



NOTICE OF MEETING AND AGENDA

Pursuant to the Massachusetts Open Meeting Law (G.L. c. 30A, §§ 18-25), St. 2022, c. 107, and St. 2023, c. 2, notice is hereby given of a public meeting of the **Massachusetts Gaming Commission**. The meeting will take place:

Tuesday | July 11, 2023 | 10:00 a.m.
VIA REMOTE ACCESS: 1-646-741-5292
MEETING ID/ PARTICIPANT CODE: 111 509 0803
All meetings are streamed live at www.massgaming.com.

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

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

PUBLIC MEETING - #464

1. Call to Order – Cathy Judd-Stein, Chair

2. Meeting Minutes
 - a. January 12, 2023 **VOTE**
 - b. ~~January 18, 2023~~ **VOTE**

3. Administrative Update – Karen Wells, Executive Director

4. Succession of Officers and Positions – All Commissioners **VOTE**

5. Sports Wagering Division – Bruce Band, Director of Sports Wagering, Sterl Carpenter, Sports Wagering Operations Manager, Crystal Beauchemin, Sports Wagering Business Manager
 - a. Event Catalog Addition Request – LIV Golf **VOTE**
 - b. Update to House Rules – Barstool Sportsbook and Casino **VOTE**
 - c. Request for Temporary Waivers



Massachusetts Gaming Commission

- I. 205 CMR 238.45 (2)e – Personally Identifiable Information Security **VOTE**
- II. 205 CMR 248.16 – Responsible Gaming Limits **VOTE**

- 6. Community Affairs Division – Joe Delaney, Chief of Community Affairs
 - a. Encore Boston Harbor East of Broadway Expansion Continued Discussion
- 7. Search for Permanent Executive Director – All Commissioners
 - a. Consideration of Executive Director Search Process – Mina Makarious (Partner – Anderson & Kreiger LLC), David Mackey (Partner – Anderson & Kreiger LLC) **VOTE**
 - b. Review of Executive Director Job Description **VOTE**
- 8. Commissioner Updates
- 9. Other Business - Reserved for matters the Chair did not reasonably anticipate at the time of posting.

I certify that this Notice was posted as “Massachusetts Gaming Commission Meeting” at www.massgaming.com and emailed to regs@sec.state.ma.us. Posted to Website: July 7, 2023 | 10:00 a.m. EST | **REVISED: July 10, 2023**

July 7, 2023

Cathy Judd-Stein
Cathy Judd-Stein, Chair

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



Massachusetts Gaming Commission



Massachusetts Gaming Commission Meeting Minutes

Date/Time: January 12, 2023, 10:00 a.m.
Place: Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 492 8950

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

Commissioners Present:

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

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

Chair Judd-Stein called to order the 423rd Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five Commissioners were present for the meeting.

2. [Review of Meeting Minutes](#) (01:01)

a. June 22, 2022

Commissioner Hill moved that the Commission approve the minutes from the June 22, 2022, public meeting that are included in the Commissioner's Packet subject to any necessary corrections for typographical errors or other non-material matters. Commissioner O'Brien seconded the motion.

Roll call vote:
Commissioner O'Brien: Aye.

Commissioner Hill: Aye.
Commissioner Skinner: Aye.
Commissioner Maynard: Abstain.
Chair Judd-Stein: Aye.

The motion passed unanimously, 4-0 with one abstention.

3. [Administrative Update](#) (02:00)

Executive Director Karen Wells stated that the Commission staff was finalizing preparations for the launch of the three category one sports wagering operators, and they were on target for the launch date of January 31, 2023. She stated that Communications Division Chief, Thomas Mills was devising a plan for the Commissioners to visit all three casinos at the same time.

Executive Director Wells stated that software was being tested in the lab and would be verified on-site. She stated that a date needed to be figured out for the Commission to grant operations certificates for the three casinos.

Executive Director Wells announced that IEB Assistant Director and Gaming Agents Divisions Chief Bruce Band had been selected to assume the position of Director of Sports Wagering. She announced that Gaming Agent Field Manager Burke Caine would be stepping in as the Interim Division Chief for the Gaming Agents Unit

a. [Casino Update](#) (06:05)

Director Band stated that Plainridge Park Casino (“PPC”) had a New Year’s Eve balloon drop and live entertainment in the Revolution Lounge. He stated that sports wagering kiosks had been placed in position pending approval from the Investigation and Enforcement Bureau (“IEB”) and Gaming Laboratories International (“GLI”). He stated that PPC was getting ready for Chinese New Years celebrations.

Director Band stated that Encore Boston Harbor (“EBH”) had a prom themed party on New Year’s Eve in the Wynn Sports bar. He stated that EBH was having a lion awakening ceremony for Chinese New Year and was selling year of the rabbit chips.

Director Band stated that MGM Springfield (“MGM”) had a successful New Year’s Eve celebration. He stated that MGM was preparing for a winter weekend happening on January 21. He stated that the comedy club was open on Friday and Saturday Nights. The Commission congratulated Director Band on his new position.

b. [Request for Additional IT Hires](#) (12:03)

Chief Information Officer (“CIO”) Katrina Jagroop Gomes presented a request for five additional full-time positions (“FTEs”) for the ITS Division due to the recent expansion of staff

and technical services requires. She stated that the positions requested were gaming technical compliance engineer, business analyst, system administrator, service-desk specialist, and network engineer.

CIO Jagroop-Gomes explained that these positions would allow for a well-needed redundancy that would reduce the risk of a single point of failure and increase effectiveness through the distribution of workloads. She noted that the ITS service desk experienced a 46.17% increase in requests. Chief Financial and Accounting Officer (“CFAO”) Derek Lennon stated that if this request was approved, it would come to the Commission as part of the second quarter of the annual budget update. He stated that he planned to have an update on sports wagering in the budget and that some of these positions would be included there.

Commissioner Skinner moved that the Commission approve the request for five additional IT FTEs including gaming technical compliance engineer, business analyst, network engineer, systems administrator, and service desk specialist as included in the Commissioner's Packet and discussed here today. Commissioner Maynard seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

c. [Sports Wagering License Update](#) (18:22)

a. Temporary Sports Wagering License Request from Plainridge Park Casino

Executive Director Wells presented a request for a temporary sports wagering license from Plainville Gaming and Redevelopment LLC dba Plainridge Park Casino. She stated that she had found PPC to be a qualified gaming entity pursuant to General Law Chapter 23N, § 3 and stated that PPC had paid the initial sports wagering license fee of \$1 million. She recommended the Commission issue PPC the requested temporary sports wagering license and authorize PPC to conduct sports wagering for one year or until a final determination was made on its license application. She noted that PPC would still be required to undergo testing and receive an operations certificate pursuant to the Commission’s regulations.

Commissioner Hill moved that pursuant to General Law Chapter 23N, § 6 (c)(2) and 205 CMR 219.00, the Commission issue Plainville Gaming and Redevelopment LLC a temporary sports wagering license and authorize Plainville Gaming and Redevelopment LLC to conduct sports wagering for a period of one year under a temporary license or until a final determination on its operator’s license application was made. Commissioner O’Brien seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

b. [Full License Update for Category 1 - Retail](#) (21:20)

Executive Director Wells stated that EBH and MGM did not request a temporary license and that they had both paid their \$5 million fee for their operator's license. She stated that the casinos were on target to move forward for the January 31, 2023, launch date.

Chair Judd-Stein requested that the Commission defer discussions on 205 CMR 232.00 and 205 CMR 104.00. She stated that a memorandum could provide more information on integration and options. The Commission reached a consensus to remove those two regulations from the agenda and discuss the topics on a later date.

4. [Racing Division](#) (24:15)

a. Plainridge Park Casino Capital Improvements Request

Director of Racing and Chief Veterinarian Dr. Alex Lightbown stated that PPC had submitted a capital improvement request. She introduced Financial Analyst Chad Bourque to present the request. The *Memorandum for The Capital Improvement Request* was included in the Commissioners packet on pages 23 through 29.

Mr. Bourque stated that PPC has submitted a request for consideration for funds the Harness Horse Capital Improvement Trust. He explained that each month funds are deposited into the trust that licensees can use to repair, maintain, or improve their property. He stated that distributions are made upon the Commission's approval of the licensee's request for consideration followed by their request for reimbursement.

Mr. Bourque stated that the request was for \$95,000 in funds for preconstruction services for the renovation and expansion of the horse paddock and barn building. He stated that he had reviewed the documentation submitted and that all statutory requirements were met. He noted that the current balance of the fund was \$855,445 and recommended approval of PPC's request.

Director of Racing from PPC Steve O'Toole stated that the paddock barn was twenty-five years old, and that the infrastructure was antiquated. He stated that PPC was working with Currie Building Systems Inc. in coordinating on the project. He noted that the project might extend into the racing season.

Commissioner Hill asked if the \$855,445 balance in the Harness Horse Capital Improvement Trust was before or after the \$95,000 request. Mr. Bourque stated that the \$95,000 had yet to be subtracted from that balance. Chair Judd-Stein noted that this improvement would benefit both the animal athletes and human athletes.

Commissioner Hill moved that the Commission approve the Plainridge Park Casino capital improvement request for \$95,000 for phase-one preconstruction design for the race paddock renovations and expansion as included in the Commissioner's Packet and discussed here today. Commissioner Skinner seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

5. [Community Affairs](#) (32:26)

a. Community Mitigation Fund Budget Update

Chief of the Community Affairs Division Joe Delaney presented a budget modification request for the Community Affairs Division to upgrade the Community Mitigation Fund database. He noted that \$40,000 was allocated for this upgrade and that the quote from the contractor was for \$79,437.75. He stated that the Community Affairs Division would need an additional \$40,000 in its budget.

Chief Delaney explained that under 205 CMR 153.05 the Community Affairs Division could use up to ten percent of the Community Mitigation Fund for administrative costs. He explained that for FY23 the Community Affairs Division had only used 2% of the funds, and that the additional \$40,000 would raise it to 2.2%. He noted that this was well below the 10% established in the regulation.

CFAO Lennon explained that the \$40,000 could have been sufficient if the Commission had a developer in-house, but that the Commission was still hiring for that position. Commissioner O'Brien noted that the database was sorely needed and would make compliance more accurate and easier to effectuate. Chair Judd-Stein and Commissioner Hill agreed that it was an essential tool.

Chair Judd-Stein inquired whether this round of upgrades was enough. Chief Delaney stated that there would be additional enhancements over time, and that the Community Affairs Division would reserve some money each year for upgrades to the program.

Commissioner O'Brien moved that the Commission amend the FY23 budget to transfer an additional \$40,000 to the Community Affairs Division budget from the Community Mitigation Fund for development of the Community Mitigation Fund database as included in the Commissioner's Packet and discussed here today. Commissioner Hill seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

6. [Legal](#) (50:33)

a. Sports Wagering Regulations:

i. 205 CMR 256.00: Sports Wagering Advertising – Draft Regulation and Memorandum for Review and Discussion

Attorney Mina Makarious, outside counsel from the law firm Anderson and Krieger presented 205 CMR 256 related to sports wagering advertising. He noted that an advertising roundtable was held in 2022 and that first amendment considerations and federal statutes relevant to regulating advertising were discussed. The *legal memorandum and draft 205 CMR 256* were included in the Commissioner's Packet on pages 50 through 60. He stated that the Legal Team wanted Commission feedback for edits.

Commissioner Maynard asked, relative to 205 CMR 256.013, if it was standard to include language related to the volume of patrons. Mr. Makarious stated that it shows up in other jurisdictions, and it was based on the number of patrons who do wagers as a volume. Chair Judd-Stein suggested clarifying language in this provision.

Commissioner Maynard stated that marketing firms try to drive up volume and expressed concern about restrictions based on the volume of patrons. Chair Judd-Stein stated that the provision was in response to the issue of frequency and intensity of sports wagering advertisements. She noted that other jurisdictions had a barrage of advertising, and that it was an issue from the responsible gaming perspective as well. Mr. Makarious noted that the language was identical to Connecticut's language.

Commissioner Hill sought clarification as to whether operators doing business in another state and advertising in Massachusetts would have to include language in their advertisements, making it clear that they do not do business in Massachusetts. Mr. Makarious stated that was correct; and that the regulation would require a disclaimer making it clear they do not operate in Massachusetts.

Commissioner Hill presented an example that a radio show in Boston may have a New Hampshire company's logo behind the host, and asked how they would include a disclaimer. Mr. Makarios stated that the example's operator would have to figure out whether they wanted to continue advertising in Massachusetts and change the advertisement to clarify they operate in another state.

Chair Judd-Stein stated that operators from other states who advertise in Massachusetts should also be obligated to have the same responsible gaming language Massachusetts operators are required to have. Mr. Makarios stated that there could be an issue of enforceability, as it would require the operators to remain apprised of the responsible gaming language in a forum, they are not licensed in.

Commissioner O'Brien noted that Connecticut did not allow operators to imply patrons had a greater chance to win with their platform as opposed to another operator. She asked if that language should be considered. Mr. Makarios stated that it could be added but was likely already covered by the prohibition on misleading statements.

Chair Judd-Stein suggested a reordering of the subsections. Mr. Makarios noted that removing the word "free" from 205 CMR 256.04 could prevent confusion with 205 CMR 256.06(c)

Commissioner O'Brien asked if the percentages in 205 CMR 256.05(b) and 205 CMR 256.05(e) were backwards. Mr. Makarios noted that those provisions were in the negative, and stated he would clarify the language. Commissioner O'Brien noted that some jurisdictions prevent advertising where less than 85% of the audience was of the age to participate and suggested that the 75% could be raised to 85%. Chair Judd-Stein added that the Massachusetts Cannabis Control Commission used 85%.

Mr. Makarios explained that several states used the term majority with their regulations. Director of Research and Responsible Gaming Mark Vander Linden stated that the advertising white paper recommended 85%. He noted that the American Gaming Association ("AGA") code of conduct suggested 73.6%. Commissioner O'Brien stated a compromise could be reached with 80%.

Chair Judd-Stein asked what the 85% in the white paper was based on. Commissioner O'Brien suggested clarifying language to make clear that 85% of the audience would need to be twenty-one or older.

Commissioner Skinner expressed that the regulation as written seemed clear. She stated she would like to be more informed on which percentage to choose for the regulation. Mr. Makarios stated that the state population was approximately 15% to 20% under the age of twenty-one. Commissioner O'Brien cautioned the idea of using a metric that might change based upon birth

rate. Commissioner Maynard stated that percentages would then have to change dependent upon population change.

Director Vander Linden stated that marketers could tell with great precision who the audience of an advertisement was. Commissioner Maynard stated that targeted advertisements were okay, due to the precision of knowing the audience, but that he was conflicted regarding billboards. He stated that he would like more information about that form of marketing. Commissioner O'Brien stated that she was amazed by the amount of information available to marketers.

Chair Judd-Stein stated that billboards could be addressed if the Commission hears complaints. Mr. Makarios noted that the language would be inversed to 15% rather than 85%. Chair Judd-Stein asked if any jurisdiction had adopted the AGA recommendation. Mr. Makarios stated that most other jurisdictions used majority rather than specific numbers.

Commissioner Maynard expressed an interest in whether the more restrictive provision would affect events at TD Garden or other large stadiums. Chair Judd-Stein stated that the 85% mark could be a dangerous delta that was more restrictive than best practices.

Chair Judd-Stein sought clarification regarding the definition of conspicuous. Commissioner O'Brien noted that Pennsylvania and New York had larger fonts during television ads. Mr. Makarios stated that those jurisdictions defined conspicuous for each media market. He stated that it was a reasonable addition to mirror the language from those two states.

Chair Judd-Stein stated she thought there was an obligation to have the language on the home screen of the platforms and asked if that was included in the responsible gaming provisions. Mr. Makarios stated there was language in 205 CMR 238 regarding the conspicuous identification of problem gambling hotlines as part of internal controls. He stated that cross-referencing that regulation here would allow operators to understand the Commission's parameters for conspicuous would be similar to New York and Pennsylvania. Commissioner Hill stated that would be beneficial.

Chair Judd-Stein asked if links to resources would also be in another regulation. Mr. Makarios stated that language in 205 CMR 238 may require it, and that he believed the language was being developed by the Department of Public Health. Director Vander Linden stated that the issue would be addressed in a forthcoming regulation regarding responsible gaming. He stated that he would like to see space in advertising for the promotion of responsible gaming in addition to the helpline. Director Vander Linden noted that the 85% figure in the whitepaper was from the Cannabis Control Commission.

