



## 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:

**Thursday | September 12, 2024 | 12:00 p.m.**  
**VIA REMOTE ACCESS: 1-646-741-5292**  
**MEETING ID/ PARTICIPANT CODE: 112 397 0099**  
**All meetings are streamed live at [www.massgaming.com](http://www.massgaming.com).**

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

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

### **PUBLIC MEETING - #531**

1. Call to Order – Jordan Maynard, Interim Chair
  
2. Meeting Minutes
  - a. December 20, 2022 **VOTE**
  - b. January 3, 2023 **VOTE**
  - c. January 4, 2023 **VOTE**
  
3. Presentation of final candidate (Carrie Torrisi) for Division Chief, Sports Wagering – Dean Serpa, Executive Director
  
4. Investigations and Enforcement Bureau – Caitlin Monahan, Director of Investigations and Enforcement Bureau
  - a. Briefing on noncompliance matter related to Temporary Category 3 Sports Wagering Licensee Crown MA Gaming, LLC d/b/a DraftKings, and discussion regarding next steps. Alleged noncompliance relates to communications sent to members of the Massachusetts Voluntary Self-



Massachusetts Gaming Commission

Exclusion List in violation of 205 CMR 256.07(1), 205 CMR 233.06, and 205 CMR 133.06. - Zac Mercer, Enforcement Counsel

b. Security at the Casino Facilities

Executive Session

**VOTE**

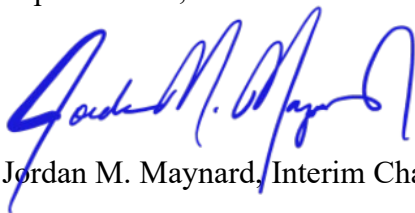
The Commission anticipates that it will meet in executive session in accordance with G.L. c.30A, §21(a)(4), c.30A, §21(a)(7), and G.L. c. 4, §7(26)(f) to discuss the use and deployment of security personnel or devices, or strategies with respect thereto at Encore Boston Harbor, MGM Springfield and Plainridge Park Casino, specifically with regard to firearms and parking garage security; to discuss investigatory materials related to MGM parking garage security, necessarily compiled out of the public view by the IEB the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest; and to discuss responses to the Commission's internal control related directives submitted by Encore Boston Harbor, MGM Springfield, and Plainridge Park Casino related to the same subject matter outlined herein. The public session of the Commission meeting will not reconvene at the conclusion of the executive session.

5. Commissioner Updates

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

I certify that this Notice was posted as "Massachusetts Gaming Commission Meeting" at [www.massgaming.com](http://www.massgaming.com) and emailed to [regs@sec.state.ma.us](mailto:regs@sec.state.ma.us). Posted to Website: September 10, 2024 | 12:00 p.m. EST

September 10, 2024



Jordan M. Maynard, Interim Chair

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



Massachusetts Gaming Commission



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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** December 20, 2022, 10:00 a.m.  
**Place:** Massachusetts Gaming Commission  
VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE: 112 768 3893

The Commission conducted this public meeting remotely utilizing collaboration technology. The 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 415th Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

Chair Judd-Stein stated that the Commission's principal responsibility in reviewing the sports wagering applications was to ensure the integrity of the gaming industry in Massachusetts. She stated that the Commission would maintain strict oversight of gaming establishments and sports wagering operators. She stated that awarding a sports wagering license is a privilege and that operators would be held to the highest standards of compliance on a continuing basis. She stated that the Commission's mission permits the creation of a fair, transparent process that engenders the confidence of the public and maximizes the benefits to the Commonwealth.

#### 2. [Legal Framework relative to the award of a Category 3 sports wagering operator license](#) (02:52)

General Counsel Todd Grossman explained that G.L. c. 23K required the Commission to conduct a full suitability review before the licensure of casino gaming operators. He stated that G.L. c. 23N had a mechanism for the presumption of suitability for licensees that were subject to further review, and that it allows for a temporary license before full suitability.

General Counsel Grossman noted that this proceeding was happening in a public meeting. He stated that if questions were raised related to suitability, they would be addressed during the thorough investigations. He stated that applicants may be deemed eligible to operate under a temporary license.

General Counsel Grossman stated that the Commission would continue its evaluation of the application received by American Wagering Inc. d/b/a Caesars Entertainment (“Caesars”). He stated that the Commission would then recommence its evaluation of Plainridge Park Casino’s application for a category one sports wagering license and following that review, the category three tethered sports wagering application submitted by Penn Sports Interactive (“PSI”).

General Counsel Grossman stated that 205 CMR 218 set out the application’s requirements, standards, and procedures. He stated that the Commission had convened a meeting to receive public feedback on the category one applications on December 5, 2022. He stated that the regulation sets out factors and considerations for the Commission to analyze in the evaluation process, but that the regulations did not set out a particular order in which to review factors or assign particular weight to the factors. He stated that the Commission may require that the applicant provide additional information or documents that the Commission deems appropriate.

General Counsel Grossman noted that the evaluation of this application was being conducted in public and that all deliberations made by the Commission were required to take place in public. He stated that G.L. Chapter 30A, § 21(a)(7) allowed the Commission to move into executive session to comply with or act under the authority of any general law, such as G.L. Chapter 23N, § 6(i) regarding competitively sensitive information in the course of the application process. He explained that if the Commission requested competitively sensitive information, the applicant could request to move the meeting to executive session.

General Counsel Grossman stated that any finding the Commission makes must be backed by substantial evidence, and that the heightened standard of clear and convincing evidence applied to a durable finding of suitability pursuant to 205 CMR 215.

General Counsel Grossman stated that the factors the Commission would evaluate would be: the applicant’s experience and expertise related to sports wagering; the economic impact and benefits to the Commonwealth; the applicant’s proposed measures related to responsible gaming; the description of the applicant’s willingness to foster racial, ethnic, and gender diversity, equity, and inclusion (“DEI”); the technology the applicant intends to use in operation; the suitability of the applicant and qualifiers; and any other appropriate factor in the Commission’s discretion.

General Counsel Grossman stated that the Commission could make temporary or durable findings of suitability, but that no preliminary finding needed to be entered. He noted that the Commission could use any information received pursuant to G.L. Chapter 23K, G.L. Chapter 128A, G.L. Chapter 128C, or information from other jurisdictions where the operator was authorized to operate. He stated that conditions could be placed on a license pursuant to 205 CMR 220. General Counsel Grossman noted that the operator would require an operations certificate before they could begin sports wagering operations in the Commonwealth.

3. Continuation of Application Review from December 14, 2022 (#411) for Category 3 sports wagering operator license submitted by American Wagering, Inc. (Caesars Entertainment, Inc) in accordance with 205 CMR 218.06(3) and (5) (27:09)

Chair Judd-Stein stated that on December 14, 2022, the Commission had reached a consensus that the applicant had met the Commission's expectations in regard to Sections B, C, and F of the application. She stated that the applicant had exceeded the Commission's expectations with respect to Section D of the application.

Chair Judd-Stein stated that the Commission had requested a comprehensive schedule of violations and penalties from the applicant. She stated that supplemental information was requested regarding the ultimate parent company as an entity qualifier. She stated that the Commission had received and reviewed the schedule of penalties and asked the Director of the Investigations and Enforcement Bureau ("IEB") to review the second item.

Director of the IEB Loretta Lillios stated that the parent company's Business Entity Disclosure ("BED") was not submitted to the Commission on December 14, 2022, due to an inadvertent omission by the IEB. She stated that the BED had been submitted and reviewed by the Chief of the Licensing Division. She stated that the submission was substantially complete with no material omissions.

Commissioner O'Brien asked what was missing from the BED submitted. Chief of the Licensing Division, Kara O'Brien stated that the items looked to be complete, but out of an abundance of caution, the Licensing Division was having the applicant confirm that there were no other items that would fall within a particular category. She stated that there were no deficiencies, but that the Licensing Division was seeking for more information, such as docket numbers, for two investigations. Commissioner O'Brien requested that the supplemental materials be provided to the Commission when possible.

Director Lillios stated that the IEB did not perform a review of entity qualifiers but relied upon publicly filed SEC documents. She stated that the Commission was not missing information in its report. Commissioner O'Brien asked if there were any new individual qualifiers based on the information provided by the parent company. Director Lillios stated that individual qualifiers from the parent company were captured during initial scoping and that no new individual qualifiers were identified.

Caesars' Assistant General Counsel, Jeff Hendricks explained that Caesars had supplemented its application with a BED filed on behalf of Caesars Entertainment Inc. and an updated exhibit that included a more comprehensive fine schedule that included all fines applicable to Caesars. He stated that all fines were promptly paid. He requested that the Commission issue a temporary license to Caesars.

