

## NOTICE OF MEETING AND AGENDA

(Revised 2.7.23)

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

**Thursday | February 9, 2023 | 10:00 a.m.**

**VIA REMOTE ACCESS: 1-646-741-5292**

**MEETING ID/ PARTICIPANT CODE: 111 271 6063**

**All meetings are streamed live at [www.massgaming.com](http://www.massgaming.com).**

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

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

### **PUBLIC MEETING - #434**

1. Call to Order – Cathy Judd-Stein, Chair
  
2. Approval of the Meeting Minutes
 

a. August 11, 2022	<b>VOTE</b>
b. August 17, 2022	<b>VOTE</b>
  
3. Administrative Update – Karen Wells, Executive Director
  - a. Casino Update – Burke Cain, Interim Gaming Agent Division Chief
  
4. Investigations and Enforcement Bureau- Loretta Lillios, Director; Heather Hall, Chief Enforcement Counsel
  - a. Update on Plainridge Park Casino and Encore Boston Harbor’s compliance with the Approved Massachusetts Sports Wagering Catalog – Burke Cain, Interim Gaming Agent Division Chief
    - i. Executive Session
 

The Commission anticipates that it may meet in executive session in conjunction with its review of Plainridge Park Casino and Encore Boston Harbor’s compliance with the Approved Massachusetts Sports Wagering

Catalog in accordance with G.L. c. 30A, § 21(a)(7) and G.L. c. 4, § 7(26)(f) (the investigatory exemption of the Massachusetts Public Records Law) to discuss the details of any ongoing investigation related to the licensees’ compliance with the Approved Massachusetts Sports Wagering Catalog. **VOTE**

The public session of the Commission meeting will reconvene at the conclusion of the executive session.

- 5. Finance – Derek Lennon, Chief Financial Officer
  - a. Mid-Year Financial Update **VOTE**
  - b. Sports Wagering Assessment for Approved Operators **VOTE**
- 6. Legal – Todd Grossman, General Counsel; Carrie Torrisi, Deputy General Counsel; Caitlin Monahan, Deputy General Counsel
  - a. New Table Games - Judith Young Associate General Counsel; Burke Cain, Interim Gaming Agents Division Chief, IEB
    - i. 205 CMR 146.28: *Pontoon 21 Table; Physical Characteristics*. Review of Final regulation and ABSIS for approval to finalize the promulgation process. **VOTE**
    - ii. Approval of New Table Game Rules – Pontoon 21 **VOTE**
  - b. Discussions regarding Sports Wagering Regulations:
    - i. 205 CMR 254: *Temporary Prohibition from Sports Wagering* **VOTE**
    - ii. 205 CMR 256: *Sports Wagering Advertising* **VOTE**
- 7. Commissioner Updates
  - a. GPAC Update
- 8. Other Business - Reserved for matters the Chair did not reasonably anticipate at the time of posting.

I certify that this Notice was posted as “Massachusetts Gaming Commission Meeting” at [www.massgaming.com](http://www.massgaming.com) and emailed to [regs@sec.state.ma.us](mailto:regs@sec.state.ma.us). Posted to Website: February 7, 2023 | 10 a.m. EST

February 7, 2023

*Cathy Judd-Stein*  
Cathy Judd-Stein, Chair

*If there are any questions pertaining to accessibility and/or further assistance is needed, please email [crystal.beauchemin@massgaming.gov](mailto:crystal.beauchemin@massgaming.gov).*



---

## Massachusetts Gaming Commission Meeting Minutes

---

**Date/Time:** August 11, 2022, 10:00 a.m.  
**Place:** Massachusetts Gaming Commission  
VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE: 111 198 3440

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](#) (00:03)

Chair Judd-Stein called to order the 387<sup>th</sup> Public Meeting of the Massachusetts Gaming Commission (“Commission”). Roll call attendance was conducted, and all five Commissioners were present for the meeting.

2. [Approval of Meeting Minutes](#) (00:40)

a. February 10, 2022

Commissioner O’Brien moved that the Commission approve the meeting minutes in the packet from February 10, 2022, subject to any necessary changes for typographical errors or other non-material matters. The motion was seconded by Commissioner Hill.

*Roll call vote:*

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

*The motion passed unanimously, 3-0 with two abstentions.*

3. [Administrative Update](#) (1:47)

a. Table Games/Poker Update

Executive Director Karen Wells reviewed the Commission's previous request for an update regarding table games and poker. Executive Director Wells introduced Bruce Band, Assistant Director of the Investigations and Enforcement Bureau ("IEB") and Gaming Agents Divisions Chief.

Assistant Director Band presented statistics comparing the number of table games and poker tables listed in the RFA-2, active tables in March 2020, and active tables in July 2022 for Encore Boston Harbor ("EBH"), MGM Springfield ("MGM"), and Plainridge Park Casino ("PPC"). Assistant Director Band stated that the average wait at EBH was approximately 45 minutes. The *Table Statistics* were included on pages 12 through 33 of the Commissioner's Packet.

Commissioner O'Brien asked for the hours of poker availability at EBH. Assistant Director Band stated that EBH operated poker tables from 10 A.M. until 2 A.M. on Sunday through Thursday, but that EBH had previously offered 24-hour tables prior to the COVID pandemic.

Commissioner O'Brien inquired as to when the longest waiting periods for poker tables occurred, and if it was nights or weekends. Assistant Director Band noted that EBH did not run poker tables on the weekend, but that the longest wait times occur between 6 P.M. and 7 P.M. IEB Senior Supervising Gaming Agent for EBH Luis Lozano stated he observed long waits of approximately 45 minutes between 2 P.M. and 3 P.M. in addition to the evening wait times.

Assistant Director Band stated that patrons can remotely reserve a seat for the poker tables after 11 P.M., but prior to that time patrons must be present to reserve a seat. Commissioner O'Brien inquired as to what the longest wait period for patrons was at the poker tables. Mr. Lozano stated that EBH had wait times between 90 minutes and two hours depending upon the type of game. Assistant Director Band stated that wait times are also influenced by the wager average of the tables. Chair Judd-Stein noted that waiting time information for EBH was located on page 20 of the Commissioner's Packet.

Commissioner Hill asked why poker had not been expanded to Fridays and Saturdays. Assistant Director Band stated that EBH was struggling to find trained dealers and lacked parking space. Chair Judd-Stein noted that information regarding the expansion of poker at EBH and MGM would likely be indicated in their quarterly reports presented later in the meeting.

Chair Judd-Stein inquired about the poker availability at MGM. Assistant Director Band stated that the longest wait was late at night for a period of one hour and fifteen minutes, and that MGM recently begun providing 24-hour table games. IEB Field Manager Burke Cain noted that only a limited number of games are provided for 24-hours. Chief Judd-Stein asked how many table games were provided by MGM. Assistant Director Band stated that MGM provides 48 table games and 14 poker tables. He stated that the number of games provided in July of 2022



fall below the pre-COVID number of 79 Tables provided in March of 2020. He stated MGM often had tables closed on the floor that were not available for the public to play.

Commissioner O'Brien asked how MGM decided which tables would be open. Assistant Director Band stated that the open tables depended upon customer demand, and larger scale players often had the games they wanted to play opened. Commissioner O'Brien asked how a group of patrons could identify which game tables they wanted open. Assistant Director Band explained that patrons could approach a shift manager to request a table be open if there was enough demand and a dealer trained for that game was available. Mr. Cain stated that traditionally the gaming establishments would perform information gathering to decide what games were to be offered in each week. Assistant Director Band noted that MGM was limited in which games they could offer due to staffing issues.

Commissioner O'Brien inquired as to why more poker dealers had been available pre-COVID compared to the most recent assessment in July 2022. Assistant Director Band stated he did not have information regarding the poker dealers for this update. Chair Judd-Stein noted that this information may be discussed at the licensee's Quarterly Report later in the meeting. Commissioner O'Brien clarified that the previous question was regarding the number of total poker employees at MGM, as the statistics reported only contained details regarding the broader category of table games employees.

Commissioner Maynard asked if there was a statistic regarding the average number of table games open at MGM as it was reported that not all tables are run. Assistant Director Band stated that he would have to review MGM's schedules, but that the information can be compiled. Mr. Cain stated that MGM maintains between six and twelve table games between 4 A.M. and 10 A.M. Commissioner Maynard asked that Assistant Director Band review what percentage of time the total 46 table games were in use and provide a statistic.

Commissioner O'Brien expressed interest in a meeting with the licensees regarding the employment numbers for table games, and to inquire about what happened to the trained poker dealers the casinos employed prior to the COVID pandemic. Chief of the Division of Community Affairs Joe Delaney stated that the Commission can schedule a meeting with the licensees to discuss the format of reporting regarding the expansion of poker and table games. Should comm ask Legal Division advice for next steps and address concerns regarding further expansion of poker and table games. Commissioner Hill expressed interest in a deeper discussion with licensees regarding the expansion of poker, as it had been an issue raised for months and he was not satisfied with the answers received from the licensees. He stated that he wanted the number of poker tables to increase back to pre-COVID levels. Chief Delaney stated he will work in his compliance capacity and coordinate with IEB.

Commissioner Skinner stated that she agreed with all the suggestions offered by the other Commissioners. Commissioner Maynard noted concern with patron demand, and what patrons do during the long wait periods for the poker tables. He noted that getting data points on patron demand would help address the next steps the Commission would take for poker wait times.

4. [Community Affairs Division](#) (30:43)

a. Plainridge Park Casino Quarterly Report

Chief Delaney introduced General Manager of Plainridge Park Casino (“PPC”) North Grounsell. Mr. Grounsell introduced Vice President of Finance at PPC Heidi Yates-Akbaba and Vice President of Human Resources at PPC Kathy Lucas.

The team from PPC presented the Q2 2022 PPC quarterly report including topics on lottery sales, state and local spending, vendor diversity, compliance, employment diversity, community initiatives and team initiatives. The *PPC Quarterly Report* was included on pages 34 through 45 of the Meeting Packet.

Commissioner O’Brien asked whether there was a difference between this year’s state spending and the prior year. Ms. Yates-Akbaba stated that she did not have that statistic present but would provide it to the Commission after the report. Chair Judd-Stein congratulated PPC on exceeding diversity spending. Chair Judd-Stein stated that one of PPC’s diversity vendors was purchased by a non-diverse owner and asked if PPC had located multiple new vendors to offset that diversity loss. Ms. Yates-Akbaba explained that the purchasing and receiving team sourced new vendors and was dedicated to PPC’s diversity goal.

Commissioner O’Brien asked if more amenities coming online in the coming quarters would impact the percentage of women in supervisor roles. Ms. Lucas stated that the sports bar had yet to open, and the launch of fall and winter banquet services would increase the diversity of women supervisors. She added that it was not an issue of finding women for these roles, but that a significant segment of the business hadn’t reopened in areas where women management and support teams were likely. Commissioner Hill asked what type of banquets PPC’s service would provide. Ms. Lucas stated that the banquets were predominantly holiday parties and meetings. She stated that a catering manager and culinary teams would be required for expanded service. Commissioner Hill noted that at the prior meeting PPC discussed calling culinary colleges regarding hiring and inquired about the progress of that communication. Ms. Lucas stated that PPC had contacted to work with Johnson and Wales, and that the food director had focused on opportunities in local communities where restaurants had shut down. She stated that online advertisement recruitment had also increased. Commissioner Hill noted that catering businesses on the north shore had been expanding as indication that the market was slowly recovering. Ms. Lucas agreed, and commented that PPC had a food truck and outdoor patio and had brought in a culinary team to support those locations; and the team would transition to indoor banquets as the weather shifted.

Commissioner Maynard asked if PPC would adjust their diversity goals, as they reported they had exceeded the diversity goals. Mr. Grounsell stated that PPC wanted to reliably hit the diversity goals, and if a hiring profile matched well with the surrounding communities, diversity would be considered in finding vendors.

Commissioner Skinner congratulated PPC on exceeding diversity goals both in terms of vendors and employees. Commissioner Skinner asked what the eligibility criteria for PPC’s Leadership Program. Ms. Lucas stated that team members can be nominated by a manager or nominate

themselves. She explained that the program creates cohorts of team members, and that the employees must meet performance and attendance standards. She added that employees in the program were assigned a mentor with the goal of the program to prepare employees for leadership positions. Mr. Grounsell stated that the program focused primarily on hourly team members who aspired for management positions. Commissioner Skinner asked about makeup of the Leadership Program in terms of diversity. Ms. Lucas stated that the precise statistics were not available, but that approximately one third of the Leadership Program was diverse, and half of the employees in the Leadership Program were women.

Commissioner Hill asked about PPC's sponsorship of Habitat for Humanity and Rolling Thunder. Ms. Lucas noted that PPC has sponsored the building of a house in Attleboro, MA. She stated that PPC sponsored their second Memorial Day event and planned to hold a Veteran's Day event with Rolling Thunder chapters from four local states.

Commissioner O'Brien thanked PPC for separating out underage and minor access to the gaming area into discrete categories within their report. Chair Judd-Stein clarified that she had made an error earlier when she had stated that the Commission would hear from both EBH and MGM regarding table games, as MGM was not planned to present until September. Chief Delaney reported that the Quarterly Report presentation for MGM was scheduled for September 8, 2022. Chair Judd-Stein noted that the Commission would be in touch with PPC for a formal introduction to Commissioner Maynard as well.

b. [Encore Boston Harbor Quarterly Report](#) (1:01:10)

Chief Delaney introduced Senior Vice President and General Counsel for EBH Jacqui Krum; President of EBH Jenny Holaday; and Executive Director for EBH's Legal Division Juliana Catanzariti. Counselor Krum introduced Tom Coffey, Executive Director of Security, and Investigations at EBH.

EBH's team presented the Q2 EBH Quarterly Report, which included topics on gaming revenue and taxes, lottery sales, a workforce diversity update, operation spending, diversity among vendors, compliance, marketing, the Wynn Employee Foundation Scholarship, the Leadership Development Training Program, and the development of poker and table games. The *EBH Quarterly Report* was included on pages 46 through 70 of the Meeting Packet.

Chair Judd-Stein sought clarification regarding the current poker table schedule, and whether the expansion of poker availability was both an expansion of hours and expansion of days. Counselor Krum stated that the immediate change would be to extend the hours poker was provided until 4 A.M. for designated days. She noted that the expansion of poker hours was contingent upon the hiring and training of poker dealers, and that EBH would expand poker to seven days a week once it had the requisite staff. Chair Judd-Stein asked if the days poker was offered was Sunday through Thursday. Counselor Krum confirmed that poker was available from Sunday through Thursday. Commissioner O'Brien asked whether weekend hours would be considered during the implementation of expanded poker hours. Counselor Krum explained that weekend poker availability was an issue of scheduling, as they didn't want to overwork their existing dealers seven days a week. Commissioner O'Brien asked how many positions would

need to be filled to open poker availability on weekends. Counselor Krum stated that it would require approximately fifty positions be hired to work the tables and accompanying staff.

Commissioner Skinner stated that EBH listed 25 poker tables in their RFA-2 and that information was used in the decision to grant EBH their gaming license. Commissioner Skinner stated she was unaware of the implication of a licensee not reaching the expectation. She asked what EBH's plans were to reach the expected 25 poker tables. Counselor Krum explained that EBH was constantly changing the gaming floor to bring in new products or remove old ones. She noted that EBH had removed 600 slot machines and would need to balance the available games on the game floor to adjust to reach 25 poker tables. Commissioner Skinner stated that she would like a more detailed plan about how EBH plans to reach 25 poker tables. Counselor Krum noted that EBH was down in terms of slot machines in addition to the lower number of table games. Commissioner Skinner replied that the Commission had not received complaints about a lack of slot machines being offered.

Commissioner Hill asked whether the additional dealers being hired for expanded hours of operations would include dealers for additional poker tables. He questioned whether there was more patron demand for expanded hours or if demand would be for additional table opportunities at peak hours. Counselor Krum stated that patron demand was likely a combination of expanded hours and expanded table numbers, but that EBH had no intention of increasing the number of poker tables. She stated that EBH's feedback showed patrons wanted poker on days where it was not being offered, and that the current goal is to rectify the hours poker is offered. Commissioner Hill stated that citizens had raised the issue that they wanted more poker tables at encore. He noted that Encore had 88 tables prior to the COVID pandemic, and they are now down to 15. Commissioner Hill stated that he wanted to see the number of poker tables significantly increase and was concerned that increased numbers of poker tables were not being considered at this point. Counselor Krum stated that EBH did not have the space for more poker tables, as EBH reconfigured the entire floor to be compliant for social-distancing guidelines during the pandemic. She noted that the slot machines that were compliant with social distancing were popular amongst the patrons. Chair Judd-Stein stated that EBH was exceeding the RFA-2 expectations for the number of table games by 34 tables, but with respect to poker, EBH was below the 25 tables specified in the RFA-2. Chair Judd-Stein clarified that the number of poker tables EBH provided in March 2020 was 74, not 88 as previously stated by Commissioner Hill. Commissioner O'Brien stated that EBH still saw a decrease of 59 poker tables between March 2020 and July 2022, and that the reduction seemed to be in favor of slot machines. She stated that the overarching concern from patrons are that the patrons want more poker tables and weekend hours.

Commissioner Skinner expressed she was glad to hear about the expanded poker hours and inquired about recruitment efforts to find staff for the poker tables. Counselor Krum stated that there were efforts to get potential employees enrolled into dealer school. Commissioner Skinner asked how the recruits were being located. Counselor Krum stated that EBH was utilizing several different sources including websites and community partners. She noted that the issue in finding candidates for the positions was in the perception that poker dealing required math skills, but that relevant skills could be trained. Commissioner Skinner asked how long it would take to

sufficiently staff these positions. Counselor Krum stated the EBH expected to offer poker seven days a week on or before October 1, 2022.

Commissioner Maynard expressed concern that patrons could be drawn in by poker marketing and end up gambling elsewhere due to the long waiting periods for poker. He stated that he understands the space and recruitment issues but hiring these positions would be a great opportunity to increase the gender balance amongst employees. Commissioner Maynard asked what patrons do during the hour long waits for poker. Counselor Krum explained that EBH utilized an online application, Poker Atlas, to queue for poker and patrons were not diverted to other games. She noted that a portion of EBH's poker patron used Poker Atlas frequently.

Commissioner O'Brien stated that EBH's goal for diversity in hiring women is 50%, and asked what efforts were being made to reach that goal. Counselor Krum stated that she reviewed the diversity statistics on a weekly basis with the recruiting team and reached out to local groups. Commissioner Hill asked if the expansion of restaurant services, such as PPC's banquets, could be used to increase the diversity numbers. Counselor Krum stated that EBH anticipated an increase in banquets and conventions utilizing EBH's facilities in quarter three.

Commissioner O'Brien asked about the chart detailing underage individuals who accessed the gambling floor, inquiring if they were gaming or consumed alcohol. Mr. Coffey stated that there were three underage persons who accessed the gambling floor, and that two bypassed security checkpoints having forced their way through a fire exit in the Black Tier Lounge. He stated that the door is problematic, but can't be removed due to fire regulations, and that the two underage persons who entered through it were stopped shortly after they sat down at the slot machines. Mr. Coffey stated that the third underage person entered the gaming floor having walked in with two older gentlemen. Commissioner O'Brien asked Mr. Coffey to explain why there had been a minor on the gaming floor for more than three hours. Mr. Coffey stated that the minor went straight to Mémoire, a nightclub on the premises of EBH, and spent most of the time in Mémoire, with only 40 minutes spent on the gaming floor. Commissioner O'Brien asked how he mistakenly got admitted into Mémoire as well. Mr. Coffey explained that VeriDocs, the scanner program used to check identification, had an error when the underage person scanned their identification. He noted that in the review with security, the minor's identification was checked but not entered into Mémoire's system.

Commissioner Skinner asked if there was a reason EBH overhauled its security training program, and the impetus for the revisions. Mr. Coffey stated that he took over the Executive Director of Security position in January, that he noticed the deficiency in training, and received additional resources from the president to hire training staff. Mr. Coffey stated that the changes were not due to compliance concerns. Commissioner Maynard stated that all questions he had were addressed by his fellow Commissioners.

1. [Research and Responsible Gaming](#) (1:58:52)
  - a. Play My Way Update

Director of Research and Responsible Gaming Mark Vander Linden stated that the Commission was committed to reducing negative and unintended consequences of expanded gaming in the

Commonwealth. He stated that the Play My Way program would be launched at EBH. He explained that the Play My Way application commits to a budget before the commencement of gambling and tracks gambling over time.

Director Vander Linden stated that PPC had 29,000 enrollments since 2016, with a 13% unenrollment rate, and since March 2022, MGM had 2542 active enrollments with 6% unenrollment rate. He stated that Play My Way was scheduled to be launched on September 12, 2022, at EBH. Director Vander Linden noted that Play My Way was first of its kind as a program, and other United States jurisdictions did not provide this technology or uniform platform across all casinos. The *Play My Way Update* was included on page 71 of the Meeting Packet.

Director Vander Linden noted that Dr. Michael Wahl of Carleton University in Ottawa secured funding through the International Center for Responsible Gaming to conduct a study evaluating Play My Way. Director Vander Linden stated that the two goals of the study were to understand how Play My Way could sustain recreational gambling by establishing feasible parameters and to eliminate the regret from the loss of control while gambling. He stated that the study would contain information and feedback for improving the Play My Way program within the next fiscal year. Director Vander Linden stated that he will report in late September or October about the launch of Play My Way at Encore.

Commissioner O'Brien stated as a non sequitur that she had undergone online training that praised Massachusetts's commitment to responsible gaming. Chair Judd-Stein sought clarification on the language of the study regarding recreational gambling. Director Vander Linden stated that Play My Way is designed to help patrons develop a predetermined budget and set to keep their gambling recreational. He explained that approximately 2% of gamblers were problem gamblers, 8% were at-risk gamblers, and between 63 and 67% of the population were recreational gamblers. He stated that the goal is to create tools to support recreational gambling and provide resources for problem gamblers and those at risk. Chair Judd-Stein asked if the budget was the parameters for the research, and Director Vander Linden confirmed that it was.

5. [Legal Division](#) (2:10:50)

- a. 205 CMR 116.03: Waivers – and Small Business Impact Statement for approval to finalize the promulgation process.

General Counsel Todd Grossman introduced Deputy General Counsel Carrie Torrissi. Deputy Counsel Torrissi stated that IEB raised the issue that 205 CMR 116.03 did not match the language of G.L. C. 23K § 14(c). She stated that the statute allowed for the Commission to waive the licensing requirement for institutional investors which held up to 15% of the stock of the applicant company, holding intermediary or subsidiary company of the applicant company. Deputy General Counsel Torrissi stated that 205 CMR 116.03 had used the language “less than 15%” rather than the language “up to 15%” found in that statute. She stated that the proposed change would change the regulation language in 205 CMR 116.03 to match the statute. The *Proposed Amendment* was included on pages 72 through 77 of the Meeting Packet.

Deputy General Counsel Torrissi stated that the Commission voted to begin the promulgation process on May 25, 2022, and the Commission held a public hearing on this regulation the morning of August 11, 2022, presided over by Commissioner O’Brien. Deputy General Counsel Torrissi stated that no written comments were received, and no public comments were made at the public hearing.

Commissioner Hill moved that the Commission approve the amended small business impact statement and the amendments to 205 CMR 116.03 as reflected in the Commissioner’s Packet and discussed here today and further that the staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth and finalize the regulation promulgation process. The motion was seconded by Commissioner Skinner.

*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.*

6. [Licensing Division](#) (2:14:12)

a. Encore Boston Harbor Position Exemption Requests

Chair Judd-Stein introduced David MacKay, Licensing Supervisor. Mr. Mackay stated that EBH had requested the Commission allow four new exemption positions under the statutory provision enacted in 2017 that authorized the Commission to exempt certain job positions.

Mr. MacKay explained that the four positions EBH was seeking exemption for were Lead Florist, Florist II, Lead Gardener, and Irrigation Tech. He noted that EBH had responded negative to all criteria on the gaming licensee certification regarding these positions. He clarified that these were new positions within in the Horticulture and Floral Department, and not reclassifications of previous jobs. Mr. MacKay stated that these positions would not have supervisory responsibilities or access to the back of house or gaming floor without a proper escort. He added that the prior similar positions of Florist, Gardener 1 and 2, and the supervisor for this department were exempted. Mr. MacKay stated that the Licensing team worked with Kara Henson, the Assistant Director of Recruiting and Employment at EBH to obtain the necessary information to develop the request. The *Exemption Requests* were included on pages 78 through 98 of the Meeting Packet.

