



Massachusetts Gaming Commission Meeting Minutes

Date/Time: August 18, 2022, 10:00 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 112 499 4620

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
Commissioner Jordan Maynard

1. [Call to Order](#) (00:08)

Chair Judd-Stein called to order the 389th Public Meeting of the Massachusetts Gaming Commission (“Commission”). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. [Administrative Update](#) (1:00)

a. Release of Notice of Intent

Executive Director Wells reiterated the importance of the Notice of Intent and requested that any party seeking a license for sports wagering go to the Commission website where the Notice of Intent form was posted. Executive Director Wells stated that the Notice of Intent was designed to give the Commission an approximate number of interested parties, and that the Notice of Intent would ease communications between the Commission and prospective sports wagering operators. Executive Director Wells noted that the Notice of Intent was due by August 31, 2022. The *Notice of Intent* was included on pages 4 through 5 of the Commissioner’s Packet.

b. Additional Updates

Executive Director Wells stated that the job listing for Director of Sports Wagering had been posted on Taleo, MassCareers, and the Commission website.

3. [Round Table Discussion](#) (4:05)

a. Presentation of Initial Preparations for In-Person Sports Wagering Operations

Chair Judd-Stein provided a brief recap of the sports wagering legislation signed into law on August 10, 2022, and the Commission’s responsibilities as the regulator of sports wagering. She stated that the sports wagering legislation referenced existing entities, providing separate categories of licensing. She stated that the category one sports wagering licenses were intended for gaming establishments currently licensed under G.L. Chapter 23K § 2, including Encore Boston Harbor (“EBH”), MGM Springfield (“MGM”), and Plainridge Park Casino (“PPC”). Chair Judd-Stein stated that category two sports wagering licenses were intended for entities authorized to conduct simulcast wagering, including Raynham Park and Suffolk Downs. She continued that category three licenses were intended for mobile sports wagering operators.

Chair Judd-Stein noted that this meeting was to address retail sports wagering locations and that additional roundtables would be conducted for operators under the category three license. She stated that there would also be a roundtable discussion regarding responsible gaming and advertising. The *Presentations of Initial Preparations* were included on pages 6 through 22 of the Meeting Packet.

1. [Plainridge Park Casino](#) (11:28)

PPC General Manager North Grounsell stated that Penn Entertainment (“Penn”), the operator of PPC, has 24 sports wagering locations across 13 states, and that PPC executives are experienced in retail sports wagering. He stated that there was support from Penn, and that PPC had developed project timelines, job descriptions, standard operating procedures, and best practices. Mr. Grounsell stated that PPC had provided the Commission staff with a retail vendor list and identified potential locations for PPC’s retail sports wagering operation. Mr. Grounsell noted potential obstacles included licensing, certifications needed for hardware and software, and whether the Commission would accept temporary reciprocity agreements.

2. [MGM Springfield](#) (17:22)

Vice President and Legal Counsel at MGM Springfield Augustine Kim stated that MGM had already constructed a sports wagering lounge with a cage. He stated that MGM is ready to launch as soon as a regulatory framework is implemented. He continued that MGM had provided a vendor list, proposed internal controls, and standard operating procedures to the Commission. Mr. Kim stated that MGM maintained sports wagering operations in five states and had partnered with previously used operators to assist with the setup in Massachusetts. He stated that MGM would be ready within 90 days of regulations being finalized.

3. [Encore Boston Harbor](#) (22:00)

Senior Vice President and General Counsel for EBH Jacqui Krum explained that construction was completed, and the WynnBet sports bar was operational for viewing of sports. Counselor Krum stated plans to include sports wagering kiosks throughout the gaming establishment. She stated an interest in employees from affiliated Las Vegas companies training employees, as there was a provision allowing similar training in the Gaming Act. She noted concern regarding the timeline for vendor licensing and having the IT team work on obtaining required certificates.

4. [Suffolk Downs](#) (25:33)

Chief Operating Officer of Suffolk Downs Chip Tuttle stated that Suffolk Downs was looking at two paths. He stated one concern was securing a sports wagering partner, and while Suffolk Downs had contact with sports wagering operators, no firm decision had been made. He stated that the second issue was securing a real estate option for the sports wagering operation as Suffolk Downs had been a tenant since 2017.

5. [Raynham Park](#) (29:33)

Attorney with Rimon, P.C. and outside counsel for Raynham Park Steven Eichel stated that Raynham Park was searching for a sports wagering partner. He noted that potential partners had questions about fee structures, licensing structures, and whether it is permitted to have different sports wagering operators for the retail license and mobile license. He stated that the existing greyhound simulcast location would be demolished and replaced with a 58,300 square foot structure with 30,000 square feet devoted to the gaming area.

b. [Operations](#) (39:19)

1. Placement/Floor Plans

Executive Director Wells stated that the licensees should know the Commission’s parameters and restraints on sports wagering on the premises. Counselor Krum asked if the ballroom can be temporarily turned into a viewing party, and if kiosks could be transferred to the ballroom with appropriate security. Counselor Krum continued that EBH had considered the potential of kiosks in the garage. Commissioner O’Brien asked if these were short-term solutions until on-premises sports wagering was available, or were they an intended change in the structure of how sports wagering would be provided at EBH. Counselor Krum stated that they would be short term to address volume and ensure there were enough sports wagering locations. Commissioner Hill asked what floorplans looked like in other jurisdictions. Counselor Krum stated that Wynn only had one location with sports wagering in Las Vegas. Mr. Grounsell stated that sports wagerers enjoy other forms of gaming, and the ability to have kiosks near other games is helpful. He stated that horse racing patrons were accustomed to self-service and PPC anticipated that patrons may also be willing to wager on an active game.

Chair Judd-Stein inquired whether any other sports wagering facility utilized the garage area, and noted PPC had used drive-up wagering for the Kentucky Derby. She sought clarification as to

whether the garage location would be drive-up or if the patrons would have to exit the vehicle. Counselor Krum stated that the garage location would be an enclosed space to walk into. Commissioner Maynard asked if the garage kiosk would be the only interaction some patrons would have with the property. Counselor Krum replied that patrons could enter the casino from the proposed location, but that short term parking would be available for patrons who did not intend to stay. Commissioner Maynard asked if the Las Vegas sports wagering location had a similar structure, and Counselor Krum replied that it did not.

Mr. Kim stated that MGM would not provide kiosks outside of the space already designated as the casino, and stated an interest in the watch parties previously mentioned by Counselor Krum. Counselor Krum stated that EBH had no immediate concern regarding long-term expansion of the casino floor.

2. [Staffing/Hiring](#) (49:20)

Mr. Grounsell stated that PPC had made determinations regarding organizational structure, supervision, and what positions were required. He stated that hiring depended upon how the Commission proceeded regarding the prioritization of retail or mobile sports wagering. He noted that the number of employees required for sports wagering was dependent upon the sports seasons.

Commissioner Hill voiced concerns about hiring issues the licensees had reported in prior months, and inquired whether more employees would be required for retail locations than mobile. Mr. Grounsell explained that the hiring issues had been in the culinary industry, but the numbers had been returning to normal. He stated that potential employee interest in sports wagering peaked when it became legal in the new jurisdiction, and that PPC feels comfortable in being able to meet the hiring demand. Commissioner Maynard commented that the new positions would be a great way to meet employment diversity goals.

Chair Judd-Stein asked how many sports wagering operation jobs take place outside of Massachusetts, and recognized that the numbers may differ between retail operators and mobile operators. Mr. Eichel stated that Raynham Park expected the retail side to operate locally, and that mobile was dependent upon the sports wagering operator they chose to partner with. Mr. Tuttle echoed Mr. Eichel's concerns of uncertainty regarding the mobile sports wagering operator's hiring, but noted that retail sport wagering employees would be within the existing Suffolk Downs union. Mr. Tuttle stated that existing employees had expressed an interest in additional shifts, so their hours would be expanded in addition to hiring. Counselor Krum stated that the positions hired for sports wagering would likely be culinary, security, surveillance, IT, and cashiers. She anticipated that mobile sports wagering positions would likely not be based in Massachusetts.

3. [House Rules and Internal Control Submissions](#) (1:01:09)

Chair Judd-Stein stated that licensees must present house rules for approval to the Commission prior to operation. Counselor Krum stated that house rules for sports wagering would look similar to the house rules for other games offered, and that EBH is ready to submit the house

rules to the Commission, based upon Wynn's other sports wagering operations. She stated that internal controls will largely be dependent upon the regulations, and that EBH would develop internal controls once the regulations were received.

Investigations and Enforcement Bureau (IEB) Field Manager Burke Cain stated that IEB was preparing for physical property inspections for sports wagering, but that internal controls would be dependent upon regulations. Executive Director Wells stated that any licensee who had developed house rules should submit them to the Director of the IEB, Loretta Lillios.

4. [Security \(Physical/Cybersecurity, Data, Age Restrictions, KYC, Compliance\)](#) (1:04:16)

Mr. Kim stated that MGM's intent was to keep sports wagering limited to the existing casino floor, and utilize the existing surveillance, security operations, and standard operating procedures. He noted that cameras and lighting would be changed to adequately cover the sports wagering kiosks. He stated that once MGM is licensed the casino will implement existing protocols used by sports wagering operations located in other jurisdictions.

Mr. Grounsell stated that PPC will use systems currently in use, and intended to add additional systems for unusual betting patterns. Chair Judd-Stein expressed concern that horse racing allows betting for ages 18 and older, while sports wagering requires patrons to be 21. She asked how PPC will manage to distinguish patrons who are old enough to wager on horse racing but not sports wagering, as sports wagering kiosks cannot discern player age. Mr. Grounsell stated that monitoring would occur, and staff could check identification to monitor for underage patrons. Commissioner O'Brien asked whether any other jurisdiction had the dichotomy of dual age-requirements for horse racing and sports wagering. Mr. Grounsell stated that West Virginia and Pennsylvania had similar issues. Commissioner O'Brien asked if any additional security protocols had been implemented in those jurisdictions. Mr. Grounsell stated that the protocol was the human element of monitoring the transactions. Commissioner O'Brien expressed she was uncomfortable with the existing protocol, and wanted more protection in place.

Counselor Krum stated that EBH was operating under the assumption that the Commission would require the same level of security and surveillance that it requires for other forms of gaming, and that EBH would have that level of security and surveillance in each area where sports wagering would be authorized.

5. [Equipment and Technology \(Geofencing, Kiosk Testing, IT Certifications\)](#) (1:12:32)

Executive Director Wells stated that the expectations from Commission staff were that Gaming Labs International ("GLI") certifications for sports wagering equipment would be to the Massachusetts rules and regulations. Mr. Grounsell stated that retail operators would require the definition of "gaming equipment" for certification. He inquired as to whether the licensees would require a Massachusetts-specific GLI letter, or simply a certification that the equipment complies with GLI. Chair Judd-Stein replied that Chief Information Officer Jagroop-Gomes was not present, but could answer these questions at a later date. Executive Director Wells stated that the

Commission would create regulations for GLI standards and any additional requirements, and that an independent test lab will test to specific state standard. Chair Judd-Stein stated that the next step in this process was to identify any additional requirements for Massachusetts.

Commissioner O'Brien asked how many states have specific standards in addition to the base GLI standards. Mr. Grounsell stated that he was unsure, but many states allowed reciprocity, where another jurisdictions' GLI standards could be used on a temporary basis during the implementation of new standards and regulations.

6. [Identified Challenges and Regulatory Implications](#) (1:19:47)

Counselor Krum stated that EBH foresaw challenges in the GLI timeline and reciprocity. She stated that in other jurisdictions reciprocity was allowed, and the licensees were given a time period of 90 days to amend the GLI standards to be state-specific. She also stated potential operational issues in contracting with vendors, as while there is a framework in place for licensing, the licensees need clarification regarding what employees and vendors are required to do. Executive Director Wells stated that vendors presumably have a similar licensing process for vendors for their gaming operations, and that the establishment of a framework for temporary licensure would help impact the timeline.

Commissioner Skinner asked how reciprocity would work in terms of technical standards. Counselor Krum stated that if the Commission would consider accepting a GLI certification prepared for another jurisdiction as the initial submission, the licensee can get a certification letter addressing any additional Massachusetts standard within 90 days. Commissioner Skinner asked how the terms of another jurisdiction's equipment would tie into the Massachusetts GLI standards. Counselor Krum stated that the GLI standards for another jurisdiction would likely be baseline acceptable in comparison to Massachusetts standards. Mr. Cain noted that in field checks, the IEB tests that the approved GLI standard is replicated on the kiosks, and that licensees would have to confirm the software in the kiosk matches the certification.

c. [Licensing Procedures – Applications, Suitability, Reciprocity](#) (1:25:55)

1. Operator License

Chair Judd-Stein asked whether there should be a distinction between the operator licenses provided for retail sports wagering and mobile sports wagering. Executive Director Wells stated that as the gaming licensees already went through rigorous background checks that the prospective mobile sports wagering operator's had not, she recommended distinguishing between the licenses provided. She stated that the process and criteria will be developed by the licensing staff for the Commission to consider.

2. [Occupational Licensing](#) (1:28:15)

Executive Director Wells recommended looking at the jobs compendium for the hiring of employees for retail sports wagering operations. Director Lillios stated that the licensing division had a communication for potential retail operators delineating job descriptions which would be

sent later in the day. Chair Judd-Stein stated that regulations did not need to be in place for this process, and would be put in place later. Director Lillios stated that Commission staff could receive job descriptions and attempt to identify similar job codes.

Commissioner Hill asked what the expected volume of employees would be for sports wagering establishments. Counselor Krum stated that EBH would hire an additional 75 employees. She stated that from the licensing perspective the new positions would largely fall under existing titles, and only a few new job descriptions would have to be created. Commissioner Hill asked for an example of a new job description. Counselor Krum stated that one new title would be the Director of Sports Wagering. Mr. Grounsell stated that PPC's new positions would be the lead of the sports wagering department, supervisory team members, and ticket writers. Commissioner Hill asked how many employees the licensees expected to hire. Mr. Grounsell stated that PPC anticipated between 20 and 50 new hires. Mr. Kim stated that until MGM finalized the role team members would play, the number would be uninformed and he would require more research. Mr. Eichel stated that Raynham Park would likely double its existing staff of 75. Mr. Tuttle stated that Suffolk Downs had anticipated 50 to 100 new employees. Commissioner Hill expressed that he was concerned about getting employees hired, but is feeling more comfortable with the implementation. Director Lillios stated that hiring numbers had been shared, but the plan hinges upon the ongoing renewal process for two locations.

3. [Vendor Licensing \(Scoping/ Organizational Complexity/ Exemptions\)](#)
(1:39:58)

Counselor Krum stated that EBH had turned in a list of proposed retail vendors and expected that the vendors will submit their application in a timely manner. Executive Director Wells explained that vendor licensing was not included in the legislation, but temporary licensure would be important. She stated that the existing infrastructure and staff knowledge for licensing gaming vendors for casinos can be applied to licensing sports wagering vendors, but the Commission staff required confirmation from the Commission to do so.

Director Lillios stated that the licensing division had no questions regarding the vendor lists provided, but expressed interest regarding the potential exemption list, that is often used in other jurisdictions. Counselor Krum stated that EBH had no objections to using the same exemption list used for casinos. Chair Judd-Stein asked if there were any potential expanded exemptions. Counselor Crum stated an interest in retail products that would not pose a threat. Executive Director Wells asked whether the Commission wanted to grant specific exemption requests or allow IEB to grant the exemptions. She continued that a common exception in other jurisdictions is spending under a monetary threshold, such as an operator spending less than \$10,000. Commissioner O'Brien stated the issue of deferring specific exemption requests can be circled back to at a later point.

Commissioner Skinner clarified that exemption of non-gaming vendors had traditionally been the responsibility of the Director of Licensing, and not required to go to the Commission for determination. Commissioner O'Brien asked whether it was internal policy guidelines that drove the decision-making process, or if the authority was vested in the chief of the licensing division. Commissioner Skinner clarified that the authority was not entirely vested in the chief of the

licensing division, and that there was collaboration with IEB. Commissioner O'Brien stated that the Commission voted on statutory exemptions for employment based upon a list of criteria whether to exempt the position, and asked if there was a similar list of criteria for exempting vendors. Director Lillios stated that the exemptions are often straightforward based upon the statutory exemptions, such as the previously mentioned threshold dollar exemption. She also stated that there are exemptions for professional entertainers and public interest exemptions. Chair Judd-Stein asked whether G.L. Chapter 23K included this delegation of authority. Director Lillios stated that the delegation was not in the statute but had been used by the Commission. She noted that the statute may authorize the exemption but the authority over who granted the exemption is in the regulation.

Mr. Grounsell stated that PPC is comfortable with the exemptions in 205 CMR 134.04(6), assuming the same exemptions would apply in sports wagering. Chair Judd-Stein stated that with respect to marketing the Commission would require further guidance from other jurisdictions. Commissioner O'Brien stated that marketing and advertisement of online gaming is a first in the Commonwealth. Commissioner O'Brien raised the issue of third-party marketing payments including clauses allowing for remuneration based upon client signup, as it may create problems with predatory advertising. Commissioner Skinner expressed interest in looking at differences in the environment between casino gaming and sports wagering when developing marketing exemptions. Chair Judd-Stein stated that given Commissioner Skinner's experience, this should be a prioritization for staff.

4. [Identified Challenges and Regulatory Implications](#) (1:59:50)

Mr. Eichel raised a number of questions his client wanted to address. He sought clarification whether the Notice of Intent was only required for category three sports wagering operators. Executive Director Wells stated that the Notice of Intent was expanded to include categories one and two, and that the Notice of Intent should be submitted for Raynham Park.

Mr. Eichel asked if the \$5 million license fee was payable upon granting of the license, and if separate licenses would be required for retail operation and mobile operation. He asked whether the \$1 million Public Trust Help Fund applied to each operator, or if the operators would pay an equal share of the \$1 million. He asked whether the licensee would require a single operator for both retail and mobile sports wagering, or if separate operators could be hired for each category. He inquired as to when the \$7.5 million capital investment required by category two licenses was to be spent by, as Raynham Park had undergone significant investment in their \$24 million facility prior to the legislation passing.

Executive Director Wells stated that the Commission staff will revisit these questions once research and discussion had taken place.

d. [Responsible Gaming and Advertising](#) (Licensee's Perspective) (2:46:20)

1. Voluntary Self-Exclusion

Counselor Krum asked if the Commission envisioned combined lists for voluntary self-exclusion (VSE) for casino gambling and sports wagering. Chair Judd-Stein agreed that the legislation was ambiguous language, and the Commission could implement either combined or separate VSE lists. Chair Judd-Stein asked if operations in other jurisdictions had experience. Mr. Grounsell stated that Penn's national policy is a combined VSE list, excluding those on the list from all forms of gaming at Penn properties. Chair Judd-Stein asked if this form of VSE was more restrictive than what the jurisdictions require. Mr. Grounsell confirmed that the policy was more restrictive than jurisdiction requirements.

Commissioner Hill inquired if there had been issues with patrons wanting to be excluded from one form of gaming but not another. Mr. Grounsell stated that different forms of exclusion can be requested and that responsible gaming exclusions are honored across all Penn locations.

Mr. Kim stated that it makes sense to have a combined VSE list. Mr. Kim introduced Daniel Miller, Director of Compliance at MGM Springfield. Mr. Miller stated that MGM properties have a similar program to Penn, including a self-limit program in other jurisdictions limiting availability of the gaming establishment if the patron was on a VSE list. Chair Judd-Stein asked if a patron who was on the VSE list could not gamble at MGM properties in other jurisdictions. Mr. Miller stated that the patron can only play as a cash-player and would not have access to rewards points if they were on the VSE list.

Chair Judd-Stein stated that there is not a VSE list for simulcast. Mr. Tuttle stated that Suffolk Downs maintained a VSE list. Chair Judd-Stein asked if the VSE list was for a particular timeframe or provided other options. Mr. Tuttle stated that the VSE list is permanent, and he did not have information regarding the patron's process of removing themselves from the VSE list. Chair Judd-Stein asked if Raynham Park maintained a VSE list. Mr. Eichel stated that Raynham Park did not have a VSE process, but the simulcast center was in the initial stages of meeting with GameSense and installing additional responsible gaming signage.

2. [Promo Play](#) (2:57:45)

Chair Judd-Stein prompted the licensees for a definition of promo play. Counselor Krum stated that it is a coupon the patrons can use to assist in placing a wager. Commissioner Hill noted the issue of taxing promotional play had been raised in the past. Chair Judd-Stein asked how promotional play is taxed in other jurisdictions. Counselor Krum stated that promotional play is not counted for taxation for casino gaming in Massachusetts. General Counsel Todd Grossman noted that the legislation contained the definition for promotional play, but was silent as to the taxation issue. Chair Judd-Stein clarified that the potential tax exemptions surrounding promotional play were for Massachusetts taxes and would not apply to federal taxes.

General Counsel Grossman stated that the taxation of promotional play would be a matter of Commission policy, and whether the Commission would consider promotional play a part of the operator's gross revenue. He stated that the other jurisdictions had a variety of approaches. Mr. Eichel stated that the Commission was conflating two issues, whether promotional credit is

taxable to the individual and whether promotional credit should be included in calculating net gaming revenue for state taxation. General Counsel Grossman clarified that the current conversation was regarding tax payments by the licensee rather than the individual.

A member of the public entered the meeting unmuted. Chair Judd-Stein stated that a member who was not invited could be invited with the Chair's permission if they identified themselves and took part in a conductive fashion. The member of the public identified himself as Kevin McDevitt, and stated the Commission should include members more knowledgeable on sports wagering. Chair Judd-Stein stated she did not want to dismiss his concerns and that the Commission would have public hearings to address the public's concerns.

Executive Director Wells stated that with the emergence of sports wagering operations, promotional play will be used to draw in long-term customers that offset the initial costs of promotional play. She stated that the downside to this approach, as seen in other jurisdictions, was decreased and therefore a decreased benefit to the state. Chair Judd-Stein stated that in addition to the taxation issue, there was another issue regarding responsible gaming.

Commissioner O'Brien read the definition of gross sports wagering receipts from the legislation, defined as "total gross receipts from total Sports Wagering less the sum of 1) the total of all winnings paid to participants and 2) all excise taxes paid pursuant to federal law provided however that the total winnings paid to participants shall not include the cash equivalent of any merchandise or thing of value that is awarded as a prize". Commissioner O'Brien stated that the legislation did not mention promotional play, and the Commission would have to define it.

Mr. Kim stated MGM would be accepting of promo play as it is crucial to attracting customers to the market, awarding customer loyalty, and the success of a new venue. He stated that MGM would endorse excluding promotional play from gross receipts. Commissioner O'Brien asked if promotional play is more critical to early success upon launching. Mr. Kim stated that there was a preference for permanent promotional play, but it is more effective earlier in the process. Counselor Krum stated EBH wanted promotional play to be deducted from gross receipts, and that promotional play makes a big difference in retail launches. She stated excessive promotional play is a problem for the casino as well as the state. Mr. Grounsell stated that PPC would be in favor of deducting promotional pay from gross receipts, but PPC would be reliant on the Commission's interpretations as guidance.

Commissioner O'Brien asked about the impact of promotional play on other jurisdictions. Mr. Grounsell noted that Penn had been relatively stable in providing promotional play. Counselor Krum stated that from a launch perspective promotional play offsets upfront cash spent to attract patrons and gets patrons comfortable with playing. Mr. Tuttle stated that while he was interested in the discussion, he had nothing further to offer. Mr. Eichel stated that Raynham Park has heard from potential operator partners that promotional play is a large part of their strategy, but Raynham Park has no current experience with promotional play.

Counselor Krum stated that other jurisdictions have sunset provisions, which allow for promotional play for a limited time of 12 to 24 months, and these provisions would make Massachusetts competitive with surrounding states. Mr. Eichel stated that promotional play was

almost self-regulating as the operators do not want to give excess money away. Chair Judd-Stein stated that the need to attract customers cannot come at the cost of predatory advertising.

3. [Advertising/Marketing Guidelines](#) (3:19:21)

Counselor Krum stated that during the launch of casino gaming at EBH, EBH staff worked with Director of Research and Responsible Gaming Mark Vander Linden to develop and provide feedback for the responsible gaming framework. She stated that EBH was willing to develop a similar plan for sports wagering. Mr. Kim stated that MGM created a GameSense space and adopted the Play My Way program. He stated that MGM will defer to Director Vander Linden for best policy regarding marketing sports wagering. Mr. Grounsell stated that PPC staff will be trained to notice similar behaviors to those with responsible gaming issues, and continue staff member interventions and provide resources. Chair Judd-Stein stated sports wagering mobile promotional play differs from retail promotional play, and that different approaches might need to be taken.

Chair Judd-Stein asked General Counsel Grossman to read the provisions in the legislation regarding restrictions on advertising. General Counsel Grossman stated that a bulk of the advertising language would be held in the regulations the Commission would promulgate, and the legislation contained principles to be included. He stated that the prohibited advertisements are those that would use biometric data of an athlete; advertisements that would be untrue, deceptive, or misleading; unsolicited pop-up advertisements; any advertisement to an individual on the VSE list; any advertisement appealed directly to a person under the age of 21; advertising on billboards that fails to comply with state, federal, or local laws; and any marketing or branding the Commission deems unacceptable or disruptive to the viewer experience at the sports event.