Commissioner Hill expressed concern that the terms intensity, frequency, and saturation included in 205 CMR 256.08 were too vague. Mr. Makarios stated that Virginia had a similar requirement with respect to sporting events. He stated the standard was hard to define and may be different between sports. He noted it would be worth keeping an eye on Virginia on this issue.

Director Vander Linden noted that Tennessee required advertisements not be placed with such intensity and frequency that they would represent a saturation of that media. Mr. Makarious noted that was the same language from Virginia. Commissioner O'Brien sought clarification as to whether saturation was defined in these jurisdictions. Mr. Makarious stated he would research the issue. Director Vander Linden stated that multiple operators could cause saturation rather than a single operator.

Commissioner O'Brien stated that some of the professional leagues self-police the issue. Mr. Makarious noted that 205 CMR 256.08 was written with intent of sporting events and meant to capture multiple entities combining to saturate the market. He noted that the regulation referred to sports wagering not individual operators. Commissioner Hill expressed he was not as concerned after hearing about how the leagues self-policed the issue. Chair Judd-Stein agreed and stated that each applicant that had appeared before the Commission had heard about this concern.

Commissioner Maynard noted that some operators have exclusivity contracts to prevent saturation. Commissioner Skinner stated that she would like to do additional review of the advertising roundtable and white paper. She stated that she did not see any glaringly questionable issues.

Chair Judd-Stein asked when this regulation would return to the Commission. Deputy General Counsel Carrie Torrisi stated that it would be January 20 or January 26. Mr. Makarious highlighted that there was an inconsistency in 205 CMR 256.09. He clarified to the Commissioners that athletes who were underage could not endorse sports wagering operators, but that footage of an underage athlete was allowed.

Chair Judd-Stein stated that the Commission could quickly require advertisements that don't conform to the regulations to be taken down, and inquired if disciplinary action could be taken as quickly. Mr. Makarious stated that if a single violation was egregious enough, it could be grounds for disciplinary action, and that neither these provisions nor 205 CMR 232 would obviate the Commission's disciplinary abilities. He noted that the language was based on Connecticut's language and that Virginia had similar language.

Mr. Makarious asked if the Commission had further consideration on whether to adopt the 85% language. Chair Judd-Stein noted that she was under the impression that more jurisdictions adopted a percentage range and not the majority language that was used. Commissioner O'Brien stated that all but one applicant that appeared before the Commission stated they complied with the AGA guidelines and that 75% wouldn't have an impact.

Commissioner Maynard suggested to leave the language at 75% and expressed an interest in receiving more information from stakeholders before changing it. Chair Judd-Stein stated that

research and review would be helpful. She stated that the Commission could change the number during the next round of edits. Commissioner Skinner agreed.

ii. [205 CMR 106.00](#): Information and Filings – Amendments to Existing Regulation, and Small Business Impact Statement for review and approval to commence the promulgation process and/or adoption via emergency (2:23:32)

Mr. Makarios presented an amendment to 205 CMR 106. He noted that the changes clarified that the regulation also pertained to General Law Chapter 23N. The *draft 205 CMR 106* was included in the Commissioner’s Packet on pages 73 through 78.

iii. [205 CMR 107.00](#): Professional Practice – Amendments to Existing Regulation, and Small Business Impact Statement for review and approval to commence the promulgation process and/or adoption via emergency. (2:25:38)

Mr. Makarios explained that the changes to 205 CMR 107 allowed the addition of professional sports related to sports wagering. He stated that the language was also changed to be gender neutral. The *draft 205 CMR 107 and Small Business Impact Statement* were included in the Commissioner’s Packet on pages 79 through 82.

iv. [205 CMR 109.00](#): Authority of the Commission to Act in An Emergency Situation – Amendments to Existing Regulation, and Small Business Impact Statement for review and approval to commence the promulgation process and/or adoption via emergency. (2:26:42)

Mr. Makarios explained that 205 CMR 109 was edited to include reference G.L. Chapter 23N in addition to G.L. Chapter 23K. He noted that in 205 CMR 109.02, the discipline would come from the Commission. The *draft 205 CMR 109 and Small Business Impact Statement* were included in the Commissioner’s Packet on pages 83 through 86.

Chair Judd-Stein inquired whether this regulation would need to be amended if there were changes in the Commission’s delegation authority. Mr. Makarios stated that this regulation was only for emergency situations, but it would not preclude the Commission from taking initial or secondary disciplinary action.

Mr. Makarios stated that language could be clarified so that both the IEB and Commission could issue an emergency cease and desist order if necessary. Commissioner Skinner stated that made sense and that the language would be consistent with 205 CMR 109.11.

Commissioner Hill moved that the Commission approve the small business impact statement and the draft 205 CMR 106 as included in the Commissioner’s Packet and discussed here today, and further moved that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency; and thereafter to begin the regulation promulgation process. He further moved that staff shall be authorized to modify

chapter or section number or titles to file additional regulation sections as reserved or to make any other administrative changes as necessary to execute the regulation promulgation process. Commissioner Maynard seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

Commissioner Hill moved that the Commission approve the small business impact statement and the draft 205 CMR 107 as included in the Commissioner's Packet and discussed here today and further moved that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency; and thereafter to begin the regulation promulgation process. He further moved that staff shall be authorized to modify chapter or section number or titles to file additional regulation sections as reserved or to make any other administrative changes as necessary to execute the regulation promulgation process. Commissioner O'Brien seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

Commissioner Hill moved that the Commission approve the small business impact statement and the draft 205 CMR 109 as included in the Commissioner's Packet and discussed here today and further that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency; and thereafter to begin the regulation promulgation process. He further moved that staff shall be authorized to modify chapter or section number or titles to file additional regulation sections as reserved or to make any other administrative changes as necessary to execute the regulation promulgation process.

Commissioner Maynard noted that the discussion included slight amendments to this regulation to add language for both the IEB and Commission to be able to issue emergency cease and desists. Commissioner Maynard stated he supported the friendly amendment. Commissioner O'Brien seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.
Commissioner Skinner: Aye.
Commissioner Maynard: Aye.
Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

b. [Promotional Play discussion and tax implications](#) (3:23:39)

Deputy General Counsel Caitlin Monahan stated that this topic was last discussed on December 12, 2022, and that the Commission weighed whether they had authority to determine whether promotional play was taxed.

Attorney Lon Povich from Anderson and Krieger stated that the sports wagering statute was not explicit as to the definition of gross sports wagering receipts and whether promotional play was to be included or excluded. He stated that the better reading of the statute based upon the legislative history was that promotional play should not be deducted from gross sports wagering receipts.

Commissioner O'Brien stated that Mr. Povich's summary regarding the best interpretation was consistent with how she interpreted the statute. She noted that the statute and legislative history was consistent with that interpretation, and she believed promotional play was fully taxable. She noted other jurisdictions treated it the same way. Chair Judd-Stein agreed with Commissioner O'Brien.

Commissioner Hill disagreed, expressing that promotional play should not be taxed as it was like a coupon. He stated that the goal should be to get companies up and started and that he would not vote to tax promotional play.

Commissioner Maynard cited *Biogen IDEC MA, Inc. vs. Treasurer and Receiver General*, 454 Mass. 174, (2009), where it was found that deference was given to agencies' interpretations of statutory silence or ambiguity, and that it was appropriate where the regulation in question was promulgated immediately after the enactment of the governing legislation. He stated that there were two questions: the threshold question of whether the Commission had the authority to interpret the statute and the policy question of whether promotional play should be included or excluded from the definition of gross sports wagering receipts. He stated that the Commission had the authority to make this decision.

Commissioner Skinner stated that both arguments were compelling. She noted that the taxation of sports wagering benefitted the Public Health Trust Fund, Workforce Investment Trust Fund, and others, but agreed with Commissioner Hill that there was also a level of business interest to be considered.

Mr. Povich stated that Commissioner Maynard was correct that agencies are given deference in interpreting the statutes which govern them. He noted that either interpretation of the statute was defensible. He explained that the House Bill included language that affirmatively stated promotional play was not taxable, but the bill signed into law that became G.L. 23N was silent about the taxation of promotional play. He stated that taxing promotional play was the better reading.

Commissioner Skinner stated that given the advice, it was less of a legal issue and more of a policy issue. She expressed interest in seeing a potential compromise. Commissioner O'Brien stated that anything other than taxing or not taxing would not be consistent with the available interpretations of the statute. She stated that justifying not taxing promotional play would not follow the intent of the legislature. She noted that Maryland received almost no taxes in its first month of sports wagering because the operators claimed a loss on promotional play to obviate the taxes.

Chair Judd-Stein stated that she became familiar with the legislative history. She recognized that negotiations occurred between the House and Senate, but that the final bill that was signed was silent on excluding promotional play from the definition of gross sports wagering receipts. She noted that other jurisdictions with similar language interpreted that as taxing promotional play. She stated that promotional play was burdensome with respect to revenue collection and responsible gaming. She expressed concern that exercising discretion might not reflect the law that was passed and the policy behind it.

Commissioner Maynard noted that a definition of promotional play remained in G.L. Chapter 23N, which shows that the legislature had considered the issue. Commissioner Hill stated he was struggling with why silence in this provision was being interpreted as the ability to tax promotional play. He stated that he did not view it as an affirmative mandate and that he believed the language was ambiguous.

Chair Judd-Stein stated that other jurisdictions had interpreted that language to mean that promotional play was taxed. Commissioner Hill expressed that the interpretations from the other jurisdictions may be wrong. Commissioner O'Brien stated that the alternative would suggest that the Commission as a body had the discretion to alter the definitions of gross sports wagering receipts, and asked if there would be limitations on the modification of that definition.

Mr. Povich stated that promotional play was different from other forms of advertising as it was not backed by real money. He stated that in the bill that was enacted, promotional play was not deducted from adjusted gross sports wagering receipts. He noted that gross sports wagering receipts was not defined in the statute. He reiterated that the better reading was to not exclude promotional play from gross sports wagering receipts for the purpose of taxation.

Commissioner O'Brien stated that the legislative intent and language of the statute was clear. Commissioner Maynard stated that the legislature also did not affirmatively address the issue. He

stated that the Commission had the right to interpret the statute and make a decision. He stated that the legislature could amend the statute if they disagree with the decision, or that the Commission could amend the regulation.

Commissioner O'Brien stated that from a policy perspective she believed promotional play was taxable. She stated that other jurisdictions that had excluded promotional play revisited the topic to add sunset provisions and change it. She noted that changes to promotional play in Virginia and Colorado were all based on legislative changes rather than regulator changes. Chair Judd-Stein stated that an operator objected to the Maryland regulator's attempts to change the deduction of promotional play.

Chair Judd-Stein stated that the language deducting promotional play was removed before the bill was signed. She stated that the operators had a chance to lobby and address their interests with the legislature and that they did not prevail. She noted that an operator at a round table stated that he did not believe promotional play would be deducted. She stated that the Commission has a great deal of discretion but that did not mean the Commission could fill in language where there was an absence.

Commissioner Maynard stated that there was also an equity issue as gifts such as tickets and trips could be written off. Mr. Povich stated that promotional play was unique from those concepts as it was part of the bet being made in addition to being advertising. He noted that other advertisements were not part of the receipt as they were expenses on the corporate side. CFAO Lennon explained that promotional play accounts are contra revenue accounts and not expense accounts.

Chair Judd-Stein stated that sports wagering analysts from a widely respected publication examined the language of the statute, and their interpretation was that Massachusetts does not offer a deduction on promotional play. She stated that the better interpretation was supported by outside experts.

Commissioner Skinner stated she believed that the Commission had the authority to interpret the statute on this issue. She noted that she wanted to consider that threshold question and whether the Commission ultimately would tax promotional play separately. Chair Judd-Stein expressed that her perspective was that there was no ambiguity after reviewing the statutory language, the legislative intent, and interpretations from other jurisdictions.

Commissioner Skinner noted that the underlying advice from the Legal Team hasn't changed and that both interpretations were defensible. Mr. Povich reiterated that the better reading based on the legislative history was to tax promotional play. Commissioner Maynard expressed that he believed the legislative history helped to prove the ambiguity. Commissioner O'Brien stated that the longer the discussion went on the more confident she was in her position. She stated that the question of taxation rates was not the purview of the Commission unless specifically addressed

by the legislature. Commissioner O'Brien stated that there was no ambiguity in the statute and that the legislative history supports that interpretation.

Chair Judd-Stein stated that her stance had not changed. She stated that she would leave the tax issue to the legislature. Commissioner Maynard stated that supporting the better reading also set a tax rate. Chair Judd-Stein stated that the rate was set in the statute, and expressed she did not feel it should be altered.

Commissioner Maynard offered a motion to his fellow Commissioners did have the ability to interpret General Law Chapter 23N and to address the inclusion or exclusion of promo play into its calculation of gross gaming receipts.

Chair Judd-Stein sought clarification as to whether Commissioner Maynard was interpreting the law. Commissioner Maynard clarified that the motion was to establish that the Commission, as the regulator of sports wagering, had the ability to interpret the law. Commissioner Hill seconded the motion.

CFAO Lennon suggested an amendment to clarify that it was gross sports wagering receipts not gaming receipts. Commissioner Maynard accepted the amendment. Commissioner Hill seconded the amended motion.

Commissioner O'Brien asked if this interpretation could be certified as a question to the Massachusetts Supreme Judicial Court ("SJC"). Mr. Povich stated that a motion drawing a legal conclusion was interesting and questioned whether the Commission could certify a question to the SJC. General Counsel Todd Grossman stated that he hadn't heard of an agency certifying a question to the court and that he could look into that option.

Commissioner Maynard asked if there was a better way to phrase the motion language. General Counsel Grossman stated that the motion was adding an intermediate step and that a motion could be moved on simply as to whether to include or exclude promotional play from the definition of gross sports wagering receipts. Commissioner O'Brien stated that the threshold question was whether the Commission had this authority and noted that the Commission had yet to discuss how it would be handled if the answer was yes.

Chair Judd-Stein noted that the Commission had not heard the implications related to responsible gaming and methods used in other jurisdictions. She stated that the Commission had an obligation to evaluate whether a change would benefit the Commonwealth. Commissioner Maynard clarified that his motion was limited to the threshold question of whether the Commission had the authority to interpret G.L. Chapter 23N.

General Counsel Grossman stated that there seemed to be a consensus on the Commission's authority. Commissioner Maynard stated that the motion was to cement the consensus. Chair

Judd-Stein stated that the Commission would likely need more information before evaluating the policy issue.

Commissioner Skinner suggested that the motion could be withdrawn based upon General Counsel Grossman's indication that there was a consensus that the Commission had the authority to interpret the statute. Commissioner Maynard expressed hesitance because the issue of authority may arise during the discussion of the policy question. Commissioner Skinner stated that he could choose to make a motion if the threshold question was returned to.

Commissioner Hill asked which interpretation would be followed if the motion was withdrawn. Chair Judd-Stein stated that the law stands. She expressed she viewed the law as not permitting the deduction of promotional play. Commissioner Hill asked if further discussion could be held on the pros and cons of the taxation of promotional play. Chair Judd-Stein stated that there could be a vote, but she wanted to be respectful of Commissioner Skinner's request for guidance.

Commissioner Skinner stated she struggled with the question of whether the Commission as a body should be setting tax policies or rates. Mr. Povich stated that the discussion could include various ways promotional play could be treated other than taxation, such as limited deduction.

Chair Judd-Stein stated her position that the Commission did not have the legal authority to interpret the statute as it was not ambiguous. She stated past that answer to the threshold question she did not have a position regarding whether promotional play should be deducted or included. Commissioner O'Brien stated she felt strongly that the Commission did not have the authority. She noted that moving past the threshold question related to authority was not on the agenda for this meeting.

Mr. Povich stated that there are many ways to modify the inclusion or deduction based on percentage and time and that this policy question should be discussed at a later meeting.

Commissioner Maynard requested that his motion be called for a vote. He stated that he wanted more information before addressing the policy question of whether promotional play was taxable or deductible. Commissioner Skinner stated that if the Commission could not preserve a consensus to allow for a discussion on policy, a vote was required.

Roll call vote:

Commissioner O'Brien: Nay.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Nay.

The motion passed, 3-2.

Chair Judd-Stein stated that the Commission would return to this as a policy discussion in a future meeting.

