



Massachusetts Gaming Commission Meeting Minutes

Date/Time: December 2, 2021, 10:00 a.m.
Place: Massachusetts Gaming Commission
 VIA CONFERENCE CALL NUMBER: 1-646-741-5292
 PARTICIPANT CODE: 112 877 9572

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

Commissioners Present:

- Chair Cathy Judd-Stein
- Commissioner Gayle Cameron
- Commissioner Brad Hill
- Commissioner Eileen O’Brien

1. [Call to Order](#) (0:18)

Chair Judd-Stein called to order the 362nd public meeting of the Massachusetts Gaming Commission. Roll call attendance was conducted and all four commissioners were present.

2. [Administrative Update](#) (0:35)

a. On-Site Casino Updates

Assistant Director of the Investigations & Enforcement Bureau/Gaming Agents Division Chief Bruce Band provided an update on events at all three properties, including an update on the opening of Encore Boston Harbor’s upstairs VIP lounge. The Commission thanked Assistant Director Band for his update.

b. [Hybrid Work Model and Office Reopening Update](#) (2:15)

Executive Director Karen Wells provided an update on the hybrid work model and the Boston office reopening. She reminded the Commission that they implemented a pilot hybrid work program through the end of the year and sought guidance on what the Commission would like to do at the end of the pilot program. Executive Director Wells also provided an update on the process for acquiring new streaming equipment, noting that two bids have been received and

identifying the key issues and needs with respect to the setup of the public meeting room. She also addressed options for interim operations until the new equipment is acquired and noted that future demonstrations and testing of these interim options would be helpful.

Chair Judd-Stein asked if the Commission could participate somehow in this process. Executive Director Wells agreed that feedback from the Commissioners on the bids would be helpful. Commissioner Hill further advised that the Commission test any equipment before purchasing.

Executive Director Wells next raised the issue of the current office dress code, which allows staff to dress more casually in jeans during the hybrid work model while the office is not open to the public. She noted that she has received positive feedback from staff and recommended that the Commission continue with the policy in place. She also raised the question of the current daily screening survey that staff are required to fill out and whether the Commission felt that the survey was still necessary. Commissioner Cameron noted that Human Resources had advised that the screening survey had outlived its usefulness. Executive Director Wells confirmed that she would move forward with eliminating this requirement.

Executive Director Wells sought feedback from the Commission on what would be helpful for the next meeting in terms of the hybrid work model update and obtaining guidance from the Commission. Chair Judd-Stein requested that Executive Director Wells provide recommendations at the next meeting and allow the Commission an opportunity to take formal action then.

3. [Research and Responsible Gaming](#) (20:57)

a. Asian CARES Report

Research Manager Marie-Claire Flores-Pajot introduced a community-engaged research project intended to advance knowledge regarding casino impacts on population subgroups that are not reached by the general population surveys. She noted that the focus of the work is on communities considered to be at greater risk of experiencing gambling harm. She introduced the following individuals to present this study: Asian CARES Principal Investigator and Community Engagement Consultant Dr. Heang Leung Rubin; Executive Director of the Boston Chinatown Neighborhood Center, Ben Hires; and Program Officer of the Boston Chinatown Neighborhood Center, YoYo Yau. The team presented comprehensive details on this study, a copy of which is included in the Commissioners' packet.

Chair Judd-Stein noted the importance of this type of research and expressed hope that the Commission continue to make this a rigorous part of its overall research framework. Commissioner Hill noted that this report is a valuable roadmap with respect to problem gambling for the Commission moving forward and inquired as to what the Commission can do to advocate to the administration and the legislature that a bigger effort be put forward in this area in terms of funding. Chair Judd-Stein noted that this report highlights an opportunity for collaboration with the Department of Public Health and Public Health Trust Fund. Commissioner O'Brien noted the importance of disseminating the report not only to the legislature and public health agencies but to other agencies that may benefit from further understanding of these issues.

Chair Judd-Stein asked the presenters to elaborate on how their recommendation to fund an equity audit about responsible gambling and responsible advertising in the Asian community might be implemented. Mr. Hires responded that it's important to look at who the casino's marketing practices and promotions are targeting and how the practices are impacting those individuals, particularly when looking at targeted themes of casino games. Director Vander Linden also noted that the Research and Responsible Gaming team is completing a written request for proposals for the GameSense program and an aspect of that is to examine how responsive or culturally responsive the GameSense program is.

Chair Judd-Stein asked for clarification regarding the buses arriving at the casinos and where they were arriving from. Mia Colby from the presenting team responded that they do arrive from in-state but also arrive from out-of-state. She noted that there are pickups in Chinatown, Malden Center, Quincy, and Connecticut, and that they all primarily pick up outside of either Asian grocery stores or Asian eateries.

The Commission thanked the team for their comprehensive presentation.

4. [Commissioner Updates](#) (1:32:44)

There were no Commissioner updates presented.

5. [Other business](#) (1:33:02)

There was no other business presented.

Commissioner Cameron moved to adjourn. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated December 2, 2021
2. [Commissioners' Packet](#) from the December 2, 2021, meeting



Massachusetts Gaming Commission Meeting Minutes

Date/Time: January 27, 2022, 10:00 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 112 331 1748

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

Commissioners Present:

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

1. Call to Order ([00:02](#))

Chair Judd-Stein called to order the 368th Public Meeting of the Massachusetts Gaming Commission. Roll call attendance was conducted, and all four commissioners were present for the meeting.

2. Approval of Meeting Minutes ([00:38](#))

a. January 12, 2022

Commissioner O'Brien moved approve the January 12, 2022, Public Meeting minutes, included in the meeting packet, subject to necessary changes for typographical errors or edits.
Commissioner Cameron seconded.

Roll Call Vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

3. Administrative Update ([01:24](#))

a. On-Site Casino Updates ([01:40](#))

Executive Director Karen Wells introduced Assistant Director of the Investigations & Enforcement Bureau Bruce Band to give a report about the three gaming establishments. Assistant Director Band reported that MGM's companywide loyalty program M Life is being changed to "M Rewards," to include more amenities for casino patrons. MGM Springfield is also opening their South End Market to people under 21 years of age. MGM is also in the process of relocating their GameSense center to another location in their establishment. There were not any updates related to Plainridge Park Casino.

Assistant Director Band continued that Encore Boston Harbor ("EBH") is preparing to re-open their poker tables Monday through Thursday, 10 p.m. to 8 p.m. Commissioner O'Brien inquired as to how many tables would be included at EBH when it would re-open. Mr. Band reported 12 tables would be restored. Chair Judd-Stein then asked how many poker tables MGM had resumed, and Director Band stated they likewise had 12 tables. In response to the Chair's question Director Band confirmed that 50 jobs at the MGM property were restored when they re-opened their poker tables earlier this year.

Commissioner Cameron inquired about the GameSense center relocation at MGM. Executive Director Wells confirmed that the relocation was a collaboration between Research and Responsible Gaming Director Mark Vander Linden and the MGM staff to find a more optimal location for patrons. Commissioner O'Brien asked Director Band if EBH intended to ramp up the number of poker tables and how many other casinos such as Mohegan Sun offered. Director Band did not know the future plans in that regard or the current numbers at Mohegan Sun.

Later in the meeting, Assistant Director Band was provided with information that 22 dealers and 25 supervisors- across 12 tables- would be returning to work upon the EBH table games re-opening, for a total of 47 jobs. (11:18)

b. Covid-19 Updates (06:08)

Executive Director Wells reported that the re-opening date of the Boston office was tentatively set for February 14th, but that there is a public meeting on the February 12th, to discuss this date if there are recommended changes. The Return-to-Work Group is meeting regularly, and monitoring cases, and the positivity rate while planning its re-opening efforts. Executive Director Wells explained that the data will contribute to both re-opening efforts, as well as mask-wearing determinations made by the Commissioners.

Commissioner Cameron, as a member of the Working Group, explained that the group is keeping a close eye on the most current numbers and is going to make their decision as close to the tentative date as possible, while also trying to provide a certain date so that staff has adequate time to prepare. Commissioner Cameron discussed the value of having a meeting and providing a certain date as February 14th approaches. Commissioner O'Brien, who also sits on the Working Group, confirmed that they are tracking the numbers and will try to provide people with as much notice as possible, but that a meeting may need to be convened as the re-opening date draws closer.

c. MGC IT Equipment International Travel Policy (12:09)

Executive Director Wells introduced Chief Information Officer Katrina Jagroop-Gomes and provided a summary of the Commission’s International Travel policy. Best practices for use of equipment include using equipment safely and protecting users’ security while they are traveling. The IT Department, in conjunction with Executive Director Wells sought the Commission’s approval of the policy before its implementation. CIO Jagroop-Gomes shared that depending on the risk rating of the country, it may not be feasible for a staff member to take their equipment with them. Chair Judd-Stein inquired as to how much notice would be required to inform the MGC IT Department before a staff member travels abroad with their equipment. Senior Engineer Kevin Gauvreau confirmed that two weeks' notice would be optimal for the department.

Commissioner Hill moved that the Commission adopt the IT Equipment International Travel Policy. Commissioner O’Brien Seconded.

Roll call vote:

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

The motion passed unanimously.

The Travel Policy is included in the Commissioner’s Packet on pages 6-8.

d. MGC Security Awareness Training and Testing Policy (16:30)

Next, Executive Director Wells provided a summary of the Commission’s Security Awareness Training and Testing Policy. Director Wells explained that the training would serve as an internal mechanism to ensure a reduction of errors. Director Wells clarified that the policy includes the Commissioners in the training and testing mechanisms, however it does not reference or include Commissioners in the penalty provisions of the policy, as the statute does not provide that authority. She then turned the presentation over to CIO Jagroop-Gomes for questions from the Commissioners.

CIO Jagroop-Gomes further emphasized that the training was intended to be inclusive of modules on data, personally identifying information (“PII”), security, exercises for users to recognize attempts to steal data, otherwise known as “phishing,” and would also include intermittent assessment of Commission employees. She elaborated that a Security Awareness Training and Testing policy is continual and intended to serve as an ongoing reference point.

With that, Commissioner Cameron moved that the Commission adopt the Security Awareness Training and Testing Policy. Commissioner O’Brien Seconded.

Roll call vote:

- Commissioner Cameron: Aye.*

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

The motion passed unanimously.

The Security Awareness Training and Testing policy is included in the Commissioner's packet on pages 9-15.

4. Racing Division (21:25)

a. Update on Suffolk Downs Compliance with City of Boston "Be Together" COVID Vaccine Requirement

Dr. Lightbown reported that the city of Boston's vaccine mandate has been implemented at Suffolk Downs Racecourse. Patrons are required to be fully vaccinated with two doses by February 15, 2022. Businesses are required to post information about the policy and check patrons and employees as they enter the property. Suffolk has been compliant in this effort. Dr. Lightbown reports that thus far, there have been no major issues, but the property has had some patrons turned away. She added that proof of vaccination can be shown by patrons on paper documentation, or via their smartphones. Suffolk also has an equitable vaccine implementation to ensure that patrons are not being excluded based on race, ethnicity, or national origin. Dr. Lightbown shared the website for more information on the vaccination policy in her presentation as well, [Introducing B Together | Boston.gov](https://www.boston.gov/newsroom/introducing-be-together)

b. 2020 Plainridge Park Racecourse Unpaid Winnings (24:15)

Dr. Lightbown began her next presentation on unpaid winnings by explaining that a patron has one calendar year to cash-out or redeem a ticket from the date of their winning, and these unpaid winnings amounts were from 2020. Dr Lightbown and Senior Analyst Chad Bourque requested a vote for \$93,620.08 to be returned to the Commission, and that the CFAO be authorized to deposit such funds into the purse account at Plainridge in accordance with G.L. c. 128A, section 5A.

Commissioner Hill moved approve the amount of \$93,620.08 as the unclaimed winnings from the calendar year 2020 at Plainridge Park as described in the memorandum in the Commissioners' Packet. Commissioner Cameron Seconded.

Roll call vote:

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

The motion passed unanimously.

Unclaimed Winnings from Plainridge Racecourse are detailed in Commissioners' Packet, on pages 16, and 20.

c. 2020 Suffolk Unpaid Winnings ([27:13](#))

Dr Lightbown stated that there were \$90,864.66 in unclaimed winnings from Sterling Suffolk Racecourse in 2020. She asked that the Commission vote to return the funds to the Commission and that the CFAO be authorized to deposit such funds into the purse account at Sterling Suffolk in accordance with G.L. c. 128A, section 5A.

Commissioner Cameron moved that the Commission approve the amount of \$90,864.66 as the unclaimed winnings from the calendar year 2020 at Sterling Suffolk Racecourse as described in the memorandum in the Commissioners' Packet. Commissioner Hill seconded.

Roll call vote:

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

The motion passed unanimously.

Unclaimed Winnings from Sterling Suffolk Racecourse are detailed in Commissioners' Packet, on pages 17, and 20.

d. 2020 Wonderland Park Unpaid Winnings ([29:25](#))

Dr. Lightbown stated that there were \$1,740.02 in unclaimed winnings at Wonderland Park in 2020 and requested a vote to return these funds to the Commission and that the CFAO be authorized to deposit the funds to the Racing Stabilization Fund Pursuant to G.L. c. 128, section 5a. Commissioner O'Brien inquired about the use of a Racing Stabilization Fund instead of a purse account for this action. Dr. Lightbown explained that there was a statutory requirement to pay into the Greyhound Racing Stabilization Fund.

Commissioner O'Brien moved that the Commission approve the amount of \$1,740.02 as the unclaimed winnings from the calendar year 2020 at Wonderland as described in the memorandum in the Commissioners' Packet. Commissioner Hill Seconded.

Roll call vote:

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

The motion passed unanimously.

Unclaimed Winnings from Wonderland Greyhound Park are detailed in Commissioners' Packet, on page 18, and 20.

e. 2020 Raynham Park Unpaid Winnings (31:10)

Dr. Lightbown stated that there were \$117,920.92 in unclaimed winnings at Raynham/Taunton track in 2020 and requested a vote to return these funds to the Commission and that the CFAO be authorized to deposit the funds to the Racing Stabilization Fund.

Commissioner O'Brien moved that the approve the amount of \$117,920.92 as the unclaimed winnings from the calendar year 2020 at Raynham/Taunton as described in the memorandum in the Commissioners' Packet and discussed at the meeting, and further that upon receipt of the funds, the CFAO be authorized to deposit such funds into the Racing Stabilization Fund. Commissioner Cameron Seconded.

Roll call vote:

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

The motion passed unanimously.

Unclaimed Winnings from Raynham Taunton Massasoit Greyhound Associations are detailed in Commissioners' Packet, on pages 18, and 20.

f. Authorization for CFAO to Pay Out Funds Once Approved by Commission (33:06)

Dr. Lightbown explained that item had been approved by the previous votes based on the motions made by the Commissioners in items a through e.

5. Research and Responsible Gaming (33:48)

a. Assessment of the Casinos' Impacts on Operating Under the Influence (OUI) and OUI-Involved Traffic Collisions – Christopher Bruce, Crime Analysis Consultant

Marie-Claire Flores-Pajot, Research Manager of the Responsible Gaming Division, offered introductory remarks of the report furnished by the Division titled *Assessment of the Casinos' Impacts on Operating Under the Influence (OUI) and OUI-Involved Traffic Collisions* to examine the relation of Casinos and rates of Operating Under the Influence. Ms. Flores-Pajot introduced Christopher Bruce, Crime Analysis Consultant and thanked him for all the work he has done for the Commission since 2015. Mr. Bruce has produced 14 reports for the Commission since 2015, and this will be his final report for the Commission. Commissioner Cameron and Commissioner O'Brien also extended their gratitude to Mr. Bruce for his collaborative working

style with multiple police divisions, commitment to public safety in the Commonwealth, as well as his dedication to providing accurate and high-quality work products.

Mr. Bruce then began his presentation on the report’s findings and explained the three data sets utilized in the report: (1) Agency complaints for OUI occurring as arrests and summons; (2) last drink locations as reported at adjudication; and (3) [motor vehicle] crashes involving impaired driving.

Mr. Bruce concluded his presentation by stating that OUI rates are consistent with rates of casino attendance. Commissioner O’Brien inquired about the “last drink question” being asked in guilty dispositions in court. Commissioner Cameron thanked Mr. Bruce and inquired about the information in the report about the bias of large locations and its impact on his research. Mr. Bruce clarified that it does not affect the overall research, but that it does affect the ranking of the top 10 locations cited, as there are more patrons in those locales as well.

Mr. Bruce’s presentation on the report, “Assessment of the Casinos’ Impacts on Operating Under the Influence (OUI) and OUI-Involved Traffic Collisions” is included in the Commissioner’s Packet on pages 21-35. The Report is included on pages 36 - 59

Meeting Suspended for Lunch. Parties Reconvene at 12:26PM

6. Community Affairs Division [\(2:24:00\)](#)

Joe Delaney, Chief of Community Affairs Division, and Mary Thurlow, Senior Program Manager, introduced three community mitigation fund reserve applications that were submitted to the Commission prior to the end of 2021.

a. Community Mitigation Fund Reserve Applications

i. Cambridge [\(2:25:10\)](#)

Mr. Delaney presented a request from the City of Cambridge to make use of \$100,000 of its allocated reserve funds for the expansion of the Blue Bikes program in two locations in East Cambridge for the promotion of alternative transportation methods, including associated program costs.

Commissioner O’Brien moved that the Commission approve the use of \$100,000 of reserve funds by the City of Cambridge for the expansion of the Blue Bikes program in two locations in East Cambridge for the promotion of alternative transportation methods as discussed at the meeting and described in the materials in the Commissioners’ Packet. And, further, that Commission staff be authorized to execute all necessary grant instruments commemorating this award in accordance with 205 CMR 153.04. The motion was seconded by Commissioner O’Brien.

Roll call vote:

*Commissioner Cameron: Aye.
Commissioner O’Brien: Aye.*

Commissioner Hill: Aye.
 Chair Judd-Stein: Aye.
The motion passed unanimously.

A summary memorandum and full application are included in the Commissioner’s Packet on pages 60 – 67.

ii. **East Longmeadow** ([2:30:25](#))

Chief Delaney presented a request from the Town of East Longmeadow to make use of \$100,000 of its allocated reserve funds for development of an online resource portal for business development and permitting assistance, including associated project costs. Commissioner O’Brien inquired as to why the amount of the request was originally \$70,000. Chief Delaney clarified that the applicant was originally reluctant to apply for the full grant amount out of concern that they may not be able to spend it within the required period. After clarification to the requestor by Chief Delaney, they were encouraged to apply for the full \$100,000 grant which is shown in the memo included in the Commissioner’s Packet.

Commissioner Cameron moved that the Commission approve the use of \$100,000 of reserve funds by the Town of East Longmeadow for development of an online resource portal for business development and permitting and associated project costs as discussed at the meeting and described in the materials in the Commissioners’ Packet. And, further, that Commission staff be authorized to execute all necessary grant instruments commemorating this award in accordance with 205 CMR 153.04. The motion was seconded by Commissioner O’Brien.

Roll call vote:

Commissioner Cameron: Aye.
 Commissioner O’Brien: Aye.
 Commissioner Hill: Aye.
 Chair Judd-Stein: Aye.
The motion passed unanimously.

A summary memorandum and the full application are included in the Commissioner’s Packet on pages 68 – 77.

iii. **Longmeadow** ([2:37:23](#))

Chief Delaney presented a request from the Town of Longmeadow to make use of \$96,279.66 of its allocated reserve funds for the final redesign and engineering of the Route 5 corridor, which serves as a commuting corridor connecting different communities to I-91, as well as a substantial amount of traffic to and from the MGM Springfield casino property.

Commissioner Hill moved that the Commission approve the use of reserve funds by the Town of East Longmeadow to make use of \$96,279 of its allocated reserve funds for the final redesign and engineering of Route 5 corridor which serves as a means of traffic to and from the casino property as well as for associated project costs as discussed at the meeting and described in the materials in the Commissioners' Packet. And, further, that Commission staff be authorized to execute all necessary grant instruments commemorating this award in accordance with 205 CMR 153.04. The motion was seconded by Commissioner O'Brien.

Roll call vote:

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

The motion passed unanimously.

A summary memorandum and the full application are included in the Commissioner's Packet on pages 78 – 85.

7. Hiring Authority Policy ([2:41:54](#))

Executive Director Wells presented on the Commission's Hiring authority policy, that is to be read in conjunction with section 1.03 of the Commission's Human Resources Policy Manual, and intended to clarify the authority of the Executive Director to make certain hiring decisions. Executive Director Wells and Commissioner O'Brien provided a memo that was included in the Commissioners' Packet on pages 86 and 87. Commissioner Cameron expressed her gratitude to Commissioner O'Brien and Executive Director Wells for their work in drafting and codifying the policy.

Commissioner O'Brien moved that the Commission approve the Hiring Authority policy included in the Commissioners' Packet and discussed at the meeting. Commissioner Cameron Seconded.

Roll call vote:

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

The motion passed unanimously.

8. Executive Director Annual Review ([2:45:35](#))

Commissioners engaged in thoughtful discussion of the annual performance of Executive Director Wells. Chair Judd-Stein explained that by statute, compensation of the Executive Director must be openly discussed. Commissioner O'Brien provided an updated memorandum from the HR Department regarding the process of evaluation of the Executive Director. Executive Director Wells also performed a self-evaluation as well. Commissioners thanked

Executive Director Wells for her performance over the past year and expressed gratitude for her diligence during a very trying time.

Next, Commissioners engaged in thorough discussion on compensation, which included, past compensation of prior Executive Directors, other independent state agencies, as well as executive directors across other gaming jurisdictions. As discussed, salary ranges across these other organizations vary from \$129,600 to \$207,400. Ms. Wells’ existing salary is \$185,000. Commissioner O’Brien shared comparable compensation of Executive Director roles at the POST and Cannabis Commissions for reference as well as clarification that MGC employees and staff received a 4% increase retroactive to the fiscal year. It was noted, however, that Executive Director Wells did not receive this increase; had she, her salary would have been \$192,750.

After lengthy discussion amongst the Commissioners, Commissioner O’Brien moved to adjust Executive Director Wells’ salary beginning January 1, 2022 to \$207,400, as well as providing her a retroactive adjustment to her salary from January 1, 2021, totaling \$11,446.00. Commissioner Cameron Seconded.

Roll call vote:

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

The motion passed unanimously.

9. Commissioner Updates ([3:34:28](#))

a. Review of job description for Executive Assistant to the Commissioners

Chair Judd-Stein opened a discussion relative to the details of the job description as well as the prospective salary range for the position of Executive Assistant to the Commissioners. The commissioners were comfortable with the job description itself but recognized that the salary range had to be established in advance of posting the position publicly. By consensus after initial discussion amongst Commissioners, it was agreed that Chair Judd-Stein and Commissioner O’Brien would work with staff to develop a reasonable range before posting the position publicly. Commissioners agreed that this would be the best way to move this issue forward.

10. Other Business ([3:38:58](#))

Commissioner Cameron moved to adjourn the meeting. The motion was seconded by Commissioner. O’Brien.

Roll call vote:

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

The motion passed unanimously.

The meeting was adjourned.

List of Documents and Other Items Used

1. Revised Notice of Meeting and Agenda dated January 26, 2022
2. Revised [Commissioners' Packet](#) from the January 27, 2022,
3. Meeting Minutes – January 12, 2022



Poker in Massachusetts

Presented by Sterl Carpenter, Luis Lozano, & Andrew Steffen

April 28th, 2022



Poker Terms

Bad Beat - means a high-ranking poker hand that is beat by a higher-ranking hand. The Bad Beat jackpot is paid out when a minimum predetermined hand is beaten by a higher hand.

High Hand - is the best hand in any round of poker. Some casinos pay jackpots for hourly high hands, meaning that the person who makes the best overall hand that hour wins the jackpot.

Promotional Fund/Reserve Fund – is a pool of money set aside for poker rooms to offer events and bad beat jackpots to the players playing there. Events (like High Hand) are usually scheduled, and Bad Beat jackpots (when offered) are valid when a pot reaches a certain predetermined amount of money.



Pre-Pandemic Poker Numbers



Reopening Poker Numbers





PRE-COVID CLOSURE



NOW



PRE-COVID CLOSURE



NOW



Other Information

Encore - allows players to earn \$1 in comp points per hour

MGM Springfield - allows players to earn \$2 in food credit per hour

Drinks are comped at both properties.

Not all casinos serve free drinks to their poker players or receive comp dollars.



How a Poker Room Makes Money.

Poker earns money by taking a rake (percentage of money) from each pot. The amount a poker table makes is dependent on the number of hands dealt and amount of each pot. High limit poker tables sometime use a timed method to charge their patrons a rake.

Ex. At the end of the hand the patron wins a pot of \$80. Of this \$8 goes into the Rake drop box. The patron receives \$72 of the \$80 for that hand.

OTHER JURISDICTIONS

New Hampshire – Connecticut – Rhode Island – New Jersey – Maryland



Poker Outside the Commonwealth

- **New Hampshire** has **10** poker rooms; below are the four largest.

All casinos offer a rake of 10% up to \$5 with a \$2 promo drop (exceptions noted in red).

- **Manchester Poker Room & Casino** – Manchester
Does not take a promotion drop
30 Tables – from 12:00 pm – 1:00 am
Has the DraftKings Sportsbook
- **Boston Billiard Club & Casino** – Nashua
20 Tables – from 11:30am-1:00am
Advertises to place your mobile sports betting in the casino via DraftKings
- **The Brook** – Seabrook
Does not take a promotion drop
18 Tables – from 11:00 am – 12:00 am
Has the DraftKings Sportsbook
- **Chasers Poker Room** – Salem
15 Tables – from 11:00 am – 1:00 am



Poker Outside the Commonwealth



- **Mohegan Sun**

23 Tables

Sunday-Thursday 10:00am - 2:00am

Friday- Saturday 10:00am - 4:00am

Rake: 10% up to \$5

Offers Sports Wagering with a partnership with FanDuel

Both offer free drinks and comps



Poker Outside the Commonwealth



Rhode Island

Twin River

- 23 poker tables remain closed per their website. Twin River presented to us they receive complaints that their Poker room is not open.

New Jersey-

- There are 5 poker rooms (2 are currently closed) in Atlantic City offering 101 tables (various casinos) Largest is **Borgata** 52 tables Rake - 10% up to \$4

Maryland-

Live and National Harbor

- Live opens 30 NH opens 37 Rake: 10% up to \$5
+\$2 drop for promos (\$1 on \$10, \$1 on \$30)
Live -Comp Rate -\$1/hr Depends on a player's Tier card status.
NH- Comp Rate \$2/hr

- **MGM Comments and Complaints**

- Since March of 2020 at MGM, the IEB received approximately 60 comments and complaints regarding MGM bringing back poker tables.
- Since poker has returned last October, there have been no further comments or complaints regarding the poker room.

- **EBH Comments and Complaints**

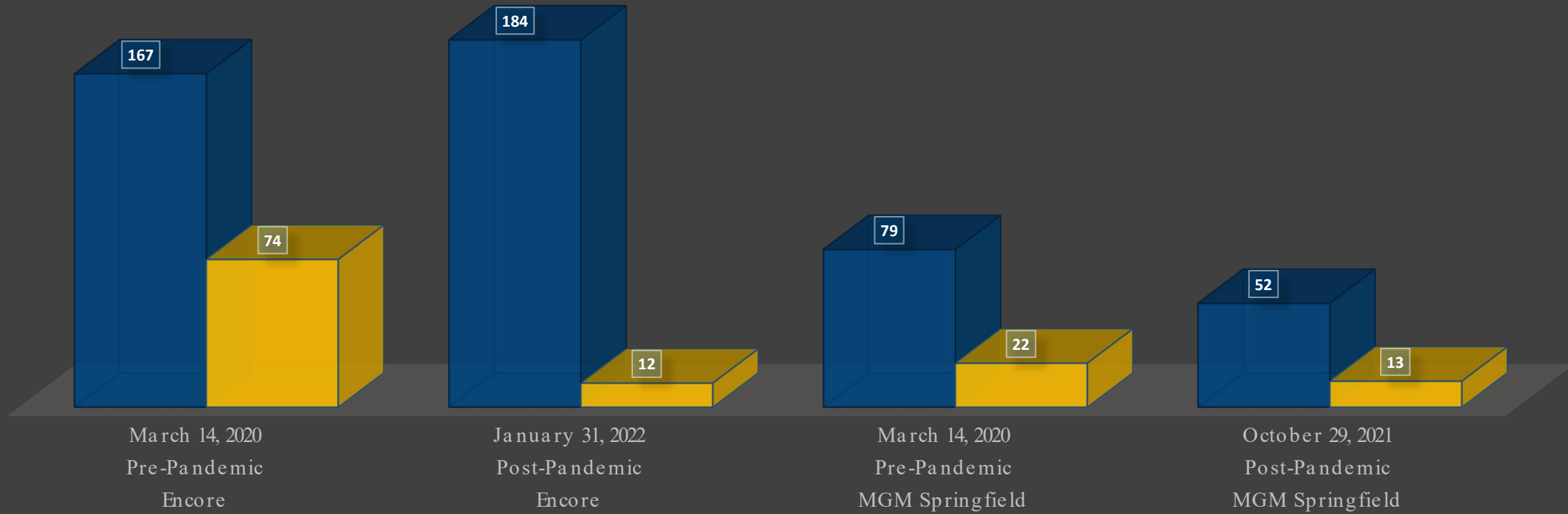
- Since March of 2020 at Encore, the IEB received approximately 160 comments and complaints regarding the Encore poker room.
- Since poker has returned this past January, the IEB continues to receive comments and complaints at Encore on the following subjects:
 - **Number of Tables**
 - **Hours and Days of Operation**
 - **The Rake**



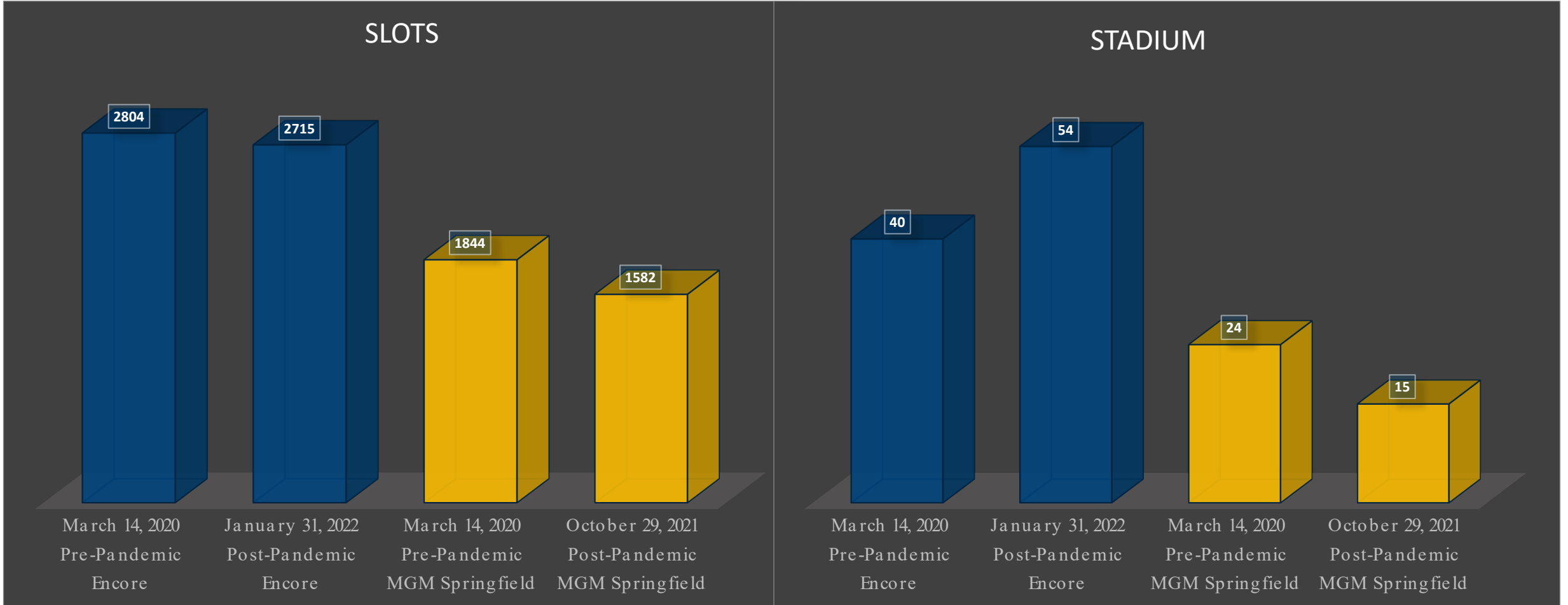
Pre & Post Pandemic Numbers on Tables and Poker

TABLE AND POKER GAMES

■ Table games ■ Poker Tables



Pre & Post Pandemic Numbers on Stadium and Slots



QUESTIONS?





101 Federal Street, 12th Floor, Boston, MA 02110

TEL 617.979.8400

FAX 617.725.0258

www.massgaming.com

MEMORANDUM

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

FROM: Loretta Lillios, IEB Director
Heather Hall, Chief Enforcement Counsel

RE: The IEB's Process for Assessment of Civil Administrative Penalties (Fines)

Date: February 4, 2022 (updated April 20, 2022)

cc: Karen Wells, Executive Director
Todd Grossman, General Counsel
Michael Banks, Captain, Mass. State Police/GEU
Bruce Band, Chief, Gaming Agents Division

1. Introduction

The IEB has prepared this memorandum to describe the IEB's process for issuing civil administrative penalties (fines) to licensees and registrants for repeated instances of noncompliance. As such, this memorandum may assist the Commission in providing additional policy and process guidance to the IEB.

2. Statutory and Regulatory Background

General Law chapter 23K, section 4(15) grants the commission broad authority to assess a fine on a licensee, registrant, or qualifier. Section 4(15) provides, in relevant part, that the "commission shall have . . . the power to: . . . deny an application or limit, condition, restrict, revoke or suspend a license, registration, finding of suitability or approval, or *fine a person licensed, registered, found suitable or approved for any cause that the commission deems reasonable[.]*". (Emphasis supplied).

In addition to the authority granted to the commission by § 4(15), G.L. c. 23K, § 36 authorizes the IEB to assess a civil administrative penalty on a licensee or registrant for failing to comply with provisions of G.L. c. 23K, the gaming regulations, or orders adopted by the commission.¹ See also G.L. c. 23K, § 4(32) (providing that one of the enumerated purposes of

¹ A copy of section 36 is included at the end of this Memorandum. The link to section 36 is: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter23K/Section36>.

the Commission is to “ensure that there is no duplication of duties and responsibilities between the commission and bureau; provided, however, that the commission shall not place any restriction upon the bureau’s ability to investigate or prosecute violations of this chapter or the regulations adopted by the commission[.]”), and 205 CMR 105.05 (Civil Penalties: “The bureau shall have power and authority, without limitation, to assess a civil administrative penalty to and in accordance with M.G.L. c. 23K, § 36.”).

Generally, before a civil administrative penalty may be assessed, § 36 requires that the IEB, as a prerequisite, give the licensee or registrant prior written notice of the noncompliance and an opportunity to rectify it. That is, only after the written notice and the time for coming into compliance has elapsed does the IEB assess a penalty for subsequent noncompliance of the same sort.²

3. Sources of Information

Typically, the IEB becomes aware of instances of noncompliance from the monitoring and auditing efforts of the on-site Gaming Agents, the on-site members of the Gaming Enforcement Unit (“GEU”), the on-site members of the Alcoholic and Beverages Control Commission (“ABCC”), and by way of self-reporting from the gaming licensees themselves. On a less frequent basis, the IEB investigates reports from other sources as well, such as reports from front line casino employees, patron complaints, submissions from the Fair Deal tip hotline, media reports, and intelligence information provided by other law enforcement agencies.

The IEB has a standing weekly meeting of the IEB Director, the Chief of the Gaming Agents Division, the State Police Commander of the GEU, the Chief Enforcement Counsel, the Chief of the Financial Investigations Division, and other senior members of the IEB. In addition, there is frequent communication outside of the weekly standing meeting with the IEB Director and management of each of the IEB’s divisions. Serious or recurring noncompliance matters are flagged for and discussed by IEB senior management in their early stages.

4. Overall Objective of IEB’s Enforcement Measures

The overall objective of the IEB’s monitoring and enforcement function is for the licensee or registrant to come into compliance. With this objective in mind, the IEB implements enforcement measures that are incremental in nature. This approach fosters the licensee’s or

² The bureau may assess a penalty *without* providing prior written notice in very limited circumstances, only if the failure to comply meets all four of the following criteria: “(i) was part of a pattern of noncompliance and not an isolated instance; (ii) was willful or neglectful and not the result of error; (iii) resulted in a significant breach to the integrity of the gaming establishment or gaming laws of the commonwealth; and (iv) consisted of failure to promptly report to the commission any knowledge of evidence or circumstances that would cause a reasonable person to believe that a violation of this chapter had been committed.” See G.L. c. 23K, § 36(a).

registrant's opportunity for achieving compliance. It also encourages self-reporting, which is a foundational aspect of gaming regulatory oversight.

To date, the IEB's Office of the Chief Enforcement Counsel has issued 25 Notices of Noncompliance and has assessed a Civil Administrative Penalty in five instances. The penalty amounts issued thus far range in amounts from \$5,000 to \$100,000. The gaming licensees should be commended for their culture of self-reporting and for giving adequate and timely attention to rectifying noncompliance issues in the first instance.

5. Escalating Enforcement Measures

This section describes the incremental enforcement measures utilized by the IEB to address noncompliance matters. The IEB reserves the ability to accelerate and condense the measures in certain circumstances including those involving serious violations. The IEB makes every effort to communicate noncompliance items with the licensee contemporaneously with the IEB's identification of the noncompliant activity, and to implement enforcement measures in a timely manner. Timely communication and prompt enforcement measures enhance the ability of the licensee to achieve compliance without undue delay.

a) Verbal Notification by Gaming Agent Division, with Email Follow-Up

Typically, the Gaming Agent Senior Supervisor first brings the noncompliance at issue to the attention of the relevant casino department director. Then, the casino's Compliance representative is informed during the routine bi-weekly (twice monthly) meetings held with Gaming Agent management and supervision and the casino. In most cases, the Chief of the Gaming Agent Division, the Gaming Agent Field Manager, the Senior Supervisor, and the Gaming Agent Compliance Manager attend these meetings on behalf of the IEB. Gaming Agent supervision follows up on these meetings with an email to the gaming licensee memorializing the noncompliance discussion. This gives the licensee the opportunity to understand, address, and rectify the matter early on. Communication between Gaming Agent supervision and the casino is critical and allows the IEB to monitor the casino's efforts at addressing and correcting the matter in real time.

b) Issuance of Noncompliance Form ("NCF") by Gaming Agent Division

On occasions where instances of noncompliance continue, Gaming Agent Management may approve the issuance of a written notice of noncompliance using a Noncompliance Form ("NCF") designed for this purpose. Once approved, the Senior Supervisor delivers the NCF to the gaming licensee. The licensee is asked to acknowledge, initial, and date its receipt of the NCF. The NCF contains a Comment section where the licensee can voice its understanding of the situation, and a Corrective Action section where the licensee can indicate steps it is taking to address the matter. Again, communication continues to be critical so that the licensee is clear about expectations going forward.

c) Issuance of Notice of Noncompliance by Chief Enforcement Counsel's Office

In instances where the noncompliance continues after the Gaming Agents' issuance of the NCF, the Chief Enforcement Counsel may prepare a more formal "Notice of Noncompliance." This Notice of Noncompliance cites the relevant statutory and regulatory authority and Internal Controls where applicable. The Notice contains a Facts section, which includes a description of prior relevant instances of noncompliance and the noncompliance at hand. The Notice of Noncompliance also sets forth a required Time for Correction and remedial measures directed. It is the IEB's practice to alert the licensee or registrant in advance of issuing the Notice of Noncompliance.

Following receipt of the Notice of Noncompliance, the licensee or registrant reports back to the Gaming Agents Division and the Chief Enforcement Counsel on the measures it has put into place to ensure that the noncompliance does not continue.

d) Assessment of Civil Administrative Penalty by Chief Enforcement Counsel's Office

Unfortunately, on some occasions, further instances of noncompliance ensue. In those instances where the formal Notice of Noncompliance and opportunity for correction are not successful, the IEB evaluates the matter for a civil administrative penalty.

Under 23K, § 36(c), whenever the IEB seeks to assess a civil administrative penalty, the IEB is required to first serve a written "Notice of Intent" to assess the civil administrative penalty upon the licensee or registrant. Section 36(c) provides that this Notice of Intent to Assess a Civil Administrative Penalty shall include:

a concise statement of the alleged act or omission for which such civil administrative penalty is sought to be assessed, each law, regulation, order, license or approval which has not been complied with as a result of such alleged act or omission, the amount which the bureau seeks to assess as a civil administrative penalty for each alleged act or omission, a statement of the licensee's or registrant's right to an adjudicatory hearing on the proposed assessment, the requirements the licensee or registrant shall comply with to avoid being deemed to have waived the right to an adjudicatory hearing and the manner of payment thereof if the person elects to pay the penalty and waive an adjudicatory hearing.

The IEB's protocols call for the IEB Director to approve all Notices of Intent to Assess a Civil Administrative Penalty.

Where appropriate, this Notice of Intent is accompanied by Exhibits containing, for example, relevant surveillance footage and casino reports demonstrating the existence of the continued noncompliance.

Each written Notice of Intent to Assess a Civil Administrative Penalty invites the licensee or registrant to inform the IEB whether it disputes any of the facts alleged in the Notice, and to inform the IEB of any mitigating information it wishes to bring to the IEB's attention. Inviting the input of the licensee or registrant at this juncture is a helpful part of the IEB's process. It gives the licensee or registrant the opportunity to bring mitigating information to the IEB's attention, and to alert the IEB to circumstances that may not have been observable to the IEB. Such information may include, for example, that the licensee proactively introduced additional employee training, disciplined involved employees, or implemented changes in its processes or other measures to address the issue. This information-sharing may lead the IEB to conclude that an adjusted dollar amount more fairly addresses the infraction at hand or, potentially, that a fine is not warranted after all. Ultimately, this communication may lead to the IEB and the licensee reaching an agreement as to the amount of the civil administrative penalty.

Following this discourse with the licensee, the IEB may issue an Assessment of Civil Administrative Penalty. To date, the amounts of all five Assessments issued by the IEB have been agreed-upon.

Under G.L. c. 23K, § 36(e), a licensee or registrant may seek an adjudicatory hearing to challenge the facts alleged by the IEB in the Assessment, or to challenge the amount of the assessment as excessive. Challenges by a gaming licensee are reviewed by the Commission pursuant to 205 CMR 101.01(2)(e). Challenges by other types of licensees or registrants are reviewed in the first instance by a hearing officer pursuant to 205 CMR 101.02. See G.L. c. 23K, § 36(d) (setting forth the licensee's or registrant's right to an adjudicatory hearing under G.L. c. 30A), and § 36(e) (providing a 21-day period for the licensee or registrant to file a notice of appeal to challenge the facts alleged by the IEB or to assert that the amount of the proposed penalty is excessive). Payment of the fine or failure by the licensee or registrant to file a Notice seeking a hearing within the 21-day period allotted by §36 results in a waiver of the hearing right.³

It is the practice of the IEB to inform the Commission of the issuance of civil administrative penalties. The IEB is mindful to do so in a manner that will preserve the Commission's impartiality in instances where the licensee or registrant may exercise its right to an adjudicatory hearing. The IEB also is mindful to do so in a forum that will preserve the confidentiality of sensitive information, if any.

³ The licensee or registrant may ask to extend the time for filing the request for a hearing beyond 21 days in order to allow it to carefully review and evaluate the details in the Notice.

6. Consideration of Appropriate Dollar Amounts

In making a determination of the appropriate dollar amount to assess as a civil administrative penalty, the IEB considers many factors. Noncompliance matters that reach this stage are intensively fact-specific by their nature. Factors considered include the level of seriousness of the noncompliance and its potential impact on the integrity of gaming operations or public safety; the number and degree of prior similar instances of noncompliance; and the opportunities that licensed or registered personnel had to recognize, intercede, and rectify the noncompliance (but failed to do so).

Some factors are dependent on the particular type of noncompliance. For instance, in determining the appropriate fine amount for the over-service of alcohol, the IEB considers the degree of visible intoxication of the patron, the level of contact with the patron by casino staff, the number of alcoholic beverages served in total and per hour, whether the individual was underage, and the number and proximity of prior incidents of noncompliance and notices of noncompliance of the same sort.

As a further example, in determining the appropriate amount to assess upon a nongaming vendor for failure to comply with the registration requirements for its employees, the IEB considered the serious nature of the violation and the potential risk to the integrity of the licensing and registration process,⁴ the location of the vendor's establishment adjacent to the casino floor, the fact that the burden of satisfying the registration requirement is quite low, and the repeated and ongoing nature of the noncompliance over an extended period of time despite notifications from the IEB. The IEB also considered the mitigating circumstances at that time, specifically that the owners of the business had no prior experience in the highly regulated casino environment, that the employees at issue eventually registered, and that the company was in compliance with a remedial measure previously ordered by the IEB.

In evaluating an appropriate fine amount, the IEB also keeps informed and maintains a file of fines issued by gaming regulators in other jurisdictions.⁵ Further, over the course of time, the IEB's past actions serve as internal precedent for future assessments.⁶

⁴ Employing a person in a position that requires licensure or registration under G.L. c. 23K is a criminal offense punishable by imprisonment in the house of correction for not more than six months or by a fine not to exceed \$10,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$100,000. See G.L. c. 23K, § 37(b).

⁵ In light of the increased prevalence of remote and hybrid work arrangements, the IEB is transitioning this file into an electronic format to be maintained on SharePoint.

⁶ As previously stated, to date, the IEB has issued only five civil administrative penalties. The licensee or registrant has agreed to the dollar amount in all five instances, thereby waiving its right to review by the commission. It can be expected that at some point, a licensee or registrant will request an adjudicatory hearing on the IEB's Assessment. Decisions of the Commission (for matters involving gaming licensees) and of the hearing officer (for matters involving other types of licensees or registrants) will of course have precedential value as well.

Initially, the IEB considered adopting a Schedule of Fines, organized by type of infraction. The idea behind a Schedule of Fines was to create a dollar range for each category of infraction, and to include gradations for first offense, second offense, third offense, etc. Ultimately, the IEB did not favor this approach because it does not lend itself to the intensively fact-specific analysis that is warranted. Also, the IEB wanted to avoid a scenario where a licensee might examine the potential dollar amount for noncompliance and make a business and economic decision not to comply based on the ceiling amount of the fine in the Schedule. Further, a Schedule of Fines could serve to limit the IEB's ability to consider mitigating circumstances. On the whole, the IEB believes that a Schedule approach is less effective in furthering the goals of achieving compliance, encouraging self-reporting, and discouraging bad behavior. The Commission previously discussed the Schedule method at two public meetings in 2015.⁷

In summary, the IEB bases the enforcement measure taken (including the dollar amount of the fine, if any) on the particular facts at hand. This includes consideration of mitigating information. Performing this fact-specific analysis on an individualized basis insulates the IEB's enforcement action from a challenge based on "substantial evidence," "arbitrary or capricious," and "abuse of discretion" grounds. See G.L. c. 30A, § 14(7). The Supreme Judicial Court has stated that "[w]here there is substantial evidence in the record to support the [agency's] decision," then "it was not arbitrary or capricious as a matter of law." Cherubino v. Board of Registration of Chiropractors, 403 Mass. 350, 359 (1988); Hotchkiss v. State Racing Comm'n, 45 Mass. App. Ct. 684, 688-689 n.5 (1998) (superior court erred by reversing agency's decision to eject mutuel teller; "a decision that is supported by substantial evidence cannot be arbitrary and capricious" and a court may not substitute its judgment for that of an expert agency which made a rational, discretionary choice in implementing the statutory scheme it was empowered by the Legislature to oversee.). "'Substantial evidence' means such evidence as a reasonable mind might accept as adequate to support a conclusion." G.L. c. 30A, § 1(6). "To satisfy the 'substantial evidence' requirement, the agency's conclusion need not be based upon the 'clear weight' of the evidence or even the preponderance of the evidence, but rather only upon reasonable evidence, that is, 'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" Gupta v. Deputy Dir. Of the Div. of Employment & Training, 62 Mass. App. Ct. 579, 582 (2004, (quoting G.L. c. 30A, § 1(6)). An agency's decision is not "arbitrary or capricious" if it has a "rational basis." Sierra Club v. Comm'r of Dept. of Env'tl. Mgt., 439 Mass. 739, 748 (2003). Both the substantial evidence test and the arbitrary or capricious test are "highly deferential" to the agency, and a reviewing court will not substitute its views as to the facts. See Friends and Fishers of Edgartown Great Pond, Inc. v. Dept. of Env'tl. Protection, 446 Mass. 830, 836, 840 (2006) (substantial evidence test); Britton v. Zoning Bd. Of Appeals of Gloucester, 59 Mass. App. Ct. 68, 74 (2003) (arbitrary or capricious test). See also Cherubino, 403 Mass. at 354-359 (substantial evidence and arbitrary or capricious tests).

⁷ The Commission considered the IEB's process of issuing civil administrative penalties, including the option of adopting a Schedule of Fines, at its open public meetings on September 17 and October 1, 2015.

Furthermore, under Massachusetts law, see Thomann v. Board of Reg. of R.E. Brokers and Salesman, 481 Mass. 1006, 1011-1012 (2018), where, as here, the agency has the statutory and regulatory power to impose a sanction, the agency “has discretion in determining the appropriate sanction.” A reviewing court will “consider only whether the sanction imposed was a reasonable exercise of [the agency’s] discretion” and the court “will not interfere with the agency’s imposition of a penalty except in the most extraordinary circumstances.” Id.