Counselor Krum raised the issue of competitor sports wagering vendors from other states already advertising in Massachusetts. Chair Judd-Stein stated she had recently seen sports wagering advertisements with no responsible gaming language on the billboard. She stated that the Commission staff should approach the Massachusetts Department of Transportation regarding the billboard.

Counselor Krum stated that EBH would not use any of the prohibited practices, and EBH had no problem with the language in the Act. Mr. Grounsell agreed that PPC would not have used any of these marketing practices, and in addition would include responsible gaming messages in all advertisements for sports wagering.

Commissioner Hill stated a concern regarding the volume of sports wagering advertisements during sports championships, but that he was not sure how to address the issue due to first amendment considerations. Chair Judd-Stein asked whether the volume of advertisement could be included in the category the Commission deems unacceptable or disruptive to the viewer experience. Chair Judd-Stein sought clarification as to whether “view experience at the sports event” would consider television viewing. Commissioner O’Brien stated curtailing advertising was a primary issue discussed at her previous training, but that the wording of the statute limit’s the Commission in how to address the volume of advertisements. She stated that the prohibition

on advertising designed to target individuals under the age of 21 might be a way to address the volume of advertisements.

Mr. Kim stated that the Commission could look towards the Federal Trade Commission and federal law which would have authority over the interstate advertisements. Commissioner Hill stated that other state's advertisements come across the border into Massachusetts and he would not want Massachusetts operators having to compete with the existing advertisements. He stated the Commission will research a potential solution, but a review of constitutionality would have to occur.

Commissioner Skinner stated it would be worthwhile to consider this discussion in more depth, but it is assuring that the licensees are conscientious about responsible gaming. Commissioner O'Brien stated concerns regarding advertisements that incidentally target individuals under the age of 21, and that the Commission should have the ability to protect those who cannot gamble. Mr. Eichel suggested the Commission look at the advertisement limitations on smoking, vaping, and cannabis, as they might prove to be useful guidance. He also stated that advertisements across borders fall under federal regulation and cannot be regulated to the same degree. Counselor Krum stated that the Americans with Disabilities Act has a responsible marketing code for sports wagering that might address these concerns more in depth. Chair Judd-Stein stated that the Commission has looked closely at the ADA.

e. [Timelines](#) (3:47:40)

1. Licensee Milestones for Standing up Retail Operations

Executive Director Wells addressed Mr. Eichel's earlier questions, and was prepared to give tentative answers. She stated that the capital expenditure of \$7.5 million was to occur within three years after receiving a sports wagering license. Mr. Eichel stated that construction of Raynham Park's facility was intended to be completed by February, and an issue would occur as this spending has to occur after being licensed.

Executive Director Wells stated that the licensee could choose to partner with either a single sports wagering operator for both retail and mobile operations, or contract with one operator for retail sports wagering and a second for mobile sports wagering. She stated that it would likely be easier from a licensing standpoint to only work with a single operator.

Executive Director Wells stated that an answer to the question regarding licensing fees and public health trust fund fees would have to be addressed later, when the Commission had received more information from Commission staff. Chair Judd-Stein sought clarification regarding Raynham Park's question about the Public Health Trust Fund. Mr. Eichel clarified that the question was whether the \$1 million fee was per operator or to be split amongst the nine potential operators. Executive Director Wells asked Mr. Eichel to email the questions in writing to the Commission. Chair Judd-Stein stated that the three casino licensees already contributed funds to the Public Health Trust Fund, and are exempt from paying funds in category one.

Mr. Grounsell stated that with regard to timelines a determination needed to be made whether PPC would require a temporary facility to be constructed before a permanent one. He stated that PPC would launch sports wagering in a time that fits within the regulatory framework.

2. [Prioritization of Regulatory Promulgation](#) (3:54:09)

Executive Director Wells explained the milestones required to set up a retail sports wagering operator, including space, regulator approval of the space, ordering equipment, licensing vendors, approval for the equipment, and equipment testing.

Mr. Grounsell stated that PPC would like a firm launch date, and for the Commission to prioritize the promulgation of regulations regarding licensing and technical standards. Mr. Kim stated MGM had their space set with all cabling and wiring done, and the only issue was getting the kiosks installed and improved. He stated MGM wanted guidance from the Commission on the licensing process and approval of equipment. Counselor Krum expressed interest in a launch date, and stated that it would take six weeks to hire and train staff for sports wagering. She stated that EBH was ready to purchase equipment once Commission approval is received. Mr. Eichel stated that the operators Raynham Park was considering partnering with were dependent upon the Massachusetts regulations in implementing their models and procedures. He stated finalization of the regulations is critical to the operation of the sports wagering facility. Mr. Tuttle stated that Suffolk Downs endeavored to catch up in the process and expected news regarding a sports wagering operating partner and certainty of location in the near future.

Chair Judd-Stein inquired if there were supply issues with required equipment that might impact the accelerated timeline. The licensees unanimously agreed that there was not a foreseeable problem in acquiring sports wagering equipment.

Commissioner O'Brien stated that the Commission's compliance role must also be operational during the launch of sports wagering, and asked the licensees what they interpreted launch date to mean. Mr. Grounsell stated that it would be the day where wagers could be accepted. Commissioner O'Brien stated that she had not envisioned the Commission providing an exact date as the sports wagering regulations needed to be in position to be finalized. Counselor Krum asked for an estimated timeline for regulations to calibrate EBH's planning accordingly. Commissioner O'Brien stated that communication between the licensees and the Commission would be critical. Chair Judd-Stein stated that on September 8, 2022, the legal division would present a timeline for regulatory action as a framework for the licensees' timeline. Executive Director Wells stated that the regulation process has built-in waiting periods, and staff needed a clearer picture as to what regulations can occur after licensee operation.

Commissioner Skinner stated that the conversation felt premature as the Commission had yet to hear from category three applicants. She stated the Commission shouldn't discuss mobile wagering with licensees as it may give them a leg up. Chair Judd-Stein clarified that this round table was regarding the licensee's retail locations and not mobile operations.

3. [Discussion of Staggered vs. Simultaneous In-Person Sports Wagering Launch](#) (4:12:44)

Chair Judd- Stein stated there was an issue of whether one licensee can open their location prior to other licensees. She asked whether opening of the retail locations should occur simultaneously or staggered. Mr. Grounsell asked if multiple licensees were ready for launch, would they have to wait for the other licensees to be ready. He stated that a simultaneous launch date would reasonably work, but some licensees would not be prepared at that date. Mr. Tuttle stated that he would not want to hold up other licensees that are further in development, and would work with the Commission to be prepared for launch day. Commissioner O'Brien asked Mr. Tuttle if he supported a single launch date, even if some of the licensees were not sufficiently ready. He replied that targeting a launch date would encourage the licensees to be prepared, but he would not hold up those who are more prepared. Counselor Krum acknowledged the date could not be established until further along in the process, but a singular launch date would allow for an even playing field. Mr. Eichel stated that each licensee was in a slightly different position, but he did not expect those who were more prepared to have to wait on the licensees who required more time after the regulations were in place. Commissioner Skinner expressed she was glad to hear a consensus from the licensees for a singular launch date.

Chair Judd-Stein adjourned the meeting.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated August 15, 2022
2. [Meeting Packet](#) from the August 18, 2022, Open Meeting



Massachusetts Gaming Commission Meeting Minutes

Date/Time: September 12, 2022, 9:30 a.m.
Place: Massachusetts Gaming Commission
 VIA CONFERENCE CALL NUMBER: 1-646-741-5292
 PARTICIPANT CODE: 112 019 3806

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
 Commissioner Jordan Maynard

1. [Call to Order](#) (00:29)

Chair Judd-Stein called to order the 391st Public Meeting of the Massachusetts Gaming Commission (“Commission”). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. [Play My Way Launch at Encore Boston Harbor](#) (1:20)

Chair Judd-Stein introduced Director of Research and Responsible Gaming Mark Vander Linden. Director Vander Linden explained that Play My Way (“PMW”) is a budget setting tool that was available on every slot machine at Encore Boston Harbor (“EBH”). Director Vander Linden stated that PMW was unique as it was a partnership between the casinos and the GameSense program. He stated that PMW had 27,500 actively enrolled patrons, and that PMW was a voluntary tool for patrons to enroll in.

Director Vander Linden stated that the launch of PMW at EBH was going smoothly. He stated that random slot machines were being tested, and PMW was working as intended on those machines. He noted that EBH was in the process of getting the kiosk outside of their GameSense area working, and the kiosk was expected to be running by noon. The Commissioners

unanimously congratulated Director Vander Linden and his team on the PMW launch. Chair Judd-Stein also thanked EBH for their work in the collaboration, and stated she looked forward to seeing the number of enrollees from EBH.

3. [Racing Division](#) (9:12)

- a. Standardbred Owners of Massachusetts Recognition Request as Breeders' Representative Group

Chair Judd Stein introduced Director of Racing and Chief Veterinarian Dr. Alexandra Lightbown. Dr. Lightbown explained that in accordance with G.L. 128, the Commission must recognize a Breeder's Representative Group. She stated that the Standardbred Owners of Massachusetts ("SOM") had been recognized as the representative group since 1992.

Dr. Lightbown introduced Nancy Longobardi, Secretary and Treasurer of SOM. Ms. Longobardi stated that SOM had given away \$2.5 million in purses for the year, had 83 individual starters in 36 races, and had 137 broodmares. She stated that SOM expected to match the 2021 purses, with their races beginning on September 25 and all eight finals occurring on October 24. The *SOM Recognition Request* was included on pages 3 through 4 of the Meeting Packet.

Commissioner Skinner asked Dr. Lightbown if this process is an annual one, and what made SOM uniquely qualified to hold this recognition. Dr Lightbown stated that per statute this recognition required an annual vote by the Commission. She stated that SOM was the only group that had presented themselves for this recognition and have held the position since 1992.

Chair Judd-Stein asked for an update on the breeding program. Ms. Longobardi stated that funds from the Race Horse Development Fund had helped, and that there was an increased interest in breeding that had attracted larger farms from other states' involvement in the breeding program. She stated that COVID had slowed progress, but the numbers were increasing and the anticipated numbers were good. Dr. Lightbown stated that competitiveness in races had increased, resulting in growth in field sizes and additional races. Dr. Lightbown recommended the Commission approve SOM's request.

Commissioner O'Brien moved that the Commission approve the request of the Standardbred Owners of Massachusetts, Inc. to be recognized as the group of representatives for standardbred breeders to administer Massachusetts' standardbred breeding program and the sire state races for 2022. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.
Commissioner Hill: Aye.
Commissioner Skinner: Aye.
Commissioner Maynard: Aye.
Chair Judd-Stein: Aye.

The motion passed unanimously 5-0.

b. [Review of Revisions to Draft Application for License to Hold or Conduct a Racing Meeting for Future Applicants](#) (20:09)

Chair Judd-Stein introduced Executive Director Karen Wells and General Counsel Todd Grossman. General Counsel Grossman stated that the draft application for a license to conduct horse racing was previously reviewed by the Commission at the August 17, 2022, meeting. He stated that a series of public comments and issues raised by the Commission were addressed in the draft application revisions being presented for this meeting. He stated that the Commission may elect to approve the application for formal use, and promptly post the application to the Commission website prior to the statutory filing deadline on October 1.

General Counsel Grossman stated that the contents of the application were addressed in the racing statute, G.L. Chapter 128A § 2, and that certain portions of the application were authorized by caselaw. Chair Judd-Stein noted that the commissioners had received a privileged memorandum from Anderson and Kreiger that analyzed the legal issues the Commission was briefed on in public comments and silent briefings. Chair Judd-Stein introduced and thanked Paul Kominers from Anderson and Kreiger for appearing in the meeting with short notice.

Deputy General Counsel Caitlin Monahan presented the revisions for the application for a license to conduct horse racing. The *Revisions to the Draft Application* were included on pages 5 through 46 of the Meeting Packet.

Deputy General Counsel Monahan explained that an application fee of \$300 must be enclosed in the application, and that a surety bond must be issued and included in the application. She explained that section one of the application was related to background information for the applicant; that section two was a project summary and description of financing; and that section three contained a schedule of proposed races.

Deputy General Counsel Monahan stated that an additional question had been added in section three, which requested additional information regarding the applicant's timeline if they sought a license for future years. Chair Judd-Stein stated that this was a positive addition that allowed the Commission to address horse racing for future years. Mr. Kominers explained that the statute stated the license request must occur before October 1 in the calendar year preceding the calendar year for which the applicant requested the license. He stated that while filing prior to October 1, 2022, would be the year preceding a 2023 racing schedule, the license request was also preceding all future years. He stated that circumstances had changed since horse racing was first permitted, and that construction and permitting take longer than they had in the past.

Commissioner O'Brien noted concern that the choice of language in the statute refers to "the calendar year" and not "a calendar year," leaving less room for interpretation regarding future racing years. She asked if this distinction is dispositive of allowing applicants to file requests for future years. Mr. Kominers stated that the language quoted raised ambiguity, but that he did not believe the use of an article would be entirely dispositive. Commissioner O'Brien stated she understood Mr. Kominers' interpretation of the statute, but she did not agree. Chair Judd-Stein inquired as to whether Suffolk Downs began its operations under the same legislative language when it opened as a racetrack. Mr. Kominers stated that he would have to check if the statutory

language had changed over time. Deputy General Counsel Monahan stated that the legal division agreed with Mr. Kominers' interpretation regarding future years, but applicants would be required to provide sufficient information that they could operate in the future.

Deputy General Counsel Monahan stated that section four of the application was in regard to non-Commission approvals required under statutory regulations. She stated that racetracks required local community approval under G.L. 128A §13(a) which required the mayor or board of selectmen to approve the development of a racetrack and G.L. 128A § 14(a) which required county approval. She explained that local community approval must be in place prior to the license being granted and stated that additional language was added if approval had yet to be received but a vote on approval was scheduled. Commissioner Hill stated that he was satisfied with the new clarifying language that addressed previous concerns.

Deputy General Counsel Monahan explained that section five of the application was in regard to qualifiers and suitability. She stated that the legal division intended for the definition of qualifier to be consistent for the purposes of horse racing and its anticipated use in sports wagering. Chair Judd-Stein asked if there was a way the application could include catch-all language to include additional qualifiers at the Commission's discretion. Deputy General Counsel Monahan stated that additional language could be included, but there is a tight deadline as the applications are due by October 1, and the Commission must make their decision on the applications by November 15. Commissioner Skinner suggested the language Chair Judd-Stein requested is covered by subsection five. Deputy General Counsel Monahan stated that the language in subsection five should be sufficient to allow the Commission the discretion to include additional qualifiers. Executive Director Wells stated that the questions in this section are consistent with qualifier discretion for casino gaming, and anticipated similar questions for sports wagering qualifiers.

Commissioner O'Brien asked whether the language in section five subsection nine was limited in scope due to its wording of "limited or revoked by a governing authority." Deputy General Counsel Monahan stated that the governing authority was whoever had the authority to issue the license, but if the language could be interpreted more restrictively it could be changed. Commissioner O'Brien suggested broader language regarding if the applicant or its qualifiers had a gaming license revoked or suspended, with the goal of removing ambiguity if the license was not revoked via an order from the governing authority. Chair Judd-Stein suggested the Commission include a question about the applicant withdrawing an application in the past. Commissioner O'Brien stated that such a question would be valid and should be included.

Deputy General Counsel Monahan stated that section six was related to public interest. She stated that subsection seven regarding promises made to the community or mitigation agreements was informed by public comment during the comment period. Commissioner O'Brien suggested that "promises or rewards" should be changed to include inducements. Chair Judd-Stein expressed appreciation for the public's participation, as subsections six and seven were designed from public input.

Deputy General Counsel Monahan explained that section seven was regarding the applicant's facilities and equipment. She noted that a question was added related to whether the applicants

premises was owned by the Commonwealth or a political subdivision, as racetracks can't be placed on those lands per statute. She explained that section eight was in regards to wagering and simulcasting and that additional language was added to subsection two to reflect the language in G.L. Chapter 128C. a political subdivision, as racetracks can't be placed on those lands per statute. She explained that section eight was in regards to wagering and simulcasting and that additional language was added to subsection two to reflect the language in G.L. Chapter 128C.

Deputy General Counsel Monahan explained that section eight was regarding wagering and simulcasting. She stated that additional language was included in subsection two to reflect the language in G.L. Chapter 128C related to the number of race days. Chair Judd-Stein asked if Mr. Kominers had advice in his memorandum related to this provision. Mr. Kominers replied that this provision was addressed in the second footnote. Deputy General Monahan presented section nine, which included general provisions, attestations, and applicants' signatures.

Chair Judd-Stein asked if the Commissioners felt comfortable referencing their privileged memorandum in a public meeting. General Counsel Grossman stated that there was not a great way for the Commission to discuss legal issues outside of their public meetings. Commissioner O'Brien stated she had no further questions and was willing to move forward on finalizing the application, notwithstanding reservations related to statute interpretation.

Mr. Kominers stated that the critical point of the statute is the date of receipt of the application, which must be on or before October 1. He stated than an application submitted that date would be on or before October 1, 2022, but also each subsequent October 1 in future years. Commissioner O'Brien stated she understood his interpretation, but was still processing how to interpret the statute. Executive Director Wells stated she agreed with Commissioner O'Brien's interpretation. Commissioner O'Brien raised concerns that if the finalized application is accepted now it would lock the Commission into making decision about the interpretation of this issue. General Counsel Grossman stated that the application would not lock the Commission's decision in, but he expressed an interest in avoiding mixed messages.

General Counsel Grossman stated that a legal principle that would be useful to this interpretation is to read the statutes in harmony with each other. He stated that the licensing of a new racetrack is discussed in statute and is permissible, but there is no clear mechanism to take in applications. He stated that in order to license a new racetrack it would likely take longer than the November 15 to March construction period to develop and build the site. He agreed that the Commission's concerns with the article use of "the" in the statute is concerning, but Mr. Kominers' interpretation would follow the Commission's exercise of discretion with no great alternatives.

Chair Judd-Stein noted that the application process was being revised as a new applicant had applied in the previous year. She stated that the applicant withdrew their application, and no decision was required from the Commission. Chair Judd-Stein raised the issue of simulcasting for horse racing and its interconnectedness with sports wagering. Mr. Kominers stated that under a new provision in G.L. Chapter 128C § 9 a horse racing licensee could conduct simulcasting with 20 live-racing days at a thoroughbred racetrack. He stated that the statute was meant to revise the number of races an operator needed to conduct to be considered to have held a racing season and therefore be permitted to simulcast. He noted that this provision did not directly

amend G.L. Chapter 128C § 2 which limited the days simulcasting could occur. He stated that the changes were related to what constituted a racing season, but did not change the other requirements for the licensee to simulcast.

Commissioner Maynard noted that lowered standard requiring 20 live-racing days to simulcast was cited in section 8.2 of the application, and wondered if the Commission should take this into consideration for this year's applicants as the statute would not go into effect until the next year. Deputy General Counsel Monahan stated that as the statute does not go into effect until the following year, the 2023 applicants will be considered under the old rule. She stated that future years will be under the new statute which required fewer race days in order to simulcast.

Mr. Kominers stated that a category two sports wagering licensee allows in-person sports wagering where live horse racing is conducted. He stated that the present tense is important to interpretation, and that the premises must be operating horse races for sports wagering to occur under the category two license. Chair Judd-Stein stated that is a condition for sports wagering to occur was that horse racing was being conducted, and sports wagering could not occur first. Executive Director Wells asked if this condition applied to mobile sports wagering as opposed to in-person. Mr. Kominers stated that online wagering would take place under a category three license and not a category two license. Chair Judd-Stein stated she believed the licenses were tethered, as the category three license was contingent upon the category two license. Mr. Kominers stated that the category two license still required the licensee's mobile sports wagering operator to apply for a category three license, and that licensing is independent of the category two licensing. Deputy General Counsel Monahan stated that the legal division had not contemplated separating the licenses in that way, and expressed an interest in reviewing the statute.

Chair Judd-Stein asked if the applicant awarded license would allow for mobile sports wagering absent horse racing, as it seemed obtaining a category two license was a condition precedent that must be obtained prior to a category three license. Mr. Kominers stated that he would collaborate with the legal division regarding the timing issue and would return to the Commission with an answer. He stated that a request to conduct off-site mobile sports wagering by the same operator would be under a category three license, and not a category two license. Chair Judd-Stein asked if this answer assumed the licensee would be partnered with one of the seven category three licensees, or a mobile sports wagering operator tethered to their category two license. Mr. Kominers stated that it was based upon partnership with one of the seven category three licensees. Chair Judd-Stein inquired as to if an applicant from the approaching deadline was not able to conduct category two in-person sports wagering until they could conduct live horse racing, whether they would have the ability through the conditional tethered license to operate mobile sports wagering upon issuance of the license. Mr. Kominers stated that looking at section six of the legislation, the language stated was "may offer a category three license," but that he would like to conduct further research. He stated that the category three license, even if tethered to a category two license was still discretionary. General Counsel Grossman stated that it was a complicated question which would require more time to analyze.

Chair Judd-Stein stated the application needed to be available for any interested party, and that the sports wagering issue would be should be separate from the application. Executive Director

Wells stated that given the advice from Anderson and Kreiger regarding the added protections of utilizing regulations, she recommended moving on the application at this meeting, and putting in place a regulation prior to October 1 which would cover the application. Chair Judd-Stein asked if the category three mobile sports wagering operators tethered to licensee’s in-person sports wagering licenses would be part of the seven category three sports wagering operators or in addition to the seven. She stated her understanding was that the tethered mobile sports wagering operators would be in addition to the seven category three licensees. Executive Director Wells agreed with the Chair’s understanding. Commissioner O’Brien stated that the legal division should take some time to research this issue and circle back.

Executive Director Wells asked whether, after the vote on the application, the application would be posted to the Commission’s website with the caveat that the Commission would adopt the application once a regulation had been established. The Commissioners unanimously agreed.

Commissioner Maynard stated that the application for horse racing should be for the consideration of horse racing, and sports wagering should not be considered for the application. Chair Judd-Stein stated that horseracing was a condition of the sports wagering license, and horseracing would have to continue for sports wagering to be conducted. She asked if there would be consequences for licensees should horseracing not occur. General Counsel Grossman stated that a series of conditions were attached to any future licensee awarded horseracing licenses, and that the prioritization on the application was for horseracing. Commissioner Skinner stated that she was in favor of moving forward on the application, but that the conditions must match the Commission’s interpretation of the statute.

Commissioner O’Brien asked what language should be added to the motion to move on the application. Executive Director Wells stated that the language should move to accept the document as the application for horseracing subject to further regulatory action.

Commissioner O’Brien moved that the Commission approve the version of the new application for license to hold or conduct a racing meeting, which is included in the Commissioner’s Packet, including the edits as discussed here today, which will be effective upon the execution of further regulation by this Commission and further authorize staff to make any necessary typographical or other non-material edits and to post the application on the Commission’s website for immediate use. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O’Brien: Aye.
Commissioner Hill: Aye.
Commissioner Skinner: Aye.
Commissioner Maynard: Aye.
Chair Judd-Stein: Aye.

The motion passed unanimously 5-0.

4. [Executive Session](#) (1:34:34)
 - a. Review of Executive Session Minutes

Chair Judd-Stein read into the record that the Commission anticipates that it will meet in executive session to review minutes from previous executive sessions convened 1) in accordance with G.L. c. 30A, § 21(a)(3) in order for the Commission to discuss strategy with respect to litigation where such discussion at an open meeting may have a detrimental effect on the Commission’s litigating position; 2) in accordance with G.L. c. 30A, § 21(a)(7) to comply with G.L. c. 23K, § 21(a)(7) for the specific purpose of reviewing the proposed multi-year capital expenditure plan described in 205 CMR 139.09, and any corresponding materials, submitted relative to Encore Boston Harbor and Plainridge Park Casino, as discussion of this matter in public may frustrate the purpose of the statute and associated legal authorities; and 3) in accordance with G.L. c. 30A, § 21(a)(6) to consider the lease of real property, as its discussion at an open meeting may have a detrimental effect on the negotiating position of the Commission.

- i. 1/10/22
- ii. 2/10/22
- iii. 6/9/22

- b. Litigation strategy pursuant to G.L. c.30A, §21(a)(3) to discuss strategy with respect to Massachusetts Gaming Commission v. Landmark American Insurance Co.

Chair Judd Stein read into the record that the Commission anticipates that it will meet in executive session in accordance with G.L. c.30A, §21(a)(3) to discuss strategy with respect to Massachusetts Gaming Commission v. Landmark American Insurance Co., as discussion at an open meeting may have a detrimental effect on the litigating position of the Commission.

- c. Litigation strategy pursuant to G.L. c.30A, §21(a)(3) to discuss strategy with respect to FBT Everett Realty, LLC v. Massachusetts Gaming Commission

Chair Judd-Stein read into the record that the Commission also anticipates that it will meet in executive session in accordance with G.L. c.30A, §21(a)(3) to discuss strategy with respect to FBT Everett Realty, LLC v. Massachusetts Gaming Commission, as discussion at an open meeting may have a detrimental effect on the litigating position of the Commission.

Commissioner O’Brien moved that the Commission enter an executive session for the basis stated by the chair and for the reasons enunciated in the record. The motion was seconded by Commissioner Hill.

Roll call vote:

- Commissioner O’Brien: Aye.*
- Commissioner Hill: Aye.*
- Commissioner Skinner: Aye.*
- Commissioner Maynard: Aye.*
- Chair Judd-Stein: Aye.*

The motion passed unanimously 5-0.