Chair Judd-Stein asked if any violations on the schedule would put Caesars at a commercial disadvantage if discussed in public. Mr. Hendricks stated that if there was a matter related to how Caesars addressed team processes or updates to controls then he would prefer the topic to be discussed in executive session. He stated that he would answer all questions publicly to the extent possible.

Commissioner Skinner asked whether the IEB had sufficient time to review the supplemented documentation provided by the applicant. Director Lillios stated that the disciplinary actions submitted dated back to 2019 and that it was not a surprise to see a list of disciplinary actions for an operator active in multiple jurisdictions. She stated that Caesars promptly paid all fines.

Commissioner Hill noted several instances of incidents involving individuals who had been self-excluded. He asked if there were additional protocols or employee training to prevent similar issues from arising. Mr. Hendricks stated that Caesars continued to refine its responsible gaming processes. He stated that Caesars had automated the process to prevent human error to every extent possible. He stated that Caesars conducted an annual audit to ensure the information in the excluded person database was accurate. He stated that Caesars had continual training with all team members to ensure adherence with responsible gaming controls.

Commissioner Skinner stated that the Commission was receiving a summary of the information in the application as part of the IEB's report, but that she expected to receive some type of recommendation from the IEB based upon the information presented by the applicant and its qualifiers. She requested that the Commission receive additional input from the IEB going forward on each application, including a recommendation. Chair Judd-Stein asked to revisit the statutory structure and regulatory framework to determine if this was permissible.

Commissioner O'Brien noted that she shared Commissioner Skinner's discomfort with the process. She expressed the expectation that the IEB would alert the Commission to any issues. She stated that there was an obligation to flag any area in the preliminary reports where concerns arose.

General Counsel Grossman stated that G.L. c. 23N allowed the Commission to determine preliminary suitability before a complete investigation had been conducted. He stated that the IEB was not directed to conduct a full investigation or make a recommendation during the preliminary suitability process. He stated that the applicant was required to certify to the best of its knowledge and belief that it was suitable to hold the license, and that the IEB would conduct

an initial background investigation limited to a review of self-disclosed information and an open-source check. He stated that a full investigation would follow after the finding of preliminary suitability. He stated that it was appropriate for the Commission to inquire into any issues that arise during this process.

Commissioner Skinner stated that she recognized that the Commission voted for this process in the regulation, but that she was not satisfied with the process as currently envisioned. She stated that the IEB's report gave a conclusion reciting facts based upon the applicant's self-disclosures, but that she was looking for a recommendation on suitability even at the preliminary suitability stage. Commissioner Skinner asked if the IEB needed additional information or time in order to convert the conclusion of the IEB's report into a recommendation.

Chair Judd-Stein stated that a recommendation was not envisioned by the regulation at this stage of the review process. She suggested the Commission take a break to allow Commissioner Skinner to consult with the General Counsel. Commissioner Skinner stated that her concerns stemmed from the adoption of such an aggressive timeline related to the issuance of sports wagering licenses. She stated that she raised her concerns, and that she looked forward to her fellow Commissioners opinions on the matter.

Commissioner Hill stated that he respected Commissioner Skinner's concerns, but that the Commission had previously voted to adopt the regulations. He stated that if changes needed to be made to the regulations, the Commission could revisit them at some point in the future. Commissioner O'Brien noted that this process had a sunset provision. She stated that the Commission should be able to request more information on a matter before moving forward. She stated that if an issue needed to be reviewed further, she would include a condition precedent to her vote or a condition on the applicant's license. She stated that the Commission was following an aggressive timeline that relied upon the applicant's self-disclosures. She stated that she had additional questions for Caesars related to the supplemental information provided.

Commissioner Maynard stated that the supplemental information was requested to make a decision on preliminary suitability. He stated that if any applicant violated the process or misled the Commission, the full force of the Commission would be brought to bear. He stated that he was comfortable with the process as outlined in the regulation, provided the Commission received all information required in the application.

Chair Judd-Stein asked if there were any questions relative to the schedule of violations submitted by Caesars. Commissioner O'Brien asked if Caesars had precautions in place to ensure the platform did not go live prior to being authorized to do so, as there were incidents in Iowa and New Jersey.

Mr. Hendricks stated that Caesars continued to refine changes to the management process during implementation. He stated that Caesars had improved communications between the compliance team, technical team, and regulators to ensure all necessary approvals have been received prior to

launching. He stated that Caesars would coordinate with Commission staff and Caesars' independent testing laboratory to ensure that the platform meets all applicable standards. He stated that some of the violations were due to the expansion of the industry in a short time period, and that Caesars had learned from these issues.

Commissioner O'Brien asked if there were any changes to internal controls or compliance plans related to this problem. Mr. Hendricks stated that plans and controls were updated to provide safeguards after each incident. He stated that each item listed on the schedule is reviewed prior to deployment. Commissioner O'Brien asked if any particular protocols were added for launching in a new jurisdiction. Mr. Hendricks stated that Caesars regularly met with regulators prior to launching in a new jurisdiction. He stated that Caesars now performs a final confirmation with a run-through of each step required for the jurisdiction.

Commissioner O'Brien asked what changes were made related to the erroneous acceptance of credit cards due to an error by a third-party vendor. Mr. Hendricks explained that a payment provider did not properly exclude credit card deposits for several operators in a jurisdiction. He stated that Caesars worked with that operator to ensure all card numbers associated with credit cards are excluded from the platform. He stated that Caesars audits this rule to confirm the prohibition on credit cards is in place.

Chair Judd-Stein noted that the Commission previously found a consensus that Caesars had met the Commission's expectations with regard to Sections B, C, and F of the application, and had exceeded the Commission's expectations with respect to Section D of the Application. The Commission reached a consensus that Caesars had met the Commission's expectations with regard to Section E of the application.

Commissioner Skinner noted that the reservations she had raised earlier in the meeting were not exclusive to the review of Caesars application, but a general statement on certain inadequacies in the process. The Commission reached a consensus that Caesars had met the Commission's expectations with regard to Section G of the application.

#### 4. [American Wagering, Inc. \(Caesars Entertainment, Inc\) Category 3 license application determination by the Commission in accordance with 205 CMR 218.07](#) (2:11:33)

Chair Judd-Stein asked for General Counsel Grossman to clarify the factors the Commission was to use to evaluate the application. General Counsel Grossman reiterated that the factors the Commission would evaluate would be: the applicant's experience and expertise related to sports wagering; the economic impact and benefits to the Commonwealth; the applicant's proposed measures related to responsible gaming; the description of the applicant's willingness to foster racial, ethnic, and gender DEI; the technology the applicant intends to use in operation; the suitability of the applicant and qualifiers; and any other appropriate factor in the Commission's discretion.



General Counsel Grossman stated that there were two options for suitability. He stated that a durable finding of suitability could only be awarded if an applicant had been through an adjudicatory proceeding pursuant to 205 CMR 101, and that durable suitability would not be appropriate as there had not been an adjudicatory proceeding for Caesars. He stated that a preliminary finding of suitability may be awarded based upon certifications made by the applicant and in the IEB's report. He stated that a preliminary finding of suitability would make the applicant eligible for a temporary sports wagering license in accordance with 205 CMR 219.

Commissioner O'Brien stated that given the past practices of the applicant, she would propose a license condition that Caesars not enter into any agreements or relationships for advertising or marketing with any Massachusetts college or university. Chair Judd-Stein asked if this could be addressed by regulation. Commissioner O'Brien stated her preference for imposing the condition, as the regulation related to marketing was not yet in place.

Commissioner Maynard stated that the Commission had not placed this condition on any other applicant. Commissioner O'Brien noted that Caesars had contractual relationships with universities that other applicants had policies to prevent. Chair Judd-Stein stated her preference for marketing restrictions to apply universally for all applicants.

Commissioner Hill asked when the advertising and marketing regulations would be before the Commission. Chair Judd-Stein stated that the Commission would review the marketing regulations on January 12, 2023. Commissioner O'Brien restated that she wanted this restriction as a condition on Caesars' license. Commissioner Skinner stated that she would second the condition, but that she shared Commissioner Maynard's concerns about equity. She stated that she would like to attach the same condition to each applicant absent a universal regulation. Commissioner Hill agreed.

Mr. Hendricks stated that Caesars had no issue adhering to this condition. He requested that the same condition be applicable to all licensees given the competitive landscape. Commissioner O'Brien withdrew her request for a condition as Caesars had represented on the record that they would comply with the Commission's request.