7. Conclusion

The IEB looks forward to discussing this important matter with the Commission.

General Law c. 23K, Section 36:

Assessment of civil administrative penalties for failure to comply with provisions of chapter or any regulation or order of the commission

Section 36. (a) The bureau may assess a civil administrative penalty on a licensee or registrant who fails to comply with any provision of this chapter or any regulation or order adopted by the commission; provided, however, that the noncompliance shall have occurred after the bureau had given such person written notice of the noncompliance and the time stated in the notice for coming into compliance had elapsed; provided further, that the bureau may assess a penalty without providing written notice if the failure to comply: (i) was part of a pattern of noncompliance and not an isolated instance; (ii) was willful or neglectful and not the result of error; (iii) resulted in a significant breach to the integrity of the gaming establishment or gaming laws of the commonwealth; and (iv) consisted of failure to promptly report to the commission any knowledge of evidence or circumstances that would cause a reasonable person to believe that a violation of this chapter had been committed. The civil administrative penalty shall be in addition to any other civil penalty that may be prescribed by law.

(b) For the purpose of determining whether such noncompliance was part of a pattern of noncompliance and not an isolated instance, the bureau shall consider, without limitation: (i) whether the bureau had previously notified the person of such noncompliance on more than 1 occasion during the previous month or of any noncompliance with the same provision of a law, regulation, order, license or approval as the current noncompliance during the previous 6-month period; or (ii) whether the current and previous noncompliances, considered together, indicate a potential threat to the integrity of the gaming establishment and gaming in the commonwealth or an interference with the commission's ability to efficiently and effectively regulate gaming in the commonwealth and enforce any regulation, license or order. If a licensee or registrant who has received a notice of noncompliance fails to come into compliance within the time period stated in the notice, the civil administrative penalty may be assessed by the bureau upon the licensee or registrant from the date of receipt of such notice.

(c) Whenever the bureau seeks to assess a civil administrative penalty on a licensee or registrant, the bureau shall cause to be served upon the licensee or registrant, either by service in hand or by certified mail, return receipt requested, a written notice of its intent to assess a civil administrative penalty which shall include a concise statement of the alleged act or omission for which such civil administrative

penalty is sought to be assessed, each law, regulation, order, license or approval which has not been complied with as a result of such alleged act or omission, the amount which the bureau seeks to assess as a civil administrative penalty for each alleged act or omission, a statement of the licensee's or registrant's right to an adjudicatory hearing on the proposed assessment, the requirements the licensee or registrant shall comply with to avoid being deemed to have waived the right to an adjudicatory hearing and the manner of payment thereof if the person elects to pay the penalty and waive an adjudicatory hearing. After written notice of noncompliance or intent to assess a civil administrative penalty has been given, each day thereafter during which noncompliance occurs or continues shall constitute a separate offense and shall be subject to a separate civil administrative penalty if reasonable efforts have not been made by the licensee or registrant to promptly come into compliance.

(d) Whenever the bureau seeks to assess a civil administrative penalty on a licensee or registrant, the licensee or registrant shall have the right to an adjudicatory hearing under chapter 30A, the provisions of which shall apply except when they are inconsistent with the provisions of this chapter.

(e) A licensee or registrant shall be deemed to have waived its right to an adjudicatory hearing unless, within 21 days of the date of the bureau's notice that it seeks to assess a civil administrative penalty, the licensee or registrant files with the bureau a written statement denying the occurrence of any of the acts or omissions alleged by the bureau in the notice, or asserting that the amount of the proposed civil administrative penalty is excessive. In an adjudicatory hearing authorized under chapter 30A, the bureau shall, by a preponderance of the evidence, prove the occurrence of each act or omission alleged by the bureau.

(f) If a licensee or registrant waives the right to an adjudicatory hearing, the proposed civil administrative penalty shall be final immediately upon such waiver. If a civil administrative penalty is assessed at the conclusion of an adjudicatory hearing, the civil administrative penalty shall be final upon the expiration of 30 days if no action for judicial review of the decision is commenced under chapter 30A.

(g) A licensee or registrant who institutes proceedings for judicial review of the final assessment of a civil administrative penalty shall place the full amount of the final assessment in an interest-bearing escrow account in the custody of the clerk or magistrate of the reviewing court. The establishment of an interest-bearing escrow account shall be a condition precedent to the jurisdiction of the reviewing court unless the party seeking judicial review demonstrates in a preliminary hearing held within 20 days after the filing of the complaint either the presence of a substantial question for review by the court or an inability to pay. Upon such a demonstration, the court may grant an extension or waiver of the interest-bearing escrow account or may require, in lieu of such interest-bearing escrow account, the posting of a

bond payable directly to the commonwealth in the amount of 125 per cent of the assessed penalty. If, after judicial review, in a case where the requirement for an escrow account has been waived, and in cases where a bond has been posted in lieu of such requirement, the court affirms, in whole or in part, the assessment of a civil administrative penalty, the commission shall be paid the amount thereof together with interest at the rate provided in section 6C of chapter 231. If, after such review in a case where an interest-bearing escrow account has been established, the court affirms the assessment of such penalty, in whole or in part, the commission shall be paid the amount thereof together with the accumulated interest in the interest-bearing escrow account. If the court sets aside the assessment of a civil administrative penalty in a case where the amount of such penalty has been deposited in an interest-bearing escrow account, the licensee or registrant on whom the civil administrative penalty was assessed shall be repaid the amount so set aside, together with the accumulated interest thereon.

(h) Each licensee or registrant who fails to timely pay a civil administrative penalty and each person who issues a bond under this section and who fails to timely pay to the commission the amount required hereunder, shall be liable to the commonwealth for up to 3 times the amount of the civil administrative penalty, together with costs, plus interest from the time the civil administrative penalty became final and attorneys' fees, including all costs and attorneys' fees incurred directly in the collection thereof. The rate of interest shall be the rate provided in section 6C of chapter 231. The bureau shall be authorized to require that the amount of a civil administrative penalty imposed under this section exceed any economic benefit realized by a person for noncompliance.

**IEB POLICY REGARDING ASSESSMENTS OF CIVIL ADMINISTRATIVE
PENALTIES BY THE IEB¹**

Governing Authority:

G.L. c. 23K, § 36

G.L. c. 23K, § 4(32)

205 CMR 105.05 (Civil Administrative Penalties)

Applies to:

Gaming Licensees

Licensed Gaming Vendors (Primary & Secondary)

Registered Non-Gaming Vendors

Licensed Casino Employees (Keys, GELs)

Registered Casino Employees (SERs)

- **Authority:** General Law chapter 23K, section 36 authorizes the IEB to assess a civil administrative penalty on a licensee or registrant for failing to comply with provisions of G.L. c. 23K, the gaming regulations, or orders adopted by the Commission. See also G.L. c. 23K, § 4(32) (providing that the commission shall not place any restriction upon the bureau's ability to investigate or prosecute violations of c. 23K or the regulations adopted by the Commission), and 205 CMR 105.05 (Civil Penalties: "The bureau shall have power and authority, without limitation, to assess a civil administrative penalty to and in accordance with M.G.L. c. 23K, § 36.").
- **Sources of information:** The IEB evaluates instances of noncompliance brought to its attention by the on-site Gaming Agents, the on-site members of the Gaming Enforcement Unit ("GEU"), the on-site members of the Alcoholic and Beverages Control Commission ("ABCC"), and by way of self-reporting from the gaming licensees. The IEB also investigates reports from other sources, including from front line casino employees, patron complaints, submissions from the Fair Deal tip hotline, media reports, and intelligence information provided by other law enforcement agencies.
- **Objective and Incremental Nature of Enforcement Measures:** The overall objective of the IEB's monitoring and enforcement function is for the licensee or registrant to come into

¹ The Commission also is authorized by statute to assess a civil administrative penalty. See G.L. c. 23K, § 4(15) (the "commission shall have . . . the power to: . . . deny an application or limit, condition, restrict, revoke or suspend a license, registration, finding of suitability or approval, or *fine a person licensed, registered, found suitable or approved for any cause that the commission deems reasonable*[.]" (Emphasis supplied). This Policy addresses the process utilized by the IEB for issuing a civil administrative penalty under separate provisions of G.L. c. 23K.

compliance. With this objective in mind, the IEB implements enforcement measures that are incremental in nature. This approach fosters the licensee's or registrant's opportunity for achieving compliance. It also encourages self-reporting, which is a foundational aspect of gaming regulatory oversight. The IEB reserves the ability to accelerate and condense the enforcement measures in certain circumstances including those involving serious violations and risks to public safety.

- Timely Attention to Noncompliance Matters: The IEB makes every effort to communicate noncompliance items with the licensee contemporaneously with the IEB's identification of the noncompliant activity, and to implement enforcement measures in a timely manner. Timely communication and prompt enforcement measures enhance the ability of the licensee to achieve compliance without undue delay.
- Notice of Intent to Assess a Penalty Invites Input from the Licensee: Whenever the IEB seeks to assess a Civil Administrative Penalty, the IEB first provides the licensee or registrant with a Notice of Intent to assess the penalty. See G.L. c. 23K, § 36(c). The IEB also invites the licensee or registrant to inform the IEB whether it disputes any of the facts alleged in the Notice, and to inform the IEB of any mitigating information it wishes to bring to the IEB's attention. Inviting the input of the licensee or registrant is a helpful part of the IEB's process because it gives the licensee or registrant the opportunity to bring mitigating information to the IEB's attention, and to alert the IEB to circumstances that may not have been observable to the IEB. This information-sharing may lead the IEB to conclude that an adjusted dollar amount more fairly addresses the infraction at hand or, potentially, that a fine is not warranted after all. Ultimately, this communication may lead to the IEB and the licensee reaching an agreement as to the amount of the civil administrative penalty.
- Determining Appropriate Dollar Amount: In making a determination of the appropriate dollar amount to assess as a civil administrative penalty, the IEB considers many factors. Noncompliance matters that reach this stage are intensively fact-specific by their nature. Factors considered include, without limitation:
 - the level of seriousness of the noncompliance and its potential impact on the integrity of gaming operations or public safety;
 - the number and degree of prior similar instances of noncompliance;
 - the opportunities that licensed or registered personnel had to recognize, intercede, and rectify the noncompliance (but failed to do so);
 - factors that are dependent on the particular type of noncompliance;
 - fines issued by gaming regulators in other jurisdictions; and

- past precedent of the IEB and past precedent of the Commission Hearing Officers and the Commission in reviewing IEB actions.
- Approval: The IEB’s protocols call for the IEB Director to approve all Notices of Intent to Assess a Civil Administrative Penalty and all Assessments of such Penalties.
- Standards of Review: The IEB remains mindful of the standards by which any of its orders are subject to review, including the “substantial evidence” standard and the related requirements that its orders remain insulated from challenges based on “arbitrary or capricious” and “abuse of discretion” grounds. See G.L. c. 30A, § 14(7).
- Notification to Commission of Fines Assessed by the IEB: It is the practice of the IEB to inform the Commission of the issuance of civil administrative penalties. The IEB is mindful to do so at a time and in a manner that will preserve the Commission’s impartiality in instances where the licensee or registrant may exercise its right to an adjudicatory hearing. The IEB also is mindful to do so in a manner that will preserve the confidentiality of sensitive information, if any.

TO: Chair Cathy Judd-Stein, Commissioners, Bradford Hill, Eileen O'Brien, and Nakisha Skinner

FROM: 2022 Community Mitigation Fund Review Team

CC: Karen Wells, Executive Director, Todd Grossman, General Counsel

DATE: April 28, 2022

RE: 2022 Community Mitigation Fund Transportation Planning Grant Applications

This memorandum provides an analysis of the Transportation Planning Grant applications for funding from the 2022 Community Mitigation Fund ("2022 CMF"). Copies of the applications can be found at <https://massgaming.com/about/community-mitigation-fund/>.

The Community Mitigation Fund Review Team ("Review Team") has evaluated the applications to ensure that they comply with the 2022 Guidelines. As part of this review process, copies of the applications were sent to the licensees and MassDOT for their review and comment. Conference calls and remote meetings were held between the applicants and the Review Team. Requests for supplemental information were submitted to the applicants so they could provide further clarification on their application. Numerous meetings were held by the Review Team to ensure a thorough review of every application.

Recommendations of the Review Team

To ensure a consistent and efficient system to analyze the applications, the Review Team utilized the review criteria specified in the 2022 Guidelines. This summary will mention some significant factors for these applications. Among the criteria are:

- A demonstration that the impact is being caused by the proposed gaming facility
- The significance of the impact to be remedied
- The potential for the proposed mitigation measure to address the impact
- The potential for the proposal to maximize the economic impact of the gaming facility
- The feasibility and reasonableness of the proposed mitigation measure.

The chart below summarizes the recommendations of the Review Team with respect to the Transportation Planning Grant Applications

Recommended Transportation Planning Grant Awards.

Guidelines: Transportation Planning (\$200,000 per application plus any regional planning incentive)	Applications Received	Recommendation of Review Team
Boston - Sullivan/Rutherford	\$200,000	\$200,000
Chelsea – Spruce Street	\$167,600	\$167,600
Everett/Boston Lower Mystic	\$450,000	\$450,000
Malden – Traffic Signal Inventory	\$115,000	\$57,500
Malden – MBTA Station Study	\$49,400	0
Medford Wellington Rail Trail	\$70,000	\$70,000
Total:	\$1,052,000.00	\$945,100

BOSTON – Sullivan Square/Rutherford Avenue

Summary: The City of Boston is requesting \$200,000 for a portion of the design cost of improvements to Sullivan Square and Rutherford Avenue.

Analysis: The Review Team recommends awarding the full amount of \$200,000 to the City of Boston for the design of Sullivan Square and Rutherford Avenue.

The Commission has provided grant funds for this project in the amount of \$1.05 million from 2017-2021. During the last grant round, it was expected that there would be no additional requests for funding. However, during the 25% design review, MassDOT requested that the City of Boston change the design to incorporate dedicated center bus rapid transit lanes and stations through Sullivan Square and along the Rutherford Avenue corridor. This results in a significant design change, which is the subject of this request.

The Review Team agrees that the design for the Sullivan Square/Rutherford Avenue improvements is clearly related to impacts of the gaming facility as approximately 70% of the project-generated traffic passes through Sullivan Square. Boston’s long-term designs for the area have been significant considerations in the Commission’s ongoing review of the Encore Boston Harbor project and the license conditions. These conditions include a requirement for Encore Boston Harbor to contribute \$25 million to this project.

As originally proposed, the total design cost for the project was approximately \$11 million. The increase in design fee for the center bus lane and station design is currently being negotiated, but will certainly be substantial. With an additional grant of \$200,000, the total contribution from the Commission would be \$1.25 million or about 11.4% of the original \$11 million budget. In the end, these funds will leverage over \$150 million in federal and state funds associated with the full reconstruction of Sullivan Square and Rutherford Avenue.

The Review Team agrees that this level of investment is appropriate given the amount of casino traffic travelling through this area and ultimately the federal and state construction dollars that this project will leverage, and therefore recommends this project for funding.

Licensee Response: “Encore Boston Harbor supports the City of Boston’s plans to enhance the flow and ease the impact of traffic at Sullivan Square and Rutherford Avenue in Charlestown.”

MassDOT Response: “MassDOT recommends approval of the City of Boston’s request for \$200,000 to contribute to the design costs for the Sullivan Square/Rutherford Avenue reconstruction project. Our approval is consistent with state and City efforts to support economic development, manage congestion, support multimodal travel, and improve safety for travel in this area.”

CHELSEA – Spruce Street

Summary: The City of Chelsea is requesting \$167,600 to undertake a comprehensive study and devise a conceptual design of multi-modal infrastructure enhancements on Spruce Street between Everett Avenue and Williams Street to mitigate casino induced operational and safety issues.

Analysis: The Review Team recommends full funding of this grant in the amount of \$167,600.

The Beacham Street/Williams Street corridor provides an alternative route to the Encore casino from points north and east of Chelsea, which has been the subject of earlier CMF grants. Spruce Street provides a connection between Route 1 and Beacham/Williams Street. Chelsea conducted traffic studies before and after the casino opening which documented increases in traffic on Beacham and Williams Streets that were significantly larger than those anticipated in the Environmental Impact Reports. While traffic counts were not conducted on Spruce Street itself, it can be safely inferred that some of that increase in traffic will be using Spruce Street because of its direct connection to Route 1. Chelsea also documented an increase in the number of accidents on Spruce Street after the casino opened. The Review Team agrees that Chelsea has demonstrated a sufficient connection to traffic related impacts from the casino.

Chelsea plans to hire a consultant to perform a comprehensive transportation corridor study to identify ways to mitigate the increase in vehicular traffic as well as addressing safety issues associated with the corridor. The study will look at a full range of issues including multi-modal safety and access.

The Review Team agrees that the approach presented in the application would provide the necessary level of planning to allow Chelsea to move forward in making improvements to this corridor to mitigate the issues identified and therefore recommends this project for funding.

Licensee Response: “Encore Boston Harbor supports the City of Chelsea’s initiative to undertake a comprehensive study and devise a conceptual design of infrastructure enhancements on Spruce Street. We continue to encourage regional collaboration to ensure that the resources available in the Community Mitigation Fund are put towards impactful initiatives that will benefit the region for decades to come.”

MassDOT Response: “MassDOT supports the City of Chelsea’s application for \$167,600 for a Transit Planning Initiative to study improvements and alternative designs for Spruce Street between Williams

Street and Everett Avenue. This request represents the total budget of the project in order to retain a planning firm to propose a comprehensive improvement plan for Spruce Street, with the final product including baseline and traffic analyses, utility assessment, preliminary environmental and subsurface data review, preliminary mapping, and 10% design plans. MGC funds will be matched in-kind through municipal coordination with the selected consulting firm to provide deliverables, which will be reported quarterly to the MGC.”

EVERETT/BOSTON – Lower Mystic Transportation Management Association

Summary: The cities of Everett and Boston are requesting a grant in the amount of \$450,000 to complete the formation of the Lower Mystic Transportation Management Association (TMA). These funds would support the basic operational needs of the TMA during its first 3 years.

Analysis: The Review Team recommends full funding of the grant in the amount of \$450,000.

As part of its MassDOT Section 61 findings, Encore Boston Harbor was required to become a member of a TMA to help in reducing the amount of traffic associated with the development. At the time of Encore’s opening, there was no TMA that was designed to cover the Everett area. Encore joined a Boston based TMA to satisfy the requirement, but it was not the most effective way to carry out that mandate. The City of Everett and the City of Boston have established the Lower Mystic Transportation Management Agency to cover Everett, the Charlestown neighborhood of Boston, Chelsea, Malden, and Medford. Encore has joined this TMA as well as several other local area businesses. Absent the Encore development, the need for a local TMA would be significantly reduced and developing the critical mass necessary to create an Everett/Charlestown-centric TMA would be less likely. The Review Team agrees that the presence of Encore as a major traffic generator helps create the need for a local TMA and therefore constitutes an impact of the casino.

Everett and Boston propose to use these funds over a three-year period to close the gap between funding generated by members of the TMA and the overall financial needs of the TMA itself. It is expected that the TMA will be fully self-sufficient within the three years identified in the application. Some of the activities proposed with these funds include a commuter survey tool to better understand travel patterns in the region, a marketing campaign to provide education and promotion of the tools that are available as part of the TMA and development of a working plan for consolidated private shuttle services to fill gaps in the existing transportation network.

The Review Team agrees that providing this sort of seed money to help the TMA quickly establish itself is appropriate and will help mitigate traffic related impacts from Encore as well as any subsequent development in the area.

Licensee Response: “Encore Boston Harbor supports the Cities of Boston and Everett’s join efforts to complete the formation of the Lower Mystic Transportation Management Association.”

MassDOT Response: “MassDOT supports the joint request by the Cities of Boston and Everett for \$450,000 (noting that the scope budget attached to the application totals \$448,000) in order to inaugurate and support the first three years of operations for a Lower Mystic Transportation Management Association (TMA). This grant request represents the total project cost for the first three years of operations of the proposed TMA, including administrative, management, and operating costs,

and will be matched in-kind by City staff from both municipalities working to support the TMA and to evaluate new permitting materials submitted in compliance with TMA requirements.

This proposal results in part from the Lower Mystic Regional Working Group convened by the MAPC and regional communities and supported by a grant of \$250,000 in Community Mitigation Funds. The study concluded that a regional TMA would be important to transit-orientated local development.”

MALDEN - Traffic Signal Inventory

Summary: The City of Malden is requesting \$115,000 to conduct a city-wide traffic signal inventory to catalogue and evaluate the City’s traffic signal systems in order to optimize traffic operations, determine appropriate near-term and long-range improvement strategies, and develop a capital plan for implementation.

Analysis: The Review Team recommends awarding \$57,500 to the City of Malden for traffic signal inventory and analysis.

The City of Malden serves as a transportation hub for the Encore facility with patron and employee shuttles running to and from the Malden Center MBTA Station. The original traffic studies done as part of the Encore Environmental Impact Report (EIR) determined that local traffic from the Encore facility would travel north through Everett into Malden at several locations. This report estimated that about 2% of the Encore related traffic would travel north on Main Street, about 1% of the traffic would travel on Ferry Street and about 1% on Route 99 (Broadway). The Review Team agreed that these factors constitute an impact of the casino on the Malden roadway network.

Based on the first post-opening traffic study conducted by Encore in January 2020, the peak day at the property generates a total of about 24,000 vehicles per day (12,000 in and 12,000 out). Using the trip generation percentages established in the EIR, this would result in about 480 vehicles per day on the Main Street corridor, about 240 vehicles per day on the Ferry Street corridor and about 240 vehicles per day on the Route 99 corridor. Any other use of Malden roads coming from/going to the casino site would likely be much lower than these main routes. By any measure, this is a modest impact on the local roadway network.

The City of Malden is requesting grant funds to conduct an evaluation of every City owned traffic signal installation, which according to the application totals 70 locations. This study would create a physical inventory of existing traffic signals, develop an evaluation and recommendation report and perform some field adjustments of signal equipment.

The Review Team was not convinced that mitigation funds should be used to study every signalized intersection in Malden given the modest impact on local roads. The Review Team did agree that the main north/south routes identified in the EIR and some east/west routes that connect these routes could warrant some additional study and evaluation. Rather than trying to micromanage this application, the Review Team recommends providing 50% of the requested funding and requiring the applicant to submit a revised scope of work that outlines which routes and traffic signals will be evaluated as part of the study.

Licensee Response: “Encore Boston Harbor supports the City of Malden’s efforts to conduct a city-wide traffic signal study to evaluate its traffic signal systems in order to optimize operations and determine both near-term and long-term improvements.”

MassDOT Response: “MassDOT supports the request by the City of Malden for \$115,000 to fully fund an inventory and analysis of signalized intersections within the community. The City will support this effort with an in-kind contribution of staff time and has identified municipal Chapter 90 funding and MassDOT grant funds for potential use in implementation of improvements which result from this planning process.”

MALDEN – Transit Oriented Development Study

Summary: The City of Malden is requesting \$50,000 to conduct a Transit-Oriented Development (TOD) Opportunities Study and explore conceptual alternatives for the development of land adjacent to the Malden Center MBTA Station.

Analysis: The Review Team was not able to identify a clear nexus between an impact of the Encore facility and the proposed remedy, and therefore does not recommend this project for funding.

The grant application identifies two impacts associated with Encore. The first is the increased use of Malden Center as a “transportation hub” for Encore’s visitors, workers and vendors, which is contributing to congestion on its roadways. The second impact described in the application is that workers and visitors to Encore are not utilizing the local amenities in Malden, but rather just using Malden as a pass-through to the casino.

While each of these in and of themselves could be considered an impact of the casino, the Review Team did not believe that a compelling case was made for either one.

In the first case, Malden Center was specifically identified in the Surrounding Community Agreement as a “transportation hub” specifically for the use of Encore patrons and employees. Certain improvements to the Malden Center MBTA Station were required to be made by Encore to accommodate both employee and patron shuttles as part of the environmental review of the project. As part of the Surrounding Community Agreement, Malden receives an annual \$325,000 transportation hub payment to mitigate any impacts.

In the second case, the Commission did determine that impacts on local businesses could be considered under the Community Planning Grant category, but Malden is applying under the Transportation Planning category, which by its very nature deals only with transportation related issues.

Even if the Review Team had concurred with the Malden’s assessment of casino related impacts, there is significant question whether the proposed remedy would address those impacts. As identified in the scope of work attached to the application, the purpose of the TOD study is to explore conceptual alternatives for the land adjacent to the Malden Center Station, including a mix of uses, densities and parking configurations. The TOD alternatives will include a summary of each development program such as retail, commercial, housing and parking. The notion of TOD is that significant development can be created around mass transit stations while minimizing additional burdens on other modes of transportation. While this type of planning is certainly appropriate for any community with mass transit availability, it is unclear how this study would mitigate increased traffic associated with the casino. The Review Team felt that the proposed project was really a local economic development planning effort and as such, should be considered a general municipal expense and not a project eligible for mitigation funds.

For these reasons, the Review Team was unable to recommend this project.

Licensee Response: “Encore Boston Harbor supports the City of Malden’s efforts to mitigate traffic congestion... We continue to encourage regional collaboration to ensure that the resources available in the Community Mitigation Fund are put towards impactful initiatives that will benefit the region for decades to come.”

MassDOT Response: “MassDOT supports the City of Malden’s request for \$49,400 to fully fund a transportation-oriented design study for the immediate area of the MBTA station at the intersection of Commercial Street and Pleasant Street...Improvements to the infrastructure and services available at the Malden MBTA station and surrounding area have the potential to improve transit access, public safety and equity in line with MassDOT strategic initiatives.”

MEDFORD – Wellington Rail Trail Study

Summary: The City of Medford is requesting \$70,000 in funds to study the feasibility of utilizing an inactive freight rail right-of-way to construct a multi-use trail that would improve connectivity in the Wellington/Glenwood neighborhood.

Analysis: The Review Team recommends full funding of this grant in the amount of \$70,000. The Team also recommends that this approval be conditioned upon Medford demonstrating that this rail line is indeed inactive and available for re-use.

The construction of this proposed multi-use trail would provide a protected path between the Wellington/Glenwood neighborhood and more established bike routes along River’s Edge Drive and the bike paths currently in the planning or construction phase in Mystic View Park and the Gateway Center. While it is difficult to quantify the exact level of use of this type of trail, development of this trail would allow Encore patrons and employees residing primarily to the west of the site relatively unimpeded bicycle/pedestrian access to the site. In addition, it will improve bicycle/pedestrian access to the Wellington MBTA Station, where patrons and employees can avail themselves of the shuttles to Encore. Further, it has the potential to reduce vehicular trips to Wellington/Encore by providing a safer option for walking/bicycling. The Review Team agrees that any improvements to the bike network in the area has the potential to remove a substantial number of vehicles from area roads.

The grant application states that the rail line where the trail is proposed is believed to be inactive. The Review Team has very recently requested additional information regarding the rail line ownership and activity but has not yet received a response. Therefore, the Review Team recommends that any approval be conditioned upon a demonstration that this rail right-of-way is no longer in use and available for re-development.

This type of project is consistent with other projects that the Commission has funded in the area and the Review Team recommends approval.

Licensee Response: “Encore Boston Harbor supports the City of Medford’s efforts to improve transportation for its residents and business owners. If the Massachusetts Gaming Commission determines that this request is aligned with the established fund guidelines, Encore Boston Harbor is happy to endorse the same.”

MassDOT Response: “MassDOT supports the request by the City of Medford for \$70,000 to fully fund a feasibility study analyzing the potential conversion of a railroad right-of-way to create a separated multi-use trail...The rail trail, if determined to be feasible, would support multimodal transit in line with MassDOT planning initiatives and climate change policy. The City’s proposal notes that it would serve to connect extant bike infrastructure in the area and complete a connection between the Encore Casino, neighborhood residences, and the Wellington MBTA station.”

MASSACHUSETTS GAMING COMMISSION

MEMORANDUM

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

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

Date: 4/28/2022

Re: Fiscal Year 2022 (FY22) Third Budget Update

Summary:

The Massachusetts Gaming Commission approved an FY22 budget for the Gaming Control Fund of \$33.02M, composed of \$27.12M in regulatory costs and \$5.9M in statutorily required costs. The entire Research and Responsible Gaming budget is funded by the Public Health Trust Fund (PHTF), at an additional \$6.49M. The Commission approved an initial budget of \$274K for the Community Mitigation Fund. The Gaming Control Fund required an initial assessment of \$29.3M on licensees. After balancing forward \$2.05M from FY21, the assessment is reduced to \$27.26M. The Commission also approved an additional \$5M assessment required by law for the PHTF.

In the first two quarterly updates, we increased spending projections in the Gaming Control Fund by \$54.6K. We also increased revenue projections by ~\$338.3K through the first two-quarters of FY22. The combination of spending increases and revenue increases resulted in a projected surplus of \$283.6K through the first two quarterly updates.

In this third quarterly update, the finance office is increasing the Gaming Control Fund spending projections by \$170.6K. The increased spending projections are composed of \$334.4K in operational spending reductions combined with \$505K in independent monitoring bills paid between January 1 and March 31. We are also increasing revenue projections by \$463K (\$505K of which are reimbursements for the independent monitor invoices).

Gaming Control Fund

Spending Update:

Staff is reporting on the following spending projection adjustments:

- Payroll Savings—The Commission continues to experience turnover savings. We are projecting an additional \$125K on top of the \$750K we have already accounted for through the first two quarterly updates.
- Travel Reimbursement Savings—We currently have only used ~25% of our travel reimbursement line. While there may be a small lag in reporting of expenses, we do not anticipate using this entire item in FY22.
- Contract Employee Savings—The civilian investigators continue to use their time prudently and we are anticipating not spending out this entire item.
- Fringe and Payroll Taxes—Fringe benefits are assessed at 37.53% of salaried and contract employees and payroll taxes are assessed at 1.97% of salaried employees. The combination of

projected savings in straight time and contract employee time results in this item being reduced as well.

- Independent Monitor Fees—Independent monitor fees are accounted for when we incur the expense. The item is revenue-neutral, as all expenses associated with the independent monitor are billed back to Encore Boston Harbor.
- Gaming Enforcement Unit—The Massachusetts State Police continue to have vacancies in their GEU units at the casinos. The vacancies do project above the \$300K in this update, however, we are keeping some money held back in case overtime is needed to fill vacant shifts in the upcoming months. In addition to the savings in the GEU fund, the town of Plainville has brought to our attention some of the costs for the two officers assigned to PPC that have been paid for by the town historically but should have been paid for by the Gaming Control Fund.
- Indirect Increase—The Commonwealth assesses non-budgetary accounts an indirect cost rate. The Commission’s rate is 10% and that is assessed against all expenditures in the AA, CC, HH, JJ, UU (excluding U07) object classes.

The table below summarizes the information in Attachment A (FY22 Actuals Spending and Revenue 4-1-2022) and above.

Object Class	Explanation	Amount
AA	Additional Turnover Savings	(125,000.00)
BB	Travel Below Projections	(10,000.00)
CC	Contract Employee Underspending	(40,000.00)
DD	Fringe and Payroll Taxes on AA and CC	(50,163.00)
EE	10% Indirect on AA, CC, HH, JJ and UU	20,984.36
HH	Independent Monitor Jan-March Paid Invoices	505,080.57
JJ	MSP Straight Time Underspending	(300,000.00)
JJ	Plainville Costs of GEU	169,763.00
Total		170,664.93

Revenue Update:

In FY22, licensing fees continue to stabilize. We will continue to keep a close watch on the employee licensing fees. We are recommending a slight decrease in overall fee projections of \$42K, however, that is offset by \$505K in independent monitor revenue, for a net projected increase of \$463K in the Gaming Control Fund.

Conclusion:

The combination of budget increases of \$170.6K and revenue increases of \$463K results in the Gaming Control Fund having revised projected spending of \$33.25M, relying on revised revenue projections of \$33.82M. This represents a projected surplus of ~\$576K in the Gaming Control Fund. We do not recommend changing the assessment currently.

Attachment A: FY22 Actuals Spending and Revenue as of 4/1/2022

2022		Budget Projections					Actuals To Date		
Row Labels	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Total	%Spent	% BFY Passed	
10500001--Gaming Control Fund									
MGC Regulatory Cost									
AA REGULAR EMPLOYEE COMPENSATION	\$ 7,391,959.00		\$ (440,000.00)	\$ (125,000.00)	\$ 6,951,959.00	\$ 4,996,887.21	72%	75%	
BB REGULAR EMPLOYEE RELATED EXPEN	\$ 43,700.00		\$ -	\$ (10,000.00)	\$ 43,700.00	\$ 8,321.40	19%	75%	
CC SPECIAL EMPLOYEES	\$ 205,000.00		\$ -	\$ (40,000.00)	\$ 205,000.00	\$ 111,708.97	54%	75%	
DD PENSION & INSURANCE RELATED EX	\$ 2,744,582.97		\$ (173,800.00)	\$ (50,163.00)	\$ 2,570,782.97	\$ 1,872,760.95	73%	75%	
EE ADMINISTRATIVE EXPENSES	\$ 523,003.92		\$ -	\$ -	\$ 523,003.92	\$ 246,441.09	47%	75%	
FF PROGRAM, FACILITY, OPERATIONAL SUPPLIES	\$ 20,000.00		\$ -	\$ -	\$ 20,000.00	\$ 2,093.94	10%	75%	
GG ENERGY COSTS AND SPACE RENTAL	\$ 1,333,102.02		\$ -	\$ -	\$ 1,333,102.02	\$ 995,644.56	75%	75%	
HH CONSULTANT SVCS (TO DEPTS)	\$ 816,629.00		\$ 354,252.10	\$ 505,080.57	\$ 1,170,881.10	\$ 1,258,540.59	107%	75%	
JJ OPERATIONAL SERVICES	\$ 9,717,737.15		\$ 330,067.58	\$ (130,237.00)	\$ 10,047,804.73	\$ 5,388,749.81	54%	75%	
KK Equipment Purchase	\$ 59,500.00		\$ -	\$ -	\$ 59,500.00	\$ 9,916.13	17%	75%	
LL EQUIPMENT LEASE-MAINTAIN/REPAIR	\$ 40,494.25		\$ -	\$ -	\$ 40,494.25	\$ 21,113.18	52%	75%	
NN NON-MAJOR FACILITY MAINTENANCE REPAIR	\$ 25,000.00		\$ -	\$ -	\$ 25,000.00	\$ 10,523.06	42%	75%	
PP STATE AID/POL SUB/OSD	\$ 175,000.00		\$ -	\$ -	\$ 175,000.00	\$ 38,815.00	22%	75%	
TT PAYMENTS & REFUNDS	\$ -		\$ -	\$ -	\$ -	\$ -	#DIV/0!	75%	
UU IT Non-Payroll Expenses	\$ 4,025,680.24		\$ -	\$ -	\$ 4,025,680.24	\$ 2,313,767.20	57%	75%	
MGC Regulatory Cost Subtotal:	\$ 27,121,388.55		\$ 70,519.68	\$ 149,680.57	\$ 27,191,908.23	\$ 17,275,283.09	64%	75%	
EE--Indirect Costs	\$ 2,261,055.34	\$ -	\$ (15,877.23)	\$ 20,984.36	\$ 2,245,178.11	\$ 1,358,783.47	61%	75%	
Office of Attorney General									
ISA to AGO	\$ 2,630,034.15		\$ -	\$ -	\$ 2,630,034.15	\$ 1,645,872.67	63%	75%	
TT Reimbursement for AGO 0810-1024	\$ -		\$ -	\$ -	\$ -	\$ 134,451.57	#DIV/0!	75%	
AGO State Police	\$ 937,971.46		\$ -	\$ -	\$ 937,971.46	\$ 402,881.33	43%	75%	
Office of Attorney General Subtotal:	\$ 3,568,005.61	\$ -	\$ -	\$ -	\$ 3,568,005.61	\$ 2,183,205.57	61%	75%	
ISA to ABCC	\$ 75,000.00	\$ -	\$ -	\$ -	\$ 75,000.00	\$ -	0%	75%	
Gaming Control Fund Total Costs	\$ 33,025,449.50	\$ -	\$ 54,642.45	\$ 170,664.93	\$ 33,080,091.95	\$ 20,817,272.13	63%	75%	

		Revenue Projections					Actuals To Date		
Revenues	Initial Projection		Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Total			
Gaming Control Fund Beginning Balance 0500	\$ -		\$ 1,958,874.32	\$ -	\$ 1,958,874.32	\$ 1,947,298.69			
EBH Security Fees 0500	\$ -		\$ 36,743.51	\$ -	\$ 36,743.51	\$ 36,743.51			
IEB Background/Investigative Collections 3000	\$ 150,000.00		\$ 38,212.05	\$ (150,000.00)	\$ 188,212.05	\$ 22,953.36			
Category/Region Collection Fees 0500	\$ -		\$ -	\$ -	\$ -	\$ -			
Current Year Independent Monitor Fees	\$ -	\$ -	\$ 354,252.10	\$ 505,080.57	\$ 354,252.10	\$ 859,332.64			
Prior Year Independent Monitor Fees	\$ -		\$ 97,943.40	\$ -	\$ 97,943.40	\$ 97,943.40			
Phase 1 Refunds 0500	\$ -		\$ -	\$ -	\$ -	\$ -			
Phase 2 Category 1 Collections (restricted) 0500	\$ -		\$ -	\$ -	\$ -	\$ -			
Region C Phase 1 Investigation Collections 0500	\$ -		\$ -	\$ -	\$ -	\$ -			
Region C Phase 2 Category 1 Collections 0500	\$ -		\$ -	\$ -	\$ -	\$ -			
Grant Collections (restricted) 0500	\$ -		\$ -	\$ -	\$ -	\$ -			
Region A slot Machine Fee 0500	\$ 1,545,000.00		\$ -	\$ -	\$ 1,545,000.00	\$ 1,545,000.00			
Region B Slot Machine Fee 0500	\$ 1,020,600.00		\$ -	\$ -	\$ 1,020,600.00	\$ 1,020,600.00			
Slots Parlor Slot Machine Fee 0500	\$ 563,400.00		\$ -	\$ -	\$ 563,400.00	\$ 563,400.00			
Gaming Employee License Fees (GEL) 3000	\$ 75,000.00		\$ -	\$ 75,000.00	\$ 75,000.00	\$ 134,700.00			
Key Gaming Executive (GKE) 3000	\$ 10,000.00		\$ -	\$ -	\$ 10,000.00	\$ -			
Key Gaming Employee (GKS) 3000	\$ 15,000.00		\$ -	\$ 11,000.00	\$ 15,000.00	\$ 26,000.00			
Non-Gaming Vendor (NGV) 3000	\$ 10,000.00		\$ -	\$ 20,000.00	\$ 10,000.00	\$ 30,000.00			
Vendor Gaming Primary (VGP) 3000	\$ 225,000.00		\$ (100,000.00)	\$ -	\$ 125,000.00	\$ 93,780.01			
Vendor Gaming Secondary (VGS) 3000	\$ 15,000.00		\$ -	\$ -	\$ 15,000.00	\$ -			
Gaming School License (GSB)	\$ 15,000.00		\$ -	\$ (10,000.00)	\$ 15,000.00	\$ 2,400.00			
Gaming Service Employee License (SER) 3000	\$ 25,000.00		\$ -	\$ 12,000.00	\$ 25,000.00	\$ 36,825.00			
Subcontractor ID Initial License (SUB) 3000	\$ -		\$ -	\$ -	\$ -	\$ -			
Temporary License Initial License (TEM) 3000	\$ 10,000.00		\$ -	\$ -	\$ 10,000.00	\$ -			
Assessment for PHTF	\$ 5,000,000.00		\$ -	\$ -	\$ 5,000,000.00	\$ -			
Transfer PHTF Assessment to PHTF	\$ (5,000,000.00)		\$ -	\$ -	\$ (5,000,000.00)	\$ -			
Veterans Initial License (VET) 3000	\$ -		\$ -	\$ -	\$ -	\$ -			
Transfer of Licensing Fees to CMF 0500	\$ -		\$ -	\$ -	\$ -	\$ -			
Assessment 0500	\$ 29,321,449.50		\$ (2,056,817.72)	\$ -	\$ 27,264,631.78	\$ 20,590,875.31			
Misc/MCC Grant	\$ 25,000.00		\$ -	\$ -	\$ 25,000.00	\$ 25,000.00			
Miscellaneous 0500	\$ -		\$ 8,413.39	\$ -	\$ 8,413.39	\$ 13,275.29			
Bank Interest 2700	\$ -		\$ 652.46	\$ -	\$ 652.46	\$ 907.57			
Grand Total	\$ 33,025,449.50	\$ -	\$ 338,273.51	\$ 463,080.57	\$ 33,363,723.01	\$ 27,047,034.78			

2021		Budget Projections					Actuals To Date		
Row Labels	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Total	%Spent	% BFY Passed	
4000-1101 Research and Responsible Gaming/Public Health Trust Fund									
AA REGULAR EMPLOYEE COMPENSATION	\$ 300,984.03		\$ -	\$ -	\$ 300,984.03	\$ 187,938.41	62%	75%	

BB REGULAR EMPLOYEE RELATED EXPEN	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00	\$ 1,617.91	32%	75%
CC SPECIAL EMPLOYEES	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	75%
DD PENSION & INSURANCE RELATED EX	\$ 118,888.70	\$ -	\$ -	\$ 118,888.70	\$ 73,973.00	62%	75%
EE ADMINISTRATIVE EXPENSES	\$ 352,500.00	\$ -	\$ -	\$ 352,500.00	\$ 178,384.95	51%	75%
FF PROGRAMMATIC FACILITY OPERATONAL SUPPLIES	\$ 1,000.00	\$ -	\$ -	\$ 1,000.00	\$ 1,222.65	122%	75%
HH CONSULTANT SVCS (TO DEPTS)	\$ 3,090,000.00	\$ -	\$ -	\$ 3,090,000.00	\$ 1,531,406.38	50%	75%
JJ OPERATIONAL SERVICES	\$ 10,000.00	\$ -	\$ -	\$ 10,000.00	\$ 505.80	5%	75%
MM PURCHASED CLIENT/PROGRAM SVCS	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	75%
PP STATE AID/POL SUB	\$ 2,613,000.00	\$ -	\$ -	\$ 2,613,000.00	\$ 747,269.81	29%	75%
UU IT Non-Payroll Expenses	\$ 2,000.00	\$ -	\$ -	\$ 2,000.00	\$ 772,487.89	38624%	75%
ISA to DPH	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	75%

Research and Responsible Gaming/Public Health Trust Fund Subtotal:	\$ 6,493,372.73	\$ -	\$ -	\$ -	\$ 6,493,372.73	\$ 3,494,806.80	54%	75%
---	------------------------	-------------	-------------	-------------	------------------------	------------------------	------------	------------

Revenue Projections							
Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY
Public Health Trust Fund ISA	\$ 6,493,372.73	\$ -	\$ -	\$ 6,493,372.73	\$ 6,493,372.73		

Row Labels	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
------------	--------------------	----------------------	----------------------	----------------------	--	-----------------------	--------	--------------

1050002								
----------------	--	--	--	--	--	--	--	--

TT LOANS AND SPECIAL PAYMENTS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	75%
-------------------------------	------	------	------	------	------	------	---------	-----

Revenue Projections							
Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
Greyhound Balance Forward Simulcast 7200	\$ -	\$ -	\$ -	\$ -	\$ 575,323.71		
Plainridge Greyhound Import Simulcast 7200	\$ 18,000.00	\$ -	\$ -	\$ 18,000.00	\$ 15,990.75		
Raynham Greyhound Import Simulcast 7200	\$ 95,000.00	\$ -	\$ -	\$ 95,000.00	\$ 41,496.03		
Suffolk Greyhound Import Simulcast 7200	\$ -	\$ -	\$ -	\$ -	\$ 18,175.13		
TVG Greyhound Import Simulcast 7200	\$ -	\$ -	\$ -	\$ -	\$ 7,685.00		
TWS Greyhound Import Simulcast 7200	\$ -	\$ -	\$ -	\$ -	\$ 12,328.06		
Wonderland Greyhound Import Simulcast 7200	\$ 2,500.00	\$ -	\$ -	\$ 2,500.00	\$ 959.21		
Total	\$ 115,500.00	\$ -	\$ -	\$ -	\$ 671,957.89		

Budget Projections								
Row Labels	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
1050003								
AA REGULAR EMPLOYEE COMPENSATION	\$ 806,691.79	\$ -	\$ -	\$ -	\$ 806,691.79	\$ 538,093.95	67%	75%
BB REGULAR EMPLOYEE RELATED EXPEN	\$ 1,750.00	\$ -	\$ -	\$ -	\$ 1,750.00	\$ 1,041.45	60%	75%
CC SPECIAL EMPLOYEES	\$ 450,000.00	\$ -	\$ -	\$ -	\$ 450,000.00	\$ 260,495.79	58%	75%
DD PENSION & INSURANCE RELATED EX	\$ 318,643.25	\$ -	\$ -	\$ -	\$ 318,643.25	\$ 207,661.67	65%	75%
EE ADMINISTRATIVE EXPENSES	\$ 42,385.00	\$ -	\$ -	\$ -	\$ 42,385.00	\$ 23,329.55	55%	75%
FF PROGRAMMATIC FACILITY OPERATONAL SUPPLIES	\$ 42,000.00	\$ -	\$ -	\$ -	\$ 42,000.00	\$ -	0%	75%
HH CONSULTANT SVCS (TO DEPTS)	\$ 25,000.00	\$ -	\$ -	\$ -	\$ 25,000.00	\$ 4,427.50	18%	75%
JJ OPERATIONAL SERVICES	\$ 795,090.03	\$ -	\$ -	\$ -	\$ 795,090.03	\$ 411,945.77	52%	75%
KK EQUIPMENT PURCHASES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,202.78	#DIV/0!	75%
LL EQUIPMENT LEASE-MAINTAIN/REPAR	\$ 915.00	\$ -	\$ -	\$ -	\$ 915.00	\$ -	0%	75%
MM PURCHASED CLIENT/PROGRAM SVCS	\$ 155,000.00	\$ -	\$ -	\$ -	\$ 155,000.00	\$ 65,000.00	42%	75%
NN INFRASTRUCTURE:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	75%
TT LOANS AND SPECIAL PAYMENTS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	75%
UU IT Non-Payroll Expenses	\$ 15,000.00	\$ -	\$ -	\$ -	\$ 15,000.00	\$ 2,614.04	17%	75%
EE --Indirect Costs	\$ 209,178.18	\$ -	\$ -	\$ -	\$ 209,178.18	\$ 121,286.90	58%	75%
ISA to DPH	\$ 70,000.00	\$ -	\$ -	\$ -	\$ 70,000.00	\$ -	0%	75%
Grand Total	\$ 2,931,653.25	\$ -	\$ -	\$ -	\$ 2,931,653.25	\$ 1,637,099.40	56%	75%

Revenue Projections							
Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY
Racing Oversight and Development Balance Forward 0131	\$ -	\$ -	\$ -	\$ -	\$ 791,108.31		
Plainridge Assessment 4800	\$ 48,131.00	\$ -	\$ -	\$ 48,131.00	\$ 56,774.08		
Plainridge Daily License Fee 3003	\$ 108,600.00	\$ -	\$ -	\$ 108,600.00	\$ 93,800.00		
Plainridge Occupational License 3003/3004	\$ 50,000.00	\$ -	\$ -	\$ 50,000.00	\$ 25,270.00		
Plainridge Racing Development Oversight Live 0131	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00	\$ 6,794.69		
Plainridge Racing Development Oversight Simulcast 0131	\$ 115,000.00	\$ -	\$ -	\$ 115,000.00	\$ 74,534.42		
Raynham Assessment 4800	\$ 47,639.00	\$ -	\$ -	\$ 47,639.00	\$ 44,827.38		
Raynham Daily License Fee 3003	\$ 87,000.00	\$ -	\$ -	\$ 87,000.00	\$ 69,900.00		
Raynham Racing Development Oversight Simulcast 0131	\$ 125,000.00	\$ -	\$ -	\$ 125,000.00	\$ 62,825.37		

Suffolk Assessment 4800	\$ 653,334.00	\$ -	\$ -	\$ -	\$ 653,334.00	\$ 522,033.00
Suffolk Commission Racing Development Oversight						
Simulcast 0131	\$ 75,000.00	\$ -	\$ -	\$ -	\$ 75,000.00	\$ 84,823.62
Suffolk Daily License Fee 3003	\$ 78,000.00	\$ -	\$ -	\$ -	\$ 78,000.00	\$ 63,000.00
Suffolk Occupational License 3003/3004	\$ 5,000.00	\$ -	\$ -	\$ -	\$ 5,000.00	\$ -
Suffolk Racing Development Oversight Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Suffolk TVG Commission Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Suffolk TVG Commission Simulcast 0131	\$ 650,000.00	\$ -	\$ -	\$ -	\$ 650,000.00	\$ 341,229.24
Suffolk Twin Spires Commission Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Suffolk Twin Spires Commission Simulcast 0131	\$ 220,000.00	\$ -	\$ -	\$ -	\$ 220,000.00	\$ 152,782.10
Suffolk Xpress Bet Commission Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Suffolk Xpress Bet Commission Simulcast 0131	\$ 120,000.00	\$ -	\$ -	\$ -	\$ 120,000.00	\$ 72,491.00
Suffolk NYRA Bet Commission Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Suffolk NYRA Bet Commission Simulcast 0131	\$ 130,000.00	\$ -	\$ -	\$ -	\$ 130,000.00	\$ 89,147.34
Transfer to General Fund 10500140 0000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Wonderland Assessment 4800	\$ 894.00	\$ -	\$ -	\$ -	\$ 894.00	\$ 1,087.31
Wonderland Daily License Fee 3003	\$ 60,000.00	\$ -	\$ -	\$ -	\$ 60,000.00	\$ 47,400.00
Wonderland Racing Development Oversight Simulcast 0131	\$ 5,000.00	\$ -	\$ -	\$ -	\$ 5,000.00	\$ 576.68
Plainridge fine 2700	\$ 10,000.00	\$ -	\$ -	\$ -	\$ 10,000.00	\$ 16,525.00
Suffolk Fine 2700	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Plainridge Unclaimed wagers 5009	\$ 200,000.00	\$ -	\$ -	\$ -	\$ 200,000.00	\$ -
Suffolk Unclaimed wagers 5009	\$ 300,000.00	\$ -	\$ -	\$ -	\$ 300,000.00	\$ -
Raynham Unclaimed wagers 5009	\$ 175,000.00	\$ -	\$ -	\$ -	\$ 175,000.00	\$ -
Wonderland Unclaimed wagers 5009	\$ 5,000.00	\$ -	\$ -	\$ -	\$ 5,000.00	\$ -
Misc/Bank Interest 0131	\$ 500.00	\$ -	\$ -	\$ -	\$ 500.00	\$ 0.06
Grand Total	\$3,289,098.00	\$0.00	\$0.00	\$0.00	\$3,289,098.00	\$2,616,929.60

