

NOTICE OF MEETING AND AGENDA

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, and Chapter 107 of the Session Acts of 2022, notice is hereby given of a public meeting of the **Massachusetts Gaming Commission**. The meeting will take place:

Thursday | October 27, 2022 | 10:00 a.m.
VIA REMOTE ACCESS: 1-646-741-5292
MEETING ID/ PARTICIPANT CODE: 112 793 9916

Please note that the Commission will conduct this public meeting remotely utilizing collaboration technology. Use of this technology is intended to ensure an adequate, alternative means of public access to the Commission's deliberations for any interested member of the public. If there is any technical problem with the Commission's remote connection, an alternative conference line will be noticed immediately on www.massgaming.com.

All documents and presentations related to this agenda will be available for your review on the morning of the meeting date by visiting our website and clicking on the News header, under the Meeting Archives drop-down.

PUBLIC MEETING - #399

1. Call to Order

2. Approval of the Meeting Minutes
 - a. March 14, 2022 **VOTE**
 - b. April 28, 2022 **VOTE**
 - c. July 12, 2022 **VOTE**

3. Administrative Update – Karen Wells, Executive Director
 - a. Casino Update – Bruce Band, Assistant Director, IEB and Gaming Agents Divisions Chief
 - b. MGC Covid Policy Update – David Muldrew, Chief People and Diversity Officer **VOTE**
 - c. Sire Stakes Finals Update – Dr. Alex Lightbown, Director of Racing and Chief Veterinarian

4. Sports Wagering Process Updates- Karen Wells, Executive Director
 - a. Sports Wagering Studies Update – Mark Vander Linden, Director of Research and Responsible Gaming
 - b. Public Comments Regarding Sports Wagering Application
 - c. Divisional Updates

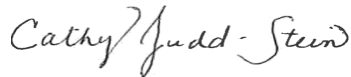
5. Legal Division: Regulations – Todd Grossman, General Counsel

- a. Sports Wagering Operator Licensing Framework
 - i. 205 CMR 212: Additional Information Requested of Applicants and Continuing Duty for initial review and possible emergency adoption **VOTE**
 - ii. 205 CMR 214: Application and Investigation Fees for initial review and possible emergency adoption **VOTE**
 - iii. 205 CMR 215: Suitability Determinations, Standards, and Procedures for initial review and possible emergency adoption **VOTE**
 - iv. 205 CMR 219- Temporary Licensing Procedures for initial review and possible emergency adoption **VOTE**
 - v. 205 CMR 220- License Conditions for initial review and possible emergency adoption **VOTE**
 - vi. 205 CMR 221- Licensing Fees for initial review and possible emergency adoption **VOTE**
- b. Revisions to Sports Wagering License Evaluation
 - i. Draft 205 CMR 218: General Sports Wagering Application Requirements, Standards, and Procedures; and small business impact statement for initial review for possible emergency adoption and to begin the promulgation process. **VOTE**
- c. Repeal of 205 CMR 103: Access to and Confidentiality of Commission Records and Review of Comments Received
 - i. 205 CMR 103: Access to and Confidentiality of Commission Records and Amended Small Business Impact Statement to finalize the promulgation process **VOTE**
 - ii. 205 CMR 102.02: Definitions, and Amended Small Business Impact Statement to finalize the promulgation process **VOTE**
 - iii. 205 CMR 115.04: Phase 1 and New Qualifier Proceedings by the Commission, and Amended Small Business Impact Statement to finalize the promulgation process **VOTE**
 - iv. Amendments to Policy Governing Information Provided in Response to Request for Applications – Phase 1 & Phase 2 **VOTE**
 - v. Amendments to Security Protocols and Restricted Access Policy **VOTE**

6. Commissioner Updates
 - a. Discussion on Request from DraftKings for Reconsideration of Commission Vote on Staggered launch
 - b. Sports Wagering Evaluation Project Manager Update – Derek Lennon, Chief Financial Officer
7. Community Affairs – Joe Delaney, Chief
 - a. MGM Springfield Quarterly Reports- Q2 and Q3
8. Other Business - Reserved for matters the Chair did not reasonably anticipate at the time of posting.

I certify that this Notice was posted as “Massachusetts Gaming Commission Meeting” at www.massgaming.com and emailed to regs@sec.state.ma.us. Posted to Website: October 25, 2022 | 9:30 a.m.

October 20, 2022



Cathy Judd-Stein, Chair

*This meeting is open to all interested individuals for viewing.
If there are any questions pertaining to accessibility and/or further assistance is needed, please email
crystal.beauchemin@massgaming.gov.*



Massachusetts Gaming Commission Meeting Minutes

Date/Time: March 14, 2022, 10:00 a.m.
Place: Massachusetts Gaming Commission
 VIA CONFERENCE CALL NUMBER: 1-646-741-5292
 PARTICIPANT CODE: 112 195 5793

The Commission conducted this public meeting remotely utilizing collaboration technology. Use of this technology was intended to ensure an adequate, alternative means of public access to the Commission's deliberations for any interested member of the public.

Commissioners Present:

Chair Cathy Judd-Stein
 Commissioner Gayle Cameron
 Commissioner Bradford Hill
 Commissioner Eileen O'Brien

1. Call to Order (00:21)

Chair Judd-Stein called to order the 374th Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all four Commissioners were present for the meeting.

2. Approval of Meeting Minutes (5:00) 1. June 3, 2021

Commissioner O'Brien moved that the Commission approve the Public Meeting minutes from June 3, 2021, included in the Commissioners' Packet, subject to any necessary corrections for typographical errors or other non-material matters. Chair Judd-Stein made a note that these minutes do not involve Commissioner Hill, as he was not present during those meetings. Chair Judd-Stein offered Commissioner Hill the option to abstain from this vote. The motion was seconded by Commissioner Cameron.

Roll call vote:

<i>Commissioner Cameron:</i>	<i>Aye.</i>
<i>Commissioner O'Brien:</i>	<i>Aye.</i>
<i>Commissioner Hill:</i>	<i>Abstain.</i>
<i>Chair Judd-Stein:</i>	<i>Aye.</i>

The motion passed unanimously 3-0, with one abstention.

2. June 14, 2021

Commissioner O'Brien moved that the Commission approve the Public Meeting minutes from June 14, 2021, included in the Commissioners' Packet, subject to any necessary corrections for typographical errors or other non-material matters. The motion was seconded by Commissioner Cameron.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Hill: Abstain.

Chair Judd-Stein: Aye.

The motion passed unanimously 3-0, with one abstention.

Commissioner O'Brien moved that the Commission approve the Public Meeting minutes from June 3, 2021, and June 14, 2021, included in the Commissioners' Packet, subject to any necessary corrections for typographical errors or other non-material matters. Chair Judd-Stein made a note that these minutes do not involve Commissioner Hill, as he was not present during those meetings. Chair Judd-Stein offered Commissioner Hill the option to abstain from this vote. The motion was seconded by Commissioner Cameron.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Hill: Abstain.

Chair Judd-Stein: Aye.

The motion passed unanimously 3-0, with one abstention.

3. [Administrative Update](#) (7:38)

a. On-Site Casino Updates

Executive Director Karen Wells introduced Assistant Director of Investigations & Enforcement Bureau and Gaming Agents Division Chief Bruce Band to give a report about ongoing operations at the gaming establishments. Assistant Director Band reported that PPC is running a slots promotion and celebrating responsible gaming month. He continued that MGM added a poker table to their poker room, and that they now have 14 total poker tables. He reported that Encore celebrated the Celtics 75th anniversary with players and VIPs, and will be hosting an MMA fight on March 17th in the ballroom. The Commission thanked Assistant Director Band for his update.

4. [Racing Division](#) (9:40)

1. Jockeys' Guild Recognition

Chief Veterinarian and Director of Racing Dr. Alexandra Lightbown introduced Mindy Coleman, Attorney for the Jockeys' Guild. Dr. Lightbown provided a summary regarding G.L. 128A, §5(h)(4), which requires part of pari-mutuel tax funds to be used to pay organizations determined by the Commission to represent the majority of jockeys licensed by the Commission. While Suffolk Downs was not having live racing at the time of the meeting, simulcasting was still occurring, and funds were available to pay the \$65,000. Seventeen jockeys qualify, thirteen retired and four permanently disabled, and each would receive approximately \$3,800. Dr. Lightbown recommended the Commission approve the Jockeys' Guild as the representative organization. Commissioner Cameron agreed with Dr Lightbown's recommendation.

Commissioner Cameron moved that the Commission find the Jockeys' Guild meets the requirement of §5(h)(4) of Chapter 128A for the reasons discussed today and accordingly authorize the \$65,000 payment described in the statute. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

5. [Research and Responsible Gaming](#) (14:24)

1. Presentation on *Responsible Gaming Considerations for Gambling Advertising* White Paper

Mark Vander Linden, Director of Research and Responsible Gaming, and Research Manager Marie-Claire Flores-Pajot presented their paper on responsible gaming considerations for gambling advertising.

Director Vander Linden presented an analysis of existing law, including the Commission's regulations as well as provisions of G.L. c. 23K related to marketing restrictions and the voluntary self-exclusion list. Director Vander Linden also briefly described the Massachusetts responsible gaming framework, first developed in 2014 and revised in 2018, which advises on how licensees should develop and implement strategies to ensure their promotions are delivered in a responsible manner. Director Vander Linden then outlined the American Gaming Association ("AGA") Code of Conduct as all licensees are AGA members, and the code of conduct roughly aligns with the Massachusetts responsible gaming framework.

Research Manager Flores-Pajot discussed the study's findings regarding exposure to gambling advertisements and noted that Asian communities have been identified as a population at risk.

Long Banh, Responsible Gaming Program Manager, provided an overview of regulations in the United States and regulation of other industries, including responsible gaming messaging, target audience, content, placement and frequency, and approval process. Mr. Banh noted that Massachusetts has regulation in two of the five categories: responsible messaging and target audience.

Director Vander Linden recommended that the Commission consider additional measures where feasible and consistent with statute, including strengthening regulations within Massachusetts, establishing a complaint process in compliance with the AGA model, raising awareness through licensee trainings, revising the Massachusetts framework, and increasing research into the effects of advertisement on gaming to address ambiguity or lack of research.

Commissioner Hill commented regarding advertisement and marketing of collegiate betting. Commissioner Hill cited AGA requirements for sports betting, noting that betting should not be advertised in college or university-owned news assets or advertised on college or university campuses and that there needs to be regulation on collegiate sports betting given that college students are a high-risk group. Commissioner Hill continued that regulations on casino gaming that prevent marketing towards those underage individuals are sufficient and can be rewritten to encompass sports betting.

Commissioner Hill then raised questions regarding speech limitations, and how regulations of advertising may run into issues with the first amendment. General Counsel Todd Grossman stated that he would need to conduct further research into the limitations on advertising due to the first amendment, but noted that there are laws restricting advertisement in other similarly situated industries, such as alcohol, tobacco, and cannabis.

Commissioner O'Brien commented that the mixed population on college campuses makes them at risk as they contain both underage students and students reaching the age where they can gamble. Commissioner O'Brien stated that the regulation by the Cannabis Control Commission requiring 85% of the target audience to be of age would protect this uniquely vulnerable population.

Commissioner O'Brien also raised the issue of requiring prior approval of advertisements, as it may be labor intensive for the Commission. Commissioner O'Brien requested more information regarding the process and how content would be tested. Chair Judd-Stein requested that this information be presented at a future meeting regarding content evaluation.

Chair Judd-Stein questioned when the frequency and intensity of distribution of advertising should be considered a prevalence. She noted that while content may be neutral the prevalence in amount of gambling advertisement can become an issue, and that there would need to be a test for marketing frequency.

Director Vander Linden stated that the proposal was in draft form and would be opened up for public comment. The Commission thanked Director Vander Linden and his team for their presentation.

6. [Commissioner Updates](#) (1:08:02)

a. Annual Report Update

Chair Judd-Stein introduced Crystal Beauchemin, Chief Administrative Officer to the Chair and Special Projects Manager, to provide an update on the Commission's 2021 Annual Report. Ms. Beauchemin explained that the Commission had a draft of the annual report and that they are prepared to receive remarks from the Commission. Chair Judd-Stein asked Commissioner Cameron to review the report and reply with her insights.

7. [Community Affairs Division](#) (1:10:35)

a. Development East of Broadway in Everett, MA

Chief of the Community Affairs Division Joe Delaney continued the discussion from March 10th meeting regarding the four-part test as to whether a particular amenity or component of an amenity would be considered part of the gaming establishment, and a draft set of conditions regarding Wynn's development of East of Broadway in Everett. Chief Delaney introduced Jacqui Krum, General Counsel for Encore Boston Harbor, and Attorney Tony Starr from Mintz Levin. General Counsel Todd Grossman provided a summary of the previous meeting on this topic, which included a comprehensive review of a four-part test as to whether a particular amenity or component of an amenity would be considered part of the gaming establishment. He noted that part four of the test was whether the Commission has a regulatory interest that would be addressed by conditions on the development.

General Counsel Grossman explained that there were seven proposed conditions. The first condition was regarding seating limitations at live entertainment venues. Executive Director Wells and Chair Judd-Stein raised an issue of ambiguity within the second sentence of this condition, as it did not include the 3,500 seat language as allowed statutorily in G.L. c. 23K. Commissioner O'Brien suggested reintroducing language regarding "live entertainment events that exceed 3,500 ticketed seats" in addition to the language regarding events under 1,000 seats.

General Counsel Grossman noted that the Commission had never discussed the definition of "live entertainment event." Chair Judd-Stein questioned whether the current description would be inclusive of events such as gardening exhibitions, presidential debates, or conferences. Chair Judd-Stein noted that such events are not typically competing with the ones regulated here, and that they should not be implicated by this proposed condition. Commissioner Hill agreed that such exhibitions were not a concern, and that he considered live entertainment to be a live event or theater. Commissioner Cameron agreed with Chair Judd-Stein and Commissioner Hill, and General Counsel Grossman stated that he would work to define the term "live entertainment."

General Counsel Grossman explained that the second proposed condition was a ban on provisions regarding radius restrictions of entertainers that would prevent them from performing elsewhere within the Commonwealth. The Commission had no further questions or comments on this condition.

General Counsel Grossman explained that the third condition was regarding the Massachusetts Environmental Policy Act (“MEPA”), as the project may trigger MEPA considerations. The condition requires the licensee to comply with MEPA and provide their filings to the Commission. The Commission had no further questions or comments on this condition.

General Counsel Grossman explained that the fourth condition was regarding the security plan for the parking garage and required the licensee to submit the plan for approval 60 days before the garage opens and conduct regular security checks for minors left in motor vehicles. Chair Judd-Stein provided a suggestion that regular monitoring of the garage occur, in addition to the checks for minors in motor vehicles. Commissioner Cameron suggested the use of “patrolling” as language to encompass this. Commissioner O’Brien suggested that reports of children in motor vehicles while their parents are in the gaming establishment be reported to the IEB. Commissioner Cameron noted that situations of that nature are rare, but the gaming establishment security and IEB work closely on these issues. General Counsel Krum noted that if parents are in the gaming establishment, the report goes out to everyone quickly to reconnect the child with the parent, including the IEB.

General Counsel Grossman noted that the fifth condition was that proposed future developments by Wynn in Lower Broadway in Everett must be submitted to the Commission for review prior to or contemporaneous with any filings with other government agencies. Commissioner O’Brien asked for clarification as to whether the decommissioned area is considered part of the Lower Broadway development. Chief Delaney responded that he was not sure if it incorporated that area, but “Lower Broadway” refers to the area south of the circle to the city line. To prevent ambiguity, Commissioner O’Brien asks to change the language of the condition from “Lower Broadway” to “the Lower Broadway district urban renewal plan area.”

General Counsel Grossman noted that the sixth condition was that employees of the facility at the project site not be given access to restricted sections of the gaming establishment unless they follow the applicable visitor access protocol. The Commission had no further questions or comments on this condition.

General Counsel Grossman noted that the final condition was regarding the construction of a pedestrian bridge, requiring the licensee to submit a plan within 60 days of the execution of the decision. General Counsel Grossman noted that 90 days would be more workable for the licensee. General Counsel Krum and the Commission all agreed to extend the deadline to 90 days.

Commissioner O’Brien moved that the Commission find that each of the components of the development of East Broadway in Everett as submitted by the licensees as discussed on March 10, 2022, and today, that is situated across the street from Encore Boston Harbor, satisfies the first three parts of the four-part test discussed at the meetings on March 10, 2022, and today.

Commissioner O'Brien further moved that the conditions attached to the category one gaming license awarded to Wynn MA, LLC be amended to add the new conditions discussed and edited here today with the addition of these conditions.

Commissioner O'Brien further moved that pursuant to the fourth part of the test, the Commission does not find that it has a regulatory interest in including the components of the development as presented as part of the present gaming establishment, as its concerns will be adequately addressed through the conditions. Commissioner Hill seconded this motion.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously

8. [Other Business](#) (2:10:35)

Hearing no other business, Chair Judd-Stein asked for a motion to adjourn.

Commissioner Cameron moved to adjourn. Commissioner Hill seconded.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously. Meeting Adjourned.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated March 9, 2022
2. June 3, 2021, Meeting Minutes
3. June 14, 2021, Meeting Minutes
4. [Commissioners' Packet](#) from the March 14, 2022, meeting (posted on massgaming.com)



Massachusetts Gaming Commission Meeting Minutes

Date/Time: April 28, 2022, 10:00 a.m.
Place: Massachusetts Gaming Commission
 VIA CONFERENCE CALL NUMBER: 1-646-741-5292
 PARTICIPANT CODE: 112 611 8346

The Commission conducted this public meeting remotely utilizing collaboration technology. Use of this technology was intended to ensure an adequate, alternative means of public access to the Commission's deliberations for any interested member of the public.

Commissioners Present:

Chair Cathy Judd-Stein
 Commissioner Bradford Hill
 Commissioner Eileen O'Brien
 Commissioner Nakisha Skinner

1. [Call to Order](#) (00:04)

Chair Judd-Stein called to order the 378th Public Meeting of the Massachusetts Gaming Commission. Roll call attendance was conducted, and all four Commissioners were present for the meeting.

2. [Approval of Meeting Minutes](#) (00:49)

a. December 2, 2021

Commissioner O'Brien moved that the Commission approve the minutes from December 2, 2021, subject to any necessary changes for typographical changes or other non-material matters. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.
Commissioner Hill: Aye.
Commissioner Skinner: Abstain.
Chair Judd-Stein: Aye.
The motion passed unanimously.

b. January 27, 2022

Commissioner O'Brien moved that the Commission approve the minutes from January 27, 2022, subject to any necessary changes for typographical changes or other non-material matters. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Abstain.

Chair Judd-Stein: Aye.

The motion passed unanimously.

3. [Administrative Update](#) (2:10)

a. On-Site Casino Updates

Executive Director Karen Wells introduced Assistant Director of Investigations & Enforcement Bureau and Gaming Agents Division Chief Bruce Band to provide updates on the properties, including updates related to food and beverage amenities as well as Encore Boston Harbor's recent five-star rating from Forbes.

4. [Investigations and Enforcement Bureau](#) (4:10)

a. Status of Poker

Assistant Director Band introduced Sterl Carpenter, Compliance Manager; Andrew Steffen, Senior Gaming Agent at MGM; and Luis Lozano, Senior Gaming Agent at Encore Boston Harbor, to provide the status of poker in the Commonwealth. They provided information regarding pre- and post-pandemic numbers, patron comments and complaints received since the poker rooms closed in 2020, the way in which a poker room makes money, and how nearby northeast gaming jurisdictions are currently managing their poker rooms. A PowerPoint of the presentation is included in the Commissioners' Packet. In addition, Assistant Director Band received notice during the presentation that Encore Boston Harbor would be moving from 13 poker tables to 16 in the near future.

Commissioner Hill expressed his disappointment in the decline in available poker tables post-pandemic and questioned what the Commission could do to see that number rise. General Counsel Grossman stated that the Commission looked at this issue and noted that this issue is tied to representations made in the licensees' RFA-2 application, in which they did make certain representations relative to poker. He stated that it as an issue that staff could revisit. Chair Judd-Stein asked if General Counsel Grossman could provide the specific language from the RFA-2 process at a future date.

Commissioner O'Brien asked if the New Hampshire poker rooms are providing complimentary beverages; Assistant Director Band stated that they are not. Commissioner O'Brien also expressed her disappointment with the drop in poker tables and noted in particular the marked drop from the representations made in Encore Boston Harbor's application. She also expressed concerns with the fact that the Encore poker rooms close at 8pm and asked if Encore had provided any explanation for that decision. Assistant Director Band stated that Encore would need to address that question. Chair Judd-Stein suggested that the Commission ask these questions during the licensees' quarterly report presentations.

Chair Judd-Stein asked about the drop in employee numbers, specifically how many positions have been lost due to the reduction in poker tables. Compliance Manager Carpenter noted that Encore is struggling with staffing; Assistant Director Band noted that MGM is, as well.

The Commission thanked the IEB team for this update.

b. [Review of Casino Non-Compliance Penalties](#) (30:57)

IEB Director Loretta Lillios and Chief Enforcement Counsel Heather Hall presented a review of the IEB's casino non-compliance penalties. Director Lillios provided background on civil administrative penalties issued since 2016, noting that historically fines have only been issued after a written notice of non-compliance is provided to the licensee and they are given an opportunity to rectify the non-compliance. Director Lillios stated that the IEB has developed a process for evaluating non-compliance matters and issuing enforcement measures, including fines, a memorandum of which is included in the Commissioners' Packet along with a draft policy. Director Lillios and Chief Enforcement Counsel Hall walked through the details of this process and sought feedback and guidance from the Commission.

Chair Judd-Stein asked if there should be guidelines with respect to fine amounts and also noted that the IEB team plans to work on the timeline from when an issue is identified to when a fine is issued.

Commissioner O'Brien weighed the pros and cons of having written guidelines for this process. She asked for clarification on the maximum fine that has been issued versus the minimum fine that has been issued, and Director Lillios explained the details of each situation. Commissioner O'Brien questioned if there is a mechanism by which the Commission and/or an individual Commissioner could communicate any concerns relative to a specific situation to each other and to the IEB.

Commissioner Skinner asked if first instance fines might serve as a minimum amount for additional fines. Director Lillios stated that this process is very fact-specific and provided further details on specific fines that have been issued in the past. Commissioner Skinner suggested that the IEB address additional violations issued after an initial fine in the guidelines.

Chair Judd-Stein suggested that the Commission reflect upon the policy as included in the Commissioners' Packet and bring it back at a future meeting for a formal vote. She also asked the Commission to consider whether it wants these types of penalties to be posted publicly.

5. [Community Affairs Division](#) (1:19:12)

a. Community Mitigation Fund Transportation Applications

Community Affairs Division Chief Joe Delaney presented the following transportation planning grants from the Community Mitigation Fund along with the Community Mitigation Fund Team's recommendations with respect to each, the details of which are include in the Commissioners' Packet: the City of Boston, seeking \$200,000 for Rutherford Avenue design; the City of Chelsea, seeking \$167,600 for a study of multimodal improvements to Spruce Street; the City of Everett and City of Boston joint application seeking \$450,000 to complete the formation of the Lower Mystic Transportation Management Association; the City of Malden, seeking \$115,000 for a citywide traffic signal inventory; the City of Malden, seeking \$50,000 for a transit-oriented development opportunities study in the area around the Malden Center MBTA station; and the City of Medford, seeking \$70,000 for a study for a rail trail in the Wellington area.

Regarding the City of Malden's \$115,000 application, Commissioner O'Brien asked the team to provide more guidance to the grantee on the expected scope of work.

Regarding the City of Malden's \$50,000 application, Chief Delaney noted that this type of development might be better suited for a community planning application. Chair Judd-Stein noted that she would be interested in hearing from the City of Malden on this next year with respect to community planning.

With respect to the City of Medford's application, Chief Delaney suggested that the Commission authorize the \$70,000 grant but that the distribution of the award be administratively broken into an initial grant of \$25,000 for legal research and a second grant for the balance, should the research be fruitful.

Commissioner Skinner exited the meeting at 1:25:40.

Commissioner O'Brien moved that the Commission approve the following applications for funding from the Community Mitigation Fund in the amounts specified for the purposes described in the submitted applications and materials that were included in the Commissioners' Packet today and for the reasons described during our discussion here today, and specifically (1) the City of Boston for \$200,000; (2) the City of Chelsea for \$167,600; (3) the Cities of Everett and Boston for \$450,000; and (4) the City of Malden for \$57,500 subject to the further clarification that the monies be focused on the north/south routes in their application, and further that Commission staff be authorized to execute the grant instruments commemorating these awards in accordance with 205 CMR 153.04. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

Commissioner O'Brien moved that the Commission defer adjudication of the request from the City of Medford for the rail trail for the reasons discussed here today. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

Commissioner O'Brien moved that the Commission deny the application for funding from the Community Mitigation Fund in connection with a transit-oriented development opportunity study presented by the City of Malden as there does not appear to be a clear nexus between the use of the funds requested and the impacts created by the operation of the gaming establishment. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

6. [Finance Division](#) (2:03:32)

a. Quarterly Budget Update

Chair Judd-Stein introduced Chief Financial Officer Derek Lennon. CFAO Lennon introduced other members of the finance team, Agnes Beaulieu, Douglas O'Donnell, Noelle Low, and John Scully. The Finance Team presented the third quarterly budget update for the fiscal year '22 gaming control fund budget. The Commission approved a fiscal year '22 gaming control fund budget of \$33.02 million. This comprised of \$27.12 million in regulatory cost and \$5.9 million in statutory required costs. The fund required an initial assessment of \$29.3 million on licensees. After balancing fiscal year '21 revenues the assessment was reduced to \$27.26 million, and the Commission approved an additional \$5 million assessment.

In the first two quarterly updates, the finance team increased spending projections in the fund by \$54,600 and increased revenue projections by \$338,300. The combination of spending increases and revenue increased resulted in a projected surplus of \$283,600.

The Finance Team also increased revenue projections by \$505,000 to offset the independent monitor expenses. Combination of budget increases of \$170,600 and revenue increases of \$463,000 resulted in the gaming control fund having revised spending projections of \$33.25 million relying on revised revenue projections of \$33.82 million. This represented a projected surplus of \$576,000. The finance team did not recommend change in the assessment, as any unspent amount will be credited to the licensee's next year funds.

Chair Judd-Stein commented that the presentation skipped over a ten-percent increase of spending in indirect costs. While a small percentage, it totaled \$2.26 million of the budget. CFAO Lennon noted

that while there were decreases in some spending categories, they were outpaced by consultant expenditures. The Commission had no further questions, however Chair Judd-Stein wished to circle back regarding the indirect expenses at a later point.

7. [Legal Division](#) (2:13:40)

- a. 205 CMR 133: Voluntary Self-Exclusion – and Small Business Impact Statement, for approval to begin the promulgation process

Deputy General Counsel Carrie Torrisi presented draft amendments to 205 CMR 133 related to Voluntary Self-Exclusion. She noted that Director of Research and Responsible Gaming Mark Vander Linden and his team, in conjunction with the Commission’s IT Department, developed an electronic application that can be used to submit voluntary self-exclusion applications and maintain the self-exclusion list rather than requiring it be done on paper. The proposed changes update the regulation to allow for the use of that app and include language identifying the process for electronic submission and maintenance of the voluntary self-exclusion list.

Commissioner O’Brien asked why the word “problem” was used to replace “harm.” Director Vander Linden clarified that it was a more commonly used term, and it was used to modernize the regulation. Deputy General Counsel Torrisi noted that should the vote pass, the proposed draft will then enter the promulgation process for public comment. Chair Judd-Stein requested the Commission publish the cover sheet in addition to the proposed regulation for public comment, so that a description of the reasoning behind the changes would be included.

Commissioner Hill moved that the Commission approve the small business impact statement and version of 205 CMR 133 as included in the Commissioner’s Packet and authorized staff to take all steps necessary to begin the promulgation process. The motion was seconded by Commissioner O’Brien.

Roll call vote:

Commissioner O’Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

- b. [205 CMR 138.26: Keys for Dual Locks; Gaming Licensee-Controlled Keys and Locks; Notice to the IEB and Surveillance Department upon Malfunction and Repair, Maintenance or Replacement – and Amended Small Business Impact Statement, for approval to finalize the promulgation process](#) (2:18:42)

Deputy General Counsel Torrisi presented draft amendments to 205 CMR 138.26. She stated that Associate General Counsel Judith Young brought the draft of 205 CMR 138.26 to the Commission on March 3rd along with Assistant Director of Investigation and Enforcement Bureau Bruce Band, Senior Supervising Gaming Agent Burke Cain, and Regulatory Compliance Manager Sterl Carpenter. She noted that the Commission voted at the time to begin the promulgation process, and a public hearing was held regarding this regulation on April 28, 2022, presided over by Commissioner Hill. She further noted that there was no public comment

received at the hearing. Deputy General Counsel Torrissi sought to finalize the promulgation process on this regulation.

Commissioner Hill moved that the Commission approve the amended small business impact statement in version of 205 CMR 138.26 as included in the Commissioner's Packet and authorize staff to take all steps necessary to finalize the promulgation process. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

c. [205 CMR 147.00: Uniform Standards of Rules of the Games – and Amended Small Business Impact Statement, for approval to finalize the promulgation process](#) (2:21:19)

Deputy General Counsel Torrissi presented a draft of 205 CMR 147 related to uniform standards of rules of the game. She noted that the draft was brought before the Commission on March 3rd at which point the Commission voted to begin the promulgation process. A public hearing was held regarding this regulation on April 28, 2022, presided over by Commissioner Hill. Commissioner Hill noted that no public comment was received at the hearing. Deputy General Counsel Torrissi sought to finalize the promulgation process on this regulation.

Commissioner Hill moved that the Commission approve the amended small business impact statement in version of 205 CMR 147 as included in the Commissioner's Packet and authorize staff to take all steps necessary to finalize the promulgation process. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

8. [Independent Monitor's Report](#) (3:05:24)

Chair Judd-Stein introduced Alejandra Montenegro Almonte, Vice Chair of the International Department at Miller & Chevalier, to present the Independent Monitor's Phase Three Report. Ms. Almonte introduced her team from Miller & Chevalier: Counsel Ann Sultan, Counsel Katherine Pappas, Senior Associate Nicole Gökçebay, Alex Beaulieu, and Counsel Preston Pugh from Crowell & Moring.

Ms. Almonte noted that the goal of phase three was to continue to value the company's implementation of the recommendations made in the prior annual reports.

Ms. Almonte presented the overview of business, focusing on continued change in senior management, and noted that there had been significant turnover in positions relative to human resources. The Independent Monitor Team spoke with the new CEO, Craig Billings, and reported the same level of commitment they had seen with the previous CEO. Ms. Almonte noted that the company had active recruitment efforts in this time.

The Independent Monitor Team presented their phase three report, including topics on compliance and conduct, training and guidance, controls compliance, policies and procedures, third party relationships, internal reporting and investigation, incentives and discipline, risk-based review, monitoring and testing, and authority, oversight, and independence. The Independent Monitor Team's presentation including further details is included in the Commissioners' Packet.

Commissioner O'Brien raised the issue that the driving decision leading to monitorship was how management handled allegations of misconduct, and that it is a concern that management has not undergone specific trainings. Ms. Almonte noted that while they did not receive specific management and supervisor training, all managers had received general training regarding misconduct. Commissioner O'Brien asked whether harassment or misconduct was more likely given an employee's area of employment. Ms. Almonte explained that staff members in client-facing positions, such as cocktail waitresses and housekeeping staff, were more likely to come across potentially problematic interactions with third parties. The issue the Monitor Team hoped to address is the disconnect between management communications with employees and the employee's perception of management response. Commissioner O'Brien noted that she found it disturbing that the issue of management not adequately addressing allegations of misconduct still existed. Commissioner Hill and Chair Judd-Stein echoed Commissioner O'Brien's concerns. Chair Judd-Stein stated that the skill of being a managing supervisor should be more enhanced than other non-managerial roles.

Chair Judd-Stein asked about the differences between implementing Human Resource Compliance Program (HRCP) policies in Boston and Las Vegas, and sought clarification regarding the channels of communication available to employees for the purpose of reporting misconduct. Ms. Almonte stated that Boston has more room for improvement than Las Vegas. Ms. Almonte further explained that there had been both greater use of the employee support line and increased familiarity with the line due to the available QR code link located in company workplaces.

Commissioner Hill asked to circle back at a future date to learn more about the details of the Speakup campaign and how its implemented. He noted that only three of the eight recommendations for training and guidance being satisfied was a red flag.

Chair Judd-Stein asked who oversees the program regarding performance management and the regulation of HRCP compliant behavior. Counsel Pappas stated that the program had not been rolled out yet, but it will likely be the Senior Vice President of HR and the role will oversee both the Las Vegas and Boston locations. However, the specifics to how the program will be executed are not yet known.

Chair Judd-Stein inquired if there is a standard approach for increased vetting during the hiring process. Ms. Almonte stated that there are not enough data points, but the company followed an investigation policy and that there were no current concerns about individuals who have been hired or engaged. Current concerns are regarding the process, and there will be further focus on sustainability and long-term impact. Chair Judd-Stein remarked that culture change cannot occur overnight.

9. [Research and Responsible Gaming](#) (4:51:44)

a. FY23 Research Agenda Proposal

Due to time constraints Director Vander Linden agreed to present his fiscal year 2023 research agenda proposal at the public meeting on May 12th, 2022.

b. Play My Way at MGM Update

Director Vander Linden introduced Long Banh, Program Manager, to present the Play My Way at MGM Update. Mr. Banh introduced Amy Gabrila, Senior GameSense Advisor at the Massachusetts Counsel on Gaming and Health (MACGH), and Daniel Miller, Compliance Director, MGM. The official launch of Play My Way (“PMW”) was on March 31st.

The Research and Responsible Gaming Team presented their update on PMW, including topics on staff training and advertisement design implementation. The Research and Responsible Gaming Team's presentation including further details is included in the Commissioners' Packet.

Compliance Director Miller provided details on the launch, including the current number of enrollees. Chair Judd-Stein asked if MGM was pleased with PMW as another tool. Compliance Director Miller responded that MGM is happy with the continuous growth in number of enrollees, and that few are unenrolling.

Director Vander Linden noted that they are having monthly meetings with Encore Boston Harbor to implement PMW at their casino.

10. [Racing Division](#) (5:16:45)

a. Plainridge Park Casino Request for Capital Improvement Fund Consideration

Director of Racing Dr. Alexandra Lightbown introduced Chad Bourque, Senior Financial Analyst, to present Plainridge Park Casino’s capital improvement request. Mr. Bourque explained that each month funds are deposited into a capital improvement trust fund and that licensees use these funds for repair, maintenance, or improvements to the property where racing activities are conducted. He noted that distributions from the fund are made upon Commission approval of both a request for consideration and subsequent request for reimbursement.