7. [Sports Wagering Implementation](#) (4:45:46)

a. Approval of Permitted Sports Wagering Events/Catalog

Regulatory Compliance Manager Sterl Carpenter presented a catalog of potential sports wagering categories, events, and wagers to be voted on for approval. The [Permitted Sports Wagering Events Catalog for Approval](#) was included in the meeting materials.

Commissioner Hill asked if betting on which player wins an MVP award would be considered a select event. Mr. Carpenter stated that the Commission would vote on which awards they think it was acceptable to wager on. He noted that MVP awards could be placed at the beginning of a season based off of statistics, and that wagering could be stopped upon the commencement of the season. He explained that other awards like the Cy Young award are based off of votes from the press and that the Commission would need to make a determination to approve wagering on those awards.

Regulatory Compliance Manager Carpenter stated that the first ten wager types were required by statute and that the next eleven were requested by licensees. Commissioner O'Brien stated that she was not ready to vote on any requests beyond those required by statute. She stated she would need time to reflect on the others. Chair Judd-Stein requested that the catalog return to the Commission for the January 20 meeting for voting. Executive Director Wells stated that was sufficient time for the operators and GLI.

Chair Judd-Stein stated that statute addresses e-sports by stating a request could be made to the Commission. Regulatory Compliance Manager Carpenter stated that e-sports were requested by EBH. Chair Judd-Stein questioned whether the Commission would have to develop regulations to create the governing body for e-sports before approving e-sports as a wagering category. General Counsel Grossman stated that was correct. He stated that e-sports were authorized under the statute but that the Commission would have to adopt regulations to determine the governing body.

Regulatory Compliance Manager Carpenter stated that e-sports events could be requested so long as the operator can validate the event and identify who was overseeing the event. He recommended denying e-sports at this time and revisiting their approval.

Commissioner Hill explained that at a conference there was a recommendation to begin with a small scope. Director of Client Solutions from GLI Joe Bunevith explained that there were over 300 basketball leagues and close to 3,000 professional soccer leagues. He noted that the limited approach was with consideration of the market being so large. He stated that the lists the operators requested were agreeable.

Commissioner Hill asked how many sports and leagues were being requested for approval. Regulatory Compliance Manager Carpenter stated that the document had fifty leagues. Commissioner O'Brien asked what other the minimum and maximum number of events approved in other jurisdictions. Digital Technical Compliance Specialist from GLI Mike Robbins stated that it was dependent upon the maturity of the market. He stated that there were between fifty and sixty on average between Wyoming, Arizona, Colorado, Maryland, and Michigan.

Commissioner Hill inquired whether those jurisdictions started with those numbers. Mr. Robbins stated that Ohio recently launched with twenty-three categories. Commissioner Hill stated that the list provided to the Commission would be good for launch. Chair Judd-Stein stated that there had to be a robust enough market to compete with the illegal market.

Chair Judd-Stein stated that the requests were from the category one licensees, and asked if further approvals would need to happen for online operators. Mr. Bunevith stated that the catalog was universal for both retail and mobile operators. Regulatory Compliance Manager Carpenter stated that category three applicants could follow the regulations and request new events. He stated that the request would be presented to the Commission to vote on. Executive Director Wells stated that category three operators could provide input before the catalog was voted on at the January 20 meeting.

b. [Pre-Launch Marketing and Registration](#) (5:48:15)

Executive Director Wells stated that prospective licensees had submitted inquiries about marketing activities and preregistration. She stated that they were not engaging in Massachusetts specific marketing activities or preregistering potential bettors in Massachusetts.

Executive Director Wells noted that some operators had a shared wallet capacity that allowed them to create generic accounts that could be later used in Massachusetts. She stated that GLI recommended that the Commission allow account set up after the operators are licensed. She noted that damage could be mitigated if operators were required to post a bond to protect the patron's money. She stated that allowing preregistration and loading money into accounts increases the risk of a company going live before being authorized to do so. She stated that there was also an equity issue to operators who did not have the ability to do generic account preregistration.

Chair Judd-Stein asked if a patron could load a shared wallet in another jurisdiction and use that money to bet if they are geolocated in Massachusetts. Executive Director Wells stated that she was unsure. Executive Director Wells stated that one applicant indicated that their generic accounts could not be finalized until they were approved to go live.

Executive Director Wells stated that prior to the casino openings patrons were allowed to get rewards cards. Director Wells stated that she heard from an operator that money does move

between jurisdictions in a shared wallet. Mr. Bunevith stated no other stated had this level of oversight over preregistration.

Commissioner Skinner stated that she wanted a comprehensive understanding of the options available and what preregistration looks like between the different operators if the Commission were to undertake this level of oversight.

Commissioner O'Brien asked if these concerns were relative only to the mobile launch. Executive Director Wells explained that category one licensees already had player rewards cards and a customer base and that these concerns were relevant to category three operators. Chair Judd-Stein asked if the Commission wanted to provide oversight here or allow the market to dictate the issues as other regulators allowed. Commissioner Skinner expressed concern that the Commission would be the first regulator with this type of oversight.

Chair Judd-Stein noted that advertising and preregistration were separate issues. Commissioner O'Brien stated the expectation that the Commission would circle back to advertising and marketing. Commissioner Maynard stated that if a Massachusetts patron was unable to get their money back during the preregistration period, the Commission's oversight would extend to dealing with that issue. Executive Director Wells stated that one the operator was a licensee the Commission has an enormous amount of control over them.

Chair Judd-Stein stated that if advertising was occurring before the launch of sports wagering the advertising needs to be in compliance with the Commission's advertising regulations. Commissioner O'Brien noted that the Commission did not vote to adopt the advertising regulation and stated that the guidance would be that the advertising be compliant with the draft regulation and consistent with the AGA responsible marketing and advertising guidelines pending the implementation of the Commission's regulation.

Executive Director Wells stated that the operators are expected to be in compliance with the Commission's draft regulations and the AGA code of conduct with respect to any advertising going forward. The Commission reached a consensus in support of this notice.

The Commission reached a consensus to not put restrictions on pre-registrations but expect that applicants will comply with Massachusetts regulations.

8. [Finance](#) (6:17:17)

a. Daily Fantasy Sports Taxation and Revenue Allocation

CFAO Lennon presented on taxation for fantasy sports contests. He explained that the comments from operators suggested the use of the resident percentage or location percentage methodology for the distributing and accounting for fantasy sports contests. The *Presentation on Daily*

Fantasy Sports Taxation and written comments were included in the Commissioner's Packet on pages 121 through 137.

Commissioner Hill asked if Massachusetts would receive more or less revenue if the taxation was changed consistent with the operators' requests. CFAO Lennon stated that it was dependent upon player skill. He stated that all sixteen jurisdictions that tax daily fantasy sports used this method of accounting for fantasy sports contests.

Chair Judd-Stein asked if this was being considered solely because of the operators' requests. CFAO Lennon stated that he could pull the language from the tax laws of the sixteen other jurisdictions that tax fantasy sports contests. Chair Judd-Stein asked what language would be changed in 205 CMR 240. CFAO Lennon stated that the language suggested by each operator was consistent with other jurisdictions.

Chair Judd-Stein requested that the Commission be apprised of the laws from other jurisdictions. Commissioner Skinner requested that the Finance and Legal Divisions draft the language for the regulatory amendment so that the Commission would be ready for a vote at the next discussion.

CFAO Lennon noted that three licensees had paid taxes, and he was unsure which methodology was used to determine the tax amount. He stated that he wanted to avoid having taxes filed in two different manners. He stated that he would give clarification on this and return with the language for the amendment.

9. [Other Business](#) (6:35:22)

Commissioner Skinner expressed an interest in discussing sports wagering operators who ban bettors who perform too well and having an opportunity for the Commission to communicate its expectations regarding this issue.

Commissioner Hill stated he hoped to speak to the Commission staff on this topic so that they could reach out for applicant and licensee input. Chair Judd-Stein asked if that would include category one operators. Commissioner Hill stated that it would and expressed that it was an important issue.

Chair Judd-Stein asked Executive Director Wells to arrange for the team to get CPR training. Executive Director Wells stated that CPR training was added to the list in addition to unconscious bias training.

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

Commissioner Hill moved to adjourn. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated January 9, 2023
2. [Commissioner's Packet](#) from the January 12, 2023, meeting (posted on massgaming.com)
3. [Permitted Sports Wagering Events Catalog for Approval](#)



Sports Wagering Division

TO: Chair Cathy Judd-Stein
Commissioner Bradford R. Hill
Commissioner Jordan Maynard
Commissioner Eileen M. O'Brien
Commissioner Nakisha L. Skinner

FROM: Sterl Carpenter – Sports Wagering Operations Manager

CC: Karen Wells – Executive Director
Bruce Band – Sports Wagering Division Director

DATE: June 22, 2023

RE: Request for a new event approval

Under 205 CMR 247.03 <https://www.mass.gov/doc/205-cmr-247-uniform-standards-of-sports-wagering/download>, the Commission reviews all requests for additional events to be placed in the catalog. Under section 8, the Commission may grant, deny, limit, restrict, or condition a request made pursuant to this rule, and may revoke, suspend, or modify any approval granted under this rule.

EXECUTIVE SUMMARY:

DraftKings has submitted a *Petition for New Events or Wagers* form, requesting the *LIV Golf Tour* be added into the Golf section of our catalog. The PGA Tour, DP World Tour and LIV Golf League, have agreed to unify and move forward in a larger commercial business. This request is to add this league prior to its merger believed to take place for the 2024 season.

The [Form](#) is attached to the commissioner's packet for reference. Its website link is also placed here for reference <https://www.livgolf.com/about>.

CONCLUDING STATEMENT:

The division confirms that all requirements have been met under 205 CMR 247.03 and the Sports Wagering Division has found the operator has answered all the applicable questions on the form. The operator has not informed *LIV Golf Tour* that they are making this request to the Massachusetts Gaming Commission. They have stated that they currently offer wagering on this event in other states. In doing so, DraftKings believe that expanding this offering into the Commonwealth does not require them to inform *LIV Golf Tour*.



MASSACHUSETTS GAMING COMMISSION

PETITION FOR A SPORTING EVENT OR WAGER CATEGORY

In accordance with 205 CMR 247.03

Directions:

Please fill out and address all areas of the form. If an area does not apply to the request, please place 'NA' in the section. Each section will extend to accommodate large answers. If needed, one may attach additional documents. Please make sure any attachments reference the relevant section and number in their title.

SECTION A BACKGROUND

1. NAME OF OPERATOR(S) PETITIONING: [DraftKings](#)
2. REQUESTING A SPORTS WAGERING EVENT OR WAGERING CATEGORY: [Sports Wagering Event](#)
3. NAME OF EVENT OR WAGERING CATEGORY: [LIV Golf Tour](#)
4. IS THIS A VARIATION OF AN AUTHORIZED SPORTING EVENT OR WAGER CATEGORY? [Yes](#)
5. IS THIS A COMPOSITE OF AUTHORIZED SPORTING EVENTS OR WAGER CATEGORIES? [Yes](#)
6. IS THIS A NEW SPORTING EVENT OR WAGER CATEGORY? [Yes](#)

WEBSITE LINK FOR THE EVENT AND/OR GOVERNING BODY: <https://www.livgolf.com/about>

SECTION B A COMPLETE AND DETAILED DESCRIPTION OF THE SPORTING EVENT OR WAGER CATEGORY FOR WHICH APPROVAL IS SOUGHT

1. A summary of the Sporting Event or Wager Category and the manner in which Sports Wagers would be placed and winning Sports Wagers would be determined.

LIV Golf is a professional golf tour and league founded in 2021 and is governed by its Board of Directors, Chairman, Chief Executive Officer and Commissioner, and Senior Management, along with eight committees overseeing various aspects of the league. Players in the LIV Golf League include many of the best golfers in the world. The 2023 LIV Golf League season began on February 23 with its first event being held at the El Camaleon Golf Course in Mayakoba, Mexico. A total of fourteen (14) events will be held for the 2023 LIV Golf League season, which will conclude on November 5, 2023. LIV Golf League events use a team-based format wherein twelve (12) teams of four players compete in a 54-hole (three-round) stroke play event. Sports Wagers would be placed through DraftKings' platform and winning Sports Wagers determined in accordance with the already proposed Golf House Rules.



2. A draft of the proposed House Rules, including a description of any technology that would be utilized to offer Sports Wagering on the Sporting Event or Wager Category.

The already proposed Golf House Rules will be utilized for this league. Technology used is provided by DraftKings Sportsbook.

3. Any rules or voting procedures related to the Sporting Event or Wager Category.

Attached LIV 2023 Rules and Regulations Handbook.

4. Assurance that the Sporting Event or Wager Category meets the requirements of 205 CMR 247.03(4) (*details are required in the minimum criteria section below*).

Verified the event follows all requirements set by Reg 247.03 – 4(a-d)

5. Whether and to what extent the outcome of the Sporting Event or Wager Category is determined solely by chance.

Non-applicable because LIV Golf Tour events are not determined solely by chance.

SECTION C

IF THE PROPOSED SPORTING EVENT OR WAGER CATEGORY IS BASED ON ESPORTS ACTIVITIES, PLEASE ANSWER THE FOLLOWING QUESTIONS

1. The proposed location(s) of the eSports event(s). N/A

2. The video game used for the eSports event, including, without limitation, the publisher of the video game.

N/A

3. The eSports event operator, whether the eSports event operator is approved to host events by the video game publisher, and whether the eSports event operator has any affiliation with the video game publisher. N/A

4. The manner in which the eSports event is conducted by the eSports event operator, including, without limitation, eSports event rules and certification from a third party, such as an eSports event operator or the game publisher, that the eSports event meets the Commission's event integrity requirements. N/A



SECTION D
POLICIES AND PROCEDURES REGARDING EVENT INTEGRITY

To the extent known by the operator(s), please provide a description of policies and procedures regarding event integrity.

To ensure the integrity of the events, LIV golf maintains a player obligations policy and anti-corruption policy. The player obligations policy prohibits players from gambling (whether directly or indirectly) in connection with any tournament, event or any other golf match or competition. It also prohibits players from manipulating or unlawfully influencing any results or statistics relating to any such tournament, series-related event or any other match or competition, or providing any nonpublic information to any person for gambling or wagering. The purpose of the anti-corruption policy is: (i) to maintain the integrity of the game of golf; (ii) to seek to protect against corruption within the sport, intended improperly to influence the outcome of any tournament; and (iii) to set down a clear and effective regulatory framework for prohibited behaviors, enforcement actions and sanctions available in respect of all tournaments.

Attached LIV 2023 Rules and Regulations Handbook – Sect. VII and Appendix D

SECTION E
MINIMUM CRITERIA

1. Can the outcome of the Sporting Event or Wager Category be verified? If yes, explain the verification process.

Yes, event dates and start times are available at www.LIVGolf.com as soon as they are finalized. LIV Golf data is collected by industry leading data company, SMT. The SMT Golf Data Feed is completely event driven. In other words, whenever a scoring entry is entered, updated, or deleted, the appropriate XML feed is pushed. For example, when a player withdraws from the tournament and the pairings are updated, the Player XML for the player is pushed with an updated status of “Withdraw”, the updated Pairings XML is pushed, and the updated Leaderboard XML and Top 20 Leaderboard are pushed. This source of record is transmitted within seconds to the LIV Golf leaderboard on broadcast and www.LIVGolf.com.

2. Is the Sporting Event generating the outcome conducted in a manner that ensures sufficient integrity controls exist so the outcome can be trusted? Please explain.

Yes, the league has contracted with U.S. Integrity to provide LIV with integrity monitoring services and to ensure continued compliance.

3. Is the outcome likely to be affected by any Sports Wager placed? Please explain.

No, game integrity and fairness are integral to LIV and its desire to uphold the standards of the game of golf.

4. Is the Sporting Event conducted in conformity with all applicable laws? Please explain.

Yes, we have verified the event follows all requirements set by Reg 247.03 -4(a-d).



SECTION F

THE COMMISSION WILL CONSIDER THE REQUEST, ALL PROVIDED MATERIALS, AND ANY RELEVANT INPUT FROM THE SPORTS GOVERNING BODY OR THE CONDUCTOR OF THE SPORTING EVENT PRIOR TO AUTHORIZING A SPORTING EVENT OR WAGER CATEGORY.

1. NAME OF SPORTS GOVERNING BODY: LIV Golf Holdings Limited

2. HAS THE SPORTS GOVERNING BODY BEEN INFORMED OF THIS REQUEST? No

IF 'NO' PLEASE EXPLAIN THE REASON BEHIND IT:

We are currently offering LIV Golf Tour in other states. We do not believe expanding the offering in MA requires contact with the league.