General Counsel Grossman reiterated that a series of automatic conditions were attached to licensure. He stated that whether preregistration could occur might be better addressed by regulation. He stated that the automatic conditions that attach to the license are that: the operator obtain an operations certificate before conducting sports wagering; the operator comply with all terms and conditions of the license and operations certificate; the operator comply with G.L. Chapter 23N and all rules and regulations of the Commission; the operator make all required payments to the Commission in a timely manner; the operator maintain its suitability to hold a sports wagering license; and the operator conduct sports wagering within its approved system of internal controls and in accordance with its approved house rules and G.L. Chapter 23N, § 10(a).

Commissioner Hill moved that the Commission find based on the application submitted and discussed today and on December 14, 2022, that the applicant American Wagering, Inc. d/b/a/ Caesars Entertainment, has shown by substantial evidence, and met the criteria set forth in G. L. Chapter 23N, as well as 205 CMR 218.06(5) specifically as to subsection 7, that the license award would benefit the Commonwealth; and further that they have established by substantial evidence their qualification for preliminary suitability in accordance with 205 CMR 215.01(2) and 205 CMR 218.07(2)(a) and that this approval be subject to the requirements of G.L. Chapter 23N and the requirements set forth in 205 CMR 220.01. 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.*

Caesars' representatives thanked the Commission. The Commission thanked Caesars' representatives for their time.

[5. Continuation of Application Review from December 6, 2022 \(#406\) for Category 1 sports wagering operator license submitted by Plainville Gaming Redevelopment, LLC \(d/b/a Plainridge Park Casino\) \("PPC"\) in accordance with 205 CMR 218.06\(3\) and \(5\) \(3:10:12\)](#)

Chair Judd-Stein noted that the Commission had reached a consensus that PPC had met the Commission's expectations with respect to Sections B, C, D, and F of the application. She stated that the applicant had later submitted a letter to supplement their application.

PPC's General Manager, North Grounsell introduced CEO and President of Penn Entertainment, ("Penn") Jay Snowden, Penn's General Counsel, Harper Ko, and Penn's Vice President and Chief Compliance Officer, Chris Soriano.

Mr. Snowden stated that he understood the Commission's concerns related to the November 20, 2022, New York Times article included in the IEB's report. He stated that Penn had submitted a response letter on December 15, 2022, with several exhibits. He explained that Barstool Sports Inc. ("Barstool") was separate from the Barstool Sportsbook that was wholly owned and operated by Penn. He stated that Penn acquired a 36% equity position in Barstool in 2010. He stated that Barstool had over 400 employees working across 95 shows, and that Barstool's audience and revenue had more than doubled since Penn's initial investment.

Mr. Snowden noted that Barstool had ample community engagement as it had donated \$40 million to over 800 small businesses affected by the Covid-19 Pandemic. He stated that twenty-

five of those companies were in Massachusetts. He reported that the Boston Strong Fundraiser had raised \$240,000 for one of the victims of the Boston marathon bombing.

Mr. Snowden stated that Barstool had agreed to exclusively promote Penn's brand and licensed Penn the right to use the Barstool brand for Penn's retail sportsbooks and online sports wagering platforms. He stated that Penn operated retail sportsbooks in thirteen casinos and the online sportsbook in fourteen states. He noted that Penn was set to launch Barstool Sportsbooks at four casinos in Ohio in January 2023. He reiterated that no Barstool employee had control or decision-making authority at the Barstool Sportsbooks. He stated that Barstool was solely Penn's media and marketing partner.

Mr. Snowden stated that Google analytics showed that 85% of Barstool's audience was over the age of 25. He stated that 90% of the podcast audience was over the age of 22. He explained that Barstool acted as a marketing partner, and that Penn established compliance guardrails for Barstool personalities to follow. He stated that the guardrails were included in the Barstool employee handbook which each employee signs.

Mr. Snowden stated that Penn's compliance team monitored Barstool content for violations and provided customized training on responsible gaming to the Barstool team. He stated that Penn provided periodic refresher sessions on this training. He stated that Barstool Sportsbook recently passed the Responsible Gaming Council's Responsible Gaming Check, and that Penn was the first U.S. operator to voluntarily go through the accreditation process.

Mr. Snowden stated that Penn chose not to participate in the New York Times article and was disappointed by the misrepresentations and factual inaccuracies. He stated that several of the comments were taken out of context and that the New York Times did not write about who conveyed certain information. He noted that the article did not include any of the potential positive comments offered by those interviewed.

Mr. Snowden stated that the Barstool College Football Show began in 2019 prior to Penn's investment in Barstool. He stated that two out of seventeen shows in 2022 were located on college campuses. He stated that while sports wagering was referred to on the show, the focus of the show was college football games.

Mr. Snowden stated that the Commission had inquired about Barstool's founder David Portnoy's actions on a show in September in Knoxville, Tennessee. He explained that this event was not organized by Barstool Sportsbook. He stated that the event took place at an off-campus bar and Mr. Portnoy referenced a bet he had made on the game. He noted that while the wager may seem large, that wagering at those levels in and of itself did not constitute problem gambling. He stated that all players were subject to responsible gaming practices that monitored for problem gambling behaviors.

Mr. Snowden stated that Penn had received a notice regarding an advertising violation at the University of Toledo in Ohio. He stated that he would discuss this matter further in executive session. He stated that 86% of the viewers of the Barstool College Football Show were not live, but on YouTube, where 90% of the audience was over the age of twenty-five. He stated that this was well above the AGA marketing code requirement of 73.6% of the audience being above the age of twenty-one.

Mr. Snowden stated that Barstool Sports did not market with colleges or universities. He noted that Barstool worked with over 500 universities to increase mental health awareness. He stated that the Barstool College Football Show would restrict access to any further live shows to those over the age of twenty-one. He stated that Mr. Portnoy had not been part of any investigations, criminal litigation, civil litigation, or financial settlements based on the allegations against him. Mr. Snowden stated that Penn would not partner with Mr. Portnoy if he was how the media portrayed him to be. Mr. Snowden stated that Barstool held a non-gaming vendor registration in Massachusetts since May 20, 2020, and that Barstool holds similar registration and licenses in other jurisdictions.

Commissioner Hill stated that some of Mr. Portnoy's comments flew in the face of what the Commission pushed for in relation to responsible gaming. He asked how Penn would address that. Mr. Snowden stated that Barstool's strength was its relationship with its fan base, and that those who have watched the shows for years would have additional underlying context about statements made. He stated that he would need examples to provide additional context.

Commissioner Hill requested further details about the incident that happened on a college campus in Ohio. Mr. Snowden stated that a show was being hosted on-campus at the university of Toledo. He stated that the mistake made was that the host mentioned that the Barstool Sportsbook would be going live in Ohio in January. He stated that Ohio's regulators should have been consulted to determine whether this was considered advertising. Commissioner Hill stated that data about college games appeared to support the fact that the majority of certain college audiences were well over the age of twenty-one. Mr. Snowden stated that any future show on campus or near campus would require live audience members to be twenty-one or older.

Commissioner O'Brien stated that her concerns were related to PPC and Penn branding their Sportsbooks as Barstool. She stated that she appreciated the supplemental information provided. She stated that tying the sportsbooks to the Barstool brand brings both the good and bad associated with the brand. She stated that while Barstool attracted a new demographic, that demographic was a group vulnerable to addiction.

Commissioner O'Brien stated that it was not solely Mr. Portnoy's conduct that raised concerns. She stated that one of Barstool's personalities, Dan Katz, had crass things he put out. She stated that Barstool helped Penn's market share, but that it raised questions related to suitability, character, reputation, and honesty of the applicant. She noted that PPC had been exemplary in responses to the Commission, but that she had a hard time reconciling the branding decision.

Mr. Snowden asked what it was about Barstool that made Commissioner O'Brien uncomfortable. He stated that Barstool was more than just young men, and that it brought a diverse audience. He stated that these concerns did not line up with the data and statistics. He requested that PPC be provided the benefit of the doubt during the temporary license process to allow the Commission to uncover the full information.

Commissioner O'Brien expressed frustration that the response seemed like pushback. She stated that Barstool was not a qualifier for PPC, but that she still wanted a vetting of Barstool conducted by the IEB. She stated that the entities seemed intertwined. Mr. Snowden stated that media response is often clickbait and that the most controversial issues were not a full representation of Barstool and its founder.

Commissioner Skinner stated that she shared a lot of Commissioner O'Brien's concerns. She stated that her concerns went beyond responsible gaming and entered the category of responsible relationships. She expressed appreciation for the information shared by PPC and Penn. She stated that she wanted a deeper dive from the IEB and a more fulsome discussion regarding Mr. Portnoy and Barstool as they were tethered to Penn and PPC's branding.

