- ▶ "[S]ufficient resources, namely, staff to effectively undertake the requisite auditing, documentation, and analysis;" and
- ▶ "[S]ufficient autonomy from management, such as direct access to the board of directors or the board's audit committee."

Id. at 10–11. Likewise, important for a company's compliance program is "the availability of compliance expertise to the board." *Id.* at 10. Notably, with approximately 16,400 employees in Nevada and

Massachusetts, the DOJ would hold the Company's program to higher standards than programs of smaller companies. As stated in the commentary to U.S.S.G. § 8B2.1 note 2(C), "A large organization generally shall devote more formal operations and greater resources . . . than shall a small organization." *Id.*

As noted in Section III.A., the Nevada statute includes the principle that Boards of Directors have a duty to be reasonably informed about the matters on which they are making decisions. In the present case, the Monitor Team is of the view that the Company's Directors should be reasonably informed regarding the Company's compliance program, given their responsibility in ensuring that the Company maintains an effective compliance program.

In keeping with these obligations, and in light of the issues identified through the MGC's investigation, the MGC required the Monitor to "assess the structure and effectiveness of the Compliance Committee (and related Compliance Program and Plan), the Audit Committee, and training programs for new and current members." Decision and Order at 51.

2. Testing

To assess the oversight and independence of the HRCP, the Monitor Team:

- ▶ Interviewed employees in Compliance, HR, Legal, senior management, and members of the Compliance Committee and Board of Directors, which exercises oversight over the HRCP, the controls environment, and risk;
- ▶ Reviewed Compliance Committee, Board minutes, and Audit Committee minutes;
- ▶ Conducted focus groups with employees in ER at EBH and Wynn Las Vegas;
- ▶ Reviewed the Company's Compliance Plan; and
- ▶ Reviewed the investigations process from complaint intake to case closure for indicators of autonomy and independence.

3. Observations

The Company's HRCP is implemented by Compliance, Legal, and HR and overseen by the Compliance Committee pursuant to the Company's Compliance Plan (the "Plan"). The roles of the Compliance Committee and each of these departments is critical to ensuring the effectiveness of the HRCP. We discuss each in turn.

a. Compliance Plan

The Company's Compliance Plan, last updated in November 2019, is designed, with the Compliance Committee (discussed further below), to:

- ▶ Ensure the Company's compliance with applicable federal, state, local, and gaming laws;
- ▶ Perform background investigations on employees, directors, vendors, and others;
- ▶ Perform background investigations for proposed transactions and associations;
- ▶ Protect "against unethical or unlawful behavior by employees"; and
- ▶ "[I]dentify and evaluate situations arising in the course of the business of the Company that

may have a negative effect upon the objectives of gaming control.”

In 2018, the Company’s GC led an effort to revise the Compliance Plan, in several respects, including by requiring the Compliance Committee to be comprised of independent members, and expanding its role in overseeing the Company’s activities. As the Company’s Compliance Plan notes, both the Compliance Plan and the Compliance Committee are required by the Massachusetts and Nevada Gaming Authorities. Most relevant for the HRCF, the Compliance Plan defines the role and scope of the Compliance Committee, notes relevant compliance responsibilities of the Compliance Committee and the Compliance Officer, sets requirements for internal reporting on relevant matters, and outlines certain financial controls (as discussed further in Section III.J.).

b. Compliance Committee¹⁸

As noted above, the Compliance Committee “is intended to serve as an advisory body to enhance the Company’s goals of avoiding Unsuitable Situations and relationships with Unsuitable Persons.” The Company’s Compliance Plan states that “[t]he [Compliance] Committee is not intended to displace the Board or the Company’s Executive Officers with decision-making authority.”

According to the Company’s February 12, 2019 submission to the MGC, the Company’s changes to the functioning of the Compliance Committee, including the independence of its members and the expanded role of the Committee, were intended so that the Compliance Committee would “regain its prominence and responsibility as a regulatory tool to ensure that the Company adequately monitors individuals, activities, and associations that may result in unsuitable situations and appropriately manages and minimizes this risk.” Encore Report at 24–25. The Monitor Team’s review focused specifically on evaluating these issues as they relate to the HRCF generally and to harassment and discrimination specifically.

Membership. The Company’s Compliance Committee is to be comprised of between three and five members, appointed by the Board of Directors. In 2018, the Company reconstituted its Compliance Committee with three new members: Thomas Peterman, Michelle Chatigny, and Edward F. Davis III. The Compliance Committee has two *ex officio* members: Philip G. Satre (Chair of the Board of Directors) and Patricia Mulroy (member of the Audit Committee). Each of the current three Compliance Committee members meets the Compliance Plan’s “independence” standard in that none is a director, officer, or employee of the Company. Each is also qualified for the role. Thomas Peterman, the Compliance Committee Chair, is the former SVP and Chief Compliance Officer of MGM Resorts International and has approximately 40 years of experience in the gaming industry. Michelle Chatigny is the former VP and Compliance Officer of International Game Technology and has over 25 years of experience in the gaming industry. Mr. Davis, the only Compliance Committee member from Massachusetts, served in a number of senior positions in law enforcement, including for seven years as Commissioner of the Boston Police Department. These individuals have considerable industry, regulatory, and management experience, and have well-established reputations for their ethics and professional excellence.

The Company’s GC recommended for the Compliance Committee two of its current members—Mr. Peterman and Ms. Chatigny—based on her long-standing working relationships with each of them. The Monitor Team was particularly sensitive to this fact because of the prior management issues at the

¹⁸ It is worth noting that each property also has its own local Compliance Committee, but such committees focus on anti-money laundering matters and are therefore outside of the scope of this assessment.

Company, as noted in the Decision and Order, and specifically the apparent accumulation of influence and loyalty at the Company by senior leadership during the former CEO's tenure. We have seen no indication to date that the GC's relationship with certain members of the Compliance Committee compromises the ability of those members or of the Compliance Committee as a whole to function independently. Each of the members of the Compliance Committee has expressed to the Monitor Team his or her ability to be independent and interviews with other individuals knowledgeable about the Compliance Committee have supported the view that the Compliance Committee does in fact function independently. The Monitor Team will continue to review the independence of the Compliance Committee in future phases of the monitorship, including by attending meetings of the Compliance Committee.

Oversight. As noted above, the Compliance Committee oversees the Company's compliance with all applicable regulations. Since 2018, and at the recommendation of the GC, the Compliance Committee has also overseen the Company's HRCP, specifically with respect to sexual harassment and discrimination. The Compliance Committee meets on a quarterly basis, with Committee members and *ex officio* members required to attend.¹⁹ The Compliance Plan requires Compliance Committee members to receive a report from the Company's CGCO regarding topics under their purview, including HRCP Compliance. We understand from interviewees that each Compliance Committee member reviews HRCP compliance matters ahead of meetings and attends meetings prepared to engage in detailed discussions on matters related to the HRCP.

Specifically, the Compliance Plan requires the CGCO to report the following to the Compliance Committee:

7.3 HR Complaints. The in-house counsel and the Division Head of HR responsible for handling Human Resource Complaints shall provide a quarterly written report to the Compliance Officer of HR Complaints. For substantiated claims, the report must include a narrative of the underlying incident or incidents and the remedial action taken. For claims made which are not substantiated, the report must include a narrative of the underlying claimed incident or incidents and reason it was not substantiated.

The Company's current practice requires that the Compliance Committee receive a report of all sexual harassment and discrimination complaints made to the Company. The Monitor Team commends the Company for its transparency with the Compliance Committee. In the long term, the Monitor Team is concerned about the effectiveness and sustainability of requiring the Compliance Committee to review summaries of every sexual harassment complaint lodged, instead of focusing Compliance Committee members' attention on the most significant cases of (sexual and other forms of) harassment and discrimination, and on aggregate data and trends that could enable the Committee to advise the Company on a strategy to evaluate, remediate and mitigate the HRCP risks facing the Company. In order for the Compliance Committee to provide the high-level oversight that it is uniquely positioned to provide, the Monitor Team recommends that the Company develop more specific criteria to guide

¹⁹ The Compliance Committee often invites additional people to attend its meetings. During approximately the last six months, those individuals have included: Chair of the Audit Committee, CGCO, GC, GCs for EBH, Wynn Las Vegas, and Wynn Macau, Senior Corporate and Compliance Counsel, Chief Audit Officer, SVP of Human Resources, Executive Director—Global Compliance Investigations, Executive Director—Global Compliance, VP—Security and Crisis Management & Response, Executive VP—Corporate Security, and external counsel.

which cases management should specifically highlight for the attention of the Compliance Committee. This approach will allow the Compliance Committee members to spend time on the cases of particular note for the Company's HRCP, while still having access to and being informed of all relevant cases. Ideally, notification to the Compliance Committee of cases of interest would be made in advance of meetings. The Monitor Team commends the Company for providing data on HRCP investigations trends to the Compliance Committee beginning in September 2019 and plans to engage with the Compliance Committee regarding its analysis of these trends in the next phase of review.

HRCP Expertise. Compliance Committee member expertise with regard to HRCP is important in the Compliance Committee's oversight role. The Monitor Team notes that despite Compliance Committee members' vast industry and regulatory experience, including Mr. Peterman's time as GC at MGM Resorts International when the human resources department reported up to him, none of the current members has first-hand expertise in the design and implementation of an HRCP. This substantive experience gap necessarily makes the Compliance Committee particularly reliant on the guidance and judgment of Company personnel, including the GC and the SVP of HR, on matters related to the HRCP and could, under certain circumstances, limit Compliance Committee members' ability to exercise true independent judgment and oversight over the design, implementation, and effectiveness of the HRCP.

This is particularly noteworthy for the Company because in its Decision and Order, the Massachusetts Gaming Commission identified governance and oversight failures by the Company's then-senior leadership with respect to HRCP matters. Against this backdrop, the Monitor Team considers the Compliance Committee to play a critical role in adequately monitoring the Company's leadership and HRCP to ensure that it appropriately manages risk, particularly with respect to unsuitable situations such as sexual harassment and discrimination. At this critical juncture for the Company—when it is making strides to enhance its HRCP program and send a powerful message regarding its commitment to HRCP—the Monitor Team recommends that the Company add to the Compliance Committee an additional member who has substantive and substantial first-hand HR expertise.

The Monitor Team will continue to assess the Compliance Committee's functioning and independence in phases of this assessment, including by requesting to observe meetings of the Compliance Committee.

c. Audit Committee

As noted, a member of the Audit Committee attends meetings of the Compliance Committee and reports back to the Audit Committee. In addition, over the last year, the Audit Committee has received certain updates related to HRCP matters. For example, the GC provided the Audit Committee with an overview of statistics on sexual harassment and assault claims and statistics from the Company's GPTW survey results. In addition, as part of its quarterly update from Internal Audit, the Audit Committee receives updates on calls to the Company's hotline, with a focus on whether the calls are related to financial reporting or disclosure issues. Notably, although the GC and CGCO are both generally invited to participate in Audit Committee meetings, the SVP of HR has not been invited to Audit Committee meetings since joining the Company in late 2018. In future phases of this assessment, the Monitor Team will focus on evaluating Audit Committee's oversight of the HRCP through, among other steps, attending meetings of the Audit Committee and interviewing members.

d. Chief Global Compliance Officer

In addition to changing the composition of the Compliance Committee, the Company recently elevated the Compliance Officer of Wynn Las Vegas to the position of CGCO of Wynn Resorts North America, giving him oversight responsibilities for the regulatory compliance of both EBH and Wynn Las Vegas.²⁰ With respect to compliance officers and department functions, the DOJ asks, among other questions: “How does the compliance function compare with other strategic functions in the company in terms of stature, compensation levels, rank/title, reporting line, resources, and access to key decision-makers?” Evaluation of Corporate Compliance Programs at 11. As part of its Baseline Assessment, the Monitor Team interviewed the CGCO, members of the Compliance Department, and other leaders who interact with the CGCO to test the scope of his authority and independence on HRCP matters.

CGCO Authority and Oversight Responsibility. The Compliance Plan states that the Compliance Officer shall have day-to-day responsibility over administration of the Compliance Plan. The Compliance Plan further states that “[t]he Company will make available to the Compliance Officer the resources of the Company and appropriate outside resources to enable the Compliance Officer to administer the Plan.”

According to the Compliance Plan, the Compliance Committee selects the Compliance Officer, who reports to the Compliance Committee, and, at the discretion of the Company, to the General Counsel. The Monitor Team understands that the CGCO’s employment is governed by a contract and his bonus is determined by the Company’s Compensation Committee.

The CGCO oversees teams at EBH, Wynn Las Vegas, and Wynn Resorts. At EBH, the Compliance team consists of a Compliance Manager, two Senior Specialists, and three Specialists. At Wynn Las Vegas, the Compliance team is comprised of a Director—Regulatory Compliance, a Title 31 Compliance Manager, and nine Specialists and Senior Specialists. At Wynn Resorts, the Compliance team includes an Executive Director—Global Compliance, an Executive Director—Global Compliance Investigations, a Director—Global Compliance Investigations, a Financial Investigations Manager, and a team of eight Investigators.²¹ The Company’s elevation of the Compliance Officer role to a Chief Global Compliance Officer role, as noted above, is a positive step to demonstrate the Company’s commitment to regulatory compliance across its properties. However, in the Monitor Team’s view, the Company has not yet realized the full potential benefits of this arrangement because of a lack of clear delineation of responsibility for the CGCO with respect to the HRCP.

Aside from the responsibility of the CGCO to report to the Compliance Committee on “Human Resources Complaints” (as noted above at Section III.B.3.b.), the Compliance Plan and other documents, such as the Code of Business Conduct, do not delineate specific responsibility for the CGCO with respect to the HRCP. In effect, the current reporting obligation puts the CGCO in a position where he is simply passing on HRCP information that he receives from Legal and HR without personal oversight responsibility. The Company—like many organizations today—is rightly shifting from viewing HR

²⁰ The Monitor Team understands that the CGCO’s license in Massachusetts is currently under review and that the EBH General Counsel is fulfilling many compliance-related day-to-day responsibilities at EBH during this time. The Monitor Team will continue to assess this situation to ensure that resources are appropriately allocated both during this time of uncertainty as the CGCO’s license is considered and after licensing is resolved.

²¹ The Monitor team understands that Global Compliance Investigations, which reports to the CGCO, is responsible for conducting background investigations on new Company employees. EBH uses a third-party provider to perform this service and the Global Compliance Investigations team reviews the results of the third party’s work.

matters as purely litigation risks to viewing them as compliance obligations that require the types of programmatic elements that are otherwise reserved to regulatory and licensing obligations. Especially as the Company goes through this transition, the Monitor Team is of the view that it would be helpful for the CGCO to actively participate in the HRCP process, specifically with an eye towards evaluating the programmatic aspects of the HRCP from a compliance perspective, to, for example, monitor and test the program. The Monitor Team recommends that the Company evaluate the CGCO's role and function vis-à-vis the HRCP and identify how to increase his authority to oversee the HRCP from a compliance perspective.

The Monitor Team understands that the CGCO meets with the Chair of the Compliance Committee prior to each Compliance Committee meeting and with the Audit Committee on a quarterly basis. These reporting opportunities are important for the sustainability of the HRCP; especially at a company where issues with management behavior were recognized, the Monitor Team is pleased to see that the Company employee with the express responsibility over compliance has a direct line to the Board and Compliance Committee and is empowered to report potential management misconduct to those highest levels. As noted above, the Monitor Team recommends that the CGCO's ability to additionally engage with the Audit Committee at his own discretion be formally memorialized and encouraged.

e. Legal Department

Since mid-2018, the Legal Department has been led by the Company's GC, Executive VP, and Secretary, Ellen Whittemore, who has over 30 years of experience and is a renowned expert in regulatory gaming matters.

Legal Department at EBH. The SVP and GC for Wynn, MA (the EBH property) reports to the GC. The GC for EBH is allocated two direct reports who are Corporate Counsels. The Corporate Counsel who was responsible for employment matters and was the main contact point between Legal and HR on a day-to-day basis, left the Company in January 2020. As noted, the Monitor Team understands that the Company is actively seeking to fill this important position.

Legal Department at Wynn Las Vegas. The SVP for Wynn Las Vegas reports to the GC. The GC for Wynn Las Vegas oversees the Chief Labor and Employment Counsel, as well as one Senior Corporate Counsel, a Director of Regulatory Compliance, two Paralegals, and a Contract Administrator.

Corporate Legal Department. On a corporate level, the Company GC oversees the CGCO, the Senior Corporate and Compliance Counsel, the VP of Community Relations, Chief Sustainability Officer, Executive Director of Government Affairs, Chief IP and Corporate Records Officer, and a Senior Corporate Counsel.

Given the events of early 2018, ongoing sexual harassment-related litigation, and the lack of a corporate-wide CGCO or corporate-wide leader for HR (now the SVP of HR) until late 2018, it is not surprising that the Legal Department has taken a leading role in the Company's HRCP. However, in addition to functioning as the legal advisor to the Company on HR issues—which is common—Legal has informally assumed a *de facto* role as the Company's main advisor on HR issues generally, including on HRCP design and implementation. The Monitor Team expects that with the addition of the SVP of HR that the operational role related to the HRCP will be entirely assumed by HR.

As discussed further in Section III.F., the Legal Department oversees all investigations into allegations of sexual harassment or discrimination, meaning that HR personnel conduct investigations

into these allegations under the direction and counsel of the Legal Department. The Monitor Team understands from interviews that, as is typical in most organizations, HR personnel often consult the Legal Department on matters that arise during investigations, including scope of investigation, potential interviewees, and when to close out a matter. The Legal Department also oversees external counsel representing the defense of all complaints filed with the MCAD, Nevada Equal Rights Commission (“NERC”), and the EEOC, as well as litigation filed in state or federal court. The Monitor Team understands that with the exception of such cases, the Legal Department does not take an active role in investigative interviews. As discussed in Section III.F. the Company will need to review its investigations protocol to ensure that investigations are conducted by personnel with the appropriate expertise, which in some cases, may be in Legal.

In addition, from a process perspective, the Legal Department has taken a leading role in defining the HRCP by leading the redesign of the Compliance Committee, including its oversight of HRCP matters. The Legal Department also oversees HR preparation of reporting materials on HRCP investigations and allegations that flow through the CGCO to the Compliance Committee. The Company’s GC and the property GCs attend meetings of the Compliance Committee, with the EBH GC playing a key role in reporting on EBH HRCP issues, including allegations of sexual harassment and discrimination.

f. Human Resources Department

In 2018, the Company created and filled the position of SVP of HR, whose responsibility includes overseeing the HR teams at EBH and Wynn Las Vegas. The SVP of HR, Rose Huddleston, has over 20 years of HR experience.

HR at EBH. At EBH, HR is led by a VP of HR, who oversees teams for ER (comprised of Employee Relations and Labor Relations), Learning and Employee Communication, Employee Services, Employment/Recruitment, Diversity, Compensation, and Benefits. The ER team handles investigations of harassment and discrimination allegations (and other matters) and the Learning and Employee Communication team is responsible for training.

HR at Wynn Las Vegas. The Wynn Las Vegas HR has similar functions to those at EBH and in addition also includes: Compensation, Benefits, and Performance Management; Diversity and Inclusion; Guest Experience; and Employee Services and Communications. The Monitor Team understands that both Compensation, Benefits, and Performance Management and Diversity and Inclusion have some corporate-wide responsibilities.

HR has responsibilities in four key HRCP areas, which we discuss in turn: (1) policies; (2) complaint reporting channels and intake; (3) investigations; and (4) discipline.

Policies. According to the Company Policy Review policy (discussed further in Section III.C.3.b.i.), ER is tasked with overseeing the Company’s review of policies on a biennial basis, and coordinating with appropriate departments to ensure that the Company’s policies are reviewed according to schedule. The Monitor understands that a review committee composed of the following functions performs the substantive review of policies: the SVP of HR, the GC of WLV, the GC of EBH, the Chief Labor and Employment Counsel, the VP of HR at EBH, the Director of ER at WLV, the CGCO, and the Executive Director—Global Compliance. As discussed further below in Section III.C.3.b.i., the Monitor Team recommends that the Company enhance its policy review process, including by memorializing review procedures.

Complaint Reporting Channels. HR is responsible for managing the Company’s reporting channels, which are available to employees and third parties. As discussed in Section III.F., the Company accepts complaints in-person on each property and through phone and email services. The SVP of HR is currently engaged in migrating the Company from one hotline provider to another (which it is anticipated will provide more useful functionality for the Company) and has received support from other senior leadership in this effort. The Monitor Team will continue to assess the Company’s intake channels in future phases.

Investigations. According to the Company’s Workplace Conduct Investigations policy (“Investigations Policy”), either HR or ER is responsible for conducting investigations, except “[i]n certain situations,” where Legal or Corporate Investigations may assume responsibility. In those cases, HR and ER are to take instruction from Legal. As discussed in Section III.C., the Investigations Policy does not define the “situations” in which Legal may assume responsibility over investigations. The Monitor Team understands that, as a matter of practice, ER typically assumes responsibility for investigations of allegations of harassment or discrimination at the request of Legal. If there are legal issues that arise, ER consults Legal. In both scenarios, HR maintains the files on investigations and HR drafts summaries of investigations (with oversight and input from Legal) for reporting to the CGCO and ultimately the Compliance Committee. As discussed further in Section III.F., the Monitor Team has a number of recommendations with respect to the conduct and documentation of investigations.

In addition, the Monitor Team understands that HR is currently developing an approach to track trends in allegations and investigations so that the Company can have a data-driven understanding of its overall risk profile. The Monitor Team supports the development of this analysis.

Discipline. At the conclusion of an investigation, HR is primarily responsible for determining the appropriate disciplinary steps in each case but without sufficient policy guidance. As discussed further in Section III.G., the Monitor Team recommends that the Company develop further guidance on appropriate discipline and take steps to standardize discipline across the organization.

Overall, the Monitor Team has observed that the main driver of behavior in managing HRCP allegations appears to be mitigation of legal and reputational risk to the Company with HR largely functioning as an extension of the Legal Department for purposes of HRCP investigations. Although this may be necessary for investigations, the dynamics of the Company’s current emphasis on HRCP investigations have overshadowed other valuable HRCP responsibilities of HR, such as culture, diversity, and training. The Monitor Team anticipates that enhancing the Company’s investigations and discipline approach will assist to correct this imbalance. The Monitor Team will continue to review whether HR is adequately resourced and empowered in future phases of this assessment.

g. Security Department

For HRCP purposes, it is most relevant that the Security Department is responsible for providing security in the building, including a physical security presence on the premises and providing alarm buzzers for certain employees; and assisting with certain investigations, specifically those where physical removal (referred to as “trespassing”) of an individual from the premises may be warranted. The Monitor Team understands that the Security Department often works closely with HR in these instances. Security is particularly key to the Company’s response to harassment and discrimination outside of normal business hours, when representatives of Legal and HR are not on premises.

- ▶ **Physical Security.** The Security Department is responsible for physical security at the properties. The team conducts ongoing risk assessments to determine, for example, where

personnel should be stationed or cameras located. Security interacts with Surveillance, which operates many of the cameras at the properties, to assist in these determinations. The Monitor Team understands that Security factors in the risk of sexual assault in its assessments of system design and effectiveness.

- ▶ **Investigations.** If an allegation or incident concerns physical security—such as assault—Security will become involved to assist with the investigation. Security will coordinate and review camera footage as available, and work with HR. The Monitor Team understands that Security may be more actively involved at the outset of an investigation if an incident occurs after regular business hours when HR personnel are not on the premises. Security documents each incident in which they are involved.
- ▶ **Trespassing.** Only supervisors and managers in the Security Department can make the decision to trespass, or ban, someone from the property. When a person is trespassed, Security escorts the individual off of the property, cancels the person’s “Red Card” (loyalty) account (if he or she has one), and logs the person’s identity into a tracker. Information from the tracker is shared between EBH and Wynn Las Vegas so that an individual who has been trespassed at one property cannot venture into another. The Monitor Team understands that in instances of confirmed inappropriate physical contact, Patrons are trespassed. We also understand that individuals who are trespassed may appeal their trespass and that in such cases, at EBH, the Executive Director of Security and the Assistant Director of Security Investigations make the determination together regarding whether an individual should be allowed back onto the property. At Wynn Las Vegas, the Monitor Team understands that the process also involves the VP Security, Corporate Investigation, Crisis Management, and, at times, the Property GC. The Monitor Team expects to review the Company’s Security Manual in future phases of the monitorship in order to specifically evaluate these and other HRCF-related security protocols.

From an HRCF perspective, Security provides an important service to the Company by assisting with certain investigations and resulting measures that need to be taken in so far as they entail trespassing an individual.

h. HRCF Leadership Access to and Relationship with the Compliance Committee, Audit Committee, and Board

One of the main questions in evaluating the effectiveness of the Company’s HRCF is whether key senior management vested with responsibility over the HRCF have the necessary access to the Company’s Compliance Committee, Audit Committee, and Board. Such access is a key indicator of the independence of those positions and is critical in mitigating the risk that members of management are not empowered to report concerns appropriately. This independence is also key to ensuring that all who are associated with the Company are held accountable for HRCF violations. The CGCO, the GC, and the SVP of HR have varying degrees of responsibility over the HRCF. We look at the access of each of these positions to the Compliance Committee and Audit Committee in turn.

CGCO Access to the Compliance Committee. The Compliance Plan requires that on a quarterly basis, the CGCO report to the Compliance Committee (as discussed above) and that the CGCO attend quarterly Compliance Committee meetings. In addition, the Monitor Team understands based on interviews that in addition to regularly scheduled quarterly meetings with the Compliance Committee, the CGCO currently has a standing meeting with the Chair of the Compliance Committee to discuss compliance issues and ensure that the Chair is informed appropriately between meetings.

CGCO Access to the Audit Committee and Board. The Compliance Plan states that the Compliance Officer and the Chair of the Compliance Committee (or another member of the Compliance Committee) shall meet with the Board's Audit Committee as determined by the Audit Committee, and that the Chair of the Compliance Committee shall meet with the Audit Committee annually. The Compliance Plan does not reflect that the CGCO may reach out to the Audit Committee or Compliance Committee outside of these scheduled meetings. In fact, the Monitor Team understands that this already takes place in practice. The Monitor Team's interviews indicated that the CGCO has calls or meetings with the Chair of the Audit Committee on a regular basis and that the CGCO uses these interactions to raise issues that he believes should be discussed prior to the next official meeting of the Compliance Committee or Audit Committee. Thus, the Monitor Team recommends that the Company memorialize that the CGCO and the Chair of the Compliance Committee may request meetings with the Audit Committee on an as-needed basis.

We understand from interviewees that the Chair of the Audit Committee, who has a standing invitation to (and often does) attend Compliance Committee meetings, reports back to the Audit Committee on HRCP complaints received by the Company and that the Audit Committee also reviews ongoing lawsuits and settlements. The Monitor Team anticipates attending Audit Committee meetings to observe relevant discussions in future assessment phases. The Monitor Team will also continue to interview Board members about this process.

GC Access to the Compliance Committee. As discussed above, the GC is regularly invited to attend meetings of the Compliance Committee. The GC, with the SVP of HR, answers many of the Compliance Committee's questions on HRCP investigations and matters.

GC Access to the Audit Committee and the Board. The GC is regularly invited to participate in meetings of the Audit Committee and acts as Secretary for the meetings. She reports to the Audit Committee on various topics, including any revisions to key policies and regulatory updates. Similarly, the Board regularly invites the GC to attend meetings and the GC acts as Secretary for the meetings.

SVP of HR Access to the Compliance Committee. The SVP of HR is regularly invited to attend meetings of the Compliance Committee. As noted above, with the GC, the SVP of HR provides information to and answers questions from the Compliance Committee. The Monitor Team understands that the SVP of HR is in touch with members of the Compliance Committee on an as-needed basis between Compliance Committee meetings.

SVP of HR Access to the Audit Committee and the Board. The SVP of HR has not been invited to any Audit Committee or Board meetings since joining the Company in the second half of 2018. Given the important role played by the SVP of HR in the HRCP, the Company may consider whether the SVP of HR be invited to (portions of) Audit Committee meetings.

Overall, the Monitor Team is of the view that the senior management vested with responsibility over the HRCP has appropriate necessary access to the Company's Compliance Committee, Audit Committee, and Board and exercises that access as needed. The Monitor Team will continue to evaluate these as they continue to develop and mature.

i. Proper Resources

The Monitor Team interviewed the heads of Legal, HR, Security, and Compliance to assess: (1) whether they had adequate staffing and budgetary resources; and (2) whether their teams had the experience and competencies to effectively manage and oversee the Company's HRCP. Each of the

relevant functions in Boston and Las Vegas indicated that they receive adequate resourcing to effectively carry out their roles. The Monitor Team also understands that leadership at the Company has funded initiatives requested by these functions to enhance the HRCP—including hotline transition, the GPTW survey, and others—even before the monitorship began, and continues to do so currently.

In our independent evaluation, there are key areas that require further resourcing. First, the Monitor Team has observed that the HR Department at EBH is currently not able to effectively keep pace with investigations. As discussed in Section III.F., the Monitor Team recommends that the Company evaluate staffing for that function, both in terms of numbers and degrees of experience. In addition, the Monitor Team recommends that the Company provide additional training to relevant HR personnel, both on investigation skills and on substantive areas, such as HR best practices, legal frameworks in the relevant jurisdictions, and Company policies and procedures. The Monitor Team is aware that the Company currently funds HR personnel attending relevant industry conferences, but notes, based on focus group and interviews, that staff lack a comprehensive training curriculum and regular updates that are tailored to the Company's needs. The Monitor Team expects to focus on the adequacy of resource allocations and effectiveness at EBH in future phases of our assessment.

As a Nevada-headquartered company with multiple properties in Nevada, understandably many of the Company's policies, procedures, and internal guidance documents are focused on Nevada and its requirements. Nonetheless, it is important that Legal personnel whose work affects the EBH property be trained on the legal and regulatory differences between Massachusetts and Nevada so that these can be appropriately taken into account in the review and development of Company policies, procedures, and approaches. The Monitor Team also understands that the Company recently, as part of general cost-savings measures, reduced the Legal Department budget. While the Company has informed the Monitor Team that at no time has Legal been told to reduce costs at the expense of HRCP, the Monitor Team will monitor the effects of budget cuts on HRCP matters. In addition, as noted above, the Monitor Team emphasizes the importance of filling the vacant Corporate Counsel for Employment position at EBH.

