



NOTICE OF MEETING AND AGENDA

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

Monday | March 27, 2023 | 10:00 a.m.
VIA REMOTE ACCESS: 1-646-741-5292
MEETING ID/ PARTICIPANT CODE: 111 048 1739
All meetings are streamed live at 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.

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 - #445

1. Call to Order – Cathy Judd-Stein, Chair
2. Update on Assessment of Civil Administrative Penalty under G.L. c. 23K – Loretta Lillios, Director of Investigations and Enforcement Bureau, Heather Hall, Chief Enforcement Counsel
3. Legal – Caitlin Monahan, Deputy General Counsel
 - a. 205 CMR 106: *Information and Filings* – Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
 - b. 205 CMR 107: *Professional Practice* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
 - c. 205 CMR 109: *Emergency Action* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
 - d. 205 CMR 202: *Authority and Definitions* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
 - e. 205 CMR 213: *Withdrawal of an Application* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**



Massachusetts Gaming Commission

- f. 205 CMR 229: *Review of a Proposed Transfer of Interest* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
- g. 205 CMR 232: *Discipline of Sports Wagering Operators and Other Licensees, and Registrants* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
- h. 205 CMR 239: *Continuing Disclosure and Reporting Obligations of Sports Wagering Licensees* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
- i. 205 CMR 241: *Surveillance and Monitoring* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**
- j. 205 CMR 256: *Sports Wagering Advertising* - Regulation and Amended Small Business Impact Statement for final review and possible adoption **VOTE**

4. Commissioner Updates

5. Other Business - Reserved for matters the Chair did not reasonably anticipate at the time of posting.

I certify that this Notice was posted as “Massachusetts Gaming Commission Meeting” at www.massgaming.com and emailed to regs@sec.state.ma.us. Posted to Website: March 23, 2023 | 10 a.m. EST

March 23, 2023

Cathy Judd-Stein

Cathy Judd-Stein, Chair

If there are any questions pertaining to accessibility and/or further assistance is needed, please email Gertrude.Lartey@massgaming.gov.



Massachusetts Gaming Commission

205 CMR 202: SPORTS WAGERING AUTHORITY AND DEFINITIONS

Sections

202.01: Authority
202.02 : Definitions
202.03 : Construction and Amendments

202.01: Authority

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

202.02: Definitions

As used in 205 CMR ~~202.00, *et seq.*~~, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise. Words and phrases not defined below shall have the meaning given to them in 205 CMR 102.00, if any, unless the context clearly requires otherwise:

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

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

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

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

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

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

Cash means as defined in 205 CMR 238.01.

Cash Equivalent means as defined in 205 CMR 238.01.

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

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

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

Check means as defined in 205 CMR 238.01.

Chief Sports Wagering Executive means as defined in 205 CMR 238.01.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Qualifier means a person whose qualification must be established in evaluating the suitability of an applicant in accordance with the standards and criteria set forth in M.G.L. c. 23N and 205 CMR 200 *et seq.*

Responsible Gaming Messaging means as defined in 205 CMR 256.06(2).

Segregated Account means as defined in 205 CMR 238.01.

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

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

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

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

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

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

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

Sports Wagering Counter means as defined in 205 CMR 238.01.

Sports Wagering Equipment means, an electronic, electrical or mechanical contrivance, machine, or system used in connection with Sports Wagering.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ticket Writer means as defined in 205 CMR 238.01.

Ticket Writer Station means as defined in 205 CMR 238.01.

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

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

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

202.03 Construction and Amendments

(1) The principles of regulatory construction and interpretation specified in 205 CMR 102.03 shall also include construction in accordance with the principles of statutory construction set forth in M.G.L. 23N, and avoidance of conflict with any provision of M.G.L. 23N.

(2) Where the Commission waives or grants a variance from any provision or requirement contained in 205 CMR 200 *et seq.*, not specifically required by law, the waiver or variance shall be conditioned on a finding of the requirements specified in 205 CMR 102.03(4) and a finding that granting the waiver or variance is consistent with the purposes of M.G.L. c. 23N.

~~REGULATORY AUTHORITY~~

~~M.G.L. c. 23N § 4.~~



Legal Division

AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed amendments to **205 CMR 202.00: Sports Wagering Authority and Definitions**, for which a public hearing was held on March 21, 2023.

The promulgation of 205 CMR 202.00 was developed as a part of the process of promulgating regulations governing Sports Wagering in the Commonwealth. This regulation is governed largely by G.L. c. 23N, §4.

The adoption of 205 CMR 202.00 creates definitions that will be used throughout the sports wagering-related regulations. Accordingly, this regulation is unlikely to have an impact on small businesses.

In accordance with G.L. c.30A, §5, the Commission offers the following responses on whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

1. Establishing less stringent compliance or reporting requirements for small businesses:

This regulation amendment contains definitions and does not establish compliance and reporting requirements for small businesses.

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

There are no schedules or deadlines for compliance or reporting requirements.

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

This regulation amendment does not impose any reporting requirements.

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

There are no design or operational standards within in the proposed regulation amendment.



Massachusetts Gaming Commission

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

This regulation amendment is unlikely to deter or encourage the formation of new businesses in the Commonwealth.

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

This regulation amendment does not create adverse impact upon small businesses.

Massachusetts Gaming Commission

By:

/s/ Ying Wang

Ying Wang

Associate General Counsel

Dated: Dated: March 23, 2023



Massachusetts Gaming Commission

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 Sports Wagering 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 or any other agreement for consideration or remuneration, 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, in exchange for a percentage of net sports wagering revenue earned from users that the third party directs or causes to be directed to the Operator.
- ~~(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 or promotion for Sports Wagering shall disclose the identity of the Sports Wagering Operator and whether a financial relationship exists between any Person providing an endorsement or promotion and 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. ~~;~~ provided, however, that Nothing herein shall be construed as limiting a Person's obligations to comply with any other federal, state or local law applicable to advertising, marketing and branding, nor shall anything herein be construed as modifying or limiting in any way any more stringent or additional requirement applicable to advertising, marketing and branding.
- (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 material conditions under which Sports Wagering is being offered, including information about the cost to participate and the nature of any promotions ~~or~~ to assist patrons in understanding the odds of winning. Any material conditions or limiting factors must be clearly and conspicuously specified in the advertisement. Additional, non-material terms

and conditions may be otherwise made available on a website or application if an advertisement is not of sufficient size or duration to permit inclusion of the additional information.

- (4) ~~No Sports Wagering Operator, or a Sports Wagering Vendor, or a third party marketing or adverting entity required to be licensed or registered pursuant to 205 CMR 234, nor any employee of any of the foregoing, may No employee or vendor of any Sports Wagering Operator (or an employee of any Sports Wagering Vendor) 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, which may require notify a patron of the need to place a specific wager type, kind, subject, or amount in order for patron to receive a promotional benefit.~~
- (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~~ material terms, conditions or limitations through the following methods, provided that additional, non-material terms and conditions, may be otherwise made available on a website or application if an advertisement is not of sufficient size or duration to permit inclusion of the non-material information.
 - (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; ~~or-~~

(l) Use individuals to provide purported expertise or Sports Wagering advice who are employed by, contracted with, or otherwise compensated by a Sports Governing Body, team, club or athlete on which a wager may be placed.