Mr. Snowden stated that there was statistical evidence and positive articles written about Barstool's philanthropic efforts. He stated that the Commission should have access to the positive portrayals of Barstool in addition to the negative. He stated that not all articles are completely factual, and that out of context statements could have people negatively labeled. He stated that the Commission should evaluate the full context and comprehensive information.

Commissioner Maynard stated that the Commission heard one side of the story, but that he wanted to keep an open mind and give PPC a fair shot. Chair Judd-Stein stated that she had initial concerns, but that her mind could be changed with data. She stated that she still had concerns about responsible gaming and stated that the IEB should look into this matter further with Penn's cooperation. She stated that the Commission could still provide temporary licensure while the investigation is ongoing.

Mr. Snowden stated that PPC had provided a fulsome application and responded to concerns raised by the Commission on December 6, 2022. He stated that changes had been made to ensure the live audience at the Barstool College Football Show was over the age of twenty-one. He stated that there is more positive information about Barstool for the Commission to review.

Chair Judd-Stein stated that PPC's initial presentation was excellent with respect to everything but the association with Barstool. She stated that there was still conflicting messaging between some of David Portnoy's statements and responsible gaming.

Commissioner O'Brien stated that she was happy to hear about the changes to live audiences. She noted that in the Ohio matter the host went beyond stating the launch date and included

statements about preregistration offers. Mr. Snowden stated that Barstool did not believe itself to be in violation, but that it should have checked with the regulator beforehand. He stated that this will not happen again.

Commissioner O'Brien stated that on December 11, 2022, the Barstool College Football Show broadcast a show at a parking lot next to the Army-Navy game. She asked whether the live audience for this show was all twenty-one or older. Mr. Snowden stated that he was not certain, but that all shows going forward would check the IDs of the audience.

Commissioner Skinner noted that in the December 15, 2022, letter it was indicated that Barstool could not take certain marketing actions without approval from Penn appointees to Barstool's Board of Directors, if the action would have an adverse effect on Penn's gaming license. She asked what type of marketing actions would be deemed risks that require this approval.

Mr. Snowden stated that there were nuances in each jurisdiction's laws and regulations, and that Penn ensured a thorough understanding of expectations related to the approval of Barstool content. He stated that these guardrails related to responsible gaming, age, alcohol usage, and other factors specific to each jurisdiction.

Commissioner Skinner asked if an advisory or guidance was issued to Barstool informing the personalities of the requirements and types of marketing for which they must seek approval. Mr. Snowden stated that this policy had been in place for more than two years. Commissioner Skinner thanked Mr. Snowden for the clarification that it was not a new initiative.

Chair Judd-Stein asked if the on-air talent group went through the guardrail training. Mr. Soriano stated that each employee went through that training, and that the Board's Compliance Committee regularly developed enhancements for the program. Chair Judd-Stein stated that while watching some of the personalities it was not clear that they received all of the guardrail concepts. She stated that she had concerns and that she had raised similar questions during other applications with respect to third-party affiliate marketers. She asked if Penn had control over Barstool's content. Mr. Snowden stated that Barstool abides by the responsible gaming protocols and guardrails established by Penn.

Commissioner O'Brien stated that the structure of Penn's relationship with Barstool might be such that it could in the future affect the reputation and character of the licensee without necessarily qualifying as a qualifier. She stated that there might be a mechanism for the Commission to conduct suitability for certain third-party marketers. Mr. Snowden stated that it was within the Commission's authority but asked that it be applied equally across all applicants. Commissioner O'Brien stated that the nature of the relationship with the marketing partner was part of the analysis.

Commissioner Maynard asked if Penn would notify the Commission before announcing the go-live date and how to sign up at any event. Mr. Snowden stated that Penn would notify the

Commission and acknowledged the error that occurred in Ohio. He stated that Penn would pay the fines and that they had internal conversations to ensure this mistake would not happen again.

Commissioner Maynard asked what benefits the Barstool brand would bring to PPC. Mr. Snowden stated that Barstool had a very loyal fanbase that originated in Massachusetts. He stated that Penn anticipated one of the highest-ranking market shares in Massachusetts due to the fanbase loyalty. He stated that a lot of Barstool fans might be confused if the platform was not offered in Massachusetts.

Chair Judd-Stein asked if the Commission had a consensus whether PPC had met the Commission's expectations with respect to Sections E and G of the application. Commissioner Skinner noted that the application met her expectations with the caveat that the IEB needed to conduct a more thorough investigation, even for preliminary suitability. She expressed an interest in attaching conditions to the applicant's license.

General Counsel Grossman noted that the Commission had awarded a durable finding of suitability to each of the other category one gaming licensees. He stated that if there were outstanding issues the Commission believed would benefit from a full IEB investigation, then the Commission could look to a preliminary finding of suitability. He stated that for a preliminary finding of suitability the Commission would have to find substantial evidence of suitability based upon the information presented. He stated that this was consistent with the way the Commission reviewed and evaluated all other applications not in category one.

Commissioner O'Brien stated that she wanted additional details related to the Barstool College Football Show at the Army-Navy game, and whether those under the age of twenty-one were in the audience. She stated that she wanted a full suitability review of Barstool as a condition on PPC and PSI's licenses. She stated that it should be a fulsome review of the company as a media marketing branch of the licensee without distinction of who was an independent contractor. Penn's Michael West stated that no IDs were checked for the live audience at the Army-Navy game.

Chair Judd-Stein stated that she wanted to ensure that the IEB understood the scope of Commissioner O'Brien's request and how that would affect the IEB's investigative work. Commissioner O'Brien stated that she viewed Barstool as an entity qualifier that was intertwined with both this applicant and PSI. She stated that a condition on licensure should be that Barstool undergoes a suitability review as if it was an entity qualifier.

Director Lillios stated that the IEB anticipated investigating Barstool in light of the upcoming transaction where Penn would obtain 100% ownership of Barstool in February. She stated that this condition would accelerate the review instead of performing ongoing suitability in February.

Chair Judd-Stein asked if Commissioner O'Brien's proposal was reaching beyond the Commission's authority. Commissioner O'Brien noted that the Commission had previously

directed the IEB to conduct further suitability when a matter arose in the public realm. Chair Judd-Stein questioned whether Barstool would have to be a qualifier for the IEB to investigate.

Mr. Snowden requested that PPC receive a temporary sports wagering license while the full suitability investigation was being conducted. Commissioner O'Brien noted that PPC had an existing category one gaming license, and that there was a question whether there was clear and convincing evidence to disturb that finding of suitability. She stated that for that to be determined the Commission would need a full IEB report on Barstool. She stated that this issue arose in connection with PPC and PSI's applications for sports wagering, but that Barstool might not fall under the category of entity qualifiers. She stated that the investigation into Barstool impacted two different licenses and two different postures.

Chair Judd-Stein stated that the Commission needed additional information, but that the information could be gathered when the entity is under temporary licensure subject to further investigation. Commissioner O'Brien stated that the temporary license should be subject to the condition that a full suitability investigation is conducted by the IEB on Barstool as a qualified entity.

Chair Judd-Stein requested clarity regarding how Barstool fit into Penn's corporate governance structure. Mr. Snowden stated that an executive session might be appropriate. Mr. Soriano stated that the media entity discussed by Commissioner O'Brien is Barstool Sports Inc., not the Barstool Sportsbook. He stated that Penn is taking 100% ownership of Barstool in February. He stated that further review could be conducted by the IEB, and that Penn would cooperate with that. He stated that Barstool would likely not meet the definition of an entity qualifier, but that Penn would cooperate with additional review by the IEB.

Ms. Ko asked if this condition would be attached to PSI or PPC. Commissioner O'Brien stated that the condition would apply to both applicants. She stated that more information was needed before moving forward on the applicant's license. Executive Director Wells stated that the IEB typically designated qualifiers and would likely provide this information to the Commission as part of ongoing suitability reviews. She stated that it was more consistent with past practices to move forward with the investigation rather than having the Commission add a qualifier that is not part of the statutory or regulatory structure.

Commissioner O'Brien explained that Barstool was not listed as an entity qualifier, and that she wanted the review of qualifiers to include Barstool. Chair Judd-Stein stated that due to the corporate governance structure and control the Commission could not necessarily get to the entity it was most interested in. She stated that she felt compelled to honor the statute and regulatory scheme. Commissioner O'Brien stated that it was not overstepping the Commission's authority because Penn had a pending acquisition of Barstool in February. She stated that the only barrier appeared to be that Penn did not currently have complete ownership of Barstool.