Budget Projections								
Row Labels	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
10500004								
AA REGULAR EMPLOYEE COMPENSATION	\$ 156,872.17	\$ -	\$ -	\$ -	\$ 156,872.17	\$ 99,062.37	63%	75%
BB REGULAR EMPLOYEE RELATED EXPEN	\$ 2,500.00	\$ -	\$ -	\$ -	\$ 2,500.00	\$ 232.00	9%	75%
DD PENSION & INSURANCE RELATED EX	\$ 61,964.51	\$ -	\$ -	\$ -	\$ 61,964.51	\$ 24,816.12	40%	75%
EE ADMINISTRATIVE EXPENSES	\$ 20,687.22	\$ -	\$ -	\$ -	\$ 20,687.22	\$ 6,894.77	33%	75%
GG ENERGY COSTS AND SPACE RENTAL	\$ 2,500.00	\$ -	\$ -	\$ -	\$ 2,500.00	\$ -	0%	75%
JJ OPERATIONAL SERVICES	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,610.00	#DIV/0!	75%
PP STATE AID/GRANTS	\$ 10,000,000.00	\$ -	\$ -	\$ -	\$ 10,000,000.00	\$ 2,095,098.07	21%	75%
UU IT Non-Payroll Expenses	\$ 30,000.00	\$ -	\$ 100,000.00	\$ -	\$ 130,000.00	\$ 106,298.15	82%	75%
Grand Total	\$ 10,274,523.90	\$ -	\$ 100,000.00	\$ -	\$ 10,374,523.90	\$ 2,338,011.48	23%	75%

Revenue Projections								
Revenues	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
Balance forward prior year	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 31,086,146.28		
Grand Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		

Budget Projections								
Row Labels	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
10500005								
TT LOANS AND SPECIAL PAYMENTS (Race Horse Dev Fund)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,130,415.97	#DIV/0!	75%

Revenue Projections								
Revenues	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
Balance forward prior year 3003	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20,263,970.03		
Race Horse Development Fund assessment 3003	\$ 20,000,000.00	\$ -	\$ -	\$ -	\$ 20,000,000.00	\$ -		
Grand Total	\$ 20,000,000.00	\$ -	\$ -	\$ -	\$ 20,000,000.00	\$ -		

Budget Projections								
Row Labels	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
10500008								
Casino forfeited money MGC Trust MGL 267A S4	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	75%
Grand Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		

Budget Projections								
Row Labels	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed
10500012/ P promo								
TT LOANS AND SPECIAL PAYMENTS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	75%

Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total
Plainridge Racecourse Promo Fund Beginning Balance 7205	\$ -	\$ -	\$ -	\$ -	\$ 205,169.08
Plainridge Import Harness Horse Simulcast 0131	\$ 15,000.00	\$ -	\$ -	\$ 15,000.00	\$ 10,499.98
Plainridge Racing Harness Horse Live 0131	\$ 3,000.00	\$ -	\$ -	\$ 3,000.00	\$ 8,179.86
Raynham Import Plainridge Simulcast 0131	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00	\$ 2,666.06
Suffolk Import Plainridge Simulcast 0131	\$ 2,500.00	\$ -	\$ -	\$ 2,500.00	\$ 1,152.46
TVG Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -
TVG Simulcast 0131	\$ 22,000.00	\$ -	\$ -	\$ 22,000.00	\$ 17,118.92
Twin Spires Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -
Twin Spires Simulcast 0131	\$ 10,000.00	\$ -	\$ -	\$ 10,000.00	\$ 7,916.03
Xpress Bets Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -
Xpress Bets Simulcast 0131	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00	\$ 3,145.62
NYRA Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -
NYRA Simulcast 0131	\$ 5,500.00	\$ -	\$ -	\$ 5,500.00	\$ 3,279.12
Grand Total	\$ 68,000.00	\$ -	\$ -	\$ 68,000.00	\$ 259,127.13

Budget Projections									
Row Labels	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed	
10500013/ P Cap									
TT LOANS AND SPECIAL PAYMENTS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	75%	
Revenue Projections									
Revenues	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed	
Plainridge Capital Improvement Fund Beginning Balance 7205	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 651,122.24			
Plainridge Import Harness Horse Simulcast 0131	\$ 15,000.00	\$ -	\$ -	\$ -	\$ 15,000.00	\$ 20,971.31			
Plainridge Racing Harness Horse Live 0131	\$ 7,500.00	\$ -	\$ -	\$ -	\$ 7,500.00	\$ 14,462.70			
Raynham Import Plainridge Simulcast 0131	\$ 6,500.00	\$ -	\$ -	\$ -	\$ 6,500.00	\$ 5,127.98			
Suffolk Import Plainridge Simulcast 0131	\$ 1,500.00	\$ -	\$ -	\$ -	\$ 1,500.00	\$ 2,501.07			
TVG Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
TVG Simulcast 0131	\$ 22,000.00	\$ -	\$ -	\$ -	\$ 22,000.00	\$ 41,063.04			
Twin Spires Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
Twin Spires Simulcast 0131	\$ 20,000.00	\$ -	\$ -	\$ -	\$ 20,000.00	\$ 20,376.31			
Xpress Bets Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
Xpress Bets Simulcast 0131	\$ 8,500.00	\$ -	\$ -	\$ -	\$ 8,500.00	\$ 7,088.11			
NYRA Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
NYRA Simulcast 0131	\$ 7,500.00	\$ -	\$ -	\$ -	\$ 7,500.00	\$ 10,183.03			
Grand Total	\$88,500.00	\$0.00	\$0.00	\$0.00	\$88,500.00	\$772,895.79			

Budget Projections									
Row Labels	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed	
10500021/ S promo									
TT LOANS AND SPECIAL PAYMENTS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	75%	
Revenue Projections									
Revenues	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed	
Suffolk Promotional Fund Beginning Balance 7205	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 475,697.66			
Plainridge Import Suffolk Simulcast 0131	\$ 25,000.00	\$ -	\$ -	\$ -	\$ 25,000.00	\$ 16,846.26			
Raynham Import Suffolk Simulcast 0131	\$ 22,000.00	\$ -	\$ -	\$ -	\$ 22,000.00	\$ 12,085.04			
Suffolk Import Running Horse Simulcast 0131	\$ 18,500.00	\$ -	\$ -	\$ -	\$ 18,500.00	\$ 24,827.31			
Suffolk Racing Running Horse Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
TVG Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
TVG Simulcast 0131	\$ 210,000.00	\$ -	\$ -	\$ -	\$ 210,000.00	\$ 102,370.24			
Twin Spires Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
Twin Spires Simulcast 0131	\$ 80,000.00	\$ -	\$ -	\$ -	\$ 80,000.00	\$ 45,772.61			
Xpress Bets Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
Xpress Bets Simulcast 0131	\$ 50,000.00	\$ -	\$ -	\$ -	\$ 50,000.00	\$ -			
NYRA Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
NYRA Simulcast 0131	\$ 60,000.00	\$ -	\$ -	\$ -	\$ 60,000.00	\$ 28,339.05			
Grand Total	\$465,500.00	\$0.00	\$0.00	\$0.00	\$465,500.00	\$705,938.17			

Budget Projections									
Row Labels	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)	Actuals To Date Total	%Spent	% BFY Passed	
10500022/ S Cap									
TT LOANS AND SPECIAL PAYMENTS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	#DIV/0!	75%	
Revenue Projections									

Revenues	Initial Projection	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Apvd Adjmts)	Actuals To Date Total	
Suffolk Capital Improvement Fund Beginning Balance 7205	\$ -	\$ -	\$ -	\$ -	\$ 4,088,379.05	
Plainridge Import Suffolk Simulcast 0131	\$ 40,000.00	\$ -	\$ -	\$ 40,000.00	\$ 61,142.49	
Raynham Import Suffolk Simulcast 0131	\$ 75,000.00	\$ -	\$ -	\$ 75,000.00	\$ 39,684.89	
Suffolk Import Running Horse Simulcast 0131	\$ 42,000.00	\$ -	\$ -	\$ 42,000.00	\$ 104,764.12	
Suffolk Racing Running Horse Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	
TVG Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	
TVG Simulcast 0131	\$ 525,000.00	\$ -	\$ -	\$ 525,000.00	\$ 372,546.34	
Twin Spires Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	
Twin Spires Simulcast 0131	\$ 220,000.00	\$ -	\$ -	\$ 220,000.00	\$ 186,715.09	
Xpress Bets Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	
Xpress Bets Simulcast 0131	\$ 110,000.00	\$ -	\$ -	\$ 110,000.00	\$ -	
NYRA Live 0131	\$ -	\$ -	\$ -	\$ -	\$ -	
NYRA Simulcast 0131	\$ 125,000.00	\$ -	\$ -	\$ 125,000.00	\$ 107,546.21	
Grand Total	\$1,137,000.00	\$0.00	\$0.00	\$0.00	\$1,137,000.00	\$4,960,778.19

Row Labels	Budget Projections					Actuals To Date Total	%Spent	% BFY Passed
	Initial Projection	FY21 Balance Forward	Approved Adjustments	Proposed Adjustments	Current Budget (Initial+Bal Fwd+Apvd Adjmts)			
10500140								
TT LOANS AND SPECIAL PAYMENTS	\$ 721,350.00	\$ -	\$ -	\$ -	\$ 721,350.00	\$ 212,761.02	29%	75%

WYNN RESORTS, LIMITED AND WYNN MA, LLC INDEPENDENT COMPLIANCE MONITOR PHASE III REPORT

April 22, 2022

Alejandra Montenegro Almonte

Miller & Chevalier

900 16th Street NW
Black Lives Matter Plaza
Washington, DC 20006
202.626.5800
www.millerchevalier.com

TABLE OF CONTENTS

I.	INTRODUCTION AND OVERVIEW	1
II.	BACKGROUND.....	5
	A. PROCEDURAL HISTORY	5
	B. CHANGES TO COMPANY BUSINESS	5
	C. SUMMARY OF REVIEW AND TESTING ACTIVITIES	5
III.	OBSERVATIONS	6
	A. CULTURE OF COMPLIANCE AND CONDUCT AT THE TOP.....	6
	1. Recommendations.....	10
	2. Additional Observations	12
	B. PROPER AUTHORITY, OVERSIGHT, AND INDEPENDENCE	14
	1. Recommendations.....	14
	C. POLICIES AND PROCEDURES.....	17
	1. Recommendations.....	18
	D. THIRD PARTY RELATIONSHIPS.....	32
	1. Recommendations.....	32
	E. TRAINING AND GUIDANCE.....	50
	1. Recommendations.....	50
	F. INTERNAL REPORTING AND INVESTIGATION.....	61
	1. Recommendations.....	62
	G. INCENTIVES AND DISCIPLINE	71
	1. Recommendations.....	72
	H. RISK-BASED REVIEW.....	75
	1. Recommendations.....	76
	I. MONITORING AND TESTING.....	77
	1. Recommendations.....	78
	J. CONTROLS ENVIRONMENT.....	82
	1. Recommendations.....	83
	2. Additional Observations	85
IV.	FOLLOW-UP REPORT RECOMMENDATIONS.....	88

A.	CULTURE OF COMPLIANCE AND CONDUCT AT THE TOP.....	88
B.	PROPER AUTHORITY, OVERSIGHT, AND INDEPENDENCE	88
C.	POLICIES AND PROCEDURES	88
D.	THIRD PARTY RELATIONSHIPS.....	89
E.	TRAINING AND GUIDANCE.....	89
F.	INTERNAL REPORTING AND INVESTIGATION.....	90
G.	INCENTIVES AND DISCIPLINE	90
H.	RISK-BASED REVIEW.....	91
I.	MONITORING AND TESTING	91
J.	CONTROLS ENVIRONMENT.....	91

LIST OF SELECTED TERMS

Back of House	Restricted, behind-the-scenes property areas accessible to Company personnel only.
Baseline Assessment	Independent Compliance Monitor Baseline Assessment Report submitted on May 8, 2020.
CEO	Chief Executive Officer.
CFO	Chief Financial Officer.
CGCO	Chief Global Compliance Officer.
Commission or MGC	Massachusetts Gaming Commission.
Company or Wynn	Wynn Resorts, Limited and its affiliates Wynn MA, LLC and Wynn Las Vegas, LLC.
Compliance	Compliance Department.
DOJ	Department of Justice.
Decision and Order	Massachusetts Gaming Commission’s April 30, 2019 Decision and Order, In the Matter of Wynn MA, LLC.
D&I	Diversity and Inclusion.
EBH	Encore Boston Harbor and/or Wynn, MA LLC, unless Wynn, MA LLC is specifically noted.
EEOC	U.S. Equal Employment Opportunity Commission.
ER	Employee Relations Department.
EVP	Executive Vice President.
GC	General Counsel.
HR	Human resources or the Human Resources Department.
Human Resources Compliance Program or HRCP	Human resources policies, procedures, and corporate governance structures.
Internal Audit	Internal Audit Department.
Legal	Legal Department.
Monitor	The Independent Compliance Monitor for Wynn MA, LLC, Alejandra Montenegro Almonte.
Monitor Team	Alejandra Montenegro Almonte and other Miller & Chevalier attorneys with responsibility for the monitorship include Ann K. Sultan, Katherine E. Pappas, Nicole D. Gökçebay, and Alexandra E. Beaulieu. Preston L. Pugh joined another law firm in 2020 but continues to work with the Monitor Team as a consultant on Internal Reporting and Investigation.
Patron	An individual who visits a property in the Wynn Resorts family for various entertainment-related activities, including use of facilities or staying as an overnight guest.
Phase II Report	Wynn Resorts, Limited and Wynn MA, LLC Independent Compliance Monitor Phase II Report Submitted on January 29, 2021
QMM	Quarterly Management Meeting.

SVP	Senior Vice President.
VP	Vice President.
The Wire	Employee intranet.
WLV	Wynn Las Vegas and Encore Las Vegas.
WSI	Wynn Sports Interactive.
Wynn Resorts or WRL	Wynn Resorts, Limited.

I. Introduction and Overview

This report (the “Phase III Report”) covers the period from February 2021 until March 2022. Along with the Monitor Team’s¹ presentation of its interim findings to the Massachusetts Gaming Commission (the “Commission” or the “MGC”) in September 2021, this Phase III Report responds to the ongoing obligation of the independent compliance monitor to Wynn MA, LLC (“EBH”) and its parent, Wynn Resorts, Limited (“Wynn Resorts” or “WRL”) (collectively, the “Company”) to “report to the Commission no less than annually” following the submission of the Independent Compliance Monitor Baseline Assessment Report (May 8, 2020) (the “Baseline Assessment”). Decision and Order at 51, *In the Matter of Wynn MA, LLC* (Apr. 30, 2019) (the “Decision and Order”). The Monitor Team has issued two prior reports: the Independent Compliance Monitor Phase II Report (“Phase II Report”) (Jan. 29, 2021), and the Baseline Assessment. This Phase III Report details the Monitor Team’s evaluation of the Company’s implementation of the recommendations made by the Monitor Team in the Baseline Assessment and the Phase II Report.

Over the two-and-a-half years since this Monitorship commenced, we have seen the Company make meaningful improvements in key areas of its Human Resources Compliance Program (“HRCP”). The Company should be proud of its work. Not only has the Company satisfied nearly all eighty-five recommendations, but it did so despite the COVID-19 pandemic and turnover of personnel related to its HRCP. Below we highlight the most notable areas of progress:

- ▶ The Company **strengthened its Compliance Committee through the addition of a new member with relevant Human Resources (“HR”) experience**. This addition enhances the Committee’s ability to advise the Company on issue related to its HRCP and reinforces the Committee’s independence from management. The Monitor Team has already observed a deeper engagement by the Committee on HRCP-related issues since the new member joined the Committee.
- ▶ The Company **has updated its Policies and Procedures to reflect the Monitor Team’s recommended changes**. These changes include strengthening the Policy Against Harassment and Discrimination, enhancing Internal Investigations Procedures, and implementing a new Employee Interaction with Guests and Other Third Parties Policy. The Company has also embarked on efforts to promote these policies to employees through proactive communications and trainings. The Company is thus poised to move into the next steps of the maturation of its HRCP: full implementation of the developed policies and procedures.
- ▶ The Company **has expanded upon its already well-designed trainings by developing additional focused trainings that address specific risk areas**, such as interactions with those who visit its establishments (“Patrons”) and reinforcement of policies and procedures, including as to internal investigations. Importantly, the Company has begun to employ testing

¹ Alejandra Montenegro Almonte of Miller & Chevalier Chartered and other Miller & Chevalier attorneys with responsibility for the monitorship include Ann K. Sultan, Katherine E. Pappas, Nicole D. Gökçebay, and Alexandra E. Beaulieu (collectively, the “Monitor Team”). Preston L. Pugh joined another law firm in 2020 but continues to work with the Monitor Team as a consultant on Internal Reporting and Investigation.

modules in conjunction with online trainings to verify comprehension of policy elements.

- ▶ The Company **has increased its communication on HRCP issues** by taking advantage of existing communications channels, such as daily WE Shift messages to employees, to disseminate guidance related to HR policies with greater intentionality and increased frequency. The Company has also initiated Compliance Pop-up Events to showcase and incentivize awareness of core policies. These events include short quizzes and prizes to attract participation.
- ▶ The Company's Internal Audit Department ("Internal Audit") **has continued its annual HRCP risk assessment process**, completing a risk assessment in 2021. In that assessment, Internal Audit employed both qualitative and quantitative information to classify the Company's employees by risk. Internal Audit took an additional step of drilling down among pre-defined employee groups for more targeted classifications. Notably, the 2021 Risk Assessment also incorporates a "trending" analysis that tracks year-over-year changes in risk rankings—which is significant because it signals the maturation of the Company's HRCP.

Based on testing during this Phase III review period, the Monitor Team has identified certain areas that provide opportunities for continued improvement. These areas transcend individual hallmark observations (which are covered further below), but are nevertheless critical to ensuring an effective and sustainable HRCP:

- ▶ **Governance.** The Company has taken significant steps to move away from its origins as a founder-led company. This includes revamping and expanding the Compliance Committee, enhancing HR policies and procedures, nurturing a speak-up culture, and maturing its internal investigations procedures. However, absent meaningful governance structures defined by a clear system of rules, procedures, and controls that apply at all levels of the Company, including at the highest levels of the organization, the Company risks sliding backwards, and—as one interviewee stated—could find itself "playing an old game in a new stadium." This does not mean that the Company must implement rigid and bureaucratic processes. But it does require the Company to ensure that it has in place a system of rules—applicable to HRCP and related areas—designed to guide objective and transparent decision-making and to define the roles and responsibilities of management in a manner that drives objectivity and accountability. Many decisions at Wynn appear to be made based on mutual trust and individual judgment, relying on the general familiarity among leadership team members, the Compliance Committee, and the Board. That approach to decision-making works provided that the leaders making the decisions are guided—collectively and individual—by principles of ethics and integrity. We certainly have not seen any indication that the current management team lacks ethics or integrity, and these comments should not be read to imply otherwise. However, our mandate is to evaluate the HR program itself to ensure that it is structured to remain effective and sustainable, independent of any specific leader or group of leaders. In the long term, a program that relies on the judgment of an individual or group of individuals may be vulnerable to exploitation of process gaps for individual gains.
- ▶ **Need for Continuous Improvement.** Ongoing review of compliance-related data is critical for a compliance program to both currently be effective and ensure its effectiveness in the long

term. Certain departments at the Company—most notably Internal Audit and Security—are already engaging in data review, monitoring, and self-assessment activities. As the Company moves further into the implementation stage of its HRCP development, the Monitor Team will expect to see the Company obtain and engage with data about the effectiveness of its HRCP and take initiative to improve its program based on the results of data analyses.

The following is a brief summary of the most salient points related to the Company's activities in each of the compliance hallmarks based on testing in this Phase III review period:

Culture of Compliance and Conduct at the Top. The Company has largely satisfied the precise recommendations that the Monitor Team has put forward in the area of culture of compliance and conduct at the top. However, testing during this phase showed that the Company's messaging has not (yet) taken hold throughout the Company and that some employees continue to feel disconnected. In future phases of the Monitorship, the Company should seek out additional ways of messaging its HRCP to employees throughout the Company and enhance its communications plans to include self-evaluation mechanisms to ensure the communications remain relevant and effective. The Monitor Team expects the Company at all levels to take initiative in this critical aspect of a compliance program to further the HRCP's goals.

Proper Authority, Oversight, and Independence. The Company has now completed the Baseline Assessment recommendations of evaluating the roles and responsibilities related to its HRCP and adding a member with significant and substantive HR experience to its Compliance Committee. The Company also conducted an assessment of the resourcing and skills sets of relevant functions at EBH, including HR. In future phases of this Monitorship, the Monitor Team will focus on testing the effectiveness of the Company's division of roles and responsibilities related to its HRCP, including the Chief Global Compliance Officer's ("CGCO") role in monitoring and reporting on the Company's HRCP, the impact of the Compliance Committee, as well as ongoing staffing for HRCP roles.

Policies and Procedures. The Company has made significant progress in enhancing its policy landscape, including by making both structural and substantive changes and further implementing core HRCP policies. Through on-site testing activities, including focus groups and interviews with key personnel, the Monitor Team observed increased awareness of key HRCP compliance policies, suggesting that employees have benefited from the Company's communication activities. Going forward, the Monitor Team will continue to review the development and design of core compliance policies and the implementation and sustainability of existing communication channels.

Third Party Relationships. The Company should be proud of its work in addressing risks presented by third parties. The Company has updated its Employee Interaction with Guests and Other Third Parties Policy, rolled out a related training, and undertaken a successful Speak Up campaign to encourage employees to report misconduct. The Company has also taken steps to communicate standards of behavior to Patrons. Additionally, the Company adopted a Policy for Avoiding Conflicts of Interest with the Retention of Outside Counsel and Settlement Agreements and communicated the new policy to the relevant parties, both internally and externally. Going forward, the Monitor Team recommends that the Company plan and conduct employee surveys and focus groups to obtain a better understanding of employee perceptions and experiences (including as to risks).

Training and Guidance. Although the Company has continued implementation of its Preventing Harassment and Discrimination training, as well as other targeted trainings and programmatic recommendations, most of which originated in the Baseline Assessment, several recommendations remain partially or wholly unsatisfied. Going forward, the Monitor Team expects to see meaningful progress towards the implementation of those recommendations, and perhaps more importantly a continued self-assessment of where enhancements to the current training program may be warranted.

Internal Reporting and Investigation. The Company has moved its reporting and investigation capabilities and processes forward by investing in a new reporting platform, launching a Speak Up campaign, and rolling out an updated Investigations Policy and related training. The Monitor Team found that surveyed employees were generally comfortable speaking up but that Boston employees have less trust in the process and senior management's support for speak up culture than their Las Vegas counterparts. The Monitor Team encourages the Company to continue to engage with its employees on the importance of speaking up. In the next phase of review, the Monitor Team will continue to test the efficacy of the new reporting and investigation system and related processes.

Incentives and Discipline. The Monitor Team continues to emphasize the importance of a performance evaluation and incentives program that takes into account whether employees are living up to the HRCP values of the Company. While development of a performance management program was halted during Phase II, the Monitor Team is pleased to hear that the Company is once again moving this effort forward. The Monitor Team will review materials related to this initiative in future phases of review and will look for the Company to identify opportunities to build compliance-based incentives into existing programs.

Risk-Based Review. In this review period, the Company's Internal Audit function completed its second annual HRCP Risk Assessment. The Monitor Team commends the Company for its consistency and commitment in conducting this annual evaluation. The Monitor Team is also pleased to report that the Security Department is actively conducting trend analysis and assessing the EBH and WLV properties for security risks, including the risks of harassment and sexual assault. The Monitor Team reissues one outstanding Recommendation that the Company document the Security Department's risk assessment procedures, however, to ensure that these practices are sustained in the long term.

Monitoring and Testing. The Company has continued manual monitoring of harassment and discrimination allegations and investigations but continues its efforts to design a new automated reporting system that will enable better trends analysis. For example, the Company's Security Department is already engaging in this exercise and the Company is providing some trainings that include quizzes to test employees' understanding. As noted above, the Company has also implemented an annual HRCP testing program conducted by Internal Audit. The Monitor Team continues to encourage Company to prioritize and build upon those efforts.

Controls Environment. The Company took meaningful steps to complete the Monitor Team's recommendations with respect to its HRCP controls environment—completing all but one recommendation, which is currently on its way to completion. Progress made in this phase focuses on addressing some of the key concerns of the MGC, including the review and approval of settlement agreements, settlements of harassment and discrimination claims, as well as the exclusion of mandatory arbitration provisions. However, the Monitor Team identified areas of opportunity for improvement, in

connection with the recruiting, vetting, and onboarding of consultants and senior personnel, specifically as to the management of potential conflicts of and assessment of background investigations. Improving upon these processes will be important to ensure that the cultural changes the Company strives to implement take root at all levels of the organization, starting at the top.

II. Background

A. Procedural History

The current Phase III Report follows the Baseline Assessment, which was submitted to the MGC on May 8, 2020, the Phase II Report, which was submitted to the MGC on January 29, 2021, and the Phase III Interim Presentation of September 22, 2021.

B. Changes to Company Business

The Baseline Assessment set forth an overview of key aspects of the Company's business model, corporate structure, and operations. In our Phase II Report, we noted several developments, namely the general impact of the COVID-19 pandemic and changes in certain senior management roles. During this Phase III review period, we observed the Company's ongoing reopening and ramp up efforts, as well as continued personnel turnover in key compliance-facing roles at various levels.

In particular, certain personnel relevant to the Company's HRCF left the Company or changed roles during the Phase III review period, including the Chief Executive Officer ("CEO") (WRL), President (EBH), President (WLV), Executive Director, HR (EBH), Executive Director, Security and Investigations (EBH), and Executive Director, Global Compliance (WRL). These changes strained Company resources, but did not appear to expose the Company to increased risk on issues related to the HRCF. The Company has been actively working to rebuild its teams and, we understand, will be operating with complete teams, in the near term.

C. Summary of Review and Testing Activities

Documents and Materials Examined. During this review period, the Monitor Team reviewed over 600 documents produced by the Company. The categories of documents reviewed included but were not limited to:

- ▶ The Company's HRCF-related policies and procedures, including drafts and revisions thereof;
- ▶ Information on the Company's channels for reporting suspected compliance violations and documentation on the Company's internal investigations of reported issues;
- ▶ HR training materials; and
- ▶ HRCF Risk Assessment documentation.

Interviews Conducted. During the Phase III review period, the Monitor Team interviewed forty-five Company employees onsite and virtually, including Board and Compliance Committee members, executives, senior and middle management at each property and of Wynn Resorts, and more junior employees. The Monitor Team interviewed personnel in functions with HRCF oversight or

implementation responsibilities, including Legal Department (“Legal”), Compliance Department (“Compliance”), Learning & Development, HR, Internal Audit, Security and Crisis Management, and Diversity and Inclusion (“D&I”).

Focus Groups. The Monitor Team conducted forty-four employee focus groups across a variety of departments and covering all shifts in both Boston and Las Vegas. Participating departments included: Stewarding, Food & Beverage, Public Area Department (“PAD”), Table Games, Slots, In-Room Dining, Housekeeping, Horticulture, Security and Surveillance, Employee Relations Department (“ER”), Valet, Marketing, and Spa and Salon. As with prior focus groups, the Monitor Team requested that participants complete an anonymous survey regarding their perceptions of the Company’s HRCP. In total, the Monitor Team spoke with 130 employees at EBH and over 140 employees in Las Vegas. Focus group discussions and survey results are critical to the Monitor Team’s assessment of the effectiveness of the Company’s HRCP. For purposes of this Phase III Report, we relied on and incorporated employee responses that emerged as prevalent themes across focus groups or which were particularly meaningful in the Monitor Team’s own review of the HRCP.

Observation of Board and Compliance Committee Meetings. Members of the Monitor Team attended (as silent observers) HRCP focused portions of two Compliance Committee meetings and one Board of Directors meeting virtually. Specifically, the Monitor Team attended portions of the Compliance Committee’s October 28, 2021 and February 17, 2022 sessions and a portion of the Board’s August 6, 2021 meeting. Our observation of these meetings is important for assessing engagement and oversight over the Company’s HRCP by both bodies.

Audit Function Testing. The Monitor Team attended eleven interviews conducted by Internal Audit as part of its HRCP Risk Assessment, which focused on testing each element of the Company’s HRCP. As noted in our Phase II Report, this activity was critical to testing the effectiveness of the HRCP’s Risk Assessment process.

III. Observations

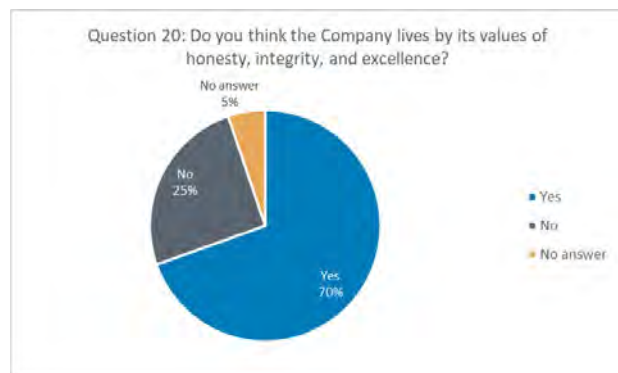
For each HRCP hallmark discussed in the Baseline Assessment and Phase II Report, this section discusses: (1) the Monitor Team’s assessment of the Company’s responses to and implementation of the recommendations; (2) any new recommendations resulting from the Monitor Team’s observations and testing during this Phase III review period; and (3) any additional Monitor Team findings based on the Phase III review period.

A. Culture of Compliance and Conduct at the Top

Culture of compliance and conduct at the top is perhaps the most difficult of the hallmarks of an effective compliance program to establish, enhance, and measure. Two and a half years into the Monitorship, we have seen management take certain specific actions designed to increase the culture of compliance at the Company and message to employees that the Company is committed to its HRCP. These actions include, for example, the CGCO incorporating a personal statement about the Company’s commitment to compliance into new hire orientation, the Company engaging in Speak Up campaigns in both Boston and Las Vegas, and the creation and delivery of additional HRCP-related trainings. These

efforts have generated some improvement in employee perception, but it remains the case that stated commitments are not fully felt by employees.

Two questions that we asked in anonymous surveys during the Baseline Assessment and Phase III reporting period shed light on employee perceptions of a culture of compliance. First, during the Baseline Assessment, we asked employees, “Do you think the Company lives by its values of honesty, integrity, and excellence?” Employees responded:

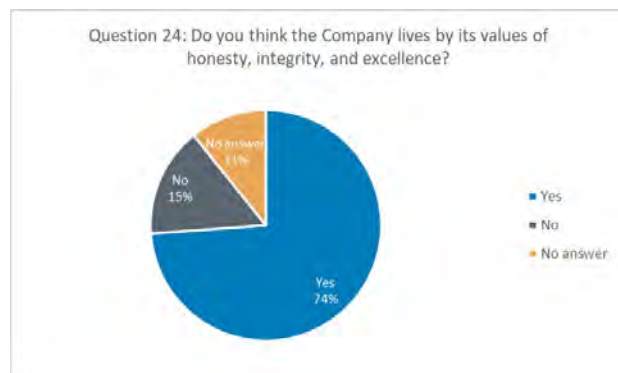


Boston



Las Vegas

Approximately two years later, we asked the same question and received the following results:



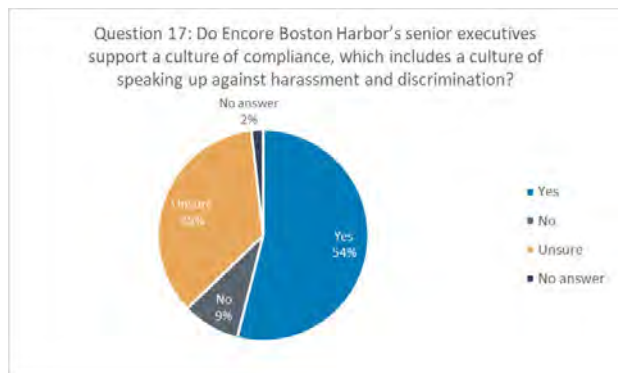
Boston



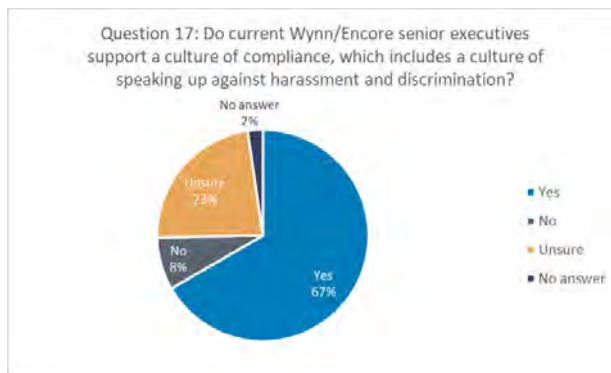
Las Vegas

Two data points that are particularly meaningful from these results are: (1) there is a stark difference between employee perceptions in Boston and Las Vegas; and (2) neither location has seen a significant shift since our first round of focus groups, with approximately 26% of respondents in Boston (previously 30%) not confident that the Company is living up to its values and 8% of respondents in Las Vegas (previously 9%) reporting similarly.

Second, we asked employees, “Do current Wynn/Encore senior executives support a culture of compliance, which includes a culture of speaking up against harassment and discrimination?” In the Baseline Assessment, employees reported:

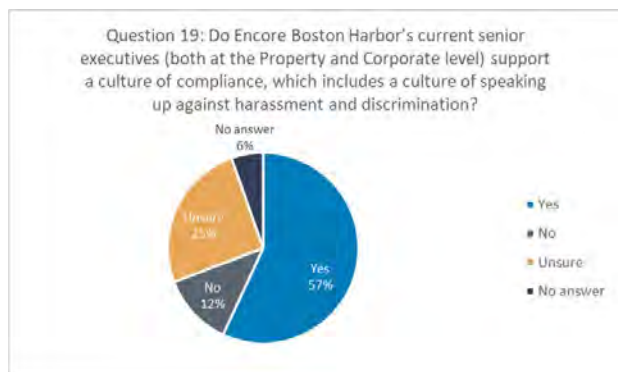


Boston

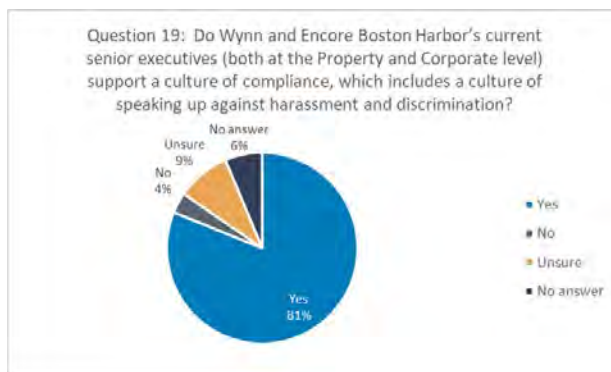


Las Vegas

And in this Phase III Report, employees responded:



Boston

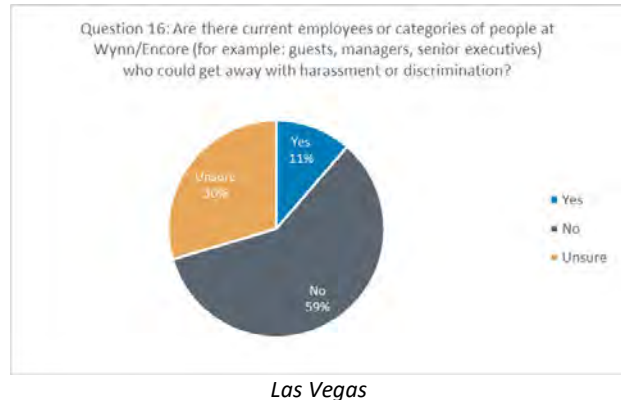
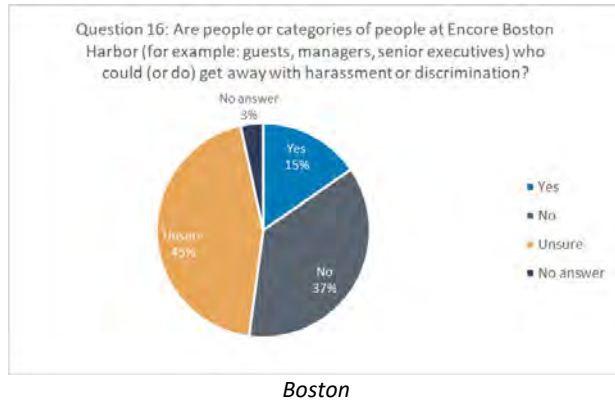


Las Vegas

Thus, despite some of the concrete actions that we have seen from leadership at the Company, only 57% (up from 54%) of surveyed employees in Boston believe leadership supports a culture of compliance and speaking up, while Las Vegas has seen a much more significant increase, with 81% of surveyed employees (previously 67%) indicating that they believe senior leadership supports a culture of compliance and speaking up.

One of the subtopics of a compliance culture on which we have been focusing is the question of whether there is a perception that certain individuals—be they Patrons, managers, or senior executives, for example—can get away with harassment or discrimination in ways that others cannot. The Monitor Team is concerned that a significant number of employees in both locations report either having this perception or being unsure.

Baseline



Phase III



The survey results discussed above are largely consistent with focus group discussions at both EBH and WLV, though individuals who spoke up in focus groups appeared to voice more positive impressions than were conveyed in the written surveys. The Monitor Team also learned that there are certain groups of employees on both properties who have not been persuaded by messaging from the Company about its commitment to HRCF, and who, in fact, reported negative interactions with and perceptions of HR’s ability to assist with HRCF-related issues they have faced. Based on the Monitor Team’s observations, these employees are largely non-native English speakers or employees of certain departments. For example, where employees do not have consistent assignments or teams with which they work, employees reported feeling “unseen” and being treated with disrespect by members of their own department and by their colleagues from other departments. We also note that these employees are much less likely to get consistent pre-shift messaging. The Monitor Team has communicated this observation to the Company and looks forward to seeing the Company’s efforts to reach these employees specifically and in the context of its larger efforts to forge a culture of compliance. We encourage the Company not to lose momentum and to stay the course. Cultural change does not happen overnight, but if the Company continues to resource and push its initiatives, the change will come.

Since the Baseline Assessment, the Monitor Team has recommended certain steps for the Company to take to enhance its culture of compliance and tone from the top. The Company has made an effort to implement those recommendations. Those efforts are noted by the Monitor Team and by many of the employees with whom we spoke. But changing culture requires more than the implementation of recommendations. It requires sustained commitment across all levels and areas of the business. Indeed, as the Monitor Team has emphasized, the development and enhancement of a culture of compliance must come from within the Company and ultimately needs to be driven by the Company. A successful culture will not result from a check-the-box exercise of fulfilling the Monitor Team's recommendations.

1. Recommendations

Phase II Report Recommendation CCCT 1: By March 31, 2021, complete Baseline Assessment Recommendation CCCT 1, enhance EBH communications plan and develop corporate and WLV communications plans designed to promote HRCP knowledge, compliance, and culture throughout the organization. These should be written plans that are periodically internally reviewed and updated by the Company. The plans should involve communication about HRCP matters coming from various levels of leadership and address the risk areas discussed in the Baseline Assessment, this Report, as well as those that emerge from the Company's Legal and HR functions based on their monitoring of HRCP issues, and from Internal Audit's HRCP review.

Summary Status

The Company has largely satisfied this Recommendation.

In 2021, the Company created basic communication plans for both EBH and WLV. The Company has also developed a communications plan for 2022, with varying HRCP topics to be covered on a monthly basis.

Assessment of Work Completed

The Company designed and executed an anti-harassment campaign across both properties in 2021. The campaign focused on encouraging employees to report concerns through the Company's multiple reporting channels, including the recently enhanced reporting line. During site visits, the Monitor Team observed a significant increase in related signage throughout the Back of House of both properties. The Company also leveraged internal communications, such as WE Shift messages, The Wire, and others to remind employees of ways to report concerns. During focus groups and interviews, employees demonstrated an increased awareness and understanding of the Company's reporting channels, and more importantly, of the Company's expectation that employees report any known or suspected wrongdoing. For the most part, employees commented positively on the signage and other communication efforts.

A central goal of this Monitorship is to ensure the sustainability of the Company's HRCP program beyond the term of this Monitorship and beyond the tenure of personnel responsible for driving change. The Recommendation for the development of a communications plan is designed to ensure that HRCP matters are formally woven into corporate communication alongside other business-critical matters. The Company has developed a communications plan, in the form of a calendar, for 2022. According to

the plan, the Company will highlight a different compliance policy on a monthly basis, reinforcing themes from each policy through other means of communication, including WE Shift messages, videos, and printed and digital signage. The Monitor Team encourages the Company to continue these efforts beyond 2022.

Follow-Up Recommendations

Neither the 2021 nor 2022 communications plans include a process for the continuation of the plan in subsequent years or evaluation of the effectiveness of the same. As the Monitor Team has emphasized since the start of the Monitorship, it is our objective and hope that the lessons learned during the course of the Monitorship are internalized by the Company and that efforts continue past the term of the Monitorship in a sustainable manner. Fulfilling Monitor recommendations cannot be seen as a check-the-box exercise. We are therefore looking to see the Company develop not just a year-long communications plan, but the demonstration of a commitment by the Company to continue such activities in the long-term. The Monitor Team recommends that the Company therefore incorporate a long-term vision into its communications plans by June 30, 2022.

<p>Phase III Report Recommendation CCCT 1</p>	<p>Incorporate a long-term vision and strategy for communications with employees on HRCP topics. The revised or standalone plan should incorporate self-evaluation and communications on substantive elements of HRCP.</p>
--	--

Phase II Report Recommendation CCCT 2: In future HRCP-related trainings of the Compliance Committee, Board of Directors, and senior Wynn Resorts and WLV personnel with oversight of HRCP-related functions at EBH, include training on relevant Massachusetts-specific HR considerations.

Summary Status

The Company has partially satisfied this Recommendation.

No HRCP-related Board training has taken place since our Phase II Report. The Compliance Committee and other key individuals received training on Massachusetts employment laws in its February 2021 meeting. On March 17, 2022, the Company produced the accompanying training deck, which outlined MA-specific employment considerations, as contemplated by this Recommendation.

Assessment of Work Completed

As discussed in greater detail in Section III.E., Training and Guidance, Minutes from the Compliance Committee’s February 18, 2021 meeting indicate that EBH’s General Counsel (“GC”) provided training on “Massachusetts employment laws” to the Compliance Committee and management who were in attendance, including certain employees in Las Vegas with HRCP oversight, specifically the Senior Vice President (“SVP”) of HR, Executive Director of HR, and Vice President (“VP”) of Legal—Labor & Employment at WLV, CGCO, SVP and Chief Audit Executive of the Company, Executive Director—Global Compliance Investigations, and Executive Director—Global Compliance. The accompanying training deck covers relevant MA-specific considerations such as diversity and employee relations, recruitment and hiring, and pay and benefits.

Because the Board has not yet received training on Massachusetts-specific HRCP issues, this Recommendation will stay open.

Follow-Up Recommendations

The Monitor Team reiterates this Recommendation.

<p>Phase II Report Recommendation CCCT 2</p>	<p>In future HRCP-related trainings of the Compliance Committee, Board of Directors, and senior Wynn Resorts and WLV personnel with oversight of HRCP-related functions at EBH, include training on relevant Massachusetts-specific HR considerations.</p>
---	--

2. Additional Observations

As in our Phase II Report, the Monitor Team continued to assess the Company’s overall culture of compliance through the conduct of leadership throughout the Company. In the Phase II Report, we focused on the Company’s Board of Directors’ selection process and its resource allocation for HRCP functions. In this Phase III Report, we focused more broadly on the Board of Directors and resource allocation for HRCP functions.

Resource allocation plays a large part in the effectiveness over time of any company HR program and is a primary way in which company leadership displays its commitment to compliance. In future phases of our assessment, and particularly once the Company’s operations stabilize, the Monitor Team will continue to review resource allocations for HRCP-critical functions throughout the organization.

Board of Directors

We continue to hear from Board members about their and the Company’s commitments to the HRCP. [REDACTED]

[REDACTED] Despite requesting to observe relevant HRCP-related Board discussions since our Baseline Assessment, the Monitor Team was only permitted to attend one Board meeting, in August 2021. During that meeting, the Company reported on HR-related trainings, developments in certain Nevada regulations, statistics on grievances filed in Las Vegas, and the Company’s D&I developments.

[REDACTED] The Monitor Team is pleased to see that HRCP discussions are taking place at the Board level and encourages additional substantive discussion focused on communicating to management the Board’s commitment to and expectations for the HRCP. Without that type of substantive engagement and oversight by the Board, the management team cannot be effectively held to account in executing on HRCP priorities.

[REDACTED]

Resource Allocation for HRCF Functions

During this Phase III review period, the Company continued to adjust its staffing and budgeting because of the effects of the COVID-19 pandemic. The Monitor Team conducted focus groups and interviews to determine whether individuals in Legal, Compliance, and HR felt that those departments were adequately resourced. Overall, departments reported adequate resourcing. However, there are significant gaps in the staffing of the ER function at EBH.

The Company continued to have significant staff turnover in key roles but has moved to fill the vacancies. Specifically:

- ▶ After over a year of position vacancy, the position of Employment and Litigation Counsel at EBH has been filled.
- ▶ The Company has hired a VP of D&I. This individual is primarily responsible for the Company's D&I initiatives. The role was vacant between October 2020 and June 2021.
- ▶ The Company hired a new Executive Director of HR at EBH in July 2021 after another individual started and left in the spring of 2021.
- ▶ The President of EBH became President of WLV in the summer of 2021. Replacing him at EBH is the former EBH Executive Vice President ("EVP")—Operations.
- ▶ The Company hired a new EVP—Operations for EBH.
- ▶ The Company has a new Director of ER for EBH. The individual works remotely from Las Vegas and spends approximately one week per month at EBH. Notably, in early 2022, a series of departures and internal transfers led to a period when there were no ER counselors at EBH. We understand that the Company understands the importance of filling this role and is actively engaged in relevant recruitment efforts.

The Monitor Team is continuing to assess the effectiveness of these individuals and their roles as currently structured.

As noted in our Phase II Report, the Company has also restructured its most senior HR position from a Corporate position reporting to the Wynn Resorts CEO or Chief Financial Officer ("CFO") to a property-level position reporting to the President of WLV. This change was made after the departure of the SVP of HR—North America in June 2020 and is being filled by the former VP of HR from EBH, who began as the SVP of HR for WLV on January 1, 2021. The Monitor Team will continue to assess the effectiveness of a Las Vegas property-reporting SVP of HR position to oversee both locations but is encouraged by the recent hiring of the current Executive Director of HR at EBH, who brings very significant experience to the role.

Additional Considerations/Further Testing

Overall, the Monitor Team notes that the Company has largely satisfied the precise preexisting recommendations put forward in our Baseline Assessment and subsequent phases of review as related to culture of compliance and conduct at the top. Going forward, the Monitor Team will be testing the

continuation of the practices that these recommendations were designed to initiate. Critically, we will also be testing how the Company internalizes the principles underlying the recommendations and takes initiative to further the goals of a culture of compliance. We note that at the Board meeting observed by the Monitor Team, a Board member inquired how the Company works to ensure that it is meeting its promises to employees in the context of the Company's commitment and values. We look forward to more such discussions at the Board level and throughout the Company.

B. Proper Authority, Oversight, and Independence

As we noted in the Baseline Assessment, the Company's cultural and programmatic changes "require an uncompromised implementation of policies and procedures driven by independent governance and oversight of the Company's HRCP." Baseline Assessment at 2. Compliance-related roles and functions must have proper authority, oversight ability, and independence in order to effectively perform their roles. In the Baseline Assessment, the Monitor Team observed a lack of clarity in the roles and responsibilities of the Legal, Compliance, and HR functions with respect to the HRCP. Ambiguity in roles and responsibilities can create gaps in the oversight of the HRCP, resulting in a lack of ownership, and a threat to the independence of key functions in exercising their respective responsibilities. Therefore, in Phases II and III, we have focused on observing and testing how the HRCP-related functions operate in an effort to bring clarity to the delineation of their roles and responsibilities. Equally, we have focused on the Compliance Committee's independence and role within the Company's HRCP. In this Section, we assess how the new compliance framework fits into the overall structure of the Company to test whether it is enabled to function effectively within the organization, whether there is oversight of the function, and whether the function has sufficient independence in order to execute its responsibilities.