Commissioner Skinner moved that the Commission exempt the Lead Florist, Florist II, Lead Gardener, and Irrigation Tech positions at Encore Boston Harbor from the Commission’s registration requirements in accordance with 205 CMR 134.031(b) for the reasons discussed today and described in the Commissioner’s Packet. 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.*

7. [Civil Administration Penalty Assessment](#) (2:20:45)

Chair Judd-Stein introduced Chief Enforcement Counsel Heather Hall. Counselor Hall stated that after two prior notices of non-compliance from the Chief Enforcement Counsel’s office, the IEB had assessed Big Night Entertainment Group, the operators of Mémoire nightclub on the premises of EBH, a civil administrative penalty in the agreed upon amount of \$25,000.

Counselor Hall stated that the fine was assessed for alcohol over-service incidents between October 2021 and June 2022. She stated that one incident of over-service occurred at the bar, and 4 incidents of over-service occurred during bottle service, and was a result of improper administration of bottle service. She explained that bottle service consisted of the reservation of a table attended to by a dedicated bottle server. Counselor Hall noted that only the server is to pour drinks during bottle service and stated that the over-service incidents were a result of improper bottle management.

Counselor Hall stated that in addition to the assessment, the IEB required Mémoire staff to follow corrective actions including additional staff training, adjustments to bottle service policies, and no longer allowing bottles to be left on tables. She continued that the new policy included that servers must take bottles with them when leaving the table, and that no patron be allowed to pour alcohol or drink directly from the bottle, as well as the prohibition of free-pouring alcohol into the patron’s mouth. Counselor Hall stated that Mémoire agreed to these terms and agreed to discipline its employees. She noted Mémoire worked with IEB to develop these corrective measures. She stated that Mémoire also purchased enhanced security details and additional police details to work on weekend nights. Counselor Hall added that by agreeing to and accepting the assessment, Mémoire waived its right to an adjudicatory hearing on the matter.

Counselor Hall stated that the Alcoholic Beverage Control Commission had also increased its presence within Mémoire. She stated that EBH agreed to review all medical incidents to investigate for alcohol over-service and provide quarterly audits of Mémoire for compliance.

Chair Judd-Stein sought clarification as to whether Mémoire’s waiver of the right to adjudicatory hearing waived the right to appear before the Commission. Counselor Hall stated that as a registrant, Mémoire would first appeal to a hearing officer, but that further review past that would be performed by the Commission.

Commissioner O’Brien suggested IEB, and the Legal Division consider modifying the language of 205 CMR 136.077(a) to include language about being “while seated for food service,” but that she would leave specific phrasing up to IEB and the Legal Division. Commissioner O’Brien stated that during Mr. Coffey’s earlier report he noted a 17-year-old had entered Mémoire and asked if that incident was one of five incidents of over-service. Counselor Hall stated that the

first incidence of over-service at the bar was an underage individual with a valid identification, who had previously drunk at center bar before the over-service at Mémoire. She stated that there had been two minors who were admitted entrance due to errors in the VeriDocs system, and that issue had been raised with Mémoire. She stated that Memoire had agreed to run additional screening on the identification of any patron under the age of 25. Commissioner O'Brien sought clarification whether the individual from Mr. Coffey's report was cited in the assessment. Counselor Hall stated that the minor in question was included in the footnote as he had entered on two separate occasions but was not part of the basis for the fine.

Commissioners Maynard, Skinner and Hill had no questions. Chair Judd-Stein expressed she was satisfied with the level of cooperation and corrective measures being implemented.

Commissioners thanked Chief Enforcement Counsel Hall for her report.

#### 8. [Preparations for Matters Related to Sports Wagering](#) (2:36:07)

Chair Judd-Stein presented the regulatory objectives and intentions of the Commission in preparation for sports wagering. She stated that sports wagering had been signed into law by Governor Baker on August 10, 2022, with the Commission named as the regulator of lawful sports wagering in the Commonwealth. Chair Judd-Stein stated that the Commission must work with current and prospective licensees to implement the requisite framework and to ensure integrity and consumer protection. She stated that a more precise timeline was in development, and that the Commission would collaborate with the Massachusetts Legislature and Governor's office regarding any required fixes to the Special Act. Chair Judd-Stein noted that the annual research agenda within the Act included research regarding the socioeconomic impact of sports wagering. She added that the position for the Director of Sports Wagering had also been drafted, so that candidates could be evaluated, and one could eventually be hired. She reported that the Legal Division begun work on the anticipated 225 regulations governing operations of sports wagering. She stated that the assessment of sports wagering technology, including electronic sports wagering kiosks, had begun.

Chair Judd-Stein introduced Executive Director Karen Wells. Executive Director Wells reported that the Chief of Sports Wagering position was to be listed in the grade seven salary and was in the process of being finalized. She stated the job listing would be sent to the Commissioners prior to its posting.

Moving on to the next topic, Executive Director Wells stated that under category three licenses, mobile operators could operate independently or partnered with a casino or racetrack, as tethered entities. She stated that evaluation of the most efficient way to move forward and assess resources would require the prospective licensees to file a notice of intent, which would give the Commission an estimation of the number of applicants. The Commissioners had unanimous agreement to begin this process.

Executive Director Wells explained that neither the enabling act for 23N nor the statute provided specific direction regarding the licensing of vendors for sports wagering operators. She noted that the broad language would allow the Commission to do so. She stated that the Commission

licensed both gaming vendors, such as slot machine manufacturers, and non-gaming vendors, such as the registrants that conduct business with casinos. Executive Director Wells recommended the Commission work with the Legal Division to receive guidance on the creation of regulation for the licensing of sports wagering operators. Commissioner Hill agreed with the recommendation but did not want to lower any standards. He stated an interest in having the sports wagering licensure language mirror the regulations regarding current casino vendors. Commissioner O'Brien and Commissioner Maynard agreed that this regulation is a cornerstone to sports wagering, and that it should be prioritized by the Legal Division.

Executive Director Wells stated that with mobile operations there is a massive IT component to sports wagering and expressed interest in expediting regulations regarding the IT testing of sports wagering technology so that the procurement of operators complies with the law. Executive Director Wells stated that three options for IT testing were considered; inhouse; the use of a third-party contractor; or having the licensee contract with the third-party. Chair Judd-Stein requested a memorandum of the benefits of each IT testing method. Executive Director Wells noted that due to timing, the former hybrid recommendation of performing inhouse testing and additional third-party contracting might change.

Executive Director Wells stated that in the application for licensure of casinos, five criteria were considered. She explained the criteria were a general overview, finances, economic development, building and site design, and mitigation factors. Executive Director Wells noted that sports wagering licensure would likely differ in some respects from casino licensure as sports wagering does not require the same level of building infrastructure. Executive Director Wells stated that the Commission can incorporate additional criteria catered to sports wagering in the licensure applications.

Chair Judd-Stein noted that in terms of context the Commission will look towards the Legal Division for guidance and asked if a competitive licensing assessment would be confined to mobile sports wagering operators. Executive Director Wells stated that current casino licensees can have up to two mobile operators, but that those operators must be classified in category three, and that there could be an additional seven mobile operators past that. She noted that the limitation on number of licenses in this category created the necessity of a competitive process. Chair Judd-Stein asked what criteria would be different or more nuanced regarding sports wagering that was not present in past criteria. Commissioner O'Brien suggested each criteria category from casino licensure be written down and reviewed to see if they are transferable to sports wagering licensure or if criteria were missing. Commissioner O'Brien stated criteria different from casino licensure may be strength and security of the sports wagering platform. Executive Director Wells stated that the draft application had identified some criteria and it should be cross referenced. Chair Judd-Stein stated that developing the criteria for sports wagering licensure would take several meetings.

Executive Director Wells added that the Legal Division is working on a schedule for drafting regulations. Commissioner Hill inquired whether the existing licensees should be prioritized first, or if all licensees would be considered at the same time. Chair Judd-Stein stated that the existing casino licensees had been invited to a meeting as they were positioned differently than other potential applicants. She expressed she would prefer to address licensing simultaneously

for all potential licensees. Executive Director Wells inquired as to whether the Commission would want a single launch date for sports wagering or launch as the operators become ready and are compliant with Massachusetts law. She stated that existing casino licenses were likely to implement sports wagering on a faster timeframe, due to their familiarity with the Commission's processes and existing resources already in place. Chair Judd-Stein stated that the roundtable meeting with the Commission and potential licensees was scheduled for the following week, and that Commissioners were looking forward to gaining more perspective from the attendees.

Commissioner O'Brien recommended simultaneous launch periods for existing casino licenses and prospective sports wagering operators, if possible, with the recognition that established licensees had the advantage on moving forward more expediently. Executive Director Wells stated that the timing involved was why the notice of intent process was important, as the evaluation of 40 potential applicants would be very different than 5 potential applicants.

Commissioner Maynard stated that while the legislature provided for funding sources within the statutory framework within 23N, he wanted to ensure the IEB had sufficient staff and resources to perform the suitability and background checks for a higher number of potential applicants. Executive Director Wells reported that the staff had reviewed procurement from the statewide contract list to use investigators and CPA firms to assist in the checks. She stated that the Commission previously procured contracts for the investigation of casino licensees. Chair Judd Stein added that there was a wider field of interested prospective mobile sports wagering operators, and that the procurement of contractors to assist in the vetting process could sufficiently narrow down applicants to the top seven applicants. Executive Director Wells confirmed this point; adding that the Commission would require more knowledge about the universe of potential applicants prior to deciding.

8. [Commissioner Updates](#) (3:22:20)

a. Plan for Sports Wagering Roundtables with Licensees and Stakeholders

Chair Judd-Stein reported that the Commission would conduct a public roundtable to continue to discuss sports wagering legalization on August 18, 2022. She stated that potential applicants would join the Commission for this discussion, and that current licensees, PPC, MGM, EBH, Suffolk Downs, and Raynham Park were also invited.

Chair Judd-Stein stated that the Commissioners should be prepared to hear questions and sentiments regarding prioritization, consumer protection, regulatory controls, as well as security and operational issues. She stated that similar roundtables would be convened for additional categories of prospective sports wagering operators in future months. Communications Division Chief Tom Mills stated that he was working on a communications strategy for the roundtable, and that all materials were available on the website.

Chair Judd-Stein specified that the roundtables would be streamed publicly to ensure the licensees were able to present from remote areas if necessary, and that she would work with Executive Director Wells to identify issue areas for discussion. Chair Judd-Stein inquired what

time the roundtable would begin on August 18. Crystal Beauchemin, Chief Administrative Officer to the Chair, and Special Projects Manager, confirmed the roundtable would begin at 10 A.M.

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

Commissioner O'Brien moved to adjourn. 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. Meeting Adjourned.*

### **List of Documents and Other Items Used**

1. Notice of Meeting and Agenda dated August 8, 2022
2. [Meeting Packet](#) from the August 11, 2022, meeting (posted on massgaming.com)




---

## Massachusetts Gaming Commission Meeting Minutes

---

**Date/Time:** August 17, 2022, 11:00 a.m.  
**Place:** Massachusetts Gaming Commission  
 VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
 PARTICIPANT CODE: 111 490 2595

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](#) (00:00)

Chair Judd-Stein called to order the 388<sup>th</sup> Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

#### 2. [Review of Draft Application for License to Hold or Conduct a Racing Meeting for Future Applicants](#) (00:30)

Chair Judd-Stein began the meeting by stating that the draft application for a license to hold or conduct a racing meeting had previously been reviewed by the Commission in June, and the Commission had received public comments and oral commentary at a public hearing as well. The *Draft Application for License to Hold or Conduct a Racing Meeting for Future Applicants* was included in the Commissioner's Packet on pages 2 through 28, and the Public Comments received were also included in the Commissioner's Packet on pages 29 through 65.

Commissioner Skinner inquired as to whether the Commission had proposed changes to the application in response to the public comments. General Counsel Todd Grossman stated that the draft in the packet was the same draft application previously reviewed by the Commission,

however, he noted that comments had been considered for amendments but had yet to be incorporated into the final draft.

Commissioner O'Brien inquired if the application would require further changes in response to the recently passed sports wagering legislation. Commissioner Maynard and Commissioner Hill echoed Commissioner O'Brien's concerns regarding the provisions of the sports wagering legislation related to horse racing. Chair Judd-Stein assured Commissioners that the sports wagering bill and its impacts would be discussed later in the meeting, but asked that the Commission begin with discussion of comments received from the public.

Chair Judd-Stein reported that the Commission would begin with a public comment from Butters Brazilian, LLP on behalf of Commonwealth Investors LLC, which suggested several edits to the application. Commissioner Skinner noted that some of the comments fed into larger issues related to the implications of the language in the sports wagering act relative to simulcasting. Chair Judd-Stein agreed and stated that the sports wagering implications would be discussed later in the meeting.

Chair Judd-Stein presented the suggested edits in the public comments from Commonwealth Investors LLC. Commissioner Maynard stated that the current language relative to location was clear and sufficient. Chair Judd-Stein asked if there was a legal implication in changing "in calendar year" to "for calendar year" within the document. Commissioner O'Brien stated she believed the language choice would affect the ability of applicants to advocate for themselves in certain situations.

General Counsel Grossman stated the calendar year was not necessary in the current section, as it was addressed later in the application. He suggested removing the date from the first page to increase clarity and avoid confusion. Commissioner Maynard asked if there was a reason it was included on the first page within the initial draft. General Counsel Grossman stated that the draft application was modelled after the existing application and was likely a placeholder from an earlier iteration of the application.

Commissioner O'Brien suggested changing the date, to the date the application was submitted. General Counsel Grossman agreed and confirmed that Legal Division would produce a document for review that incorporated the comments and discussion from the meeting.

Deputy General Counsel Monahan explained that the Commission would have to decide what language would be utilized to discuss the surety bond, but that General Law Chapter 128A required that a surety bond be submitted with the completed horseracing application. She stated that the Commission had a regulation in place that allowed for the surety bond to be paid within thirty days of the license, and that the application could match the language of the regulation.

General Counsel Grossman explained that the purpose of the bond was for compliance with racing rules, and that no license shall be issued unless a surety bond was submitted within thirty



days. Director of Racing and Chief Veterinarian Dr. Alex Lightbown stated that if applicants were allowed to simulcast prior to live racing, then the bond should be required prior to simulcast operations, as well. Commissioner Skinner inquired if the line related to the bond was necessary. General Counsel Grossman stated that the best approach may be to reference the regulation within the application, and direct applicants there to review the timing and submission requirements associated with bond. Commissioner Skinner agreed.

Chair Judd-Stein explained that the sports wagering statute would have implications for the surety bond and inquired whether the surety bond should be paid up front. She added that she could not reconcile the statutory language with the regulatory language allowing for an additional thirty days. Commissioner O'Brien expressed concern that the regulation was inconsistent with the statutory language, as did Commissioner Maynard.

General Counsel Grossman stated the safest approach would be to require the bond as required by the statute. Chair Judd-Stein asked why the public comment from Commonwealth Investors LLC suggested deleting the description of the anticipated number of outlets for fresh drinking water. Dr. Lightbown agreed, stating that patrons in the gaming area have access to drinking fountains and was unsure why the deletion was suggested. Commissioner Hill asked if this provision was part of the original application. Dr. Lightbown stated that it was. Chair Judd-Stein stated that freshwater access was important.

Chair Judd-Stein suggested edits relative to the comments to integrate the two studies requested into a single study. Commissioner Skinner noted that the economic impact study was listed in two separate subsections, and suggested edits within the application to remove the redundancy. General Counsel Grossman stated that it was fair recommendation to combine the questions. General Counsel Grossman explained that the provision likely came from the RFA2 applications for potential gaming licensees. Commissioner O'Brien expressed an interest to further clarify the language. Commissioner Skinner stated that the questions should be identical so that there would not be a distinction between them.

Chair Judd-Stein expressed concern about whether the information submitted in an application would qualify for exemptions under the public records law. General Counsel Grossman stated that there was no specific language in G.L. c. 128A or G.L. c. 128C that exempts such information submitted in an application for a license, unlike the gaming and sports wagering legislation which included that language. He explained however, that public records law would need to be applied to all information received as part of the application, and all exemptions would have to be evaluated if the materials were ever requested. He stated that the privacy exemption would allow the Commission to withhold personal information from public dissemination, but not financial or entity information.

Chair Judd-Stein stated that the public records law applied to records in the Commission's custody, and that a practical solution could be to review documents in a portal without taking custody of the documents.

Commissioner O'Brien inquired whether the public records exemption from the sports wagering legislation would apply here, as applicants were applying for both horse racing and sports wagering licensure. General Counsel Grossman explained that it was not a combined application, however, and explained that in order to apply for a sports wagering license the applicant must first have a license under G.L. c. 128A.

Commissioner Skinner asked if the public records law defined whether viewing documents through a portal would constitute "custody" of the records, as the Chair had mentioned. Chair Judd-Stein explained that her understanding was that using a portal was a device that could work within the restrictions that it is used only for analysis. She stated that if the issue had to come before the Commission, then the portal suggestion would not work. General Counsel Grossman explained his opinion that once the Commission relied on information in making a decision that information becomes part of the public record regardless of how it is viewed, or accessed.

General Counsel Grossman noted that another public records exemption was the Investigatory Exemption. He explained that the exemption was temporary, and applies only while the matter is being investigated, and if the records request would affect the Commission's ability to complete their investigation.

Commissioner Maynard asked if current licensees had to provide similar information without exemptions from the public records law. General Counsel Grossman stated that Plainridge Park Casino ("PPC") was the only current racing licensee, and stated that this information was not part of their renewal application. He explained that as their track was operational, PPC would not require a feasibility study.

Chair Judd-Stein noted that a lot was exempt from the public records law under the privacy exemption and further inquired whether the Commission wanted to perform more suitability reviews for new applicants. General Counsel Grossman stated that a more thorough background check had been conducted for existing licensees, and that the initial suitability review was more rigorous than the review for a renewal of a license.

Chair Judd-Stein stated it would be helpful for the General Counsel to now update the Commission on the implications of the sports wagering legislation on horseracing licensees, both potential and existing. General Counsel Grossman explained that a category two sports wagering license permitted the operation of sports wagering on premises where live horseracing was conducted under G.L. c. 128A. He explained that if a holder of a license met the requirements of G.L. c. 23N, in addition to the rules and regulations required by the Commission, they would be eligible for a category two sports wagering license.

Chair Judd-Stein inquired whether there was a cap to the number of horse racing licenses that could be granted. General Counsel Grossman stated that there was no cap in G.L. c. 128A that stipulated the number of horse racing licenses.

General Counsel Grossman explained that the sports wagering legislation also amended G.L. c. 128C; changing the number of live-racing days required to simulcast. He stated that a thoroughbred racetrack would require not less than twenty live-racing days to simulcast, but that the Commission could waive this requirement. He noted that the requirement for simulcasting would not change for PPC, as they do standardbred racing which required 100 race days, as opposed to thoroughbred racing's twenty race day requirement.

General Counsel Grossman explained that the language in the sports wagering legislation that called for twenty live race days was intended to supplant the previous 100 race days requirement.

Deputy General Counsel Monahan stated that the provision lowering the number of race days required to simulcast would not go into effect for a year and would not apply to the 2023 applications. Chair Judd-Stein asked if the twenty race days should be interpreted as twenty days annually. General Counsel Grossman stated her interpretation was correct. Chair Judd-Stein asked how this change would alter the application. General Counsel Grossman stated that if a horse racing license was awarded under G.L. c. 128A in the next few months the applicant likely could not request a license to simulcast within the next year.

General Counsel Grossman noted that the application applied to both thoroughbred and standardbred racing, and existing language should not be removed for that reason. He suggested supplementing the language in the application with the new language in G.L. c. 128C, § 9.

Chair Judd-Stein asked if the application should include the trigger date in which the law takes effect. General Counsel Grossman stated that it was important to include language that the law does not go into effect for a year, and that the Commission should not if race days are less than 100. Chair Judd-Stein asked if the race-day requirements were only connected to simulcasting. Dr. Lightbown stated that the number of race-days affects the licensees' ability to have simulcasting, and that it is not financially viable for a racetrack to not offer simulcasting in addition to live racing. Chair Judd-Stein asked if it was required by statute for the licensees to have simulcasting. Dr. Lightbown replied that simulcasting was not required, but desired by licensees.

Commissioner Skinner raised the issue that the timing of the application of the change in law related to the question of whether the Commission could grant licenses for future racing seasons and asked whether the Commission could consider an application for a new track that would not be operational for at least a year under the newly worded statute. Commissioner Maynard stated that he would like to include the date where the new law goes into effect in the application. Commissioner O'Brien noted that it was dependent upon whether the Commission interpreted the statute to allow applicants for future years beyond the next calendar year.

Chair Judd-Stein asked that the Commission turn to the remaining public comments. She presented the public comments from New England United for Justice and the Massachusetts

Building Trade Union which suggested including objectives such as labor harmony and project labor agreements (“PLAs”), which were used during casino construction. General Counsel Grossman stated that 18 criteria were incorporated into the RFA2 application, but there was not language in G.L. c. 128A or G.L. c. 128C that required these labor agreements. However, he noted that G.L. Chapter 128A gave the Commission broad discretion and flexibility to include questions on the application.

Chair Judd-Stein asked if the \$7.5 million capital investment applied only to the proposed track and amenities. Commissioner Maynard stated that he read the statute as requiring a minimum of a \$7.5 million investment within three years of receiving a sports wagering license. Commissioner O’Brien noted she was impressed by the success of the construction phase of the casino, and requested similar language be applicable to horse racing licensees.

Chief Administrative Officer to the Chair and Special Projects Manager Crystal Beauchemin stated that the section six of the application related to public interest included employing a diverse workforce, and a question related to PLAs or labor harmony could be included in section six. Chair Judd-Stein inquired whether casinos had entered PLAs for their developments. Ms. Beauchemin stated that PLAs were discussed in the Access and Opportunity Committee meetings, and that the committee tracked workforce and union agreements during the development and construction of casinos. She stated that PLAs were in place either prior to development or soon after.

The Commission reached unanimous consensus about adding language related to PLAs and labor harmony to the application. Commissioner Skinner suggested broader language encompassing a comment that mentioned community transparency and holding applicants accountable for promises they made to the communities in furtherance of gaining a license. Chair Judd-Stein stated that could be added as another section within the attestations required of applicants. Commissioner Maynard supported adding the additional language and voiced desire to consider factors such as diversity standards. The Commission reached unanimous consensus to add a section in section six related to applicants promises made to communities.

Chair Judd-Stein asked if licensees were required to report to the Commission during construction. Ms. Beauchemin explained that casino licensees were required to report their progress on a quarterly basis, but they had met with the Commission monthly for further access and opportunity. She stated that sports wagering could be modeled after the casino system.

Chair Judd-Stein presented the public comment from Paul Umbrello as the Executive Director of the New England Horsemen’s Benevolent and Protective Association. Mr. Umbrello suggested that section 5.9 be broken down by category for clarity. Commissioner O’Brien agreed that this edit would make the document more clarified. Chair Judd-Stein stated that the discussion regarding race-days had addressed Mr. Umbrello’s concerns within section eight. Commissioner O’Brien suggested edits to also address his concerns related to purse agreements.

Commissioner Skinner sought context regarding the changes to purse agreements. Dr. Lightbown explained that tracks and horsemen may not have purse agreements in place at the time of the application, but the racetrack would not lose simulcast rights as long as the track and horsemen were working towards a purse agreement in good faith.

Commissioner Skinner asked if the restrictions to race days related to the purse agreement referred to licensing limitations and restrictions. Dr. Lightbown stated that the public comment was submitted prior to the sports wagering bill specifying twenty race-days. Commissioner O'Brien asked if the comment regarding purse agreements should be taken into consideration, but not as a substitute for a statutory minimum of race-days.

Chair Judd-Stein stated that some of the public comments pertained to a potential applicant and were not relevant to today's review of the general application. Commissioner Hill agreed that the comments were not pertinent as they did not address any portion of the application's proposal. Commissioner O'Brien, Commissioner Skinner, and Commissioner Maynard agreed.