Commissioners entered executive session. The public session of the Commission meeting did not reconvene at the conclusion of the executive session.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated September 9, 2022; revised September 9, 2022
2. [Meeting Packet](#) from the September 12, 2022, Open Meeting



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

FROM: Mark Vander Linden, Director of Research and Responsible Gaming; Bonnie Andrews, Research Manager

DATE: December 1, 2022

RE: Commission Research Needs

The Expanded Gaming Act requires the MGC to establish “an annual research agenda” to understand the social and economic effects of casino gambling in Massachusetts. The Research Goals are to:

- Understand the social and economic effects of expanded gambling and use findings to inform evidence-based policy and regulation
- Obtain scientific information relative to the neuroscience, psychology, sociology, epidemiology and etiology of gambling
- Inform best practice strategies and methods for responsible gaming and problem gambling treatment and prevention
- Evaluate all responsible gaming initiatives developed by the Massachusetts Gaming Commission

Over the past ten years, the research agenda has produced more than fifty reports and studies answering key questions in each of these three areas.

In 2019, the MGC engaged a consulting firm, Strategic Science, to develop a research strategy for the evolution of a comprehensive research program to service the needs of the Commonwealth. One key recommendation in the strategic plan is to develop the explicit function, expertise and resources to engage in *strategic knowledge translation* to fully utilize the substantial knowledge being generated by the research program. Strategic knowledge translation serves to support stakeholders’ use of evidence in their decision-making; for example, to inform new or adapted policies, programs, treatment, and/or prevention and education initiatives.

To facilitate this recommendation, as part of the MGC’s FY23 research agenda, we engaged the Canadian organization Gambling Research Exchange Ontario (GREO) to help build our internal expertise and develop a strategy to best mobilize the knowledge gained from the MGC research agenda. During the open public meeting on December 1st, staff from GREO will lead a discussion



Massachusetts Gaming Commission

with Commissioners about the information you need and how it should be delivered in order to best support you in making evidence-informed policy decisions.

This conversation will be facilitated by the following GREO staff:

- Lindsay Kalbfleisch, Stakeholder Engagement Lead
- Corrine Leon, Knowledge Broker

The Research and Responsible Gaming Division is attaching for your review a document containing an overview of GREO, knowledge translation and exchange, and the goals for this project, as well as questions for discussion at the meeting on 12/1. We encourage you to review the attached information, as well as the questions for discussion, and come to the meeting with your top priorities or focus areas over the next two years, ideas for information you need in order to support your work in these policy areas, and how it is most helpful for you to receive information.

Attachments to this memo include:

- 1) Overview document for conversation, *Exploring Commissioners' knowledge needs and preferences*.



Massachusetts Gaming Commission



Exploring Commissioners' knowledge needs and preferences

ABOUT GREO

Greo is a non-profit organization on a mission to advance health and wellbeing globally. Greo (formerly Gambling Research Exchange Ontario) began over two decades ago as a government funded non-profit in Canada mandated to tackle the harms associated with gambling. Today we are an independent global organization addressing complex societal issues impacting people's health and wellbeing, with a current focus on gambling and gaming, substance use, mental health, digital wellbeing, and financial harm reduction.

ABOUT THE PROJECT

Greo is working in support of the Research and Responsible Gaming team at the Massachusetts Gaming Commission (MGC) to develop a comprehensive, multi-year knowledge translation and exchange (KTE) strategy. The general intent of KTE is to actively support stakeholders' use of evidence in their decision-making, for example in new or adapted policies, programs, treatment, and / or prevention and education initiatives. For this reason, it is vital that stakeholders best positioned to make use of and benefit from the research emerging from MGC are engaged to inform MGC's KTE Strategy.

The goal is to scaffold a scalable approach to KTE, by initially focusing on:

- Expanding MGC's KTE program of support to actively strengthen awareness, use, and application of research findings and MODE data by stakeholders
- Integrating a KTE component into MGC's research funding and data access processes to ensure that KTE is thoughtfully planned for, budgeted for, and practiced
- Building the capacity of MGC's Research and Responsible Gaming staff to contribute to the KTE program

DESIGNING A STAKEHOLDER-INFORMED STRATEGY

A key step in the design of MGC's KTE strategy is exploring the information and decision-making needs and preferences of key stakeholders. As the group responsible for overseeing and implementing gambling regulations in the State, understanding your policy priorities, information needs and preferences, and implementation support needs and preferences are critical to the success of the strategy.

To get to know you and better understand how we can support you, we're requesting your response to five key questions:

1. What are your top priorities or focus areas for policy over the next two years? This could include new policy areas, or policies you aim to refresh or re-envision.
2. What information do you need to support your policy work in these priority areas? (Consider research, evidence, data, knowledge products such as policy briefs, etc.)
3. Typically, when a research project is finished, the MGC Research and Responsible Gaming team shares the report with you and delivers a presentation of the study and findings. Going forward, in what ways would you like to receive information about newly published MGC research? (Consider information sharing processes/pathways, opportunities to discuss, products, and resource types, etc.)
 - a. What is working well currently?
 - b. What might you like to see changed or approached differently?
4. From your perspective, what are some of the barriers to, and facilitators of, implementing evidence into policy?
5. Are there additional ways the MGC Research and Responsible Gaming team could support your understanding and use of the research emerging from this program? Please share any ideas you have that could support your policy-related work.



MEMORANDUM

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

FROM: Loretta Lillios, IEB Director

RE: Designation of Mass. State Police under G.L. c. 23N

DATE: November 23, 2022

cc: Karen Wells, Executive Director; Todd Grossman, General Counsel

The Investigations and Enforcement Bureau (“IEB”) of the Massachusetts Gaming Commission (the “Commission”) requests that the Commission consider designating the Department of the Massachusetts State Police to have primary responsibility for conducting or assisting the Commission in conducting investigations into corruption in sports wagering in Massachusetts.

General Law chapter 23N, section 11(c) provides as follows:

The commission shall designate a state law enforcement entity to have primary responsibility for conducting, or assisting the commission in conducting, investigations into abnormal betting activity, match fixing and other conduct that corrupts a betting outcome of a sporting event for purposes of financial gain.

The IEB notes that the State Police already have a specialized unit and a specialized division dedicated to gaming: the Gaming Enforcement Unit (where officers are assigned to the IEB and report to the Colonel of the State Police and the IEB Director jointly) and the Division of Gaming Enforcement within the Office of the Attorney General.

The IEB also notes that State Police Colonel Christopher Mason has informed the Commission that the State Police agrees to this designation.



Legal Division

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

DATE: November 23, 2022

RE: Regulations for Final Approval to Complete the Promulgation Process

There are currently four regulations that are before the Commission for final approval to complete the promulgation process. A public hearing was held on the below regulations on November 22, 2022, presided over by Commissioner Hill.

205 CMR 211: Category 2, Category 2, and Category 3 Sports Wagering License Applications

This regulation outlines the requirements that must be met by an applicant to submit an application for a sports wagering operator license, including the type of information that will be required on the application form and required fees. In addition, the regulation authorizes the Commission to extend the filing deadline for applications under certain circumstances.

205 CMR 202: Sports Wagering Authority and Definitions

This regulation includes various definitions that are/will be used throughout the 205 CMR 200 series.

205 CMR 235: Sports Wagering Vendors

This regulation governs the licensing of sports wagering vendors, including relevant forms, submittal of applications, review of applications, temporary licensing, term and renewal, duties to cooperate, and disciplinary action.

205 CMR 240: Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts Tax Remittance and Reporting

This regulation governs the process of filing and collecting taxes related to sports wagering activities and fantasy contests.



Massachusetts Gaming Commission

205 CMR 202: SPORTS WAGERING AUTHORITY AND DEFINITIONS

202.01 Authority
202.02 Definitions

202.01 Authority

205 CMR 202.00, *et seq.* are issued pursuant to M.G.L. c. 23K, §§ 4(42) and 5 and M.G.L. c. 23N, §§ 4(a), 4(b) and 5, unless otherwise specified.

202.02 Definitions

As used in 205 CMR 202.00, *et seq.*, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise:

Adjusted Gross Fantasy Wagering Receipts means as defined in M.G.L. c. 23N, § 3.

Adjusted Gross Sports Wagering Receipts means as defined in M.G.L. c. 23N, § 3.

Affiliate means as defined in M.G.L. c. 23N, § 3.

Annual Assessment means the annual assessment required to be paid by Operators pursuant to M.G.L. c. 23N, § 15(c).

Applicant means as defined in M.G.L. c. 23N, § 3.

Category 1 Sports Wagering License means as defined in M.G.L. c. 23N, § 3.

Category 2 Sports Wagering License means as defined in M.G.L. c. 23N, § 3.

Category 3 Sports Wagering License means as defined in M.G.L. c. 23N, § 3.

Close Associate means as defined in M.G.L. c. 23N, § 3.

Collegiate Sport or Athletic Event means as defined in M.G.L. c. 23N, § 3.

Collegiate Tournament means as defined in M.G.L. c. 23N, § 3.

Commission means as defined in M.G.L. c. 23N, § 3.

Electronic Sports or eSports means as defined in M.G.L. c. 23N, § 3.

Governmental Authority means as defined in M.G.L. c. 23N, § 3.

House Rules means comprehensive house rules for game play governing sports wagering transactions with an Operator's patron as required pursuant to M.G.L. c. 23N, § 10.

License means as defined in M.G.L. c. 23N, § 3.

Mobile Application means a Sports Wagering Platform accessible through an application on a mobile phone or other mobile device through which an individual is able to place a Sports Wager.

National Criminal History Background Check means as defined in M.G.L. c. 23N, § 3.

Non-Sports Wagering Vendor means a Person who offers to an Operator goods or services which are not directly related to Sports Wagering and who does not meet the definition of a Sports Wagering Vendor.

Occupational License means as defined in M.G.L. c. 23N, § 3.

Official League Data means as defined in M.G.L. c. 23N, § 3.

Operation(s) Certificate means a certificate of compliance issued by the Commission to an Operator.

Operator or Sports Wagering Operator means as defined in M.G.L. c. 23N, § 3.

Operator License means as defined in M.G.L. c. 23N, § 3.

Person means as defined in M.G.L. c. 23N, § 3.

Personal Biometric Data means as defined in M.G.L. c. 23N, § 3.

Players Association means as defined in M.G.L. c. 23N, § 3.

Professional Sport or Athletic Event means as defined in M.G.L. c. 23N, § 3.

Promotional Gaming Credit means as defined in M.G.L. c. 23N, § 3.

Qualified Gaming Entity means as defined in M.G.L. c. 23N, § 3.

Qualifier means 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. 23N and 205 CMR 200 *et seq.*

Sports Event or Sporting Event means as defined in M.G.L. c. 23N, § 3.

Sports Governing Body means as defined in M.G.L. c. 23N, § 3.

Sports Wager means as defined in M.G.L. c. 23N, § 3.

Sports Wagering means as defined in M.G.L. c. 23N, § 3.

Sports Wagering Account means as defined in M.G.L. c. 23N, § 3.

Sports Wagering Area means the part of a Gaming Establishment operated by a Category 1 Sports Wagering Licensee for in-person Sports Wagering.

Sports Wagering Control Fund means the fund established pursuant to M.G.L. c. 23N, § 15.

Sports Wagering Equipment means as defined in 204 CMR 244.01.

Sports Wagering Facility means a facility operated by a Category 1 Sports Wagering Licensee or Category 2 Sports Wagering Licensee and approved by the Commission for in-person Sports Wagering.

Sports Wagering Fund means the fund established pursuant to M.G.L. c. 23N, § 17.

Sports Wagering Kiosk means any self-service automated kiosk, terminal, machine or other device which a Person may use to place or redeem a Wager.

Sports Wagering License means a Category 1 Sports Wagering License, Category 2 Sports Wagering License, or Category 3 Sports Wagering License.

Sports Wagering Platform means a website, application, widget or other digital platform accessible via the internet, or mobile or wireless technology on which a Person may place or redeem a Wager.

Sports Wagering Registrant means a Non-Sports Wagering Vendor or Subcontractor required to register with the Commission pursuant to 205 CMR 234.01(2).

Sports Wagering Subcontractor means a Person that contracts with a Sports Wagering Vendor or Sports Wagering Registrant to provide goods or services necessary to fulfill the licensed sports wagering vendor’s contract with an Operator.

Sports Wagering Vendor. A Person that is not required to be licensed as an Operator or Sports Wagering Operator under M.G.L. c. 23N, or as a gaming vendor under M.G.L. c. 23K, who regularly provides goods or services to an Applicant for an Operator License or an Operator; which goods, software, or services directly relate to Sports Wagering operations, including but not limited to:

- a. Sports Wagering platform design, operation or maintenance;
- b. line and odds setting;
- c. Sports Wagering risk management;
- d. geolocation;
- e. customer verification;
- f. integrity monitoring;
- g. Sports Wagering kiosks;
- h. sportsbook data; or
- i. third-party advertising or marketing entities.

Sports Wagering Vendor License means a license issued by the Commission pursuant to 205 CMR 234.00 that permits the licensee to act as a vendor to a Sports Wagering Operator.

Temporary License means a Sports Wagering License issued pursuant to M.G.L. c. 23N, § 6(c) and 205 CMR 219.

Tethered Category 3 License. A Category 3 License connected to a Category 1 or Category 2 License pursuant to M.G.L. c. 23N, § 6.

Tier 1 Sports Wager means as defined in M.G.L. c. 23N, § 3.

Tier 2 Sports Wager means as defined in M.G.L. c. 23N, § 3.

Untethered Category 3 License. A Category 3 License not connected to a Category 1 or Category 2 License pursuant to M.G.L. c. 23N, § 6.

Wager means as defined in M.G.L. c. 23N, § 3.

Wager Category means a specific type of sporting event or other event governed by a specific Sports Governing Body or other oversight body (for example, professional basketball governed by the National Basketball Association).

205 CMR 202: SPORTS WAGERING AUTHORITY AND DEFINITIONS

202.01 Authority
 202.02 Definitions

202.01 Authority

205 CMR 202.00, *et seq.* are issued pursuant to M.G.L. c. 23K, §§ 4(42) and 5 and M.G.L. c. 23N, §§ 4(a), 4(b) and 5, unless otherwise specified.

202.02 Definitions

As used in 205 CMR 202.00, *et seq.*, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise:

Adjusted Gross Fantasy Wagering Receipts means as defined in M.G.L. c. 23N, § 3.

Adjusted Gross Sports Wagering Receipts means as defined in M.G.L. c. 23N, § 3.

Affiliate means as defined in M.G.L. c. 23N, § 3.

Annual Assessment means the annual assessment required to be paid by Operators pursuant to M.G.L. c. 23N, § 15(c).

Applicant means as defined in M.G.L. c. 23N, § 3.

Category 1 Sports Wagering License means as defined in M.G.L. c. 23N, § 3.

Category 2 Sports Wagering License means as defined in M.G.L. c. 23N, § 3.

Category 3 Sports Wagering License means as defined in M.G.L. c. 23N, § 3.

Close Associate means as defined in M.G.L. c. 23N, § 3.

Collegiate Sport or Athletic Event means as defined in M.G.L. c. 23N, § 3.

Collegiate Tournament means as defined in M.G.L. c. 23N, § 3.

Commission means as defined in M.G.L. c. 23N, § 3.

Electronic Sports or eSports means as defined in M.G.L. c. 23N, § 3.

Governmental Authority means as defined in M.G.L. c. 23N, § 3.

House Rules means comprehensive house rules for game play governing sports wagering transactions with an Operator's patron as required pursuant to M.G.L. c. 23N, § 10.

License means as defined in M.G.L. c. 23N, § 3.

Mobile Application means a Sports Wagering Platform accessible through an application on a mobile phone or other mobile device through which an individual is able to place a Sports Wager.

National Criminal History Background Check means as defined in M.G.L. c. 23N, § 3.

Non-Sports Wagering Vendor means a Person who offers to an Operator goods or services which are not directly related to Sports Wagering and who does not meet the definition of a Sports Wagering Vendor.

Occupational License means as defined in M.G.L. c. 23N, § 3.

Official League Data means as defined in M.G.L. c. 23N, § 3.

Operation(s) Certificate means a certificate of compliance issued by the Commission to an Operator.

Operator or Sports Wagering Operator means as defined in M.G.L. c. 23N, § 3.

Operator License means as defined in M.G.L. c. 23N, § 3.

Person means as defined in M.G.L. c. 23N, § 3.

Personal Biometric Data means as defined in M.G.L. c. 23N, § 3.

Players Association means as defined in M.G.L. c. 23N, § 3.

Professional Sport or Athletic Event means as defined in M.G.L. c. 23N, § 3.

Promotional Gaming Credit means as defined in M.G.L. c. 23N, § 3.

Qualified Gaming Entity means as defined in M.G.L. c. 23N, § 3.

Qualifier means 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. 23N and 205 CMR 200 *et seq.*

Sports Event or Sporting Event means as defined in M.G.L. c. 23N, § 3.

Sports Governing Body means as defined in M.G.L. c. 23N, § 3.

Sports Wager means as defined in M.G.L. c. 23N, § 3.

Sports Wagering means as defined in M.G.L. c. 23N, § 3.

Sports Wagering Account means as defined in M.G.L. c. 23N, § 3.

Sports Wagering Area means the part of a Gaming Establishment operated by a Category 1 Sports Wagering Licensee for in-person Sports Wagering.

Sports Wagering Control Fund means the fund established pursuant to M.G.L. c. 23N, § 15.

Sports Wagering Equipment means, ~~an electronic, electrical or mechanical contrivance, machine, or system used in connection with Sports Wagering as defined in 204 CMR 244.01.~~

Sports Wagering Facility means a facility operated by a Category 1 Sports Wagering Licensee or Category 2 Sports Wagering Licensee and approved by the Commission for in-person Sports Wagering.

Sports Wagering Fund means the fund established pursuant to M.G.L. c. 23N, § 17.

Sports Wagering Kiosk means any self-service automated kiosk, terminal, machine or other device which a Person may use to place or redeem a Wager.

Sports Wagering License means a Category 1 Sports Wagering License, Category 2 Sports Wagering License, or Category 3 Sports Wagering License.

Sports Wagering Platform means a website, application, widget or other digital platform accessible via the internet, or mobile or wireless technology on which a Person may place or redeem a Wager.

Sports Wagering Registrant means a Non-Sports Wagering Vendor or Subcontractor required to register with the Commission pursuant to 205 CMR 234.01(2).

Sports Wagering Subcontractor means a Person that contracts with a Sports Wagering Vendor or Sports Wagering Registrant to provide goods or services necessary to fulfill the licensed sports wagering vendor's contract with an Operator.

Sports Wagering Vendor. A Person that is not required to be licensed as an Operator or Sports Wagering Operator under M.G.L. c. 23N, or as a gaming vendor under M.G.L. c. 23K, who regularly provides goods or services to an Applicant for an Operator License or an Operator; which goods, software, or services directly relate to Sports Wagering operations, including but not limited to:

- a. Sports Wagering platform design, operation or maintenance;
- b. line and odds setting;
- c. Sports Wagering risk management;
- d. geolocation;
- e. customer verification;
- f. integrity monitoring;
- g. Sports Wagering kiosks;
- h. sportsbook data; or
- i. third-party advertising or marketing entities.

Sports Wagering Vendor License means a license issued by the Commission pursuant to 205 CMR 234.00 that permits the licensee to act as a vendor to a Sports Wagering Operator.

Temporary License means a Sports Wagering License issued pursuant to M.G.L. c. 23N, § 6(c) and 205 CMR 219.

Tethered Category 3 License. A Category 3 License connected to a Category 1 or Category 2 License pursuant to M.G.L. c. 23N, § 6.

Tier 1 Sports Wager means as defined in M.G.L. c. 23N, § 3.

Tier 2 Sports Wager means as defined in M.G.L. c. 23N, § 3.

Untethered Category 3 License. A Category 3 License not connected to a Category 1 or Category 2 License pursuant to M.G.L. c. 23N, § 6.

Wager means as defined in M.G.L. c. 23N, § 3.

Wager Category means a specific type of sporting event or other event governed by a specific Sports Governing Body or other oversight body (for example, professional basketball governed by the National Basketball Association).



Legal Division

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 202: Sports Wagering Authority and Definitions**, for which a public hearing was held on November 22, 2022.

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 202 creates definitions that will be used throughout the sports wagering-related regulations. 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:

This regulation contains definitions and therefore, does not establish compliance and 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 regulation.

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.



Massachusetts Gaming Commission

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.

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/ Ying Wang

Ying Wang
Associate General Counsel
Legal Division

Dated: November 23, 2022



Massachusetts Gaming Commission



205 CMR 211: CATEGORY 1, CATEGORY 2, AND CATEGORY 3 SPORTS WAGERING
LICENSE APPLICATIONS

211.01: Applications

- (1) An Applicant for a Category 1 Sports Wagering License, Category 2 Sports Wagering License, or Category 3 Sports Wagering License must submit a fully executed original application to the Commission using the appropriate application forms issued by the Commission by the deadlines established by the Commission. Each application form shall be submitted in accordance with the instructions included in the application form. The Commission shall have no obligation to accept or review an incomplete application or an application submitted after the established deadline. Applicants shall, at a minimum, submit the following completed forms as part of their application for a Category 1, Category 2, or Category 3 Sports Wagering License:
 - (a) *Operator and Vendor Scope of Licensing – Initial Survey*;
 - (b) *Application for Category 1, 2, & 3 Sports Wagering Operator License*;
 - (c) For designated entity qualifiers, *Business Entity Disclosure Form* as described in 205 CMR 111.02: *Business Entity Disclosure Form – Category 1 and Category 2 Entity Applicants and Holding/Intermediary Companies*, as modified by the Commission with respect to Sports Wagering;
 - (d) For designated individual qualifiers, *Multi-jurisdictional Personal History Form* as described in 205 CMR 111.03: *Multi-jurisdictional Personal History Form*, as modified by the Commission with respect to Sports Wagering;
 - (e) For designated individual qualifiers, *Massachusetts Supplemental Form* as described in 205 CMR 111.04: *Massachusetts Supplemental Form*, as modified by the Commission with respect to Sports Wagering; and
 - (f) Any attestation forms required by the Bureau.
- (2) An Applicant's fully executed *Operator and Vendor Scope of Licensing – Initial Survey* must be submitted pursuant to 205 CMR 211.01(1)(a) as a prerequisite to the submission of the application forms described in 205 CMR 211.01(b) through (e). Failure to submit such Survey by the deadline established by the Commission shall result in the Commission deeming the Applicant's application incomplete and administratively closed unless authorization is given pursuant to 205 CMR 211.01(10).
- (3) An *Application for Category 1, 2, & 3 Sports Wagering Operator License* submitted pursuant to 205 CMR 211.01(1)(b) shall include, but not be limited to, the following information:
 - (a) Background information related to the Applicant;
 - (b) The Applicant's experience and expertise related to Sports Wagering;
 - (c) The economic impact to the Commonwealth if the Applicant is awarded a License;
 - (d) A description of the Applicant's willingness to foster racial, ethnic, and gender diversity, equity, and inclusion within their workforce;
 - (e) The Applicant's proposed measures related to responsible gaming;
 - (f) The technology that the Applicant intends to use in its operation;
 - (g) The suitability of the Applicant and its qualifiers; and


- (h) Attestation forms verifying the authenticity of the information submitted in the application.
- (4) The Commission may request supplemental information from an Applicant at any time prior to its issuance of a decision on an application.
- (5) The application forms shall include language permitting Applicants for Category 1 Sports Wagering Licenses, Category 2 Sports Wagering Licenses, and Tethered Category 3 License applicants to 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.
- (6) Fees. All application fees required pursuant to G.L. c. 23N shall be submitted to the Commission in a format prescribed on the application form issued by the Commission.
- (7) An Applicant shall have an affirmative obligation to abide by every statement made in its application to the Commission, including all evaluation criteria and eligibility requirements. A misrepresentation or omission made with respect to an application may be grounds for denial of the application or revocation of any license granted by the Commission.
- (8) An Applicant shall have a continuing duty to disclose any changes in the information submitted to the Commission.
- (9) Public Records. The *Application for Category 1, 2, & 3 Sports Wagering Operator License* form issued by the Commission may include information regarding how certain materials submitted in the course of the application may be withheld from public disclosure pursuant to G.L. c. 66, § 10.
- (10) Extension of Time for Filing. The Commission may, in its discretion, extend the time for filing a complete application to enable an Applicant to cure a deficiency in its application, provided that the application forms were submitted and the applicable fee was paid before the established deadlines, or to provide reasonable additional time for filing in cases where extraordinary circumstances prevented a timely filing.