1. Recommendations

Phase II Report Recommendation PAOI 1: By March 31, 2021, complete Baseline Assessment Recommendation PAOI 1, the Company should conduct a self-evaluation of the roles and responsibilities of Compliance, Legal, and HR as related to HRCP with participation from each of those functions and memorialize the delineation of responsibilities.

In doing so, the Company should give particular consideration to the responsibilities of the CGCO with respect to the HRCP.

Summary Status

The Company has satisfied this Recommendation.

Although the Company did not engage in a set course of systematically evaluating the roles and responsibilities of Compliance, Legal, and HR as such, the Company undertook activities during the past year that effectively satisfy the goals of the above Recommendation.

The Company assembled representatives from Legal, Compliance, HR, and Security in the context of developing its Workplace Conduct Investigation protocol and during the course of those discussions developed a division of responsibilities among those functions. The Company initially reported on this to the Monitor Team in March 2021. The Monitor Team understands that the Company has continued to

assess various roles with respect to HRCP at other decision-making points, including in the formulation of the job description for the CGCO role.

Assessment of Work Completed

Consistently performing self-evaluations is critical to a self-sustaining compliance program to ensure that the Company is purposefully making determinations regarding ownership of HRCP elements and to avoid redundancies and gaps in the HRCP. As the Company's HRCP matures, so too should the maturity of the functions that support it. As discussed above, the Company has begun this process. In March 2021, the Company provided to the Monitor Team the following explanation of roles and responsibilities related to its HRCP:

The development and refinement of the Company's HRCP is the responsibility of the Legal Department, with guidance and input from the Human Resources Department, Chief Compliance Officer, and the Compliance Department. The Human Resources Department has full responsibility for the implementation of all aspects of the HRCP with the assistance of the Legal Department, on an as-needed basis (e.g., investigations, litigation, settlements). The Compliance Department shall be responsible for ensuring that the Company is adhering to the HRCP through the monitoring of cases reported to the Compliance Committee or EthicsPoint (Navex) and general adherence to Company policies.

The Monitor Team notes that the CGCO job description, as shared with the Monitor Team, also places the following responsibility on the CGCO: "[r]eview all human resources complaints including, but not limited to, reports of discrimination and harassment, review the results of the investigation of such complaints, **and report on said investigations to the Compliance Committee in accordance with the WRL Compliance Plan**" (emphasis added). The Monitor Team understands that the Company views the CGCO's compilation of investigation updates from HR and Legal as part of the quarterly book to constitute the CGCO's reporting to the Compliance Committee. In addition, the Company has informed the Monitor Team that the CGCO reports on investigations he runs during Executive Sessions of the Compliance Committee. The Monitor Team aims to review information relevant to that process as part of the next phase of the Monitorship. At the Compliance Committee meetings, Legal and HR personnel generally respond to questions from Compliance Committee members based on their reading of the prepared materials. In future phases, the Monitor Team will continue to review the distribution of responsibilities. The Monitor Team considers the CGCO's responsibilities as outlined above to be reasonable and looks forward to speaking with the CGCO about his monitoring of the Company's HRCP.

To enable the HRCP's growth and proper functioning, the Company should continue to think strategically about how to structure and resource each HRCP-related function to ensure the appropriate attention can continue to be given in a strategic and coordinated manner.

Additional Considerations/Further Testing

In future phases of this Monitorship, the Monitor Team will explore in greater detail Compliance's monitoring and reporting activities on the Company's HRCP.

Baseline Assessment Recommendation PAOI 2: By June 30, 2021, the Company should add a member to the Compliance Committee who has substantive and substantial HR expertise.

Summary Status

The Company has satisfied this Recommendation.

In June 2021, the Board of Directors appointed Alison Quirk to the Compliance Committee. Ms. Quirk has significant experience and expertise in the HR function, having served as the EVP, Chief HR and Corporate Citizenship Officer and a member of the management committee of State Street Corporation. Ms. Quirk was identified for the Compliance Committee role by the CGCO.

Assessment of Work Completed

The Company successfully identified and recruited Ms. Quirk to join the Compliance Committee. Ms. Quirk will serve an initial term of three years.

As noted in our Baseline Assessment, for the Compliance Committee to effectively play its role of advising on management's work on the Company's HRCP, it is critical for at least one member of the Compliance Committee to have substantive and substantial prior experience with HRCP matters. Thus, Ms. Quirk's membership on the Compliance Committee was particularly important because she provides that experience. In addition, in the Baseline Assessment, we highlighted the importance of the Compliance Committee's independence, particularly considering the Company's past issues related to the accumulation of influence and loyalty to positions of authority. The Monitor Team views Ms. Quirk's addition as helpful in ensuring this independence. The combination of Ms. Quirk's expertise on HR and governance matters and her lack of prior affiliation with the Company or its leadership positions her to advise on HRCP issues as part of her role on the Compliance Committee.

Indeed, the Monitor Team attended two Compliance Committee meetings during this review period and observed Ms. Quirk to be an active and insightful participant to the Compliance Committee. In addition to her substantive expertise in HR management, Ms. Quirk has demonstrated an understanding of the importance of a strong and self-sustaining HRCP for the Company and asks questions that appear to be designed to encourage the Company's understanding in this regard and to push management to continue to strengthen its program.

Phase II Report Recommendation PAOI 2: In consultation with the Monitor Team regarding timing, conduct an evaluation of the resourcing and skill sets of relevant functions, including HR, at EBH.

Summary Status

The Company has satisfied this Recommendation.

Assessment of Work Completed

The Company has told the Monitor Team that the required assessment has taken place. Specifically, in March 2022, the Company informed the Monitor Team that the EBH Executive Director of HR, in conjunction with the EBH executive team, and the SVP of HR for WLV, conducted an assessment of EBH HR. That assessment led to the creation of additional positions and certain revised job

descriptions for current positions in EBH HR. Some of the HR positions are currently vacant as the Company seeks to recruit individuals for those roles.

As reported in our Interim Report, the EBH Legal in 2021 hired an Executive Director—Labor and Employment to fill out the remaining vacancy in the Department.

Additional Considerations/Further Testing

In the next phases of the Monitorship, the Monitor Team will review in greater detail the updated organizational framework for EBH’s HR function and focus on the operational results from the updated team.

C. Policies and Procedures

The Company has satisfied seven out of the eleven recommendations made by the Monitor Team in the Baseline Assessment and Phase II Report. The Company made both structural and substantive changes; and, overall, the Monitor Team notes progress in the Company’s development, enhancement, and implementation of core HRCP policies. During the Phase III review period, the Company revised the following policies consistent with recommendations made in the Baseline Assessment and Phase II Report:

- ▶ Preventing Harassment and Discrimination Policy;
- ▶ Personal Relationships Policy;
- ▶ Personal Presentation Policy;
- ▶ Company Policy Review Policy;
- ▶ Employee Patronization Policy; and
- ▶ Code of Personal Conduct.

Two policies remain under review by the Company:

- ▶ Job Accommodation Request Policy; and
- ▶ Code of Business Conduct and Ethics.

Our discussion here focuses on substantive changes, with particular attention to the changes that most directly address our underlying concerns. The Company has also enhanced its activities related to the implementation and continued communication of core HRCP policies, including through a communication strategy. Through on-site testing activities, including focus groups and interviews with key personnel, the Monitor Team observed increased employee awareness of key HRCP policies, suggesting that employees have benefited from the Company’s communication activities. Going forward, the Monitor Team will continue to review the development and design of core compliance policies as well as the implementation and sustainability of existing communication channels.

1. Recommendations

Phase II Report Recommendation P&P 1: By March 31, 2021, the Company should amend the Preventing Harassment and Discrimination Policy to:

- ▶ include a cross-reference to the Company's Social Media Policy; and
- ▶ include pregnancy-related conditions as a protected characteristic.

Within four weeks of the launch of the new reporting line, include references to the Company's new reporting platform, once implemented.

Summary Status

The Company has satisfied this Recommendation.

In the Phase II Report, we noted that the Company adopted most, but not all, of the recommended enhancements to the Preventing Harassment and Discrimination Policy, leading to a follow-up Recommendation that by March 31, 2021, the Company amend the Preventing Harassment and Discrimination Policy to include a cross-reference to the Company's Social Media Policy and include pregnancy-related conditions as a protected characteristic.

Assessment of Work Completed

The Company timely satisfied this follow-up Recommendation by providing the Monitor Team with a revised draft of the Preventing Harassment and Discrimination Policy by the March 31 deadline. The revised Policy includes a cross-reference to the Company's Social Media Policy that satisfies this Recommendation. The revised Policy also specifically includes pregnancy-related conditions as a protected characteristic. Finally, the revised Policy includes multiple references to the Company's new reporting line, with accompanying contact information to the platform, including its website and phone number.

As previously observed, and as expected by U.S. regulators, the development of written policies and procedures is an initial step towards a mature compliance program. A company's policies and procedures should help to incorporate a culture of compliance into day-to-day operations. Thus, the Monitor Team encourages the Company not only to continuously re-evaluate enhancements of its policy universe, but also to effectively implement policies and procedures to reinforce the Company's culture.

Baseline Assessment Recommendation P&P 2: Within four weeks of the launch of the new reporting line, the Company should engage in proactive messaging to employees at both properties regarding the new reporting line and the ability that it provides to make confidential reports. [This can be done in connection with Baseline Assessment Recommendation IRI 1 and Baseline Assessment Recommendation IRI 3.]

Summary Status

The Company has satisfied this Recommendation.

In 2021, the Company launched its new reporting line and engaged in proactive messaging consistent with the parameters contemplated by the Recommendation.

Assessment of Work Completed

The Company launched its new reporting line in March 2021. Over the course of that month, the Company engaged in a proactive messaging campaign across both properties to socialize the new reporting line, its ability to make confidential reports, and to reinforce certain key aspects of the Company's Preventing Harassment and Discrimination Policy. The Company memorialized the campaign into a Yearly Communication Plan for Harassment Reporting with quarterly dates in which certain communications would take place. The Company provided the Monitor Team with supporting documentation reflecting these activities. Activities included:

- ▶ At both EBH and WLV, the Company implemented messaging across multiple communication vehicles dedicated to promoting a speak-up culture. For example, EBH displayed a digital banner in the Back of House and on employee dining napkin holders. The signage is bright yellow in an eye-catching design and lists the various reporting channels available to employees, including the new reporting channel. Some signage includes a QR code that employees can scan using their phones for direct access to additional reporting information. The information on the page also includes a statement of commitment by the Company communicating that EBH "is determined to fully investigate and resolve possible harassment or discrimination in a timely manner and encourages reporting allegations of those claims as rapidly as possible" and reminding employees that there is no "chain of command" requirement to report potential instances of harassment or discrimination.
- ▶ Similarly, WLV updated its existing Speak Up signage to include reference to the Company's new reporting channel and reminds employees of their responsibility to report "unethical or illegal activity" in the workplace, including "harassment or discrimination." Like EBH, WLV also creatively utilized common Back of House touchpoints such as napkin holders and digital displays with accompanying QR codes in employee dining areas.
- ▶ Both EBH and WLV updated The Wire to reflect information about the Company's new reporting channel. Specifically, The Wire homepage now includes a contact information for the Company's new reporting channel in the "Quick Contacts" section.
- ▶ Both properties employed WE Shifts to disseminate messaging about the Company's new reporting channel. During Q1 and Q3 2021, EBH's WE Shift included a section on confidential reporting, providing that employees can report, in relevant part, "unethical behavior and/or policy violations" to the confidential reporting channel and listing the contact information for making such reports. Similarly, in March 2021, WLV released a WE Shift that included messaging on its confidential hotline, reminding employees of their responsibility to report harassment or discrimination and providing relevant contact information for the Company's reporting channel.
- ▶ Both EBH and WLV required employees to review and acknowledge the revised Preventing Harassment and Discrimination Policy on The Wire. Employees were required to review and

acknowledge the revised Policy prior to engaging with other aspects of The Wire. Notably, some employees surveyed as part of the Monitor Team's focus group activities highlighted The Wire when asked about ways in which the Company communicates changes to policies, demonstrating that this may be an effective method of communication.

The Monitor Team commends the Company for identifying creative platforms through which to engage in proactive messaging regarding its new reporting line, as well as key elements of the Company's Preventing Harassment and Discrimination Policy. These platforms communicate important messaging to employees, utilizing widely accessible technology (e.g., The Wire, QR codes) and thus promote the policies as contemplated by this Recommendation and relevant Department of Justice ("DOJ") Guidance. Moreover, messaging concerning speaking up against inappropriate Patron behavior helps to demonstrate the Company's efforts to respond to a core risk area.

The Monitor Team tested the effectiveness of the Company's communication campaign through surveys and related focus group activities at both properties. Results from surveys indicate that the majority of employees have reviewed certain core compliance policies. Specifically, 61% and 92% of employees at EBH and WLV respectively reviewed the Company's Employee Interaction with Guests and Other Third Parties Policy and 89% and 99% reviewed the Preventing Harassment and Discrimination Policy, respectively. This data was consistent with discussions in focus groups which showed that employees specifically recalled reviewing these policies. For example, the Monitor Team was pleased to see that employees across both properties specifically mentioned the use of QR codes to communicate important policies and reporting channels, with some employees showing that they had taken a screen shot or picture of signage.

Baseline Assessment Recommendation P&P 3: Develop and issue the following policies and incorporate references to them throughout the HRCP as appropriate:

- ▶ disability accommodations;
- ▶ religious accommodations; and
- ▶ pregnancy discrimination, harassment, and accommodation.

Summary Status

The Company has not fully satisfied this Recommendation.

The Company produced a revised draft of the Job Accommodation Requests Policy to the Monitor Team on March 15, 2022. The Monitor Team credits the Company with providing a revised draft of the Policy and will provide observations to the Company on the Policy and related materials in the next phase of review.

Assessment of Work Completed

The draft Job Accommodation Requests Policy addresses religious, pregnancy-related, and disability accommodations and sets forth the procedures for handling information related to a disclosed disability. Specifically, Section I of the Policy includes an expression of commitment by the Company to

“providing reasonable accommodations to employees who have substantially limiting physical or mental impairments” and cites a selection of relevant statutes.

Although earlier drafts did not reference Massachusetts law, the current draft addresses this omission and takes into account Massachusetts’ legal requirements related to not just pregnancy but pregnancy-related conditions. Moreover, the current draft separately addresses the processes for medical, pregnancy-related, and religious accommodation. The Monitor Team will continue to engage with the Company regarding this Policy and Recommendation.

Phase II Report Recommendation P&P 2: Enhance the Code of Business Conduct and Ethics to encourage employee engagement and awareness, including by improving visual design and readability.

Summary Status

The Company has not satisfied this Recommendation.

Based on interviews with key personnel, the Monitor Team understands that enhancements to the Company’s Code of Business Conduct and Ethics are an ongoing and cross-functional effort being spearheaded by the Company’s CGCO for Board of Directors’ review and approval.

Assessment of Work Completed

Based on interviews with relevant Company personnel, we understand that the Company is in the process of updating its Code of Business Conduct and Ethics. Since the last report, the Company engaged in a benchmarking exercise to ensure that enhancements to the Code of Business Conduct and Ethics are in line with existing trends by, for example, streamlining text-heavy sections, and improving visual design, consistent with our Recommendation. In this regard, the Monitor Team also understands that the enhanced Code will include a letter from the Company’s recently appointed CEO as well as a compliance-oriented message from the CGCO. As the overarching document on the Company’s commitment to compliance with applicable laws and regulations, revisions to the Code require approval by the Company’s Board of Directors. This level of approval is consistent with the DOJ’s expectations regarding commitment and tone setting by senior leadership, including the Board of Directors. As a threshold matter, the DOJ assesses whether companies have “a code of conduct that sets forth, among other things, the company’s commitment to full compliance with relevant Federal laws that is accessible and applicable to all company employees.”²

The Monitor Team awaits the revised Code of Business Conduct and Ethics.

Follow-Up Recommendations

The Monitor Team reformulates the requirements of Phase II Report Recommendation P&P 2 with a deadline.

² U.S. Dep’t of Justice, Criminal Div., Evaluation of Corporate Compliance Programs at 4 (June 2020), <https://www.justice.gov/criminal-fraud/page/file/937501/download>.

<p>Phase III Report Recommendation P&P 1</p>	<p>Enhance the Code of Business Conduct and Ethics to encourage employee engagement and awareness, including by improving visual design and readability and present it to the Board of Directors by June 30, 2022.</p>
---	--

Additional Considerations/Further Testing

The Monitor Team will evaluate the enhanced Code and will provide the Company observations as appropriate. Given that the Code of Business Conduct and Ethics is a key compliance policy, the Monitor Team will also be closely monitoring the approval process, launch, and implementation activities relating to the rollout of the revised Code.

Baseline Assessment Recommendation P&P 5: By November 30, 2021, review the Code of Personal Conduct to identify the core behaviors that are most fundamental to the Company and relaunch the new Code of Personal Conduct to drive awareness and communicate compliance.

Summary Status

The Company has partially satisfied this Recommendation.

The Company restructured the Code of Personal Conduct, transforming it into the Personal Conduct Policy, which sets forth specific personal conduct standards applicable to Company employees.

Assessment of Work Completed

Based on communications with the Company and relevant interviews, the Monitor Team understands that the Company designed the Code of Personal Conduct to comply with Union requirements for a policy that sets forth all behavioral expectations and prohibitions. The revised Code of Personal Conduct—renamed the Personal Conduct Policy—does just that by listing standards of behavior that all employees are required to follow. For example, employees are expected to respect privacy, follow “guest service standards” as well as Wynn “work methods and procedures.” At the same time, the Policy also contains several intellectual property, gaming, security, and disclosure-oriented requirements. These include “complying with the intellectual property rights of third parties,” prohibiting the misuse of Company “show tickets or engaging in any form of ‘ticket scalping,’” reporting missing keys, and requiring disclosure of “any arrests, arraignments, indictments or formal complaints/charges pertaining to allegations of criminal activity.” Moreover, as currently structured, the Policy contains an overwhelming number of specific requirements across different subject areas that the Monitor Team understands are addressed by other policies.

For example, standards such as “[d]isplaying appropriate behavior at work, on Wynn Resorts business, or on property” and “never engaging in conduct whether on or off-duty that . . . materially and adversely affects job performance or tends to bring discredit to Wynn Resorts” are broad behavioral expectations that can cover critical topics such as harassment and discrimination. Standalone requirements of this nature—set forth outside of the official policy on a specific subject—can create confusion and ambiguity for employees who might not be prompted to consult other policies that contain more comprehensive guidance (e.g., Preventing Harassment and Discrimination Policy or Code

of Business Conduct and Ethics). Thus, the Monitor Team recommends the Company cross reference relevant policies that govern conduct included in the Policy so employees can benefit from the more fulsome guidance contained in those documents. The Monitor Team also recommends that the Company add a statement at the start clarifying that the Policy supplements other existing policies.

The Company highlighted the Policy through Pre-shifts in October 2021. Pre-shift messages reviewed by the Monitor Team revealed three instances in which the Company messaged key elements of the Personal Conduct Policy through the “Training Corner Compliance Pop Quiz.” On October 12–13, 2021, for instance, the Company launched two quizzes via The Wire designed to test effectiveness of the Policy and rollout by gauging employees’ knowledge of the Personal Conduct Policy while also reinforcing key themes.

As discussed in greater detail in Section III.E., Training & Guidance, the Company’s use of Training Corners to test key compliance policies is a creative tool to reinforce training. They provide an accessible and stimulating way for employees to engage in core HRCP policies without requiring much effort from employees. The Monitor Team encourages the Company to continue to creatively think about other ways to test employees’ knowledge of core HRCP policies and also generate helpful data to identify potential training gaps.

Follow-Up Recommendations

The Monitor Team recommends that the Company cross reference relevant policies in the Policy so employees can benefit from the more fulsome guidance contained in those documents and add a statement at the start clarifying that the Policy supplements other existing policies.

<p>Phase III Report Recommendation P&P 2</p>	<p>In the Code of Personal Conduct, cross reference relevant policies in the Policy so employees can benefit from the more fulsome guidance contained in those documents; and add a statement at the start clarifying that the Policy supplements other existing policies.</p>
---	--

Baseline Assessment Recommendation P&P 6: By February 28, 2021, update the Personal Relationships Policy as follows:

- ▶ Include a straightforward statement at the outset that addresses the risks a personal relationship poses to the Company and why Company intervention is important;
- ▶ Clarify that even where there is consent, or the appearance of consent, consent is fluid and can be revoked by either party at any time, and consequently, issues relating to conflict of interest, sexual harassment, or violations of the Code of Business Conduct may still arise; and
- ▶ Implement a process to review department-specific policies before they are made available on The Wire.

Summary Status

The Company has satisfied this Recommendation.

The Company produced a revised draft of the Personal Relationships Policy to the Monitor Team on February 24, 2021. Following receipt of the Policy, the Company discussed revisions with the Monitor Team, after which the Monitor Team provided additional feedback. The Company finalized the revised Policy, reflecting the Monitor Team's feedback, on April 14, 2021.

Assessment of Work Completed

The revised Policy conforms to key aspects of the Monitor Team's Recommendation. First, the Policy now opens with a straightforward statement that addresses the risks personal relationships pose to the Company and why the Company's governance surrounding personal relationships is important. Specifically, the Policy explains why personal relationships in the employment context can lead to conflicts of interests, defines the nature of these conflicts, including by providing illustrative examples, and sets out reasons the Company's intervention is important.

Second, and critical to the focus of our review, the revised Policy addresses consent and heightened power dynamics that may exist in relationships between supervisors and subordinates. The Policy explains that consent is fluid and can be revoked by either party at any time. Specifically, the revised Policy states that it is "intended to apply to relationships between two consenting employees," noting that "[i]f an employee believes he or she has been forced or coerced into a relationship against their will, such action violates Wynn Resorts' Preventing Harassment and Discrimination Policy and should be reported immediately as provided in the policy." With respect to relationships between supervisors and subordinates specifically, the Policy states that the latter may "not believe they have a choice as to whether to maintain such a relationship," highlighting the complexity and heightened power dynamics surrounding consent in such romantic relationships. This revision is particularly important in the context of the MGC's statement in its Decision and Order:

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

Decision and Order at 46–47 (citation omitted).

As observed in our Phase II Report, the Policy must do more than define a "conflict of interest." Specifically, it must "provide explicit guidance on coercion, abuse of authority, harassment, unfair treatment, and favoritism in the workplace" within the context of a discussion of the power dynamics described above. The revised Policy satisfies this requirement. Phase II Report at 27.

However, as currently drafted, the Policy applies to "employees, officers, and directors of Wynn Resorts" only, and does not apply to third parties such as consultants, vendors, and agents. This limited scope of applicability is problematic because it does not mitigate, among other things, actual or

perceived conflicts of interest presented by relationships with third parties. Indeed, DOJ Guidance calls on companies to assess compliance risks presented by third parties, and as discussed in greater detail in Section III.J., Controls Environment, third parties, particularly consultants, have presented many of the same risks to the Company as those contemplated by the Policy. Thus, the Monitor Team recommends that the Company amend scope of the Policy to include third parties and appropriately communicate the expectations set forth in the Policy to its third parties.

For the Personal Relationships Policy to be effective it must include clear reporting and monitoring procedures. The Company’s Personal Relationships Policy requires employees who enter into a personal relationship to report the relationship to their manager or “highest ranking Human Resources’ Officer for the property,” which “shall be submitted on the Personal Relationship Acknowledgement Form,” approved by the relevant department VP for each employee and reviewed by the CGCO, property HR Officer and property GC. In addition, the Policy empowers the CGCO and Company GC with the authority to determine whether a relationship is prohibited under the Personal Relationship Policy.

Finally, as contemplated by this Recommendation, the Company has implemented a process to review department-specific policies before they are made available on The Wire through a separate document called the Company’s Policy Review Policy, which is discussed in greater detail under Baseline Assessment Recommendation P&P 10.

Follow-Up Recommendations

The Monitor Team recommends that the Company expand the applicability of the Personal Relationships Policy to include third parties and appropriately communicate the expectations set forth therein to its third parties.

Phase III Report Recommendation P&P 3	By May 30, 2022, amend the scope of applicability of the Personal Relationships Policy to include third parties.
Phase III Report Recommendation P&P 4	Include compliance with this Policy as a provision in contracts with third parties.

Additional Considerations/Further Testing

In the next phase of this Monitorship, the Monitor Team will test the effectiveness of the Personal Relationships Policy by reviewing representative samplings of: (1) Personal Relationship Acknowledgement Forms at all levels; and (2) template agreements for various types of third parties with an eye towards testing whether the Company follows the reporting and review requirements as set forth in the Policy.

Phase II Report Recommendation P&P 3: By March 31, 2021 update the Personal Presentation Policy to:

- ▶ Ensure it is consistent with federal and state harassment and discrimination laws;
- ▶ Include a cross-reference to the Company’s religious accommodation policy and guidance to

help employees understand that it will provide a reasonable accommodation to employees and provide channels for requesting an accommodation;

- ▶ Provide additional examples and/or guidance to subjective terms regarding hair and grooming requirements; and
- ▶ Implement a process to review department-specific personal presentation policies before they are enforced.

Summary Status

The Company has satisfied this Recommendation.

The Company produced a revised draft of the Personal Presentation Policy to the Monitor Team on March 30, 2021. The Company discussed necessary revisions with the Monitor Team and subsequently finalized an updated policy on April 14, 2021.

Assessment of Work Completed

In the Baseline Assessment, we observed that the wording of many of the requirements of the Personal Presentation Policy left “significant discretion to management and may create a platform for discriminatory manifestations of ethnic, racial, or religious bias.” Baseline Assessment at 48. We also reported that some Spa and Salon Department employees “expressed frustration with the rigidity of these rules, particularly concerning prohibitions on hairstyles.” *Id.* The Monitor Team made recommendations aimed at addressing these observations, and specifically to ensure clear expectations regarding personal presentation standards to safeguard against the risk that unclear standards could be a platform for discrimination or harassment.

The revised Policy conforms to key aspects of the Monitor Team’s Recommendation:

- ▶ The Policy is consistent with federal and state harassment and discrimination laws.
- ▶ The revised Policy includes a cross-reference to the Company’s Job Accommodation Request Policy, clarifying that the Company will provide a reasonable accommodation to employees as well as channels for requesting an accommodation.
- ▶ The Policy now includes additional examples and guidance on subjective terms regarding hair and grooming requirements. For example, whereas the previous version required that hair be “appropriately styled at all times,” the revised policy contains additional detail and provides that hair must be styled “naturally or in a professional fashion at all times.” The Company also clarified requirements on hair accessories, facial hair, makeup, tattoos, and jewelry.
- ▶ The Company clarified the process for the review and implementation of department-specific policies. Specifically, the Policy now requires “[d]epartments seeking to create department-specific standards” to “submit the proposed standards to the Employee Relations department prior to the implementation in accordance with the Wynn Resorts’ Policy Review Policy.” Further, the Policy prohibits departments from “incorporate[ing] and enforc[ing] the proposed standards until approval has been obtained.” In sum, these revisions provide important

precision to the Policy, allowing employees to clearly understand the Company’s expectations.

In addition, On October 22, 2021, WLV issued a dedicated WE Shift message from the property President, communicating changes to the Personal Presentation Policy. In his message, the President conveyed WLV’s expectation that employees have “acknowledged our Personal Presentation policy on [T]he WIRE” and then proceeds to highlight changes to the Policy. His message carried a personal and understanding tone, which the Monitor Team commends. As observed in previous reports, the Monitor Team continues to encourage the Company to use property-specific tools to communicate revisions to key compliance policies.

Phase II Report Recommendation P&P 4: Make department-specific policies available and accessible to employees to whom they apply.

Summary Status

The Company has not fully satisfied this Recommendation.

The Company has not provided documentary evidence of where department-specific policies are stored and how they can be accessed by employees.

Assessment of Work Completed

In the Baseline Assessment, the Monitor Team observed that department-specific policies and requirements were not published on The Wire, thereby potentially limiting employee access to relevant policies. Based on these observations, the Monitor Team recommended that the Company publish department-specific policies on The Wire.

The Company has expressed concerns with this approach on the basis that certain policies require limited access because they contain confidential business processes and therefore cannot be published securely on The Wire. The Monitor Team is sensitive to the Company’s interest in protecting the confidentiality of its processes and has encouraged the Company to identify secure ways for employees to access policies and procedures necessary to their function. Indeed, the Monitor Team clarified the Recommendation to state that the Company should make department-specific policies available and accessible to employees to whom they apply (rather than to all employees). Certain EBH employees surveyed during this Phase III review period indicated that they receive department-specific policies in hard copy and are required to review and acknowledge those policies via hardcopy signature. The Monitor Team continues to expect that the Company will consistently provide employees with access to the policies affecting them and be able to provide the requisite documentary evidence that employees have received and acknowledged relevant department-specific policies.

Follow-Up Recommendations

The Monitor Team reformulates Phase II Report Recommendation P&P 4 as follows:

<p>Phase III Report Recommendation P&P 5</p>	<p>By May 31, 2022, provide documentary records evidencing employees’ receipt and acknowledgement of relevant department-specific policies.</p>
---	---

Baseline Assessment Recommendation P&P 9: By March 31, 2021, in the Employee Patronization Policy, clarify from whom employees should seek authorization and under what circumstances patronization of the pool and health spa are authorized.

Summary Status

The Company has satisfied this Recommendation.

The Company produced a revised draft of the Employee Patronization Policy to the Monitor Team on March 30, 2021. The Company discussed revisions with the Monitor Team and finalized a revised Policy on April 14, 2021.

Assessment of Work Completed

In the Baseline Assessment, we observed that the Employee Patronization Policy allowed Company employees, cohabitants, and family members to patronize the property, with added attention placed on pool and health spa facilities. We also observed that the Policy did not provide details of how authorization to use those facilities could be obtained, largely diminishing the functionality and enforcement of the Policy. In the context of the events that precipitated the present Monitorship, the Monitor Team is looking at access by the Company's leadership to the Spa and Salon. The Monitor Team reissued the Recommendation in the Phase II Report with a deadline.

The revised Policy conforms to key aspects of the Recommendation. Specifically, the Policy now clarifies from whom employees should seek authorization and under what circumstances patronization of the pool and health spa are authorized. In this regard, the Policy now delineates certain categories of employees, their cohabitants, and immediate family members who are permitted to use the pool and health spa facilities. Specifically, cohabitants include, "individuals living with employees" and immediate family members include "parents, grandparents, siblings, and children of employees."

With respect to the approval process, the Policy now requires employees to obtain authorization from "the property President or General Counsel unless staying at the hotel as a registered guest, or for purposes of training or quality control testing." The revised Policy now also cites to key compliance policies, including the Preventing Harassment and Discrimination Policy and the Code of Personal Conduct when requiring employees to conduct themselves in a "professional manner at all times."

These revisions are constructive to ensuring appropriate approval controls for employee and close contact requests to patronize Company pool and health spa facilities. The Monitor Team encourages the Company to communicate these changes to employees leveraging mechanisms described under other recommendations in this section such as WE Shifts and Training Corners.

Additional Considerations/Further Testing

As noted above, in future phases, the Monitor Team will assess whether the Company has leveraged established mechanisms to communicate changes to the Policy. In addition, to test whether the Policy has been effectively implemented, the Monitor Team will request a representative sampling of requests for both properties.

Baseline Assessment Recommendation P&P 10: By March 31, 2021, update the Company Policy Review Policy to include:

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

Summary Status

The Company has satisfied this Recommendation.

The Company produced a revised draft of the Company Policy Review Policy to the Monitor Team on March 31, 2021. The Company discussed revisions with the Monitor Team, after which the Monitor Team provided additional feedback. The Company finalized the updated Policy on April 14, 2021.

Assessment of Work Completed

In the Baseline Assessment, the Monitor Team observed that the Company had recently developed the Company Policy Review Policy, demonstrating “the Company’s appetite to formalize its HRCP and create a foundation for the program to expand and mature.” Baseline Assessment at 49. However, we also noted that the Policy was limited to “reviewing existing policies” and did not “establish a process to develop new policies or leverage relevant departments to develop and review policies.” *Id.* In addition, the Monitor Team observed that the Policy did not set forth minimum requirements for Company policies generally, which could lead to a lack of cohesiveness in policy structure. As indicated above, the Monitor Team made several recommendations based on these observations.

The revised Policy satisfies the recommendations:

- ▶ The revised Policy includes a stated purpose of “assur[ing] that **all** company policies are reviewed regularly to ensure the information contained within the policies and procedures is accurate and current” (emphasis added). The Company created a Policy Review Committee, consisting of the CGCO, property GCs, the property VPs of HR, the VP, Legal—Legal and Employment, the Executive Director of HR, and the Executive Director of Global Compliance, for the periodic review of policies.
- ▶ The Company added a dedicated “Definitions” section for certain key terms, including “Policy” and “Procedure.”

- ▶ The Company established a biennial process for the review and revision of policies. Specifically, the Policy tasks ER with initially collecting feedback from departments on a monthly basis, with a focus “placed on specific departments with the most operational knowledge of the policies to be reviewed.” This step enables the Company to leverage the knowledge of relevant departments and subject matter experts when developing and reviewing policies, in line with this Recommendation. After reviewing proposed departmental revisions to the policies and “any department-specific policy submissions,” ER is tasked with submitting the policies for review to the Policy Review Committee. The Policy Review Committee should then review and return the revised policies to ER, advising ER “if specific training is required to accompany any policy modification,” This review flow incorporates a downstream compliance process for training, monitoring, and audit, as contemplated by this Recommendation.

The Monitor Team observed a Policy Review Committee meeting in November 2021 and was impressed with the collaborative tone and overall cadence of the meeting. All required members attended the meeting, each individually leveraging their subject matter expertise to weigh in on specific sections of the policies reviewed. WLV’s Labor and Employment GC moderated the discussion, leading the Committee through revisions to the Company’s Seminar Assistance and Tuition Reimbursement Policies. The Monitor Team commends the Company for establishing this important structure.

Baseline Assessment Recommendation P&P 11: By March 31, 2021 adopt a comprehensive communications strategy to disseminate the Preventing Harassment and Discrimination Policy and other equally important policies and procedures. This strategy may be folded into communication campaigns already in development at both properties.

Summary Status

The Company has satisfied this Recommendation.

The Company produced a quarterly communications campaign for 2021 and a 2022 Compliance Calendar to promote the Preventing Harassment and Discrimination Policy and other core compliance policies to employees with greater intentionality. In addition, the Company engaged in two Compliance Pop-up Events also aimed at enhancing engagement with employees on key HRCF topics.

Assessment of Work Completed

In the Baseline Assessment, we reviewed the Company’s HRCF policies, focusing on evaluating, in relevant part, “the Company’s procedures for communicating and publishing its HRCF policies.” Baseline Assessment at 39. Informed by applicable guidance, including DOJ guidance, which calls on companies to evaluate the accessibility of policies and procedures to employees and integration of the policies throughout the company, the Monitor Team took a critical eye to the ways and frequency at which the Company socialized HRCF policies with employees. Evaluation of Corporate Compliance Program at 4. Focus groups conducted during the Baseline Assessment indicated that many employees had not actually reviewed policies in full and had instead “just clicked through the pages to be able to acknowledge receipt.” Based on these observations, the Monitor Team recommended that the

Company adopt a comprehensive communications strategy to disseminate the Preventing Harassment and Discrimination Policy and other equally important policies and procedures.

The Company's activities in this respect address to the key aspects of this Recommendation. As noted above, the Company developed a quarterly communications campaign, which it used to relaunch the Preventing Harassment and Discrimination Policy. The campaign consisted of thematic messages such as "Speak Up," and "We're in This Together." The Company used banners, digital displays, napkin holders with QR codes containing the various reporting channels available to employees with corresponding contact information, WE Shifts and specific compliance policy spotlights. For example, in Q1 2021, both properties focused their communications on "Speak Up" and "ways for team members to report harassment and discrimination" using the various channels listed above. Photos of the digital banner displayed in Back of House and on employee dining napkin holders emphasize to employees that they should not keep silent and stated that employees should report any instances of harassment from Patrons.

In Q2 2021, the Company's communications campaign centered on the theme "We're in This Together" emphasizing the Company's stance against retaliation and certain components concerning Patron behavior, including information about employee in-person ER schedule. For example, on March 18, 2021, then-President of EBH included messaging concerning confidential reporting, underscoring that "no one will be subject to retaliation or adverse employment action because of a good faith report of suspected misconduct or for assisting in the investigation of suspected misconduct."

Most recently, in February 2022 (to align with Valentine's Day), the Company featured the Personal Relationships Policy on signage in the Back of House. Photos reviewed by the Monitor Team show a printed banner stating that "[a]ll Personal Relationships Between Wynn Employees Must Be Reported" with a creative caption providing "[i]f you've found your cupid at work, be sure to complete a restricted relationship acknowledgement form." The banner is Valentine's Day themed with an image of two individuals exchanging flowers for restricted relationship acknowledgement forms. The Monitor Team commends the Company for its creativity.

The Company also launched Compliance Pop-up Events in September 2021. Specifically, ER personnel set up a station in the Back of House and invited employees to participate in compliance trivia that was designed to test employee knowledge of the Company's five main ER compliance policies: (1) Preventing Harassment and Discrimination, (2) Personal Relationships, (3) Employee Interaction with Guests and Other Third Parties, (4) Code of Business Conduct and Ethics, and (5) Code of Personal Conduct. Employees who answered questions correctly were rewarded with movie or baseball tickets. Importantly, the events were attended by senior leadership, including members of executive leadership.

The Monitor Team asked focus group participants at both properties whether they attended or had heard about the event. Notably, employees surveyed were generally not aware of the event, which highlights the need for additional communication regarding events of this nature in the future. Specifically, only 10% of employees at EBH and 9% of WLV employees indicated that they had heard of and participated in the event.

Finally, the Company produced its 2022 Compliance Communications Calendar on February 28, 2022. The Calendar contains monthly policy highlight and campaign theme, accompanied by collateral

messaging. For example, March 2022's policy highlight focused on Responsible Gaming in keeping with March being Problem Gambling Awareness Month. Collateral communication activities will include Wire quizzes, an in-person "pop up" and digital and printed displays. According to the schedule, the focus for June and July will be on the Code of Business Conduct and Ethics, and for September-December will be the Company's Personal Relationships Policy and Code of Personal Conduct. The Monitor Team is pleased to have received the 2022 Compliance Communications Calendar and will closely monitor implementation of the schedule.

Additional Considerations/Further Testing

As noted above, the Monitor Team will closely monitor implementation of the 2022 Compliance Communications Calendar. In this regard, the Monitor Team will also request evidence of execution of planned activities and communications.

D. Third Party Relationships

Since the Baseline Assessment, the Monitor Team has identified Patron misconduct as the Company's highest risk factor for sexual harassment and discrimination. At each phase of this Monitorship, we have issued recommendations designed to help the Company mitigate that risk and to empower the Company to develop its own long-term initiatives and the Monitor Team is pleased to see the Company make meaningful progress in this area. As of this Phase III Report, the Company has fully satisfied eleven of the fourteen outstanding recommendations made in connection to third party relationships. The remaining recommendations relate to aligning Security trespass guidance with the Employee Interaction with Guests and Other Third Parties Policy ("Employee Interaction with Guests Policy") and planning and conducting culture surveys and focus groups to assess employee experiences and perceptions surrounding the Company's response to Patron misconduct. Below we assess the Company's progress on each of the fourteen recommendations, and in some cases, issue additional recommendations to guide the Company in making further progress on this aspect of the HRCP.

1. Recommendations

Phase II Report Recommendation TP 1: By March 31, 2021, incorporate the Monitor Team observations described above and in the Monitor Team comments to the draft Employee Interaction with Guests Policy.

Summary Status

The Company has satisfied this Recommendation.

The Company has implemented changes to the Employee Interaction with Guests Policy as requested by the Monitor Team. The revised Policy was adopted on May 3, 2021.

Assessment of Work Completed

In the Baseline Assessment, the Monitor Team reported on the employee perception that the Company's emphasis on the "Five-Star" customer service value "hinders employees from effectively managing Patrons acting out of line." Baseline Assessment at 22. Many employees stated that providing "Five-Star" Patron service meant tolerating certain types of Patron misconduct, which was an

unintended consequence of the Company's service standards. However, the Company has made a sincere effort to undo that perception, including making all recommended updates to the Employee Interaction with Guests Policy. These changes implemented by the Company are critical to addressing the harassment and discrimination risks presented by misbehaving Patrons, regardless of status, and communicating the Company's expectation that employees not tolerate harassment or discrimination. In the Baseline Assessment, the Monitor Team also highlighted employee statements regarding inconsistency in how different managers and supervisors handle offensive behavior by Patrons. The revised Employee Interaction with Guests Policy now explicitly requires that managers and supervisors address and escalate incidents of harassment and discrimination. In this Section, we discuss the substantive changes most relevant to the Monitor Team's assessment and commend the Company for its attention to this critical issue.

On May 3, 2021, the Company rolled out an updated Employee Interaction with Guests Policy that addressed the concern discussed in the Baseline Assessment that employees felt disempowered to respond to certain offending conduct from high value Patrons. The updated Employee Interaction with Guests Policy now includes an explicit statement that "Wynn Resorts will not tolerate any guest that harasses or offends our employees, regardless of wealth or status." This statement eliminates the opportunity for misinterpretation or misapplication of the policy against Patron misconduct and takes an important step in what must be a long-term effort to overcome the perception that high value Patrons are treated differently. The Company's initial efforts to communicate this message appear to be taking root. During focus groups conducted in Phase III, a greater number of employees expressed an understanding that inappropriate behavior cannot be tolerated regardless of an offender's status. However, there is still work to be done to ensure that the message is absorbed throughout the Company. While to a far lesser degree than during the Baseline Assessment, some employees continue to perceive that double standards apply. Indeed, an employee at EBH stated that they "have seen guests getting immediately thrown out. Then the same thing happens with someone with more importance and the same throw out does not happen." Similarly, one WLV employee expressed that the Company "will tolerate a lot if you are playing the right amount of money." We note these examples not to minimize the progress observed, but to highlight that driving real change is an on-going effort that requires intentional and focused communication of the type that is underway.

In the Baseline Assessment, the Monitor Team highlighted reports from employees that they felt "disempowered to pushback on offending behavior" and commented that "this feeling was exacerbated by the Company's focus on preserving its patina through excellence in service." Baseline Assessment at 55. To respond to these concerns, the Monitor Team recommended that the Company include a clear statement that employees may stop servicing offending Patrons and that it clarify that employees would not be disciplined for speaking up to an offending Patron or discontinuing service. Phase II Report at 36–37. The updated Policy addresses these recommendations by explicitly advising that "[i]f the employee is not comfortable speaking to the Offending Party, the employee may stop providing service." This is an important clarification of the Company's expectations that, if reinforced through action, will empower employees to stop and report inappropriate conduct by all Patrons. This messaging also builds on changes made in Phase II to advise employees that "paying a gratuity does not give a customer permission to act improperly" and that employees "always have the power to speak up and put a stop to guests who say or do things that make [them] feel uncomfortable."

The Monitor Team tested the effectiveness of this Policy through anonymous surveys and focus groups at both EBH and WLV. Employees at both properties expressed a general understanding of the Company's expectation that they push back on offending conduct. As discussed in greater detail in Section III.E., Training and Guidance, employees with whom the Monitor Team spoke generally indicated that they understood core elements of the Policy. Specifically, the Monitor Team repeatedly heard from employees in focus groups, including Patron-facing groups, that they felt empowered to confront offending Patrons. One employee stated that they "diffuse" the situation themselves and another stated they would just "say no." One cocktail server explained that "[i]f [Patrons] say something inappropriate, [she] say[s] it right away that [she doesn't] appreciate it." Still, other employees continue to express discomfort at directly pushing back on misbehaving Patrons, with one employee noting that "[she doesn't] feel comfortable being very direct" and instead "[has] a tendency to just walk away." The latter part of her statement suggests an understanding that she is empowered to stop serving the offending individual and demonstrates the importance of providing employees on-going guidance on the multiple ways to handle a misbehaving Patron.

Patron misconduct extends beyond sexual harassment and sexual discrimination. In focus groups conducted during the Baseline Assessment, the Monitor Team identified instances of racial discrimination by Patrons against employees and subsequently recommended that the Company revise the Employee Interaction with Guests Policy to prohibit all forms of discrimination. Phase II Report at 37. The Company has implemented that Recommendation by expressly stating at the outset of the Employee Interaction with Guests Policy that the offending conduct captured by the Policy includes "the behavior of a guest, outside vendor, or other third party" that "is inconsistent with our Preventing Harassment and Discrimination, and Workplace Violence Policies." The Preventing Harassment and Discrimination Policy in turn notes that "[t]he Company does not tolerate sexual or other unlawful harassment or discrimination."

The Employee Interaction with Guest Policy now also includes specific examples of the type of conduct the Policy prohibits. For example, the Policy provides that "verbal or physical conduct of a sexual or discriminatory nature" should be reported to the Manager on Duty. The Policy clarifies that "sexual misconduct" includes "suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks and threats; requests for any type of sexual favor; obscene gestures; or any other form of communication that is sexual or discriminatory in nature and offensive to the observer/recipient; and physical contact of a sexual nature that may include tickling, kissing and fondling." Such a definition is valuable because this is a category of offending behavior that has been identified in focus groups as a "grey area" of misconduct that employees believe is not always addressed appropriately. Baseline Assessment at 55.

From the Baseline Assessment through this Phase III review period, employees reported "an inconsistency in how managers [and] supervisors . . . respond to reports of offending conduct by Patrons." Baseline Assessment at 55. The revised Employee Interaction with Guests Policy not only defines the roles and responsibilities of managers and supervisors to address and report Patron misconduct, it also directs that "[i]f the employee feels the situation was not addressed appropriately, the employee should further report the incident." The Preventing Harassment and Discrimination Policy in turn instructs that "[a] supervisor or above who is aware of any discriminatory, harassing or retaliatory behavior but fails to report it is subject to disciplinary action, up to and including

termination.” Taken together, these policy statements implement the Monitor Team’s recommended changes. The Monitor Team notes, however, that employees continue to describe inconsistent responses from managers and supervisors with respect to addressing and tolerating certain Patron misconduct. One employee captured the issue when she said that “[i]t’s hit or miss” when escalating harassment or discrimination issues to managers. This issue is discussed more fully under Phase II Report Recommendation TP 2 below, but we reiterate here the need for targeted training and communication to managers and supervisors on their roles and responsibilities when Patrons exhibit offending conduct.

The Company’s changes to the Employee Interaction with Guests Policy are notable and result in a policy designed to address the highest risk areas identified by the Monitor Team in the Baseline Assessment and Phase II Report. Even more notable, however, are the Company’s efforts to socialize the Policy and demonstrate its commitment to its messaging through the various communication efforts discussed in connection with Baseline Assessment Recommendation TP 2 below. The Monitor Team is encouraged by the updates the Company made in this area.

Phase II Report Recommendation TP 2: By March 31, 2021, develop manager and supervisor training regarding the Employee Interaction with Guests Policy.

Summary Status

The Company has satisfied this Recommendation.

On June 17, 2021 at WLW and July 2, 2021 at EBH, the Company rolled out an online training specifically on the Employee Interaction with Guests Policy. The training is intended for all Company employees and it includes guidance on management responsibilities with respect to addressing and reporting Patron misconduct, and therefore satisfies the Monitor Team’s Recommendation.

Assessment of Work Completed

In the Baseline Assessment, employees reported mixed experiences with manager and supervisor responses to instances of Patron misconduct: some managers and supervisors took immediate action and others took a hands-off approach, “there is nothing they can do about [Patron misconduct].” Baseline Assessment at 55. Those reports indicated to the Monitor Team that “the Company must reinforce its messaging to managers and supervisors as to their roles in addressing and stopping [offending] Patron behavior” and “increase training of managers and supervisors to prepare them for such interactions.” *Id.* In response to these concerns, the Company developed online training on the Employee Interaction with Guests Policy that incorporates information on management responsibilities, as discussed in further detail in Section III.E., Training and Guidance, in connection with Phase II Report Recommendation T&G 2.

Consistent with the Employee Interaction with Guests Policy, the training includes a module that provides specific instruction on what management must do if they learn of, or observe, offensive Patron behavior: (1) speak with the employees who were subject to the offending conduct; (2) address Patrons who exhibit inappropriate or offensive conduct; and (3) depending on the conduct exhibited, request that the Patron leave. Managers must also ensure that employees servicing offending Patrons are comfortable with the resolution. As with other modules in the training, following instructions on

management responsibilities are questions designed to test the trainee’s knowledge. In focus group activities, managers and supervisors demonstrated an understanding of how to handle Patron misconduct, including an understanding of the consequences of not complying with Company expectations. In particular, one supervisor expressed to the Monitor Team that “[i]f someone comes to their supervisor and we don’t do anything, we’re in trouble. We could lose our jobs over that.” Managers and supervisors across focus groups echoed a similar understanding and highlighted a marked shift in Company culture in this regard. In several instances, managers, supervisors, and front-line employees more generally observed that “things have changed considerably” and that “it is better now,” “there is more of a willingness to say that something is not right,” and “[t]hey do more in-depth training.”

Some employees continued to report hesitancy to report Patron misconduct to managers and supervisors, despite expressing an understanding of the Company’s expectations that misconduct be reported. Those employees stated their hesitancy arose from a continuing view that certain managers respond inconsistently to offending conduct by Patrons. For example, employees expressed to the Monitor Team that “[s]ometimes [they will] go to a manager and sometimes [the manager will not] give [them an] answer.” Others noted that tolerance for misconduct “depends on the manager and supervisor” and “it depends on the managers in terms of what they will allow.” One employee even expressed that she “would feel comfortable going to a manager [to report Patron misconduct], but . . . would be worried about what they were actually going to do about it.” These responses signal a need for continued training and messaging directed specifically to managers and supervisors.