With respect to Compliance, the Monitor Team notes that the Company's CGCO is currently not licensed to work in Massachusetts and that the EBH GC has been temporarily fulfilling the role of Compliance Officer for the property while the Company awaits his license. The Monitor Team will therefore continue to assess how the Company allocates these responsibilities in the longer term. Overall, the Monitor Team recommends that the Company evaluate the scope of Wynn Resorts and property level HR responsibility and oversight over the HRCP to empower decision-making at the property level while preserving consistency and corporate oversight.

j. Overall Accountability for HRCP Matters

It is not surprising that in the aftermath of significant HRCP issues, many resources from various parts of the Company have turned their attention to HRCP compliance and that there is some potential lack of clarity regarding responsibilities. The Monitor Team observed that overall accountability for HRCP matters is largely divided within the Company among the Compliance Committee, CGCO, Legal, and HR. However, the delineation of responsibility is not always clear and the presence of so many parties in the process could create confusion regarding ultimate ownership of HRCP issues, especially in the long term as personnel in these functions changes. In addition, it appears to the Monitor Team that the CGCO's responsibilities as related to the HRCP are particularly ill-defined. Based on what the Monitor Team has learned about the Company, the Monitor Team recommends clearer definition of functional responsibilities so that overlap in oversight or a lack of memorialized responsibility does not

lead to the unintended consequence of an abdication of ultimate responsibility or of issues proverbially “falling through the cracks.” Specifically, as the Company continues to transition from a view of HRCP as simply a legal risk to a compliance area of focus, it will be important that HR, as the substantive experts, be designated as the main department vested with authority to make decisions over the HRCP (with corresponding access to the Audit Committee and Board), that Legal be positioned to act as an advisor to HR on legal matters, including for oversight of privileged investigations, and that the Company identify how to increase the CGCO’s authority to oversee the HRCP from a compliance perspective.

4. Recommendations

Based on our testing, the Monitor Team recommends:

PAO&I 1	<p>Provide clearer definition and delineation to the roles and responsibilities of functions with HRCP responsibility, including Legal, HR, and Compliance. Further delineation of responsibilities should include:</p> <ul style="list-style-type: none"> ▶ the CGCO’s oversight role with respect to the HRCP and identify and document how to increase his authority to oversee the HRCP from a compliance perspective, as well as his independent access to the Audit Committee; and ▶ the scope of Wynn Resorts and property level HR responsibility and oversight over the HRCP to empower decision-making at the property level while preserving consistency and corporate oversight.
PAO&I 2	<p>Add an additional member to the Compliance Committee who has substantive and substantial HR expertise.</p>
PAO&I 3	<p>Develop more specific criteria to guide which harassment and discrimination cases should be highlighted for the attention of the Compliance Committee.</p>
PAO&I 4	<p>Assess resource allocation and staff skill-set at EBH, particularly in HR, around the one-year anniversary of the property opening to determine whether and what adjustments should be made.</p>

C. Policies and Procedures

Policies and procedures define a corporate compliance program and form the foundation for a company’s culture. Prior to the monitorship, the Company introduced several policy and organizational changes pertinent to HRCP, including changes to the Company’s Preventing Harassment and Discrimination policy, Codes of Conduct, Personal Relationships and Potential Conflicts of Interest policy (“Personal Relationships Policy”), Personal Presentation policy, and Employee Patronization policy. The Monitor Team’s Baseline Assessment centered on the Company’s updates to its HRCP policies and procedures, focusing primarily on harassment and discrimination. The Monitor Team evaluated the extent to which these HRCP changes are designed to mitigate recurrence of past conduct and how the Company communicates HR policies and procedures throughout the organization. Our review, conclusions, and recommendations are discussed below.

1. Compliance Guidance

A well-designed compliance program includes policies and procedures that establish ethical and behavioral norms within a company and mitigate a company's compliance risk. Policies and procedures provide employees with an understanding of workplace expectations and ensure that an organization is compliant with federal, state, local, and company requirements. The EEOC 2016 Report states:

Policies, reporting procedures, investigations, and corrective actions are essential components of the holistic effort that employers must engage in to prevent harassment. . . . An organization needs a stated policy against harassment that sets forth the behaviors that will not be accepted in the workplace and the procedures to follow in reporting and responding to harassment. . . . [E]mployers should adopt a robust anti-harassment policy, regularly train each employee on its contents, and vigorously follow and enforce the policy.

EEOC 2016 Report at 37–38. The EEOC 2016 Report suggests that anti-harassment policies should be easy for all to understand and be available in all languages used in the workplace. Generally, the content of an anti-harassment policy should include: (1) a clear explanation of prohibited conduct, including examples; (2) a description of a complaint process with multiple avenues to report misconduct; (3) assurances that there will be no retaliation against employees for reporting misconduct or cooperating in an investigation; (4) assurances that complaints will be treated confidentially to the extent possible; (5) a description of a clear impartial investigations process; and (6) assurances that the employer will quickly respond to behavior that may lead to harassment and will take immediate action where harassment occurs. *Id.* at 38. The EEOC emphasizes that an anti-harassment policy “should make clear that harassment on the basis of any protected characteristic will not be tolerated.” *Id.*

The MCAD similarly requires:

[(i)] a statement that sexual harassment in the workplace is unlawful; [(ii)] a statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment, or for cooperating in an investigation of a complaint for sexual harassment; [(iii)] a description and examples of sexual harassment[;] [(iv)] a statement of the potential consequences for employees who are found to have committed sexual harassment; [(v)] a description of the process for filing internal complaints about sexual harassment and the work addresses and telephone numbers of the person or persons to whom complaints should be made; and [(vi)] the identity of the appropriate state and federal employment discrimination enforcement agencies instructions as to how to contact such agencies.²²

The MCAD strongly encourages employers to supplement their sexual harassment policies with equivalent policies covering harassment more broadly. The MCAD also suggests that, like the sexual

²² Mass. Gen. Laws ch. 151B, § 3A; *Guidelines on 151B: Sexual Harassment in the Workplace*, MCAD at 8 (Sept. 1, 2017), <https://www.mass.gov/files/documents/2017/09/06/2112%20Guideline%20Sexual%20Harassment.pdf> (“Guidelines on 151B”); see also *Model Sexual Harassment Policy*, MCAD (Sept. 16, 2017), <https://www.mass.gov/files/documents/2017/09/06/2112%20Model%20Sexual%20Harassment%20Policy.pdf> (“Model Sexual Harassment Policy”).

harassment policy, general harassment policies should provide examples of prohibited behavior and generally parallel the structure of the company's sexual harassment policy. Model Sexual Harassment Policy at 3.

Other federal compliance experts also emphasize the importance of policies and procedures to a compliance program. For example, according to the DOJ, "Any well-designed compliance program entails policies and procedures that give both content and effect to ethical norms and that address and aim to reduce risks." Evaluation of Corporate Compliance Programs at 3. In evaluating a company's compliance program, the DOJ examines whether the company communicates its commitment to full compliance in its code of conduct and whether its policies and procedures incorporate a culture of compliance into its day-to-day operations. To that end, the DOJ evaluates the company's process for designing policies and procedures; the comprehensiveness of the procedures in dealing with the types of risks the business faces, including changes to the legal and regulatory landscape; the accessibility of the procedures to employees and relevant third parties; integration of the policies and procedures throughout the company; and training of gatekeepers.

The Decision and Order charged the Monitor Team to evaluate the Company's policy changes, by considering the:

- ▶ "Implementation of and compliance with all human resource or 'HR' policies that reflect current best practices;"
- ▶ "Use of outside counsel and maintenance of and adherence to de-conflicting policies and procedures;" and
- ▶ "[T]he effectiveness of the Company's policies, practices and programs under the purview of the independent monitor."

Decision and Order at 50–51.

2. Testing

To evaluate the Company's HRCP policies and procedures landscape, the Monitor Team:

- ▶ Reviewed policies and procedures implemented at EBH and Wynn Las Vegas related to the relevant compliance areas;
- ▶ Interviewed relevant EBH, Wynn Las Vegas, and Wynn Resorts personnel, including from Legal, Compliance, and HR, regarding the Company's general policy framework and specific HRCP policies and procedures;
- ▶ Interviewed members of the Compliance Committee; and
- ▶ Conducted focus groups and surveys of EBH and Wynn Las Vegas employees to assess their knowledge and comprehension of compliance policies and procedures.

3. Observations

As part of our Baseline Assessment, the Monitor Team reviewed policies across various HRCP subject areas. The Monitor Team focused on evaluating: (1) the substance of the policies reviewed and whether they comply with applicable laws and regulatory guidance; (2) whether the Company's policies address the HRCP risks and compliance gaps identified in the MGC's investigation and the Company's

internal processes; and (3) the Company's procedures for communicating and publishing its HRCP policies.

The policies reviewed by the Monitor Team include, but are not limited to the following:

- ▶ Preventing Harassment and Discrimination policy;
- ▶ Code of Business Conduct;
- ▶ Code of Personal Conduct;
- ▶ Personal Relationships Policy;
- ▶ Personal Presentation policy;
- ▶ Employee Patronization policy;
- ▶ Legal Department Policy for Avoiding Conflicts of Interest ("Deconflicting Policy"); and
- ▶ Company Policy Review.

The Company developed or modified many of its HR policies in response to the incidents investigated by the IEB in 2018, introducing important changes intended to mitigate the risks identified through the MGC's investigation and the Company's subsequent review. The Monitor Team's initial impressions are that the Company has made significant efforts in enhancing its HRCP policies and procedures, including by streamlining policies to ensure covered persons understand the Company's expectations. However, more work needs to be done. As explained further below, the Monitor Team recommends that the Company improve the substance of its Preventing Harassment and Discrimination policy; develop a policy on pregnancy anti-discrimination; expand its religious anti-discrimination and disability anti-discrimination policies; improve its policy origination, review, and integration process; and implement protocols to effectively communicate its policies and procedures to covered persons.

a. Preventing Harassment and Discrimination Policy

The Company's Preventing Harassment and Discrimination policy is, in many ways, at the heart of its HRCP. In the Decision and Order, the MGC noted that the Company's violations of corporate policy were a "leading cause in the overall corporate systemic failures." Decision and Order 47. It stated that despite assurances in the Company's previous policy that "Wynn Las Vegas has zero tolerance for any form of sexual harassment and promotes a work environment that furthers the mutual respect of all its employees," the Company "fell far short of these ideals, and thereby failed its employees." *Id.* Prior to the Monitorship, the Company made significant changes to the Policy, including removing "zero tolerance" terminology, adding examples of sexual harassment, adding additional reporting channels, clearly defining retaliation, clarifying managers' obligation upon receiving a complaint, and clarifying that the Policy applies to Patrons and third parties as well as employees. The Monitor Team assessed whether the current version of the Preventing Harassment and Discrimination policy is appropriately tailored to mitigate the Company's risks.

Date Implemented. The Preventing Harassment and Discrimination policy has been updated several times between 2018 and 2019. The revisions made reflect both legal updates and design changes to make the Policy user-friendly, easier to read, and commonly understood. The most recent update was on November 12, 2019.

Applicability/Coverage. The Policy is intended to apply to “all employees throughout the Company, including full-time, part-time, temporary, and seasonal employees, and members of the Board of Directors” at all Wynn entities. It affirmatively states that the Company does not “tolerate sexual or other unlawful harassment or discrimination by any employee, volunteer, vendor, contractor, consultant, agent, guest, customer, or visitor.” The Policy encourages “employee[s], guest[s], contractor[s], or other third part[ies]” to immediately report an incident if they “believe[] a co-worker, manager, vendor, contractor, consultant, customer, visitor, volunteer or agent of the organization is harassing or discriminating against him or her.” Notably, although the Policy applies to “all employees” throughout the Company, the Policy does not explicitly specify that it applies to management or senior executives. Although, the Monitor Team understands that reference to “all employees” includes management and senior executives, specifically calling out those two categories sends an important and explicit message to lower level employees that no one at the Company is above its rules and that anyone who engages in harassment or discrimination will be subject to discipline regardless of their position. The fact that the past misconduct permeated the upper echelons of the Company calls for the Company to double down on its messaging that this Policy—and the HRCP as a whole—apply to senior executives and management. The Monitor Team therefore recommends that the Company update the Preventing Harassment and Discrimination Policy to state unequivocally that the Policy applies to management and senior executives.

Key Provisions. The Policy is divided into twelve sections. The first three sections are introductory and communicate the Company’s commitment to diversity, inclusion, and respect; the Company’s commitment to creating a workplace free from harassment and discrimination; and each employee’s responsibility to creating a positive, safe, and respectful work environment. The next seven sections make up the Policy’s substantive provisions. The last two sections briefly communicate the Company’s disability and religious accommodation policies.

The key anti-harassment provisions in the Policy align with most of the MCAD’s baseline requirements on sexual harassment and the EEOC’s suggested framework on harassment generally, in that they specifically:

- ▶ Define harassment as unwelcome conduct that is verbal, physical, or visual that is based upon a person’s “Protected Characteristic.” “Protected Characteristic” broadly includes race, color, national origin, sex, actual or perceived sexual orientation or gender identity/expression, age, religion, veteran status, genetic information, disability, history of disability or perceived disability, or any other basis protected by federal, state or local law or ordinance or regulation. Notably, the current Policy does not list pregnancy or a condition related to pregnancy (such as lactation) as a protected characteristic. These omissions deviate from MCAD guidance.²³ The Monitor Team recommends that the Company update the Preventing Harassment and Discrimination policy to include these characteristics and to put covered persons on notice. The change should then be standardized across all relevant policies and to related trainings.
- ▶ State that sexual harassment in the workplace is unlawful.

²³ Mass. Gen. Laws ch. 151B, § 4; *see also* MCAD Guidance: Pregnant Workers Fairness Act, MCAD (Jan. 23, 2018), <https://www.mass.gov/doc/mcad-guidance-on-pregnant-workers-fairness-act/download> (“The Act, effective on April 1, 2018, expressly prohibits employment discrimination on the basis of pregnancy and pregnancy-related conditions, such as lactation or the need to express breast milk for a nursing child.”).

- ▶ Include a definition of sexual harassment²⁴ that follows the language set forth in the EEOC’s regulations²⁵ and the Massachusetts General Laws chapter 151B.²⁶ The Policy also provides generic examples of verbal, nonverbal, and physical sexual harassment. Examples listed of non-verbal harassment include “display or discussion of written or graphic material, including calendars, posters and cartoons that are sexually suggestive.” Although the examples are illustrative of inappropriate conduct, the Policy could benefit from additional examples of misconduct that more aptly capture the types of behaviors likely to occur in the gaming and hospitality industry in which the Company operates. Focus group participants also expressed a desire for more relevant examples. Moreover, the current Policy is heavily focused on sexual harassment but does not provide examples of harassment related to other protected characteristics. This omission may serve to undermine the effectiveness of the Policy, given the diverse nature of the Company’s workforce.²⁷ Thus, the Monitor Team recommends that the Company add more relevant examples of sexual harassment as well as examples of harassment and discrimination based on other protected characteristics, including age, gender identity, race, national origin, sexual orientation, or religion.
- ▶ Encourage both employees and Patrons to report incidents of harassing behavior whether it comes from employees or Patrons. Specifically, the Policy states, “If an employee, guest, contractor, or other third party believes a co-worker, manager, vendor, contractor consultant, customer, visitor, volunteer or agent of the organization is harassing or discriminating against him or her, they should immediately report the incident”
- ▶ Provide notice that “[i]f the Company finds that discrimination or harassment has occurred (or other policies have been violated), it will take appropriate corrective action up to and including termination of employment of the offending employee, or other appropriate action if the offender is not a Company employee.” The Company may also reassign, terminate, or refer employees to law enforcement. The Monitor Team has seen evidence of appropriate corrective action being taken for harassment, including against senior leadership. The Monitor Team discusses these issues in Section III.G. and makes recommendations for further enhancements. The Monitor Team will continue to monitor the Company’s practices in this regard, specifically based on recommendations made in this Baseline Assessment.

²⁴ It is defined as:

unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature . . . when:

submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment,

Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.

29 C.F.R. § 1604.11(a)

²⁵ *Id.*

²⁶ Model Sexual Harassment Policy at 1.

²⁷ The MCAD strongly encourages employers to supplement their sexual harassment policies with equivalent broader harassment policies. *Id.*

- ▶ Instruct that any supervisor or above who becomes aware of discriminatory, harassing, or retaliatory behavior “must immediately report the situation to the Employee Relations Department or Legal Department, whether or not an employee has actually complained to the supervisor, and whether or not a complaining employee desires that the situation be reported.” The Monitor Team has learned of supervisors being reprimanded and coached for failure to report incidents of harassment. That type of action by the Company helps establish a speak-up culture and we will continue to monitor for continued and consistent implementation.
- ▶ List the Company’s internal reporting channels, including two of the three online reporting channels, to whom employees, Patrons, and third parties may report incidents. Although the Policy refers generally to “the Company’s hotline,” the Policy does not inform readers of the possibility of making anonymous complaints and omits reference to the Company’s principle reporting channel, InTouch. We understand from the Company that this omission was intentional due to the Company’s plans to transition to a new reporting platform. However, this omission could cause confusion and could disincentivize anonymous reporting. Indeed, as discussed in Section III.F., feedback from EBH focus groups showed that a number of employees were unaware that the Company had an anonymous reporting option. The Monitor Team recommends that the Company update the Preventing Harassment and Discrimination policy to instruct employees that they are able to submit anonymous complaints and to provide the information for the relevant hotline. Because of the pending transition to the new reporting platform, the Monitor Team considers it appropriate for the Company to wait to implement this recommendation until that new platform is rolled-out. In the meantime, the Monitor Team recommends that the Company engage in proactive messaging to employees – particularly at EBH – about InTouch and the ability that it provides to make confidential reports. Moreover, the MCAD recommends that the policy list physical work addresses of the people to whom complaints should be made. Guidelines on 151B at 8.
- ▶ Provide information on state and federal remedies.
- ▶ Emphasize that it is unlawful to retaliate against an employee for filing a complaint or participating in an investigation. It provides termination, disciplinary action, change in pay, change in shift assignments, or unfair performance evaluations as examples.

In addition to the enhancements suggested above, the Company can further improve the Policy by aligning its content with the Company’s anti-harassment training. As discussed further in Section III.E., the Monitor Team observed two anti-harassment training sessions at EBH. The training explained that the Company’s anti-harassment policy covers a broad scope of conduct, which includes conduct that occurs outside the workplace but has a nexus to employment.²⁸ Such conduct may occur, for example, over social media or at a work event. Currently, the Policy broadly prohibits harassment and discrimination in a variety of phases of employment, including hiring, promotion, assignment, discharge,

²⁸ Chapter 151B may apply to harassment that occurs between co-workers that takes place outside the workplace. Factors considered include whether the event at which the conduct occurred is linked to the workplace in any way, such as at an employer-sponsored function; whether the conduct occurred during work hours; the severity of the alleged outside-of-work conduct; the work relationship of the complainant and alleged harasser, which includes whether the alleged harasser is a supervisor and whether the alleged harasser and complainant come into contact with one another on the job; whether the conduct adversely affected the terms and conditions of the complainant’s employment; or, impacted the complainant’s work environment. Guidelines on 151B at 4–5.

benefits, compensation, and training, but does not mention conduct that occurs outside the workplace but has a nexus to employment. We note that the Company's Social Media Policy does prohibit employees from engaging in harassing or discriminating conduct on social media against an individual based on protected characteristic. The Monitor Team recommends that the Company update its Preventing Harassment and Discrimination policy to include a cross reference to its Social Media Policy and to include guidance to help employees understand that certain limited conduct outside the workplace but with a nexus to employment at the Company may also constitute sexual harassment and a violation of Company policy .

The Company should also enhance its disability and religious anti-discrimination policies. Currently, the Preventing Harassment and Discrimination policy has two short sections on "Invitation to Self Identify Disability" and "Religious Accommodation." In the former, the Company states that employees who have a "physical or mental impairment" that "substantially limits a major life activity and believes that they require an accommodation," they should contact ER. The Policy does not define the terms, "physical or mental impairment," "substantially limits," "major life activity," "accommodation," or other key terms. Nor does the Policy provide any guidance with respect to the Company's interactive process. The Policy is similarly lacking with respect to religious accommodations. Although the Policy states that "[t]he Company respects the religious beliefs and practices of all employees and will make, upon request, an accommodation for such observances when a reasonable accommodation is available that does not create an undue hardship." However, the Policy does not define the term "religious beliefs" or instruct employees on the Company's procedures for intaking and evaluating accommodations requests. Moreover, ER personnel advises employees that they can request a religious accommodation, but does not instruct employees on how to request one by, for example, listing the appropriate channel. The Monitor Team recommends that the Company incorporate these elements and adopt stand-alone policies addressing disability and religious accommodations. Additionally, based on discussions with ER and HR focus groups, the Monitor Team considers it equally important that the Company develop internal procedures to guide managers, ER, and HR on how to handle requests for accommodation.

b. Codes of Conduct

The Company has two Codes of Conduct: a Code of Business Conduct and a Code of Personal Conduct. The Code of Business Conduct sets out guiding principles covered persons must follow and standards to which they are held. It emphasizes honesty, integrity, and excellence—all of which are key to a compliance culture. It also empowers covered persons to handle ethical dilemmas and provides them with avenues to seek guidance and report violations. The Code of Personal Conduct lists a variety of behaviors and standards the Company expects of covered persons in their interactions with Patrons, co-workers, managers, and vendors. The Monitor Team views these standards as equally important in helping to foster a culture of compliance. The Monitor Team's observations and recommendations with respect to these documents are discussed further below.

i. *Code of Business Conduct and Ethics*

As part of the Company's policy enhancements, it revised the Code of Business Conduct's tone from the top message; included a stand-alone subsection on prevention of harassment and discrimination; added a personal relationships sub-section; enhanced the reporting violations section by referencing anonymous hotlines, including adding more reporting channels, confidentiality language, and anti-retaliation language; and added a permitted disclosures section.

The current version is 17 pages and divided into seven sections. Section one is introductory and contains a subsection on reporting violations. Section two outlines a covered person's responsibility to the organization, which includes abiding by the Prevention of Harassment and Discrimination and Personal Relationships policies. Section three lists various conflicts of interests. Section four discusses prohibitions and restrictions on gifts and entertainment. Section five explains a covered person's duty to protect the Company's assets and information. Section six discusses prohibited interactions with the government. And, section seven outlines permitted disclosures.

Date Implemented. Between 2018–2019 the Company updated the Code of Business Conduct at least three times. The Code was last updated on November 5, 2019 and ratified by the Board of Directors.

Tone from the Top. The Company significantly revised its introductory message to the Code of Business Conduct. The current version begins with a statement from the CEO, Matthew Maddox, that emphasizes the Company's commitment to compliance and a workplace defined by honesty, integrity, and excellence:

As reflected in this Code, we are committed to the Wynn Resorts workplace community being defined by honesty, integrity, and excellence. To earn and sustain the respect of our guests, colleagues, regulators, and the investment community, we must exemplify a true commitment to compliance in all that we do. That means complying with applicable laws and regulations, as well as with the highest standards of integrity and ethical business conduct. Together we are responsible for safeguarding the reputation and continued success of Wynn Resorts. . . . All employees, officers, directors, and agents of Wynn Resorts and its affiliates must comply with the Code.

Applicability/Coverage. The Code of Business Conduct applies to "Wynn Resorts" and all "Wynn entities." It applies to all employees, officers, directors, agents, and representatives of the Company and its affiliates as well as to "certain independent contractors and consultants who work at the Company's facilities or on the Company's behalf."

Key Provisions. The following Code of Business Conduct sections were of particular relevance to the Monitor Team's review:

- ▶ **1.3 Seeking Guidance.** Understandably, the Code of Business Conduct notes that it cannot provide answers to all questions. Accordingly, it directs covered persons to seek additional guidance from a variety of personnel, including supervisors, the Compliance Officer, or the Legal Department, and provides the numbers and emails of the relevant persons.
- ▶ **1.4 Reporting Violations.** The Code of Business Conduct provides several channels for reporting violations and contains an anti-retaliation clause. It encourages employees to report violations of laws, regulations, the Code of Business Conduct, or the Company's policies to their supervisors, the Compliance Officer, the ER, the SVP of HR, the GC, their particular regional division VP, the McClain Resources, or InTouch hotlines. The Code of Business Conduct also directs employees who have complaints regarding senior executive legal employees to make reports to the Audit Committee of the Board of Directors, ensuring that no one will be subject to retaliation for reporting suspected misconduct and promising to treat reports confidentially "to the extent possible." Given that past misconduct at the

Company permeated the upper echelons of the Company and as the Decision and Order states “repeatedly failed to protect a class of its employees,” Decision and Order at 38, the Monitor Team recommends the Company explicitly emphasize *throughout* the Code of Business Conduct that no person is above the Code and covered persons should report incidents *regardless* of who is involved.

- ▶ **2.2 Promoting a Diverse and Productive Workforce.** This provision states that the Company supports equal opportunity in employment and lists several protected characteristics, including citizenship status, pregnancy, and military status. These protected characteristics are not listed in a similar provision in the Preventing Harassment and Discrimination policy. The Monitor Team has recommended that the Company update the Preventing Harassment and Discrimination policy to include those protected characteristics. As the Company implements that recommendation, it should ensure that the new language aligns with the provisions of the Code of Business Conduct.
- ▶ **2.3 Prevention of Harassment and Discrimination.** This clause directs employees to the Prevention of Harassment and Discrimination policy, which is critical so that employees understand where to seek additional guidance on this important topic.
- ▶ **2.6 Personal Relationships.** Here, the Company discourages romantic or intimate relationships between employees even if the relationship is consensual. It also notes that some romantic and intimate relationships are absolutely prohibited but does not provide further guidance. Instead it directs employees to the Personal Relationships Policy for information on required reporting obligations, concluding that failure to abide by the Policy may result in discipline, up to and including termination. The Personal Relationships Policy is discussed below.
- ▶ **3. Conflicts of Interest.** This section covers examples of conflicts of interests, such as improper personal benefits from the Company, financial interests in other businesses, outside employment, activities with a competitor, etc. Notably, a personal relationship with an employee is not listed as a potential conflict of interest. The Monitor Team recommends that the Company include a personal relationship as a potential conflict of interest.
- ▶ **5.6 Record Retention.** This clause does not provide a retention period for Company records. The Monitor Team understands that the Company has developed a comprehensive document retention policy and the Monitor expects to review it in future phases.
- ▶ **7.1 Investigations of Suspected Violations.** This clause provides that all reported violations will be taken seriously and confidentially to the extent reasonably possible, and that “[n]o one will be subject to retaliation or adverse employment action because of a good faith report of suspected misconduct or for assisting in any investigation of suspected misconduct.”
- ▶ **7.2 Discipline for Violations.** This clause states that “Team Members” (employees, officers, directors, agents, and representatives of the Company) who violate the Code of Business Conduct may be subject to disciplinary action, up to discharge.
- ▶ **7.5 Permitted Disclosures.** This provision states “Nothing in this Code or any other agreement between you and the Company or any other policies of the Company shall prohibit or restrict you or your attorneys from” making certain disclosures to government

agencies. The Company added a Permitted Disclosures Policy “to facilitate employee reporting and legally-protected whistleblowing.” Encore Report at 22.

Overall, the Company’s Code of Business Conduct appropriately communicates the Company’s expectations that its employees uphold the highest standards for honesty and ethical conduct, and includes guidance to help drive such behavior—including guidance on conflicts of interest, personal relationships, and harassment and discrimination. Importantly, the Company establishes accountability for adherence to the Code of Business Conduct by providing methods for employees to seek guidance on its provisions and requiring employees to communicate suspected violations of the Code of Business Conduct.

ii. *Code of Personal Conduct*

The Company’s Code of Personal Conduct further focuses on expected behaviors and applies to “all interactions with others at the Company including guests, co-workers, managers and vendors.” The Code of Personal Conduct centers on four general rules: (1) “[r]especting others”; (2) “[s]triving for excellence in job performance”; (3) “[k]nowing and following all Company policies and procedures”; and (4) “[b]eing honest.” An additional 90 rules stem from these core principles. Previously, the Code of Personal Conduct included the “Golden Rule,” which directed employees to “Treat Others Like You Would Like to Be Treated” but the Company removed this paragraph as an acknowledgement that “not all individuals may share the same treatment preferences.” Encore Report at 21. In addition, the Company recently amended the Code of Personal Conduct to require covered persons to advise the Company of any sexual harassment claims made against them.

Date Implemented: The Code of Personal Conduct was revised on June 21, 2019, but unlike the Code of Business Conduct was not ratified by the Board.

Applicability/Coverage: Unlike other policies that specifically state to whom they apply (e.g., to “all employees, officers, directors, agents, and representatives of the Company and its affiliates”), the Code of Personal Conduct is silent as to its application. That silence could limit the Company’s ability to hold its employees and others accountable to the standards of behavior that the Code of Personal Conduct purports to uphold. To effectively drive these desired behaviors, the Company will need to clarify to whom standards of conduct apply and include management and senior executives within that scope.

Key Provisions: Overall, the Code of Personal Conduct is dense. It lists nine pages of personal conduct standards and states over 90 rules and standards of behavior. Some of the conduct mentioned is duplicative of rules in the Code of Business Conduct. We commend the Company for its initiative in identifying specific behaviors that it seeks to promote. Concretely defining what is expected and what is unacceptable is an effective way to promote a culture that reflects corporate values. However, a list of ninety rules and standards could be overwhelming and difficult to internalize. It also could create challenges to the Company’s ability to hold individuals accountable for violations of those rules and standards.