Mr. Bourque presented the initial request for consideration submitted by Plainridge in the amount of \$46,600, plus tax and shipping. Mr. Bourque reviewed the documents, and all statutory requirements were met. Mr. Bourque recommended the document be approved.

Commissioner O'Brien moved that the Commission approve the expenditure of \$46,600 from the Harness Force Capital Improvement Trust Fund for the purpose of the purchase of the track conditioner and track harrow by Plainville Gaming and Redevelopment as described by the materials in the Commissioner's Packet.

Chair Judd-Stein raised the issue of whether "plus tax and shipping" would be considered part of the capital investment and asked whether Commissioner O'Brien had mentioned tax and shipping in her motion. Commissioner O'Brien remarked that tax and shipping had been erroneously omitted from her motion. PPC Director of Racing Steve O'Toole noted that shipping and tax have been included as part of the capital investment in the past. General Counsel Todd Grossman stated that the licensee will have to submit financial statements at the end of year stating they treated this as a capital expenditure in their books. Mr. Bourque stated he will talk with General Counsel Grossman regarding the inclusion of that language in the request for reimbursement to account for any differences in amounts between the request for consideration and request for reimbursement due to the unknown shipping costs.

Commissioner O'Brien amended her prior motion and moved that the Commission approve the expenditure of \$46,600 plus 6.25% sales tax and the yet to be determined shipping from the Harness Force Capital Improvement Trust Fund for the purpose of the purchase of the track conditioner and track harrow by Plainville Gaming and Redevelopment as described by the materials in the Commissioner's Packet". The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

b. [Suffolk Downs Request for Approval of Account Wagering Provider Xpressbet](#)
(5:24:09)

Dr. Lightbown presented the request from Suffolk Downs to approve Xpressbet as an account wagering provider. The Commission had no questions or comments on this item.

Commissioner Hill moved that the Commission approve the Suffolk Downs licensee use of Xpressbet, LLC as an account wagering service provider. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

c. [Plainridge Park Casino Operations Plan Review for Kentucky Derby Day, May 7](#)
(5:25:58)

Dr. Lightbown explained that Plainridge requested to use handheld wagering devices again on Kentucky Derby Day. Dr. Lightbown noted that the Commission approved the use of handheld wagering devices during the August 27th, 2020, meeting. While COVID restrictions had been lifted, the policy was successful and Plainridge asked to approve handheld wagering devices again this year. Executive Director Karen Wells noted that the machines are now hard-wired and not mobile devices, and Chair Judd-Stein asked for clarification to where the bets are made. Mr. O'Toole explained that for convenience bets can be placed at the cashier. Further, signage and detail officers are placed to direct people to the station where they can place their wagers. The outside station used the same hard-wired kiosk features as inside. The Commission determined an executive session will discuss the issue further.

d. [Executive Session](#) (5:29:41)

Chair Judd-Stein read the following into the record: The Commission anticipates that it will meet in executive session in accordance with G.L. c.30A, §21(a)(4) to discuss the deployment of security personnel or devices, or strategies with respect thereto, pertaining to accepting horse racing wagers outdoors at Plainridge Park Casino on May 7, 2022.

Commissioner O'Brien moved that the Commission go into consecutive executive sessions for the reasons and exemptions stated. The motion was seconded by Commissioner Hill

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated April 28, 2022
2. [Commissioners' Packet](#) from the April 28, 2022, meeting (posted on massgaming.com)



Massachusetts Gaming Commission

Meeting Minutes

Date/Time: July 12, 2022, 10:00 A.M.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 703 9337

The Commission conducted this public meeting remotely utilizing collaboration technology. Use of this technology was intended to ensure an adequate, alternative means of public access to the Commission's deliberations for any interested member of the public.

Commissioners Present:

Chair Cathy Judd-Stein
Commissioner Eileen O'Brien
Commissioner Bradford Hill
Commissioner Nakisha Skinner

1. [Call to Order](#) (1:13)

Chair Judd-Stein called to order the 384th Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all four commissioners were present for the meeting.

2. [Approval of Meeting Minutes](#) (1:40)

Chair Judd-Stein noted that the agenda included two sets of minutes for approval, but the Commissioner's Packet contained three sets.

Commissioner Hill moved that the Commission approve the meeting minutes from October 7, 2021, and May 25, 2022, that are included in the Commissioner's Packet subject to any necessary changes for typographical errors or other non-material matters. The motion was seconded by Commissioner O'Brien.

Chair Judd-Stein suggested an edit for the October 7, 2021, meeting minutes. Chair Judd-Stein stated that in item number five she wanted to include that she had inquired regarding Commissioner Cameron's availability to assume the role of Treasurer, and that Commissioner Cameron confirmed she was available to serve. Associate General Counsel Judith Young stated that she will meet with Chair Judd-Stein regarding the language to be changed.

Chair Judd-Stein asked if the Commission planned to move on the October 21, 2022, meeting minutes, which was included in the Commissioner's Packet but not the Agenda. Commissioner Skinner asked that separate motions be made for each set of meeting minutes being approved as she was not present for the October 7, 2021, and October 21, 2021, meetings and would be required to abstain.

Chair Judd-Stein noted that the motion was seconded, and the motion therefore had to be withdrawn. Commissioner Hill withdrew the motion.

a. October 7, 2021

Commissioner Hill moved that the Commission approve the minutes from October 7, 2021, that are included in the Commissioner's Packet subject to any necessary corrections for typographical errors or other non-material matters. The motion was seconded by Commissioner O'Brien.

Commissioner Judd-Stein asked for a correction to be made to the minutes which included that Chair Judd-Stein had asked Commissioner Cameron whether she would consider serving as Treasurer.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Abstain.

Chair Judd-Stein: Aye.

The motion passed unanimously 3-0, with one abstention.

b. May 25, 2022

Commissioner Hill moved that the Commission approve the minutes from May 25, 2022, that are included in the Commissioner's Packet subject to any necessary corrections for typographical errors or other non-material matters. The motion was seconded by Commissioner Skinner.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously 4-0.

Chair Judd-Stein inquired as to whether the Commissioners had a chance to review the minutes from October 21, 2021, which were included in the Commissioner's Packet but not listed on the agenda. Chair Judd-Stein then asked General Counsel Todd Grossman if the Commission could move on the minutes as they were not on the agenda. General Counsel Grossman stated that the Commission should wait to make a motion until the minutes are noted in the agenda.

Commissioner Hill stated that he believed a member of staff or a Commissioner had previously raised objections with the October 21, 2021, meeting minutes and that he would hold the motion.

3. [Administrative Update](#) (8:38)

a. On-Site Casino Updates

Executive Director Karen Wells introduced Burke Cain, Investigations and Enforcement Bureau (“IEB”) Field Manager of Casino Operations and Gaming Agents Division Assistant Chief. Assistant Chief Cain reported that Encore Boston Harbor (“EBH”) had 2,728 slot machines, 184 table games and 15 poker games at their gaming establishment. He reported that Plainridge Park Casino (“PPC”) had 1,009 slot machines. He further reported that MGM Springfield (“MGM”) had 1,527 slot machines, 48 table games, and 14 poker games at their gaming establishment.

Assistant Chief Cain stated that for the month of July EBH hosted Night Shift Brewery’s beer garden on weekends and would have live country music on the lawn on July 21, 2022. He stated that PPC had live music on their patio and would host several Spirit of Massachusetts Day races on July 24, 2022. Assistant Chief Cain continued that MGM hosted several bands and DJs in Revolution Bar and had fireworks viewing from the garage on July 4, 2022.

Commissioner Hill noted concern regarding the number of poker tables, as 29 for the entire Commonwealth seemed small. He stated that he would like to see the number of poker tables continue to grow. Commissioner O’Brien agreed and asked whether longer hours and weekend access to poker tables was being considered at EBH. Assistant Chief Cain replied that EBH was in the process of announcing extended hours, including longer hours and weekend hours. Chair Judd-Stein stated that the Commission had received an inquiry from a patron regarding the expansion of poker tables at EBH.

Commissioner Skinner stated that in the prior update during the June 22, 2022, public meeting, Commissioner O’Brien requested data regarding the wait time for poker tables, the estimate queue time and average number of patrons in the queue. Assistant Chief Cain explained that at EBH the waiting list was active one hour before the poker room opens, that it was first come first serve, and that the poker room was typically filled to capacity before noon. He stated that there were typically thirty to forty patrons on the waitlist after opening. Commissioner O’Brien asked if the waitlist is electronic, and Assistant Chief Cain replied that it was. Commissioner O’Brien sought information regarding the wait at MGM. Assistant Chief Cain stated that MGM has a walk-up sign in location and that while there are less people waiting, the wait is for longer durations.

Chair Judd-Stein asked when the Commission would hear from the licensees regarding table games. Chief of the Division of Community Affairs Joe Delaney stated that the quarterly review was scheduled for August. Chair Judd-Stein asked how the table game numbers compared to pre-COVID numbers. Assistant Chief Cain stated that MGM lowered theirs slightly, but EBH was running the same amount.

Chair Judd-Stein stated that she had seen a billboard advertising a Machine Gun Kelly concert at Memoire Nightclub, located at EBH in June, and asked if there had been issues with crowd size or issues exiting the venue. Assistant Chief Cain stated the casino reported no issues. Chair Judd-Stein stated that she would appreciate briefing of anticipated events and crowd management for the events. Director of the Investigations and Enforcement Bureau Loretta Lillios stated that the IEB could add that moving forward, and that she had not heard of any issues from the Gaming Enforcement Unit regarding the Machine Gun Kelly concert. Chair Judd-Stein noted she wanted more information regarding crowd size both before and after the COVID pandemic.

4. [Racing Division](#) (20:40)

a. Request for Promotional Fund Consideration

Dr. Alex Lightbown, Director of Racing and Chief Veterinarian, presented a request by PPC to use promotional funds for a summer handicapping series. She noted that funding for handicapping series was approved in the past.

Financial Analyst Chad Bourque stated that each month funds are deposited into the Harness Horse Promotional Trust, and that licensees can use the funds to engage customers and increase attendance. Mr. Bourque explained that distributions of the fund are made upon the Commission's approval, and that the licensee must first submit a Request for Consideration and then a Request for Reimbursement to the Commission. He noted that the present item is the initial Request for Consideration from PPC. Mr. Bourque stated that the request was for \$26,000 for the summer handicapping series which would begin on July 23, 2022, and end on September 5, 2022. He stated that the fund contained \$270,000, and after review of the documentation he recommended approval of this request. The *Request for Promotion Fund Consideration* was included on pages 30 through 38 of the Meeting Packet.

Steve O'Toole, Director of Racing at PPC, stated that this handicapping series would run seven weekly contests, where patrons could earn points per contest, and lead to a \$10,000 final. He noted that the series would end on Labor Day and that live-racing could be mixed in with the final contest.

Mr. O'Toole stated that he had explored social media marketing and had met with a social media group for a proposal. He stated that he did not have the proposal ready for this meeting, but would bring it to the next meeting. Chair Judd-Stein asked if the request would still be timely if deferred to the next meeting on July 28, 2022. Mr. O'Toole stated it may be an issue. Mr. O'Toole also noted that most racetracks had not effectively utilized social media marketing. Chair Judd-Stein noted that there are statutory requirements regarding social media marketing. Commissioner O'Brien stated that the social media marketing should have a focus on responsible gaming. Mr. O'Toole stated that he would work to implement that. Chair Judd-Stein stated she would have Director of Research and Responsible Gaming, Mark Vander Linden, and Gaming Project Manager Long Banh work with him on that.

Chair Judd-Stein asked if Mr. O'Toole was willing to move forward on the vote with the inclusion of the responsible gaming message. Mr. O'Toole noted that PPC brands all advertising

materials with responsible gaming messages, and that GameSense would be present on Spirit of Massachusetts Day.

Commissioners Hill and Skinner sought clarification as to the term “handicapping a race.” Mr. O’Toole stated that horse players differ from casino players in that they are able to study prior to wagering. He continued that a handicap was research compiling factors such as the length of the race, positions, conditions of the track, and weather in an attempt to determine the winner. He stated that there will be ten races at different tracks, which will be free to customers. Commissioner Skinner inquired as to whether patrons were wagering on finishing place. Mr. O’Toole clarified that they are only predicting the winner, not other forms of betting such as placements. He further clarified that the race wagering was limited to those eighteen or older.

Commissioner O'Brien moved that the Commission approve the expenditure of \$26,000 from the Harness Horse Promotional Trust Fund in accordance with Chapter 128A section 5(g) for the purposes described in the Commissioner’s Packet and discussed here today. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O’Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously 4-0.

b. [Local Aid](#) (40:40)

Mr. Bourque stated that Local Aid is payable to each City or Town where racing activities are conducted and stated that the amount of aid was determined as .35% of the handle from the quarter that ended six months prior. He explained that this request from the quarter ending June 30, 2022, was calculated using handles from October, November, and December of 2021. Mr. Bourque stated that according to the calculation the City of Boston would receive \$112,323.20, the Town of Plainville would receive \$29,406.56, the Town of Wrentham would receive \$16,899.72, and the City of Revere would receive \$56,178.44. He stated that the total payment amount would be \$214,807.92. The detailed amount and calculations can be found in the *Local Aid Quarterly Distribution* which was included on pages 27 through 29 of the Meeting Packet.

Commissioner Skinner inquired as to whether the funding for Local Aid had been corrected, as the last time the Commission voted to approve funds the line item was underfunded. Chief Finance and Accounting Officer (“CFAO”) Derek Lennon stated that the fund contained \$297,710.16 unexpended, which was more than enough for this item. He explained that it was underfunded the prior time due to a supplemental request from the legislature, and that the request from the legislature was approved between the time of the vote and time of payment.

Commissioner Skinner asked whether this item would be paid using funds from Fiscal Year 22. Mr. Bourque confirmed that the spending is from FY22, and CFAO Lennon stated that the next payment would be from the Fiscal Year 23 budget.

Commissioner Hill moved that the Commission authorize the Quarterly Local Aid Payments for the final quarter of 2021 to the City of Boston, Town of Plainville, Town of Wrenham, and the City of Revere in the specific amounts reflected in the memorandum in the Commissioner's Packet totaling \$214,807.92. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: *Aye.*

Commissioner Hill: *Aye.*

Commissioner Skinner: *Aye.*

Chair Judd-Stein: *Aye.*

The motion passed unanimously 4-0.

5. [Legal Division](#) (45:31)

a. Adoption of Policy Language from 205 CMR 103.03, 103.09, and 103.14

Associate General Counsel Carrie Torrisi discussed the prior meeting on June 22, 2022, where the Commission voted to rescind 205 CMR 103, the Commission's regulation regarding confidentiality of records and public records requests issues. She stated that the regulation was undergoing promulgation and a final vote would be held to rescind it in September. Associate General Counsel Torrisi stated that at the June 22 meeting, the Commissioners raised concerns regarding the process of preserving the language of 205 CMR 103 sections .03,.09, and .14 as policy. She stated that the language from those three sections of 205 CMR 103 were provided in the Commissioner's Packet as individual documents to be preserved as policy, to avoid gaps between the regulation being rescinded and the policy being implemented.

Commissioner O'Brien thanked Associate General Counsel Torrisi, as this was an important point during the last meeting. Chair Judd-Stein stated that the request was to adopt the language as presented with the understanding they would be edited and put into policy format. Chair Judd-Stein asked if the Commissioners felt comfortable moving on all three in a single motion. The Commissioners unanimously agreed that a single motion was sufficient.

Commissioner O'Brien moved that the Commission adopt the following policies as included in the Commissioner's Packet and discussed here today, namely Official Custodian's Policy, Individuals Responsible for Personal Data Systems, Policy Governing Information in Response to Requests for Applications Phases I and II and lastly Security Protocols and Restricted Access Policy. The motion was seconded by Commissioner Skinner.

Roll call vote:

Commissioner O'Brien: *Aye.*

Commissioner Hill: *Aye.*

Commissioner Skinner: *Aye.*

Chair Judd-Stein: *Aye.*

The motion passed unanimously 4-0.

b. 205 CMR 138.00: Licensee's System of Internal Controls – and Small Business Impact Statement, for approval to begin the promulgation process (51:50)

Associate General Counsel Judith Young presented proposed amendments to four regulations within 205 CMR 138, the regulation which detailed uniform standards of accounting procedures and internal control. The *Proposed Amendments* and the accompanying *Small Business Impact Statement* were included on pages 39 through 50 of the Meeting Packet.

i. 205 CMR 138.02, Licensee's System of Internal Controls

Associate General Counsel Young presented a proposed change to 205 CMR 138.02, regarding details for administrative and internal procedures the licensee must submit prior to commencing operations. She noted that existing language contained no time-based system to ensure the licensee had implemented a system of internal controls after a secondary change had been made or the Commission requested a change be implemented. She noted that IEB suggested a 30-day requirement for the licensee to confirm they had implemented the suggested protocols be included in subsection 7, so that the IEB would not have to continually follow-up with the licensee.

Chair Judd-Stein expressed an interest in ensuring the language is clear on when the 30-day requirement would trigger. Associate General Counsel Young replied that the 30-day requirement would trigger after approval of a modification of the licensee's system.

Commissioner O'Brien inquired as to what consequences would occur should a licensee not comply within thirty days. Associate General Counsel Young stated that IEB has worked on identifying areas of non-compliance, and it would be handled accordingly to similar non-compliance issues.

ii. 205 CMR 138.05, Systems for Ensuring Employee Licensing

Associate General Counsel Young explained that subsection 2(j) of 205 CMR 138.05 had language removed during a previous amendment, and suggested adding the previously approved language to clarify "the date the information in the report was compiled."

Commissioner O'Brien inquired as to whether this was a scrivener's error, or a vote would have to be held on this item. Associate General Counsel Young recommended a vote to approve this language as an amendment, because the language was entirely removed and was showing blank.

iii. 205 CMR 138.07, Floor Plans

Associate General Counsel Young suggested additional clarifying language be included in 205 CMR 138.07 subsection 4 to include additional language instilling the licensees with a quarterly filing requirement to submit floorplans or any amendments every three months or upon IEB request.

iv. 205 CMR 138.62, Payment of Table Game Progressive Payout Wagers

Associate General Counsel Young explained that the current regulation regarding progressive jackpots requires a licensee to submit a system of internal controls detailing when one patron wins a progressive jackpot. She suggested changes that would ask licensees to submit policies that govern when two or more patrons win a progressive jackpot during the same instance of play. She noted that the suggested changes were enacted at one gaming establishment, but not the other. Associate General Counsel Young stated that this policy would attempt a more equitable distribution between the first and second jackpot, with an even split of the jackpot and reset amount values between the two patrons. She stated that the goal is for licensees to uniformly offer this equitable distribution and submit to the Commission the protocols and policies that govern the process.

Commissioner O'Brien asked if this issue had occurred at the licensee who had not enacted this policy. Associate General Counsel Young replied that it had not been an issue, and that the legal division and IEB wanted to preemptively avoid the possibility.

Chair Judd-Stein sought clarification as to whether a public service announcement would be required for a certain time period after the implementation of the change. Assistant Chief Cain noted that as it was not a change in game rules but an administrative payout change. Chair Judd-Stein asked what the communication plan would be for this change. Associate General Counsel Young stated that a separate requirement regarding patron notice would be within 205 CMR 147.03. Chair Judd-Stein asked if this vote would begin the promulgation process. Associate General Counsel Young replied that the Commission would have to first submit the amendments to the Local Government Advisory Committee.

Commissioner Hill moved that the Commission approve the Small Business Impact Statement and the amendments to 205 CMR 138.2, 205 CMR 138.5, 205 CMR 138.07, and 205 CMR 138.62, all as reflected in the Commissioner's Packet and discussed here today and further that the staff be authorized to take the steps necessary to file the required documentation for the Secretary of the Commonwealth and proceed with the regulation promulgation process. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously 4-0.

6. [Research and Responsible Gaming](#) (1:29:10)

a. GameSense Quarterly Report

Responsible Gaming Program Manager Long Banh introduced Executive Director at the Massachusetts Council on Gaming and Health ("MACGH") Marlene Warner; Director of

Communications and Marketing at MACGH Phillip Sherwood; Director of Responsible Gaming at MACGH Chelsea Turner, and Senior GameSense Advisor Amy Gabrila.

Mr. Banh explained that G.L. Chapter 23k § 9(a)(8) required casino operators to provide an on-site space for independent substance abuse, compulsive gambling and mental health services. He explained that casino operators were also required to establish a program to train employees in identification and intervention with customers exhibiting problem gambling behavior. Mr. Banh explained that the Commission partnered with GameSense to give patrons information and tools which adopt positive play behavior and offer resources to individuals in distress from gambling related harm. Mr. Banh continued that the Commission had contracted with MACGH to operate GameSense information centers located on-site within all Massachusetts casinos and staffed 16-24 hours daily by trained GameSense advisors.

The MACGH team presented their Quarterly GameSense Report, including topics on numbers of interactions, an update on Play My Way at MGM, the GameSense excellence awards, a communications spotlight, live chat update, an overview of hosting the National Conference on Problem Gambling (NCPG) in Boston, and GameSense's goals for FY23. The *MACGH FY 2022 Fourth Quarter Report* was included on pages 51 through 67 of the Meeting Packet.

Commissioner Hill commented that he looked forward to the FY23 projects and future collaborations and partnerships. Commissioner Skinner echoed Commissioner Hill's sentiments and asked why EBH's chart measuring interactions had a subcategory for Voluntary Self-Exclusion while the other gaming establishment charts did not. Ms. Turner explained that EBH is the only GameSense center open overnight, as the other centers are open only sixteen hours per day.

Commissioner O'Brien commented that the statistics were impressive and inquired as to the reasoning given from patrons who unenrolled from Play My Way. Ms. Gabrila noted that she did not have the statistics with her at the time, but in-person patrons who unenrolled were typically unenrolling due to tracking purposes and wished to stay anonymous. Director Vander Linden stated he was working on a study evaluating Play My Way at MGM, with the goal of using research to improve the program based upon more information and evidence.

7. [Investigations and Enforcement Bureau](#) (2:06:50)

a. Civil Penalties and Fines Process and Policy

IEB Chief Enforcement Counsel Heather Hall recapped a discussion from the end of April regarding the IEB's process of assessing civil administrative penalties, and how the IEB addressed noncompliance matters more broadly. She explained that requirements under G.L. Chapter 23K § 36 require fair notice to licensees in the process of assessing a fine. She further explained that there were a series of escalating enforcement measures prior to the assessment of a fine, including verbal notification by gaming agents, a follow up email, noncompliance forms ("NCFs") issued by gaming agents, notices of non-compliance by Chief Enforcement Counsel and then assessment of civil administrative penalties.

Counselor Hall stated that fine assessment was fact-specific and incorporated factors such as the seriousness of the offense, the number of prior similar incidents, any opportunities the licensee had to rectify the issue and if they failed to do so, and impact on the integrity of gaming and public safety. Counselor Hall stated that an issue that had come up during the prior meeting was regarding the assessment of fines issued for similar noncompliance, and whether circumstances warranted smaller or larger fine amounts for the subsequent fine. Counselor Hall stated that policy had been adjusted to reflect this consideration. The *Civil Penalties and Fines Process and Policy* was included on pages 68 through 82 of the Meeting Packet.

Counselor Hall stated that in the prior meeting Commissioner Skinner had inquired as to the circumstances lowering the subsequent fine. Counselor Hall noted differences between two previous fines for underage individuals being present on the game floor, where the first \$100,000 fine was based upon the pervasiveness of the issue and the second \$18,000 fine was for significantly less individuals after the gaming establishment had implemented mitigating factors. Counselor Hall stated that IEB was continuing to work through the issue.

Chair Judd-Stein stated that the Commission was planning to formally adopt the clarifying language as a policy. Chair Judd-Stein suggested edits to page 81 in the Commissioner's Packet to include language which notified the licensees of their option to appeal to the Commission. Counselor Hall replied that prior to the assessment of fines, the Notice of Intent issued by the IEB contained this language regarding the right to appeal and the appeal timeframe. Director Lillios stated that there was a statutory requirement and notifying the licensee of their right to appeal was common practice, but not expressly mentioned in policy. Chair Judd-Stein asked if the appeals notification can be included and asked at what point in the process the licensee could file their appeal. Director Lillios explained that once the licensee received the assessment of fines, they have a right to Commission review. Counselor Hall stated that licensees would go to the Commission for review, but registrants would go to a hearing officer.

Chair Judd-Stein suggested a change to the last bullet-point on page 81 to include a clause regarding the Public Records Law and the Open Meeting Law, as it would be difficult to uphold confidentiality with the legal structure of the Commission. Counselor Hall stated that she would take this suggestion and implement it. Associate General Counsel Torrisi stated she would work with IEB on the language required.

Commissioner O'Brien sought clarification as to whether the language detailing the right to appeal is included in the disposition regarding the assessment of fines. Director Lillios noted that the language regarding appeals was included in the assessment, but that all fines to date had been agreed to by the gaming establishments and therefore the right to appeal had been waived. Director Lillios stated that language informing the licensee that their right to appeal is waived by agreement with the fines is provided in writing to the licensees. Chair Judd-Stein stated that language informing the licensee that their appeal was waived upon agreement to the fine should be included in the policy. The Commissioners had no objections to including this language.

Chair Judd-Stein explained that as the fines are fact-based, the Commission should not have a policy of minimum or maximum fines, but that the issue can be reviewed at a later date.

Commissioner Skinner moved that the Commission approve the IEB's process and policy for assessment of civil administrative penalties, both as included in the Commissioner's Packet and discussed here today. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously 4-0.

8. [Commissioner Updates](#) (2:30:08)

a. Independent Monitor's Budget Update

Commissioner O'Brien explained that the contract with the Independent Monitor Team ("Monitor") required the Monitor to submit estimates for the contract cost, and that if the costs were to exceed fifteen percent over the budget, the Monitor had to alert the Commission to the fact that circumstances changed and exceeded the estimate. Commissioner O'Brien stated that in February 2022 the Monitor revised the estimate from \$775,000 to \$1.125 million for the fiscal year of July 2021 to June 2022. Commissioner O'Brien stated that the Monitor had billed \$1.325 million through April 30, 2022, with invoice still incoming for the remainder of the fiscal year. Commissioner O'Brien presented the Monitor's explanations for the costs represented in the revised estimate.

Chair Judd-Stein sought clarification as to whether there was a maximum amount for which the Monitor could bill. Commissioner O'Brien noted that there was not a hard cap, but an estimated amount of payments for the five years. CFAO Lennon explained that the Monitor extrapolated and anticipated the amount of funding required for the initial six-month time period, but that it was paid as a time and materials rate.

Commissioner O'Brien noted that the increased expenses were based upon how quickly the licensee was compliant with requests, and that issue remained a recurring theme. Chair Judd-Stein noted that the Commission received timely notice in February regarding the excess expenses, but this notice was untimely, and the Monitor exceeded the revised budget by \$230,000 to \$250,000. Chair Judd-Stein asked whether the Commission should ask the Monitor to come in and explain their workplan going forward to address concerns about cost.

Commissioner Skinner stated that notwithstanding the untimely notice, the Monitor's reasons provided seem justifiable. Commissioner Hill stated an interest to have the Monitor update the Commission and recognized that exceeding the budget was not due to the Monitor, but due to the dialogue between the Monitor and licensee.

Chair Judd-Stein asked if the invoices remained unpaid. CFAO Lennon replied that the Commission had not paid April's invoices as the March invoices exceeded 15% higher than the

estimate. Chair Judd-Stein expressed interest in scheduling the Monitor for a meeting in August or September to present their plan and consider whether adjustments would be required.

b. [Legislative Update](#) (2:46:24)

Commissioner Hill stated that the Massachusetts House of Representatives passed House Bill 4978, which provided benefits to veterans and families of veterans, and allowed veteran's groups to offer up to three slot machines in the establishment with all profits designated to go to a local non-profit, under the oversight of the Commission. Commissioner Hill stated that a similar bill had previously been rejected by the state senate.

Chair Judd-Stein stated that the Commission had conducted a great deal of research regarding the impact of gambling on veterans and noted it made sense for Executive Director Wells or Director Vander Linden to send that research to the legislature as they consider this bill.

Commissioner O'Brien stated that the proposed bill would not be a seamless integration, as there were challenges in the difference between licensee's gaming establishments and the proposed slot machines spread across the Commonwealth. Commissioner Hill stated that the Commission should send their research to the legislature, but that there needed to be funding to implement the proposed bill. Commissioner O'Brien stated concerns regarding the regulatory implementation of the proposed bill and issues with monitoring and integrity.

Chair Judd-Stein stated that the information provided to the legislature should include Executive Director Wells' contact information and she would be the point of contact for this issue. Commissioner Skinner requested the research being sent to the legislature be distributed internally within the Commission, and an update regarding on how the Commission is preparing for sports wagering. Commissioner Hill stated his approval for the section of the proposed bill which required notice and information for MACGH and the Department of Public Health to be placed upon the proposed slot machines.

Chief Administrative Officer to the Chair and Special Projects Manager Crystal Beauchemin stated that the House was also hearing a bill that would extend the Open Meeting Law, but the House Bill and Senate Bill contained differences. She stated that staff had worked on the process transitioning back to in-person meetings should the Open Meeting Law not be extended. Commissioner Hill noted that the difference between the bills was that the House Bill would expire on March 2023 while the Senate Bill extended until September 2023. He further noted that the House Bill permanently extended the allowance of hybrid meetings. Commissioner Hill stated that each bill had an emergency preamble, which would effectuate the bill upon being signed and there would not be a 45-day wait for the bill to take effect.

Chair Judd-Stein asked whether sending a repeat of the prior letter detailing the flexibility afforded by remote meeting would be helpful or unnecessary. Commissioner Hill stated that the Commission should reoffer their opinion as the bill is being debated. He stated that the Commission is not the only public entity who requested the Open Meeting Law be extended.

Chair Judd-Stein provided a brief recap of the International Association of Gaming Advisor's conference that occurred in Boston, where she heard from fellow regulators and licensee representation.

Hearing no other business, Chair Judd-Stein asked for a motion to adjourn.

Commissioner Skinner moved to adjourn. Commissioner O'Brien seconded.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously. Meeting Adjourned.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated July 1, 2022; revised July 5, 2022
2. [Commissioner's Packet](#) from the July 12, 2022, meeting (posted on massgaming.com)

TO: Chair Cathy Judd-Stein, Commissioner Eileen O'Brien, Commissioner Nakisha Skinner, and Commissioner Jordan Maynard

FROM: David Muldrew, CPDO, and Trupti Banda, Human Resources Manager

CC: Karen Wells, Executive Director

DATE: October 24, 2022

RE: COVID- 19 Policy

Early in 2022, the CDC changed the quarantine/isolation requirements for people who tested positive and/or experienced COVID-19 symptoms from 10 days to 5 days. This was done in response to evolving scientific studies related to the Omicron variant and to help businesses overcome supply chain and staffing issues. The MGC COVID-19 Working Group advised the Commission on January 28, 2022, that it should retain a mandatory quarantine period of 10 days for anyone who has tested positive for COVID-19 and/or is displaying symptoms.

The MGC requires vaccinations for both employees and visitors, and it has a reliable reporting system to ensure employee safety.

We recommend that the Commission adopt the CDC's COVID-19 guidelines because it will retain the required safety precautions and allow for appropriate staffing levels.



TO: Chair Judd-Stein, Commissioners O'Brien, Hill, Skinner, and Maynard

FROM: Mark Vander Linden, Director of Research and Responsible Gaming

DATE: October 27, 2022

RE: Update on Sports Wagering Research

The Act to Regulate Sports Wagering extends the commitment to gaming research by aligning Chapter 23N, Section 20 with Chapter 23K, Section 71. In both sections, the MGC is directed to develop an annual research agenda in order to understand the social and economic effects of sports wagering in the commonwealth and to obtain scientific information relative to the neuroscience, psychology, sociology, epidemiology, and etiology of gambling.

In addition, there are two studies the MGC is to begin immediately. Below, I provide a brief status update for both.

- 23N Section 20: Research study examining the feasibility of allowing retail locations in the Commonwealth to operate sports wagering kiosks.** A scoping document for the section 20 requirements has been drafted. I recruited the assistance of two MGC research consultants to provide feedback. As of Monday, October 24, 2022, I received feedback from both consultants. Per Treasurer Goldberg's request during the September 8, 2022 open public meeting, this study will consider effects on the lottery, because, as she pointed out, many of the potential retail locations would likely offer both lottery products and sports wagering. The scoping document will inform the development of a competitive RFR, which I expect to release by the end of December. A status report will be delivered to the Legislature before December 31, 2022.
- Act Regulating Sports Wagering, Section 25: A research study on the participation by minority business enterprises, women business enterprises, and veteran business enterprises in the sports wagering industry in the Commonwealth.** Work has begun on a scoping document. Similar to the Section 20 study, I will seek the assistance of the commission's research consultants to provide feedback. Because this study requires the sports wagering industry to be live in the state, I don't advise that an RFR be released until later in 2023 or a date determined by the commission. A status report will be delivered to the Legislature before December 31, 2022.



Massachusetts Gaming Commission



Cory Fox
cory.fox@fanduel.com

October 17, 2022

Via email and public comment portal at <https://massgaming.com/news-events/requests-for-public-comments/>

Massachusetts Gaming Commission
Attn: Caroline Torrisi, Associate General Counsel
101 Federal St. 12th Floor
Boston, MA 02110
caroline.torrisi@massgaming.gov
Copy to: mgccomments@massgaming.gov

Re: FanDuel Comments on Sports Wagering Operator License Application

Dear Ms. Torrisi:

I write to provide comments on behalf of FanDuel Group, Inc. (“FanDuel”) regarding the Massachusetts Gaming Commission’s (“Commission”) proposed “Application for Category 1, 2, & 3 Sports Wagering Operator License” (“Application”). Based on our extensive experience as an operator in the online casino gaming, sports betting and fantasy sports industries and collaborator with regulators of sports betting in many states in the development of their regulations, we would like to offer constructive feedback on improving the Proposed Application and the application review process.

Following the Supreme Court’s decision to strike down the Professional and Amateur Sports Protection Act (PASPA) in May of 2018, FanDuel has now become the leading sports wagering operator, and the largest online real-money gaming operator, in the United States. FanDuel currently operates twenty-seven (27) brick-and-mortar sportsbooks in fifteen (15) states and Washington D.C., as well as online sports wagering in sixteen (16) states and Ontario.