Additional Considerations/Further Testing

Through focus groups, surveys, trainings, and review of communications, the Monitor Team will continue to evaluate how the Company communicates the core components of the Employee Interaction with Guests Policy, particularly as they relate to the role of supervisors and managers, and how employees are perceiving the Company’s efforts to address offending conduct by Patrons and other third parties.

Phase II Report Recommendation TP 3: By March 31, 2021, develop a training roll-out plan for the Employee Interaction with Guests Policy. Training should be completed by July 31, 2021.

Summary Status

The Company has satisfied this Recommendation.

The Company provided the Monitor Team a written plan for the roll-out of the Employee Interaction with Guests Policy and access to the online training video that accompanied the roll-out.

Assessment of Work Completed

On June 17, 2021 at WLV and July 2, 2021 at EBH, the Company launched an online training on the Employee Interaction with Guests Policy. In advance of the launch, the Company developed a written training roll-out plan that the Company provided to the Monitor Team for review. The plan required all employees at both EBH and WLV to complete the Employee Interaction with Guests Policy training through WE Learn, the Company’s Learning Management System and “to acknowledge the policy upon

completion of the online training course.” In addition, the plan contemplated that “employees will also be required to acknowledge receipt of the policy (electronically) via the company’s intranet, commonly referred to as the ‘WIRE.’” At the time, the Company anticipated that “[b]y June 30, 2021 training will be 100% complete for employees who have consistently worked from the date training was launched.”

The Company also provided the Monitor Team evidence reflecting the Company’s communication and roll-out efforts with respect to the training. On June 17, 2021, the Company issued a memorandum via email to “Supervisors & Above” at WLV that communicated the launch of the Employee Interaction with Guests Policy training. The memorandum assigned the training to employees with “job[s] that require regular interactions with guests” and explained that those employees must complete the training by August 31, 2021. While the Monitor Team did not receive a similar memorandum issued to EBH personnel, the Monitor Team reviewed an August 31, 2021 EBH WE Shift that reminded employees of the deadline to complete the training. The WE Shift explained that the “training is mandatory for all guest-facing, front-of-house departments and is recommended for all [EBH] team members.” The roll-out efforts as designed were in line with the Monitor Team’s expectations and we encourage the Company to use this plan as a blueprint for future core trainings. The plan was focused, specific, and through its efforts the Company communicated the importance of the training substance.

In addition to evaluating the design of the training plan, the Monitor Team tested the effectiveness of the Company’s roll-out and training through focus group activities conducted at both EBH and WLV in November and December 2021. Most of the focus group participants indicated that they had completed the Employee Interaction with Guests Policy training. In particular, data from focus group surveys indicated that 60.8% of employees surveyed at EBH and 91.5% of employees surveyed at WLV had completed the training. Employees generally expressed liking the training video and finding it relevant and helpful. One employee noted that the training “refresh[es] you” and reminds employees of “things that happen that shouldn’t.” Another employee learned that “if you feel uncomfortable, don’t hesitate [to g]o to your manager.” However, other employees also suggested that the training may be more effective if it was tailored to specific departments, with one employee explaining that “[i]t is a broad video, and not all [of it] applies to us.” Employee perceptions of the training are discussed in further detail below in Section III.E., Training and Guidance.

The Monitor Team views the Company’s development and roll out of the Employee Interaction with Guests Policy training as a positive improvement in educating employees about offending conduct and the methods for addressing such situations when they occur. However, for the Employee Interaction with Guests Policy training to be effective, the training program must be sustainable in the long term. The Monitor Team requests that the Company develop a longer-term plan that will allow the Company to monitor and continuously improve its training initiatives in this area.

Follow-Up Recommendations

To ensure that the sustainability and effectiveness of the Employee Interaction with Guests Policy training program, the Monitor Team issues an additional Recommendation that the Company develop a plan to monitor and continuously improve its training going forward.

<p>Phase III Report Recommendation TP 1</p>	<p>Develop a plan to monitor the effectiveness of the Employee Interaction with Guests Policy training and continuously improve the training in response to any identified knowledge gaps.</p>
--	--

Additional Considerations/Further Testing

In future phases of the Monitorship, the Monitor Team will assess the sustainability of the Employee Interaction with Guests training program and employee perceptions of the Company’s stance on Patron misconduct.

Phase II Report Recommendation TP 4: By March 31, 2021, ensure alignment between the Employee Interaction with Guests Policy and Security Trespass guidance.

Summary Status

The Company has not fully satisfied this Recommendation.

The Monitor Team has received updated WLV Security trespass guidance reflecting changes to the previously reviewed guidelines. However, the Monitor Team has not received similarly updated Security trespass guidance for EBH.

Assessment of Work Completed

The Company’s trespass guidance documents generally provide which types of behavior will result in a trespass, and the WLV guidance now aligns with the Employee Interaction with Guests Policy. In the Phase II Report, the Monitor Team noted that the trespass guidance did not explicitly include harassment and discrimination as defined by the Company’s HRCP policies, including the Employee Interaction with Guests Policy. We recommended, therefore, that Legal and Security work together to ensure alignment between trespass guidance and the guidance provided in the Employee Interaction with Guests Policy in order to mitigate the risk of inconsistent responses from Security personnel. Baseline Assessment at 55 (noting that “employees in focus groups noted an inconsistency in how . . . Security personnel responded to reports of offending conduct by Patrons.”)

The Employee Interaction with Guests Policy provides that a third party will be asked to leave the Company’s premises if they engage in “sexual misconduct.” The Policy defines “sexual misconduct” as “suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks and threats; requests for any type of sexual favor; obscene gestures; or any other form of communication that is sexual or discriminatory in nature and offensive to the observer/recipient; and physical contact of a sexual nature that may include tickling, kissing and fondling.” The Policy further provides that if the third party refuses to leave, “Security will be contacted.”

The Company provided the Monitor Team two documents containing trespass guidance. For WLV,



██████████ This guidance generally aligns with the trespass guidance contained in the Employee Interaction with Guests Policy. In particular, ██████████ —all of which would result in eviction under the Employee Interaction with Guests Policy. The Monitor Team is pleased that the Company has enhanced its WLV trespass guidance to account for these situations. This alignment with the Security Department will help the Company respond more consistently to Patron misconduct.

The Company appears not to have updated the trespass guidance for EBH. The Monitor Team, therefore, will reissue this Recommendation with respect to EBH.

Follow-Up Recommendations

With respect to EBH’s Security trespass guidance, the Monitor Team reissues this Recommendation with an updated deadline.

<p>Phase II Report Recommendation TP 4</p>	<p>By June 30, 2022, ensure alignment between the Employee Interaction with Guests Policy and Security Trespass guidance.</p>
---	---

Additional Considerations/Further Testing

In future phases of the Monitorship, the Monitor Team will continue to assess Company guidance on the trespassing of Patrons, particularly as it relates to harassment and discrimination. As the Company updates its current trespass guidance for EBH, the Monitor Team will seek to review those changes to ensure continued alignment with the Employee Interaction with Guests Policy.

Baseline Assessment Recommendation TP 2: By March 31, 2021, develop a communication strategy for 2021 that is designed to reinforce messaging regarding the Company’s expectation that employees report offending conduct by Patrons.

Summary Status

The Company has satisfied this Recommendation.

The Monitor Team received and reviewed a communications plan that outlined the various methods the Company will use to communicate to employees its expectation that they report Patron misconduct. The Company’s plan included Speak Up campaign posters and displays on napkin holders, banners emphasizing the confidential reporting hotline, and WE Shift messages. In addition to the communication plan, the Monitor Team reviewed relevant WE Shift messages and saw the banners posted in the Back of House during on-site visits at both properties.

Assessment of Work Completed

The Company provided the Monitor Team with a communications plan focused on proactive messaging intended to reinforce the Company’s expectation that employees report Patron misconduct. The plan outlined quarterly communications efforts, which included WE Shift messages, banners to be posted at both EBH and WLV, and similar displays on employee dining napkin holders. For example, as part of this campaign, the Company posted Speak Up banners in several locations in the Back of House

that instruct employees “do not keep silent.” The banners remind employees that if they “experience or witness harassment from guests, [they should] report it.” Similar displays are also posted on employee dining napkin holders. The displays themselves also list the various avenues for making a report such as direct supervisors, ER, the VP of HR, property level GCs, the CGCO, and the confidential and anonymous hotline. QR codes printed on the displays also link to a one-pager, which provides additional information on reporting harassment or discrimination. The Monitor Team commends the Company on its efforts to communicate the importance of reporting Patron misconduct. Going forward, it will be important that the Company continues messaging the expectation that employees speak up.

In the Baseline Assessment, the Monitor Team noted gaps in employee familiarity with the Company’s confidential reporting hotline. Baseline Assessment at 79. As part of its communication and remediation efforts, the Company displayed posters in the Back of House promoting the Company’s confidential reporting hotline. These posters provide the confidential hotline contact information, as well as other reporting options, and reemphasize the ability to report Patron behavior confidentially. The banners note the Company’s collective responsibility “to report unethical or illegal activity taking place in the workplace, including harassment or discrimination . . . or misconduct by employees or guests.” In addition, the Company published confidential hotline information on The Wire, making it easily accessible to employees at both EBH and WLV.

The Company also utilized WE Shifts to communicate expectations that employees report offending conduct by Patrons, including in the following instances:

- ▶ During Q1 and Q3 2021, EBH issued WE Shifts emphasizing the availability of confidential reporting channels. These WE Shifts highlighted that employees “are encouraged to report unethical and illegal activity.”
- ▶ A March 20, 2021 WLV WE Shift also reinforced that employees should report “unethical or illegal activity” including “misconduct by employees or guests.”
- ▶ In September and October 2021, many other WE Shifts were issued that highlighted important aspects of the Employee Interaction with Guests Policy in a “Training Corner.” For example, a September 18, 2021 WE Shift asked “[w]hat is the purpose of the employee interactions with guest and other third parties training?” The WE Shift provided multiple answers and indicated that “a” was the correct choice: “[t]o educate employees on what they should do when a guest behaves inappropriately or offensively towards them.”

The Monitor Team tested the effectiveness of the Speak Up campaign during on-site visits to EBH and WLV. During focus group activities conducted by the Monitor Team, employees referenced the Speak Up campaign and its signage. One manager at EBH noted that “it is reiterated that [employees] should speak up.” An EBH ER counselor also explained that there was an uptick in complaints based on the Speak Up campaign, with employees referencing the signage or related training when making reports. WLV employees also communicated that they were comfortable speaking up when Patrons exhibit inappropriate conduct, with one employee saying that the Company “want[s] people to know that [they] can speak up even against guests” Further, during focus groups conducted by the Monitor Team, employees repeatedly confirmed that they could access the confidential reporting

hotline and referenced other reporting options, thus verifying that employees are knowledgeable about the resources available for making a report.

Despite these efforts, some employees continued to express a general hesitation of speaking up. The Monitor Team does not view this hesitation as indicating that the Company's plans are ineffective, but rather as a reflection of the vestiges of the culture and mindset that had formed around these issues under the prior leadership. Thus, the Monitor Team expects that the Company will not rest on the initial success of its Speak Up campaign and will continue messaging the importance of speaking up against misconduct to continue to strengthen employee confidence in the reporting system.

Outside of the Company's planned communication strategy, the Monitor Team also observed unprompted communications that also reinforce the Company's zero tolerance of Patron misconduct. In particular, during the Monitor Team's visit to EBH, the Monitor Team briefed the EVP of Operations at EBH regarding some employees' perception that the Company's high service standards required employees to tolerate Patron misconduct. Approximately an hour and a half later, while discussing the Company's Forbes training at the Quarterly Management Meeting ("QMM"), EBH's EVP of Operations emphasized that providing Forbes five-star service does not equate to tolerating Patron misbehavior. The Monitor Team applauds this type of spontaneous and authentic messaging surrounding offending conduct by Patrons. It reflects exactly the type of on-going and organic approach to communicating on these issues that the Monitor Team expects to see in the coming Phases. It also reflects the opportunities that forums like the QMM provide for the Company to address large groups of employees on issues related, not just speaking up and Patron misconduct, but on other important policies and standards. The Monitor Team encourages the Company to find additional ways to engage in this type of messaging to employees at both properties.

Additional Considerations/Further Testing

In future phases of the Monitorship, the Monitor Team will continue to evaluate how the Company is messaging its expectation that employees report offending conduct by Patrons. The Company should continue to explore effective methods of communicating these expectations, including through unprompted messaging that targets areas of employee confusion, such as with comments at large meetings like the QMM. The Monitor Team will also continue to test employee understanding of Company expectations by conducting focus groups.

Baseline Assessment Recommendation TP 3: By April 30, 2021, develop a plan to track and monitor data collected from investigations of offending Patrons.

Summary Status

The Company has satisfied this Recommendation.

The Company continues to track information related to investigations into offending Patrons in its reports submitted to the Compliance Committee and through iTrack reports generated by the Security and Investigations teams. The Company also continues to work with EthicsPoint to tailor reports on reporting and investigation trends and facilitate the monitoring of those trends with automated reporting.

Assessment of Work Completed

In the Baseline Assessment Report, the Monitor Team stressed the importance of monitoring data collected from investigations of offending Patrons. Baseline Assessment at 55. The Monitor Team observed a perception by employees of inconsistency in how the Company addressed certain Patron misconduct, particularly from high-value Patrons, and suggested that monitoring of investigations would allow the Company to evaluate its practices. *Id.*

The Company continues to use iTrack as its primary tool for monitoring trends of Patron misconduct at EBH and WLW. Based on discussions with both the Director of Investigations and the Executive Director of Security and Investigations at EBH, the Monitor Team understands that EBH analyzes iTrack reports weekly to review the types of incidents occurring and to deploy resources as appropriate. At WLW, the Director of Corporate Investigations similarly explained to the Monitor Team that a designated analyst considers trends reflecting when and where incidents are occurring, and resources are adjusted accordingly. As an example, [REDACTED]

[REDACTED] As discussed further in Section III.F., Internal Reporting and Investigation, in connection with Phase II Report Recommendation IRI 5, the Monitor Team understands that the Company is standardizing its process for classifying incidents in iTrack. This standardization will help the Company ensure it is accurately monitoring trends. In addition, the Company continues to include investigations related to harassment and discrimination by Patrons in incident reports submitted weekly to the GC and quarterly to Compliance Committee.

As we noted in the Phase II Report, the Company invested in EthicsPoint to manage internal reporting. That tool will permit the Company to monitor incidents and reports on a more automated basis, including through the periodic generation of tailored reports. We understand that the Company has encountered unanticipated challenges with the EthicsPoint platform and has not been able to leverage its full capabilities. In future phases of the Monitorship, the Monitor Team will consider how the Company is using EthicsPoint to analyze trends in Patron misconduct.

Additional Considerations/Further Testing

In future phases of the Monitorship, the Monitor Team will continue to evaluate how the Company is tracking and monitoring trends in Patron misconduct. The Monitor Team encourages the Company to utilize the capabilities of EthicsPoint in identifying existing trends. The Monitor Team also encourages the Company to provide the Monitor Team with copies of EthicsPoint trend reports once the Company develops a process for generating these reports.

Phase II Report Recommendation TP 5: By March 31, 2021, submit to the Monitor Team a plan and schedule for conducting culture surveys and focus groups (COVID-19 restrictions permitting) to assess employee experience and perceptions regarding the Company's response to reports of offending conduct.

Summary Status

The Company has not satisfied this Recommendation.

The Company provided the Monitor Team with a high-level timeline for conducting employee surveys and focus groups in 2021 to assess employee experiences and perceptions regarding the Company’s response to reports of offending conduct, however, the Monitor Team has not received a detailed plan for conducting these activities on a going forward basis.

Assessment of Work Completed

The Company provided documentation to the Monitor Team indicating that it would conduct employee culture surveys and focus groups during 2021. Specifically, the Company noted that it would issue an employee survey in August 2021 and hold focus groups in December 2021. This documentation reflects a general timeline for executing the employee surveys and focus groups. However, this Recommendation requires the Company to prepare a plan for conducting culture surveys and focus groups on a going forward basis to assess employee experience and perceptions regarding the Company’s response to reports of offending conduct.

Follow-Up Recommendations

The Monitor Team reissues this Recommendation with an updated deadline.

<p>Phase II Report Recommendation TP 5</p>	<p>By June 30, 2022, submit to the Monitor Team a plan and schedule for conducting culture surveys and focus groups (COVID-19 restrictions permitting) to assess employee experience and perceptions regarding the Company’s response to reports of offending conduct.</p>
---	--

Additional Considerations/Further Testing

Once received, the Monitor Team will review and assess the Company’s plan for conducting employee culture surveys and focus groups. The Monitor Team will also evaluate the Company’s implementation of its plan, as further discussed in connection with Phase II Report Recommendation TP 6 below.

Phase II Report Recommendation TP 6: By September 30, 2021, conduct culture survey and focus groups (COVID-19 restrictions permitting) to assess employee experience and perceptions regarding the Company’s response to reports of offending conduct and submit results to the Monitor Team.

Summary Status

The Company has not fully satisfied this Recommendation.

The Company has not conducted culture surveys and focus groups to gauge employee experiences and perceptions at both EBH and WLV as envisioned by this Recommendation.

Assessment of Work Completed

Although the Company has not conducted focus groups or surveys consistent with this Recommendation, the Company has undertaken efforts designed to gauge employee engagement and experiences in other areas. At EBH, for example, the President and EVP of Operations are conducting

roundtable discussions with each department across the property. From interviews, we understand that the roundtables create a direct dialogue between employees and senior property management. Management has indicated to the Monitor Team that after each session they develop takeaways and action items and intend to provide updates to the relevant departments. The roundtable effort at EBH is in line with the expectations of the Monitor Team in issuing this Recommendation. The roundtables have allowed senior property management to engage with employees throughout the resort and identify concerns and gaps in knowledge. The Monitor Team understands that EBH is undertaking efforts to address areas of concerns raised through certain of the roundtables held. This level of engagement allows the Company to monitor and test Company culture and employee experiences. The Monitor Team was impressed by this initiative and encourages the Company to continue these efforts and expand them to WLV as well. As these efforts continue, we anticipate they could be leveraged to accomplish the goal of this Recommendation but will need to test their effectiveness before we can make that determination. The Monitor Team considered it important to protect the organic nature of these sessions—particularly in their early stages when trust is first built between management and employees. Therefore, we opted not to observe any of the meetings in this Phase III review period and therefore cannot credit these efforts towards this Recommendation.

In addition to the roundtables at EBH, the Monitor Team understands that the SVP of D&I conducted focus groups with employees at both EBH and WLV to gain a better understanding of employee perceptions of D&I. From the Monitor Team’s interview with the SVP of D&I, we understand that conducting such focus groups was integral to the development of the Company’s D&I strategy. In particular, the D&I focus groups allowed the SVP of D&I to identify a concern about opportunity for growth and professional development. Now, the D&I strategy targets the creation of a hiring pipeline, among other initiatives. The Monitor Team is encouraged by this responsiveness to employee concerns and experiences.

The Monitor Team commends the Company’s efforts in conducting roundtables at EBH and D&I focus groups at both properties and encourages the Company to think of ways to build upon these types of efforts to include issues related to the HRCP. The Monitor Team is open to evaluating such efforts under this Recommendation.

Follow-Up Recommendations

Because the Company has not satisfied this Recommendation, the Monitor Team reissues the Recommendation and requests completion by September 30, 2022.

<p>Phase II Report Recommendation TP 6</p>	<p>By September 30, 2022, conduct culture survey and focus groups (COVID-19 restrictions permitting) to assess employee experience and perceptions regarding the Company’s response to reports of offending conduct and submit results to the Monitor Team.</p>
---	---

Baseline Assessment Recommendation TP 5: By March 31, 2021, develop and submit to the Monitor Team a plan to communicate standards of behavior to Patrons of EBH and WLV.

Summary Status

The Company has satisfied this Recommendation.

The Monitor Team has received and approved a plan for communicating standards of behavior to Patrons at both EBH and WLV. The plan envisions the communication of behavior standards to Patrons in multiple formats, some of which have already been implemented.

Assessment of Work Completed

The Company submitted plans to the Monitor Team for communicating standards of behavior to Patrons and has started to implement various aspects of the plan. Below we list the elements of the plan and their current state of implementation:

- ▶ **Company website:** The Company has implemented a Patron behavior policy that is published on the EBH and WLV websites. The policy provides that “Wynn Resorts is committed to ensuring the safety and enjoyment of our guests and employees.” The provision then explains that “[b]ehavior we consider to be inappropriate and disrespectful is prohibited.” The prohibited behaviors cited by this policy include, in relevant part, the following:
 - “Unruly behavior, threatening or obscene gestures, fighting or violence”;
 - “Derogatory and threatening language including offensive remarks about race, ethnicity, gender, religion, disability, age, sexual orientation, national origin, pregnancy, or other legal protected classifications”; and
 - “Any other inappropriate conduct as determined by Wynn Resorts.”
- ▶ **“Terms and Conditions” of Wynn Rewards Card:** The EBH and WLV websites provide the terms and conditions for the Wynn Rewards Card, which also address expectations for Patron behavior. On the WLV website, the Wynn Rewards terms and conditions note in provisions related to “[s]tays at Encore Boston Harbor” that the Company has “zero tolerance for irresponsible or inappropriate behavior on [its] property.” On the EBH website, the Wynn Rewards terms and conditions link to the Patron behavior policy described immediately above.
- ▶ **Hotel reservations:** The Company planned to incorporate a provision addressing Patron standards of conduct in the email confirmations of hotel reservations. EBH hotel reservation confirmations now include the following statement: “Wynn Resorts requires appropriate and respectful interactions between our guests and employees in our resorts. The Company reserves the right to trespass anyone exhibiting behavior, language, or clothing that, at our discretion, is inconsistent with the Company’s behavior standards, which can be found on our website.” The email then provides a link to the Company’s Patron behavior policy described above. The Monitor Team also reviewed a sample WLV hotel reservation confirmation, which similarly provides a link to the terms and conditions available on the Company’s website, including the Patron behavior policy.
- ▶ **Nightclub signage:** The Company has designed and posted signs at the entrance to every night

at both EBH and WLV addressing Patron standards of behavior. For example, signs for Encore Beach Club at Night, XS, and Wynn Field Club note that “Wynn Resorts requires appropriate and respectful interactions between . . . guests and employees” and “the Company reserves the right to eject and/or trespass anyone exhibiting behavior[or] language . . . inconsistent with the Company’s behavior standards, which can be found on [the] website.”

- ▶ **Spa and Fitness Center waiver of liability:** The Company has also incorporated Patron standards of behavior language into the Spa and Fitness Center waiver of liability form at both properties. These forms are issued and executed by all Patrons prior to receiving spa services or utilizing the Fitness Center. The Monitor Team reviewed both EBH and WLV waiver forms. The EBH form explains that “Wynn Resorts requires appropriate and respectful interactions between our guests and employees in our resorts. The Company reserves the right to trespass anyone exhibiting behavior, language, or clothing that, at our discretion, is inconsistent with the Company’s behavior standards, which can be found on our website.” The WLV waiver includes similar language.
- ▶ **Cocktail server cards:** While not yet implemented, the Monitor Team understands that the Company plans to provide Patron behavior cards to certain employees in Patron-facing positions. As explained to the Monitor Team, the cards will contain text regarding expectations for Patron conduct. The cards are intended to serve as guidance to Patron-facing employees on ways to communicate standards of behavior.

The Monitor Team commends the Company for its progress in developing and implementing a plan to communicate standards of behavior to Patrons. These efforts reflect a significant step forward in a space in which the Company had previously expressed hesitancy, demonstrating to the Monitor Team openness and flexibility to address areas of risk. Phase II Report at 41. Going forward, it will be important for the Company to continue developing creative methods for communicating behavior standards to Patrons.

Baseline Assessment Recommendation TP 8: By March 31, 2021, revise the Deconflicting Policy to explicitly prohibit external counsel from dually representing Wynn Resorts personnel, including executives and Board members and the Company, unless such representation is approved by the Company in writing.

Summary Status

The Company has satisfied this Recommendation.

The Company adopted the Policy for Avoiding Conflicts of Interest with the Retention of Outside Counsel and Settlement Agreements (“Policy for Avoiding Conflicts of Interest”) on April 13, 2021 and similarly revised its Billing Guidelines for Outside Counsel. Both documents now incorporate a requirement that the representation of Wynn personnel by external counsel be approved in writing. These revisions satisfy this Recommendation.

Assessment of Work Completed

The Monitor Team previously observed that the Company's Legal Department Policy for Avoiding Conflicts and Billing Guidelines for Outside Counsel failed to recognize the risk of conflicts of interest that could arise between the Company and its personnel. Phase II Report at 45. In the Company's new Policy for Avoiding Conflicts of Interest, adopted on April 13, 2021, however, the Company acknowledges the potential for conflicts of interest when external counsel dually represents Wynn Resorts personnel and the Company. The Policy explains that "Wynn Resorts retains outside counsel to represent the Company, its affiliates, and/or employees, officers or directors thereof." The Company then provides that "[i]n some instances, that outside counsel may also perform legal services for other affiliates or persons affiliated with Wynn Resorts, which could cause a conflict of interest between clients, such as when interests diverge between the Company and represented individual in a Wynn-related matter." This acknowledgement of the potential for conflicts of interest is an important step in mitigating the risk that outside counsel could represent an individual affiliated with the Company without advising the Company of the representation.

The Policy for Avoiding Conflicts of Interest also requires written approval to move forward with such a representation. The Policy states that "[a]ny retention of outside counsel to represent Wynn Resorts or an affiliate, employee, director, or agent thereof, in a Wynn-related matter must be approved in writing by the General Counsel of Wynn Resorts or the affiliate retaining the outside counsel." Similar language is also incorporated in the Billing Guidelines for Outside Counsel, which the Company revised on April 21, 2021. Now, both documents are aligned and reflect the need for representations by external counsel to be approved by the Company.

Additional Considerations/Further Testing

The Monitor Team will assess the implementation of the procedures established in the Policy for Avoiding Conflicts of Interest and the Billing Guidelines for Outside Counsel in future phases of the Monitorship. While these documents establish a process for ensuring conflicts of interest do not arise in the dual representation of Wynn Resorts and Company personnel, the Company must also ensure these procedures are being followed in practice.

Phase II Report Recommendation TP 7: Within 30 days of revising the Deconflicting Policy, disseminate the revised Policy to existing external counsel, and Wynn executives and Board members and submit documentary evidence of the same to the Monitor Team.

Summary Status

The Company has satisfied this Recommendation.

The Monitor Team received evidence of multiple email communications disseminating the revised Policy for Avoiding Conflicts of Interest to Wynn executives and Board members and both the revised Policy for Avoiding Conflicts of Interest and Billing Guidelines for Outside Counsel to the Company's external counsel.

Assessment of Work Completed

After the new Policy for Avoiding Conflicts of Interest was adopted and the Billing Guidelines were revised, the Monitor Team received a copy of an April 21, 2021 email communication that provided these two documents to outside counsel. Similarly, internally, on April 14, 2021, the Wynn Resorts GC, issued a memorandum to “Vice Presidents and above—North America” by email, to which the new Policy for Avoiding Conflicts of Interest was attached. The memorandum itself explained the intent of the new Policy by noting that “the Company is further memorializing its existing policies to avoid conflicts of interest that may arise in the retention of outside counsel (to represent the Company or an employee/director thereof).” Finally, also on April 14, 2021, the new Policy for Avoiding Conflicts of Interest and accompanying memorandum prepared by the Wynn Resorts GC was also emailed to Board members. Considered together, these three email communications disseminated the Policy to both external counsel and Wynn executives and Board members, as requested by this Recommendation.

Phase II Report Recommendation TP 8: By March 31, 2021, issue a formal policy that (1) memorializes the procedures set forth in the October 5, 2020 memorandum on the “Retention of Outside Counsel and Approval of Legal Settlements”; and (2) applies to requests by Company personnel for individual representation by Company outside counsel.

Summary Status

The Company has satisfied this Recommendation.

The Monitor Team received and reviewed the new Policy for Avoiding Conflicts of Interest, which was adopted by the Company on April 13, 2021. The Policy for Avoiding Conflicts of Interest incorporates both policy changes required by this Recommendation.

Assessment of Work Completed

A core finding of the MGC’s Investigations and Enforcement Bureau (the “IEB”) was dual representation of the Company and Wynn Resorts personnel in matters presenting a conflict of interest. Phase II Report at 46. To mitigate the risk of recurrence, the Monitor Team recommended that the Company establish procedures designed to minimize the risk of conflicts of interest in such dual representations by external counsel. The Company first memorialized this policy in an October 5, 2020 memorandum on the “Retention of Outside Counsel and Approval of Legal Settlements” (the “October 2020 Legal Memo”). Noting that memorandums do not carry the weight or formality of a written policies and procedures, the Monitor Team reissued its Recommendation to require a formal policy memorializing this process and additionally addressing requests by Company personnel for representation by the Company’s external counsel. Phase II Report at 45.

On April 13, 2021, the Company adopted a formal Policy for Avoiding Conflicts of Interest. The Policy memorializes the procedures set forth in the October 2020 Legal Memo. The new Policy for Avoiding Conflicts of Interest requires that “[a]ny retention of outside counsel to represent Wynn Resorts or an affiliate, employee, director, or agent thereof, in a Wynn-related matter must be approved in writing by the General Counsel of Wynn Resorts or the affiliate retaining the outside counsel.” This broadened policy language makes clear that requests by Company personnel, including employees and directors, are subject to the processes identified in the Policy for Avoiding Conflicts of Interest. The new

Policy minimizes the conflict-of-interest risks described above by ensuring that the Company is aware of all representations of Company personnel by external counsel.

The Policy for Avoiding Conflicts of Interest also memorializes procedures requiring that “[a]ny settlement of a Wynn-related matter must be approved in writing by the General Counsel of Wynn Resorts or the affiliate entering into the settlement.” The Policy also provides that “all settlements of a Wynn-related matter involving allegations of sexual assault, harassment or discrimination must be approved in writing by the General Counsel of Wynn Resorts, as well as the President of Wynn Resorts or the affiliate entering into the settlement.” As with the process of retaining outside counsel, the Monitor Team is pleased to see that the processes for approving legal settlements are also now formalized in a concrete policy.

Phase II Report Recommendation TP 9: Ensure that the policy on “Retention of Outside Counsel and Approval of Legal Settlements” is housed in the applicable department-specific portal.

Summary Status

The Company has satisfied this Recommendation.

The Monitor Team received evidence showing that the Policy for Avoiding Conflicts of Interest is saved in the Legal Department Policies folder. The filing of the Policy in the applicable department folder satisfies this Recommendation.

Assessment of Work Completed

As described in our assessment of the preceding Recommendation, the Policy for Avoiding Conflicts of Interest memorializes the October 2020 Legal Memo. The Policy was subsequently saved in the applicable Legal Department Policies folder, as evidenced by a screen capture provided to the Monitor Team by the Company.

Baseline Assessment Recommendation TP 10: By March 31, 2021, communicate Company procedures for requests by Company personnel for individual representation by Company outside counsel. The Communication should be disseminated in writing internally and to external counsel. The communication should be designed to ensure that external counsel, officers, and directors of the Company are aware of the risks associated with dual representation.

Summary Status

The Company has satisfied this Recommendation.

The Monitor Team received evidence of multiple email communications disseminating the revised Policy for Avoiding Conflicts of Interest internally to Wynn executives and Board members and both the revised Policy for Avoiding Conflicts of Interest and Billing Guidelines for Outside Counsel to the Company’s external counsel.

Assessment of Work Completed

As noted above in the discussion of Phase II Report Recommendation TP 7, the Company issued three email communications disseminating the new Policy for Avoiding Conflicts of Interest to both

external counsel and internal personnel. These email communications satisfy this Recommendation in addition to Phase II Report Recommendation TP 7.

E. Training and Guidance

During this Phase III review period, the Company fully satisfied three out of the Monitor Team's eight outstanding recommendations. The Company has continued implementation of its Preventing Harassment and Discrimination training as well as other targeted trainings and programmatic recommendations, most of which originated in the Baseline Assessment. However, several recommendations such as the development and implementation of manager/supervisor specific training on core HRCF risk factors and a training plan for ER personnel tasked with conducting investigations remain partially or wholly unsatisfied.

1. Recommendations

Phase II Report Recommendation T&G 1: In future harassment and discrimination trainings for individuals who have roles related to EBH, include training on relevant Massachusetts-specific HR considerations. [This Recommendation satisfies Phase II Report Recommendation CCCT 2.]

Summary Status

The Company has satisfied this Recommendation.

The Company produced EBH's all-employee Preventing Harassment and Discrimination training deck and a recording of a training session conducted by EBH's GC. The Company also produced minutes of a February 18, 2021 Compliance Committee meeting. Those minutes indicate that the Compliance Committee received training on Massachusetts employment laws relevant to the Compliance Committee's execution of its advisory role. On March 17, 2022, the Company produced the accompanying training deck, which outlined MA-specific employment considerations, as contemplated by this Recommendation.

Assessment of Work Completed

The Company continued implementation of its Preventing Harassment and Discrimination training for employees across properties. EBH shared a recording of its Preventing Harassment and Discrimination training with the Monitor Team. Delivered by EBH's GC, the training was engaging and dynamic. The Monitor Team observed active participation from employees, reflecting that employees found the training to be relevant. In line with the Monitor Team's Recommendation, the training included Massachusetts-specific considerations. For example, the EBH GC highlighted Massachusetts personal liability laws in the context of discrimination and harassment.

Minutes from the Compliance Committee's February 18, 2021 meeting indicate that EBH's GC provided training on "Massachusetts employment laws" to the Compliance Committee and management who were in attendance. The accompanying training deck covers relevant MA-specific considerations such as diversity and employee relations, recruitment and hiring, and pay and benefits. The training specifically covered the Massachusetts Fair Employment Practices Law, Paid Family and Medical Leave Act, and additional Massachusetts laws on sick leave and other employment

requirements. By addressing nuances relevant to MA employment laws, which are in turn important to the Compliance Committee's understanding of MA-specific HRCP considerations, the training is responsive to the Monitor's Recommendation.

Baseline Assessment Recommendation T&G 3: By May 31, 2021, incorporate the following topics into trainings for managers and supervisors:

- ▶ intake and escalation of employee complaints;
- ▶ the Personal Relationships Policy, including reporting obligations;
- ▶ social media, including as a potential platform for harassment;
- ▶ the risks of alcohol usage in the workplace;
- ▶ the impact and limitations of off-duty conduct; and
- ▶ how to appropriately process and escalate both formal complaints concerning discrimination and harassment and problematic behaviors they have observed or of which they have been made aware.

Summary Status

The Company has not satisfied this Recommendation.

The Monitor Team has not seen evidence of trainings targeted to managers or supervisors focusing on the above-enumerated topics.

Assessment of Work Completed

Since the Baseline Assessment, the Monitor Team has discussed with the Company the need to provide targeted training to supervisors and managers on the discrete topics contemplated by this Recommendation. The Company has said that they would prefer, for the sake of transparency, to offer the Preventing Harassment and Discrimination training without distinction to all employees so that employees understand how managers and supervisors are expected to behave regarding allegations. The Monitor Team does not object to this, in theory. However, throughout the Monitorship, employees have reported that some managers and supervisors are less effective in their responses to Patron misconduct than others, stating specifically that they witness inconsistent responses to allegations of misconduct or to employee concerns about potential misconduct. For example, some employees at EBH and WLV commented that certain managers, including managers on the casino floor, showed greater tolerance for high value players who exhibited "rowdy" behavior.

In contrast to the impressions of employees, managers and supervisors with whom we spoke expressed an understanding of their responsibilities to address harassment and discrimination and to raise issues further as needed. Similarly, Department Heads reported their expectation and confidence that managers understand how to address complaints of harassment and discrimination. This understanding stems from the Company's general efforts on its Company-wide Preventing Harassment and Discrimination trainings noted above, and from the Preventing Harassment and Discrimination Policy itself, which, along with other core HRCP policies, imposes an elevated obligation and

responsibility on managers and supervisors to report, escalate, and appropriately manage complaints received by employees regarding behavior not consistent with Company policies or the Company’s values. The Preventing Harassment and Discrimination Policy has a dedicated section on supervisors and manager responsibilities and highlights that “the Company has established training for all supervisors and above to ensure that they understand their obligation to prevent and report harassment and other discrimination, and the steps they can take to both stop it and report it.”

Nevertheless, the inconsistencies in the treatment of complaints and allegations by supervisors and managers underscores the need for greater emphasis for managers and supervisors on how to respond to issues when they arise. For example, the risk of harassment and discrimination increases with the consumption of alcohol, and as noted in the Baseline Assessment, the Equal Employment Opportunity Commission (“EEOC”) specifically identifies workplace cultures that tolerate or encourage alcohol consumption as a risk factor for harassment. Employees on the casino floor and in restaurants and bars reported increased aggressiveness and harassment from intoxicated Patrons, particularly when those individuals were denied further drinks. In these circumstances, consistent supervisor and managerial support is critical to ensuring that employees are empowered to effectively deal with intoxicated Patrons.

The Monitor Team does not take a specific position on when this training should happen and is not opposed to such additional training taking place in a setting where non-managers and supervisors are present. However, in keeping with DOJ guidance, the Monitor Team continues to recommend that managers and supervisors receive some separate trainings focused on issues specific to managers and supervisors. In designing these trainings, the Company should consider the appropriate cadence, keeping in mind that the training should be relevant to individuals at all stages of their career. In that regard, trainings should be given to individuals at onboarding and upon promotion.

Follow-Up Recommendations

Based on the fact that the Company has not satisfied this Recommendation, we reissue it here with a new deadline.

<p>Baseline Assessment Recommendation T&G 3</p>	<p>By May 31, 2022, incorporate the following topics into trainings for managers and supervisors:</p> <ul style="list-style-type: none"> ▶ intake and escalation of employee complaints; ▶ the Personal Relationships Policy, including reporting obligations; ▶ social media, including as a potential platform for harassment; ▶ the risks of alcohol usage in the workplace; ▶ the impact and limitations of off-duty conduct; and ▶ how to appropriately process and escalate both formal complaints concerning discrimination and harassment and problematic behaviors they have observed or of which they have made aware.
--	--

Baseline Assessment Recommendation T&G 4: By March 31, 2021, develop a training plan for ER that includes, at minimum, annual trainings on all HR subject matter policies and procedures for which ER is responsible and submit documentary evidence of the plan to the Monitor Team.

Summary Status

The Company has not satisfied this Recommendation.

The Monitor Team has not received a training plan for ER that includes training on all HR subject matters and policies and procedures for which ER is responsible.

Assessment of Work Completed

The Company’s HR function has experienced significant turnover during this phase of the Monitor Team’s review, particularly at EBH. These changes have naturally required the Company to shift its attention to recruitment efforts and away from other priorities, including the training of HR teams. For example, as noted above, a former Executive Director of HR at EBH departed the Company in the Spring of 2021. Although EBH quickly filled the position, other ER personnel, including counselors, departed the Company or moved into other roles at EBH, leading, at one point, to a complete vacancy in counselors. At the same time as the Company is actively working to fill vacant positions, we understand that the Company is also developing an ER training program. The Monitor Team understands that the recent investigations training is the first executed training in a planned quarterly training series and will review additional training plans and materials in the coming phase of review. The Monitor Team emphasizes the importance of this Recommendation to maintaining the cadence of trainings and ensuring the sustainability and consistency of the Company’s training efforts and investigations process.

Follow-Up Recommendations

Because the Company has not satisfied this Recommendation, in part due to significant employee turnover, we reissue it here with an updated deadline.

<p>Baseline Assessment Recommendation T&G 4</p>	<p>By May 31, 2022, develop a training plan for ER that includes, at minimum, annual trainings on all HR subject matter policies and procedures for which ER is responsible and submit documentary evidence of the plan to the Monitor Team</p>
--	---

Phase II Report Recommendation T&G 2: Continue to develop short, tailored trainings that address gaps in knowledge in position-specific realities.

Summary Status

The Company continues to satisfy this ongoing Recommendation.

The Company developed an online employee training focused on the updated Employee Interaction with Guests and Other Third Parties Policy.

Assessment of Work Completed

As discussed in our Baseline Assessment, Compliance authorities—including the EEOC and DOJ—advise that an integral component of an effective HRCP is the Company’s training and guidance to employees at all levels. For example, the EEOC outlines several principles to guide the structure of successful compliance training, including that a Company’s training program be routinely evaluated.³ The DOJ similarly encourages companies to “assess the steps taken by the Company to ensure that policies and procedures have been integrated into the organization, including through periodic training and certification for all . . . employees” and “whether the company has relayed information in a manner tailored to the audience’s size, sophistication, or subject matter expertise.” Evaluation of Corporate Compliance Programs at 5.

In the Phase III Interim Presentation to the MGC, the Monitor Team reported that the Company produced an online training on the Employee Interaction with Guests and Other Third Parties Policy, specifically covering management responsibilities, employee guidelines, and reporting channels and responsibilities. The target audience for this training was all employees who have “a job that requires regular interactions with guests.” This includes, among other groups, Cage, Slots, Table Games, Concierge, Housekeeping, Public Area, Salon, Spa, and Food & Beverage. The Company assigned the training to each employee via the Company’s online training platform, WE Learn, which enables the Company to track employee completion. As of the date of our Phase III Interim Presentation, the completion rate of the training was 75% at EBH and 84% at WLV, with Food & Beverage employees lagging behind other groups.

Overall, surveyed employees indicated that the training was well-received. For example, in response to the Monitor Team’s written question concerning review of core HRCP policies, 92% of employees at WLV and 61% of employees at EBH indicated that they reviewed the Employee Interaction with Guests and Other Third Parties Policy. Moreover, when the Monitor Team asked tailored questions about the training, surveyed employees generally reported their recollection of the online training, specifically calling out the video messages from property presidents. Based on the Monitor Team’s testing activities, the training appears to have been effective in conveying the key policy elements to employees.

Importantly, the training also began with introductory video messages by the then property Presidents for EBH and WLV. In the video messages, both Presidents clearly and sincerely messaged the Company’s position on Patron misconduct and instructed employees to report misconduct regardless of the spend of an offending Patron. The Monitor Team understands that the Company anticipates revised training will be implemented to reflect current property Presidents at both locations.

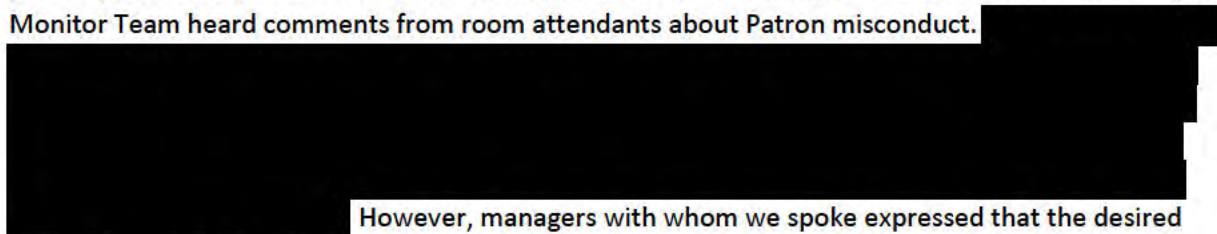
The introduction was followed by several modules featuring videos portraying employees, including cocktail servers and spa employees, dealing with improper behavior from patrons. The training is well-tailored to the Company’s operations and provides discrete guidance on how to respond to common instances of inappropriate Patron behavior by, for example, providing sample scripts that

³ Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace*, EEOC (June 2016), https://www.eeoc.gov/sites/default/files/migrated_files/eeoc/task_force/harassment/report.pdf (“EEOC 2016 Report”).

employees can use. After each module, employees are prompted to answer questions that are designed to highlight key elements of the policy. If an employee answers the question incorrectly, the employee is directed to re-watch the relevant module.

This is the type of testing that the DOJ looks for in evaluating corporate compliance programs and the Monitor Team commends the Company for its effort. Indeed, the DOJ encourages companies to “give employees practical advice or case studies to address real-life scenarios.” Evaluation of Corporate Compliance Programs at 5. The Monitor Team’s Recommendation was driven by this criteria and the Company’s response shows that it is conducting tailored training to help employees mitigate particularized risks posed by third parties.

However, as set forth by the DOJ, the Company should continuously assess where additional training may be warranted. In that vein, certain employees that participated in focus groups across both properties expressed a need for additional training, tailored to their operational realities. Specifically, employees from Housekeeping, PAD, and Salon expressed their appreciation of the training, but requested training tailored to their particular engagements with Patrons. For example, multiple Housekeeping employees requested additional guidance with respect to servicing rooms with Patrons present, particularly when those Patrons may be intoxicated. During on-site visits at EBH and WLV, the Monitor Team heard comments from room attendants about Patron misconduct.



However, managers with whom we spoke expressed that the desired approach for such a situation was clear: Housekeeping staff should not tolerate inappropriate conduct from Patrons and should feel empowered to return to clean the room after the Patron has left should they feel uncomfortable servicing the room with the Patron present. The Monitor Team observed similar disconnects between management and line level employee understandings in other departments as well. Instances such as these suggest that hotel Patrons could benefit from additional messaging regarding behavior and service expectations.

In addition, some salon employees, particularly at WLV, requested additional support and guidance in how to appropriately deal with Patrons whose behavior may not rise to the level of sexual harassment or discrimination on a protected ground, but is otherwise inappropriate. For example, multiple salon employees observed that their workspace can be as isolating as other departments, and therefore may benefit from the same kinds of resources available to those employees. This feedback underscores the importance of ongoing monitoring of areas in which employees may benefit from targeted and function-specific training and guidance. Thus, the Monitor Team reissues this Recommendation and will continue to review the Company’s training program, with an emphasis on short, tailored trainings that address gaps in knowledge and position-specific realities.

Follow-Up Recommendations

<p>Phase II Report Recommendation T&G 2</p>	<p>Continue to develop short, tailored trainings that address gaps in knowledge in position-specific realities.</p>
--	---

Phase II Report Recommendation T&G 3: Develop additional diversity and inclusion training as part of the formal training program.

Summary Status

The Company has partially satisfied this Recommendation.

The Monitor Team has not received a Company-specific D&I training. As noted in our Phase III Interim Presentation, the Company onboarded a new SVP of D&I tasked with the development of the Company's D&I strategy. The Monitor Team has heard about the strategy and related activities through interviews with key personnel, including the SVP of D&I, weekly meetings with the Company. On March 16, 2022, the Company produced its D&I Strategic Plan, and the Monitor Team looks forward to assessing the plan and testing its implementation in the next phase of the Monitorship.

Assessment of Work Completed

The Monitor Team understands that a Company-specific D&I training program is an important feature of the Company's new D&I strategy. In the next phase of review, the Monitor Team looks forward to reviewing the D&I strategy in greater detail and observing progress on training initiatives.

In the meantime, the Company has continued its D&I training initiatives as part of its Preventing Harassment and Discrimination training. The training consists of an external training video implemented as part of onboarding for all employees. The video, produced by an external vendor, addresses core D&I topics, including how to recognize and overcome unconscious bias and how to embrace the inclusion component of D&I.

The training video begins with unconscious bias, specifically by helping employees to identify and acknowledge their biases or the "unconscious assumptions" people make about others. The training instructs that having a bias "isn't illegal" but that "acting on one at work can be." Helpfully, the training also explains the biological and evolution bases for biases, and why they no longer serve the same purpose today. The training breaks to show actors playing out examples of unconscious bias and provides instructive examples on how to overcome them. The last section of the training addresses embracing D&I.

Although the training video is instructive, focus groups conducted during this phase of review suggest there is room for the Company to improve its D&I-specific training efforts, particularly at EBH. Specifically, 86% of Las Vegas employees surveyed reported that they received D&I training. By contrast, only 52% of EBH employees surveyed indicated receiving the training.

Notwithstanding the discrepancy in responses between EBH and WLV, one consistent theme in discussions with surveyed employees was the need for specifically targeted D&I training on transgender and gender fluid identities. Specifically, the Monitor Team received multiple accounts of confusion concerning bathroom use by Patrons who identify as transgender or gender fluid. Given this feedback and because the Monitor Team has not yet received a revised and tailored training program, we recommend that the Company pay particular attention to these topics in the design and implementation of its D&I training program.

The Company's training efforts form part of a larger D&I strategy designed by the Company's SVP of D&I. Through our discussions with Company personnel, we understand that the development of the Company's D&I strategy began with the SVP of D&I's preliminary assessment of the Company's D&I landscape. The assessment included discussions with senior management, such as the Company's then CEO, GC, and respective property Presidents and HR personnel, as well as meetings with various other stakeholders. We understand that the SVP of D&I also engaged in benchmarking activities through CEO ACTION for Diversity & Inclusion—a coalition of CEOs “founded on a shared belief that diversity, equity and inclusion is a societal issue, not a competitive one” and in which CEOs are “vital to driving change at scale.”⁴ This was followed by the implementation of D&I focus groups in Boston and Las Vegas.

Based on the information obtained through these preliminary activities, the SVP of D&I developed the Company's D&I strategy, which was approved by respective property leadership and the Company's then CEO. The strategy is organized into three pillars: workplace, marketplace, and community and also includes a D&I Advisory Council (“Advisory Council”). The Advisory Council generally consists of VPs and above across both properties as well as other relevant stakeholders, namely Learning and Development representatives. The Monitor Team understands that training is covered by the Workplace pillar, which also includes cultural commemorations, D&I events, director training, recruitment, and selection. Marketplace pillar covers D&I initiatives with respect to how the Company interacts with the market and engages external stakeholders. Lastly, the Community pillar addresses the Company's D&I activities with respect to the wider community (e.g., volunteering, and related activities).