3. IF THERE IS NO SPORTS GOVERNING BODY, NAME THE ENTITY THAT CONDUCTS THE SPORTING EVENT: N/A

4. HAS THE ENTITY THAT CONDUCTS THE SPORTING EVENT BEEN CONTACTED REGARDING THIS REQUEST? N/A

IF 'NO' PLEASE EXPLAIN THE REASON BEHIND IT:

5. HAS ANY RELEVANT PLAYER'S ASSOCIATION BEEN INFORMED OF THIS PETITION? No

IF ANY OF THE ABOVE ENTITIES HAVE BEEN CONTACTED, PLEASE PROVIDE ADDITIONAL DETAIL BELOW, INCLUDING BUT NOT LIMITED TO WHEN THE ENTITIES WERE INITIALLY CONTACTED ABOUT THE REQUEST ANY COMMENTS OR INPUT PROVIDED BY THE ENTITIES:

N/A

SIGNATURE AND INFORMATION

I swear or attest under the pains and penalties of perjury that the information provided as part of this request for a hearing is true and accurate to the best of my knowledge and understanding.

/s/ Jodie Lau

Signature of individual requesting new event/wager

June 12, 2023

Date

[If this request is submitted via email, it may be signed electronically by typing the petitioner's name on the signature line above. In that case, the 'signature' must be preceded by /s/ (e.g.- /s/ John S. Doe). Use of an electronic signature permits the Commission to rely upon the signature as if it were handwritten.]

Please submit this request and any attachments to the Massachusetts Gaming Commission via email at:

mgcsportswagering@massgaming.gov





Sports Wagering Division

TO: Chair Cathy Judd-Stein
Commissioner Bradford R. Hill
Commissioner Jordan Maynard
Commissioner Eileen M. O'Brien
Commissioner Nakisha L. Skinner

FROM: Sterl Carpenter – Sports Wagering Operations Manager

CC: Karen Wells – Executive Director
Bruce Band – Sports Wagering Division Director

DATE: June 26, 2023

RE: Update to licensee's house rules

Under 205 CMR 247.02(4) <https://www.mass.gov/doc/205-cmr-247-uniform-standards-of-sports-wagering/download> the Commission reviews all changes proposed by a licensee to their house rules. A Sports Wagering Operator shall not change or modify the House Rules without the prior written approval of the Commission. Failure by an Operator to act in accordance with its House Rules may result in disciplinary action.

EXECUTIVE SUMMARY:

Barstool Sportsbook and Casino has re-submitted its language for their house rules due to a change in service providers.

The total changes are as follows:

1. Throughout the document the name *Barstool Sportsbook* is replaced with *Barstool Sportsbook and Casino*.
2. Removal of Tattersalls in section 6.
3. *Odds Boosts and Special Markets* replaces *Barstool Battles* in section 31.

Page 3 section 9



Sports Wagering Division

- 9) ~~Barstool Sportsbook~~ **Barstool Sportsbook and Casino** permits players to fund their accounts as follows:
- o ~~A player's debit card, including prepaid cards and debit cards stored in digital wallets (e.g. ApplePay);~~
 - o ~~A player's reloadable prepaid card (e.g. Sightline Play+), which has been verified as being issued to the player and is nontransferable;~~
 - o ~~Cash complimentary, promotional credits or bonus credits;~~
 - o ~~Winnings;~~
 - o ~~Wire transfer;~~
 - o ~~PayNearMe;~~
 - o ~~PayWithMyBank(Online Banking);~~
 - o ~~PayPal;~~
 - o ~~Venmo;~~
 - o ~~Skrill;~~
 - o ~~Other methods approved by the Commission; and~~
 - o ~~Automated clearing house (ACH) transfer;~~
 - o ~~Debit card;~~
 - o ~~Prepaid account;~~
 - o ~~Wire transfer;~~
 - o ~~Digital Payment Vehicles;~~
 - o ~~ACH/Online Banking; and~~
 - o ~~Such other options that may become available in the future at our sole discretion.~~
- 10) **In no event may a Massachusetts account be funded through a form of credit.**

Page 5 Section 4 (1) –

1) In order to guarantee the viability of each market, to avoid potential cases of fraud and match-fixing, and to be able to make a correct estimate of the risk involved in each product offered, **Barstool Sportsbook** ~~Barstool Sportsbook and Casino reserves the right to limit the net payout (the payout after the stake has been deducted) on any bet or combination of bets by one Account Holder for any bets placed or settled within a 24-hour timeframe. will limit the net payout (the payout after the stake has been deducted) on any bet or combination of bets by one Account Holder at {Currency Value} for any bets placed or settled within a 24-hour timeframe.~~

Page 8 Section 3 -

3) The [Cash Out] function allows the Account Holder the possibility to redeem a bet, which status has not been settled yet, at its current value. It is available on selected events both in pre-match and live, as well as on both single and multiple bets. [Cash Out] functionality cannot be used on **free bets bonus bets**.

Page 14 Section 20 and 21 –

Removed

Page 15 Section 22 –



Sports Wagering Division

22) “ Teaser s +” are a type of parlay with the possibility to allocate the same pre-set amount of points to all outcomes present in a parlay (combination) containing Spreads (Handicaps), Totals (Over/Unders) or a combination of both. Should any part of a Teaser bet be settled as void or push, that particular selection will be excluded from the parlay and the odds/payout will be re-adjusted removing the voided or push legs. Where a void or push results in a teaser being reduced to one selection, the teaser will be treated as a single wager and paid out at the appropriate fixed odds . ~~allows the user the possibility to allocate the same pre-set amount of points to all outcomes present in a parlay (combination) containing Spreads (Handicaps), Totals (Over/Unders) or a combination of both. Example: User combines NFL Team X +6.5 points in a parlay with Over 41 points in the NFL match between Team Y and Team Z. By choosing the “Teaser + Football 6 points” option, the lines and odds get recalculated into a parlay featuring Team X +12.5 points (previously +6.5), combined with Over 35 points (previously Over 41). Should any part of a “Teaser +” bet be settled as void (push), that particular selection will be excluded from the parlay and the computation of odds/payout will be re-adjusted accordingly.~~

Removal section Barstool reasoning - *We felt the example of a ‘Teaser’ could be removed, as the language felt unnecessary.*

Section 4 (1) –

1) In Pre-match and Live betting, it is possible to (parlay) up to ~~twelve (12)~~ twenty (20) different offers on a single coupon. Based on these twenty offers, Account Holders can choose their own number of singles, doubles, trebles etc.

Subsections 3-10 –

Removed – No longer being offered.

Page 18 section 11 –

Changed

11) Wagers placed on participants/teams who take no part in an event, will be declared void. However applicable qualifying stages or similar, are to be considered part of the main event, and any participation within, is considered as validating the wager and will not be voided. For the avoidance of doubt, unless designated otherwise in the wagering description, all markets that are determined based on postseason tournaments will be settled as losing if the team does not qualify for the tournament.

Removed



Sports Wagering Division

~~11) Wagers placed on participants/teams who take no part in an event, will be declared void. However applicable qualifying stages or similar, are to be considered part of the main event, and any participation within, is considered as validating the wager and will not be voided. For the avoidance of doubt, unless designated otherwise in the wagering description, all markets that are determined based on postseason tournaments will be settled as losing if the team does not qualify for the tournament.~~

~~Barstool Sportsbook Barstool Sportsbook and Casino reserves the right, to apply Tattersalls Rule 4, as explained in <Section B, Para 6>, on any competition and this will be stated in correlation to the bet offer and/or the relevant Sport specific rule.~~

Removal section Barstool reasoning - *This section was updated within the attached redlined copy of the House Rules. The intention was to only remove the sentence referencing 'Tattersalls Rule 4'.*

Page 22 – Parlay+
Added

1) Parlay+™ wagers are a type of parlay wager consisting of one or more same game parlay wagers and may also include other individual selection(s) on unrelated Event(s). By way of illustration, the following is an example of a 5-leg Parlay+™ wager:

- Selection A and Selection B on Event 1 (same game parlay portion SG1) + Selection C and Selection D on Event 2 (same game parlay portion SG2) + Selection E on Event 3

2) Same game parlay portion(s) of a Parlay+™ wager are subject to the following grading rules:

a) If one or more selections in a same game parlay portion of a Parlay+™ wager result in a loss, such same game parlay portion will be graded as a loss, except if a selection of such same game parlay portion was voided for any reason, in which case the < Section B, Para 6.2.b > below applies.

b) If one or more selections in a same game parlay portion of a Parlay+™ wager are voided for any reason (for example, due to the selected player not taking part in the game), the same game parlay portion of the Parlay+™ wager that contained the applicable selection will be voided, regardless of the results of the remaining selections of such same game parlay portion. The remaining selections in the Parlay+™ wager will be graded in accordance with Barstool Sportsbook and Casino's house rules.

c) If one or more selections in a same game parlay portion of a Parlay+™ wager settle as a push (for example, due to a total ending up exactly on the number that was selected), the same game parlay portion of the Parlay+™ wager that contained the applicable selection will be deemed a push, except if a selection of such same game parlay portion results in a loss, in which case < Section B, Para 6.2.a > above applies. The remaining selections in the Parlay+™ wager will be graded in accordance with Barstool Sportsbook and Casino's house rules.



Sports Wagering Division

d) If the number of selections in a Parlay+™ wager is reduced (e.g. due to pushes or voids), it will cause the Parlay+™ wager to reduce to the remaining number of valid selections, and reduce the potential win amount based on the prices of the remaining number of selections. If a Parlay+™ wager reduces such that the remaining selections are on separate Events (i.e. there are no same game parlay portions remaining), the wager will no longer be a Parlay+™ wager and will be graded as a standard parlay wager in accordance with Barstool Sportsbook and Casino's house rules. If a Parlay+™ wager reduces to a single selection, the wager will be graded as a straight wager based on the price of that remaining selection.

e) By way of example, using the Parlay+™ wager illustration in < Section B, Para 6.1 > above:

- Situation 1: If Selection A is voided for any reason, the SG1 portion of the Parlay+™ wager will be voided (regardless of the outcome of Selection B) and the remainder of the Parlay+™ wager (SG2 + Selection E) will be graded in accordance with Barstool Sportsbook and Casino's house rules.

- Situation 2: If Selection A results in a push and Selection B wins, and Selection D is voided for any reason, then the SG1 portion of the Parlay+™ wager will be deemed a push, the SG2 portion will be voided, and Selection E will be graded as a straight wager in accordance with Barstool Sportsbook and Casino's house rules.

- Situation 3: If Selection A results in a push and Selection B results in a loss, then SG1 results in a loss and the Parlay+™ wager will be graded as a loss, regardless of the outcome of Selections C, D, or E.

3) If one or more same game parlay portion(s) or other selection(s) in your Parlay+™ wager result in a loss, the Parlay+™ wager will be graded as a loss.

Old language deleted.

Page 25 section 6 –

6) Matchday/Weekly props is where it is possible to bet on the performances and outcomes of a pre-defined selection of teams and/or individual players' occurrences happening in a collection of matches/events on a specified week/round/day/match day (example: Total Points Scored in matches from a specific Conference, Highest/Lowest Scoring team, Player Yardage markets etc). All applicable matches/events (including any rescheduling to be played within the aforementioned timeframe), must be completed and validated for the specified week/round/day/matchday for bets to stand except for those the outcomes of which has been decided prior to the abandonment and could not possibly be changed regardless of future events, which will be settled according to the decided outcome. ~~In addition, offers referring to the~~



Sports Wagering Division

~~performance of specified players require that all the specified players participate in at least one more play in the match, after bet acceptance for bets to stand.~~

Language removed.

Removal language Barstool reasoning - *We removed the final sentence as all specified players need to participate for a bet to stand.*

For example, we list 20 quarterbacks in a weekly market, "QB most passing yards for the week". If 1 quarterback doesn't play we wouldn't void the entire market. All bets would stand except for the 1 quarterback (no action), we believe this would be Patron friendly because if an individual took Tom Brady with most passing yards for the week, and on Friday Cam Newton gets injured and doesn't play and Tom Brady wins – the individual would expect to be paid out.

As an additional note, these weekly markets usually go up before the starting roster is released, which is usually 2 hours before kick-off.

Page 27 section 5 –

Removed – no longer offered

Page 46 section 7 –

Removed- No longer offered.

Page 54 section 2 –

Addition

2) “Match” bet offers are based on the general principle of tournament progress or tournament win, depending on which phase of the competition the match refers to. The player/team progressing to the next round or winning the tournament is to be considered as the winner of the bet regardless of withdrawals, disqualifications, etc. These bets require at least one set to be completed for bets to stand.

~~Exclusive to tennis (including ATP, WTA, Challenger and ITF tours) where a player withdraws during a match due to injury, money line wagers on that player’s opponent progressing to the next round of the Tournament will be graded as a win, and wagers placed on the player who withdraws from the match will be deemed “no action” and refunded.~~

Page 57 section 5 –

Removed- No longer offered.

Page 61 Section 31-

Addition – Old language deleted.

~~31. Barstool Battles Odds Boosts and Special Markets~~

~~1) We may offer Odds Boosts and Special Markets in a clearly marked section of the Services. Unless otherwise stated below, wagers will be governed by the above sport-specific betting rules. Specific rules for individual Markets will be displayed within the Service, as applicable. Additional wager limits may apply.~~



Sports Wagering Division

- 2) All Events must be completed for wagers to stand. Wagers will be deemed “no action” and refunded if all Events listed are not completed, unless the result has already been determined.
- 3) All games must play.
- 4) Players featuring in Baseball, Soccer, Rugby Union and Rugby League must start. Players featuring in other sports must be in play at some point during the game.
- 5) If any part of the Odds Boost or Special Market is deemed “no action”, then the entire Odds Boost or Special Market will be deemed “no action” and refunded, unless the result has already been determined.
- 6) Unless stated otherwise, the wager refers to the next official Event that the listed team or participant(s) are scheduled to participate in.
- 7) Where a collective group of participants is described but not named (for example: Any American to Finish Top 5), wagers will stand if a single participant from this group participates in the Event (for example: 1 American participating in the race). If this is not the case, wagers will be deemed “no action” and refunded.
- 8) All wagers will be graded as per the official statistics from the sport governing body at the end of the Event. Statistical corrections after the grading will not result in wagers being regraded.
- 9) We reserve the right to withdraw any Odds Boosts or Special Markets, and/or edit the respective odds on the enhanced price at its sole discretion.
- 10) Markets fluctuate in pricing which means the presented ‘Was’ price may not be accurate at all times. The presented ‘Was’ price is accurate as of the time of initial publishing of the Market. As such, due to price fluctuations, Odds Boosts pricing may not represent an enhanced value as compared to the Market price at the time a patron places the Odds Boosts wager.
- 11) If there’s no offer an original Market on the Odds Boosts, the ‘Was’ price will be determined based on market average pricing for the Event.

CONCLUDING STATEMENT:

The division confirms that all requirements have been met under 205 CMR 247.02 and the Sports Wagering Division has no reservations about moving forward on approving these changes.



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

FROM: Crystal Beauchemin, Sports Wagering Business Manager
Bruce Band, Director of Sports Wagering

DATE: June 30, 2023

RE: Operator Requests for Temporary Waivers from Certain Provisions of 205
CMR 238 and 205 CMR 248

EXECUTIVE SUMMARY:

On June 1, 2023, the Commission voted to finalize the drafts of [205 CMR 238: Additional Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering](#) and [205 CMR 248: Sports Wagering Account Management](#), to file the regulations by emergency, and to begin the formal regulation process. The legal department has filed the regulations by emergency.

The sports wagering division has received temporary waiver requests from a few of our Category 3 operators, indicating additional time needed to evaluate the regulation and/or implement the technical provisions necessary for 205 CMR 238.45 (2)e and 205 CMR 248.16 to ensure compliance with these regulations. We have compiled this memo to identify those temporary waiver requests as outlined.

SUPPORTING DOCUMENTS:

The full waiver requests from each operator are included in the packet.