FanDuel appreciates the Commission and its staff’s diligent efforts in implementing the launch of sports wagering in Massachusetts following the enactment of G.L. ch. 23N and submits for consideration these targeted comments regarding the Application in the interest of promoting an efficient, effective, and fair licensing application and evaluation process.

Public Records & Confidentiality



Page 9 of the Application refers to a forthcoming guide “advising which answers and attachments submitted with this form will be considered to presumptively meet the exception to the public records law and withheld from public disclosure.” The publication of this guide—and ensuring it is available as soon as practicable in advance of the application submission deadline—is of significant importance to potential applicants and is also likely to benefit the Commission’s review.

The Application, other required forms (Business Entity Disclosure Form, Multi-Jurisdictional Personal History Disclosure Form, and MGC Supplemental Form), and the attachments thereto require disclosure of an extensive amount of highly sensitive information, including both confidential and proprietary business information that would place applicants at a competitive disadvantage if disclosed, as well as private personal, family, and financial information the public disclosure of which would result in unwarranted invasion of personal privacy, risk of identity theft, and other harms. The Legislature’s language in Chapter 23N, as well as the Massachusetts Public Records Law, recognizes the need to protect such information. *See, e.g.,* G.L. c. 23N § 6(i).

Clear, specific, and timely advance guidance from the Commission—as custodian of these records—regarding the presumptive confidentiality of specific requests will better enable applicants and their associated persons and entities to prepare appropriate, fulsome submissions without undue concern regarding the risks that submitted information may unexpectedly become a public record at a later date.

Sections C.1 and C.5: Economic Development

Sections C.1 and C.5 of the Application seek detailed information and plans relating to employment opportunities in the Commonwealth and contributions to community engagement and tourism. In Chapter 23N, the Legislature established a framework for the licensure of sports wagering operators that contemplates not only in-person wagering facilities at gaming and racing establishments, but also a competitive open process for statewide mobile sports wagering platforms. That framework sets forth the core considerations for assessing prospective license holders, which focus on the applicant’s integrity and reputation, financial stability and resources, capacity to establish and maintain a successful sports wagering operation, compliance, and the suitability of its associated persons. G.L. c. 23N § 6(d). The Legislature did not identify economic development or community engagement as considerations for licensure—and for Category 3 mobile sports wagering licenses in particular, those factors are not correlated to the identification of the best possible products for consumers in the Commonwealth.



Accordingly, the Commission should consider removing Sections C.1 and C.5 of the Application, or at minimum making them inapplicable to Category 3 license applicants. Including those Sections will require Category 3 applicants to expend significant effort preparing proposals and data on subjects unrelated to the quality of their sports wagering platform or capacity to operate it in a successful and compliant manner—and risks shifting the focus of the selection process away from the primary factors established by the Legislature, potentially creating an uneven playing field for applicants based on these other considerations.

Section G.3: Financial Stability & Integrity

Financial stability and integrity are critical considerations for evaluating potential applicants, and the Application appropriately calls for the disclosure of information on these topics to guide the Commission’s review. Certain requests in the Application, however, require preparation of detailed analyses and data that are likely to impose additional burdens on applicants given the compressed time period for preparing a complete application, while providing limited benefit to the Commission in light of the extensive financial information already addressed by other portions of the Application.

Specifically, Section G.3 requires submission of the following information “for the last five (5) fiscal years and through the date of the application”:

- d. An analysis, including best, worst, and average case scenarios, that demonstrates the applicant’s plan and capacity for accommodating steep downturns in revenues, and provides examples of those plans and strategies that have been successful in other jurisdictions; and
- e. the Applicant’s annual liquidity, leverage, and profitability ratios, including current ratio, debt-to-equity ratio, and gross/net margin ratios

The Application already provides for disclosure of “studies and projections for gross sports wagering revenue for each of the first five years of wagering operations on a best, average, and worst, case basis” including historical experience in other jurisdictions (Section C.2), detailed advertising and promotional plans (Section E.2), and “[d]ocumentation demonstrating the financing structure and plan for the proposal, including all sources of capital” (Section G.3(b)). Moreover, the Business Entity Disclosure Form to be submitted by each applicant and its affiliates also requires disclosure of five years of audited financial statements, and numerous other disclosures concerning financial capacity and history.



The foregoing provides the Commission with ample information to assess the financial ability of prospective applicants to operate a successful sports wagering operation, and the incremental benefit of the additional requirements in Section G.3(d) and (e) is outweighed by the burdens on applicants to prepare the required analyses and data, particularly given the overall scope of the Application and limited timeframe for submission. For those reasons, the Commission should consider removing those additional requirements from the Application form.

Clarification of Certain Application Questions

In the interest of ensuring the Commission receives the information it needs, there are two questions on the Application form that are unclear in their current form and would benefit from clarification or further explanation:

- In Section B.4 (Technical Features & Operation of Platform), subpart (f) requests a “[d]escription of Applicant’s proposed ability to commence mobile sports wagering on the platform.” It is not clear what information should be provided in response to this question that is not already addressed by other portions of the application, including without limitation Sections B.1, B.3, and the other subparts of Section B.4, E.2.
- In Section G.3 (Financial Stability & Integrity), subpart (j) requests “[e]xamples and/or narratives that substantiate the applicant’s understanding of and experience with Internal Controls.” The vague phrasing of the question provides little guidance to applicants on the type or extent of information being requested that is not already covered by the numerous other sections of the application related to financial integrity, compliance history, and the like.

We appreciate your time and consideration of our comments and would be happy to discuss at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cory Fox', written over a light blue circular stamp.

Cory Fox
Vice President for Product and New Market Compliance



October 17, 2022

Massachusetts Gaming Commission
101 Federal St., 12th Floor,
Boston, MA 02110

VIA EMAIL ONLY

Re: PENN Commentary on the Sports Wagering Operator License Application

Dear Massachusetts Gaming Commission:

PENN Entertainment, Inc., PENN Interactive, and Plainville Gaming and Redevelopment, LLC d/b/a Plainridge Park Casino, appreciates the opportunity to provide comments on the Application for a Category 1, 2, and 3 Sports Wagering Operator License (the “Application”) issued by the Massachusetts Gaming Commission (the “Commission”).

PENN Entertainment, Inc. (PENN: NASDAQ), formerly known as Penn National Gaming, Inc., is North America’s leading provider of integrated entertainment, sports content, and casino gaming experiences. PENN operates 43 properties in 20 jurisdictions, 25 retail sportsbooks in 11 jurisdictions, online sports betting in 14 jurisdictions and iCasino in five, under a portfolio of well-recognized brands including Hollywood Casino®, L’Auberge®, Barstool Sportsbook®, and theScore Bet®. PENN’s highly differentiated strategy, which is focused on organic cross-sell opportunities, is reinforced by its investments in owned technology, including a state-of-the-art media and betting platform and an in-house iCasino content studio. The Company’s portfolio is further bolstered by its industry-leading mychoice® customer loyalty program (the “mychoice program”), which offers its over 26 million members a unique set of rewards and experiences across business channels.

PENN’s wholly owned interactive division, Penn Interactive Ventures, LLC, and its wholly owned subsidiary Penn Sports Interactive, LLC (collectively, “PENN Interactive”), operates advance deposit wagering on pari-mutuel horse racing, as well as online social casino, bingo, and iCasino products. PENN Interactive offers iCasino products in Michigan, New Jersey, Pennsylvania, West Virginia, Ontario (CA) and online sports betting services in 14 jurisdictions, including Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, New Jersey, Ontario (CA), Pennsylvania, Tennessee, Virginia, and West Virginia under the Barstool Sportsbook®, Hollywood Casino®, and theScore Bet® brands. PENN and PENN Interactive’s leading, international footprint is expected to increase in the coming months with upcoming online and/or retail launches in Ohio and Maryland, pending all regulatory approvals.

For the Commission’s consideration, please find PENN and PENN Interactive’s comments on the Application based on best practices, industry standards, and extensive experience operating online and retail sports wagering in other jurisdictions. Please do not hesitate to reach out should there be any questions.

*PENN Commentary to MGC's Sports Wagering Operator License Application
October 17, 2022*

Best Regards,

North Grounsell

North Grounsell
General Manager, Plainridge Park Casino

cc: Chris Soriano, VP Chief Compliance Officer, PENN Entertainment, *via email only*
Lisa McKenney, Compliance Manager, Plainridge Park Casino, *via email only*
Josh Pearl, Sr. Dir. of New Markets & Strategic Initiatives, Penn Interactive, *via email only*
Nicole Derr, Sr. Licensing Manager, Penn Interactive, *via email only*



PENN Entertainment, Inc., Plainville Gaming and Redevelopment, LLC d/b/a Plainridge Park Casino, and Penn Sports Interactive, LLC,
Summary of Comments to the MGC's Application for a Category 1, Category 2, & Category 3 Sports Wagering Operator License:

Application Section	Comment Summary
Completing the Application (page 5)	Recommending Applicants have 30 days to provide additional information, if requested.
Electronic Application Format (page 7)	Recommending that Applicants submit only one signed Application Form.
Electronic Application Format (page 7)	Permitting Applicants to submit both redacted and unredacted tables of calculations.
Public Records (page 9)	Confirmation that information subject to an existing NDA with the Commission is protected if included in the Application.
B.2 Sports Wagering Experience – Description of the Sports Wagering Operation (page 13)	Seeking confirmation that parent company information may be provided, and that Applicants with the same parent company may cross-reference information in each other's Application.
B.3 Sports Wagering Experience – Description of the Sports Wagering Platform (page 13)	Seeking clarity regarding the information requested in (b); recommending minor revision to (e) to ensure the Commission receives all relevant information.
B.4 Sports Wagering Expertise – Technical Features & Operation of Platform (page 13)	Seeking clarity regarding the information requested in (f).
C.1 Employment Opportunities Within the Commonwealth (page 14)	Seeking confirmation as to the extent of information that may be provided.
C.2 Projected Revenue (page 14)	Recommending the Commission require a description of the <i>good faith efforts</i> to maximize revenue to the Commonwealth in (f).
D.2 Diversity, Equity, & Inclusion – Supplier Spend (page 16)	Recommending additional clarity to ensure national and Commonwealth-specific spend goals are provided.
E.2 Advertising & Promotional Plans (page 17)	Recommending additional flexibility for all Applicants.

Application Section	Comment Summary
F.2 Know Your Customer (page 18)	Recommending additional flexibility to ensure sports wagering technology related information is provided directly by the entity that will be offering it within the Commonwealth.
F.3 Technological Expertise and Reliability (page 18)	Recommending additional flexibility to ensure sports wagering technology related information is provided directly by the entity that will be offering it within the Commonwealth.
G.2 Suitability – Individual Qualifier Integrity (page 18)	Recommendation to make clear that currently licensed Key Gaming Employees and/or Gaming Employees are not required to submit any previously submitted information.

**APPLICATION FOR CATEGORY 1, 2, & 3
SPORTS WAGERING OPERATOR LICENSE**



APPLICANT NAME: _____

Applicant: _____

INSTRUCTIONS

General Information

Applicant: _____

This *Application For Category 1, 2, & 3 Sports Wagering Operator License* form (the form itself “Application Form”, and along with all attachments “application”) was designed by the Massachusetts Gaming Commission (“Commission”) as a vehicle for each applicant to demonstrate that it has thought broadly and creatively about creating a sports wagering operation in Massachusetts that will provide a significant and lasting benefit to the Commonwealth of Massachusetts and will deliver an overall experience that both offers an exceptional sports wagering experience and includes significant responsible gaming and consumer protection measures.

The application must be completed in accordance with these instructions. In accordance, any discrepancies may be taken into consideration by the Commission when evaluating the application.

To the extent that an applicant is a newly formed entity or to date has been a largely non-operational entity, any information required to be provided relative to past performance or general practice shall, at a minimum, be provided in relation to the primary controlling and/or operating entity of the proposed sports wagering operator and/or its significant business units.

If an applicant is unable to comply with or respond to any part of the application, it may apply for a waiver or variance from the Commission in accordance with 205 CMR 102.03(4) {update reg info when available} in advance of the filing deadline.

All communications, including general questions and application inquiries, should be directed to the Executive Director or Commission staff.

How to submit a general question and/or application inquiry:

1. Please go to {insert link to inquiry template on MGC website}
2. Complete all of the required fields and click “Submit.”

A Commission representative will respond to each inquiry in a timely manner. *At no time during the application process should any applicant, agent of the applicant, qualifier, or another associated individual contact or attempt to contact a Commissioner directly.*

This Application Form does not constitute an offer of any nature or kind to any applicant or its agents. The Commission is under no obligation to issue a license to any of the applicants. By submitting an Application, the applicant is deemed to agree to all of the terms of this process.

To the extent that anything contained in this application is inconsistent with any other guidance or policy-related document issued by the Commission in the past, this application shall control. To the extent that anything contained in this application is inconsistent with any provision of 205 CMR or G.L. c.23N, the governing law shall control.

Terms used in the application shall be given their most logical, plain meaning in the context of the application. The Commission reserves the right to amend or clarify this application at any time prior to the deadline for the submission of applications.

For each Application, all of the Commission’s costs and expenses of the administrative proceedings pursuant shall be borne by the applicant. All such costs and expenses shall be assessed to the applicant and collected by the Commission.

The Commission will utilize its website, www.massgaming.com, to provide notices of hearings, a notice of amendment or clarification of the Application Form, general updates, and general information relative to the application process.

Please be advised that any portion of this Application Form and any associated requests for information or documents may be changed at any time.

Non-Refundable Processing Fee

Applicant: _____

Pursuant to G.L. c. 23N, § 7(a), an applicant for an operator license shall pay to the commission a nonrefundable processing fee of \$200,000 for the costs associated with the processing of the application and investigation of the applicant; provided, however, if the costs of the investigation exceed the initial application fee, the applicant shall pay the additional amount to the commission not more than 30 days after notification of insufficient fees or the application shall be rejected.

Applicants may pay the \$200,000.00 processing fee via wire transfer, certified check, or cashier's check. Wiring information may be obtained by contacting:

Douglas O'Donnell
Revenue Manager
(617) 979-8425

Checks must be made out to the Massachusetts Gaming Commission and mailed to:

Massachusetts Gaming Commission
c/o Revenue Division
101 Federal Street, 12th Floor
Boston, MA 02110

Completing the Application

Applicant: _____

The application is divided into seven primary sections, each section containing questions relating to that section. The applicant should answer each question fully. While a cross-reference to other sections within the application may be included as part of an answer to a particular question, a cross-reference may not serve as the entire answer to any particular question. Please make sure to include the name of the applicant in the provided space at the top of the page for each question. If the answering of any question requires an attachment, please see below.

Attachments: Where an applicant may wish to attach a document in response or to supplement its written response, or another exhibit of any nature, it may attach such documents and/or exhibits as set forth in the instructions for “[Electronic Application Format](#).” All attachments must be named and listed for the corresponding question. If the same attachment is responsive to multiple questions within the application, a copy of the attachment should be attached to each question, not just cross-referenced.

Every question must be answered completely. If a question or portion thereof is not applicable, enter “N/A” into the appropriate space on the application.

Applicants for Category 1 Sports Wagering Licenses and Category 2 Sports Wagering Licenses may refer the Bureau and Commission to prior application forms submitted to the Commission by the Applicant or previous information otherwise obtained by the Bureau or Commission regarding the Applicant.

Request for Additional Information: In its discretion, the Commission may request additional information from an applicant. Any applicant that does not reply in {insert number of days} days may be disqualified from consideration.

Commented [A1]: In accordance with industry standard, PENN recommends that the Commission allow Applicants to provide any requested additional information within 30 days of the request being made. A 30-day timeframe will ensure the Commission receives well thought out and complete responses to such requests.

Applicant: _____

Submission of Materials

The Application must be submitted by the application deadline. The deadline for **Category 1 & 2 applications is {date} at 2 p.m.** The deadline for **Category 3 applications is {date} at 2 p.m.** The Commission shall have no obligation to accept or review an application submitted after the established deadline.

How to Submit an MGC Sports Wagering Operator License Application

Entities interested in applying for a Sports Wagering Operators License must request a link to the MGC Secure File Transfer Site prior to submitting their application form and any additional documents. This link will allow for the secure and confidential upload and storage of all application materials.

How to Request a Link to the MGC Secure File Transfer Site:

Please Note: All link requests must be received no later than one (1) week prior to the application deadline {date to be established}.

1. Please visit {insert a hyperlink to Secure Link Request Form on the MGC website}
2. Complete all of the required forms and click "Submit"

A Commission representative will provide the requested link and additional instructions on how to upload the application materials securely via email. The information will be sent in two emails, with the link being in the first email and the password sent separately in the second email, for security purposes.

Applicant: _____

Electronic Application Format

When the electronic version of the application materials is submitted via the MGC Secure File Transfer Site and uploaded to the Commission's server, the applicant must abide by the following:

- (a) The applicant must submit this original completed Application Form that has not been printed, signed, and scanned, but with all answers electronically filled in, all attachments identified, and all necessary boxes checked. This version is being required so that it may be searched electronically by the Commission during the evaluation process. This document must be in PDF format.
- (b) The applicant must also submit this completed Application Form with all answers electronically filled in, all attachments identified, all necessary boxes checked, and all required signatures affixed. This version is identical to the document described in (a) above, but it should also be printed, signed, and scanned. This scanned document must be in PDF format.
- (c) The applicant must submit each attachment as its own electronic file. No electronic file should contain more than one document. Each attachment should be in PDF format unless otherwise required. The file names of all of the attachments must be named strictly in accordance with the following rules:
 - The first portion of the filename must contain the section number and subsection of the question followed by a hyphen, then and the attachment number for that particular question with a leading zero for numbers under 10 (e.g. "B1-b-##").
 - The file name should then contain the descriptive name of the attachment, in at most 20 characters.
 - The name of the attachment must not contain the name of the applicant.
 - The final portion of the filename should be the extension, such as ".pdf" or ".xls".
 - The file name should correspond to the list of attachments on the Application Form.
 - If the Applicant believes the attachment to be confidential, in whole or in part (i.e.- exempt from disclosure under the Public Records Law), then the filename must have the word "CONFIDENTIAL" in all capital letters placed directly before the file extension. Failure to include this label may result in the public release of the document.

Although a PDF version of each attachment is required, in certain cases providing an alternative file format may be helpful to the Commission in reaching its decision. For example, where the applicant is required to submit tables of calculations, such as a revenue projection, it should be submitted in spreadsheet format so that the Commission may numerically analyze this information. The applicant may also, although not required, provide other documents such as videos, interactive documents, or physical models. These types of documents do not readily lend themselves to conversion into PDF format. For these documents, the applicant should provide both the document in original format, and a PDF file describing the existence of such a document within the applicant's application materials. The file name of the alternate format, if it is in fact a computer-readable file, and the filename of the PDF format of the attachment should be identical, excluding the file extension.

No electronically submitted document to the Commission may be password protected. The individual documents should not be encrypted separately.

Any attachments containing a table of calculations, such as a revenue projection, should be included in the electronic submission in a spreadsheet format, preferably Microsoft Excel ".xls" files. Applicants may submit both a redacted and unredacted version of any attachments included in the electronic submission that contain a table of calculations.

Commented [A2]: Generally, it is not industry norm to require an Applicant to submit an unsigned version of the application. By affixing appropriate signatures, an Applicant is formally attesting that the information provided within the application is fully accurate. For this reason, prospective applicants may be reluctant to submit any application materials without signatures, particularly when the materials are subject to Public Records laws.

As both the signed and unsigned versions of the Application Form must be submitted in PDF format, PENN recommends that the Commission require only one completed Application Form to be submitted. This Application Form will be signed, and the Commission may require the Applicant to ensure that the PDF is searchable when submitted through the MGC Secure File Transfer Site.

Commented [A3]: Penn recommends that the Commission allow Applicants to provide both an unredacted and redacted version of calculations. Generally, calculations related to revenue projections will include some level of sensitive information that applicants will want to ensure is protected. Permitting applicants to submit both redacted and unredacted calculations will ensure the Commission receives accurate and complete information, while providing notice as to what information is sensitive and anticipated to receive protection from any public records requests.

Applicant: _____

The following is an example of select files of a properly organized application:

B2-a-01 Additional Sports Wagering Licensure Information.pdf

B2-a-02 Additional Sports Wagering Jurisdiction Information.pdf

C2-a-01 Revenue Projections CONFIDENTIAL.pdf

C2-b-01 Revenue Projections CONFIDENTIAL.xls

Application.pdf

Signed Application.pdf

Public Records

Applicant: _____

Pursuant to G.L. c. 23N, §6(i), “[a]pplications for operator licenses shall be public records ” Applicants should be mindful of this prior to submission of an Application. However, the law also provides “that trade secrets, competitively-sensitive or other proprietary information provided in the course of an application for an operator license under [chapter 23N], the disclosure of which would place the applicant at a competitive disadvantage, may be withheld from disclosure under [the Massachusetts public records law].” Additionally, if the Applicant has an existing NDA with the Commission pursuant to 205 CMR 139.02, and includes any protected information in this Application, the Applicant may indicate where such information is included and exempt from public disclosure.

To help inform applicants of the Commission’s intentions, a guide has been attached at the end of the Application advising which answers and attachments submitted with this form will be considered to presumptively meet the exception to the public records law and withheld from public disclosure. There is also space for an applicant to request exempt treatment of a specific document identified in the Application. FAILURE TO FOLLOW THE INSTRUCTIONS PROVIDED IN THE GUIDE MAY RESULT IN PUBLIC RELEASE OF THE DOCUMENTS.

Please note, though the Commission will use its best efforts to protect any information it deems subject to an exemption, final appeals are adjudicated by the [Secretary of the Commonwealth](#) in accordance with G.L. c.66, §10.

Commented [A4]: PENN is seeking confirmation that any information protected under an Applicant’s existing NDA with the Commission, pursuant to 205 CMR 139.02, will be afforded the same protections if disclosed in the Applicant’s Sports Wagering Operator Application.

Checklist

Applicant: _____

Complete this checklist prior to submitting any materials to the Commission.

Applicant: _____

- ☐ The applicant has answered all of the questions in this Application Form that it was required to respond to
- ☐ Any question requiring an attachment has the attachment noted on the Application Form
- ☐ The applicant properly named all the files
- ☐ The applicant has properly organized all of the attachments
- ☐ No files have been password protected
- ☐ The applicant has signed all required pages of this application
- ☐ The applicant has completed the Public Records section of this application
- ☐ The applicant has paid the \$200,000.00 non-refundable processing fee
- ☐ The applicant will update the Commission if there are any changes to the information presented in the Application or any of the attachments.

SECTION A: GENERAL INFORMATION

A.1 APPLICANT NAME

Name _____

Applicant: _____

A.2 CATEGORY OF LICENSE APPLYING FOR (check one)

- ☐ **Category 1** (In-Person Wagering at a Gaming Establishment)
☐ **Category 2** (In-Person Wagering at a Live Horse Racing or Simulcasting Facility)
☐ **Category 3** (Mobile Sports Wagering)

A.3 IF APPLYING FOR CATEGORY 3 (MOBILE SPORTS WAGERING) LICENSE, IS THIS APPLICATION TETHERED TO A CATEGORY 1 OR CATEGORY 2 APPLICATION (check one)

- ☐ **No** (*Independent Application*)
☐ **Yes, Tethered to Category 1 or Category 2 Applicant** (*applicant name*):

A.4 STATE/COUNTRY IN WHICH THE BUSINESS ENTITY IS INCORPORATED, ORGANIZED, FORMED, OR REGISTERED

State/Province _____ Country _____

A.5 IDENTIFY THE APPLICANT'S TYPE OF BUSINESS (check one)

- ☐ **Limited Liability Company** ☐ **Partnership** ☐ **Other** (*please describe*):
☐ **C-Corporation** ☐ **Limited Partnership** _____
☐ **S-Corporation** ☐ **Trust**
☐ **Sole Proprietorship**

A.7 FEDERAL TAX ID NUMBER

Federal Tax ID Number _____

A.6 APPLICANT LOCATION INFORMATION

Number and Street Address _____

City, State, & Zip Code _____ Phone Number _____

Email Address _____ Website _____

A.7 APPLICANT PRINCIPAL PLACE OF BUSINESS INFORMATION

Number and Street Address _____

City, State, & Zip Code _____ Phone Number _____

Email Address _____

Applicant: _____

A.7 PRIMARY CONTACT FOR THIS APPLICATION

Name

Title

Email Address

Phone Number

SECTION B: SPORTS WAGERING EXPERIENCE & EXPERTISE

B.1 APPLICANT'S ABILITY TO OFFER SPORTS WAGERING IN THE COMMONWEALTH

Provide a thorough description of the applicant's ability to offer sports wagering in the Commonwealth. This summary should include:

- a. Background in sports wagering
- b. Experience and licensure in other jurisdictions with sports wagering
- c. Plans to offer the platform in coordination with other applicants or person
- d. Any intention of limiting participation in any allowable sports events

**B.2 SPORTS WAGERING EXPERIENCE - DESCRIPTION OF SPORTS WAGERING OPERATION
(Category 1 & 2 Applicants Only)**

Provide a thorough description of the sports wagering operation proposed for the Commonwealth. Applicants may include relevant corporate level information, if applicable. This description should include:

- a. Description of the customer experience, including options, promotions, and offers
- b. Overview of wagering activity
- c. Estimated volume of wagering activity (*annually*)
- d. Estimated market share within each jurisdiction

**B.3 SPORTS WAGERING EXPERIENCE - DESCRIPTION OF SPORTS WAGERING PLATFORM
(Category 3 Applicants Only)**

Provide a thorough description of the sports wagering platform to be operated in the Commonwealth. This narrative should include:

- a. Description of the customer experience, including options, promotions, and offers
- b. Overview of wagering activity
- c. Estimated volume of wagering activity (*annually*)
- d. Jurisdictions where the platform is currently licensed and operating
- e. Current integration in use with other sports wagering license applicant operators
- f. The number of user accounts maintained
- g. Estimated market share within each jurisdiction

**B.4 SPORTS WAGERING EXPERTISE - TECHNICAL FEATURES & OPERATION OF PLATFORM
(Category 3 Applicants Only)**

Provide a thorough description of the applicant's expertise in sports wagering and how it would be applicable in the Commonwealth. This summary should include:

- a. Overview of technical standards, features, and operation of the platform
- b. List of all current certifications or approvals from certified independent test labs and jurisdictions
- c. Plan for continuous support, maintenance, and change management of the platform
- d. Outline the features of the platform designed to support the customers
- e. Sample wagering menu the Applicant intends to offer, *pending approval from the Commission*
- f. Description of Applicant's proposed ability to commence mobile sports wagering on the platform

Commented [A5]: As Category 1 and Category 2 Applicants will not have previous experience operating sports wagering in the Commonwealth, or any other jurisdiction, PENN would like to confirm that these Applicants may include applicable information on their parent company experiences in response to B.2 (a) through (d).

Additionally, PENN would like to confirm that if a Category 1 or Category 2 Applicant shares a parent company with its tethered Category 3 Applicant, these Applicants may cross-reference information included within each other's Application Form.

Commented [A6]: PENN is seeking clarity as to the extent and type of information to be provided in response to Section B.3(b). If an overview of an Applicant's wagering activity for all registered sports wagering accounts in each operating jurisdiction is required, this will result in an extensive amount of information submitted to the Commission from most Applicants. This will have an impact on the timing and efficiency of the Commission's Application review and evaluation process.

Commented [A7]: PENN recommends amending Section B.3(c) as most mobile sports wagering operators will likely not have integrations with other operators. A mobile sports wagering operator may have integrations with other sports wagering vendors or registrants. The proposed amendment ensures that the Commission will receive information on any integrations an Applicant has with a prospective sports wagering vendor, or any other sports wagering license applicant, generally.

Commented [A8]: PENN is seeking clarity regarding the information that the Commission is requesting in Section B.4(f). As currently written, it is not clear whether information should be provided describing *how quickly* the Applicant will be able to commence mobile sports wagering operations in the Commonwealth, or generally describe the Applicant's *ability* to operate a mobile sports wagering platform in the Commonwealth based upon experiences in other jurisdictions.

Applicant: _____

- g. How the Applicant intends to prevent wagering by prohibited persons, including underage persons, problem gamblers, employees, etc.
- h. Outline any technology to be used or features offered that the applicant believes sets their platform apart from those of (potential) other applicants

SECTION C: ECONOMIC IMPACT ON THE COMMONWEALTH

C.1 EMPLOYMENT OPPORTUNITIES WITHIN THE COMMONWEALTH

Provide a thorough description of the employment opportunities that will be offered if the applicant is approved for licensure by the Commission. Please include:

- a. The number of current full-time and part-time employees within the Commonwealth
- b. The number of current work locations within the Commonwealth
- c. The number of proposed full-time and part-time positions that will be created within the Commonwealth
- d. The title, job description, salary, and benefits information for each of the proposed positions
- e. The training that will be required and made available for all proposed positions
- f. The number of proposed work locations that will be created within the Commonwealth
- g. Description of plans for workforce development opportunities for Applicant's staff within the Commonwealth
- h. Outline the strategy for focusing on job opportunities and training in areas and demographics with high unemployment and/or underemployment

C.2 PROJECTED REVENUE

Provide studies and projections for gross sports wagering revenue for each of the first five years of wagering operations on a best, average, and worst, case basis. The studies and information provided should include:

- a. Projected figures for sports wagering revenue and methodology used to arrive at these projections
- b. Projected figures for any non-sports wagering revenue and methodology used to arrive at these projections
- c. Projected figures for all tax revenue to the Commonwealth and methodology used to arrive at these projections
- d. Profitability of sports wagering operation (in-person & mobile) in other jurisdictions where the applicant is licensed
- e. History of operating performance versus revenue projections for the last five years for other jurisdictions where the platform is licensed – *includes documentation outlining the applicant's record of success or failure in meeting the performance objectives*
- f. Description of methods to ensure that **good faith efforts are made to maximize revenues are maximized within the Commonwealth**
- g. Description of plans to compete with other nearby jurisdictions and to market to Massachusetts patrons

C.3 CONSTRUCTION – GAMING ESTABLISHMENTS (for Category 1 Applicants Only)

Provide a thorough description of the location of the proposed sports wagering operation. This should include:

- a. A detailed timeline of construction
- b. Proposed location within the gaming establishment, including plans for the construction of a new section within the gaming floor and/or any potential additions to the facility
- c. Approximate square footage of the sports wagering area
- d. Secure location for storing funds issued by a cage, to be used in the operation, including all security measures and procedures
- e. Proposed security and surveillance of the sports wagering area and operation and how the applicant intends to prevent wagering by prohibited persons, including underage persons, problem gamblers, employees, etc.
- f. Reasonable measures the applicant will take to ensure the safety and security of all employees and patrons of any sports wagering related events
- g. Accessibility of patrons to the proposed sports wagering area, including all means of entry and exit, including handicapped access, and the volume of traffic that can be sustained
- h. Number and location(s) of ticket window(s)
- i. Number and location(s) of wagering kiosk(s)

Commented [A9]: Due to the nature of mobile sports wagering, operating the same platform in many states across the U.S., mobile sports wagering operators will generally have centralized office locations for ease of scale. For example, employees within a mobile operator's accounting department will handle revenue reporting for each operating jurisdiction, while working remotely from the operator's centralized office location.

PENN is seeking confirmation from the Commission that:

(1) Category 3 Applicants, contracted to offer mobile sports wagering on a Category 1 or Category 2 Applicant's behalf, may reference relevant parent company information and information provided by their contracted partner, within Section C.1.

(2) Category 3 Applicants, contracted to offer mobile sports wagering on a Category 1 or Category 2 Applicant's behalf will not be penalized if it is does not have ample information to provide in response to Section C.1, generally.

Commented [A10]: PENN recommends amending Section C.2(f) to require that Applicants describe the good faith efforts to be taken to maximize revenue within the Commonwealth. The current language of subpart (f) is impractical, as it is difficult for an operator to ensure revenue is maximized for economic reasons outside of the operator's control.

Applicant: _____

- j. Location and display format for all wagers, available to the public
- k. Location of posting of house rules
- l. *If applicable* – description regarding any proposal of providing food, beverages, and other concessions to patrons

C.4 CONSTRUCTION – LIVE HORSE RACING/SIMULCASTING FACILITY (Category 2 Applicants Only)

Provide a thorough description of the location of the proposed sports wagering operation. This should include:

- a. Location of proposed sports wagering operation (*address*)
- b. A detailed timeline of construction
- c. Proposed location of sports wagering area within the facility, including plans for the construction of a new section and/or any potential additions to the facility
- d. Approximate square footage of the sports wagering area
- e. Secure location for storing funds issued by a cage, to be used in the operation, including all security measures and procedures
- f. Proposed security and surveillance of the sports wagering area and operation and how the applicant intends to prevent wagering by prohibited persons, including underage persons, problem gamblers, employees, etc.
- g. Reasonable measures the applicant will take to ensure the safety and security of all employees and patrons of any sports wagering related events
- h. Accessibility of patrons to the proposed sports wagering area, including all means of entry and exit, including handicapped access, and the volume of traffic that can be sustained
- i. Number and location(s) of ticket window(s)
- j. Number and location(s) of wagering kiosk(s)
- k. Location and display format for all wagers, available to the public
- l. Location of posting of house rules
- m. *If applicable* – description regarding any proposal of providing food, beverages, and other concessions to patrons

Capital Investment

In accordance with G.L. c.23N, §3, Category 2 licensees shall make a capital investment of not less than \$7,500,000.00 within 3 years after receiving a sports wagering license, which the applicant must agree to expend.

Please provide a thorough description, including:

- n. How the applicant proposes to realize the required capital investment
- o. The financial commitments and guarantees the applicant is prepared to provide the Commission
- p. How the applicant will ensure that the project is completed, the license conditions are fulfilled, and sufficient working capital is available to allow operation in the promised fashion
- q. Any mitigation measures the applicant will take to reduce any impact on the local community

C.5 COMMUNITY ENGAGEMENT

Provide a thorough description of how the Applicant will contribute to economic & business development, tourism & community relations, and the promotion of charitable causes in the Commonwealth. Including:

- a. Creating partnerships for any community, economic development, and tourism opportunities with local or regional entities including but not limited to the Massachusetts Office of Business Development, Chambers of Commerce, Regional Tourism Councils, and the Massachusetts Marketing Partnership
- b. Promoting local businesses, including restaurants, hotels, and retail outlets
- c. Cross-marketing with live entertainment venues and/or attractions
- d. Supporting any community enhancements being incorporated at the local level
- e. Highlighting unique business and marketing strategies to draw new revenues from new customers

SECTION D: DIVERSITY, EQUITY, & INCLUSION

D.1 DIVERSITY, EQUITY, & INCLUSION – WORKFORCE

Applicant: _____

Provide a thorough description of the applicant's willingness to foster racial, ethnic, and gender diversity, equity, and inclusion, within their workforce, both at the corporate level and the proposed entity within the Commonwealth. The information must include:

- a. Applicant's current diversity, equity, and inclusion team – *please include the name and title of those individuals currently identified as part of the diversity, equity, and inclusion staff/team, as well as a copy of their location on the applicant's organizational chart*
- b. Applicant's workforce diversity, equity, and inclusion policy
- c. Workforce demographics, demonstrating the applicant's current workforce diversity
- d. Efforts to be made to cultivate workforce diversity, equity, and inclusion by identifying, recruiting, and hiring minorities, women, persons with disabilities, and veterans
- e. Memberships and/or intentions for joining any local, regional, state, and/or national organizations committed to the development and promotion of diversity, equity, and inclusion initiatives

D.2 DIVERSITY, EQUITY, & INCLUSION - SUPPLIER SPEND

Provide a thorough description of the Applicant's overall and specific goals, applicable to the total dollar amount of contracts, for the utilization of:

- a. Minority-owned business enterprises
- b. Women-owned business enterprises
- c. Veteran-owned business enterprises

The Applicant should include any national supplier spend goals and any supplier spend goals applicable to the Commonwealth of Massachusetts.