As noted above, the Monitor Team will assess the Company's D&I Strategic Plan in the next phase of this Monitorship. However, the Company produced its Black History Month Celebration video to the Monitor Team. The thirteen-minute video starts with an introductory message from one of the Company's Board of Directors who highlights the importance of celebrating Black History Month and remarks on his professional history. The video then breaks to a montage of employees across properties, expressing what Black History Month means to them, culminating in a discussion between the Company's VP of D&I and WLV's VP of Food & Beverage. The Monitor Team enjoyed and appreciated the video: it was heartfelt, importantly set the tone from the top by including a message from one of the Company's Board members, and appropriately integrated employees at all levels into an important discussion about black history. The Monitor Team commends the Company's efforts and looks forward to seeing other Company-wide discussions about important D&I topics.

The Company also shared a January 17, 2022 email communication from the SVP of D&I titled “Celebrating Martin Luther King, Jr. Day” to all employees at WLV. The email introduces the Company's Diversity Speaker Series starting with the commemoration of Dr. Martin Luther King, Jr. The email described Dr. King's “personified inclusive leadership” and “[i]n keeping with this spirit of service,” invited employees to join for a community service project. The email included a link to a video containing the Company's “MLK Commemoration program.” Like the Black History Month video, the communication is instructive and welcoming, demonstrating the Company's commitment to D&I by recognizing an important figure in American history. The Monitor Team encourages additional communications around other annual and monthly celebrations.

⁴ Purpose, CEO Action for Diversity & Inclusion, <https://www.ceoaction.com/purpose/> (last visited March 22, 2022).

Despite these positive developments, the Company has not produced a Company-specific D&I training program, which the Monitor Team understands, is a key feature of the Company’s new D&I strategy. In the next phase of review, the Monitor Team looks forward to reviewing progress on training initiatives and continuing to test the effectiveness of the Company’s D&I training.

Follow-Up Recommendations

Because the Monitor Team has not received documentation evidencing the progress made on the Company’s D&I training initiatives, we reformulate Phase II Report Recommendation T&G 3 as follows.

<p>Phase III Report Recommendation T&G 1</p>	<p>Provide evidence of Company-specific D&I training as part of the formal training program by May 31, 2022.</p>
<p>Phase III Report Recommendation T&G 2</p>	<p>Include specific guidance on transgender and gender identity as part of D&I training.</p>

Additional Considerations/Further Testing

In the next phase of review, the Monitor Team will assess the effectiveness of the Company’s D&I training program.

Phase II Report Recommendation T&G 4: Update future Security Academy training to specifically cover harassment and discrimination.

Summary Status

The Company has not satisfied this Recommendation.

The Monitor Team has not received a revised Security Academy training deck.

Assessment of Work Completed

As noted above, the Monitor Team has not received a revised Security Academy training deck and therefore cannot assess the extent to which the training has been revised, including with respect to this Recommendation. Interviews with key security personnel at EBH and WLV did not shed a cohesive light on the status of this Recommendation, although we understand that the security training manual—upon which the training is based—may be undergoing some revision. Specifically, interviews with key personnel indicated that revision of the manual was an ongoing activity but provided no further specificity as to the nature of those revisions, including whether they addressed the Monitor Team’s recommendations. Given that security personnel are often first on the scene to respond to incidents of harassment and discrimination, the Monitor Teams emphasizes the importance of this Recommendation to ensure cohesiveness and uniformity of response to incidents of harassment and discrimination.

Follow-Up Recommendations

The Monitor Team reissues the Phase II Report Recommendation T&G 4 with a deadline.

<p>Phase II Report Recommendation T&G 4</p>	<p>By May 31, 2022, update future Security Academy training to specifically cover harassment and discrimination and provide documentary evidence to the Monitor Team.</p>
--	---

Baseline Assessment Recommendation T&G 6: Continue to leverage existing communications channels, like pre-shifts, to regularly reinforce messages from trainings.

Summary Status

The Company continues to satisfy this ongoing Recommendation.

The Monitor Team received and reviewed a large sampling of WE Shift messages from the Company, the large majority of which include specific messaging on core HRCP compliance policies. In addition, and as discussed in Phase III Interim Presentation and in Section III.C., Policies & Procedures, the Company held a Compliance Pop-up Event, in which it tested employees on important elements of its core HRCP compliance policies and recently used Valentine’s Day to promote key elements from the Personal Relationships Policy.

Assessment of Work Completed

The Company continues to leverage existing communications channels to regularly reinforce messages from trainings. In addition to continuing messaging through pre-shifts, the Company has creatively developed other ways to test and reinforce messages from training through the addition of “Training Corners” in WE Shifts, Compliance Pop-up Events, and monthly features of key HRCP policies.

The Monitor Team was pleased to see the development of a “Training Corner” in the WE Shifts reviewed by the Monitor Team. These “Training Corners” generally appear on the bottom right-hand corner of daily WE Shift messages and contain a “Compliance Pop Quiz” on various Company policies, including core HRCP policies. For example, in September, Compliance quizzes appeared to focus on the Company’s Preventing Harassment and Discrimination Policy, specifically testing employees on their knowledge of the Company’s various reporting channels. Other September 2021 WE Shift Training Corners included true/false questions on bystander intervention and retaliation. Other core HRCP policies tested through WE Shift training corners during Fall 2021 include: Personal Presentation Policy, Personal Conduct Policy, Code of Business Conduct and Ethics, Employee Interaction with Guests and Third Parties Policy, and Personal Relationships Policy.

As discussed in greater detail in Section III.C., Policies & Procedures, the Company developed and implemented a Compliance Pop-up Event at both properties. The Event tested employees’ knowledge on core HRCP Policies, including but not limited to the Preventing Harassment and Discrimination Policy and Personal Relationships Policy and was attended by senior leadership across both properties. As observed on our Phase III Interim Presentation, the Compliance Pop-up Event was a creative way to engage employees on important topics from training, while also providing a platform for senior leader to demonstrate the Company’s commitment to the HRCP. The Monitor Team encourages more activities of this nature.

Finally, and also discussed in greater detail in Section III.C., Policies & Procedures, the Company featured the Personal Relationships Policy as part of its monthly Compliance Policy highlight. Through printed and digital displays, the Company leveraged existing communication channels to reinforce messaging from its Preventing Harassment and Discrimination training, as contemplated by this Recommendation. The Monitor Team looks forward to receiving evidence of subsequent policy highlights as the Company implements its 2022 Compliance Calendar.

Additional Considerations/Further Testing

In line with DOJ expectations, the Monitor Team will continue to assess how the Company leverages existing communication channels and creatively develop new ones to regularly reinforce messages from trainings.

Baseline Assessment Recommendation T&G 7: By April 30, 2021, develop procedures to periodically test and measure the effectiveness of trainings and incorporate feedback into future trainings.

Summary Status

The Company has partially satisfied this Recommendation.

The Monitor Team has seen some indication that the Company is soliciting information on the effectiveness of trainings. In particular, we have seen the Company use Training Corners in WE Shifts (as discussed in greater detail above), but not a cohesive approach evidencing the development of procedures to periodically test and measure the effectiveness of trainings and incorporate feedback into future trainings.

Assessment of Work Completed

In its Evaluation of Corporate Compliance Programs Guidance, DOJ emphasizes the importance of evaluating how a company assesses the effectiveness of its training. Evaluation of Corporate Compliance Programs at 5. To that end, the Monitor Team recommended that the Company develop procedures to periodically test and measure the effectiveness of trainings and incorporate feedback into future trainings. As described in greater detail under Phase II Report Recommendation T&G 2, the Company developed a training on the Employee Interaction with Guests and other Third Parties Policy, consisting of multiple modules and quizzes to test employees' comprehension of core themes.

Also discussed above, the Company implemented Training Corners through WE Shift communications and held a Compliance Pop-up Event at both properties. Both activities test employees on the effectiveness of training on key policies. If executed on a periodic and consistent basis, these are precisely the type of testing activities contemplated by this Recommendation. Moreover, the Monitor Team recommends that the Company not only continue this activity but systematize and incorporate its feedback into future trainings. Specifically, the Company should use responses to training corners to identify potential gaps or areas of improvement in training and in doing so creating a consistent feedback loop.

The Company has a significant number of employees for whom English is a second language and many of whom have limited English proficiency. During this period of review, the Monitor Team was particularly struck by the significant number of surveyed employees across both properties who

indicated that they could not fully understand policies and related trainings. Many noted that translations had been provided for them by colleagues but also requested that policies and trainings be translated into additional languages.

Consistent with our approach to focus groups and based on employee demographics provided by the Company, the Monitor Team translated focus group surveys into Spanish and Haitian Creole. Given the choice, a significant number of employees opted to complete the focus group surveys in a non-English option. In addition, to facilitate discussion, the Monitor Team conducted some focus groups in Spanish.

A fundamental part of assessing the effectiveness of a company’s training program is whether “training [has] been offered in the form and language appropriate for the audience.” *Id.* The EEOC has also emphasized the importance of ensuring that language considerations are taken into account. For example, EEOC guidance states that “effective written harassment policies are, for example . . . [t]ranslated into all languages commonly used by employees” and that “[h]arassment training may be most effective if it is, among other things . . . [p]rovided in all languages commonly used by employees.”⁵ Further, to ensure that the Company’s training program is continuously evaluated, the Monitor Team recommends that the Company engage in a self-assessment of its employee base to identify policies and trainings that may warrant translation into other languages.

Follow up Recommendations

The Monitor Team reissues Baseline Assessment T&G 7 and creates an additional Recommendation to address potential language enhancements to certain Company policies and trainings.

<p>Baseline Assessment Recommendation T&G 7</p>	<p>By May 31, 2022, develop procedures to periodically test and measure the effectiveness of trainings and incorporate feedback into future trainings.</p>
<p>Phase III Report Recommendation T&G 4</p>	<p>Conduct an assessment of the employee base at EBH and WLV to identify policies and trainings that may warrant translation into languages other than English.</p>

F. Internal Reporting and Investigation

The Monitor Team continues to view the Company’s internal reporting and investigation procedures as key to the success of the HRCP. Since the Phase II Report, the Monitor Team has been pleased to see the Company take steps forward to enhance its procedures, including rolling out a new reporting platform, launching employee-focused communications regarding the importance of speaking up, and updating its Investigations Policy. The design of an enhanced reporting and investigation framework is crucial to the foundation of the Company’s HRCP, but the application of this framework

⁵ EEOC, Promising Practices for Preventing Harassment (Nov.21, 2017), <https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment>.

will be critical to its success. Indeed, the MGC's Decision and Order lays out "substantial evidence" of the Company's prior failures "to follow its own corporate policies," including the appropriate reporting and investigation of allegations of misconduct made against a senior executive. Decision and Order at 46. For that reason, the Monitor Team will be focused on evaluating and testing the implementation of these aspects of the Company's program to ensure strict adherence to these important policies.

The Monitor Team observed in the Phase II Report, that the Company's Legal and ER teams had to address the health and safety risks presented by the pandemic, placing additional strain on the personnel responsible for HRCP matters. As a result of the pandemic, the Monitor Team was unable to conduct focus groups and speak with line employees at that time.

However, during the Phase III review period, the Monitor Team did speak directly with employees and conduct focus groups. Among other benefits, this gave us an opportunity to assess the efficacy of the Company's Speak Up communication campaigns around reporting, reaching not only potential complainants, but also personnel responsible for implementing the Company's policies regarding reporting and investigations. Focus group participants expressed a positive shift in employee perception of speak-up culture since we conducted the Baseline Assessment but survey results were more nuanced and indicated the Company and its senior leaders still have work to do. The Monitor Team reviewed 60 investigation files and spoke with personnel involved in the review of allegations. Through that exercise, we observed the continued need to strengthen investigation processes, including around document collection, credibility determinations, and documenting findings.

Recognizing the improvements made over the last phase of review, particularly finalizing the new Investigations Policy, the Monitor Team will be focused on implementation and continuous improvement in the coming review period.

1. Recommendations

Baseline Assessment Recommendation IRI 1: By April 30, 2021, launch a communication campaign through which senior management at the Wynn Resorts and property levels communicate support for a speak-up culture. While the campaign may be timed with the launch of the Company's new reporting channel, the lack of a new reporting channel should not delay the start of the campaign.

[This can be done in connection with Baseline Assessment Recommendation IRI 3 and Baseline Assessment Recommendation P&P 2.]

Baseline Assessment Recommendation IRI 3: Within two weeks of the launch of the new reporting channel, launch a campaign to promote the new reporting channel, including, for example, posters, table-top messages, computerized messages on TV screens, and pre-shift communications.

[This can be done in connection with Baseline Assessment Recommendation IRI 1 and Baseline Assessment Recommendation P&P 2.]

Summary Status

The Company has satisfied this Recommendation.

In 2021, the Company launched a communications plan at both properties centered on speak-up culture.

Assessment of Work Completed

As noted in the discussion of Culture of Compliance and Conduct at the Top, the Company designed and executed a communications campaign focused on encouraging employees to report concerns and highlighting the new reporting channel. The campaign included digital displays in Back of House, escalator banners, and information displayed on napkin holders, including a QR code that linked to a one-pager on harassment reporting. In addition, WE Shift messages from senior management emphasized the importance of speaking up. During focus groups, employees were not only mindful of the speak up campaign but also demonstrated an increased awareness of the hotline and other reporting channels. Despite these efforts and positive feedback on the campaign, employee comments on speak-up culture reflected in anonymous surveys of focus group participants indicates there is room for improvement. The Monitor Team recommends that the Company continue to include communications in their HRCP campaign emphasizing speak-up culture and the availability of anonymous reporting channels.

A comparison of results from surveys conducted during the Baseline Assessment and the current phase of review demonstrate where the Company has opportunities to grow. First, survey questions aimed at assessing trust in the reporting process highlighted that most employees are comfortable bringing a report forward while also showing that Boston employees trust the process, and particularly anonymous reporting, less than their Vegas counterparts. Second, the survey probed employee awareness of unreported instances of misconduct and demonstrated that a greater number of employees acknowledged unreported instances of harassment and discrimination in Boston than in Las Vegas. Third, the survey questions aimed at addressing management tone on speak-up culture revealed that employees are hearing about the Company's anti-harassment and discrimination policies from their managers but employees in Boston are not as sure of senior management's support for speak-up culture as they are in Las Vegas.

Comfort and trust in reporting processes

Ensuring trust in anonymous reporting is key to the success of the HRCP. Indeed, the DOJ considers "the existence of an efficient and trusted mechanism by which employees can anonymously or confidentially report allegations" to be a hallmark of a well-designed compliance program. Evaluation of Corporate Compliance Programs at 6.

Survey results reflect that comfort with the Company's reporting process has remained relatively stable or slightly decreased at both properties.



[REDACTED]

Faith in the anonymous reporting process has also slightly decreased, with Boston employees expressing significantly less trust in the process than their Las Vegas counterparts.

[REDACTED]

In the next phase of review, the Monitor Team will assess the causes underlying the delta between the responses from two properties.

Awareness of unreported conduct

The Monitor Team also tested employee awareness of unreported harassment or discrimination allegations. In this category, the Monitor Team observed improvement with slightly fewer employees at both properties reporting awareness of allegations of harassment or discrimination that had not been reported at the property.

Management engagement on harassment and discrimination issues

Employee feedback regarding management engagement on harassment and discrimination issues was mixed.

[REDACTED]

The shift in Las Vegas was slightly more favorable.

Similarly, when asked if property and corporate executives supported a “culture of compliance, which includes a culture of speaking up against harassment and discrimination,” employees in Boston delivered a mixed response.

The difference between the two properties in response to this question, in particular, suggests that senior management at the Boston property should send a stronger message about its support for the Company’s speak-up culture. The Monitor Team understands that since these surveys were conducted, senior management in Boston has been conducting department-specific town halls with members of various departments across the property. These town halls provide an opportunity to reinforce this message and the Monitor Team will test the impact of these conversations on employee perception of speak-up culture in the next phase of review.

Based on the results of these surveys and what the Monitor Team heard from employees during focus groups, the majority of employees are comfortable speaking up and trust the anonymous reporting channel. But work remains to be done to effectively communicate management support, at all levels, for the Company’s speak-up culture. The Monitor Team understands that HR at both properties have developed a coordinated HRCP communications campaign for 2022. The Monitor Team has reviewed a calendar of compliance communications but has not reviewed materials from the campaign. The Monitor Team notes that one of this year’s campaign themes is that “Preventing Harassment & Discrimination Starts at the Top” and recommends that the Company continue to dedicate space and resources to communicating the importance of speak-up culture at all levels, whether through this campaign or through other communications.

Follow-Up Recommendations

The Monitor Team recommends that the Company continue to develop communications campaigns centered on reporting and speak-up culture.

<p>Phase III Report Recommendation IRI 1</p>	<p>Provide evidence of or launch a communication campaign through which senior management at the Wynn Resorts and property levels increases the frequency of communicating its support for a speak-up culture, emphasizing the available means through which employees can report concerns.</p>
---	---

Additional Considerations/Further Testing

The Monitor Team will continue to solicit employee feedback regarding speak-up culture and comfort with reporting. The Monitor Team will also review communication campaign strategy documents and materials shared with employees which are centered on these topics. Lastly, the Monitor Team’s review of investigations files will assess the effectiveness of this messaging.

Baseline Assessment Recommendation IRI 2: Within two weeks of the launch of the new reporting channel, provide documentary evidence to the Monitor Team that the new reporting channel permits multi-lingual reporting options to facilitate reports by employees with proficiency in languages other than English.

Summary Status

The Company has satisfied this Recommendation.

Assessment of Work Completed

The Company’s new reporting channel allows for multi-lingual reporting options. But employee knowledge of these options was less clear. Indeed, focus groups conducted during this phase of review reiterated the importance of providing employees with the opportunity to report concerns in languages other than English.

As noted in the context of Training & Guidance, there may be a language barrier for some employees attending the harassment and discrimination training. So, while the reporting channel provides specific multi-lingual reporting options and ER personnel at both properties confirmed that they have resources available to ensure reports can be made or interviews can be conducted in an employee’s preferred language, these resources have not been publicized to the employee base. In addition to the hotline, the Monitor Team heard from ER personnel at both properties that there were translation resources available, whether from bilingual colleagues or from a translation service available by phone. The Company should consider whether this translation line, which the Monitor Team understands is also used by Front Desk and Security employees, is authorized for ER’s use. To avoid chilling reporting from employees for whom English is not their preferred language, the Company should communicate the availability of multi-lingual options to employees. Specifically, the Company should consider whether to notify employees of the language reporting options currently available through the hotline as well as the ability of ER personnel to use translation services.

Follow-Up Recommendations

<p>Phase III Report Recommendation IRI 2</p>	<p>Provide evidence of communications to employees regarding the available multi-lingual reporting options.</p>
---	---

Additional Considerations/Further Testing

The Monitor Team will test the efficacy of multi-lingual reporting in the next phase of review through submitting a non-English complaint through the Company’s reporting channel and through continued conversations with employees.

Phase II Report Recommendation IRI 1: By February 28, 2021, provide a proposal to extend ER availability to cover the current gaps in the ER on-site schedule.

Phase II Report Recommendation IRI 2: By March 31, 2021, inform employees about the in-person ER schedule, including any variations or flexible availability outside of business hours, ER availability outside of business hours (including remote access), and about any subsequent changes to the schedule.

Summary Status

The Company has satisfied these recommendations.

Given the strain on resources caused by and subsequent to the Pandemic, the Company has not extended in-person ER availability. However, it has instituted signage informing employees about ER availability outside of regular business hours.

Assessment of Work Completed

Although the Company has not extended the hours of availability for in-person ER services, the Company has made an effort to alert employees as to the multiple means of contacting ER outside of regular business hours by placing signs at the ER windows at both properties. Signage at the HR Concierge in Boston and the Staff Services Center in Las Vegas reinforces alternatives to in-person service. In Boston, when the Concierge is closed, the sign provides email addresses and phone numbers for benefits, employment, employee relations, learning and development, employee services, and payroll. In Las Vegas, the Staff Services Center likewise provides email addresses and phone numbers for employee relations, benefits, and learning and development.

This signage addresses the concern that prompted this Recommendation; namely, an employee perception expressed during the Baseline Assessment phase that ER was not available to the graveyard shift or employees working on the weekends. During Phase III review period, the Monitor Team heard some employees express concerns regarding in-person ER availability, but it was not as pronounced as it was during our first Focus Group interviews. In fact, some employees have used alternative methods to contact ER, such as sending an email. Others have approached their managers for HR issues.

Follow-Up Recommendations

The Monitor Team requests that the Company submit documentary evidence of completion to the Monitor Team by May 31, 2022:

<p>Phase III Report Recommendation IRI 3</p>	<p>By May 31, 2022, provide a data-based explanation for the decision not to extend in-person ER availability. This explanation may be provided by email.</p>
---	---

Additional Considerations/Further Testing

The Monitor Team will continue to test employee awareness of and satisfaction with ER availability, particularly on the graveyard and weekend shifts. The Monitor Team would welcome a briefing on a data-based consideration of an extension to ER hours.

Baseline Assessment Recommendation IRI 5: By March 31, 2021, update the Investigations Policy to include clearly defined intake and routing protocols. Those procedures should include the following elements:

- ▶ designation of personnel authorized to receive reports routed through the Company’s reporting channels, including their role and responsibility in the intake process;
- ▶ objective criteria to help intake-personnel scope the issues presented and route the complaint to the appropriate personnel for response and potential investigation;
- ▶ guidance and procedures to wall off from an investigation anyone who is either the subject of an allegation, or may have a conflict that could jeopardize the objectivity of the investigation;
- ▶ clearly defined guidelines for the intake, routing, and response to complaints against

management and senior leadership;

- ▶ substantive guidance for each of the investigative steps enumerated in the Policy; and
- ▶ guidance on measures that should be taken to protect confidentiality in investigations, including guidance with respect to what information may and may not be shared with employees in an investigation.

Phase II Report Recommendation IRI 3: By March 31, 2021, update the Investigations Policy to include the following additional elements:

- ▶ clearly defined guidelines for the retention of electronic data and collection of electronic devices during the course of an investigation; and
- ▶ objective criteria regarding the classification of allegations.

Summary Status

The Company has satisfied these recommendations.

Assessment of Work Completed

One of the core recommendations in our Baseline Assessment was that the Company update its Investigations Policy to include clearer guidance and structure for investigators, in particular regarding the intake and routing of reports, conflicts of interest, and substantive guidance on investigative steps. As noted in our Phase II Report, the Company was delayed in launching the Policy. However, in November 2021, the Company updated the Policy in line with the Monitor Team’s recommendations. In particular, the Policy now includes instructions regarding appropriate document retention and collection; assessment of witness credibility; direction against over-reliance on corroborating evidence; and direction to tie substantiation decisions to policy violations. The Monitor Team will continue to test how effectively counselors are identifying and investigating policy violations implicated by the initial allegations or that arise during the course of the investigation but are separate from the central allegations raised. With the implementation of this Policy underway, the Monitor Team will be testing the effectiveness of this instruction in the next phase of review.

Additional Considerations/Further Testing

The Monitor Team will conduct interviews with HR and ER personnel involved in the investigation process, engage in regular meetings with HR and ER management regarding investigations, and review a sample of investigation files to analyze the implementation of the newly established procedures and assess their effectiveness.

Baseline Assessment Recommendation IRI 6: By May 15, 2021, develop and conduct mandatory training on updated investigations policy for all personnel authorized to conduct investigations.

Summary Status

The Company has satisfied this Recommendation.

The Company did not conduct an investigations training in 2021. However, following the implementation of the updated Investigations Policy, in February, the Company conducted a training on the new policy for all employees authorized to conduct investigations under that Policy.

Assessment of Work Completed

At the close of this phase of review, the Company provided the Monitor Team with a recording of the training and a copy of the slide deck used to train ER personnel. Based on these materials, the Company has implemented a training that emphasizes many of the elements of the new Investigations Policy which were central to the Monitor Team's recommendations, including enhanced guidance regarding routing and intake and investigative steps, such as document retention and collection and assessment of credibility. The recorded session demonstrated positive engagement by a cross-functional group of managers responsible for overseeing implementation of the Policy. In the next phase of review, the Monitor Team will assess the effectiveness of this training and evaluate the need for further training on key elements of the Policy, including processes for effectively walling off from an investigation anyone who is either the subject of an allegation or may have a conflict and the importance of considering allegations and facts learned during the course of an investigation through the lens of policy violations.

Additional Considerations/Further Testing

The Monitor Team will engage with personnel responsible for conducting investigations and review investigation files to test the effectiveness of this training.

Baseline Assessment Recommendation IRI 7: By four weeks following the launch of the new reporting channel, provide documentary evidence to the Monitor Team that HR policies include updated language regarding the Company's reporting channels to ensure consistency across policies.

Summary Status

The Company has satisfied this Recommendation.

Assessment of Work Completed

As described in Section C., Policies & Procedures, the Company has updated a number of policies, as recommended by the Monitor Team. Central to these revisions was the launch of the updated Preventing Harassment and Discrimination Policy, which describes the multiple avenues available to employees for reporting, including "the Company's hotline, EthicsPoint (wynnresorts.ethicspoint.com or (844) 962-1319)." The Employee Interaction with Guests and Third Parties Policy refers employees to "the company's reporting hotline, as set forth in the Preventing Harassment and Discrimination Policy." As of May 2021, the Company has also updated the Code of Business Conduct and Ethics to include the phone number and web address for EthicsPoint. The Code also refers to InTouch for "Macau only" and to Audit Aware for reporting complaints regarding senior executive employees. The Monitor Team did not observe any additional policies which made reference to the reporting line.

Additional Considerations/Further Testing

As additional or updated policies are rolled out, the Monitor Team will continue to evaluate whether they reference the available reporting channels.

Phase II Report Recommendation IRI 4: By May 15, 2021, provide evidence of a schedule or plan for annual training for all employees responsible for conducting investigations.

Summary Status

The Company has not fully satisfied this Recommendation.

As noted in connection with Baseline Assessment Recommendation IRI 6, the Company did not conduct an annual training in 2021 but provided the materials and attendance list for the training conducted in February 2022, reflecting that they trained personnel authorized to conduct investigations, including employees in the ER and Security functions. The Monitor Team understands that additional trainings are being planned for ER personnel on specific topics, including requests for accommodations. However, the Monitor Team has not yet seen the training plan for these employees. The Monitor Team further understands that the WLV Corporate Investigation team attends quarterly meetings to review company and department policies relevant to reporting, documenting, and investigations allegations by employees and Patrons. However, the Monitor Team has not yet seen materials related to these trainings. To the extent the EBH Security function already provides, or plans to provide, additional training to its employees on addressing allegations of harassment and discrimination, the Monitor Team would be interested in viewing those materials as well.

Assessment of Work Completed

The Monitor Team was unable to assess the schedule or plan for training in 2022.

Follow-Up Recommendations

The Monitor Team reissues this Recommendation and requests that the Company submit documentary evidence of completion to the Monitor Team by May 31, 2022:

Phase II Report Recommendation IRI 4	By May 31, 2022, provide a schedule or plan for annual training for employees responsible for conducting investigations.
Phase III Report Recommendation IRI 4	By May 31, 2022, provide evidence of training provided to security personnel for addressing complaints of harassment and discrimination.

Additional Considerations/Further Testing

The Monitor Team will review the attendance list for past trainings and any schedule or plan for future trainings or drafts thereof. The Monitor Team would also welcome the opportunity to review training materials and to sit in on future trainings.

Phase II Report Recommendation IRI 5: Provide evidence that Corporate Security has defined and standardized the classification of incidents related to harassment and discrimination.

Summary Status

The Company has not fully satisfied this Recommendation.

The Monitor Team understands that the Company has changed its process for classifying incidents related to harassment and discrimination to ensure consistency in classification in the iTrack system used by Security. In February 2022, Security management trained employees who use the iTrack system on the appropriate classifications to use. The Monitor Team also understands that Security provided written instructions to employees regarding incident classification. However, the Company has not yet provided the Monitor Team with documentary evidence of the training and a listing of employees who received the training or written instructions.

Assessment of Work Completed

The Monitor Team has spoken to Security management regarding the updates to the classification system and has seen an excerpt of a written communication to employees. However, the Monitor Team has not reviewed materials used during the related training or seen a list of attendees at the training or recipients of the written instructions. Proper classification of iTrack complaints is critical to ensure that these matters are appropriately monitored. Inconsistent classification first became apparent to the Monitor Team over the Phase II review period when the Monitor Team requested a sample of harassment and discrimination iTrack files, Security advised the Monitor Team to use “common terms” as key words. Our review of the files provided reflected the use of common terms but also revealed inconsistent, as well as inappropriate, classification of certain incidents. For example, incidents that clearly related to allegations of sexual harassment or assault were variably classified as “suspicious,” “medical,” or “personal illness incidents.” Without guidance regarding the proper classification of incidents, the Company and the Monitor Team will be unable to accurately track metrics and conduct trends analysis.

Follow-Up Recommendations

The Monitor Team reissues this Recommendation and requests that the Company submit documentary evidence of completion to the Monitor Team by May 31, 2022:

<p>Phase II Report Recommendation IRI 5</p>	<p>By May 31, 2022, provide evidence that Corporate Security has defined and standardized the classification of incidents related to harassment and discrimination.</p>
--	---

Additional Considerations/Further Testing

The Monitor Team will review the materials evidencing the change in classification process and related training and test the effectiveness of the new process by reviewing a sample of iTrack files to analyze the application of the newly established procedures.

G. Incentives and Discipline

For the duration of this Monitorship, the Company has not operated a company-wide performance management program. When the Baseline Assessment was submitted, the Company was

in the process of designing and implementing a system that would have applied to all employees across the organization. The Executive Director driving that initiative left the Company in August 2020, before the submission of the Phase II Report, and senior leaders informed the Monitor Team that the Company would not move forward with a company-wide performance management program. The Company now finds itself at a potential turning point for performance management. The Monitor Team understands that the Company has reconsidered its prior position and is in the process of once again developing a unified performance management program. Initial rollout is expected later this year.

Incentivizing compliance is a key hallmark of a successful compliance program and the development of a formal performance management program provides the Company with a significant growth opportunity in this space. As the DOJ has explained, the “establishment of incentives for compliance and disincentives for non-compliance” is a hallmark of an effective compliance program. Evaluation of Corporate Compliance Programs at 13. The DOJ has highlighted the use of “positive incentives” to drive compliance, such as “personnel promotions, rewards, and bonuses for improving and developing a compliance program or demonstrating ethical leadership,” noting that “[s]ome companies have even made compliance a significant metric for management bonuses and/or have made working on compliance a means of career advancement.” For this reason, the Monitor Team continues to view a formal performance management program, including compliance-based metrics, to be central to the success of the HRCP. The Monitor Team will evaluate the Company’s development of its performance management program over the next phase of review, alongside other programs aimed at incentivizing compliance and ensuring employees live up to the HRCP values of the Company.

1. Recommendations

Baseline Assessment Recommendation I&D 1: By March 31, 2021, explicitly integrate standards of behavior related to compliance in its “Employee of the Month” (STARS) programs.

Summary Status

The Company has not fully satisfied this Recommendation.

The Company has updated the Employee Recognition Program Policy but did not provide the Monitor Team with evidence demonstrating the dissemination of the policy to employees or documenting the employee behaviors the Program has been used to recognize.

Assessment of Work Completed

The Employee Recognition Program Policy, which governs the monthly team member recognition program at the Company, known as STARS, now states that the program is “about recognizing those who consistently show up with a great attitude, work ethic and demonstrate excellence in their role, including but not limited to extraordinary guest service and teamwork and consistency excelling in the standards of behavior associated with our compliance policies.” This description meets the Recommendation’s requirement to explicitly integrate compliance values into the Policy. However, in order to evaluate the effectiveness of this change, the Monitor Team needs to assess whether employees are aware of the scope of the Policy and review the types of behaviors actually garnering recognition under the Policy.

As noted in the Phase II Report, programs that reward excellent customer service, like “Employee of the Month,” are also well-suited to reward HRCP compliant behavior because employee interactions with Patrons or other third parties provide opportunities to display Company values or to interrupt inappropriate behavior. Indeed, the Preventing Harassment and Discrimination Policy, a cornerstone of the Company’s HRCP, speaks to the Company’s commitment “to fostering and promoting a culture of diversity” and “to creating a respectful, courteous work environment free of unlawful harassment or discrimination by any employee, volunteer, vendor, contractor, consultant, agent, guest, customer, or visitor.” Behaviors exemplifying these values are worthy of recognition and Company programs should incentivize compliance with the Policy. For example, an employee who steps in to assist and ensure that a differently abled Patron is treated with respect or an employee who de-escalates a situation between peers could and should be recognized under the STARS program. In the next phase of review, the Monitor Team will evaluate whether the program is being used to incentivize compliance in this way.

The Company should continue to highlight to the Monitor Team any events or existing programs that could be used to incentivize compliance. For example, during this phase of review, the Company provided evidence of an HRCP Compliance Pop-up Event held at both properties to reward employees for correctly answering questions about the HRCP. The Company should consider whether there are any other events or recognition programs that could be used to incentivize HRCP compliance.

Follow-Up Recommendations

The Monitor Team requests documentary evidence of dissemination of the updated STARS standard to employees:

<p>Phase III Report Recommendation I&D 1</p>	<p>Provide evidence that the Company has communicated to employees that the STARS program, and any other relevant incentive-based programs, provide avenues for recognition of behaviors exemplifying the values of the HRCP program.</p>
---	---

Additional Considerations/Further Testing

The Monitor Team will review materials disseminating the updated STARS standard to employees and the process by which employees are nominated and selected. The Monitor Team will also review the types of behaviors currently rewarded under the program to evaluate its effectiveness in incentivizing compliance with the HRCP.

Baseline Assessment Recommendation I&D 2: By March 31, 2021, update the Progressive Discipline and Performance Policy as follows:

- ▶ provide additional guidance on how to determine appropriate discipline based on a holistic evaluation of circumstances; and
- ▶ clarify roles, responsibilities, and authority with respect to the disciplinary process.

Summary Status

The Company has satisfied this Recommendation.

Assessment of Work Completed

The Progressive Discipline and Performance Policy has been updated to ensure a holistic approach and to explicitly define the responsibilities of department managers and supervisors in the disciplinary process. In particular, the policy highlights factors that department managers and supervisors should review in determining the level of discipline, including “whether the employee knew what he or she was doing was wrong, whether there were any extenuating circumstances . . ., whether the employee has committed the infraction before, and the level of discipline other employees have received for committing the same or similar infractions.” The Policy also outlines the role of department managers and supervisors as “ensuring that discipline is imposed impartially and consistently,” sets out that department VPs are “the final decisionmaker,” and notes the role of ER in providing guidance “to ensure consistency.”

These changes address the concerns underlying the Recommendation, which originated from testing undertaken during the Baseline Assessment period. Specifically, the Monitor Team observed employee frustrations with a binary approach to discipline: the subjects of investigations were often either terminated or fully reinstated, with little to no observed middle ground. The Monitor Team also heard employee frustrations regarding inconsistent application of discipline. In the next phase of our review, the Monitor Team will assess the effectiveness of the updated policy at addressing these previously expressed concerns and ensuring consistent disciplinary outcomes.

Additional Considerations/Further Testing

The Monitor Team will review discipline imposed in harassment and discrimination matters to test consistency in disciplinary outcomes.

Phase II Report Recommendation I&D 3: Develop a plan for a performance management program that includes a recognition of compliant behavior by both managers and employees. Provide evidence that responsibility for development of the program has been assigned to an individual with oversight over both properties.

Summary Status

The Company has not satisfied this Recommendation.

The Company has not developed a plan for a performance management program. However, we understand that the Company is working to develop such a plan and program.

Assessment of Work Completed

As noted above, the Company has not implemented a performance management program. Over the last phase of review, the Monitor Team heard from multiple managers and employees that a structured evaluation program would be beneficial. Indeed, several managers reported that they have implemented evaluation programs of their own for their direct reports. Those initiatives are a positive

step forward but can result in inconsistencies between departments and amongst employees. Moreover, we did not hear about any compliance-based metrics used in these ad hoc programs. Therefore, the Monitor Team continues to recommend that the Company drive this initiative forward. As noted in the Phase II Report, the Company abandoned the creation of a performance management program in 2020, around the time of the departure of the Executive Director—Performance Management, Compensation, and Benefits. The Monitor Team understands that the performance management program is now under development again and HR anticipates implementing a pilot program this year.

Follow-Up Recommendations

The Monitor Team reissues this Recommendation with a request for periodic updates.

<p>Phase II Report Recommendation I&D 3</p>	<p>Starting May 31, 2022, provide periodic updates on plans for and progress toward a performance management program that includes a recognition of compliant behavior by both managers and employees.</p>
--	--

Additional Considerations/Further Testing

The Monitor Team will review evidence of the development of a plan for a structured evaluation process and its implementation.

H. Risk-Based Review

DOJ considers periodic and on-going risk-based reviews or assessments to be the “starting point” for evaluating “whether a company has a well-designed compliance program” and “how the company has identified, assessed, and defined its risk profile, and the degree to which the program devotes appropriate scrutiny and resources to the spectrum of risks.” Evaluation of Corporate Compliance Programs at 2. A company must first assess risk, and then evaluate the results of its assessment and use information from that exercise to tailor its compliance program in response to the risks or enhancement opportunities identified. *Id.* at 3. Similarly, the EEOC suggests that “to effectuate and convey a sense of urgency and commitment” to preventing harassment, leadership should assess the workplace’s harassment risk factors and then subsequently act to mitigate those risks. EEOC 2016 Report at 33. The EEOC further emphasizes that “employers need to maintain ‘situational awareness’” of the risk factors that exist in their workplace. *Id.* at 30. In short, assessment of risk and program adjustment needs to be an on-going effort.

Since the Baseline Assessment, the Company has developed and implemented an HRCP risk assessment process that forms part of the Company’s annual audit cycle. Through this process, Internal Audit applies qualitative and quantitative principles to classify the Company’s employees into “high,” “medium,” and “low” risk categories. The HRCP risk assessment procedures also include Internal Audit interviews of certain personnel and an evaluation of HRCP documentation. In addition, Internal Audit reviews specific HRCP program elements annually, including Culture of Compliance and Conduct at the Top, Policies and Procedures, Training and Guidance, Employee and Third Party Relationships, and other specific testing. The Compliance and Audit Committees receive a final report of all issues identified.

In Phase III, the Company demonstrated a faithful application of its written HRCP Risk Assessment protocol, as discussed further below in Section III.I., Monitoring and Testing. The Monitor Team also previously recommended that the Security Department document its risk assessment procedures. While the Monitor Team understands the Security Department is conducting risk assessments in practice, the Company has not yet provided documentation of those procedures as required by this Recommendation.

1. Recommendations

Baseline Assessment Recommendation RBR 5: In the Company’s existing Security Protocol, document the Security Department’s risk assessment procedures for identifying conditions that could expose employees to physical harm, including sexual assault. Provide the Monitor Team documentation reflecting the updated Security protocol by June 30, 2021.

Summary Status

The Company has largely satisfied this Recommendation.

The Monitor Team understands that the Company is actively conducting risk assessments of physical conditions that could expose employees to physical harm, including sexual harassment. The Monitor Team would like the Company to memorialize this practice so that it is consistently done.

Assessment of Work Completed

Although the Monitor Team has not seen written physical security risk assessment procedures, from interviews, we understand that in practice the Security Department assesses the EBH and WLV properties for security risks that include the risk of harassment and sexual assault. The review includes

[REDACTED]

The Monitor Team understands that the VP of Security and Crisis Management & Response works with a designated analyst, who assists with assessing investigations statistics and identifying trends. Based on identified commonalities, the Security Department evaluates the risks presented and adjusts resources accordingly. Citing a recent example, the Company’s VP of Security and Crisis Management & Response noted that

[REDACTED]

The Monitor Team is pleased to see the Company actively identifying, evaluating, and mitigating risks across the properties.

These practices reflect the spirit of the EEOC’s guidance on risk factors that impact the likelihood of harassment in the workplace. The EEOC suggests a number of conditions that employers should assess to evaluate their harassment risk, including whether employees are working in “isolated workplaces.” EEOC 2016 Report at 29. The Monitor Team commends the Company for setting in motion a process for identifying and addressing harassment risks associated with employees,

[REDACTED]

In keeping with our goal of ensuring that the Company’s efforts are sustained beyond this Monitorship and beyond the tenure of personnel currently responsible for carrying out these good practices, we renew our Recommendation that the Company explicitly document its security risk assessment procedures as applying to assessments of risks to employees and Patrons from sexual misconduct. The Monitor Team notes that the Company currently has a protocol in place that requires conducting safety inspections and recommends that sexual misconduct be enumerated as part of the scope of the inspections or elsewhere. Documenting this procedure will help ensure that such risk assessments are conducted systematically and consistently in accordance with established procedures and criteria on a future basis and that they can be easily replicated across the organization.

Follow-Up Recommendations

The Monitor Team revises this Recommendation and includes an updated deadline.

<p>Baseline Assessment Recommendation RBR 5</p>	<p>In the Company’s existing Security Protocol, document the Security Department’s risk assessment procedures for identifying conditions that could expose employees to sexual misconduct. Provide the Monitor Team with documentation reflecting that change by June 30, 2022.</p>
--	---

I. Monitoring and Testing

Monitoring and testing are critical elements of a mature and sustainable compliance program. Thus, the Company’s monitoring and testing program has become and will continue to be an increased focus of the Monitor Team’s review in future phases. To date, the Company continues to monitor harassment and discrimination allegations and investigations, and has implemented an annual HRCP testing program through the Company’s Internal Audit. The Monitor Team commends the Company for these efforts. As noted in previous reports, while these efforts are important, opportunities for improvement remain. Most notably, we encourage the Company to move away from a reliance on manual review and analysis of reporting and investigation data towards a more automated approach that will allow the Company to aggregate and synthesize a broader range of data. Additionally, we encourage the Company to utilize the data for management’s and relevant functions’ own internal understanding of trends and areas for improvement.

The Monitor Team understands that the Company continues to undertake efforts to design a new automated reporting system to enable better trends analysis. The Monitor Team encourages the Company to prioritize those efforts and to implement the changes promptly. In interviews with Company personnel, including personnel in leadership roles, the Monitor Team observed a lack of appreciation for the importance of developing more robust monitoring and testing practices. This sentiment appears to be fueled by a sincere sense that the Company already knows and understands its trends (or lack thereof), and therefore does not need to conduct formal trends analysis. However, an effective compliance program cannot be built on the awareness or general understanding of trends by a specific team or individual. To be sustainable, it requires ongoing monitoring and analysis of trends coupled with a periodic review of how those trends might require changes to a compliance program.

The Monitor Team notes that the Company is already engaging in this exercise in its Security Department. As discussed in Section III.H., Corporate Security maintains a database of security incidents, including security incidents involving harassment and discrimination against employees. Security personnel dedicated to data analytics review this data periodically to incorporate changes to the Company's security measures to mitigate the risk of those incidents recurring. It is this exercise that the Monitor Team encourages the Company to replicate in other areas of the HRCP through related functions.

To facilitate these efforts, throughout the Monitorship, the Monitor Team has provided the various areas of the program that should be tested. More recently, the Monitor Team has provided the Company with specific elements of the Company's reporting and investigations that should be tested and has requested frequent and ongoing reports from the Company regarding those elements. We hope this ongoing request will enable to Company to develop its own routine processes for internal use. For the sake of clarity, the Monitor Team's focus to-date on monitoring trends related to reporting and investigation should not be read to indicate that no other monitoring is needed. Monitoring and testing other elements of the HRCP—including, for example, the effectiveness of policies, perceptions of Company culture, and effectiveness of HRCP trainings—is equally important.

The Monitor Team notes that the Company has in fact provided some trainings that include quizzes intended to ensure that employees understand the key lessons. However, the Monitor Team has not seen evidence of the Company reviewing or analyzing the results of those quizzes to have an indication of how effectively employees are learning from various trainings, both substantively and based on training modules. The Company continues to hold in-person trainings, which we encourage, but has not incorporated any tools or practices to test employee understanding during or after those trainings; for example, through surveys, quizzes, or even real-time responses during the training that would permit the trainer to focus on areas that appear not fully understood by participants. These practices are used widely across industries in the most effective compliance programs to help identify what is working and what needs improvement. Absent ongoing monitoring and testing, compliance programs risk becoming static and ineffective in mitigating the risks they were designed to address. Hence the Monitor Team's ongoing emphasis is on this aspect of the Company's program.

1. Recommendations

Baseline Assessment Recommendation M&T 2: Within three months of the launch of the new internal reporting system, develop a monitoring protocol that will facilitate identification of data and trends that could signal opportunities to improve specific aspects of its HRCP. The protocol should include a process for periodic root-cause analysis of the data and trends identified through monitoring and applying those analyses to propel improvements in its HRCP.

Summary Status

The Company has not satisfied this Recommendation.

The Company continues to work to enable its internal reporting system to facilitate review of data and trends. The Company has reported that it is close to completing this exercise and will be able to provide a walk-through of the reporting capabilities in the near term.

Assessment of Work Completed

In addition to the ongoing efforts to develop automated trends analysis, the ER departments at EBH and WLV hold regular meetings to review open investigations. Those meetings could provide an opportunity for the Company to discuss observations in real-time and engage in root-cause analysis of incidents under investigation. In that regard, these meetings provide the Company the opportunity to monitor investigations as they occur.

In the Phase II Report, the Monitor Team commented on Internal Audit's written HRCF testing protocol noting that, as designed, the testing activities planned by Internal Audit "align[] with the monitoring and testing activities contemplated in this Recommendation." Phase II Report at 82. At the time of the Phase II Report, Internal Audit had not yet commenced its testing and the Monitor Team, therefore, could not comment on the effectiveness of those activities. During this Phase III review period, the Monitor Team was able to review the Internal Audit HRCF 2021 Program Assessment and to observe eleven walkthrough interviews⁶ conducted by Internal Audit as part of its 2022 HRCF testing cycle.

With respect to the 2021 Program Assessment, the Monitor Team considers the assessment activities to be well-scoped for the stated purpose of determining "whether the key policies and procedures Management has implemented provide an effective environment for the Company's HRCF." The Assessment Objectives cover a review of all ten elements of the program and focuses primarily on the recommendations made by the Monitor Team. The assessment procedures included walkthrough interviews of Company personnel and members of the Compliance Committee, as well as a review of HRCF-related documentation and a review of statistical samples where appropriate (e.g., sample new vendor registrations to confirm acknowledgement of the Preventing Harassment and Discrimination Policy; sample settlements to confirm proper approvals). The assessment also reviewed whether HRCF policies were available on The Wire for WLV, EBH, and Wynn Sports Interactive ("WSI") as well as the launch and completion rates of HRCF-related trainings. The Monitor Team was pleased to see that certain deficiencies were identified by Internal Audit as confirmation of the independence and completeness of the process. Internal Audit informed management of those deficiencies and the issues are reported as corrected.

We consider the walkthrough interviews observed by the Monitor Team to have been thorough, impartial, and designed to help Internal Audit "further understand the policies and procedures implemented by management, and to evaluate the design and effectiveness of related key controls." Importantly, the Monitor Team observed openness from each of the personnel interviewed. We look forward to reviewing the results of those interviews as incorporated into Internal Audit's overall assessment.

The Monitor Team again commends Internal Audit for its efforts. Internal Audit consistently demonstrates not only a strong understanding of the Monitor Team's recommendations and

⁶ The Monitor Team observed walkthrough interviews of individuals in the following positions: SVP HR, WLV; Executive Director, Labor & Employment, EBH; Executive Director HR, EBH; select members of the Company's Board of Directors; Executive Director, HR, WLV; SVP, D&I, WRL; CGCO, WRL; EVP & GC, EBH; VP, Security and Crisis Management & Response, WRL; and a member of the Company's Compliance Committee.

expectations, but importantly, of the importance of monitoring and testing independent of our process. We look forward to observing how the monitoring and testing program will mature beyond the current focus on Monitor Team recommendations.

We note, however, that monitoring and testing of the HRCP by Internal Audit satisfies only one pillar of monitoring and testing. Equally important will be monitoring and testing of the program by the functions that carry out and implement the program day-to-day. As noted above, the Monitor Team will be keenly interested in the Company’s efforts in this regard.

Follow-Up Recommendations

The Monitor Team reissues this Recommendation with an updated deadline.

<p>Baseline Assessment Recommendation M&T 2</p>	<p>By June 30, 2022, develop a monitoring protocol that will facilitate identification of data and trends that could signal opportunities to improve specific aspects of its HRCP. The protocol should include a process for periodic root-cause analysis of the data and trends identified through monitoring and for applying those analyses to propel improvements in its HRCP.</p>
--	--

Additional Considerations/Further Testing

The Monitor Team will continue to evaluate the Company’s existing monitoring efforts and will assess the design and implementation of new procedures as they develop.

In 2021, Internal Audit also carried out its annual HRCP Risk Assessment (the “Risk Assessment”). As in 2020, the Risk Assessment sought to “[a]ssist Management in preparing an annual Assessment to properly identify, document, test, and report on the Company’s HRCP . . .” and “in confirming the HRCP policies and procedures which mitigate compliance risk and provide employees with an understanding of workplace expectations.” In conducting the assessment, Internal Audit evaluated the risks faced by the Company’s various employee groups and tested certain elements of the Company’s HRCP, such as Culture of Compliance and Conduct at the Top, Policies and Procedures, Training and Guidance, and Employee and Third Party Relationships. The Monitor Team commends Internal Audit for its continued commitment to conducting a thorough analysis of the Company’s HRCP-related risks. This year, as a new aspect of the Risk Assessment, the Monitor Team observed that Internal Audit also incorporated an assessment of trends. The Company’s focus on conducting ongoing monitoring and continuously improving its HRCP is critical to the HRCP’s sustainability and will be a point of focus for the Monitor Team going forward.