Name
Alexander Kane
Email
alex@getsporttrade.com
Select Public Comment Category from Dropdown Menu
205 CMR 211: Category 1, 2, & 3 Sports Wagering License Applications
Questions or Comments
<p>Hello MGC,</p> <p>My name is Alexander Kane, CEO and Founder of Sporttrade. Sporttrade is a sports betting exchange live in the State of New Jersey.</p> <p>Sporttrade offers customers a highly-differentiated product (our app looks *nothing* like a traditional sportsbook), and in turn we are bringing accretive tax revenue to the State.</p> <p>205 CMR 211.01(3)(b) requires applicants to provide "The Applicant's experience and expertise related to Sports Wagering". I would urge the Commission to be open-minded to applications that have unique answers to this section, even if the answer is "None".</p> <p>As we have seen in the first 4 years of regulated online sports betting, the same small handful of operators are capturing most of the market, leaving in some case dozens of others vying for the same customer, with the same product. This leads to a race to the bottom, both in terms of promotional spend by operators, and in some cases taxable revenue by the jurisdiction.</p> <p>Unfortunately, due to extremely high licensing fees and regulatory requirements, many American entrepreneurs have been left out of the US online sports betting market. This means that we've seen, at best, only a glimpse of what American entrepreneurs can offer to consumers when given a chance.</p> <p>So, if an applicant doesn't (yet) have gaming experience, remember that innovation most often comes from folks who think outside the box, and innovation fosters new products for consumers and accretive revenue for the Commonwealth.</p> <p>Thank you, and have a great day!</p> <p>Best, Alex</p>

Notes
 Admin Notification (ID: 51d328f102c7a) added October 17, 2022 at 10:35 pm
WordPress successfully passed the notification email to the sending server.
 {Name (First):9.3} {Name (Last):9.6} (ID: 5af1e583a9cb4) added October 17, 2022 at 10:35 pm
WordPress successfully passed the notification email to the sending server.

Torrisi, Carrie

From: MGC Website <massgamingcomm@gmail.com>
Sent: Friday, October 14, 2022 9:43 AM
To: MGCcomments
Subject: Contact the Commissioner Form Submission

Name
Alex Mikaelian
Email
 @gmail.com
Select Public Comment Category from Dropdown Menu
205 CMR 211: Category 1, 2, & 3 Sports Wagering License Applications
Questions or Comments
My question is why is the process longer for mobile sports betting compared to retail? so many other states have legalized sports betting including almost every border state, why isn't it faster when there is a solid outline for legalizing it.

Forwarded to Todd G. on October 17, 2022



Legal Division

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 211.00: Category 1, Category 2, and Category 3 Sports Wagering Operator License Applications**, for which a public hearing was held on November 22, 2022.

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 211.00 applies to potential sports wagering operators and 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:

While it is unknown at this time if a potential sports wagering operator subject to this regulation may be a small business, there are no less stringent compliance or reporting requirements for small businesses at this time.

2. Establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses:

This regulation relates to deadlines imposed for sports wagering operator application submissions but does not include any reporting requirements. It is unknown at this time if any small business might apply for a sports wagering operator license and be subject to this regulation.

3. Consolidating or simplifying compliance or reporting requirements for small businesses:

This amendment does not impose any reporting requirements for small businesses.

4. Establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation:



Massachusetts Gaming Commission

No standards are set forth in this regulation.

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

The proposed regulation is unlikely to deter or encourage the formation of new businesses in the Commonwealth.

6. Minimizing adverse impact on small businesses by using alternative regulatory methods:

At this time it does not appear that 205 CMR 211.00 creates any adverse impact on small businesses.

Massachusetts Gaming Commission

By:

/s/ Ying Wang

Ying Wang

Associate General Counsel

Legal Division

Dated: November 23, 2022



Massachusetts Gaming Commission

205 CMR 234: SPORTS WAGERING VENDORS

- 234.01 Vendors
- 234.02 Forms; Fingerprinting
- 234.03 Submission by Applicants; Fees
- 234.04 Investigation, Determination, and Appeals for Sports Wagering Vendors
- 234.05 Affirmative License Standards for Sports Wagering Vendors
- 234.06 Affirmative Registration Standards for Sports Wagering Registrants
- 234.07 Temporary Licenses for Sports Wagering Vendors
- 234.08 Administrative Closure of Applications for Sports Wagering Vendor Licensure
- 234.09 Term of Sports Wagering Vendor License; Renewal
- 234.10 Duties of Applicants and Licensees
- 234.11 Disciplinary Action
- 234.12 Application following Denial or Revocation

234.01 Vendors

- (1) Requirement for Licensure or Registration.
 - (a) Unless otherwise licensed as a gaming vendor pursuant to 205 CMR 134.00, no Person shall conduct business with a Sports Wagering Operator as a Sports Wagering Vendor unless such Person has been licensed as a Sports Wagering Vendor. A Person shall be considered to be conducting business upon commencement of performance of a contract or provision of a good or service.
 - (b) Except as provided in 205 CMR 234.01(2), a Non-Sports Wagering Vendor shall not be required to obtain a Sports Wagering Vendor License or to register as a Sports Wagering Registrant under this 205 CMR 234. As part of its license application process, a prospective Operator shall be required to identify all of its known or anticipated vendors providing goods or services to whom the prospective Operator reasonably expects to pay an amount of \$10,000 or more within a 12-month period, including Non-Sports Wagering Vendors, and if licensed the Operator shall have a continuing duty to update the Bureau relative to the identification of any new vendors. The Bureau may, at its discretion, require the submission of additional information and documents from an Operator, prospective Operator, or a Non-Sports Wagering Vendor.
 - (c) Except as provided in 205 CMR 234.01(2), a Sports Wagering Subcontractor shall not be required to obtain a Sports Wagering Vendor License or to register as a Sports Wagering Registrant under this 205 CMR 234. As part of its application process, a prospective Sports Wagering Vendor shall be required to identify all of its known or anticipated Sports Wagering Subcontractors providing goods or services to whom the vendor reasonably expects to pay an amount of \$10,000 or more within a 12-month period, and if licensed the vendor shall have a continuing duty to update the Bureau relative to the identification of any new Subcontractors. The Bureau may, at its discretion, require the submission of additional

information and documents from a Sports Wagering Subcontractor or a Sports Wagering Vendor or Applicant for a Sports Wagering Vendor License including, but not limited to, the Sports Wagering Subcontractor Information Form as provided in 205 CMR 234.02(3).

- (2) Designation for Registration.
 - (a) Notwithstanding any other provision of this Section 205 CMR 234, the Division of Licensing may, after consultation with the Bureau, designate a Non-Sports Wagering Vendor or a Sports Wagering Subcontractor a Sports Wagering Registrant, regardless of the types of goods or services being provided by that vendor.
 - (b) In making the determination whether to designate a vendor or a Subcontractor a Sports Wagering Registrant, the Bureau may consider the following factors, without limitation:
 - (i) whether the total dollar amount by which the vendor's or Subcontractor's business with an Operator exceeds \$250,000 in gross sales within a 12 month period, or \$100,000 in gross sales within a three month period; or
 - (ii) the relative value of the vendor or Subcontractor's business with the Operator compared to the Operator's overall disbursements to vendors;
 - (iii) whether the goods or services are limited to the pre-operating phase of the Operator's business in the Commonwealth;
 - (iv) the duration of the contract;
 - (v) whether the vendor will be providing goods or services at an on-site facility of the Operator;
 - (vi) the number of Sports Wagering Subcontractors involved in the performance of the vendor's contract with the Operator;
 - (vii) the number of employees employed by the vendor;
 - (viii) whether the vendor is licensed, registered or certified and regulated by another Governmental Authority;
 - (ix) the nature of the goods or services; and
 - (x) public safety considerations.
 - (c) If the Division of Licensing, after consultation with the Bureau, determines that the Non-Sports Wagering vendor or subcontractor should instead be registered as a Sports Wagering Registrant, it shall notify the vendor of that decision and of the vendor's obligation to register. Within

45 days of service of the notice, the vendor shall submit the applicable completed Registration Form-Sports Wagering Vendor as set forth in 205 CMR 234.02(1) for registration or file a written request to the Division of Licensing for reconsideration from the determination requiring filing of an application for registration. The Bureau may order any Person that fails to comply with such notice to cease conducting business with a Sports Wagering Vendor or an Operator immediately.

- (d) Nothing herein shall be construed to limit the Commission's or the Bureau's ability to require a Person designated as a Non-Sports Wagering Vendor or Subcontractor by an Operator to be licensed as a Sports Wagering Vendor.
- (3) Exceptions.
- (a) For purposes of 205 CMR 234.01, Persons engaged in the following fields of commerce who provide goods or services to an Operator or an Applicant for a Sports Wagering Operator license and who are not otherwise required to be licensed or registered by the Commission as a Sports Wagering Vendor or Sports Wagering Registrant, shall not be required to obtain licensure or registration as a vendor:
 - (i) insurance companies and insurance agencies, other than Sports Wagering risk management vendors;
 - (ii) television, radio, newspaper, internet or other similar media used for advertising purposes, not including third-party marketing entities;
 - (iii) Governmental Authorities or other governmental entities;
 - (iv) legal, accounting, lobbying and financial services entities;
 - (v) labor organizations, unions, or Affiliates registered in accordance with 205 CMR 134.00;
 - (vi) utility companies;
 - (vii) telecommunications companies;
 - (viii) providers of training seminars, publications, subscriptions, conference registration or membership dues for professional associations intended to directly contribute to the work performance or professional development of an employee;
 - (ix) nonprofit charitable corporations or organizations, provided that no consideration is received for the contribution;
 - (x) court order or stipulation of settlement or for settlement of consumer losses or consumer refunds;

- (xi) payments for freight charges to freight transporters selected by the vendor for delivering goods;
 - (xii) professional entertainers and/or celebrity appearances;
 - (xiii) any Person that, by submission of a written petition, can demonstrate to the Division of Licensing after consultation with the Bureau that licensure as a Sports Wagering vendor is not necessary to protect the public interest;
 - (xiv) upon submission of a written certification by an Operator, any Person providing goods or services not directly related to Sports Wagering to whom the Operator reasonably expects to pay an amount less than \$10,000 within a 12-month period.
- (b) Any other Person, by submission of a written petition, may request a determination from the Bureau that despite meeting the definition of a Sports Wagering Vendor they need not be licensed or registered, or despite meeting the definition of a Sports Wagering Vendor should be a Sports Wagering Registrant and do not require a Sports Wagering License, on the grounds that they are not providing goods or services on a regular or continuing basis, that the goods or services they provide do not directly relate to Sports Wagering, or that they are otherwise licensed as a gaming vendor or non-gaming vendor.
- (4) Sports Wagering Vendor Qualifiers.
- (a) Persons designated as Sports Wagering vendor qualifiers must establish their qualifications in accordance with 205 CMR 234.05.
 - (b) Sports Wagering Vendors. The following Persons shall be designated as Sports Wagering Vendor qualifiers:
 - (i) If the prospective Sports Wagering Vendor is a sole proprietor: The owner.
 - (ii) If the prospective Sports Wagering Vendor is a corporation:
 - (a) Each officer;
 - (b) Each inside director;
 - (c) Any Person owning more than 10% of the common stock of a company applying for licensure as a Sports Wagering Vendor, or a holding, intermediary or subsidiary company of such company and who has the ability to control the activities of the prospective vendor; and
 - (d) 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 vendor’s operations in the Commonwealth.

- (iii) If the prospective Sports Wagering Vendor is a limited liability corporation:
 - (a) Each Member;
 - (b) Each transferee of a Member’s interest;
 - (c) Each Manager; and
 - (d) 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 vendor’s operations in the Commonwealth.

- (iv) If the prospective Sports Wagering Vendor is a limited partnership:
 - (a) Each General Partner;
 - (b) Each Limited Partner; and
 - (c) 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 vendor’s operations in the Commonwealth.

- (v) If the Sports Wagering Vendor is a partnership:
 - (a) Each Partner; and
 - (b) 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 Sports Wagering Vendor’s operations in the Commonwealth.

- (c) Other Qualifiers. The Division of Licensing, after consultation with the Bureau, may, at its discretion, require other Persons that have a business association of any kind with the Applicant for a Sports Wagering Vendor License to be subject to the qualification requirements as a qualifier. These Persons include, but are not limited to, an Affiliate or holding, intermediary or subsidiary company of the Applicant for a Sports Wagering Vendor License.
- (d) Internal Review of Determinations. An Applicant may ask for review of any determination made by the Bureau, in accordance with 205 CMR 234.01(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.
- (5) Waiver. In addition to any other exception or exemption under 205 CMR 234.00, upon written petition, the Commission may waive the requirement to be qualified as a Sports Wagering Vendor qualifier for:
 - (a) Institutional investors holding up to 15% of the stock of the Sports Wagering Vendor or Applicant for a Sports Wagering Vendor License, 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 Sports Wagering Vendor or Applicant for a Sports Wagering Vendor License or a 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 Sports Wagering Vendor or Applicant for a Sports Wagering Vendor License, 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 234.00 before taking any action that may influence or affect the affairs of the Sports Wagering Vendor or Applicant for a Sports Wagering Vendor License or a holding, intermediary or subsidiary company. Any Person holding over 15% of a Sports Wagering Vendor or Applicant for a Sports Wagering Vendor License, or a holding, intermediary or subsidiary company thereof, shall be required to apply for a license before doing business in the Commonwealth; or
 - (b) Any Person who, in the opinion of the Bureau or the Commission, cannot exercise control or provide direction to a Sports Wagering Vendor or Applicant for a Sports Wagering Vendor License or a holding, intermediary or subsidiary company thereof.
- (6) Qualification of New Qualifiers for Sports Wagering Vendors.

- (a) No Person requiring qualification pursuant to 205 CMR 234.01(4) may perform any duties or exercise any powers relating to the position that said qualifier is seeking to assume for a Sports Wagering Vendor 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 Vendor may require qualification pursuant to 205 CMR 234.01(4) 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 234.01(4)(b) 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 pursuant to 205 CMR 234.02(2). 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 determination and inform the Commission in accordance with 205 CMR 234.00 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, a Sports Wagering Vendor shall promptly remove the qualifier from his or her position until such time as the Commission makes its final determination on suitability.
- (7) Internal Review of Determinations. An Applicant may ask for review of any determination made by the Bureau in accordance with 205 CMR 234.01(4)-(6) 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.

234.02 Forms; Fingerprinting

- (1) Sports Wagering Vendor License Application Form. Every Person applying for a Sports Wagering Vendor License shall be obligated to complete and submit a Sports Wagering Vendor Business Entity Disclosure Form to the Division of Licensing. Said forms shall be created by the Bureau, subject to the approval of the Commission. The Division of Licensing may make non-material changes to

the forms. The license application forms for Sports Wagering vendors shall require, at a minimum, the following information:

- (a) The name of the Applicant;
 - (b) The post office address and, if a corporation, the name of the state under the laws of which it was incorporated, the location of its principal place of business and the names and addresses of its directors and stockholders;
 - (c) The Applicant's criminal and arrest record;
 - (d) Any civil judgments obtained against the Applicant pertaining to antitrust or security regulation;
 - (e) The identity of every Person having a direct or indirect interest in the business and the nature of such interest; provided, however, that if the disclosed entity is a trust, the application shall disclose the names and addresses of all beneficiaries; provided further, that if the disclosed entity is a partnership, the application shall disclose the names and addresses of all partners, both general and limited; and provided further, that if the disclosed entity is a limited liability company, the application shall disclose the names and addresses of all members;
 - (f) An independent audit report of all financial activities and interests including, but not limited to, the disclosure of all contributions, donations, loans, loan forgiveness, or any other financial transactions to or from a gaming entity or Operator in the past three years; and
 - (g) Clear and convincing evidence of financial stability including, but not limited to, bank references, business and personal income and disbursement schedules, tax returns and other reports filed by governmental agencies, and business and personal accounting check records and ledgers.
- (2) Sports Wagering Registration Form. Every person seeking to register as a Sports Wagering Registrant shall be obligated to complete and submit a registration form to the Division of Licensing. The registration form shall be created by the Bureau and shall request the disclosure of any information deemed necessary by the Bureau, subject to the approval of the Commission. The Division of Licensing may make non-material changes to the form.
- (3) Qualifiers. Every Person designated as a qualifier for a Sports Wagering Vendor under 205 CMR 234.01(4) shall be obligated to complete and submit a personal disclosure form to the Division of Licensing. Said forms for Sports Wagering Vendor qualifiers shall be created by the Bureau, subject to the approval of the Commission. The Division of Licensing may make non-material changes to the forms.

- (4) Non-Sports Wagering Vendor and Sports Wagering Subcontractor Information Forms. A Non-Sports Wagering Vendor form to be completed by the Operator, and a Sports Wagering Subcontractor information form to be completed by Sports Wagering Vendors shall be created by the Bureau requesting any information as deemed necessary by the Bureau and submitted to the Division of Licensing. The Division of Licensing may make non-material changes to the form.
- (5) Fingerprinting. Each Sports Wagering Vendor License qualifier shall be fingerprinted under the supervision of the Commission in accordance with the procedures in 205 CMR 134.13.

234.03 Submission by Applicants; Fees

- (1) An application, disclosure form or registration for the initial issuance of a Sports Wagering Vendor License shall include all of the following:
 - (a) A completed Business Entity Disclosure Form-Sports Wagering Vendor, as applicable, as set forth in 205 CMR 234.02(1) and (2); and
 - (b) Proof of the vendor’s business relationship with one or more Operators in the manner prescribed by the Division of Licensing.
- (2) A Sports Wagering Vendor, Sports Wagering Registrant or qualifier (individual) shall file all the applicable Sports Wagering Business Entity Disclosure Forms or Sports Wagering employee disclosure forms, or a Sports Wagering Registration Form.
- (3) A qualifier for a Sports Wagering Vendor License may, if authorized by the Bureau, instead file disclosure information including, but not limited to, for publicly traded companies, copies of securities filings and/or audited consolidated financial statements for a period as determined by the Bureau, in lieu of the form identified in 205 CMR 234.03(1)(a).
- (4) Except as otherwise provided for in 205 CMR 234.07, each Applicant shall file a complete application pursuant to 205 CMR 234.03(1) with the Division of Licensing in the manner prescribed by the Division of Licensing. The Division of Licensing shall not accept an incomplete application.
- (5) Fees.
 - (a) A non-refundable fee of \$15,000 for an initial application and \$5,000 for a renewal shall be paid at the time of application for licensure as a Sports Wagering Vendor.
 - (b) A non-refundable fee of \$5,000 for an initial application and \$5,000 for a renewal shall be paid at the time of application for registration as a Sports Wagering Registrant.

- (c) Such fees shall be subject to the provisions of 205 CMR 134.15 regarding increases in application fees and manner of submittal of such fees.

234.04 Investigation, Determination, and Appeals for Sports Wagering Vendors and Sports Wagering Registrants

- (1) Upon receipt of an application for a Sports Wagering Vendor License or registration or a Sports Wagering vendor qualification, the Division of Licensing shall conduct a review of each for administrative completeness and then forward the application or submission to the Bureau which shall conduct an investigation of the Applicant. In the event an application or submission is deemed incomplete, the Division of Licensing may either request supplemental information from the Applicant or administratively close the application in accordance with 205 CMR 234.08. For individuals, the investigation shall include obtaining and reviewing criminal offender record information from the Department of Criminal Justice Information Services (DCJIS) and exchanging fingerprint data and criminal history with the Massachusetts Department of State Police and the United States Federal Bureau of Investigation. The investigation shall be conducted for purposes of determining whether the Applicant is suitable to be issued a license or registration in accordance with 205 CMR 234.05 and 205 CMR 234.06.
- (2) In determining the weight to be afforded any information bearing on suitability in accordance with 205 CMR 234.05 or 205 CMR 234.06, the Division of Licensing, Bureau, or Commission, as applicable, shall consider: the relevance of the information to doing business with a Sports Wagering Operator in general, whether there is a pattern evident in the information, and whether the Applicant is likely to be involved in Sports Wagering related activity. Further, the information will be considered in the light most favorable to the Applicant, unless the information cannot be so viewed pursuant to M.G.L. c. 23K or M.G.L. c. 23N, or the information obtained does not otherwise support such view. For purposes of 205 CMR 234.00, an adjudication of delinquency shall not be considered a conviction. Such a finding may, however, be considered for purposes of determining the suitability of an Applicant. Sealed or expunged records of criminal or delinquency appearances, dispositions, and/or any information concerning such acts shall not be considered for purposes of making a suitability determination in accordance with 205 CMR 234.00, and M.G.L. c. 23N.
- (3) Sports Wagering Vendor License Decisions. Upon completion of the investigation, conducted in accordance with 205 CMR 234.04(1), the Bureau shall either approve or deny the application for a Sports Wagering Vendor License. If the Bureau approves the application for a Sports Wagering Vendor, the Bureau shall forward a written approval to the Division of Licensing which shall issue a license to the Applicant on behalf of the Commission. If the application is denied, the Bureau shall forward the determination of denial and reasons therefor to the Division of Licensing which shall issue a written decision to the Applicant explaining the reasons for the denial. The decision shall include an advisory to the Applicant that they may appeal the decision in

accordance with 205 CMR 101.00. If the denial is based upon information contained in a Person's criminal record, the decision shall also include an advisory that the Person will be provided with a copy of their criminal record upon request and that they may challenge the accuracy of any relevant entry therein. The decision may be served *via* first class mail or email to the addresses provided by the Applicant on the application.

- (4) Sports Wagering Registration Decisions. The Division of Licensing shall issue a registration to the Applicant for Sports Wagering Registration on behalf of the Commission in accordance with 205 CMR 234.06. In the event that the Bureau determines, upon completion of the investigation conducted in accordance with 205 CMR 234.04(1), that the Applicant should be disqualified from holding a registration or is otherwise unsuitable in accordance with 205 CMR 234.06, it shall forward the results of the investigation to the Division of Licensing which shall issue a written notice to the Applicant denying or revoking the registration. The notice shall include an advisory to the Applicant that they shall immediately cease doing business with the gaming establishment and may request an appeal hearing in accordance with 205 CMR 101.00. If the denial is based upon the information contained in the person's criminal record, the decision shall also include an advisory that the person will be provided with a copy of their criminal record upon request and that they may challenge the accuracy of any relevant entry therein. The notice may be served *via* first class mail or *via* email to the addresses provided by the Applicant on the application.

234.05 Affirmative License Standards for Sports Wagering Vendors

- (1) An Applicant for a Sports Wagering Vendor License and any Sports Wagering Vendor qualifier shall establish individual qualifications by clear and convincing evidence.
- (2) In determining whether an Applicant for licensure is suitable for purposes of being issued a Sports Wagering Vendor License, being qualified as a Sports Wagering Vendor qualifier or for having a Sports Wagering Vendor License or qualification renewed, the Bureau shall evaluate and consider the overall reputation of the Applicant and qualifiers, if any, including, without limitation:
 - (a) the integrity, honesty, good character and reputation of the Applicant and qualifiers;
 - (b) the financial stability, integrity, and background of the Applicant and 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 application, is a defendant in litigation;

- (e) whether the Applicant is disqualified from receiving a license under 205 CMR 234.05(3);
 - (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;
 - (h) the extent to which the Applicant and qualifiers have cooperated with the Bureau in connection with the background investigation; and
 - (i) the integrity, honesty, and good character of any subcontractor.
- (3) The Bureau and Commission shall deny an application for a Sports Wagering Vendor License if the Applicant or a qualifier:
- (a) has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury; except that for such disqualifying convictions which occurred before the ten-year period immediately preceding submission of the application for licensure, the Bureau may, in its discretion, approve the issuance of a Sports Wagering Vendor License to an Applicant who affirmatively demonstrates rehabilitation in accordance with 205 CMR 234.05(4);
 - (b) submitted an application for a license under M.G.L. c. 23K, §§ 30, 31, 205 CMR 134.00, M.G.L. c. 23N or 205 CMR 234.00 that willfully, knowingly or intentionally contains materially false or misleading information;
 - (c) committed prior acts which have not been prosecuted or in which the Applicant was not convicted, but which form a pattern of misconduct that makes the Applicant unsuitable for a license; or
 - (d) has Affiliates or Close Associates that would not qualify for a license or whose relationship with the Applicant may pose an injurious threat to the interests of the Commonwealth.
- (4) Rehabilitation.
- (a) An Applicant may provide proof of rehabilitation from a criminal conviction as part of the application for licensure.
 - (b) In considering the rehabilitation of an Applicant the following shall be considered:
 - (i) the nature and duties of the position of the Applicant;
 - (ii) the nature and seriousness of the offense or conduct;

- (iii) the circumstances under which the offense or conduct occurred;
 - (iv) the date of the offense or conduct;
 - (v) the age of the Applicant when the offense or conduct was committed;
 - (vi) whether the offense or conduct was an isolated or repeated incident;
 - (vii) any social conditions which may have contributed to the offense or conduct; and
 - (viii) any evidence of rehabilitation, including recommendations and references of persons supervising the Applicant since the offense or conduct was committed.
- (c) A Sports Wagering Vendor License qualifier shall be at least 18 years of age at the time of application.

234.06 Affirmative Registration Standards for Sports Wagering Registrants

- (1) Upon submission of an administratively complete registration form as a Sports Wagering Registrant, the Division of Licensing shall issue the registration on behalf of the Commission. A registration may be denied or subsequently revoked if it is determined that the Applicant is disqualified in accordance with 205 CMR 234.06(2) or unsuitable for any criteria identified in 205 CMR 234.06(3).
- (2) The Bureau and Commission shall deny or revoke a registration if the person:
 - (a) has been convicted of a felony or other crime involving embezzlement, theft, fraud or perjury; except that for such disqualifying convictions which occurred before the ten-year period immediately preceding submission of the application for licensure, the Bureau may, in its discretion, approve the issuance of a registration to an Applicant who affirmatively demonstrates rehabilitation in accordance with 205 CMR 234.05(4);
 - (b) submitted a registration form under M.G.L. c. 23K, §§ 30, 31, 205 CMR 134.00, M.G.L. c. 23N or 205 CMR 234.00 that willfully, knowingly or intentionally contains materially false or misleading information;
 - (c) committed prior acts which have not been prosecuted or in which the Applicant was not convicted, but which form a pattern of misconduct that makes the Applicant unsuitable for registration; or
 - (d) has affiliates or close associates that would not qualify for a license or whose relationship with the Applicant may pose an injurious threat to the interests of the Commonwealth in approving a registration.