Chair Judd-Stein asked whether the application should include language pertaining to the anticipated spectator number- in addition to seating capacity. Dr. Lightbown stated that applicants, may provide an estimate that is closer to the median number of spectators they anticipate at the property. Chair Judd-Stein stated that the seating capacity should reflect the largest number of spectators, and if that was the case the Commission, did not need to ask about anticipated spectators.

Chair Judd-Stein requested edits to the section numbers on the draft application to provide clarity on where section three began. Commissioner O'Brien suggested additional language related to financing and construction plans if the applicant was not ready to race by the next year. General Counsel Grossman stated that a question existed related to the proposed construction timeline, and that Commissioner O'Brien's concerns were captured within the application.

General Counsel Grossman suggested the inclusion of a question regarding the local authority vote, and when it would be received- if it had not been by the time of the application. He explained that local authority approval by the county, selectman, and mayor were prerequisites to being granted a license under G.L. c. 128A. He explained that the Legal Division thought it wise to clarify that local approval must occur prior to the license being awarded.

Chair Judd-Stein offered a suggestion that language be included to more broadly request information related to the types of permits the applicant requires for the development. General Counsel Grossman stated that generally the applicants identified the permits. Commissioner O'Brien noted that the application only listed the city council, town council and mayoral approval required, but not the permits. Deputy General Counsel Monahan stated that the statute did not require that information, but the Commission had the discretion to ask any questions of applicants during the application process.

Commissioner Hill asked if the Commission had the authority to circumvent the vote of a board of selectmen. Deputy General Counsel Monahan stated that the Commission did not have that authority. Commissioner Skinner asked whether the Commission could require local approval prior to the submission of the application. General Counsel Grossman stated that approval had to occur prior to the Commission awarding the license, but in recognition of the submission deadline flexibility was built in for when local approval could occur. Commissioner Skinner asked whether the deadline was the same for new applications and renewal applications. General Counsel Grossman confirmed that the applications had the same deadline.

Commissioner Maynard suggested including language in the application asking whether the applicant had ever been denied local approval on this project. Deputy General Counsel Monahan stated that it could be included in the application. Commissioner Skinner suggested language requesting when the applicant expected to receive local approval if they did not already have it. Commissioner O'Brien suggested a question about when the local approval vote is scheduled.

Chair Judd-Stein noted that in the prior year an applicant had relied upon an old county approval. Commissioner O'Brien suggested adding language that the applicant avers to their knowledge that a county approval vote had not been superseded at a later point. General Counsel Grossman stated that local votes should be recent, as they are specific to the project.

Commissioner Skinner offered edits to section 4.4 to clarify that the specific approvals were the ones referenced in the subsection and that they are prerequisites. General Counsel Grossman explained that statute and caselaw were clear that the Commission can require a suitability review prior to awarding a license, but gave no direction as to what that process entails. He stated that gaming's suitability review was effective, and asked Commissioners whether the same approach should be used for entities and qualifiers. He stated that if the same forms from gaming were not used, additional questions related to suitability would have to be added to the application.

Chair Judd-Stein stated that if an applicant received a horse racing license, they would be eligible for a category two sports wagering license, and that there is no a cap on the amount of category two licenses. She stated that the application should ask if the applicant plans to pursue a sports wagering license, so that the full suitability would not have to be performed twice- for both horse racing and sports wagering. The Commission reached a consensus in support of this idea. General Counsel Grossman stated that there may be issues with the timing of suitability and the timing of the horse racing application by statute.

Deputy General Counsel Monahan inquired Commissioner's thoughts if a horse racing applicant could apply for a sports wagering license during their construction period. Commissioner O'Brien stated that while the license may be effective, the applicant cannot launch until they receive an operations certificate, and that she believed sports wagering was attached to operations. Chair Judd-Stein expressed an interest in having applicants undergo full suitability to the sports wagering standard if they intended to apply for a sports wagering license. General

Counsel Grossman stated it made sense to not have the applicants resubmit their documents if they had submitted them for a sports wagering review under G.L. c. 23N accordingly.

General Counselor Grossman stated that a public comment suggested language be added to the application identifying how the applicant would provide welfare and aftercare for the horses on site. He stated that the language related to animal treatment and medicines administered was covered by existing regulations, and would support the language being added to the document. Commissioner Hill expressed an interest in including the language in the application. Chair Judd-Stein and Commissioner Maynard agreed. General Counsel Grossman stated that it would be added to the end of section seven.

Commissioner Hill asked when the finished draft application would return to the Commission with the edits discussed in today's meeting. The Commission discussed when there would be adequate time to review the application and added it to the agenda for the September 12, 2022 public meeting.

### 3. [Other Business](#) (3:10:39)

Hearing no further business, Chair Judd-Stein requested a motion to adjourn.

Commissioner O'Brien moved to adjourn. 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.*

### **List of Documents and Other Items Used**

1. Notice of Meeting and Agenda dated August 11, 2022
2. [Commissioner's Packet](#) from the August 17, 2022, meeting (posted on massgaming.com)





## MASSACHUSETTS GAMING COMMISSION

---

### MEMORANDUM

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

**From:** Karen Wells, Executive Director and Derek Lennon, CFAO

**Date:** 2/9/2023

**Re:** Fiscal Year 2023 (FY23) Second Budget Update

---

#### Summary:

After the first quarterly update, the approved FY23 budget for the Gaming Control Fund was \$35.97M, composed of \$29.61M in regulatory costs and \$6.36M in statutorily required costs. The Gaming Control Fund required an initial assessment of \$29.3M on licensees. After balancing forward \$1.84M from FY22 and correcting for an over statement of revenue estimates of \$1.2M, the assessment is reduced to \$29.88M.

This quarterly update, staff is recommending increasing the Gaming Control Fund by a total of \$50.77K. The increase is for invoices for the independent monitor received and paid in the second quarter. The independent monitor expense is revenue neutral so we are also increasing revenue estimates by \$50.77K. In previous meetings, the Commission approved 5 additional FTEs for the IT division. Those additional positions do not require an increase to the Gaming Control Fund Budget as we have experienced substantial turnover and delays in hiring previously vacant IT positions. While the assessment is not changing, this memorandum also recommends adjustments to each licensee's share of the second half of the FY22 Gaming Control Fund assessment and the assessment to the Public Health Trust Fund, based on revised gaming position counts as of January 1, 2023.

In a public meeting on 9/8/2022 the Commission approved a preliminary budget for the Sports Wagering Control Fund of \$2.193M, composed of 12: FTEs, contracted investigator positions, outside counsel, and CPA consultants. At a subsequent meeting, the Research and Responsible Gaming Division requested approval to move forward with a \$150K RFR for a statutorily required study, as well as \$60K for enhancements to the VSE database. These approvals increased the Sports Wagering Control Fund's approved level to \$2.42M. In this quarterly update, we are recommending additional increases of \$2.32M which would bring the total FY23 projected budget for sports wagering to \$4.74M. The MGC received \$3.2M in initial background investigation fees from applicants. ~\$2.54M of the anticipated FY23 Sports Wagering Control Fund budget would be funded by the fees, and the remaining ~\$2.2M would be assessed on the sports wagering licensees.

#### Gaming Control Fund

##### *Spending Update:*

The costs of the independent monitor were not included in the FY23 budget, as that item is revenue neutral (each dollar of expense is offset by a corresponding dollar of revenue). We are increasing the spending projection by \$50.77K for the independent monitor bills paid between 10/1/2022 and 12/31/2022. We are increasing the revenue projection by that same amount.



Massachusetts Gaming Commission

In a public meeting on January 4, 2023, the Commission approved the addition of 5 new FTEs for the Information Technology Division. Allocated to gaming were 3.5 of the new FTEs. We have experienced high turnover, as well as lag in filling vacant positions, in FY23. The combination of turnover and difficulty filling vacant positions has resulted in those new positions being funded from the current budget, without the need for additional requests in funding. We are not recommending an increase to the assessment for the payroll and fringe associated with these approved positions.

The Commission approved the FY23 budget with the bare minimum set aside for litigation costs, as required by our insurance policy, as well as a flat funding level for GEU OT. As of this second update, both of those funding levels are sufficient. However, we will continue to closely monitor these items in future updates.

**Revenue Update:**

The FY23 Budget for the Gaming Control Fund relies on fees from licensing and slot machines, as well as an assessment to maintain regulatory oversight of the gaming operations. We are increasing revenue projections for the gaming control fund by \$50.77K, to recognize the independent monitor revenue that will offset the costs incurred in the second quarter.

**Assessments on Licensees:**

205 CMR 121.00 describes how the Commission shall assess its operational costs on casino licensees, including: any increases or decreases that are the result of over or under spending. 205 CMR 121.05, paragraph (2) specifically states:

“(2) In the event that actual revenues exceed actual costs for a given fiscal year, the commission, in its sole discretion may either return any excess revenue (Excess Assessment) in the same manner in which Excess Assessment was assessed or the commission may credit such Excess Assessment to the Annual Assessment due for the next fiscal year.”

The Commission has determined that once a year, on or about January 1, it will revise the number of gaming positions utilized for determining a licensee’s proportional share of the assessment and use that percentage for the billing of the second half of the annual assessment. The tables below show reported gaming positions at each facility on July 1, 2022, as well as January 1, 2023. The change in gaming positions impacts each licensee’s proportional share of the second half assessment. The tables below illustrate each licensee’s anticipated assessments for both the Gaming Control Fund and the Public Health Trust Fund for FY23:

<b>FY23 Initial Assessment</b>	31,723,901.07
<b>1/2 of Assessment</b>	15,861,950.54
<b>Less FY22 Surplus</b>	1,838,369.20
<b>Revised First 1/2 Assessment</b>	14,023,581.34
<b>Second Half Assessment</b>	15,861,950.54
<b>FY23 Revised Assessment</b>	29,885,531.87

FY23 Gaming Positions 7/1/2022 for First Half Year Assessment					
Licensee	Slot Machines	Table Games	Table Gaming Positions	Total Gaming Positions	Percentage of Gaming Positions
MGM	1,521	42	261	1,782	26.22%
Encore	2,661	253	1,404	4,065	59.81%
PPC	904			950	13.98%
<b>TOTAL</b>	<b>5,086</b>	<b>295</b>	<b>1,665</b>	<b>6,797</b>	<b>100.00%</b>



Massachusetts Gaming Commission

FY23 Gaming Positions 1/1/2023 for Second Half Year Assessment					
Licensee	Slot Machines	Table Games	Table Gaming Positions	Total Gaming Positions	Percentage of Gaming Positions
MGM	1,509	56	388	1,897	27.80%
Encore	2,432	261	1,561	3,993	58.51%
PPC	894			934	13.69%
<b>TOTAL</b>	<b>4,835</b>	<b>317</b>	<b>1,949</b>	<b>6,824</b>	<b>100.00%</b>

Licensee	FY23 1st Half Year % of Assessment	FY23 1st Half Year Assessment	FY22 Surplus	FY23 Revised First Half Assessment	FY23 2nd Half Year % of Assessment	FY23 2nd Half Year Assessment	FY23 Total Assessment
MGM	26.22%	4,158,598.77	549,889.86	3,608,708.91	27.80%	4,409,454.89	8,018,163.80
Encore	59.81%	9,486,365.89	1,040,076.62	8,446,289.27	58.51%	9,281,472.52	17,727,761.79
PPC	13.98%	2,216,985.88	248,402.72	1,968,583.16	13.69%	2,171,023.12	4,139,606.28
<b>Total</b>	<b>100.00%</b>	<b>15,861,950.54</b>	<b>1,838,369.20</b>	<b>14,023,581.34</b>	<b>100.00%</b>	<b>15,861,950.54</b>	<b>29,885,531.87</b>

Licensee	FY23 1st Half Year % of Assessment	FY23 1st Half Year Assessment	FY23 2nd Half Year % of Assessment	FY23 2nd Half Year Assessment	FY23 Total PHTF
MGM	26.22%	655,436.22	27.80%	694,973.62	1,350,409.84
Encore	59.81%	1,495,144.92	58.51%	1,462,851.70	2,957,996.62
PPC	13.98%	349,418.86	13.69%	342,174.68	691,593.54
<b>Total</b>	<b>100.00%</b>	<b>2,500,000.00</b>	<b>100.00%</b>	<b>2,500,000.00</b>	<b>5,000,000.00</b>

## Sports Wagering Control Fund

### Spending Update:

The Commission approved an initial budget for the sports wagering control fund of \$2.193M, in a public meeting in September. In a subsequent meeting, the Commission approved an additional \$210K in costs for updates to the VSE database, as well as \$150K for a statutorily required study on sports wagering kiosks, thus raising the approved sports wagering budget to \$2.4M. In this second quarterly update we are requesting an additional \$2.32M as detailed in the table below:



Massachusetts Gaming Commission

Object Class	Description	Approved Amount	Adjustment	Revised Amount	Revision Notes
AA	Salaries	794,970.77	-	794,970.77	Added 4 FTEs (.5 of an HR Business Partner, .5 of a Gaming Technical Compliance Position, 1 Sports Wagering Systems Analyst, 1 Administrative Assistant and 1 Paralegal) No change in funding needed as there were delays in hiring the originally approved 12 FTEs.
CC	Contracted Civilian Investigators	393,600.00	-	393,600.00	No Change
DD	Fringe and Payroll Taxes	336,002.01	-	336,002.01	No Change
EE	Commonwealth Indirect Costs	189,857.08	211,210.00	401,067.08	10% of additional HH and UU adjustments.
HH	Outside Counsel	200,000.00	650,000.00	850,000.00	Assistance in drafting regulations and policies for sports wagering implementation.
HH	CPA Consultants	300,000.00	700,000.00	1,000,000.00	Contracted assistance for full financial suitability review. This is an estimate
HH	Kiosk Study	150,000.00	-	150,000.00	Statutorily Required Study
HH	Application Review Consultant	-	230,000.00	230,000.00	Indexing of Category 3 untethered applications
UU	GLI Consulting	-	135,000.00	135,000.00	On-going consulting for first year of sports wagering
UU	GLI Training	-	25,000.00	25,000.00	One-time training for sports wagering operations
UU	GLI IC Review	-	360,000.00	360,000.00	GLI review of applicants submitted system of internal controls (\$22.5K/applicant)
UU	VSE Database	60,000.00	-	60,000.00	Update to current database to incorporate Sports Wagering
UU	VSE Database Licenses	-	12,100.00	12,100.00	Additional 100 licenses for sports wagering licensees.
<b>FY23 Sports Wagering Estimate</b>		<b>2,424,429.86</b>	<b>2,323,310.00</b>	<b>4,747,739.86</b>	

#### *Revenue Update:*

The FY23 Budget for the Sports Wagering Control Fund relies on fees from initial suitability reviews and an assessment to maintain regulatory oversight of the sports wagering operations. We received \$3.2M in initial application fees for suitability reviews. Any costs associated with standing up the sports wagering regulatory environment, suitability reviews, and application reviews prior to the licensing of operators, was funded from the initial application fees. Any on-going reviews for full suitability will be funded from the initial fees, as well as any costs that exceed the initial \$200K deposit, will be funded from the specific licensees. Any costs moving forward that are not a part of the suitability of applicants will be funded from the assessment.

#### *Assessments on Licensees:*

205 CMR 221.00 describes how the Commission shall assess its operational costs on Sports Wagering licensees, including: any increases or decreases that are the result of over or under spending. 205 CMR 221.01, paragraph 4(a) specifically states:

- (a) An Annual Assessment as provided by M.G.L. c. 23N, § 15(c), to be determined by the Commission and calculated in accordance with M.G.L. c. 23N, § 15(c) to cover costs of the Commission necessary to maintain control over Sports Wagering, in proportion to each licensees' actual or projected Adjusted Gross Sports Wagering receipts; provided, however, that such assessment may be adjusted by the Commission at any time after payment is made where required to reflect the actual Adjusted Gross Sports Wagering Receipts, and accordingly, the payment of additional funds may be required or a credit may be issued towards the payment due the following year;



Massachusetts Gaming Commission

For the purposes of this first assessment, we will be using licensees projected revenue for determining each licensee’s proportional share of the FY23 assessment for the sports wagering control fund. To determine the amount of the Sports Wagering Control Fund that will be assessed on licensees, we have developed the following table:

Object Class	Description	Revised Amount	Subject to Licensing Suitability Fees	Subject to Annual Assessment	Total
AA	Salaries	794,970.77	-	794,970.77	794,970.77
CC	Contracted Civilian Investigators	393,600.00	393,600.00	-	393,600.00
DD	Fringe and Payroll Taxes	336,002.01	-	336,002.01	336,002.01
EE	Commonwealth Indirect Costs	401,067.08	228,298.75	172,768.33	401,067.08
HH	Outside Counsel	850,000.00	229,387.50	620,612.50	850,000.00
HH	CPA Consultants	1,000,000.00	1,000,000.00	-	1,000,000.00
HH	Kiosk Study	150,000.00	-	150,000.00	150,000.00
HH	Application Review Consultant	230,000.00	230,000.00	-	230,000.00
UU	GLI Consulting	135,000.00	45,000.00	90,000.00	135,000.00
UU	GLI Training	25,000.00	25,000.00	-	25,000.00
UU	GLI IC Review	360,000.00	360,000.00	-	360,000.00
UU	VSE Database	60,000.00	-	60,000.00	60,000.00
UU	VSE Database Licenses	12,100.00	-	12,100.00	12,100.00
<b>FY23 Sports Wagering Estimate</b>		<b>4,747,739.86</b>	<b>2,511,286.25</b>	<b>2,236,453.61</b>	<b>4,747,739.86</b>

As noted on the table above, the Commission would assess ~\$2.236M on sports wagering licensees in accordance with 205 CMR 221.01, paragraph (4), based on the licensees anticipated revenues as reported to the Commission in the applications for a sports wagering license. Below is a breakout of each licensee’s share of the assessment, which we will bill upon approval by the Commission of this material.

Applicant	Percent of Assessment Based on Estimate	Sports Wagering Control Fund Assessment
Bally's		
Betfair (FanDuel)		
Betr		
Crown MA (DraftKings)		
Digital Gaming Corp		
PointsBet MA		
AWI (Caesars)		
BetMGM		
FBG (Fanatics)		
PSI (PENN)		
WSI (Wynn)		
<b>Total</b>	<b>100.0%</b>	<b>2,236,453.61</b>

In addition to the assessment on licensees for the sports wagering control fund, there is a statutorily required assessment on sports wagering licensees for the Public Health Trust Fund (PHTF). 205 CMR 221.01, paragraph 4(b) specifically states:



Massachusetts Gaming Commission

- (b) An annual fee, as provided by M.G.L. c. 23N, § 15(e) reflecting each Operator that is not a Category 1 Sports Wagering Licensee's share of \$1,000,000 to be deposited into the Public Health Trust Fund; provided, however, that the Commission shall determine each Operator's share as their proportional share of anticipated or actual Adjusted Gross Sports Wagering Receipts; provided further, however, that such assessment may be adjusted by the Commission at any time after payment is made where required to reflect the actual adjusted gross sports wagering revenue;

Based on the above regulatory requirements, we will use the licensees anticipated revenues, as reported to the Commission in the applications for a sports wagering license, to determine each licensee's proportional share of the annual \$1M deposit to the Public Health Trust Fund.

Applicant	Percent of Assessment Based on Estimate	Public Health Trust Fund Assessment
Bally's		
Betfair (FanDuel)		
Betr		
Crown MA (DraftKings)		
Digital Gaming Corp		
PointsBet MA		
AWI (Caesars)		
BetMGM		
FBG (Fanatics)		
PSI (PENN)		
WSI (Wynn)		
<b>Total</b>	<b>100.0%</b>	<b>1,000,000.00</b>

Attachment A to this document shows the initial budgets, actual spending, and revenue for all accounts under the control of the MGC for the second quarter of FY23, as well as the recommended adjustments contained in this memorandum.

**Conclusion:**

We recommend increasing the Gaming Control Fund spending and revenue projections by \$50.77K for the independent monitor actual. We will continue to monitor all spending and revenue activity with attention to litigation costs, GEU overtime costs, and payroll turnover savings. We also recommend adjusting the assessments on gaming licensees, based on the revised gaming position accounts as of January 1, 2023, as included in the packet.

We are seeking approval to increase the sports wagering control fund budget to \$4.747M and assessing \$2.236M of that on MA licensed sports wagering operators. We also seek approval of the \$1M statutorily required assessment to the PHTF on licensed sports wagering operators as contained in this memorandum.

Attachment A: FY23 Actuals Spending and Revenue as of 1/1/2023.