In developing the 2021 Risk Assessment, Internal Audit again employed both qualitative and quantitative principles to classify the Company’s employee groups into high, medium, and low risk categories—as it had in 2020. For the 2021 Risk Assessment, however, Internal Audit also incorporated some additional considerations, which the Monitor Team considers to be valuable enhancements as they allow the Company to drill down into specific categories of risk. Most notable is the Company’s decision to separate out certain employee groups into more targeted classifications. [REDACTED]

[REDACTED] The 2021 Risk Assessment also incorporates a “trending” analysis that tracks year-over-year changes in risk rankings. In 2021, the trending analysis indicates that thirteen employee groups previously identified as “high” risk now have a reduced risk score. The Risk Assessment also notes that six employee groups moved into the “high” risk category for the first time. These enhancements will enable the Company to engage in more precise remediation efforts.

The Risk Assessment anticipates that the “trending analysis” will be used for “continued ‘High Risk’ positions to determine if ‘position risk scores’ have changed based on the on-going efforts and continued enhancement of the HRCP Program.” This is consistent with Baseline Assessment Recommendation M&T 2, which requests that the Company develop a monitoring protocol to identify data and trends that could signal an opportunity to improve specific aspects of the HRCP.

The Company’s efforts to assess its HRCP-related risks extend beyond operational risks and also take into account changes to the risk environment. For example, with COVID-19 restrictions easing, the Risk Assessment notes that the reopening of club operations at EBH and WLV presents a change in the Company’s risk environment. [REDACTED]

[REDACTED] The Risk Assessment notes that these factors were considered as part of the “bottom up” analysis of employee groups. The Monitor Team is pleased to see Internal Audit accounting for changes in the risk environment in its assessment. In the future, the Monitor Team encourages the Company to go further and propose actions that would address and mitigate these risk factors.

At the same time, the Risk Assessment highlights key 2021 HRCP updates, which included the Company’s preparation of an Investigations Policy, roll out of a Patron Standards of Behavior Program, distribution of a monthly management newsletter, and completion of an HRCP related self-assessment. In preparing the 2021 Risk Assessment, Internal Audit also assessed “the findings and recommendation made from [the] 2020 HRCP Program evaluation” and “the Monitor’s Phase II Report and Phase III Status Update to determine whether new risks or controls should be considered” Internal Audit notes that these updates “were included in [the] assessment phases and have been incorporated into the 2021 testing plan.” The Monitor Team welcomes the Company’s efforts to continuously evaluate and respond to previously identified concerns.

The 2021 Risk Assessment also proposes modifications to the Company’s HRCP Steering Committee, through which Internal Audit engages support from Company management. Since 2020, the proposed membership of the HRCP Steering Committee has increased. The 2021 Risk Assessment proposes that eleven members be drawn from the Legal, HR, and Compliance. The new members represent additional Company entities and bring different perspectives and areas of expertise to the Committee. The new proposed members of the HRCP Steering Committee include:

- ▶ Wynn Resorts VP of D&I
- ▶ Wynn Resorts Global Compliance Officer
- ▶ EBH Executive Director of HR
- ▶ WSI GC

▶ WSI Director of HR

As in the Phase II Report, Internal Audit’s risk assessment procedures continue to satisfy the Monitor Team’s recommendations. For the 2021 Risk Assessment in particular, the Monitor Team commends Internal Audit for its focus on trend analysis and changes in risks. In future phases, the Monitor Team encourages Internal Audit to continue these efforts and focus on the continuous improvement of the Company’s HRCP. Going forward, the Monitor Team will assess the Company’s efforts to tailor and improve its HRCP, as well as how these efforts are informed by the trends and risk factors identified in the Risk Assessment.

Baseline Assessment Recommendation M&T 3: By June 30, 2021, engage in separate, targeted surveys or focus groups to test the effectiveness of the substantive elements of the HRCP.

Summary Status

The Company has not satisfied this Recommendation.

As noted in Section III.D. above, the Company has not conducted surveys or focus groups to test the effectiveness of the substantive elements of the HRCP.

Assessment of Work Completed

Assessment of this Recommendation will be completed when the Monitor Team receives information from the Company reflecting completion of this Recommendation. We note, however, that to the extent this Recommendation calls for *targeted* surveys and focus groups, the Company has implemented certain initiatives that could be used towards satisfying this objective. For instance, as noted above, the Company has launched Compliance Pop-up Events in which employees are asked to complete surveys or quizzes. Currently, those surveys and quizzes are used as tools to engage employees on HRCP and to promote HRCP policies and procedures. However, the Company does not utilize those surveys or quizzes to help test the elements of the program it is promoting. The Company should think through ways that it can leverage these events to also provide data points and input that will facilitate the goals of monitoring and testing. For example, the Company could launch department specific Pop-up Events and use the results of the quizzes issued to evaluate whether employees of one department over another may require reinforcement on certain policies or procedures.

Follow-Up Recommendations

The Monitor Team reissues this Recommendation with an updated deadline.

<p>Baseline Assessment Recommendation M&T 3</p>	<p>By June 30, 2022, develop a plan for engagement in separate, targeted surveys or focus groups to test the effectiveness of the substantive elements of the HRCP.</p>
--	---

J. Controls Environment

In Phase III, the Monitor Team continued to review the Company’s progress in implementing the recommendations made in the Baseline Assessment and Phase II Report. As of the date of this report,

the Company has completed all but one of the Monitor Team's recommendations made with respect to the Company's HRCP Controls Environment. The open Recommendation requires the Company to review its separation agreement and EBH employment agreement to exclude harassment, discrimination, and retaliation claims from mandatory arbitration provisions. Based on discussions with the Company, the Monitor Team understands that the Company continues to review these provisions and will address the Recommendation in short order. Importantly, since the Phase II Report, the Company has developed a formal policy on the initiation, review, and approval of legal settlements. That policy also requires dual signatures for all settlement agreements related to sexual harassment and discrimination claims.

Notably, during the Phase III review period, the Monitor Team's testing revealed opportunities for the Company to enhance HRCP processes and controls related to the recruiting, vetting, and onboarding of consultants and senior personnel, specifically as to the management of potential conflicts of interest at senior levels in the organization and the review and assessment of background investigations.

1. Recommendations

For the sake of expediency and to avoid redundancy, we assess the relevant aspects of Baseline Assessment Recommendation CE 1 and Phase II Report Recommendation CE 1 together.

Baseline Assessment Recommendation CE 1: By April 30, 2021, develop and disseminate policies and procedures for the initiation, review, and approval of settlements related to claims of harassment and discrimination. Those policies and procedures should:

- ▶ include appropriate segregation of duties; and
- ▶ contemplate and apply to the settlement of claims both before and after initiation of formal legal proceedings, as well as separation with employees who have made allegations of harassment or discrimination.

Phase II Report Recommendation CE 1: By March 31, 2021, update the Contract Approval Policy and Procedure to require dual approval of sexual harassment and discrimination settlements involving officers and senior management at Wynn Resorts, Wynn Las Vegas, and EBH.

Summary Status

The Company has satisfied both recommendations.

The Company has addressed Baseline Assessment Recommendation CE 1 and Phase II Report Recommendation CE 1 through the adoption of the Policy for Avoiding Conflicts of Interest with the Retention of Outside Counsel and Settlement Agreements. The Policy addresses all aspects of these recommendations. For the sake of expediency and to avoid redundancy, we assess the relevant aspects of the Policy in one section below.

Assessment of Work Completed

On April 13, 2021, the Company adopted a written policy that governs both external counsel engagements and the review and approval of settlement agreements, including settlements of

harassment and discrimination claims. As discussed in the Phase II Report, these issues were previously covered in a Legal Memo, which the Monitor Team deemed too informal as guidance given the severity of the governance failures identified in the MGC’s Decision and Order—namely, facilitation by Senior Executives at WRL in the negotiation and payment of settlements with then-current and former female employees who alleged sexual misconduct by Steve Wynn. To address that concern, the Company drafted and adopted the Policy for Avoiding Conflicts of Interest with the Retention of Outside Counsel and Settlement Agreements. As with the Legal Memo, the Policy requires that “[a]ny settlement of a Wynn-related matter must be approved in writing by the General Counsel of Wynn Resorts or the affiliate entering into the settlement.” Importantly, the Policy also requires that all settlements of a Wynn-related matter involving allegations of sexual assault, harassment or discrimination must be approved “by the General Counsel of Wynn Resorts, as well as the President of Wynn Resorts or the affiliate entering into the settlement.” That language satisfies the Monitor Team’s Recommendation requiring dual approval of sexual harassment and discrimination allegations.

Importantly, we note that Internal Audit tested the Company’s adherence to the Policy for Avoiding Conflicts of Interest with the Retention of Outside Counsel and Settlement Agreements and reported its findings to the Board of Directors and the Compliance Committee in Q1 2022 as part of its Human Resources Compliance Program 2021 Program Assessment Report. [REDACTED]

[REDACTED] Internal Audit reported its findings in the Human Resources Compliance Program 2021 Program Assessment Report that was produced to the Compliance Committee and in turn to the Monitor Team in February 2022—after the testing phase of our Phase III review period had closed. Therefore, the Monitor Team has not been able to review the issues reported in depth but plans to do so during Phase IV.

Phase II Report Recommendation CE 2: By April 30, 2021, revise separation agreement standards at Wynn Resorts, Wynn Las Vegas, and EBH to explicitly exclude sexual harassment, discrimination, and retaliation from mandatory arbitration.

Summary Status

The Company has not satisfied this Recommendation because it has not provided evidence of the recommended language revisions.

Assessment of Work Completed

The Company has informed the Monitor Team that it is working to address the concerns raised in our Phase II Report and has submitted an email with proposed language that satisfies the Monitor Team’s concerns. The Monitor Team will continue to work with the Company to ensure that the proposed changes are implemented and will continue to monitor the use of separation and employment agreements.

Follow-Up Recommendations

In light of the fact that the Company has demonstrated efforts to address Phase II Report Recommendation CE 2, including by providing language that addresses the Monitor Team’s concerns, we issue the following Recommendation.

<p>Phase III Report Recommendation CE 1</p>	<p>By June 30, 2022, provide evidence that the employment agreement standards at EBH have been revised to explicitly exclude sexual harassment, discrimination, and retaliation from mandatory arbitration and that arbitration provisions contained in separation agreements align with those revisions.</p>
--	---

2. Additional Observations

A strong controls environment provides the framework for a corporate governance structure designed to ensure adherence to policies and procedures so that decisions and transactions are made in accordance with management authority. For Wynn, a strong controls environment related to HRCIP issues is critical to ensuring that weaknesses in corporate governance identified by the MGC in its Decision and Order are fully remediated and cannot be exploited. For that reason, as the Company completes the initial design and implementation of policies and procedures, the Monitor Team has focused more intently on monitoring and testing the Company’s corporate governance as to HRCIP, including the Company’s adherence to related policies and procedures. In doing so, we have identified several issues that raise concerns from a governance perspective related to the Company’s approach to the recruiting, vetting, and onboarding of consultants and senior personnel.

Lack of appreciation for importance of vetting and deliberative process for hiring key senior positions. In previous reports, the Monitor Team has commented on management’s tendency to recruit candidates for key roles based on pre-existing relationships. We have cautioned that absent formalized processes, that practice could compromise the independence of key roles or create the perception of an inner circle in a way that could delegitimize individuals and call their competencies into question. Companies vary in approaches to hiring and recruiting, especially at their highest levels where candidate pools are much smaller. In fact, for highly specialized and trusted positions, companies often turn to known and trusted candidates, especially in specialized industries (such as gaming). There is nothing inherently wrong with such practices. However, the Monitor Team is tasked with evaluating Wynn’s practices in the context of its past issues to assess whether the Company’s current controls environment adequately remediates the deficiencies that led to the Decision and Order. Specifically, we must ensure that the Company has in place a controls environment that mitigates the risk of a reemergence of a corporate culture that existed under Mr. Wynn of placing “loyalty over the best interests of the Company.” Decision and Order at 27. How the Company hires is critical to protecting against the above-noted risk. To protect against this risk, the Company must ensure that regardless of who it hires, it consistently subjects each candidate to the full extent of the Company’s vetting procedures, and that it assesses each candidate with due objectivity and with the appropriate degree of deliberation required for the position. Absent that, the Company could create the appearance of favoritism or of an “inner circle” which, even if not true, could undermine both the authority of the individual being hired and the entire Company’s leadership team.

During this phase, the Monitor Team reviewed the vetting and onboarding process of an individual for a senior position. The individual was previously known to the Company. Following the initial interview, the Company identified public negative information [REDACTED]

[REDACTED] The Monitor Team has previously commented on the importance of ensuring that background investigations of potential candidates take into consideration background information related to harassment and discrimination. The Monitor Team has seen evidence that the Company generally identifies and takes such information into consideration. However, in the case described above, the Monitor Team has not seen contemporaneous or independent evidence of due consideration of the prior retaliation claim. Rather, based on information provided by the Company to the Monitor Team, we understand that the Company extended a conditional employment offer to the individual two days after learning of negative information and prior to commencing a background check. The Company thereafter onboarded the individual prior to concluding the background investigation and prior to making the results of that background investigation available [REDACTED]. The sequencing of these events, especially the lack of contemporaneous documentation reflecting full analysis and deliberation over the negative background information, suggests to the Monitor Team that the Company may not have assessed the candidate's background with due objectivity or an appropriate degree of recognition of the issues—specifically as related to the significance of the position. It is important to note that the Monitor Team does not raise this issue to call into question the qualifications or suitability of any candidate—or even the Company's ultimate decision to hire any specific candidate. The Monitor Team raises these issues strictly as a process concern and to stress the importance that all candidates be subject to complete and thorough vetting prior to onboarding.

Narrow scope of personal relationships disclosure obligations. Wynn's Personal Relationships and Potential Conflicts of Interest Policy applies only to employees, officers, and directors of Wynn. Therefore, currently, neither Company employees nor third parties engaged by Wynn with whom employees are in a personal relationship are required to disclose those relationships under that policy. The conflicts of interest and inappropriate power dynamics which the Personal Relationships Policy is designed to safeguard against can just as easily occur between employees and third parties retained by the Company. Thus, the lack of a disclosure requirement for relationships between employees and third parties is a gap in the HRCF. The Monitor Team understands that personal relationships must also be disclosed under the conflicts of interest provision of the Company's Code of Business Conduct and Ethics. However, as discussed below, that provision does not provide an adequate safeguard.

Narrow application of personal relationships disclosure obligations. In one case reviewed by the Monitor Team, the Company took the position that formal and documented disclosure by the executive of his personal relationship with the third party would have been unnecessary because it was not required under the Personal Relationship Policy and because that relationship is "well known" to individuals involved in the hiring decision-making process and was disclosed to the Compliance Committee and the Board of Directors (and was not required at all as to HR because HR is not involved in third party engagements). In the Company's view, these facts satisfy the spirit of the disclosure obligations. Even if that were the case, the Company's position is problematic from a corporate governance and compliance program viewpoint. Effective corporate governance cannot turn on

individual circumstances or on familiarity between members of management or on compliance with the spirit of policies and procedures. Effective corporate governance must be disciplined and auditable and must apply as a matter of course to all employees regardless of position or seniority. Absent such rigor, the Company cannot be sure that its policies and procedures will work as designed—to avoid the risk of non-disclosures that could result in improprieties. These formal requirements are also important to avoid the perception that certain rules do not apply to certain people.

Non-disclosure of potential conflicts of interest. In a similar vein, the Company also did not require the third party or Company employee to disclose or document their relationship under the Company’s Code of Business Conduct and Ethics, which requires disclosure of “actual, apparent and potential conflicts of interest,” including familial relationships with suppliers. The Monitor Team understands that the WRL GC verbally disclosed the relationship between the employee and the third party as well as the potential conflict of interest to the CGCO. According to documentation provided to the Monitor Team,

[REDACTED]

Both the potential conflict and the proposed form of engagement were brought to the attention of the Compliance Committee, over which (the Monitor Team understands) the Compliance Committee did not express concerns. While it is important and helpful that the WRL GC disclosed the relationship to the CGCO, an effective conflicts of interest policy and process requires increased rigor and formality, including documentation that creates an auditable trail not only of the fact of a disclosure, but of the nature and extent of the disclosure, along with evidence that the relationship and potential conflict was reviewed and cleared by the authorized parties along with mitigating controls, if needed. We have not seen this type of rigor here, and therefore, recommend that the Company review and formalize its conflicts of interest disclosure and review procedures.

Since the removal of Mr. Wynn as CEO, the Company has made numerous changes to transition away from a founder-led culture towards a more mature and independent corporate governance model. As it continues on this path, the Company must be mindful to develop clear processes and controls designed to govern decision making at the highest levels. Absent those processes and controls, the corporate culture that the Company seeks to create, may not take root and the risks identified through the IEB investigation could surface once more. Going forward, the Monitor Team will be keenly focused on the Company’s HRCF controls not just as they relate to the technical aspects of the program, but more critically to overarching corporate governance as it relates to issues identified in the Decision and Order.

Follow-Up Recommendation

The Monitor Team issues a new Recommendation to address the above-noted observations.

<p>Phase III Report Recommendation CE 2</p>	<p>The Company should review and enhance its conflicts of interest procedures and Personal Relationships Policy to:</p> <ul style="list-style-type: none"> ▶ require written disclosure of personal relationships between employees and consultants;
--	---

	<ul style="list-style-type: none"> ▶ define a process for review and evaluation of potential conflicts of interest; ▶ allow for the implementation of controls to mitigate potential conflicts of interest from materializing; and ▶ ensure ongoing monitoring of the controls to ensure their effectiveness.
--	--

IV. Follow-up Report Recommendations

A. Culture of Compliance and Conduct at the Top

Phase III Report Recommendation CCCT 1	Incorporate a long-term vision and strategy for communications with employees on HRCP topics. The revised or standalone plan should incorporate self-evaluation and communications on substantive elements of HRCP.
Phase II Report Recommendation CCCT 2	In future HRCP-related trainings of the Compliance Committee, Board of Directors, and senior Wynn Resorts and WLV personnel with oversight of HRCP-related functions at EBH, include training on relevant Massachusetts-specific HR considerations.

B. Proper Authority, Oversight, and Independence

No Follow-up Recommendations during this review period.

C. Policies and Procedures

Phase III Report Recommendation P&P 1	Enhance the Code of Business Conduct and Ethics to encourage employee engagement and awareness, including by improving visual design and readability and present it to the Board of Directors by June 30, 2022.
Phase III Report Recommendation P&P 2	In the Code of Personal Conduct, cross reference relevant policies in the Policy so employees can benefit from the more fulsome guidance contained in those documents; and add a statement at the start clarifying that the Policy supplements other existing policies.
Phase III Report Recommendation P&P 3	By May 30, 2022, amend the scope of applicability of the Personal Relationships Policy to include third parties.
Phase III Report Recommendation P&P 4	Include compliance with this Policy as a provision in contracts with third parties.
Phase III Report Recommendation P&P 5	By May 31, 2022, provide documentary records evidencing employees' receipt and acknowledgement of relevant department-specific policies.

D. Third Party Relationships

Phase III Report Recommendation TP 1	Develop a plan to monitor the effectiveness of the Employee Interaction with Guests Policy training and continuously improve the training in response to any identified knowledge gaps.
Phase II Report Recommendation TP 4	By June 30, 2022, ensure alignment between the Employee Interaction with Guests Policy and Security Trespass guidance.
Phase II Report Recommendation TP 5	By June 30, 2022, submit to the Monitor Team a plan and schedule for conducting culture surveys and focus groups (COVID-19 restrictions permitting) to assess employee experience and perceptions regarding the Company’s response to reports of offending conduct.
Phase II Report Recommendation TP 6	By September 30, 2022, conduct culture survey and focus groups (COVID-19 restrictions permitting) to assess employee experience and perceptions regarding the Company’s response to reports of offending conduct and submit results to the Monitor Team.

E. Training and Guidance

Baseline Assessment Recommendation T&G 3	<p>By May 31, 2022, incorporate the following topics into trainings for managers and supervisors:</p> <ul style="list-style-type: none"> ▶ intake and escalation of employee complaints; ▶ the Personal Relationships Policy, including reporting obligations; ▶ social media, including as a potential platform for harassment; ▶ the risks of alcohol usage in the workplace; ▶ the impact and limitations of off-duty conduct; and ▶ how to appropriately process and escalate both formal complaints concerning discrimination and harassment and problematic behaviors they have observed or of which they have made aware.
Baseline Assessment Recommendation T&G 4	By May 31, 2022, develop a training plan for ER that includes, at minimum, annual trainings on all HR subject matter policies and procedures for which ER is responsible and submit documentary evidence of the plan to the Monitor Team
Phase II Report Recommendation T&G 2	Continue to develop short, tailored trainings that address gaps in knowledge in position-specific realities.
Phase III Report Recommendation T&G 1	Provide evidence of Company-specific D&I training as part of the formal training program by May 31, 2022.

Phase III Report Recommendation T&G 2	Include specific guidance on transgender and gender identity as part of D&I training.
Phase II Report Recommendation T&G 4	By May 31, 2022, update future Security Academy training to specifically cover harassment and discrimination and provide documentary evidence to the Monitor Team.
Phase III Report Recommendation T&G 3	By May 31, 2022, develop procedures to periodically test and measure the effectiveness of trainings and incorporate feedback into future trainings.
Phase III Report Recommendation T&G 4	Conduct an assessment of the employee base at EBH and WLV to identify policies and trainings that may warrant translation into languages other than English.

F. Internal Reporting and Investigation

Phase III Report Recommendation IRI 1	Provide evidence of or launch a communication campaign through which senior management at the Wynn Resorts and property levels increases the frequency of communicating its support for a speak-up culture, emphasizing the available means through which employees can report concerns.
Phase III Report Recommendation IRI 2	Provide evidence of communications to employees regarding the available multi-lingual reporting options.
Phase III Report Recommendation IRI 3	By May 31, 2022, provide a data-based explanation for the decision not to extend in-person ER availability. This explanation may be provided by email.
Phase II Report Recommendation IRI 4	By May 31, 2022, provide a schedule or plan for annual training for employees responsible for conducting investigations.
Phase III Report Recommendation IRI 4	By May 31, 2022, provide evidence of training provided to security personnel for addressing complaints of harassment and discrimination.
Phase II Report Recommendation IRI 5	By May 31, 2022, provide evidence that Corporate Security has defined and standardized the classification of incidents related to harassment and discrimination.

G. Incentives and Discipline

Phase III Report Recommendation I&D 1	Provide evidence that the Company has communicated to employees that the STARS program, and any other relevant incentive-based programs, provide avenues for recognition of behaviors exemplifying the values of the HRCP program.
--	--

<p>Phase II Report Recommendation I&D 3</p>	<p>Starting May 31, 2022, provide periodic updates on plans for and progress toward a performance management program that includes a recognition of compliant behavior by both managers and employees.</p>
--	--

H. Risk-Based Review

<p>Baseline Assessment Recommendation RBR 5</p>	<p>In the Company’s existing Security Protocol, document the Security Department’s risk assessment procedures for identifying conditions that could expose employees to sexual misconduct. Provide the Monitor Team with documentation reflecting that change by June 30, 2022.</p>
--	---

I. Monitoring and Testing

<p>Baseline Assessment Recommendation M&T 2</p>	<p>By June 30, 2022, develop a monitoring protocol that will facilitate identification of data and trends that could signal opportunities to improve specific aspects of its HRCP. The protocol should include a process for periodic root-cause analysis of the data and trends identified through monitoring and for applying those analyses to propel improvements in its HRCP.</p>
<p>Baseline Assessment Recommendation M&T 3</p>	<p>By June 30, 2022, develop a plan for engagement in separate, targeted surveys or focus groups to test the effectiveness of the substantive elements of the HRCP.</p>

J. Controls Environment

<p>Phase III Report Recommendation CE 1</p>	<p>By June 30, 2022, provide evidence that the employment agreement standards at EBH have been revised to explicitly exclude sexual harassment, discrimination, and retaliation from mandatory arbitration and that arbitration provisions contained in separation agreements align with those revisions.</p>
<p>Phase III Report Recommendation CE 2</p>	<p>The Company should review and enhance its conflicts of interest procedures and Personal Relationships Policy to:</p> <ul style="list-style-type: none"> ▶ require written disclosure of personal relationships between employees and consultants; ▶ define a process for review and evaluation of potential conflicts of interest; ▶ allow for the implementation of controls to mitigate potential conflicts of interest from materializing; and

	<ul style="list-style-type: none">▶ ensure ongoing monitoring of the controls to ensure their effectiveness.
--	--

Miller & Chevalier

Independent Compliance Monitor Summary of Phase III Assessment Report

April 28, 2022

Agenda

- Introduction
 - Goals of Phase III Review
 - Overview of Company business
 - Summary of review and testing activities
 - Overall observations
- Findings by compliance hallmark
- Concluding observations
- Q&A

Goals of Phase III Review

- Phase III review focused on:
 - Evaluation of Company’s implementation of the Baseline Assessment and Phase II Recommendations
 - Continued review and assessment of key elements of Company’s HRCP
 - Culture of Compliance and Conduct at the Top
 - Proper Authority, Oversight, and Independence
 - Policies and Procedures
 - Third Party Relationships
 - Training and Guidance
 - Internal Reporting and Investigation
 - Incentives and Discipline
 - Risk-Based Review
 - Monitoring and Testing
 - Controls Environment

Overview of Company Business

- Continued changes in senior management, including:
 - WRL CEO
 - WRL Executive Director, Global Compliance
 - EBH President
 - EBH Executive Director, HR
 - EBH Executive Director, Security and Investigations
 - WLV President
- Active recruitment efforts

Summary of Review and Testing Activities

- During this review period, the Monitor Team engaged in testing activities, including the following:
 - Document review
 - Interviews
 - Onsite testing
 - Observation of Board meetings
 - Observation of Compliance Committee meetings
 - Shadowing audit function testing

Overall Observations

- The Company has made meaningful improvements in key areas of its HRCP
 - Strengthened Compliance Committee through the addition of a new member with relevant HR and corporate governance experience
 - Updated its Policies and Procedures
 - Expanded upon already well-designed trainings by developing new focused trainings that address specific risk areas (e.g., interactions with guests)
 - Increased internal communication on HRCP issues by taking advantage of existing communication channels (e.g., WE Shifts)
 - Continued annual HRCP risk assessment process led by Internal Audit

Overall Observations

- The Monitor Team has identified certain areas for Company focus:
 - Governance
 - Company has taken significant steps to develop governance controls
 - There remain areas where the Company should enhance transparency in decision-making procedures so that there is not an over-reliance on individual judgment and familiarity
 - Continuous improvement
 - Certain departments at the Company are already engaging in meaningful data review
 - The Monitor Team will expect to see the Company obtain and engage with data about the effectiveness of its HRCP and improve its program based on the results of data analyses

Culture of Compliance and Conduct at the Top

- Prior Recommendations largely satisfied
- Communications plans
 - Focused on creating a Speak Up culture
 - Campaigns at both EBH and WLV
 - Spotlighting HRCP policies
 - Next step: include a process for the continuation of the plan in subsequent years or evaluation of its effectiveness
- Compliance Committee and certain employees received Massachusetts-specific training in 2021
 - Board has not yet received MA-specific training

Culture of Compliance and Conduct at the Top

- Other observations: focus group survey results
- Going forward, the Monitor Team will be testing:
 - Continuation of practices that the Recommendations were designed to initiate
 - Long-term sustainability of the Company's messaging about commitment to the HRCP
 - How the Company internalizes the principles underlying the Recommendations and takes initiative to further goals of a culture of compliance

Proper Authority, Oversight, and Independence

- Prior Recommendations satisfied
- Company completed self-assessment of HRCP-facing roles and responsibilities
- Company appointed a new member of the Compliance Committee with substantive and substantial HR expertise in June 2021
- Company conducted an evaluation of resourcing of relevant HRCP-facing functions at EBH
- In the next phases of the Monitorship, the Monitor Team will:
 - Test Compliance’s monitoring and reporting on the Company’s HRCP
 - Review in greater detail the updated organization framework for the EBH HR Department focusing on the operational results from the updated team

Policies and Procedures

- Seven out of 11 prior Recommendations satisfied
- Progress in the Company's development, enhancement and roll-out of core HRCP policies.
- Going forward, the Monitor Team will be testing:
 - Compliance with all outstanding Recommendations
 - Implementation of updated policies
 - Sustainability of communications

Third Party Relationships

- Most prior Recommendations satisfied
- Meaningful progress to address risks from Patron misconduct
 - Enhancements to Employee Interaction with Guests Policy
 - Tailored training initiatives
 - Development of plan to track and monitor data collected from investigations of misbehaving Patrons
- Enhancement of Policy for avoiding conflicts of interest with the retention of outside counsel and settlement agreements
- Going forward, the Monitor Team will be testing:
 - Compliance with all outstanding Recommendations
 - Communications on core components of Employee Interaction with Guests Policy, sustainability of the training program, and perceptions of the Company's stance on Patron misconduct
 - Implementation of the procedures established in the Policy for Avoiding Conflicts of Interest

Training and Guidance

- Three out of eight prior Recommendations satisfied
 - Continued implementation of Company's Preventing Harassment and Discrimination training and other targeted trainings and programmatic recommendations
- Several recommendations remain partially satisfied or outstanding:
 - Development and implementation of manager/supervisor-specific training
 - Training for ER personnel tasked with conducting investigations
 - Development of Company-specific diversity and inclusion training
 - Revision of Security Academy training to cover harassment and discrimination
 - Development of procedures to periodically test and measure the effectiveness of trainings and incorporate feedback into future trainings

Training and Guidance

- Going forward, the Monitor Team will assess:
 - Compliance with all outstanding Recommendations
 - Effectiveness of the Company's trainings
 - How the Company leverages existing communication channels and creatively develops new ones to regularly reinforce messages from trainings

Internal Reporting and Investigation

- Most prior Recommendations satisfied
- Company has enhanced its internal reporting and investigation processes and procedures
 - Rollout of a new reporting platform
 - Launch of employee-focused communications regarding the importance of speaking up
 - Enhancements to its Investigations Policy
- Further Recommendations:
 - Senior WRL management increased communication in support of Speak-up culture
 - Communications to employees regarding available multi-lingual reporting options

Internal Reporting and Investigation

- Going forward, the Monitor Team will:
 - Test effectiveness of communications regarding Speak-up culture
 - Observe the Company's continued implementation of its investigations policy
 - Test the efficacy of multi-lingual reporting channels
 - Test employee awareness of and satisfaction with ER availability
 - Conduct interviews and engage in regular meetings with HR and ER personnel involved in the investigation process and review a sample of investigation files
 - Test the effectiveness of the Company's trainings for personnel responsible for investigations

Incentives and Discipline

- One of three prior Recommendations satisfied
 - Enhancements to the Company’s Progressive Discipline and Performance Policy
- Company recently re-committed to developing a performance management program
- By the next phase of review, the Monitor Team expects the Company to:
 - Communicate to employees the standards of behavior related to HRCP which may be rewarded by the incentive program
 - Develop a plan for a performance management program that includes a recognition of HRCP-compliant behavior
- Going forward, the Monitor Team will:
 - Test effectiveness of incentive programs in rewarding HRCP-compliant behavior
 - Test consistency of discipline imposed in harassment and discrimination matters
 - Review the development and roll out of the performance management program

Risk-Based Review

- One outstanding prior Recommendation largely satisfied
- Since the Baseline Assessment, the Company has developed and implemented an HRCP risk assessment process that forms part of the Company's annual audit cycle
- In Phase III:
 - The Company executed on its written HRCP Risk Assessment protocol
 - The Security Department also conducts security risk assessments that account for risks of harassment and discrimination
- Going forward, the Monitor Team will expect the Company to:
 - Document the Security Department's risk assessment procedures in the Company's existing Security Protocol
 - Continue to carry out the HRCP Risk Assessment

Monitoring and Testing

- Company has not satisfied two outstanding prior Recommendations
- Internal Audit and Security departments conduct independent monitoring
 - Monitor Team observed Internal Audit “walkthroughs”
- Company is in the process of developing process for automated trends and data reporting from its internal reporting system.
- Going forward, the Monitor Team will:
 - Test completion of all outstanding Recommendations
 - Continue to evaluate the Company’s existing monitoring efforts will assess the design and implementation of new procedures as they develop
 - Assess the Company’s the Company’s efforts to tailor and improve its HRCP based on trends and risk factors identified in monitoring
 - Assess Company’s testing of employee understanding of key lessons from trainings.

Controls Environment

- Two of three prior Recommendations satisfied
- Adoption of Policy for avoiding conflicts of interest with the retention of outside counsel and settlement agreements
- Company should review its separation agreement and EBH employment agreement to exclude harassment, discrimination, and retaliation claims from mandatory arbitration provisions
- Additional observations:
 - Opportunity to enhance approach to vetting and deliberative process for hiring key senior positions
 - Narrow scope and application of personal relationships and conflicts of interest disclosure obligations between Wynn employees and third parties
- Going forward, the Monitor Team will expect the Company to review and enhance its conflicts of interest procedures and Personal Relationships Policy

Concluding Observations

- Significant progress in two and half years
- Next stage of HRCP maturation process entails further efforts by the Company geared towards implementation and self-directed initiatives
- Monitor Team will focus on sustainability and long-term commitment

Monitor Team



Alejandra Montenegro Almonte
International Dept. Vice Chair
Independent Monitor



Nicole D. Gökçebay
Senior Associate



Ann K. Sultan
Member



Alexandra Beaulieu
Associate



Katherine E. Pappas
Counsel



Preston L. Pugh
Partner, Crowell & Moring
Consultant to Monitor Team

Agency Contacts for This Specific Regulation		
Name	Email	Phone
Carrie Torrisi		
Mark Vander Linden		
Overview		
CMR Number	205 CMR 133	
Regulation Title	Voluntary Self-Exclusion	
<input checked="" type="checkbox"/> Draft Regulation		<input type="checkbox"/> Final Regulation
Type of Proposed Action		
<input checked="" type="checkbox"/> Please check all that apply		
<input type="checkbox"/> Retain the regulation in the current form.		
<input type="checkbox"/> New regulation (Please provide statutory cite requiring regulation):		
<input type="checkbox"/> Emergency regulation (Please indicate the date regulation must be adopted):		
<input checked="" type="checkbox"/> Amended regulation (Please indicate the date regulation was last revised): 1/8/21		
<input type="checkbox"/> Technical correction		
<input type="checkbox"/> Other Explain:		

Summary of Proposed Action
The proposed amendment will update the regulation to the current practice of using an electronic app for voluntary self-exclusion applications.
Nature of and Reason for the Proposed Action
The purpose of this amendment is to bring the regulation in line with a newly developed app that allows voluntary self-exclusion applications to be submitted electronically.

Additional Comments or Issues Not Earlier Addressed by this Review

Required Attachments	
✓ Please check all that apply	
<input checked="" type="checkbox"/> Redlined version of the proposed amendment to the regulation, including repeals	<input type="checkbox"/> Clean copy of the regulation if it is a new chapter or if there is a recommendation to retain as-is
<input type="checkbox"/> Text of statute or other legal bases for regulation	
<input checked="" type="checkbox"/> Small Business Impact Statement (SBIS)	<input type="checkbox"/> Amended SBIS

205 CMR 133.00: VOLUNTARY SELF-EXCLUSION

133.01: SCOPE AND PURPOSE

133.02: PLACEMENT ON THE SELF-EXCLUSION LIST

133.03: CONTENTS OF THE APPLICATION

133.04: DURATION OF EXCLUSION AND REMOVAL FROM THE LIST

133.05: MAINTENANCE AND CUSTODY OF THE LIST

133.06: RESPONSIBILITIES OF THE GAMING LICENSEES

133.07: SANCTIONS AGAINST A GAMING LICENSEE

133.08: COLLECTION OF DEBTS

133.01: Scope and Purpose

In accordance with M.G.L. c. 23K, § 45(f), 205 CMR 133.00 shall govern the procedures and protocols relative to the list of self-excluded persons from entering the gaming area of a gaming establishment or any area in which pari-mutuel or simulcasting wagers are placed. The voluntary self-exclusion list shall consist of the names and information relative to those individuals who have complied with the requirement of 205 CMR 133.00 and have been placed on the list by the commission. Placement of one's name on the voluntary self-exclusion list is intended to offer individuals one means to help address problem gambling behavior or deter an individual with family, religious, or other personal concerns from entering the gaming area of a gaming establishment or any area in which pari-mutuel or simulcasting wagers are placed.

For purposes of 205 CMR 133.00, the term 'problem gambler' shall mean an individual who believes their gambling behavior is currently, or may in the future without intervention, cause **problems harm** in their life or on the lives of their family, friends, and/or co-workers.

133.02: Placement on the Self-Exclusion List

(1) An individual whose name is placed on the voluntary self-exclusion list shall be prohibited from entering the gaming area of a gaming establishment or any area in which pari-mutuel or simulcasting wagers are placed for the duration of the exclusion period, and shall not collect any winnings or recover any losses resulting from any gaming activity at a gaming establishment. Provided, however, that an employee of a gaming licensee or vendor who is licensed or registered as a key gaming employee, gaming employee, or gaming service employee in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations* and who is on the voluntary self-exclusion list may be in the gaming area of a gaming establishment or an area in which pari-mutuel or simulcasting wagers are placed solely for purposes of performing their job functions.

(2) An individual may request to have their name placed on the voluntary self-exclusion list by completing the application and procedure outlined in 205 CMR 133.02. Applications shall be submitted in a format approved by the commission and shall be available on the commission's website and at designated locations on and off the premises of the gaming establishments as determined by the commission.

(3) An application for placement on the voluntary self-exclusion list may only be accepted, and an intake performed, by an available designated agent. An individual may only become a designated agent by successfully completing a course of training approved and administered by the commission or its designee. The course of training shall include, at a minimum, instruction on completion of the application, instruction on maintaining confidentiality of personal protected information, information relative to problem gambling and resources, and an understanding of 205 CMR 133.00. A designated agent is any individual authorized by the commission for the purpose of administering the voluntary self-exclusion program including, but not limited to, a GameSense advisor; a health or mental health professional; or an employee of a gaming licensee, the commission, or other government entity. The commission may refuse to offer training to any individual whose service as a designated agent it determines would be contrary to the aims of 205 CMR 133.00.

(4) Upon submission of an application, a designated agent shall review with the applicant the contents and statements contained in the application, as provided by [205 CMR 133.03](#). If the application is complete, the designated agent shall sign the application indicating that the review has been performed and the application has been accepted.

(5) A designated agent may not sign an application if (a) any required information is not provided or (b) they are of the belief that the applicant is not capable of understanding the responsibilities and consequences of being placed on the self-exclusion list.

(6) ~~The designated agent~~ Designated agents completing an electronic form of the approved application shall deliver electronically forward the signed application for voluntary self-exclusion to the commission immediately upon completion. Designated agents completing a paper form of the approved application shall forward the signed application for voluntary self-exclusion to the commission within 48 hours of immediately upon completion in a manner directed by the commission.

(7) Upon receipt of an application, the commission, or its designee, shall review it for completeness. If the application meets all requirements of 205 CMR 133.02 the application shall be approved and the individual's name shall be added to the voluntary self-exclusion list. If the application is incomplete, the commission, or its designee, may deny the application and make efforts to contact the applicant advising them of such.

(8) If the gaming licensee utilizes an internal management system to track individuals on the self-exclusion list, they shall update that system at least every 72 hours with names of individuals being added or removed from the self-exclusion list.

(9) The commission, or its designee, shall add to the list of voluntarily self-excluded persons the name of any individual provided from a gaming jurisdiction outside of Massachusetts, with which the commission has entered into an interstate compact, upon a determination that the individual voluntarily requested that their name be added to the list of the referring jurisdiction and that they were notified, either directly or by operation of law, that their name may be placed on similar lists in other jurisdictions.

(10) If the applicant has elected the services identified in [205 CMR 133.03\(8\)](#), the commission, or its designee shall contact the designated coordinating organization for the provision of requested services.

133.03: Contents of the Application

The application for voluntary self-exclusion shall require provision of, at a minimum, the following content:

- (1) Name, home address, email address or telephone number, date of birth, and last four digits of social security number of the applicant;
- (2) A passport style photo of the applicant without headwear, unless worn daily for religious purposes and provided that the applicant's facial features are not obscured;
- (3) A statement from the applicant that one or more of the following apply:
 - (a) they identify as a problem gambler as defined in [205 CMR 133.01](#);
 - (b) they feel that their gambling behavior is currently causing problems in their life or may, without intervention, cause problems in their life; or
 - (c) there is some other reason why they wish to add their name to the list.
- (4) Election of the duration of the exclusion in accordance with [205 CMR 133.04](#);
- (5) An acknowledgement by the applicant that the individual will not enter the gaming area of a gaming establishment or any area in which pari-mutuel or simulcasting wagers are placed for the duration of the exclusion period (except as provided by [205 CMR 133.02\(1\)](#)) and that it is their sole responsibility to refrain from doing so;
- (6) An acknowledgment by the applicant that the individual shall not collect any winnings or recover any losses resulting from any gaming activity at a gaming establishment for the duration of the exclusion period;
- (7) An acknowledgment by the applicant that he or she will forfeit all rewards or points earned through a player reward card program;
- (8) An offer by the commission or the designated agent completing the self-exclusion application to assist the applicant to access information about gambling disorders, self-guided help, peer-support, or counseling services with a clinician approved by the Massachusetts Department of Public Health or otherwise licensed or certified through a process or program **approved** **recognized** by the Commission;
- (9) An acknowledgment of understanding by the applicant that by placing their name on the voluntary self-exclusion list the prohibitions identified in [205 CMR 133.02\(1\)](#) apply to all gaming establishments licensed by the commission in Massachusetts, any affiliates of the

gaming licensee, whether within Massachusetts or another jurisdiction, and that the commission may share the list with other domestic or international gaming jurisdictions resulting in placement on those lists and may share such portion of the list with designated agents as may be necessary for the purpose of administering the voluntary self-exclusion program;

(10) An acknowledgment by the applicant that he or she is submitting the application freely, knowingly, and voluntarily;

(11) A statement that the individual is not under the influence of a substance or suffering from a health or mental health condition that would impair their ability to make an informed decision;

(12) An acknowledgment by the applicant that if they violate their agreement to refrain from entering a gaming area of a gaming establishment or any area in which pari-mutuel or simulcasting wagers are placed during the exclusion period, the applicant shall notify the commission of such violation within 24 hours of their presence within the gaming area of the gaming establishment or any area in which pari-mutuel or simulcasting wagers are placed; and releasing the Commonwealth of Massachusetts, the commission, the licensee, and all affiliated employees from any claims associated with their breach of the agreement; and

(13) An acknowledgment by the applicant that once their name is placed on the self-exclusion list they may be refused entry and/or ejected from the gaming area of a gaming establishment by the gaming licensee, an agent of the commission, or law enforcement personnel.

133.04: Duration of Exclusion and Removal from the List

(1) As part of the request for voluntary self-exclusion, the individual must select the duration for which they wish to be voluntarily excluded. An individual may select any of the following time periods as a minimum length of exclusion:

- (a) One year;
- (b) Three years;
- (c) Five years; or
- (d) Lifetime (An individual may only select the lifetime duration if their name has previously appeared on the voluntary self-exclusion list for at least six months.)

(2) An individual on the Voluntary Self-exclusion list may not apply to decrease the duration of exclusion. An individual who is on the list may submit a request to increase the minimum length of exclusion.

(3) Upon expiration of the selected duration of exclusion, individuals may request that their name be removed from the list or petition for exclusion for a new duration. Individuals shall remain on the list after the expiration of the selected duration of exclusion until such time as they submit a petition for removal in accordance with 205 CMR 133.04(4) and it is approved by the commission or its designee.

(4) At any time after the expiration of the selected duration of exclusion, an individual may request that their name be removed from the Voluntary Self-exclusion list by submitting a petition for removal to a designated agent. The petition shall include confirmation from a designated agent that the individual completed a reinstatement session in accordance with 205 CMR 133.04(5). Any petition for removal received by a designated agent prior to the expiration of the duration of the selected exclusion period shall be denied.

The commission shall approve a completed petition for removal. An individual who has selected a lifetime duration in accordance with 205 CMR 133.04(1)(e) may not submit a petition for removal of their name from the list. An incomplete application, including one that fails to demonstrate completion of a reinstatement session in accordance with 205 CMR 133.04(5), shall be denied until such time as the application is completed.

(5) To be eligible for removal from the Voluntary Self-exclusion list, the petitioner shall participate in a reinstatement session with a designated agent. The reinstatement session shall include a review of the risks and responsibilities of gambling, budget setting and a review of problem gambling resources should the petitioner wish to seek them. Upon completion of the reinstatement session, the designated agent shall sign the individual's petition for removal from the list attesting to the fact that the reinstatement session was conducted.

(6) Upon approval of a petition for removal from the Voluntary Self-exclusion list, a written notice of removal from the list shall be forwarded by the commission, or its designee, to each gaming licensee. The petitioner shall be deemed to be removed from the Voluntary Self-exclusion list immediately upon completion of the reinstatement session, at which point the petitioner shall be given a receipt verifying said completion and confirming their removal from the Voluntary Self-exclusion list. A petitioner may be asked to present said confirmation of Voluntary Self-exclusion list removal receipt while gaming for seven days following their reinstatement. Failure to do so may result in administrative difficulties in confirming Voluntary Self-exclusion status during that time-period. **The designated agent shall submit an electronic verification to the commission that the petitioner has completed a reinstatement session.**

(7) If a petitioner does not meet the eligibility requirements for removal from the list provided in 205 CMR 133.04(4), the petition shall be denied. The petitioner shall be notified of the denial by email or first class mail to the email address or home address provided by the petitioner in the petition. In the event of a denial of a petition, the individual shall remain on the Voluntary Self-exclusion list until such time as the eligibility requirements have been satisfied.

(8) An individual whose name has been removed from the Voluntary Self-exclusion list may reapply for placement on the list at any time by submitting an application in accordance with [205 CMR 133.02](#).

(9) An individual whose name was added to the Voluntary Self-exclusion list in Massachusetts in accordance with [205 CMR 133.02\(9\)](#) shall be removed from the list notwithstanding 205 CMR 133.04(4) through (6) upon receipt of written notice from the referring jurisdiction that the individual's name has been removed from that jurisdiction's list.

133.05: Maintenance and Custody of the List

(1) The commission shall maintain an up-to-date database of the Voluntary Self-exclusion list. Gaming licensees shall be afforded a minimum of five licenses to access to the Voluntary Self-exclusion list. ~~The Voluntary Self-exclusion list may only be accessed by individuals~~ Persons afforded a license are authorized by the commission for the purpose of administering the voluntary self-exclusion program. ~~This shall include positions identified in accordance with the gaming licensee's approved system of internal controls in accordance with 205 CMR 133.00.~~ All information contained in approved applications for voluntary exclusion may be disclosed to a gaming licensee.

(2) The list of Voluntary Self-exclusion is exempt from disclosure under M.G.L. c. 66 and shall not be publicly disclosed by a gaming licensee. However, a gaming licensee may share the list with its affiliates in other jurisdictions for the purpose of assisting in the proper administration of responsible gaming programs operated by affiliated gaming establishments. Additionally, a gaming licensee shall include the names and contact information of individuals on the Voluntary Self-exclusion list in its aggregated no marketing list to be shared with junket enterprises and junket representatives in accordance with [205 CMR 134.06\(5\)\(b\)](#) for the purpose of effectuating the intent of the Voluntary Self-exclusion program. Such disclosure shall not be a violation of [M.G.L. c. 23K, § 45](#).

(3) The commission may disclose de-identified information from the Self-exclusion list to one or more research entities selected by the commission for the purpose of evaluating the effectiveness and ensuring the proper administration of the Self-exclusion process.

133.06: Responsibilities of the Gaming Licensees

A gaming licensee shall have the following responsibilities relative to the administration of the Voluntary Self-exclusion list:

(1) A gaming licensee shall eject from or refuse entry into the gaming area of a gaming establishment or any area in which pari-mutuel or simulcasting wagers are placed any individual whose name appears on the Voluntary Self-exclusion list;

(2) A gaming licensee shall promptly notify the commission, or its designee, if an individual on the Voluntary Self-exclusion list is found in the gaming area of a gaming establishment or any area in which pari-mutuel or simulcasting wagers are placed;

(3) A gaming licensee shall not market to individuals on the Voluntary Self-exclusion list;

(4) A gaming licensee shall deny access to complimentary services or items, check cashing privileges, player reward programs, and other similar benefits to persons on the list;

(5) Individuals on the Voluntary Self-exclusion list shall not be permitted to participate in a cashless wagering system. A gaming licensee shall take steps to ensure that it denies entry into

and terminates all access and privileges associated with its cashless wagering program to individuals on the voluntary list of self-excluded persons;

(6) A gaming licensee shall not extend credit to an individual on the Voluntary Self-exclusion list;

(7)(a) A gaming licensee shall not pay any winnings derived from gaming to an individual who is prohibited from gaming in a gaming establishment by virtue of having placed their name on the Voluntary Self-exclusion list in accordance with 205 CMR 133.00. Winnings derived from gaming shall include, but not be limited to, such things as proceeds derived from play on a slot machine/electronic gaming device and a wager, or series of wagers, placed at a table game. Where reasonably possible, the gaming licensee shall confiscate from the individual in a lawful manner, or shall notify a commission agent who shall confiscate, or shall refuse to pay any such winnings derived from gaming or any money or thing of value that the individual has converted or attempted to convert into a wagering instrument whether actually wagered or not. A wagering instrument shall include, but not be limited to, chips, tokens, prizes, non-complimentary pay vouchers, electronic credits on a slot machine/electronic gaming device, and vouchers representing electronic credits/TITO slips. The monetary value of the confiscated winnings and/or wagering instrument shall be paid to the commission for deposit into the Gaming Revenue Fund within 45 days;

(b) If an individual wishes to contest the forfeiture of winnings or things of value, the individual may request a hearing in writing with the commission within 15 days of the date of the forfeiture. The request shall identify the reason why the winnings or things of value should not be forfeited. A hearing shall be conducted in accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings* to determine whether the subject funds were properly forfeited in accordance with 205 CMR 133.06(7)(a); and

(8) In cooperation with the commission, and where reasonably possible, the gaming licensee shall determine the amount wagered and lost by an individual who is prohibited from gaming. The monetary value of the losses shall be paid to the commission for deposit into the Gaming Revenue Fund within 45 days.