- (3) In determining whether an Applicant is suitable for purposes of being issued a registration or having a registration renewed, the Bureau may evaluate and consider the overall reputation of the Applicant including, without limitation:
 - (a) the integrity, honesty, good character and reputation of the Applicant;
 - (b) the financial stability, integrity, and background of the Applicant;
 - (c) whether the Applicant has a history of compliance with gaming licensing requirements in other jurisdictions;
 - (d) whether the Applicant, at the time of submission of the registration form, is a defendant in litigation;
 - (e) whether the Applicant is disqualified from receiving a registration under 205 CMR 234.06(2);
 - (f) whether the Applicant has been convicted of a crime of moral turpitude;
 - (g) whether, and to what extent, the Applicant has associated with members of organized crime and other persons of disreputable character;
 - (h) the extent to which the individual has cooperated with the Bureau in connection with the background investigation; and
 - (i) the integrity, honesty, and good character of any Subcontractor.

(5) An Applicant for a registration shall be 18 years of age or older at the time of application.

(6) The Bureau may deny an application for registration if it determines that the Applicant formed the Applicant entity for the sole purpose of circumventing the requirement to be licensed as a Sports Wagering Vendor.

234.07 Temporary Licenses for Sports Wagering Vendors

- (1) Notwithstanding any other provision of 205 CMR 234.00, upon petition to the Commission by an Operator, the Commission may issue a temporary Sports Wagering Vendor License to an Applicant for a Sports Wagering Vendor License if:
 - (a) the Applicant for a Sports Wagering Vendor License has filed a completed application with the Commission and has submitted all of the disclosure forms as required by the Division of Licensing. The Bureau may waive the requirement to submit application information for some or all of the Applicant’s individual and entity qualifiers prior to issuance of a Temporary License;
 - (b) the Operator certifies, and the Commission finds, that the issuance of a temporary Sports Wagering Vendor License is necessary for the operation

of Sports Wagering and is not designed to circumvent the normal licensing procedures; and

- (c) the Operator certifies that, to the best of its reasonable knowledge and belief, the proposed temporary Sports Wagering Vendor meets the qualifications for licensure pursuant to 205 CMR 234.05 and that the Operator understands that it may be denied an Operator License if it has willfully, knowingly or intentionally provided false or misleading information regarding the proposed vendor.
- (2) An Applicant applying for a Sports Wagering Vendor License on or before August 31, 2023 shall demonstrate its suitability for temporary licensure upon certification by the Applicant under the pains and penalties of perjury that the Applicant entity:
 - (a) is not disqualified under one or more of the criteria listed in 205 CMR 234.05(3);
 - (b) is properly licensed or registered, and in good standing, to conduct the same operations in every other jurisdiction where it operates as a Sports Wagering Vendor or the equivalent; and
 - (c) has disclosed any other information not previously disclosed of which it is aware or reasonably should be aware which would negatively impact a determination on the Applicant's suitability for a sports wagering vendor license.
 - (3) On or after September 1, 2023, a temporary Sports Wagering Vendor License shall issue, unless:
 - (a) A preliminary review of the Applicant shows that the Applicant is disqualified under one or more of the criteria listed in 205 CMR 234.05(3); or
 - (b) A preliminary review of the Applicant shows that the Applicant will be unable to establish his or her qualifications for licensure under the standards set forth in 205 CMR 234.05(1).
 - (4) If an Applicant for a temporary Sports Wagering Vendor License is licensed or registered in another jurisdiction within the United States with comparable license and registration requirements, as determined by the Bureau, and is in good standing in all jurisdictions in which it holds such a license or registration, the Commission may issue the vendor a temporary Sports Wagering Vendor License; provided, however, that the Commission shall reserve its rights to investigate the qualifications of an Applicant at any time.
 - (5) Unless otherwise stated by the Commission, a temporary Sports Wagering Vendor License issued under this 205 CMR 234.07 shall expire upon issuance of a full Sports Wagering Vendor License or upon suspension or revocation of

the temporary Sports Wagering Vendor License, and in any event no later than the term of the license as set forth in 205 CMR 234.09(1).

234.08 Administrative Closure of Applications for Sports Wagering Vendor Licensure or Registration

- (1) All Applicants for a Sports Wagering Vendor License or registration shall promptly respond to any request for information from the Division of Licensing and/or the Bureau. This obligation is in addition to the continuing duty set forth in 205 CMR 234.10.
- (2) Failure of an Applicant for a Sports Wagering Vendor License or registration to respond to a request for information from the Division of Licensing and/or the Bureau within 21 days of the request may result in the administrative closure of the application for licensure or registration and the corresponding administrative revocation of a Sports Wagering Vendor license or registration, if applicable.
- (3) In the event that an application for licensure or a registration is administratively closed for failure to provide requested information or to comply with the obligations set forth in either 205 CMR 234.08(1) or 205 CMR 234.10, the Division of Licensing or the Bureau will notify the Applicant of the determination in writing and will identify the specific deficiencies in the application that served as the basis for the closure. Once an application for licensure or registration has been administratively closed, the Applicant is required to submit a new application in order to be considered for licensure or registration. In that event, the Applicant shall submit a complete application including all outstanding information as previously detailed by the Division of Licensing or the Bureau. The submission of outstanding information is not a guarantee of licensure or registration, but is a prerequisite for the application to be deemed administratively complete.

234.09 Term of Sports Wagering Vendor License or Registration; Renewal

- (1) Term. Sports Wagering Vendor licenses and registrations and Sports Wagering vendor qualifications shall be for an initial term of three years. The initial term of a Sports Wagering Vendor License or registration shall expire and be renewable on the last day of the month on the third anniversary of the issuance date.
- (2) Renewal.
 - (a) At a minimum of 150 days prior to expiration, each Sports Wagering Vendor shall submit a new and updated application or registration in accordance with 205 CMR 234.00.
 - (b) If a vendor or qualifier has made timely and sufficient application for a renewal, the Applicant's existing license or registration shall not expire and the Applicant shall remain in good standing until the Bureau has issued a decision on the application or registration. If a renewal

application or registration is received after the renewal date and the license or registration expires before the Commission issues a new license or registration, the Person shall not conduct business with an Operator until a new license or registration is issued.

- (c) It shall be the responsibility of the vendor to ensure that their license or registration is current.

234.10 Duties of Applicants, Licensees, and Sports Wagering Registrants

All Sports Wagering Vendor Applicants, Sports Wagering Vendors, Sports Wagering Registrants and qualifiers, shall have the same duties and obligations required of gaming vendor Applicants, licensees, and registrants pursuant to 205 CMR 134.18.

234.11 Disciplinary Action

- (1) Grounds for Disciplinary Action. Any Sports Wagering Vendor License or registration issued under 205 CMR 234.00 may be conditioned, suspended, or revoked, or a civil administrative penalty assessed, if the Commission finds that a vendor or qualifier has:
 - (a) been charged with or convicted of a crime while employed by an Operator and failed to report the charges or the conviction to the Commission; or
 - (b) failed to comply with any provision of M.G.L. c. 23N or 205 CMR pertaining to licensees or registrants, including failure to act in conformance with an applicable provision of the Operator’s system of internal controls.
- (2) Finding and Decision. If the Commission finds that a Sports Wagering Vendor or Non-Sports Wagering Registrant has violated a provision of 205 CMR 234.11(1), it may issue a written notice of its intent to reprimand, suspend, or revoke said vendor’s license or registration. Such notice shall be provided in writing and contain a factual basis and the reasoning in support the decision, including citation to the applicable statute(s) or regulation(s) that supports the action. It shall further advise the vendor of their right to a hearing and their responsibility to request a hearing in accordance with 205 CMR 234.11(4), if they so choose, and that failure to do so may result in the decision automatically being imposed. Mailing of the notice to the address on record with the Commission, or emailing the notice to the address provided to the Commission by the licensee or registrant shall be deemed satisfactory service of the notice. The Commission may alternatively issue an order temporarily suspending a license or registration.
- (3) Civil Administrative Penalties. The Commission may assess a civil administrative penalty on a Person in accordance with M.G.L. c. 23N, § 21(a) for a violation of 205 CMR 234.11(1).

- (4) Review of Decision. Any Person aggrieved by a decision made by the Commission, in accordance with 205 CMR 234.11(2) or (3), may request review of said decision in accordance with 205 CMR 101.00. Failure to request such review may result in the decision automatically being imposed.

234.12 Application Following Denial or Revocation

No individual who has been denied a license or registration or has had their license or registration revoked pursuant to 205 CMR 234.11 may reapply for the same license or registration prior to two years from the date of denial or revocation. If an individual has appealed the denial or revocation of their license or registration, the two year period shall begin to run from the date that the denial or revocation is affirmed pursuant to 205 CMR 101.00 or otherwise pursuant to M.G.L. c. 30A.

REGULATORY AUTHORITY

G.L. c. 23K, § 4(42); c. 23N, §§ 4(a)-(b), 5

Submitted By	Business/Entity Name	Name (First)	Name (Last)	Email	Regulation	Subsection	Comments	Entry Date
Vendor (Applicant or Licensed)	Sports Information Services Limited (DBA Kambi)	Tommaso	Di Chio	Kambi.licensing@kambi.com	205 CMR 234 - Sports Wagering Vendors	234.07(3-4) – Temporary Licensing	<p>Currently, section 234.07(3) as it is drafted implies that Temporary Licenses shall only be issued on or after September 1, 2023. We understand that Massachusetts sports betting is expected to launch by early 2023 with retail sportsbooks aiming to launch in January followed by online in March. Will there be scope to issue temporary licenses for this timeline, or are Temporary Licenses only issued on or after September 1, 2023?</p> <p>Section 234.07(4) provides that the Commission may issue temporary licenses if an Applicant for a temporary Sports Wagering Vendor License is licensed or registered in another jurisdiction in the United States with comparable licensing and registration requirements, and is in good standing in all jurisdictions in which it holds such a license or registration. Please could you comment on the type of jurisdictions that the Commission will consider when reviewing applications for temporary licenses.</p>	11/22/2022 9:00
Operator (Applicant or Licensed)	BetMGM	Robyn	Bowers	robyn.bowers@betmgm.com	234.01 Vendors	234.01 Vendors (b) and (c)	<p>BetMGM Comment: Proposing that subsections (b) and (c) be subject to a reasonableness standard.</p> <p>(b) Except as provided in 205 CMR 234.01(2), a Non-Sports Wagering Vendor shall not be required to obtain a Sports Wagering Vendor License or to register as a Sports Wagering Registrant under this 205 CMR 234. As part of its license application process, a prospective Operator shall be required to identify all of its known or anticipated vendors providing goods or services to whom the prospective Operator reasonably expects to pay an amount of \$10,000 or more within a 12-month period, including Non-Sports Wagering Vendors, and if licensed the Operator shall have a continuing duty to update the Bureau relative to the identification of any new vendors. The Bureau may, to a reasonable extent, require the submission of additional information and documents from an Operator, prospective Operator, or a Non-Sports Wagering Vendor.</p> <p>(c) Except as provided in 205 CMR 234.01(2), a Sports Wagering Subcontractor shall not be required to obtain a Sports Wagering Vendor License or to register as a Sports Wagering Registrant under this 205 CMR 234. As part of its application process, a prospective Sports Wagering Vendor shall be required to identify all of its known or anticipated Sports Wagering Subcontractors providing goods or services to whom the vendor reasonably expects to pay an amount of \$10,000 or more within a 12-month period, and if licensed the vendor shall have a continuing duty to update the Bureau relative to the identification of any new Subcontractors. The Bureau may, to a reasonable extent, require the submission of additional information and documents from a Sports Wagering Subcontractor or a Sports Wagering Vendor or Applicant for a Sports Wagering Vendor License including, but not limited to, the Sports Wagering Subcontractor Information Form as provided in 205 CMR 234.02(3).</p>	11/21/2022 16:40



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 234.00: Sports Wagering Vendors**, for which a public hearing was held on November 22, 2022.

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.

205 CMR 234.00 applies to sports wagering vendors and 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, it is not currently known how many small businesses will be subject to this regulation, as the Commission does not presently have information on how many vendors would identify as small businesses. Accordingly, there are no less stringent compliance or reporting requirements for small businesses at this time.

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 established by this regulation, however, sports wagering vendors are bound to cooperate with the Commission and the Investigation and Enforcement Bureau, pursuant to 205 CMR 234.10.

3. Consolidating or simplifying compliance or reporting requirements for small businesses:

This amendment does not impose any reporting requirements for small businesses but does provide a renewal requirement for sports wagering vendors and registrants every three years, within 205 CMR 234.09.



Massachusetts Gaming Commission

4. Establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation:

The proposed regulation utilizes performance-based standards and forms.

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

The proposed regulation is unlikely to deter or encourage the formation of new businesses in the Commonwealth, as it is limited in its impact on the greater small business community.

6. Minimizing adverse impact on small businesses by using alternative regulatory methods:

At this time it does not appear that 205 CMR 234.00 creates any adverse impact on small businesses.

Massachusetts Gaming Commission
By:

 /s/ Judith Young
Judith A. Young
Associate General Counsel
Legal Division

Dated: 11/22/2022



Massachusetts Gaming Commission

205 CMR 240:00: ADJUSTED GROSS SPORTS WAGERING AND ADJUSTED GROSS FANTASY WAGERING RECEIPTS TAX REMITTANCE AND REPORTING

240.01: DESCRIPTION OF TAX

240.02: COMPUTATION OF ADJUSTED GROSS SPORTS WAGERING AND ADJUSTED GROSS FANTASY WAGERING RECEIPTS

240.03: REMITTANCE

240.04: EXAMINATION OF ACCOUNTS AND RECORDS FOR VERIFICATION OF ADJUSTED GROSS SPORTS WAGERING AND ADJUSTED GROSS FANTASY WAGERING RECEIPTS

240.01: Description of Tax

Pursuant to M.G.L. c. 23N, § 14, the following excise taxes relative to sports wagering and fantasy contests shall be calculated daily and remitted to the Commission on a monthly basis:

- (1) a monthly tax of 15% of the Operator's Adjusted Gross Sports Wagering Receipts from the operation of in-person sports wagering, computed in accordance with 205 CMR 240.02;
- (2) a monthly tax of 20% of the Operator's Adjusted Gross Sports Wagering Receipts from the operation of sports wagering through mobile applications and other digital platforms approved by the Commission, computed in accordance with 205 CMR 240.02; and
- (3) a monthly tax of 15% of the Adjusted Gross Fantasy Wagering Receipts of a person or entity that offers fantasy contests pursuant to M.G.L. c. 12, § 11M½ and 940 CMR 34.00, computed in accordance with 205 CMR 240.02. Any person engaged in offering fantasy contests shall register with the Commission on a form approved and prescribed by the Commission. Failure to comply with M.G.L. c. 23N or 205 CMR 240.00 may result in civil consequences.

240.02: Computation of Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts

(1) Sports Wagering: In accordance with M.G.L. c. 23N, § 3, Adjusted Gross Sports Wagering Receipts shall be the total gross receipts from sports wagering less the sum of: (i) the total of all winnings paid to participants; and (ii) all excise taxes paid pursuant to federal law; provided, however, that the total of all winnings paid to participants shall not include the cash equivalent of any merchandise or thing of value awarded as a prize.

(a) Adjusted Gross Sports Wagering Receipts shall be calculated daily and in accordance with the Operator's approved system of internal controls.

(b) Any amount that an Operator is unable to collect pursuant to any credit issued to a patron to take part in sports wagering in accordance with 205 CMR, *et seq.* shall be deemed an amount actually received for purposes of calculating gross sports wagering receipts.

(c) Adjusted Gross Sports Wagering Receipts shall not include any amount received by an Operator from credit extended or collected by the Operator for purposes other than sports wagering.

(d) The accrual method of accounting shall be used for the purposes of calculating the amount of the tax owed.

(2) Fantasy Contests: In accordance with M.G.L. c. 23N, § 3, Adjusted Gross Fantasy Wagering Receipts shall be the total gross receipts from fantasy contests as defined in section 11M ½ of chapter 12, less only the total of all cash prizes paid to participants in the fantasy contests; provided, however, that the total of all cash prizes paid to participants shall not include the cash equivalent of any merchandise or thing of value awarded as a prize.

(a) Adjusted Gross Fantasy Wagering Receipts shall be calculated daily and in accordance with the person or entity offering fantasy contests' approved system of internal controls.

(b) Any amount that a person or entity offering fantasy contests is unable to collect pursuant to any credit issued to a patron to take part in fantasy contests in accordance with 205 CMR, *et seq.* shall be deemed an amount actually received for purposes of calculating gross fantasy wagering receipts.

(c) Adjusted Gross Fantasy Wagering Receipts shall not include any amount received by a person or entity offering fantasy contests from credit extended or collected by the person or entity for purposes other than fantasy contests.

(d) The accrual method of accounting shall be used for the purposes of calculating the amount of the tax owed.

240.03: Remittance

(1) The excise taxes set out in 205 CMR 240.01 shall be due and payable to the Commission in monthly installments on or before 5:00 P.M. on the fifteenth calendar day following the calendar month in which the Adjusted Gross Sports Wagering Receipts or Adjusted Gross Fantasy Wagering Receipts were received by the Operator or person or entity offering fantasy contests, in accordance with 205 CMR 240.01.

(2) On or before the fifteenth calendar day of each month a monthly remittance report shall be filed with the Commission in a form prescribed by the Commission setting forth the following:

- a) the total gross sports wagering receipts and Adjusted Gross Sports Wagering Receipts from the operation of sports wagering during that month;
- b) the tax amount for which an Operator is liable;
- c) the total gross fantasy wagering receipts and Adjusted Gross Fantasy Wagering Receipts from the offering of fantasy contests, as defined in section 11M ½ of chapter 12, during that month;
- d) the tax amount for which a person or entity that offers fantasy contests, as defined in said section 11M ½ of said chapter 12, is liable; and

- e) any additional information necessary for the computation and collection of the tax on Adjusted Gross Sports Wagering Receipts and Adjusted Gross Fantasy Wagering receipts required by the Commission.

(3) The tax shall be due and remitted by electronic funds transfer simultaneously with the filing of the remittance report.

(4) When a monthly total for Adjusted Gross Sports Wagering or Adjusted Gross Fantasy Wagering Receipts is negative, the Operator or person or entity that offers fantasy contests may carry over the negative amounts to returns filed in subsequent months provided that sufficient documentation, as determined by the Commission, is submitted in support of the offset.

240.04: Examination of Accounts and Records for Verification of Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts

(1) The Commission or its designee may perform audits of the books and records of an Operator or person or entity offering fantasy contests, at such times and intervals as it deems appropriate, in order to verify the tax amount reported and remitted for Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts.

(2) The Operator or person or entity offering fantasy contests shall permit duly authorized representatives of the Commission to examine the accounts and records for the purpose of verifying Adjusted Gross Sports Wagering and Adjusted Fantasy Wagering Receipts. In the event that any records or documents deemed pertinent by a Commission examiner are in the possession of another person or entity, the Operator or person or entity offering fantasy contests shall be responsible for making those records or documents available to the Commission examiner within the time period provided by the Commission.

(3) The Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering tax verification process may incorporate audit work performed by an Operator's or person or entity offering fantasy contests' internal audit department or its independent accountant or auditor provided that:

- (a) Such audit work is conducted in accordance with minimum standard internal audit procedures which have been submitted to and approved by the Commission including, at a minimum, a detailed description of the audit tests to be performed;

- (b) The Operator or person or entity offering fantasy contests submits to the Commission by January 31st of each year an audit plan specifying the scheduled audit dates for verification of Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts that upcoming calendar year; and

- (c) The Operator or person or entity offering fantasy contests submits to the Commission no later than March 15th of each year, copies of all internal audit reports and any other reports directly relating to the reporting of Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts for the preceding tax year.

(4) The Commission shall notify the Operator or person or entity offering fantasy contests of any Adjusted Gross Sports Wagering or Adjusted Gross Fantasy Wagering Receipt tax deficiencies disclosed during the verification process. Any additional amounts due by the Operator or person or entity offering fantasy contests shall be remitted within 15 days of completion of the audit, except that in the event the Operator or person or entity offering fantasy contests disagrees with the Commission's audit results, the time for payment shall be extended for an additional thirty (30) days during which time the Operator or person or entity offering fantasy contests shall be provided an opportunity to respond to the Commission's audit results.

Submitted By	Business/Entity Name	Name (First)	Name (Last)	Email	Regulation	Subsection	Comments	Entry Date
Operator (Applicant or Licensed)	FanDuel	Andrew	Winchell	andrew.winchell@fanduel.com	205 CMR 240	240.02	<p>FanDuel suggests adding a new subdivision (e) to 205 CMR 240.02(2) which clarifies that the amount of Adjusted Gross Fantasy Wagering Receipts subject to taxation is Massachusetts’s proportionate share of nationwide fantasy contest receipts. This would ensure that Massachusetts taxation of fantasy contests is consistent with the other sixteen states, including: Connecticut; Maine; New York; New Jersey; and Pennsylvania, which provide for taxation of fantasy contest receipts.</p> <p>Language to be added:</p> <p>(e) The amount of Adjusted Gross Fantasy Wagering Receipts subject to the tax in 205 CMR 240.01(3) shall equal the total Adjusted Gross Fantasy Wagering Receipts from all participants entering fantasy contests, multiplied by the Location Percentage. The "Location Percentage" means the percentage, rounded to the nearest tenth of a percent, of the total entry fees collected from all fantasy contest players located in the commonwealth, divided by the total entry fees collected from all fantasy contest players in fantasy contests.</p>	11/22/2022 7:54
Operator (Applicant or Licensed)	Plainridge Park Casino and Penn Interactive Sports	lisa	mckenney	lisa.mckenney@pennentertainment.com	205 CMR 240 Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts Tax Remittance and Reporting	205 CMR 240.03	<p>Section 205 CMR 240.03 of the Sports Wagering Regulations requires a Sports Wagering Operator to file a tax remittance report, and simultaneously remit the tax due, to the Commission by 5:00 P.M. on the 15th calendar day of each month. Both M.G.L. c. 23N, Section 3, and 205 CMR 202.02 define an "Operator" as any entity permitted to offer sports wagering in the Commonwealth through a Category 1, Category 2, or Category 3 Sports Wagering License. As the definition of "Operator" contemplates Category 1, Category 2, and Category 3 licensees, PENN would like to confirm its understanding that a tethered Category 3 sports wagering licensee may handle these tax reporting and remittance requirements directly with the Commission, in situations where it offers mobile sports wagering on behalf of a Category 1 sports wagering licensee.</p>	#####
Operator (Applicant or Licensed)	BetMGM	Robyn	Bowers	robyn.bowers@betmgm.com	205 CMR 240.02 : Computation of Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts	205 CMR 240.02 (1)	<p>Are bonuses, freebets and other promotional play considered a "thing of value" under M.G.L. c. 23N, § 3? Thus making them subject to tax? This may be worth clarifying in the regulation.</p>	#####

Submitted By	Business/Entity	Name	Name (Last)	Email	Regulation	Subsection	Comments	Entry Date
Operator (Applicant or Licensed)	FFPC, LLC.	Michael	Petropoulos	mike@myffpc.com	205 CMR 240:00 - Adjusted Gross Sports Wagering & Adjusted Gross Fantasy Wagering Receipts Tax Remittance & Reporting	205 CMR 240:00 - 240.01 Description of Tax, (3)	<p>My name is Michael Petropoulos, I am the Head of Compliance for the Fantasy Football Players Championship (FFPC), a privately owned, small business, season-long fantasy football operator that has been operating since 2008. We are licensed in several jurisdictions across the country including New York, Pennsylvania, Virginia, New Jersey and many more.</p> <p>I am contacting you today kindly requesting consideration from the Massachusetts Gaming Commission to decrease the proposed 15% tax of Adjusted Gross Fantasy Wagering Receipts for persons or entities offering fantasy sports contests in the state.</p> <p>Many small operators in the industry have been forced to exit states in the past due to excessive and unfair cost requirements. States like Delaware, Indiana and Vermont all have required taxes and/or application fees that are not manageable and highly burdensome for the small operators in the industry.</p> <p>Missouri, on the other hand, took the opposite approach and have made several amendments to their fantasy operator rules to accommodate and ease costs for smaller operators in the state. One of the several accommodations they have made includes decreasing the annual operating fee to six- and one-half percent, down from eleven percent.</p> <p>The FFPC hopes that Massachusetts can be the next state to stand behind small businesses in the fantasy operator industry.</p> <p>While there are states across the country requiring a 15% tax on fantasy revenue, namely New York, Pennsylvania and Delaware, these states are in the minority among the licensed states by requiring such a high percentage tax. Furthermore, New York and Pennsylvania are in the top five most populated states across the country, while Delaware is an outlier that has effectively closed their doors to small fantasy operators due to their egregious cost requirements.</p> <p>States that most resemble Massachusetts in terms of state population that require operators to pay taxes on revenue include Arizona, Tennessee, and Missouri (Missouri requires an operation fee, not a tax, but it based on a percentage of revenue, nonetheless, so it serves the same purpose). These three states have established tax revenue percentages of 5%, 6% and 6.5%, respectively.</p> <p>The FFPC hopes that the Massachusetts Gaming Commission will consider adjusting the tax of Adjusted Gross Fantasy Wagering Receipts for persons or entities offering fantasy sports contests to a more comparable and manageable percentage as discussed above. A more reasonable tax cost would ensure small operators that Massachusetts embraces parity among all operators, no matter the size.</p>	11/17/2022 10:08



November 18, 2022

BY EMAIL ONLY (caroline.torrisi@massgaming.gov)

Massachusetts Gaming Commission
c/o Caroline Torrisi, Esq.
Deputy General Counsel
101 Federal Street, 12th Floor
Boston, Massachusetts 02210

Re: Regulation Comment

Dear Members of the Massachusetts Gaming Commission:

As one of the largest gaming establishments in the Commonwealth and a prospective Category 1 sports wagering license applicant, MGM Springfield submits this rulemaking comment on 205 CMR 240:00 *et seq.*, governing the computation of adjusted gross sports wagering revenue. We appreciate the opportunity to provide input and urge the Commission to adopt policies that will promote and ensure the success of the Commonwealth's future sports wagering industry.