2023		Budget Projections			Current Budget		Actuals To Date		% BFY	
Row Labels	Initial Projection	Approved Adjustments	Proposed Adjustments	(Initial+Apv'd Adjmts)	Total	%Spent	Passed			
<b>10500001--Gaming Control Fund</b>										
<b>MGC Regulatory Cost</b>										
AA REGULAR EMPLOYEE COMPENSATION	\$ 7,982,768.03	\$ 127,623.77	\$ -	\$ 8,110,391.80	\$ 4,078,616.71	50%	50%			
BB REGULAR EMPLOYEE RELATED EXPEN	\$ 81,197.00	\$ -	\$ -	\$ 81,197.00	\$ 8,721.80	11%	50%			
CC SPECIAL EMPLOYEES	\$ 248,022.52	\$ -	\$ -	\$ 248,022.52	\$ 129,452.33	52%	50%			
DD PENSION & INSURANCE RELATED EX	\$ 3,198,108.43	\$ 53,461.60	\$ -	\$ 3,251,570.03	\$ 1,524,056.37	47%	50%			
EE ADMINISTRATIVE EXPENSES	\$ 634,974.92	\$ -	\$ -	\$ 634,974.92	\$ 170,368.38	27%	50%			
FF PROGRAM, FACILITY, OPERATIONAL SUPPLIES	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00	\$ 4,651.03	23%	50%			
GG ENERGY COSTS AND SPACE RENTAL	\$ 1,347,958.08	\$ -	\$ -	\$ 1,347,958.08	\$ 676,981.56	50%	50%			
HH CONSULTANT SVCS (TO DEPTS)	\$ 818,500.00	\$ 32,608.40	\$ 50,771.80	\$ 901,880.20	\$ 320,994.88	36%	50%			
JJ OPERATIONAL SERVICES	\$ 10,510,400.56	\$ -	\$ -	\$ 10,510,400.56	\$ 2,126,380.12	20%	50%			
KK Equipment Purchase	\$ 62,000.00	\$ -	\$ -	\$ 62,000.00	\$ 947.37	2%	50%			
LL EQUIPMENT LEASE-MAINTAIN/REPAR	\$ 41,707.90	\$ -	\$ -	\$ 41,707.90	\$ 9,885.08	24%	50%			
NN NON-MAJOR FACILITY MAINTENANCE REPAIR	\$ 25,000.00	\$ -	\$ -	\$ 25,000.00	\$ 667.10	3%	50%			
PP STATE AID/POL SUB/OSD	\$ 150,000.00	\$ -	\$ -	\$ 150,000.00	\$ -	0%	50%			
TT PAYMENTS & REFUNDS	\$ -	\$ -	\$ -	\$ -	\$ 107,034.87		50%			
UU IT Non-Payroll Expenses	\$ 4,222,914.03	\$ -	\$ -	\$ 4,222,914.03	\$ 1,836,860.80	43%	50%			
<b>MGC Regulatory Cost Subtotal:</b>	<b>\$ 29,343,551.47</b>	<b>\$ 213,693.77</b>	<b>\$ 50,771.80</b>	<b>\$ 29,608,017.04</b>	<b>\$ 10,995,618.40</b>	<b>37%</b>	<b>50%</b>			
<b>EE--Indirect Costs</b>	<b>\$ 2,419,852.48</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 2,419,852.48</b>	<b>\$ 742,684.19</b>	<b>31%</b>	<b>50%</b>			
<b>Office of Attorney General</b>										
ISA to AGO	\$ 2,927,384.00	\$ -	\$ -	\$ 2,927,384.00	\$ 1,040,755.52	36%	50%			
TT Reimbursement for AGO 0810-1024	\$ -	\$ -	\$ -	\$ -	\$ -					
AGO State Police	\$ 939,113.12	\$ -	\$ -	\$ 939,113.12	\$ 134,692.50	14%	50%			
<b>Office of Attorney General Subtotal:</b>	<b>\$ 3,866,497.12</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 3,866,497.12</b>	<b>\$ 1,175,448.02</b>	<b>30%</b>	<b>50%</b>			
<b>ISA to ABCC</b>	<b>\$ 75,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 75,000.00</b>	<b>\$ -</b>	<b>0%</b>	<b>50%</b>			
<b>Gaming Control Fund Total Costs</b>	<b>\$ 35,704,901.07</b>	<b>\$ 213,693.77</b>	<b>\$ 50,771.80</b>	<b>\$ 35,969,366.64</b>	<b>\$ 12,913,750.61</b>	<b>36%</b>	<b>50%</b>			
<b>Revenue Projections</b>										
Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apv'd Adjmts)	Actuals To Date Total					
Gaming Control Fund Beginning Balance 0500	\$ -	\$ 1,437,053.08	\$ -	\$ 1,437,053.08	\$ 1,437,053.08					
EBH Security fees 0500/Independent Monitor	\$ 1,200,000.00	\$ (1,167,391.60)	\$ 50,771.80	\$ 83,380.20	\$ 83,380.20					
Category/Region Collection Fees 0500	\$ -	\$ -	\$ -	\$ -	\$ -					
Prior Year Independent Monitory Fees 500	\$ -	\$ 401,316.12	\$ -	\$ 401,316.12	\$ 401,316.09					
<b>IEB background / investigative collections 0500</b>	<b>\$ 125,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 125,000.00</b>	<b>\$ 145,348.49</b>					
Phase 1 Refunds 0500	\$ -	\$ -	\$ -	\$ -	\$ -					
Phase 2 Category 1 Collections (restricted) 0500	\$ -	\$ -	\$ -	\$ -	\$ -					
Region C Phase 1 Investigation Collections 0500	\$ -	\$ -	\$ -	\$ -	\$ -					
Region C Phase 2 Category 1 Collections 0500	\$ -	\$ -	\$ -	\$ -	\$ -					
Grant Collections (restricted) 0500	\$ -	\$ -	\$ -	\$ -	\$ -					
Region A slot Machine Fee 0500	\$ 1,596,600.00	\$ -	\$ -	\$ 1,596,600.00	\$ 1,650,000.00					
Region B Slot Machine Fee 0500	\$ 912,600.00	\$ -	\$ -	\$ 912,600.00	\$ 930,000.00					
Slots Parlor Slot Machine Fee 0500	\$ 542,400.00	\$ -	\$ -	\$ 542,400.00	\$ 615,000.00					
Gaming Employee License Fees (GEL) 3000	\$ 300,000.00	\$ -	\$ -	\$ 300,000.00	\$ 109,800.00					
Key Gaming Executive (GKE) 3000	\$ 10,000.00	\$ -	\$ -	\$ 10,000.00	\$ 3,000.00					
Key Gaming Employee (GKS) 3000	\$ 50,000.00	\$ -	\$ -	\$ 50,000.00	\$ 41,000.00					
Non-Gaming Vendor (NGV) 3000	\$ 50,000.00	\$ -	\$ -	\$ 50,000.00	\$ 10,600.00					
Vendor Gaming Primary (VGP) 3000	\$ 225,000.00	\$ -	\$ -	\$ 225,000.00	\$ -					
Vendor Gaming Secondary (VGS) 3000	\$ 15,000.00	\$ -	\$ -	\$ 15,000.00	\$ 10,000.00					
Gaming School License (GSB)/LIQ	\$ 15,000.00	\$ -	\$ -	\$ 15,000.00	\$ -					
Gaming Service Employee License (SER) 3000	\$ 75,000.00	\$ -	\$ -	\$ 75,000.00	\$ 15,637.50					
Subcontractor ID Initial License (SUB) 3000	\$ 15,000.00	\$ -	\$ -	\$ 15,000.00	\$ -					
Temporary License Initial License (TEM) 3000	\$ 10,000.00	\$ -	\$ -	\$ 10,000.00	\$ -					
Assessment for PHTF	\$ 5,000,000.00	\$ -	\$ -	\$ 5,000,000.00	\$ -					
Tranfer PHTF Assessment to PHTF	\$ (5,000,000.00)	\$ -	\$ -	\$ (5,000,000.00)	\$ -					
Veterans Initial License (VET) 3000	\$ -	\$ -	\$ -	\$ -	\$ -					
Transfer of Licensing Fees to CMF 0500	\$ -	\$ -	\$ -	\$ -	\$ -					
Assessment 0500	\$ 30,523,901.07	\$ (638,369.20)	\$ -	\$ 29,885,531.87	\$ 15,118,550.50					
Misc/MCC Grant	\$ 25,000.00	\$ -	\$ -	\$ 25,000.00	\$ -					
Miscellaneous 0500	\$ 11,000.00	\$ -	\$ -	\$ 11,000.00	\$ -					
Bank Interest 2700	\$ 3,400.00	\$ -	\$ -	\$ 3,400.00	\$ 2,013.39					
<b>Grand Total</b>	<b>\$ 35,704,901.07</b>	<b>\$ 32,608.40</b>	<b>\$ 50,771.80</b>	<b>\$ 35,788,281.27</b>	<b>\$ 20,572,699.25</b>					
<b>2023 Budget Projections</b>										



Row Labels	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
<b>4000-1101 Research and Responsible Gaming/Public Health Trust Fund</b>							
AA REGULAR EMPLOYEE COMPENSATION	\$ 313,023.39	\$ -	\$ -	\$ 313,023.39	\$ 119,014.16	38%	50%
BB REGULAR EMPLOYEE RELATED EXPEN	\$ 7,250.00	\$ -	\$ -	\$ 7,250.00	\$ 2,705.18	37%	50%
CC SPECIAL EMPLOYEES	\$ -	\$ -	\$ -	\$ -	\$ -	0%	50%
DD PENSION & INSURANCE RELATED EX	\$ 131,125.50	\$ -	\$ -	\$ 131,125.50	\$ 44,663.78	34%	50%
EE ADMINISTRATIVE EXPENSES	\$ 352,602.34	\$ -	\$ -	\$ 352,602.34	\$ 143,328.74	41%	50%
FF PROGRAMMATIC FACILITY OPERATONAL SUPPLIES	\$ -	\$ -	\$ -	\$ -	\$ -	0%	50%
HH CONSULTANT SVCS (TO DEPTS)	\$ 3,051,775.00	\$ -	\$ -	\$ 3,051,775.00	\$ 1,240,093.41	41%	50%
JJ OPERATIONAL SERVICES	\$ 10,000.00	\$ -	\$ -	\$ 10,000.00	\$ -	0%	50%
MM PURCHASED CLIENT/PROGRAM SVCS	\$ -	\$ -	\$ -	\$ -	\$ -	0%	50%
PP STATE AID/POL SUB	\$ 1,360,000.00	\$ -	\$ -	\$ 1,360,000.00	\$ 214,108.12	16%	50%
UU IT Non-Payroll Expenses	\$ 2,000.00	\$ -	\$ -	\$ 2,000.00	\$ -	0%	50%
ISA to DPH	\$ 39,225.00	\$ -	\$ -	\$ 39,225.00	\$ -	0%	50%
<b>Research and Responsible Gaming/Public Health Trust Fund Subtotal:</b>	<b>\$ 5,267,001.23</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 5,267,001.23</b>	<b>\$ 1,763,913.39</b>	<b>33%</b>	<b>50%</b>

Revenue Projections							
Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
Public Health Trust Fund ISA	\$ 5,267,001.23	\$ -	\$ -	\$ 5,267,001.23			

Row Labels	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
<b>10500002</b>							
TT LOANS AND SPECIAL PAYMENTS	\$ -	\$ -	\$ -	\$ -			50%
Revenue Projections							
Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
Greyhound Balance Forward Simulcast 7200	\$ -	\$ -	\$ -	\$ -	\$ 685,532.32		
Plainridge Greyhound Import Simulcast 7200	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00	\$ 9,954.63		
Raynham Greyhound Import Simulcast 7200	\$ 50,000.00	\$ -	\$ -	\$ 50,000.00	\$ 24,085.10		
Suffolk Greyhound Import Simulcast 7200	\$ 15,000.00	\$ -	\$ -	\$ 15,000.00	\$ -		
TVG Greyhound Import Simulcast 7200	\$ 25,000.00	\$ -	\$ -	\$ 25,000.00	\$ 3,401.72		
TWS Greyhound Import Simulcast 7200	\$ 10,000.00	\$ -	\$ -	\$ 10,000.00	\$ 4,565.65		
Wonderland Greyhound Import Simulcast 7200	\$ 1,500.00	\$ -	\$ -	\$ 1,500.00	\$ 335.57		
	<b>\$ 121,500.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 121,500.00</b>	<b>\$ 727,874.99</b>		

Budget Projections							
Row Labels	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
<b>1050003</b>							
AA REGULAR EMPLOYEE COMPENSATION	\$ 955,163.30	\$ -	\$ -	\$ 955,163.30	\$ 353,097.20	37%	50%
BB REGULAR EMPLOYEE RELATED EXPEN	\$ 13,000.00	\$ -	\$ -	\$ 13,000.00	\$ 812.10	6%	50%
CC SPECIAL EMPLOYEES	\$ 468,000.00	\$ -	\$ -	\$ 468,000.00	\$ 246,358.13	53%	50%
DD PENSION & INSURANCE RELATED EX	\$ 409,038.88	\$ -	\$ -	\$ 409,038.88	\$ 139,044.48	34%	50%
EE ADMINISTRATIVE EXPENSES	\$ 42,385.00	\$ -	\$ -	\$ 42,385.00	\$ 21,824.12	51%	50%
FF PROGRAMMATIC FACILITY OPERATONAL SUPPLIES	\$ 42,000.00	\$ -	\$ -	\$ 42,000.00	\$ 185.62	0%	50%
HH CONSULTANT SVCS (TO DEPTS)	\$ 25,000.00	\$ -	\$ -	\$ 25,000.00	\$ 4,035.50	16%	50%
JJ OPERATIONAL SERVICES	\$ 773,122.26	\$ -	\$ -	\$ 773,122.26	\$ 294,395.75	38%	50%
KK EQUIPMENT PURCHASES	\$ -	\$ -	\$ -	\$ -		#DIV/0!	50%
LL EQUIPMENT LEASE-MAINTAIN/REPAR	\$ 915.00	\$ -	\$ -	\$ 915.00	\$ -	0%	50%
MM PURCHASED CLIENT/PROGRAM SVCS	\$ 85,000.00	\$ -	\$ -	\$ 85,000.00	\$ -	0%	50%
NN INFRASTRUCTURE:	\$ -	\$ -	\$ -	\$ -		#DIV/0!	50%
TT LOANS AND SPECIAL PAYMENTS	\$ -	\$ -	\$ -	\$ -	\$ 304,145.68	#DIV/0!	50%
UU IT Non-Payroll Expenses	\$ 15,000.00	\$ -	\$ -	\$ 15,000.00	\$ 763.42	5%	50%
EE --Indirect Costs	\$ 209,178.18	\$ -	\$ -	\$ 209,178.18	\$ 86,942.81	42%	50%
ISA to DPH	\$ 70,000.00	\$ -	\$ -	\$ 70,000.00	\$ -	0%	50%
<b>Grand Total</b>	<b>\$ 3,107,802.62</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 3,107,802.62</b>	<b>\$ 1,451,604.81</b>	<b>47%</b>	<b>50%</b>
Revenue Projections							

Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total
Racing Oversight and Development Balance Forward 0131	\$ -	\$ -	\$ -	\$ -	\$1,006,209.74
Plainridge Assessment 4800	\$ 75,000 00	\$ -	\$ -	\$ 75,000 00	\$ 28,159 05
Plainridge Daily License Fee 3003	\$ 120,000 00	\$ -	\$ -	\$ 120,000 00	\$ 60,880 00
Plainridge Occupational License 3003/3004	\$ 50,000 00	\$ -	\$ -	\$ 50,000 00	\$ 12,310 00
Plainridge Racing Development Oversight Live 0131	\$ 20,000 00	\$ -	\$ -	\$ 20,000 00	\$ 6,347 99
Plainridge Racing Development Oversight Simulcast 0131	\$ 100,000 00	\$ -	\$ -	\$ 100,000 00	\$ 44,658 58
Raynham Assessment 4800	\$ 50,000 00	\$ -	\$ -	\$ 50,000 00	\$ 23,624.12
Raynham Daily License Fee 3003	\$ 85,000 00	\$ -	\$ -	\$ 85,000 00	\$ 45,900 00
Raynham Racing Development Oversight Simulcast 0131	\$ 85,000 00	\$ -	\$ -	\$ 85,000 00	\$ 39,052.69
Suffolk Assessment 4800	\$ 620,000 00	\$ -	\$ -	\$ 620,000 00	\$ 215,519.42
Suffolk Commission Racing Development Oversight Simulcast 0131	\$ 10,000 00	\$ -	\$ -	\$ 10,000 00	\$ 29,513 26
Suffolk Daily License Fee 3003	\$ 85,000 00	\$ -	\$ -	\$ 85,000 00	\$ 23,400 00
Suffolk Occupational License 3003/3004	\$ 5,000 00	\$ -	\$ -	\$ 5,000 00	
Suffolk Racing Development Oversight Live 0131	\$ -	\$ -	\$ -	\$ -	
Suffolk TVG Commission Live 0131	\$ -	\$ -	\$ -	\$ -	
Suffolk TVG Commission Simulcast 0131	\$ 500,000 00	\$ -	\$ -	\$ 500,000 00	\$ 150,829 05
Suffolk Twin Spires Commission Live 0131	\$ -	\$ -	\$ -	\$ -	
Suffolk Twin Spires Commission Simulcast 0131	\$ 220,000 00	\$ -	\$ -	\$ 220,000 00	\$ 76,422 00
Suffolk Xpress Bet Commission Live 0131	\$ -	\$ -	\$ -	\$ -	
Suffolk Xpress Bet Commission Simulcast 0131	\$ 100,000 00	\$ -	\$ -	\$ 100,000 00	\$ 32,363 22
Suffolk NYRA Bet Commission Live 0131	\$ -	\$ -	\$ -	\$ -	
Suffolk NYRA Bet Commission Simulcast 0131	\$ 120,000 00	\$ -	\$ -	\$ 120,000 00	\$ 45,222.16
Transfer to General Fund 10500140 0000	\$ -	\$ -	\$ -	\$ -	
Wonderland Assessment 4800	\$ 5,000 00	\$ -	\$ -	\$ 5,000 00	\$ 226 33
Wonderland Daily License Fee 3003	\$ 60,000 00	\$ -	\$ -	\$ 60,000 00	\$ 19,800 00
Wonderland Racing Development Oversight Simulcast 0131	\$ 2,000 00	\$ -	\$ -	\$ 2,000 00	\$ 210.69
Plainridge fine 2700	\$ 25,000 00	\$ -	\$ -	\$ 25,000 00	\$ 20,250 00
Suffolk Fine 2700	\$ -	\$ -	\$ -	\$ -	
Plainridge Unclaimed wagers 5009	\$ 180,000 00	\$ -	\$ -	\$ 180,000 00	
Suffolk Unclaimed wagers 5009	\$ 250,000 00	\$ -	\$ -	\$ 250,000 00	
Raynham Unclaimed wagers 5009	\$ 150,000 00	\$ -	\$ -	\$ 150,000 00	
Wonderland Unclaimed wagers 5009	\$ 5,000 00	\$ -	\$ -	\$ 5,000 00	
Return of Unclaimed wagers	\$ (585,000 00)	\$ -	\$ -	\$ (585,000 00)	
Misc/Bank Interest 0131	\$ 500 00	\$ -	\$ -	\$ 500 00	
<b>Grand Total</b>	<b>\$2,337,500.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$2,337,500.00</b>	<b>\$1,880,898.30</b>

Budget Projections							
Row Labels	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
10500004							
AA REGULAR EMPLOYEE COMPENSATION	\$ 170,463.12	\$ -	\$ -	\$ 170,463.12	\$ 71,652.45	42%	50%
BB REGULAR EMPLOYEE RELATED EXPEN	\$ 5,000 00	\$ -	\$ -	\$ 5,000 00	\$ 464 00	9%	50%
DD PENSION & INSURANCE RELATED EX	\$ 71,407 00	\$ -	\$ -	\$ 71,407 00	\$ 27,366 09	38%	50%
EE ADMINISTRATIVE EXPENSES	\$ 20,687 22	\$ -	\$ -	\$ 20,687 22	\$ 6,618.17	32%	50%
GG ENERGY COSTS AND SPACE RENTAL	\$ 2,500 00	\$ -	\$ -	\$ 2,500 00		0%	50%
PP STATE AID/GRANTS	\$ 10,000,000 00	\$ -	\$ -	\$ 10,000,000 00	\$ 1,300,596 01	13%	50%
UU IT Non-Payroll Expenses	\$ 40,000 00	\$ 40,000.00	\$ -	\$ 80,000 00		0%	50%
<b>Grand Total</b>	<b>\$ 10,310,057.34</b>	<b>\$ 40,000.00</b>	<b>\$ -</b>	<b>\$ 10,350,057.34</b>	<b>\$ 1,406,696.72</b>	<b>14%</b>	<b>50%</b>

Revenue Projections							
Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total		
Balance forward prior year	\$ -	\$ -	\$ -	\$ -	\$40,371,307 30	50%	
<b>Grand Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>			

Budget Projections							
Row Labels	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
10500005							
TT LOANS AND SPECIAL PAYMENTS (Race Horse Dev Fund)	\$ -	\$ -	\$ -	\$ -	\$ 7,681,885 04	#DIV/0!	50%

Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total
Balance forward prior year 3003				\$ -	\$ 21,522,593.49
Race Horse Development Fund assessment 3003	\$ 20,000,000.00			\$ 20,000,000.00	
<b>Grand Total</b>	<b>\$ 20,000,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 20,000,000.00</b>	

Row Labels	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
Casino forfeited money MGC Trust MGL 267A S4	\$ -			\$ -	\$7,229.00	#DIV/0!	50%
<b>Grand Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>			

Budget Projections							
Row Labels	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
<b>10500012/ P promo</b>							
TT LOANS AND SPECIAL PAYMENTS	\$ -	\$ -	\$ -	\$ -		#DIV/0!	50%

Revenue Projections							
Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total		
Plainridge Import Harness Horse Simulcast 0131	\$ 18,000.00	\$ -	\$ -	\$ 18,000.00	\$ 5,633.38		
Plainridge Racing Harness Horse Live 0131	\$ 10,000.00	\$ -	\$ -	\$ 10,000.00	\$ 5,793.93		
Raynham Import Plainridge Simulcast 0131	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00	\$ 2,268.98		
Suffolk Import Plainridge Simulcast 0131	\$ 2,000.00	\$ -	\$ -	\$ 2,000.00	\$ 432.52		
Plainridge Racecourse Promo Fund Beginning Balance 7205	\$ -	\$ -	\$ -	\$ -	\$ 270,274.76		
TVG Live 0131	\$ -	\$ -	\$ -	\$ -			
TVG Simulcast 0131	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00	\$ 6,266.99		
Twin Spires Live 0131	\$ -	\$ -	\$ -	\$ -			
Twin Spires Simulcast 0131	\$ 10,000.00	\$ -	\$ -	\$ 10,000.00	\$ 2,908.08		
Xpress Bets Live 0131	\$ -	\$ -	\$ -	\$ -			
Xpress Bets Simulcast 0131	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00	\$ 1,141.64		
NYRA Live 0131	\$ -	\$ -	\$ -	\$ -			
NYRA Simulcast 0131	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00	\$ 1,503.76		
<b>Grand Total</b>	<b>\$ 75,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 75,000.00</b>	<b>\$ 296,224.04</b>		

Budget Projections							
Row Labels	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
<b>10500013/ P Cap</b>							
TT LOANS AND SPECIAL PAYMENTS	\$ -	\$ -	\$ -	\$ -		#DIV/0!	50%

Revenue Projections							
Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total		
Plainridge Import Harness Horse Simulcast 0131	\$ 25,000.00	\$ -	\$ -	\$ 25,000.00	\$ 10,973.95		
Plainridge Racing Harness Horse Live 0131	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00	\$ 10,201.40		
Raynham Import Plainridge Simulcast 0131	\$ 7,000.00	\$ -	\$ -	\$ 7,000.00	\$ 3,605.61		
Suffolk Import Plainridge Simulcast 0131	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00	\$ 903.33		
Plainridge Capital Improvement Fund Beginning Balance 7205	\$ -	\$ -	\$ -	\$ -	\$798,697.92		
TVG Live 0131	\$ -	\$ -	\$ -	\$ -			
TVG Simulcast 0131	\$ 50,000.00	\$ -	\$ -	\$ 50,000.00	\$ 15,911.17		
Twin Spires Live 0131	\$ -	\$ -	\$ -	\$ -			
Twin Spires Simulcast 0131	\$ 25,000.00	\$ -	\$ -	\$ 25,000.00	\$ 7,871.24		
Xpress Bets Live 0131	\$ -	\$ -	\$ -	\$ -			
Xpress Bets Simulcast 0131	\$ 10,000.00	\$ -	\$ -	\$ 10,000.00	\$ 2,310.50		
NYRA Live 0131	\$ -	\$ -	\$ -	\$ -			
NYRA Simulcast 0131	\$ 15,000.00	\$ -	\$ -	\$ 15,000.00	\$ 4,969.70		
<b>Grand Total</b>	<b>\$157,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$157,000.00</b>	<b>\$855,444.82</b>		

Budget Projections							
Row Labels	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
<b>10500021/ S promo</b>							

Revenue Projections						
Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total	
Plainridge Import Suffolk Simulcast 0131	\$ 25,000 00	\$ -	\$ -	\$ 25,000 00	\$ 10,587.66	
Raynham Import Suffolk Simulcast 0131	\$ 20,000 00	\$ -	\$ -	\$ 20,000 00	\$ 7,664.92	
Suffolk Import Running Horse Simulcast 0131	\$ 30,000 00	\$ -	\$ -	\$ 30,000 00	\$ 8,560.73	
Suffolk Racing Running Horse Live 0131	\$ -	\$ -	\$ -	\$ -		
Suffolk Promotional Fund Beginning Balance 7205	\$ -	\$ -	\$ -	\$ -	\$ 786,113.53	
TVG Live 0131	\$ -	\$ -	\$ -	\$ -	\$ 13,162.82	
TVG Simulcast 0131	\$ 125,000 00	\$ -	\$ -	\$ 125,000 00	\$ 34,405.36	
Twin Spires Live 0131	\$ -	\$ -	\$ -	\$ -		
Twin Spires Simulcast 0131	\$ 75,000 00	\$ -	\$ -	\$ 75,000 00	\$ 23,334.20	
Xpress Bets Live 0131	\$ -	\$ -	\$ -	\$ -		
Xpress Bets Simulcast 0131	\$ -	\$ -	\$ -	\$ -		
NYRA Live 0131	\$ -	\$ -	\$ -	\$ -		
NYRA Simulcast 0131	\$ 50,000 00	\$ -	\$ -	\$ 50,000 00	\$ 14,406.87	
<b>Grand Total</b>	<b>\$325,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$325,000.00</b>	<b>\$898,236.09</b>	

Budget Projections							
Row Labels	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY
<b>10500022/ S Cap</b>							
TT LOANS AND SPECIAL PAYMENTS	\$ -	\$ -	\$ -	\$ -		#DIV/0!	50%
Revenue Projections							
Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total		
Plainridge Import Suffolk Simulcast 0131	\$ 100,000 00	\$ -	\$ -	\$ 100,000 00	\$ 35,726.80		
Raynham Import Suffolk Simulcast 0131	\$ 70,000 00	\$ -	\$ -	\$ 70,000 00	\$ 25,030.41		
Suffolk Import Running Horse Simulcast 0131	\$ 150,000 00	\$ -	\$ -	\$ 150,000 00	\$ 31,462.52		
Suffolk Racing Running Horse Live 0131	\$ -	\$ -	\$ -	\$ -			
Suffolk Capital Improvement Fund Beginning Balance 7205	\$ -	\$ -	\$ -	\$ -	\$ 5,260,377.61		
TVG Live 0131	\$ -	\$ -	\$ -	\$ -			
TVG Simulcast 0131	\$ 450,000 00	\$ -	\$ -	\$ 450,000 00	\$ 163,918.55		
Twin Spires Live 0131	\$ -	\$ -	\$ -	\$ -			
Twin Spires Simulcast 0131	\$ 225,000 00	\$ -	\$ -	\$ 225,000 00	\$ 86,117.70		
Xpress Bets Live 0131	\$ -	\$ -	\$ -	\$ -			
Xpress Bets Simulcast 0131	\$ -	\$ -	\$ -	\$ -			
NYRA Live 0131	\$ -	\$ -	\$ -	\$ -			
NYRA Simulcast 0131	\$ 150,000 00	\$ -	\$ -	\$ 150,000 00	\$ 53,165.32		
<b>Grand Total</b>	<b>\$1,145,000.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$1,145,000.00</b>	<b>\$5,655,798.91</b>		