WAIVER REQUESTS: **205 CMR 238.45 (2)e – Personally Identifiable Information Security**
(2) No employee or agent of the Sports Wagering Operator shall divulge any Confidential Information or personally identifiable information related to a Sports Wagering Account, the placing of any Wager or any other sensitive information related to the operation of Sports Wagering, except as required or permitted by this section, the Commission or other authorized governmental agencies, including:

(e) Unless otherwise authorized by the patron, the name, address, and other Personally Identifiable Information or Confidential Information in the possession of the Sports Wagering Operator that would identify the patron to anyone other than the Commission or the Sports Wagering Operator, provided, however, that such authorization must be clear, conspicuous, and received apart from any other agreement or approval of the patron. Acceptance of general or broad terms of use or similar documents that purport to permit the sharing of Personally Identifiable Information or Confidential Information in the same document shall not constitute adequate authorization, not shall hovering over, muting, pausing, preselecting, or closing a given piece of content without affirmatively granting consent; or purported agreement. Further, no authorization shall be deemed to be a waiver of any of the patron’s other rights. The option to withdraw such consent must be clearly and conspicuously available to the patron.

The sports wagering division has received temporary waiver requests from DraftKings, Fanatics, FanDuel and Penn Interactive in relation to 205 CMR 238.45 (2)e. A summary of these requests include:

DraftKings September 6, 2023

DraftKings requests a temporary waiver to allow additional time “to ensure full understanding and intent of requirement and allow time for any change of procedures or processes that may be required.”

Fanatics December 30, 2023

Fanatics has identified this as the date which they estimate the necessary technical implementations to be complete and requests a temporary waiver through this date.

FanDuel Through the effective date of the final regulation language as published in the Massachusetts register

FanDuel will put in a waiver request, if necessary, once evaluating the final version of the regulation to determine necessary technical changes.

PSI August 1, 2023

Penn Sports Interactive is also requesting a temporary waiver to implement technological enhancements which would achieve compliance with the regulation, which will be incorporated once they have completed their migration to the in-house technology slated for July.

WAIVER REQUEST: 205 CMR 248.16 – Responsible Gaming Limits

(1) In accordance with M.G.L. c. 23N, § 13(e)(3), a Category 3 Sports Wagering Operator shall allow the patron to set self-imposed limitations on sports wagering at any time, including when the patron signs up for a Sports Wagering Account. Such limitations must include the following and must be clearly and conspicuously displayed prior to allowing registration of a new account, the first time a patron makes a deposit into an account, and the first time the patron places a wager from an account:

(a) The Operator must offer daily, weekly and monthly deposit limits, which shall specify the maximum amount of money a patron may deposit into their Sports Wagering Account during a particular period of time.

(b) The Operator must offer daily, weekly and monthly wager limits, which shall specify the maximum amount of patron funds that may be put at risk during a particular period of time.

(2) Any decrease to these limits shall be effective immediately or at a point in time (e.g., next login, next day) that was clearly indicated to the patron. Any increase to these limits shall become effective only after the time period of the previous limit has expired, and the patron reaffirms the requested increase.

The sports wagering division has received temporary waiver requests from BetMGM, Fanatics, FanDuel, and Penn Interactive in relation to 205 CMR 248.16, all of which relate to necessary technological enhancements to achieve compliance. The operators are requesting temporary waivers through the following dates to implement those changes. (FanDuel wishes to put in a final waiver request at a later date, if needed, based upon the final regulation language.)

BetMGM August 24, 2023

Fanatics December 29, 2023

FanDuel Through the effective date of the final regulation language as published in the Massachusetts register

PSI August 1, 2023

CONCLUSION/ RECOMMENDATION:

The sports wagering division would recommend that the Commission approve the temporary waivers requested, as stated above.



6/

MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

In accordance with 205 CMR 202.03; 205 CMR 102.03(4)

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

CONTACT INFORMATION

DATE: 6/30/2023

NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY): Crown MA Gaming d/b/a DraftKings

NAME OF INDIVIDUAL COMPILING REQUEST: Kevin Nelson

TITLE OF INDIVIDUAL COMPILING REQUEST: Senior Manager, Regulatory Operations

CONTACT EMAIL ADDRESS: knelson@draftkings.com

CONTACT PHONE NUMBER: 518-727-4624

EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):

REGULATION INFORMATION

SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED:

REGULATION SECTION TITLE: 238.45 (2)e

REGULATION LANGUAGE/TEXT:

Unless otherwise authorized by the patron, the name, address, and other Personally Identifiable Information or Confidential Information in the possession of the Sports Wagering Operator that would identify the patron to anyone other than the Commission or the Sports Wagering Operator, provided, however, that such authorization must be clear, conspicuous, and received apart from any other agreement or approval of the patron. Acceptance of general or broad terms of use or similar documents that purport to permit the sharing of Personally Identifiable Information or Confidential Information in the same document shall not constitute adequate authorization, not shall hovering over, muting, pausing, pre-selecting, or closing a given piece of content without affirmatively granting consent; or purported agreement. Further, no authorization shall be deemed to be a waiver of any of the patron's other rights. The option to withdraw such consent must be clearly and conspicuously available to the patron online through any patron account page on the Sports Wagering Operator's website and within any Sports Wagering mobile application. A patron shall not be required to confirm withdrawal of consent more than once, and no intervening pages or offers will be presented to the patron before such confirmation is presented to the patron.



REASON FOR REQUEST OF WAIVER

DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH: September 6, 2023

Per 205 CMR 102.03(4)(b)

PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:

DraftKings is seeking this waiver to allow time to hold discussions with appropriate MGC staff to ensure full understanding and intent of requirement and allow time for any change of procedures or processes that may be required. In its current form, the requirement lacks sufficient clarity and definitions around what data sharing is permitted, which is necessary in an industry where DraftKings and other operators are dependent on hundreds of different vendors and partners in order to provide gaming services. For instance, the prescription that "[a]cceptance of general or broad terms of use or similar documents that purport to permit the sharing of Personally Identifiable Information or Confidential Information in the same document shall not constitute adequate authorization" is vague insofar as it leaves open the critically important question as to whether acceptance of the data processing and disclosure practices articulated in our company's privacy notice would constitute adequate authorization. That prescription appears to track similar provisions in the California Consumer Privacy Act, Colorado Privacy Act, and other privacy laws, but unlike such laws omits key language that clarifies that consent to a privacy notice or policy would provide adequate authorization.

Per 205 CMR 102.03 (4)(a)(4)

PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:

Impact of the regulation in its current form without approval of the requested waiver cannot be properly determined until DraftKings has a clearer and more defined understanding of the requirement. Functional areas of the business such as marketing and analytics could be severely impacted.

ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:

n/a

DETERMINATION

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;



3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

In accordance with 205 CMR 202.03; 205 CMR 102.03(4)

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

CONTACT INFORMATION

DATE: 6/30/2023

NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY): FBG Enterprises Opco, LLC d/b/a Fanatics Sportsbook

NAME OF INDIVIDUAL COMPILING REQUEST: Lauren Lemmer

TITLE OF INDIVIDUAL COMPILING REQUEST: Director, New Markets & Product Compliance

CONTACT EMAIL ADDRESS: lauren.lemmer@betfanatics.com

CONTACT PHONE NUMBER: 925-699-0837

EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):
N/A

REGULATION INFORMATION

SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED: 205 CMR 238

REGULATION SECTION TITLE: 205 CMR 238.45(2)(e)

REGULATION LANGUAGE/TEXT: Unless otherwise authorized by the patron, the name, address, and other Personally Identifiable Information or Confidential Information in the possession of the Sports Wagering Operator that would identify the patron to anyone other than the Commission or the Sports Wagering Operator, provided, however, that such authorization must be clear, conspicuous, and received apart from any other agreement or approval of the patron. Acceptance of general or broad terms of use or similar documents that purport to permit the sharing of Personally Identifiable Information or Confidential Information in the same document shall not constitute adequate authorization, not shall hovering over, muting, pausing, preselecting, or closing a given piece of content without affirmatively granting consent; or purported agreement. Further, no authorization shall be deemed to be a waiver of any of the patron's other rights. The option to withdraw such consent must be clearly and conspicuously available to the patron.

REASON FOR REQUEST OF WAIVER

DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH: December 30, 2023



Per 205 CMR 102.03(4)(b)

PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT: In order to comply with the new requirement as adopted on June 7, 2023 and provide patrons with the option to withdraw consent in a way that is clearly and conspicuously available to the patron, Fanatics seeks a waiver of 6 months, which would reasonably allow Fanatics the time necessary to implement the technological enhancements required to comply with this regulation.

Per 205 CMR 102.03 (4)(a)(4)

PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION: Non-compliance with recently adopted regulation.

ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST: N/A

DETERMINATION

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

In accordance with 205 CMR 202.03; 205 CMR 102.03(4)

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

CONTACT INFORMATION

DATE: 06/30/23

NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY): Betfair Interactive US LLC (FanDuel)

NAME OF INDIVIDUAL COMPILING REQUEST: Cory Fox

TITLE OF INDIVIDUAL COMPILING REQUEST: Vice President, Product and New Market Compliance

CONTACT EMAIL ADDRESS: cory.fox@fanduel.com

CONTACT PHONE NUMBER: 650-346-6624

EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT): NA

REGULATION INFORMATION

SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED: 205 CMR 238.45(2)(e)

REGULATION SECTION TITLE: Confidential Information and Personally Identifiable Information Security

REGULATION LANGUAGE/TEXT:

(e) Unless otherwise authorized by the patron, the name, address, and other Personally Identifiable Information or Confidential Information in the possession of the Sports Wagering Operator that would identify the patron to anyone other than the Commission or the Sports Wagering Operator, provided, however, that such authorization must be clear, conspicuous, and received apart from any other agreement or approval of the patron. Acceptance of general or broad terms of use or similar documents that purport to permit the sharing of Personally Identifiable Information or Confidential Information in the same document shall not constitute adequate authorization, not shall hovering over, muting, pausing, pre-selecting, or closing a given piece of content without affirmatively granting consent; or purported agreement. Further, no authorization shall be deemed to be a waiver of any of the patron's other rights. The option to withdraw such consent must be clearly and conspicuously available to the patron online through any patron account page on the Sports Wagering Operator's website and within any Sports Wagering mobile application. A patron shall not be required to confirm withdrawal of consent more than once, and no intervening pages or offers will be presented to the patron before such confirmation is presented to the patron.



REASON FOR REQUEST OF WAIVER

DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:

FanDuel respectfully requests a temporary uniform waiver through the effective date of the updated/finalized regulation.

Per 205 CMR 102.03(4)(b)

PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:

FanDuel is seeking a temporary waiver of the requirements set forth in 205 CMR 238.45(2)(e) to give itself the necessary time to scope, develop, test, and implement a technical solution in accordance with the regulation.

Per 205 CMR 102.03 (4)(a)(4)

PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:

FanDuel's ability to continue to offer online sports wagering in a compliant manner in the Commonwealth of Massachusetts would be impacted if the Commission were not to approve the temporary waiver request that considers the significant technical effort the emergency regulation would require.

ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:

205 CMR 238.45(2)(e) creates compliance obligations unique to Massachusetts, and as such, compliance with the emergency regulation requires significant scoping, building, testing, and then implementation of relevant product changes due to the nature of online sports wagering systems and the impact that changes to technical systems have. Moreover, these changes may have some dependencies on independent lab testing, which could require additional time to complete. Accordingly, FanDuel requests this temporary waiver in order to afford itself adequate time to develop and review these features to ensure its systems comply with the regulation, and that the new acknowledgements are recorded and stored in an appropriate manner. FanDuel appreciates and supports the Commission's efforts to further enhance protections for Massachusetts users and remains committed to working with the Commission to create safeguards for its users. Nonetheless, these enhancements require time to bring to fruition.

DETERMINATION

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;



3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

In accordance with 205 CMR 202.03; 205 CMR 102.03(4)

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

CONTACT INFORMATION

DATE: 6/28/2023

NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY): Penn Sports Interactive

NAME OF INDIVIDUAL COMPILING REQUEST: Adam Kates

TITLE OF INDIVIDUAL COMPILING REQUEST: Sr. Director, Compliance

CONTACT EMAIL ADDRESS: adam.kates@penn-interactive.com

CONTACT PHONE NUMBER: 416-479-8812 ext. 2728

EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT): N/A

REGULATION INFORMATION

SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED: 205 CMR 238.45(2)(e)

REGULATION SECTION TITLE: Confidential Information and Personally Identifiable Information Security

REGULATION LANGUAGE/TEXT:

(2) No employee or agent of the Sports Wagering Operator shall divulge any Confidential Information or Personally Identifiable Information related to a Sports Wagering Account, the placing of any Wager or any other sensitive information related to the operation of Sports Wagering except as required or permitted by this section or elsewhere explicitly permitted in 205 CMR, the Commission or other authorized governmental agencies, including:

...

(e) Unless otherwise authorized by the patron, the name, address, and other Personally Identifiable Information or Confidential Information in the possession of the Sports Wagering Operator that would identify the patron to anyone other than the Commission or the Sports Wagering Operator, provided, however, that such authorization must be clear, conspicuous, and received apart from any other agreement or approval of the patron. Acceptance of general or broad terms of use or similar documents that purport to permit the sharing of Personally Identifiable Information or Confidential Information in the same document shall not constitute adequate authorization, not shall hovering over, muting, pausing, preselecting, or closing a given piece of content without affirmatively granting consent; or purported agreement. Further, no authorization shall be deemed to be a waiver of any of the patron's other rights. The option to withdraw such consent must be clearly and conspicuously available to the patron online through any patron account page on the Sports Wagering Operator's website and within any Sports



Wagering mobile application. A patron shall not be required to confirm withdrawal of consent more than once, and no intervening pages or offers will be presented to the patron before such confirmation is presented to the patron.

REASON FOR REQUEST OF WAIVER

DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH: August 1, 2023

Per 205 CMR 102.03(4)(b)

PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:

Penn Sports Interactive (“PSI”) respectfully requests a temporary waiver of the requirements of 205 CMR 238.45(2)(e) until August 1, 2023, in order to complete the technological work necessary to comply with the new requirements as approved by the Commission at their June 1, 2023, public meeting. PSI is currently preparing for an upcoming migration to its own in-house technology in July of 2023. Once migrated to the in-house technology, PSI will solve for this requirement as outlined in 238.45(2)(e) via appropriate in-app messaging to the patron of the potential reasons for which personal and confidential information may be used, as well as clear and conspicuous technological functionality which will enable the patron to withdraw their consent for the online Barstool Sportsbook to utilize their confidential or personal information for any reason unrelated to the operation of sports wagering, or as required by applicable laws.

Per 205 CMR 102.03 (4)(a)(4)

PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:

Not granting this waiver would cause substantial hardship to PSI. The online Barstool Sportsbook is currently live in the Commonwealth of Massachusetts, and as this regulation was promulgated by emergency procedures, PSI is not currently technologically able to comply with the amended requirements. As mentioned above, PSI is currently preparing for our upcoming migration to in-house technology and, as a result, we are under resource constraints which will prevent completion of the necessary technological enhancements to comply with the newly amended requirements of 238.45(2)(e) until the migration is completed. In addition, the required technological enhancements must be developed, tested, and validated prior to use in the Commonwealth on the online Barstool Sportsbook.

ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:

Granting this waiver would be consistent with the purposes of M.G.L. c. 23K. PSI intends to fully comply with 205 CMR 238.45(2)(e); however, technological development work and proper testing is needed to do so. Granting this waiver would not interfere with the ability of the Commission to fulfill its duties as it would allow PSI to continue sports wagering operations while developing the technology necessary to comply with 205 CMR 238.45(2)(e). In addition, the public interest will not be affected because the online Barstool Sportsbook, operated by PSI, will continue to operate in the Commonwealth as it does today, including all existing data security measures, until the necessary development work and testing is completed.



DETERMINATION

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

In accordance with 205 CMR 202.03; 205 CMR 102.03(4)

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

CONTACT INFORMATION

DATE: 6/27/2023

NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY): BetMGM

NAME OF INDIVIDUAL COMPILING REQUEST: Lucas Niglio

TITLE OF INDIVIDUAL COMPILING REQUEST: Senior Responsible Gaming Compliance Analyst

CONTACT EMAIL ADDRESS: lucas.niglio@betmgm.com

CONTACT PHONE NUMBER: 732-832-6904

EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):

richard.taylor@betmgm.com andrew.spisak@betmgm.com sarah.brennan@betmgm.com

REGULATION INFORMATION

SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED: 248.16

REGULATION SECTION TITLE: Responsible Gaming Limits

REGULATION LANGUAGE/TEXT:

In accordance with M.G.L. c. 23N, § 13(e)(3), a Category 3 Sports Wagering Operator shall allow the patron to set self-imposed limitations on sports wagering at any time, including when the patron signs up for a Sports Wagering Account. Such limitations must include the following and must be clearly and conspicuously displayed prior to allowing registration of a new account, the first time a patron makes a deposit into an account, and the first time the patron places a wager from an account:

(a) The Operator must offer daily, weekly and monthly deposit limits, which shall specify the maximum amount of money a patron may deposit into their Sports Wagering Account during a particular period of time.