Please include how each of these enterprise groups will participate as:

- Contractors in the design and/or building of the sports wagering platform
- Vendors in the execution, maintenance, and/or support of the sports wagering platform
- Vendors in the provision of goods and services

D.3 DIVERSITY, EQUITY, & INCLUSION – CORPORATE STRUCTURE

Provide a thorough description of the Applicant's commitment to diversity, equity, and inclusion initiatives in the Commonwealth. This should include:

- a. The makeup of the Applicant's ownership, leadership, and governance structure, – *including minorities, women, and veterans in positions of leadership throughout the corporate structure*
- a. How the Applicant intends to create joint ventures with corporate partners and/or partnerships with local or regional entities, including but not limited to programs, non-profit organizations, and agencies, dedicated to establishing a welcoming and inclusive experience for all patrons, users, and employees in the Commonwealth

SECTION E: RESPONSIBLE GAMING

E.1 RESPONSIBLE GAMING POLICIES

Referencing the following documents:

- [MGC Responsible Gaming Framework](#)
- [Applying Principles of the Massachusetts Responsible Gaming Framework to Sports Wagering Policy & Practice](#)
- [GameSense Logic Model](#)
- [Responsible Gaming Considerations for Gambling Advertising](#)

Provide a proposed responsible gaming plan draft that, at a minimum, incorporates policies and tactics for the following key strategies:

- a. Commitment to corporate social responsibility
- b. Support positive play
- c. Promote public health and safety

Commented [A11]: As many mobile sports wagering operators implement Supplier Diversity, Equity, and Inclusion goals on a national scale, PENN recommends adding clarity to Section D.2, to ensure the Commission receives all relevant information in response to this requirement.

Applicant: _____

- d. Ensure responsible advertising and marketing
- e. Manage high-risk financial transactions
- f. Engage the community
- g. Commitment to improvement and reporting

E.2 ADVERTISING & PROMOTIONAL PLANS

If applicable, provide a thorough description of the Applicant's ability to demonstrate the advertising, marketing, and promotional efforts to be made in the Commonwealth. Information should include:

- a. Estimated marketing budget in the Commonwealth
- b. Promotion and player loyalty programs
- c. Advertising plans – *must include information for any third-party marketing firm applicant plans to partner with for advertising in the Commonwealth*
- d. Measures to ensure that marketing reaches the target audience and not underage or vulnerable populations
- e. Player acquisition models – *specify minimum age to participate*
- f. Plans to incorporate responsible gaming and problem gambling information
- g. Strategies for converting those customers wagering via unlicensed or illegal means to wagering legally in the Commonwealth
- h. Examples of marketing, advertising, and promotional materials/activities recently used in other jurisdictions. Category 1 and Category 2 Applicants may submit examples of marketing, advertising and promotional materials/activities currently offered for other forms of gaming, and preliminary plans to expand these to sports wagering.

E.3 HISTORY OF DEMONSTRATED COMMITMENT

Provide a thorough description of the policies and procedures that the applicant has adopted to:

- a. Promote responsible gaming within the gaming establishment or mobile application and in the community
- b. Assist patrons and users that are experiencing gambling-related harm
- c. Cooperate and support any government or regulatory agencies to promote responsible gaming and/or mitigate gambling-related harm
- d. List any membership or partnership with an agency or organization whose mission is in whole, or part, dedicated to responsible gaming or problem gambling
- e. List any awards or recognition the applicant has received, related to efforts to promote responsible gaming or mitigate gambling related harms
- f. List any fines, violations, citations, and/or corrective action required by the applicant in response to insufficient or improper policies, procedures, operations, advertising/marketing, and/or any other business-related to sports wagering or other gambling enterprises

SECTION F: TECHNOLOGY

F.1 GEOFENCING

If applicable, provide a thorough description of how the applicant will ensure that authorized users placing online sports wagers on their platform are geographically located in the Commonwealth of Massachusetts. This information must include:

- a. Which geolocation system(s) will be utilized to reasonably detect the physical location of an authorized user attempting to place a wager on the platform
- b. How the system will:
 - 1. Accurately detect the physical location of an authorized user attempting to access or place a wager on the platform through accurate location data sources (Wi-Fi, GSM, GPS)
 - 2. Block or deny unauthorized attempts to access the platform, or place a wager, from outside of the Commonwealth
 - 3. Update the IP address and physical location if they change while the user is active on the platform
 - 4. Identify attempts to circumvent the requirement to be physically located in the Commonwealth
- c. How the applicant will log information received from the system
- d. How the applicant will report the information received from the system to the Commission, or how the Commission will otherwise have access to the information.

Commented [A12]: PENN recommends amending Section E.2 to add clarity for Applicants. Not all requested information will be applicable for all Applicants. For example, "player acquisition models" are generally associated with, and implemented by, online sports wagering operators.

Additionally, not all Applicants will have recent examples of marketing and promotional materials used in other jurisdictions. Particularly, Category 1 and Category 2 Applicants who have not operated sports wagering previously. The amendment makes clear that these Applicants may provide examples of current marketing and promotional activities for other forms of gaming and plans to expand these to sports wagering.

Commented [A13]: PENN recommends amending Section F.1 so that information is only provided to the Commission, if applicable. In situations where a Category 1 or Category 2 Applicant has contracted with a Category 3 Applicant to operate mobile sports wagering on its behalf, the Category 1 or Category 2 Applicant will not have relevant information to provide, as they will not be operating mobile sports wagering in the Commonwealth. This amendment ensures that information related to the sports wagering technology to be used in the Commonwealth is submitted directly by the entity that will be providing it.

Commented [A14]: PENN recommends amending Section F.1(d) as Penn is aware of at least two other regulatory bodies that receive a regular cadence of reporting directly from GeoComply. Therefore, some Geofencing information may be accessed by the Commission directly, while more detailed information will be monitored regularly and reported to the Commission in accordance with the Applicant's internal controls.

Applicant: _____

F.2 KNOW YOUR CUSTOMER

If applicable, provide a thorough description of how the Applicant will ensure the verification of information provided by users opening a new account on the platform.

1. Ensure the integrity of the user's account information
2. Ensure the integrity of a user's device if it indicates tampering or suspicious activity
3. Notify the applicant of potential risks or fraudulent activity

F.3 TECHNOLOGICAL EXPERTISE AND RELIABILITY

If applicable, provide a thorough description of how the Applicant will ensure the security, sustainability, and reliability of the following items:

- a. Wager acceptance
- b. Systems for monitoring structured wagers, real-time data feed, and any unusual or suspicious wagering activity
- c. Description, location, and periodic testing of servers
- d. Security of servers, applications, and communications networks
- e. Security of patron personal and wagering information
- f. Integrity monitoring and reporting, including any current affiliations related to integrity monitoring

Commented [A15]: Similar to Section F.1, above, PENN recommends amending Section F.2 and F.3 so that information is only provided to the Commission, if applicable. In situations where a Category 1 or Category 2 Applicant has contracted with a Category 3 Applicant to operate mobile sports wagering on its behalf, the Category 1 or Category 2 Applicant will not have relevant information to provide, as they will not be operating mobile sports wagering in the Commonwealth. These amendments ensure that information related to the sports wagering technology to be used in the Commonwealth is submitted directly by the entity that will be providing it.

SECTION G: SUITABILITY

G.1 SUITABILITY – CORPORATE INTEGRITY

Applicants must also complete and submit the following documents, before any suitability investigations or background checks will commence:

- [Massachusetts Gaming Commission Business Entity Disclosure Form](#)
- a. Joint Venture Agreements for the implementation of a sports wagering operation:
 1. Other Applicants
 2. Businesses
 3. Contractors
 4. Vendors

G.2 SUITABILITY - INDIVIDUAL QUALIFIER INTEGRITY

Any Key Persons or Employees associated with an applicant must also complete and submit the following documents, before any suitability investigations or background checks will commence. Any currently licensed Key Gaming Employee or Gaming Employee is not required to resubmit any previously submitted Form, so long as the license is in good standing:

- [Massachusetts Gaming Commission Multi-Jurisdictional Personal History Disclosure Form](#)
- [Massachusetts Gaming Commission Supplemental Form](#)

Commented [A16]: PENN recommends including additional language to make clear that any currently licensed Key Gaming Employee or Gaming Employee is not required to complete and resubmit any previously submitted form.

G.3 FINANCIAL STABILITY & INTEGRITY

Please provide the following documents, for the last five (5) fiscal years and through the date of the application:

- b. Documentation demonstrating the financing structure and plan for the proposal, including all sources of capital. *Please include current capital commitments, as well as plan and timing for meeting future capital needs*
- c. A detailed budget of the proposal cost, including any construction, design, legal and professional, consulting, and all other developmental fees. *Also identify all other pre-launch costs, including training, marketing, and initial startup capital*
- d. An analysis, including best, worst, and average case scenarios, that demonstrates the applicant's plan and capacity for accommodating steep downturns in revenues, and provides examples of those plans and strategies that have been successful in other jurisdictions
- e. What are the Applicant's annual liquidity, leverage, and profitability ratios, including current ratio, debt-to-equity ratio, and gross/net margin ratios?

Applicant: _____

- f. Information pertaining to contracts, loan agreements, and/or commitments that the applicant has breached or defaulted on during the last ten years. *Provide information for any lawsuit, administrative proceeding, or another proceeding that occurred as a result of the breach or default*
- g. A description of any administrative or judicial proceeding, during the last ten years, in which the applicant or any entity that owns 5%, or greater share, was found to have violated a statute or regulation governing its operation
- h. Any bankruptcy filings made, or proceedings commenced, for any entities owned or controlled by the applicant and any entity owning a 5% or greater share of the applicant
- i. Any financing amounts or ownership interests that are anticipated to come from minorities, women, and/or disadvantaged businesses. *If the applicant, or any portion of the applicant, is a public company, it is not necessary to list shareholders*
- j. Examples and/or narratives that substantiate the applicant's understanding of and experience with Internal Controls.

G.4 COMPLIANCE

Provide information on whether the applicant or its Key Persons has ever:

- a. Been employed by the Massachusetts Gaming Commission
- b. Possessed a gaming license (casino, video gaming, charitable games, lottery, pari-mutuel, sports wagering, etc.) issued by any jurisdiction – *if so, please provide a copy of each license*
- c. Held or holds a direct, indirect, or attributed interest in any business that intends to apply for a license with the Commonwealth
- d. Withdrawn a gaming license application, in any jurisdiction – *if so, please submit a detailed description of each withdrawal*
- e. Been denied a gaming-related license or finding of suitability, in any jurisdiction – *if so, submit a detailed statement describing the denial and/or related findings*
- f. Had a gaming license suspended, in any jurisdiction – *if so, include a detailed statement regarding each suspension*
- g. Had a gaming license revoked, in any jurisdiction, or has had disciplinary action initiated to revoke a license – *if so, submit a detailed description of each revocation or action initiated*
- h. Had a gaming license non-renewed or considered for non-renewal, in any jurisdiction – *if so, provide a detailed description of the circumstances*
- i. Been found unsuitable gaming license non-renewed or considered for non-renewal, in any jurisdiction – *if so, provide a detailed description of the circumstances*

Applicant: _____

SIGNATURE FORMS

Applicant: _____

VERIFICATION AND AUTHENTICATION

The applicant, _____, hereby authorizes the Commission, the Executive Director of the Commission, the Investigations and Enforcement Bureau, and/or their respective designees to take all necessary and reasonable steps to verify and authenticate any information or materials submitted in conjunction with this application and agrees to fully cooperate in such an inquiry. Further, the applicant is aware that if any of the responses to any question in this application are determined to be false, or if they are misleading, the application may be denied. The applicant acknowledges its continuing duty to provide updated information and/or promptly notify the Commission of any changes to the information or materials, of which it becomes aware or should be aware, that were provided in response to any question in this application.

Name of Authorized Individual

Signature of Authorized Individual

Position with Applicant

Date

Applicant: _____

ATTESTATION

I, _____, on behalf of _____ hereby swear or affirm under the pains and penalties of perjury that the information contained in this Application form and all materials accompanying said form are true and accurate to the best of my knowledge and understanding; that I have reviewed the information contained in the Application form for accuracy; that I read and understand the questions and responses on the Application form; that any document accompanying this Application that is not an original document is a true copy of the original document; that I have read and understood all applicable provisions of 205 CMR and G.L. c.23N; that the applicant agrees to all terms, conditions, and obligations made applicable to all applicants for a sports wagering operator license; that in the event that the applicant is awarded an operator license it agrees to all obligations, terms, and conditions imposed upon a successful applicant; and that I am authorized to submit this application on behalf of the applicant.

Name of Authorized Individual

Signature of Authorized Individual

Position with Applicant

Date

Applicant: _____

WAIVER OF LIABILITY

_____ hereby holds the Commonwealth of Massachusetts and its instrumentalities and agents, including but not limited to the Massachusetts Gaming Commission and its agents, representatives and employees harmless, both individually and collectively, from any and all claims of liability for damages of whatever kind, resulting at any time from any disclosure or publication of information acquired during the application process or the use of any information provided in furtherance of this application.

Name of Authorized Individual

Signature of Authorized Individual

Position with Applicant

Date

TO: Cathy Judd-Stein, Chair
Eileen O'Brien, Commissioner
Brad Hill, Commissioner
Nakisha Skinner, Commissioner
Jordan Maynard, Commissioner

FROM: Carrie Torrisi, Deputy General Counsel
Caitlin Monahan, Deputy General Counsel
Mina S. Makarious, Anderson & Krieger LLP
Paul Kominers, Anderson & Krieger, LLP

DATE: October 21, 2022

RE: Proposed 205 CMR 212, 214, 215, 219, 220 and 221 re Sports Wagering
Operator Licensing

Enclosed for the Commission's review is a proposed package of regulations regarding the Sports Wagering licensing process. These regulations supplement 205 CMR 218, previously presented to the Commission, which governed the form, submittal, and review of Sports Wagering applications. As with other regulations presented to the Commission, this set of regulations is largely based on the Commission's existing gaming regulations (205 CMR 112, 114, 115, 116, 117, 120 and 121). However, because the Commission is proceeding with a one-phase application process for Sports Wagering, as opposed to the two-phase gaming licensing process, the regulations are organized and titled somewhat differently. Also, there is no direct analogue in G.L. c. 23K for temporary licensing pursuant to G.L. c. 23N, § 6(c), which is addressed here in 205 CMR 219. These regulations were developed collaboratively by the Commission's finance and legal teams (along with outside counsel) and the IEB.

So far, the Commission has approved 205 CMR 202 (definitions), 211 (license applications), 234 (vendor licensing), and 244 (approval of equipment and testing laboratories), and will review 205 CMR 218 (operator licensing process) on October 20, 2022. These regulations supplement 205 CMR 218, rely on the definitions set out in 205 CMR 202, and in some respects mirror 205 CMR 234. After these regulations, the regulation to be presented is anticipated to be 205 CMR 251, which governs the issuance of operations certificates.

Each of the proposed regulations is described briefly below.

205 CMR 212: ADDITIONAL INFORMATION AND COOPERATION

This regulation, which tracks 205 CMR 112, requires all applicants for Sports Wagering licenses (as well as applicants for related licenses such as vendor licenses or occupational licenses) to cooperate with the Commission and its staff during license review, and after licensure.

Applicants and licensees are required to submit information requested by the Commission or its staff and to provide updates to the Commission regarding changed circumstances affecting suitability. Like 205 CMR 112 and consistent with G.L. c. 23N, 205 CMR 212 also provides that the Commission can discipline applicants and licensees that fail to meet these obligations.

205 CMR 214: SPORTS WAGERING APPLICATION FEES

This regulation describes the applications fee required under G.L. c. 23N, § 7(a). It also requires applicants to cover the Commission's full costs to review an application as provided under 205 CMR 114. Rather than establish a new schedule of investigative fees, 205 CMR 214 adopts the fees established pursuant to 205 CMR 114.04(3).

205 CMR 215: APPLICANT AND QUALIFIER SUITABILITY DETERMINATION, STANDARDS, AND PROCEDURES

This provision mirrors the RFA-1 suitability process under 205 CMR 115 to 117, with one important exception: like the vendor regulations approved at 205 CMR 234, the regulation contemplates a "preliminary finding of suitability" that (in combination with 205 CMR 218.07) permits an Applicant to seek a temporary license from the Commission in accordance with G.L. c. 23N, § 6(c). Such a preliminary finding can be made based on applicant and qualifier certifications made under the pains and penalties of perjury that the applicant and its qualifiers meet the suitability criteria for a license.

205 CMR 115 also provides the suitability criteria for licensure, including criteria and evidence that may be taken into consideration under 215.01(3) and mandatory bases for denial under 215.01(4).

A description of persons and entities required to be qualified, and the Bureau's and Commission's process for identifying and reviewing qualifiers, is laid out in 215.02. This section largely tracks 205 CMR 116, but was included in this section for simplicity. Reviews of qualification decisions made by the Bureau under 205 CMR 115.02 may be requested from the Commission.

205 CMR 219: TEMPORARY LICENSING PROCEDURES

This regulation establishes a procedure to issue temporary licenses that function as provisional licenses. It permits applicants already deemed suitable under 205 CMR 215 (either after a full review, or based on attestations) to request a temporary license from the Commission.

Temporary license requestors must pay the \$1,000,000 temporary license fee and have their

request reviewed by the Executive Director or their designee. The Executive Director then makes a recommendation to the Commission regarding the eligibility of the requestor for temporary licensing. The Commission will then deliberate on the temporary licensee's request at an open meeting.

Allowing applicants deemed suitable based on a full review to request temporary licenses gives the Commission the option (but does not require the Commission) to simplify certain operating requirements, such as occupational licensing, for temporary licensees.

205 CMR 220: SPORTS WAGERING LICENSE CONDITIONS

205 CMR 220 provides a set of high-level categories of conditions that may be placed on a licensee, including that the Sports Wagering Operator:

- comply with G.L. c. 23N and all applicable rules and regulations of the Commission;
- pay all amounts due to the Commission;
- maintain its suitability; and
- comply with its approved system of internal controls and house rules.

205 CMR 220.01(2) also permits the Commission to impose any other conditions it determines appropriate to secure the objectives of G.L. c. 23N and 205 CMR.

205 CMR 220.02 provides a separate condition applicable to temporary licensee: an expiration date of the temporary license of either the final conclusion of suitability review or one year, whichever is longer. However, a temporary license shall in any event expire within five years, consistent with the term of all operator licenses under G.L. c. 23N.

205 CMR 221: SPORTS WAGERING LICENSE FEES

This provision outlines the licensing fees paid by licensees pursuant to G.L. c. 23N, including:

- The \$1,000,000 initial licensing fee for temporary licensees, pursuant to G.L. c. 23N, § 6(c);
- The \$5,000,000 license fee for operator licenses (subject to a credit of \$1,000,000 for entities that paid the initial licensing fee for a temporary license);
- Annual assessments pursuant to M.G.L. c. 23N, § 15(c), to be determined by the Commission to cover costs of the Commission necessary to maintain control over Sports Wagering; and
- A \$1,000,000 annual fee for licensees other than Category 1 Licensees (who are exempt from payment pursuant to G.L. c. 23N, § 15(e)).

The remainder of this regulation provides the method for payment of fees and the Commission's establishment of a budget and reconciliation process for sports wagering.

205 CMR 212: ADDITIONAL INFORMATION AND COOPERATION

212.01 Additional Information and Cooperation

212.01 Additional Information and Cooperation

- (1) The Commission, the Bureau or their agents and employees may request additional information and documents from an Applicant for a Sports Wagering License including all qualifiers, employee license, vendor license or registration, or any other license or registration required in accordance with M.G.L. c. 23N or 205 CMR throughout the application review process. Failure by the Applicant to timely submit the additional information as requested by the Commission, the Bureau or their agents and employees may be grounds for denial of the application.
- (2) All Applicants, licensees, registrants and qualifiers under M.G.L. c. 23N and 205 CMR shall comply with all requests of the Commission, the Bureau and their agents and employees for information and documents as authorized by M.G.L. c. 23N and 205 CMR.
- (3) Applicants, licensees, registrants and qualifiers shall respond within ten days or within the time specified in an information request by the Commission, the Bureau and their agents and employees under 212.01(1) and 212.01(2) to said information request.
- (4) All Applicants, licensees, registrants and qualifiers under M.G.L. c. 23N shall have a continuing duty to provide all information and documents requested by the Commission, Bureau, and their agents and employees and to cooperate in any investigation or hearing conducted by the Commission, Bureau, and their agents and employees, as authorized by M.G.L. c. 23N.
- (5) Once issued a positive determination of suitability, all Sports Wagering Operators and qualifiers shall have a continuing duty to maintain suitability in accordance with 205 CMR 215.00. The Sports Wagering Operator and each qualifier shall have a continuing duty to notify and update the Bureau, in writing, within ten days of the occurrence, unless an alternative filing time is authorized by the executive director, or where applicable, gaining knowledge of the following:
 - (a) Any denial, suspension or revocation by a Governmental Authority in any jurisdiction of a Sports Wagering related license, registration, certification, permit or approval held by or applied for by the Sports Wagering Operator or qualifier;
 - (b) Any discipline, including a fine or warning, related to Sports Wagering imposed upon the Sports Wagering Operator or qualifier by any Governmental Authority in any jurisdiction;

- (c) Any fine related to Sports Wagering assessed on any Sports Wagering entity owned or operated by the parent to the Sports Wagering Operator by any Governmental Authority in any jurisdiction.
- (d) Any arrest, indictment, charge or criminal conviction of any qualifier in any jurisdiction;
- (e) Any complaints, allegations, or notice of investigation thereof made or known to be contemplated by a Governmental Authority against the Sports Wagering Operator, qualifier, or any Sports Wagering entity owned or operated by the parent to the Sports Wagering Operator, of which the Sports Wagering Operator or qualifier is or should reasonably be aware, involving conduct that if substantiated could reasonably lead to potential revocation or suspension of the license or approval held by the Sports Wagering Operator, qualifier, or Sports Wagering entity owned or operated by the parent to the Sports Wagering Operator, in that jurisdiction and/or imposition of a fine of \$50,000 or greater;
- (f) Any reports, complaints, allegations, or material legal proceedings made, commenced, or known to be contemplated by a Governmental Authority against the Sports Wagering Operator or qualifier, of which the Sports Wagering Operator or qualifier is or should reasonably be aware, involving conduct that if substantiated could reasonably lead to potential criminal charges including, but not limited to, allegations of theft or embezzlement;
- (g) Any information known or that should reasonably be known to the Sports Wagering Operator or qualifier, including by way of receipt of a subpoena, that the Sports Wagering Operator or qualifier is or may be the subject of a criminal investigation by a law enforcement or regulatory agency;
- (h) Any exclusion or barring of a qualifier from any casino, gaming establishment, or gambling/gaming related entity, or Sports Wagering or Sports Wagering facility in any jurisdiction;
- (i) The termination, suspension from employment, or other discipline of any qualifier or Sports Wagering employee licensed in accordance with 205 CMR;
- (j) Any material pending legal proceedings required to be reported in accordance with 17 CFR 229.103 - (Item 103) Legal proceedings: For purposes of 205 CMR 212.01(5)(j) the registrant referred to in 17 CFR 229.103 - (Item 103) shall be both the Sports Wagering Operator and the parent company of the Sports Wagering Operator as determined by the Bureau. Additionally, the Sports Wagering Operator and each qualifier shall provide notice of any pending legal proceeding which includes any allegation of fraudulent conduct by the Sports Wagering Operator or a

qualifier, that may reasonably threaten the economic viability of the Sports Wagering Operator or a qualifier, or that alleges a pattern of improper conduct by the Sports Wagering Operator or a qualifier over a sustained period of time;

- (k) Any significant financial event related to a Sports Wagering Operator or entity qualifier. For purposes of 205 CMR 212.01(5)(k), a significant financial event means a merger, acquisition, consolidation, debt restructuring, material change in debt rating by major credit rating agencies (US/International), legal entity change, material ownership change, the assessment of a fine or penalty of \$250,000 or greater by the SEC or international equivalent, restatement of previously issued financial statement(s), late filing of financial statement(s) with the SEC or international equivalent, US or international equivalent bankruptcy petition, default of financial debt covenants and receivership, disposal of a material business segment or asset, or adverse action(s) taken by the IRS;
 - (l) Issuance of an “Adverse” or “Qualified” audit opinion, or the international equivalent, by an independent accountant to the Sports Wagering Operator or qualifier;
 - (m) A change in accounting firm engaged to perform attestation and/or assurance services for the Sports Wagering Operator or qualifier; and
 - (n) Issuance of a delisting notice from a United States or international stock exchange relative to the Sports Wagering Operator or qualifier.
- (6) If the Commission determines that an Applicant, licensee, registrant, or qualifier has knowingly withheld information, knowingly failed to provide information or documents requested by the Commission, Bureau, or their agents and employees, knowingly provided materially false or misleading information to the Commission, the Bureau or their agents and employees, or knowingly failed to cooperate with any investigation or hearing conducted by the Commission, Bureau, or their agents and employees, the Commission may, with respect to such Person:
- (a) Find that Person ineligible to hold a license or registration or be qualified in connection with a license;
 - (b) Suspend the relevant license, registration or qualification; or
 - (c) Revoke the relevant license, registration or qualification.

205 CMR 214: SPORTS WAGERING APPLICATION FEES

- 214.01 Application Fees
- 214.02 Additional Fees for Investigations

214.01 Application Fees

- (1) Pursuant to M.G.L. c. 23N, § 7(a), each Applicant for a Sports Wagering Operator License shall pay to the Commission a nonrefundable application fee of \$200,000 to defray the costs associated with the processing of the application and investigation of the Applicant; provided, however, that if the costs of the investigation exceed the initial application fee, the Applicant shall pay the additional amount to the Commission within 30 days after notification of insufficient fees or the application shall be rejected.
- (2) The Applicant shall pay the initial non-refundable application fee of \$200,000 by certified check or secure electronic funds transfer made payable to the "Massachusetts Gaming Commission." The Applicant shall submit this initial non-refundable application fee with or before its initial application.
- (3) All required application fees and community disbursements pursuant to 205 CMR 214.00 shall be non-refundable, due and payable notwithstanding the withdrawal or abandonment of any application.
- (4) In connection with an application for a Sports Wagering Operator License, the Applicant and its Affiliates shall be jointly and severally liable for any amounts chargeable to the Applicant pursuant to 205 CMR 214.00.
- (5) All fees in this section 205 CMR 214.00 shall be deposited into the Sports Wagering Control Fund established in M.G.L. c. 23N, § 15.

214.02 Additional Fees for Investigations

- (6) Pursuant to 205 CMR 214.00, the Applicant shall be responsible for paying to the Commission all costs incurred by the Commission, directly or indirectly, for conducting any investigation into an Applicant. As required by the procedure established pursuant to 205 CMR 114.04(5), the Applicant shall pay to or reimburse the Commission for all such investigation costs that exceed the initial application fee.
- (7) For purposes of 205 CMR 214.00, the costs for conducting any investigation into an Applicant shall include, without limitation:
 - (a) All costs for conducting an investigation into an Applicant and its qualifiers, the Applicant's Affiliates and Close Associates, and any other person subject to the jurisdiction of the Commission under M.G.L. c. 23N relating to the application in question; and

- (b) All fees for services, disbursements, out of pocket costs, allocated overhead, processing charges, administrative expenses, professional fees, and other costs directly or indirectly incurred by the Commission, including without limitation all such amounts incurred by the Commission to and through the Bureau, the Division, the Gaming Enforcement Unit, the Gaming Liquor Enforcement Unit, and any contract investigator.
- (8) The Commission in its discretion shall establish, and, post on its website, a schedule of hourly fees, wages, applicable fringe benefits, payroll taxes, overhead rates and other charges to be assessed by the Commission to Applicants for in-house personnel, services and work of the Commission, the Bureau, the Division, the Gaming Enforcement Unit, and the Gaming Liquor Enforcement Unit for conducting investigations into an Applicant pursuant to 205 CMR 214.00.
- (9) The Commission shall assess to the Applicant all other costs paid by or for the Commission, directly or indirectly, to any other Person for conducting an investigation into an Applicant plus an appropriate percent for overhead, processing and administrative expenses.

205 CMR 215: APPLICANT AND QUALIFIER SUITABILITY DETERMINATION, STANDARDS, AND PROCEDURES

215.01 Affirmative Suitability Standards for Applicants and Qualifiers
 215.02 Persons required to be qualified.

215.01 Affirmative Suitability Standards for Applicants and Qualifiers

- (1) Durable finding of suitability.
 - (a) An Applicant or Qualifier shall have the duty to establish its suitability by clear and convincing evidence.
 - (b) No Applicant shall be determined to be suitable in accordance with this 205 CMR 215.01(1) unless and until all Qualifiers identified in 205 CMR 215.02 have been found by the Commission suitable in accordance with this 205 CMR 215.01(1).
 - (c) Before the Commission may determine that an Applicant or Qualifier is suitable in accordance with this 205 CMR 215.01(1), the Bureau shall conduct an investigation into the qualifications and suitability of the Applicant or Qualifier, consistent with 205 CMR 115.03(1). At the completion of the Bureau's investigation, it shall submit a written report to the Commission, which will include recommendations and findings of fact relative to the suitability of the Applicant or Qualifier for a Sports Wagering License.
- (2) Preliminary finding of suitability. Notwithstanding any other provision of 205 CMR 215.00, the Commission, in its sole discretion, may determine in accordance with 205 CMR 215.01(5) that an Applicant or Qualifier is suitable in accordance with this 205 CMR 215.01(2) if the Applicant or Qualifier certifies:
 - (a) that it understands it may be denied a Sports Wagering License or have a Sports Wagering License revoked if it has willfully, knowingly, recklessly, or intentionally provided false or misleading information to the Commission;
 - (b) that, under pains and penalties of perjury, to the best of its reasonable knowledge and belief, it is suitable to hold a license pursuant to M.G.L c. 23N, §§ 5, 6, and 9(a), and 205 CMR 215.01(3)-(4); and
 - (c) (for an Applicant): the Applicant certifies, under pains and penalties of perjury, that to the best of its reasonable knowledge and belief, all of its Qualifiers are also suitable to hold a license pursuant to M.G.L c. 23N, §§ 5, 6, and 9(a), and 205 CMR 215.01(3)-(4).
- (3) In determining whether an Applicant or Qualifier is suitable, the Commission shall evaluate and consider the overall reputation of the Applicant and its

Qualifiers, if any, including, without limitation, and on the basis of a report from the Bureau, sworn attestations, or other information or evidence available to the Commission:

- (a) the integrity, honesty, good character and reputation of the Applicant and its Qualifiers;
 - (b) the financial stability, integrity, and background of the Applicant and its Qualifiers;
 - (c) whether the Applicant and its Qualifiers have a history of compliance with gaming and Sports Wagering licensing requirements in other jurisdictions;
 - (d) whether the Applicant or any Qualifier, at the time of the request, is a defendant in litigation;
 - (e) whether the Applicant or any Qualifier is ineligible to hold a license under 205 CMR 215.01(4) and M.G.L. c. 23N, § 9(a);
 - (f) whether the Applicant or any Qualifier has been convicted of a crime of moral turpitude;
 - (g) whether, and to what extent, the Applicant or any Qualifier has associated with members of organized crime and other Persons of disreputable character; and
 - (h) the extent to which the Applicant and its Qualifiers have cooperated with the Bureau during the review of the Sports Wagering License Application.
- (4) The Commission shall determine that an Applicant is unsuitable if the Applicant or one of its Qualifiers:
- (a) has knowingly made a false statement of a material fact to the Commission;
 - (b) has had a license revoked by any Governmental Authority responsible for regulation of gaming or Sports Wagering activities;
 - (c) has been convicted of a felony or other crime involving embezzlement, theft, fraud, perjury or a gambling-related offense;
 - (d) has not demonstrated to the satisfaction of the Commission financial responsibility sufficient to adequately meet the requirements of the proposed enterprise;
 - (e) has Affiliates or Close Associates that would not qualify for a Sports Wagering License or whose relationship with the Applicant may pose an injurious threat to the interests of the Commonwealth.

- (5) Determinations of suitability, and further Commission review thereof shall be made in a manner consistent with 205 CMR 115.04 and 205 CMR 115.05.

215.02 Persons Required to be Qualified.

- (1) The following Persons shall be required to qualify as part of the Sports Wagering License review:
 - (a) If the Applicant is a corporation:
 - (i) Each officer;
 - (ii) Each inside director;
 - (iii) Any Person owning 10% or more of the common stock of the Applicant, or a holding, intermediary or subsidiary company of such company and who has the ability to control the activities of the Applicant; and
 - (iv) In the judgment of the Division of Licensing after consultation with the Bureau, any Person with significant and substantial responsibility for the Applicant's Business under the jurisdiction of the Commission or having the power to exercise significant influence over decisions concerning the Applicant's operations in the Commonwealth.
 - (b) If the Applicant is a limited liability corporation:
 - (i) Each member;
 - (ii) Each transferee of a member's interest;
 - (iii) Each manager; and
 - (iv) In the judgment of the Division of Licensing after consultation with the Bureau, any Person with significant and substantial responsibility for the Applicant's Business under the jurisdiction of the Commission or having the power to exercise significant influence over decisions concerning the prospective Applicant's operations in the Commonwealth.
 - (c) If the Applicant is a partnership:
 - (i) Each partner; and
 - (ii) In the judgment of the Division of Licensing after consultation with the Bureau, any Person with significant and substantial responsibility for the Applicant's Business under the jurisdiction of

the Commission or having the power to exercise significant influence over decisions concerning the Applicant's Operations in the Commonwealth.