Budget Projections							
Row Labels	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY
<b>10500140</b>							
TT LOANS AND SPECIAL PAYMENTS	\$ 1,112,591 00	\$ -	\$ -	\$ 1,112,591 00	\$ 196,396.05	18%	50%

Budget Projections							
Row Labels	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY
<b>10501384</b>							
AA REGULAR EMPLOYEE COMPENSATION	\$ 794,970.77	\$ -	\$ -	\$ 794,970.77	\$ -	0%	50%
BB REGULAR EMPLOYEE RELATED EXPEN	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	50%
CC SPECIAL EMPLOYEES	\$ 393,600 00	\$ -	\$ -	\$ 393,600 00	\$ -	0%	50%
DD PENSION & INSURANCE RELATED EX	\$ 336,002 01	\$ -	\$ -	\$ 336,002 01	\$ -	0%	50%
EE ADMINISTRATIVE EXPENSES	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	50%
FF PROGRAMMATIC FACILITY OPERATONAL SUPPLIES	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	50%
HH CONSULTANT SVCS (TO DEPTS)	\$ 500,000 00	\$ 150,000.00	\$ 1,580,000 00	\$ 2,230,000 00	\$ 312,604.50	14%	50%
JJ OPERATIONAL SERVICES	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	50%
KK EQUIPMENT PURCHASES	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	50%
LL EQUIPMENT LEASE-MAINTAIN/REPAR	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	50%
NN INFRASTRUCTURE:	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	50%
TT LOANS AND SPECIAL PAYMENTS	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	50%
UU IT Non-Payroll Expenses	\$ -	\$ 60,000.00	\$ 532,100 00	\$ 592,100 00	\$ 23,700 00	4%	50%
EE --Indirect Costs	\$ 168,857 08	\$ 21,000.00	\$ 211,210 00	\$ 401,067 08	\$ 33,630 56	8%	50%

Grand Total						
	\$	2,193,429.86	\$	231,000.00	\$	2,323,310.00
	\$				\$	4,747,739.86
	\$				\$	369,935.06
						8%
						50%
Revenue Projections						
Revenues*	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total	
CATERGORY 1	\$ 600,000.00	\$ -	\$ -	\$ 600,000.00	\$ 600,000.00	
CATERGORY 2	\$ 200,000.00	\$ -	\$ -	\$ 200,000.00	\$ 200,000.00	
CATEROGRY 3 (TETHERED)	\$ 1,200,000.00	\$ -	\$ -	\$ 1,200,000.00	\$ 1,200,000.00	
CATERGORY 3 (UNTETHERED)	\$ 1,200,000.00	\$ -	\$ -	\$ 1,200,000.00	\$ 1,200,000.00	
SW GAMING CONTROL FUND BALANCE 0500	\$ -	\$ -	\$ -	\$ -	\$ -	
EMPLOYEE LICENSING FEES 3000	\$ -	\$ -	\$ -	\$ -	\$ -	
VENDOR SW FEES 3000	\$ -	\$ -	\$ -	\$ -	\$ 120,000.00	
FANTASY FEES 3000	\$ -	\$ -	\$ -	\$ -	\$ -	
ASSESSMENT 0500	\$ -	\$ -	\$ 2,236,453.61	\$ 2,236,453.61	\$ -	
FINES & PENALTIES 2700	\$ -	\$ -	\$ -	\$ -	\$ -	
MISC 0500	\$ -	\$ -	\$ -	\$ -	\$ -	
IEB BACKGROUND/INVESTIGATIVE FEES 3000	\$ -	\$ -	\$ -	\$ -	\$ -	
<b>Grand Total</b>	<b>\$3,200,000.00</b>	<b>\$0.00</b>	<b>\$2,236,453.61</b>	<b>\$5,436,453.61</b>	<b>\$3,320,000.00</b>	

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

FROM: Judith Young, Associate General Counsel

Burke Cain, Interim Gaming Agents Division Chief  
 Angela Smith, Casino Regulatory Manager, MGM Springfield  
 Dustin Nigro, Supervising Gaming Agent

RE: **205 CMR 146.28** Pontoon 21 Table; Physical Characteristics and Updated Rules

DATE: January 30, 2023

---

**205 CMR 146.28:**

The Commission adopted Pontoon 21 as an authorized table game within the Commonwealth at the December 1, 2022, public meeting. As physical characteristics of table games are included within 205 CMR 146.00, the Legal Division, in partnership with the IEB drafted 205 CMR 146.28: ***Pontoon 21 Table; Physical Characteristics***. The regulation adopts by reference, the physical layout of the Pontoon 21 table, and includes the Commission’s requirements for the licensee’s name, wager information, payout odds, signage, and notice requirements.

The Commission authorized the Legal Division to begin the promulgation process for the draft regulation on December 1st, and a public hearing was held on January 31, 2022. An Amended Small Business Impact Statement (ASBIS) and copy of final regulation are included in the Commissioner’s Packet, and members of the IEB and Legal Division are available if the Commissioners have questions. The Legal Division is seeking vote of finalization so that the final regulation can be filed with the Secretary of State’s Office and published in the register on March 3, 2023.

**Updated Rules for Pontoon 21:**

With the regulation being finalized, the Legal Division now recommends removal of the physical characteristics that were initially included within Section 17 of the posted rules for Pontoon 21. With Commission approval, the second version of the rules will be posted on the MGC Website and made available for review at the gaming establishments.

## 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

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 floor person 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



## 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 amendment to **205 CMR 146.28: Pontoon 21 Table; Physical Characteristics**, for which a public hearing was held on January 31, 2023.

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 establishes a physical table layout for the table game, Pontoon 21.

This regulation applies directly to gaming licensees, equipment manufacturers, and Blackjack dealers; it is not anticipated 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 will not impose any additional 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 created or initiated by this regulation.

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

This regulation 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:

A performance standard is appropriate to prescribe the layout of blackjack tables in casinos. It will provide clarity for patrons and is consistent with the Commission's approved rules of the game of Pontoon 21.

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

The intent of this regulation is to clarify the rules regarding payout odds and physical layout for the game of blackjack and will not deter or encourage the formation of small businesses.

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/ Judith Young

---

Judith A Young  
Associate General Counsel  
Legal Division

Dated: February 1, 2023

# 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 double 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 floor person 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 next card 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.
  - (1) 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.
  - (2) 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 floor person 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.~~

# Pontoon 21



# Pontoon 21, Bonus Wheel



## 205 CMR 254: TEMPORARY PROHIBITION FROM SPORTS WAGERING

## Section

254.01:	Scope and Purpose
254.02:	Temporary Prohibition
254.03:	Duration of Temporary Prohibition and Conclusion of Temporary Prohibition
254.04:	Responsibilities of the Sports Wagering Operator
254.05:	Sanctions Against a Sports Wagering Operator
254.06:	Collection of Debts

254.01: Scope and Purpose

As an alternative to voluntary self-exclusion as described in 205 CMR 233.00, Sports Wagering Operators shall allow individuals to designate themselves as temporarily prohibited from Sports Wagering. 205 CMR 254.00 shall govern the procedures and protocols relative to individuals' designation of themselves as temporarily prohibited from Sports Wagering. Designation is intended to offer individuals one means to help address potential problem gambling behavior, where individuals have not yet determined whether they may benefit from voluntary self-exclusion as described in 205 CMR 233.00.

254.02: Temporary Prohibition

(1) Individuals who designate themselves to a Sports Wagering Operator as temporarily prohibited from Sports Wagering shall be prohibited from accessing the individual's Sports Wagering Account maintained on the Sports Wagering Operator's Sports Wagering Platform for the temporary prohibition period specified in 205 CMR 254.03(1). Provided, however, that employees of a Sports Wagering Operator who designate themselves to the Sports Wagering Operator as temporarily prohibited from Sports Wagering may engage in Sports Wagering solely for the purposes of performing the employees' job functions.

(2) Individuals who designate themselves as temporarily prohibited from Sports Wagering shall not collect any winnings or recover any losses resulting from Sports Wagering in violation of the temporary prohibition.

(3) Upon an individual's initial enrollment onto a Sports Wagering Platform, a Sports Wagering Operator shall conspicuously display a message offering an individual the opportunity to designate themselves as temporarily prohibited from Sports Wagering. A Sports Wagering Operator shall require an individual to acknowledge the following prior to being designated as temporarily prohibited from Sports Wagering:

(a) That the individual will not access the individual's Sports Wagering Account maintained on the Sports Wagering Operator's Sports Wagering Platform in accordance with 205 CMR 254.02(1);

(b) That the individual shall not collect any winnings or recover any losses resulting from Sports Wagering in violation of the temporary prohibition in accordance with 205 CMR 254.02(2);



- (c) That once the individual is designated as temporarily prohibited from Sports Wagering, an individual's attempted Sports Wager may be rejected or, if placed, may be voided or cancelled by the Sports Wagering Operator.
- (4) If an individual elects to designate themselves as temporarily prohibited from Sports Wagering, the temporary prohibition shall become immediately effective.
- (5) Sports Wagering Operators shall maintain at all times a link prominently placed on the Sports Wagering Operator's Sports Wagering Platform on which individuals may designate themselves as temporarily prohibited from Sports Wagering.
- (6) If the Sports Wagering Operator utilizes an internal management system to track individuals temporarily prohibited from Sports Wagering, the Sports Wagering Operator shall update that system at least every 24 hours with the names of individuals designated as temporarily prohibited from Sports Wagering, or individuals who are no longer designated as temporarily prohibited from Sports Wagering. Such system shall notify the Sports Wagering Operator's marketing and communications departments so as to prevent the further marketing and communication of Sports Wagering material to individuals designated as temporarily prohibited from Sports Wagering.

254.03: Duration of Temporary Prohibition and Conclusion of Temporary Prohibition

- (1) An individual shall select a temporary prohibition period of 72 hours, 1 week, 2 weeks, 3 weeks or 4 weeks.
- (2) An individual may elect to renew the temporary prohibition at any time by informing the Sports Wagering Operator of the individual's desire to renew the temporary prohibition period. There shall be no limitations regarding the number of times an individual is permitted to renew the temporary prohibition period.
- (3) ~~An individual shall select whether the individual will receive advance notification of the expiration of the temporary prohibition period prior to its expiration. If an individual elects to receive such notification, the Sports Wagering Operator shall notify the individual when the temporary prohibition will expire 24 hours prior to the expiration of the 72 hour or 1 week temporary prohibition period, or 72 hours prior to the expiration of the 2 week, 3 week or 4 week temporary prohibition period, the Sports Wagering Operator shall notify the individual when the temporary prohibition will expire.~~ The notification shall also provide the individual instructions on how to renew the temporary prohibition, and how to apply to have the individual's name placed on the voluntary self-exclusion list in accordance with 205 CMR 233.02(2).
- (4) Upon conclusion of the temporary prohibition, the Sports Wagering Operator shall notify the individual that the temporary prohibition has concluded. The Sports Wagering Operator shall not accept Wagers from the individual until the individual has acknowledged the notification of the conclusion of the temporary prohibition. The notification shall provide the individual instructions on how to renew the temporary prohibition period, and how to apply to have the individual's name placed on the voluntary self-exclusion list in accordance with 205 CMR 233.02(2).

254.04: Responsibilities of the Sports Wagering Operator

A Sports Wagering Operator shall have the same responsibilities relative to the administration of the temporary prohibition from Sports Wagering program as gaming licensees and Sports Wagering Operators have relative to the administration of the voluntary self-exclusion list pursuant to 205 CMR 133.06(3)-(6) and 7(b) and 205 CMR 233.06(4)-(8), respectively, including the obligation to submit a written policy for compliance with 205 CMR 254.00. Individuals who designate themselves to the Sports Wagering Operator as temporarily prohibited from Sports Wagering shall have the same rights as those provided under 205 CMR 133.06(7)(b). A Sports Wagering Operator shall also not accept any Sports Wager from an individual who designates themselves to the Sports Wagering Operator as temporarily prohibited from placing a Wager on the Sports Wagering Platform.

254.05: Sanctions Against a Sports Wagering Operator

- (1) Grounds for Action. A Sports Wagering Operator license may be conditioned, suspended, or revoked, or a Sports Wagering Operator assessed a civil administrative penalty if it is determined that a Sports Wagering Operator has:
  - (a) knowingly or recklessly failed to carry out the Sports Wagering Operator's responsibilities as set forth in 205 CMR 254.04. Provided, it shall not be deemed a knowing or reckless failure if an individual designated to the Sports Wagering Operator as temporarily prohibited from Sports Wagering shielded the individual's identity or otherwise attempted to avoid identification while present on the Sports Wagering Platform; or
  - (b) failed to abide by any provision of 205 CMR 254.00 or a Sports Wagering Operator's approved written policy for compliance with the temporary prohibition from Sports Wagering program pursuant to 205 CMR 254.00. Provided, a Sports Wagering Operator shall be deemed to have marketed to an individual designated to the Sports Wagering Operator as temporarily prohibited from Sports Wagering only if marketing materials are sent directly to an address, email address, telephone number, or other contact identified by individuals on their designation form.
- (2) Finding and Decision. If the bureau finds that a Sports Wagering Operator has violated a provision of 205 CMR 254.04(1), it may issue a decision or notice in accordance with 205 CMR 133.07(2).
- (3) Civil Administrative Penalties. The Commission may assess a civil administrative penalty on a Sports Wagering Operator in accordance with M.G.L. c. 23N, § 16 for a violation of 205 CMR 254.04(1).
- (4) Review of Decision. A recommendation that a Sports Wagering Operator license be suspended or revoked shall proceed in accordance with the procedures set out in 205 CMR 133.07(4).

254.06: Collection of Debts

Nothing in 205 CMR 254.00 shall be construed to prohibit a Sports Wagering Operator from seeking payment of a debt from an individual who is designated to the Sports Wagering Operator

as temporarily prohibited from Sports Wagering, but who violates the terms of the temporary prohibition.

# Understanding the utility of notifications during a cooling-off period

Mark Vander Linden, MSW

Bonnie Andrews, Ph.D.

Long Banh, LICSW, MBA



# What is the purpose of cooling-off

- One means for an individual to limit their access to a specific type of gambling on a platform for a short period of time
- A voluntary external control for persons concerned about their ability to self limit (internal control)
- A shorter period of self-exclusion that may be offered as part of a precommitment system (Thomas et al., 2016)

# **STRATEGY 1 2 3 4 5 6 7**

## **SUPPORT POSITIVE PLAY**

For persons who are unable to maintain positive play, gaming licensees must offer information about problem gambling and options for help. Programs to support positive play are expected to continually evolve as new information and technologies become available. Licensees and others have a role in innovating and assuring programs and materials that support positive play and address problem play are woven into gaming establishment practices and policies.

# Stepped Care Approach



The Responsible Gaming Framework is organized into seven broad strategies. To carry out these strategies, gaming licensees should apply a stepped care approach to maximize positive player outcomes. A stepped care approach recognizes that players differ from one another, as each player plays in a different manner and, to differing degrees, is susceptible to harm. This means that there should be a hierarchy of potential interventions designed for different player groups, ranging from a focus on promoting positive play, to providing access to self-management tools and help resources, to offering casino exclusion.<sup>3</sup>

Target Audience for Cooling-off



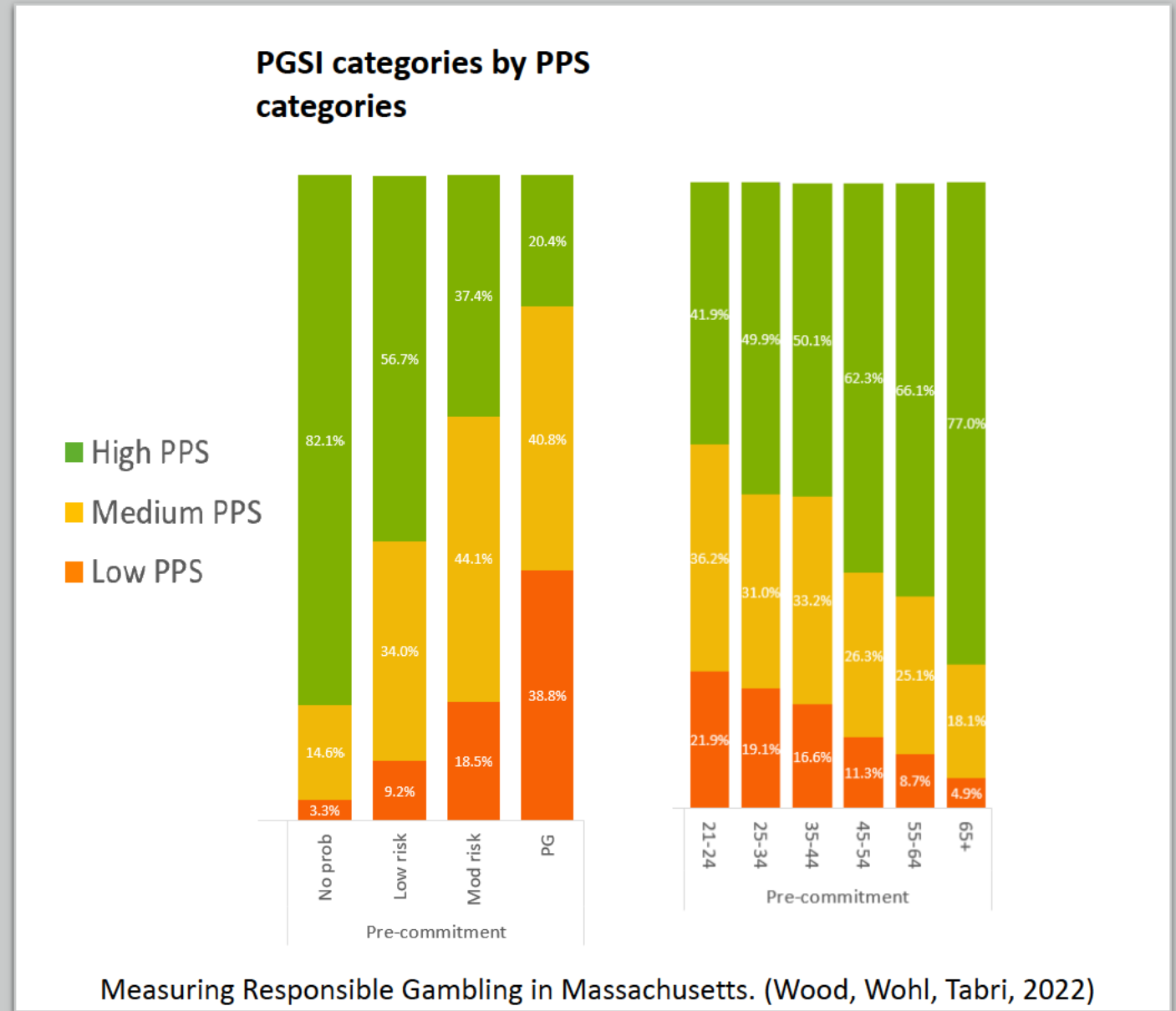
# DiClemente and Prochaska's Stages of Change

Stages of Change Model was originally used to help people overcome addictions and problematic behaviors such as alcohol or drug abuse, overeating and smoking. It's been adapted for a variety of other issues to help people seeking to change their behavior.

- 1) **Pre-Contemplation:** May not recognize the consequences of their actions. They don't connect the negative outcome with the behavior.
- 2) **Contemplation:** Acknowledges the problem but may not have the confidence to take a step forward.
- 3) **Preparation:** Willing to set small, achievable goals. It's important to encourage self-efficacy and commitment to change.
- 4) **Action:** Have developed a clear plan for change and are implementing it.
- 5) **Maintenance:** Maintain the change for at least six-months.
- 6) **Relapse**

# Notification supports pre-commitment

A harm minimization strategy which allows players to make rational decisions about gambling involvement prior to actually engaging in gambling and obliges them to retain these limits despite subsequent temptations that arise during play.



A lack of support and access to counseling/treatment options during exclusion periods has been identified as a weakness of some current self-exclusion models (Delfabbro, 2012; Hing & Nuske, 2011, 2012; Ladouceur et al., 2000),

Studies have observed that many self-excluders identified a need for better links to treatment and support during their period of self-exclusion (Responsible Gambling Council, 2008)" (Thomas et al., 2016)

# Triggers and Relapse

"Triggers are external events or emotional reactions that contribute to gambling urges being formed. Every gambler has a different set of triggers. For some, it's an argument with a spouse, access to cash, and a stressful day at work. For others it might be depression, anxiety or being left alone." (Fong & Rosenthal, 2009, p. 25)

Five key themes related to "push" to relapse identified from a constant comparative analysis and synthesis of data (Oakes et al., 2012a):

- 1) Environmental gambling triggers: opportunity to access gambling, access to money
- 2) Negative affect: stress, escape, boredom, financial stress, physical health
- 3) Erroneous cognitions: over confidence in skill, luck
- 4) Presence of an urge: psycho/physiological response to external or internal trigger
- 5) Relationship issues: poor quality of relationships; poor social networks; loneliness

Some sources have noted reminders of gambling as possible triggers (sign for casino; freeway exit for casino; sights/sound of casino or sights/sounds reminding them of casino as examples) (Fong & Rosenthal, 2009; Grant & Kim, 2001; Littman-Sharp et al., 2009; Morasco et al., 2007)

# Key features of proposed cooling-off notification

- Opt-in
- Ability to extend cooling off immediately
- Information about problem gambling helpline
- Information about other RG tools (play management)
- Information about VSE
- In response to concerns about triggers, consider having notification delivered by MGC or GameSense
- Support for evaluation in the MGC annual research agenda





February 7, 2023

*VIA ELECTRONIC MAIL ONLY*

Karen Wells  
Executive Director  
**Massachusetts Gaming Commission**  
101 Federal Street  
Boston, MA 02110

**Re: 205 CMR 254: Temporary Prohibition from Sports Wagering**

Dear Executive Director Wells:

As discussed at length during the Category 1 and Category 3 sports wagering licensing hearings, PENN and WynnBET committed to providing responsible gaming resources and tools for all of its patrons. To that end, PENN and WynnBET offer many tools and resources designed to help patrons play responsibly, including temporary timeout functionality, as demonstrated during our product presentations. We write to comment that the language in 205 CMR 254.03(3) is not consistent with responsible gaming best practices, and respectfully suggest that the language be modified to be more consistent with those practices.

By way of background, it is important to distinguish two tools used by operators and to discuss why it is important that they be treated differently. These two tools are (1) self-imposed limits and (2) self-exclusion. While both tools help players wager responsibly, the tools are distinct. Timeout functionality is a self-imposed limit tool that players can use to take a break from playing on a specific online platform, but is not as restrictive or extreme as voluntary self-exclusion.

Self-imposed limits are a proactive measure and are designed to help players create healthy gaming habits while mitigating potential problem gambling behaviors.<sup>1</sup>

Alternatively, “self-exclusion is a reactive measure and is designed to help self-admitted problem gamblers regain control of their gambling behavior by supporting their efforts to abstain from at least one specific form of gambling for a particular amount of time” (Responsible Gambling Council 2016). Unlike self-imposed limits, self-exclusion is for players that already feel, or admit, that they have a gambling problem (Gainsbury 2013).

The current language of the following proposed rule, 205 CMR 254.03 (3), requires that an operator notify a customer that their timeout is expiring prior to its expiration. Customers may view this as an inducement, invitation, or encouragement to return to the platform (almost as a

---

<sup>1</sup> Studies have demonstrated that limit-setting tools can help players maintain better control of their gambling expenditures and reduce their monetary losses (Auer & Griffiths, 2019). Moreover, a recent study proved that limit-setting even successfully and significantly decreased the amount of money at-risk players spent over time (Auer, Hoggartner, & Griffiths, 2020).