To increase the impact of the Code of Personal Conduct, the Monitor Team recommends that the Company review its Code of Personal Conduct to identify the core behaviors that are most fundamental to the Company and that it relaunch the new Code of Personal Conduct to drive awareness and communication around compliance.

c. Other Relevant Policies

In addition to the Preventing Harassment and Discrimination policy and the Company Code of Business Conduct and Code of Personal Conduct, the Monitor Team also reviewed the Company's changes to the Personal Relationships Policy, Personal Presentation policy, and Employee Patronization policy. The Monitor Team is pleased with the Company's efforts but has identified opportunities for further refinement. The Monitor Team's observations are discussed below. The Monitor Team will further test these policies in the next phase of review.

i. *Personal Relationships Policy*

The Company issued a revised version of this Policy on April 1, 2019. Over the last few years, the Company has made several changes to the Personal Relationships Policy. The updated Policy discourages personal relationships between all employees; cautions that a personal relationship must not interfere with an employee's professionalism; clarifies that when a manager and a subordinate are involved in a relationship, either may be transferred out of his or her position; and—importantly—creates reporting obligations for relationships between managers and subordinates and any relationships involving SVPs and above. Although these changes are a step in the right direction, the Policy requires further improvement.

The current Policy does not get to what should be the crux of a personal relationship policy: preventing coercion, abuse of authority, harassment, conflict of interest, unfair treatment, and favoritism in the workplace. Rather, the Company couches the purpose of its Personal Relationships Policy in terms of "maintaining a professional work environment free of potential conflicts of interest" and not behaving in a way that makes others feel "uncomfortable." Words like "professionalism" and "uncomfortable" have a variety of meanings and are prone to subjective interpretation. Personal relationships raise serious concerns about consent, conflicts of interest, and preferential treatment within the Company, which are not adequately addressed in the policy. The Monitor Team recommends that the Company amend this Policy to include a straightforward statement at the outset that addresses the risks a personal relationship poses to the Company and why Company intervention is important.

In addition, the Policy should sensitize employees to issues of consent and instruct that engaging in personal relationships could result in claims of sexual harassment. Indeed, a lack of understanding around issues of consent at the Company was a central concern for the MGC. Regarding the past conduct at the Company, the Decision Order noted:

The fact that many of the allegations and settlements were characterized as "consensual" is of no import. The fact that those in positions of authority actually repeatedly accepted such characterization reflects a complete lack of understanding of the applicable principles of law. The fact that a high ranking corporate executive is of the belief that a lower ranking employee is consenting to a sexual relationship, i.e., that it appears to be voluntary, does not mean that the relationship was welcome by the employee. In such an instance, the relationship may not be consensual despite the executive's characterization as such.

Decision and Order at 47 (internal citation omitted). Notably, the Policy may leave the misimpression that even where there is evidence of apparent consent, issues of coercion and harassment are mitigated. Specifically, the Policy provides that "[i]ndividuals involved in a relationship covered by this policy may be asked to sign a document acknowledging that their relationship is free from coercion and

harassment.” However, without more of an explanation, a covered person may misunderstand that signing such a document will absolve them of potential liability. To that end, the Monitor Team recommends that the Company instruct its personnel that even where there is consent, or the appearance of consent, that consent is fluid and can be revoked by either party at any time, and consequently, issues relating to conflicts of interest, sexual harassment, or violations of the Code of Business Conduct may still arise.

Finally, the Policy also notes that departments may implement policies more restrictive than those contained in the Personal Relationships Policy. However, the Company should define baseline requirements to which all departments must adhere and also implement a process to review department-issued policies before they are enforced and made available to employees through *The Wire*. In the next phase of our review, the Monitor Team will discuss this Policy with focus groups and test the effectiveness of this Policy.

ii. *Personal Presentation Policy*

The six-page Personal Presentation policy contains grooming, hygiene, and dress requirements. The Monitor Team encourages the Company to revisit these standards to ensure they are consistent with federal and state harassment and discrimination laws. As worded, many of the requirements leave significant discretion to management and may create a platform for discriminatory manifestations of ethnic, racial, or religious bias. For example, the Policy provides:

- ▶ “Extreme hairstyles and/or colors are not permitted.”
- ▶ “Hair accessories, types, and styles should be appropriate for a business environment and must conform to the specific requirements of each department.”
- ▶ “Beards and goatees, if permitted, must be well-groomed, conservative and professional in length and grown while you are off work (e.g., on your vacation).”

Indeed, some employees from the Spa and Salon Department expressed frustration with the rigidity of these rules, particularly concerning prohibitions on hairstyles. The Monitor Team learned of instances in which managers are alleged to have made inappropriate comments and gestures about their employees’ hair. Moreover, terms like “extreme” are subjective and without additional guidance that is sensitized to racial and ethnic issues surrounding hair and physical appearance, the Company may be inadvertently creating fertile ground for harassment and discrimination. To the extent these rules conflict with certain religious beliefs, the Company might also include a statement that it will provide reasonable accommodations to employees and provide channels for requesting an accommodation.

Like the Personal Relationships Policy (discussed above), the Personal Presentation policy also permits departments to develop and communicate department-specific personal presentation standards. For the same reasons as noted above, the Monitor Team recommends that the Company define baseline requirements to which all departments must adhere and implement a process to review these policies before they are enforced and made available on *The Wire*.

iii. *Employee Patronization Policy*

The Employee Patronization policy allows Wynn employees, cohabitants, and family members to patronize the property within the guidelines of the Policy. The Policy provides guidelines as to areas employees are permitted to patronize. The Policy states that “[e]mployees are not permitted to patronize the pool and health spa without specific authorization unless staying at the hotel as a

registered guest.” It does not provide details of how such authorization is to be achieved. The Monitor Team recommends that the Company clarify from whom employees should seek authorization and under what circumstances patronization of the pool and health spa are authorized. Moreover, although the Policy states that it is applicable to cohabitants and family members, it is employee-focused and none of the rules appear to directly apply to family members and cohabitants. The Company may want to consider changing this Policy to apply only to employees. The Monitor Team has not tested the effectiveness of this Policy but will do so in a follow-up phase.

iv. *Pregnancy Accommodation Policy*

The Pregnant Workers Fairness Act²⁹ prohibits employment discrimination on the basis of pregnancy and pregnancy-related conditions, such as lactation or the need to express breast milk for a nursing child. Employers must provide written notice of these rights to new employees prior to the start of employment and to an employee who notifies the employer of a pregnancy or pregnancy related condition.³⁰ The Company maintains that it provides the required notices to employees, and in the next phase of our review, the Monitor Team will review and evaluate the notices. However, simply providing notice is not enough. As with the disability and religious accommodations, the Monitor Team recommends that the Company adopt a policy to make it clear that the Company prohibits pregnancy discrimination and harassment and that otherwise aligns with applicable laws.

d. Procedures for Developing, Updating, and Communicating Published HRCF Policies

Well written policies and procedures are only one aspect of a well-designed compliance program. Equally important to establishing compliance is creating a process for updating and developing new policies and procedures and establishing a communications strategy to convey the policies and procedures to covered persons. The Company has some of these processes in place, but they can be significantly improved.

i. *Company Procedures for Updating Policies—Company Policy Review*

The Company recently developed a policy to govern the Company’s review and approval of policies—the Company Policy Review policy. This step demonstrates the Company’s appetite to formalize its HRCF and create a foundation for the program to expand and mature. The scope of the Policy, however, is limited to reviewing existing policies and does not establish a process to develop new policies or leverage relevant departments to develop and review policies. Thus, although the Company Policy Review policy is a step in the right direction, it is incomplete. In order for it to be comprehensive, it should include a process for existing and new policy development, review, and implementation.

A comprehensive policy on policies should include a process that would require: a stated purpose for the policy; a section that defines “policy,” “procedure,” and other keywords; a process for leveraging the knowledge of relevant departments and subject matter experts when developing and reviewing policies; a process for policy development and policy review; a standard format for all Company policies; a comprehensive list of all Company policies and procedures; and a downstream

²⁹ See *MCAD Guidance: Pregnant Workers Fairness Act*, *supra* note 25 (“The Act, effective on April 1, 2018, expressly prohibits employment discrimination on the basis of pregnancy and pregnancy-related conditions, such as lactation or the need to express breast milk for a nursing child.”).

³⁰ *Id.*

compliance process for training, monitoring, and audit. Each of these elements serves an important purpose:

- ▶ Including a statement of purpose and key definitions will clarify when the “policy on policies” applies.
- ▶ Leveraging the knowledge of relevant departments and subject matter experts when developing and reviewing policies will ensure that policies are relevant to covered persons.
- ▶ Including a process for both policy development and review will ensure that policies are developed and reviewed both at a scheduled cadence and in response to triggering events, such as changes in the law, following a root cause analysis of investigations, or in the aftermath of a crisis.
- ▶ Providing a standard format for Company policies will create uniformity with respect to all policies. Currently, there is a lack of consistency in document templates and classifications (i.e., the type of documents: Corporate Governance Guidelines, Billing Guidelines for External counsel, Deconflicting Policy, Preventing Harassment and Discrimination policy). It is difficult to ascertain what constitutes a Company policy, guideline, or procedure. Moreover, most of the policies the Company provided to the Monitor Team were labeled as “Encore” and appeared to be property-specific. Where possible, the Company should consider implementing the same policies in the same format across all properties. This will create cohesion Company-wide and will make updating policies more straightforward.
- ▶ Each Policy should also reference other related policies that employees may consult. For example, the Company’s Preventing Harassment and Discrimination Policy could cross-reference the Company’s Social Media Policy and policies on disability and religious accommodations.
- ▶ The Company should include a list of all policies in its policy on policies, to ensure that the Company is able to keep track of all policy documents.
- ▶ Lastly, the Company Policy Review policy should ensure that related downstream compliance program mechanisms, such as training, monitoring, and audit are implemented in due course. Each time a policy or procedure is developed or revised, it creates the obligation to ensure it is appropriately communicated, that its predecessor document is removed from circulation, that training on the new policy or procedure timely reaches the appropriate audiences, and that its implementation is monitored and audited. These changes will establish a comprehensive process for designing, revising, and implementing policies and procedures.

The Monitor Team recommends that the Company develop a comprehensive policy on policies that aligns with the elements listed above.

ii. *Company Policy Communication Strategy*

As noted, the Company’s main communication strategy for rolling out policies and procedures is by uploading them to *The Wire*. Currently, *The Wire* houses over 50 different personnel policies, among which are, the Preventing Harassment and Discrimination policy, the Code of Business Conduct, the Code of Personal Conduct, and the Personal Relationships Policy. When employees are on-boarded, they are prompted to review and acknowledge that they have reviewed the Company policies. If

policies are updated or new policies are published, employees are alerted to review and acknowledge that they have reviewed the policy. Although *The Wire* serves well as a central repository for personnel policies and procedures, it should be only a part of a larger and more proactive dissemination strategy for policies and procedures—especially for those policies that relate to harassment, discrimination, and general employee safety and welfare.

The Monitor Team’s discussion with focus groups confirmed that employees’ main access point for policies and procedures was *The Wire*. However, when asked whether they had reviewed specific policies like the Preventing Harassment and Discrimination policy through the portal, many employees expressed they had not actually reviewed the policy in full—but rather just clicked through the pages to be able to acknowledge receipt. The most common reasons cited by employees for not fully engaging with policies: the length of the policy and technical difficulties accessing *The Wire*. These responses are particular to the Preventing Harassment and Discrimination policy, but can be extrapolated to other policies. The Company should aim to improve the design of each policy by well-articulated essentials, which will decrease its length. To improve dissemination, it can leverage other platforms to communicate key aspects of its policies, such as posting highlights publicly, utilizing modules to test comprehension, and using pre-shifts to reinforce fundamental points from its policies in Section III.E. The Monitor Team recommends that the Company adopt a comprehensive communications strategy to disseminate the Preventing Harassment and Discrimination policy and other equally important policies and procedures.

4. Recommendations

Based on our testing, the Monitor Team recommends:

P&P 1	<p>Update the Preventing Harassment and Discrimination policy as follows:</p> <ul style="list-style-type: none">▶ explicitly state that the Policy applies to management and senior executives;▶ expand the definition of “Protected Characteristic” consistent with MCAD guidance;▶ include additional relevant examples of sexual harassment as well as examples of harassment and discrimination based on other protected characteristics, including age, gender identity, race, national origin, sexual orientation, or religion;▶ instruct employees of the ability to submit anonymous complaints;▶ include information of the new confidential hotline;▶ include physical work addresses of individuals at the Company (e.g., ER, HR) to whom complaints may be made; and▶ include a cross-reference to the Company’s social media policy and guidance to help employees understand that certain limited conduct outside the workplace, but with a nexus to employment at the Company may also constitute sexual harassment and a violation of Company policy.
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P&P 2	Pending roll-out of the new reporting platform, engage in proactive messaging to employees, particularly at EBH, about InTouch and the ability that it provides to make confidential reports.
P&P 3	<p>Develop and issue the following policies and incorporate references to them throughout the HRCP as appropriate:</p> <ul style="list-style-type: none"> ▶ disability accommodations; ▶ religious accommodations; and ▶ pregnancy discrimination, harassment, and accommodation.
P&P 4	<p>Amend the Code of Business Conduct as follows:</p> <ul style="list-style-type: none"> ▶ explicitly emphasize throughout the document that no person is above the Code of Business Conduct, and covered persons should report incidents regardless of who is involved; and ▶ include a personal relationship as a potential conflict of interest.
P&P 5	Review Code of Personal Conduct to identify the core behaviors that are most fundamental to the Company and relaunch the new Code of Personal Conduct to drive awareness and communication around compliance.
P&P 6	<p>Update the Personal Relationships Policy as follows:</p> <ul style="list-style-type: none"> ▶ include a straightforward statement at the outset that addresses the risks a personal relationship poses to the Company and why Company intervention is important; ▶ clarify that even where there is consent, or the appearance of consent, consent is fluid and can be revoked by either party at any time, and consequently, issues relating to conflict of interest, sexual harassment, or violations of the Code of Business may still arise; and ▶ implement a process to review department-specific policies before they are made available on <i>The Wire</i>.
P&P 7	Review the Personal Presentation policy to ensure it is consistent with federal and state harassment and discrimination laws and implement a process to review department-specific personal presentation policies before they are enforced.
P&P 8	Make department-specific policies available on <i>The Wire</i> .
P&P 9	In the Employee Patronization policy, clarify from whom employees should seek authorization and under what circumstances patronization of the pool and health spa are authorized.
P&P 10	<p>Update the Company Policy Review policy to include:</p> <ul style="list-style-type: none"> ▶ a stated purpose for the policy;

- ▶ a section that defines “policy,” “procedure,” and other keywords;
- ▶ define a process for leveraging the knowledge of relevant departments and subject matter experts when developing and reviewing policies;
- ▶ define a process for policy development and policy review;
- ▶ a standard format for all Company policies;
- ▶ a comprehensive list of all Company policies and procedures; and
- ▶ incorporate a downstream compliance process for training, monitoring, and audit.

P&P 11 Adopt a comprehensive communications strategy to disseminate the Preventing Harassment and Discrimination policy and other equally important policies and procedures.

D. Third Party Relationships

The MGC’s Decision and Order requires the Monitor to review and evaluate “all policies and organizational changes adopted by the Company as described by the Company to the Commission.” Decision and Order at 50. Included amongst those changes are policies and procedures that relate to the Company’s management of certain third parties, such as vendors, service providers, and law firms. In this Section we evaluate those changes.

As noted throughout this Baseline Assessment, Patrons have been identified to the Monitor Team as presenting heightened risks of perpetrating sexual harassment and discrimination. Therefore, in this Section, we also include a discussion on Patrons and on the Company’s management of the sexual harassment and discrimination risks that they present for employees.

1. Compliance Guidance

EEOC enforcement guidance has long instructed that employers must provide a harassment-free environment for their employees, “regardless of who the perpetrators of the harassment are”³¹ and encourages employers to take “proactive action” and “to be vigilant about addressing complaints of harassment by third parties as well as employees.”³² Expected steps include providing employees the ability to report harassment and discrimination by third parties, *id.*, and ensuring that policies explicitly prohibit harassment by third parties. 29 C.F.R. § 1604.11(e).

The DOJ Guidance instructs companies to take a risk-based approach to managing their third party risks. This means policies and procedures related to third parties should be designed to correspond to the nature and extent of the risks posed by the third parties with whom a company engages. Companies must also identify effective ways to communicate their compliance standards to third parties and to incentivize compliant behavior among their third parties. This, the Monitor Team

³¹ Press Release, EEOC, Charleston Temp Firm and Construction Company Sued by EEOC for Sexual Harassment (Aug. 7, 2009), <https://www.eeoc.gov/eeoc/newsroom/release/archive/8-10-09.html>.

³² Press Release, EEOC, American Laser Centers to Pay \$125,000 to Settle Sexual Harassment and Retaliation Suit by EEOC (Oct. 11, 2011), <https://www.eeoc.gov/eeoc/newsroom/release/10-11-11.cfm>.

analyzed separately the risk involved in the interactions of the Company and its employees with various third parties.

2. Testing

Our Baseline Assessment focused on reviewing the Company's approach to managing harassment and discrimination risks from third parties. We reviewed policies and procedures, standard contractual language, and interviewed management employees responsible for managing third party oversight procedures. We also reviewed the Company's approach to managing harassment and discrimination risks created by Patrons, including in interviews with employees and during discussions with focus groups.

The Monitor Team also reviewed the Company's policies and procedures for managing external counsel, specifically the Company's Deconflicting Policy and Billing Guidelines.

3. Observations

Since 2018, Wynn Resorts has undertaken steps to make its third parties aware of the Company's sexual harassment policies and has opened its internal reporting channels to permit third parties to report incidents of harassment and discrimination. The Company also developed a protocol to mitigate the risk of conflicts of interest arising in connection with external legal counsel that may be engaged to provide services for the Company and any individual at the Company in a personal capacity.

a. Patrons

As discussed throughout this assessment, the Monitor Team views offending behavior by Patrons as the Company's highest risk factor for sexual harassment and discrimination. For Wynn—and the gaming industry in general—Patron behavior presents a unique challenge to promoting a culture free from harassment and discrimination. See Section III.A. Employees across the Wynn Resorts organization noted that, historically, the gaming industry has tolerated conduct that falls well outside of the norm of what is tolerated in other environments. Employees stated that Patrons come to a casino with a "mindset . . . of letting it all out" and noted that to work on a casino floor you have to have "thick hide" because "that's the culture." Many employees highlighted that they work for tips and will often tolerate behaviors from Patrons that they would not tolerate otherwise in order to maximize these tips. However, all employees—line employees, senior management, managers, and supervisors—also acknowledge that tolerating Patrons' offending behavior should not come at the price of employee safety. Based on our initial review, the greatest challenge for the Company appears to be how to effectively protect its employees from Patrons who behave inappropriately towards them.

The Company has implemented several policies aimed at protecting employees from offending conduct by Patrons. In 2018, the Company implemented changes to certain policies governing employee interactions with Patrons. The Company updated its Employee Interaction with Guests and Other Third Parties policy, updated its Spa and Salon policies, and eliminated in-room salon services. The Monitor Team received three separate policies all entitled "Employee Interaction with Guests and Other Third Parties Policy." The Monitor Team has reviewed those policies and tested their effectiveness through focus group discussions and employee interviews. Each policy appears to address separate constituencies and will therefore be discussed separately below. The Monitor Team recommends, however, that the Company consolidate all three policies into a single, comprehensive policy on Employee Interaction with Guests and Other Third Parties.

i. *Employee Interaction with Guests and Other Third Parties Policy*

In November 2008, the Company issued its Employee Interaction with Guests and Other Third Parties policy, which it updated in July 2018. The Policy is a one-page document available to employees through *The Wire*. It affirms the Company's belief in "maintaining a safe and friendly environment for both its guests and employees" and acknowledges that "[s]ometimes the behavior of a guest, outside vendor, or other third party is inconsistent with Wynn's Preventing Harassment and Discrimination, and Workplace Violence Policies." The Policy states that "appropriate steps need to be taken to address such behavior in a respectful and effective manner" and sets out procedures for responding to inappropriate behavior by Patrons. The identified procedures include, amongst others, separating the employee from the offending Patron, instructing the Patron to cease the offending behavior, and notifying Security if there was unwelcome physical contact. Although the Policy does not state to whom it applies, the procedures outlined in the Policy indicate that it is intended to guide managers and supervisors on their interactions with offending Patrons.

Guidance on how to interact with offending Patrons is critical. However, discussions with focus groups indicate that the current policy may not be sufficient. In both Massachusetts and Nevada, managers, supervisors, and line employees expressed a need for increased support from the Company with respect to addressing Patron misconduct. While all employees understood that the Company states that it does not tolerate inappropriate behavior from Patrons, a majority of employees noted an inconsistency in how the Company defines and responds to inappropriate behavior from certain categories of Patrons and hotel guests.

Specifically, employees in focus groups noted an inconsistency in how managers, supervisors, and even Security personnel respond to reports of offending conduct by Patrons. Focus group participants in Boston and Las Vegas indicated that while some managers and supervisors "may be behind [them] 100%" and take immediate action against offending Patrons, others respond by saying that "there is nothing they can do about it," leaving employees with the unstated understanding that tolerating certain offending conduct "is part of [the] job." Such inconsistency indicates that the Company must reinforce its messaging to managers and supervisors as to their roles in addressing and stopping Patron behavior that does not align with Company expectations. The Company should also increase training of managers and supervisors to prepare them for such interactions.

As noted in Section III.A., some employees also stated to the Monitor Team that they perceive mixed messaging from the Company with respect to offending Patrons. These employees stated that while there is a bright line of behavior that the Company certainly will not tolerate—e.g., touching—employees perceive a "grey area" of behavior that is not consistently actioned, especially when the offending individual is a high-value Patron. As a result, employees expressed feeling disempowered to pushback on offending behavior from high-value Patrons or VIPs. Employees expressed that this feeling was exacerbated by the Company's focus on preserving its patina through excellence in service. Even employees who self-described as having "thick skin" and as being "able to take care of [themselves]" stated that the Company's emphasis on service, especially to higher worth Patrons, left them feeling that they "can't speak up as much as [they'd] like to in certain situations." These are issues that the Company must address in order to fully transform its culture. The Monitor Team recommends that the Company develop communication and training to counteract these perceptions among employees. In addition, the Company should actively monitor data collected from investigations of offending Patrons to evaluate its practices in responding to high-value Patrons. It is equally important, of course, for the Company to monitor employee perceptions of its response to offending behavior by Patrons and to test whether and to what extent offending behavior by Patrons—especially high rollers—is underreported.

The Monitor Team recommends that the Company conduct periodic culture surveys and focus groups designed to assess employee experience and perceptions around these issues. The Monitor Team will, therefore, continue to test the Company's efforts in this regard.

ii. *Patron Standards of Behavior*

Senior and middle management at the Company are aware that Patrons are the highest risk factor for sexual harassment and discrimination but have not yet identified an effective strategy to curb the offending behavior. Interviewees acknowledged that not addressing Patron behavior can be at odds with the Company's desire to create a safe work environment for employees. As one senior manager stated it: "people come here and know that what happens in Las Vegas stays here, but we want to make it safe for our employees." The challenge, many interviewees explained, is that the gaming industry in general, and Las Vegas specifically, sells an environment where people can be uninhibited. Even though Las Vegas may change this marketing approach in the future,³³ it is likely to remain part of Patrons' perception. The Monitor Team recommends that the Company further evaluate, develop, and implement strategies to communicate standards of behavior to Patrons of EBH and Wynn Las Vegas.

Another common theme that we heard throughout our interviews and focus groups is the pride that Wynn employees take in their five-star brand: the Company and its employees take tremendous pride in offering a higher-end experience for their Patrons. However, Patrons' behavior also affects the Wynn brand and experience. Boorish behavior by one Patron can spoil the experience for other Patrons. Thus, curtailing such behavior will improve the experience for others. Viewing the issue from that perspective could open a path forward for Wynn to more effectively manage Patron behavior. For instance, capitalizing on brand image, the Company could develop messaging and communication setting forth standards of behavior that Patrons are expected to follow. The Company could develop a Patron Code of Conduct and publish it on its website. The Company could also message standards of behavior through promotional materials, its Red Card and other loyalty programs, or signage at its facilities.

iii. *Spa and Salon Policies*

Patrons' offending behavior is an even higher risk when they interact with employees in private—without any witnesses—such as in the Company's spas and salons. The Company issued a memorandum to its Spa employees in March 2018 and another to Salon employees in August 2018 that announced "revised" policies on interactions with Patrons (the "Spa Policy" and "Salon Policy," respectively). These Spa and Salon Policies take the form of the Employee Interaction with Guests and Other Third Parties policy discussed above and implemented a series of additional changes in order to increase the safety and security of the Company's Spa and Salon employees. The Salon Policy and the Spa Policy address separate constituencies and, for the most part, cover separate issues. As noted above, the Monitor Team recommends that the Company consolidate all three documents into one comprehensive policy on interactions with third parties.

(a) *Spa Policy*

On March 17, 2018, the Company issued a memorandum to "All Staff" from the "Spa Leadership Team" announcing a Revised Policy—Employee Interaction with guests and other third parties. The

³³ Ed Komenda, *What Happens in Vegas, Stays in Vegas: Could Famous Slogan be Replaced?*, USA Today, Dec. 2, 2019, <https://www.usatoday.com/story/travel/destinations/2019/12/02/what-happens-vegas-stays-vegas-famous-slogan-change/2589302001/>

“[r]evised [p]olicy” is materially similar to the Employee Interaction with Guests and Other Third Parties policy discussed above but adds provisions specific to the spa environment.

For instance, the Spa Policy acknowledges that “guests and employees are in potentially vulnerable situations behind closed doors” and provides guidance instructing employees to remove themselves from and immediately report inappropriate behavior by Patrons. Specifically, the Spa Policy prohibits “any type of sexual conduct” in treatment rooms and states that all Patrons who behave inappropriately should be reported to Spa management. The Spa Policy further advises employees that if they feel “threatened or uncomfortable” handling a situation with a Patron, they may immediately leave the room and report the situation to a manager on duty.

The Spa Policy also sets forth an “[in-room] [t]reatment [s]afety [p]rotocol and [p]rocedure,” which instructs Spa employees performing in-room treatments to follow the same guidelines as they would in the spa, and states that “[i]n any case physical contact should result in immediate removal of the therapist for [sic] guest room.”

Focus groups demonstrated that relevant employees understand the Spa Policy and that it is working effectively at both the Boston and Las Vegas properties. Employees and managers with whom the Monitor Team spoke expressed a clear understanding of the Company’s expectations and comfort in acting in compliance with those expectations. We note also that since the issuance of the Spa Policy, Spa employees have been given emergency safety alert buttons they can press that will summon Security to assist them. Employees with whom the Monitor Team spoke generally viewed this as a positive step taken by the Company towards protecting their safety. The Monitor Team has not tested the implementation and operation of the safety alert button procedures but will do so in the next phase.

(b) Salon Policy

On August 8, 2018, the Company issued a memorandum publishing another revised Employee Interaction with Guests and Third Parties policy, this one addressed to “All Salon Staff” from “Salon Leadership Team.” The Salon Policy is largely consistent with the Spa Policy and with the general Employee Interaction with Guests and Other Third Parties policy in that it instructs Salon employees to report inappropriate conduct and to remove him or herself from conduct that in their own discretion they deem threatening or offending. Notably, however, the Policy instructs management to immediately request that a Patron or other third party leave “[i]f management observes *egregious* conduct” by the Patron or third party. It is unclear to the Monitor Team why the Company limits Salon management’s ability to remove a Patron or third party from the Salon to only *egregious* conduct. We recommend that, in addition to consolidating the Salon Policy into a broader Employee Interaction with Guests and Other Third Parties policy as recommended above, the Company also remove the reference to “*egregious* conduct” and clarify that any behavior of Patrons or other third parties that is inconsistent with the Company’s Preventing Harassment and Discrimination policy could result in immediate removal.

The Monitor Team notes that the Salon Policy states that as of August 1, 2018, Salon services are not offered in-room. Should this change, the Monitor Team will re-evaluate the Salon Policy in light of that change.

b. Harassment and Discrimination Policies Applicable to Independent Contractors

Wynn has in place measures that are critical to the management of independent contractors, including screening mechanisms, written policies, and standard contractual language intended to communicate the Company's policies against harassment and discrimination. The Monitor Team is pleased that the Company has identified independent contractors as a source of harassment and discrimination risk and that it has taken measures to mitigate that risk. The Monitor Team recommends additional steps the Company should take to build upon its current efforts.

i. *Background Standards and Procedures*

The Company conducts risk-based background investigations into all vendors, consultants, lobbyists, independent hosts, independent agents, gaming promoters, and key gaming employees (collectively, "Covered Entities") with whom the Company proposes to engage. Those background investigations are governed by the Company's Compliance Plan and the Company's background investigation protocol, the Background Standards and Procedures that is applicable at both EBH and Wynn Las Vegas. According to the Background Standards and Procedures, background investigations are designed to identify "materially derogatory information that would lead to a concern that the proposed transaction or relationship may increase the likelihood of bringing disrepute to the Company or to the gaming industry" such that a proposed transaction or relationship should not go forward, as well as other information that might not increase the likelihood of bringing disrepute, but could indicate the need to exercise caution. The Background Standards and Procedures outlines a risk-based investigation approach, which includes investigation of:

- ▶ Negative Media
- ▶ Information from Gaming Regulators
- ▶ Government Prohibited Persons and Entities Lists
- ▶ Politically Exposed Persons Lists
- ▶ Consolidated Sanctions Program (OFAC) Guidance
- ▶ Litigation
- ▶ Adverse Financial Information
- ▶ Fraud and Regulatory Breaches
- ▶ Intellectual Property Violations
- ▶ Criminal Offenses
- ▶ Public Filings and Business Licensing

The Background Standards and Procedures instruct that the "baseline steps represent the minimum level of investigation to be taken" and that the "Investigation[s] Division may, in considering the circumstances and exercising its sound judgment, utilize any or all methods available to investigate" a Covered Entity. The Compliance Plan requires the CGCO to ensure adherence to the Background Standards and Procedures and to submit quarterly reports to the Compliance Committee of Covered Entities engaged and paid by the Company.

Upon completion of the background investigation, the CGCO reviews the background report to determine whether to authorize, object to, or indicate caution with respect to the proposed engagement. If the engagement is approved, the CGCO includes the engagement and the Background Report in the materials submitted quarterly to the Compliance Committee. If the CGCO does not approve the engagement or indicates caution, the Company may enter the engagement only if the GC presents a description of the proposed engagement along with the CGCO's recommendation and Background Report to the Compliance Committee for review, and if the Compliance Committee unanimously votes not to object to the engagement. If the Compliance Committee does not unanimously vote not to object, the proposed engagement may be submitted to the Board for its review, but only at the unanimous request of the CEO, CFO, and GC.