(b) The Operator must offer daily, weekly and monthly wager limits, which shall specify the maximum amount of patron funds that may be put at risk during a particular period of time.



REASON FOR REQUEST OF WAIVER

DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH: August 24, 2023

Per 205 CMR 102.03(4)(b)

PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT: These changes require significant technical and product development.

Per 205 CMR 102.03 (4)(a)(4)

PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION: BetMGM would not comply when the regulation becomes finalized.

ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST: N/A

DETERMINATION

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

In accordance with 205 CMR 202.03; 205 CMR 102.03(4)

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

CONTACT INFORMATION

DATE: 6/29/2023

NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY): FBG Enterprises Opco, LLC d/b/a Fanatics Sportsbook

NAME OF INDIVIDUAL COMPILING REQUEST: Lauren Lemmer

TITLE OF INDIVIDUAL COMPILING REQUEST: Director, New Markets & Product Compliance

CONTACT EMAIL ADDRESS: lauren.lemmer@betfanatics.com

CONTACT PHONE NUMBER: 925-699-0837

EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT):
N/A

REGULATION INFORMATION

SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED: 205 CMR 248

REGULATION SECTION TITLE: 205 CMR 248.16(1)

REGULATION LANGUAGE/TEXT: In accordance with M.G.L. c. 23N, § 13(e)(3), a Category 3 Sports Wagering Operator shall allow the patron to set self-imposed limitations on sports wagering at any time, including when the patron signs up for a Sports Wagering Account. Such limitations must include the following and must be clearly and conspicuously displayed prior to allowing registration of a new account, the first time a patron makes a deposit into an account, and the first time the patron places a wager from an account: (a) The Operator must offer daily, weekly and monthly deposit limits, which shall specify the maximum amount of money a patron may deposit into their Sports Wagering Account during a particular period of time. (b) The Operator must offer daily, weekly and monthly wager limits, which shall specify the maximum amount of patron funds that may be put at risk during a particular period of time.

REASON FOR REQUEST OF WAIVER

DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH: December 29, 2023



Per 205 CMR 102.03(4)(b)

PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT: Fanatics is currently in compliance with the requirement to allow patrons to set self-imposed limitations following initial account registration. In order to comply with the new requirement as adopted on June 7, 2023 and provide patrons with the option to set limits prior to account registration, their first deposit, or their first wager, Fanatics seeks a waiver of 6 months, which would reasonably allow Fanatics the time necessary to implement the technological enhancements required to comply with this regulation.

Per 205 CMR 102.03 (4)(a)(4)

PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION: Non-compliance with recently adopted regulation.

ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST: N/A

DETERMINATION

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

In accordance with 205 CMR 202.03; 205 CMR 102.03(4)

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

CONTACT INFORMATION

DATE: 06/30/23

NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY): Betfair Interactive US LLC (FanDuel)

NAME OF INDIVIDUAL COMPILING REQUEST: Cory Fox

TITLE OF INDIVIDUAL COMPILING REQUEST: Vice President, Product and New Market Compliance

CONTACT EMAIL ADDRESS: cory.fox@fanduel.com

CONTACT PHONE NUMBER: 650-346-6624

EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT): NA

REGULATION INFORMATION

SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED: 205 CMR 248.16(1)

REGULATION SECTION TITLE: Responsible Gaming Limits

REGULATION LANGUAGE/TEXT:

(1) In accordance with M.G.L. c. 23N, § 13(e)(3), a Category 3 Sports Wagering Operator shall allow the patron to set self-imposed limitations on sports wagering at any time, including when the patron signs up for a Sports Wagering Account. **Such limitations must include the following and must be clearly and conspicuously displayed prior to allowing registration of a new account, the first time a patron makes a deposit into an account, and the first time the patron places a wager from an account:**

(a) The Operator must offer daily, weekly and monthly deposit limits, which shall specify the maximum amount of money a patron may deposit into **their** Sports Wagering Account during a particular period of time.

(b) The Operator must offer daily, weekly and monthly wager limits, which shall specify the maximum amount of patron funds that may be put at risk during a particular period of time.

REASON FOR REQUEST OF WAIVER



DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH:

FanDuel respectfully requests a temporary uniform waiver through the effective date of the updated/finalized regulation.

Per 205 CMR 102.03(4)(b)

PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:

FanDuel is seeking a temporary waiver of the requirements set forth in 205 CMR 248.16(1) to give itself the necessary time to scope, develop, test, and implement a technical solution that will be compliant with the additional locations where limits must be displayed.

Per 205 CMR 102.03 (4)(a)(4)

PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:

FanDuel’s ability to continue to offer online sports wagering in a compliant manner in the Commonwealth of Massachusetts would be impacted if the Commission were not to approve the temporary waiver request that considers the significant technical effort the emergency regulation would require.

ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:

205 CMR 248.16(1) creates compliance obligations unique to Massachusetts, and as such, compliance with the emergency regulation requires significant scoping, building, testing, and then implementation of relevant product changes due to the nature of online sports wagering systems and the impact that changes to technical systems have. Moreover, these changes may require independent lab testing, which would require additional time to complete. Accordingly, FanDuel requests this temporary waiver in order to afford itself adequate time to develop and review these features to ensure its systems comply with the regulation that will be promulgated in its final form.

FanDuel’s current sign-up/registration flow complies with the intent of 205 CMR 248.16(1) by including a link to FanDuel’s responsible gaming tools on the page confirming that a user has been verified, and FanDuel remains steadfast in its commitment to responsible gaming and serving as a leader in the sports wagering industry. Indeed, FanDuel’s current responsible gaming processes already provide strong protections that minimize player risks, including through tooling such as deposit limits, wager limits, timeouts, self-exclusion, and reality checks, among other things. These tools are easily accessible via FanDuel’s Patron Protection Page, which users can navigate to from any page on FanDuel’s platform by clicking the Responsible Gaming logo at the top of the platform. This commitment to responsible gaming is why FanDuel’s platform already meets many of the new requirements set out in the different versions of play management regulations that have been contemplated following launch; this request for a temporary waiver is more limited in scope, and is specifically related to the additional locations where the emergency regulation contemplates that limits are surfaced to users. FanDuel appreciates and supports the Commission’s efforts to further enhance protections for Massachusetts users and remains committed to working with the Commission to create safeguards for its users. Nonetheless, these enhancements require time to bring to fruition.

DETERMINATION



Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





MASSACHUSETTS GAMING COMMISSION WAIVER/VARIANCE REQUEST FORM

In accordance with 205 CMR 202.03; 205 CMR 102.03(4)

Please fill out and address all areas of the form with blue section headers. If a specific line does not apply to the request, please place 'NA' in the response field. Each section will extend to accommodate large answers.

CONTACT INFORMATION

DATE: 6/28/2023

NAME OF LICENSEE / OPERATOR (REQUESTING ENTITY): Penn Sports Interactive

NAME OF INDIVIDUAL COMPILING REQUEST: Adam Kates

TITLE OF INDIVIDUAL COMPILING REQUEST: Sr. Director, Compliance

CONTACT EMAIL ADDRESS: adam.kates@penn-interactive.com

CONTACT PHONE NUMBER: 416-479-8812 ext. 2728

EMAIL/PHONE NUMBER FOR PROVIDING DECISION (IF DIFFERENT FROM CONTACT): N/A

REGULATION INFORMATION

SPECIFIC REGULATION (#) FOR WHICH WAIVER IS REQUESTED: 205 CMR 248.16(1)

REGULATION SECTION TITLE: Responsible Gaming Limits

REGULATION LANGUAGE/TEXT:

(1) In accordance with M.G.L. c. 23N, § 13(e)(3), a Category 3 Sports Wagering Operator shall allow the patron to set self-imposed limitations on sports wagering at any time, including when the patron signs up for a Sports Wagering Account. Such limitations must include the following and must be clearly and conspicuously displayed prior to allowing registration of a new account, the first time a patron makes a deposit into an account, and the first time the patron places a wager from an account:

REASON FOR REQUEST OF WAIVER

DATE(S)/ TIMEFRAME WAIVER IS REQUESTED THROUGH: November 30, 2023

Per 205 CMR 102.03(4)(b)

PLEASE EXPLAIN THE BASIS FOR THE PROPOSED WAIVER/VARIANCE SOUGHT:



Penn Sports Interactive (“PSI”) has assessed the emergency changes to regulation 205 CMR 248 and is developing product functionality in accordance with the new requirements. PSI specifically requests this temporary waiver of the requirements of 205 CMR 248.16(1) until November 30, 2023, in order to complete this necessary technological work to comply with these recently approved requirements. PSI currently offers new patrons the option to set self-imposed responsible gaming limitations at the time of account registration and will continue to do so in accordance with the Commission’s regulations. In addition, PSI will solve for the requirement to conspicuously display the required limitations at the time of first deposit by incorporating a clear and conspicuous in-app link on the deposit screen which will bring the patron directly to the page within the online Barstool Sportsbook where limitations can be set. Finally, PSI will solve for the requirement to display the required limitations clearly and conspicuously at the time of first wager via an in-app pop up that will be displayed when the patron makes their first wager from their registered online sports wagering account.

Per 205 CMR 102.03 (4)(a)(4)

PLEASE INDICATE THE SUBSTANTIAL HARDSHIP/IMPACT YOUR ENTITY WOULD INCUR IF WAIVER/VARIANCE IS NOT APPROVED BY COMMISSION:

Not granting this waiver would cause substantial hardship to PSI. The online Barstool Sportsbook is currently live in the Commonwealth of Massachusetts, and as this regulation was promulgated by emergency procedures, PSI is not currently technologically able to comply with the amended requirements. This is not only because the technological enhancements will require development, testing and validation, but PSI is currently preparing for an upcoming technology migration to its own in-house technology in July of 2023 and, as a result, we are under resource constraints which will prevent completion of the required technological enhancements until the migration is completed.

ADDITIONAL JUSTIFICATION/EXPLANATION FOR REQUEST:

Granting this waiver would be consistent with the purposes of M.G.L. c. 23K. PSI intends to fully comply with 205 CMR 248.16(1); however, technological development work and product testing is needed to do so. Granting this waiver would not interfere with the public interest, nor the ability of the Commission to fulfill its duties, as it would allow PSI to seamlessly continue operations while developing the technology necessary to comply with the changes made to the requirements of the regulation. Moreover, while conducting the necessary development, all Commission required responsible gaming limitations will remain available to any patron of the online Barstool Sportsbook in the same manner as was tested and certified for use in the Commonwealth by GLI prior to the commencement of sports wagering operations in early March.

DETERMINATION

Pursuant to 205 CMR 102.03(4)(a), and 205 CMR 202.03(2), the Commission may waive or grant a variance if the Commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 23K and c. 23N;
2. Granting the waiver or variance will not interfere with the ability of the commission or the bureau to fulfill its duties;



3. Granting the waiver or variance will not adversely affect the public interest; and
4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

Pursuant to 205 CMR 102.03 (4)(c), any waiver request not acted on by the Commission within 60 days of filing shall be deemed denied.





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

FROM: Joseph E. Delaney, Chief of Community Affairs

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

DATE: May 11, 2023

RE: East of Broadway Development – Application Requirements

Project Background

The following is a brief chronology of the events that have led up to today's discussion.

- In February 2022, Encore Boston Harbor (EBH) submitted design plans for the East of Broadway development that did not include any gaming component. The Commission determined that the project was not part of the gaming establishment and placed some conditions on the project to alleviate security and access concerns.
- In the fall of 2022, EBH re-filed the plans with the Commission to include a poker room and sports betting. As such, the project must be included in the gaming establishment which subjects it to full review and approval of the Commission. The first step in the approval process was for the Commission to determine if gaming could be allowed on the expanded site. EBH was asked to address whether the June 2013 referendum adequately covered expansion of the gaming establishment onto this new property.
- On November 16, 2022, the Commission initially took up this matter. EBH argued that the original referendum was adequate to account for this project. The Commission asked for additional information regarding the boundaries of the Monsanto property, a legal opinion from Everett regarding the referendum, input from Plainville and Springfield and the estimated cost of a referendum.
- After receiving the requested information, the Commission reconvened this discussion on February 8, 2023. After much discussion and deliberation, the Commission determined that the original referendum vote included the East of Broadway parcel and therefore gaming could be allowed at that location.



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- The Commission held a Public Hearing on this project in Everett on April 25, 2023. Significant oral and written comments were received. The Commission has decided to hold an additional on-line public hearing to ensure that all interested parties have the opportunity to comment.

Gaming License and Operations Certificate Amendments

For this project to move forward, the Commission needs to review and approve the proposed expansion of EBH and more particularly expansion of the gaming establishment boundaries. Any approval will require amendments to the gaming license and operations certificate as the boundaries of the gaming establishment will be modified. 205 CMR 151.05 establishes the requirements for the amendment of an operations certificate, which allows for a full hearing by the Commission on any such amendment.

The next step in the process is to hold a Public Meeting for the Commission to review the project. Since MGL 23k and the Commission's regulations do not establish a particular set of submission requirements for a project expansion, we have assembled a list of items that the Commission could consider in an application from EBH. These items came from a review of our regulations as well as issues the Commission heard in the Public Hearing and in written comment. There certainly could be other items added to this list if the Commission has a particular interest in any other issue. The overall goal is to provide guidance to EBH on what the Commission wants to see addressed as part of the project submission.

The Commission may want to have a vote on which items it would like to see in an application from EBH. After the Commission decides, staff will summarize these items in a letter to EBH requesting that any application address the specific items.

The following are the overarching issues that have been discussed by the Commission or raised by the public. To ensure that issues that have been raised are being adequately addressed, staff is recommending that each of these be addressed either in an application from EBH or through a condition to any approval issued by the Commission.

1. **Re-opening mitigation agreements (205 CMR 127)** – The Commission heard several speakers at the public hearing request the re-opening of the Host Community Agreement between Everett and EBH. We have also heard from Surrounding Communities with respect to this issue. 205 CMR 127 establishes a process for re-opening mitigation agreements including the Host Community Agreement, Surrounding Community Agreements and Impacted Live Entertainment Venue (ILEV) Agreements. The Commission is not a party to these agreements; they are between EBH and each affected entity. The regulations identify the triggering



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events that allow for the re-opening of agreements, which in this case would be an occurrence that is likely to cause a significant and material adverse impact. Staff recommends that as part of its application, that EBH address what they are doing with respect to the existing mitigation agreements and how they are ensuring that the project will not have significant impacts on the affected entities.

2. **Traffic/Parking/Transportation Demand Management (Second Amended Section 61 Findings)** – Traffic related issues are primarily the purview of the Massachusetts Department of Transportation (MassDOT) through the Massachusetts Environmental Policy Act (MEPA) process, although the Commission also plays a significant role. The Commission heard several members of the public express their concerns with project related traffic and the need for additional shuttles and water transportation. EBH is now in the middle of the MEPA process having submitted a Supplemental Draft Environmental Impact Report (SDEIR) which is currently being reviewed by MassDOT. This report is largely focused on traffic and parking related issues, but it also addresses several other environmental issues. The MEPA process is expected to be completed no sooner than the end of July 2023. At the conclusion of this process, both MassDOT and the Commission will need to revise their respective Section 61 Findings. In the past, the Commission incorporated the MassDOT Section 61 Findings into its own as an added measure of protection and we expect to do so in any amendment. We are anticipating that the MEPA process and Commission’s approval process will be working in parallel, therefore the MEPA process will not have concluded when the Commission is reviewing the East of Broadway application. At a minimum, staff recommends that the EBH application include a status update on the MEPA process as well as a summary report on traffic and parking related impacts and proposed mitigation measures. Since the detailed MEPA documents are available for review, this report does not need to be exhaustive, but should be an executive level summary of the traffic sections of the SDEIR that specifically highlight the expected impacts of the project and how the proposed mitigation measures address the impacts.
3. **Impact on Police and Fire** – Several commenters discussed the impact that EBH has on police and fire services. There is no question that any large commercial development will have some impact on public safety services. Addressing public safety related impacts is one of the key purposes of the Host Community Agreement. In addition, should the East of Broadway development become part of the gaming establishment, it will fall under the jurisdiction of the Gaming Enforcement Unit,



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which is funded as part of the casino operation. As part of its application, EBH should address what it is doing with respect to impacts on public safety and how it expects to mitigate any impacts.