~~(k)~~

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 for Sports Wagering 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 for Sports Wagering shall be published, aired, displayed, disseminated, or distributed:

~~(a)~~ in media outlets, including social media, video and television platforms, ~~that are used primarily by individuals where 25% of the audience is reasonably expected to be under twenty-one years of age, unless adequate controls are in place to prevent the display, dissemination or distribution of such advertising, marketing, branding or other promotional materials to individuals under twenty-one years of age including by use of age category exclusions and similar mechanisms;~~

~~(a)~~ _____;

~~(b)~~ in other media outlets, including social media, video and television platforms, ~~to the extent not prohibited by 205 CMR 256.05(4)(a), unless adequate controls are in place to prevent the display, dissemination or distribution of such advertising, marketing, branding or other promotional materials to individuals under twenty-one years of age including by use of age category exclusions and similar mechanisms; unless the Operator utilizes all available targeted controls to exclude all individuals under twenty-one years of age from viewing such advertising, marketing, branding, and other promotional materials;~~

~~(b)~~(c) at events aimed at minors or where 25% or more of the audience is reasonably expected to be under twenty-one years of age;

~~(e)~~(d) at any elementary, middle, and high school, or at any sports venue exclusively used for such schools;

~~(d)~~(e) 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, except for advertising, including television, radio, and digital advertising that is generally available, and primarily directed at an audience, outside of college and university campuses as well; or~~

~~(e)~~(f) to any other audience where 25% or more of the audience is presumed to be under twenty-one years of age.

- (5) No ~~sports~~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 for Sports Wagering 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 for Sports Wagering 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 individuals or 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/or such other responsible gaming 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.
- (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.

(5) 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.

256.07: 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 by a Sports Wagering Operator 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 must disclose the relationship and may not be compensated in promotional credits for additional wagers.
- (3) Endorsements must comply with the Federal Trade Commission's Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. Part 255.

256.10: Records

- (1) Each Sports Wagering Operator shall retain a copy of all advertising, marketing, branding and other promotional materials promoting or 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 or on behalf of the licensee for such purposes, provided that an Operator shall not be required to permit the Commission to control or directly alter such content on such platforms. For all directed or targeted advertising and marketing, a Sports Wagering Operator shall maintain records sufficient to describe all targeting parameters used, as well as efforts undertaken to comply with 205 CMR 256.06(1).

- (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~~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.

~~REGULATORY AUTHORITY~~

~~(4)~~(3) G.L. c. 23N, §4

Public Comments
205 CMR 256: Sports Wagering Advertising

Subsection	Comment	Commenter/Entity
All	<p>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 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."</p>	<p>Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")</p>
All	<p>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.).</p>	<p>Jennifer Roberts, General Counsel, VP WynnBet, WSI US, LLC, dba WynnBET</p>

All	With the saturation of the airwaves during sporting events, the advertising of sports gambling need severe restriction. I would simplify the regulation to state that no promotion offering credits, free play, etc., be allowed. Similar to medical advertising, at least a third of the duration of any advertisement should be devoted to the risks associated with gambling, the fact that most people lose money, and ways to access help for problem gamblers.	Ted Steger, Citizen
All	With the saturation of television advertising, children are exposed to countless numbers of sports gambling advertisements. During the Super Bowl and the Celtics game, My 6-year-old and 10-year-old were subjected to dozens of ads. I propose a limitation on television advertising until after 9:00 p.m. on weekdays, and after 10:00 p.m. on weekends. Thus, limiting the exposure of this advertising to power impressional youth, who are forbidden by law to participate in it.	Ted Steger, Citizen
256.01	Comment: 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.	Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")

256.01(1)	<p>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.</p>	PENN
256.01(3)	<p><u>Proposed:</u> (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.</p> <p>Comment: 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.</p>	Draft Kings Inc.

256.01(3)	<p>Proposed: (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.”</p> <p>Comment: 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.</p> <p>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).</p>	<p>Cory Fox, FanDuel Inc. cory.fox@fanduel.com</p>
256.01(3)	<p>Proposed (delete): (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.</p> <p>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</p>	PENN

	<p>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.</p> <p>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).</p>	
<p>256.01(3)</p>	<p>A. The Regulation (205 CMR 256.01(3)) Effectively Prohibits Affiliate Marketers from Providing their Services to Massachusetts Consumers</p> <p>i. What/Who is a Marketing Affiliate and their Advertising Strategy</p> <p>Marketing Affiliates, commonly referred to as affiliates, are entities that promote or direct customer traffic to gaming operators. Affiliates usually provide and publish informational content to interested parties. Consumers looking for sports betting options turn to affiliate websites, such as Actionnetwork.com, Gambling.com, and Legalsportsreport.com, to assist them in finding the legal options available to them and evaluating deals or best odds being offered at any given time. Affiliate websites provide links and informative content such as expert reviews, comparisons of the products offered by gaming operators, available player incentives and other informational content such as gaming industry news and “how to” guidance. The affiliate sites typically also include information and resources on responsible gaming, including compulsive gambling self-tests. Successful affiliates act as gateways to the legal gaming operators with whom they choose to work, pulling individuals away from entering the illegal market.</p>	<p>Jeff Ifrah, iDevelopment and Economic Association</p>

As opposed to traditional “push” advertising, affiliates engage in “pull” marketing. Push advertising, such as TV ads, radio ads, social media ads, etc., is designed to entice consumers to a product. Otherwise stated, push advertisements push or encourage consumers to buy or engage with a certain business unprompted. It advertises to all, regardless of age demographics and product/service interest. Affiliates, however, do not generally engage in direct or push marketing. Conversely, pull advertising, a strategy used by nearly all affiliates, is designed to provide information to consumers who are proactively searching for sports betting information. A prime example in a different industry is a travel website such as Expedia or Travelocity. When a potential traveler visits these websites, they already intend to book a trip. They are using these websites to evaluate all of their options and learn about new offers or places they could stay. Like potential travelers visiting these websites, consumers that visit affiliate websites primarily do so through unpaid channels, including search engine optimization. Search engine optimization is the process of optimizing websites to make them more appealing to search engines so they rank favorably in search engines’ results pages for certain queries. It would be rare for a consumer to be shown advertisements from a marketing affiliate unless they were already interested in making a wager or learning more about legal sports wagering.

In an affiliate/operator contractual relationship, affiliates receive performance-based marketing compensation, such as revenue share and cost per acquisition (“CPA”). Some form of performance-based marketing is permissible in all states where sports wagering is legal except Connecticut, which restricted CPA and revenue share, and Illinois, which restricts revenue share. Operators either compensate affiliates on a performance metric basis, such as CPA on deposit, CPA on first wager, or revenue, because they allow for the most efficient marketing spend. Without such predictability and ensured results from affiliates, operators would have little to no reason to outsource marketing efforts.

ii. Benefits of Marketing Affiliates in a Legal Market

Affiliates provide crucial aid in a legal and competitive market for two key reasons. First, one of, if not the ultimate, major challenge all legal wagering states face is aiding their licensees to capture market share from existing, entrenched offshore

	<p>operators who have been active in states like Massachusetts for decades. Offshore illegal sportsbooks have been able and continue to advertise freely to customers in all 50 states. Even today, offshore sportsbooks continue to obtain a significant share of customers. Offshore sportsbooks and those that advertise on their behalf frequently appear in search results like “Massachusetts online sports betting”. A top priority and goal of affiliates is to reduce or fully eradicate offshore sportsbooks, ensuring that customers who wish to participate in a regulated and approved market do so only with Massachusetts licensed operators.</p> <p>Second, affiliates assist in facilitating and providing a competitive sports betting market. Restrictions on revenue share and CPA compensation limits competition by ensuring that only the biggest sportsbooks with the largest marketing budgets will be successful. For instance, some smaller operators are unable to work with affiliates in Illinois, which prohibits revenue share, because their marketing spend is too low to pay affiliates a CPA.</p> <p>Marketing affiliates are a neutral informational source for consumers to explore all licensed options in the market. Without affiliates present in a legal market, it is harder for consumers to be educated on brands that are less front facing or with smaller advertising budgets; thereby consolidating the power at the top and stifling the natural abilities for the market to be competitive. Such consolidation will hurt the Massachusetts’ legal sports betting economy over time as the majority of the market share remains concentrated to one or two operators, with the true victims being Massachusetts consumers who will be uninformed and left with fewer choices.</p> <p>iii. Current Impact of Regulations on Marketing Affiliates</p> <p>The current regulation prohibits revenue share and CPA compensation to affiliates, stating that “[n]o 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.” From the outset to those unfamiliar with affiliates and their benefits, such prohibition could seem reasonable, but it will have detrimental effects to the Massachusetts sports betting</p>	
--	---	--

marketing. Consequently, the Regulation makes it infeasible for an affiliate to enter into agreements in Massachusetts.