Such policies include providing the Commonwealth's prospective sports betting operators the tools necessary to compete, not just with bordering states that have legalized sports betting industries, but also with a fully entrenched illegal market that continues to take wagers from Massachusetts residents. In particular, we strongly advocate exclusion from the definition of taxable "gross sports wagering revenues" the dollar value of bonuses or promotions extended by a regulated operator to bettors as an incentive to place a wager or as a result of their having placed sports betting wagers.

Clarifying such a tax exclusion in the regulations is 1) consistent with generally acceptable accounting practices, 2) removes a disincentive to operators to promote and market their legal products, 3) puts Massachusetts operators on an even playing field vis-à-vis out-of-state operators and illegal platforms, and 4) ultimately benefits brick-and-mortar gaming establishments, such as MGM Springfield, which stand to benefit from a robust and successful regulated sports betting market in the Commonwealth.

First, a free bet extended to bettors comes from the operator's own treasury funds. If the wager is in turn lost by the bettor – thus *recovered* by the operator, it is not recognized as "revenue," based upon how that term is defined under generally accepted accounting principles (GAAP) or by the Securities and Exchange Commission (SEC). No monies actually exchanged hands in that scenario; the promotional credit is not fungible;¹ the patron cannot withdraw the

¹ In typical promotional campaigns, bettors are awarded free plays with a number of conditions, including a prohibition on withdrawing the dollar amount of the free bets, unless they are first wagered and won; an expiration date on the validity of the promotion; and any minimum-odds restrictions.



promotional credit and convert it to actual cash, without first wagering and winning it; and the operator does not collect actual revenue from bettors in place of any promotional credit. This concept is not dissimilar from the tax treatment of free play in the casino gaming context: Under Massachusetts law, the dollar value of promotional gaming credits received from a patron as a wager is not included in computation of gross gaming revenue (GGR).²

It is also important to note that, if the bettor wins a wager using promotional credits, the operator is on the hook to pay the bettor with actual money. Therefore, free bets must be excluded from taxable revenue in order to ensure fairness and that an operator is being taxed only for the money that it actually collects from patrons.

As illustrated in Table 1, not permitting operators to exclude promotional credits translates to a significant increase in the operator’s effective tax rate, since the operator would be liable to pay taxes on its *own* money. In the example provided below, the effective tax rate ***doubles***, to 30% (if the wager is made in person) or 40% (if the wager is made online).

Table 1. In the following scenario, the bettor loses a \$100 wager, of which \$50 was from the bettor’s own cash funds and \$50 from the operator’s own money in the form of promotional credits.

	Operators allowed to exclude promo play	No tax exclusions
Cash from bettor	\$50.00	\$50.00
Promo credit from operator	\$50.00	\$50.00
Handle	\$100.00	\$100.00
Promo tax exclusion	<i>-\$50.00</i>	0
Taxable revenue	\$50.00	\$100.00
Retail tax (15%)	\$7.50	\$15.00
Online tax (20%)	\$10.00	\$20.00
Retail effective tax rate if promo is not excluded		30%
Online effective tax rate if promo is not excluded		40%

A regime that does not permit tax exclusions for promo play would essentially exact significant penalties on operators for promoting and developing their legal products. Taxing promotional play also distorts economic incentives in a way that severely undermines the state’s public policy objectives in legalizing and regulating sports wagering in the first place, including capturing to the greatest extent possible existing demand that is currently flowing into the illegal sports betting market.

Unregulated operators do not pay taxes, do not invest in responsible gaming programs, do not provide consumer protections, and do not face the same regulatory, integrity, and compliance overhead costs that licensed operators take on. Faced with minimal cost pressures, illegal operators are well positioned to deploy and concentrate resources toward marketing and product

² 205 CMR 140.02(e)



development, including attracting customers with generous promotions. Thus, a tax treatment that effectively penalizes Massachusetts-licensed operators for awarding promotional credits and free play makes channeling demand into the legal market – and away from unregulated operators – all the more challenging.

We also would like to underscore the importance of developing a successful and robust sports wagering industry in Massachusetts that is competitive with our neighboring states. Such an industry benefits, not just sports betting operators, but also generates positive economic impacts for brick-and-mortar gaming establishments, like MGM Springfield, and their employees. When Massachusetts legalized sports wagering last legislative session, and casino gambling nearly a decade ago, it did so in an effort to repatriate gaming and sports wagering revenues that were going out of state. As a Massachusetts gaming establishment situated in proximity to the Connecticut border, we are particularly keen on re-capturing demand for online and retail sports betting that currently flows out of state. Connecticut has legalized and launched sports wagering as well as online casino gaming. Sports betting operators in the state are subject to a tax rate of 13.75 percent and are allowed certain tax exclusions for promotional gaming credits. The Commission has an opportunity through this rulemaking to adopt a tax treatment on promotions that keeps the Commonwealth's own operators competitive vis-à-vis their out-of-state counterparts. If Massachusetts operators cannot offer competitive sports betting promotions, we risk losing sports bettors who, once in Connecticut, may also engage in online casino gaming, instead of patronizing retail gaming establishments in Massachusetts.

In anticipation of the exciting opportunities sports wagering will undoubtedly bring, we are partnered with BetMGM, a world-class sports betting and online gaming operator. We also have undertaken significant capital expenditures at our gaming establishment, including a \$4 million investment in building out our state-of-the-art sports book, a sports lounge on our casino floor, and a VIP viewing area at our sports bar. Based upon the experience of other legalized jurisdictions, restaurants, bars, hotels and other retail establishments stand to gain from the increased economic activity, spend, and fan engagement that sports betting generates around games and sporting events. In our sister MGM Resorts properties, from Las Vegas to Detroit, retail sports books serve as an anchor to bars and restaurants and have increased visitation and foot traffic into hotels and casino gaming facilities.

At MGM Springfield, we will be ready to seize these exciting opportunities the moment sports betting is finally greenlit and launched in our Commonwealth. But we will not be able to unlock the full economic potential of sports betting unless we are fully competitive with neighboring states and their operators. We and our sports betting partner need a conducive tax regime in which we are not penalized for attracting customers to our platforms and retail outlets, or else we will lose patrons to neighboring states and the illegal market.



We appreciate and thank you for the opportunity to provide our comments on this important regulatory and policy issue. Please do not hesitate to contact us should you have any questions about any points raised in this comment or any other outstanding rulemaking issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Augustine Kim", with a long horizontal flourish extending to the right.

Augustine Kim
Vice President and Legal Counsel

November 22, 2022

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

Re: Fanatics Betting & Gaming Comments on the Massachusetts Gaming Commission's Proposed Adoption of 205 CMR 240

Dear Ms. Judd-Stein:

Thank you, to you and your staff for your diligent efforts in this momentous endeavour of preparing regulations for the newest sports betting market in New England! Please know that Fanatics Betting & Gaming ("FBG") is excited to partner with Massachusetts and introduce our online sports wagering product to Bay Staters.

We are looking forward to working with the Massachusetts Gaming Commission (the "Commission") and as such, hope that you will consider our recommendations to proposed regulation 205 CMR 240: Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts Tax Remittance and Reporting, as you promulgate sports wagering regulations.

We believe that it is in the best interest of the Commonwealth, sports wagering operators, and consumers, to create a sustainable and robust online sports wagering market. To this end, regulations should: (1) allow for the use of promotional credits; and (2) exclude such promotional credits from any calculation of tax liability. I am sure many operators will echo this policy recommendation, but it is particularly important for FBG as a *second mover* in the market with intentions on capitalizing on our unique consumer base.

While other online sports wagering operators attract players from their existing Daily Fantasy Sports ("DFS") or casino userbases, FBG brings the ability to tap into our over two million Massachusetts consumers within our existing *commerce* space. Many who have purchased licensed sportswear, memorabilia, NFT's, and other merchandise from our retail outlets, but may not have been otherwise introduced to the online sports wagering market. To achieve this full potential for both our organization and the state, we need to be able to operate equitably with other national operators who have had years to build brand recognition and familiarize consumers with their platforms.

As you are aware, gaming operators in both the retail and online sector regularly utilize promotional wagering credits to introduce new consumers to our regulated entertainment industry. In fact, thanks to 205 CMR 140.02(e), promotional wagering credits are currently enhancing the success of the retail casino industry in Massachusetts. The online sports wagering market is no different, platform familiarity is a powerful tool, and promotions are essential to enhance market growth and encourage consumers to transition from illegal operators into a regulated market. Although, offering such promotions delays an operator's immediate revenue, the investment significantly expands the consumer base, which results in long term market success and an overall increase in tax revenues.

Additionally, we believe that for the purposes of calculating tax liability, promotional credits should not be classified as revenue. A state that taxes promotional play imposes a tax burden on nonexistent money, exponentially increasing the effective tax rate to an operator.

For example: Consumer X deposits \$10 into a new FBG account, during a period in which FBG issues a promotion matching X's deposit with an additional \$10 of promotional play. X decides to bet the \$10 deposited *and* the \$10 of promotional play on the Patriots to win the Super Bowl. If X loses, a tax on promotional deductions would require (1) FBG to report that it received \$20 from the wager even though it only received \$10 of actual cash revenue; and (2) FBG to pay a 20% tax on both the \$10 wager of X's cash play and the \$10 of nonexistent "promotional" money. In this example, FBG is receiving \$10 in revenue, but paying \$3 in tax revenue (30%) despite the 20% stated tax rate.

In sum, when a consumer places a wager using promotional credits and loses the wager - *no money changes hands between the consumer and the operator*. The operators' offer allowing the consumer to place a bet without staking money simply goes away. As such, promotional credits are not revenue and should be excluded from any calculation of tax liability. While all gaming operators recognize the significance of investment through promotional credits, this tool will be especially important for FBG, who is both entering the market as a *second mover* and engaging with consumers who may be generally less familiar with gaming and sports statistics than that of operators with casino or DFS roots.

Therefore, in an effort to maximize the potential size of the Massachusetts online sports wagering market, encourage new operators to enhance competition, and drive innovation, we urge the Commission to modify its proposed regulations to: (1) allow for the use of promotional credits; and (2) exclude such promotional play from any calculation of tax liability.

Again, thank you for your diligent efforts and consideration of this important issue.

Sincerely,

Brandt Iden
Vice President, Government Affairs
Fanatics Betting & Gaming



November 21, 2022

Via Electronic Mail (caroline.torrissi@massgaming.gov)

Massachusetts Gaming Commission
101 Federal Street, 12th Floor
Boston, MA 02110
Attn: Ms. Caroline Torrissi, Deputy General Counsel

RE: 205 CMR 240:02: Computation of Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts

Dear Ms. Torrissi:

In response to the regulations proposed by the Massachusetts Gaming Commission (“Commission”), DraftKings, Inc. (“DraftKings”) submits the following comments for consideration.

Rule Reference: 205 CMR 240:02(1), Sports Wagering

Rationale: DraftKings respectfully requests that the Commission explicitly exclude promotional gaming credits¹ from Adjusted Gross Sports Wagering Receipts. Including promotional gaming credits would result in the Commonwealth levying taxes on totals that do not reflect actual revenue earned by a sports wagering operator. Excluding promotional credits is the fairest way to tax sports wagering operators, and is the policy chosen by a significant number of online sports wagering states.

Promotional gaming credits in the sports wagering context refers to bonuses or promotional credits provided to players by sports wagering operators in order to encourage players to place wagers on an operator’s platform and transition players from (and keep them off of) the illegal sports wagering market.

When the Massachusetts sports wagering market launches, sports wagering operators will undoubtedly offer different types of bonuses to players. A typical example of such a promotion is a deposit match, in which a player making a deposit would receive some amount of corresponding promotional credits. For example, a 1:1 deposit match, could result in a player depositing \$100 receiving \$100 of promotional credits. These credits have no actual dollar value to the operator. A player may not exchange promotional credits for cash. As such, an operator receives no revenue from a wager placed with promotional credits.

Excluding promotions from the “adjusted gross sports wagering receipts” definition would place sports wagering operators on equal footing to other gaming licensees in the Commonwealth.²

¹ Defined in Mass. General Laws c.23N § 3

² Mass General Laws c.23K § 2 defines “gross gaming revenue” with a baseline of “the total of all sums actually received by a gaming licensee less the total of all sums paid out as winnings to patrons...” The wording of that



Many states that license online sports wagering have granted operators tax relief on promotional play, especially during the first few years of operation, and without an explicit deduction, Massachusetts would be an outlier.

Furthermore, the exclusion of promotions is authorized under the law, and the Commission has precedent to exclude the value of a “promotional gaming credit” from an adjusted gross revenue calculation similar to how the Commonwealth’s current gaming operations are taxed. This analysis also practically aligns with the definition of “adjusted gross sports wagering receipts”,³ as promotional credits do not carry any cash equivalent value, nor do payouts of cash equivalents have any value awarded as a prize until they are actually cash in a player’s sports wagering account.

Exclusion is also supported by important policy arguments, many of which were foundational in discussions by the General Court in passing sports wagering. Artificially increasing an operator’s effective tax rate is especially concerning when comparing the framework codified in the enabling legislation to status quo sports wagering in the Commonwealth, which is done through the illegal market. Promotions are a vital way to transition players to the regulated legal market and sustain their presence. Illegal operators effectively offer promotions to attract bettors to their unregulated platforms and including promotional credits in the tax base would further disadvantage licensed sports wagering operators, as they would be required to pay taxes on actual revenue **and** phantom promotional revenue, while illegal operators pay on neither. Additionally, when bettors place wagers with a legal operator, law and regulation ensure they are provided consumer protections that are unavailable to those betting with illegal operators. Legal operators also provide tax revenue to the Commonwealth, while illegal operators provide none.

For the foregoing reasons, DraftKings respectfully requests the Commission consider the below amendment to the relevant provision of the proposed regulations.

Existing Rule Language/Proposed Rule Language:

*(1) Sports Wagering: In accordance with M.G.L. c. 23N, § 3, Adjusted Gross Sports Wagering Receipts shall be the total gross receipts from sports wagering less the sum of: (i) the total of all winnings paid to participants; **(ii) promotional gaming credits;** and ~~(ii)~~**(iii)** all excise taxes paid pursuant to federal law; provided, however, that the total of all winnings paid to participants shall not include the cash equivalent of any merchandise or thing of value awarded as a prize.*

Rule Reference: 205 CMR 240:02(2), Fantasy Contests

Rationale: DraftKings respectfully requests that the Commission correct the taxation model applied to fantasy contests to align with all other jurisdictions.

definition could be interpreted as precedent that the Commonwealth intends to only tax actual revenue in other gaming verticals.

³ Mass. General Laws c.23N § 3

Fantasy sports contests differ from sports wagering in that fantasy contests are conducted on an interstate basis. Participants join the same contests from various jurisdictions, resulting in total entry fees collected (and thus total prizes distributed to the winners) not being equal across all jurisdictions. For example, imagine a fantasy contest with a top prize of one million dollars and a total of two hundred thousand entries, only one of which is from Massachusetts. If that Massachusetts player wins the prize, Massachusetts would see a significant loss under the current revenue calculation because the entry fee received from that one player would be significantly less than the one million dollars in prizes received.

The solution, which every other fantasy contest jurisdiction has adopted, is to accurately reflect the adjusted gross fantasy contest receipts by only calculating those entries that came from within Massachusetts. By applying the tax based on the location of the entry, as opposed to the location of the payout, the tax obligation is appropriately allocated. This avoids a scenario where one jurisdiction may have a small number of actual entrants and an outsized tax payout, or many entrants but without correlated tax payment because of a significant payout within the jurisdiction. For these reasons, DraftKings respectfully requests the Commission consider the below amendment to the relevant provision of the proposed regulations.

Recommended Amendment to the Emergency/Proposed Rule Language:

(2) Fantasy Contests: In accordance with M.G.L. c. 23N, § 3, Adjusted Gross Fantasy Wagering Receipts shall be the total gross receipts from fantasy contests as defined in section 11M ½ of chapter 12, less only the total of all cash prizes paid to participants in the fantasy contests; provided, however, that the total of all cash prizes paid to participants shall not include the cash equivalent of any merchandise or thing of value awarded as a prize.

(a) Adjusted Gross Fantasy Wagering Receipts shall be calculated daily and in accordance with the person or entity offering fantasy contests' approved system of internal controls.

(b) Any amount that a person or entity offering fantasy contests is unable to collect pursuant to any credit issued to a patron to take part in fantasy contests in accordance with 205 CMR, et seq. shall be deemed an amount actually received for purposes of calculating gross fantasy wagering receipts.

(c) Adjusted Gross Fantasy Wagering Receipts shall not include any amount received by a person or entity offering fantasy contests from credit extended or collected by the person or entity for purposes other than fantasy contests.

(d) The accrual method of accounting shall be used for the purposes of calculating the amount of the tax owed.



(e) Adjusted Gross Fantasy Wagering Receipts subject to tax in 205 CMR 240.01(3) shall equal the total Adjusted Gross Fantasy Wagering Receipts from all participants entering fantasy contests, multiplied by the Location Percentage. The “Location Percentage” means the percentage, rounded to the nearest tenth of a percent, of the total entry fees collected from all fantasy contest players located in the Commonwealth, divided by the total entry fees collected from all fantasy contest players in fantasy contests.

* * * * *

Thank you for your consideration of DraftKings’ comments regarding the Commission’s proposed regulations. Please feel free to contact us should you or anyone else at the Commission have any questions about our submission, or our experience in other regulated jurisdictions.

Sincerely,

DraftKings Inc.



Legal Division

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 240: Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts Tax Remittance and Reporting**, for which a public hearing was held on November 22, 2022.

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 and 14, and G.L. c. 12, § 11M ½ .

205 CMR 205 CMR 240 applies to Sports Wagering Operators, persons or entities that offer fantasy contests, and 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, it is not currently known how many small businesses will be subject to this regulation, 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:

As it is currently unknown how many small businesses would be subject to the compliance and reporting standards of 205 SMR 240, the Commission has not established less stringent schedules or deadlines for small businesses at this time.

3. Consolidating or simplifying compliance or reporting requirements for small businesses:

As stated above, this proposed regulation does not impose any reporting requirements on small businesses, however, sports wagering operators and fantasy sports operators are required to simultaneously: file a return on or before the 15th of each month demonstrating the gross wagering and fantasy sports wagering receipts; and remit the



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taxable amount due to the Commission. This consolidated requirement would apply to small businesses as well.

4. Establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation:

The proposed regulation contains reporting and finance related requirements, akin to performance-based standards.

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

The proposed regulation is unlikely to deter or encourage the formation of new businesses in the Commonwealth.

6. Minimizing adverse impact on small businesses by using alternative regulatory methods:

Currently, it does not appear that 205 CMR 240.00 creates any adverse impact on small businesses.

Massachusetts Gaming Commission
By:

/s/ Judith Young
Judith A. Young
Associate General Counsel
Legal Division

Dated: 11/22/2022



Massachusetts Gaming Commission



Legal Division

TO: Cathy Judd-Stein, Chair
 Eileen O'Brien, Commissioner
 Brad Hill, Commissioner
 Nakisha Skinner, Commissioner
 Jordan Maynard, Commissioner
 Judith Young, Associate General Counsel
 FROM: Carrie Torrisi, Deputy General Counsel

Angela Smith, Casino Regulatory Manager, MGM Springfield
 Sterl Carpenter, Compliance Manager, IEB

RE: Petition for a New Game or Game Variation, *Pontoon 21*, pursuant to 205 CMR 147.04

DATE November 24, 2022

Overview:

On January 12, 2022, Daniel Miller, Director of Compliance at MGM Springfield, sent a petition on behalf of Blue Tarp reDevelopment, LLC (d/b/a MGM Springfield) to the IEB; formally requesting adoption of a new table game, *Pontoon 21*, to their gaming floor. While *Pontoon 21* is a new game, it is similar to *Spanish 21*, an existing blackjack-style table game, that is codified in 205 CMR 146.15. The IEB reviewed the submission and ensured that it met the requirements under 205 CMR 147.03(3) prior to authorizing and scheduling testing for the game, (“Field Trial”) on the gaming floor. The Field Trial, commenced at the property on July 8, 2022, and will conclude on December 5, 2022.

The Petition:

MGM Springfield seeks to adopt *Pontoon 21*, a new, blackjack-style game that adds a different payout scale and progressive wagering feature incorporated into gameplay, known as the “Bonus Spin Extreme Feature.” *Pontoon 21* also utilizes a marker, or “lammer” that the dealer will place upon the table to signify that a Bonus Spin will take place at the table. The IEB received a petition as well as the summary of the game, the types of wagers allowed at the table, and a draft of the rules and payouts offered. They are also included in the meeting packet for the Commissioners review and reference. True odds of the game, the payout odds and the house advantages were submitted to the IEB with the initial petition. Photos of the table, and the GLI testing, and certification were received and verified by the IEB as well.



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Field Trial:

A 90-day Field Trial began at MGM Springfield on July 8, 2022 and was scheduled to conclude October 6, 2022. However, additional dates were added to the Field Trial to accommodate a longer trial for the Bonus Spin Progressive feature that was delayed by supply chain management issues, and delayed delivery. The Field Trial for *Pontoon 21* is now scheduled to conclude on December 5, 2022. In total, six tables within the gaming floor of the gaming establishment are utilized for the Pontoon 21 Field Trials. **(Pit 7, tables: PN701, PN702, PN703, PN712, PN713, PN714)**

Gaming Agents and MGM Staff cite that the interactive nature of the game and the progressive feature receives positive feedback from patrons and provides an enjoyable experience. In his petition, Director Miller noted that “almost 200,000 wagers were made on the game that equated to almost \$1 million dollars. Of that sum, almost \$850 thousand dollars was given back to players in winning payouts.”

Comments for the Pontoon 21 were accepted from the first day of the Field Trial and were expected to conclude on the final day of the initial Field Trial, October 6th. Comments from patrons are still being accepted on a rolling basis, given the extended trial period for the Bonus Spin feature. The IEB has received 6 comments from patrons to date:

Christopher	- Spanish 21 / Pontoon needs a shoe (no auto shuffle) - Change the action - Late surrender please !!
Patrick	Do not like match payout 3 to 1
M.	No complaints, Business as usual.
Malaka	I hate it!!!! (the games) Bring back SPANISH 21!!
Hasani	I <u>LOVE</u> is game... I won \$500 off \$5
Joan	Would prefer 6 betting spots per table

IEB Review and Recommendation and Commission Approval/Denial:

Pursuant to 205 CMR 147.07(5), the Commission shall have the discretion to approve or deny with reasonable cause the gaming licensee's petition for a new game or game variation following a recommendation from the Bureau. The Bureau has reviewed the petition and materials submitted by MGM Springfield pursuant to 205 CMR 247.07(03). The IEB also reviewed and evaluated the game and payouts during the Field Trials, and comments received from Patrons. Considering these factors, the IEB has recommended the Commission support the adoption of Pontoon 21 within the Commonwealth.

PONTOON 21

Rules

1. Definitions

The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

Blackjack - shall mean an ace and any card having a point value of 10 dealt as the initial two cards to a player or a dealer, except that this shall not include an ace and a 10 point value card dealt to a player who has split pairs.

Hard total - shall mean the total point count of a hand which contains no aces or which contains aces that are each counted as one in value.

Pat hand - shall mean a hand that has a value of 17 or better and does not require a hit.

Push - shall mean a tie between the hand of the player and that of the dealer, except for hands containing a point count of 21 or a blackjack.

Rescue - is defined in Section 9.

Soft total - shall mean the total point count of a hand which contains an ace that is counted as 11 in value.

Suit - shall mean one of the four categories of cards: club, diamond, heart or spade.

2. Cards; number of decks; rank of cards

- (a) Pontoon 21 shall be played with six or eight decks of cards, with backs of the same color and design and one additional cutting card. The decks shall meet the requirements of 205 CMR 146.48 and shall consist of 48 cards, with the 10 of each suit having been removed from each deck during the inspection required by 205 CMR 146.49 and Section 3. The cutting card shall be opaque and a solid color readily distinguishable from the color of the backs and edges of the playing cards, as approved by the Commission.
- (b) The point value of the cards contained in each deck shall be as follows:
 - (1) Any card from 2 to 9 shall have its face value;
 - (2) Any Jack, Queen or King shall have a value of 10;
 - (3) An ace shall have a value of 11, unless that value would give a player or the dealer a score in excess of 21, in which case it shall have a value of one.