4. **Sustainable Development** – MGL Chapter 23k Section 18 outlines the objectives to be advanced in determining the granting of a gaming license, including the use of sustainable development principles. While this section of the law pertains to the granting of the original gaming license, it is reasonable to conclude that the intent is for our licensees to use these sustainable practices going forward. EBH has already committed to the East of Broadway project being certified as LEED (Leadership in Energy and Environmental Design) Gold. As part of the application, staff recommends that EBH provide a detailed summary of the sustainability principles that will be used in the project.
5. **Labor Harmony** – The Commission received several comments regarding labor harmony on this project, both during and after construction. MGL Chapter 23k Section 18 (18) asks “whether the applicant has included detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming establishment.” This section pertains to the award of the original license, but does reference reconstruction, renovation, development and operation. Therefore, staff believes that it is reasonable to request that EBH address the efforts they are undertaking to ensure labor harmony as part of their application.
6. **Construction and Operations Diversity (205 CMR 139)** – EBH developed diversity plans for both the construction and operation phases of the original project that were approved by the Commission. They include both workforce diversity and vendor diversity (Minority, Women and Veteran Owned Businesses). 205 CMR 139 requires periodic reporting on diversity, which the Commission receives as part of the quarterly reports submitted by EBH. It also defines construction as “subsequent periods in which any structures upon a licensee’s gaming establishment are altered, converted, fitted out, commissioned, renovated, repaired, maintained, demolished, decommissioned, or dismantled ...” Should the Commission determine that the East of Broadway project is part of the gaming establishment, these provisions would appear to be applicable to the project. Staff recommends that EBH provide a breakdown of their proposed workforce goals and



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contractor/vender goals for both the construction period and operations as part of the application.

7. **Jobs** – Many commenters were interested in the number of jobs associated with the project for construction and operation. Increasing jobs in the Commonwealth has always been one of the key provisions of expanded gaming in Massachusetts. Staff believes it is reasonable to ask EBH to identify the number of jobs it expects to create as part of this project.
8. **Monitoring of Construction (205 CMR 135)** – As with many other regulations, these were designed for the original construction of the casinos and deal primarily with project schedules and reporting, the design review process, inspection of construction, certification of the final stage of construction, and determination that the gaming establishment may open for business. While many of these provisions are standard practice in the construction industry, some of these are not pertinent to an expansion. For instance, the bonding requirements and penalties for not opening the gaming establishment in a timely fashion do not appear to be particularly pertinent to this type of development. Staff recommends that any Commission approval of the East of Broadway development be conditioned to allow for the appropriate level of design and construction monitoring. We will come back to the Commission with the specific sections of the regulations that are pertinent to the project as part of the application review process.
9. **Reporting to Commission (205 CMR 135 and 139)** – The Commission received quarterly reports from EBH for the duration of the original project construction. These included a listing of all permits necessary and their status, project schedule, contracts that were awarded during the period, diversity statistics, project budget updates, any substantial project changes and general construction status. The Commission may want to receive similar reporting during the construction of the East of Broadway development. This type of reporting could easily be added to the quarterly reports that we routinely receive from EBH. If the Commission would like to receive regular reports, staff recommends that a condition be placed on any Commission approval establishing the content and frequency of the reporting.



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205 CMR 119.00: PHASE 2 APPLICATION

Section

119.01: Contents of the Application

119.02: Completing the Application

119.03: Evaluation of the Application by the Commission

119.01: Contents of the Application

The RFA-2 application form shall be designed to require applicants to demonstrate that they have thought broadly and creatively about creating an innovative and unique gaming establishment that will create a synergy with, and provide a significant and lasting benefit to, the residents of the host community, the surrounding communities, the region, and the Commonwealth of Massachusetts, and will deliver an overall experience that draws both residents and tourists to the gaming establishment and the Commonwealth of Massachusetts. Further, the RFA-2 application shall require attestation of the applicant under the pains and penalties of perjury as to the truthfulness of the contents of the submission, and shall require, at a minimum, provision of the following information on and in the form prescribed by the commission:

- (1) the name of the applicant; and
- (2) the mailing address and, if a business entity, the name of the state under the laws of which it is incorporated, organized, formed, or registered, the location of its principal place of business and the names and addresses of its owners, members, partners, directors and/or stockholders; and
- (3) an attestation that the qualifiers identified by the commission in accordance with 205 CMR 116.00: *Persons Required to Be Licensed or Qualified* and deemed suitable under the RFA-1 process in accordance with 205 CMR 115.00: *Phase 1 Suitability Determination, Standards and Procedures* maintain the association with the applicant previously identified in the RFA-1 process;
- (4) a copy of the host community agreement executed by the applicant and the host community that includes provision for a community impact fee; and
- (5) information demonstrating how the applicant proposes to address host community impact and mitigation issues as set forth in the host community agreement required under 205 CMR 123.00: *Host Communities* during both the construction and operation of the proposed gaming establishment; and
- (6) a listing of the infrastructure costs of the host community incurred in direct relation to the construction and operation of a gaming establishment and a statement to commit to a community mitigation plan for that community; and
- (7) a certificate showing that the applicant has received a certified and binding positive vote on a ballot question at an election in the host community in favor of the license; and
- (8) a copy of all surrounding community agreements it has executed, if any; and
- (9) a list identifying any community it believes to be a surrounding community in accordance with 205 CMR 125.01(1)(a) that it has not executed a surrounding community agreement with, if any; and
- (10) information demonstrating how the applicant proposes to address surrounding community impact and mitigation issues as set forth in the surrounding community agreements required under 205 CMR 125.00: *Surrounding Communities* during both the construction and operation of the proposed gaming establishment; and
- (11) a listing of the infrastructure costs of the surrounding community incurred in direct relation to the construction and operation of a gaming establishment and a statement committing to a community mitigation plan for those communities; and

119.01: continued

- (12) a description and documentation of all public outreach efforts it made to local communities; and
- (13) a description and any documentation outlining the public support for the application from the host and surrounding communities; and
- (14) a description as to how the applicant proposes to promote local businesses in host and surrounding communities, including developing cross-marketing strategies with local restaurants, small businesses, hotels, retail outlets and impacted live entertainment venues; and
- (15) a copy of all impacted live entertainment venue agreements it has executed, if any; and
- (16) a statement as to whether it intends to incorporate a geographic exclusivity clause into agreements with its entertainers engaged to perform at a venue within its proposed Massachusetts gaming establishment, or it has been its past practice to incorporate geographic exclusivity clauses into agreements with its entertainers engaged to perform at its venues and, if so, the nature of such agreements; and
- (17) an explanation as to how the applicant proposes to utilize sustainable development principles including, but not limited to:
 - (a) being certifiable as gold or higher under the appropriate certification category in the Leadership in Environmental and Energy Design program created by the United States Green Building Council;
 - (b) meeting or exceeding the stretch energy code requirements contained in 780 CMR: *Appendix 120AA* or equivalent commitment to advanced energy efficiency as determined by the secretary of energy and environmental affairs;
 - (c) efforts to mitigate vehicle trips;
 - (d) efforts to conserve water and manage storm water;
 - (e) demonstrating that electrical and HVAC equipment and appliances will be Energy Star labeled where available;
 - (f) procuring or generating on-site at least 10% of its annual electricity consumption from renewable sources qualified by the department of energy resources under M.G.L. c. 28A, § 11F; and
 - (g) developing an ongoing plan to submeter and monitor all major sources of energy consumption and undertake regular efforts to maintain and improve energy efficiency of buildings in their systems; and
- (18) a calculation of the total capital investment in accordance with 205 CMR 122.00: *Capital Investment* including an agreement that, in accordance with the design plans submitted with the licensee's application to the commission, it will invest not less than the required capital under 205 CMR 122.00: *Capital Investment* into the gaming establishment; and
- (19) how the applicant proposes to realize the maximum capital investment exclusive of land acquisition and infrastructure improvements; and
- (20) an independent audit report of all financial activities and interests including, but not limited to, the disclosure of all contributions, donations, loans or any other financial transactions to or from a gaming entity or operator in the past five years; and
- (21)
 - (a) if deemed necessary by the commission to supplement the documentation considered in making its positive determination of suitability, clear and convincing evidence of financial stability including, but not limited to, bank references, business and personal income and disbursement schedules, tax returns and other reports filed by government agencies and business and personal accounting check records and ledgers; and
 - (b) a description and documentation of the financial and capital structure of the applicant and the proposed project; and
- (22) if deemed necessary by the commission to supplement the documentation considered in making its positive determination of suitability, evidence of its ability to pay and a commitment to paying the gaming licensing fee in accordance with 205 CMR 121.00: *Licensing Fee*; and

119.01: continued

- (23) information and documentation to demonstrate that the applicant has sufficient business ability and experience to create the likelihood of establishing and maintaining a successful gaming establishment; and
- (24) a full description of the proposed internal controls and security systems for the proposed gaming establishment and any related facilities; and
- (25) an agreement that the applicant shall mitigate the potential negative public health consequences associated with gambling and the operation of a gaming establishment, and the construction of a gaming establishment, including:
 - (a) maintaining a smoke-free environment within the gaming establishment under M.G.L. c. 270, § 22;
 - (b) providing complimentary on-site space for an independent substance abuse and mental health counseling service to be selected by the commission;
 - (c) prominently displaying information on the signs of problem gambling and how to access assistance;
 - (d) describing a process for individuals to exclude their names and contact information from a gaming licensee's database or any other list held by the gaming licensee for use in marketing or promotional communications; and
 - (e) instituting other public health strategies as determined by the commission; and
- (26) how the applicant proposes to take measures to address problem gambling including, but not limited to, training of gaming employees to identify patrons exhibiting problems with gambling and prevention programs targeted toward vulnerable populations; and how the applicant proposes to cooperate and support the commission in the development of an annual research agenda as provided in M.G.L. c. 23K, § 71; and
- (27) the designs for the proposed gaming establishment, including the names and addresses of the architects, engineers and designers, and a timeline of construction that includes:
 - (a) detailed stages of construction for the gaming establishment, non-gaming structures, and racecourse, where applicable;
 - (b) the deadline by which the stages and overall construction and any infrastructure improvements will be completed; and
 - (c) a projected date that it will begin gaming operations; and
- (28) the number of construction hours estimated to complete the work; and
- (29) how the applicant proposes to build a gaming establishment of high caliber with a variety of quality amenities to be included as part of the gaming establishment and operated in partnership with local hotels and dining, retail and entertainment facilities so that patrons experience the diversified regional tourism industry; and
- (30) the number and a description of the hotels and rooms, restaurants and other ancillary entertainment services and amenities to be located at the proposed gaming establishment and how they measure in quality to other area hotels and amenities; and
- (31) the number of employees to be employed at the proposed gaming establishment, including detailed information on the pay rate and benefits for employees; and
- (32) how the applicant proposes to ensure that it provides a high number of quality jobs in the gaming establishment; and
- (33) whether the applicant has prepared, and how the applicant proposes to implement a workforce development plan that:
 - (a) incorporates an affirmative action program of equal opportunity by which the applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including persons with disabilities;
 - (b) utilizes the existing labor force in the commonwealth;

119.01: continued

- (c) estimates the number of construction jobs a gaming establishment will generate and provides for equal employment opportunities and which includes specific goals for the utilization of minorities, women and veterans on those construction jobs;
 - (d) identifies workforce training programs offered by the gaming establishment;
 - (e) identifies the methods for accessing employment at the gaming establishment; and
 - (f) addresses workplace safety issues for employees; and
- (34) whether the applicant proposes to establish, fund and maintain human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program that:
- (a) establishes transparent career paths with measurable criteria within the gaming establishment that lead to increased responsibility and higher pay grades that are designed to allow employees to pursue career advancement and promotion;
 - (b) provides employee access to additional resources, such as tuition reimbursement or stipend policies, to enable employees to acquire the education or job training needed to advance career paths based on increased responsibility and pay grades; and
 - (c) establishes an on-site child day-care program; and
- (35) whether the applicant has a contract with organized labor, including hospitality services, and has the support of organized labor for its application, which specifies:
- (a) the number of employees to be employed at the gaming establishment, including detailed information on the pay rate and benefits for employees and contractors;
 - (b) the total amount of investment by the applicant in the gaming establishment and all infrastructure improvements related to the project;
 - (c) completed studies and reports as required by the commission, which shall include, but need not be limited to, an economic benefit study, both for the commonwealth and the region; and
 - (d) whether the applicant has included detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming establishment;
- (36) completed studies and reports as required by the commission, which shall include, but not be limited to, an examination of the proposed gaming establishment's:
- (a) economic benefits to the region and the commonwealth;
 - (b) local and regional social, environmental, traffic and infrastructure impacts;
 - (c) impact on the local and regional economy, including the impact on cultural institutions and on small businesses in the host community and surrounding communities;
 - (d) cost to the host community and surrounding communities and the commonwealth for the proposed gaming establishment to be located at the proposed location; and
 - (e) the estimated municipal and state tax revenue to be generated by the gaming establishment; and
- (37) the names of proposed vendors of gaming equipment; and
- (38) whether the applicant proposes to contract with local business owners for the provision of goods and services to the gaming establishment, including developing plans designed to assist businesses in the commonwealth in identifying the needs for goods and services to the establishment; and
- (39) whether the applicant intends to purchase domestically manufactured slot machines for installation in the gaming establishment; and
- (40) the location of the proposed gaming establishment, including all amenities and significant structures, which shall include the address, maps, book and page numbers from the appropriate registry of deeds, assessed value of the land at the time of application and ownership interests over the past 20 years, including all interests, options, agreements in property and demographic, geographic and environmental information and any other information requested by the commission; and

119.01: continued

- (41) if it does not presently possess an ownership interest in the location, an agreement, and description of its plan as to how it intends to own or acquire, within 60 days after a license has been awarded, the land where the gaming establishment is proposed to be constructed; provided, however, that ownership of the land shall include a tenancy for a term of years under a lease that extends not less than 60 years beyond the term of the gaming license issued under 205 CMR 119.00; and
- (42) whether the applicant purchased or intends to purchase publicly-owned land for the proposed gaming establishment; and
- (43) a market analysis detailing the benefits of the site location of the gaming establishment and the estimated recapture rate of gaming-related spending by residents travelling to out-of-state gaming establishments; and
- (44) the type and number of games to be conducted at the proposed gaming establishment and the specific location of the games in the proposed gaming establishment; and
- (45) a projection as to the number of slot machines it will seek approval for use at the gaming establishment should it be awarded a gaming license; and
- (46) a projection as to the number of gaming positions it anticipates at the gaming establishment should it be awarded a gaming license; and
- (47) how the applicant proposes to maximize revenues received by the Commonwealth of Massachusetts; and
- (48) whether the applicant's proposed gaming establishment is part of a regional or local economic plan; and
- (49) how issuance of the license to the applicant will offer the highest and best value to create a secure and robust gaming market in the region and the Commonwealth of Massachusetts; and
- (50) A signed agreement to be a licensed state lottery sales agent under M.G.L. c. 10 to sell or operate the lottery, multi-jurisdictional and keno games including an agreement that, it would agree to a condition of the issuance of a license to operate a gaming establishment, that it will not create, promote, operate or sell games that are similar to or in direct competition, as determined by the Massachusetts Gaming Commission, with games offered by the state lottery commission, including the lottery instant games or its lotto style games such as keno or its multi-jurisdictional games; and
- (51) A written plan demonstrating the manner in which the lottery and keno games shall be made readily accessible to the guests of the gaming establishment; and
- (52) Information demonstrating how the applicant proposes to protect the lottery from and mitigate any adverse impacts due to expanded gaming including, but not limited to, developing cross-marketing strategies with the lottery and increasing ticket sales to out-of-state residents; and
- (53) a copy of, an agreement to abide by, and an explanation as to how it proposes to implement a marketing program by which the applicant identifies specific goals, expressed as an overall program goal applicable to the total dollar amount of contracts, for utilization of:
 - (a) minority business enterprises, women business enterprises and veteran business enterprises to participate as contractors in the design of the gaming establishment;
 - (b) minority business enterprises, women business enterprises and veteran business enterprises to participate as contractors in the construction of the gaming establishment; and
 - (c) minority business enterprises, women business enterprises and veteran business enterprises to participate as vendors in the provision of goods and services procured by the gaming establishment and any businesses operated as part of the gaming establishment; and

119.01: continued

(54) a copy of, an agreement to abide by, and an explanation as to how it proposes to implement an affirmative action program of equal opportunity whereby the applicant establishes specific goals for the utilization of minorities, women and veterans on construction jobs; provided, however, that such goals shall be equal to or greater than the goals contained in the executive office for administration and finance Administration Bulletin Number 14; and

(55) identification of all disclosures required in accordance with 205 CMR 108.00: *Community and Political Contributions*.