A defined third-party background investigation or due diligence procedure, such as this one, is an important indicator of a Company's commitment to compliance across the entirety of its operations and relationships.³⁴ While traditionally such procedures have focused on the management of risks that fall outside of the HR arena, we understand from interviews that the Company's background investigations do take into consideration information that can be gained by the Company related to sexual harassment by a Covered Entity (e.g., media reports and litigation). We understand that in at least one instance, the Company's background screening uncovered an allegation of harassment filed against a proposed vendor's employee. Although the Company moved forward with the engagement, on a weekly basis, the Company monitors relevant sources for additional information regarding the initial allegations and is prepared to terminate the engagement in the event the allegations are proven. In the next phase of our review, the Monitor Team will review this and other investigation files related to Covered Entities to test how the Company adjudicates findings of factors that may indicate a risk of sexual harassment.

The Monitor Team commends the Company for leveraging its Background Standards and Procedures to help identify issues related to sexual harassment. Covered Entities interact with Company employees at every level and therefore could expose Wynn employees to an increased risk of harassment and discrimination. Screening third parties for background information that may indicate instances of sexual harassment and discrimination issues is an important step in mitigating those risks. However, as discussed in a recent study by the University of Massachusetts Amherst, sexual harassment and discrimination incidents are rarely reported through public sources.³⁵ Therefore, traditional background screening exercises may not be as effective in detecting risks posed by third parties related to sexual harassment or discrimination as they are in detecting business, financial, or other regulatory compliance risks (e.g., bribery and money laundering). That is not to say that the Company should desist of its efforts. To the contrary, the Monitor Team recommends that the Company enhance its current practices in order to maximize their effectiveness and to ensure their sustainability. Specifically, the Monitor Team recommends that the Company update its Business Standards and Procedures to reflect its current practices and to provide focused instruction that claims, charges, litigation, or reports of sexual harassment and discrimination allegations may be material to the Company's consideration of whether to engage a third party and, if detected, should be documented and included as risk factors in the Investigative Report.

³⁴ The Monitor Team recognizes that its mandate does not include a review of the Company's entire third-party management system.

³⁵ Carly McCann, Donald Tomaskovic-Devey, & M.V. Lee Badgett, *Employer's Responses to Sexual Harassment*, U. of Mass. Amherst: Ctr. for Emp. Equity, <https://www.umass.edu/employmentequity/employers-responses-sexual-harassment> (last visited Apr. 16, 2020).

As noted, the Company, as a baseline, screens most Covered Entities through searches of negative media, litigation, and criminal offenses for “materially derogatory information that . . . may increase the likelihood of bringing disrepute to the Company.” However, the Company does not appear to provide guidance to relevant employees on what constitutes “materially derogatory information.” Although relevant employees may be sensitized to compliance risks from third parties with a history of sexual harassment or discriminatory behavior, the Monitor Team recommends, that the Company review and update its Background Standards and Procedures to define “materially derogatory information” to include factors related to sexual harassment and discrimination.

ii. *Third Party Form Agreements*

As stated in the Encore Report, the Company has revised its standard third-party agreements to require its vendors and independent contractors to comply with the Company’s Preventing Harassment and Discrimination policy. The Company’s changes include:

- ▶ **Form Vendor Registration Letter.** At on-boarding, the Company requires all approved vendors to complete a standard registration form through the Company’s purchasing portal. The first page of that registration form includes a provision advising vendors of the Company’s commitment to a workplace free of harassment and discrimination. The provision instructs vendors that their employees must comply with Wynn’s Preventing Harassment and Discrimination policy and advises them that violation of the Policy “may result in the termination of services.” The Company further instructs vendors to “immediately” report to the Company any incident of harassment or discrimination experienced by the vendors’ employees. The vendor registration letter also includes the Company’s Preventing Harassment and Discrimination policy as an attachment.
- ▶ **Form Vendor Purchase Order Terms and Conditions.** The Company’s standard purchase order form includes a provision requiring vendors to represent and warrant that the “[v]endor, its employees and contractors shall abide by all federal, state[,] and local laws or regulations and Wynn Las Vegas Policies and Procedures while upon any property owned by Wynn Las Vegas or any of its affiliates, including, without limitation, Wynn Las Vegas’ Preventing Harassment and Discrimination Policy.”
- ▶ **Form Independent Contractor Agreement.** The Company also modified its form agreement for independent contractors to include a provision obligating independent contractors, and their principals and employees to comply with the Company’s Preventing Harassment and Discrimination policy. The form also instructs that any violation of the Policy should be immediately reported in accordance with the procedures set forth in the Policy, which is attached as an exhibit to the form agreement. The agreement grants Wynn the right to terminate the agreement for Policy violations.

These changes demonstrate the Company’s commitment to provide a workplace free from harassment and discrimination from all sources. However, we must test how those changes are implemented. In the next phase of our review, the Monitor Team will sample vendor and independent contractor files to test the use of these forms, including what percentage of the Company’s vendors and independent contractors are engaged through the Company’s standard purchase order and agreements. The Monitor Team will also test whether any Company employees have reported harassment or discrimination by vendors or independent contractors have been reported by employees for harassment and discrimination and how such reports have been handled.

c. Law Firms

The Company has implemented a new policy related to the management of external counsel: the Deconflicting Policy. The Deconflicting Policy is managed by Legal and is intended to detect and avoid conflicts that may arise from a law firm or lawyer representing both the Company and an individual employee of the Company. In the Monitor Team's opinion, these policies do not recognize the root cause of past problems and thus do not adequately mitigate the risk of Company personnel engaging the Company's external counsel for personal matters.

i. *Deconflicting Policy*

In July 2019, the Company adopted the Deconflicting Policy to apply to external counsel retained by the Company. It is intended "to account for potential conflicts of interest that may arise in connection with third-party attorneys retained to perform services both for the Company and for individuals at the Company." Encore Report at 25. It is less than half a page in length and states only that external counsel will "avoid conflicts of interest between clients and potential clients." It also requires external counsel to "ensure that no conflicts of interest exist that have not been waived."

The Deconflicting Policy relies solely on attorneys' understanding of, and compliance with, their existing obligations to avoid legal conflicts of interest, as required by the applicable Rules of Professional Conduct. Despite the Company's past history, the Deconflicting Policy does not recognize the possibility of conflicts between the Company and its own personnel that might arise in the future, as they did in the past. Specifically, nothing in the Deconflicting Policy makes clear that external counsel generally should not represent the Company at the same time they that they represent an officer or director of the Company in their personal capacity.

Both Rule 1.13(g) of the Massachusetts Rules of Professional Conduct and Rule 1.13(g) of the Nevada Rules of Professional Conduct prohibit a lawyer who represents a company from also undertaking representation of the company's directors, officers, or other constituents, unless the company consents (and such consent must come from someone other than the individual involved in the individual representation). The Company has not included any similar provision in its own Deconflicting Policy.³⁶

As the authors of the textbook *The Law of Gambling and Regulated Gaming* note, allowing a lawyer to represent both an organization and its employees, officers, or directors is "a potential minefield," both if the representation is in the same matter or in totally unrelated matters. For example, if the lawyer representing the individual learns negative information about which the lawyer would want to inform the Company, the lawyer may be forbidden to do so because of the lawyer's obligation of confidentiality to the individual.³⁷ Further, as the textbook notes, this is more likely to occur if a lawyer represents an individual employee in a personal matter, because the employee may "mistakenly assume that the lawyer will act to further [his or her] personal interests." *Id.* at 353. Without a clean line defining the lawyer's obligations, concurrent—even unrelated—representations could result in the lawyer's withdrawal or disqualification from representing the Company. If the Company retained a lawyer to conduct an investigation and the lawyer was simultaneously—in an

³⁶ In addition, the Monitor Team has reviewed the Company's Billing Guidelines to external counsel. We note that those guidelines also include a conflict of interest provision, which, while more detailed, also does not provide language precluding external counsel from representing the Company and Company personnel.

³⁷ Anthony N. Cabot & Keith C. Miller, *The Law of Gambling and Regulated Gaming* 350–53 (Carolina Academic Press 2d ed. 2006).

unrelated matter—representing an executive whose actions were involved in the subject of the investigation, the lawyer would not be able to satisfy his or her ethical obligations to both clients.

The Deconflicting Policy refers to the Billing Guidelines for guidance about what the Company considers a conflict of interest. Section IV of the Billing Guidelines informs external counsel that they may not act “adverse to the interests of any Wynn Resorts, Limited, subsidiary or related person or entity.” This could be interpreted to imply that the Company does not oppose external counsel undertaking the representation of Company executives without further review by the Company, in cases where since representing the executive would not be adverse to the Company. The problem, however, is that adversity of the executive to the Company in some matters might not be obvious to the lawyer.

The Company may wish to accommodate individual employees, including executives and Board members, in their choice of counsel when there is no foreseeable conflict, but the *Company* should make this decision on a case-by-case basis. Further, even if there is no actual conflict, the Company might decide that—in order to maximize the lawyer’s independence—it will not consent to a lawyer individually representing a supervisor in HR on a personal matter if that employee is the lawyer’s point of contact for his or her representation of the Company. Such restrictions are allowed by Rule 1.13, but they are not addressed by the Billing Guidelines or the Deconflicting Policy.

It is the Monitor Team’s view, therefore, that the Deconflicting Policy, as currently written, is not designed to mitigate the risks that external counsel represent an individual at the Company without advising the Company of such a representation. The Monitor Team recommends that the Company revise its Deconflicting Policy and Billing Guidelines to explicitly prohibit its external counsel from also representing its personnel, including executives and Board members, unless the representation is explicitly approved by the Company.

To facilitate implementation of that Policy, the Monitor Team also recommends that the Company develop internal review procedures for reviewing requests for individual representation by the Company’s external counsel and whether there are any mechanisms that would allow separate lawyers from the same firm to undertake this representation, with appropriate screening and consent by the individual employee. Those procedures should be communicated in writing internally and externally. The communication should be designed to ensure that the Legal Department staff, management, and the Board increase their awareness of the risks associated with dual representation and why it should generally not be permitted even if the matters appear unrelated.

Based on interviews, we understand that, as a matter of practice, all external counsel engagements must be reviewed and approved by the Legal Department. That practice, however, has not been documented in a formal policy or procedure. Such lack of documentation could result in inconsistent review standards and ultimately circumvention of authority—either intentionally or inadvertently due to lack of clarity. The Monitor Team understands from interviews that the Company’s corporate culture is to minimize administrative protocols in order to foster efficiency. However, documentation of policies and procedures is key to ensuring consistent implementation of and adherence to them. Therefore, the Monitor Team recommends that the Company draft a policy and procedure for the engagement of external counsel. The policy and procedure should be designed to ensure that the Legal Department is aware of the substance of all representations and to minimize the risk that conflicts between representation of the Company and representation of its personnel occur.

4. Recommendations

Based on our testing, the Monitor Team recommends:

TP 1	Consolidate all employee interactions policies into a single comprehensive policy. The new policy should not require "egregious" conduct for the removal of a Patron or third party, and should clarify that any behavior of Patrons or other third parties that is inconsistent with the Company's Preventing Harassment and Discrimination policy could result in immediate removal. The Company should also develop manager and supervisor training regarding the new comprehensive policy.
TP 2	Develop communication strategy designed to reinforce messaging regarding the Company's expectation that employees report offending conduct by Patrons.
TP 3	Develop plan to track and monitor data collected from investigations of offending Patrons. The data obtained should be used to inform trainings and updates to relevant policies and procedures.
TP 4	Conduct periodic culture surveys and focus groups designed to assess employee experience and perceptions regarding the Company's response to reports of offending Patrons.
TP 5	Evaluate and develop strategies to communicate standards of behavior to Patrons of EBH and Wynn Las Vegas.
TP 6	Review and update the Business Standards and Procedures to: <ul style="list-style-type: none">▶ instruct the investigations department (1) that claims, charges, litigation, or reports of sexual harassment and discrimination allegations may be material to the Company's consideration of whether to engage a third party, and (2) if detected, should be documented and included as risk factors in the Investigative Report; and▶ to define "materially derogatory" information to include factors related to sexual harassment and discrimination.
TP 7	Ensure that sources used for background investigations are of the type that would provide access to background information related to claims, charges, litigation, or reports of sexual harassment and discrimination allegations.
TP 8	Revise the Deconflicting Policy to explicitly prohibit external counsel from representing Wynn personnel, including executives and Board members, unless representation is explicitly approved by the Company.
TP 9	Develop internal review procedures for requests by individuals for representation by the Company's external counsel.
TP 10	Communicate the new representation request review procedures in writing internally and to external counsel. The communication should be designed to ensure that external counsel, officers, and directors of the Company under the procedures are aware of the risks associated with dual representation.

TP 11

Draft a policy and procedure for the engagement of external counsel by the Company to ensure that the Legal Department is aware of the substance of all representations and to minimize the risk that conflicts between representation of the Company and representation of its personnel occur.

E. Training and Guidance

The Decision and Order requires the Monitor Team to evaluate the effectiveness of the Company's "policies, practices and programs." Decision and Order at 51. To that end, the Decision and Order specifically requires the Monitor Team to assess "training programs for new and current members" of the Board of Directors. *Id.*

Compliance authorities—including the EEOC, the MCAD, and the DOJ—advise that an integral component of an effective HRCP is a company's training and guidance to employees and Board members regarding the company's ethics and compliance norms and expectations. Such guidance often takes two main forms: proactive guidance, such as training, to convey applicable norms and expectations; and reactive guidance, such as corrective measures and discipline, in response to specific inquiries or issues. Since 2018, the Company has significantly enhanced its training on HRCP throughout the organization. The Monitor Team's observations and recommendations below reflect the progress the Company has made and areas where the Company can further enhance its training and guidance.

1. Compliance Guidance

The EEOC's 2016 Report advises that "training is an essential component of an anti-harassment effort" but that "to be effective in stopping harassment, such training cannot stand alone but rather must be part of a holistic effort undertaken by the employer to prevent harassment that includes the elements of leadership and accountability." EEOC 2016 Report at 45. The EEOC outlines the following principles to guide the structure of successful compliance training, providing that trainings should be:

- ▶ Supported at the highest levels;
- ▶ Conducted and reinforced on a regular basis for all employees;
- ▶ Conducted by qualified, live, and interactive trainers; and
- ▶ Routinely evaluated.

Id. at 52–53.

The MCAD mirrors the EEOC's recommendations that employers should implement training programs on sexual harassment for all employees on a regular basis and conduct additional training for supervisory and managerial employees. Guidelines on 151B at 8.

The DOJ similarly highlights the importance of training and guidance to corporate compliance programs. It instructs prosecutors evaluating compliance programs to "assess the steps taken by the company to ensure that policies and procedures have been integrated into the organization, including through periodic training and certification" of personnel. Evaluation of Corporate Compliance Programs at 4. In addition, the DOJ examines whether the company has "relayed information in a manner tailored to the audience's size, sophistication, or subject matter expertise." *Id.* It also evaluates "whether the training adequately covers prior compliance incidents and how the company measures the effectiveness

of its training curriculum.” *Id.* at 5. The DOJ notes that to determine whether a compliance program is “truly effective”, it will look to whether the training is “disseminated to, and understood by, employees in practice.” *Id.*

2. Testing

In order to conduct a Baseline Assessment of the Company’s training and guidance, the Monitor Team:

- ▶ Reviewed HR training materials, plans, and schedules, including the Company’s Compliance Plan;
- ▶ Observed anti-harassment and anti-discrimination trainings at EBH;
- ▶ Interviewed members of the Board and the Compliance Committee, as well as Legal and Compliance Department personnel, trainers, and trainees to assess the effectiveness of trainings; and
- ▶ Conducted focus groups and surveys of Company employees to assess, inter alia, the effectiveness of the trainings.

3. Observations

The Company has committed significant resources to training its employees and Directors. It provides a variety of trainings, which include, but are not limited to, anti-harassment and anti-discrimination, diversity and inclusion, unconscious bias, Code of Business Conduct and Ethics, responsible gaming, anti-money laundering, and anti-corruption. Of interest to the Monitor Team is the Company’s refreshed training program on anti-harassment and anti-discrimination and diversity and inclusion. The anti-harassment and anti-discrimination training is held in-person annually and is mandatory for all employees. The Company provides anti-harassment and anti-discrimination training to new hires, front-line employees, managers, and the Board of Directors. The trainings cover the main substantive topics of harassment, discrimination, and retaliation. The Company’s diversity and inclusion training (including training on unconscious bias awareness) is available for directors, supervisors, managers, and front-line employees. Although the Company has devoted considerable resources to its training program, there is room for improvement. The Monitor Team’s observations regarding the design, implementation, and effectiveness of the Company’s trainings are discussed further below.

a. The Company’s Current Training Program

i. Overview of Training Program

The Company’s training program has significantly improved over the last two years but continues to have gaps in key areas. Below we discuss the training provided to key stakeholders—the Board of Directors, Compliance Committee, Management, front-line employees, and ER and suggest where the Company should provide more training.

(a) Board of Directors Training

In November 2018, the Company trained the Board on a variety of topics, which included anti-harassment and anti-discrimination, the Company’s Personal Relationships Policy, pregnancy discrimination, and a manager’s responsibility to report. Overall, the Monitor Team was pleased with

the comprehensiveness of the training. At the outset, the training emphasized the unique responsibility of the Board noting, among other things, that:

- ▶ “Boards should educate themselves on how companies handle sexual harassment claims and under what circumstances the Board should be informed about complaints”;
- ▶ Boards have a responsibility to thoroughly investigate claims of sexual harassment against a corporate officer;
- ▶ “Boards should ensure that company policies specify meaningful consequences for employees who engage in harassment”; and
- ▶ “When the target of misconduct is a top level, long term executive, board members should focus on the misconduct rather than the position when considering the range of sanctions to impose.”

These responsibilities fit squarely within the Board’s governance obligations. The Monitor Team understands from the Company that, in addition to the above, Board members received further privileged legal advice as to their duty of care with respect to their responsibility to oversee the HRCP. In future phases, the Monitor Team will engage with Board Members on their understanding of the Board’s obligations.

In addition to fundamentals of its governance responsibilities, the Board was also trained as to the basic requirements of the Personal Relationships Policy. The training provided that romantic or intimate relationships between supervisors and subordinates are prohibited and that any such relationships must be disclosed to the Company. The Monitor Team is pleased that the Board has been trained on the Personal Relationships Policy—knowledge of the Company’s requirements will allow the Board to ensure that the Company’s senior operational leadership adheres to them.

However, in addition to educating the Board as to the fundamentals of the Personal Relationships Policy, the training should also cover issues related to consent. The Decision and Order was critical of the Company because persons with knowledge of the allegations at issue claimed to have believed the relationships central to those allegations were consensual. The MGC noted, “[t]he fact that a high ranking corporate executive is of the belief that a lower ranking employee is consenting to a sexual relationship, i.e., that it appears to be voluntary, does not mean that the relationship was welcome by the employee.” *Id.* at 47. Thus, the Monitor Team recommends that the Board’s training on the Personal Relationships Policy focus not only on the requirements of the Company’s policy, but also cover issues related to consent and how power imbalances within an organization may affect consent.

(b) Compliance Committee

As discussed in further detail in Section III.A., the Compliance Committee is charged with “oversee[ing] procedures to enhance the likelihood that no activities of the Company or any Affiliate would impugn the reputation and integrity of the Company, any of the specific jurisdictions in which the Company maintains gaming operations, or the gaming industry in general.” Part of this mandate includes reviewing “all claims of sexual harassment reported by employees” on a quarterly basis. Encore Report at 24. Yet, based on interviews, Compliance Committee members do not receive formalized anti-harassment and anti-discrimination training or guidance as to the Company’s investigative process. See Section III.A. Since understanding the Company’s policies and the Company’s investigative process are

essential context for the Compliance Committee’s review of sexual harassment complaints, this is an important gap that must be filled. The Monitor Team recommends that the Compliance Committee receive anti-harassment and anti-discrimination training, including tailored training on the Company’s investigative process and training on other potentially relevant HRCP policies. To the extent the Company is not providing this training because it is concerned about compromising the independence of the Compliance Committee, it should consider hiring an outside third party to conduct the trainings.

(c) Management and Supervisors

The Company provides certain additional HRCP-related training to managers and supervisors. These trainings cover diversity and inclusion; and anti-harassment and anti-discrimination. We discuss each in turn.

(1) Diversity and Inclusion Training

Managers and supervisors receive more extensive diversity and inclusion and anti-harassment and anti-discrimination training than the front-line employees they supervise. Specifically, managers and supervisors participate in a four-hour interactive training program on diversity and inclusion, which includes unconscious bias awareness education. In general, managers and supervisors provided feedback to the Monitor Team regarding the training. The Monitor Team appreciates that the Company’s Diversity and Inclusion Department is currently establishing its overall strategy, which will include specific goals and additional affinity groups, known as “councils”. The implementation of the Company’s Diversity and Inclusion strategy, including how it coordinates with HR to maximize the effectiveness of its messaging across the Company, will be a focus of the Monitor Team in future phases.

(2) Anti-Harassment and Anti-Discrimination Training

The anti-harassment and anti-discrimination training for managers and supervisors covers the main substantive aspects of discrimination, harassment, and retaliation, including more extensive training on their reporting obligations upon “becom[ing] aware of possibly discriminatory, harassing, or retaliatory behavior.” However, unlike the training for front-line employees, the Monitor Team has not seen evidence that the manager and supervisor training covers reporting requirements under the Company Personal Relationships Policy, the use of social media as a potential platform for harassment, the risks of alcohol in the workplace, and the risks of off-duty conduct that has a nexus to the Company. The Monitor Team will follow-up on this issue in the next phase.

With respect to the Personal Relationships Policy, the Company should pay particular attention to clarifying the types of relationships covered by the Policy. Currently, the Policy directs employees to report romantic or intimate relationships, especially where management is engaged in a relationship. The Policy does not define “romantic or intimate relationship,” or provide examples. Without an understanding of the range of relationships to which the Policy applies, a covered person may narrowly interpret the word “relationship” and not report a relationship. Moreover, as discussed in Section III.C., the Policy does not explain how workplace relationships raise issues of consent and how participating in such relationships could result in claims of sexual harassment. Through trainings the Company can clarify the types of relationships to which the Policy applies and issues related to employees in positions of authority and consent.

The Monitor Team recommends that the Company incorporate these topics into the anti-harassment and anti-discrimination training for managers and supervisors, with a particular focus on the

Personal Relationships Policy, the types of relationships the policy covers, and issues related to employees in positions of authority and consent.

Moreover, although the current anti-harassment and anti-discrimination training informs management of its obligation to immediately report discriminatory, harassing, or retaliatory behavior to ER, as discussed in further detail in Section III.F., the training does not provide detailed guidance for supervisors and managers on how to process discrimination and harassment complaints and report harassing behavior up the chain of command. Providing such formalized training to managers and supervisors will equip them with the tools to appropriately receive and process complaints and minimize the risk that complaints will be mishandled. The Monitor Team recommends that the Company train managers and supervisors on how to appropriately process and escalate both formal complaints concerning discrimination and harassment and problematic behaviors they have observed or of which they have been made aware.

(d) Employee Relations

The Monitor Team's review showed that ER receives the Company's anti-harassment and anti-discrimination training but does not receive training on other areas of HR compliance over which they have responsibility, including compliance with the Americans with Disability Act, religious accommodations, or diversity and inclusion. ER also does not receive specialized training for certain core functions, including conducting investigations as discussed further in Section III.F. Currently, ER staff rely on past experience and ad hoc trainings from continuous learning and education opportunities they individually seek out. A formalized training provided at the time employees are onboarded and periodically thereafter, will ensure consistency in knowledge and process across the department and will allow ER employees to keep abreast of changes in the law and Company policy. As discussed further in Section III.F., the Monitor Team recommends that the Company develop a training plan for ER that, at a minimum, includes annual trainings on all HR subject matters and policies and procedures for which they responsible.

(e) Front-Line Employees

Front-line employees receive anti-harassment and anti-discrimination training and diversity and inclusion training as part of onboarding and annually thereafter. At EBH, trainings are scheduled several times a month to accommodate all employees and, until her departure at the end of 2019, were typically led by EBH's internal Employment and Litigation Counsel. Since that time, the Company has continued to offer trainings in-person conducted by the property GC and by video. The Monitor Team understands that the Company is committed to providing live trainings and is actively seeking a qualified person to provide these trainings in the long-term.

The Company's anti-harassment and anti-discrimination training for front-line employees covers harassment, discrimination, and retaliation. It explains which characteristics are protected, provides examples of discrimination and sexual harassment, educates employees on reporting mechanisms, and informs employees on the Company's response process. It also covers reporting requirements under the Company Personal Relationships Policy, using social media as a potential vehicle for harassment, the risks of alcohol in the workplace, and the risks of off-duty conduct that has a nexus to the Company. Overall, the training provides a comprehensive overview to employees.

Although this training covers the most important topics, feedback from focus groups showed that more can be done to tailor the training to the specific realities of the Wynn Resorts workplace in the following ways:

- ▶ Employee comments showed that front-line employees do not have a clear understanding of the connection between engaging in protected activity and retaliation. The Company should leverage existing communications channels to conduct short briefings or trainings on retaliation.
- ▶ Some employees indicated they were unaware of the Company’s anonymous hotline, as discussed further in Section III.F. The Company should reinforce the existence and availability of this hotline during trainings and pre-shifts.
- ▶ Employees expressed an interest in position-focused harassment trainings. Security personnel, cocktail servers, in-room dining, and spa personnel face position-specific challenges with respect to harassment from Patrons. For example, Security personnel who are harassed cannot walk away from their post and thus need different tools than other employees to manage a harasser. The Company should incorporate additional harassment training tailored to issues specific to different roles or positions.
- ▶ The Company should consider omitting references to what harassment is **not**. While not all workplace grievances are actionable under harassment and discrimination laws, providing training to employees on what does not constitute harassment and discrimination can be misconstrued by employees, unnecessarily chill claims, or impede the Company’s ability to discipline certain behavior. The Company should include this type of training for managers, supervisors, and ER only.

The Monitor Team recommends that the Company provide short, tailored trainings to front-line employees that address gaps in knowledge and position-specific realities.

The feedback on diversity and inclusion training from front-line employees was mixed at both properties. Some employees stated they received diversity and inclusion training for 1–2 hours and others did not recall receiving any diversity and inclusion training at all. The employees who recalled receiving the training enjoyed it and asked for more training on the subject. In particular, employees expressed to the Monitor Team that they were interested in receiving sensitivity training on gender identity, gender expression, and the proper use of pronouns. The Monitor Team recommends that the Company incorporate diversity and inclusion into its formal training program. As stated above, the implementation of the Company’s Diversity and Inclusion strategy, including how it coordinates with HR to maximize the effectiveness of its messaging across the Company, will be a focus of the Monitor Team in future phases.

b. Implementation of Training

The Company has dedicated significant attention and resources to implementing anti-harassment and anti-discrimination training. The Monitor Team was encouraged with the Company’s emphasis on the importance of attending annual trainings and recommends that the Company make efforts to continue to reinforce content from the trainings throughout the year.

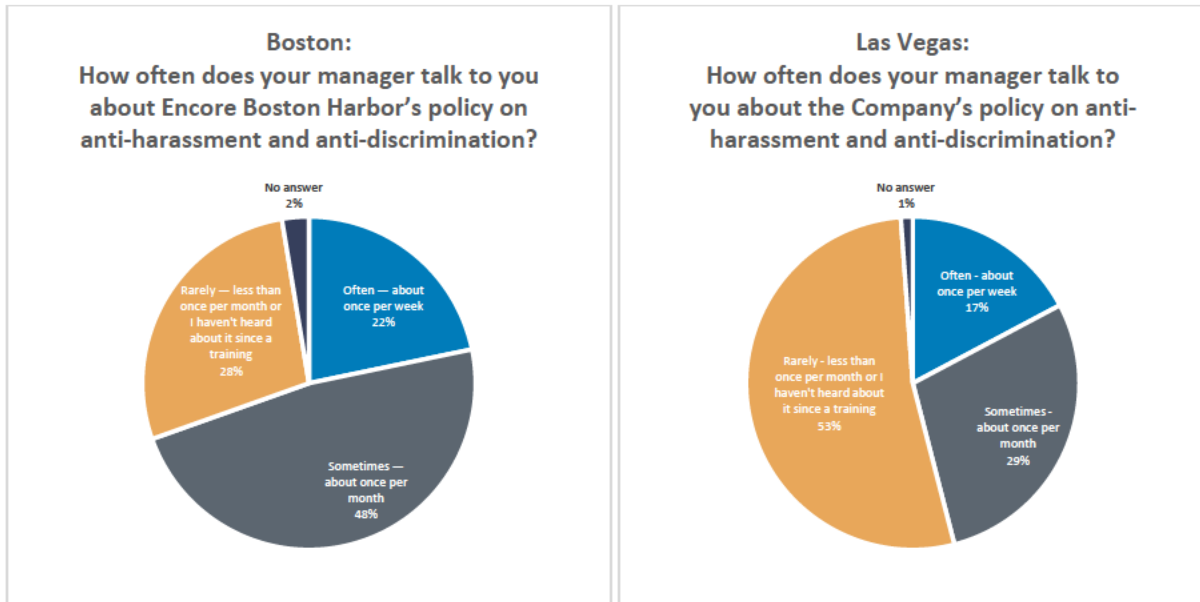
i. *Anti-Harassment and Anti-Discrimination Training Takeaways*

The Monitor Team’s review showed that almost all employees attended comprehensive anti-harassment and anti-discrimination training and were receptive to it, and that it was comprehensive. The Monitor Team observed two live training sessions for employers conducted by EBH’s then-Employment and Litigation Counsel. The trainer engaged well with the audience and had full command of the subject matter. Notably, at least 90% of employees who completed the Monitor Team’s

anonymous survey at EBH and Wynn Las Vegas reported that they had attended the anti-harassment training, with a slightly lower average turnout of 81% for anti-discrimination training. The high attendance rate resulted from the Company making the training mandatory, including—as reported by employees—being vigilant in tracking employee attendance at the training and imposing serious consequences for non-attendance. The Company tracks attendance at trainings either manually using sign-in sheets or electronically using a software system that is tied to employee ID cards. Individual interviews and comments in employee focus groups emphasized the lengths the Company will go to ensure that employees are trained, including enlisting managers to encourage employee attendance for any employees who are behind in their training requirements, and going as far as suspending employees without pay until they complete training. The Monitor Team is encouraged by the Company’s apparently strict implementation of training attendance, including by not crediting attendance for employees who arrive more than a few minutes late or need to leave prior to the completion of a training. The Monitor Team will continue to evaluate how the Company tracks and enforces training attendance.

ii. *Company Reinforcement of Training*

In addition to holding annual trainings, the Company should conduct trainings on a regular basis to reinforce and embed principles from the anti-harassment and anti-discrimination training into employee behavior and Company culture. Feedback from employee focus groups across both properties consistently indicated an absence of additional messaging surrounding harassment and discrimination issues apart from the training itself.