Additionally, by prohibiting revenue share and CPA, the likely result will be that those that have a true interest in being educated and placing a wager in the legal market will not be able to effectively do so as takes place in other regulated jurisdictions. Additionally, as explained above, offshore sportsbooks will be more likely to continue prospering, and the market is likely to become consolidated and anti-competitive.

iv. Recommendations for Amending

The vast majority of states that have legalized sports betting do not regulate the compensation structures available to affiliates. In fact, the majority of states have limited to no regulations at all in regards to marketing affiliates, with most not even requiring affiliates to register or obtain a license. It is our recommendation that the Commission strike regulation 205 CMR 256.01(3), and instead focus on ways it can effectively license and register such affiliates.

As has been done in other legal wagering states, we suggest that if the Commission has concerns on certain compensations structures, then they effectively regulate and monitor those entities through elevated licensing requirements. For example, of the legalized states, Colorado, Michigan, New Jersey, and Pennsylvania have explicit elevated licensing requirements for affiliates receiving a revenue share compensation as opposed to the more traditional CPA compensation. Other states such as Kansas, Louisiana, and Maryland only require licenses or elevate the level of license if a vendor/affiliate's annual expected revenue from the state exceeds a certain dollar threshold. All other states with registration or licensing requirements demand the same level of registration/licensing from affiliates regardless of their compensation structure: Arizona, Indiana, Virginia, and West Virginia.

Marketing affiliates are vital to a legal sports wagering market. Through appropriate licensing any and all of the Commission's third-party advertising concerns will be assuaged. Therefore, we recommend striking 256.01(3) and

	instead provide a more structured licensing scheme for affiliates, perhaps being elevated, or differentiated depending on their payment structure.	
256.01(3)	<p>We thank the Commission for entertaining comments during this regulatory process, and for hosting a roundtable on Subsection 256.01(3) on February 27, 2023. We agree with comments shared by stakeholders during the discussion.</p> <p>We applaud the Commission for approving an interim waiver of the regulation to allow cost per acquisition (CPA) and revenue sharing models for affiliate relationships. It is our view that CPA and revenue sharing advertising is appropriate – not only with regard to affiliate arrangements for platforms like Google and other search engines, but also in other contexts. These affiliate models are commonplace in the industry, and work to funnel individuals with sports wagering intent to legally licensed regulated sports books. As presented in the roundtable, when Operators are able to focus advertising on adults through “pull” ads, Operators will tend to use this more efficient approach and rely less on “push advertising” that would reach a broad audience (including minors). We do not believe that CPA or revenue sharing advertising relationships pose a threat to consumers, and as the Commission continues to evaluate whether and how to regulate third party advertising models, we urge the Commission to avoid unneeded restrictions that may have unintended consequences.</p>	Dave Friedman, Red Sox obo Broadcasters coalition
256.01(3)	Importantly, we note that these issues would become even more problematic should the Commission back away from its current (and very sound) prohibition on commission-based payments to third-party marketing vendors. We understand certain vendors are asking for that prohibition to be lifted, which the Commission is considering on an interim basis. The fact is that certain third-party marketing vendors present themselves to the public as tip sheets, providing advice on prospective wagers. Where a vendor expressly or impliedly advises a particular wager, that vendor must not be compensated based on whether its audience then uses or accesses a sports wagering operator’s site or app to make the bet it has advised.	M. Patrick Moore Jr., AGO

256.01(3)	<p>Comment: (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.</p>	Jennifer Roberts, General Counsel, VP Wynnbet, WSI US, LLC, dba WynnBET
256.01(3)	<p>I’m writing on behalf of Better Collective USA, Inc. (“BC US”, “we”, or “us”), a Delaware corporation and a wholly owned subsidiary of Better Collective A/S, a Denmark-based public company listed on Nasdaq Stockholm.</p> <p>The global and US leader in the affiliate marketing space, BC works exclusively with regulated sportsbooks. As a result, we take seriously our role within the ecosystem to educate and guide our users on all aspects of legal sports betting, including how to gamble responsibly. We believe that doing so creates a more sustainable industry for all involved, including states such as Massachusetts that have chosen to legalize sports betting.</p> <p>While we are pleased that Massachusetts has regulated online sports betting, we have concerns about the current proposed regulation limiting performance-based compensation like CPA and revenue share, which we fear will be harmful to the sports wagering market and is unnecessary for regulatory oversight of affiliates. As more fully detailed below, restrictions on performance-based affiliate compensation models create an anti-competitive environment due to the compensation restrictions with third parties. These restrictions make it unduly</p>	<p>Katherine McCord, Better Collective USA, Inc.</p> <p>Similar comment submitted by Jeff Ifrah, Ifrah PLLC, obo Better Collective USA, Inc., Catena Media plc, and GDC America, Inc. (“Affiliate Group”)</p>

	<p>difficult for regulated affiliates to compete with unregulated affiliates and Operators. As a result, we worry the Massachusetts regulated market will lose revenue to the offshore markets.</p> <p>First, due to the oversight of the Massachusetts Gaming Commission (“MGC”) through affiliate licensing requirements, restrictions on performance-based affiliate compensation models are unnecessary. Some form of performance-based marketing is permissible in all states except Connecticut, which restricts CPA and revenue share, and Illinois, which restricts revenue share. Neither Connecticut nor Illinois impose any vendor registration or affiliate licensing requirements. With the MGC’s direct enforcement power over affiliates, it is unnecessary to also restrict performance-based compensation.</p> <p>Limiting the affiliate commercial model away from traditional performance-based compensation methods like CPA and revenue share also hurts the growth of a newly regulated market like Massachusetts in the following ways:</p> <p>Channelization: Responsible affiliates like BC US exclusively promote licensed operators. Many consumers refer to specific affiliate-run websites, like BC US’s sportshandle.com, actionnetwork.com and vegasinsider.com, for betting information and education, such as which Operators are licensed. Discouraging affiliates from participating in the market by limiting affiliate compensation models allows offshore Operators to flourish. Diverting consumers from the regulated market decreases legitimacy and compliance, and reduces taxes to the state.</p> <p>Sustainable Marketing Spend: Operators typically prefer compensation models based on key performance metrics (such as CPA on deposit, CPA on first wager, or revenue share) because it allows for efficiency in their marketing spend. This predictability allows them to invest in other areas that will grow handle, gross gaming revenue and tax revenue as much as possible.</p>	
--	---	--

	<p>Competitive Market: Restricting performance-based affiliate payment hinders competition within a state by ensuring that only the biggest sportsbooks with the largest marketing budgets will be successful. For instance, some smaller Operators are unable to work with affiliates in Illinois (which prohibits revenue share) because their marketing spend is too low to pay on CPA.</p> <p>Prohibiting both CPA and revenue share would only compound the problem smaller Operators face in Illinois. This consolidation will hurt the state economy over time, as less money will be invested by second- and third-tier operators, and it's bad for consumers who will be left with fewer choices.</p> <p>Mass Media: In assessing gambling advertising, it is important to differentiate between “pull” and “push” advertising. Push marketing, such as TV advertising, paid social media ads and others, is designed to entice consumers to a product. Conversely, most affiliate marketing can be categorized as pull marketing, designed to provide information to consumers who are proactively searching for sports betting information. Limiting performance-based compensation will result in Operators focusing their marketing budgets away from pull advertising and towards push advertising. Responsible gaming resources and educational content are scarce at best on push marketing, and shown to all age demographics.</p> <p>Education and Responsible Gaming: Affiliates provide betting information and insights, including introductions to various bet types and markets, and information and resources on responsible gaming, including compulsive gambling self-tests. BC US is committed to fostering wider initiatives in the affiliate marketing sector to promote social responsibility and create a safer gambling environment for consumers, including offering responsible gaming products that help consumers track their wins and losses across all Operators.</p> <p>Limiting compensation models paid by Operators will limit regulated affiliate activities in the state, reducing access to resources our consumers depend on to</p>	
--	---	--