(56) any additional information that, after release of the RFA-2 application the commission determines would be useful in conducting its evaluation of the RFA-2 applications. Provided, however, that additional information may be requested from the applicant by the commission upon reasonable notice at any time after the submission of the RFA-2 application in accordance with 205 CMR 112.00: *Required Information and Applicant Cooperation*.

119.02: Completing the Application

Two hard copies and one electronic copy on a compact disc or flash drive of the application and all attachments shall be submitted to the Commission by mail or in hand by the filing deadline. Applications must be neatly prepared and organized and marked in the manner specified on the application form to ensure uniformity of the submissions. To the extent that an applicant identified in the RFA-2 application is a newly formed entity, any information required to be provided in accordance with 205 CMR 119.01 relative to past performance shall, at a minimum, be provided in relation to the primary controlling and/or operating entity of the proposed gaming establishment and/or its significant business units.

119.03: Evaluation of the Application by the Commission

(1) Once a submitted RFA-2 application is deemed administratively complete, the commission shall commence a substantive evaluation of its contents. The commission may utilize any technical assistance it deems necessary to aid in its review.

(2) In determining which applicant will be awarded a Category 1 gaming license in accordance with M.G.L. c.23K, §19, and a Category 2 gaming license in accordance with M.G.L. c. 23K, § 20, the commission will evaluate the RFA-2 application to determine, and shall issue a statement of findings of how the applicant proposes to advance the objectives specified in M.G.L. c. 23K, § 18. In no particular order and without assigning any particular weights, the commission will evaluate the applicant's overall response on how it addresses the following categories of information which may be expanded upon in the RFA-2 application form:

- (a) Overview of project.
- (b) Financial criteria including:
 1. Financial and capital structure
 2. Maximization of revenues to the Commonwealth
 3. Realization of maximum capital investment exclusive of land and infrastructure
 4. Ability to offer the highest and best value to create a secure and robust gaming market
- (c) Economic Development criteria including:
 1. Job creation
 2. Supporting external business and job growth
 3. Regional tourism and attractions
- (d) Building and Site Design criteria including:
 1. Compliance with 780 CMR: *State Board of Building Regulations and Standards*, 521 CMR: *Architectural Access Board*, local ordinances and by-laws, including M.G.L. c. 30, §§ 61 through 62H as provided in 205 CMR 120.01: *Permitting Requirements*
 2. Demonstration of creativity in design and overall concept excellence
 3. Proposal to build a gaming establishment of high caliber a with quality amenities in partnership with local facilities
 4. Compatibility with surroundings
 5. Utilization of sustainable development principles in the construction and during the life cycle of the facility

119.03: continued

6. Security measures
7. Alternative uses for buildings in the complex
- (e) Mitigation criteria including:
 1. Agreement to be a lottery agent, not run competing games, and to protect and enhance the lottery
 2. Demonstration of plan for mitigation of lottery impact and compulsive gambling problems, community development, and host and surrounding community impact and mitigation issues
 3. Addressing the infrastructure costs of the host and surrounding community from the construction and operation of the gaming establishment and commitment to a mitigation plan
 4. Quality of signed host community agreement and a certified and binding vote on a ballot question at an election in the host community in favor of such license
 5. Quality of surrounding community agreements
 6. Quality of impacted live entertainment venue agreements
 7. Traffic mitigation
 8. Measures to address problem gambling
 9. Addressing mitigation of local and regional impact on housing, social services, and utilities

(3) In addition to 205 CMR 119.03(2), in awarding a Category 1 gaming license the commission shall take into consideration the physical distance between the location of Category 1 gaming establishments as they relate to each other and how they maximize benefits to the commonwealth; provided, however, that in determining which gaming applicant shall receive a gaming license in each region, the commission shall also consider the support or opposition to each gaming applicant from the public in the host and surrounding communities as demonstrated by public comment provided by the gaming applicant or directly to the commission pursuant to M.G.L. c. 23K, § 15 and through oral and written testimony received during the public hearing conducted pursuant to M.G.L. c. 23K, § 17. Further, in awarding the Category 1 and Category 2 gaming licenses, the commission may take into consideration the prospective or actual proximity of the location of the Category 2 gaming establishment to the Category 1 gaming establishments.

REGULATORY AUTHORITY

205 CMR 119.00: M.G.L. c. 23K, §§ 4(12); 4(28), 4(37); 5; 9; 15; 18; 19; and 20.

NON-TEXT PAGE



July 11, 2023

Jacqui Krum
Senior Vice President and General Counsel
Encore Boston Harbor

(VIA EMAIL:)

RE: East of Broadway MGC Review Requirements

Dear Attorney Krum,

The proposed East of Broadway development will require a modification to the Encore Boston Harbor (“EBH”) Gaming License as well as modifications to the Operations Certificate and the Massachusetts Gaming Commission (“Commission”) Section 61 Findings under the Massachusetts Environmental Policy Act (“MEPA”).

The Agreement to Award the Category 1 License in Region A to Wynn MA, LLC signed on September 17, 2014 defined the boundaries of the Gaming Establishment, which were later modified on May 22, 2019. To include gaming in the East of Broadway development, the Gaming Establishment boundaries will need to be changed, thereby requiring an amendment to the Gaming License. Further, 205 CMR 151.05 outlines the process for amending an Operations Certificate which would take place after approval of any amendment to the Gaming License and before the new facility would be allowed to open. Any amendments to the Section 61 findings would happen at the conclusion of the MEPA process.

The licensee has discussed its plans several times in different contexts over the course of advancing this development and the Commission has held two public hearings on the matter. These meetings have raised several questions that the Commission requests be addressed by EBH via the formal submission of the information requested below. See 205 CMR 112.00.

The Commission requests that EBH submit the following information to the Commission so that it may properly consider the request before it to expand the boundary of the gaming establishment such that gaming activity may be conducted on the site of the development East of Broadway:

1. A set of plans with sufficient detail for the Commission to fully understand the proposal including, at a minimum, a site plan, floor plans for each floor of the development, building elevations and renderings of the interior and exterior spaces, including any proposed modifications to the floor plan of the existing EBH facility.



Massachusetts Gaming Commission

This submission shall also include the information required in accordance with 205 CMR 151.05.

2. The number of new employees anticipated for the construction and operation of the new facility.
3. The number of new gaming positions for the new facility and total gaming positions for the entire EBH property.
4. A high-level summary of the traffic and parking related impacts and proposed mitigation measures. Please provide plans for any physical improvements that are being proposed.
5. A discussion of the measures being implemented to ensure a sustainable development including Leadership in Energy and Environmental Design (LEED) certification.
6. A discussion of the security and safety measures being put in place for the new development.
7. Please provide an update on the status of the MEPA process and when that process is anticipated to be completed.
8. Please provide an update on the status of the current EBH Section 61 findings.
9. Please provide a workforce and vendor diversity plan for the construction and operation of the new development.
10. Please provide an update on the current status of project permitting including site plan review, zoning changes, etc.
11. Please discuss EBH's plans with respect to re-opening Host and Surrounding Community Agreements.
12. Please discuss the impact that this project may have on Police/Fire/EMS services and any proposed mitigation. Please also discuss the impact that this new development would have on the Gaming Enforcement Unit.
13. Please discuss the efforts being undertaken by EBH to ensure labor harmony both during construction and operations.
14. Please discuss the commitments EBH has made with respect to affordable housing.

Please note that the Commission reserves the right to request further information as the process proceeds. Similarly, recall that if the request is approved, several existing plans, goals, and internal control submissions will require amendments.

Thank you for your anticipated cooperation. Please feel free to reach out to me to discuss this matter further.



Massachusetts Gaming Commission

Very truly yours,

MASSACHUSETTS GAMING COMMISSION

By:

Joseph E. Delaney
Chief of Community Affairs



Massachusetts Gaming Commission



July 11, 2023

Mayor Carlo DeMaria
Everett City Hall
484 Broadway
Everett, MA 02149

Subject: Massachusetts Gaming Commission East of Broadway Public Hearings

Dear Mayor DeMaria:

The Massachusetts Gaming Commission (the Commission) held two public hearings on the East of Broadway development proposed by Encore Boston Harbor. These meetings were well attended and generated significant oral and written comments. There were a few overarching areas that were touched upon by many of the commenters which the Commission believes should be brought to the City's attention. They include:

- Adequacy of the Referendum Vote – Several commenters suggested that they did not envision expanded gaming across Broadway when they originally voted on the project and believe there should be an additional referendum for this project. While the Commission has already weighed in on this matter, the City could consider adding a non-binding question to one of the upcoming elections to be held in the City this fall to gauge the level of support for this project.
- Re-opening of the Host Community Agreement (HCA) – Many commenters requested that the HCA be re-negotiated to include this new development. Since the Commission is not a party to the HCA, this is a matter to be discussed between the City and Encore Boston Harbor. The Commission has promulgated regulations (205 CMR 127.00) that identify the triggering events that would allow for the re-opening of mitigation agreements and the construction of the East of Broadway development would appear to meet those standards. There are also provisions in these regulations that allow for the Commission to become involved in re-opening agreements if an impasse is reached in negotiations.
- Impacts on Traffic and Public Safety – A number of commenters discussed the impacts of the current Encore facility on traffic in the lower Broadway area and the increased demands on the Everett Police and Fire Departments, and the potential for these impacts to be increased with the development of the East of Broadway development. The Commission shares these concerns but understands



Massachusetts Gaming Commission

that the City of Everett receives an annual Community Impact Fee from Encore to help address these issues. Over and above these impact fees, the City of Everett has received significant funding from the Commission's Community Mitigation Fund. Since the program's inception, the Commission has provided the City over \$_____ for projects to assist the City in long-term community planning, transportation planning efforts including expanded bus lanes and multi-use paths, transportation construction projects such as the extension of the Northern Strand bike path and public safety initiatives including expanded late night police patrols, radio upgrades, vehicle purchases, safety equipment upgrades and training initiatives. These funds have helped the City offset the costs associated with the construction and operation of the Encore Boston Harbor facility.

The Commission still has several steps to complete in the review of the proposed East of Broadway development and looks forward to working with the City to ensure that any development meets the highest standards and adequately mitigates project related impacts.

Sincerely:

Massachusetts Gaming Commission

cc: Everett City Council



Massachusetts Gaming Commission

Executive Director

The MGC, and therefore the Executive Director are the responsible regulatory authority for all casino and slot related gaming activities as well as racing related gambling activities. This authority and responsibility includes the creation of a fair, transparent and participatory process for implementing the expanded Commonwealth gaming law while seeking to provide the greatest possible economic development benefits and revenues to the people of the Commonwealth and reduce, to the maximum extent possible, the potentially negative or unintended consequences of the legislation.

The Executive Director is appointed by and serves at the pleasure of the Commission. Under the direction of the Commission, the Executive Director is the executive, operational and administrative head of the MGC and is responsible for instilling the Mission and Core Values among staff and stakeholders; achieving strategic and annual operating objectives; addressing and resolving cross-departmental matters; managing budgets, staff and scheduling.

General Duties and Responsibilities

- Oversees the overall administration of the Commission's business
- Assumes the leadership of staff and ensures an effective organizational structure
- Supports and advances Commission operations and all major Commission undertakings and projects.
- Ensures that all critical projects are successfully completed on time and within budget by means of effectively managing internal resources and external consultants.
- Facilitates communication, coordination and priority setting with Directors and Commissioners ensuring the successful outcome of projects
- Presents annual and individual business plans and gains approval from the Commissioners
- Produces monthly status reports to be measured against the annual business plan and achieves monthly, quarterly and annual business objectives set by the Commission
- Manages and employs a diverse group of employees, consultants, agents and advisors, including legal counsel, accounting and audit staff, and field agents
- Oversees the development of extensive legal and regulatory policy
- Oversees and coordinates the development of an efficient system of review and referral of cases to the Massachusetts Attorney General's Office, Division of Gaming Enforcement
- Oversees the development of fiscal policy and procedures for the MGC, including responsibility for the Gaming Revenue Fund
- Oversees the development and preparation of the MGC's budget
- Prepares, maintains and executes, in an efficient manner, the Commission approved plan of organization including the creation of subordinate units so as to efficiently comply with the requirements of the Gaming Act as well as assisting in the development of all lines and definitions of internal interaction and relative authority among MGC sub-divisions and staff

- Prepares, maintains and oversees a coordinated system of application, applicant, and case review for consideration of the Commission, inclusive of assisting in the establishment of a coordinated and efficient appeal process as required by the Gaming Act
- Develops administrative procedures and internal controls for the MGC which assure the highest integrity and efficiency
- Establishes relationships and credibility for the MGC, with local, state and federal agencies and all other stakeholders in the gaming industry in the Commonwealth of Massachusetts
- Attends and participates in all Commission meetings
- Works with staff to manage correspondence and communication with gaming license applicants and licensees reflecting the official actions of the Commission
- Develops and administers appropriate training for the MGC staff ensuring all are competency and knowledge of all regulations, laws and policies and procedures pertaining to their job responsibilities
- Reviews operations to assess performance against budget and legal requirements and implements corrective action as necessary
- Attends trade shows, gaming seminars, and other events when necessary to maintain knowledge of current gaming issues
- Ensures that gaming facilities are constructed, maintained and operated in a manner that protects the environment and public health and safety
- Assists the Commissioners in all functions as needed
- Performs other such duties which may be deemed necessary to effectuate the plans of the MGC

Skills and Qualifications

- Excellent management and communication skills
- Significant knowledge of gaming regulatory requirements
- Demonstrated competence in management of a large and varied staff
- Excellent track record of communication skills with elected officials, the press, private industry and public agencies including law enforcement, legal authorities and other diverse stakeholders
- Excellent judgment of the character and potential of employees and experience in recruiting, mentoring, promoting and retaining talented colleagues
- The highest level of good character, honesty, and integrity
- Capable of handling many tasks that are time sensitive in pressure situations
- Demonstrated ability to work at a highly independent level
- Ability to tactfully navigate challenging political environments
- Ability to adapt a flexible reporting style when required
- Entrepreneurial enthusiasm and insight
- Ability to maintain a steady state of operation as an entity's infrastructure evolves
- A sophisticated understanding of performance management, lines of accountability, and the use of metrics to track and predict progress
- Proven success at influencing and building consensus amongst competing interests
- Ability to keep all stakeholders informed and engaged
- Strong attention to detail and ability to implement and execute complex plans efficiently and effectively
- Ability to summarize and disseminate important details in a timely manner

- Exceptional writing skills
- Ability to understand statistical information
- Ability to solve complex problems and deal with a variety of concrete and abstract variables in situations where only limited standardization exists
- Ability to read, analyze and interpret business and financial reports

Experience, Education, and Training

- At least ten years of relevant experience in management,
- A bachelor's degree and a professional degree (J.D. or MBA preferred)
- Regulatory experience in a gaming regulatory agency or other regulatory compliance experience
- Experience with internal control standards and requirements over wide-ranging fiscal and administrative responsibilities
- Previous start up experience, including experience testifying at state or federal hearings

The successful candidate will be required to pass an extensive background check that includes a full credit check, CORI, drug screen, and finger printing.

The Massachusetts Gaming Commission is responsible for the implementation of the expanded gaming law (Chapter 194 of the Acts of 2011). Under the law, the Commission is tasked with establishing a regulatory framework for the solicitation, licensing, taxation, and oversight of a maximum of three casino licenses and one slots parlor license in Massachusetts.

It is the policy of the Massachusetts Gaming Commission and the Commonwealth of Massachusetts to afford equal employment opportunities to all qualified individuals, without regard to their race, color, ancestry, religion, sex, sexual orientation, national origin, age, physical or mental disability, citizenship status, veteran status, gender identity or expression, or any other characteristic or status that is protected by federal, state, or local law.