The Monitor Team has identified two ways the Company can reinforce messaging on harassment and discrimination based on existing practices already ingrained in the Company’s structure and operations.

- ▶ **Pre-shifts.** As discussed in greater detail in Sections III.A. and III.C., the Company uses daily Pre-shifts to communicate updates and enhance its “Five-Star” approach across its properties. Based on feedback from employee focus groups, the Monitor Team understands that some departments are using pre-shifts as an opportunity to highlight

certain department-specific policies. The Monitor Team recommends that the Company utilize pre-shifts Company-wide as an additional channel to reinforce messaging on harassment and discrimination and other relevant HR policies and compliance (e.g., Personal Relationships Policy and Code of Business Conduct) to reinforce and further embed the HRCP.

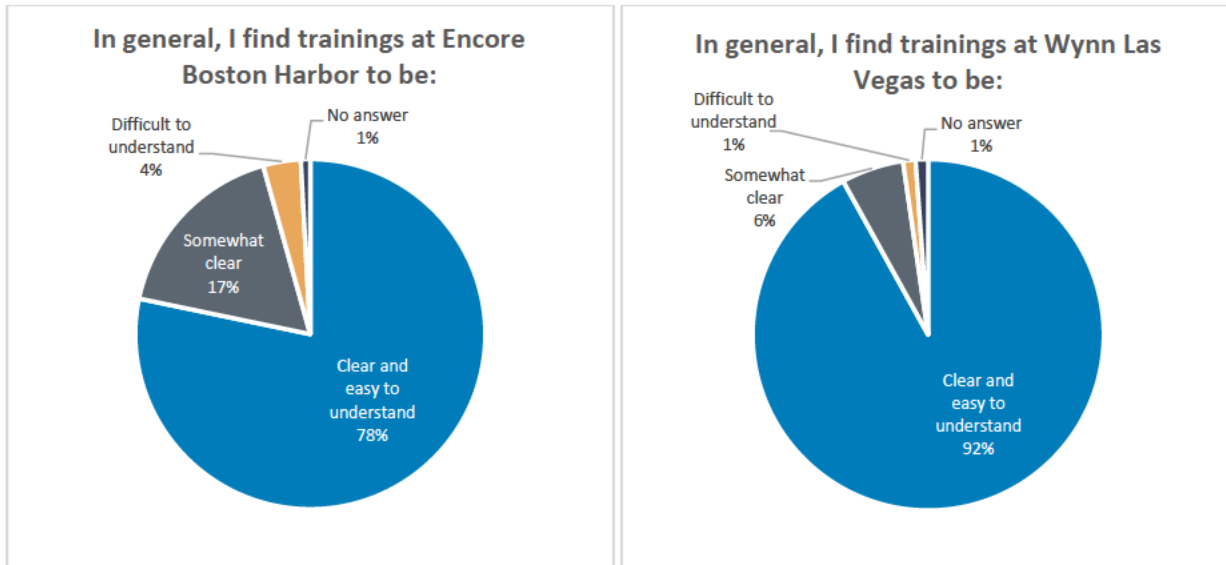
- ▶ **Messaging from Senior Leadership.** Also discussed in greater detail in Section III.A. is the use of daily or weekly messaging from senior leadership at each property to disseminate information and to reinforce messaging around service and other Core Values. Feedback from employee focus groups indicated that these messages are generally well-received, especially at EBH. However, employees also indicated that these messages largely pertain to how employees are to treat Patrons, and are intended to reinforce the “Five-Star” standard of service the Company embraces. As noted in Section III.A., the Monitor Team recommends that senior leadership leverage existing these communication mechanisms to reinforce training and to deepen employees’ understanding of core HRCP elements.

Reinforcing key information from training throughout the year in different settings conveys that trainings and the policies those training cover are high priorities for the Company.

c. Effectiveness of Training

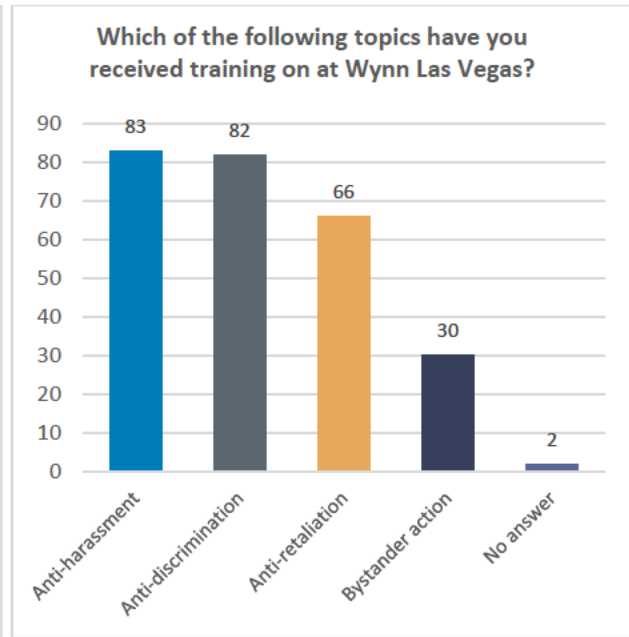
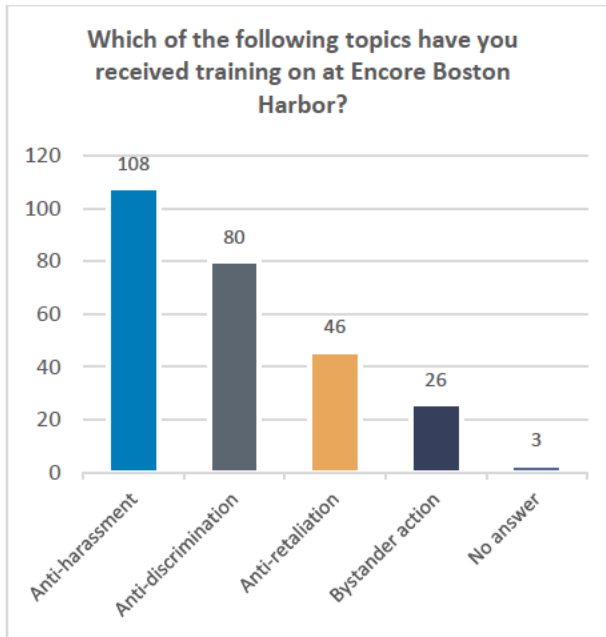
Critically, the Company does not currently test the effectiveness of its training. This is due, at least in part, to the absence of data collection systems that can be leveraged to identify and address trends. While the GPTW survey, oft-cited by the Company, provides helpful benchmarks on the Company’s culture, values, and employee sentiment across the organization, it does not contain questions that assess the effectiveness of training. Thus, the Company cannot rely on it as a benchmark in this regard.

To assess the effectiveness of trainings, the Monitor Team conducted its own assessment through employee focus groups in Boston and Las Vegas. Overall, employees provided positive feedback regarding the effectiveness of the Company’s anti-harassment and anti-discrimination training. Specifically, 78% of participating EBH employees indicated that they felt trainings were “clear and easy to understand.” A significantly higher number of employees in Las Vegas—92%—expressed the same sentiment. Although we do not yet know the reasons for the difference between the two, one possible reason may be the reality that Wynn Las Vegas has been operating significantly longer, and thus there are long-tenured employees who have received training multiple times.



In contrast, when the Monitor Team asked about more discrete subjects addressed in the Company’s anti-harassment and anti-discrimination training, general perceptions were significantly lower. For example:

- ▶ Less than half of participating EBH employees (41%) indicated that they had received **anti-retaliation training**, with a significantly higher percentage (76%) of Las Vegas employees confirming the same lack of training.
- ▶ An even smaller number of participating EBH employees (23%) indicated that they had received **bystander action training**, with a slightly higher percentage (34%) of Las Vegas employees expressing the same view. To probe further into those results, in focus groups the Monitor Team rephrased the question and asked whether employees had been trained on what to do if they witnessed an incident. Employees generally indicated that they had received such instruction and were able to provide examples of the various ways in which to intervene.



The Monitor Team also tested the effectiveness of training through substantive discussions with employee groups. Through these discussions, employees conveyed that they had been trained effectively and understood the Company’s anti-harassment and anti-discrimination policies in these areas.

A word of caution is in order: while the Monitor Team’s assessment provides a snapshot of how employees are internalizing the Company’s policies and training they have received, it is by no means a substitute for developing a system that routinely assesses how employees are applying the guidance set forth in training. The Company can leverage existing tools and programs, such as *The Wire*, to conduct periodic surveys or short “quizzes” or trivia challenges to test themes addressed in trainings and seek feedback from employees on what is working well and what can be improved, thereby also providing employees an opportunity to seek additional guidance. The Monitor Team recommends the Company develop mechanisms or leverage existing processes to test and measure the effectiveness of trainings.

4. Recommendations

Based on our testing, the Monitor Team recommends:

T&G 1	Conduct Board of Director training on Personal Relationships Policy that includes guidance related to the types of relationships covered under the Policy and to issues related to consent and how power imbalances within the organization may affect consent.
T&G 2	Develop and conduct (either directly or through external counsel) training for the Compliance Committee on anti-harassment, anti-discrimination, and on the Company’s HRCP processes.
T&G 3	Incorporate the following topics into trainings for managers and supervisors: <ul style="list-style-type: none"> ▶ intake and escalation of employee complaints; ▶ the Personal Relationships Policy, including reporting obligations;

	<ul style="list-style-type: none"> ▶ social media, including as a potential platform for harassment; ▶ the risks of alcohol usage in the workplace; ▶ the impact and limitations of off-duty conduct; and ▶ how to appropriately process and escalate both formal complaints concerning discrimination and harassment and problematic behaviors they have observed or of which they have been made aware.
T&G 4	Develop a training plan for ER that includes, at a minimum, annual trainings on all HR subject matter and policies and procedures for which ER is responsible.
T&G 5	<p>For front-line employees:</p> <ul style="list-style-type: none"> ▶ develop short, tailored trainings that address gaps in knowledge in position-specific realities; and ▶ develop additional diversity and inclusion training, as part of its formal training program.
T&G 6	Leverage existing communications channels, like pre-shifts, to conduct briefings on a regular basis to reinforce messages from trainings.
T&G 7	Develop procedures to periodically test and measure the effectiveness of trainings and incorporate feedback into future trainings.

F. Internal Reporting and Investigation

Before our monitorship began, the MGC observed incidents of non-compliance with the Company’s policies and procedures related to the reporting and investigation of allegations of sexual harassment. Decision and Order at 46. The Monitor Team views those violations as central to the Company’s past HR compliance issues and, therefore, spent—and will continue to spend—a considerable amount of time evaluating and testing the Company’s internal reporting channels, investigations procedures, and remediation efforts. Since the events leading up to the Commission’s Decision and Order, the Company has made some effort to enhance its reporting and investigative procedures, including updating its investigative protocols. In addition, as reported in the Encore Report and confirmed by the Monitor Team through individual interviews, “all reports involving allegations of sexual harassment and/or sexual assault are immediately sent to internal labor and employment attorneys and the Company’s General Counsel, who consult with outside counsel in specifically addressing these reports.” Encore Report at 20.

In the Monitor Team’s view, while these changes are important, they do not go far enough to remediate the issues identified in the Investigative Report and in the Decision and Order or to mitigate the risk that prior compliance issues may recur. More must be done to enhance the effectiveness of internal reporting channels, including more proactive socialization of the confidential reporting channel.

1. Compliance Guidance

Compliance authorities—including the EEOC, the MCAD, and the DOJ—provide concordant guidance on the elements of an effective reporting and investigative process. The EEOC advises that an

effective reporting system for allegations of harassment is “among the most critical elements of a holistic anti-harassment effort,” EEOC 2016 Report at 40, and outlines the following elements that contribute to an effective reporting system:

- ▶ A reporting system that allows the organization to provide a timely response to the concern followed by an investigation;
- ▶ A supportive environment where employees feel safe to report and believe they will not be retaliated against for making reports;
- ▶ Well-trained investigators;
- ▶ Investigators who document all steps taken and prepare a written report; and
- ▶ A commitment to maintaining the confidentiality of all people involved, including the charged party(s) and witnesses.

Id. at 42. The MCAD also emphasizes the importance of timeliness, anti-retaliation messaging, documentation, and confidentiality for an effective reporting and investigative system. Guidelines on 151B at 9–16.

The DOJ endorses similar principles. The DOJ advises that a hallmark of a “well-designed compliance program is the existence of an efficient and trusted mechanism by which employees can anonymously or confidentially report allegations.” Evaluation of Corporate Compliance Programs at 5. The DOJ will “assess whether the company’s complaint-handling process includes pro-active measures to create a workplace atmosphere without fear of retaliation, appropriate processes for the submission of complaints, and processes to protect whistleblowers.” *Id.* The MCAD also emphasizes the importance of these measures. The DOJ will also evaluate a company’s processes for “routing of complaints to proper personnel, timely completion of thorough investigations, and appropriate follow-up and discipline.” *Id.* at 5–6.

Bearing these guidelines in mind, as the MGC’s Decision and Order requires, the Monitor Team evaluated the Company’s policies and organizational changes, including:

- ▶ “Implementation of and compliance with all human resource or ‘HR’ policies that reflect current best practices;”
- ▶ “Adequacy of internal reporting and communication channels throughout the Company and their alignment with up-to-date organizational charts and reporting structures;” and
- ▶ “Use of retractions, mandatory arbitration provisions, gag orders, confidentiality clauses, and non-disparagement provisions of all employees, with particular attention to the use of such measures and their impact on non-executive employees.”

Decision and Order at 50–51.

2. Testing

In assessing the Company’s internal reporting and investigation mechanisms, the Monitor Team:

- ▶ Interviewed members of the Board, as well as Legal, Compliance, and ER personnel regarding the Company’s internal reporting and investigation mechanisms;

- ▶ Reviewed the Company’s Investigation Process Flow Chart, Investigations Policy, Investigations Checklist, Progressive Discipline Performance Policy, and non-retaliation policy as set forth in its Preventing Harassment and Discrimination policy;
- ▶ Reviewed the Company’s mandatory arbitration provisions, gag orders, confidentiality clauses, and non-disparagement provision templates;
- ▶ Conducted focus groups and surveys to assess employee familiarity with reporting processes and the Company’s Anti-Harassment and Discrimination policy and other relevant policies, including the Personal Relationships Policy; and
- ▶ Lodged a fictitious anonymous sexual harassment complaint through multiple reporting channels to test the Company’s response to its external reporting channels.

3. Observations

Coming out of the 2018 crisis, the Company focused its efforts and resources on ensuring that harassment and discrimination complaints are reported and are properly addressed. The Company added more internal reporting channels; included the reporting process in its trainings; changed the process so that all allegations of harassment and discrimination are elevated immediately to ER and the Legal Department; expanded the on-site schedule of ER; and, adopted a new protocol for handling complaints and investigations. The Monitor Team views these efforts as important, to increase the effectiveness of its reporting channels and strengthen its investigative capacity, however, the Company’s processes require further enhancements.

a. Internal Reporting and Communication Channels

In this Section, we discuss the Company’s internal reporting and communication channels for allegations related to HRCP violations. The Company has multiple reporting channels and we cover each one in turn.

i. Policies on Internal Reporting

As noted above, Company policy requires employees to immediately report known or suspected “violations of applicable laws, rules or regulations, the Code, or the Company’s related policies.” The Company communicates that requirement to all employees through its Code of Business Conduct, trainings, and other HR policies. For example, the Company’s Preventing Harassment and Discrimination policy states: “If an employee, guest, contractor, or other third party believes a co-worker, manager, vendor, contractor, consultant, customer, visitor, volunteer or agent of the organization is harassing or discriminating against him or her, they should immediately report the incident”

The Monitor Team tested the effectiveness of the Company’s policy through anonymous surveys and focus groups at both the Boston and Las Vegas properties. The results of those testing exercises indicate that the Company has effectively communicated its expectation that misconduct be immediately reported. In fact, 89% of 113 employees surveyed at EBH and 98% of the 87 employees surveyed at Wynn Las Vegas indicated that they would feel comfortable reporting instances of sexual harassment.³⁸ When asked about their understanding of the Company’s policy on internal reporting,

³⁸ The Monitor Team notes that at first glance, this may be seen as slightly inconsistent with findings that 6% of employees surveyed in Las Vegas and 18% of employees surveyed at EBH responded that they were aware of allegations that had gone unreported in the last six months. However, the disparity may reflect that multiple people knew about the same unreported instance(s).

the majority of employees in focus groups agreed that the Company expects employees to report misconduct.

Notably, however, when asked whether “senior executives support a culture of compliance, which includes a culture of speaking up against harassment and discrimination,” only 54% of the employees at EBH surveyed responded affirmatively. Thirty-five percent indicated that they were unsure and 9% indicated that senior executives do not support a culture of compliance, including a culture of speaking up. Those responses viewed against the totality of our assessment indicate that while employees understand they have an obligation to report misconduct, many do not perceive adequate support of that mandate from the highest levels of the Company.

It is critical that employees understand their obligation to report misconduct and the Monitor Team is pleased that Company employees have that understanding. It is equally important, however, for employees to see that senior management supports a speak-up culture—especially given issues identified in the Investigative Report and the Decision and Order. Absent that understanding, employees may be reluctant or fearful to make reports involving senior management or those that might require support from senior management.

The Monitor Team has reviewed communication from senior management to employees, some of which relates to HR compliance and values. The Monitor Team has not seen communication in which senior management expressly states its expectation that employees speak out against and report known or suspected misconduct regardless of who is involved or impacted by the allegations. The Monitor Team recommends that senior management—at the property and corporate level—develop a communication campaign in support of a speak-up culture. These communications could be timed with the upcoming launch of the Company’s new reporting channel, which we discuss below.

ii. *Available Reporting Channels*

The Company currently has in place three separate telephonic and web-based reporting channels that allow employees to report incidents of misconduct, including harassment and discrimination: InTouch, AuditAware, and McClain resources. These are in addition to reporting to HR, supervisors, Legal, Vice Presidents, and other internal resources. Each of the three telephonic and web-based reporting channels is designated for separate and distinct types of reporting, as described below:

- ▶ InTouch is an online and telephone reporting mechanism that permits employees to submit anonymous reports of “all types of unethical or illegal activity, including but not limited to, violations of accounting, auditing or securities laws, any form of harassment or discrimination and any misconduct by employees or guests.” InTouch provides multilingual reporting and is managed through a third-party that routes complaints to HR for response.
- ▶ AuditAware is an email-based reporting channel intended for reporting complaints regarding senior executive level employees. Reports made through the AuditAware email address are directed to the Audit Committee of the Board of Directors and cannot be made anonymously, unless an employee creates a fictitious email account to make a report.
- ▶ McClain Resources is an email-based reporting channel that, like InTouch, permits employees to make anonymous reports of known or suspected violations of any “applicable laws, rules and regulations, the Code, or the Company’s related policies.”

In addition, the Company encourages employees to direct their complaints to supervisors, managers, ER, HR, property level GCs, the Wynn Resorts GC, the Company’s Compliance Officer, and

divisional VPs. The Company does not require employees follow a “chain of command” in deciding to whom they should make reports.

The Company has done well to provide employees a diversity of reporting channels, including the option to file complaints with managers and HR, which the EEOC recognizes as an important element of a reporting system. EEOC 2016 Report at 41. In interviews, the Company represented to the Monitor Team that it has evaluated its current reporting channel structure and has identified enhancements which it will implement in the short term. Those enhancements will permit the Company to consolidate the three separate reporting channels into one channel through which all complaints can be made, including anonymously. The Monitor Team agrees with the Company’s proposed enhancement. While it is important for employees to have multiple reporting channel options, focus group discussions indicated that the Company’s current reporting architecture created some confusion and could have adversely impacted the types and quality of reports received, particularly reports involving management. Further, multiple reporting channels also create a risk that individual reports will be missed or will not be responded to in a timely and effective manner. The Company’s proposed change—if implemented effectively—would go a long way to alleviating these issues.

The Company also represented to the Monitor Team that the new platform will introduce data-analytics capabilities. This will increase the Company’s ability to monitor reporting trends and the Company’s response to and resolution of complaints. As noted in Section III.I., monitoring of reporting trends and related metrics will significantly enhance the Company’s ability to conduct meaningful root-cause analyses of HRCP incidents, assess the effectiveness of its HRCP, and consequently engage in continuous improvement of its HRCP.

During focus groups, the Monitor Team met with several employees who indicated that they were not aware that they could make reports in their native language. As the Company moves forward with the design of the new platform, the Monitor Team recommends that the Company provide multilingual reporting options to facilitate reports by employees with stronger proficiency in languages other than English. The Company should also proactively make employees aware of those options. Given the diversity among Wynn’s personnel, and the sensitivity of HR issues, it can be particularly helpful to enable employees to report in their native languages, as needed. We understand the new reporting platform is capable of meeting those needs.

The Monitor Team commends the Company for its initiative in proactively identifying ways for enhancing its reporting channels and looks forward to updates on the Company’s progress. In the upcoming phases, the Monitor Team will monitor the implementation of the new reporting channel and evaluate its effectiveness against the backdrop of the opportunities identified in this Baseline Assessment.

iii. *Socializing/Advertising of Reporting Channels and Employee Perceptions Towards These Channels*

Through interviews, focus groups, and review of applicable documentation, the Monitor Team learned that the Company socializes the channels discussed above through the Code of Business Conduct, the Company’s Preventing Harassment and Discrimination policy, and trainings. Information regarding these channels is also available on *The Wire*. As noted above, the Company Code of Business Conduct, policies, and anti-harassment and anti-discrimination training inform employees of their obligation to report misconduct and the various channels available for reporting. *The Wire* homepage contains a visible link to the InTouch confidential hotline and an extension to reach ER. The Monitor Team notes the Company’s efforts to inform its employees of available reporting channels, but focus

group feedback and employee interviews showed gaps in employee awareness and understanding of the reporting mechanisms—including InTouch—which indicates to the Monitor Team that the Company’s efforts to socialize its reporting channels are not as effective as they should be.

(a) Reporting Channel: Confidential Hotline

A confidential hotline is an important feature of a reporting infrastructure because it serves as an alternative to reporting to upper management and allows a reporter to be anonymous. Indeed, during focus groups, some employees indicated that they did not trust their particular managers and would never report to them. Under such circumstances, a hotline may provide an attractive alternative—particularly if it provides anonymity. Critically, focus group feedback at EBH showed that some employees were not familiar with In-Touch or any of the other reporting channels. A number of employees across different EBH focus groups commented that they did not know the purpose of In-Touch, that it was confidential, or to whom their complaints would be routed. In contrast, employees at Wynn Las Vegas were familiar with InTouch, stated that they were comfortable using it, and believed their reports would be taken seriously and treated confidentially. None of the employees at either location expressed awareness of either AuditAware or McLain Resources. The higher awareness of InTouch in Las Vegas may be explained by clear signage located across from the employee dining room area highlighting the availability of the confidential hotline. The Monitor Team looked for, but did not find similar signage at EBH. In light of the feedback received through focus groups, and considering that the Company will be rolling out a new reporting channel in the near term, the Monitor Team recommends that the Company launch a campaign to introduce the new hotline. The campaign might include posters, tabletop messages, and messaging on TV screens in back-of-house employee areas; and leverage Pre-shifts and other mediums to further educate its employees on reporting channels, with a particular focus on educating employees at EBH.

(b) Reporting Channel: Middle Management

The Monitor Team is pleased that many employees expressed comfort in reporting complaints to their managers in the first instance. 73 out of 87 survey participants from EBH listed their manager as their first and preferred reporting channel. The fact that employees prefer to complain to their managers shows that middle management is generally setting a tone and culture that invites reports, but we note that some employees still expressed discomfort in raising issues to their managers. At this juncture, we do not view those statements as reflective of systemic issues, but will continue to evaluate and monitor the handling of reports by managers in the next phase and throughout the term of this monitorship. For the next phase, the Monitor Team recommends that the Company provide additional training to managers to ensure a consistent and effective handling of all complaints received by managers. For a further discussion of training, see Section III.E.

(c) Reporting Channel: Employee Relations

ER plays a central role in the investigations process. How employees view and interact with ER is important to the success and effectiveness of their role. Feedback from several focus groups at EBH reflected frustration with respect to ER’s availability, responsiveness, and, to some extent, helpfulness.

Employees expressed dissatisfaction with ER’s role as an internal reporting channel, specifically with respect to the timeliness and quality of its response to complaints as well as its resolution of issues raised. For instance, several EBH employees cited instances when ER instructed employees to “follow the chain of command” when reporting harassment and discrimination concerns, even though that

would have required the complaining employees to report their concerns to the very persons who, from the employees' perspectives, caused the problems in the first place. Focus groups in EBH and Las Vegas also expressed concerns over ER instructing managers to return employees who were accused of misconduct despite the managers' expressed concern about the employees' behavior. Managers in these situations reported to the Monitor Team that they were not told why ER disagreed with their recommendations against bringing the employees back into the workforce. These and other similar accounts have created a perception among employees and managers that ER is not a reliable source of support and will not effectively investigate and address their concerns. That perception, of course, can lead to underreporting of misconduct, particularly of more sensitive issues. It is critical, therefore, for the Company to develop on-going training for ER personnel on how to handle and respond to employee complaints.

Employees also expressed concern that ER is not available during the graveyard shift and on weekends. Not only does limited ER availability create a practical impediment to reporting, it also delays responsiveness. The Monitor Team understands that EBH's current hours of operation vary throughout the week to enable employees working early or late shifts to access ER. It appears that none of the employees with whom we spoke knew that because managers and employees expressed a need for some ER access during those hours. We understand from ER that the team does make itself available for employee and witness interviews in connect to open investigation, but is not available for consultations on complaints or other issues that may arrive during those shifts. The Monitor Team recommends that the Company evaluate the possibility of extending ER availability to cover the current gaps and that any expansion made to the current schedule be broadly publicized to employees.

iv. Routing of Reports Received Through the Channels

As part of its efforts to address complaints in a timely manner, the Company routes all complaints of harassment and discrimination to the Company's GC, SVP of HR, and Director of ER. This occurs, however, as a matter of practice, and not as a matter of policy. Indeed, the Company's Investigations Policy is silent on the intake and routing of employee complaints. Given the number of intake channels that the Company operates, it is critical that the Company define and formalize clear intake and routing procedures to avoid inefficiency, the risk of delayed responses, and mishandling of issues due to a complaint being routed to personnel lacking relevant experience or with a potential interest or conflict in the matter being investigated. This approach also risks creating a diffusion of responsibility, such as appeared to have occurred at the time of the alleged misconduct by Mr. Wynn.

The Monitor Team recommends that the Company update its Investigations Policy to include clearly defined intake and routing protocols. Those procedures should include the following elements:

- ▶ Designation of personnel authorized to receive reports routed through the Company's reporting channels, including their role and responsibility in the intake process.
- ▶ Objective criteria to help intake-personnel scope the issues presented and route the complaint to the appropriate personnel for response and potential investigation.
- ▶ Clearly defined guidelines for the intake, routing, and responding to complaints against management and senior leadership.

b. Policies on Investigations

In this Section, we discuss the Company's Investigations Policy and its three different investigation checklists or workflows.

i. *Investigations Policy*

The Company’s HR investigation procedures are governed by the Investigations Policy, which provides a high level overview for how the Company conducts investigations. The Investigations Policy opens with an affirmation of the Company’s commitment “to ensuring that all company-initiated, employment-related matters are investigated in a fair, impartial, thorough, thoughtful manner and in compliance with all applicable laws within the United States.” The stated purpose of the Policy is “to provide guidance for conducting internal investigations of alleged discrimination, harassment and other violations of company policies, rules and standards of conduct.” The three-page Policy is organized in three general parts: Procedure, Conducting the Investigation, and Follow-up.

The Investigations Policy requires the Company to initiate an investigation immediately upon receipt of an allegation and tasks HR or ER with the primary investigative responsibility for HR complaints. The Policy states that the involvement of Legal and of Corporate Investigations may be required in “certain situations,” but does not provide any guidance or criteria as to when those functions should be involved.

The Policy provides a non-exclusive list of the types of matters that ER will investigate. Included among the types of matters to be investigated by ER are “[a]lleged verbal or physical conduct that potentially denigrates or shows hostile feelings toward any individual because of race, color, religion, sex, sexual orientation, national origin, age, disability, marital status or other characteristics protected by law.” The Policy also describes the steps that should be taken “as appropriate for the particular investigation.” These general steps constitute the totality of Company’s written guidance on investigative procedures:

Step	Action
1.	Obtain verbal and written statements from all parties involved, including the complainant and accused.
2.	Take photographs/video of any injury or damage (if applicable).
3.	Preserve all evidence, and secure the evidence in a locked location. Document all evidence obtained.
4.	Determine if there is a potential for risk occurrence. If there is a potential, take all measures appropriate to protect employees.
5.	Complete an investigation report, and provide all relevant and necessary information, including findings.

To close out an investigation, the Investigations Policy instructs that the investigator reach one of three outcomes: (1) “[v]iolation found,” which would result in a corrective action issued against the accused, up to and including termination; (2) “[n]o violation found,” which requires notification to the accused and to the complainant that the Company investigated the complaint “and found that the evidence did not support the claim”; and (3) “[i]nconclusive investigation,” which also results in communication to the accused and the complainant that the Company investigated the matter “but has been unable to establish the truth or falsity of the allegations(s).” In cases resulting in a determination of “inconclusive investigation,” the Investigations Policy states that “Wynn will take appropriate steps to ensure that the persons involved understand the requirements of Wynn’s policies and applicable laws, and [] will monitor the situation to ensure compliance in the future.” Upon completion of an investigation, the Investigations Policy instructs “[p]eriodic follow up communication” be made by the investigator with the complainant “to ensure there are no further incidences of harassment or retaliation.”