- (2) Other Qualifiers. The Commission may, in its sole discretion, require other Persons that have a Business association of any kind with the Applicant to undergo a Qualifier review and determination process. These Persons may include, but are not limited to, holding, intermediary or subsidiary companies of the requestor.
- (3) Waivers. In addition to any other exception or exemption under 205 CMR 215.00, upon written petition, the Commission may waive the requirement to be qualified as a Qualifier under this Section 205 CMR 215 for:
 - (a) Institutional investors holding up to 15% of the stock of the Applicant, or holding, intermediary or subsidiary company thereof, upon a showing by the Person seeking the waiver that it purchased the securities for investment purposes only and does not have any intention to influence or affect the affairs or operations of the Applicant or holding, intermediary or subsidiary company thereof. Provided, however, any institutional investor granted a waiver which subsequently determines to influence or affect the affairs or operations of the Applicant, or a holding, intermediary or subsidiary company thereof shall provide not less than 30 days' notice to the Commission of such intent and shall file an application and may be subject to the licensing requirements of 205 CMR 210.00 through 218.00 before taking any action that may influence or affect the affairs of the Applicant or a holding, intermediary or subsidiary company; or
 - (b) Any Person who, in the opinion of the Bureau or the Commission, cannot exercise control or provide direction to an Applicant or a holding, intermediary or subsidiary company thereof.
 - (c) Any Person previously qualified pursuant to M.G.L. c. 23K or 205 CMR 116.00.
- (4) Qualification of New Qualifiers.
 - (a) No Person requiring qualification pursuant to 205 CMR 215.02(1)-(2) may perform any duties or exercise any powers relating to the position that said Qualifier is seeking to assume for a Sports Wagering Operator unless the Person notifies the Bureau in writing within 30 days of appointment to the position. Such notification shall be accompanied by the applicable Business entity or personal disclosure form specified by the Bureau. Following such notification and submission of the completed form, the Person may continue to perform duties and exercise powers relating to the position pending qualification.

- (b) A Person with reason to believe that his or her new position with a Sports Wagering Operator may require qualification pursuant to 205 CMR 215.02(1)-(2) shall notify the Bureau in writing within 30 days of appointment to the position. Such notification shall be accompanied by a summary of the responsibilities and/or features of the position. The Bureau shall determine whether the Person shall be designated a Qualifier pursuant to 205 CMR 215.02(1)-(2) and shall notify the Person of such designation in writing. Within 30 days of designation as a Qualifier, the Person shall submit a completed personal disclosure form. Following submission of the completed form, the Person may continue to perform duties and exercise powers relating to the position pending qualification.
- (c) The Bureau shall review the forms submitted by the new Qualifier, as well as such other information that the Bureau may request, and, upon completion of its investigation, shall make a recommendation in accordance with 205 CMR 215.01(1)(c) whether the new Qualifier meets the standards for suitability.
- (d) Upon notification by the Bureau of a determination that reasonable cause exists to believe the Qualifier may not ultimately be found suitable, an Applicant shall promptly remove the Qualifier from his or her position until such time as the Commission makes its final determination on suitability.
- (5) Internal Review of Determinations. An Applicant may ask for review of any determination made by the Bureau in accordance with 205 CMR 215.02(1)-(4) to the Commission, by filing a petition on a form prescribed by the Commission. The Commission shall decide the question at a public meeting on the matter at which it may allow representatives of the petitioner and Bureau to testify.

205 CMR 215: APPLICANT AND QUALIFIER SUITABILITY DETERMINATION, STANDARDS, AND PROCEDURES

215.01 Affirmative Suitability Standards for Applicants and Qualifiers
 215.02 Persons required to be qualified.

215.01 Affirmative Suitability Standards for Applicants and Qualifiers

(1) Durable finding of suitability.

- (a) An Applicant or Qualifier shall have the duty to establish its suitability by clear and convincing evidence.
- (b) No Applicant shall be determined to be suitable in accordance with this 205 CMR 215.01(1) unless and until all Qualifiers identified in 205 CMR 215.02 have been found by the Commission suitable in accordance with this 205 CMR 215.01(1).
- (c) Before the Commission may determine that an Applicant or Qualifier is suitable in accordance with this 205 CMR 215.01(1), the Bureau shall conduct an investigation into the qualifications and suitability of the Applicant or Qualifier, consistent with 205 CMR 115.03(1). At the completion of the Bureau's investigation, it shall submit a written report to the Commission, which will include recommendations and findings of fact relative to the suitability of the Applicant or Qualifier for a Sports ~~Watering~~Wagering License.

(2) Preliminary finding of suitability. Notwithstanding any other provision of 205 CMR 215.00, the Commission, in its sole discretion, may determine in accordance with 205 CMR 215.01(5) that an Applicant or Qualifier is suitable in accordance with this 205 CMR 215.01(2) ~~if the Applicant or Qualifier certifies based on a certification pursuant to 205 CMR 215.01(2)(a) and an investigatory report pursuant to 205 CMR 215.01(2)(b).~~

(a) To be found suitable in accordance with 205 CMR 215.01(2), the Applicant or Qualifier must certify:

- ~~(a)(i)~~ that it understands it may be denied a Sports Wagering License or have a Sports Wagering License revoked if it has willfully, knowingly, recklessly, or intentionally provided false or misleading information to the Commission;
- ~~(b)(ii)~~ that, under pains and penalties of perjury, to the best of its reasonable knowledge and belief, it is suitable to hold a license pursuant to M.G.L c. 23N, §§ 5, 6, and 9(a), and 205 CMR 215.01(3)-(4); and

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~~(e)(iii)~~ (for an Applicant): the Applicant certifies, under pains and penalties of perjury, that to the best of its reasonable knowledge and belief, all of its Qualifiers are also suitable to hold a license pursuant to M.G.L c. 23N, §§ 5, 6, and 9(a), and 205 CMR 215.01(3)-(4).

(b) Before the Commission may determine that an Applicant or Qualifier is suitable in accordance with this 205 CMR 215.01(2), the Bureau shall conduct an investigation into the qualifications and suitability of the Applicant or Qualifier. The investigation may be limited to a review of the Applicant or Qualifier's 205 CMR 215.01(2)(a) certification; an Applicant's self-disclosed licensing and compliance history in other jurisdictions; self-disclosed open litigation involving an Applicant; and an open-source check concerning the Applicant or, if a natural person, a Qualifier. At the completion of the Bureau's investigation, it shall submit a written report to the Commission, which will include recommendations and findings of fact relative to the suitability of the Applicant or Qualifier for a Sports Wagering License.

- (3) In determining whether an Applicant or Qualifier is suitable, the Commission shall evaluate and consider the overall reputation of the Applicant and its Qualifiers, if any, including, without limitation, and on the basis of a report from the Bureau, sworn attestations, or other information or evidence available to the Commission:
- (a) the integrity, honesty, good character and reputation of the Applicant and its Qualifiers;
 - (b) the financial stability, integrity, and background of the Applicant and its Qualifiers;
 - (c) whether the Applicant and its Qualifiers have a history of compliance with gaming and Sports Wagering licensing requirements in other jurisdictions;
 - (d) whether the Applicant or any Qualifier, at the time of the request, is a defendant in litigation;
 - (e) whether the Applicant or any Qualifier is ineligible to hold a license under 205 CMR 215.01(4) and M.G.L. c. 23N, § 9(a);
 - (f) whether the Applicant or any Qualifier has been convicted of a crime of moral turpitude;
 - (g) whether, and to what extent, the Applicant or any Qualifier has associated with members of organized crime and other Persons of disreputable character; and

- (h) the extent to which the Applicant and its Qualifiers have cooperated with the Bureau during the review of the Sports Wagering License Application.
- (4) The Commission shall determine that an Applicant is unsuitable if the Applicant or one of its Qualifiers:
 - (a) has knowingly made a false statement of a material fact to the Commission;
 - (b) has had a license revoked by any Governmental Authority responsible for regulation of gaming or Sports Wagering activities;
 - (c) has been convicted of a felony or other crime involving embezzlement, theft, fraud, perjury or a gambling-related offense;
 - (d) has not demonstrated to the satisfaction of the Commission financial responsibility sufficient to adequately meet the requirements of the proposed enterprise;
 - (e) has Affiliates or Close Associates that would not qualify for a Sports Wagering License or whose relationship with the Applicant may pose an injurious threat to the interests of the Commonwealth.
- (5) Determinations of suitability, and further Commission review thereof shall be made in a manner consistent with 205 CMR 115.04 and 205 CMR 115.05.

215.02 Persons Required to be Qualified.

- (1) The following Persons shall be required to qualify as part of the Sports Wagering License review:
 - (a) If the Applicant is a corporation:
 - (i) Each officer;
 - (ii) Each inside director;
 - (iii) Any Person owning, or having another beneficial or proprietary interest in, 10% or more of the common stock of the Applicant, or a holding, intermediary or subsidiary company of such company and who has the ability to control the activities of the Applicant; and
 - (iv) In the judgment of the Division of Licensing after consultation with the Bureau, any Person with significant and substantial responsibility for the Applicant's Business under the jurisdiction of the Commission or having the power to exercise significant

influence over decisions concerning the Applicant's operations in the Commonwealth.

(b) If the Applicant is a limited liability corporation:

(i) Each member;

(ii) Each transferee of a member's interest;

(iii) Any other holder of a beneficial or proprietary interest of 10% or more in the Applicant;

~~(iii)~~(iv) Each manager; and

~~(iv)~~(v) In the judgment of the Division of Licensing after consultation with the Bureau, any Person with significant and substantial responsibility for the Applicant's Business under the jurisdiction of the Commission or having the power to exercise significant influence over decisions concerning the prospective Applicant's operations in the Commonwealth.

(c) If the Applicant is a partnership:

(i) Each partner; ~~and~~

~~(i)~~(ii) Any other holder of a beneficial or proprietary interest of 10% or more in the Applicant; and

~~(ii)~~(iii) In the judgment of the Division of Licensing after consultation with the Bureau, any Person with significant and substantial responsibility for the Applicant's Business under the jurisdiction of the Commission or having the power to exercise significant influence over decisions concerning the Applicant's Operations in the Commonwealth.

(2) Other Qualifiers. The Commission may, in its sole discretion, require other Persons that have a Business association of any kind with the Applicant to undergo a Qualifier review and determination process. These Persons may include, but are not limited to, holding, intermediary or subsidiary companies of the requestor.

(3) Waivers. In addition to any other exception or exemption under 205 CMR 215.00, upon written petition, the Commission may waive the requirement to be qualified as a Qualifier under this Section 205 CMR 215 for:

(a) Institutional investors holding up to 15% of the stock of the Applicant, or holding, intermediary or subsidiary company thereof, upon a showing by the Person seeking the waiver that it purchased the securities for

investment purposes only and does not have any intention to influence or affect the affairs or operations of the Applicant or holding, intermediary or subsidiary company thereof. Provided, however, any institutional investor granted a waiver which subsequently determines to influence or affect the affairs or operations of the Applicant, or a holding, intermediary or subsidiary company thereof shall provide not less than 30 days' notice to the Commission of such intent and shall file an application and may be subject to the licensing requirements of 205 CMR 210.00 through 218.00 before taking any action that may influence or affect the affairs of the Applicant or a holding, intermediary or subsidiary company; or

- (b) Any Person who, in the opinion of the Bureau or the Commission, cannot exercise control or provide direction to an Applicant or a holding, intermediary or subsidiary company thereof.
- (c) Any Person previously qualified pursuant to M.G.L. c. 23K or 205 CMR 116.00.

(4) Qualification of New Qualifiers.

- (a) No Person requiring qualification pursuant to 205 CMR 215.02(1)-(2) may perform any duties or exercise any powers relating to the position that said Qualifier is seeking to assume for a Sports Wagering Operator unless the Person notifies the Bureau in writing within 30 days of appointment to the position. Such notification shall be accompanied by the applicable Business entity or personal disclosure form specified by the Bureau. Following such notification and submission of the completed form, the Person may continue to perform duties and exercise powers relating to the position pending qualification.
- (b) A Person with reason to believe that his or her new position with a Sports Wagering Operator may require qualification pursuant to 205 CMR 215.02(1)-(2) shall notify the Bureau in writing within 30 days of appointment to the position. Such notification shall be accompanied by a summary of the responsibilities and/or features of the position. The Bureau shall determine whether the Person shall be designated a Qualifier pursuant to 205 CMR 215.02(1)-(2) and shall notify the Person of such designation in writing. Within 30 days of designation as a Qualifier, the Person shall submit a completed personal disclosure form. Following submission of the completed form, the Person may continue to perform duties and exercise powers relating to the position pending qualification.
- (c) The Bureau shall review the forms submitted by the new Qualifier, as well as such other information that the Bureau may request, and, upon completion of its investigation, shall make a recommendation in accordance with 205 CMR 215.01(1)(c) whether the new Qualifier meets the standards for suitability.

- (d) Upon notification by the Bureau of a determination that reasonable cause exists to believe the Qualifier may not ultimately be found suitable, an Applicant shall promptly remove the Qualifier from his or her position until such time as the Commission makes its final determination on suitability.
- (5) Internal Review of Determinations. An Applicant may ask for review of any determination made by the Bureau in accordance with either 205 CMR 215.02(1)-(3) or 205 CMR 215.02(4)(b) to the Commission, by filing a petition on a form prescribed by the Commission. The Commission shall decide the question at a public meeting on the matter at which it may allow representatives of the petitioner and Bureau to testify.

205 CMR 219: TEMPORARY LICENSING PROCEDURES

219.01 Eligibility to Request a Temporary License

219.02 Temporary License Request Process

219.01 Eligibility to Request a Temporary License

- (1) A Person shall be eligible to request a Temporary License if:
 - (a) The Commission deems it eligible in accordance with 205 CMR 218.07(1)(a); or
 - (b) The Commission awards it a Sports Wagering License in accordance with 205 CMR 218.07(1)(b).

219.02 Temporary License Request Process

- (1) Any Person who is eligible to request a Temporary License may submit a request for a Temporary License to the Executive Director on a form to be approved by the Commission. Such request shall be accompanied by an initial licensing fee of \$1,000,000 payable to the Commission.
- (2) Upon receiving a request for a Temporary License, the Executive Director or their designee shall within fourteen days determine whether the requestor is eligible to request a Temporary License and has paid the initial licensing fee as described in 205 CMR 219.02, and make a written recommendation to the Commission as follows:
 - (a) If the Executive Director determines that the requestor is eligible and has paid the initial licensing fee, they shall recommend to the Commission that the Commission issue the requested Temporary License.
 - (b) If the Executive Director determines that the requestor is not eligible or has not paid the initial licensing fee, they shall recommend to the Commission that the Commission deny the requested Temporary License.
- (3) Upon receiving a recommendation from the Executive Director in accordance with 205 CMR 219.02(2), the Commission shall, at an open public meeting held within fourteen days, either issue or deny the requested Temporary License.
 - (a) The Commission shall send written notice of the public meeting to the requestor at least seven days in advance of the meeting.
 - (b) The chair or their designee shall preside over the public meeting, and may in their discretion allow comment or presentations from representatives of the requestor or from the public.

- (4) Any Temporary License shall be subject to conditions in accordance with M.G.L. c. 23N and 205 CMR 220.

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SPORTS WAGERING: License Conditions

- 220.01 Conditions on All Licenses
- 220.02 Conditions on Temporary Licenses

220.01 Conditions on All Licenses

- (1) All Sports Wagering Licenses shall be issued subject to the following conditions:
 - (a) That the Operator comply with all terms and conditions of its license and operations certificate;
 - (b) That the Operator comply with G.L. c. 23N and all rules and regulations of the Commission;
 - (c) That the Operator make all required payments to the Commission in a timely manner;
 - (d) That the Operator maintain its suitability to hold a sports wagering license; and
 - (e) That the Operator conduct sports wagering in accordance with its approved system of internal controls, consistent with 205 CMR, and in accordance with its approved house rules, in accordance with G.L. c. 23N, § 10(a) and consistent with 205 CMR.
- (2) The Commission may impose any other conditions on particular licenses that it determines are appropriate to secure the objectives of G.L. c. 23N and 205 CMR.

220.02 Conditions on Temporary Licenses

In addition to the conditions set out in 205 CMR 220.01, all Temporary Licenses shall be issued subject to the condition that the Temporary License shall expire after the Commission makes a supplemental determination of suitability in accordance with 205 CMR 218.06(7), or one year, whichever is longer; provided, that the Temporary License shall expire after five years if the Commission has not made a supplemental determination of suitability in that time.

205 CMR 221: SPORTS WAGERING LICENSE FEES

- 221.01 Licensing and Assessment Fees
- 221.02 Payment of Fees
- 221.03 Annual Reconciliation of Commission Budget

221.01 Licensing and Assessment Fees

- (1) Upon submission of a request for a Temporary License pursuant to 205 CMR 219.00, the requestor shall pay an initial non-refundable license fee of \$1,000,000 to the Commission.
- (2) Within 30 days after the award of a Sports Wagering Operator License by the Commission, the Operator shall pay a license fee of \$5,000,000 to the Commission; provided, however, that any \$1,000,000 fee paid to the Commission because the Operator previously received a Temporary License shall be credited against that \$5,000,000. As a pre-condition of any award, the Commission may provide that such license fees be paid on an installment basis before the award is made and the license issued.
- (3) The following additional fees are due and payable to the Commission for each Sports Wagering Operator:
 - (a) An Annual Assessment as provided by M.G.L. c. 23N, § 15(c), to be determined by the Commission and calculated in accordance with M.G.L. c. 23N, § 15(c) to cover costs of the Commission necessary to maintain control over Sports Wagering, in proportion to each licensee's actual or projected Adjusted Gross Sports Wagering receipts; provided, however, that such assessment may be adjusted by the Commission at any time after payment is made where required to reflect the actual Adjusted Gross Sports Wagering Receipts, and accordingly, the payment of additional funds may be required or a credit may be issued towards the payment due the following year;
 - (b) An annual fee, as provided by M.G.L. c. 23N, § 15(e) reflecting each Operator that is not a Category 1 Sports Wagering Licensee's share of \$1,000,000 to be deposited into the Public Health Trust Fund; provided, however, that the Commission shall determine each Operator's share as their proportional share of anticipated or actual Adjusted Gross Sports Wagering Receipts; provided further, however, that such assessment may be adjusted by the Commission at any time after payment is made where required to reflect the actual adjusted gross sports wagering revenue; and
 - (c) any other such license fees required under M.G.L. c. 23N and required to be assessed by the Commission.

221.02 Payment of Fees

- (4) Except in the case of an assessment for fiscal years 2023 and 2024 the Annual Assessment due under 205 CMR 221.01(3)(a) shall be assessed on or about 30 days prior to the start of the Commission fiscal year. The Annual Assessment for each Operator shall be the difference between the Commission's projected costs to regulate Sports Wagering minus any other revenues anticipated to be received by the Commission related to Sports Wagering and assessed as provided in 205 CMR 221.01(3)(b). The Commission may assess the Annual Assessment on a *pro rata* basis commencing in fiscal year 2023 and will make such assessment each fiscal year thereafter. The Commission, in its sole discretion, may allow the Annual Assessment to be paid in one or more installments during the fiscal year.
- (5) All license fees and assessments due to the Commission shall be due and payable within 30 days of receipt of an invoice from the Commission.
- (6) All license fees and assessments shall be submitted in the form of a certified check or secure electronic funds transfer payable to the "Massachusetts Gaming Commission."
- (7) In the event that a licensee fails to pay any fees or assessments as provided in 205 CMR 221.01, the Commission may take any remedial action it deems necessary up to and including revocation of the Sports Wagering Operator License.

221.03 Commission Budget and Reconciliation

- (8) The Commission shall establish a budget for Sports Wagering in the course of establishing its overall budget pursuant to 205 CMR 121.03 and 121.04.
- (9) If at any time during the fiscal year the Commission determines that actual costs associated with Sports Wagering will exceed the projected costs and projected revenue associated with Sports Wagering in the budget the Commission will revise the Annual Assessment assessed to Operator and invoice each Operator for its proportional share of such costs.
- (10) Within 90 days of the close of each fiscal year the Commission will reconcile its actual costs to actual revenues. In no case will the Commission end a fiscal year on a negative basis. No commitment or expense shall cause the Sports Wagering Control Fund to end the fiscal year with a negative cash balance.
- (11) In the event that actual revenues exceed actual costs for a given fiscal year, the Commission in its sole discretion shall credit such Excess Assessment to the Annual Assessment due for the next fiscal year.
- (12) In the event that actual revenues associated with Sports Wagering are less than actual costs associated with Sports Wagering for a given fiscal year, the Commission will assess each Operator for its share of the excess costs (Excess Cost Assessment) in the same manner in which the Commission assessed the

Annual Assessment. Such Excess Cost Assessment shall be due and payable as part of the Annual Assessment due for the next fiscal year.

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SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Small Business Impact Statement in accordance with G.L. c. 30A, §2 relative to the proposed adoption of **205 CMR 212 ADDITIONAL INFORMATION AND COOPERATION**.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §4.

The adoption of 205 CMR 212 applies to potential sports wagering operators and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses. Under G.L. c.30A, §2, the Commission offers the following responses to the statutory questions:

1. Estimate of the number of small businesses subject to the proposed regulation:

This regulation is unlikely to have an impact on small businesses.

2. State the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation:

There are no projected reporting, recordkeeping, or other administrative costs required for small businesses to comply with this regulation.

3. State the appropriateness of performance standards versus design standards:

No standards applicable to small businesses are set forth.

4. Identify regulations of the promulgating agency, or of another agency or department of the Commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

Sports wagering is a new industry in the Commonwealth and these regulations are intended to encourage it, not deter it.

Massachusetts Gaming Commission
By:

/s/ Carrie Torrissi
Carrie Torrissi, Deputy General Counsel

Dated: October 21, 2022

DRAFT

SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Small Business Impact Statement in accordance with G.L. c. 30A, §2 relative to the proposed adoption of **205 CMR 214 SPORTS WAGERING APPLICATION FEES**.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §4.

The adoption of 205 CMR 214 applies to potential sports wagering operators and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses. Under G.L. c.30A, §2, the Commission offers the following responses to the statutory questions:

1. Estimate of the number of small businesses subject to the proposed regulation:

This regulation is unlikely to have an impact on small businesses.

2. State the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation:

There are no projected reporting, recordkeeping, or other administrative costs required for small businesses to comply with this regulation.

3. State the appropriateness of performance standards versus design standards:

No standards applicable to small businesses are set forth.

4. Identify regulations of the promulgating agency, or of another agency or department of the Commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

Sports wagering is a new industry in the Commonwealth and these regulations are intended to encourage it, not deter it.

Massachusetts Gaming Commission
By:

/s/ Carrie Torrissi
Carrie Torrissi, Deputy General Counsel

Dated: October 21, 2022

DRAFT

SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Small Business Impact Statement in accordance with G.L. c. 30A, §2 relative to the proposed adoption of **205 CMR 215 APPLICANT AND QUALIFIER SUITABILITY**.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §4.

The adoption of 205 CMR 215 applies to potential sports wagering operators and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses. Under G.L. c.30A, §2, the Commission offers the following responses to the statutory questions:

1. Estimate of the number of small businesses subject to the proposed regulation:

This regulation is unlikely to have an impact on small businesses.

2. State the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation:

There are no projected reporting, recordkeeping, or other administrative costs required for small businesses to comply with this regulation.

3. State the appropriateness of performance standards versus design standards:

This regulation expects the Commission to make context-sensitive determinations as to the suitability of licensees and applicants.

4. Identify regulations of the promulgating agency, or of another agency or department of the Commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

Sports wagering is a new industry in the Commonwealth and these regulations are intended to encourage it, not deter it.

Massachusetts Gaming Commission
By:

/s/ Carrie Torrissi
Carrie Torrissi, Deputy General Counsel

Dated: October 21, 2022

DRAFT

SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Small Business Impact Statement in accordance with G.L. c. 30A, §2 relative to the proposed adoption of **205 CMR 219 TEMPORARY LICENSING PROCEDURES**.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §4.

The adoption of 205 CMR 219 applies to potential sports wagering operators and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses. Under G.L. c.30A, §2, the Commission offers the following responses to the statutory questions:

1. Estimate of the number of small businesses subject to the proposed regulation:

This regulation is unlikely to have an impact on small businesses.

2. State the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation:

There are no projected reporting, recordkeeping, or other administrative costs required for small businesses to comply with this regulation.

3. State the appropriateness of performance standards versus design standards:

No standards are set forth in this regulation.

4. Identify regulations of the promulgating agency, or of another agency or department of the Commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

Sports wagering is a new industry in the Commonwealth and these regulations are intended to encourage it, not deter it.

Massachusetts Gaming Commission
By:

/s/ Carrie Torrissi
Carrie Torrissi, Deputy General Counsel

Dated: October 21, 2022

DRAFT

SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Small Business Impact Statement in accordance with G.L. c. 30A, §2 relative to the proposed adoption of **205 CMR 220 LICENSE CONDITIONS**.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §4.

The adoption of 205 CMR 220 applies to potential sports wagering operators and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses. Under G.L. c.30A, §2, the Commission offers the following responses to the statutory questions:

1. Estimate of the number of small businesses subject to the proposed regulation:

This regulation is unlikely to have an impact on small businesses.

2. State the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation:

There are no projected reporting, recordkeeping, or other administrative costs required for small businesses to comply with this regulation.

3. State the appropriateness of performance standards versus design standards:

No standards are set forth in this regulation.

4. Identify regulations of the promulgating agency, or of another agency or department of the Commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

Sports wagering is a new industry in the Commonwealth and these regulations are intended to encourage it, not deter it.

Massachusetts Gaming Commission
By:

/s/ Carrie Torrissi
Carrie Torrissi, Deputy General Counsel

Dated: October 21, 2022

DRAFT

SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Small Business Impact Statement in accordance with G.L. c. 30A, §2 relative to the proposed adoption of **205 CMR 221 SPORTS WAGERING LICENSE FEES**.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §4.

The adoption of 205 CMR 221 applies to potential sports wagering operators and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses. Under G.L. c.30A, §2, the Commission offers the following responses to the statutory questions:

1. Estimate of the number of small businesses subject to the proposed regulation:

This regulation is unlikely to have an impact on small businesses.

2. State the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation:

There are no projected reporting, recordkeeping, or other administrative costs required for small businesses to comply with this regulation.

3. State the appropriateness of performance standards versus design standards:

No standards are set forth in this regulation.

4. Identify regulations of the promulgating agency, or of another agency or department of the Commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

Sports wagering is a new industry in the Commonwealth and these regulations are intended to encourage it, not deter it.

Massachusetts Gaming Commission
By:

/s/ Carrie Torrissi
Carrie Torrissi, Deputy General Counsel

Dated: October 21, 2022

DRAFT

205 CMR 218: GENERAL SPORTS WAGERING APPLICATION REQUIREMENTS, STANDARDS, AND PROCEDURES

- 218.01 Pre-application Consultation
- 218.02 Application Requirements
- 218.03 Administrative Completeness Review
- 218.04 Review Procedures
- 218.05 Public Meetings Regarding Sports Wagering Applications
- 218.06 Evaluation of the Application by the Commission
- 218.07 Sports Wagering License Determinations
- 218.08 Provisions Applicable to All Sports Wagering Licensing Determinations

218.01 Pre-application Consultation

The Commission or its designees may conduct one or more consultation meetings or information sessions with Sports Wagering License Applicants to provide guidance on application procedures, including the requirements of this 205 CMR 218.00. In addition, the Commission may use other methods to respond to inquiries regarding the application process, such as publishing responses to questions submitted by Applicants.

218.02 Application Requirements

- (1) A Sports Wagering License Application must be filed on or before any applicable deadline established by the Commission, if any, and pursuant to any instructions and process posted by the Commission on its website or in the application.
 - (a) For any application submitted after a given deadline has passed, the Commission may decline to take any action or particular actions on that application until it has made determinations in accordance with 205 CMR 218.07 on all applications of the same category received by the prior deadline.
 - (b) The Commission may establish different deadlines for applications for different categories or groups of sports wagering licenses, or parts thereof.
 - (c) After an application deadline for any category or group of applications or parts thereof has passed, the Commission may establish a new application deadline for such applications or parts thereof.
- (2) The Commission shall have no obligation to accept or review an incomplete application submitted by an established deadline or an application submitted after an established deadline except where permitted pursuant to 205 CMR 211.01(10) and 205 CMR 218.03(3).

218.03 Administrative Sufficiency Review

- (1) The Commission's Division of Licensing will review each Sports Wagering License Application for administrative sufficiency.
- (2) When determining whether an application is administratively sufficient, the Division of Licensing shall review only the portions of the application required by 205 CMR 211.01(1)(c)-(f) and only determine whether all information or materials required to be provided in response to each question or request has been submitted.
- (3) If an application is determined to be insufficient:
 - (a) The Division shall notify the Applicant by email. The notification shall specifically identify the deficiencies.
 - (b) The Applicant shall have the right to submit supplemental or corrected information to cure the deficiencies within fourteen days.
 - (c) For each deficient application component, the fourteen day period established in 205 CMR 218.03(3)(b) shall begin the day after:
 - (i) The applicable deadline established by the Commission under 205 CMR 218.02(1), if that deadline has not passed; or
 - (ii) The date on which the notification sent pursuant to 205 CMR 218.03(3)(a) was sent, if the applicable deadline established by the Commission under 205 CMR 218.02(1) has passed.
- (4) A positive determination of administrative sufficiency shall not constitute a finding with respect to the accuracy of the information submitted, and shall not bar a request for further information by the Commission, the Bureau or their agents and employees with respect to the application.

218.04 Review Procedures

- (5) In reviewing the merits of the Sports Wagering License Application, the Commission may, at such times and in such order as the Commission deems appropriate, take some or all of the following actions:
 - (a) Refer the application, or any parts thereof, for advice and recommendations, to any or all of the following:
 - (i) The Executive Director;
 - (ii) The Bureau;

- (iii) Any office, agency, board, council, commission, authority, department, instrumentality, or division of the commonwealth;
 - (iv) Commission staff; and
 - (v) Any consultant retained by the Commission to aid in the review of the application;
- (b) Retain, or authorize the Executive Director or the Executive Director's designee to retain, using the application fee and investigation reimbursements described in 205 CMR 214.00, such professional consultants (including without limitation financial and accounting experts, legal experts, Sports Wagering experts, contractor investigators, and other qualified professionals) as the Commission in its discretion deems necessary and appropriate to review the request and make recommendations; and
 - (c) Require or permit, in the Commission's discretion, the Applicant to provide additional information and documents.

218.05 Public Meetings Regarding Sports Wagering Applications

- (1) The Commission may conduct one or more meetings to:
 - (a) receive public feedback on sports wagering license applications;
 - (b) allow any Applicant to make a presentation; and
 - (c) allow any Applicant to respond to questions or public comments.
- (2) Prior to any meeting held in accordance with this 205 CMR 218.05, the commission will prescribe the manner in which it will receive comments from members of the public.

218.06 Evaluation of the Application by the Commission

- (1) Once a submitted Sports Wagering License Application is deemed administratively sufficient, the Commission shall commence a substantive evaluation of its contents. The Commission may utilize any technical assistance it deems necessary to aid in its review.
- (2) The Commission shall analyze the factors and considerations set out in 205 CMR 218.06(5) and 218.06(6) in no particular order, and giving any particular weights, or no weight, to any factor.
- (3) In reviewing any application, the Commission may also utilize any of the following methods, without limitation:

- (a) Public meetings and presentations; or
 - (b) Requests for additional information, modified proposals, or applications from Applicants, including requesting the Applicants' "best and final" proposals.
- (4) The Commission shall deliberate on license applications in a public meeting, and shall not be required to use the procedures set out in 205 CMR 101.00.
- (5) In determining whether any Applicant will be awarded a Sports Wagering License, the Commission will evaluate the Sports Wagering License Application to determine whether a license award would benefit the Commonwealth, and consider the following factors:
 - (a) The Applicant's experience and expertise related to Sports Wagering, including:
 - (i) The Applicant's background in Sports Wagering;
 - (ii) The Applicant's experience and licensure in other jurisdictions with Sports Wagering;
 - (iii) A description of the Applicant's proposed Sports Wagering operation, or description, technical features, and operation of Sports Wagering platform, as applicable; and
 - (b) The economic impact and other benefits to the Commonwealth if the Applicant is awarded a License, including:
 - (i) Employment opportunities within the Commonwealth;
 - (ii) The projected revenue from wagering operations, and tax revenue to the Commonwealth;
 - (iii) For Category 1 and 2 Sports Wagering License Applicants, the Applicant's proposed plans for construction and capital investments associated with the license award; and
 - (iv) Community engagement; and
 - (c) The Applicant's proposed measures related to responsible gaming, including:
 - (i) The Applicant's responsible gaming policies;
 - (ii) The Applicant's advertising and promotional plans; and
 - (iii) The Applicant's history of demonstrated commitment to responsible gaming; and

- (d) A description of the Applicant's willingness to foster racial, ethnic, and gender diversity, equity, and inclusion, including:
 - (i) Within the Applicant's workforce;
 - Through the Applicant's supplier spend; and
 - (ii) In the Applicant's corporate structure; and
 - (e) The technology that the Applicant intends to use in its operation, including:
 - (i) Geofencing;
 - (ii) Know-your-customer measures; and
 - (iii) Technological expertise and reliability; and
 - (f) The suitability of the Applicant and its qualifiers, including:
 - (i) Whether the Applicant can be or has been determined suitable in accordance with 205 CMR 215;
 - The Applicant's and all parties in interest to the license's integrity, honesty, good character, and reputation;
 - (ii) The Applicant's financial stability, integrity, and background;
 - The Applicant's business practices and business ability to establish and maintain a successful sports wagering operation;
 - (iii) The Applicant's history of compliance with gaming or sports wagering licensing requirements in other jurisdictions; and
 - Whether the Applicant is a defendant in litigation involving its business practices; and
 - (g) Any other appropriate factor, in the Commission's discretion.
- (6) Additional considerations for applications for untethered Category 3 licenses
- (a) In determining whether a particular Applicant will be awarded an Untethered Category 3 License, the Commission shall take into consideration the variations between the Applicants as they relate to any other Sports Wagering License Applicants or licensees, and how granting any particular Application, or combination of Applications, would maximize overall benefits and minimize overall harms or the risk of harms to the Commonwealth.

- (b) The Commission may, in its discretion, implement competitive processes for awarding Untethered Category 3 Licenses, and may, without limitation:
 - (i) Utilize scored or unscored selection systems;
 - (ii) Grant or deny one or more particular applications, while reserving action on other applications for future deliberation; or
 - (iii) Review applications in multiple phases or rounds, and use different review methodologies in each phase or round.