Commissioner Skinner asked what the extent of the investigation into Barstool would be if Barstool was not designated an entity qualifier. Director Lillios stated that the IEB could investigate areas that potentially overstepped on responsible gaming or inconsistencies with cultural integrity as it relates to the brand. She stated that a lot could be done without designating Barstool as a qualifier. She noted that designating Barstool as an entity qualifier required the designation of individuals to be fingerprinted, and that the IEB might not have that authority if Barstool was not designated an entity qualifier.

Director Lillios stated that the IEB would want to see the transaction with Barstool occur before making requests. She stated that a lot could be done without the formal qualifier designation piece. She recommended that the IEB develop a plan and revisit qualification in due course. Commissioner Skinner stated that this approach was no different than the approach applied to every other applicant with respect to full suitability.

Chair Judd-Stein noted that category one applicants were treated differently by statute, and that other category one applicants were awarded durable suitability with no further investigation. She stated that Mr. Snowden had offered to undergo the temporary license process due to the Commission's requests for more information which created a distinction. Commissioner O'Brien agreed.

General Counsel Grossman stated that the request appeared to be that regardless of what scoping might find that the IEB designate Barstool as an entity qualifier. He stated that an issue arose related to fingerprinting, and that the IEB might not be able to fingerprint Barstool employees if Barstool did not qualify as an entity qualifier by statute. He stated that the IEB could conduct a background investigation, but that CORIs might not be run on the individuals in Barstool.

Commissioner Hill stated that he was comfortable moving forward with a temporary license, and that more information could be uncovered during the investigation. He stated that he was fine with Commissioner O'Brien's proposed condition, but that he believed that the Commission would receive that information going forward regardless of the condition.

Commissioner Maynard expressed that he wanted the treatment of applicants to be equitable and that other category one applicants each received a durable finding of suitability. He stated that he had full faith in the IEB and that he was not comfortable with the proposed condition. Commissioner Skinner sought clarification regarding what Penn had proposed. Mr. Snowden stated that Penn was requesting that PPC move forward on a temporary licensure basis and to let the full suitability investigation play out in its normal course.

Commissioner O'Brien reworded her request and asked for a fulsome and full investigation of Barstool by the IEB without limitation in connection with Barstool's branding as it related to PPC and Penn. She stated that this language would address the fingerprint issue.

Chair Judd-Stein asked what this further investigation would look like. Director Lillios stated that the IEB would anticipate full cooperation from PPC, Penn, and Barstool as of February when they were fully owned by Penn. She stated that Penn had always been cooperative with the IEB, and that the IEB could develop an investigation plan with that cooperation. She stated that temporary licensure would give the IEB sufficient time to conduct this investigation. Executive Director Wells stated that this approach would satisfy what Commissioner O'Brien wants and allow the IEB to investigate with no limitations.

Chair Judd-Stein stated that there would be expanded responsibility in February as Penn would own and control all content that Barstool uses for promotion and advertising. Mr. Snowden stated that was correct. Chair Judd-Stein asked if there was less control in the interim period. Mr. Snowden stated that there were guardrails in place, but that there would be more official policy once the transaction with Barstool was complete.

6. [Plainville Gaming Redevelopment, LLC \(d/b/a Plainridge Park Casino\) \("PPC"\) Category 1 license application determination by the Commission in accordance with 205 CMR 218.07 \(5:35:46\)](#)

General Counsel Grossman reiterated that the factors the Commission would evaluate would be: the applicant's experience and expertise related to sports wagering; the economic impact and benefits to the Commonwealth; the applicant's proposed measures related to responsible gaming; the description of the applicant's willingness to foster racial, ethnic, and gender DEI; the technology the applicant intends to use in operation; the suitability of the applicant and qualifiers; and any other appropriate factor in the Commission's discretion.

General Counsel Grossman stated that there were two options for suitability. He stated that a durable finding of suitability could only be awarded if an applicant had been through an adjudicatory proceeding pursuant to 205 CMR 101, and that the applicant was not pursuing a durable finding of suitability.

General Counsel Grossman stated that a durable suitability finding could be premised on the applicant's ongoing suitability proceedings under G.L. c. 23K. He stated that if there were outstanding issues that would benefit from further review from the IEB, the Commission could then look at a preliminary finding of suitability standard outlined in 205 CMR 215. He stated that under preliminary suitability the standard shifts from clear and convincing evidence to substantial evidence standard.

He stated that a preliminary finding of suitability may be awarded based upon certifications made by the applicant and in the IEB's report. He stated that a preliminary finding of suitability makes the applicant eligible for a temporary sports wagering license in accordance with 205 CMR 219.

General Counsel Grossman noted that the Commission identified two conditions to attach to the license pursuant to 205 CMR 220.01. He stated that the first condition was that the applicant and presumptive licensee agreed that no person under the age of twenty-one years old would be allowed at its live shows. He stated that the second condition was that the licensee fully cooperate with the IEB, which would conduct a fulsome investigation without limitation of Barstool and its connection with the branding of the licensee.

Mr. Snowden asked if this condition was in place of designating Barstool as a qualifier. Commissioner O'Brien stated that was correct, and that the change in language addressed the statutory issue. Director Lillios stated that the IEB could conduct a relevant full investigation without the qualifier status. Mr. Snowden stated that Penn would have mechanism in place to prevent those under twenty-one from attending the Barstool College Football Show's live shows.

Commissioner Maynard asked why the Commission was not considering a finding of durable suitability for the category one applicant. Chair Judd-Stein stated that Mr. Snowden had requested preliminary suitability which allowed for temporary licensure as the Commission had requested additional details related to Barstool. She stated that durable suitability did not require further investigation.

Commissioner Maynard asked why the IEB would not investigate further at the time Penn acquires Barstool in February. General Counsel Grossman stated that a durable finding of suitability required no further background investigation. Director Lillios stated that it could be looked into as part of the ongoing suitability reviews. Chair Judd-Stein stated that under statute temporary licensure could be granted subject to rules and regulations pursuant to G.L. Chapter 23N, § 6.

Commissioner O'Brien stated that durable suitability was not being considered because some Commissioners had requested additional information regarding Barstool's branding. Commissioner Maynard stated that he would treat PPC the same as the other two category one applicants.

The Commission reached a consensus that PPC had met the Commission's expectations with regard to Section E of the application. The Commission reached a consensus that PPC had met the Commission's expectations with regard to Section G of the application. Commissioner O'Brien stated that she still wanted the condition related to investigating Barstool.

Commissioner Maynard inquired as to why the Commission was not moving for durable suitability with regard to this applicant. He stated that durable suitability could be found and that the IEB would still have authority to investigate Barstool. General Counsel Grossman stated that durable suitability required clear and convincing evidence that PPC had demonstrated its suitability, and that there were concerns raised by the Commission where it might not be possible to get to that clear and convincing level.

Ms. Ko stated that PPC had maintained suitability for the past seven years and that PPC was subject to continued investigation to maintain the finding. Chair Judd-Stein stated that suitability was always ongoing, but that the Commission had to take a vote around the factors enumerated. She stated that the Commissioners had different levels of comfort with voting on suitability, and something would have to spark an investigation if PPC had durable suitability. Ms. Ko stated that Penn's upcoming acquisition of Barstool could spark the investigation for ongoing suitability.

Commissioner O'Brien expressed that she did not find clear and convincing evidence for a category one sports wagering request without the further information requested as a condition on the license. She stated that she would vote no on durable suitability. Chair Judd-Stein stated that she wanted as much information as possible and recommended preliminary suitability as Mr. Snowden requested. She stated that she was aligned with Commissioner O'Brien on this matter.

Commissioner Skinner agreed with Chair Judd-Stein. Commissioner Skinner noted that Mr. Snowden had requested temporary licensure, and that there was no need to have further debate on whether suitability should be preliminary or durable. She stated that the decision was made easier due to Mr. Snowden offering a path forward with temporary licensure.

Commissioner Maynard stated that he was open to learning more, but that he wanted to ensure that Mr. Snowden was aware of the full implications of what he was saying. Commissioner Maynard stated that he agreed that there should be an ongoing investigation but expressed hesitancy in treating PPC different from the other category one applicants.

Mr. Snowden stated that durable suitability was ideal but that he was listening to the Commission's questions and concerns. He stated that PPC was comfortable with an investigation to the extent described and that Penn would cooperate. He stated that the investigation was likely to happen whether PPC pursued durable suitability or temporary suitability. He stated that Penn was comfortable with PPC moving forward with temporary suitability.