“reminder” that their timeout is expiring) and as such does not align with industry best practices concerning timeout and responsible gaming functionalities. As such, PENN and WynnBET suggest removing this section of the rule entirely, to allow operators to implement RG-friendly timeout functionality without encouraging patrons to return to a platform and gamble immediately upon the end of the patron’s chosen timeout term.

First, this section of the rule encourages operators to reach out and contact patrons before the expiration of the patron’s temporary timeout period, which is inconsistent with the nature and purpose of a timeout period. During the timeout period, the operator has made a commitment to honor the patron’s request to not be contacted or encouraged to wager. PENN and WynnBET seek to honor that patron-based request by only allowing the patron to access or receive communications relating to the Barstool Sportsbook following the expiration of the patron-requested timeout period and not before that period expires.

We note that this section of the timeout rule closely mirrors the process created for self-exclusion, which, as explained, has an entirely different purpose. The self-exclusion process allows a patron who recognizes that they may have a gambling problem to completely remove themselves from sports wagering in Massachusetts for a relatively long period of time. Notably, a timeout period automatically expires, while a self-exclusion term does not – after a patron’s self-exclusion term has ended, that patron is required to complete a reinstatement session before being removed from the voluntary self-exclusion list. Therefore, while it may be appropriate in some circumstances to notify a customer that their self-exclusion is expiring, those same justifications are not present when a timeout is expiring.

Additionally, revised rule verbiage has been proposed that would allow the patron the choice of whether to be contacted before the timeout period ends. However, this revision also does not align with the intent or functionality of a timeout. It has also been suggested that a third party, such as GameSense or the Massachusetts Gaming Commission (“MGC”), would execute the proactive patron notification. However, there is currently no technological infrastructure to support the secure transmission of data from operators to a third party. As such, even this potential solution would take a significant amount of time for operators, GameSense, and the MGC, to choose, design, and implement a method to transfer timeout data securely. As operators, we would also need to inform patrons that their data will be transferred to a third party and obtain patron permission. This may deter a patron from using the timeout functionality, which is inconsistent with the goal of the functionality.

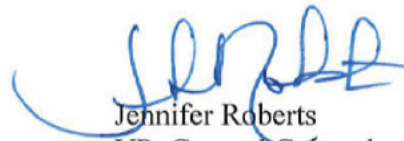
We respectfully request that the pre-expiration notice requirement in 254.03 (3) be removed in its entirety, to ensure this rule aligns with and incorporates industry best responsible gambling practices.

Thank you in advance for your consideration. We are, of course, happy to discuss further at your request.

Respectfully,



Chris Soriano  
VP, Chief Compliance Officer  
PENN Entertainment



Jennifer Roberts  
VP, General Counsel  
WynnBET

cc: Bruce Band, Head of Sports Wagering, Massachusetts Gaming Commission (*via email only*)  
Mark Vander Linden, Director of Research and Responsible Gaming, Massachusetts Gaming Commission (*via email only*)  
Todd Grossman, General Counsel, Massachusetts Gaming Commission (*via email only*)  
  
North Grounsell, General Manager, Plainridge Park Casino (*via email only*)  
Samantha Haggerty, Deputy Chief Compliance Officer, Regulatory Affairs Counsel, PENN Entertainment (*via email only*)  
Benjamin Levy, Head of Penn Interactive, Penn Interactive (*via email only*)  
Alana Sacerdote, Senior Manager of Responsible Gaming, Penn Interactive (*via email only*)



205 CMR 256: SPORTS WAGERING ADVERTISING

Section

- 256.01: Third Parties
- 256.02: Application
- 256.03: Internal Controls
- 256.04: False or Misleading Advertising
- 256.05: Advertising to Youth
- 256.06: Advertising to Other Vulnerable Persons
- 256.07: Self-Excluded Persons
- 256.08: Disruption
- 256.09: Endorsement
- 256.10: Records
- 256.11: Enforcement

256.01: Third Parties

- (1) Each Sports Wagering Operator shall be responsible for the content and conduct of any and all advertising, marketing, or branding done on its behalf or to its benefit whether conducted by the Sports Wagering Operator, an employee or agent of the Sports Wagering Operator, or an affiliated entity or a third party pursuant to contract, regardless of whether such party is also required to be licensed or registered as a Sports Wagering Vendor or Non-Sports Wagering Vendor.
- (2) Each Sports Wagering Operator shall provide a copy of the regulations contained herein to all advertising, marketing, branding and promotions personnel, contractors, agents, and agencies retained by the Sports Wagering Operator or its agents and shall ensure and require compliance herewith.
- (3) No Sports Wagering Operator may enter into an agreement with a third party to conduct advertising, marketing, or branding on behalf of, or to the benefit of, the licensee when compensation is dependent on, or related to, the volume of patrons or wagers placed, or the outcome of wagers.
- (4) Any advertisement for Sports Wagering shall disclose the identity of the Sports Wagering Operator.

256.02: Application

- (1) The provisions of this section shall apply to all advertising, marketing, and branding for Sports Wagering aimed at, published, aired, displayed, disseminated, or distributed in the Commonwealth.
- (2) Sports Wagering advertisements may only be published, aired, displayed, disseminated, or distributed in the Commonwealth by or on behalf of Sports Wagering Operators licensed to offer Sports Wagering in the Commonwealth, unless the advertisement clearly states that the offerings are not available in the

Commonwealth or otherwise makes clear that the offerings are not intended for use in the Commonwealth. Sports Wagering Operators and their agents, employees, or any third party conducting advertising or marketing on their behalf shall not advertise forms of illegal gambling in the Commonwealth.

- (3) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering on any billboard, or other public signage, which fails to comply with any federal, state or local law.

256.03:      Internal Controls

Each Sports Wagering Operator shall include in its internal controls submitted pursuant to 205 CMR 138 and 238 provisions to ensure compliance with the requirements of 205 CMR 256.00.

256.04:      False or Misleading Advertising

- (1) No Sports Wagering Operator shall allow, conduct, or participate in any unfair or deceptive advertising, marketing, or branding for Sports Wagering. Advertising, marketing, or branding that is unfair or deceptive includes, but is not limited to, advertising, marketing, or branding that would reasonably be expected to confuse and mislead patrons in order to induce them to engage in Sports Wagering.
- (2) No Sports Wagering Operator shall obscure or fail to disclose any material fact in its advertising, marketing, or branding for sports wagering or use any type, size, location lighting, illustration, graphic, depiction or color resulting in the obscuring of or failure to disclose any material fact in any advertising, marketing, or branding.
- (3) All Sports Wagering advertisements must clearly convey the conditions under which Sports Wagering is being offered, including information about the cost to participate and the nature of any promotions or information to assist patrons in understanding the odds of winning. Any material conditions or limiting factors must be clearly and conspicuously specified in the advertisement.
- (4) No employee or vendor of any Sports Wagering Operator shall advise or encourage individual patrons to place a specific wager of any specific type, kind, subject, or amount. This restriction does not prohibit general advertising or promotional activities.
- (5) A Sports Wagering Operator that engages in any promotion related to Sports Wagering shall clearly and concisely explain the terms of the promotion and adhere to such terms. If a Sports Wagering Operator offers complimentary items or promotional credit that are subject to terms, conditions or limitations in order to claim the item or redeem the item or credit, the Operator shall fully disclose all such terms, conditions or limitations through the following methods:
  - (a) In all advertisements or inducements where the complimentary item or promotion are advertised;

- (b) If being added to a Sports Wagering Account, through the use of a pop-up message either while the complimentary item or promotional credit is being added or when the patron next logs in to the Account, whichever is earlier; and
  - (c) If the offer requires the patron to Wager a specific dollar amount to receive the complimentary item or promotional credit, the amount that the patron is required to Wager of the patron's own funds shall be disclosed in the same size and style of font as the amount of the complimentary item or promotional credit, and the complimentary item or promotional credit shall not be described as free.
- (6) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall:
- (a) Promote irresponsible or excessive participation in Sports Wagering;
  - (b) Suggest that social, financial, or personal success is guaranteed by engaging in event wagering;
  - (c) Imply or promote Sports Wagering as free of risk in general or in connection with a particular promotion or Sports Wagering offer;
  - (d) Describe Sports Wagering as "free", "cost free" or "free of risk" if the player needs to incur any loss or risk their own money to use or withdraw winnings from the Wager;
  - (e) Encourage players to "chase" losses or re-invest winnings;
  - (f) Suggest that betting is a means of solving or escaping from financial, personal, or professional problems;
  - (g) Portray, suggest, condone or encourage Sports Wagering behavior as a rite of passage or signifier of reaching adulthood or other milestones;
  - (h) Portray, suggest, condone or encourage Sports Wagering behavior that is socially irresponsible or could lead to financial, social or emotional harm;
  - (i) Imply that the chances of winning increase with increased time spent on Sports Wagering or increased money wagered;
  - (j) Be placed on any website or printed page or medium devoted primarily to responsible gaming;
  - (k) Offer a line of credit to any consumer.

256.05: Advertising to Youth

- (1) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall state that patrons must be twenty-one years of age or older to participate.
- (2) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that is aimed at individuals under twenty-one years of age.
- (3) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall contain images, symbols, celebrity or entertainer endorsements, or language designed to appeal primarily to individuals younger than twenty-one years of age.
- (4) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall be published, aired, displayed, disseminated, or distributed:
  - (a) in media outlets, including social media platforms, that are used primarily by individuals under twenty-one years of age;
  - (b) at events aimed at minors or where 25% or more of the audience is reasonably expected to be under twenty-one years of age;
  - (c) at any elementary, middle, and high school, or at any sports venue exclusively used for such schools;
  - (d) on any college or university campus, or in college or university news outlets such as school newspapers and college or university radio or television broadcasts; or
  - (e) to any other audience where 25% or more of the audience is presumed to be under twenty-one years of age.
- (5) No sports Wagering advertisements, including logos, trademarks, or brands, shall be used, or licensed for use, on products, clothing, toys, games, or game equipment designed or intended for persons under twenty-one years of age.
- (6) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall depict an individual who is, or appears to be, under twenty-one years of age, except live footage or images of professional athletes during sporting events on which sports wagering is permitted. Any individual



under the age of twenty-one may not be depicted in any way that may be construed as the underage individual participating in or endorsing sports gaming.

- (7) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall depict students, schools or colleges, or school or college settings.

256.06: Advertising to Other Vulnerable Persons

- (1) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that is aimed exclusively or primarily at groups of people that are at moderate or high risk of gambling addiction. A Sports Wagering Operator shall not intentionally use characteristics of at-risk or problem bettors to target potentially at-risk or problem bettors with advertisements.
- (2) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health and such other information regarding responsible gaming as required by the Commission (“Responsible Gaming Messaging”).
- (3) Such advertising, marketing, branding and other promotional materials shall not use a font, type size, location, lighting, illustration, graphic depiction or color obscuring conditions or limiting factors associated with the advertisement of such Problem Gambling Helpline Information. font
- (4) Information regarding the Problem Gaming Helpline and any other required responsible gaming information (“Responsible Gaming Messaging”) must also meet the following requirements:
  - (a) For signs, direct mail marketing materials, posters and other print advertisements, the height of the font used to advertise Responsible Gaming Messaging must be the greater of:
    - i. The same size as the majority of the text used in the sign, direct mail marketing material, poster or other print advertisement; or
    - ii. 2% of the height or width, whichever is greater, of the sign, direct mail marketing material, poster or other print advertisement.
  - (b) For billboards, the height of the font used for Responsible Gaming Messaging must be at least 5% of the height or width, whichever is greater, of the face of the billboard.

- (c) For digital billboards, Responsible Gaming Messaging must be visible for the entire time the rest of the advertisement is displayed.
- (d) For video and television, Responsible Gaming Messaging must be visible for either:
  - i. The entire time the video or television advertisement is displayed, in which case the height of the font used for Responsible Gaming Messaging must be at least 2% of the height or width, whichever is greater, of the image that will be displayed.
  - ii. From the first time Sports Wagering Equipment, a Sports Wagering Facility, a Sports Wagering Area or Sports Wagering is displayed or verbally referenced, and on a dedicated screen shot visible for at least the last three (3) seconds of the video or television advertisement. If the Operator elects to utilize this option, the height of the font used for Responsible Gaming Messaging:
    - 1. During the advertisement must be at least 2% of the height or width, whichever is greater, of the image that will be displayed.
    - 2. On the dedicated screen shot must be at least 8% of the height or width, whichever is greater, of the image that will be displayed.
- (e) For web sites, including social media sites:
  - i. Responsible Gaming Messaging must be posted in a conspicuous location on each webpage or profile page and on a gaming related advertisement posted on the webpage or profile page.
  - ii. The height of the font used for Responsible Gaming Messaging must be at least the same size as the majority of the text used in the webpage or profile page.
  - iii. For advertisements posted on the webpage or profile page, the height of the font used for Responsible Gaming Messaging must comply with the height required for signs, direct mail marketing materials, posters and other print advertisements,

256.07: Self-Excluded Persons

- (1) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for sports wagering that is aimed at persons who have enrolled in a Self-Exclusion Program pursuant to 205 CMR 233.
- (2) No Sports Wagering Operator shall direct text messages or unsolicited pop-up advertisements on the internet to an individual in the Self-Exclusion Program or

shall allow any employee or agent of the Sports Wagering Operator, or affiliated entity or a third party pursuant to contract, to take such actions.

- (3) All direct advertising, marketing, or promotional materials shall include a clear and conspicuous method allowing patrons to unsubscribe from future advertising, marketing, or promotional communications.

256.08: Disruption to Viewers

- (1) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that obscures the game play area of a sporting event or obstructs a game in progress.
- (2) Advertisements for Sports Wagering may not be placed at a sports event with such intensity and frequency that they represent saturation of that medium or become excessive.

256.09: Endorsements

- (1) An advertisement for Sports Wagering shall not state or imply endorsement by minors, persons aged 18 to 20 (other than professional athletes), collegiate athletes, schools or colleges, or school or college athletic associations.
- (2) An individual who participates in Sports Wagering in the Commonwealth under an agreement with a Sports Wagering Operator for advertising, branding or promotional purposes may not be compensated in promotional credits for additional wagers.

256.10: Records

- (1) Each Sports Wagering Operator shall retain a copy of all advertising, marketing, branding and other promotional materials intended to promote any Sports Wagering within the Commonwealth, including a log of when, how, and with whom, those materials have been published, aired, displayed, or disseminated, for six (6) years. A Sports Wagering Operator shall also grant the Commission access to all social media platforms utilized by the licensee.
- (2) All advertising, marketing, branding, and other promotional materials related to Sports Wagering and the log described in subsection (1) shall be made available to the Commission or its agents upon request.

256.11: Enforcement

- (1) A Sports Wagering Operator shall discontinue or modify as expeditiously as possible the use of a particular advertisement, marketing, or branding material in the Commonwealth or directed to residents in this state upon receipt of written notice that the Commission has determined that the advertisement, marketing, or branding material in question does not conform to the requirements of 205 CMR

256.00 or the discontinuance or modification of which is necessary for the immediate preservation of the public peace, health safety, and welfare of the Commonwealth.

- (2) A failure to adhere to the rules of 205 CMR 256.00 may be grounds for disciplinary action under any enforcement method available to the Commission, including emergency enforcement orders to immediately cease and desist such advertising pursuant to 205 CMR 109.
- (3) The Commission may, in addition to, or in lieu of, any other discipline, require an Operator that violates this section 205 CR 256 to provide electronic copies of all advertising, marketing and promotional materials developed by or on behalf of the Operator to the Commission at least ten (10) business days prior to publication, distribution or airing to the public.

#### REGULATORY AUTHORITY

G.L. c. 23N, §4

Jennifer Roberts  
General Counsel, Vice President  
[Jennifer.roberts@wynnbet.com](mailto:Jennifer.roberts@wynnbet.com)  
702-770-7592

**VIA EMAIL**

February 6, 2023

Karen Wells, Executive Director  
Massachusetts Gaming Commission  
101 Federal Street, 12th Floor  
Boston, Massachusetts 02110

RE: 205 CMR 256: Sports Wagering Advertising (Amended)

To Whom It May Concern:

I am writing on behalf of WSI US, LLC, dba WynnBET, to provide comments on the proposed Sports Wagering Advertising regulations, **205 CMR 256**.

- (1) Regarding **Section 256.01(3)**, this section appears to prohibit compensation arrangements for marketing affiliates and similar vendors on the basis of “volume of patrons or wagers placed, or the outcome of wagers.” WynnBET does not believe that the common form of compensation, cost per acquisition (CPA), which is driven by a flat fee for a single patron enrollment, would fall within this prohibition. To the extent that it is the intention of this proposed section, WynnBET would respectfully request reconsideration. Nearly all mobile sports betting jurisdictions permit CPA as a method of payment for marketing affiliates and similar companies. A majority also allow revenue sharing arrangements that are tied to player activity. While some require a higher level of licensing for such a compensation, a majority of mobile sports betting states have some allowance for it.
- (2) Regarding **Section 256.04(3)**, all Sports Wagering advertisements must clearly convey the conditions under which Sports Wagering is being offered, including information about the cost to participate and the nature of any promotions or and information to assist patrons in understanding the odds of winning. As this requirement would necessitate a significant number of disclosures, WynnBET respectfully requests additional information as to what disclosures would be required. WynnBET does have such information available within its app and on its website.
- (3) Regarding **Section 256.04(4)(a)**, “all advertisements or inducements where the complimentary item or promotion” is must fully disclose all the terms, conditions, or limitations of the offer. Such terms and conditions are detailed and lengthy and disclosure would render advertising and promotions impossible. WynnBET includes at minimum that terms apply and will often include a link for direct access to the terms.

- (4) Regarding **205 CMR 256.06(4)**, WynnBET strongly supports the display of responsible gaming messaging for marketing materials. However, the length of the responsible gaming messaging and font size requirements would significantly impact our ability to utilize billboards, radio, and television media. WynnBET respectfully asks for reconsideration of these requirements. In addition, WynnBET does not have any way to control or prevent a VSE from observing an “unsolicited pop-up advertisement” that is available to the general public through broad distribution channels.
- (5) Finally, WynnBET looks forward to any clarity on whether there are any advertising requirements as it relates to e-mail, SMS or text message, or social media posts (e.g., Twitter, Instagram, Facebook, etc.)

Thank you for your consideration of our comments.

Sincerely,

*Jennifer Roberts*

Jennifer Roberts

cc (via e-mail): Bruce Band, Head of Sports Wagering)  
Mark Vander Linden, Director of Research and Responsible Gaming  
Todd Grossman, General Counsel

# CAESARS<sup>®</sup> SPORTSBOOK

February 6, 2023

Bruce Band  
Sports Wagering Division Director  
Massachusetts Gaming Commission  
101 Federal Street, 12<sup>th</sup> Floor  
Boston, MA 02110

Re: **Caesars Sportsbook Comments on Proposed Rulemaking Regulation 205 CMR 256**

Dear Mr. Band:

On behalf of Caesars Sportsbook (“Caesars”), respectfully submits these comments to the Massachusetts Gaming Commission (“Commission”) proposed regulations 205 CMR 256, regarding advertisement provisions. Caesars would like to thank the Commission for the opportunity to comment on the proposed rules and respectfully requests the Commission take into consideration the following suggestions:

### **CMR 256.01 – Third Parties**

~~*(3) No Sports Wagering Operator may enter into an agreement with a third party to conduct advertising, marketing, or branding on behalf of, or to the benefit of, the licensee when compensation is dependent on, or related to, the volume of patrons or wagers placed, or the outcome of wagers.*~~

Caesars supports operators taking full responsibility for the actions of their third-party marketing affiliates and efforts to protect the consumers, but this regulation does not provide further protections for the public and instead mandates contractual relationship terms between private

# CAESARS<sup>®</sup>

# SPORTSBOOK

parties. Many of the other provisions in the marketing regulations provide ample, and often best-in-class, consumer protections. Further, the vagueness of the terms “moderate” and “high risk” render this regulation inherently problematic. For example, if it were determined that males are at higher risk of gambling disorder than females, would an advertisement depicting just males be prohibited? If persons of color are at a higher risk of gambling disorder than persons not of color, would an advertisement depicting primarily group of people of color be prohibited? Caesars recommends deleting this regulation.

## **CMR 256.02 - Application**

*(2) Sports Wagering advertisements may only be published, aired, displayed, disseminated, or distributed in the Commonwealth by or on behalf of Sports Wagering Operators licensed to offer Sports Wagering in the Commonwealth, unless the advertisement clearly states that the offerings are not available in the Commonwealth or otherwise makes clear that the offerings are not intended for use in the Commonwealth. Sports Wagering Operators and their agents, employees, or any third party conducting advertising or marketing on their behalf shall not advertise forms of illegal gambling in the Commonwealth.*

Caesars supports this regulation but recommend this not apply to national advertising buys. While we are licensed to operate in the Commonwealth, it would be onerous on the staff, and potentially illegal, to regulate out-of-state media organizations.

## **CMR 256.04 – False or Misleading Advertising**

*(1) No Sports Wagering Operator shall allow, conduct, or participate in any unfair or deceptive advertising, marketing, or branding for Sports Wagering. ~~Advertising, marketing, or branding that is unfair or deceptive includes, but is not limited to, advertising, marketing, or branding that would reasonably be expected to confuse and mislead patrons in order to induce them to engage in Sports Wagering.~~*



# CAESARS<sup>®</sup>

# SPORTSBOOK

Caesars supports the Commonwealth's goal of prohibiting deceptive advertising practices, but as written it is too broad to provide meaningful direction to the operators and may be impossible to comply with.

*(3) All Sports Wagering advertisements must clearly convey the conditions under which Sports Wagering is being offered, including information about the cost to participate and the nature of any promotions or information to assist patrons in understanding the odds of winning. Any material conditions or limiting factors must be clearly and conspicuously specified in the advertisement.*

Caesars believes it would be impracticable to include all terms and conditions in an advertisement. For example, an NFL game earlier this season was canceled in the first quarter because a player collapsed from cardiac arrest. This was an unprecedented result for a NFL game. Operators in legal jurisdictions were bound by their internal controls and terms and conditions. Listing every possible condition would not be possible.

### **CMR 256.04: False or Misleading Advertising**

*(4): No employee ~~or vendor~~ of any Sports Wagering Operator (or employees of its vendors) shall advise or encourage individual patrons on a one-on-one basis to place a specific wager of any specific type, kind, subject, or amount. This restriction does not prohibit general advertising or promotional activities, which may require a patron to place a specific wager type, kind, subject, or amount in order for patron to receive a promotional benefit.*

Caesars believes the proposed change above would clarify that standard industry promotions advertised publicly or to certain market segments that require a participating customer to place a specific wager type, kind, subject or amount in order to receive a particular promotional benefit would not be prohibited.

### **CMR 256.05 – Advertising to Youth**

# CAESARS<sup>®</sup> SPORTSBOOK

*(3) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall contain images, symbols, celebrity or entertainer endorsements, or language designed to appeal primarily to individuals younger than twenty-one years of age.*

Caesars believes further clarification if this is a ban on celebrity and entertainment endorsements, or those designed to appeal to minors. Caesars supports the former interpretation. Celebrities that appeal to adults can be a key part of a marketing strategy to attract customers who currently bet illegally and to grow the market through new customers who will generate increased tax revenues for the Commonwealth.

## **CMR 256.06 – Advertising to Other Vulnerable Persons**

*(3) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall include a link to and phone number for the Massachusetts Problem Gambling Helpline, or a national problem gambling helpline, using language provided by the Department of Public Health and such other information regarding responsible gaming as required by the Commission (“Responsible Gaming Messaging”).*

National leaders in responsible and problem gaming have requested the industry use the national 1-800 number where possible to create consistency and to allow the experts there to direct customers to the best local resources. This has become an industry best practice.

We thank the Commission for requesting input on these matters and hope our comments are helpful for your consideration.

Sincerely,



Curtis Lane Jr.