	<p>make informed betting decisions that are particularly essential in a newly regulated market.</p> <p>It is vital that consumers searching for gambling related products find the product offerings of responsible, regulated operators, rather than those of unlicensed operators. To achieve this, it is necessary to create a commercially viable market in which affiliate marketers can thrive.</p> <p>We would welcome the opportunity to discuss further and can be reached via email at kmccord@bettercollective.com and Legal.US@bettercollective.com, or by phone at 203-536-2138.</p>	
256.01(3)	<p>On behalf of Better Collective USA, Inc. (“we”, “us” or “BC”), we respectfully submit the below comments on the Massachusetts Gaming Commission’s (“Commission”) proposed Sports Wagering Advertising regulations 205 CMR 256.</p> <p>As a leading marketing affiliate, BC takes seriously our role within the sports wagering ecosystem to responsibly educate and guide users. While we understand and are aligned with the Commission’s concerns on advertising with respect to responsible gaming, we believe that 205 CMR 256 as currently drafted will have a significant dampening effect on the new Massachusetts market without any measurable increase in consumer protections. Accordingly, we provide the following comments:</p> <p>We respectfully urge the Commission to delete 205 CMR 256.01(3) in its entirety to allow for performance-based marketing compensation models such as revenue share and cost per acquisition (“CPA”). Prohibiting industry-recognized commercial models like CPA and revenue share in a newly regulated Massachusetts will limit both marketing affiliate activity and competition between sports wagering operators, negatively impacting tax revenue to the state and hurting consumers.</p>	Katherine McCord, Better Collective USA, Inc.

Some form of performance-based marketing is permissible in all states where sports wagering is legal except Connecticut, which restricts CPA and revenue share, and Illinois, which restricts revenue share. Neither Connecticut nor Illinois impose any vendor registration or affiliate licensing requirements. With the Commission's direct enforcement power over marketing affiliates through the vendor registration process, it is unnecessary to also restrict performance-based compensation.

Additionally, we note feedback from Todd Grossman conveyed by email on February 16 that operators may enter into revenue share or CPA agreements where compensation is based on the number of visits to the operator's website, i.e., a cost-per-click model ("CPC"). Operators typically prefer to compensate marketing affiliates based on key performance metrics (such as CPA on deposit, CPA on first wager, or revenue share) because it allows for efficiency in their marketing spend. This predictability allows them to invest in other areas that will grow handle, gross gaming revenue and tax revenue as much as possible.

Responsible marketing affiliates like BC exclusively promotes licensed operators. Many consumers refer to specific affiliate-run websites, like BC's sportshandle.com, actionnetwork.com and vegasinsider.com, for betting information and education, such as which operators are licensed. Discouraging affiliates from participating in the market by limiting affiliate compensation models allows offshore operators to flourish. Diverting consumers from the regulated market decreases legitimacy and compliance, and reduces taxes to the state.

Restricting revenue share and CPA also limits competition by ensuring that only the biggest sportsbooks with the largest marketing budgets will be successful. For instance, some smaller operators are unable to work with affiliates in Illinois (which prohibits revenue share) because their marketing spend is too low to pay on CPA. Prohibiting both CPA and revenue share would only compound the problem smaller operators face in Illinois. This consolidation will hurt the state economy

	<p>over time as the majority of the market share is concentrated to one or two operators, and it's bad for consumers who will be left with fewer choices.</p> <p>In assessing gambling advertising, it is important to differentiate between “pull” and “push” advertising. Push marketing, such as TV advertising, paid social media ads and others, is designed to entice consumers to a product. Conversely, most affiliate marketing can be categorized as pull marketing, designed to provide information to consumers who are proactively searching for sports betting information. By prohibiting CPA and revenue share in favor of CPC, operators will instead focus their marketing budgets away from pull advertising (such as agreements with marketing affiliates) and towards push advertising. Push advertising is shown across all age demographics, and doesn't include the same responsible gaming resources and educational content that marketing affiliates provide.</p> <p>Marketing affiliates provide betting information and insights, including introductions to various bet types and markets, and information and resources on responsible gaming, including compulsive gambling self-tests. BC is committed to fostering wider initiatives in the affiliate marketing sector to promote social responsibility and create a safer gambling environment for consumers, including offering responsible gaming products that help consumers track their wins and losses across all operators.</p> <p>It is vital that consumers searching for gambling related products find the product offerings of responsible, regulated operators, rather than those of unlicensed operators. To achieve this, it is necessary to create a commercially viable market in which affiliate marketers can thrive. As such, we respectfully request that 205 CMR 256.01(3) be removed in its entirety.</p>	
--	--	--

256.02	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.	Curis Lane Jr., Caesars Sportsbook
256.02(2)	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?	Draft Kings Inc.
256.02(2)	<p>Subsection 256.02(2) requires an affirmative statement that wagering is not available in Massachusetts if the Operator is not licensed in Massachusetts. We would like to request clarification on whether and when such a disclosure is required and in particular would propose a modification for advertisements in broadcasts. Any additional disclosures like this, proposed by the Commission, add to an already cumbersome disclosure paragraph that is difficult for viewers to sort through. Additionally, a significant portion of ads in sports broadcasts are national or regional ads for which it may be technically and practically infeasible to substitute state-specific ads or copy. This proposal would raise significant legal questions in this context. We would recommend that the Commission allow industry standard verbiage for these ads (e.g., “Void where prohibited.”).</p> <p>Our coalition also requests clarification on the Commission’s definition of “third party.” We understand third parties to refer to creative producers like advertising</p>	Dave Friedman, Red Sox obo Broadcasters coalition

	agencies and marketing firms, and media buyers, but not to include broadcasters who simply air the content produced by other third parties.	
256.02(2)	<p>Proposing: Add “knowingly” to state: “Sports Wagering Operators and their agents, employees, or any third-party conducting advertising or marketing on their behalf shall not knowingly advertise forms of illegal gambling in the Commonwealth.”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p>	<p>Jess Panora, BetMGM jess.panora@betmgm.com</p>
256.04 256.04(2) and (3)	<p>While BC supports the Commission’s goals of prohibiting deceptive advertising and clearly disclosing responsible gaming messaging, we believe the requirements of 205 CMR 256.04 and 205 CMR 256.06 are too broad to realistically allow for compliance.</p> <p>Requirements such as those in 205 CMR 256.04(2) and (3) regarding the conspicuous disclosure of terms and conditions on the advertisements themselves would effectively render digital advertisements and promotions impossible. We therefore respectfully request that the Commission allow for such disclosures to be accessible within one click, as permitted by Ohio Administrative Code 3775-16-0&(A)(1).</p>	<p>Katherine McCord, Better Collective USA, Inc.</p>
256.04(1)	<p>Proposing: Add “knowingly” to state: “No Sports Wagering Operator shall knowingly 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.”</p>	<p>Jess Panora, BetMGM jess.panora@betmgm.com</p>

	BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	
256.04(1)	To avoid any future, incorrect argument otherwise from regulated entities, the Commission should expressly state that its regulations, and particularly those related to advertising and marketing, are in addition to, and are not intended to displace, the Commonwealth's preexisting and extensive consumer protection laws. Those laws include without limitation the Massachusetts Consumer Protection Act, G.L. c. 93A, and regulations established by our Office under that Act.	M. Patrick Moore Jr., AGO
256.04(1)	Delete: "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." Comment: 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.	Curis Lane Jr., Caesars Sportsbook
256.04(1)	Our coalition appreciates the Commission's work to prevent unfair or deceptive advertising. On this Subsection, we request clarification to confirm that the Commission intends this provision to apply to Operators and those responsible for producing the advertising at issue, not third parties that disseminate the ads, including broadcasters.	Dave Friedman, Red Sox obo Broadcasters coalition
256.04(2)	Proposing: Add "knowingly" to state: "No Sports Wagering Operator shall knowingly 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."	Jess Panora, BetMGM jess.panora@betmgm.com

	BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	
256.04(3)	Comment: 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.	Curis Lane Jr., Caesars Sportsbook
256.04(3)	Proposing: Change “and the nature of any promotions or and information to assist patrons in understanding the odds of winning” to “and the nature of any promotions or any information to assist patrons in understanding the odds of winning” BetMGM Comment: This appears to be a typo.	Jess Panora, BetMGM jess.panora@betmgm.com
256.04(3)	Comment: 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.	Jennifer Roberts, General Counsel, VP Wynnbet, WSI US, LLC, dba WynnBET
256.04(4)	205 CMR 256.04(4) regarding limitations on "specific wager[s] of any specific type, kind, subject or amount" is so vague and broad as to potentially prohibit	Katherine McCord, Better Collective USA, Inc.

	content we create that is intended to educate users and allow for more informed betting decisions.	
256.04(4)	<p><i>Proposed (4): No employee or vendor of any Sports Wagering Operator (<u>or employees of its vendors</u>) shall advise or encourage individual patrons on a <u>one-on-one</u> basis to place a specific wager of any specific type, kind, subject, or amount. This restriction does not prohibit general advertising or promotional activities, <u>which may require a patron to place a specific wager type, kind, subject, or amount in order for patron to receive a promotional benefit.</u></i></p> <p>Comment: 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.</p>	Curis Lane Jr., Caesars Sportsbook
256.04(4)	<p>Proposed: (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.</p> <p>Comment: 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?</p> <ul style="list-style-type: none"> • 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.” 	Draft Kings Inc.

	<ul style="list-style-type: none"> • 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!” <p>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.</p> <p>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.</p>	
256.04(4)	<p>Comment: 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.</p>	<p>Cory Fox, FanDuel Inc. cory.fox@fanduel.com</p>

256.04(2)-(4)	<p>Section 256.04(2) and (3) require conspicuous disclosure of all terms and conditions on advertisements including disclosing “any material fact in its advertising” and “information about the cost to participate and the nature of any promotions or information to assist patrons in understanding the odds of winning.” Such a requirement would effectively render all digital advertisements and promotions impossible. Displaying such information within an advertisement would render it useless, the content would be nothing but terms and conditions, and not provide any effective marketing of the product or service. It is commonly understood that the most effective means to provide a message or marketing is within easily understood and digestible words or phrases, not long-winded displays of terms and conditions which are commonly ignored. The Commission’s intentions can be better captured by requiring such disclosures similar to those in Ohio. The Ohio Administrative Code 3775-16-08(A)(1) allows such disclosures to be displayed in a one-click link on the advertisement.</p> <p>Further, section 256.04(4)’s prohibition against vendors advising “patrons to place a specific wager of any specific type, kind, subject, or amount” is ripe for unintended negative consequences. The sports wagering market is new to consumers in Massachusetts. It is more than likely that many consumers will be unfamiliar with odds or types of bets and where such wagers may be legally placed. These individuals must have resources to inform them of the specific types and kinds of bets that are not only accessible but also permitted in Massachusetts. Many marketing affiliates publish and provide this sort of content, and it has shown to be beneficial in aiding consumers to place well and more informed wagers. We request that the Commission reconsider the wording in this section to ensure that Massachusetts sports wagering consumers remain able to seek advisements through informational resources.</p>	Jeff Ifrah, iDevelopment and Economic Association
256.04(5)(a)	Regarding Section 256.04(5)(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	Jennifer Roberts, General Counsel, VP Wynnbet, WSI US, LLC, dba WynnBET

	includes at minimum that terms apply and will often include a link for direct access to the terms.	
256.04(5)(c)	<p>Section 205 CMR 256.04(5)(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:</p> <p>Section 205 CMR 256.04(c):</p> <p>“(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.”</p>	<p>Cory Fox, FanDuel Inc. cory.fox@fanduel.com</p>

256.04(5)(b)	<p>Proposed: Delete (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</p> <p>(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.</p> <p>Comment: 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.</p>	Draft Kings Inc.
256.04(5)(b)	<p>Proposed: (delete) [(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</p> <p>(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.”</p> <p>Comment: 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</p>	Cory Fox, FanDuel In. cory.fox@fanduel.com

	<p>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.</p>	
256.04(5)(b)-(c)	<p>Comment: 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.</p> <p>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</p>	<p>Adam Berger, Duane Morris LLP o/b/o</p> <p>FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")</p>

	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.	
256.04(6)	Proposing to add "knowingly" after "shall not" BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	Jess Panora, Bet MGM jess.panora@betmgm.com
256.05(1)	Proposing to add "knowingly" to state: "No Sports Wagering Operator shall knowingly allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that is aimed at individuals under twenty-one years of age." BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	Jess Panora, BetMGM jess.panora@betmgm.com
256.05(2)	Proposing to add "knowingly" to state: "Advertising, marketing, branding, and other promotional materials knowingly published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall not knowingly contain images, symbols, celebrity or entertainer endorsements, or language designed to appeal primarily to individuals younger than twenty-one years of age." BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	Jess Panora, BetMGM jess.panora@betmgm.com

256.05(3)	<p>Proposing to add “knowingly” to state: “Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall not be knowingly published, aired, displayed, disseminated, or distributed;”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p>	<p>Jess Panora, BetMGM jess.panora@betmgm.com</p>
256.05(3)	<p>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.</p>	<p>Curis Lane Jr., Caesars Sportsbook</p>
256.05(4)	<p>Proposing to add “knowingly” to state: “Sports Wagering advertisements, including logos, trademarks, or brands, shall not knowingly 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.”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p>	<p>Jess Panora, BetMGM jess.panora@betmgm.com</p>
256.05(2)-(7)	<p>Comment: 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</p>	<p>Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")</p>

	<p>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.</p>	
256.05(4)(a)	<p>Section 256.05(a) prohibits advertisements and promotions published or disseminated “in media outlets, including social media platforms, that are used primarily by individuals under twenty-one years of age.” This requirement is vague. We request that the Commission provide clearer guidance on the specific media outlets such content cannot be disseminated. It is well known that individuals under the age of 21 are active on many social media platforms, but it is nearly impossible for an advertiser to determine at any one time if such platform is “primarily” used by those underage. The Commission’s concern is valid, however, we advise that they provide operators and third-party advertisers more specific guidance media outlets and social media platforms that are strictly prohibited, and regularly update that guidance. Importantly, we note that social media, like affiliate marketing, is an effective way to advertise the legal and regulated market, thereby drawing individuals away from the illegal market and making regulators operators known to consumers.</p>	<p>Jeff Ifrah, iDevelopment and Economic Association</p>
256.05(4)(a)	<p>The AGO appreciates the Commission’s efforts to protect underage youth from harmful exposure to sports wagering, which is a goal that we share. With that goal in mind, the Commission’s draft and emergency regulations should be strengthened.</p> <p>The Commission’s advertising regulations limit the placement of paid marketing and promotion in areas likely to be viewed by young people, including, for example, mass media with a young audience and outlets serving colleges and universities. These regulations should be amended to more directly address social media (e.g., Instagram and TikTok) and connected television platforms (e.g., YouTube TV and Hulu). Many such platforms allow individuals under a certain age (actual or predicted) to be excluded from an advertiser’s audience. Where</p>	<p>M. Patrick Moore Jr., AGO</p>