Commissioner Hill agreed with Commissioner Maynard and stated that he was ready to move forward. Commissioner O'Brien stated that she would move on temporary licensure with the conditions described.

Commissioner O'Brien moved that the Commission find based on the application submitted and what was discussed today and on December 6, 2022, that the applicant Plainville Gaming and Redevelopment, LLC d/b/a Plainridge Park Casino, has shown by substantial evidence that they have satisfied the criteria set forth in G.L. c. 23N as well as 205 CMR 218.06(5) and that the license award would benefit the Commonwealth and further that they have established by substantial evidence their qualification for preliminary suitability in accordance with 205 CMR 215.01(2) and 205 CMR 218.07(1)(a) and that this approval be subject to the requirements of G.L. c. 23N and the requirements set forth in 205 CMR 220.01 in addition to the two conditions allowable by 205 CMR 215.01(2)(d)(2) as previously stated by General Counsel, specifically

that the licensee agrees not to allow the attendance of anyone under the age of twenty-one at their shows for the Barstool College Football Show, and second that the licensee fully cooperate with the Commission's IEB without limitation in conducting an investigation of Barstool Sports Inc. in connection with the licensee's branding of the licensee. Commissioner Skinner seconded the motion.

Chair Judd-Stein asked if suitability had to be separated from the other factors. Commissioner O'Brien noted that suitability has the same standard as the other factors for temporary licensure. Commissioner Maynard stated that he would vote for the preliminary finding of suitability, but that he believed PPC had met the requirement for a durable finding of suitability with the investigation condition. Commissioner Hill agreed.

*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.*

The Commission thanked PPC and Penn's representatives for their time. The Commission reached a consensus to adjourn for the evening and review PSI's application on January 3, 2023.

#### 7. [Other Business](#) (6:19:44)

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

Commissioner Maynard 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 December 15, 2022
2. [Commissioner's Packet from the December 20, 2022](#), meeting (posted on massgaming.com)



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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** January 3, 2023, 1:30 p.m.  
**Place:** Massachusetts Gaming Commission  
VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE: 111 318 9205

The Commission conducted this public meeting remotely utilizing collaboration technology. The 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 418<sup>th</sup> Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

Chair Judd-Stein stated that the Commission's principal responsibility in reviewing the sports wagering applications was to ensure the integrity of the gaming industry in Massachusetts. She stated that the Commission would maintain strict oversight of gaming establishments and sports wagering operators. She stated that awarding a sports wagering license is a privilege and that operators would be held to the highest standards of compliance on a continuing basis. She stated that the Commission's mission permits the creation of a fair, transparent process that engenders the confidence of the public and maximizes the benefits to the Commonwealth.

#### 2. [Legal Framework relative to the award of a Category 3 sports wagering operator license](#) (08:02)

General Counsel Todd Grossman stated that this meeting was the Commission's opportunity to evaluate the application for a category one sports wagering license submitted by Penn Sports Interactive d/b/a Barstool Sportsbook ("PSI"). He explained that PSI was seeking a category

three sports wagering license tethered to Plainridge Park Casino's ("PPC") category one temporary sports wagering license.

General Counsel Grossman stated that 205 CMR 218 set out the application requirements, standards, and procedures. He stated that the regulation sets out factors and considerations for the Commission to analyze in the evaluation process, but that the regulations did not set out a particular order to review factors in or assign particular weight to the factors. He stated that the Commission may require that the applicant provide additional information or documents the Commission deems appropriate.

General Counsel Grossman noted that the evaluation of this application was being conducted in public and that all deliberations made by the Commission must take place in public. He stated that G.L. Chapter 30A, § 21(a)(7) allowed the Commission to move into executive session to comply with or act under the authority of any general law, such as G.L. Chapter 23N, § 6 (i) regarding competitively sensitive information in the course of the application process. He stated that if the Commission requests competitively sensitive information the applicant could request to move the meeting to executive session.

General Counsel Grossman stated that any finding the Commission makes must be backed by substantial evidence, and that the heightened standard of clear and convincing evidence applied to suitability pursuant to 205 CMR 215.

General Counsel Grossman stated that the factors the Commission would evaluate would be: the applicant's experience and expertise related to sports wagering; the economic impact and benefits to the Commonwealth; the applicant's proposed measures related to responsible gaming; the description of the applicant's willingness to foster racial, ethnic, and gender diversity, equity, and inclusion ("DEI"); the technology the applicant intends to use in operation; the suitability of the applicant and qualifiers; and any other appropriate factor in the Commission's discretion.

General Counsel Grossman stated that the Commission could determine preliminary suitability which would allow for a temporary sports wagering license. He noted that the Commission could use any information received pursuant to G.L. Chapter 23K, G.L. Chapter 128A, G.L. Chapter 128C, or information from other jurisdictions where the operator was authorized to operate. He stated that conditions could be placed on a license pursuant to 205 CMR 220. General Counsel Grossman noted that the operator would require an operations certificate before they could begin sports wagering operations.

### [3. Presentation of Application for Category 3 sports wagering operator license submitted by Penn Sports Interactive, LLC including demonstration of technology and user experience in accordance with 205 CMR 218.06\(3\) \(24:21\)](#)

PPC's General Manager North Grounsell stated that PPC was excited about the opportunity to offer online sports wagering in the Commonwealth through the tethered category three sports wagering operator in addition to PPC's retail operations.

Head of Penn Interactive (“PI”) Benjie Levy introduced Penn Entertainment’s (“Penn”) Senior Vice President of Regional Operations Erin Chamberlain, Penn’s Senior Vice President of Regional Operations Justin Carter, Penn’s Chief of Compliance Chris Soriano, Penn’s Deputy Chief Compliance Officer and Regulatory Affairs Counsel Sam Haggerty, Penn’s Vice President for Legal Strategy and Business Affairs Michael West, PI’s Senior Director of New Markets and Strategic Initiatives Josh Pearl, PI’s Director of Operations Trey Atkinson.

Mr. Levy stated that PI oversaw the operations of the Barstool Sportsbook and The Score. He noted that PI was a wholly owned subsidiary of Penn. He stated that since he began his current role in June 2022, he had overseen launches of sports wagering in Kansas, Maryland, and Ohio. He stated that if the Commission awarded PI the privilege of a license it would build upon PPC’s strong foundation in Massachusetts. He noted that some information in the application was redacted, and that PI and Penn would be willing to answer questions related to that information in executive session.

Mr. Levy explained that Penn was a publicly traded company with forty-three properties across twenty states, twenty-nine retail sportsbooks, and sixteen jurisdictions with online operations. He stated that Penn and its subsidiaries had extensive experience and expertise as a sports wagering operator. He stated that Penn engaged millions of customers daily. He stated that PI employed twenty-seven team members in Massachusetts. He stated that Massachusetts was also home to PI’s iCasino content studio Penn Games Studios. He explained that PI was a wholly owned subsidiary of Penn, and that PSI was a wholly owned subsidiary of PI.

Mr. Levy stated that PPC, another wholly owned subsidiary of Penn, would control the day-to-day operations of retail sports wagering. He explained that PSI would provide PPC with a turn-key solution including equipment, systems, services, and training. He stated that the equipment and systems provided to PPC would be manufactured and provided by licensed vendors. He stated that the sports wagering system and necessary equipment was currently being certified by Gaming Laboratories International (“GLI”).

Mr. Levy stated that PSI’s estimates of wagering volume, market share, and gross gaming revenue were included in the unredacted application provided to the Commission. He stated that PSI was backed by Penn, which maintained a healthy balance sheet and a liquidity position of \$2.7 billion in total liquidity. He stated that \$1.7 billion of the liquidity was in cash and cash-equivalents.

Mr. Soriano stated that responsible gaming committees were incorporated at Penn, PI, and each property. He stated that each team member undergoes ongoing responsible gaming training. He explained that those who are voluntarily excluded from one Penn property are excluded from all Penn properties. He stated that Penn partnered with the National Council on Problem Gambling, the International Center for Responsible Gaming, the American Gaming Association (“AGA”), and the Responsible Gaming Council.

Mr. Soriano stated that Penn used independent third parties to assess its responsible gaming program and efforts to reach an audience who are not as responsive to traditional responsible



gaming messaging. He stated that PI had stringent responsible gaming policies and practices which were regularly evaluated. He stated that PI reached 10.9 million social media users in July 2022, and that the messaging increased limit usage by 50%.

Mr. Soriano stated that the Barstool Sportsbook utilized limits, time outs, reality checks based upon time spend on the platform, and automated alerts. He stated that the single wager limit and withdrawal controls were each developed for the requirements of a single jurisdiction but then implemented in each jurisdiction. He stated that Barstool Sportsbook was the first U.S. operator to voluntarily undergo the Responsible Gaming Council's RG Check accreditation.