Digital Compliance Manager

# CAESARS<sup>®</sup> SPORTSBOOK

Caesars Sportsbook

Cc: Jeffrey P. Hendricks, Lisa Rankin



February 6, 2023

Via E-Mail to [bruce.band@massgaming.gov](mailto:bruce.band@massgaming.gov)

Mr. Bruce Band  
Director, Sports Wagering Division  
Massachusetts Gaming Commission  
101 Federal St., 12th Floor  
Boston, MA 02110

**RE: SPORTS WAGERING REGULATIONS FOR STAKEHOLDER COMMENT**

Dear Director Band:

In response to the sports wagering rules in 205 CMR 256: Sports Wagering Advertising proposed by the Massachusetts Gaming Commission (“Commission”), DraftKings Inc. (“DraftKings”) submits the following comments for consideration. As a leading sports wagering operator in the United States, DraftKings has first-hand experience with sports wagering regulatory frameworks, and submits these comments based on its operational knowledge in multiple regulated markets. DraftKings would also welcome the opportunity to speak directly with the Commission about the comments addressed below.

**Rule 205 CMR 256.01(3)**

Reason for Change:

DraftKings respectfully requests that the Commission clarify its intentions in rule 205 CMR 256.01(3). DraftKings reads the below to only allow for flat fee arrangements with third parties to conduct advertising, marketing, or branding on behalf of operators. In other jurisdictions an arrangement based upon a cost per acquisition model is permitted. Clarification as to the Commission’s intentions will allow DraftKings and other operators to appropriately plan for the upcoming Massachusetts launch.

Proposed Final Rule Language:

(3) No Sports Wagering Operator may enter into an agreement with a third party to conduct advertising, marketing, or branding on behalf of, or to the benefit of, the licensee when compensation is dependent on, or related to, the volume of patrons or wagers placed, or the outcome of wagers.

**Rule 205 CMR 256.02(2)**

Reason for Change:

DraftKings respectfully requests that the Commission clarify the requirements of this section. For example, if an offer in a national advertisement is not available in Massachusetts and not intended for use in Massachusetts, would a “Void in MA” disclaimer be sufficient? In such a case, where an offer is not available in Massachusetts and the advertisement includes a disclaimer as such,



would the provisions about including specific responsible gaming information about resources in Massachusetts still apply?

Rule Language:

(2) Sports Wagering advertisements may only be published, aired, displayed, disseminated, or distributed in the Commonwealth by or on behalf of Sports Wagering Operators licensed to offer Sports Wagering in the Commonwealth, unless the advertisement clearly states that the offerings are not available in the Commonwealth or otherwise makes clear that the offerings are not intended for use in the Commonwealth. Sports Wagering Operators and their agents, employees, or any third party conducting advertising or marketing on their behalf shall not advertise forms of illegal gambling in the Commonwealth.

**Rule 205 CMR 256.04(4)**

Reason for Change:

DraftKings respectfully requests that the Commission clarify and amend this section.

From time to time, employees of operators and personalities affiliated with operators can be active on social media, posting their active wagers, thoughts on bets, and so on. Would any of the following examples be a violation of this rule?

- An operator executive attends a Celtics game, and before the game tweets “We put the line at Celtics -4 tonight, but the way they’ve been playing it should be Celtics -75.”
- A low-level employee replies to a tweet about the Super Bowl with, “the Patriots are a lock to win the 2024 Super Bowl. Count on it.”
- A vendor employee posts a screenshot of their active wagers before games begin, and says “I’m feeling really good about these!”

As written, this section could be read to prohibit pre-made same-game parlay bets offered by an operator, as that could be encouragement to place a specific wager, which DraftKings does not believe is the intention of the proposed rule.

Further, by way of example, DraftKings owns VSIN (Vegas Sports Information Network, Inc.), which is a multi-platform broadcast and content company that delivers sports wagering news, analysis, and data. VSIN produces up to 18+ hours of live sports wagering content each day. It operates a 24/7 stream of content, and is accessible through multiple video and audio channels, including on NESN and other platforms in Massachusetts. VSIN maintains editorial independence, but its on-air talent are all DraftKings employees who discuss, advise, and encourage bets on specific markets. DraftKings respectfully submits that the proposed rule should not prohibit the manner in which VSIN operates.

Proposed Final Rule Language:

(4) No employee or vendor of any Sports Wagering Operator shall advise or encourage individual patrons to place a specific wager of any specific type, kind, subject, or amount. This restriction



does not prohibit general advertising or promotional activities, **including wager types offered by operators and sports wagering industry media coverage.**

**Rule 205 CMR 256.04(5)(b)**

Reason for Change:

DraftKings respectfully requests that the Commission strike this section of the proposed rules, as terms of promotion are readily available on the website and in the app whenever a customer views or selects a promotion. The availability of terms moots the need for an additional popup.

Proposed Final Rule Language:

~~(b) If being added to a Sports Wagering Account, through the use of a pop-up message either while the complimentary item or promotional credit is being added or when the patron next logs in to the Account, whichever is earlier; and~~

~~(e)~~**(b)** If the offer requires the patron to Wager a specific dollar amount to receive the complimentary item or promotional credit, the amount that the patron is required to Wager of the patron's own funds shall be disclosed in the same size and style of font as the amount of the complimentary item or promotional credit, and the complimentary item or promotional credit shall not be described as free.

**Rule 205 CMR 256.06(2)**

Reason for Change:

DraftKings respectfully requests that the inclusion of the National Council on Problem Gambling's 1-800-GAMBLER helpline be allowed as a substitution for the Massachusetts Problem Gaming Helpline in national advertisements. This inclusion is supported by the American Gaming Association, has been approved for advertisements in other U.S. regulated sports wagering jurisdictions, including Ohio, and allows for consistency in advertising and clearer resources for players.

The American Gaming Association (AGA) previously released a policy note to improve access and service for problem gambling that focused on how state-specific regulations have led to confusion and inconsistency in how operators must display problem gambling helpline disclaimers. Specifically, the AGA identified advertisements that listed each state specific problem gambling helpline number on national advertisements created diminished awareness, customer confusion, and outdated offerings. The policy note states, "The American Gaming Association and its members support utilizing national problem gambling helplines in national advertising campaigns to help consumers in need access support and resources quickly and efficiently." As more jurisdictions request jurisdiction-specific information in national advertisements, the responsible gaming information included in those advertisements become lengthier, and thus more difficult for players to parse. This may result in a player being less likely to be able to identify the correct resource to contact, thus impeding access to that resource.

DraftKings supports the AGA’s position and our proposed language is adopted from Ohio’s regulations and provides the Commission discretion to approve additional gambling hotline numbers, and messages, for national advertising to provide clarity and streamlined messaging to players.

Proposed Final Rule Language:

(2) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator **targeted at Massachusetts residents** shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health and such other information regarding responsible gaming as required by the Commission (“Responsible Gaming Messaging”). **Such materials not specifically targeted at Massachusetts residents that may be seen in Massachusetts shall include either: The Massachusetts Problem Gambling Helpline; the National Council on Problem Gambling’s twenty-four hour confidential helpline; or another helpline approved by the Commission that is free of charge to the caller.**

**Rule 205 CMR 256.06(4)(e)(i)**

Reason for Change:

DraftKings respectfully requests that the Commission clarify that, while operators should include responsible gaming messages on social media sites, they are not required to use responsible gaming messaging specific to Massachusetts.

No other jurisdiction requires a jurisdiction-specific responsible gaming messaging to be utilized on third party websites, including in profiles. Additionally, character limitations in profiles on third party websites, including social media pages, make it impossible for operators to include responsible gaming messages for specific jurisdictions.

Rule Language:

i. Responsible Gaming Messaging must be posted in a conspicuous location on each webpage or profile page and on a gaming related advertisement posted on the webpage or profile page.

**Rule 205 CMR 256.07(2)**

Reason for Change:

DraftKings respectfully requests that the Commission remove the reference to “unsolicited pop-up advertisements.” Operators understand their responsibility to not direct advertisements to individuals on a self-exclusion list, however, it is not clear what is meant by “unsolicited pop-up advertisements,” nor what it would mean to “direct” such an advertisement to a person in the Self-Exclusion program.

While operators work with their advertising partners to ensure that individuals on the self-exclusion list are not directly marketed to, operators have limited to no ability to control who sees

a general advertisement online, and thus cannot prevent individuals who have self-excluded from seeing them.

Additionally, the provisions of this section are already covered by the prohibitions in 205 CMR 256.07(1). Eliminating the vagueness presenting in 205 CMR 256.07(2) will not have any negative effect on consumer protections in Massachusetts.

Proposed Final Rule Language:

(1) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for sports wagering that is aimed at persons who have enrolled in a Self-Exclusion Program pursuant to 205 CMR 233.

(2) No Sports Wagering Operator shall direct text messages ~~or unsolicited pop-up advertisements on the internet~~ to an individual in the Self-Exclusion Program or shall allow any employee or agent of the Sports Wagering Operator, or affiliated entity or a third party pursuant to contract, to take such actions.

**Rule 205 CMR 256.10(1)**

Reason for Change:

DraftKings respectfully requests that the Commission amend this section to clarify Commission access to social media platforms.

The term “utilized by the licensee” is broad and undefined. This could include customer experience accounts, which deal with individual customers and can include private information in direct messages. “Utilized by the licensee” could also be construed to include any personal social media accounts of company executives, who may promote the company on their personal channels. DraftKings requests an amendment to limit this to the promotional log detailing posts expressly used for advertising, marketing, and branding purposes.

Additionally, DraftKings requests an amendment to clarify that “access” means specifically to view a log of what the accounts have publicly posted. As written, it is not clear if the Commission requests the ability to view all posts by accounts utilized by the licensee for marketing purposes, or if the Commission requests login credentials for each licensee for all social media accounts used for marketing purposes. If the latter, DraftKings would request establishment of a detailed process for access that would include but not be limited to detailed information as to reasons for access, the level of access required, the process by which the Commission would gain access, and procedures for the operator to be able to safeguard information.

Proposed Final Rule Language:

(1) Each Sports Wagering Operator shall retain a copy of all advertising, marketing, branding and other promotional materials intended to promote any Sports Wagering within the Commonwealth, including a log of when, how, and with whom, those materials have been published, aired, displayed, or disseminated, for six (6) years. A Sports Wagering Operator shall also grant the Commission access to **such log of all social media posts utilized by the licensee for advertising, marketing, and branding purposes.**





**Rule 205 CMR 256.11(3)**

Reason for Change:

To date, operators have been directed by Commission staff to submit all promotional materials ten days prior to publication. The Commission has not issued any regulation that operators must submit all promotional materials ten days prior to publication outside of this section, which only provides the Commission an option to enact such a requirement as part of an enforcement action.

DraftKings respectfully requests that the Commission only apply the ten day requirement in line with this section - to operators who are the subject of enforcement actions, and where the Commission specifically determines that such pre-approval is warranted.

Providing all materials ten days in advance of publication would be exceptionally burdensome, and would prevent operators from marketing certain events. For example, the NBA Finals may go to a game seven, which could not be known to operators 10 days in advance. Operators would be unable to advertise or offer such promotions.

Additionally, there is no need for preapproval for all operators for oversight purposes, as operators are already required by 205 CMR 256.10(1) to retain all advertising, marketing, and promotional materials. The Commission already has access to those materials to ensure that operators follow these regulations, and the Commission has remedies in cases where an operator does not follow the regulations.

Finally, there is one typographical error in the draft rule, corrected below.

Proposed Final Rule Language:

(3) The Commission may, in addition to, or in lieu of, any other discipline, require an Operator that violates this section 205 CMR 256 to provide electronic copies of all advertising, marketing and promotional materials developed by or on behalf of the Operator to the Commission at least ten (10) business days prior to publication, distribution or airing to the public.

\* \* \* \* \*

Thank you for your consideration of DraftKings' comments regarding the Commission's proposed regulations in 205 CMR 256: Sports Wagering Advertising. Please feel free to reach out should you or anyone else at the Commission have any questions about our submission or our experience in other regulated jurisdictions.

Sincerely,

DraftKings Inc.

NEW YORK  
LONDON  
SINGAPORE  
PHILADELPHIA  
CHICAGO  
WASHINGTON, DC  
SAN FRANCISCO  
SILICON VALLEY  
SAN DIEGO  
LOS ANGELES  
BOSTON  
HOUSTON  
DALLAS  
FORT WORTH  
AUSTIN

# DuaneMorris®

FIRM and AFFILIATE OFFICES

ADAM BERGER  
DIRECT DIAL: +1 215 979 1554  
PERSONAL FAX: +1 856 494 7968  
E-MAIL: ABerger@duanemorris.com

[www.duanemorris.com](http://www.duanemorris.com)

HANOI  
HO CHI MINH CITY  
SHANGHAI  
ATLANTA  
BALTIMORE  
WILMINGTON  
MIAMI  
BOCA RATON  
PITTSBURGH  
NEWARK  
LAS VEGAS  
CHERRY HILL  
LAKE TAHOE  
MYANMAR

ALLIANCES IN MEXICO

February 6, 2023

VIA E-MAIL

Bruce E Band  
Sports Wagering Division Director  
Massachusetts Gaming Commission  
Bruce.Band@MASSGAMING.GOV  
101 Federal Street, 12th Floor  
Boston, Massachusetts 02110  
Tel 617.979.8470  
Cell 857.301.2645

**Re: 205 CMR 256: SPORTS WAGERING ADVERTISING COMMENTS**

Dear Director Band:

As you may be aware, this firm represents FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics"). As you further know, last month the Massachusetts Gaming Commission ("Commission") found Fanatics to be preliminarily suitable to hold a Category 3 sports wagering operator license. Fanatics, through the leadership of its highly experienced executive team comprised of former leaders of top tier sportsbook operators, plans to launch mobile sports wagering in the Commonwealth in the coming months. Based on this experience, Fanatics believes it can provide the Commission with constructive comments to help make the rulemaking process as productive and efficient as possible. Accordingly, on behalf of Fanatics, we provide the following comments, organized generally by rule number, to 205 CMR 256: Sports Wagering Advertising.

### ***Global Comment***

Generally, the proposed advertising rules apply to "branding" and not just advertising and promotional materials. Fanatics submits that these requirements, as applied to branding, create unnecessarily burdensome requirements for operators and their employees. For example, under these rules, as written, operators would have to include responsible gambling messages in simple logo placement branding. Further, inclusion of "branding" in the rules would impinge

DUANE MORRIS LLP

30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196  
DM1113843530.1

PHONE: +1 215 979 1000 FAX: +1 215 979 1020

February 6, 2023  
Page 2

**Duane Morris**

requirements on employees of operators who set up LinkedIn profiles, or, for example, share a press release about a sportsbook opening. Further, and as alluded to above, it is increasingly likely that new entrants to the sports betting market will be part of larger and diversified organizations whose success is premised on brand awareness – both in and out of the gaming space. The inclusion of “branding” within these rules thus could subject such companies to overly exhaustive and near impossible to follow gambling-advertising requirements. Such a result would also potentially confuse the public and limit companies’ abilities to establish a diverse brand that only partially encompasses the gaming industry. As such, Fanatics respectfully requests that the Commission amend these rules to remove the inclusion of “branding.”

***Rule 256.05(2)-(7) – Advertising to Youth***

Subsections (2)-(7) of this rule, generally, prohibit sports wagering operators from advertising and marketing to persons under twenty-one years of age and limit the dissemination of marketing information at certain venues, including schools and college campuses. As written, the prohibitions are broad and when read literally are not necessarily limited to sports wagering, or gaming-related advertisements. While Fanatics understands the presumed purpose and shares the goal of preventing the promotion of sports wagering to youth, the provisions as written are overly limiting. Particularly, Fanatics recommends that the Commission amend these subsections to remove any potential ambiguity and make clear that the rules relate solely to an operator’s gaming-related business. Such a clarification would be timely and consistent with the scope and presumed objectives of the sports wagering statute given that as the gaming industry expands and new multi-dimensional and innovative companies enter the market, it is likely that such companies will seek to advertise and market their gaming business while also growing their non-gaming assets.

Moreover, as to subsection (4)(e), Fanatics submits that the use of the phrase “presumed to be under 21” is ambiguous. Fanatics submits that the presumed intention of subparagraph (e) is captured in subparagraph (b), which prohibits advertising at events aimed at minors or where 25% or more of the audience is “reasonably expected” to be under twenty-one years of age. As such, Fanatics recommends that the Commission delete this language and instead rely upon the clear mandate set forth in subsection (b).

***Rule 256.06 – Advertising to Other Vulnerable Persons***

This rule, among other things, requires that marketing and advertising include a link to and phone number for the Massachusetts Problem Gambling Helpline, as well as state-specific problem gambling messages, regardless of whether the marketing and advertising is targeted to Massachusetts. Consistent with the approach accepted in numerous jurisdictions, Fanatics recommends that the Commission give operators the ability to use the "1-800 GAMBLER" number and message for national or regional advertisements. Fanatics submits that the requirement to list state-specific responsible gaming messages in national advertisements does

February 6, 2023  
Page 3

Duane Morris

not further operators' and regulators' shared goal of providing customers straightforward guidance on how to seek assistance with problem gaming. More particularly, Fanatics submits that permitting operators to utilize one helpline for national or regional advertisements will promote greater awareness, consistency in messaging and understanding by patrons of the resources available to persons in need of valuable problem gambling resources. To the contrary, a state-by-state approach on the issue risks creating confusion amongst patrons and makes responsible gaming disclosures on multi-state advertisements harder to read and quickly comprehend.

Consistent with the above recommendations, Fanatics submits that the Commission should limit the express requirements in subsection (4)(d) (related to video and television responsible gaming messaging) and subsection (4)(e) (related to websites and social media responsible gaming messaging) to advertising specifically targeting the Massachusetts market or the promotion of Massachusetts-specific offerings - as opposed to national or regional advertisements. Further to this point, Fanatics again submits that operators should be permitted to utilize national problem gambling messaging (i.e., 1-800 GAMBLER" number and message for national advertisements) when conducting multi-state marketing efforts on its websites and social media assets in order to permit easy viewing and comprehension of responsible gaming messaging, and in turn give patrons straightforward guidance on seeking assistance.

Finally, as to subsection (e)(1), Fanatics recommends that the Commission replace the word "webpage" with "website." Fanatics understands the importance for operators to clearly and prominently display responsible gaming messaging. Fanatics believes that this amendment gives more flexibility to determine the appropriate placement of the messaging on the overall websites to meet that requirement. This will allow operators to effectively provide the requisite messaging to patrons in a location on the website that is easily accessible and in a manner that is most user friendly. In this regard, Fanatics suggests that the Federal Trade Commission's ("FTC") ".com Disclosures: How to Make Effective Disclosures in Digital Advertising"<sup>1</sup> may provide additional guidance on the issue. The FTC's guidance provides that the use of hyperlinks to provide relevant disclosures (or by extension other means to provide disclosures in a manner that is one-click away) are particularly useful if a disclosure in question is lengthy or needs to be repeated. Fanatics submits that it should be permitted to use a similar approach for including responsible gaming messaging on advertisements on social media platforms as well.

#### ***Rule 256.07(2) – Self Excluded Persons***

Subsection (2) prohibits sports wagering operators from directing text messages or "unsolicited pop-up advertisements on the internet" to individuals in the self-exclusion program. Fanatics recommends that the Commission amend this rule to replace "unsolicited pop-up

---

<sup>1</sup> The FTC's guidance is available here: <https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>.

February 6, 2023  
Page 4

**Duane Morris**

advertisements,” with “directed marketing to Massachusetts residents.” Digital companies, whether gaming businesses or otherwise, in almost all cases do not have the ability to determine the identity of the person receiving a non-targeted marketing pop-up, and by extension whether the recipient of such a pop-up is a self-excluded person. By focusing this requirement toward directed marketing activities, operators would still be prohibited from directly advertising to persons known to be self-excluded, which is consistent with requirements in other sports wagering jurisdictions.

***Rule 256.04(5)(b) and (c) – False or Misleading Advertising***

Subsection (5)(b) provides that sports wagering operators who offer complimentary items or promotional credits that are subject to terms, conditions or limitations must fully disclose the terms, conditions or limitations through the use of a pop-up message. While Fanatics appreciates the importance of disclosing any specific terms, conditions or limitations, Fanatics submits that this requirement is overly limiting. Fanatics recommends that the Commission amend this rule to give operators the option of making the terms of an offer available through webpage disclosures (which could be one-click away), as opposed to requiring them to display terms through a pop up. Fanatics submits that this approach is consistent with Federal Trade Commission guidance as well as the goal of ensuring that the terms of an offer are fully disclosed to patrons in a manner that is most user friendly and easy to comprehend.

Subsection 5(c) also applies to sports wagering operators who offer complimentary items or promotional credits that are subject to terms, conditions or limitations. This subsection provides that if the offer requires the patron to wager a specific dollar amount, operators must disclose the amount in the same size and style of font as the amount of the complimentary item or promotional credit. Fanatics submits that the Commission should amend this rule to require that sports wagering operators must disclose “clearly and conspicuously” the amount a patron must wager, as opposed to the “same font” requirement. The requirement, as written, limits operators' ability to exercise discretion in establishing marketing campaigns and to determine what is most appropriate for a particular advertisement.

***Rule 256.01 – Third Parties***

This rule provides that sports wagering operators shall be responsible for the content and conduct of any and all advertising and marketing conducted on its behalf. Fanatics submits that, to the extent an advertisement is improperly placed on behalf of a sports wagering operators without its prior approval, the sports wagering operator should not be responsible for said marketing/advertisement. Said otherwise, an operator should not be subject to punishment in situations where it has taken reasonable steps to ensure that it maintains the right to review all advertisements made on its behalf prior to public dissemination, but where a third party fails to adequately provide such operator with an opportunity for prior approval of content.

February 6, 2023  
Page 5

Duane Morris

***Rule 256.10(1) and (2) – Records***

Subsection (1) requires operators to maintain all promotional materials for six years. Fanatics submits that this rule is unnecessarily burdensome for operators and not in accordance with market standards. As such, Fanatics respectfully recommends that the Commission adopt a two-year retention standard, which is in line with the rules in other jurisdictions that have recently adopted robust advertising regulations, such as Ohio.

Subsection (2) requires operators to make advertising and marketing materials available to the Commission or its agents upon request. Fanatics recommends that the Commission amend this subsection to clarify that operators are only required to give "read only" access to social media accounts and not control of such accounts. Such access controls would not undermine the purpose of the rule.

Thank you for your consideration and please do not hesitate to contact us should you wish to discuss our comments.

Very truly yours,

DUANE MORRIS LLP



Adam Berger  
Partner

AB



Cory Fox  
cory.fox@fanduel.com

February 6, 2023

*Via Email to [Bruce.Band@MASSGAMING.GOV](mailto:Bruce.Band@MASSGAMING.GOV)*

Bruce Band, Sports Wagering Division Director  
Massachusetts Gaming Commission  
101 Federal Street, 12<sup>th</sup> Floor  
Boston, MA 02110

**Re: FanDuel comments on proposed 205 CMR 256: SPORTS WAGERING  
ADVERTISING**

Dear Director Band:

I write to provide comments on behalf of FanDuel Group, Inc. (“FanDuel”) regarding the Massachusetts Gaming Commission’s (“Commission”) proposed regulation 205 CMR 256: SPORTS WAGERING ADVERTISING (“Proposed Advertising Regulation”). Based on our extensive experience as an operator in the online casino gaming, sports betting and fantasy sports industries and collaborator with regulators of sports betting in many states in the development of their regulations, we offer constructive feedback on ways in which the Proposed Advertising Regulations can be improved for effectiveness and consistency with other state regulations.

Following the Supreme Court’s decision to strike down the Professional and Amateur Sports Protection Act (PASPA) in May of 2018, FanDuel has now become the leading sports wagering operator, and the largest online real-money gaming operator, in the United States. FanDuel currently operates twenty-eight (28) brick and mortar sportsbooks in sixteen (16) states and Washington D.C. and online sports wagering in eighteen (18) states and Ontario.

We thank the Commission for providing the opportunity for stakeholders to provide comment on the Proposed Advertising Regulation and have arranged our comments in two parts. Part I is focused on issues that will have significant negative impacts on the ability of sports wagering operators to effectively offer sports wagering and convert bettors from the illegal, offshore sports wagering market. Part II is focused on requests for clarification.



For our proposed amendments to the Proposed Advertising Regulation, all changes will be shown as follows: proposed additional text will be bolded and underlined and all text to be deleted will be bolded, bracketed, and struck through.