	<p>technically feasible, operators and their vendors should be mandated to exclude any age category that includes those under the age of 21. We understand from our diligence that certain operators would welcome this mandate. Where an operator can demonstrate that this type of exclusion is not feasible or available, however, operators should still not be permitted to promote or market on platforms where 25% or more of the audience is under 21, consistent with the standard for other marketing settings under the current draft regulations. This is particularly important given that operators are presently advertising through paid social media influencers who have potentially substantial underage audiences.</p> <p>Moreover, we urge the Commission to strengthen age verification protocols by amending 205 CMR 248.04 to clearly state the minimum standard of reliability and accuracy for age verification that operators must implement. The standard should be consistent with the highest level of accuracy and reliability in the digital age verification industry and incorporate protections against the unauthorized use of sports betting accounts by underage users (e.g., underage use of an account of an older sibling or friend).</p>	
<p>256.05(4)(d) (now (e))</p>	<p>Proposed: 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:</p> <p>(d) on any college or university campus, <u>except for generally available advertising, including television, radio, and digital advertising;</u></p> <p>Comment: 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</p>	<p>PENN</p>

	generally available advertisements on mediums such as television, radio, and social media are not able to be consumed on college or university campuses.	
256.05(4)(e)	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).	Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")
256.05(5)	Proposing to add "knowingly" to state: "Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall not knowingly 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 knowingly depicted in any way that may be construed as the underage individual participating in or endorsing sports gaming." BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	Jess Panora, BetMGM jess.panora@betmgm.com
256.05(6)	Proposing to add "knowingly" to state: "Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall not knowingly depict students, schools or colleges, or school or college settings." BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	Jess Panora, BetMGM jess.panora@betmgm.com

256.05(7)	<p>Proposing to add “knowingly” to state: “Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall knowingly state that patrons must be twenty-one years of age or older to participate.”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p>	<p>Jess Panora, BetMGM jess.panora@betmgm.com</p>
256.06	<p>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.</p> <p>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 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.</p> <p>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</p>	<p>Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")</p>

	<p>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 tum give patrons straightforward guidance on seeking assistance.</p> <p>Finally, as to subsection (e)(l), 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" 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.</p>	
--	---	--

256.06	<p>iDEA is highly invested in providing consumers with meaningful and easily accessible resources in connection with responsible gaming. Section 256.06’s requirement for Massachusetts specific messaging, along with the messaging length and font size requirements for responsible gaming messages, are not practical. A state specific messaging approach will be very difficult for multi-jurisdictional operators and advertisers and is ripe for unintended errors. Such operators and advertisers provide advertisements and promotional content nationally and/or throughout the legal wagering jurisdictions, and many forms of advertising that cross national or regional borders is not well suited for jurisdiction specific responsible gaming messaging.</p> <p>As stated above, when an ad contains too many disclaimers, they are more likely to be ignored or drowned out by the other messaging. Instead, iDEA suggests that the Commission follow in the footsteps of other states and allow advertisements to display the national hotline, 1-800-GAMBLER, at a minimum for advertisements that are intended to be deployed on a multi-jurisdictional basis. The national hotline is very effective in providing access to problem gaming resources. By using the national hotlines, it is less likely the important messaging will be lost, and the messaging will be more effective to those that require such assistance and guidance.</p> <p>Additionally, it is important to note that the provisions of Chapter 23N, Section(4)(d)(3) only require display of the “problem gambling hotline overseen by the department of health” to patrons “upon each entry into the application or platform.” There is no requirement in statute to utilize the Massachusetts specific messaging in advertisements</p>	Jeff Ifrah, iDevelopment and Economic Association
256.06	<p>With respect to 205 CMR 256.06, while BC is strongly supportive of the display of responsible gaming messaging for all marketing materials, the length of the messaging and the font size requirements are practically very challenging. Furthermore, the requirement to use Massachusetts-specific language is impossible</p>	Katherine McCord, Better Collective USA, Inc.

	to implement across certain advertising mediums including direct marketing (such as emails) and social media posts.	
256.06(1)	<p>Proposing to add “knowingly” to state: “No Sports Wagering Operator shall knowingly 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.”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p>	<p>Jess Panora, BetMGM jess.panora@betmgm.com</p>
256.06(1)	Subsection 256.06(1) prohibits certain advertising aimed at “moderate or high risk” individuals. We agree with the public comment provided by PENN that the current language is vague and seek further clarification on how “moderate” and “high risk” are defined.	Dave Friedman, Red Sox obo Broadcasters coalition
256.06(1) (<i>note, moved down from 256.01 because I think this comment was misplaced</i>)	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 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” renders 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?	Curis Lane Jr., Caesars Sportsbook

	<p>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?</p> <p>Caesars recommends deleting this regulation.</p>	
256.06(1)	<p>In addition, unfair and deceptive trade practices, like targeted marketing to at-risk populations, do not require proof of specific intent. It is enough that the business knew or should have known that its conduct reasonably could be perceived as unfair or deceptive. To this end, the word “intentionally” should be removed from 204 CMR 256.06(1); the phrase “in order to induce them to engage in Sports Wagering” should be removed from 205 CMR 256.04(1); and 205 CMR 256.09 should be expanded to specifically require compliance with Federal Trade Commission’s Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. Part 255, or any later iteration.</p>	M. Patrick Moore Jr., AGO
256.06(2)	<p>Proposed: (2) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator <u>targeted at Massachusetts residents</u> 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”). <u>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.</u></p> <p>Comment: 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,</p>	Draft Kings Inc.

	<p>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.</p> <p>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.</p>	
256.06(2)	<p><u>Proposed:</u> (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, <u>or a national toll-free problem gambling assistance hotline approved by the commission,</u> and such other information</p>	<p>Cory Fox, FanDuel Inc.</p> <p>cory.fox@fanduel.com</p>

	<p>regarding responsible gaming as required by the Commission (“Responsible Gaming Messaging”).</p> <p><u>Alternative Language:</u> (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</p> <p>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</p> <p>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”))”</p> <p>Comment: 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 [205 CMR 256.06(4)] below.</p> <p>Comment: Section 205 CMR 256.06(2) of the Proposed Advertising Regulation requires that operators must include a responsible gaming message on all</p>	
--	--	--

	<p>advertising, and that such responsible gaming message must include the contact information of the Massachusetts Problem Gambling Helpline1.</p> <p>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.</p> <p>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.</p> <p>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.</p>	
--	--	--

256.06(2)	<p>Proposed: 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, 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”).</p> <p>Comment: 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.</p>	Curis Lane Jr., Caesars Sportsbook
256.06(2)	<p>Subsection 256.06(2) requires advertising on behalf of any Sports Wagering Operator to include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health. The coalition agrees with various Operators’ requests that the inclusion of the National Council on Problem Gambling’s 1-800-GAMBLER helpline be allowed as a substitute for the Massachusetts Problem Gambling Helpline in national advertisements.</p>	Dave Friedman, Red Sox obo Broadcasters coalition

256.06(2)	<p>Proposed: 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.</p> <p>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.</p> <p>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.</p>	PENN
256.06(4)	<p>Comment: 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</p>	Jennifer Roberts, General Counsel, VP Wynnbet, WSI US, LLC, dba WynnBET