3. Opening of the table for gaming

- (a) After receiving the decks of cards at the table in accordance with 205 CMR 146.49, the

dealer shall, as applicable, comply with the requirements of either 205 CMR 146.49 and (b) through (c) below or the requirements of 205 CMR 146.50.

- (b) If the decks contain the 10 of any suit, the dealer shall remove these cards from the decks, and the floor person shall verify that all such cards have been removed from each deck. Following the inspection of the cards by the dealer and the verification by the floor person assigned to the table, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. Each deck of cards shall be spread out separately, according to suit and in sequence.
- (c) After the first player has been afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a "washing" or "chemmy shuffle" of the cards, and stacked. If during the mixing or the stacking process a card is turned over and exposed to the players, the cards shall be remixed. Once the cards have been stacked, they shall be shuffled in accordance with Section 4.

4. Shuffle and cut of the cards

- (a) Immediately prior to the commencement of play, unless the cards were pre-shuffled pursuant to 205 CMR 146.50, and after each shoe of cards has been completed, the dealer shall shuffle the cards, either manually or by use of an automated card shuffling device, so that the cards are randomly intermixed. Upon completion of the shuffle, the dealer or device shall place the deck of cards in a single stack.
- (b) After the cards have been shuffled and stacked, the dealer shall:
 - (1) If the cards were shuffled using an automated card shuffling device, place the stack of cards in the dealing shoe and deal the cards in accordance with the procedures set forth in Section 7; provided, however, that nothing herein shall be deemed to prohibit the use of an automated card shuffling device which, upon completion of the shuffling of the cards, inserts the stack of cards directly into a dealing shoe; or
 - (2) If the cards were shuffled manually or were pre-shuffled pursuant to 205 CMR 146.50, cut the cards in accordance with the procedures set forth in (c) below.
- (c) If a cut of the cards is required, after the cards have been shuffled, the dealer shall perform one of the following options. The dealer will offer the stack of cards, with backs facing away from them to the players to be cut, or at the casino's discretion, the dealer will cut the stack of cards for the table.
- (d) The cut of the cards shall be offered to players in the following order:
 - (1) The first player to the table, if the game is just beginning; or
 - (2) The player at the farthest position to the right of the dealer; provided, however, that if there are two or more consecutive rounds of play, the offer to cut the cards shall rotate in a counterclockwise manner after the player to the far right of the dealer has been offered the cut.
- (e) The player or dealer making the cut shall place the cutting card in the stack at least a deck from either end. Once the cutting card has been inserted, the dealer shall take the cutting card and all the cards on top of the cutting card and place them on the bottom of the stack.

The dealer shall then take the entire stack of cards that was just shuffled and align them along the side of the dealing shoe. Thereafter, the dealer shall insert the cutting card in the stack at a position at least approximately one-quarter of the way in from the back of the stack. The stack of cards shall then be inserted into the dealing shoe for commencement of play.

- (f) After the cards have been cut and before any cards have been dealt, a casino supervisor may require the cards to be recut if they determine that the cut was performed improperly or in anyway that might affect the integrity or fairness of the game. If a recut is required, the cards shall be recut, at the gaming licensee's option, by the player who last cut the cards, or by the next person entitled to cut the cards, as determined by (c) and (d) above.
- (g) A reshuffle of the cards in the shoe shall take place after the cutting card is reached in the shoe as provided for in Section 7(j), provided, however, that the gaming licensee may determine after each round of play that the cards should be reshuffled.
- (h) A gaming licensee may submit to the Massachusetts Gaming Commission for approval the proposed shuffle, cut card placement, number of cut cards (to include shuffle techniques without the use of any cut cards), location of where the shuffle takes place, who is responsible for shuffling, shuffling equipment (dealing shoes or other dealing devices) and burn card procedures.
- (i) Whenever there is no gaming activity at a Pontoon 21 table that is open for gaming, the cards shall be spread out on the table. After the first player is afforded an opportunity to visually inspect the cards, the procedures outlined in Section 3(c) shall be completed.
- (j) When the licensee is using a manual shuffle the following steps will be incorporated into their shuffle procedure.
 - (1) The "plug" is a method for inserting unused cards from behind the cut card into the cards in the discard tray. This is usually the first step.
 - (2) The "riffle" is when the cards are divided into two piles and interlaced.
 - (3) The "turn" involves dividing the shoe into two stacks and rotating one stack 180 degrees before riffling the stacks together.
 - (4) The "strip" also known as running cuts. The strip should not occur before at least two riffles have taken place.
 - (5) The "cut" is the final step before the cards are put back into the shoe. This ensures that the top card cannot be identified if it was accidentally exposed during the other steps.

5. Wagers; payout odds

- (a) Prior to the first card being dealt for each round of play, each player at the game of Pontoon 21 shall make a wager against the dealer which shall win if:
 - (1) The score of the player is 21 or less and the score of the dealer is in excess of 21;
 - (2) The score of the player exceeds that of the dealer without either exceeding 21;
 - (3) The player has achieved a score of 21 in two cards and the dealer has achieved a score of 21 in two or more cards; or
 - (4) The player has achieved a score of 21 in more than two cards and the dealer has

achieved a score of 21 in more than two cards.

- (b) Except as otherwise provided in (a)(3) and (4) above, a wager made in accordance with this section shall be void if the score of the player is the same as the dealer. However, a wager shall lose if the player has 21 in more than two cards and the dealer has a blackjack.
- (c) All wagers at Pontoon 21 shall be made by placing gaming chips or plaques and, if applicable, a match play coupon on the appropriate betting areas of the table layout. A verbal wager accompanied by cash may be accepted, provided it is confirmed by the dealer and casino supervisor, and that such cash is expeditiously converted into gaming chips or plaques in accordance with 205 CMR 146.09.
- (d) Except as otherwise provided in this section, no wager shall be made, increased or withdrawn after the first card of the respective round has been dealt.
- (e) After each round of play is complete, the dealer shall collect all losing wagers and pay off all winning wagers. Except as provided in (f) and (g) below, winning wagers made in accordance with (a)(3) above shall be paid at odds of 3 to 2, and all winning wagers made in accordance with (a)(1), (2) or (4) above shall be paid at odds of 1 to 1.
- (f) Notwithstanding the provisions of (e) above, a gaming licensee shall pay the following payout odds for winning wagers made in accordance with (a) above unless the player has doubled down, in which case all of the following wagers shall only be paid at odds of 1 to 1:
 - (1) Three cards consisting of the 6, 7 and 8 of mixed suits shall be paid at odds of 3 to 2;
 - (2) Three cards consisting of the 6, 7 and 8 of the same suit shall be paid at odds of 2 to 1, except that three cards consisting of the 6, 7 and 8 of spades shall be paid at odds of 3 to 1;
 - (3) Three cards consisting of three 7's of mixed suits shall be paid at odds of 3 to 2;
 - (4) Three cards consisting of three 7's of the same suit shall be paid at odds of 2 to 1, except that the three cards consisting of three 7's of spades shall be paid at odds of 3 to 1;
 - (5) Five cards totaling 21 shall be paid at odds of 3 to 2;
 - (6) Six cards totaling 21 shall be paid at odds of 2 to 1; and
 - (7) Seven or more cards totaling 21 shall be paid at odds of 3 to 1.
- (g) In addition to the payouts required by (f)(4) above, a winning hand that consists of three 7's of the same suit when the dealer's exposed card is also a seven of any suit shall be paid an additional fixed payout of \$1,000 if the player's original wager was \$5.00 or more but less than \$25.00, or \$5,000 if the player's original wager was \$25.00 or more. All other players at the table who placed a wager during that round of play shall also be paid an additional fixed payout of \$50.00. Notwithstanding the foregoing, the additional fixed payouts required by this subsection shall not be applicable if the winning hand had been doubled down pursuant to Section 9 or had been split pursuant to Section 10.
- (h) Except as expressly permitted by this section, once the first card of any hand has been removed from the shoe by the dealer, no player shall handle, remove or alter any wagers

that have been made until a decision has been rendered and implemented with respect to that wager.

- (i) Once an insurance wager, a wager to double down or a wager to split pairs has been made and confirmed by the dealer, no player shall handle, remove or alter such wagers until a decision has been rendered and implemented with respect to that wager, except as expressly permitted by this section.
- (j) After the cards have been shuffled pursuant to Section 4, a gaming licensee may, in its discretion, prohibit any person, whether seated at the gaming table or not, who does not make a wager on a given round of play from placing a wager on the next round of play and any subsequent round of play at that gaming table unless the gaming licensee chooses to permit the player to begin wagering or until a reshuffle of the cards has occurred.

6. Match Super Bonus wager

- (a) A player at a Pontoon 21 table may make an additional “match-super-bonus” wager that either of the player’s initial two cards will match the dealer’s up card in the manner required by (e) below. If both of the player’s initial two cards match the dealer’s up card, the player shall be paid in accordance with (e) below for each matching card.
- (b) Prior to the first card being dealt for each round of play, a player who has placed the basic wager required by Section 5 may make an additional “match-super-bonus” wager, which shall be an amount not less than \$5.00 and shall not exceed the lesser of:
 - (1) The amount of the wager made by the player pursuant to Section 5(a); or
 - (2) A maximum amount established by the gaming licensee, which limit shall be posted in accordance with 205 CMR 147.03.
- (c) A “match-super-bonus” wager shall be made by placing gaming chips or plaques and, if applicable, a match play coupon on the appropriate area of the Pontoon 21 layout, except that a verbal wager accompanied by cash may be accepted provided that it is confirmed by the dealer and casino supervisor at the table prior to the first card being dealt to any player, and that such cash is expeditiously converted into gaming chips or plaques in accordance with 205 CMR 146.09.
- (d) Immediately after the second card is dealt to each player and the dealer, and prior to any additional cards being dealt to any player at the table or the dealer and before any card reader device is utilized, all losing “match-super-bonus” wagers shall be collected by the dealer, and then all winning “match-super-bonus” wagers shall be paid by the dealer, in accordance with (e) below.
- (e) All winning “match-super-bonus” wagers shall be paid at no less than the following odds:
 - (1) If six or eight decks of cards are being used:

Each matching card of a different suit

3 to 1

Each matching card of the same suit

12 to 1

- (f) A “match-super-bonus” wager shall have no bearing on any other wager made by a player at the game of Pontoon 21.

7. Procedure for dealing the cards

- (a) All cards used in Pontoon 21 shall be dealt from a dealing shoe specifically designed for such purpose and located on the table to the left of the dealer.
- (b) The dealer shall remove cards from the shoe with their left hand, turn them face upwards, and then place them on the appropriate area of the layout with their right hand, except that the dealer has the option to deal hit cards to the first two betting positions with their left hand. Cards will be dealt so as not to expose the hole card or any other face down cards in a manner that cannot be readily observed by someone attempting to ascertain their value.
- (c) After each full set of cards is placed in the shoe, the dealer shall remove the first card therefrom face downwards and place it in the discard rack, which shall be located on the table immediately to the right of the dealer. Each new dealer who comes to the table shall also burn one card as described in this section before the new dealer deals any cards to the players. The burn card shall be disclosed if requested by a player.
- (d) At the commencement of each round of play, the dealer shall, starting on their left and continuing around the table, deal the cards in the following order:
- (1) One card face upwards to each box on the layout in which a wager is contained;
 - (2) One card face upwards to the dealer; and
 - (3) A second card face upwards to each box in which a wager is contained.
- (e) After two cards have been dealt to each player, the dealer shall, beginning from their left, announce the point total of each player. As each player's point total is announced, such player shall indicate whether they wish to surrender, double down, split pairs, stand or draw, as provided for by this section.
- (f) As each player indicates their decisions, the dealer shall deal face upwards whatever additional cards are necessary to effectuate such decisions consistent with this section and shall announce the new point total of such player after each additional card is dealt.
- (g) After the decisions of each player have been implemented and all additional cards have been dealt, the dealer shall deal a second card face upward to themselves; provided, however, that such card shall not be removed from the dealing shoe until the dealer has first announced "Dealer's Card," which shall be stated by the dealer in a tone of voice calculated to be heard by each person at the table. Any additional cards authorized to be dealt to the hand of the dealer by Section 12 shall be dealt face upwards at this time, after which the dealer shall announce their total point count. In lieu of the requirements of this subsection, one of the procedures set forth in (i) below may be implemented.

- (h) At the conclusion of a round of play, all cards still remaining on the layout shall be picked up by the dealer in order and in such a way that they can be readily arranged to indicate each player's hand in case of question or dispute. The dealer shall pick up the cards beginning with those of the player to their far right and moving counterclockwise around the table. After all the players' cards have been collected the dealer shall pick up their cards against the bottom of the players' cards and place them in the discard rack.
- (i) In lieu of the procedure set forth in (g) above, a gaming licensee may permit the dealer to deal their hole card face downward after a second card in a manner as to not disclose the value of the card and before additional cards are dealt to the players; provided, however, that the dealer shall not look at the face of the hole card until after all other cards requested by the players pursuant to those regulations are dealt to them. Notwithstanding the foregoing, if a gaming licensee elects to utilize a card reader device and the dealer's first card is an ace, king, queen or jack of any suit, the dealer shall determine whether the hole card will give the dealer a blackjack prior to dealing any additional cards to the players at the table, in accordance with procedures approved by the Commission. The dealer shall insert the hole card into the card reader device by moving the card face down on the layout without exposing it to anyone, including the dealer, at the table. If the dealer has a blackjack, no additional cards shall be dealt and each player's wager shall be settled in accordance with Section 5. Any gaming licensee using this alternate dealing procedure shall provide notice thereof in accordance with the requirements set forth in 205 CMR 147.03.
- (j) Whenever the cutting card is reached in the deal of the cards, the dealer shall continue dealing the cards until that round of play is completed, after which the dealer shall:
 - (1) Collect the cards as provided in (h) above;
 - (2) Remove the cards remaining in the shoe and place them in the discard rack to ensure that no cards are missing; and then
 - (3) Shuffle the cards.
- (k) No player or spectator shall handle, remove or alter any cards used to game at Pontoon 21 except as explicitly permitted by this section and no dealer or other casino employee shall permit a player or spectator to engage in such activity.
- (l) Each player at the table shall be responsible for correctly computing the point count of their hand, and no player shall rely on the point counts required to be announced by the dealer under this section without checking the accuracy of such announcement themselves.

8. Surrender

- (a) After the first two cards are dealt to a player and the player's point total is announced, the player may elect to discontinue play on their hand for that round by surrendering one-half of their wager. All decisions to surrender shall be made prior to such player indicating as to whether they wish to double down, split pairs, stand or draw as provided in this section.
 - (1) If the first card dealt to the dealer was a 2, 3, 4, 5, 6, 7, 8 or 9, the dealer shall immediately collect one-half of the wager and return one-half to the player.

- (2) If the first card dealt to the dealer was an ace, king, queen or jack, the dealer shall place the player's wager on top of the player's cards. When the dealer's second card is revealed, the hand shall be settled by immediately collecting the entire wager if the dealer has blackjack, or by collecting one-half of the wager and returning one-half of the wager to the player if the dealer does not have blackjack.
- (b) If the player has made an insurance wager and then elects to surrender, each wager shall be settled separately, and one wager shall have no bearing on the other.

9. Doubling down; rescue

- (a) Except for blackjack, a player may elect to double down, that is, make an additional wager not in excess of the amount of their original wager, on the two or more cards dealt to that player, including any hands resulting from a split pair, on the condition that one and only one additional card shall be dealt to each hand on which the player has elected to double down. In such circumstances, the one additional card shall be dealt face upwards and placed sideways on the layout.
- (b) A winning wager on a doubled hand shall be paid in accordance with Section 5(e) only, and the payouts in Section 5(f) and (g) shall not be applicable to such wagers.
- (c) If a dealer obtains blackjack after a player doubles down, the dealer shall collect only the amount of the original wager of such player and shall not collect the additional amount wagered in doubling down.
- (d) After the additional card required by (a) above has been dealt to a doubled hand, a player may "rescue" (take back) the double down wager and forfeit their original wager, as long as the additional card does not result in the hand having a point count in excess of 21.

10. Splitting pairs

- (a) Whenever the initial two cards dealt to a player are identical in value, the player may elect to split the hand into two separate hands, provided that the player makes a wager on the second hand so formed in an amount equal to their original wager.
- (b) When a player splits pairs, the dealer shall deal a card to and complete the player's decisions with respect to the first incomplete hand on the dealer's left before proceeding to deal any cards to any other hand.
- (c) After a second card is dealt to a split pair, the dealer shall announce the point total of such hand and the player shall indicate their decision to stand, draw or double down with respect thereto. A player may also split pairs again if the second card dealt to an incomplete hand is identical in value to the split pair; provided, however, that a player may split pairs a maximum of three times, or a total of four hands.
- (d) If the dealer obtains blackjack after a player splits pairs, the dealer shall collect only the amount of the original wager of such player and shall not collect the additional

amount wagered in splitting pairs.

- (e) The additional payouts provided in Section 5(g) are not applicable to a winning wager on a split hand.

11. Insurance

- (a) Whenever the first card dealt to the dealer is an ace, each player shall have the right to make an insurance bet, which shall win if the dealer's second card is a King, Queen or Jack and shall lose if the dealer's second card is an ace, 2, 3, 4, 5, 6, 7, 8 or 9.
- (b) An insurance bet shall be made by placing on the insurance line of the layout an amount not more than half the amount staked on the player's initial wager, except that a player may bet an amount in excess of half the initial wager to the next unit that can be wagered in chips, when because of the limitation of the value of chip denominations, half the initial wager cannot be bet. All insurance bets shall be placed immediately after the second card is dealt to each player and prior to any additional cards being dealt to any player at the table. If a card reader device is in use, all insurance wagers shall be placed prior to the dealer inserting their hole card into the card reader device.
- (c) All winning insurance bets shall be paid at odds of 2 to 1.
- (d) All losing insurance bets shall be collected by the dealer immediately after the dealer draws their second face up card or discloses their hole card and before the dealer draws any additional cards.
- (e) Insurance bets shall not apply to the "match-super-bonus" wager permitted pursuant to Section 6.

12. Drawing of additional cards by players and dealers

- (a) A player may elect to draw additional cards whenever their point count total is less than 21, except that:
 - (1) A player having blackjack or a hard total of 21 may not draw additional cards; and
 - (2) A player electing to double down shall draw one and only one additional card;
- (b) Except as provided in (c) below, a dealer shall draw additional cards to their hand until the dealer has a hard or soft total of 17, 18, 19, 20 or 21, at which point no additional cards shall be drawn.
- (c) A dealer shall draw no additional cards to their hand, regardless of the point count, if decisions have been made on all players' hands and the point count of the dealer's hand will have no effect on the outcome of the round of play.

13. More than one player wagering on a box

MGMS will not permit more than one player to wager on a box.

14. Player wagering on more than one box

A player may only wager on one box at a Pontoon 21 table unless the gaming licensee, in its discretion, permits the player to wager on additional boxes.

15. Irregularities

- (a). A card found turned face upwards in the shoe shall not be used in the game and shall be placed in the discard rack. If more than one card is found face up in the shoe during the dealing of the cards, the round of play shall be void and the cards shall be reshuffled.
- (b) If a 10 card of any suit is found in the shoe, it shall not be used in the game and shall be removed from the shoe by a floorperson in a manner approved by the Commission. If more than one 10 card is found in the shoe during the dealing of the cards, the round of play shall be void and the cards shall be reshuffled.
- (c) A card drawn in error without its face being exposed shall be used as though it were the nextcard from the shoe.
- (d) After the initial two cards have been dealt to each player and a card is drawn in error and exposed to the players, such card shall be dealt to the players or dealer as though it were the next card from the shoe. Any player refusing to accept such card shall not have any additional cards dealt to him during such round. If the card is refused by the players and the dealer cannot use the card, the card shall be burned.
- (e) If the dealer has a point count of 17 or higher and accidentally draws a card for themselves, such card shall be burned.
- (f) If the dealer misses dealing their first or second card to themselves, the dealer shall continue dealing the first two cards to each player, and then deal the appropriate number of cards to themselves.
- (g) If there are insufficient cards remaining in the shoe to complete a round of play, all of the cards in the discard rack shall be shuffled and cut according to the procedures in Section 4, the first card shall be drawn face downwards and burned, and the dealer shall complete the round of play.
- (h) If no cards are dealt to the player's hand, the hand is dead and the player shall be included in the next deal. If only one card is dealt to the player's hand, at the player's option, the dealer shall deal the second card to the player after all other players have received a second card.
- (i) If after receiving the first two cards, the dealer fails to deal an additional card or cards to a player who has requested such cards, then, at the player's option, the dealer shall either deal the additional cards after all other players have received their additional cards but prior to the dealer revealing their hole card or shall call the player's hand dead and return the player's original wager.
- (j) If an automated card shuffling device is being used and the device jams, stops shuffling during a shuffle, or fails to complete a shuffle cycle, the cards shall be reshuffled in

accordance with procedures approved by the Commission.

- (k) Any automated card shuffling device shall be removed from a gaming table before any other method of shuffling may be utilized at that table.
- (l) If the dealer inserts their hole card into a card reader device when the value of their first card is not an ace, king, queen or jack, the dealer, after notification to a casino supervisor, shall:
 - (1) If the particular card reader device in use provides any player with the opportunity to determine the value of the hole card, call all hands dead, collect the cards and return each player's wager; or
 - (2) If the particular card reader device in use does not provide any player with the opportunity to determine the value of the hole card, continue play.
- (m) If a card reader device malfunctions the dealer may only continue dealing the game of Pontoon 21 at that table using the dealing procedures applicable when a card reader device is not in use.

16. Bonus Spin Xtreme -16

- (a) Scope. *Bonus Spin Xtreme - Xtreme-16*, (“BSX-16”) is an optional fixed-amount progressive wager that can be configured for standard Blackjack or Pontoon 21 games. The Pontoon decks are standard 52-card decks with the “10’s” removed making them 48 card decks. The amount of the wager is \$5. The Player may place the *BSX-16* side wager at the beginning of the game, at the same time as their main Blackjack wager. The wager may not be made alone, it must be made with a standard Blackjack wager that meets the table minimum. The primary game is then played as normal, per house rules. The *BSX- 16* side wager is resolved when a qualifying "Trigger-Event" occurs.
- (b) If a qualifying "*Triggering Event*" occurs with the Dealer's initial two-cards, the *BSX-16* side wager wins, and awards the prize in Table 1, otherwise, the wager loses.

Table 1. Triggering Events

Event	\$5 Wager
Dealer's Initial Hand is a Six and a 10-valued Card	Wheel

- (c) To begin, Player's place their main Blackjack wagers and the optional *BSX-16* side wager.
- (d) After all wagers have been placed, the Dealer will press "Start Round" on the Dealer Terminal and begin locking up all *BSX-16* side wagers.
 - (1) Important Note: Dealer should verify that all *BSX-16* side wagers have been placed and are accurately reflected on the Dealer Terminal before "Start Round" is selected. If the Dealer presses "Cancel Round" this will allow the sensors to be reset and all side wagers can be played accurately.

- (e) Once all *BSX-16* side wagers have been collected, the Player's and Dealer hand each receive their initial first two-cards according to the underlying Blackjack dealing procedures, per house rules.
- (f) If the *BSX-16* side wagers do not meet the criteria in "*Triggering Events*", the side wagers will lose, and the Dealer will press "*End Round*" on the Dealer Terminal immediately then proceed with standard dealing procedures.
- (g) If the *BSX-16* side wagers do meet the criteria in "*Triggering Events*", Player's will have an opportunity for additional winnings at the end of the round/game.
 (1) The Dealer will mark the "*Triggering Event*" by placing Xtreme-16 button or lammer on the table indicating that the event has occurred, so they can continue dealing the game of Blackjack per house rules.
- (h) Once all main Blackjack and any other side wagers have been reconciled, all cards have been locked up in the discard racks, except the Dealer cards, the Dealer will mark "*Triggering Event*" on the Dealer Terminal and press "*Spin*".
- (i) After "*Spin*" is selected on the Dealer Terminal, a confirmation screen will appear confirming the wheel spin. The Dealer must press "*Confirm*" to begin the virtual wheel spin on the table signage. While the wheel is spinning only the *BSX-16* Player's position are displayed with participating Players highlighted.
 (1) *Important Note:* If the spin outcome lands on a seat which has not participated, (no *BSX-16* side wager), then all participating Players with *BSX-16* side wagers win the community prize randomly picked and indicated by the inner community prize wheel on the table signage.
- (j) If the spin outcome lands on a seat for a participating *BSX-16* Players, then the Player at the winning position is the Hot-Spot Prize winner and will spin the Hot-Spot wheel. The Hot-Spot winning position is highlighted on the Dealer Terminal screen and table signage.
 (1) *Important Note:* The Hot-Spot winner only gets paid the Hot Spot prize (Outer wheel) and does not get paid the community prize (Inner wheel).
- (k) The Dealer Terminal screen will prompt "*Enable Spin*" to activate the Players sensor in front of the Hot-Spot winner. When the Player is ready to initiate their spin, the Dealer will then press "*Enable Spin*" and at this point the Players sensor lights up and acts as a button to spin the *BSX-16* virtual wheel on the table signage.
- (l) Once the spin has been "*Enabled*", the Player will now place their hand over the sensor to initiate their spin.
 (1) *Important Note:* Depending on the system settings or sensor malfunction, the Dealer may initiate the spin on behalf of the Player by pressing the highlighted Player position on the Dealer Terminal.
- (m) A "*Disable Spin*" will appear on the Dealer Terminal once the spin has been "*Enabled*" and will allow the Dealer to again "*Disable*" the spin should the need arise, (Player is momentarily unable to initiate the spin).