Ms. Haggerty stated that before launching in a new market the compliance team reviewed all statutory and regulatory guidance regarding advertising. She stated that the compliance team develops specific training for each state. She stated that PI ensured compliance with the AGA code of conduct and responsible marketing code. She stated that there was a dedicated marketing compliance team with social media and advertising controls. She stated that marketing vendors employed geofencing and controls that limited the visibility of advertising to those over the age of twenty-one.

Mr. West stated that Penn's compliance team developed a responsible gaming training program for the media company Barstool Sports ("Barstool"). He stated that every Barstool employee was required to undergo gambling guardrail training with annual refreshers. He stated that Penn had dedicated resources to monitor Barstool's gambling content and social media presence. He stated that Penn had allotted time in every Barstool company-wide meeting to discuss responsible gaming and compliance with gaming laws. He stated that Barstool gave Penn an authentic voice that helped to reach patrons. He noted that Barstool personalities were transparent about their picks, success, and losses related to sports wagering.

Mr. Carter stated that Penn had a commitment to diversity, equity, and inclusion ("DEI"). He stated that Penn had pledged \$4 million to fund STEM scholarships over a period of five years to historically black colleges and universities ("HBCUs"). He noted that Penn was partnered with thirty-five HBCUs. He stated that Penn also had the Leadership Excellence at Penn Program ("LEAP") which provided internships, training, and mentorships for recent college graduates who planned to build long-term careers in the gaming industry. He noted that Penn provided \$1 million annually through Penn's Diversity Scholarship Program to children of team members. He stated that 58% of the 2022 recipients were first-generation college bound students.

Mr. Carter stated that Penn had launched the My Heroes program honoring active-duty veterans. He stated that Penn had donated \$100,000 to veterans' organizations and first-responder groups. He noted that Penn created a scholarship program for veterans pursuing law degrees at the University of Pennsylvania and created a military partnership at Penn State Berks.

Ms. Chamberlain explained that Penn also developed the Emerging Leaders Program to train frontline team members in leadership skills. She stated that Penn had created the Women Leading at Penn Program to encourage women to pursue leadership roles. She stated that 35% of

Penn's Executive Senior Management team are women. She stated that Forbes had ranked Penn one of America's best employers for diversity.

Ms. Chamberlain stated that Penn and PI team members all received robust DEI training with a curriculum including inclusion, unconscious bias, and allyship. She stated that Penn's partnership with 35 HBCU helped to create technology-based internship opportunities for those in the STEM field. She stated that Penn had an initiative established in 2021 that any time there is an open executive role, then at least one woman and/or ethnically diverse candidate is interviewed for that position. She stated that PI teamed with Hopeworks, an entity that helped disadvantaged young adults find fulfilling careers in the industry.

Mr. Levy stated that women and diverse candidates had been historically underrepresented in the sports and technology industries. He stated that PI was committed to fostering a diverse workforce. He stated that 27% of PI employees were women, 27% of employees were diverse, and 30% of those in managerial roles were women. He stated that in order to increase the representation of diverse team members PI had implemented enhanced employee benefits, the opportunity for hybrid or remote work, wellness programs, parental leave benefits, tuition reimbursement, and a yearly stipend for professional development. He stated that PI was focusing on mentorship in the workplace and facilitating networking opportunities. He stated that PI was further optimizing its campus recruitment strategy through a DEI lens.

Mr. Carter stated that Penn was committed to increasing diverse vendor spend each year. He stated that Penn had recently expanded their team to source more diverse suppliers. He stated that Penn had doubled its spending with minority-owned businesses, women-owned businesses, veteran-owned businesses, and businesses owned by those with disabilities.

Mr. Pearl stated that PI's system integrated and connected services from various licensed vendors. He stated that the platform was available on the web, Android, and iOS. He stated that the platform hosted wagering on 5000 markets across forty-five sports.

Mr. Pearl stated that Kambi provided the sports wagering platform. He stated that Kambi was licensed in thirty-five U.S. and international jurisdictions. He stated that Kambi applied as a sports wagering vendor for Massachusetts. He stated that Whitehat Gaming Provided the player account management system. He noted that Whitehat Gaming was licensed in fifteen U.S. and international jurisdictions. He explained that PSI also had its own engineering and product team that worked with the vendors.

Mr. Pearl stated that the Barstool Sportsbook meets GLI-33 standards and complied with all additional state regulations or statutory requirements in jurisdictions where PSI operates. He stated that the platform undergoes audits through Bulletproof Solutions, and that the platform used the geolocation vendor GeoComply to ensure compliance with the federal Wire Act. He stated that PSI was partnered with Aristotle for know-your-customer services to confirm patron identification information. He stated that all ancillary service providers required for online wagering were licensed or registered in jurisdictions that required it. He stated that many vendors were in the process of becoming licensed in Massachusetts.

Mr. Atkinson provided a product demonstration of PSI's Barstool Sportsbook online sports wagering platform. Chair Judd-Stein asked if the cool-off period options were limited on the platform. She stated that other applicants had the ability to be less restrictive in setting a date. Commissioner O'Brien asked if there was a notification prior to the cool-off period ending, as the Commission had recently discussed that topic.

Mr. Levy stated that PSI did not provide an email notification notifying patrons to the end of a cool-off period. He stated that this policy was part of PSI's responsible gaming measures. He stated that PI could work with Whitehat Gaming to allow for additional cool-off periods on the platform. Chair Judd-Stein stated that the Commission may need to revisit the regulation related to cool-off periods. Commissioner O'Brien stated that the responsible gaming regulation was open for comment through February 3, 2023. Mr. Pearl stated that another applicant had indicated they do not provide notification to the patron prior to the end of a cool-off period. He stated that PI would work with the vendor to ensure the cool-off periods comply with the regulations. Mr. Atkinson noted that the demo being shown was specific to Pennsylvania's regulations.

Commissioner Hill sought clarification whether live support by phone was available 24/7. Mr. Atkinson stated that callback times would vary depending on ongoing issues and the queue. He stated that the fastest approach was to use the live chat, but that patrons could request a callback. He stated that the live chat was typically responded to in ten seconds or less.

Commissioner O'Brien asked if there was a direct number available, or if a callback had to be requested. Mr. Atkinson stated that there was no inbound number, and that a call could be requested via live chat. Commissioner O'Brien asked what languages were available for customer support. Mr. Atkinson stated that customer support was only offered in English, but that PI could expand the chat to different languages if the Commission required it. Commissioner O'Brien asked where the call center was based. Mr. Atkinson stated that the call center was based in Cherry Hill, New Jersey. Chair Judd-Stein asked if patrons were required to log in to access the live chat function. Mr. Atkinson stated that the live chat was available on the platform and website homepage whether or not the patron was logged in.

Chair Judd-Stein asked if the same chat was used for patrons in distress related to gambling. Mr. Atkinson stated that it would be the same access point, and that all live agents received extensive responsible gaming training. He stated that the agents were trained in guiding patrons through the use of responsible gaming tools.

#### [4. Presentations and Analysis Relevant to review and evaluation of Application for Category 3 sports wagering operator license submitted by Penn Sports Interactive, LLC: \(2:21:22\)](#)

Chair Judd-Stein noted that GLI had not yet joined the call. Executive Director Karen Wells recommended that the Commission move on to the IEB's report on the applicant's suitability, then return to GLI's presentation.

a. [Report on suitability of the Applicant](#) (2:22:22)

Director of the Investigation and Enforcement Bureau (“IEB”) Loretta Lillios stated that the IEB submitted a report on the preliminary suitability of the applicant to the Commission. She stated that PSI was seeking a category three sports wagering license tethered to the category one sports wagering license granted to PPC on December 20, 2022. She stated that the IEB performed a review for preliminary suitability according to the standards set forth in 205 CMR 2.15.01(2). She noted that a full suitability investigation had not been conducted at this time.

Director Lillios stated that the licensing division did a scoping review of the applicant pursuant to G.L. Chapter 23N, § 5(b). She stated that the IEB identified one entity and one individual to be designated as qualifiers in connection with this application. She stated that the entity qualifier was PI and that the individual qualifier was Mr. Levy. She noted that Penn was the parent company of the applicant. She explained that Penn was a qualifier under a category two gaming license pursuant to G.L. Chapter 23K.

Director Lillios noted that the online sports wagering license would be for the Barstool Sportsbook which is operated by PI. She stated that Penn had entered a strategic partnership with the digital media company Barstool in 2020. She stated that Penn owned 36% of Barstool and intended to purchase Barstool in its entirety in February 2023. She stated that Barstool had a branding and marketing partnership with Penn. She reiterated that the Barstool Sportsbook would be fully operated by PSI employees.