	<p>advertisement” that is available to the general public through broad distribution channels.</p>	
<p>256.06 (4)</p>	<p><u>Proposed:</u> Strike 205 CMR 256.06(4) in its entirety.</p> <p>Alternative Language: “(4) Information regarding the Problem Gaming Helpline and any other required responsible gaming information (“Responsible Gaming Messaging”) must also meet the following requirements:</p> <p>(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:</p> <p style="padding-left: 40px;">i. The same size as the majority of the text used in the sign, direct mail marketing material, poster or other print advertisement; or</p> <p style="padding-left: 40px;">ii. 2% of the height or width, whichever is greater, of the sign, direct mail marketing material, poster or other print advertisement.</p> <p>(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.</p> <p>(c) For digital billboards, Responsible Gaming Messaging must be visible for the entire time the rest of the advertisement is displayed.</p> <p>(d) For video and television, Responsible Gaming Messaging must be visible for either:</p> <p style="padding-left: 40px;">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.</p>	<p>Cory Fox, FanDuel Inc.</p> <p>cory.fox@fanduel.com</p>

	<p>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:</p> <ol style="list-style-type: none"> 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. <p>(e) For web sites, including social media sites:</p> <ol style="list-style-type: none"> 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}." 	
256.06(4)(b)	<p>Proposed: For billboards, the height of the font used for Responsible Gaming Messaging must be at least 5-2% of the height or width, whichever is greater, of the face of the billboard.</p> <p>Comment: 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</p>	PENN

	<p>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.</p>	
256.06(4)(e)(i)	<p>Comment: 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.</p> <p>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</p>	Draft Kings Inc.
256.06(4)(e)(i)	<p>Requesting to change “webpage” to “website”</p>	Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")
256.07(1)	<p>Proposing to add “knowingly” to state: “No Sports Wagering Operator shall knowingly 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.”</p>	Jess Panora, BetMGM

	BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	
256.07(2)	<p>Proposing to add “knowingly” to state: “No Sports Wagering Operator shall knowingly direct text messages or unsolicited pop-up advertisements on the internet to an individual in the Self-Exclusion Program or shall knowingly allow any employee or agent of the Sports Wagering Operator, or affiliated entity or a third party pursuant to contract, to take such actions.”</p> <p>BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.</p> <p>Question: Looking for more clarity on what they deem “unsolicited pop-up advertisements” and the process around this. If these are general advertisements on the internet it would be extremely hard/almost impossible to control these being seen by self-excluded person.</p>	Jess Panora, BetMGM
256.07(2)	<p>Proposed: (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.</p> <p>(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.</p> <p>Comment: 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</p>	Draft Kings Inc.

	<p>what it would mean to “direct” such an advertisement to a person in the Self-Exclusion program.</p> <p>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.</p> <p>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.</p>	
256.07(2)	<p>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 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.</p>	<p>Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")</p>
256.07(2)	<p>Proposed: “(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. <u>A Sports Wagering Operator shall not be found to have violated this</u></p>	<p>Cory Fox, FanDuel Inc. cory.fox@fanduel.com</p>

	<u>provision if the individual did not provide the phone number at which the text message was received when entering the Self-Exclusion Program.”</u>	
256.07(2)	We additionally note with respect to 205 CMR 256.07(2) that preventing unsolicited pop-up advertisements from being shown to self-excluded persons is not technologically possible.	Katherine McCord, Better Collective USA, Inc.
256.07(2)	Subsection 256.07(2) prohibits direct text messages or unsolicited pop-up advertisements to an individual in the Self-Exclusion Program from any Operator, affiliated entity, or third party. We support the goal of preventing sports wagering advertising from reaching individuals in the Program. We share the concerns raised by Operators in their public comments, however, regarding the technical feasibility of implementing this provision (e.g., similar name issues, privacy restrictions) and seek clarification on how the Commission believes such a system could be implemented. At the very least, a standard based on knowledge or intent should be added.	Dave Friedman, Red Sox obo Broadcasters coalition
256.08 (1)	<p>Proposed: 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 at a live sporting event or obstructs the viewer experience at a sports event game in progress.</p> <p>Comment: 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 at a sports event" (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</p>	PENN

	amending this rule so that it is narrowly tailored and aligns with the intent of M.G.L. c. 23N, Section 4(c)(C).	
256.08(1)	Subsection 256.08(1) relates to “obscur[ing]” game play area or “obstruct[ion]” of a game in progress. The Commission’s legal counsel acknowledged that “[w]hile this section fulfills the Commission’s statutory mandate, [it] may be on constitutionally shaky ground.” And we appreciate that several Commissioners expressed concerns about the section’s lack of clarity during the open meeting on January 12. We trust that the Commission will be reasonable in its interpretation of this section and will not call into question widely used advertising displays such as physical or virtual signage on venue walls, dasher boards, on-screen scrolls, etc., and we ask only that the Commission engage with relevant stakeholders before taking any relevant interpretive or enforcement action.	Dave Friedman, Red Sox obo Broadcasters coalition
256.08 (1)	Proposing to add “knowingly” to state: “No Sports Wagering Operator shall knowingly 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.” BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	Jess Panora, BetMGM
256.08(2)	Proposing to add “knowingly” to state: “Advertisements for Sports Wagering may not knowingly be placed at a sports event with such intensity and frequency that they represent saturation of that medium or become excessive.” BetMGM Comment: This conduct should not constitute a violation if the operator is unaware of it.	Jess Panora, BetMGM

256.08(2)	<p>Comment: 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.”</p> <p>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.”</p>	<p>Cory Fox, FanDuel Inc. cory.fox@fanduel.com</p>
256.09	<p>To avoid any future, incorrect argument otherwise from regulated entities, the Commission should expressly state that its regulations, and particularly those related to advertising and marketing, are in addition to, and are not intended to displace, the Commonwealth’s preexisting and extensive consumer protection laws. Those laws include without limitation the Massachusetts Consumer Protection Act, G.L. c. 93A, and regulations established by our Office under that Act. The Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), and the regulations and guidance interpreting that statute also apply. The Commission should ensure that its regulations are consistent with these and other existing laws and regulations.</p>	<p>M. Patrick Moore Jr., AGO</p>

<p>256.10(1)</p>	<p>Proposed: (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 <u>such log of all social media posts</u> utilized by the licensee <u>for advertising, marketing, and branding purposes</u>.</p> <p>Comment: 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.</p> <p>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.</p>	<p>Draft Kings Inc.</p>
<p>256.10(1)</p>	<p>Proposed: (1) Each Sports Wagering Operator shall retain a copy of all advertising, marketing, branding and other promotional materials intended to promote any</p>	<p>PENN</p>

	<p>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.</p> <p>Comment: 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.</p>	
256.10(1) -(2)	<p>Subsection 256.10(1), as written, requests Commission access to all social media platforms “utilized by” Operators. We would appreciate clarification on what social media platforms the Commission expects to access, how such access is granted, and if this access differs from the Commission viewing a public social media page. On Subsection 256.10(2), we request clarification as to what entity is responsible for providing the Commission any advertising materials or logs and believe the obligation should reside with the Operator.</p>	Dave Friedman, Red Sox obo Broadcasters coalition
256.10(1) -(2)	<p>Comment: 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,</p>	Adam Berger, Duane Morris LLP o/b/o FBG Enterprises Opco, LLC d/b/a Fanatics Betting & Gaming ("Fanatics")

	<p>which is in line with the rules in other jurisdictions that have recently adopted robust advertising regulations, such as Ohio.</p> <p>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.</p>	
256.11(3)	<p>Proposed: (3) The Commission may, in addition to, or in lieu of, any other discipline, require an Operator that violates this section 205 <u>CMR</u> 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.</p> <p>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.</p> <p>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.</p> <p>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</p>	Draft Kings Inc.