(9) A gaming licensee shall submit a written policy for compliance with the Voluntary Self-exclusion program for commission approval at least 60 days before the gaming establishment opening. The commission shall review the plan for compliance with 205 CMR 133.00. If approved, the plan shall be implemented and followed by the gaming licensee. The plan for compliance with the Voluntary Self-exclusion program shall include, at a minimum, procedures to:

- (a) Prevent employees from permitting an individual on the voluntary exclusion list from engaging in gambling activities at the gaming establishment;
- (b) Identify and remove self-excluded individuals from the gaming area of a gaming establishment or any area in which pari-mutuel or simulcasting wagers are placed;
- (c) Remove individuals on the Self-exclusion list from marketing lists and refrain from sending or transmitting to them any advertisement, promotion, or other direct marketing

- mailing from the gaming establishment more than 30 days after receiving notice from commission that the individual has been placed on the Voluntary Self-exclusion list;
- (d) Prevent an individual on the voluntary self-exclusion list from having access to credit, cashless wagering program access, or from receiving complimentary services, check-cashing services, junket participation and other benefits from the gaming establishment;
- (e) Ensure the confidentiality of the identity and personal information of the voluntarily self-excluded individual;
- (f) Training of employees relative to the Voluntary Self-exclusion program to be provided in conjunction with its problem gambling training program.

(10) A gaming licensee shall notify the commission within ten days if an employee or agent fails to exclude or eject from its premises any individual on the list of self-excluded persons, or otherwise fails to perform a responsibility of the gaming establishment identified in 205 CMR 133.06, including any provision of its approved written policy for compliance with the voluntary self-exclusion program.

133.07: Sanctions Against a Gaming Licensee

(1) Grounds for Action. A gaming license may be conditioned, suspended, or revoked, and/or the gaming licensee assessed a civil administrative penalty if it is determined that a gaming licensee has:

- (a) knowingly or recklessly failed to exclude or eject from its premises any individual placed on the list of Self-excluded persons. Provided, it shall not be deemed a knowing or reckless failure if an individual on the Voluntary Self-exclusion list shielded their identity or otherwise attempted to avoid identification while present at a gaming establishment; or
- (b) failed to abide by any provision of 205 CMR 133.00, [M.G.L. c. 23K, § 45](#), the gaming licensee's approved written policy for compliance with the Voluntary self-exclusion program pursuant to [205 CMR 133.06\(9\)](#), or any law related to the Voluntary Self-exclusion of patrons in a gaming establishment. Provided, a gaming licensee shall be deemed to have marketed to an individual on the self-exclusion list only if marketing materials are sent directly to an address, email address, telephone number, or other contact identified by the individual on their application.

(2) Finding and Decision. If the bureau finds that a gaming licensee has violated a provision of 205 CMR 133.07(1), it may issue a written notice of decision recommending that the commission suspend, revoke, and or condition said gaming licensee. Either in conjunction with or in *lieu* of such a recommendation, the bureau may issue a written notice assessing a civil administrative penalty upon said licensee. Such notices shall be provided in writing and contain a factual basis and the reasoning in support the decision, including citation to the applicable statute(s) or regulation(s) that supports the decision.

(3) Civil Administrative Penalties. The bureau may assess a civil administrative penalty on a gaming licensee in accordance with [M.G.L. c. 23K, § 36](#) for a violation of 205 CMR 133.07(1).

(4) Review of Decision. A recommendation made by the bureau to the commission that a gaming license be suspended or revoked shall proceed directly to the commission for review in

accordance with [205 CMR 101.01](#): *Hearings before the Commission*. If the gaming licensee is aggrieved by a decision made by the bureau to assess a civil administrative penalty in accordance with 205 CMR 133.07(2) and (3), it may request review of said decision in accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

133.08: Collection of Debts

(1) An individual who is prohibited from gaming in a gaming establishment under 205 CMR 133.00 shall not be entitled to recover losses as a result of prohibited gaming based solely on their inclusion on the list.

(2) Nothing in 205 CMR 133.00 shall be construed so as to prohibit a gaming licensee from seeking payment of a debt from an individual whose name is on the Voluntary Self-exclusion list if the debt was accrued by the individual before their name was placed on the list.

SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this Small Business Impact Statement in accordance with G.L. c. 30A, §2 relative to the proposed amendments to 205 CMR 133.00: Voluntary Self-Exclusion; notice of which was filed with the Secretary of the Commonwealth. Specifically, amendments to **205 CMR 133.00: Voluntary Self-Exclusion** will update the process for accepting voluntary self-exclusion applications to allow for electronic submissions.

This regulation was developed as part of the process of promulgating regulations governing the operation of gaming establishments in the Commonwealth, and is primarily governed by G.L. c. 23K, §4(28), 5.

The amendment to 205 CMR 133.00 applies to the gaming licensees and the Commission. Accordingly, this regulation is unlikely to have an impact on small businesses. Under G.L. c.30A, §2, the Commission offers the following responses to the statutory questions:

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

As a general matter, no small businesses are subject to this regulation.

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

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

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

A specific design standard is required in this situation to ensure clarity of the calculation.

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

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

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

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

Massachusetts Gaming Commission
By:

Carrie Torrisi
Associate General Counsel

Dated: April 20, 2022

DRAFT

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 138.00: UNIFORM STANDARDS OF ACCOUNTING PROCEDURES AND INTERNAL CONTROLS

138.26: Keys for Dual Locks; Gaming Licensee-Controlled Keys and Locks; Notice to the IEB and Surveillance Department upon Malfunction and Repair, Maintenance or Replacement

- (1) Any key, locking mechanism or locking system that is required by 205 CMR 138.00 shall be subject to review and approval by the IEB. Such key shall be capable of unlocking the locking device on no more than one type of secure box, compartment or location used or maintained within the gaming establishment.
- (2) A system of internal controls submitted by a gaming licensee in accordance with [205 CMR 138.02](#) shall include a process for obtaining, reproducing, inventorying and identifying each controlled key, locking mechanism, or locking system and setting forth the procedure by which the key, locking mechanism, or locking system shall be controlled. Such internal controls shall, at a minimum, include an enumeration of those incidents which would be considered to compromise the security of any part of the gaming establishment.
- (3) The types of secure boxes, compartments or locations that require a unique key, locking mechanism, or locking system shall include, without limitation, the following:
 - a) Drop boxes;
 - b) Slot drop containers;
 - c) Trolleys to transport drop boxes from gaming tables to a secure location;
 - d) Trolleys or cabinets used to transport or store, respectively, slot cash storage boxes;
 - e) Count room entrance and exit doors;
 - f) Compartments housing slot drop buckets containers;
 - g) Areas in which slot cash storage boxes are located;
 - h) Compartments housing microprocessors or other control units controlling progressive meter(s) for progressive slot machines;
 - i) Locations housing a computer that controls a progressive payout wager system for gaming tables offering a progressive payout wager; and
 - j) Storage cabinets or trolleys for unattached slot drop boxes.
- (4) A system of internal controls submitted by a gaming licensee in accordance with [205 CMR 138.02](#) shall include inventory procedures for any key required to be controlled and maintained by a gaming licensee and for any corresponding locking device including, without limitation, any key and locking device required by 205 CMR 138.00 for a dual control locking system. The key and locking device inventory controls of each gaming licensee shall include, at a minimum, procedures for:
 - a) Maintenance of inventory ledgers by identified, authorized personnel for purposes of documenting:
 1. The requisitioning of keys and locking devices from vendors;

2. The receipt of blank key stock;
 3. The storage and issuance of keys and locking devices;
 4. Any loss, removal from service, and subsequent replacement of keys and locking devices;
 5. The destruction of keys and locking devices; and
 6. The results of physical inventories.
- b) The storage of duplicate keys and locking devices, including a physical description of any storage location and the identification of authorized personnel in control of such location;
- c) The destruction of keys and locking devices, including documentation detailing in whose presence any destruction shall occur; and
- d) Physical inventories of all keys and locking devices at least once every ~~12~~ 3 months.

The Massachusetts Administrative Code titles are current through Register No. 1459, dated December 24, 2021.

Mass. Regs. Code tit. 205, § 138.26, 205 MA ADC 138.26

REGULATORY AUTHORITY

205 CMR 138.00: M.G.L. c. 23K, §§ 4(28), 5, 25(d), 27 and 28

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 138.26 (4): Keys for Dual Locks; Gaming Licensee-Controlled Keys and Locks; Notice to the IEB and Surveillance Department upon Malfunction and Repair, Maintenance or Replacement:** for which a public hearing was held on April 28, 2022.

205 CMR 138.26 was developed as part of the process of promulgating regulations governing the operation of gaming establishments, and their system of internal controls in the Commonwealth. The proposed amendment will increase the physical inventory of keys, to be performed by licensee and reported to the Commission from once yearly to every three months. This regulation is governed largely by G.L. c. 23K, §§ 4(28), 5, 25(d), 27 and 28.

The amendment to 205 CMR 138.26(4) apply to the gaming licensees and the rate they conduct their physical inventories of keys. Accordingly, this regulation is unlikely to have an impact on small businesses.

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

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

As a general matter, no small businesses will be negatively impacted by this amendment as it predominately relates to licensees and their employees. We anticipate that businesses or vendors within the casino may be notified of the increase of physical inventories performed, however, there are no less stringent compliance or reporting requirements for small businesses.

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

The amendment does not establish less stringent schedules or deadlines for compliance for small businesses.

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

The current amendment does not impose 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 standards in the regulation are intended to ensure proper efficiency and inventory of physical locks and keys for the gaming establishment. Accordingly, small businesses are not likely to be forced to replace design or operational standards in compliance with this proposed regulation.

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

The proposed amendment is not likely to deter or encourage the formation of new businesses in the Commonwealth, as it is limited in its likely impact on the business community, and pertains to the gaming licensee.

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

This amendment does not create any adverse impact on small businesses.

Massachusetts Gaming Commission
By:

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

Dated: April 28, 2021

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 147.00: UNIFORM STANDARDS OF RULES OF THE GAMES

147.03: Notice and Patron Access

- (1) The Commission shall maintain on its website the complete text of the rules of all authorized table games.
- (2) Each gaming licensee shall maintain in the Game Sense area a printed or digital copy of the complete text of the rules of all authorized table games.
- (3) A gaming licensee shall not change the rules of a table game that is presently being operated from one authorized rule to another or add, change, or delete any additional wagering requirement permitted by 205 CMR ~~147.07(5)~~ 147.07(4) unless, at least 1/2 hour in advance of such change, the gaming licensee:
 - (a) Posts a sign at the gaming table advising patrons of the rule or wager change and the time that it will go into effect;
 - (b) Announces the rule or wager change to patrons who are at the table; and
 - (c) Notifies the Bureau of the rule or wager change, the gaming table where it will be implemented, and the time that it will become effective.
- (4) A gaming licensee may, at any time, change the permissible minimum or maximum wager at a table game without notifying the Bureau of such change upon posting a sign at the gaming table advising patrons of the new permissible minimum or maximum wager and announcing the change to patrons who are at the table.
- (5) The location, size, and language of each sign required by 205 CMR 147.03(3) and (4) shall be submitted to and approved by the Bureau prior to its use.

REGULATORY AUTHORITY 205 CMR 147.00: M.G.L. c. 23K, § 2, 4(37), and 5.

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 147.00: UNIFORM STANDARDS OF RULES OF THE GAMES

147.07: Minimum and Maximum Wagers; Additional Wagering Requirements

- (1) A gaming licensee may offer:
 - (a) Different maximum wagers at one gaming table for each permissible wager in an authorized game;
 - (b) Different maximum wagers at different gaming tables for each permissible wager in an authorized game.

- (2) A gaming licensee shall provide notice of the minimum and maximum wagers in effect at each gaming table and any changes thereto in accordance with 205 CMR 147.03(3). ~~and (4).~~

- (3) Notwithstanding 205 CMR 147.07(2), a gaming licensee may, in its discretion, permit a player to wager below the established minimum wager or above the established maximum wager at a gaming table.
 - (a) If a dealer announces that a patron's wager will be paid or lost up to the table maximum, the patron's wager will be paid out or lost up to the established maximum wager or minimum wager at the gaming table.
 - (b) If a dealer does not announce that a patron's wager will be paid out or lost up to the table maximum, the patron's wager will be paid out or lost in its entirety, notwithstanding the established maximum wager or minimum wager at the gaming table.

- ~~(4) Any wager accepted by a dealer shall be paid or lost in its entirety in accordance with the rules of the game, notwithstanding that the wager exceeded the current table maximum or was lower than the current table minimum.~~

- ~~(5)~~(4) Nothing in 205 CMR 147.07 shall preclude a gaming licensee from establishing additional wagering requirements that are consistent with the rules of the game, such as a requirement that wagers be made in specified increments, provided that the gaming licensee satisfies the notice requirements of 205 CMR 147.03(3).

REGULATORY AUTHORITY 205 CMR 147.00: M.G.L. c. 23K, § §2, 4(37), and 5.

AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended Small Business Impact Statement in accordance with G.L. c.30A, § 5 relative to the proposed amendments to **205 CMR 147.00 Uniform Standards of Rules to Table Games**, for which a public hearing was held on April 28, 2022.

The regulations set forth in 205 CMR 147.00 were developed as part of the process of promulgating regulations governing the operation of gaming. The proposed amendments will provide regulatory guidance for a dealer by establishing two protocols for how wagers are to be treated. A dealer may notify a patron that their wager, which is above or below the established table maximum or minimum, will be paid out or taken to pursuant to the established table maximum. If a dealer does not make this announcement, then the patron’s wager would be paid or taken in its entirety regardless of the established table maximum. This regulation is governed largely by G.L. c. 23K, §§2, 4(37), and 5.

The amendments to 205 CMR 147.07 and 147.03 apply to the gaming licensees and its employees. Accordingly, this regulation is unlikely to have an impact on small businesses.

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

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

As a general matter, no small businesses will be negatively impacted by these amendments, as they pertain to licensees and their employees. Accordingly, there are no less stringent compliance or reporting requirements for small businesses.

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

There are no schedules or deadlines for compliance or reporting requirements for small businesses imposed by these amendments.

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

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

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

Small businesses will not be called upon to establish performance standards to replace or design operational standards, as this regulation pertains to gaming licensees who offer table games.

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

This amendment is not likely to deter or encourage the formation of new businesses in the Commonwealth, as it is limited in its impact on the business community.

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

This amendment does not create any adverse impact on small businesses.

Massachusetts Gaming Commission
By:

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

Dated: April 28th 2022

TO: Chair Judd-Stein, Commissioners O’Brien, Hill, Skinner

FROM: Mark Vander Linden, Director of Research and Responsible Gaming; Marie-Claire Flores-Pajot, Research Manager

CC: Karen Wells, Executive Director,

DATE: April 22, 2022

RE: Proposed FY2023 Gaming Research Agenda with GPAC feedback

Background:

The Expanded Gaming Act enshrines the role of research in understanding the social and economic effects and mitigating the negative consequences of casino gambling in Massachusetts. To this end, with the advice of the Gaming Policy Advisory Committee (GPAC), the Commission is charged with carrying out an annual research agenda to comprehensively assess the impacts of casino gambling in Massachusetts. The GPAC met on April 4, 2022 to discuss the below FY2023 Gaming Research Agenda. The GPAC suggestions are incorporated in the below gaming agenda and are further described at the end of this memo.

Specifically, [M.G.L. Chapter 23K §71](#) directs the research agenda to examine the social and economic effects of expanded gambling and to obtain scientific information relative to the neuroscience, psychology, sociology, epidemiology, and etiology of gambling.

To fulfill this statutory mandate, the Commission adopted a strategic research plan that outlines research in seven key focus areas, including:

Economic Impact Research

The Social and Economic Impacts of Gambling in Massachusetts (SEIGMA) study, conducted by a team from the UMass Donahue Institute, analyzes the fiscal and economic effects of expanded gaming across the Commonwealth. The economic research is intended to provide 1) neutral information of decision-making, 2) early warning signs of changes connected with casino gambling, and 3) help reducing gambling-related harm. To explore more about the economic impact research including completed reports: <https://massgaming.com/about/research-agenda-search/?cat=economic-impact>

Social Impact Research

The Social and Economic Impacts of Gambling in Massachusetts (SEIGMA) study, conducted by a team from UMass Amherst, analyzes the social and health effects of expanded gaming across

the Commonwealth. To explore more about the social impact research, including completed reports: <https://massgaming.com/about/research-agenda-search/?cat=social-impact-research>

Community-Engaged Research

The objective of community-engaged research is to understand and address the impact of casino gambling in Massachusetts communities. The specific research topic or question is developed by the community through a community-driven process. To explore more about the community-engaged research, including completed reports:

<https://massgaming.com/about/research-agenda-search/?cat=community-engaged-research>

Public Safety Research

Public safety research examines Massachusetts casino impacts on public safety, including crime, calls-for-service, collision, and driving under the influence data. This element of the Commission's research agenda has produced a baseline for each casino host and surrounding communities. Annual follow-up studies measure change in activity and highlight possible connections to the casino. To explore more about the public safety research, including completed reports: <https://massgaming.com/about/research-agenda-search/?cat=public-safety>

Responsible Gaming Program Evaluation

The Commission is committed to offering effective, evidence-based responsible gaming programs and initiatives. Currently, these initiatives include statewide Voluntary Self Exclusion, PlayMyWay Play Management System, and the GameSense program. Ongoing and independent evaluation informs the overall responsible gaming strategy and future direction of these programs. To explore more about the evaluation research, including completed reports:

<https://massgaming.com/about/research-agenda-search/?cat=responsible-gaming-program-evaluations>

Massachusetts Gaming Impact Cohort

The Massachusetts Gambling Impact Cohort (MAGIC), the first major longitudinal cohort study of gambling behavior in the United States, identifies demographic groups particularly at risk of experiencing gambling-related harm and provides information on how gambling and problem gambling develop, progress and remit, and will identify demographic groups particularly at risk of experiencing gambling-related harm. To explore more about the Massachusetts Gaming Impact Cohort, including completed reports: <https://massgaming.com/about/research-agenda-search/?cat=massachusetts-gambling-impact-cohort>

Data Sharing

To improve transparency and build upon the existing research body of research, the Commission has a robust research library and data sharing portal. The Massachusetts Open Data Exchange (MODE) invites researchers of all disciplines to use available gaming-related data to advance the empirical evidence and knowledge base about casinos' social and economic effects on

individuals and communities. To explore more about the Massachusetts Open Data Exchange: <https://massgaming.com/about/research-agenda/>

Proposed FY23 Gaming Research Agenda

The proposed FY23 Gaming Research Agenda is \$1,438,000. This is roughly half the adopted FY22 budget of \$2,940,000. The major difference is that in FY22 the SEIGMA research team fielded the Follow-up General Population Survey and had a sub-contract with the National Opinion Research Center (NORC) at the University of Chicago to complete this work. The survey phase is near complete and attention in FY23 will turn to analysis and reporting lead by Drs. Rachel Volberg and Robert Williams. A final report is expected in March 2023.

Below, the proposed FY23 research agenda is shared with you in the following table and includes 1) general description of each project, 2) specific deliverables/activities, 3) a reference to the section of M.G.L. c. 23K, and significance.

Proposed FY2023 Gaming Research Agenda	
Social and Economic Research	
The Expanded Gaming Act (M.G.L. c. 23K § 71) required the MGC to engage research to understand the social and economic effects of casino gambling in Massachusetts. Since 2013 the MGC has contracted the University of Massachusetts Amherst, School of Public Health and Health Sciences to carry out this part of the research agenda.	
Task/deliverable	Statutory and Practical Significance
Follow-up General Population Study (FGPS)	Relates to: M.G.L. c. 23K, § 71 (1) and §71 (2)(iii)
	This report on the results of the Follow-up General Population Survey(n=8,000) will provide information about gambling behavior, gambling attitudes, and problem gambling prevalence in MA in 2021-2022. The report will also examine changes in gambling behavior, attitudes, and problem gambling prevalence since 2013-2014.
Task/deliverable	Statutory and Practical Significance
Follow-up Online Panel Technical Report	Relates to: M.G.L. c. 23K, § 71 (1) and §71 (2)(iii)
	This report will describe the methods used to calibrate the results of the FGPS and the Follow-up Online Panel Survey (FOPS) allows the results of future online panel surveys to be generalized to the MA population.
Task/deliverable	Statutory and Practical Significance
Administer new FOPS	Relates to: M.G.L. c. 23K, § 71 (1) and §71 (2)(iii)

questions to ~200 FGPS respondents	NORC will re-contact a small number of randomly selected FGPS participants and ask them to complete a brief additional questionnaire. This information will improve calibration of the FGPS and FOPS with the purpose of moving to online panel surveys in the future to monitor gambling behavior, gambling attitudes, and problem gambling.
Task/deliverable	Statutory and Practical Significance
Encore Boston Harbor Patron & License Plate Survey Report	Relates to: M.G.L. c. 23K, § 71 (2) This report will focus on the results of the Encore Boston Harbor Patron & License Plate Survey carried out in April 2022. Information about patron origin, expenditures, and behavior is important in understanding the social and economic impacts of casino gambling in MA.
Task/deliverable	Statutory and Practical Significance
Encore Boston Harbor Operating Report	Relates to: M.G.L. c. 23K, § 71 (2)(vii) This report will focus on the impacts of the operations of Encore Boston Harbor during its first full year of operations on the regional and state-wide economy.
Task/deliverable	Statutory and Practical Significance
Gambling Advertising study	Relates to: M.G.L. c. 23K, § 71 (2)(iv) This study will use an online panel to investigate the correlation between gambling advertising, gambling behavior and increased gambling-related harms among Massachusetts residents.
Task/deliverable	Statutory and Practical Significance
Casino Jobs and Employment – Impacts Report	Relates to: M.G.L. c. 23K, § 71 (2) This study will analyze employment characteristics and conditions at the three Massachusetts casinos to assess the extent to which Massachusetts casino jobs are benefitting the workers in the casino workforce.
Community comparisons methodology updates and analysis	Relates to: M.G.L. c. 23K, § 71(2)(iii)(v)(vii) The Economic Team will update work conducted in 2014 to select communities in the Northeast matched to the MA casino host communities for purposes of counterfactual analysis of the economic impacts of casinos in MA.
Public Safety Research	
The MGC is examining changes in crime, calls for service, and collisions following the opening of casinos in Massachusetts. The intention is to demonstrate what changes in crime, disorder, and other public safety harms can be attributed directly or indirectly to the introduction of a casino and what strategies local communities need to implement to mitigate the harm.	
Task/deliverable	<ul style="list-style-type: none"> • Provides ongoing monitoring system of crime, calls for service, and traffic. • Allows for early detection and
Assess the influence of gambling on public safety for Springfield and eight surrounding communities. Produce a	

year-4 report. Provide crime analyst technical assistance as needed.	response to casino related problems that may arise. • Provides an opportunity for greater collaboration with local police chiefs and crime analysts.
Task/deliverable	
Assess the influence of gambling on public safety for Everett and seven surrounding communities . Produce a year-3 report. Provide crime analyst technical assistance as needed.	
Community-Engaged Research	
Task/deliverable	Statutory and Practical Significance
Support an estimated two new community driven research projects	Relates to: M.G.L. c. 23K, § 71 (3)(ii)
	The objective of community-engaged research is to more deeply understand and address the impact of casino gambling in Massachusetts's communities. The specific research topic or question is developed by the community through a community-participatory process.
Data Sharing	
Task/deliverable	Practical significance
Maintain existing datasets in the MODE repository and add additional datasets as they become available, including player card data as required.	Relates to: M.G.L. c. 23K, § 71 (2); Chapter 194, Section 97
	The purpose of MODE is to provide access to data generated by research projects funded and overseen by the MGC. Datasets from existing and ongoing research projects and player card data are publicly available with certain parameters.
Responsible Gaming Evaluation	
The MGC is committed to offering effective, evidence-based responsible gaming programs and initiatives. MGC responsible gaming initiatives include; statewide Voluntary Self-Exclusion, the PlayMyWay play management system and the GameSense program. Ongoing and independent evaluation informs the overall responsible gaming strategy and future direction of these programs.	
Task/deliverable	Practical significance
Evaluation of PlayMyWay at MGM Springfield	This study will examine the effectiveness at achieving program goals; 1) Sustain recreational gambling by establishing feasible parameters, and 2) Eliminate the regret arising from loss of control NOTE: This study will be funded entirely by the International Center for Responsible Gaming
Evaluation of the GameSense program at Plainridge Park Casino, MGM Springfield and	Continuation of a study that launched in April 2022. The study will measure the effectiveness of the GameSense Program at meeting the goals stated in the GameSense Logic Model; 1) Create a responsible gaming enabled casino workforce, 2) Promote positive play, 3) Reduce

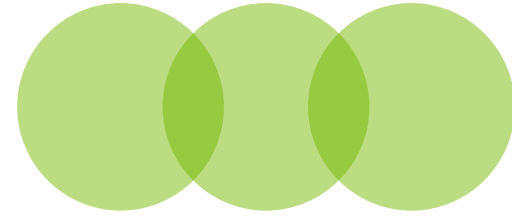
Encore Boston Harbor.	gambling related harm
Research Review	
To ensure the highest quality research, the MGC has assembled a research review committee. This committee is charged with providing the MGC and research teams with advice and feedback on gaming research design, methods, and analysis. Where additional expertise is needed, the MGC seeks advice from experts with specific subject matter expertise to review reports and advise on research matters.	
Knowledge Translation and Exchange	
To ensure findings from the MGC research program are accessed and used by key stakeholders, engage an organization with expertise in this area to help develop a strategic plan, provide on-going training, consultation, and support to build in-house capacity to improve current KTE strategies, practices, and skill sets.	

GPAC Feedback

As required by [M.G.L. Chapter 23K §71](#) the Gaming Policy Advisory Committee (GPAC) met on April 4, 2022 to discuss and advise on the proposed FY2023 Gaming Research Agenda. Following a presentation of a proposed agenda, it was suggested the MGC add a study to better understand the casino workforce. This would include measures such as salaries/payroll and benefits, to assess the quality of jobs degree to which casino employment has benefitted host casino workers. A member of GPAC emphasized the importance of such study, and if research funds were strained for FY23, in order to accommodate the workforce study, they suggested the MGC consider removing the gambling advertising study and follow the current recommendations included in [the draft advertising white paper](#) rather than further research the area.

We discussed the GPAC recommendation with the SEIGMA team on April 13, 2022. The SEIGMA team creatively suggested that we adjust the “Community comparisons methodology updates and analysis” study, to accommodate the workforce a study and keep the advertising paper, all within the proposed budget.

Based on the discussions mentioned above, the proposed FY23 agenda, incorporates a workforce study suggested by GPAC, and maintains the gambling advertising study.



Play My Way Informational Report: MGM, 2022

April 28, 2022

Mass. Gaming Commission (MGC)

Mass. Council on Gaming and Health (MACGH)

Play My Way





Lead up to Launch Day

171 MGM staff members strategically trained on PMW from guest facing departments

- 33 members of the cage department
- 27 members of the slots department with an additional 34 reached through pre-shift meetings
- 37 members of the food and beverage department
- 40 members of the security department
- Additionally, 6 MGC agents were trained

***All PMW staff trainings included a refresher on the GameSense Live Chat and Remote VSE options.**



GameSense Advisor, Aisha, posing with beverage servers after PMW training.



The Problem Gambling Awareness Month (PGAM) Connection

- During PGAM, 1,500 guests were briefed by GameSense on the upcoming PMW program
- Over 2 million views were generated through direct digital advertising of casino visitors
- On site advertenting on the floor and the back of the house promoting upcoming launch



PlayMyWay Marketing



Pull Up Banners

NEED HELP STICKING TO YOUR BUDGET?

SIGN UP FOR *PlayMyWay*

Sign up at the GamseSense Info Center or on any slot machine.

GameSense *PlayMyWay*

PLAY SMARTER WITH *PlayMyWay*

OUR FREE BUDGETING TOOL.

Sign up at the GamseSense Info Center or on any slot machine.

GameSense *PlayMyWay*

PlayMyWay

THE SMART WAY TO TRACK YOUR PLAY.

Sign up at the GamseSense Info Center or on any slot machine.

GameSense *PlayMyWay*

Poster Boards

INTRODUCING *PlayMyWay*

A FREE, EASY-TO-USE BUDGETING TOOL.

Sign up at the GameSense center or on any slot machine.
First time enrollees get a \$10 food credit.

GameSense *PlayMyWay*

INTRODUCING *PlayMyWay*

A FREE BUDGETING TOOL TO KEEP YOU ON TRACK.

Sign up at the GameSense center or on any slot machine.
First time enrollees get a \$10 food credit.

GameSense *PlayMyWay*

PlayMyWay Awareness Creative



Geo Fencing Ads

SIGN UP FOR
PLAYMYWAY AT THE
GAMESENSE CENTER
OR ON ANY
SLOT MACHINE.

PlayMyWay

PLAY SMARTER.
SAVE MONEY.
IT'S A WIN-WIN!

PlayMyWay

PLAY SMARTER.
SAVE MONEY.
IT'S A WIN-WIN!

LEARN MORE

PlayMyWay

Retro Fencing Ads

NEED HELP
STICKING TO
YOUR BUDGET
WHEN YOU
GAMBLE?

PlayMyWay

SIGN UP FOR
PLAYMYWAY AT THE
GAMESENSE CENTER
OR ON ANY
SLOT MACHINE.

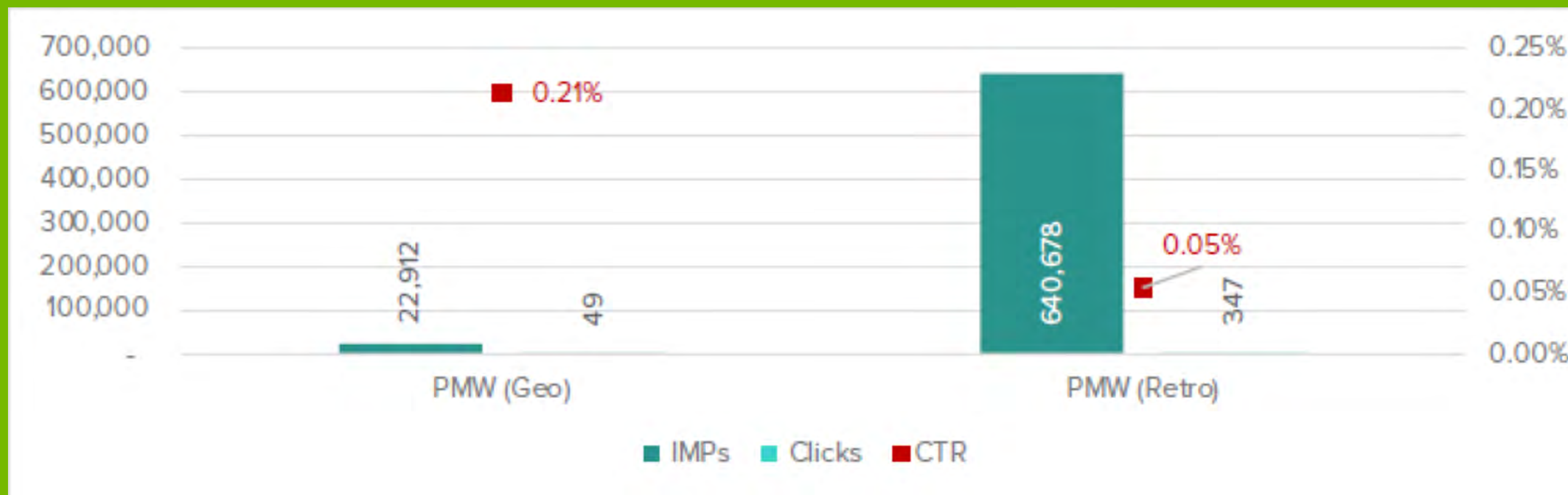
PlayMyWay

PLAY SMARTER.
KEEP GAMING FUN.
IT'S A WIN-WIN!

LEARN MORE

PlayMyWay

PlayMyWay Awareness Creative



There are more traction for Retro ads than Geo ads, suggesting the audience is more receptive to the PMW message after leaving the casino. However, those who saw the Geo ads were clicking at a much higher rate than Retro.



PlayMyWay Social Carousel



Geo Fencing

Sign up for our free PlayMyWay budgeting tool at the GameSense Center.

Retro Fencing

Need help sticking to your budget when you gamble? Sign up for PlayMyWay, our free budgeting tool.



PlayMyWay Social Story Campaign



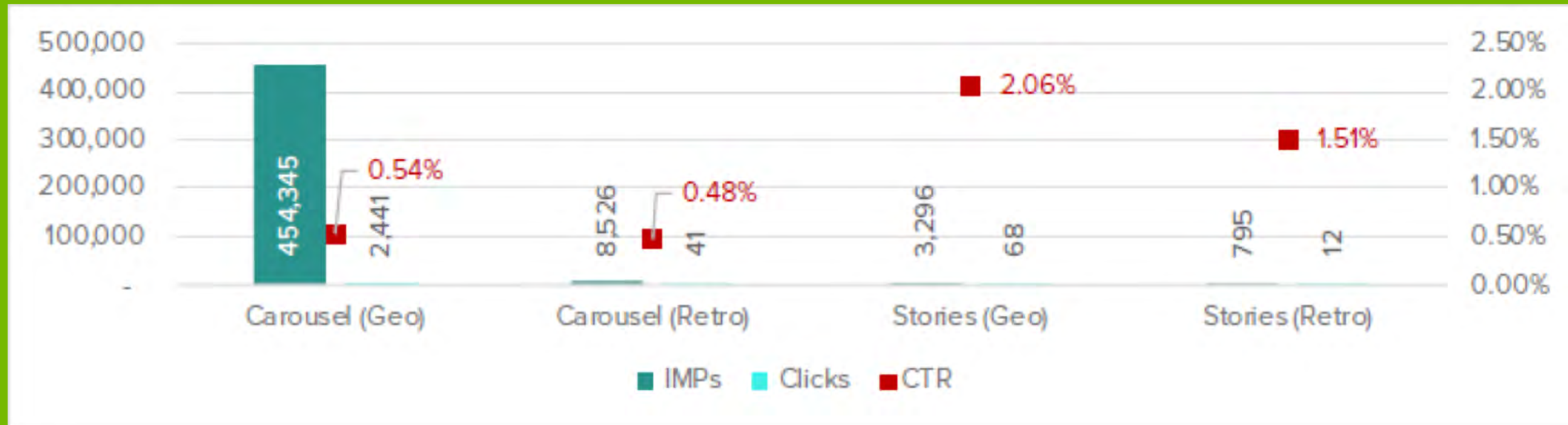
Geo Fencing



Retro Fencing



PlayMyWay Awareness Social Creative



Greater impressions with Carousel (Geo). Click Through Rates (CTR) were greater with Story ads. There are more opportunities to see Carousel ads, Stories tend to drive greater engagement.



The Soft Launch & Launch Day

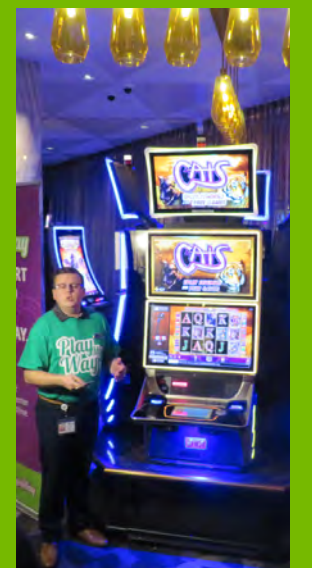
March 28 - 31

- 257 active enrollees
- 12 un-enrolled
- 5 re-enrolled
- 248 food credit incentives redeemed





Launch Day: All Hands-on Deck

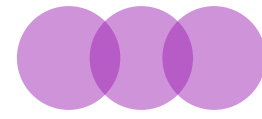


Totals as of 4/27/2022

- 1198 total active enrollees
- 52 total un-enrolled
- 10 total re-enrolled
- 1146 food credit incentives redeemed

SIGN UP NOW





Special Thanks!



IGT®



GameSense™



The Massachusetts Council
ON GAMING AND HEALTH





Division of Racing

MEMORANDUM

TO: Massachusetts Gaming Commission
FROM: Chad Bourque, Financial Analyst
SUBJECT: Request for Consideration | Harness Horse Capital Improvement Trust Fund
DATE: April 19, 2022

In accordance with General Laws of Massachusetts, Chapter 128A, Section 5g. The trustees may expend without appropriation all or any part of the capital trust fund to the appropriate track licensee in proportion to the amount deposited in each fund for use of a capital expenditure for alterations, additions, replacements, changes, improvements or major repairs to or upon the property owned or leased by the licensee and used by it for the conduct of racing, but not for the cost of maintenance or of other ordinary operations. The trustees shall hire the services of the architectural/engineering consultants as they deem appropriate to advise them and to evaluate proposed capital improvements. The following capital fund requests have been reviewed.

HHCITF Request for Consideration: 2022-01

- Track Conditioning Equipment \$46,600 (plus tax and shipping)

All financial statements required under section 6 shall be accompanied by a statement signed under the pains and penalties of perjury by the chief financial officer of the licensee setting forth the capital improvements completed with funds obtained under this section. All documentation has been submitted and reviewed.

After review and confirmation of the request, with your authorization, we will approve the scope of work to be completed at the licensee facility. The current balance in the HHCITF is \$767,194.

Encl. plainridge_rfc_hhcitf_2022_01

Cdb



Massachusetts Gaming Commission



Wayne O. Salo, Founder
Neil R. Dixon, Founder
Jesse G. Hilgenberg, Principal

April 14, 2022

Mr. Chad Bourque, Senior Financial Analyst
Massachusetts Gaming Commission/Racing Division
101 Federal Street
Boston, MA 02110

RE: Plainville Gaming & Redevelopment, LLC
Project Plainridge HHCITF 2022-01
Track Conditioner
Track Harrow
Request for Consideration

Dear Mr. Bourque:

Attached please find one copy of a Request for Consideration from Plainville Gaming & Redevelopment, LLC to the Massachusetts Gaming Commission/Racing Division in the amount of \$46,600.00 for the Purchase of a track conditioner and a track harrow for use at Plainridge Racecourse.

The project involved the purchase of a new track conditioner and new harrow to aid in the maintenance of the race track in a safe and consistent racing surface.

We have been advised that Larcom & Mitchell the vendor providing this equipment are the only vendor approved by the Massachusetts Gaming Commission and therefore Plainville Gaming & Redevelopment, LLC only solicited a proposal from Larcom & Mitchell.

Based upon the above, it is the opinion of this office that the project is an appropriate Capital Improvement Trust Fund Project, and we recommend that this Request for Consideration be approved by the Massachusetts Gaming Commission/Racing Division in the amount of \$46,600.00.

Should you have any questions please do not hesitate to contact this office.

Very truly yours,
DIXON SALO ARCHITECTS, INC.

Neil R. Dixon,
Principal/Architect
NRD/hs

cc: Steve O'Toole, Plainville Gaming & Redevelopment, LLC
Enclosure: Project Plainridge HHCITF 2022- 01 (RFC)



PLAINRIDGE PARK CASINO

Massachusetts Gaming Commission
Harness Horse Capital Improvement Trust Fund
Harness Horse Promotional Trust Fund

- 1. Date: 4/13/2022
2. Association: Plainville Gaming & Redevelopment, LLC
3. Project #: Plainridge HHCITF 2022-01

4. Project Description: Track Conditioner and Track Harrow

- 5. Type of Request: RFC - HHCITF
Request for Consideration / RFC
Request for Reimbursement / RFR
Harness Horse Capital Improvement Fund / HHCIF
Harness Horse Promotional Trust Fund / HHPTF

6. Total Project Amount: \$46,600.00 + tax & shipping (Estimate/RFC)
Estimate / RFC see attached Invoice #6665
Actual / RFR

7. RFC - Provide a detailed description of the promotional or capital improvement project including the project objectives, how it will enhance the operations of the association and / or improve attendance and handles at your racetrack:

Track conditioners and harrows help maintain a safe and consistent racing surface. Larcom & Mitchell is a single source provider for standardbred racetrack maintenance equipment and has acquired a vendor registration exemption from the Massachusetts Gaming Commission

RFR - Requests for reimbursement must contain a listing of all project expenditures by date, paid to and check number. A copy of the invoice and cancelled check must support each expenditure:

8. For Capital Improvement Projects only, RFC's and RFR's must be submitted to the Commission's architect engineer consultant for review. The consultant makes recommendations to the Trustees relative to the cost and nature of the capital improvement project.

9. By Track Official: [Signature] Title: Director of Racing Date: 4/13/2022
Steve O'Toole

10. Trustee Approval and Date:

Sterling James Investments dba

www.larcom-mitchell.com

Invoice

Larcom & Mitchell

5800 Dogwood Dr
 Urbana, OH 43078

740-595-3750

Date	Invoice #
1/26/2022	6665

Bill To
Plainridge Race Course Plainville Racing Co. 301 Washington Street Plainville, MA 02762 USA

Ship To
Plainville Racing Co. Tony Ristaino 301 Washington Street Plainville, MA 02762 USA

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
C787815	See below	House	1/25/2022	TBD		

Quantity	Item Code	Description	Price Each	Amount
1	TC-SBHD 12ft	Standardbred Track Conditioner 12' Heavy Duty 18" Roller, 11' 1 Tip Teeth	26,900.00	26,900.00
1	LB-SB-12' COMP...	LEVEL BAR - SB 12' HD	3,800.00	3,800.00
1	HARROW, SQU...	HARROW, SQUARE - 8'	15,900.00	15,900.00

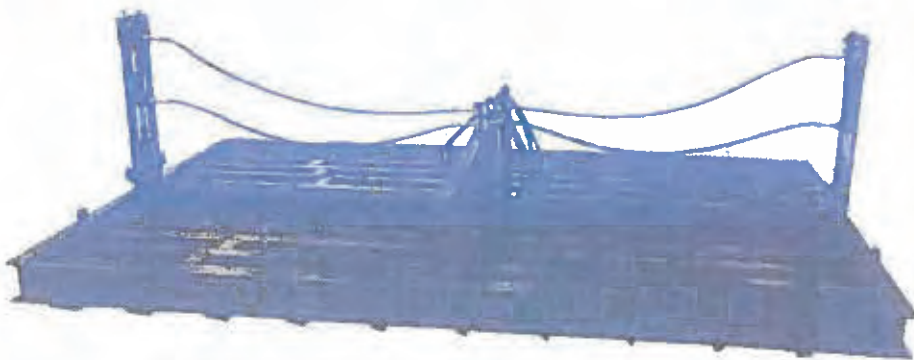
Past due invoices subject to 1 1/2% service charge or 18% annually.

Subtotal	\$46,600.00
Payments/Credits	\$0.00
Balance Due	\$46,600.00

Product Photo: Track & Race Conditioner Equipment



Standardbred Track Conditioner



INFO:

The Larcom & Mitchell Standardbred Track Conditioner is the perfect choice for consistent Horse Track Maintenance. Heavy duty welded construction has all hydraulic hoses and fittings included. Larcom & Mitchell's professional grade track equipment is used by the leading HTA race tracks worldwide.

The cutting depth for most standardbred race tracks is 1/8"-1/2". The 8" inch hardened Tungsten Carbide tipped teeth and easy to replace and adjust with wear and are backed with a 4" welded steel gusset which supports the tooth for added stability. As all Larcom and Mitchell equipment, the cutting depths are easy to adjust and control to the exact preset depths suited for your specific conditions.

Larcom and Mitchell also manufacturers a Heavy Duty Standardbred track conditioner which provides more weight in dealing with wet and icy weather conditions. The Heavy Duty Model includes a 18" roller with longer 11" carbide tipped teeth and 6" gussets. This design allows higher compaction and more aggressive performance where required. This particular unit has been very popular in Canada and the East Coast where inclement weather conditions are often severe.

Request A Quote

TECHNICAL DATA:

The **Standardbred** Track Conditioner has:

- 10.4" 80 Teeth 2500 LBS 50-60 HP Tractor
- 12' 96 Teeth 2650 LBS 60-72 HP Tractor

Standardbred Specs:

-

The **Heavy Duty Standardbred** Track Conditioner has:

- 10.4" 80 Teeth 3248 LBS 60-70 HP Tractor
- 12' 96 Teeth 3540 LBS 72-85 HP Tractor

Heavy Duty Standardbred Specs:

- 18" Tire/rollers to control depth and raise the unit for transport
- 11" hardened Tungsten Carbide steel teeth that can be adjusted
- 6" welded gusset to support tooth for added stability

ADDITIONAL OPTIONS:

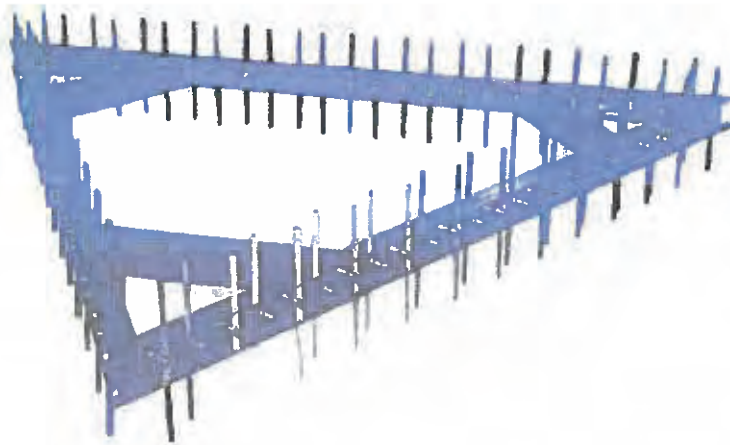
Level Bar

- works material back to higher areas, smoothest and finishes.

World's Finest Race & Event Conditioning Equipment



Triangle Drag Harrow



1 2 Next

INFO:

The Larcom and Mitchell 9' Triangle Drag Harrow is the most economical means to condition your soil surface. The double punched I-beams lock in the hardened teeth which can be adjusted as the teeth wear. Triangle Harrow is available in Aluminum for a light cut and Steel for a deeper cut. One of the original designs used back in 1952, Triangle Harrow is a low cost pull behind drag that continues to find a home on Standardbred tracks. All that is required is

to hook the drag to the tractor drawbar and go! The 9ft I Beam Frame has 75 teeth that cut into the racing surface.

Request A Quote

TECHNICAL DATA:

Description:

- 9' Triangle Drag Harrow Steel
- 9' Triangle Drag Harrow Aluminum

Features:

- Rugged and extra sturdy steel frame
- Steel or Aluminum
- Pulled by provided chains
- 15 " hardened teeth that can be driven down as they wear for extended life

ADDITIONAL OPTIONS



Our other machines:

Standardbred

Thoroughbred

Triangle

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

FROM: Alexandra Lightbown, Director of Racing

CC: Karen Wells, Executive Director
Todd Grossman, General Counsel

DATE: April 28, 2022

RE: Suffolk Downs Request for Approval of Account Deposit Wagering Provider
XpressBet

Dear Commissioners:

Suffolk Downs' Chief Operating Official Chip Tuttle has submitted a request for approval of Account Deposit Wagering provider XpressBet LLC. This vendor has been approved for many years by the Massachusetts Gaming Commission. It was to be rebranded as 1/ST Bet. At its December 16, 2021 Commission meeting, Mr. Tuttle asked for, and the Commissioners approved, 1/ST Bet for 2022. As Mr. Tuttle explains in his April 21, 2022 letter, he has learned that XpressBet continues to operate under its original name alongside 1/ST Bet, so he is seeking its approval.

Recommendation: That the Commission approves the Suffolk Downs request for approval of XpressBet LLC as an Account Deposit Wagering Vendor.

April 21, 2022

Via email

Dr. Alex Lightbown
Director of Racing and Chief Veterinarian
Massachusetts Gaming Commission
alexandra.lightbown@massgaming.com

Re: Suffolk Downs's Request for Approval of XpressBet as a 2022 ADW Vendor

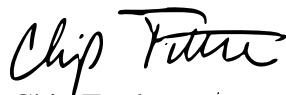
Dear Dr. Lightbown:

I write to request that the Commission approve XpressBet LLC as an additional account wagering vendor for Sterling Suffolk Racecourse, LLC ("Suffolk Downs") for 2022.

As you know, in December 2022, Suffolk Downs sought and the Commission granted approval of several ADW vendors. XpressBet, which has been an approved ADW vendor for many years, was identified in our approval request as the former name of the 1/ST Bet platform. Both XpressBet and 1/ST Bet are owned by The Stronach Group, and we understood at the time that they had fully switched the ADW service over to the 1/ST Bet platform. We have come to learn that XpressBet continues to operate in a limited capacity under its original name, alongside 1/ST Bet. As a result, our request for 2022 ADW vendors should have copied our 2021 request, which sought approval of "XpressBet LLC (and its affiliate, 1/ST Bet)". We ask that the Commission now approve XpressBet LLC as an ADW vendor in its own name, as it has for many years.

I am happy to provide any additional information or answer any questions you or the Commission may have in order to be able to act on this request. Thank you for your time and consideration,

Sincerely,



Chip Tuttle
Chief Operating Officer