The Monitor Team observed that the Company's Investigations Policy is deficient in several material respects.

First, the Policy opens with a reference to the Company's commitment to investigate "company-initiated, employment-related matters." The Monitor Team understands that this language is intended to encompass a host of issues and all violations of applicable laws and policies. However, the term "company-initiated, employment-related matters" could be misconstrued to cover only misconduct by Company personnel, not allegations of misconduct by third parties. While the Monitor Team has not seen evidence of that occurring, as noted in other parts of the Baseline Assessment, the Monitor Team views this as a missed opportunity for the Company to clarify its actual intent and to affirm a commitment to investigate allegations of wrong doing regardless of what the allegations are and who is accused of having committed them.

Second, the Policy appropriately notes the need for certain investigations to be conducted by the Legal Department or Corporate Investigations. However, the Policy provides no guidance or criteria to help users of the Policy understand when matters should be referred to Legal or to the Corporate Investigations Department. Given the current practice of reporting all harassment and discrimination complaints to the GC, the omission of such guidance is of little detriment. However, looking ahead to a time when that practice ceases or when current personnel moves on to other opportunities, the lack of guidance as to when to involve the Legal Department, Corporate Investigations, or other personnel with relevant expertise, could result in the mishandling of complaints in ineffective investigations, and inconsistencies in treatment of complaints and those involved.

Third, although the Policy imposes an obligation to investigate and provides examples of the types of matters requiring investigation, the Policy is silent as to when the obligation to investigate an issue arises, implying that only formal complaints trigger the obligation. That omission leaves largely unremediated a central concern of the MGC regarding prior violations of reporting and investigation obligations. In the Decision and Order the MGC admonished that "those with knowledge of the allegations . . . should have been spurred to action by the knowledge that the subject conduct was explicitly discouraged." Decision and Order at 46. The MGC went on to note, therefore, that "it is critical to investigate any such complaints or information, however obtained." *Id.* at 47. To fully remediate the risk of certain allegations not being investigated because no formal complaint was lodged, the Company must update its Investigations Policy to include a clear statement that an obligation to investigate may be triggered by factors other than a formal complaint and should provide examples of such triggering factors.

Fourth, the Policy enumerates the key steps to follow in an investigation, but (as evidenced in the table above), the Company provides minimal additional guidance, leaving room for the user to broadly interpret their obligations and creating risk of lack uniformity and consistency of the investigation process. Through interviews and focus groups, the Monitor Team observed a wide range of investigation experience within the HR and ER Departments—some were seasoned investigators, but others who are newer to HR and ER roles expressed a strong desire for more guidance. The Monitor Team recommends that the Company update its Investigations Policy to provide more concrete guidance, including for each of the investigative steps listed in the Policy and supplement that guidance through the trainings recommended in Section III.E.

Fifth, the Monitor Team also notes that, while the Investigations Policy requires the Company to conduct post-investigation monitoring of situations that are investigated but deemed inconclusive, we have seen no evidence of compliance with that requirement. Nor have we seen evidence of "[p]eriodic

follow up communication . . . with the complainant to ensure there are no further incidences of harassment or retaliation.” In the next phase, the Monitor Team will monitor and assess the Company’s post-investigation follow-up.

ii. *Investigation Checklists and Workflows*

The Company has two separate property-specific investigative checklists to track the actions listed in the chart above in an effort to bring consistency to investigations. For example, EBH’s checklist requires each investigative file to contain statements from relevant parties (i.e., complainant, accused, and witnesses); an attorney-client memorandum, directing ER to conduct an investigation on the Company’s behalf; backup documents such as schedules, security reports, and emails; and a case summary. In contrast, Wynn Las Vegas’s checklist is a fillable PDF form with a column consisting of items such as: charged party’s witness statement, media, witness statements, disciplinary action/termination and case summary, all containing an “if applicable” caption.

Like the Investigations Policy, these checklists lack detail and do not provide adequate guidance to ensure a comprehensive and consistent review of each complaint, which risks undermining the uniformity of approach in investigations leading to inconsistent results, both within and between properties. For example, the complainant’s statement appears to be missing from Wynn Las Vegas’s checklist, but included in EBH’s checklist. Similarly, while EBH’s checklist includes “resolving documents” such as the issuance of a thank you memorandum to the complainant and the presence of an attorney-client memorandum at the commencement of an investigation, no such requirement appears to exist on Wynn Las Vegas’s checklist. As a result, the Monitor Team observed inconsistencies among investigative files in Boston and Las Vegas with some files missing attorney-client memoranda or cover pages with case summaries. The Monitor Team recommends that if the Company continues to utilize these checklists in investigations, it should standardize the lists across both properties and provide more detailed instructions for investigators.

c. *The Company’s Implementation of Its Investigative Process*

The Monitor Team assessed the Company’s implementation of its Investigations Policy through interviews, focus groups, and on-site review of investigative files. In the absence of a satisfactory policy, we tested the implementation of the Company’s investigations against applicable EEOC and MCAD standards with an eye towards how the Company can use these standards to enhance implementation of its investigative process. Broadly, we describe them in the chart below:

Investigation Standard	EEOC Guidance	MCAD Guidance: Guidelines On 151B	Example of Relevance for the Company
Confidentiality: May employers request that employees keep internal investigations confidential? What steps should employers take to preserve confidentiality?	1999 EEOC Guidance ³⁹ and the EEOC 2016 Report stress the need for confidentiality generally.	Employer should maintain confidentiality to the extent practicable, and “inform each interviewee, as well as any other individual apprised of the investigation, that the investigation is	The Investigations Policy requires that “Confidentiality should be maintained to the extent possible.” The Company needs to ensure that is the case.

³⁹ EEOC, N-915-002, Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999), <https://www.eeoc.gov/policy/docs/harassment.html> (“EEOC 1999 Guidance”).

Investigation Standard	EEOC Guidance	MCAD Guidance: Guidelines On 151B	Example of Relevance for the Company
		<p>confidential and should not be discussed with co-workers.” Guidelines on 151B at 10.</p> <p>Employer should keep the complainant and the accused informed of the status throughout the process.</p>	
<p>Timeliness: When should the employer commence the investigation?</p>	<p>The EEOC 1999 Guidance states “an employer should set up a mechanism for a prompt, thorough, and impartial investigation into alleged harassment.” The EEOC 2016 Report states the investigation is prompt if it is conducted reasonably soon after the complaint is filed. EEOC 2016 Report at 38.</p>	<p>The Employer should always investigate a complaint of sexual harassment as soon as practicable, in a fair and expeditious manner, and any claim involving physical violence immediately. Guidelines on 151B at 10.</p>	<p>Referencing the Special Committee Report, the IEB observed the Committee’s recommendation that the Company “[e]xpand Human Resources hours to allow for a presence at night on the properties.” Investigative Report at 167.</p> <p>As described elsewhere, numerous employees with whom we spoke expressed that the time taken to conclude an investigation was too long.</p>
<p>Impartiality: How does the need for investigator impartiality affect who conducts the investigation?</p>	<p>The EEOC 1999 Guidance calls for an objective investigation conducted by an impartial party. Accused should not have supervisory authority over the individual who conducts the investigation, or direct or indirect control over the investigation. The EEOC 2016 Report discusses this, too. EEOC 2016 Report at 38.</p>	<p>The MGC guidelines do not speak to investigator’s reporting structure. But it does require investigator to prohibit interference with or obstruction of any investigation by the MCAD or EEOC. Guidelines on 151B at 10.</p>	<p>Referencing the Special Committee Report, the IEB observed that “[i]n some investigations, ER representatives likely engaged in conduct that could be perceived as inappropriate ‘victim-blaming.’” Investigative Report at 165.</p>
<p>Investigator qualifications: Speaks to the training required for investigators</p>	<p>The EEOC 1999 Guidance recommend investigator who is well-trained in the skills that are required for interviewing witnesses and evaluating credibility. The EEOC 2016 Report also stresses the importance of the investigator being well-</p>	<p>The MGC guidelines do not address investigator training.</p>	<p>Referencing the Special Committee Report, the IEB observed the Committee’s recommendation that the Company should “Train ER investigators on proper investigations to make sure the issues outlined . . . do not continue.”</p>

Investigation Standard	EEOC Guidance	MCAD Guidance: Guidelines On 151B	Example of Relevance for the Company
	trained. EEOC 2016 Report at 42.		Investigative Report at 168.
Documentation and file maintenance: How should the investigation be documented, and how should the file be maintained?	This is not addressed in the EEOC 1999 Guidance, but the EEOC 2016 Report suggests appropriately documenting every complaint, from initial intake through investigation and resolution. EEOC 2016 Report at 42.	The MGC guidance observes that investigators should take notes during interviews, or soon thereafter, create confidential files separate from personnel files, and include any materials relevant to the investigations. Guidelines on 151B at 11.	The IEB Report observed a “[f]ailure to document and record sexual misconduct allegations made against Mr. Wynn in a personnel or other centralized file.” Investigative Report at 196.
Credibility determinations: How should credibility be assessed in the investigation, and should “he say/she say” conflicts be resolved?	The EEOC 1999 Guidance states that the employer will have to “weigh each party’s credibility” if there are conflicting versions of relevant events. It instructs employers to consider “[i]nherent plausibility,” “[d]emeanor,” “[m]otive to falsify,” “[c]orroboration,” and “[p]ast record” of the alleged harasser and that no one factor is determinative. It also notes that the fact that there is no eye-witness does not defeat the complaint.	Does not address credibility determinations.	Referencing the Special Committee Report, the IEB observed that “it appears that ER investigators may have been under the misimpression that ‘he said/she said’ cases cannot be resolved.” Investigative Report at 165.
Retaliation: How should employers ensure that the investigation does not trigger retaliation?	The EEOC 1999 Guidance states that to assure employees that retaliation fear is unwarranted, the employer must clearly communicate and enforce a policy that no employee will be retaliated against for complaining of harassment. The EEOC 2016 Report addresses this as well, largely making the same point. EEOC 2016 Report at 38.	The MGC guidance states that the employer should tell each interviewee that there will be no tolerance for any retaliation against the complainant or anyone else who cooperates with the investigation. Guidelines on 151B at 10.	The IEB noted “[t]he apparent existence of a culture at the Company where employees hesitated to report allegations of sexual misconduct against Mr. Wynn to management, with employees fearful of employment-related consequences, or believing that reporting to management would be futile.” Investigative Report at 196.

Investigation Standard	EEOC Guidance	MCAD Guidance: Guidelines On 151B	Example of Relevance for the Company
			Notably, the IEB also observed that “the majority of alleged incidents went unreported to management, with fear of job loss being a major reason.” <i>Id.</i> at 182.
Conclusion: Should the employer inform the complainant and the accused about the conclusion? What are some of other steps that should be taken?	The 1999 EEOC Guidance states that the employer should inform the complainant and accused of the determination. If none can be reached, the employer should still take further preventive measures, such as training and monitoring.	MGC guidance states that the employer should inform the complainant and the accused of its findings. Guidelines on 151B at 12.	Some focus groups participants indicated a dissatisfaction with the level of information provided at the conclusion of an investigation.

i. Confidentiality

The Monitor Team has not seen any guidance or formalized measures implemented by the Company to protect confidentiality, but based on our Baseline Assessment, it appears that the Company is treating complaints confidentially to the extent possible. Feedback from focus groups, for example, generally showed that employees had confidence in the confidentiality of the Company’s internal reporting channels, as discussed above. Nonetheless, the Monitor Team recommends that the Company update its Investigations Policy to memorialize this approach.

Some employees expressed frustration with the lack of transparency exhibited by ER at the end of an investigation, which may serve to create a perception that the Company is not appropriately responding to a complaint. In many cases, personnel actions must remain confidential, but this may give the impression that the Company took no action. Pressure to provide transparency may conflict with the Company’s commitment to protect the confidentiality of reporters, witnesses, and the subject of the investigation. The Monitor Team is not aware of any formalized guidance to investigators on the type of information that may be shared with employees involved in an investigation. The Monitor Team recommends that the Company also update its Investigations Policy to include such guidance.

ii. Timeliness

EEOC and MCAD guidance recommend that employers conduct sexual harassment investigations as soon as practicable. Based on interviews and our review of investigation files, the Monitor Team believes the Company strives for timely response to complaints. Interviews with personnel indicated that while the turnaround time for an investigation can vary, it was generally longer than the Company prefers. It appears there are several reasons for this, not the least of which are the number of steps in the Company’s investigations review process, and the time it takes for ER to report the results of investigations in the Company’s internal tracker. This may be due to some miscommunication between ER and those who review investigation conclusions, as to what those reviewers want to see.

The Monitor Team appreciates that the Company may become more efficient as it conducts more investigations, but the current process provides less than optimal guidance to ER, and the review process is not as streamlined as it should be. The Company should first consider creating more guidance for investigators that more substantively sets forth end of investigation report-out expectations. Next, it should consider streamlining the review process, perhaps by using less senior reviewers for straight forward or more “routine” harassment cases, and instead saving senior reviewers for harassment investigations that are complex. This should significantly improve the speed and efficiency in the Company’s investigations without sacrificing quality. The Company should memorialize these enhancements in its Investigations Policy.

The timeliness of investigations is important both to those who file reports and to those accused of misconduct. In the course of its review, the Monitor Team learned that the Company often places employees on suspension pending an investigation (“SPI”). Feedback from focus groups reflected a perception that the Company has unfettered discretion to place employees on SPI for indefinite periods of time. The timeliness of the investigation is of added significance when employees on SPI does not receive pay during the SPI period, even if they may receive backpay upon reinstatement. The Company should consider providing clarity and guidance on the use of SPI, including when it will be imposed, how the length should be determined, who makes these decisions, and whether there is a review process for SPI decisions.

iii. Impartiality

Conflicts of interest in investigations can undermine the credibility of individual investigations and the process as a whole, including any disciplinary decisions. Conducting investigations by ER personnel in the first instance mitigates against conflicts that might arise from investigations being conducted within the chain of command of the accused. To ensure there can be no conflicts in its investigations process, the Monitor Team recommends that the Company design additional guidance and procedures to wall off from an investigation anyone who is either the subject of an allegation or may have a conflict that could jeopardize the investigation’s objectivity.

Given the historical context in which the Company now operates, the Monitor Team was keenly interested in assessing how the Company routes complaints against senior management and executives. As noted above, the internal reporting channel, AuditAware, was specifically established to receive complaints against executives, which are forwarded directly to the Audit Committee of the Company’s Board of Directors. The Monitor Team has not seen reports received through the AuditAware mechanism, but has reviewed investigative files of complaints against management. Based on that review, it appears that those complaints were routed through normal channels (i.e., ER). While the specific files reviewed by the Monitor Team reflected proper handling of the specific issues raised in the complaint, there may be situations in which it would be inappropriate for ER to investigate complaints against management—both from an impartiality and confidentiality standpoint. Given the added need for transparency and independence concerning complaints against executives, it is important that the Company clearly convey, in the Investigations Policy, the process through which these complaints will be handled.

iv. Investigator Qualifications

The Monitor Team appreciates that EBH is considering expanding its ER and is actively assessing how to make the investigative process more efficient. For any employees who are hired, as well as those who currently work in ER, EEOC guidance emphasizes the importance of ongoing training in the skills needed for conducting an effective investigation, such as interviewing witnesses and evaluating

credibility. As noted in the Section III.E., the Company does not have a formal training program for investigators. Training should be required both in onboarding any employees who may help to conduct harassment and discrimination investigations, and as part of the annual training for all such employees. The Monitor Team has made related recommendations in Section III.E.⁴⁰

In developing a formalized training program for investigators, the Company might also consider establishing a toolkit for investigators, including, among other things, interview outline templates containing a list of proposed standard questions to be asked of complainants, charged parties, and relevant third parties.⁴¹ In addition to ensuring consistency, this would also help streamline the investigative process.

v. Documentation and File Maintenance

The Monitor Team observed a wide range in the quality of investigative files, particularly with respect to the written summaries of interviews and investigations. For example, some—but not all—files contained memoranda from Legal directing ER to conduct an investigation or closure memoranda.

As the Company considers fully documenting its investigative process and providing issue-specific guidance as appropriate, the Monitor Team recommends that the Company set forth minimum documentation requirements that are flexible enough to accommodate case-specific issues as they arise. For example, every investigation file should have the original complaint and notes from any non-anonymous complainant’s interview. In every case where the accused is available, the file should also contain notes from the interview of the accused. Notes should also be retained from the interviews of any other witnesses in the investigation. Lastly, the file should include any video clips (which should be preserved), photographs, physical evidence, and other potentially relevant evidence.

vi. Credibility Determinations

Another significant risk stemming from the Company’s investigation protocol as it is currently written is the absence of any formal guidance for evaluating witness credibility. The Monitor Team recognizes that credibility determinations are fact-specific and should be made carefully. The Team also recognizes that it is not feasible to construct or to follow a protocol that determines a witness’ credibility, but it is helpful to provide guidance and training as to educate investigators about acceptable methodology and to improve their ability to make such judgments. This will improve the quality of the Company’s investigations.⁴²

In addition to credibility, the EEOC provides additional factors that should be considered, including for example, “[i]nherent plausibility,” whether a complainant has a “[m]otive to falsify,” and

⁴⁰ The Monitor Team understands that the Company is actively developing additional training programs for ER conducted by external counsel.

⁴¹ The EEOC provides a list of questions that investigators should ask to the complainant and charged party in conducting investigations. See EEOC 1999 Guidance.

⁴² The Company should be careful in over-relying on witness demeanor. At least one employment regulator (California Department of Fair Employment and Housing) has recognized that making credibility determinations based on a person’s demeanor may not always be the best approach. An interviewer who is from a different culture than a witness may misperceive the latter’s facial expressions, body language, and tone of voice, which can be exhibited for a variety of reasons that are unrelated to the investigation. California’s Department of Fair Employment and Housing lists nine credibility factors that may provide helpful guidance.

whether the charged party had a history of similar behavior in the past. EEOC 1999 Report. At least one other employment state regulator has provided such guidance.⁴³

Manager insight may also be useful to investigators assessing credibility, since managers may be able to provide history or context to some statements or actions of those with whom they work and about whom they have significant and relevant experience. However, feedback from focus groups indicated some frustration from managers who felt their perspectives towards employees subject to an investigation were not considered in assessing credibility. Several managers also indicated that they were not kept informed regarding the conclusion of an investigation, and were often surprised to only receive notice that an employee placed on SPI would be returning to work, without explanation, despite concerns regarding that employee's professionalism and performance. While the extent to which the Company will weigh manager feedback will appropriately vary depending on whether the manager is a charged party to an investigation, for example, the Company might consider evaluating how it can effectively use feedback provided by managers to assess certain credibility factors. Further, the absence of formalized guidance incorporating credibility standards leaves too much discretion to the investigator to over rely on a single factor.

Investigators should not view the presence or absence of surveillance footage as a substitute for making credibility determinations. The Monitor Team appreciates that surveillance footage is an advantageous and practical tool used to help corroborate allegations made in complaints, particularly when the underlying allegations of misconduct involve physical contact. However, surveillance is only one of several tools that should be used in investigations, and overreliance on it can be problematic. The Monitor Team identified several instances in its review of investigation files where investigations could not substantiate the allegation made in a complaint, due, in part to the absence of video surveillance evidence, giving the impression that the presence of surveillance was dispositive in corroborating allegations. The Company should consider setting and defining parameters around its use of surveillance to corroborate allegations, and suggested work-arounds when video is inconclusive.

The Company should assess whether the lack of guidance about how to make credibility determinations has contributed to investigations that were inappropriately terminated as inconclusive. Interviews with Company personnel have indicated that a relatively small percentage of the sexual harassment complaints that were made at Wynn Las Vegas were substantiated over a one-year period.⁴⁴ The Company should continue to consider the extent to which "he said/she said" cases may be automatically deemed inconclusive.

vii. *Retaliation*

Overall, focus group participants did not express concerns that retaliation for filing complaints alleging harassment or discrimination was an issue. At EBH specifically, 88% of employees stated they were unaware of any instances of retaliation against individuals who reported allegations. An even higher percentage in Las Vegas—92%—had the same perception. In addition, memoranda sent to complainants at the conclusion of investigations remind them that the Company does not tolerate retaliation. Despite these positive efforts, some focus group participants expressed confusion about the

⁴³ See California's Department of Fair Employment and Housing lists nine credibility factors that may provide helpful guidance: (1) Inherent plausibility; (2) Motive to lie; (3) Corroboration; (4) Extent a witness was able to perceive, recollect or communicate about the matter; (5) History of honesty/dishonesty; (6) Habit/consistency; (7) Inconsistent statements; (8) Manner of testimony; and (9) Demeanor. *Workplace Harassment Prevention Guide for California Employers*, Cal. Dep't of Fair Employment and Housing at 6, (last visited May 7, 2020).

⁴⁴ A comparable assessment is not yet available for EBH.

usage of the term “retaliation,” asking for clarification of its meaning and how it could be proven. As discussed in Section III.E., the Company should make sure retaliation is clearly defined in training sessions.

viii. Special Considerations for Investigations of Conduct by High-Value Patrons

As noted Section III.A., a common theme articulated in focus groups was the complexity surrounding how employees handle a misbehaving guest when that patron is a high-value Patron, otherwise known as a “high roller.” The situation is especially complicated when the employee believes that their tolerance of a high roller’s misbehavior is directly correlated to the amount of tips the employee will receive. It is important that the Company addresses these issues directly by making it clear that its policies against harassment are designed to create a workplace free of harassment or discrimination for all employees from all sources. Demonstrating any tolerance of misconduct threatens the environment that Company’s HRCP intends to create.

Over the course of our review, the Monitor Team learned that the Company’s Security and Corporate Investigations Departments are heavily involved in investigating patron misconduct if they receive a complaint which often result in trespassing the misbehaving guest. Focus groups generally appreciated the speed with which Security responds to complaints by employees and supervisors about a Patron. However, because employees are generally required to follow the chain of command when a complaint is against a Patron, managers have significant discretion in how they choose to address such complaints and whether they contact Security. This discretion, combined with the added tolerance by certain groups of employees for inappropriate behavior from high-value Patrons, may result in an overall perception that the Company will tolerate harassment and discrimination by certain guests. For example, some employees described instances where a manager’s first question in response to employee concerns about a Patron was an inquiry about the Patron’s status. Thus, the Company should consider emphasizing in training and Pre-shifts that it will not tolerate misconduct by anyone, irrespective of status. The Company should also consider training of managers to make referrals to Security, rather than failing to make a referral based on patron status.

d. Use of Retractions/Mandatory Arbitration Provisions and Gag Orders, on All Employees, with Particular Attention to the Use of Such Measures and Their Impact on Non-Executive Employees

In light of the Commission’s observations regarding the presence of “allegations and settlements, with questionable retractions given the imbalance of power between the parties,” Decision and Order at 47, the Monitor Team reviewed the Company’s arbitration provisions, gag orders, confidentiality clauses, and non-disparagement provision templates. We will focus on assessing the “use of such measures and their impact on non-executive employees” in the next phase of our review. *Id.* at 50. Based on what we have seen thus far, the Company has taken several measures to change its settlement, separation, and arbitration agreement templates following the recent crisis.

Revisions to Permitted Disclosures Policy. The Company also revised its Permitted Disclosures Policy in May 2018. This revision clarifies that nothing in the Policy prohibits or restricts any Company employee from, inter alia, filing a charge or complaint with federal, state, or local governmental agency; initiating communications or responding to inquiries from government agencies in connection with potential violations of law; making certain disclosures required by law; or participating in any action or investigation pursuant to Sarbanes-Oxley Act (“SOX”). Furthermore, the Company states that all of those steps can be taken all without notice to the Company. The Company communicated these

clarifications via a notice letter to all former employees which also provided the contact information for relevant legal personnel.

Employee Arbitration Agreements. EBH’s standard arbitration agreement, which is generally provided to employees for their review and signature, contains a provision informing employees of their right to opt out of arbitration, explaining that arbitration is not a mandatory condition of their employment at the Company. It also includes instructive text on how to opt out and clarifies that the employee will not be “subject to any adverse employment action as a consequence of that decision and may pursue available legal remedies without regard to this Agreement.”

4. Recommendations

Based on our testing, the Monitor Team recommends that the Company:

IRI 1	Develop a communication campaign through which senior management at the Wynn Resorts and property levels communicate its support for a speak-up culture. The campaign may be timed with the launch of the Company’s new reporting channel.
IRI 2	Ensure that the new reporting channel permits multilingual reporting options to facilitate reports by employees with strong proficiency in languages other than English.
IRI 3	Develop and launch a campaign to promote the new reporting channel, including for example, posters, table-top messages, computerized messages on TV screens, and pre-shift communication.
IRI 4	On at least a trial basis, extend ER availability to cover the current gaps in ER on-site schedule. Inform employees about variations in ER’s schedule and about any subsequent changes.
IRI 5	Update the Investigations Policy to include clearly defined intake and routing protocols. Those procedures should include the following elements: <ul style="list-style-type: none">▶ designation of personnel authorized to receive reports routed through the Company’s reporting channels, including their role and responsibility in the intake process;▶ objective criteria to help intake-personnel scope the issues presented and route the complaint to the appropriate personnel for response and potential investigation;▶ guidance and procedures to wall off from an investigation anyone who is either the subject of an allegation, or may have a conflict that could jeopardize the objectivity of the investigation;▶ clearly defined guidelines for the intake, routing, and response to complaints against management and senior leadership;▶ substantive guidance for each of the investigative steps enumerated in the Policy; and▶ guidance on measures that should be taken to protect confidentiality in investigations, including guidance with respect to what information may and

	may not be shared with employees in an investigation.
IRI 6	Develop and conduct mandatory training on updated investigations policy for all personnel authorized to conduct investigations.
IRI 7	Review HR policies and update language regarding the Company's reporting channels to ensure consistency across policies.
IRI 8	Develop and provide investigations regularly-scheduled (at least annual) training to all employees who may be responsible for conducting investigations.

G. Incentives and Discipline

The Company has begun to develop an approach for incentivizing HRCP compliance and utilizing disciplinary measures consistently and where appropriate. Historically, the Company has not had a formal performance management process for any employees and has not conducted annual performance evaluations. The absence of those processes makes it difficult to institutionally incentivize behavior that promotes the HRCP. As it stands, the current structure for incentivizing and compensating employees for performance, including meeting HRCP standards, is ad hoc and discretionary. The Monitor Team's observations about the current program and recommendations for enhancements are described below.

1. Compliance Guidance

The Decision and Order tasks the Monitor Team with reviewing and evaluating all policies and organizational changes adopted by the Company and reporting "on the effectiveness of the Company's policies, practices and programs." Decision and Order at 50–51. Programs designed to incentivize compliance with the HRCP and empower the Company to take appropriate enforcement disciplinary actions help ensure the integrity and effectiveness of the HRCP. Indeed, in assessing the suitability of a licensee, the Commission looks to an applicant's character, which is conceived to be "the sum of total of an individual's attributes, the thread of intention, good or bad, that weaves its way through the experiences of a lifetime." *Id.* at 15. To this end, the Commission will "judge a [person's] character by evaluating his words and deeds as they appear from the testimony and from all of the evidence in the record" focusing "particularly on those attributes of trustworthiness, honesty, integrity and candor." *Id.*

Thus, an effective HRCP must contain appropriate incentive and disciplinary systems and structures so that companies can adequately assess their employees' compliance with the companies' standards, as well as federal and state laws, that govern employee behavior. Among those standards are laws barring sexual harassment and discrimination based on an individual's status as a member of a protected class.

The EEOC 1999 Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors states:

an employer should make clear that it will undertake immediate and appropriate corrective action, including discipline, whenever it determines that harassment has occurred in violation of the employer's policy [D]isciplinary measures should be proportional to the seriousness of the offense. If the harassment was minor, such as a small number of "off-color" remarks by an individual with no prior history of

similar misconduct, then counseling and an oral warning might be all that is necessary. On the other hand, if the harassment was severe or persistent, then suspension or discharge may be appropriate.

EEOC 1999 Guidance.

The EEOC 2016 Report provides additional guidance, and states:

An employer that has an effective anti-harassment program, including an effective and safe reporting system, a thorough workplace investigation system, and proportionate corrective actions, communicates to employees by those measures that the employer takes harassment seriously. This in turn means that more employees will be likely to complain if they experience harassment or report harassment they observe, such that the employer may deal with such incidents more effectively. This creates a positive cycle that can ultimately reduce the amount of harassment that occurs in a workplace.

EEOC 2016 Report at 34 (emphasis added). The 2016 Report also states:

Employers should ensure that where harassment is found to have occurred, discipline is prompt and proportionate to the severity of the infraction. In addition, employers should ensure that where harassment is found to have occurred, discipline is consistent, and does not give (or create the appearance of) undue favor to any particular employee.

Id. at 37. The Report goes on to state: “[w]ith regard to individuals who engage in harassment, accountability means being held responsible for those actions,” “[w]ith regard to mid-level managers and front-line supervisors, accountability means that such individuals are held responsible for monitoring and stopping harassment by those they supervise and manage,” and “[a]ccountability also includes reward systems.” *Id.* at 34–35.

The MCAD Sexual Harassment Guidelines adds “if the employer concludes that sexual harassment has occurred, the employer must take prompt and appropriate remedial action designed to end the offending conduct and prevent future harassing conduct.” Guidelines on 151B at 12.

The DOJ has issued relevant guidance as well, emphasizing the role that incentives and discipline play in an organization’s compliance program. For example, the DOJ encourages its prosecutors to assess:

- ▶ Whether a company has “clear disciplinary procedures in place” that it enforces consistently across the organization and “ensures that the procedures are commensurate with the violations.” Evaluation of Corporate Compliance Programs at 12.
- ▶ “[T]he extent to which the company’s communications convey to its employees that unethical conduct will not be tolerated and will bring swift consequences, regardless of the position or title of the employee who engages in the conduct. See U.S.S.G. § 8B2.1(b)(5)(C).” *Id.*

When evaluating a company’s incentives system specifically, prosecutors are guided to ask:

- ▶ “Has the company considered the implications of its incentives and rewards on compliance?”
- ▶ “How does the company incentivize compliance and ethical behavior?”
- ▶ “Have there been specific examples of actions taken (e.g., promotions or awards denied) as a result of compliance and ethics considerations?”
- ▶ “Who determines the compensation, including bonuses, as well as discipline and promotion of compliance personnel?”