(7) Supplemental suitability determinations

- (a) At any time after deeming an Applicant eligible to request a Temporary License in accordance with 205 CMR 218.07, the Commission may make a supplemental determination of suitability according to the standard set out in 205 CMR 215.01(1).
- (b) If the Commission determines under 205 CMR 218.06(7)(a) that the Applicant is:
 - (i) suitable, the Commission shall award the Applicant a Sports Wagering License in accordance with 205 CMR 218.07;
 - (ii) unsuitable, the Commission shall deny the Applicant a Sports Wagering License in accordance with 205 CMR 218.07.

218.07 Sports Wagering License Determinations

- (1) After evaluating each Sports Wagering License application in accordance with 205 CMR 218.06, the Commission may:
 - (a) Find the Applicant suitable in accordance with 205 CMR 215.01(2), and deem the Applicant eligible to request a Temporary License, which shall be subject to conditions in accordance with M.G.L. c. 23N and 205 CMR 220.00;
 - (b) Find the Applicant suitable in accordance with 205 CMR 215.01(1), and award the Applicant a Sports Wagering License, subject to conditions in accordance with M.G.L. c. 23N and 205 CMR 220.00; or
 - (c) Deny the application for any of the reasons set out in M.G.L. c. 23N §§ 6(e), 9, or in 205 CMR.

- (2) The Commission shall not take make a determination in accordance with 205 CMR 218.07(1) on any Untethered Category 3 License Application until the deadline applicable to Untethered Category 3 License Applications has passed, and the Commission has provided an opportunity for public feedback at one or more public meetings held in accordance with 205 CMR 218.05.

218.08 Provisions Applicable to All Sports Wagering Licensing Determinations

- (1) Upon granting an application, the Commission shall prepare and file its decision, and shall issue a statement of the reasons for the grant, including specific findings of fact, and noting any conditions of licensure imposed under 205 CMR 220.
- (2) Upon denial of an application, the Commission shall prepare and file its decision and, if requested by the Applicant, shall further prepare and file a statement of the reasons for the denial, including specific findings of fact.
- (3) For purposes of 205 CMR and M.G.L. c. 23N, the award of a Sports Wagering License shall be deemed to have occurred immediately upon a majority vote by the Commission to issue the license, unless otherwise determined by the Commission.
- (4) An Applicant awarded a Sports Wagering License, or deemed eligible to request a Temporary License, shall not conduct sports wagering until it meets all other applicable requirements of M.G.L. c. 23N and 205 CMR.

205 CMR 218: GENERAL SPORTS WAGERING APPLICATION REQUIREMENTS, STANDARDS, AND PROCEDURES

- 218.01 Pre-application Consultation
- 218.02 Application Requirements
- 218.03 Administrative Completeness Review
- 218.04 Review Procedures
- 218.05 Public Meetings Regarding Sports Wagering Applications
- 218.06 Evaluation of the Application by the Commission
- 218.07 Sports Wagering License Determinations
- 218.08 Provisions Applicable to All Sports Wagering Licensing Determinations

218.01 Pre-application Consultation

The Commission or its designees may conduct one or more consultation meetings or information sessions with Sports Wagering License Applicants to provide guidance on application procedures, including the requirements of this 205 CMR 218.00. In addition, the Commission may use other methods to respond to inquiries regarding the application process, such as publishing responses to questions submitted by Applicants.

218.02 Application Requirements

- (1) A Sports Wagering License Application must be filed on or before any applicable deadline established by the Commission, if any, and pursuant to any instructions and process posted by the Commission on its website or in the application.

(a) For any application submitted after a given deadline has passed, the Commission may decline to take any action or particular actions on that application until it has made determinations in accordance with 205 CMR 218.07 on all applications of the same category received by the prior deadline.

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(b) The Commission may establish different deadlines for applications for different categories or groups of sports wagering licenses or parts thereof.

(c) After an application deadline for any category or group of applications or parts thereof has passed, the Commission may establish a new application deadline for such applications or parts thereof.

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- (2) The Commission shall have no obligation to accept or review an incomplete application submitted by an established deadline or an application submitted after an established deadline except where permitted pursuant to 205 CMR 211.01(10) and 205 CMR 218.03(3).

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218.03 Administrative ~~Sufficiency~~ Review

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- (2) The ~~Commission's Division of Licensing~~ will review each Sports Wagering License Application for administrative ~~sufficiency~~.
- (3) When determining whether an application is administratively sufficient, the Division shall review only the portions of the application required by 205 CMR 211.01(1)(c)-(f) and only determine whether all information or materials required to be provided in response to each question or request has been submitted.
- (4) If an application is determined to be insufficient:
 - (a) The Division shall notify the Applicant by email. The notification shall specifically identify the deficiencies.
 - (b) The Applicant shall have the right to submit supplemental or corrected information to cure the deficiencies within fourteen days.
 - (c) For each deficient application component, the fourteen-day period established in 205 CMR 218.03(4)(b) shall begin the day after:
 - (a) The applicable deadline established by the Commission under 205 CMR 218.02(1), if that deadline has not passed; or
 - (b) The date on which the notification sent pursuant to 205 CMR 218.03(4)(a) was sent, if the applicable deadline established by the Commission under 205 CMR 218.02(1) has passed.
- (5) ~~A positive determination of administrative sufficiency shall not constitute a finding with respect to the accuracy of the information submitted, and shall not bar a request for further information by the Commission, the Bureau or their agents and employees with respect to the application.~~

218.04 Review Procedures

- (6) In reviewing the merits of the Sports Wagering License Application, the Commission may, at such times and in such order as the Commission deems appropriate, take some or all of the following actions:
 - (a) Refer the application, or any parts thereof, for advice and recommendations, to any or all of the following:
 - (i) The Executive Director;
 - (ii) The Bureau;
 - (iii) Any office, agency, board, council, commission, authority, department, instrumentality or division of the commonwealth;

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- (iv) Commission staff; and
- (v) Any consultant retained by the Commission to aid in the review of the application;
- (b) Retain, or authorize the Executive Director or the Executive Director's designee to retain, using the application fee and investigation reimbursements described in 205 CMR 214.00, such professional consultants (including without limitation financial and accounting experts, legal experts, Sports Wagering experts, contractor investigators, and other qualified professionals) as the Commission in its discretion deems necessary and appropriate to review the request and make recommendations; and
- (c) Require or permit, in the Commission's discretion, the Applicant to provide additional information and documents.

218.05 Public Meetings Regarding Sports Wagering Applications

- (1) The Commission may conduct one or more meetings to:
 - (a) receive public feedback on sports wagering license applications;
 - (b) allow any Applicant to make a presentation; and
 - (c) allow any Applicant to respond to questions or public comments.
- (2) Prior to any meeting held in accordance with this 205 CMR 218.05, the commission will prescribe the manner in which it will receive comments from members of the public.

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218.06 Evaluation of the Application by the Commission

- (1) Once a submitted Sports Wagering License Application is deemed administratively sufficient, the Commission shall commence a substantive evaluation of its contents. The Commission may utilize any technical assistance it deems necessary to aid in its review.
- (2) The Commission shall analyze the factors and considerations set out in 205 CMR 218.06(5) and 218.06(6) in no particular order, and giving any particular weights, or no weight, to any factor.
- (3) In reviewing any application, the Commission may also utilize any of the following methods, without limitation:
 - (a) Public meetings and presentations; or

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- (b) Requests for additional information, modified proposals or applications from Applicants, including requesting the Applicants' "best and final" proposals.
- (4) The Commission shall deliberate on license applications in a public meeting, and shall not be required to use the procedures set out in 205 CMR 101.00.
- (5) In determining whether any Applicant will be awarded a Sports Wagering License, the Commission will evaluate the Sports Wagering License Application to determine whether a license award would benefit the Commonwealth, and consider the following factors:
 - (a) The Applicant's experience and expertise related to Sports Wagering, including:
 - (i) The Applicant's background in Sports Wagering;
 - (ii) The Applicant's experience and licensure in other jurisdictions with Sports Wagering;
 - (iii) A description of the Applicant's proposed Sports Wagering operation, or description, technical features, and operation of Sports Wagering platform, as applicable; and
 - (b) The economic impact and other benefits to the Commonwealth if the Applicant is awarded a License, including:
 - (i) Employment opportunities within the Commonwealth;
 - (ii) The projected revenue from wagering operations, and tax revenue to the Commonwealth;
 - (iii) For Category 1 and 2 Sports Wagering License Applicants, the Applicant's proposed plans for construction and capital investments associated with the license award; and
 - (iv) Community engagement; and
 - (c) The Applicant's proposed measures related to responsible gaming, including:
 - (i) The Applicant's responsible gaming policies;
 - (ii) The Applicant's advertising and promotional plans; and
 - (iii) The Applicant's history of demonstrated commitment to responsible gaming; and

- (d) A description of the Applicant's willingness to foster racial, ethnic, and gender diversity, equity, and inclusion, including:
 - (i) Within the Applicant's workforce;
 - (ii) Through the Applicant's supplier spend; and
 - (iii) In the Applicant's corporate structure; and
 - (e) The technology that the Applicant intends to use in its operation, including:
 - (i) Geofencing;
 - (ii) Know-your-customer measures; and
 - (iii) Technological expertise and reliability; and
 - (f) The suitability of the Applicant and its qualifiers, including:
 - (i) Whether the Applicant can be or has been determined suitable in accordance with 205 CMR 215;
 - (ii) The Applicant's and all parties in interest to the license's integrity, honesty, good character, and reputation;
 - (iii) The Applicant's financial stability, integrity, and background;
 - (iv) The Applicant's business practices and business ability to establish and maintain a successful sports wagering operation;
 - (v) The Applicant's history of compliance with gaming or sports wagering licensing requirements in other jurisdictions; and
 - (vi) Whether the Applicant is a defendant in litigation involving its business practices; and
 - (g) Any other appropriate factor, in the Commission's discretion.
- (6) Additional considerations for applications for untethered Category 3 licenses
- (a) In determining whether a particular Applicant will be awarded an Untethered Category 3 License, the Commission **shall** take into consideration the variations between the Applicants as they relate to any other Sports Wagering License Applicants or licensees, and how granting any particular Application, or combination of Applications, would maximize overall benefits and minimize overall harms or the risk of harms to the Commonwealth.

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- (b) The Commission may, in its discretion, implement competitive processes for awarding Untethered Category 3 Licenses, and may, without limitation:
 - (i) Utilize scored or unscored selection systems;
 - (ii) Grant or deny one or more particular applications, while reserving action on other applications for future deliberation; or
 - (iii) Review applications in multiple phases or rounds, and use different review methodologies in each phase or round.

(7) Supplemental suitability determinations

- (a) At any time after deeming an Applicant eligible to request a Temporary License in accordance with 205 CMR 218.07, the Commission may make a supplemental determination of suitability according to the standard set out in 205 CMR 215.01(1).
- (b) ~~If the Commission determines that the Applicant is suitable, it shall award the Applicant a Sports Wagering License in accordance with 205 CMR 218.07. Otherwise, the Commission shall deny the Applicant a Sports Wagering License in accordance with 205 CMR 218.07.~~

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(b) If the Commission determines under 205 CMR 218.06(7)(a) that the Applicant is:

- (i) suitable, the Commission shall award the Applicant a Sports Wagering License in accordance with 205 CMR 218.07;
- (ii) unsuitable, the Commission shall deny the Applicant a Sports Wagering License in accordance with 205 CMR 218.07.

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218.07 Sports Wagering License Determinations

- (1) After evaluating each Sports Wagering License application in accordance with 205 CMR 218.06, the Commission may:
 - (a) Find the Applicant suitable in accordance with 205 CMR 215.01(2), and deem the Applicant eligible to request a Temporary License, which shall be subject to conditions in accordance with M.G.L. c. 23N and 205 CMR 220;
 - (b) Find the Applicant suitable in accordance with 205 CMR 215.01(1), and award the Applicant a Sports Wagering License, subject to conditions in accordance with M.G.L. c. 23N and 205 CMR 220; or

(c) Deny the application for any of the reasons set out in M.G.L. c. 23N §§ 6(e), 9, or in 205 CMR.

- (2) The Commission shall not take make a determination in accordance with 205 CMR 218.07(1) on any Untethered Category 3 License Application until the deadline applicable to Untethered Category 3 License Applications has passed, and the Commission has provided an opportunity for public feedback at one or more public meetings held in accordance with 205 CMR 218.05.

218.08 Provisions Applicable to All Sports Wagering Licensing Determinations

- (1) Upon granting an application, the Commission shall prepare and file its decision, and shall issue a statement of the reasons for the grant, including specific findings of fact, and noting any conditions of licensure imposed under 205 CMR 220.
- (2) Upon denial of an application, the Commission shall prepare and file its decision and, if requested by the Applicant, shall further prepare and file a statement of the reasons for the denial, including specific findings of fact.

(3) For purposes of 205 CMR and M.G.L. c. 23N, the award of a Sports Wagering License shall be deemed to have occurred immediately upon a majority vote by the Commission to issue the license, unless otherwise determined by the Commission.

(4) An Applicant awarded a Sports Wagering License, or deemed eligible to request a Temporary License, shall not conduct sports wagering until it meets all other applicable requirements of M.G.L. c. 23N and 205 CMR.

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SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Small Business Impact Statement in accordance with G.L. c. 30A, §2 relative to the proposed adoption of **205 CMR 218 GENERAL APPLICATION REQUIREMENTS, STANDARDS, AND PROCEDURES**.

This regulation was developed as part of the process of promulgating regulations governing sports wagering in the Commonwealth, and is primarily governed by G.L. c. 23N, §4.

The adoption of 205 CMR 218 applies to potential sports wagering operators and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses. Under G.L. c.30A, §2, the Commission offers the following responses to the statutory questions:

1. Estimate of the number of small businesses subject to the proposed regulation:

This regulation is unlikely to have an impact on small businesses.

2. State the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation:

There are no projected reporting, recordkeeping, or other administrative costs required for small businesses to comply with this regulation.

3. State the appropriateness of performance standards versus design standards:

No standards applicable to small businesses are set forth. Provided standards are performance standards.

4. Identify regulations of the promulgating agency, or of another agency or department of the Commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

This amendment is unlikely to have any impact on the formation of new businesses in the Commonwealth.

Massachusetts Gaming Commission
By:

/s/ Todd M. Grossman
Todd M. Grossman, General Counsel

Dated: October 18, 2022

TO: Cathy Judd-Stein, Chair
 Eileen O'Brien, Commissioner
 Brad Hill, Commissioner
 Nakisha Skinner, Commissioner
 Jordan Maynard, Commissioner

FROM: Carrie Torrisi, Deputy General Counsel

DATE: September 13, 2022

RE: Repeal of 205 CMR 103: *Access to and Confidentiality of Commission Records* – Final Vote for Promulgation

On June 22, 2022, the Commission reviewed at length the proposed rescission of 205 CMR 103: *Access to and Confidentiality of Commission Records* and voted to begin the formal promulgation process to rescind the regulation in its entirety as doing so would eliminate redundancy and streamline the process to which it relates. By way of background, 205 CMR 103 creates a process by which information or records can be deemed by the Commission to constitute “confidential information” and therefore exempt from public disclosure. “Confidential information” is defined separately in 205 CMR 102:.02 *Definitions* as

all records which are, and those portions of records which contain: (a) trade secrets, competitively-sensitive information and other proprietary information provided to the commission, the bureau, and their agents and employees in the course of an application or an investigation; and (b) trade secrets and other information protected from public disclosure by a nondisclosure agreement between the gaming licensee and the commission pursuant to M.G.L. c. 23K, § 21(a)(7).

Ultimately, 205 CMR 103 consists of language that is either unnecessary or duplicative of other laws, better suited for policies and procedures as opposed to regulatory language, or inconsistent with the Massachusetts Public Records Law where it creates a redundant or duplicative process for deeming records exempt from public disclosure.

In addition, the legal department identified two regulations that include cross-references to 205 CMR 103. First, 205 CMR 102.02: *Definitions*, which includes several defined terms that only exist within 205 CMR 103. Second, 205 CMR 115.04: *Phase 1 and New Qualifier Proceedings by the Commission*, which includes a citation to 205 CMR 103. At its meeting on July 26, 2022, the Commission voted to begin the promulgation process to amend each of those regulations to remove references to 205 CMR 103.

Finally, at its meeting on June 22, 2022, the Commission agreed that three sections within 205 CMR 103 included language better suited for policy language versus regulatory language, and voted at its meeting on July 12, 2022, to adopt the following three policies:

- Official Custodians Policy: Individuals Responsible for Personal Data Systems (relocated from 205 CMR 103.03);
- Policy Governing Information Provided in Response to Request for Applications – Phase 1 & Phase 2 (relocated from 205 CMR 103.09); and
- Security Protocols and Restricted Access Policy (relocated from 205 CMR 103.14).

Given that two of these policies include citations to 205 CMR 103, they are included herewith for amendments to remove those citations in conjunction with the final rescission of the regulation.

~~205 CMR 103.00: ACCESS TO AND CONFIDENTIALITY OF COMMISSION RECORDS~~

~~103.01: PURPOSE, AUTHORITY AND APPLICABILITY~~

~~103.02: AVAILABILITY OF PUBLIC RECORDS~~

~~103.03: OFFICIAL CUSTODIANS: INDIVIDUAL RESPONSIBLE FOR PERSONAL DATA SYSTEM~~

~~103.04: DETERMINATIONS BY THE OFFICIAL CUSTODIAN, THE GENERAL COUNSEL AND THE COMMISSION~~

~~103.05: EFFECT OF REQUESTS FOR CONFIDENTIALITY~~

~~103.06: POSTPONING DENIAL OF CONFIDENTIALITY REQUEST PENDING APPEAL~~

~~103.07: WHEN CONFIDENTIAL OR EXEMPT INFORMATION MAY BE DISCLOSED BY THE COMMISSION~~

~~103.08: CONFIDENTIAL INFORMATION SUBJECT TO PROMISE OF CONFIDENTIALITY~~

~~103.09: INFORMATION PROVIDED IN RESPONSE TO REQUEST FOR APPLICATIONS —PHASE I & PHASE II~~

~~103.10: REQUEST FOR PROTECTING CONFIDENTIAL INFORMATION~~

~~103.11: PROCEDURE FOR ACTING ON REQUESTS FOR PROTECTING CONFIDENTIAL INFORMATION~~

~~103.12: RECONSIDERING CONFIDENTIALITY DETERMINATIONS~~

~~103.13: EXECUTIVE SESSION CONSIDERATION OF CONFIDENTIAL OR EXEMPT INFORMATION~~

~~103.14: SECURITY PROTOCOLS; RESTRICTED ACCESS~~

~~103.15: RECORDS RETENTION~~

~~103.01: Purpose, Authority and Applicability~~

~~205 CMR 103.00 is promulgated pursuant to M.G.L. c. 23K, §§ 4(37), and 5. 205 CMR 103.00 is intended to assure that public access to, and the confidentiality of, records made or received by the commission and the bureau are in conformity with M.G.L. c. 23K, § 9(b) and § 21(a)(7); M.G.L. c. 66, § 10; M.G.L. c. 4, § 7, cl. 26; and 950 CMR 32.00: *Public Records Access*.~~

~~103.02: Availability of Public Records~~

~~All records made or received by the commission or the bureau shall be public records and shall be available for disclosure on request pursuant to 205 CMR 103.00 and 950 CMR 32.00: *Public Records Access*, except the following, which shall be exempt from disclosure to the extent permitted by law:~~

~~(1) all records, including without limitation investigatory materials, specifically excluded from the definition of “public record” pursuant to M.G.L. c. 4, § 7, cl. 26;~~

~~(2) all confidential information as defined in 205 CMR 102.02: *Definitions*;~~

~~(3) all records which are or which contain “criminal offender record information”, “evaluative information”, or “intelligence information” pursuant to M.G.L. c. 6, § 167, the disclosure of which would not be in compliance with M.G.L. c. 6, §§ 167 through 178Q;~~

~~(4) all records which are or which contain “personal data” pursuant to M.G.L. c. 66A, § 1, the disclosure of which would not be in compliance with M.G.L. c. 66A; or which are or which contain “personal information” pursuant to M.G.L. c. 93H, § 1, the disclosure of which would not be in compliance with M.G.L. c. 93H; and~~

~~(5) all records specifically or by necessary implication exempted from disclosure by statute including, but not limited to, the exemption statutes listed by the supervisor of public records in the official *Guide to the Massachusetts Public Records Law: Appendix*.~~

~~103.03: Official Custodians: Individual Responsible for Personal Data System~~

~~(1) Pursuant to M.G.L. c. 66, § 6, and M.G.L. c. 23K § 3(f) and (i), subject to the oversight of the chair, the secretary shall be the official custodian of all books, documents and papers filed by the commission and of its minute book; the chief financial and accounting officer shall be the official custodian of its books of account and accounting records; the deputy director shall be the official custodian of all records of the bureau; and the executive director shall be the official custodian of all other records of the commission. In the case of an absence or vacancy in the office of an official custodian or in the case of disability as determined by the commission, the chair may designate an acting custodian to serve until the vacancy is filled or the absence or disability ceases. Each official custodian may, with the permission of the chair, delegate to another commissioner, employee or employees of the commission or the bureau responsibility for the custody of some or all public records under his or her jurisdiction.~~

~~(2) Pursuant to M.G.L. c. 66A, § 2, subject to the oversight of the chair, the executive director shall be the individual immediately responsible for any personal data system maintained by the commission; the deputy director shall be the individual immediately responsible for any personal data system maintained by the bureau; and each shall conform to the requirements of M.G.L. c. 66A and 801 CMR 3.00: *Privacy and Confidentiality* for preventing unauthorized access to or dissemination of personal data under his or her jurisdiction. In the case of an absence or vacancy in the office of an individual immediately responsible for any personal data system, or in the case of disability as determined by the commission, the chair may designate an acting person to serve as the individual immediately responsible for any personal data system until the vacancy is filled or the absence or disability ceases. The executive director or the deputy director may, with the permission of the chair, delegate to another commissioner or employee of the commission or the bureau immediate responsibility for any personal data system under his or her jurisdiction.~~

~~103.04: Determinations by the Official Custodian, the General Counsel and the Commission~~

~~No information which is exempt from disclosure under 205 CMR 103.02 or which a confidentiality claimant asserts to be confidential information defined in 205 CMR 102.02: Definitions shall be disclosed in response to any request for public records unless the Commission has expressly so authorized in accordance with 205 CMR 103.00.~~

~~103.05: Effect of Requests for Confidentiality~~

~~Whenever a confidentiality claimant requests in writing that particular records be deemed to be or to contain confidential information as defined in 205 CMR 102.02: Definitions, such records or information shall be treated as confidential and may not be disclosed until the confidentiality request has been approved or denied pursuant to 205 CMR 103.04, 103.10 and 103.11.~~

~~103.06: Postponing Denial of Confidentiality Pending Appeal~~

~~Whenever the commission denies a request to deem records to be or to contain confidential information as defined in 205 CMR 102.02: Definitions or exempt from disclosure as described in 205 CMR 103.02(1) through (5), such denial shall take effect 14 days after the date thereof so that any person aggrieved by said denial may appeal to a court of competent jurisdiction. During this 14 day period, the records in question shall be treated as confidential and accordingly exempt from public disclosure in accordance with M.G.L. c. 4, § 7(26)(a). This 14 day period may be extended by the commission in extraordinary situations. Any extension shall be in writing and signed by the general counsel.~~

~~103.07: When Confidential or Exempt Information May be Disclosed by the Commission~~

~~(1) Notwithstanding any provision of 205 CMR 103.00 to the contrary, information otherwise exempt from disclosure as described in 205 CMR 103.02(1) through (5) shall be subject to disclosure by the commission only:~~

- ~~(a) to the extent necessary to comply with Federal Law;~~
- ~~(b) to the extent necessary to comply with or carry out the responsibilities contained in M.G.L. c. 23K or other state law;~~
- ~~(c) to the extent necessary for any enforcement action, whether criminal or civil, judicial or administrative;~~
- ~~(d) upon presentation of proper identification, to the person who furnished the specific information to the commission or the bureau; or~~
- ~~(e) upon presentation of a timely and duly executed and notarized authorization by the person who furnished the specific information to the commission or the bureau, to any other person making a written request for the specifically identified information.~~

~~(2) If information otherwise exempt from disclosure as described in 205 CMR 103.02(1) through (5) is released or otherwise disclosed to any person under any circumstances other than those identified in 205 CMR 103.07(1)(d) and (e), written notice of such release or disclosure shall be provided to the last known address the commission has in its records for the person who~~

~~furnished the confidential information to the commission or the bureau, unless such notice may prejudice the possibility of effective law enforcement or otherwise imperil the integrity of the commission's or the bureau's operations. To the extent known, the notice shall include:~~

- ~~(a) The name and address of the person to whom the information was released or disclosed;~~
- ~~(b) A description of the information released or disclosed; and~~
- ~~(c) The date of the release or disclosure.~~

~~(3) Subject to 205 CMR 103.07(2) any such notice of confidential information to be released or disclosed will be given prior to the release or disclosure to provide an opportunity for review.~~

~~103.08: Confidential Information Subject to Promise of Confidentiality~~

~~For confidential information to be protected from public disclosure by a nondisclosure agreement pursuant to M.G.L. c. 23K, § 21(a)(7) or by other promise of confidentiality pursuant to M.G.L. c. 4, § 7, cl. 26(g), the nondisclosure agreement or other promise of confidentiality must be made in writing and signed by the chair, the secretary or a person designated by the commission.~~

~~103.09: Information Provided in Response to Request for Applications — Phase 1 & Phase 2~~

~~(1) In accordance with M.G.L. c. 23K, § 9(b), an application for a license in response to the commission's Request for Applications Phase 1, 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications*, and an RFA-2 application submitted in accordance with 205 CMR 118.00: *Phase 2—Applying for a License* shall be a public record except those portions of the application containing information otherwise exempt from disclosure pursuant to 205 CMR 103.02(1) through (5).~~

~~(2) As guidance to applicants and the public, the commission shall issue a set of specimen annotated application forms and distribute such forms together with, or incorporated as part thereof, the Request for Applications —Phase 1 pursuant to 205 CMR 111.00: *Phase 1 Application Requirements* and with or part of the Request for Applications —Phase 2 pursuant to 205 CMR 118.00: *Phase 2—Applying For a License*. These specimen annotated application forms shall designate as “Exempt/Redact” or otherwise identify all information or categories of information which, at a minimum, the commission considers to be exempt from disclosure in accordance with 205 CMR 103.02(1) through (5).~~

~~(3) To assist the commission in protecting from inadvertent disclosure information subject to 205 CMR 103.02(1) through (5), applicants shall follow the procedures in 205 CMR 103.10(1) in completing and submitting the required forms pursuant to 205 CMR 111.00: *Phase 1 Application Requirements* and 205 CMR 118.00: *Phase 2—Applying For a License*.~~

~~(4) All information submitted by an applicant in the RFA Phase 1 or Phase 2 application, other than that described as “Exempt/Redact” or otherwise so identified in 205 CMR 103.09(2), shall be presumed to be available for public disclosure on request unless a confidentiality claimant demonstrates or the commission otherwise finds that a separable portion of the information is exempt from disclosure pursuant to 205 CMR 103.02(1) through (5). Confidentiality claimants~~

shall make such a demonstration in accordance with the provisions of 205 CMR 103.10 through 103.12.

103.10: Requests for Protecting Confidential Information

Except as set forth in 205 CMR 103.09, no record shall be deemed to be or to contain confidential information as defined in 205 CMR 102.02: *Definitions* unless a person submits a written request to the commission to deem the information confidential information and accordingly exempt from public disclosure in accordance with M.G.L. c. 4, § 7(26)(a). The request shall be made and substantiated as follows:

(1) Each record containing information that is the subject of a confidentiality request shall be clearly marked "CONFIDENTIAL". To assist the commission in complying with 205 CMR 103.02, persons shall separately submit confidential portions of otherwise non-confidential records. If submitted separately, the record that is the subject of a confidentiality request shall be clearly marked "CONFIDENTIAL" and the record from which confidential information has been redacted shall be clearly marked "REDACTED".

(2) The request for confidentiality shall be supported with the following information, which shall be treated as a public record:

(a) The time period for which confidential treatment is desired.

(b) The reason the record was provided to the commission or the bureau, and the date of submittal.

(c) The basis for the claim that the record contains confidential information and, if applicable, the basis for believing that the criteria in 205 CMR 103.11 are satisfied.

(d) The extent to which the person requesting that the record be kept confidential has disclosed the contents of that record to other persons without a restriction as to confidentiality imposed by agreement or by law.

(e) A statement whether, to the best of the provider's knowledge, the information has previously been provided to a governmental entity that does not treat the information as confidential or that has denied a request for confidential treatment.

(f) A statement that the information is not required to be disclosed or otherwise made available to the public under any other Federal or state law.

(g) How making the record a public record would place the applicant at a competitive disadvantage pursuant to M.G.L. c. 23K, § 9(b), or would be detrimental to a gaming licensee if it were made public pursuant to M.G.L. c. 23K, § 21(a)(7).

(h) If the record was submitted voluntarily for use in developing governmental policy and upon a promise of confidentiality pursuant to M.G.L. c. 4, § 7, cl. 26(g), and not in compliance with a regulation or order of the commission or a court, whether and if so why making the record a public record would tend to lessen the availability to the commission or the bureau of similar records in the future.

~~103.11: Procedure for Acting on Requests for Protecting Confidential Information~~

~~The commission shall act on a confidentiality request made pursuant to 205 CMR 103.10 subject to the following provisions:~~

~~(1) If the commission has received a request to inspect or copy a record which is the subject of a confidentiality request on which the commission has not made a final decision, the commission shall notify the person who made the request to inspect or copy the record that the record in question is the subject of a pending confidentiality request and a final decision will be made when the commission determines whether the record in question is entitled to confidentiality protection and shall notify the confidentiality claimant of the request to inspect or copy the record.~~

~~(2) The commission shall determine whether the record is confidential information as defined in 205 CMR 102.02: *Definitions*. The Commission shall give notice of its determination(s) to the confidentiality claimant and all persons who requested to inspect or copy the record.~~

~~(3) If the commission determines that a record is confidential information as defined in 205 CMR 102.02: *Definitions*, the record in question, or portion thereof, shall be exempt from public disclosure in accordance with M.G. L. c. 4, § 7(26)(a) for such length of time, and subject to such terms, conditions and limitations, as the commission may include in the determination. The commission shall so notify the person who submitted the record to the commission or the bureau, the confidentiality claimant, and all persons making a request to inspect or copy the record in question.~~

~~(4) All notices given pursuant to 205 CMR 103.11(2) and (3) shall be in writing, shall be delivered by hand, by first class mail, or by electronic mail, and shall include:~~

~~(a) the reasons for the determination,~~

~~(b) notice that the determination constitutes a final decision of the commission,~~

~~(c) notice that the determination may be subject to review by the supervisor of records of the Office of the Secretary of the Commonwealth or by the courts, as applicable.~~

~~(d) if the determination is that the record in question, or portion thereof is not confidential information as defined in 205 CMR 102.02: *Definitions*, notice that the record in question shall become a public record 14 days after the date of the commission's determination unless, a person aggrieved by said determination appeals the determination to a court of competent jurisdiction. This 14-day period may be extended only in extraordinary situations, and any such extension must be in writing and signed by the commission's general counsel.~~

~~(5) If pursuant to 205 CMR 103.11, the commission denies a request to protect confidential information made pursuant to 205 CMR 103.10, the confidentiality claimant may, within ten days from the date of the commission's notice of such determination, submit to the commission one request to reconsider such determination, which request to reconsider shall set forth any and all supplemental information supporting the claim of confidentiality and further addressing the criteria of 205 CMR 103.10(2). The commission shall act on the request to reconsider following~~

~~the procedures in 205 CMR 103.11(1) through (4). The request for reconsideration shall stay the effect of the commission's original denial and the 14 day period set forth in 205 CMR 103.11(4) shall run from the date of the commission's notice of its ruling on the request for reconsideration.~~

~~(6) If pursuant to 205 CMR 103.11, the commission denies a request to protect confidential information made pursuant to 205 CMR 103.10, the confidentiality claimant may, at any time before the expiration of the applicable 14 day period set forth in 205 CMR 103.11(4), submit a written request to the commission pursuant to 205 CMR 111.05: Withdrawal of Application, to withdraw with prejudice the application to which the information relates and to order the information permanently sealed or returned to the applicant. If the commission allows the request to withdraw the application with prejudice, the commission may order the information permanently sealed or returned to the applicant to the extent permitted by M.G.L. c. 4, § 7, cl. 26, and M.G.L. c. 23K.~~

~~103.12: Reconsidering Confidentiality Determinations~~

~~If the commission determines that newly discovered information or changed circumstances make it appropriate for the commission to reconsider and possibly modify a prior grant of confidentiality, the commission shall so notify the person who submitted the record to the commission or the bureau, and the confidentiality claimant. The notice shall give the person and the confidentiality claimant a reasonable period of time to substantiate, pursuant to 205 CMR 103.10, keeping the record in question confidential. The amount of time originally established in the notice maybe reasonably extended by the commission. After this time has passed, or after the commission has received a written response from the confidentiality claimant, whichever occurs first, the commission shall make a new determination whether the record in question shall be deemed either confidential or a public record.~~

~~103.13: Executive Session Consideration of Confidential or Exempt Information~~

~~Pursuant to M.G.L. c 30A, § 21(a)(7), the commission may meet in executive session to review information which is exempt from disclosure as described in 205 CMR 103.02(1) through (5); or to conduct an in camera inspection of records to enable the commission to resolve matters as to confidentiality or exemption pursuant to 205 CMR 103.04(1) or (2), to act on requests for protecting confidential information pursuant to 205 CMR 103.11, or to reconsider confidentiality determinations pursuant to 205 CMR 103.12.~~

~~103.14: Security Protocols; Restricted Access~~

~~(1) The executive director, subject to the direction of the commission, shall establish and maintain secure storage areas, methodologies and procedures to protect tangible and electronic information exempt from disclosure as described in 205 CMR 103.02(1) through (5) contained in the records of the commission or the bureau. Records containing such information shall be kept, managed, accessed and used in accordance with the security protocols.~~

~~(2) Records for which confidential information claims have been made and related supporting materials, and information for which such claims have been finally adjudicated in favor of the confidentiality claimant, shall be kept, managed, accessed and used in accordance with the~~

~~security protocols. Materials and information for which such claims have been finally adjudicated against the confidentiality claimant may be permanently removed from the protection of the security protocols.~~

~~(3) The executive director the deputy director and the official custodians shall be responsible for implementing the security protocols for records under their respective custody.~~

~~(4) Personnel and authorized agents of the commission or the bureau who require information contained within the secure tangible and electronic storage areas for the effective performance of their duties may, upon request to its official custodian, examine documents containing such information in accordance with the security protocols.~~

~~(5) The commission and the bureau shall keep the number of tangible and electronic copies of information exempt from disclosure as described in 205 CMR 103.02(1) through (5) to a minimum and shall ensure that all copies of such information are maintained in a manner consistent with the requirements of the security protocols. No copies of such documents or information may be made or transmitted except in accordance with the security protocols; where necessary to the authorized duties and operations of the commission, the bureau, or their employees and authorized agents; or where release of the confidential information is authorized pursuant to 205 CMR 103.00. Any notes concerning such information made by commission or bureau employees or agents shall be treated as confidential pursuant to 205 CMR 103.00.~~

~~(6) Commission or bureau employees or authorized agents who violate the procedures required by 205 CMR 103.00 or the security protocols established pursuant thereto shall be subject to disciplinary action.~~

~~103.15: Records Retention~~

~~The commission shall follow the records retention schedule set forth in the *Massachusetts Statewide Records Retention Schedule* (2011 Edition) published by the Records Conservation Board in conjunction with the Massachusetts Archives and the supervisor of public records; which records retention schedule shall apply to all records within the commission's possession including all records containing information exempt from disclosure as described in 205 CMR 103.02(1) through (5).~~

205 CMR 102: CONSTRUCTION AND APPLICATION

102.02: Definitions

As used in 205 CMR 101.00 ~~et seq. through 131.00~~, the following words and phrases shall have the following meaning, unless the context clearly requires otherwise:

Affiliate ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Applicant ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Application ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Bureau ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Bureau Decision ~~is defined as described~~ in 205 CMR 115.03: *Phase 1 Investigation and Recommendations by the Bureau* and 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

Bureau Hearing ~~is defined as described~~ in 205 CMR 101.02: *Hearings Before the Bureau*.