- (n) Once the spin has been initiated by the Player, a spinning wheel animation of the Hot-Spot Prize wheel will appear on the *BSX-16* table signage and will land on a prize spot after a few seconds of spinning (5-6 seconds). After the wheel has spun one or two times depending on the Hot-Spot position and participation, the Dealer will be prompted to either "*Cancel Jackpot*" or "*Pay Jackpot*".
- (1) *Important Note:* The "*Cancel Jackpot*" should only be used in the event of system malfunction; any additional spins or "Mystery/Must Hit" jackpots are assumed valid and should be paid accordingly.
- (o) The Dealer will press "*Pay Jackpot*" to initiate the payouts for all participating Players. A payout confirmation will prompt on the Dealer Terminal showing the prize values along with Players position to be paid.
- (p) After the Dealer completes all Players winning payouts for the table, the Dealer will press "*Paid*" on the Dealer Terminal concluding *BSX-16* round.
- (1) *Important Note:* The payouts should not be confirmed in this way until after all winning Players have received their prizes or in the case of a larger prize or Jackpot, a Pit Supervisor is notified of the win. Prize amounts over a certain threshold will require a Pit Supervisor or above to confirm the winning hand and spin by entering an authorization code "333333" into the Dealer Terminal.
- (q) Once the payouts have been completed and/or authorized by a Pit Supervisor or above, the Dealer will press "*Paid*" to confirm the payouts. The Dealer Terminal will prompt "*End Round*" for the Dealer to complete the *BSX-16* round. This will signal the end of the round and the beginning of a new round of *BSX-16*.
- (r) "*Cancel Round*" and "*End Round*" commands have two different primary functions.
- (2) *Cancel Round(s)* are *NOT* accounted and should be used to RESET operational error during gameplay, or if a player wanted to place a late bet on the *BSX-16* side wager, after the Dealer already pressed "*Start Round*" on the Dealer Terminal.
- (3) *End Round(s)* are accounted for and should only be used to end a valid *BSX-16* round that contributes to the progressive meters and the beginning of a new *BSX-16* round.
- i. Once cards have been dealt, a round should not be stopped except in the case of system malfunction or misdeal.
- (s) For the "*Mystery/Must-Hit*" jackpot, after "*End Round*" is pressed, the system checks if any Player participating in *BSX-16* side wager in the current round

won the "*Must-Hit*" jackpot. The system provides the information on the Dealer Terminal which position has won the "*Mystery/Must-Hit*" jackpot and its amount. The jackpot will be processed the same way as other jackpots.

17. Table; Physical Characteristics

(a) Pontoon 21 shall be played at a table having player positions for no more than six players on one side of the table and a place for the dealer on the opposite side.

(b) A true-to-scale rendering and a color photograph of the layout(s) shall be submitted to the Bureau prior to utilizing the layout design. The layout for a Pontoon 21 table shall have imprinted thereon, at a minimum:

- (1) The name or trade name of the gaming licensee offering the game;
- (2) A separate designated betting area at each player position for the placement of the following wagers:
 - i. The required Pontoon 21 wager; and
 - ii. An optional *match super bonus* wager;
- (3) The following inscriptions:
 - i. "Blackjack Pays 3 to 2";
 - ii. "Dealer Must Draw to 16 and Stand on All 17s" or "Dealer must stand on any 17";
 - iii. "Insurance Pays 2 to 1";
- (4) The payout odds for each of the wagers listed in the authorized Rules of the Game of Pontoon 21; and
- (5) The payout odds for the *match super bonus* wager, unless the odds are included in the sign required by 205 CMR 146.28(3).

(c) A gaming licensee shall post a sign at each Pontoon 21 table, which explains:

- (1) That doubled down hands and split hands are not eligible for the additional payouts in the authorized Rules of the Game of Pontoon 21; and
- (2) The payout odds for the *match super bonus* wager if those payout odds are not imprinted on the layout.

(d) Each Pontoon 21 table shall have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer or an area approved by the Assistant Director of the IEB or their designee.

(e) In order to collect the cards at the conclusion of a round of play as required by the authorized Rules of the Game of Pontoon 21 and at such other times as provided in 205 CMR 146.49, each Pontoon 21 table shall have a discard rack securely attached to the top of the dealer's side of the table. The height of each discard rack shall equal the height of the cards, stacked one on top of the other, contained in the total number of decks that are to be used in the dealing shoe at that table; provided, however, that a taller discard rack may be used if such rack has a distinct and clearly visible mark on its side to show the exact height for a stack of cards equal to the total number of cards contained in the number of decks to be used in the dealing shoe at that table.

(f) A Pontoon 21 table may have attached to it, as approved by the Bureau, a card reader device which permits the dealer to read their hole card in order to determine if the dealer has a blackjack pursuant to the definition of “blackjack” in the authorized Rules of the Game of Pontoon 21. If a Pontoon 21 table has an approved card reader device attached to it, the floorperson assigned to the table shall inspect the card reader device at the beginning of each gaming day. The purpose of this inspection shall be to ensure that there has been no tampering with the device and that it is in proper working order.

(g) Each Pontoon 21 table shall also have an approved table game progressive payout wager system for the placement of progressive wagers. A table game progressive payout wager system shall include, without limitation:

- (1) A wagering device at each player position that acknowledges or accepts the placement of the progressive wager;
- (2) A control device that controls or monitors the placement of progressive wagers at the gaming table, including a mechanism, such as a “lock-out” button, that prevents the recognition of any progressive wager that a player attempts to place after the dealer has announced “No more bets”;
- (3) One or more devices that meet the requirements of 205 CMR for progressive wagers and payouts at table games;
- (4) Any other equipment or device that contributes to the efficient operation or integrity of the game; and
- (5) Written procedures for the operation and use of the system and its components.

VERSION 1.0 DATED 12/1/2022

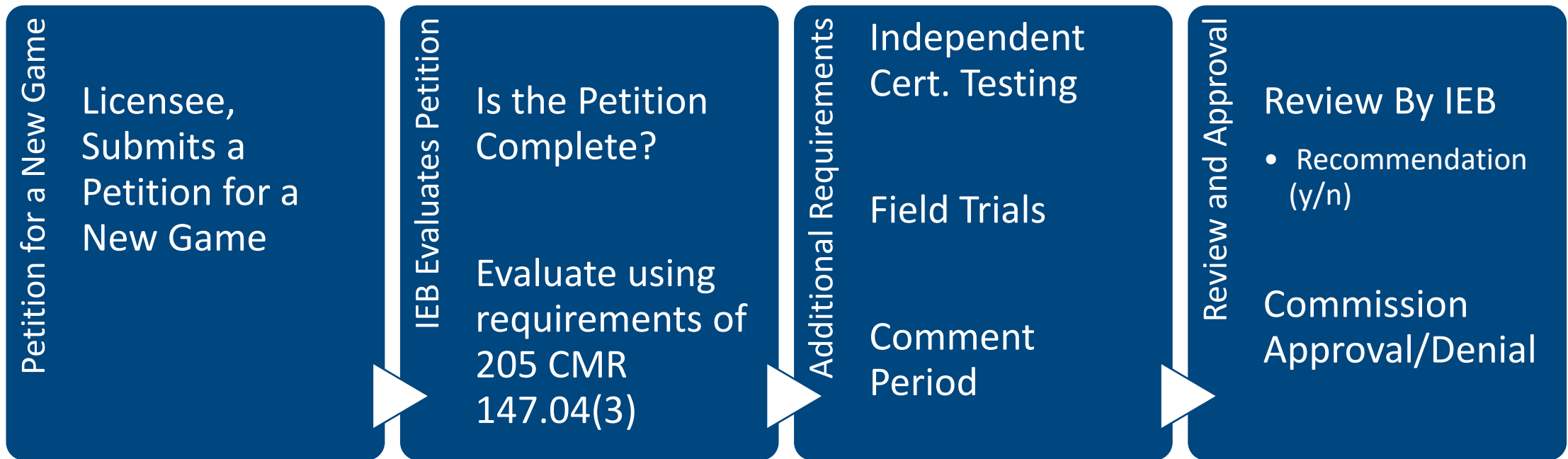


205 CMR 147.04:
Petition for a New Game

Pontoon 21

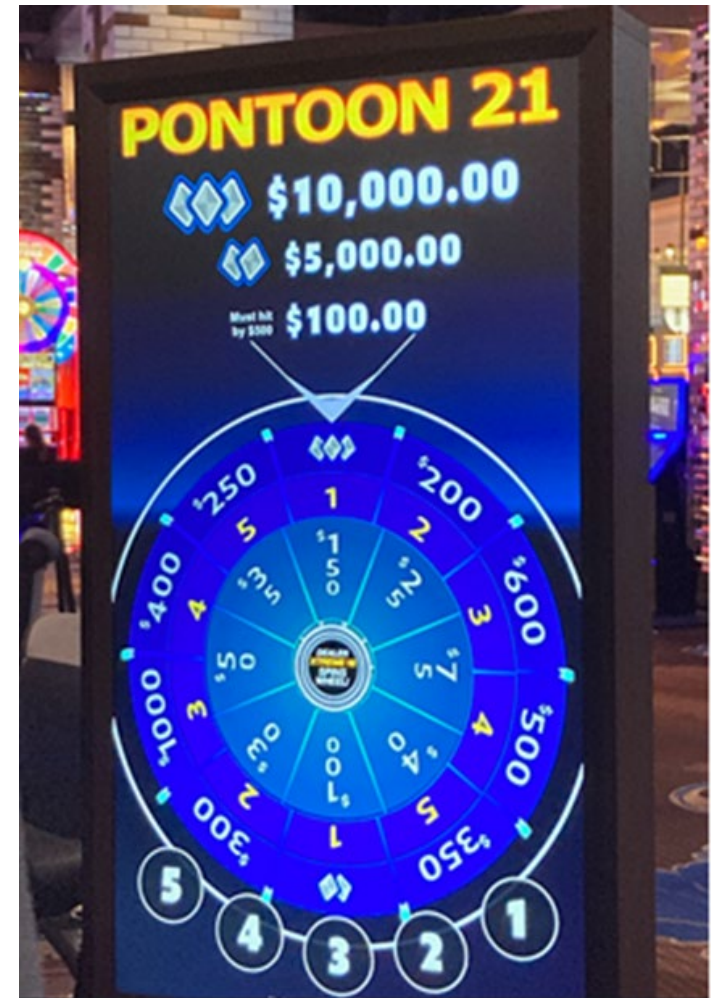


Overview of Process within 205 CMR 147.04



Features of Pontoon 21

- Blackjack style table game played with 48 cards (all four 10s removed)
- Similar rules and table layout to Spanish 21. *See, 205 CMR 146.15*
- Key difference between two games are the Progressive Bonus Spin and payout amounts.



Pontoon 21 (Continued)



BONUS SPIN XTREME

\$5 PROGRESSIVE WAGER:
SPIN THE WHEEL WHEN THE
DEALER'S FIRST-TWO CARDS ARE
6 AND ANY 10-VALUED CARD!

SUPER BONUS

PLAYER SUITED 7-7-7 VS
DEALER UP CARD ANY 7

\$5,000 ON \$25+ BET

\$1,000 ON ANY BET UNDER \$25

\$50 ENY BONUS PAID TO ALL
OTHER BETTING PLAYERS

SPLITTING/DOUBLING
VOIDS SUPER BONUS

MATCH SUPER BONUS PAYS

2 Suited Matches	24 to 1
1 Suited + 1 Unsuited Match ...	15 to 1
1 Suited Match	12 to 1
2 Unsuited Matches	6 to 1
1 Unsuited Match	3 to 1

- “Bonus Hands” offer more payout options when a player has a 21

Hand	Pay
6-7-8 or 7-7-7, Spades	3 to 1
7 or more cards, 21	3 to 1
6-7-8 or 7-7-7, Suited	2 to 1
6-card 21	2 to 1
6-7-8 or 7-7-7	3 to 2
5-card 21	3 to 2
Other 21, including any Doubled 21	1 to 1

Table Characteristics



PONTON 21

DEALER MUST STAND ON ANY 17
 PAYS 2 TO 1 • **INSURANCE** • PAYS 2 TO 1
 BLACKJACK PAYS 3 TO 2



\$5 PROGRESSIVE WAGER:
 SPIN THE WHEEL WHEN THE
 DEALER'S FIRST-TWO CARDS ARE
 6 AND ANY 10-VALUED CARD!

SUPER BONUS

PLAYER SUITED 7-7-7 VS
 DEALER UP CARD ANY 7

\$5,000 ON \$25+ BET


\$1,000 ON ANY BET UNDER \$25

\$50 ENVY BONUS PAID TO ALL
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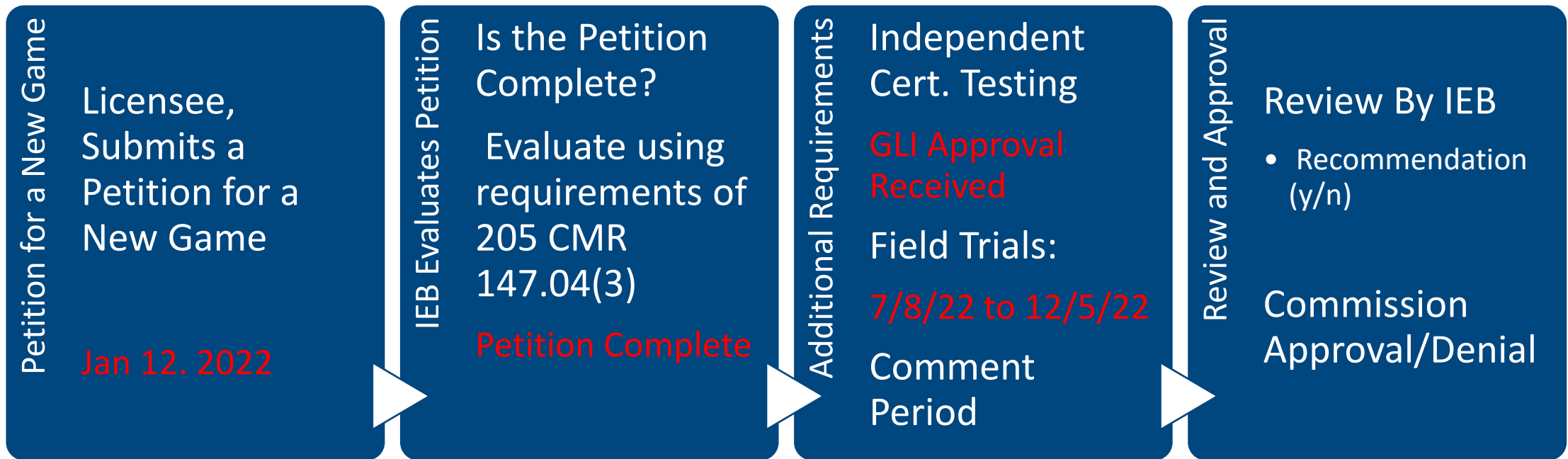
SPLITTING/DOUBLING
 VOIDS SUPER BONUS

MATCH SUPER BONUS PAYS

2 Suited Matches	24 to 1
1 Suited + 1 Unsuited Match	15 to 1
1 Suited Match	12 to 1
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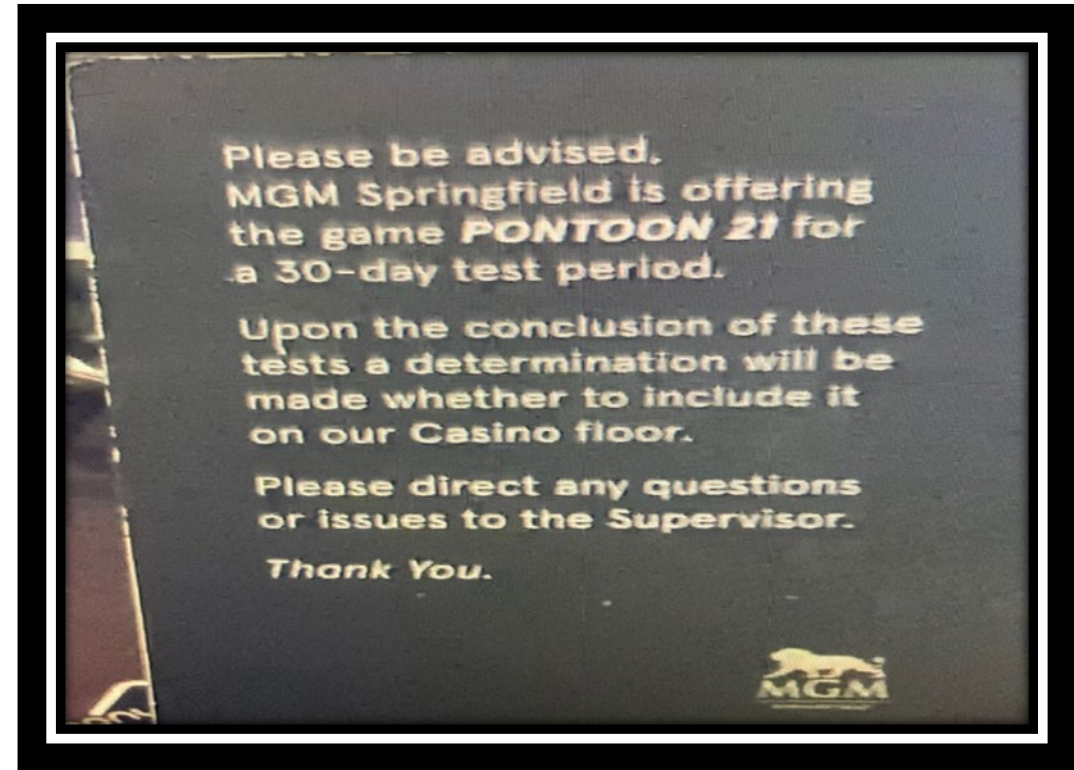
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Overview of Process within 205 CMR 147.04



Field Trials at MGM

- Commenced 7/8/22
- Will Conclude 12/5/22
- Patron Comments are being accepted on an ongoing basis
 - 6 Comments submitted to date



Considerations

- Review by IEB & Recommendation
 - The Bureau has reviewed: the petition and materials submitted by MGM Springfield; the game and payouts during the Field Trials, and comments received from Patrons, and has recommended the Commission support the adoption of Pontoon 21
- Approval by Commission
 - Pursuant to 205 CMR 147.07(5), “the Commission shall have the discretion to approve or deny with reasonable cause the gaming licensee's petition for a new game or game variation following a recommendation from the Bureau.”





Legal Division

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

FROM: Judith Young, Associate General Counsel
Carrie Torrisi, Deputy General Counsel

Angela Smith, Casino Regulatory Manager, MGM Springfield
Sterl Carpenter, Compliance Manager, IEB

RE: Draft 205 CMR 146.28 *Pontoon 21 Table; Physical Characteristics*

DATE: November 25, 2022

Overview:

The Commission's proposed adoption of Pontoon 21 pursuant to 147.04 would make the game an authorized table game in the Commonwealth. As physical characteristics of table games are included in regulations (205 CMR 146.00 *et seq*), the Legal Division, in partnership with the IEB has drafted 205 CMR 146.28: *Pontoon 21 Table; Physical Characteristics*.

The drafted regulation adopts the physical layout of what is included on the Pontoon 21 table, and includes the Commission's requirements for the licensee's name, wager information, payout odds, signage, and notice requirements to Pontoon 21, as well. Additionally, the regulation stipulates: where the drop and tip boxes must be located; how cards must be collected in accordance with 205 CMR 146.49; and incorporates the requirements for the progressive payout wager system that is utilized at the table.

Given that the regulatory process takes approximately 60 to 90 days from the date the Commission votes to authorize the Legal Division to begin promulgation, the physical characteristics have been included within a section of the rules for Pontoon 21, to ensure clarity, and provide sufficient notice to patrons and interested parties, until the regulation is finalized and filed with the Secretary of State. A Small Business Impact Statement and the draft regulation are included in the Commissioner's packet, and members of the IEB and Legal Division are available if the Commissioners have questions.



Massachusetts Gaming Commission

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 146.00: GAMING EQUIPMENT

146.28: Pontoon 21 Table; Physical Characteristics

- (1) Pontoon 21 shall be played at a table having player positions for no more than six players on one side of the table and a place for the dealer on the opposite side.
- (2) A true-to-scale rendering and a color photograph of the layout(s) shall be submitted to the Bureau prior to utilizing the layout design. The layout for a Pontoon 21 table shall have imprinted thereon, at a minimum:
 - (a) The name or trade name of the gaming licensee offering the game;
 - (b) A separate designated betting area at each player position for the placement of the following wagers:
 1. The required Pontoon 21 wager; and
 2. An optional *match super bonus* wager;
 - (c) The following inscriptions:
 1. "Blackjack Pays 3 to 2";
 2. "Dealer Must Draw to 16 and Stand on All 17s" or "Dealer must stand on any 17";
 3. "Insurance Pays 2 to 1";
 - (d) The payout odds for each of the wagers listed in the authorized Rules of the Game of Pontoon 21; and
 - (e) The payout odds for the *match super bonus* wager, unless the odds are included in the sign required by 205 CMR 146.28(3).
- (3) A gaming licensee shall post a sign at each Pontoon 21 table, which explains:
 - (a) That doubled down hands and split hands are not eligible for the additional payouts in the authorized Rules of the Game of Pontoon 21; and
 - (b) The payout odds for the *match super bonus* wager, if those payout odds are not imprinted on the layout.
- (4) Each Pontoon 21 table shall have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer or an area approved by the Assistant Director of the IEB or their designee.
- (5) In order to collect the cards at the conclusion of a round of play as required by the authorized Rules of the Game of Pontoon 21 and at such other times as provided in 205 CMR 146.49, each Pontoon 21 table shall have a discard rack securely attached to the top of the dealer's side of the table. The height of each discard rack shall equal the height of the cards, stacked one on top of the other, contained in the total number of decks that are to be used in the dealing shoe at that table; provided, however, that a taller discard rack may be used if such rack has a distinct and clearly visible mark on its side to show the exact height for a stack of cards equal to the total number of cards contained in the number of decks to be used in the dealing shoe at that table.
- (6) A Pontoon 21 table may have attached to it, as approved by the Bureau, a card reader device which permits the dealer to read their hole card in order to determine if the dealer

205 CMR: MASSACHUSETTS GAMING COMMISSION

has a blackjack pursuant to the definition of “blackjack” in the authorized Rules of the Game of Pontoon 21. If a Pontoon 21 table has an approved card reader device attached to it, the floorperson assigned to the table shall inspect the card reader device at the beginning of each gaming day. The purpose of this inspection shall be to ensure that there has been no tampering with the device and that it is in proper working order.

(7) Each Pontoon 21 table shall also have an approved table game progressive payout wager system for the placement of progressive wagers. A table game progressive payout wager system shall include, without limitation:

- (a) A wagering device at each player position that acknowledges or accepts the placement of the progressive wager;
- (b) A control device that controls or monitors the placement of progressive wagers at the gaming table, including a mechanism, such as a “lock-out” button, that prevents the recognition of any progressive wager that a player attempts to place after the dealer has announced “No more bets”;
- (c) One or more devices that meet the requirements of 205 CMR for progressive wagers and payouts at table games;
- (d) Any other equipment or device that contributes to the efficient operation or integrity of the game; and
- (e) Written procedures for the operation and use of the system and its components.

REGULATORY AUTHORITY

M.G.L. c. 23K, §§ 2, 4(37), and 5



Legal Division

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 regulation: 205 CMR 146.28: *Pontoon 21 Table; Physical Characteristics*

This regulation was developed as part of promulgating regulations governing the operation of gaming establishments in the Commonwealth and is primarily governed by G.L. c.23K, §§2, 4(37), and 5. The proposed amendment to 205 CMR 146.28 places a minimum requirement that the Pontoon 21 table layout should include specific details including: the name of the gaming licensee offering the game; a designated wagering area for each patron; payout odds inscribed on the table and clarifying signage; card shuffling and storage requirements for money; and an approve progressive payout wagering system.

This regulation applies directly to gaming licensees. The Commission does not anticipate that the proposed amendment will not impact small businesses. Under G.L. c.30A, §2, the Commission offers the following responses:

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

This regulation chiefly applies to the gaming licensees so we anticipate that no small business will be subject to this regulation.

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

There are no further projected reporting, recordkeeping, or administrative costs created by this regulation that would affect small businesses.

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

This regulation imposes a performance standard, as it prescribes the layout and physical characteristics of Pontoon 21 tables in gaming establishments to provide clarity and to be consistent with the Commission’s approved rules of the game of Pontoon 21.

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



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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 amendments to this regulation are likely to deter or encourage the formation of new businesses in the Commonwealth:

We do not anticipate that this regulation will deter or encourage the formation of new business within the Commonwealth.

Massachusetts Gaming Commission
By:

/s/ Judith A. Young
Associate General Counsel

Dated: November 28, 2022



Massachusetts Gaming Commission