Id. at 13.

2. Testing

The Monitor Team’s initial assessment of the Company’s incentives and disciplinary mechanisms included the following steps:

- ▶ Analyzed available information on enforcement and discipline through the Company to assess whether discipline is consistently applied and to evaluate whether and how discipline factors into employment action determinations, such as promotions, bonus payments, and salary increases;
- ▶ Reviewed HR training materials, policies, and plans;
- ▶ Interviewed members of the Board, Legal, Compliance, Internal Audit, and HR personnel regarding the Company’s incentives and discipline procedures; and
- ▶ Conducted focus groups and surveys of EBH and Wynn Las Vegas employees to examine their perceptions of the Company’s discipline and incentives.

3. Observations

In this Section, we discuss the Company’s current efforts to incentive compliance and to discipline employees that fail to comply with the Company’s policies and discuss ways in which the Company can build upon those efforts.

a. Incentives

Although the Company has historically not operated a performance management program, it has begun to develop such a plan and will apply to all employees, including senior and middle management. The Company also plans to leverage the GPTW survey results to further incentivize compliance from its management teams. These efforts are both in their early stages and the Monitor Team looks forward to observing how the Company continues to design and deploy these important programs.

i. Performance Evaluation System

Incentives and discipline are both important tools for encouraging compliant behavior by Company personnel and demonstrating that the Company values and prioritizes compliance. We understand the Company will soon implement a performance management system designed to recognize compliant behavior by both managers and employees. The new system will evaluate

employee performance and take into account how employees are living up to the values of the Company.

The Monitor Team understands that the Company plans to organize its performance evaluation system for managers and employees around the following three metrics: finance, service, and core behaviors. Interviews indicated that the financial metric is already in place across divisions. When it is introduced, the service-based metrics will likely be Patron facing and rooted in the “Five-Star” standards of service. The Company is still in the process of defining how “core behaviors” will factor into performance evaluations. The Monitor Team views this as an effective way to communicate the message that compliance drives value. We are keenly interested in how the Company will incorporate this metric into formal evaluations. Indeed, interviews indicated that the Company is actively brainstorming ways to define its proposed “core behaviors” metric, that the Monitor Team understands, would measure whether employees are exhibiting the behaviors listed above. While specific “core behavior” criteria may vary by division, Company personnel explained that certain community service driven requirements could be one way of defining “core behavior” performance standards. Specifically, employees could be required to perform a minimum amount of community service hours or attend a minimum amount of community service events. The Monitor Team commends the Company for prioritizing community engagement to strengthen culture and enhance community awareness, we look forward to seeing other ways the Company will incentivize compliant behavior in the HRCP context in general and in the context of harassment and discrimination context in particular.

ii. *GPTW*

As discussed in Section III.G.3.b.i., the Company participated in the GPTW survey in 2018 and 2019, and plans to continue its annual participation. The Company also reportedly plans to incorporate the survey into the performance evaluation system by, for example, tying employee participation to management compensation.

The Company’s commitment to continuously improve upon its performance in the survey is without a doubt, a sign of a maturing program. However, the Company should guard against overly relying on metrics that are either too far from the control of the person being evaluated or may not be an entirely reliable indicator of the Company’s own HRCP, such as the GPTW survey. While the survey includes a handful of supplemental prompts drafted by the Company that are specific to harassment and discrimination issues, detecting those issues is not its sole, or even predominant, purpose. Nor could it be. The survey is intended to measure employee engagement and several other facets of the Company’s culture. It does not cover questions such as those that were included in the Monitor Team’s focus group surveys, like: whether trainings are effective, including employees’ understanding of what constitutes discrimination and harassment; the regularity with which management refers to the Company’s Preventing Harassment and Discrimination policy; whether retaliation for reporting allegations of harassment and discrimination is an issue; and whether there are people or categories of people at the Company (e.g., Patrons, managers, and/or senior executives) who could (or do) get away with harassment and discrimination. All of these are more reliable indicators of management commitment and performance.

Also, a note of caution is warranted with respect to the Company’s plan to tie survey participation to management compensation. Plans such as those, while well-intentioned, may have unintended consequences that hinder the reliability of survey responses as a whole (i.e., causing managers to be too heavily invested in employee responses). Thus, the Company should consider how it will safeguard against unintentionally promoting undesirable behavior.

b. Incentives for Line-Level Employees

The Company is in the process of designing and implementing a few incentive structures to promote desired behavior among line-level employees. The Company has developed and rolled out an “Employee of the Month” program to spotlight employees who have performed well and exhibit the Company’s value of excellent service. The Company is also in the process of developing action plans based on the results of the GPTW survey so that it can work towards targeted improvements in departments, as it deems necessary. The Monitor Team considers these to be positive efforts that, if further developed, can successfully embed compliance deep into its organization.

i. *Employee of the Month*

The Company has in place “Employee of the Month” programs, which the Monitor Team understands are department-specific and may be based on a wide range of criteria that rewards outstanding service to Patrons. Significantly, neither HRCP compliance nor ethical behavior is included in that criteria. This is a lost opportunity for the Company to demonstrate that it values compliance and ethical behavior among colleagues alongside customer service and is willing to reward employees for such behavior. Therefore, the Monitor Team recommends that the Company integrate standards of behavior related to compliance in its “Employee of the Month” programs.

ii. *Action Plans*

The Company is leveraging the GPTW survey to make improvements based on its results. Thus, it has required divisional department heads and line-level employees to develop “action plans” to address department-specific concerns. The Monitor Team reviewed a selection of the management action plans and was pleased with the overall thoughtfulness and creativity in department-specific resolutions, many of which responded directly to employee concerns. The Monitor Team also received generally positive feedback in focus groups from employees directly involved in drafting their departments’ management action plans. The Monitor Team encourages the Company to consider how it can incorporate these plans more broadly into its performance evaluation system, with an eye towards providing opportunities for line-level employees to take ownership of the Company’s HRCP.

c. Incentives for Executives

Currently, compensation for senior managers does not factor in the extent to which they support the HRCP, by for example, encouraging a “speak-up” culture, even though morality clauses are included in their employment contracts. A regulatory compliance component is also included in compensation for executive leadership. In the context of the Massachusetts licensee, this turns, in part, on the requirements set forth in the MGC’s Decision and Order giving rise to this Monitorship. However, the Company recently hired a Manager of Compensation and Benefits who is in the early stages of developing a compensation philosophy. We will continue to review developments in this area in future phases of the monitorship.

d. Discipline

The Company has some policies and procedures in place that allow it to take appropriate enforcement and disciplinary action. However, due to gaps in its investigative process, as discussed in greater detail in Section III.F., the Company’s current approach to enforcement and discipline has the potential to lack uniformity. Based on our baseline review of the Company’s approach to discipline and enforcement, we believe enhancements to these processes will increase their effectiveness.

i. *Relevant Policies and Procedures*

Code of Business Conduct. The Company's Code of Business Conduct, which is designed to lay out "guiding principles" for the Company, states that employees who violate the Company's policy against harassment and discrimination "will be subject to disciplinary action, up to and including termination of employment. Disciplinary action can be taken in cases of inappropriate conduct, even if that conduct does not amount to a violation of law." The Code of Business Conduct also seeks to hold employees accountable for ensuring compliance with the Company's "rules, regulations and ethical standards," noting that employees should familiarize themselves with the Company's policies and guidelines.

Preventing Harassment and Discrimination Policy. In addition to the Code of Business Conduct, the Company also communicates to employees that discrimination and harassment will not be tolerated in its Preventing Harassment and Discrimination policy, which provides, in relevant part, that the Company "does not tolerate sexual or other unlawful harassment or discrimination by any employee, volunteer, vendor, contractor, consultant, guest, customer, or visitor," emphasizing that complaints or concerns will be investigated and that it will take "appropriate corrective action up to and including termination of employment of the offending employee" or other appropriate action, which may include immediate reassignment.

The Policy also cautions that "offenders may also be personally liable for any legal and monetary damages." Finally, the Policy clearly states its applicability to "all employees throughout the Company, including full-time, part-time, temporary, and seasonal employees, and members of the Board of Directors." Other aspects of the Company's Preventing Harassment and Discrimination policy are discussed in Section III.C.

Progressive Discipline and Performance Policy. As the governing policy on discipline, the Company's Progressive Discipline and Performance policy commits the Company to "take appropriate steps to correct [inappropriate] conduct and prevent it from occurring in the future." Based on the seriousness of the conduct and facts involved in an infraction, disciplinary action "may be used progressively from a Level One (1) written warning [,] to a Level Two (2) written warning [,] to a suspension so as to allow an employee an opportunity to modify his or her conduct." At the same time, the Company reserves the right "to start at the level of discipline that it believes is necessary to adequately address the seriousness of the infraction, which includes termination." All discipline remains "active," or, a valid basis for increased subsequent discipline, for 12 months from the date of the incident, and the would-be disciplined employee is "entitled to give a written statement explaining their side of the situation."

In addition, the Progressive Discipline and Performance policy provides that when discipline has not produced acceptable behavior or when a "serious" offense appears to have been committed that may warrant skipping one or more levels of discipline, an employee may be placed on SPI to determine whether the contemplated discipline is warranted. SPI is deemed not to be disciplinary in nature, but is instead treated as an investigatory mechanism to allow the Company to gather information necessary to determine if disciplinary action is appropriate.

The Progressive Discipline and Performance policy provides examples of behavior that merit termination, such as "[e]thics violations," "[h]arassment and/or discrimination on the basis of age, race, color, gender, religion, national or ethnic origin, disability, marital status, veteran status, sexual orientation, pregnancy, or other classification protected by Federal, State, or Local law against a customer, vendor, or any employee, supervisor, manager, director, or officer of Encore," and

“[d]iscourteous conduct towards a guest or coworker.” Furthermore, we find it significant that the Policy, on its face, incorporates standards of accountability and proportionality and contemplates that the most severe infractions may be handled with the most severe level of discipline—termination—without going through all of the progressive steps.

ii. *Implementation and Effectiveness of the Company’s Approach to Discipline*

As noted above, the Company currently takes a bifurcated approach towards enforcement and discipline. From its review of investigative files in Boston and Las Vegas, the Monitor Team observed that the Company either terminates or reinstates a charged party at the end of an investigation, with little to no middle ground resolutions such as requiring additional training. Focus groups also echoed this observation. Several employees expressed frustration with the binary—and occasionally uneven—enforcement measures taken after investigations. This may be due, in part, to the lack of adequate guidance for behavior that would merit discipline short of termination, leaving room for inconsistent application of discipline levels across the organization. Thus, the Monitor Team recommends that the Company enhance the Progressive Discipline and Performance policy to provide additional guidance regarding when each level of discipline is appropriate, based on a holistic evaluation of circumstances.

Interviews with personnel also demonstrated some reluctance to take decisive action in “he said/she said” cases. For example, ER personnel across both properties indicated that their hands may be tied in terms of how to discipline when there is an absence of or limited evidence to corroborate allegations made by complainants, for example, where camera footage does not corroborate an allegation of touching. In these cases, the charged party is generally reinstated and provided with a memorandum reminding the employee of the Company’s behavioral expectations as laid out in the Preventing Harassment and Discrimination policy and the Code of Business Conduct, and in some cases a written warning were also issued. However, it is important to note that termination may sometimes be warranted, even in the absence of corroborating evidence. A key factor in making that determination, of course, is an assessment of the credibility of the complainant, the accused, and any witnesses participating in the investigation. Moreover, formal guidance with respect to making individual credibility determinations may aid ER in making appropriate disciplinary decisions at the end of an investigation credibility assessments, as discussed in greater detail in Section III.F.3.c.vi.

The Monitor Team has also heard conflicting information as to whether and what disciplinary decisions are actually made by department managers or by HR (including to the exclusion of manager input). This lack of clarity contributes to inconsistencies in messaging, particularly with respect to discipline. For example, some employees informed the Monitor Team that they were unclear as to what behavior merited what discipline and observed application of discipline to be inconsistent, although these concerns were generally expressed in connection to allegations of harassment and discrimination based on protected classes other than sex (e.g., national origin). Moreover, it is critical for the strength of the Company’s HRCP message that discipline be applied consistently both across the organization and across infractions.

To this end, the Monitor Team understands the Company’s current approach to sexual harassment allegations includes review of investigations and related discipline by the GC, SVP of HR, and external counsel on a weekly basis. This approach is discussed in further detail in Section III.F. but is relevant here because it means that discipline related to sexual harassment allegations follows a different protocol than for harassment allegations that are based on protected classes other than sex (which receive only quarterly review). To ensure that disciplinary decisions are made with one voice,

the Monitor Team recommends that discipline authority be clarified in both the Progressive Discipline and Performance policy and in relevant trainings for managers.

iii. *Discipline of Executives and Senior Managers*

The Monitor Team recognizes the changes that the Company has made to address past corporate failures including “replac[ing] executives who had knowledge of the sexual assault and/or harassment allegations against Mr. Wynn and failed to document, investigate, and/or notify the Board and/or regulators.” Decision and Order at 40. Over the course of our discussions with executives and senior management, the Monitor Team was pleased to learn that the Company has actively taken steps to reprimand and coach senior management whose actions were inconsistent with the Company’s values, even in the absence of harassment and discrimination concerns. The Company has also adjusted compensation for certain senior management in response to the MGC’s findings.

Interviews also indicated that concerns about executives and senior management are escalated to senior members of the Legal and HR Departments, where—depending on the outcome of an investigation—they are counseled. To the Company’s credit, employees in focus groups generally expressed confidence that executives and senior management would not get away with harassment and discrimination because of their elevated positions. However, because complaints against senior management and executives are escalated to senior management of the Legal and HR Departments, it is important that this process be memorialized to encourage consistent decision-making, as discussed in greater detail in Section III.F.

4. *Recommendations*

Based on our testing, the Monitor Team recommends:

I&D 1	Integrate standards of behavior related to compliance in its “Employee of the Month” programs.
I&D 2	Update the Progressive Discipline and Performance policy as follows: <ul style="list-style-type: none">▶ provide additional guidance on how to determine appropriate discipline based on a holistic evaluation of circumstances; and▶ clarify roles, responsibilities, and authority with respect to the disciplinary process.

H. **Risk-Based Review**

Compliance authorities—including the EEOC and the DOJ—advise that, to be effective, a compliance program must be designed to mitigate the specific risks inherent to the company’s business and operational profile. The Monitor Team, therefore, conducted interviews and reviewed company documentation focused on identifying and assessing procedures the Company has in place to identify risks of sexual harassment and discrimination and to evaluate whether the HRCP is appropriately designed to mitigate those risks.

1. *Compliance Guidance*

The EEOC’s 2016 Task Force on the Study of Harassment in the Work Place advises that “[t]he first step for creating a holistic harassment prevention program is for the leadership of an organization

to establish a culture of respect in which harassment is not tolerated,” EEOC 2016 Report at 79, and suggests that one key step leadership must take “to effectuate and convey a sense of urgency and commitment” to preventing harassment is to assess harassment risk factors and to take steps to minimize those risks. *Id.* at 33. As discussed in Section I., the EEOC 2016 Report provides a preliminary “roadmap” of the types of organizational factors or conditions that employers should assess to determine where within their organization harassment may be more likely to occur. Those factors include, but are not limited to:

- ▶ Workplaces where some employees do not conform to workplace norms;
- ▶ Cultural and language differences in the workplace;
- ▶ Young workers;
- ▶ Workplaces with “high value” employees;
- ▶ Workplaces with significant power disparities;
- ▶ Workplaces that rely on customer service or client satisfaction;
- ▶ Isolated workplaces; and
- ▶ Workplaces that tolerate or encourage alcohol consumption.

The EEOC 2016 Report advises, in addition, that “employers need to maintain ‘situational awareness’” of the organizational conditions that exist in their specific workplace. *Id.* at 30.

Like the EEOC, the DOJ emphasizes that risk assessments must be the “starting point” for evaluating “whether a company has a well-designed compliance program . . . to understand the company’s business from a commercial perspective, how the company has identified, assessed, and defined its risk profile and the degree to which the program devotes appropriate scrutiny and resources to the spectrum of risks.” Evaluation of Corporate Compliance Programs at 2.

2. Testing

To review whether the Company has in place procedures to assess harassment and discrimination risk factors and whether its HRCP is designed to mitigate those risks, the Monitor Team interviewed Legal, Compliance, Finance, and Internal Audit personnel, as well as members of senior management. We also reviewed minutes from Board of Directors, Audit Committee, and Compliance Committee meetings, as well as presentations to the same.

3. Observations

Wynn Resorts does not have formal or documented procedures designed to identify harassment or discrimination risk factors that may exist in its operations. The Company does conduct formal Internal Audit Risk Assessments, which include some aspects of HR-related policies and procedures. However, those risk assessments are not designed to detect or mitigate sexual harassment or discrimination risk factors. In the Monitor Team’s view, more comprehensive and routine HR risk assessments are warranted to enable the Company to proactively identify harassment and discrimination risks and to ensure optimal utilization of Company resources in mitigating those risks.

a. Existing Risk Assessment Efforts

While the Company does not conduct formal HR risk assessments, the Monitor Team perceived a general understanding across the Company of the gaming industry's sexual harassment and discrimination risk factors and a demonstrated appreciation of some of the efforts required to mitigate those risks. See Section III.A. That perception was informed through the course of our interviews with Board and Compliance Committee members, senior and middle management, and HR-focused personnel—all of whom have responsibility in overseeing or implementing the Company's HRCP. Interviewees explained that they leverage their industry knowledge and experience to identify sexual harassment and discrimination risk factors at the Company.

Currently, the most prevalent source of information for the Company is its own reporting channel and investigations process, both of which offer the Company ongoing visibility into HR-specific risk factors as they materialize. As discussed in Section III.F., the Company currently spends significant time and effort reviewing individual complaints and investigations, and it plans to enhance its ability to track trends and metrics through the application of aggregated data analysis. This is an enhancement that the Monitor Team strongly supports, as discussed in Section III.I. below. The Monitor Team encourages the Company to continue to leverage its review procedures as part of its ongoing risk assessment and monitoring efforts. The Company should also continue to empower its teams to identify and escalate risk factors as they encounter them in the regular course of their duties. However, continued reliance on these informal risk reviews, even when conducted by personnel familiar with the industry, would be misplaced in two important ways.

First, reliance on experienced personnel can certainly be a valued tool to identify HR risks, but even the most experienced personnel do not always possess the same degree of conditional awareness as front-line employees who encounter HR risk factors daily. In the Monitor Team's opinion, HR risk assessments should take a bottom-up approach and should focus on identifying risk factors particular to the various job classifications that operate within the organization. This could involve, for example, the use of HR questionnaires or focus groups designed to identify how each position encounters sexual harassment and discrimination risk.

Second, while it is critical for the Company to review complaints and investigations to monitor risks and identify gaps in its HRCP, see Section III.I., that type of retroactive review is designed to monitor the effectiveness of its HRCP and to identify changes in the Company's risk profile. It will therefore capture only the segment of HR risks that are reported or have already materialized. This leaves the Company in a solely reactive risk *mitigation* posture and limits the Company's ability to create "a holistic harassment *prevention* program."

b. Physical Security Risk Assessments

During our review, the Monitor Team visited both the Boston and Las Vegas properties and saw firsthand the Company's impressive physical security operations. Given the sensitive nature of security operations, our reporting will not provide any detailed descriptions of the Company's security protocols. We will note, however, that through interviews and our own assessment, the Company's physical security plans are based on a risk assessment that takes into account concern for employee and Patron safety. The Monitor Team commends the Company for its efforts in this regard and encourages the Company to conduct periodic security risk assessments with a specific focus on identifying conditions that could expose their employees to physical harm, including sexual assault.

c. Internal Audit Risk Assessments

The Company’s Internal Audit Department conducts an annual risk assessment of the Company’s control environment, which includes certain HR and payroll processes as well as the Human Resource Information Systems (“HRIS”) applications for testing. The Monitor Team does not have sufficient information to evaluate whether the assessment of those processes and applications includes issues relevant to our review. During the next phase of our review, the Monitor Team will conduct follow-up requests and interviews to delve into whether and how these risk assessment procedures may be leveraged to address risks within the scope of the Monitor Team’s review.

Notably, the 2019 Internal Audit Risk Assessment Report notes: “Control Environment factors include the integrity, ethical values, and competence of the Entity’s employees; Management’s philosophy and operating style; the way Management assigns authority and responsibility and organizes and develops its employees; and the attention and direction provided by the Company’s Board.” The Report itself, however, does not reflect whether or how these controls factors were assessed or tested. To the extent that Internal Audit conducts risk assessments of these factors through management interviews or questionnaires, the Monitor Team recommends leveraging those processes to help identify risk factors affecting the effectiveness of the HRCF, especially as it relates to harassment and discrimination based on protected classifications.

4. Recommendations

Based on our testing, the Monitor Team recommends:

RBR 1	Develop and document risk assessment procedures designed to identify HR risk factors across the Company’s gaming and hotel operations. The procedures should follow a bottom-up approach to ensure that the full scope of operational conditions is reviewed and considered.
RBR 2	Develop and document guidance on how risk mitigation strategies and controls will be documented and monitored.
RBR 3	Develop written guidance for personnel responsible for implementing the risk assessment procedures.
RBR 4	Develop internal reporting procedures to ensure that senior management, the Compliance Committee, and Audit Committee of the Board receive appropriate information regarding the results of the risk assessment.
RBR 5	In the Company’s existing Security Protocol, document the Security Department’s risk assessment procedures for identifying conditions that could expose employees to physical harm, including sexual assault.
RBR 6	Review the risk assessment procedures of Internal Audit and evaluate whether and how they can be leveraged to help the Company identify risk factors affecting the effectiveness of the HRCF, especially as it relates to harassment and discrimination based on protected classifications.

I. Monitoring and Testing

Historically, Wynn Resorts has had systems to monitor and test regulatory compliance pursuant to the terms of its Compliance Plan, but has not conducted monitoring and testing of its HRCP. Over the last year-and-a-half, the Company has begun to monitor several aspects of its HRCP, including allegations of sexual harassment and discrimination and employee training participation. The Company has also included certain aspects of its HRCP in its annual Internal Audit reviews. In this Section we review the Company's current efforts and assess how those efforts may be enhanced, including by extending monitoring and testing efforts to other aspects of the HRCP.

1. Compliance Guidance

The EEOC also stresses the importance of monitoring and testing in its 2016 Report, viewing those activities as a measure of a company's commitment to its anti-harassment program. The EEOC states that "systems must be periodically tested to ensure that they are effective." EEOC 2016 Report at 33. Specifically, the EEOC encourages companies to conduct climate surveys "to assess the extent to which harassment is a problem in their organization," *id.* at 37, to "periodically 'test' their reporting system to determine how well the system is working," *id.* at 43, and to test the effectiveness of training. *Id.* at 33.

In its 2019 Guidance, the DOJ highlights that an effective compliance program demonstrates a "capacity to improve and evolve." Evaluation of Corporate Compliance Programs at 14. In evaluating compliance programs, the DOJ asks "whether the company has engaged in meaningful efforts to review its compliance program and ensure that it is not stale." *Id.* Specifically, the DOJ considers whether a company has taken "reasonable steps" to ensure that its compliance policies and procedures are followed and whether its compliance program reflects lessons learned. *Id.*

2. Testing

The Monitor Team interviewed a number of individuals responsible for the Company's HRCP to understand the Company's current efforts to monitor and test its HRCP. These interviews included personnel from Legal and HR at both EBH and the Las Vegas properties. The Monitor Team also spoke with personnel from Internal Audit and reviewed documentation relevant to monitoring and testing, including the GPTW survey, in which the Company participated in 2018 and 2019.

3. Observations

Currently, the Company's efforts to monitor its HRCP focus primarily on the ongoing review by Legal, HR, and external counsel of reports of sexual harassment and discrimination. The Company has also conducted culture surveys through GPTW, monitored training participation, and conducted some monitoring activities through its Internal Audit function. Through interviews, we understand that the Company intends to expand upon these efforts through platforms designed to help it improve its collection and analysis of HRCP data to allow for more in-depth and nuanced analyses of trends and other critical information. The Monitor Team views monitoring and testing as one of the most significant areas of opportunity for the Company and plans to actively monitor the Company's progress in this area.

a. Monitoring and Testing by Legal and Human Resources

The Legal and HR Departments monitor sexual harassment and discrimination allegations on a regular basis and report on those allegations to the Compliance Committee.

i. Monitoring of Sexual Harassment and Discrimination Allegations

In 2018, the Company began to monitor all allegations of sexual harassment received by the Company and to report those allegations to the Compliance Committee on a quarterly basis. That practice has been formalized in the Company's Compliance Plan, which now requires Legal and HR to "provide a quarterly written report to the Compliance Officer of Human Resources Complaints." The Company now classifies allegations of discrimination, in addition to allegations of sexual harassment, as "Human Resources Complaints." The Compliance Plan instructs that, for substantiated claims, "the report must include a narrative of the underlying incident or incidents and the remedial action taken. For claims made which are not substantiated, the report must include a narrative of the underlying claimed incident or incidents and reason it was not substantiated."

The Monitor Team has seen evidence that the Company complies with its obligation of quarterly reporting of HRCP incidents to the Compliance Committee, except that, as noted in Section III.B., the reporting does not always include the reason for non-substantiation. From interviews, we understand that the Compliance Committee members review the reports in detail and engage in meaningful questions and discussions around reports—both substantiated and not substantiated. Several interviewees noted that discussions of HRCP incidents often consume approximately one-third of each Compliance Committee meeting.

In addition to the quarterly reports prepared for the Compliance Committee, HR prepares weekly reports of all sexual harassment allegations—regardless of severity or investigation outcome—for review by the GC and by external counsel. The weekly reports are intended to increase transparency around the issues reported and to ensure that the Company is responding appropriately to reports of sexual harassment and discrimination. We note that both the quarterly and weekly reports are prepared manually by HR and that Legal reviews and comments on the quarterly reports before they are sent to the Compliance Committee.

The Monitor Team commends the Company for the attention it provides to sexual harassment and discrimination allegations. Based on interviews and our own review of the weekly and quarterly reports, it is evident that the Company has dedicated a tremendous amount of time and energy to this exercise. The level of awareness and engagement around these issues can be critical to ensuring that the events of the past do not recur.

At the same time, the Monitor Team learned in interviews and focus groups that HR personnel, particularly in Boston, are managing an unexpectedly high volume of investigations touching a wide range of issues. The burden of generating weekly reports places an additional burden which one interviewee described as "paralyzing" to HR's operations.

In reviewing the Company's monitoring efforts, the Monitor Team must consider not only the value and effectiveness of the efforts but also their sustainability. In this respect, the Monitor Team questions whether the burden placed on HR by the weekly reports jeopardizes the sustainability of this monitoring exercise. The Monitor Team will continue to closely monitor the weekly reporting process with a particular focus on the following potential issues:

- ▶ First, whether the weekly reporting unnecessarily draws the GC into the proverbial weeds of sexual harassment and discrimination cases, potentially causing them to lose sight of bigger picture issues—namely, trends and patterns that could signal programmatic issues that warrant review and remediation.

- ▶ Second, whether the push to get information to the GC on a weekly basis, risks limiting the relevant personnel’s ability to engage in a nuanced analysis of each case to understand whether the underlying issues reflect opportunities to enhance elements of the HRCP, rather than focus only on whether the claim was substantiated or not.
- ▶ Third, whether detailed scrutiny of each case by the GC can be disempowering to HR personnel and could—unintentionally—lead to cases taking longer to resolve, or worse, could cause the local HR and Legal Departments to be hesitant to make determinations for fear of being questioned.

The Monitor Team recommends that the Company consider approaches for streamlining the escalation of sexual harassment claims to the GC. The Company should also develop a monitoring protocol that will facilitate identification of data and trends that could signal opportunities to improve specific aspects of its HRCP. The Company should then conduct periodic root-cause analyses of the data and trends identified through monitoring and apply those analyses to propel improvements in its HRCP.

ii. Trainings

As discussed in Section III.E., the Company has developed training on key areas of its HRCP. Those trainings are mandatory for all employees across the organization. The Company tracks attendance through sign-in sheets managed by ER or through electronic tracking of employee ID cards. Employees noted that the Company is strict in its attendance requirements and enforces attendance by suspending employees who do not fulfill their training requirements.

The DOJ advises that to be “truly effective,” a compliance program must be understood by the employees to whom the program applies. Evaluation of Corporate Compliance Programs at 5. It is critical, therefore, for companies to test whether their trainings are offered in a format that is appropriate to the audience and whether employees understand their rights and responsibilities if they experience harassment or discrimination. EEOC 2016 Report at 82. There are various ways that companies test the effectiveness of their training programs. For example, many companies conduct short “quizzes” at the end of trainings, including in-person trainings, while others conduct periodic surveys that include questions designed to identify the strengths and improvement opportunities in their trainings. Companies also leverage their reporting and investigations procedures to identify trends that may signal a gap in their training programs.

Currently, Wynn does not conduct any formal testing of the effectiveness of its training programs. The Monitor Team is also not aware of any organized way for employees to submit feedback on trainings. The Monitor Team therefore recommends, as discussed further in Section III.E., that the Company test the effectiveness of its training programs.

iii. GPTW Survey

In 2018 and 2019, the Company participated in the GPTW survey, although the survey was not administered to EBH employees in 2019. The GPTW survey is a third-party anonymous survey of employee satisfaction. Through 60 questions, the survey seeks to gauge employee responses on issues of credibility, respect, fairness, pride, and camaraderie. Wynn also customized the survey with five additional questions for Company employees:

- ▶ “I believe diversity and inclusion is a top priority for my organization.”
- ▶ “I have not personally witnessed sexual harassment in this company.”