Business ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Business Entity Disclosure Form (BED) ~~is defined as described~~ in 205 CMR 111.02: *Business Entity Disclosure Form Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies*.

Candidate means a person seeking nomination or election to any local, county, or state public office in Massachusetts, but shall not include a person seeking nomination or election to any ~~f~~**F**ederal public office.

Capital Expenditure ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Cashless Wagering System ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Category 1 License ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Category 2 License ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Chair ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Change of Control means a transfer of interest which directly or indirectly results in a person obtaining greater than 50% ownership interest in a gaming licensee or which results in, or is likely to result in, significant change to the management or operation of a gaming licensee.

Cheat ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Cheating and Swindling Device or Cheating and Swindling Game ~~is~~ as defined in M.G.L. c. 23K, § 2.

Chief Executive Officer means:

(a) As to gaming licensees or applicants the natural person who is ultimately responsible for the daily conduct of the gaming establishment business of one or more affiliated gaming licensees or applicants, regardless of the form of business association of the gaming licensee or applicant or the particular title which that person or any other person holds; and

(b) As to gaming vendor licensees or applicants, the natural person who bears ultimate responsibility for the organization and business activities of the enterprise.

Chief Financial and Accounting Officer means the chief financial and accounting officer of the commission.

Close Associate ~~is~~ as defined in M.G.L. c. 23K, § 2.

Commission ~~is~~ as defined in M.G.L. c. 23K, § 2.

Commissioner ~~is~~ as defined in M.G.L. c. 23K, § 2.

Community Contribution means a political contribution or contribution in kind made by an applicant for a gaming license to a municipality or a municipal employee as allowed by M.G.L. c. 23K, § 47.

Competitively-Sensitive Information means all records which are, and those portions of records which contain, confidential personal or business information which if made publicly available would have a reasonable likelihood of placing a person at a competitive disadvantage, or be detrimental to or otherwise cause substantial damage or irreparable harm, ~~to the person~~ such as identity theft, industrial espionage, unfair competition, or similar adverse consequences, ~~to the person~~. Competitively-sensitive information includes, without limitation, social security numbers, passport numbers and other unique identifying information, research and development information, financial records, banking or lending records, mortgage and credit history, lists of customers or business contacts, pricing information, marketing information, processes and methods, and any other unique information, methodology, technique, system, or feature which is restricted by appropriate security measures ~~in the ordinary course~~ to the individual or person or to top management, counsel, research and development staff, and expert consultants only ~~in the ordinary course~~.

Complimentary Service or Item ~~is~~ as defined in M.G.L. c. 23K, § 2.

~~Confidential Information means all records which are, and those portions of records which contain:~~

~~(a) trade secrets, competitively sensitive information and other proprietary information provided to the commission, the bureau, and their agents and employees in the course of an application or an investigation; and~~

~~(b) trade secrets and other information protected from public disclosure by a nondisclosure agreement between the gaming licensee and the commission pursuant to M.G.L. c. 23K, § 21(a)(7).~~

~~Confidentiality Claimant means any person who makes a claim that any records, material or information submitted to the commission, the bureau, or their agents and employees constitutes confidential information.~~

Conservator ~~is as~~ defined in M.G.L. c. 23K, § 2.

Contractor Investigator ~~is defined as described~~ in 205 CMR 105.10: *Authority to Retain and Utilize Contractor Investigators*.

Contribution means a payment, transfer or pledge of money or a thing of value to or for the benefit of a candidate or political organization.

Credit Card ~~is as~~ defined in M.G.L. c. 23K, § 2.

Credit Instrument ~~is as~~ defined in M.G.L. c. 23K, § 2.

Dependent Person means a person who is:

- (a) An employee or co-employee of a prohibited person;
- (b) An employee or co-employee of a person affiliated with a prohibited person;
- (c) An enterprise or firm, or an officer, director, partner, owner, or principal employee of an enterprise or firm, that is a party to any contract with, or is bidding for or seeking to enter any contract with, or regularly represents or provides services to, a prohibited person; or
- (d) A child residing with a prohibited person or who is claimed as a dependent by a prohibited person for Federal tax reporting purposes.

Deputy Director means the deputy director of the bureau.

Director of Gaming Enforcement means the assistant attorney general designated by the attorney general as the director of gaming enforcement pursuant to M.G.L. c. 12, § 11M(b).

Director of Security means an employee of a gaming establishment in charge of, and with overall supervisory responsibility for, security of the gaming establishment.

Director of Surveillance means an employee of a gaming establishment in charge of, and with overall supervisory responsibility for, surveillance at the gaming establishment.

Division ~~is~~ as defined in M.G.L. c. 23K, § 2.

Executive Director ~~is~~ as defined in M.G.L. c. 23K, § 2.

Financial Stability ~~is defined~~ as described in 205 CMR 117.00: *Phase I Determination of Financial Stability*.

Gambling ~~is~~ as defined in M.G.L. c. 23K, § 2.

Game ~~is~~ as defined in M.G.L. c. 23K, § 2.

Gaming ~~is~~ as defined in M.G.L. c. 23K, § 2.

Gaming Area ~~is~~ as defined in M.G.L. c. 23K, § 2.

Gaming Device or Gaming Equipment is defined in M.G.L. c. 23K, § 2.

Gaming Employee ~~is~~ as defined in M.G.L. c. 23K, § 2.

Gaming Enforcement Unit means the gaming enforcement unit established by the colonel of state police pursuant to M.G.L. c. 22C, § 70.

Gaming Establishment ~~is~~ as defined in M.G.L. c. 23K, § 2.

Gaming License ~~is~~ as defined in M.G.L. c. 23K, § 2.

Gaming Licensee ~~is~~ as defined in M.G.L. c. 23K, § 2.

Gaming Position ~~is~~ as defined in M.G.L. c. 23K, § 2.

Gaming Service Employee ~~is~~ as defined in M.G.L. c. 23K, § 2.

Gaming Vendor ~~is~~ as defined in M.G.L. c. 23K, § 2.

Gaming Vendor License ~~is~~ as defined in M.G.L. c. 23K, § 2.

General Counsel means the person designated by the commission as its general counsel or acting general counsel.

Governing Body ~~is~~ as defined in M.G.L. c. 23K, § 2.

Gross Revenue or Gross Gaming Revenue ~~is~~ as defined in M.G.L. c. 23K, § 2.

Holding Company ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Host Community ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Impacted Live Entertainment Venue is defined in M.G.L. c. 23K, § 2.

Institutional Investor ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Intermediary Company ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Investigatory Material means any document, record, transcript, complaint, evidentiary material of any nature, correspondence, memoranda, report, work product, or other information concerning any examination, any investigation (whether formal or informal), or any related litigation, which pertains to or may disclose:

(a) the possible violation by any person of any provision of any statute, rule, or regulation administered by the commission or the bureau, by any other ~~F~~**f**ederal, state, local or foreign governmental authority, by any professional association, or by any securities industry self-regulatory organization as well as all written communications from, or to, any person complaining of or otherwise furnishing information ~~respecting with respect to~~ such possible violations;

(b) information relating to an ongoing ~~investigaton~~ **investigation** that could **potentially** ~~potentially-aert alert~~ subjects to the activities of investigative officials;

(c) confidential investigative techniques, the disclosure of which would prejudice future law enforcement efforts;

(d) any details in witness statements, which if released create a grave risk of directly or indirectly identifying a private citizen who volunteers as a witness; and

(e) the background of any person the disclosure of which would constitute an unwarranted invasion of personal privacy.

Junket ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Junket Enterprise ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Junket Representative ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Key Gaming Employee ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

License ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

List of Excluded Persons ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Lottery ~~is~~ **as** defined in M.G.L. c. 23K § 2.

Major Policymaking Position ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Massachusetts Supplement Form (PHD-MA-SUPP) ~~is defined as described~~ in 205 CMR 111.04: *Massachusetts Supplemental Form*.

MEPA means the Massachusetts Environmental Policy Act.

Minority Business Enterprise (MBE) ~~A means~~ **a** minority-owned business that has been certified by either the Massachusetts Supplier Diversity Office within the Operational Services Division, the Greater New England Minority Supplier Development Council, or both.

Money means cash or instruments that are convertible to cash in any negotiable currency.

Multi-jurisdictional Personal History Disclosure Form (PHD-MA) ~~is defined as described~~ in 205 CMR 111.03: *Multi-jurisdictional Personal History Form*.

Non-gaming Vendor ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Operation Certificate ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Person ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Political Contribution means a contribution as defined in M.G.L. c. 55, § 1, except for a community contribution as defined in 205 CMR 102.02: Community Contribution.

Political Organization means any committee of any political party in the Commonwealth of Massachusetts, as structured and defined in accordance with M.G.L. c. 23K, §§ 46 and 47, or any group, committee, or association organized in support of such political party or any candidate. Political Organization shall not include a national party committee or the committee of a **F**federal candidate for the United States Senate or House of Representatives, unless such a committee contributes to a state candidate from its general receipts.

Prohibited Person means any officer, director, key gaming employee, qualifier, or principal employee of an applicant for a gaming license or of any holding, intermediary, or subsidiary company thereof.

Promotional Gaming Credit ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Proprietary Information means all records which are, and those portions of records which contain, personal or business information which, owing to its confidential nature, is in the ordinary course subjected to strict measures to preserve its confidentiality, including confidentiality agreements, non-competition agreements, encryption and password protection for electronic information, restriction of access to those with a need-to-know, and other policies,

procedures, security measures, or markings designed to protect the secrecy of information and to keep the information strictly confidential.

Publicly Traded Corporation means a person, other than an individual, which:

- (a) has a class or series of securities registered under the Securities and Exchange Act of 1934 (48 Stat 881, 15 U.S.C. § 78a *et seq.*);
- (b) is a registered management company under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 *et seq.*); or
- (c) is subject to the reporting obligations imposed by section 15(d) of the Securities and Exchange Act of 1934 by reason of having filed a registration statement which has become effective under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a *et seq.*) or by reason of an indenture entered into pursuant to an exemption from registration under the Securities Act of 1933.

Qualification or Qualified ~~is as~~ defined in M.G.L. c. 23K, § 2.

Qualifier ~~is as~~ defined as a person whose qualification must be established in evaluating the suitability of an applicant in accordance with the standards and criteria set forth in M.G.L. c. 23K, § 12(a), and 205 CMR 115.01: *Phase I Determination Standards* and 205 CMR 116.02: *Persons Required to be Qualified*.

~~Record means a book, paper, map, photograph, recorded tape, financial statement, statistical tabulation, or any other documentary material or data, regardless of physical form or characteristics.~~

Restricted Area means a part of the gaming establishment that is not open to the public as determined by the commission.

Rewards Card ~~is as~~ defined in M.G.L. c. 23K, § 2.

RFA-P1 or RFA-1 Process ~~is defined as described~~ in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications*.

RFA-2 ~~is defined as described~~ in 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications*.

~~Secretary means the secretary of the commission.~~

Secretary of EOEEA means the Secretary of the Executive Office of Energy and Environmental Affairs.

~~Security Protocols means the system for securing and preserving the confidentiality of records in accordance with 205 CMR 103.14: *Security Protocols; Restricted Access*.~~

Slot Machine ~~is~~ as defined in M.G.L. c. 23K, § 2.

Solicitation means a request, suggestion or recommendation made to a particular person, by any means of communication, that the person make a contribution; provided, however, that a statement to a person expressing support for or opposition to the election of any candidate, or support for or opposition to any political organization, which is made without reference to a contribution or a statement intended for and given public dissemination encouraging all persons to make contributions to any candidate or political organization, is not a solicitation.

State Police ~~is~~ as defined in M.G.L. c. 23K, § 2.

Subsidiary ~~is~~ as defined in M.G.L. c. 23K, § 2.

Surrounding Communities ~~is~~ as defined in M.G.L. c. 23K, § 2.

Table Game ~~is~~ as defined in M.G.L. c. 23K, § 2.

Thing of Value means:

- (a) An item of real, personal or intellectual property that may be converted into money by selling it or pledging it as security for a loan or other advance of funds;
- (b) A loan of assets, property, personnel, or facilities for use by a candidate or political organization, such as, without limitation, office space, automobiles, telephones or telephone services, or the time and effort of employees or consultants who are paid by the person making the contribution;
- (c) A personal or professional service that is not incidental to the expression of a person's ideological beliefs or membership in a political organization, and that has a value to the candidate or political organization;
- (d) A non-reimbursed expense that is not incidental to the expression of a person's ideological beliefs or membership in a political organization, and is of the type normally incurred by the candidate or political organization; or
- (e) ~~Any~~ thing, service, expense, or other item of value similar to that identified in ~~205-CMR 102.02 this chapter, -Thing of Value(a) through (d)~~ which may be identified by the commission in an advisory ruling or other appropriate proceeding.

Trade Secret means all records which are, and those portions of records which contain, anything tangible or intangible or electronically kept or stored, which constitutes, represents, evidences, or records a secret scientific, technical, merchandising, production, manufacturing, or management information, design, process, procedure, formula, invention, method, or improvement which its owner considers to be and treats as confidential and which is not available to the public by any

other source. Trade Secret shall include anything which is a trade secret pursuant to M.G.L. c. 266, § 30(4).

Transfer ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Veteran Business Enterprise (VBE): ~~means a A Veteran Business Enterprise shall have the same meaning as~~ “Veteran-owned small business concern” as defined by 38 CFR 74.1, the status of which can be verified by Vendor Information Pages on the U.S. Department of Veterans Affairs Office of Small & Disadvantaged Business Utilization website or by the Licensing Division of the Massachusetts Gaming Commission. Veteran Business Enterprise is inclusive of the ~~S~~service-disabled veteran-owned business as defined in 15 USC § 632. Additionally, VBE shall include any entity certified as a VBE, as defined by M.G.L. c. 7, § 58, by the Massachusetts Supplier Diversity Office within the Operational Services Division pursuant to regulations promulgated in accordance with M.G.L. c. 7, §61(a).

Notwithstanding the foregoing, for purposes of 205 CMR 135.02(8) and 205 CMR 139.04(3), effective upon the issuance of an operation certificate to a gaming licensee, for vendors associated with that licensee, VBE shall only include those entities certified as such by the Supplier Diversity Office, or verified with the U.S. Department of Veterans Affairs. (Note: vendors previously verified by the Licensing Division will continue to be recognized until the end of their existing contract.)

Vulnerable Populations means groups of people that studies have shown to be more susceptible to gambling problems than others, including people with a history of alcohol or other drug abuse, people with a history of mental health issues, low income patrons of gaming establishments, and older adults.

Wager ~~is~~ **as** defined in M.G.L. c. 23K, § 2.

Women Business Enterprise (WBE): ~~means a A~~ women-owned business that has been certified by either the Massachusetts Supplier Diversity Office within the Operational Services Division, the Women's Business Enterprise National Council (or its local affiliate, Center for Women & Enterprise), or both.

205 CMR 115: PHASE 1 AND NEW QUALIFIER SUITABILITY DETERMINATION, STANDARDS, AND PROCEDURES

115.04: Phase 1 and New Qualifier Proceedings by the Commission

(1) After the Commission has received the bureau's report under 205 CMR 115.03(2), it shall provide a copy to the applicant or qualifier and the Commission shall determine whether to initiate a process for a public hearing or adjudicatory proceeding. However, the Commission may only utilize the public hearing process with the qualifier's consent.

(2) Adjudicatory Proceeding. If the Commission determines that an adjudicatory proceeding shall be held, the Commission shall conduct an adjudicatory proceeding pursuant to 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings* on the report by the bureau concerning the applicant or qualifier pursuant to 205 CMR 115.03(2).

(3) Public Hearing. If the Commission determines that a public hearing should be held, the Commission shall review the bureau's suitability report in a public hearing, subject to redaction in accordance with G.L. c. 4, § 7(26) ~~of confidential and exempt information described in 205 CMR 102.02(1) through (5)~~. The Commission will issue a notice in advance of the public hearing stating the date, time and place of the hearing and the form (oral or written) and conditions pursuant to which the Commission will receive public comments.

AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Amended Small Business Impact Statement in accordance with G.L. c.30A, § 5 relative to the proposed amendments to **205 CMR 103: Access to and Confidentiality of Commission Records; 205 CMR 102: Definitions; and 205 CMR 115.04: Phase 1 and New Qualifier Proceedings by the Commission**, for which a public hearing was held on September 15, 2022.

205 CMR 103, 102, and 115.04 were developed as part of the process of promulgating regulations governing the operation of gaming establishments in the Commonwealth. The proposed amendments will repeal 205 CMR 103 and remove cross-references to 205 CMR 103 found within 205 CMR 102 and 115.04.

The amendment to 205 CMR 103, 102, and 115.04 applies to entities submitting financial and other corporate information to the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses.

In accordance with G.L. c.30A, §5, the Commission offers the following responses on whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

1. Establishing less stringent compliance or reporting requirements for small businesses:

As a general matter, no small businesses will be negatively impacted by this amendment. Accordingly, there are no less stringent compliance or reporting requirements for small businesses.

2. Establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses:

There are no schedules or deadlines for compliance or reporting requirements by this amendment.

3. Consolidating or simplifying compliance or reporting requirements for small businesses:

This amendment does not impose any reporting requirements.

4. Establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation:

There are no design or operational standards required in the proposed amendment.

5. An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth:

This amendment is not likely to deter or encourage the formation of new businesses in the Commonwealth as it is limited in its likely impact on the business community.

6. Minimizing adverse impact on small businesses by using alternative regulatory methods:

This amendment does not create any adverse impact on small businesses.

Massachusetts Gaming Commission
By:

/s/ Carrie Torrisi
Carrie Torrisi
Associate General Counsel
Legal Division

Dated: September 13, 2022

Security Protocols and Restricted Access Policy

1. The executive director, subject to the direction of the commission, shall establish and maintain secure storage areas, methodologies and procedures to protect tangible and electronic information exempt from disclosure ~~as described in 205 CMR 103.02(1) through (5)~~ pursuant to the Massachusetts Public Records Law, G.L. c. 4, § 7(26) contained in the records of the commission or the bureau. Records containing such information shall be kept, managed, accessed and used in accordance with the security protocols.
2. ~~Records for which confidential information claims have been made and related supporting materials, and information for which such claims have been finally adjudicated in favor of the confidentiality claimant, shall be kept, managed, accessed and used in accordance with the security protocols. Materials and information for which such claims have been finally adjudicated against the confidentiality claimant may be permanently removed from the protection of the security protocols.~~
3. The executive director the deputy director and the official custodians shall be responsible for implementing the security protocols for records under their respective custody.
4. Personnel and authorized agents of the commission or the bureau who require information contained within the secure tangible and electronic storage areas for the effective performance of their duties may, upon request to its official custodian, examine documents containing such information in accordance with the security protocols.
5. The commission and the bureau shall keep the number of tangible and electronic copies of information exempt from disclosure ~~as described in 205 CMR 103.02(1) through (5)~~ pursuant to the Massachusetts Public Records Law, G.L. c. 4, § 7(26) to a minimum and shall ensure that all copies of such information are maintained in a manner consistent with the requirements of the security protocols. ~~No copies of such documents or information may be made or transmitted except in accordance with the security protocols; where necessary to the authorized duties and operations of the commission, the bureau, or their employees and authorized agents; or where release of the confidential information is authorized pursuant to 205 CMR 103.00. Any notes concerning such information made by commission or bureau employees or agents shall be treated as confidential pursuant to 205 CMR 103.00.~~

6. Commission or bureau employees or authorized agents who violate ~~the procedures required by 205 CMR 103.00 or~~ the established security protocols ~~established pursuant thereto~~ shall be subject to disciplinary action.

Approved by Commission: ~~July 12, 2022~~ October 27, 2022

Policy Governing Information Provided in Response to Request for Applications – Phase 1 & Phase 2

1. In accordance with M.G.L. c. 23K, § 9(b), an application for a license in response to the commission's Request for Applications-Phase 1, 205 CMR 110.00: *Issuance of Request for Category 1 and Category 2 License Applications*, and an RFA-2 application submitted in accordance with 205 CMR 118.00: *Phase 2- Applying for a License* shall be a public record except those portions of the application containing information otherwise exempt from disclosure pursuant to ~~205 CMR 103.02(1) through (5)~~ the Massachusetts Public Records Law, G.L. c. 4, § 7(26).
2. As guidance to applicants and the public, the commission shall issue a set of specimen annotated application forms and distribute such forms together with, or incorporated as part thereof, the Request for Applications - Phase 1 pursuant to 205 CMR 111.00: *Phase 1 Application Requirements* and with or part of the Request for Applications- Phase 2 pursuant to 205 CMR 118.00: *Phase 2 - Applying For a License*. These specimen annotated application forms shall designate as “Exempt/Redact” or otherwise identify all information or categories of information which, at a minimum, the commission considers to be exempt from disclosure in accordance with ~~205 CMR 103.02(1) through (5)~~ the Massachusetts Public Records Law, G.L. c. 4, § 7(26).
3. To assist the commission in protecting from inadvertent disclosure information ~~subject to 205 CMR 103.02(1) through (5)~~ exempt from disclosure pursuant to the Massachusetts Public Records Law, G.L. c. 4, § 7(26), applicants shall ~~follow the procedures in 205 CMR 103.10(1)~~ clearly mark as confidential any documents covered by G.L. c. 23K, § 9(b) in completing and submitting the required forms pursuant to 205 CMR 111.00: *Phase 1 Application Requirements* and 205 CMR 118.00: *Phase 2-Applying For a License*.
4. All information submitted by an applicant in the RFA Phase 1 or Phase 2 application, other than that described as “Exempt/Redact” or otherwise so identified ~~in 205 CMR 103.09(2)~~ by the commission as information or categories of information it considers to be exempt from disclosure in accordance with the Massachusetts Public Records Law, G.L. c. 4, § 7(26), shall be presumed to be available for public disclosure on request unless ~~a confidentiality claimant an applicant~~ demonstrates or the commission otherwise finds that a separable portion of the information is exempt from disclosure pursuant to ~~the~~ Massachusetts Public Records Law, G.L. c. 4, § 7(26) ~~205 CMR 103.02(1) through (5)~~. ~~Confidentiality claimants shall make such a demonstration in accordance with the provisions of 205 CMR 103.10 through 103.12.~~

Approved by Commission: ~~July 12, 2022~~ October 27, 2022

VIA EMAIL: caroline.torrissi@massgaming.gov

Caroline Torrissi
Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, Massachusetts 02110

Re: Regulation Comment 205 CMR 103

Dear Attorney Torrissi:

Pursuant to the Notice of Public Hearing and request for Comment issue by the Massachusetts Gaming Commission (“Commission”) on the proposed amendments to 205 CMR 103.00, *Access to and Confidentiality of Commission Records* (“Section 103”), Wynn MA, LLC and Blue Tarp reDevelopment, LLC (collectively hereinafter “Licensees”) submit the following comments for the Commission’s consideration. For the reasons set forth below, the Licensees oppose the wholesale repeal of Section 103 and urge the Commission to update the Regulation to preserve its framework of protecting highly sensitive and confidential information while providing the public with access to information that is not otherwise protected under the law. Rather than just repeal Section 103, the Commission should replace the Regulation with a revised Regulation or Policy that governs confidential information and incorporates a review of the use of Chapter 23K, section 21(a)7’s nondisclosure agreement provision to ensure it provides a practical and efficient mechanism to ensure the free flow of information between the Licensees and the Commission, in particular the Investigations and Enforcement Bureau (“IEB”).

Background

The Commission is unique among Massachusetts public instrumentalities in that it has sweeping authority to compel applicants and the Licensees to produce almost any record. For an applicant, failure to do so can result in a negative finding of suitability and the Licensees are subject to discipline for failing to produce records as requested by the Commission including those requested by the IEB during an investigation or as part of an applicant’s ongoing duty to maintain suitability. G.L. c. 23K, sec. 13. The Commission has subpoena power and the Commission’s regulations provide for a unilateral right to inspect and seize any Licensee record on demand. *See* G.L. c. 23K, sec. 4(22), 4(23) and 4(31). The gaming license applications used by the Commission require the disclosure of highly personal information, in some cases going back 20 years, as well as detailed financial information and records, and the application contains a consent to search. Businesses likewise are required to disclose significant non-public information, including commercially sensitive and proprietary information. The IEB shares this authority and has the ability to obtain information pertaining to applicants and licensees from law enforcement entities or gaming authorities, foreign and domestic, including the Federal Bureau of Investigation. *See* G.L. c. 23K, sec. 6. Cooperating in a gaming-related investigations,

including to “make readily available all documents, materials, equipment, personnel and any other items requested during an investigation,” is a condition of licensure. G.L. c. 23K, sec. 21(a)(7).

Section 103 (and the relevant definitions contained in 205 CMR 102) were promulgated by the Commission in late 2012 in advance of the submission of the Category 1 and Category 2 RFA-1 applications. In promulgating Section 103, the Commission recognized that it was about to become the steward of a significant amount of highly personal information on individual qualifiers as well as highly sensitive and confidential business records of gaming license applicants. It recognized that “there should be an expectation that a significant portion of this information would be deemed confidential based on the nature of the inquiries we’re making as a result of these investigations.” *See* Transcript, MGC Public Meeting, May 16, 2013, at p. 137.

At the same time, the Commission recognized as a public agency that any record that it received is considered a public record unless protected by a statutory exemption to the public records law. G.L. c. 4, sec. 7 cls. 26 and G.L. c. 66. Section 103’s framework as applied to applications is entirely consistent with G.L. c. 23K, sec. 9(b) which recognizes applications as public records, but allows “trade secrets, competitively-sensitive or other proprietary information provided in the course of an application for a gaming license under this chapter, the disclosure of which would place the applicant at a competitive disadvantage, may be withheld from disclosure under chapter 66.” Section 103, while having some flaws, mostly having to do with the internal appeal process in connection with a public records request, provided a framework to address the competing interest of the Licensees in maintaining the confidentiality of their records (and that of their qualifiers) and the Commission’s obligations under the public records law.

Section 103 Framework

While Section 103 recognizes that all records made or received by the Commission or IEB are potentially public records, it specifically exempts from disclosure “to the maximum extent permitted by law”: (1) all records that are specifically excluded from the definition of “public record” pursuant to G.L. c. 4, § 7, cl. 26; (2) “all confidential information as defined in 205 CMR 102.02,”; (3) all records that include CORI or intelligence information pursuant to G.L. c. 6, § 167; (4) personal data pursuant to G.L. c. 66A; and (5) “all records specifically or by necessary implication exempted from disclosure by statute including, but not limited to, the exemption statutes listed by the supervisor of public records in the official *Guide to the Massachusetts Public Records Law: Appendix.*” 205 CMR 103.02. Subsection (1) includes records that are subject to the privacy exemption or the investigatory exemption to the public records law. G.L. c. 4, § 7, cl. 26(c) and (f).

Under Section 103, the Commission defines confidential information as:

(a) trade secrets, competitively sensitive information¹ and other proprietary information² provided to the commission, the bureau, and their agents and employees in the course of an application or an investigation; and

(b) trade secrets and other information protected from public disclosure by a nondisclosure agreement between the gaming licensee and the commission pursuant to M.G.L. c. 23K, § 21(a)(7).

205 CMR 102 “Definitions”

The categories of exempt records and information under 205 CMR 103.02 may only be disclosed as expressly authorized by the Access to and Confidentiality of Commission Records Regulation. Section 103.04 provides:

No information which is exempt from disclosure under 205 CMR 103.02 or which a confidentiality claimant asserts to be confidential information defined in 205 CMR 102.02: *Definitions* shall be disclosed in response to any request for public records unless the Commission has expressly so authorized in accordance with 205 CMR 103.00.

205 CMR 103.04.

If a record falls within the categories listed in section 103.02, it can only be released pursuant to section 103.07. Section 103.07, in turn, provides for the release in certain limited circumstances to comply with law or carry out functions under chapter 23K among others. 205 CMR 103.07(1). If disclosed outside of those limited exceptions, “written Notice *shall* be provided to “the person who furnished the confidential information to the commission or the bureau . . .” 205 CMR 103.07(2) (emphasis supplied). Further, “any such Notice of confidential information to be released or disclosed will be given *prior to the release or disclosure to provide an opportunity for review.*” *Id.* (emphasis supplied).

Therefore, under the current Regulation, records can only be released pursuant 205 CMR 103.07, which must include at least prior notice to a Licensee and an opportunity for review. Section 103.04 applies to such records regardless of whether a claim of confidentiality has been made or not: “No information which is exempt from disclosure under 205 CMR 103.02 *or* which a

¹ “Competitively-sensitive Information” means all records which are, and those portions of records which contain, confidential personal or business information which if made publicly available would have a reasonable likelihood of placing a person at a competitive disadvantage or be detrimental to or otherwise cause substantial damage or irreparable harm to the person such as identity theft, industrial espionage, unfair competition, or similar adverse consequences. 205 CMR 102.02.

² “Proprietary Information” means all records which are, and those portions of records which contain personal or business information which, owing to its confidential nature, is in the ordinary course subjected to strict measures to preserve its confidentiality, including confidentiality agreements, non-competition agreements, encryption and password protection for electronic information, restriction of access to those with a need-to-know, and other policies, procedures, security measures or markings designed to protect the secrecy of information and to keep the information strictly confidential. 205 CMR 102.02.

confidentiality claimant asserts to be confidential information defined in 205 CMR 102.02 . . .” (emphasis supplied).³

In fact, even after a public records request has been denied and the Commission “determines that a record is confidential information as defined in 205 CMR 102.02: *Definitions*, the record in question, or a portion thereof, shall be exempt from public disclosure. . .” 205 CMR 103.11(3). In that instance, the Commission must still “notify the person who submitted the record to the commission or the bureau, the confidentiality claimant, and all persons making a request to inspect or copy the record in question.” *Id.* This regulation further prescribes that such notices must be in writing. 205 CMR 103.11(4).

When records are exempt under section 103.02, the Commission is required to provide Notice to the person who submitted the information allowing for an opportunity to review the materials and seek any further protection of their information than the Commission may provide prior to disclosure. Importantly, this process allows for input from the subject of the records providing a vantagepoint of the information or record that is critical to determining whether it may be confidential. As the Commission has recognized in the past,

“that personal information in some cases is not self-evident. So, some of the applicants have asked for additional information that on its face doesn't look like it's personal information, to be kept from disclosure because in fact when you examine the facts surrounding the information bit, it is personal information. It's just hard to tell, things like divorce records and the like.”

See, Transcript, MGC Public Meeting, March 23, 2013, at pp. 17-18. Such input as to what may be protected under an exemption to the Public Records law, or a non-disclosure agreement, is an important step for the Commission to make an informed decision in meeting its obligation to keep such information out of the public domain. Importantly, nothing under the Public Records law prevents the Commission from seeking such input, and in no way does it dilute the Commission's ultimate authority to determine what is or what is not subject to an exemption or a nondisclosure agreement. Section 103 not only ensures that a person's (including a corporation) rights are protected, but also avoids the Commission making judgments regarding confidentiality unilaterally. The elimination of Section 103 as proposed terminates the notice requirement, prejudicing the Licensees and placing the Commission in a less informed position to make judgments on what information may be subject to disclosure and what should be protected.

G.L. c. 23K, sec. 21(a)(7) Nondisclosure Agreement

In recognition of the Commission's largely unfettered right to obtain information in connection with an IEB investigation, the Legislature provided an equally powerful protection for company records and information making its disclosure subject to entering into a nondisclosure agreement.

³ Additional protections are provided under 205 CMR 103.10 to persons that make written request to deem designated information confidential. This section of the regulation provides a confidentiality claimant the ability to request Commission designation of additional information beyond what is *per se* exempt from disclosure, as well as notice of requests for such confidential materials.

Section 21(a)(7) provides a vital mechanism to protect information submitted to the IEB during the course of an investigation. Specifically, section 21(a)(7) provides in pertinent part:

“Each gaming licensee shall make readily available all documents, materials, equipment, personnel and any other items requested during an investigation; provided, however, that material that the gaming licensee considers a trade secret or detrimental to the gaming licensee if it were made public may, with the commission's approval, be protected from public disclosure and the gaming licensee may require nondisclosure agreements with the commission before disclosing such material”

G.L. c. 23K, sec. 21(a)(7). The Commission has a companion regulation that sets forth the process for obtaining a nondisclosure agreement and decrees certain types of records preemptively as covered by a nondisclosure agreement under section 21(a)(7). This section provides in pertinent part:

Pursuant to M.G.L. c. 23K or 205 CMR 139.00 the gaming licensee may request that the commission enter into a written nondisclosure agreement under the terms of which the commission agrees not to release the specified material or information publicly, in response to a request for public records or otherwise, and will assert the statutory exemption, M.G.L. c. 4, §7(26)(a), and/or any other applicable exemptions, and withhold the applicable materials in response to any request for such record or information. The agreement may provide for coverage for specific materials or information, or categories of materials or information, which will be, or are likely to be, submitted to or obtained by the commission on more than one occasion. A request for a non-disclosure agreement shall be on a form provided by the commission. Upon review of the gaming licensee's request, the commission may execute such an agreement in its discretion.