	<p>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.</p> <p>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.</p> <p>Finally, there is one typographical error in the draft rule, corrected below.</p>	
--	---	--

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 1:47:21 AM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Emaild.prestwood@draftkings.com**Regulation**

Rule 205 CMR 256 – Sports Wagering Advertising

Subsection

256.11(3)

Comments

There is one typographical error in the draft rule, where “205 CR 256” should read “205 CMR 256”.

From: [MGC Website](#)
To: [Torrise, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 1:46:27 AM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Emaild.prestwood@draftkings.com**Regulation**

Rule 205 CMR 256 – Sports Wagering Advertising

Subsection

256.07(2)

Comments

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 (replacing "unsolicited pop-up advertisements" with "advertising"):

(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 advertising 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.

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 1:43:53 AM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Emaild.prestwood@draftkings.com**Regulation**

Rule 205 CMR 256 – Sports Wagering Advertising

Subsection

256.06(4)(e)(i)

Comments

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

No other jurisdiction requires a jurisdiction-specific responsible gaming messaging to be utilized on third party websites, including 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.

Proposed Final Rule Language:

i. Responsible Gaming Messaging must be posted on each gaming related advertisement posted on the webpage.

From: [MGC Website](#)
To: [Torrise, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 1:41:58 AM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Emaild.prestwood@draftkings.com**Regulation**

Rule 205 CMR 256 – Sports Wagering Advertising

Subsection

256.06(2)

Comments

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. The 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.

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 1:39:08 AM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Emaild.prestwood@draftkings.com**Regulation**

Rule 205 CMR 256 – Sports Wagering Advertising

Subsection

256.04(5)(b)

Comments

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.

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 1:38:04 AM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Emaild.prestwood@draftkings.com**Regulation**

Rule 205 CMR 256 – Sports Wagering Advertising

Subsection

256.04(4)

Comments

DraftKings respectfully requests that the Commission clarify and amend this section to ensure that it does not capture routine statements about sports wagering, or sports wagering analysis by media.

From time to time, employees of operators and personalities affiliated with operators are active on social media, posting their active wagers, thoughts on bets, and so on. DraftKings would argue that none of the following examples should be captured by the proposed 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 (adding a clarifying clause in the final sentence):

(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.

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 4:56:32 PM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

DraftKings

Name

David Prestwood

Email

d.prestwood@draftkings.com

Regulation

Rule 205 CMR 256 – Sports Wagering Advertising

Subsection

256.05(1), 256.06(2)

Comments

DraftKings respectfully requests that the Commission clarify the intended scope of "branding" in these sections.

No jurisdiction requires all branding to include an age limitation and responsible gaming message for patrons, instead only applying provisions to advertisements and other calls to action. An advertisement encouraging individuals to visit an operator's website, download an app, or deposit funds should require age limitation information and a responsible gaming message, but a company or product logo in the absence of a call to action should not. DraftKings respectfully requests that Massachusetts adopt this line of reasoning.

Without such a clarification, the plain language of the rule would require any branding to include age limitation information and a responsible gaming message. That could include employee business cards, company letterhead, t-shirts given to employees, and building signage. Additionally, this language does not limit its application to Massachusetts, which is especially problematic in jurisdictions where the legal wagering age is not 21, and the particular responsible gaming message would not be applicable. No other jurisdiction requires anything of this kind.

Finally, Massachusetts casinos are not required to include an age limitation and responsible gaming message on all branding. Adult beverage companies are not required to include an age limitation or responsible consumption message on all branding. Sports wagering operators should not be held to a separate standard.

From: [MGC Website](#)
To: [Torrisi, Carrie](#)
Subject: Regulations Public Comment Submission
Date: Tuesday, March 21, 2023 8:33:39 PM

Submitted By

Operator (Applicant or Licensed)

Business/Entity Name

BETMGM LLC

Name

Jess Panora

Email

jess.panora@betmgm.com

Regulation

205 CMR 256: Sports Wagering Advertising

Subsection

256.01: Third Parties

Comments

BetMGM Response to MA Rev Share:

Affiliate Marketing, where 3rd-party partners market our product using specified tracking links, is essential to the health of BetMGM's business and the entire industry. Without the ability to tactfully pay our partners for their acquisition efforts, we will be forced to dial back or completely cease the affiliate channel in the state. This could potentially:

a. Allow Illegal Operators to Flourish

Models that do not allow performance-based metrics such as CPA or rev share will cause operators to not partner with as many third-party affiliates because the marketing spend is not as efficient or effective.

b. Discouraging affiliates from participating in the market by limiting compensation models allows offshore operators to flourish. Diverting consumers from the regulated market decreases legitimacy and compliance and reduces tax revenue for the state.

c. Adds to patron confusion as to who is regulated and who is not – 3rd party affiliate marketing legitimizes the market.

d. Allowing performance-based metrics and rev share models allows for the largest number of third-party marketing affiliates across the largest number of sportsbooks. This increases consumer choice;

2. Education: Player Education and Responsible Gaming

a. Without this crucial channel, acquisition across the industry will undoubtedly drop as many people rely exclusively on third party websites, blogs, influencers, and newsletters for impartial and trustworthy information about sports wagering.

b. Operators rely heavily on these partners for promotion of offers and player education. Many sites provide tools and guides to educate players on offers, bet types, and responsible gaming tactics that act to inform users before they make the choice to become an active player.

c. Affiliates are also essential in disseminating updated regulations, disclaimers, products and offers, which in turn keeps the industry current and promotes responsible gaming.

3. Massachusetts State Play Dropoff

a. With sports betting now accessible in surrounding states, players who are not incentivized by third-party sites to bet in MA, will filter to NJ, PA, NY etc. to complete wagers, in turn diverting funds from the MA gov.

4. Reduced Opportunity for Local / Smaller / Diverse 3rd Party Affiliates

- a. Models allowing performance-based metrics increase the ability for operators to contract with smaller, local, and diverse third-party marketing affiliates, allowing additional opportunity for Massachusetts-based companies to participate in the sports wagering industry and MA market.
- b. Without performance-based metrics such as rev. share, operators are likely to consider a reduction in marketing spend and allocate their marketing budgets toward paid advertising channels such as mainstream television, that receive more viewership. This will increase the visibility of sportsbook advertisements in mainstream media for the larger operators. This will reduce visibility of the smaller operators who are not competing for mainstream television spend.



Legal Division

AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c. 30A, § 5 relative to the proposed adoption of **205 CMR 256.00: Sports Wagering Advertising**, for which a public hearing was held on March 21, 2023.

The promulgation of 205 CMR 256.00.00 was developed as a part of the process of promulgating regulations governing Sports Wagering in the Commonwealth. This regulation is governed largely by G.L. c. 23N, §4.

205 CMR 256.00 will pertain to the promotional communications and advertisements produced by Sports Wagering Operators licensed by the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses.

In accordance with G.L. c.30A, §5, the Commission offers the following responses on whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

1. Establishing less stringent compliance or reporting requirements for small businesses:

As a general matter, the Commission does not anticipate that small businesses will be negatively impacted by this regulation. As a result, less stringent compliance or reporting requirements for small businesses have not been established.

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 within this regulation that would pertain to small businesses.

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

This regulation does not impose any reporting requirements upon small businesses.

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

The proposed regulation prescribes performance-based standards.



Massachusetts Gaming Commission

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

The promulgation of this regulation is not likely to deter nor encourage the formation of new businesses in the Commonwealth.

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

The Commission does not anticipate that small businesses will be impacted by this regulation, however alternative regulatory methods have been heavily discussed by the Commission, and relevant stakeholders. The provisions of the final regulations are intended to produce a minimal adverse impact or hardship on small businesses and Operators.

Massachusetts Gaming Commission
By:

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

Dated: March 23, 2023



Massachusetts Gaming Commission