- ▶ “I am familiar with the proper reporting procedures for incidents of sexual harassment.”
- ▶ “I feel comfortable reporting incidents of sexual harassment to management.”
- ▶ “I believe the company will take appropriate action in response to incidents of sexual harassment.”

The Company is certified as a “Great Workplace” because of its overall high scores on the 60 standard queries, which include: “Management delivers on its promises,” “This is a physically safe place to work,” “People here are treated fairly regardless of their sexual orientation,” “I’m proud to tell others I work here,” and “This is a fun place to work.”

For purposes of HRCP monitoring, the GPTW survey—especially with the additional questions posed by the Company—can provide helpful insight into questions of tone and culture, and whether employees feel that they are respected and their concerns are taken seriously. It is the Monitor Team’s opinion, however, that the Company places outsized emphasis on the (positive) survey results. In particular:

- ▶ The survey does not test substantive knowledge important to a functioning HRCP. Although the Wynn survey asks employees whether they feel they know the “proper reporting procedures,” the survey does not test the actual knowledge of employees as it relates to the Company’s specific reporting channels.
- ▶ Although the survey results reflect a range of responses, employees who fear retaliation or who may believe that their economic interests align with working at a “Great Workplace,” may select the survey’s easily-identifiable favorable responses and thereby skew results positively.

The Monitor Team understands that the Company may take future survey results into account in management performance evaluations. Including survey results in the management evaluation can be helpful to incentivize compliance and the Monitor Team encourages the Company to continue to explore that option. However, as the Company continues to develop this aspect of its program, it must remain vigilant not to create unintended incentives that could lead to skewed results. Moreover, if the Company does tie survey results to evaluations, it will be even more important that the surveys on which the Company relies are tailored to monitor the Company’s own HRCP.

For purposes of evaluating the Company’s HRCP, the Monitor Team recommends that the Company engage in separate and targeted surveys and focus groups to test the substantive and specific elements of the HRCP.

b. Testing by Internal Audit

The Company’s Internal Audit Department monitors and tests certain aspects of the Company’s HRCP. We understand from interviews and documentation that HRCP monitoring and testing is conducted formally as part of Company’s Annual Internal Audit plan and that, on occasion, Internal Audit conducts additional testing outside of its annual audit plan.

The Monitor Team reviewed the Company’s 2019 and 2020 audit plans, both of which reflect testing by Internal Audit of InTouch Hotline Administration, staff training, and payroll. Internal Audit personnel stated that the annual internal audit process also includes a review of the Company’s procedures for updating, codifying, and disseminating the Code of Business Conduct and HR policies, as

well as a review of the Company’s communications, such as pre-shifts and daily emails. The Monitor Team understands the goal of these reviews is to evaluate the Company’s tone at the top and to ensure that “what [the Company says] is happening is really happening.”

The Monitor Team did not have the opportunity to review the Company’s internal audit plans or methodology in detail for this Baseline Assessment, nor were we able to review internal audit reports reflecting testing of the HRCP issues noted above. It would be premature, therefore, for the Monitor Team to comment on the Company’s internal audit monitoring and testing procedures at this stage. In the next phase, we will continue our discussions with internal audit as well as our review of internal audit plans and reports.

4. Recommendations

Based on our testing, the Monitor Team recommends:

M&T 1	Consider approaches to streamlining, including through automated reporting tools, the escalation of sexual harassment claims to the GC.
M&T 2	Develop a monitoring protocol that will facilitate identification of data and trends that could signal opportunities to improve specific aspects of its HRCP. The protocol should include a process for periodic root-cause analysis of the data and trends identified through monitoring and for applying those analyses to propel improvements in its HRCP.
M&T 3	Engage in separate, targeted surveys or focus groups to test the effectiveness of the substantive elements of the HRCP.

J. Controls Environment

During this baseline review period, the Monitor Team reviewed documentation and conducted interviews to understand what controls the Company has implemented to mitigate the risk of recurrence of issues identified in MGC’s Decision and Order, specifically with respect to the use of confidentiality clauses and conflicts of interests arising from the dual representation by the Company’s external counsel of the Company and of Company executive. In this Section, we discuss those controls, our observations, and recommendations.

1. Compliance Obligations

The MGC regulations require Wynn Resorts to maintain a control environment governed by the Massachusetts Uniform Standards of Accounting Procedures and Internal Controls, 205 Mass. Code Regs. 138 (“Code 205”).

Those controls, first and foremost, ensure financial and accounting integrity of the licensee. However, viewed more broadly and as reviewed by the Monitor Team, they create a foundation for a corporate governance structure designed to safeguard the adherence to the licensee’s policies and procedures and the execution of transactions in accordance with management authority.

2. Testing

The MGC's Decision and Order highlighted several key gaps in the Company's corporate governance and procedures as they relate to the settlement of sexual harassment or assault allegations raised by employees. The MGC, therefore, instructed the Monitor to review the "use of retractions, mandatory arbitration provisions, gag orders, confidentiality clauses, and non-disparagement provisions of all employees, with particular attention to the use of such measures and their impact on non-executive employees." Decision and Order at 50.

Our goal for this baseline phase was to review the policies, procedures, and governance structures the Company currently has in place over the settlement of allegations raised by employees as well as over the not-for-cause separation of its employees. To that end, we reviewed available policies and procedures and standard settlement and separation agreements used by the Company. At this phase, we did not review the implementation of those procedures, but will conduct that testing in the next phase of our review.

With respect to the management of external counsel and other third parties, in addition to the work described in Section III.D., we obtained information related to the Company's vendor management systems. We consider those discussions to be preliminary and will continue to review those systems in greater depth during the next phase of our review.

Finally, we reviewed the Company's control environment with respect to physical security as those controls relate to the Company's efforts to create a workplace free from harassment and discrimination. We interviewed physical Security personnel at both the Boston and Las Vegas properties and received an in-person demonstration of the Company's physical security monitoring systems in Boston. Our observations and recommendations on the Company's Security environment are discussed in Section III.B.3.g.

3. Observations

The Company has taken steps to prohibit the use of overly restrictive confidentiality clauses in settlement agreement. Specifically, the Company adopted standard confidentiality clauses that permit parties to discuss facts underlying settlements related to sexual harassment and discrimination. The Monitor Team has observed opportunities for the Company to enhance its controls over settlement agreements to ensure the uniform application of these clauses and the appropriate use of settlement agreements generally. With respect to the Company's control environment related to management of external counsel, the Company will need to better document its practices with respect to the review and approval external counsel invoices. The Monitor Team's specific observations and recommendations follow.

a. Settlement of Claims

In May 2019, the Nevada Legislature passed a law precluding employers from including provisions in settlement agreements "that prohibit[] or otherwise restrict[] a party from disclosing factual information relating to . . . : [c]onduct that . . . would constitute a sexual offense . . . ; or [d]iscrimination on the basis of sex . . . ; or [r]etaliation by an employer."⁴⁵ That law went into effect on July 1, 2019.

⁴⁵ A.B. 248, 18th Assemb., Reg. Sess. (Nev. 2019) ("AB248").

In response to AB248, Wynn issued a memorandum (“Settlement Memorandum”) announcing that any confidentiality provision in a settlement with the Company of a claim of sexual harassment or other sexual offense cannot include provisions restricting the claimant from discussing the factual allegations underlying the claim. [REDACTED]

[REDACTED]

However, this provision only partially remediates the issues identified in the MGC’s Decision and Order.

First, the Settlement Memorandum and new confidentiality provision apply only to settlements in which the Company is a party and not to settlements entered into by individual employees or others affiliated with the Company. It is significant that more than one settlement noted in the Investigative Report was a private settlement in which the Company was not involved. However, just as with personal relationships between employees, which are governed by the Personal Relationships Policy, such settlements and other financial transactions between Company personnel impact the professional work environment at the Company. The EBH Code of Personal Conduct incorporates the standard of “Being Honest,” which includes as an aspect: “Immediately informing Employee Relations of any civil complaints, administrative charges, or settlements (whether as a result of a civil or administrative complaint or not) involving claims alleging that you engaged in sexual harassment.” The Monitor Team notes that that this applies to sexual harassment rather than all potential violations of Company policy and does not state that it applies to Board members or former employees. In the next phase, the Monitor Team will review and assess the controls applicable to financial transactions between employees and others affiliated with the Company.

Second, the Settlement Memorandum and its confidentiality provision apply only to settlements reached with employees *after* any initiation of formal legal proceedings against the Company, and not to settlements of threatened claims by employees *prior* to the filing of formal legal proceedings, as was the case with the incidents identified in the MGC’s Decision and Order. The Monitor Team understands that each of those settlements was reached *before* commencement of legal proceedings. According to the MGC’s Decision and Order those settlements included overly restrictive confidentiality provisions or gag orders. [REDACTED]

⁴⁶ The Company has provided the Monitor Team public statements made by the Company prior to September 2019 in which it announced that it would no longer enforce confidentiality clauses in sexual harassment claims. However, the Monitor Team has not seen documentation of that change as it relates to settlement agreements and therefore cannot rely on those public statements for purposes of this Baseline Assessment.

[REDACTED] The Monitor Team recommends that the Company develop policies and procedures for the initiation, review, and approval of settlements related to claims and threatened claims of harassment and discrimination. Those policies and procedures should include appropriate segregation of duties. They should also contemplate and apply to the settlement of claims both *before* and *after* initiation of formal legal proceedings as well as separations with employees who have made allegations of harassment or discrimination.

Third, the Settlement Memorandum does not establish procedures or controls over the review and authorization of settlement agreements and settlement amounts. We understand from interviews that, as a matter of practice, no legal settlements are reached without the involvement of the GC and the approval from the Company's CEO or CFO. However, formalized governance structure and related controls are critical to ensuring that settlement agreements and monies disbursed in connection with those agreements are executed in accordance with proper authority and "in accordance with the applicable policy and/or procedure." See 205 Mass. Code Regs. 138.02(4)(a). Wynn Las Vegas already has in place a Purchasing Authorization Matrix for certain transactions, but not including legal settlements.

The Monitor Team reviewed a redacted version of the Wynn Resorts Purchasing Authorization Matrix, which reflects authority levels granted to the CEO, CFO, and GC, each of whom is the single approver for each identified transaction. The Monitor Team has not yet tested the implementation of the Purchasing Authorization Matrix, but will do so in the next phase. We recommend that the Company incorporate legal settlements and employee separations into the appropriate authority matrix. Given the issues identified in the past, the Monitor Team also recommends that the Company apply a dual authority requirement to harassment and discrimination settlements. The Company should specifically consider what secondary approval would be appropriate to coincide with the CEO's elevated approval authority, and whether this approval should come from the Board.

Fourth, the Monitor Team notes that the September 3, 2019 memorandum only addresses the need to include the new confidentiality provision as a matter of compliance with AB248. The memorandum does not include a policy statement regarding the Company's position on the issue of overly restrictive confidentiality provisions. During interviews, the Monitor Team heard statements from management across the organization regarding the importance of ensuring the proper use of settlement agreements and the need to ensure that employees were not unduly restricted in what they could say. It is important for the Company to memorialize that position in its policies in order to ensure that the position taken by the current leadership survives beyond its tenure.

In this baseline review, we did not look into how the Company pays out employee settlements. Those procedures are, of course, a critical component of the Company's control environment. The MGC's Decision and Order notes that, on at least one occasion, a large settlement was (inaccurately) entered on a quarterly disbursement memorandum sent to the Compliance Committee. The disbursement was identified as a legal settlement. When questioned by the then-CFO, the then-GC responded that the Founder and his wife were making a payment to help a struggling employee. As noted in the MGC's Decision and Order, the matter was not pursued further. In the next phase of our review, the Monitor Team will evaluate the Company's current control environment to ensure that it is designed to prevent the disbursement of Company funds in connection with a settlement without proper review and approval.

b. External Legal Counsel

As noted in Section III.D., the Company has implemented certain policies for the management of external counsel. Those policies play an important part in the Company’s control environment over external counsel and should be updated in accordance with our recommendations above.

In addition, the Wynn Las Vegas Purchasing Authorization Matrix requires all invoices for external legal services to be approved by the Wynn Las Vegas GC and by the Wynn Resorts GC and sets different purchasing limits for both. Notably, although the Purchasing Authorization Matrix is intended to apply to Wynn MA, it does not, on its face, provide any authorization for the GC of EBH to approve invoices for legal services. The Monitor Team understands that the EBH GC does have the authority to review and approve legal invoices and we, therefore, recommend that the Company modify the Purchasing Authorization Matrix to reflect that authority.

In this review, the Monitor Team did not test the implementation of the Purchasing Authorization Matrix. In the next phase, we will work with the Company to test the implementation of this important control, and will also review the Company’s procedures and controls applicable to the approval of legal services payments, which serve as an additional layer of control to ensure compliance with the Company’s policies on management of external counsel.

4. Recommendations

Based on our testing, the Monitor Team recommends:

CE 1	Develop policies and procedures for the initiation, review, and approval of settlements related to claims of harassment and discrimination. Those policies and procedures should: <ul style="list-style-type: none">▶ include appropriate segregation of duties; and,▶ contemplate and apply to the settlement of claims both <i>before</i> and <i>after</i> initiation of formal legal proceedings, as well as separations with employees who have made allegations of harassment or discrimination.
CE 2	Update the Purchasing Authorization Matrix as follows: <ul style="list-style-type: none">▶ to incorporate legal settlements and employee separations;▶ to require dual approval of harassment and discrimination settlements; and▶ to include the GC of EBH.

IV. List of Recommendations

A. Culture of Compliance and Conduct at the Top

CCCT 1	Develop corporate and property-specific communications plans designed to promote HRCP knowledge, compliance, and culture throughout the organization. Communication should come from all levels of leadership, including the Board, and address the risk-areas discussed in this report as well as those that emerge from the Company’s Legal and HR
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functions based on their monitoring of HRCP issues. Consider leveraging existing communication channels from the Presidents to employees.

CCCT 2 Develop and conduct training for the Compliance Committee on the Company's HR obligations, the HRCP, and members' oversight responsibilities with respect to the HRCP.

B. Proper Authority, Oversight, and Independence

PAO&I 1 Provide clearer definition and delineation to the roles and responsibilities of functions with HRCP responsibility, including Legal, HR, and Compliance. Further delineation of responsibilities should include:

- ▶ the CGCO's oversight role with respect to the HRCP and identify and document how to increase his authority to oversee the HRCP from a compliance perspective, as well as his independent access to the Audit Committee; and
- ▶ the scope of Wynn Resorts and property level HR responsibility and oversight over the HRCP to empower decision-making at the property level while preserving consistency and corporate oversight.

PAO&I 2 Add an additional member to the Compliance Committee who has substantive and substantial HR expertise.

PAO&I 3 Develop more specific criteria to guide which harassment and discrimination cases should be highlighted for the attention of the Compliance Committee.

PAO&I 4 Assess resource allocation and staff skill-set at EBH, particularly in HR, around the one-year anniversary of the property opening to determine whether and what adjustments should be made.

C. Policies and Procedures

P&P 1 Update the Preventing Harassment and Discrimination policy as follows:

- ▶ explicitly state that the Policy applies to management and senior executives;
- ▶ expand the definition of "Protected Characteristic" consistent with MCAD guidance;
- ▶ include additional relevant examples of sexual harassment as well as examples of harassment and discrimination based on other protected characteristics, including age, gender identity, race, national origin, sexual orientation, or religion;
- ▶ instruct employees of the ability to submit anonymous complaints;
- ▶ include information of the new confidential hotline;

	<ul style="list-style-type: none"> ▶ include physical work addresses of individuals at the Company (e.g., ER, HR) to whom complaints may be made; and ▶ include a cross-reference to the Company’s social media policy and guidance to help employees understand that certain limited conduct outside the workplace, but with a nexus to employment at the Company may also constitute sexual harassment and a violation of Company policy.
P&P 2	Pending roll-out of the new reporting platform, engage in proactive messaging to employees, particularly at EBH, about InTouch and the ability that it provides to make confidential reports.
P&P 3	<p>Develop and issue the following policies and incorporate references to them throughout the HRCP as appropriate:</p> <ul style="list-style-type: none"> ▶ disability accommodations; ▶ religious accommodations; and ▶ pregnancy discrimination, harassment, and accommodation.
P&P 4	<p>Amend the Code of Business Conduct as follows:</p> <ul style="list-style-type: none"> ▶ explicitly emphasize throughout the document that no person is above the Code of Business Conduct, and covered persons should report incidents regardless of who is involved; and ▶ include a personal relationship as a potential conflict of interest.
P&P 5	Review Code of Personal Conduct to identify the core behaviors that are most fundamental to the Company and relaunch the new Code of Personal Conduct to drive awareness and communication around compliance.
P&P 6	<p>Update the Personal Relationships Policy as follows:</p> <ul style="list-style-type: none"> ▶ include a straightforward statement at the outset that addresses the risks a personal relationship poses to the Company and why Company intervention is important; ▶ clarify that even where there is consent, or the appearance of consent, consent is fluid and can be revoked by either party at any time, and consequently, issues relating to conflict of interest, sexual harassment, or violations of the Code of Business may still arise; and ▶ implement a process to review department-specific policies before they are made available on <i>The Wire</i>.
P&P 7	Review the Personal Presentation policy to ensure it is consistent with federal and state harassment and discrimination laws and implement a process to review department-specific personal presentation policies before they are enforced.
P&P 8	Make department-specific policies available on <i>The Wire</i> .

P&P 9	In the Employee Patronization policy, clarify from whom employees should seek authorization and under what circumstances patronization of the pool and health spa are authorized.
P&P 10	Update the Company Policy Review policy to include: <ul style="list-style-type: none"> ▶ a stated purpose for the policy; ▶ a section that defines “policy,” “procedure,” and other keywords; ▶ define a process for leveraging the knowledge of relevant departments and subject matter experts when developing and reviewing policies; ▶ define a process for policy development and policy review; ▶ a standard format for all Company policies; ▶ a comprehensive list of all Company policies and procedures; and ▶ incorporate a downstream compliance process for training, monitoring, and audit.
P&P 11	Adopt a comprehensive communications strategy to disseminate the Preventing Harassment and Discrimination policy and other equally important policies and procedures.

D. Third Party Relationships

TP 1	Consolidate all employee interactions policies into a single comprehensive policy. The new policy should not require "egregious" conduct for the removal of a Patron or third party, and should clarify that any behavior of Patrons or other third parties that is inconsistent with the Company's Preventing Harassment and Discrimination policy could result in immediate removal. The Company should also develop manager and supervisor training regarding the new comprehensive policy.
TP 2	Develop communication strategy designed to reinforce messaging regarding the Company's expectation that employees report offending conduct by Patrons.
TP 3	Develop plan to track and monitor data collected from investigations of offending Patrons. The data obtained should be used to inform trainings and updates to relevant policies and procedures.
TP 4	Conduct periodic culture surveys and focus groups designed to assess employee experience and perceptions regarding the Company's response to reports of offending Patrons.
TP 5	Evaluate and develop strategies to communicate standards of behavior to Patrons of EBH and Wynn Las Vegas.
TP 6	Review and update the Business Standards and Procedures to: <ul style="list-style-type: none"> ▶ instruct the investigations department (1) that claims, charges, litigation, or

	<p>reports of sexual harassment and discrimination allegations may be material to the Company’s consideration of whether to engage a third party, and (2) if detected, should be documented and included as risk factors in the Investigative Report; and</p> <ul style="list-style-type: none"> ▶ to define “materially derogatory” information to include factors related to sexual harassment and discrimination.
TP 7	Ensure that sources used for background investigations are of the type that would provide access to background information related to claims, charges, litigation, or reports of sexual harassment and discrimination allegations.
TP 8	Revise the Deconflicting Policy to explicitly prohibit external counsel from representing Wynn personnel, including executives and Board members, unless representation is explicitly approved by the Company.
TP 9	Develop internal review procedures for requests by individuals for representation by the Company’s external counsel.
TP 10	Communicate the new representation request review procedures in writing internally and to external counsel. The communication should be designed to ensure that external counsel, officers, and directors of the Company under the procedures are aware of the risks associated with dual representation.
TP 11	Draft a policy and procedure for the engagement of external counsel by the Company to ensure that the Legal Department is aware of the substance of all representations and to minimize the risk that conflicts between representation of the Company and representation of its personnel occur.

E. Training and Guidance

T&G 1	Conduct Board of Director training on Personal Relationships Policy that includes guidance related to the types of relationships covered under the Policy and to issues related to consent and how power imbalances within the organization may affect consent.
T&G 2	Develop and conduct (either directly or through external counsel) training for the Compliance Committee on anti-harassment, anti-discrimination, and on the Company’s HRCP processes.
T&G 3	<p>Incorporate the following topics into trainings for managers and supervisors:</p> <ul style="list-style-type: none"> ▶ intake and escalation of employee complaints; ▶ the Personal Relationships Policy, including reporting obligations; ▶ social media, including as a potential platform for harassment; ▶ the risks of alcohol usage in the workplace; ▶ the impact and limitations of off-duty conduct; and ▶ how to appropriately process and escalate both formal complaints concerning

	discrimination and harassment and problematic behaviors they have observed or of which they have been made aware.
T&G 4	Develop a training plan for ER that includes, at a minimum, annual trainings on all HR subject matter and policies and procedures for which ER is responsible.
T&G 5	For front-line employees: <ul style="list-style-type: none"> ▶ develop short, tailored trainings that address gaps in knowledge in position-specific realities; and ▶ develop additional diversity and inclusion training, as part of its formal training program.
T&G 6	Leverage existing communications channels, like pre-shifts, to conduct briefings on a regular basis to reinforce messages from trainings.
T&G 7	Develop procedures to periodically test and measure the effectiveness of trainings and incorporate feedback into future trainings.

F. Internal Reporting and Investigation

IRI 1	Develop a communication campaign through which senior management at the Wynn Resorts and property levels communicate its support for a speak-up culture. The campaign may be timed with the launch of the Company’s new reporting channel.
IRI 2	Ensure that the new reporting channel permits multilingual reporting options to facilitate reports by employees with strong proficiency in languages other than English.
IRI 3	Develop and launch a campaign to promote the new reporting channel, including for example, posters, table-top messages, computerized messages on TV screens, and pre-shift communication.
IRI 4	On at least a trial basis, extend ER availability to cover the current gaps in ER on-site schedule. Inform employees about variations in ER’s schedule and about any subsequent changes.
IRI 5	Update the Investigations Policy to include clearly defined intake and routing protocols. Those procedures should include the following elements: <ul style="list-style-type: none"> ▶ designation of personnel authorized to receive reports routed through the Company’s reporting channels, including their role and responsibility in the intake process; ▶ objective criteria to help intake-personnel scope the issues presented and route the complaint to the appropriate personnel for response and potential investigation; ▶ guidance and procedures to wall off from an investigation anyone who is either the subject of an allegation, or may have a conflict that could jeopardize the objectivity of the investigation;

	<ul style="list-style-type: none"> ▶ clearly defined guidelines for the intake, routing, and response to complaints against management and senior leadership; ▶ substantive guidance for each of the investigative steps enumerated in the Policy; and ▶ guidance on measures that should be taken to protect confidentiality in investigations, including guidance with respect to what information may and may not be shared with employees in an investigation.
IRI 6	Develop and conduct mandatory training on updated investigations policy for all personnel authorized to conduct investigations.
IRI 7	Review HR policies and update language regarding the Company’s reporting channels to ensure consistency across policies.
IRI 8	Develop and provide investigations regularly-scheduled (at least annual) training to all employees who may be responsible for conducting investigations.

G. Incentives and Discipline

I&D 1	Integrate standards of behavior related to compliance in its “Employee of the Month” programs.
I&D 2	Update the Progressive Discipline and Performance policy as follows: <ul style="list-style-type: none"> ▶ provide additional guidance on how to determine appropriate discipline based on a holistic evaluation of circumstances; and ▶ clarify roles, responsibilities, and authority with respect to the disciplinary process.

H. Risk-Based Review

RBR 1	Develop and document risk assessment procedures designed to identify HR risk factors across the Company’s gaming and hotel operations. The procedures should follow a bottom-up approach to ensure that the full scope of operational conditions is reviewed and considered.
RBR 2	Develop and document guidance on how risk mitigation strategies and controls will be documented and monitored.
RBR 3	Develop written guidance for personnel responsible for implementing the risk assessment procedures.
RBR 4	Develop internal reporting procedures to ensure that senior management, the Compliance Committee, and Audit Committee of the Board receive appropriate information regarding the results of the risk assessment.

RBR 5	In the Company's existing Security Protocol, document the Security Department's risk assessment procedures for identifying conditions that could expose employees to physical harm, including sexual assault.
RBR 6	Review the risk assessment procedures of Internal Audit and evaluate whether and how they can be leveraged to help the Company identify risk factors affecting the effectiveness of the HRCP, especially as it relates to harassment and discrimination based on protected classifications.

I. Monitoring and Testing

M&T 1	Consider approaches to streamlining, including through automated reporting tools, the escalation of sexual harassment claims to the GC.
M&T 2	Develop a monitoring protocol that will facilitate identification of data and trends that could signal opportunities to improve specific aspects of its HRCP. The protocol should include a process for periodic root-cause analysis of the data and trends identified through monitoring and for applying those analyses to propel improvements in its HRCP.
M&T 3	Engage in separate, targeted surveys or focus groups to test the effectiveness of the substantive elements of the HRCP.

J. Controls Environment

CE 1	<p>Develop policies and procedures for the initiation, review, and approval of settlements related to claims of harassment and discrimination. Those policies and procedures should:</p> <ul style="list-style-type: none"> ▶ include appropriate segregation of duties; and, ▶ contemplate and apply to the settlement of claims both <i>before</i> and <i>after</i> initiation of formal legal proceedings, as well as separations with employees who have made allegations of harassment or discrimination.
CE 2	<p>Update the Purchasing Authorization Matrix as follows:</p> <ul style="list-style-type: none"> ▶ to incorporate legal settlements and employee separations; ▶ to require dual approval of harassment and discrimination settlements; and ▶ to include the GC of EBH.



May 20, 2020

Massachusetts Gaming Commission
101 Federal St., 12th Floor
Boston, MA 02110

Dear Chair and Commissioners:

On behalf of Wynn Resorts, Limited and Wynn MA, LLC (together, the "Company"), thank you for the opportunity to comment on the WYNN RESORTS, LIMITED AND WYNN MA, LLC INDEPENDENT COMPLIANCE MONITOR BASELINE ASSESSMENT REPORT (the "Baseline Assessment") prepared by Monitor Alejandra Montenegro Almonte and her team at Miller & Chevalier (the "Monitor").

The Baseline Assessment is certainly comprehensive and reflects exhaustive work performed over the last several months. We appreciate the Monitor's determination that the Company has taken significant steps to enhance its human resource compliance program ("HRCP"). The Monitor noted "a meaningful shift in culture at the highest levels of the organization" and "sincere commitment to Human Resources ("HR") compliance generally and to the Company's HRCP specifically." The Monitor also recognized that the Company has previously spent considerable time and resources enhancing its HR-related policies and procedures and its training program, including a refreshed program covering anti-harassment, anti-discrimination, and diversity and inclusion. The Monitor found that the Company has made great strides in communicating its compliance expectations to employees and has demonstrated conduct consistent with those expectations.

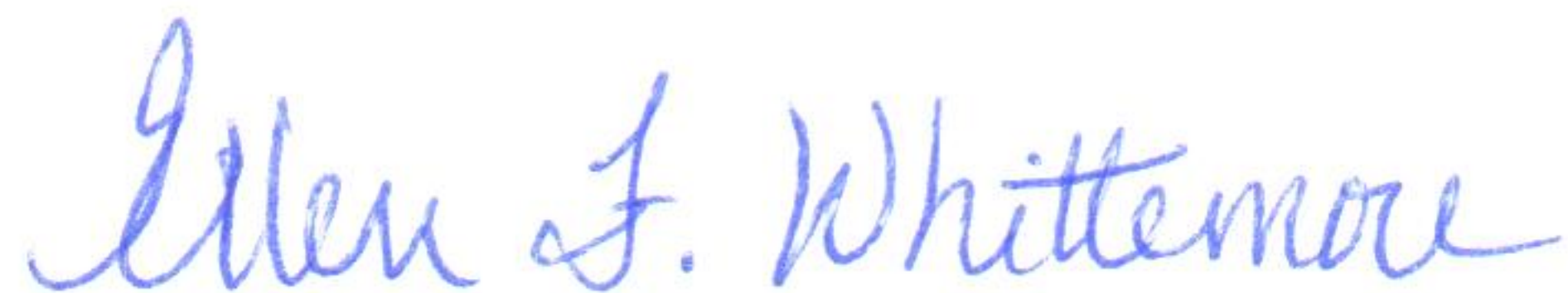
We have consistently assured our employees that we will do all that we can to ensure their health and well-being, a small indicator of which is the manner in which we have responded to the current pandemic, including being the leading proponents of closing our resorts in both Massachusetts and Nevada, committing to pay all our employees all wages, including gratuities, through May 31, 2020, and in developing comprehensive health and safety protocols for our employees and guests. We have led on these efforts not just in gaming but in all travel and entertainment related industries. The Wynn Health and Safety Plan is one of the benchmark plans used by sports leagues, airlines, hotels, and hundreds of developments around the country. We have always made our people and our culture a top priority over the decades and will continue to lead on that front.

In that vein, we remain confident that the Company's enhanced policies and procedures as presented and documented to the Commission and as reviewed by the Monitor satisfy legal and moral obligations to ensure the Company's workforce is provided with a healthy, safe and welcoming environment. Nevertheless, we have taken to heart the Monitor's recommendations for enhancements to the existing policies and procedures and are in the processing of implementing the vast majority of those recommendations. As just one example, the Monitor recommended additional investigative training for our employee relations counselors who review claims of harassment. The Company has already facilitated a comprehensive investigative training session with those employees. We will continue to review and implement the Monitor's

recommendations and discuss with the Monitor those few which we believe deserve further consideration as well as work with the Monitor to address the few observations in the Baseline Assessment which we believe may be inaccurate or for those over which we have no ability to control.

We look forward to continuing our work with the Monitor. Thank you again for the opportunity to provide these brief thoughts.

Sincerely,



Ellen F. Whitemore
Executive Vice President, General Counsel
Wynn Resorts, Limited



Jacqui Krum
Senior Vice President, General Counsel
Wynn MA, LLC - Encore Boston Harbor