205 CMR 139.02. The Commission has relied on nondisclosure agreements in protecting Licensee information and the Supervisor of Public Records has upheld the Commission's position to broadly protect records collected during the course of an IEB investigation.⁴

All of the Licensees have nondisclosure agreements in place, originally entered into around the time of each property's opening. These agreements in their current form,

⁴ Specifically, the Supervisor of Public Records has found:

“The above cited regulation states that “[a]ll documents submitted by a gaming licensee or obtained by the [C]ommission in accordance with 205 CMR 139.00 shall be deemed to have been submitted pursuant to a gaming related investigation to ensure compliance with M.G.L. c. 23K . . .” The regulation also permits the Commission to enter into a nondisclosure agreement with the licensee in order to keep certain records confidential. Where the Commission deemed the requested records to have been submitted pursuant to a gaming related investigation and entered into a nondisclosure agreement to prevent the disclosure of certain records, including the three records stated above, the Commission has met its burden to withhold those records from disclosure.

however, may not cover all records and information sought by the IEB or the Commission on a case-by-case basis. It is common for the IEB to request records, information, or analysis regarding a matter that may not fit within the four corners of an existing nondisclosure agreement despite the only requirement for such protection being that the licensee considers the material “a trade secret or detrimental to the gaming licensee if it were made public.”⁵ Revising a nondisclosure agreement under the Commission’s current process takes time and may delay the flow of information between the IEB and a Licensee. While a Licensee has a statutory right to *require* a nondisclosure agreement *before* providing the requested records, Licensees have accommodated investigative requests with the understanding that such material will remain confidential under an exemption to the public records law. The repeal of Section 103 leaves only the formal nondisclosure agreement process to protect company records and information and, while such an agreement requires approval by the Commission, the failure to approve such a request may prevent a licensee from providing the requested material or providing it in a timely manner.

The elimination of Section 103 has additional impacts on documents protected by nondisclosure agreements. As set forth above, the current regulation provides notice to a Licensee if records were requested that are subject to a nondisclosure agreement, as these are recognized under the regulation as *per se* exempt as confidential. 205 CMR 103.02. As a party to these agreements, a Licensee may have rights to enforce in addition to the Commission’s authority. Absent the notice provision in 205 CMR 103.04, a Licensee would not know whether its records are being sought or fully protected under a nondisclosure agreement to which it is a party. To the extent, the Commission and a licensee disagree about the release of a record, there may be other avenues of relief including through the Courts. Judicial relief while an unlikely scenario nonetheless is also forfeited without a process that involves notice.

Recommendations

In 2012, prior to taking custody of highly personal and other sensitive information, the Commission sought to provide clarity regarding what information it collected through the

⁵ Notably, there is no balancing test or finding that the Commission must make for a record to be covered by a nondisclosure agreement. It is within the discretion of the licensee to determine what records may be a “trade secret or detrimental to the gaming licensee if it were made public.” G.L. c. 23K, sec. 21(a)(7). The lack of a balancing test or other burden makes section 21(a)(7) unique within exceptions to the public records law and other processes for seeking confidential treatment of records submitted to a regulator. *Cf.* G.L. c. 4, sec. 7 cls. 26(c)(“personnel and medical files or information and any other materials or data relating to a specifically named individual, *the disclosure of which may constitute an unwarranted invasion of personal privacy*”)(emphasis supplied); G.L. c. 4, sec. 7, cls. 26(f)(“investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials *the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest*”)(emphasis supplied); G.L. c. 25, sec. 5D (“Notwithstanding the provisions of clause Twenty-sixth of section seven of chapter four and section ten of chapter sixty-six, the department [of Public Utilities] may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. *There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection*”)(emphasis supplied).

application process and through its investigative powers would be considered confidential and what may be accessible to the public. This approach not only provided some certainty to applicants, but also helped set the public expectation that many of the Commission's records obtained from applicants and licensees were not going to be open to review. Section 103 was part of these efforts to balance these interests. The Commission also published a "specimen application" which showed which parts of the Multi Jurisdictional Personal History Disclosure and Business Entity Disclosure forms would be public. Commission staff and the Licensees spent considerable time reviewing IEB reports in connection with the RFA-1 process to create public versions of the reports, and the Commission specifically designed the RFA-2 applications to allow for confidential exhibits. All of these steps provided some level of certainty that the highly confidential information provided to the Commission would be protected from public disclosure. The repeal of Section 103, as well as a reluctance to provide applicants or Licensees any ability to review their own records before being disclosed, erodes this certainty. In addition to revising Section 103, the Licensees respectfully urge the Commission to use this opportunity to establish a comprehensive policy on confidential records in its place, one that balances access to public records with the reality of the Commission being in possession highly personal information pertaining to individuals and highly sensitive and proprietary information of businesses many of which are publicly traded.

Specifically, the Licensees request the Commission to consider:

- Expanding the categories of records recognized as presumptively exempt listed in 205 CMR 139 and in each Licensee's nondisclosure agreement to include additional records regularly submitted to the Commission
- Clarifying a process to provide notice to the Licensees that their records are subject to a request for disclosure that is consistent with the public records law
- Upon notice of such a request, providing an opportunity for comments and proposed redactions for the Commission's consideration prior to release of the records
- Providing a mechanism so that a Licensee can designate a record "NDA Request Pending" at the time of submission to allow for the timely production of records
- Providing a mechanism for limited review of sensitive records on a secure company FTP site without further production of such materials
- Establishing a specific process and presumption of approval of an NDA if the elements of that process and G.L. c. 23K, section 21(a)(7) are met
- Streamlining the NDA process and designating authority to a single commissioner for review and approval
- Reviving the application specimens for the MJPHD, BED and MA Supp
- Providing a mechanism for review of any IEB or other Commission Report to determine whether any information contained in the report should be redacted pursuant to an exemption under the public records law or a nondisclosure agreement
- Establishing a protocol for use of confidential information in connection with adjudicatory hearing

Thank you for your consideration of these comments. We look forward to working with the Commission and staff to establish a comprehensive policy and regulations pertaining to confidential records.

Sincerely,

/s/ Jacqui Krum

Jacqui Krum
Senior Vice President and General
Counsel
Encore Boston Harbor
One Broadway, Everett, MA 02149
jacqui.krum@encorebostonharbor.com

/s/ Augustine Kim

Augustine (Gus) Kim
Vice President and Legal Counsel,
Northeast Group
(Empire City Casino and MGM
Springfield)
MGM Resorts International
akim@empirecitycasino.com



October 13, 2022

Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, MA 02110

Dear Commissioners:

We write to ask that the Massachusetts Gaming Commission ("Commission") reconsider the publicly communicated timelines for launching sports wagering in the Commonwealth to allow for retail and mobile operators to go live at the same time. During the Commission's meetings on October 6 and October 7, 2022, Commissioners stated a timeline to begin retail sports wagering in January in time for at least part of the NFL playoffs and the Super Bowl, while delaying the launch of mobile sports wagering until a few months later. This decision to launch mobile sports wagering after retail sports wagering would artificially limit consumer choice and consumer protections, stunt the state's sports wagering market, and put mobile first operators, such as DraftKings, at a competitive disadvantage compared to others. DraftKings urges the Commission to set one universal launch date for all sports wagering in the Commonwealth that encompasses both in person and online wagering.

Based on the discussion during the Commission's meeting, it is clear that the timeline decision was made not for policy reasons but, rather, because the Commission believes that it will be a challenge to promulgate regulations in a timely manner. We respectfully request the Commission reconsider, as other states have recently been able to successfully codify regulations for retail and online sports wagering at the same time and launch both verticals simultaneously. Last year, Arizona's Department of Gaming was able to draft, enact, and approve both mobile and retail operators in less than six months, allowing operators that were prepared to launch to accept wagers beginning on the same day at the start of the NFL season, both in-person and online. In a more recent example, Kansas launched both in-person sports wagering at the state's casinos and racinos, as well as online sports wagering, on the same day last month. Similarly, Ohio has set a universal go live date of January 1, 2023 for all sports wagering regardless of channel, where retail, mobile, and other permissible forms of sports wagering will all go live at the same time.

If the planned sports wagering timelines are followed, the Commonwealth will be limiting the choices of its constituents. In states with both retail and mobile wagering, over 90% of all bets are placed through mobile channels. Massachusetts not supporting this type of wagering for the biggest sporting event, and biggest sports wagering event, of the year would be a mistake and would miss an important opportunity to get Bay Staters onto regulated sports wagering platforms and away from the illegal market. Massachusetts has a long record of leading the nation in consumer protections, and we respectfully urge the Commission to not let another NFL Playoffs and Super Bowl take place where people are wagering on the illegal market, exposing their personal and financial information and providing no recourse if an illegal sports wagering operator decides to take advantage of consumers.

A staggered sports wagering launch also materially impacts state revenue. As previously mentioned, many sports bettors prefer placing mobile bets to retail bets and requiring people to drive to three brick and mortar locations in the Commonwealth could lead to significant volume of bets continuing to go to 1) neighboring states such as Connecticut, New Hampshire, New York



and Rhode Island with legal and regulated mobile sports wagering, and 2) illegal online operators that continue marketing to persons located in the Commonwealth. The NFL Playoffs and the Super Bowl are a significant customer acquisition moment in time for regulated operators that will allow the regulated operators to bring customers on to their platforms and keep them there.

The illegal market may have an even bigger advantage in Massachusetts as a result of a staggered launch: confusion. Bettors may think that their ability to place wagers in person at locations in the state means that the mobile wagers they place in the state are with reputable, regulated operators when they are not. According to research performed by the American Gaming Association, the majority of consumers believe it is important to only bet through legal operators, but over half of consumers who placed wagers with illegal operators believed they were wagering legally and that confusion will only become worse if retail sports wagering in the state is authorized but mobile is not yet authorized.¹

The final point we wish to raise is about competition and equality among operators. The authorizing law envisions a market of up to fifteen sports wagering operators. The authorizing law also requires substantial investment in the form of licensing fees, regulatory costs, staffing, product customization and marketing to name a few and the investment by operators is substantial. DraftKings has invested heavily in the Commonwealth since our founding here in 2011. We currently employ over 1,400 people at our headquarters in Boston and have continued to expand our operations here over the years. Allowing certain sports wagering operators to accept wagers before other sports wagering operators creates an unlevel playing field. Instead, DraftKings requests that all sports wagering, both in-person and online, be permitted to go live at the same time, and sports wagering operators that are licensed and prepared to accept bets should be allowed to do so.

To conclude, we respectfully request the Commission use its broad rulemaking authority to promulgate rules and launch retail and mobile sports wagering at the same time. The authorizing statute expressly permits temporary licensing and emergency rulemaking and many operators wishing to offer sports wagering have been vetted and licensed by numerous other sports wagering jurisdictions across the nation. We appreciate your consideration on this important matter.

Sincerely,

DraftKings Inc.

¹ <https://www.americangaming.org/new/new-study-finds-sports-bettors-abandoning-bookies-for-legal-market/>

MASSACHUSETTS GAMING COMMISSION

MEMORANDUM

To: Chair Judd-Stein and Commissioners Hill, Maynard, O'Brien and Skinner
From: Procurement Team (Karen Wells, Todd Grossman, Crystal Beauchemin, Cristian Taveras, Jaclynn Knecht, Noelle Low, John Scully, and Derek Lennon)
Date: 10/27/2022
Re: Update on Procuring Project Management Services for Sports Wagering Application Review

Summary:

In a public meeting on October 13, 2022, the Commission contemplated hiring a vendor to provide Project Management services to the Commissioners for the evaluation of Sports Wagering License Applications. Staff is recommending utilizing statewide contract PRF76, Management Consultant Services, as a vehicle to solicit quotes for the services that would aid the Commission in reviewing the applications.

A procurement team comprising Karen Wells, Todd Grossman, Crystal Beauchemin, Cristian Taveras, Jaclynn Knecht, Noelle Low, John Scully, and Derek Lennon met on October 24th to discuss the potential procurement based on the discussions of the Commission in public meetings on October 13th and October 20th. We have pulled together a draft Request for Quotes (RFQ), but wanted to brief the Commission on the following key items from the RFQ:

- Procurement timeline
- Scope of services
- Procurement evaluation criteria
- Procurement questions and vendor skills being evaluated

The following information in this memorandum is for discussion purposes. We are looking to verify or amend the timeline, scope of services, evaluation criteria and required skills and questions so that we can post this procurement and move forward as soon as possible in selecting and hiring a management consultant project manager vendor (project manager) to aid the Commission in its documentation and evaluation of Sports Wagering applications.

Procurement Timeline:

The Commission has set a deadline for competitive applications of November 21, 2022. The Commission has then provided 30 days for Commissioner individual review of applications and creation of evaluation tools. The selected project manager vendor will be essential in aiding and guiding the Commission in creation of the evaluation tools. In addition, the Commission has set tentative deadlines of awarding licenses for brick-and-mortar operations to allow patrons to place bets prior to the Superbowl (February 12, 2023) and for online and mobile licenses to allow patrons to place bets prior to the start of March Madness (March 14, 2023). The procurement timeline below has been established with the aforementioned dates in mind.

QUOTE FORM CALENDAR ITEM	DATES and Times (EST)
RFQ Posted	Friday October 28, 2022
Submission of Quote Form Deadline	Quote Form will be submitted to appropriate COMMBUYS RFQ. Please note that questions and answers will be turned off in COMMBUYS Deadline date and time: Monday November 14, 2022, by 3PM
Evaluation of Quotes Period (Estimated)	November 15, 2022 – November 21, 2022
Best and Final Offer Deadline (Estimated and if MGC chooses to do BAFO)	November 21, 2022
Award Notification Period (Estimated)	November 21, 2022
SOW Negotiation and Execution Period (Estimated and if needed)	November 22, 2022
Performance Start Date (Estimated)	November 23, 2022

We decided to allow for 2 weeks for vendors to submit responses for the request for quotes (RFQ). We have not included a question-and-answer period, and we have not included an oral presentation for finalists. If we chose to add either of those items, we would be cutting into the 30-day timeline the Commission has tentatively scheduled for itself to create the evaluation tools prior to formal evaluation in public proceedings.

Scope of Services:

We have developed a proposed scope of services for this procurement based on discussions from the public meetings on October 13th and October 20th. While all the bullets below are important, we want to call to attention the timeline for development of the Evaluation Tools. We have recommended setting it to 14 days after the execution of the statement of work, however, that would be contingent upon individual Commissioner's calendars.

RFQ Proposed Scope of Services: PRF76 Contractor agrees to perform the services identified below, and those related thereto, at the direction and under the supervision of the Commission. The MGC Commission Chair shall serve as the MGC project manager for this contract. The Management Consultant Project Manager may be working directly with the Commission Chair or their selected designee. **The selected Management Consultant Project Manager must be comfortable with appearing before the Commission in Public Meetings.** The Management Consultant Project Manager may be required to provide services, including but not be limited to, the following:

- Meet with the Commission and establish the roadmap for application review, evaluation process (205 CMR 218) and license award.
- Meet with the Commission and develop the business cases and key performance indicators (KPIs) regarding already established criteria and components that should be considered when reviewing applications.
- **Draft and develop potential evaluation tools for the Commission to review using industry best practices which are fair and impartial.**

- Assist the Commission to review all applications for Sports Wagering Operators. Take notes on key performance indicators established by the Commission. Ready any public documents regarding key criteria for the Commission to review.
- Be present during any public proceedings and take impartial notes regarding the subject matter of the applicants during those presentations.
- Interview MGC staff at the request of the Commission and document discussions
- Review the application summaries with the MGC Commissioners in public proceedings and other meetings with key agency leadership as appropriate to monitor the processes, procedures by the MGC related to planning for and managing application evaluation.
- Create any geo-spatial analysis review of applications as needed.

It is stated specifically in the RFQ that the Project Manager vendor will have no voting rights in the evaluation process. We believe we have captured the tools and essential scope that the Commission has envisioned this vendor to provide, however, if there are additional services, we have not captured we can use this time to discuss and add the additional services to this procurement.

Procurement Evaluation Criteria:

The Commission is a state agency for purposes of state finance law and does operate under 801 CMR 21.00. We are utilizing the statewide contract PRF76 procured by the Operational Services Division for use by state agencies. We do intend to utilize best value in determining the successful bidder. In addition, this procurement is anticipated to be over \$250K which would categorize it as a large procurement and therefore we are recommending that 25% of the total score be dedicated to the vendor's supplier diversity commitments, as is required by the Supplier Diversity Office for Executive Branch agencies and recommended for other state agencies. Below are the areas staff has identified for evaluation criteria in determining best value:

- Qualifications of Bidder and Personnel
- Quality of Work Plan to Meet Required Needs of Eligible Entity
- Costs of Services
- Commitment to Diversity 25% of the evaluation
- Best and Final offer, if warranted.

The concepts above were created for the team to develop the Skills and Questions in the next section that will be evaluated. We do anticipate this will be an hours and materials/rate contract rather than a maximum obligation contract. We have drafted the RFQ to ask vendors to provide their rates for this engagement as well as anticipated hours to create the plans, evaluation tools and time to review and create documents for public proceedings.

Procurement Questions and Vendor Skills:

The procurement team has allotted one week for review and selection of a vendor from the proposed RFQ. To meet this compressed timeline, we have developed the following list of Required Skills necessary for the Vendor team.

- At least one member of the team must have the Project Management Professionals (PMP) certification by the Project Management Institute

- Subject to approval by the MGC, the selected vendor must have the ability start substantive work as soon as the SOW is finalized and approved by the MGC.
- High level familiarity with M.G.L. c. 23N and Categories of Licenses being offered.
- Ability to review and assess complex and lengthy applications.
- Ability to determine key performance indicators from any such application review
- Ability to perform program evaluation, including design, analysis, and report preparation.
- Ability to perform qualitative analysis and mixed method of analysis.
- Expertise in geo-spatial analysis

Once the vendor has certified it is able to meet the requirements above, we will begin reviewing responses to the following questions. The respondents are limited to a two (2) page response in Times New Roman 10 Font to the bullets above as well as each of the following four (4) questions for a total maximum response of ten (10) pages for the procurement team to review. This path was intentional to aid in keeping to the timeline outlined in this memorandum.

Question 1: Noting the Commission's intended timeline, the contractor must describe (at high level) how they would approach these services and deliverables for MGC. At this time, the MGC estimates as many as 29 applicants and the contractor will review all applications with the Commission.

Question 2: Bidders also need to propose a strategy to scale their staff up and/or down to address the services being requested and to provide ongoing support of the project with deliverables.

Question 3: Contractor must detail any past or relevant experience to the work being detailed in this engagement. Please note any evaluation experience related to Gaming or the sports wagering industry. Contractors must also provide references to be contacted at the MGC's discretion.

Question 4: Contractor must be free of all conflicting Massachusetts casino gaming and sports wagering-related influences. Contractor must disclose any current or prior contracts, or other significant engagements, over the past six (6) years with entities that have or could reasonably be expected to have a current or future interest in the development of a casino or sports wagering operation in Massachusetts. Contractor must disclose the names of any such clients and the nature of the engagement(s). Contractor must also disclose if any individual associated with its firm has any significant interest or involvement in any such entities, and the nature of such interest or involvement. If a disclosure is made, the contractor should also address, if possible, in detail any plan to mitigate the appearance of any potential conflict of interest.



Q2 and Q3 2022 Report Massachusetts Gaming Commission

October 27th 2022

Revenue, Taxes, Lottery & Spend Update

MGM Springfield Q2 & Q3 2022

Q2 2022 Gaming Revenue & Taxes

Month	Gaming Revenue	MA Taxes
April	\$22,540,029	\$5,635,007
May	\$21,152,249	\$5,288,062
June	\$21,146,008	\$5,286,502
Total	\$64,838,286	\$16,209,571

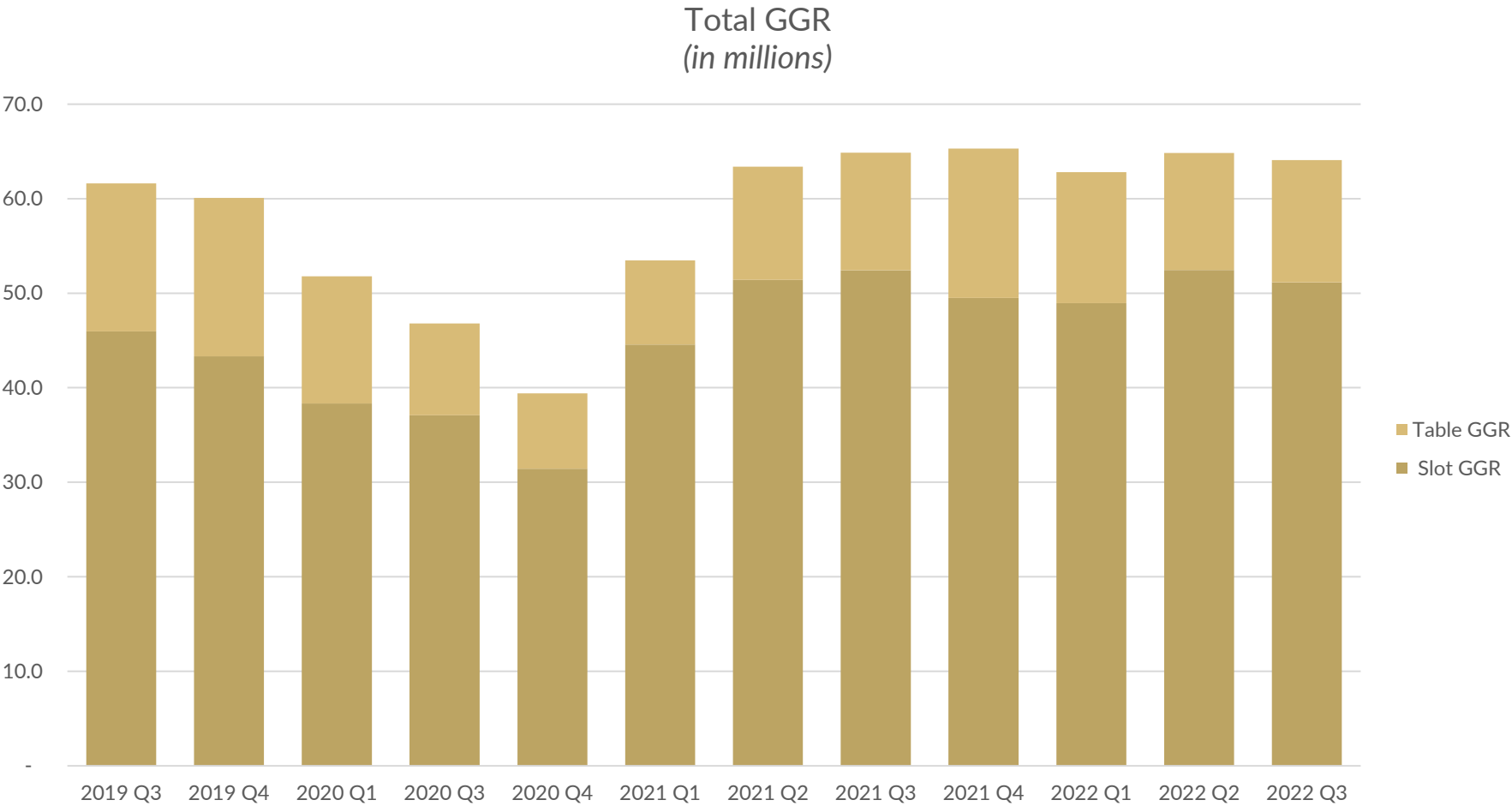
Q3 2022 Gaming Revenue & Taxes

Month	Gaming Revenue	MA Taxes
July	\$21,517,722	\$5,379,431
August	\$21,992,831	\$5,498,208
September	\$20,571,648	\$5,142,912
Total	\$64,082,202	\$16,020,550

Q2 & Q3 2022 YOY Gaming Revenue & Taxes Packet Page 165

Year	Quarter	Table Games Revenue	Slots Gaming Revenue	Total Gaming Revenue	MA Taxes
2021	Q1	\$8,897,282	\$44,558,482	\$53,455,764	\$13,363,941
	Q2	\$11,978,623	\$51,414,249	\$63,392,873	\$15,848,218
	Q3	\$12,467,529	\$52,407,561	\$64,875,090	\$16,218,773
	Q4	\$15,803,182	\$49,507,129	\$65,310,311	\$16,327,578
	Total	\$49,146,617	\$197,887,421	\$247,034,038	\$61,758,509
2022	Q1	\$13,877,719	\$48,936,406	\$62,814,125	\$15,703,531
	Q2	\$12,384,117	\$52,454,169	\$64,838,286	\$16,209,571
	Q3	\$12,930,756	\$51,151,446	\$64,082,202	\$16,020,550
	Q4	-	-	-	-
	Total (to date)	\$39,192,592	\$152,542,020	\$191,734,612	\$47,933,653

Historical Quarterly GGR



- Table Game Occupancy – at peak, we open 36 tables with an average occupancy of 4 ppl per table.
- Total GGR has met or exceeded pre-covid revenues.

Q2 2022 Lottery

Month	Lottery Sales	% Change from Previous Year
April	\$144,545	55%
May	\$103,973	(9%)
June	\$119,038	53%
Total	\$367,556	29%

Q3 2022 Lottery

Month	Lottery Sales	% Change from Previous Year
July	\$151,390	44%
August	\$98,780	8%
September	\$97,075	18%
Total	\$3347,245	25%

Q2 & Q3 2022 YOY Lottery Sales

Year	Quarter	Lottery Sales	% Change from Previous Year
2021	Q1	\$283,089	-
	Q2	\$285,253	-
	Q3	\$278,279	-
	Q4	\$335,217	-
	Total	\$1,181,837	-
2022	Q1	\$311,307	10%
	Q2	\$367,556	29%
	Q3	\$347,245	25%
	Q4	-	-
	Total (to date)	\$1,026,107	21%

Q2 & Q3 2022 Diversity Spend

Diversity Category	Annual Goal	Q2%	Q2 Spend	Q3%	Q3 Spend
MBE Vendor Spend	10%	3%	\$215,497	1%	\$136,220
VBE Vendor Spend	1%	2%	\$141,424	2%	\$215,409
WBE Vendor Spend	15%	3%	\$220,813	4%	\$382,790
Total	27%	8%	\$577,735	8%	\$733,790

*Q2 Total biddable spend was \$7.4M.

*Q3 Total biddable spend was \$9.2M.

Q 2 & Q 3 2022 Local Spend

Diversity Category	Annual Goal	Q2%	Q2 Spend	Q3%	Q3 Spend
Local* Vendor Spend	\$50M	38%	\$4,617,914	36%	\$4,619,207
MA Vendor Spend	-	48%	\$5,735,444	45%	\$5,884,319

*Local Vendor Spend includes Springfield, Surrounding Communities and Western Massachusetts.

Compliance

MGM Springfield Q2 & Q3 2022

Q2 2022 Compliance

Month	Minors Intercepted in Gaming Area and prevented from Gaming	Compared to 2019	% Change	Minors intercepted Gaming	Compared to 2019	% Change	Minors Intercepted consuming alcohol	Compared to 2019	% Change
April	23	113	(80%)	2	10	(80%)	1	3	(67%)
May	21	158	(87%)	1	11	(91%)	2	0	NA
June	24	179	(87%)	3	14	(79%)	0	3	(100%)

- Mean Average time in Gaming Area – 12.4 minutes – Median Average time – 3 minutes.
- Longest time in Gaming Area – 2 hour 36 minutes
- Shortest time in Gaming area – 26 seconds
- Those who consumed alcohol, were between the ages of 18-21. Those who managed to gamble were a combination of ages including minors encouraged by parents or guardians.

Q3 2022 Compliance

Month	Minors Intercepted in Gaming Area and prevented from Gaming	Compared to 2019	% Change	Minors intercepted Gaming	Compared to 2019	% Change	Minors Intercepted consuming alcohol	Compared to 2019	% Change
Jul	57	230	(75%)	4	13	(70%)	0	0	NA
Aug	41	213	(81%)	7	21	(67%)	0	3	(300%)
Sep	18	174	(90%)	3	9	(67%)	0	2	(200%)

- Mean Average time in Gaming Area – 5.6 minutes – Median Average time – 3 minutes.
- Longest time in Gaming Area – 55 minutes
- Shortest time in Gaming area – 9 seconds
- No one under 21 consumed alcohol in Q3 2022. Those who managed to gamble were a combination of ages including minors encouraged by parents or guardians.

Employment

MGM Springfield Q2 & Q3 2022

Q2 & Q3 2022 Employment Numbers

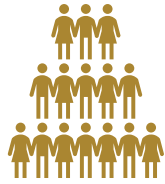
Q3 2022	Goals	Q1 2022 %	Q1 2022 Total # of Employees	Q2 2022 %	Q2 2022 Total # of Employees	Q3 2022 %	Q3 2022 Total # of Employees	Q4 2022 %	Q4 2022 Total # of Employees
Minority	50%	50%	600	50%	623	51%	683	-	-
Veteran	2%	6%	68	6%	70	5%	71	-	-
Women	50%	41%	489	40%	499	40%	537	-	-
Springfield Residents	35%	37%	437	37%	462	39%	514	-	-
Western MA Residents	-	74%	885	74%	925	75%	995	-	-
MA Residents	-	77%	911	76%	949	77%	1,022	-	-
Total # Of Gaming Establishment Employees*	-		1,203		1,244		1,330		-
Full Time	-		812		843		878		-
Part Time	-		235		234		278		-
On Call	-		156		167		174		-

Q2 & Q3 2022 Hiring Goals Percentages

2022	Minority		Women		Veterans		Total Headcount	
ALL EMPLOYEES	Q2	Q3	Q2	Q3	Q2	Q3	Q2	Q3
Number of Employees	623	683	499	537	70	71	1,244	1,330
% Actual	50%	51%	40%	40%	6%	5%		
MANAGER AND ABOVE								
Number of Employees	43	46	42	46	4	4	123	129
% Actual	35%	36%	34%	36%	3%	3%		
SUPERVISORS AND ABOVE								
Number of Employees	80	68	75	79	9	10	207	181
% Actual	39%	38%	36%	44%	4%	6%		

MGM Springfield Staffing Outlook

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Massachusetts
Unemployment Rate
3.6%



Job Requisitions
250+



Paid Dealer Training
(5 graduating
classes)



Hiring Events
40+



Competitive Total
Compensation



Competitive Health
Benefits



Free Meals for
All Employees



Expanded Guest
Offerings

Community Outreach, Special Events and Development

MGM Springfield Q2 2022

Q2 2022 Community Outreach & Special Events

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• Water donations • Open Pantry • Habitat for Humanity • Ben Swan Way • Largest Pancake Breakfast • 1st Pride Parade •

Q3 2022 Community Outreach & Special Events

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· Star Spangled Springfield Viewing · 4th Anniversary Celebrations · Springfield Puerto Rican Parade · Connecticut River Cleanup ·

Q2 Internal Development

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New **GameSense**TM
Info Center

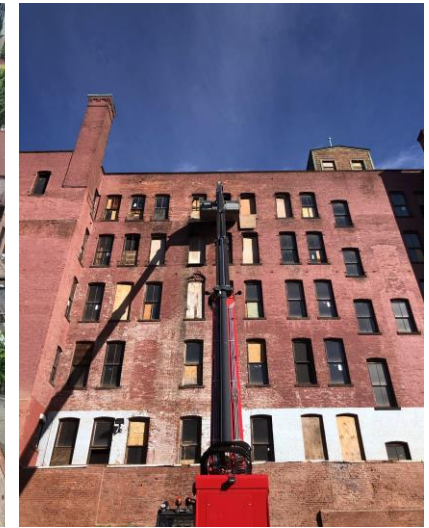


Q3 Internal Development

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Q2 External Development



31 Elm St is now under continuous construction, inside and out.

MMC Parking Garage being prepped to begin demolition.

Q3 External Development



MMC Parking Garage being demolished.

31 Elm St received a visit and tour from the Governor and his wife, the Lt. Governor and Springfield Mayor Sarno.

Entertainment

MGM Springfield Q2 2022

The Armory



Symphony Hall



Mass Mutual Center



Plaza



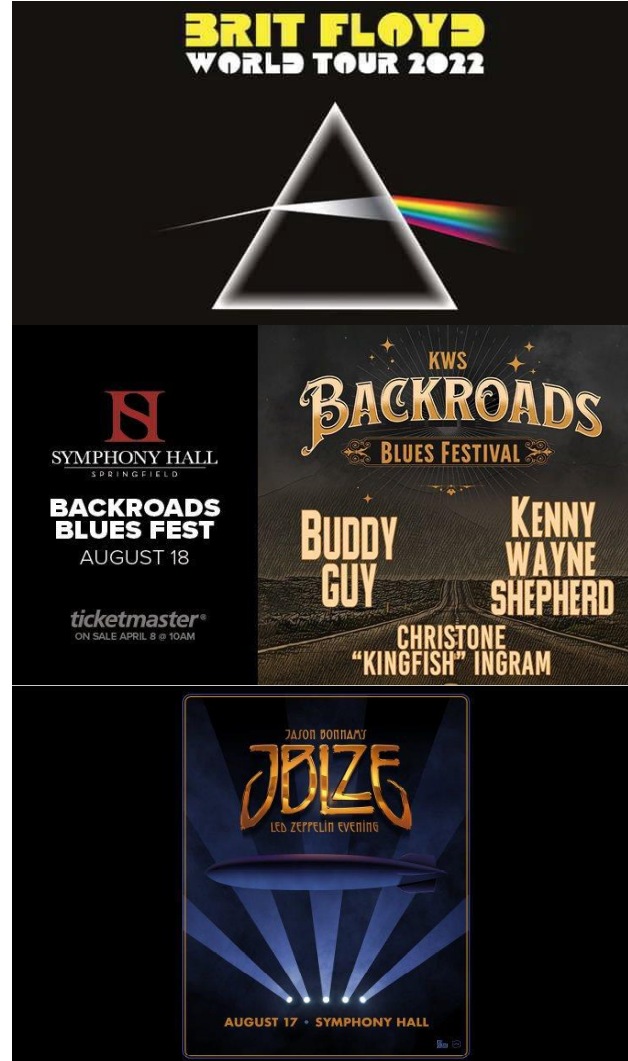
Entertainment Q3

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The Armory



Symphony Hall



Mass Mutual Center



Plaza



Largest audience in FMF's history!!!



Thank you