### **Part I – Primary Concerns.**

- *Issue 1 – Requirement to have a “pop-up message” with promotional terms for offers added to a patron’s sports wagering account.*

Section 205 CMR 256.04(5)(b) of the Proposed Advertising Regulation requires operators to disclose to a patron all terms, conditions, or limitations of a promotional offer “through the use of a pop-up message either while the complimentary item or promotional credit is being added or when the patron next logs in to the Account, whichever is earlier.” While operators certainly make the terms and conditions of promotional offers available to patrons, it is not a standard requirement in other jurisdictions for operators to build specific pop-up messaging into their application to serve this purpose. As such, we suggest removal of this requirement.

To address this concern, we suggest the following edits:

#### Section 205 CMR 256.04(5):

“(5) A Sports Wagering Operator that engages in any promotion related to Sports Wagering shall clearly and concisely explain the terms of the promotion and adhere to such terms. If a Sports Wagering Operator offers complimentary items or promotional credit that are subject to terms, conditions or limitations in order to claim the item or redeem the item or credit, the Operator shall fully disclose all such terms, conditions or limitations through the following methods:

- (a) In all advertisements or inducements where the complimentary item or promotion are advertised;
- (b) ~~[(b) If being added to a Sports Wagering Account, through the use of a pop-up message either while the complimentary item or promotional credit is being added or when the patron next logs in to the Account, whichever is earlier;]~~ and
- (c) If the offer requires the patron to Wager a specific dollar amount to receive the complimentary item or promotional credit, the amount that the patron is required to Wager of the patron’s own funds shall be disclosed in the same size and style of font as the amount of the complimentary item or promotional credit, and the complimentary item or promotional credit shall not be described as free.”





- ***Issue 2 – Requirement for Massachusetts Problem Gambling Helpline.***

Section 205 CMR 256.06(2) of the Proposed Advertising Regulation requires that operators must include a responsible gaming message on all advertising, and that such responsible gaming message must include the contact information of the Massachusetts Problem Gambling Helpline<sup>1</sup>. While we wholeheartedly agree with including a responsible gaming message along with contact information for a resource where individuals can seek assistance with problem gambling issues, the requirement to only use a jurisdictionally specific number on all advertisements poses significant issues for multi-state operators, especially those who are, or will be, advertising nationally and/or throughout New England and the northeast specifically.

While copy for billboards and other out-of-home advertisements can be designed in a jurisdictionally specific format, other forms of advertising on a national or regional level crosses borders (radio, tv, social media, podcasts, etc.) and is not best suited to require jurisdictionally specific responsible gambling messages and use of state hotlines. What happens in these forms of advertising is that numerous state disclaimers are added which leads to each individual state responsible gaming message being ignored as it is drowned out by the others. For example, it takes almost 40 seconds for a host to read through a standard listing of responsible gambling messages for an advertisement during a podcast.

We wish to work with the Commission on a solution that ensures listeners and viewers receive pertinent information on how to access problem gambling assistance in a way that reduces the likelihood of audiences “tuning out” while a long listing of jurisdictionally specific messages are presented to them. There are national hotlines, like 1-800-GAMBLER, which have been authorized by other jurisdictions and provide access to problem gambling resources. We suggest that the Commission consider allowing operators to utilize this resource, at a minimum for advertisements that will be transmitted across multiple jurisdictions. To address this concern, we suggest the following edits:

**Preferred language:**

*Section 205 CMR 256.06(2):*

“(2) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health, **or a national toll-free problem gambling**

---

<sup>1</sup> Notably, the Commission’s current Responsible Gaming Framework for Chapter 23K Gaming Establishments contains some discretion in the substance of the responsible gaming message including whether to contain a “helpline number.” Specifically, the framework provides that gambling advertising should “Contain a responsible gaming message and/or a toll-free help line number where practical”. See Responsible Gaming Framework 2.0 (2018). <https://massgaming.com/wp-content/uploads/MGC-Responsible-Gaming-Framework-2.0.pdf>



**assistance hotline approved by the commission**, and such other information regarding responsible gaming as required by the Commission (“Responsible Gaming Messaging”).”

**Alternative language:**

*Section 205 CMR 256.06(2):*

“(2) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator **solely within the commonwealth**, shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health and such other information regarding responsible gaming as required by the Commission (“Responsible Gaming Messaging”). **All other advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator within the commonwealth, shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health, or a national toll-free problem gambling assistance hotline approved by the commission, and such other information regarding responsible gaming as required by the Commission (“Responsible Gaming Messaging”).**”

Additionally, we would also urge the Commission to work with operators and the Department of Public Health on the appropriate language used in the “Responsible Gaming Message” to ensure that the length and message are both effective and appropriate in light of these considerations and the specific requirements around “Responsible Gaming Messaging” font size discussed in further detail in Issue 3 below.

- *Issue 3 – Specific requirements around Responsible Gaming Messaging font size.*

Section 205 CMR 256.06(4) of the Proposed Advertising Regulation provides incredibly detailed requirements regarding the size of the responsible gaming messaging that appears in advertisements based on the medium of the advertisement. This is not a standard requirement among jurisdictions that have authorized sports wagering.

We understand, and agree with, the underlying concern of the Commission as it relates to ensuring viewers are adequately presented with the contact information for problem gambling resources. However, this language, along with the requirement to use jurisdictionally specific Responsible Gaming Messaging, are likely to present a more confusing experience to the viewer as it relates to certain advertisements. For multi-jurisdictional advertisements, the viewer will see multiple responsible gaming messages, of varying sizes and may miss out on identifying the resources



available to them. Additionally, as requirements of this nature expand, it likely may make certain forms of advertising non-viable. This in turn will hurt the ability of operators to convert bettors from the illegal sports wagering market, leaving customers in a market with no regulation and no resources for individuals with gambling problems.

We understand that the provisions of this section are similar to that of New York. While we are suggesting that they be removed entirely, we also suggest, at a minimum, that they at least be amended to be the same as the requirements in New York to ease the compliance burden if it is going to be kept. To address these concerns, we suggest the following edits:

**Preferred language:**

Strike 205 CMR 256.06(4) in its entirety.

**Alternative language:**

Section 205 CMR 256.06(4):

“(4) Information regarding the Problem Gaming Helpline and any other required responsible gaming information (“Responsible Gaming Messaging”) must also meet the following requirements:

- (a) For signs, direct mail marketing materials, posters and other print advertisements, the height of the font used to advertise Responsible Gaming Messaging must be the greater of:
  - i. The same size as the majority of the text used in the sign, direct mail marketing material, poster or other print advertisement; or
  - ii. 2% of the height or width, whichever is greater, of the sign, direct mail marketing material, poster or other print advertisement.
- (b) For billboards, the height of the font used for Responsible Gaming Messaging must be at least 5% of the height or width, whichever is greater, of the face of the billboard.
- (c) For digital billboards, Responsible Gaming Messaging must be visible for the entire time the rest of the advertisement is displayed.



- (d) For video and television, Responsible Gaming Messaging must be visible for either:
- i. The entire time the video or television advertisement is displayed, in which case the height of the font used for Responsible Gaming Messaging must be at least 2% of the height or width, whichever is greater, of the image that will be displayed.
  - ii. From the first time Sports Wagering Equipment, a Sports Wagering Facility, a Sports Wagering Area or Sports Wagering is displayed or verbally referenced, and on a dedicated screen shot visible for at least the last three (3) seconds of the video or television advertisement. If the Operator elects to utilize this option, the height of the font used for Responsible Gaming Messaging:
    1. During the advertisement must be at least 2% of the height or width, whichever is greater, of the image that will be displayed.
    2. On the dedicated screen shot must be at least 8% of the height or width, whichever is greater, of the image that will be displayed.
- (e) For web sites, including social media sites:
- i. Responsible Gaming Messaging must be posted in a conspicuous location on each webpage or profile page and on a gaming related advertisement posted on the webpage or profile page.
  - ii. The height of the font used for Responsible Gaming Messaging must be at least the same size as the majority of the text used in the webpage or profile page.
  - iii. For advertisements posted on the webpage or profile page, the height of the font used for Responsible Gaming Messaging must comply with **subparagraph (ii) of this paragraph** ~~[the height required for signs, direct mail marketing materials, posters and other print advertisements].~~<sup>[5]</sup>”





- *Issue 4 – Prevention of unsolicited pop-up advertisements to individuals in self-exclusion program.*

Section 205 CMR 256.07(2) of the Proposed Advertising Regulation prohibits operators, or any third parties acting on behalf of an operator, from sending any direct text messages or unsolicited pop up advertisements to an individual in the Self-Exclusion Program. While we do not target individuals in any Self-Exclusion Program for advertising, we do have some concerns with this provision. First, we would ask the Commission to clarify that an operator shall not be deemed to have violated this provision in the even that the self-excluded individual did not provide their cell phone number when entering the Self-Exclusion Program. Without that information, operators will be unable to ensure that they are preventing text messages from going to that number.

Second, operators and marketing affiliates are not able to know whether someone viewing their website (without logging in or attempting to log-in) is in the Self-Exclusion Program. Thus, they are unable to ensure that they are preventing individuals in the Self-Exclusion Program from being exposed to any pop-up advertisements. We strongly suggest removing this requirement as it is unworkable.

To address these concerns, we suggest the following edits:

Section 205 CMR 256.07(2):

“(2) No Sports Wagering Operator shall direct text messages [~~or unsolicited pop-up advertisements on the internet~~] to an individual in the Self-Exclusion Program or shall allow any employee or agent of the Sports Wagering Operator, or affiliated entity or a third party pursuant to contract, to take such actions. **A Sports Wagering Operator shall not be found to have violated this provision if the individual did not provide the phone number at which the text message was received when entering the Self-Exclusion Program.**”

**Part II – Requests for Clarification.**

- *Issue 1 – Prohibition on compensation to marketing affiliates based on patron sign-ups.*

Section 205 CMR 256.01(3) of the Proposed Advertising Regulation prohibits any advertising or marketing contracts where compensation is based on “the volume of patrons or wagers placed, or the outcome of wagers.” While we understand the concern about compensation based on the



volume of wagering or the outcome of wagers, this language appears to prohibit a standard marketing practice used by operators throughout the United States.

It is standard industry practice to pay marketing affiliates on a cost per acquisition (“CPA”) basis. This is in line with marketing practices in many other industries where compensation is provided for referrals. We strongly urge the Commission to clarify that compensation of marketing affiliates is authorized based on the number of patrons they assist the operator in acquiring, while still prohibiting compensation based on player activity (amount wagered, amount won or lost).

To address this concern, we suggest the following edit:

Section 205 CMR 256.01(3):

“(3) No Sports Wagering Operator may enter into an agreement with a third party to conduct advertising, marketing, or branding on behalf of, or to the benefit of, the licensee when compensation is dependent on, or related to, the volume of ~~[patrons or]~~ wagers placed, or the outcome of wagers.”

- ***Issue 2 – Prohibition on wager suggestions.***

Section 205 CMR 256.04(4) of the Proposed Advertising Regulation prohibits employees and vendors of the sports wagering operator from advising or encouraging individual patrons to place a specific wager. While this section has an exemption for general advertising and promotional activities, we would suggest further clarification from the Commission as to the scope of this prohibition. For example, we would understand a proposed limitation on members of our VIP team specifically suggesting a wager to a customer. However, we would not expect, and it would not be a standard requirement, to prohibit our application from suggesting an event or wager a patron may be interested in based on previous activity on the site.

- ***Issue 3 – Prohibition on “saturation”***

Section 205 CMR 256.08(2) of the Proposed Advertising Regulation prohibits advertising being placed at a sports event “with such intensity and frequency that they represent saturation of that medium or become excessive.” While we understand the underlying concern of the Commission, we find it important to point out that this will be a competitive market for operators, who will be advertising significantly to draw customers from the illegal market to the regulated market. While a single operator may place advertisements in relation to a sporting event that is nowhere near “saturation”, they are unable to control what other operators will do. It is not possible for sports wagering operators to control what may feel to some as “saturation” of sports wagering



advertisements, when those advertisements are coming from many different companies. We urge the Commission to provide further clarification on what they consider “saturation.”

- *Issue 4 – Requirement for promotional offers to be listed in the same size font as the requirement to qualify.*

Section 205 CMR 256.04(c) of the Proposed Advertising Regulation requires that when a customer is required to wager a certain amount to receive a complimentary item or promotional credit, any advertisement of such promotion must display the required wager amount in the same size and style of font as the complimentary item or promotional credit. While we understand the underlying concern to prevent operators from “hiding” the required wager, it is not standard practice to require the exact same size and style of font for both the required wager and the complimentary item. We suggest that this section be clarified to require the advertisement to “clearly and conspicuously” disclose any required wager. To address this concern, we suggest the following edits:

Section 205 CMR 256.04(c):

“(c) If the offer requires the patron to Wager a specific dollar amount to receive the complimentary item or promotional credit, the amount that the patron is required to Wager of the patron’s own funds shall be **clearly and conspicuously** disclosed [~~in the same size and style of font as the amount of the complimentary item or promotional credit~~], and the complimentary item or promotional credit shall not be described as free.”

\*\*\*\*\*

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

Sincerely,

Cory Fox  
Vice President for Product and New Market Compliance

Massachusetts Gaming Commission - PENN's Comments on Proposed Regulation: 205 CMR 256: Advertising			
Rule Reference	Existing Rule Language	Proposed Language	Reason for Change
Section 256.01(1)	<i>Each Sports Wagering Operator shall be responsible for the content and conduct of any and all advertising, marketing, or branding done on its behalf or to its benefit whether conducted by the Sports Wagering Operator, an employee or agent of the Sports Wagering Operator, or an affiliated entity or a third party pursuant to contract, regardless of whether such party is also required to be licensed or registered as a Sports Wagering Vendor or Non-Sports Wagering Vendor.</i>	<i>Each Sports Wagering Operator shall be responsible for the content and conduct of any and all advertising, marketing, or branding <u>related to sports wagering</u> done on its behalf or to its benefit whether conducted by the Sports Wagering Operator, an employee or agent of the Sports Wagering Operator, or an affiliated entity or a third party pursuant to contract, regardless of whether such party is also required to be licensed or registered as a Sports Wagering Vendor or Non-Sports Wagering Vendor.</i>	PENN recommends narrowing the scope of this regulation to content specifically "related to sports wagering." As currently written, this regulation is overly broad and imposes an undue burden on Sports Wagering Operators to be responsible for any advertising, marketing, or branding content which may be "to its benefit." As many Sports Wagering Operators have affiliation with media brands, advertising, marketing, or branding for such partners may be interpreted as being to a Sports Wagering Operator's "benefit," even if such advertising, marketing, or branding is not related in any way to sports wagering.
Section 256.01(3)	<i>No Sports Wagering Operator may enter into an agreement with a third party to conduct advertising, marketing, or branding on behalf of, or to the benefit of, the licensee when compensation is dependent on, or related to, the volume of patrons or wagers placed, or the outcome of wagers.</i>	<i><del>No Sports Wagering Operator may enter into an agreement with a third party to conduct advertising, marketing, or branding on behalf of, or to the benefit of, the licensee when compensation is dependent on, or related to, the volume of patrons or wagers placed, or the outcome of wagers.</del></i>	PENN recommends this regulation be removed as it is unprecedented in the sports wagering industry and prohibits standard marketing practices and agreements currently in place across multiple jurisdictions. PENN operates online sports wagering in 15 jurisdictions and retail sports wagering in 12 jurisdictions (excluding Plainridge Park Casino in MA), none of which impose a ban on establishing agreements with third party marketing entities based on the volume of patrons or wagers placed, or the outcome of wagers. It is standard industry practice to base compensation of a third party marketing entity on the volume of new players it generates through its advertising for the Sports Wagering Operator as this is an objective metric to evaluate the partnership's success. However, the compensation terms of an agreement between a Sports Wagering Operator and a third party marketing partner are immaterial to the messaging of marketing, advertising, and branding that will be present in the Commonwealth on a Sports Wagering Operator's behalf.  Additionally, notwithstanding the removal of this regulation, the Massachusetts Gaming Commission will continue to maintain regulatory oversight of all advertising, marketing, and branding conducted by such third party marketing partners as 205 CMR 256 are applicable to all such activity done on Sports Wagering Operators' behalf pursuant to rule 256 01(1).
Section 256.05(4)(d)	<i>No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall be published, aired, displayed disseminated, or distributed:  (d) on any college or university campus;</i>	<i>No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall be published, aired, displayed disseminated, or distributed:  (d) on any college or university campus, <u>except for generally available advertising, including television, radio, and digital advertising;</u></i>	PENN recommends amending this rule to permit the presence of generally available television, radio, and digital advertising on college or university campuses in Massachusetts. Prohibiting advertisements from Massachusetts college or university campuses, generally, is overly restrictive as campus borders are often ambiguous and expand beyond areas predominantly utilized by college students and student-athletes. Additionally, the rule as currently written would result in a significant operational burden for Sports Wagering Operators to ensure generally available advertisements on mediums such as television, radio, and social media are not able to be consumed on college or university campuses.
Section 256.06(2)	<i>Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health.</i>	<i>Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health.</i>	PENN recommends removing "branding" from this regulation to align with industry standards in regards to sponsorship and brand signage. As sponsorship and brand signage solely contains a Sports Wagering Operator's logo, there is no call-to-action for patrons to engage in sports wagering. PENN is not aware of any other jurisdiction which requires a responsible gaming disclaimer be present on sponsorship and brand signage. Requiring a responsible gaming disclaimer any time a Sports Wagering Operator's logo appears without a marketing or advertising message to engage in sports wagering is overly burdensome, as it materially alters a Sports Wagering Operator's intellectual property and its ability to use it in non-advertisement materials.  By way of example, as currently written, this regulation would require a T-shirt (or other merchandise) containing a Sports Wagering Operator's logo with no call-to-action to engage in sports wagering to include a responsible gaming disclaimer. Such merchandise is not an advertisement for sports wagering and thus should not be mandated to alter the display of the Sports Wagering Operator's intellectual property.



Massachusetts Gaming Commission - PENN's Comments on Proposed Regulation: 205 CMR 256: Advertising			
Rule Reference	Existing Rule Language	Proposed Language	Reason for Change
Section 256.06(4)(b)	<i>For billboards, the height of the font used for Responsible Gaming Messaging must be at least 5% of the height or width, whichever is greater, of the face of the billboard.</i>	<i>For billboards, the height of the font used for Responsible Gaming Messaging must be at least <del>5</del>2% of the height or width, whichever is greater, of the face of the billboard.</i>	PENN recommends reducing the sizing requirement to 2% to align with the sizing requirements for other print advertisements listed in 256.06(4)(d)(i). As the sizing requirement in 256.06(4)(d)(i) is a percentage of, and thus relative to, the height or width of print material, the responsible gaming disclaimer will proportionally increase with the print material. Accordingly, there is no reason for the percentage to increase as the size of the print material increases. In practice, 5% of the height or width (whichever is greater) of a billboard is extremely large and will dominate the copy of a billboard, especially when considering the length of the prescribed responsible gaming disclaimer in Massachusetts. This responsible gaming disclaimer sizing requirement for billboards is only present in Pennsylvania, where the responsible gaming disclaimer is materially shorter than that prescribed in Massachusetts.
Section 256.08(1)	<i>No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that obscures the game play area of a sporting event or obstructs a game in progress.</i>	<i>No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that obscures the game play area <del>of</del> <b>at a live</b> sporting event or obstructs <b>the viewer experience at a sports event game-in-progress.</b></i>	PENN recommends amending this rule as the current requirement is not supported by M.G.L. c. 23N, Section 4(c)(C). Pursuant to the language of Section 4(c)(C), the Commission is to promulgate rules to prohibit "any form of advertising, marketing or branding that the commission deems unacceptable or disruptive to the viewer experience <i>at a sports event</i> " (emphasis added); however, the current language of 256.08(1) can reasonably be interpreted as imposing requirements on the broadcast or other display of a live sports event. As there is only statutory support for the Commission to determine what is unacceptable or disruptive to the viewer experience at a live sports event, PENN recommends amending this rule so that it is narrowly tailored and aligns with the intent of M.G.L. c. 23N, Section 4(c)(C).
Section 256.10(1)	<i>Each Sports Wagering Operator shall retain a copy of all advertising, marketing, branding and other promotional materials intended to promote any Sports Wagering within the Commonwealth, including a log of when, how, and with whom, those materials have been published, aired, displayed, or disseminated, for six (6) years. A Sports Wagering Operator shall also grant the Commission access to all social media platforms utilized by the licensee.</i>	<i>Each Sports Wagering Operator shall retain a copy of all advertising, marketing, branding and other promotional materials intended to promote any Sports Wagering within the Commonwealth, <del>including a log of when, how, and with whom, those materials have been published, aired, displayed, or disseminated,</del> for six (6) years. A Sports Wagering Operator shall also grant the Commission access to all social media platforms utilized by the licensee.</i>	PENN recommends removing the requirement to maintain such a detailed log of marketing activity in the Commonwealth as it is overly burdensome and does not align with industry standards. PENN operates online sports wagering in 15 jurisdictions, and Illinois is the only jurisdiction that requires such a cumbersome log for advertisements. As currently written, the required fields for the log imposed in this regulation do not impact whether such advertising, marketing, or branding is compliant with the regulations and tracking all such information is operationally burdensome.



**Penn Sports Interactive, LLC, & Plainville Gaming and Redevelopment, LLC d/b/a Plainridge Park Casino (collectively, "PENN"), Marketing Regulations Questions and Clarifications:**

1. **256.04(2).** *No Sports Wagering Operator shall obscure or fail to disclose any material fact in its advertising, marketing, or branding for sports wagering or use any type, size, location lighting, illustration, graphic, depiction or color resulting in the obscuring of or failure to disclose any material fact in any advertising, marketing, or branding.*

**Question:** For digital marketing materials where space is limited, PENN conspicuously includes all material facts possible with the full terms and conditions made available by interacting with the advertisement or present on the app in the "Promotions" section. This is primarily relevant regarding Google search and paid social media advertisements. Does this practice align with the MGC's expectations?

2. **256.04(4).** *No employee or vendor of any Sports Wagering Operator shall advise or encourage individual patrons to place a specific wager of any specific type, kind, subject, or amount. This restriction does not prohibit general advertising or promotional activities.*

**Question:** PENN interprets this regulation to narrowly apply to messages encouraging players to place specified wagers that are directed to a specific individual(s) of the public and not to general audiences, or cohorts of players based on specified criteria/attributes, in the Commonwealth. Accordingly, this regulation would not prohibit activities including, but not limited to, social media posts discussing picks and wagers, or communications with individual VIP players discussing promotional offerings as such communications are part of "general advertising or promotional activities." If PENN's interpretation of this regulation is incorrect, PENN would appreciate the opportunity to provide additional comments at a later date.

3. **256.04(6)(j).** *No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall: (j) Be placed on any website or printed page or medium devoted primarily to responsible gaming;*

**Question:** PENN is seeking to confirm that a Sports Wagering Operator's "branding" may not be associated with mediums devoted primarily to responsible gaming as described in 256.04(6)(j). It is common for Sports Wagering Operators to include their brands on responsible gaming-related messaging to demonstrate endorsement. Additionally, a Sports Wagering Operator's brand may be necessary to clarify that responsible gaming features and tools are available through that Sports Wagering Operator's offerings.

4. **256.06(1).** *No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that is aimed exclusively or primarily at groups of people that are at moderate or high risk of gambling addiction. A Sports Wagering Operator shall not intentionally use characteristics of at-risk or problem bettors to target potentially at-risk or problem bettors with advertisements.*

**Question:** PENN is seeking clarification regarding criteria to determine whether groups of people constitute having "moderate or high risk of gambling addiction." As currently written, this regulation does not provide objective criteria and can reasonably be interpreted broadly.

5. **256.07(3).** *All direct advertising, marketing, or promotional materials shall include a clear and conspicuous method allowing patrons to unsubscribe from future advertising, marketing, or promotional communications.*

**Question:** PENN is seeking to align with the MGC on what constitutes "direct advertising" in the Commonwealth. Current industry standards indicate that "direct advertising" describes communications where specific individual recipients are known and/or named (e.g., direct mail, e-mail, and text messages), but does not include advertising materials which are part of mass communications to an entire area or zip code.