Director Lillios stated that Barstool was a registered non-gaming vendor due to their branding arrangement with PPC. She stated that for gaming and sports wagering vendors there were regulatory schemes that offered a higher level of vendor licensing and lower level of vendor registration. She stated that the determination was based upon what type of risk the different kinds of vendor categories posed. She stated that Barstool was a registrant under G.L. Chapter 23K, and that the IEB performed the investigation on registrants after the registration occurs. She noted that this approach balanced the risk posed by the vendor with the operational requirements of the industry. She stated that the IEB was authorized to suspend or revoke registration. She stated that the IEB reported on Barstool’s registration to the Commission in February of 2022.

Director Lillios stated that the applicant’s submission had no substantial deficiencies. She stated that the IEB was still awaiting tax transcripts, but that it was not uncommon to wait in due course for the IRS to provide the documents once requested.

Director Lillios stated that the team conducting the review was comprised of contract investigators. She stated that the review for preliminary suitability included a summary of PSI’s licensing status in other jurisdictions, compliance history in other jurisdictions, and pending litigation valued over \$100,000.

Director Lillios stated that the IEB received an updated list of disciplinary items submitted on December 20, 2022. She stated that the submission corrected a typo in the original submission related to a 2021 incident in Indiana. She stated that the IEB’s report also included a matter from

Ohio that was not yet finalized. She stated that the applicant submitted another compliance matter from Michigan three days after the IEB's report was finalized, and that the IEB had yet to conduct an independent review of that matter. She stated that the applicant submitted a civil complaint filed in Illinois where the applicant was not a party but alerted the IEB to the matter. She stated that there was an open-source review of the applicant and individual qualifiers, but not of the entity qualifiers.

Director Lillios stated that she was aware of the areas of concern previously identified by the Commission. She stated that the IEB had not verified information from news articles as part of this review. She noted that the Commission had placed a condition on PPC's temporary license that Penn would cooperate with the IEB's review of Barstool's marketing practices.

Director Lillios stated that RSM would provide a report on the applicant's financial suitability. She stated that RSM worked closely with the Commission's financial investigation team. She stated that RSM reviewed PSI's disclosed financial information and supplemental Securities and Exchange Commission ("SEC") filings from PSI's parent company Penn.

Commissioner O'Brien asked if the matters referenced by Director Lillios would be discussed in greater detail. Director Lillios stated that Penn's representatives had indicated some of the information was competitively sensitive and would require an executive session.

Commissioner O'Brien asked if the September 29, 2021 Indiana social media post could be discussed publicly. Mr. Soriano stated that the settlement with the Indiana regulator could be discussed in public, but that any questions regarding further details might be appropriate to discuss in executive session. Commissioner O'Brien stated that she wanted more specifics about how this event occurred. Mr. Soriano stated that he would be happy to respond in executive session.

Chair Judd-Stein asked if the Commission ever publicly discussed the arrangement between Penn and Barstool. Director Lillios stated that it was reported to the Commission in February 2022, and that the Commission had been notified of the partnership and Penn's purchase of 36% of Barstool before that.

Chair Judd-Stein asked if the IEB was aware of any other issues with Barstool as part of the registrant process in 2020. Director Lillios stated that the open-source review returned media articles that raised concerns. She stated that the review identified those articles, but no action was taken as the articles were not directly related to gaming.

b. [Technical Components](#) (2:42:00)

Chair Judd-Stein stated that Gaming Laboratories International ("GLI") was the first company to develop and set gaming technical standards which are now considered an industry benchmark. She stated that GLI continues to innovate standards and regulators rely upon these standards to preserve the integrity of the industry.

GLI's Director of Client Solutions Joe Bunevith stated that the Commission had approved 205 CMR 138, 205 CMR 238, 205 CMR 247, and 205 CMR 248. He stated that since those regulations were approved the operators could submit the code for their sports wagering system and hardware to GLI for testing.

Mr. Bunevith stated that PSI would submit their last submission for one or more U.S jurisdictions and then test any changes to the platform to comply with Massachusetts specific rules and regulations. He stated that if a potential operator's platform was new to GLI it would undergo an architectural review that identifies, and documents critical files related to compliance. He stated that after the initial review is complete the source code could be submitted for testing in a locked-down environment.

Mr. Bunevith stated that the lab would verify changes for Massachusetts specific deployments. And once those changes were validated a certificate would be issued to the operator. He stated that once the certificate was issued the Commission could approve the operator for operations. He stated that field verification would be finalized in the upcoming weeks and that verification of the production server and verification of critical file signatures would commence. He stated that GLI would also review internal controls and procedures.

c. [Financial and Economic Impact Analysis](#) (2:48:02)

RSM US LLP's ("RSM") Strategic Finance Practice Leader Jeff Katz stated that RSM had reviewed sections of the application related to finance. He stated that his presentation was based on the information received as of November 21, 2022. He stated that discussion based on preliminary research was subject to change if there was new information.

Mr. Katz stated that much of the information in RSM's report was likely confidential and that details would have to be discussed in executive session. He stated that the evolving nature of the industry made it difficult to predict the composition of the marketplace.

Mr. Katz stated that the applicant provided five years of financial information for its intermediate parent company PI and the ultimate parent company Penn. He stated that Penn was previously issued a determination of suitability under G.L. Chapter 23K, and that the applicant's category three sports wagering application was tethered to PPC's category one sports wagering application.

Mr. Katz stated that he compared the applicant's revenue projections to the Deutsche Bank Equity Research Report and Truist Securities Equity Research Reports issued in October 2022. He stated that revenue projections may warrant an executive session discussion as it included details related to Penn's market share estimates.

Mr. Katz stated that the applicant provided a five-year projected plan of sports wagering activity in Massachusetts including estimated handle, gross gaming revenue, hold percentage, and net gaming revenue. He stated that the applicant shared market share estimates. He stated that RSM independently calculated market share based upon independent research. He stated that the

applicant's projected market shares aligned with the current market share percentage achieved by the applicant in other jurisdictions.

Mr. Katz stated that Penn's expectation regarding hold percentages was aligned with hold percentages in a competitive state operation. He stated that the applicant's planned relationship with PPC was not reviewed as part of RSM's investigation. He stated that the relationship with PPC was expected to provide a positive impact to the operator from cross-branding and cross-marketing activities.

Mr. Katz stated that Penn was well capitalized as of the most recent quarterly SEC filings from September 30, 2022. He stated that Penn had \$2.7 billion in available liquidity with \$1.7 billion in cash on hand and \$977 million in available revolving credit. He stated that Penn had no major debt maturities in the next twelve months. He stated that Penn generated \$877 million in cashflow from operations during the twelve months leading up to September 30, 2022. He stated that Penn's long-term debt balance had remained steady during this period.

#### 5. [Executive Session](#) (2:56:20)

Chair Judd-Stein stated that the Commission would typically review the application, but that Commissioner Hill had a hard stop within an hour. She suggested that the Commission could enter into executive session to review appropriate topics that arose in this meeting.

Commissioner Hill expressed a preference for going over the application before entering an executive session. Commissioner O'Brien suggested compiling a list of the topics identified for executive session before adjourning the meeting. The Commission reached a consensus to compile a list of topics for executive session and review PSI's application at the next public meeting.

Commissioner O'Brien stated that she wanted more details relative to the September 29, 2021 settlement agreement from Indiana and more details regarding the Illinois lawsuit. General Counsel Grossman noted that the Indiana settlement agreement was publicly available information. Commissioner O'Brien asked for a summary of events relative to the Indiana matter. Mr. Soriano agreed to provide a summary of events but stated that further questions might require an executive session.

Director Lillios stated that Penn had notified the IEB of this matter when the discipline was initially issued. She stated that the IEB reviewed the initial disclosure but did not take any action because Massachusetts had not legalized sports wagering at that time.

Mr. Soriano stated that a new Barstool employee had posted gaming content on a Barstool account unaffiliated with Penn. He noted that the account the content was posted on was not controlled by Penn or PSI. He stated that the post violated the compliance guardrails and was promptly taken down once noticed. He stated that the post was made overnight, and that Penn's compliance team saw it in the morning. He stated that Penn contacted regulators in each jurisdiction Penn does business in to inform them the post was made, that it was not consistent with Penn's guardrails, and that it was subsequently removed.

Mr. Soriano stated that the Barstool employee was suspended, and that Penn conducted a refresher training on responsible gaming. He stated that Penn conducted a review of posting privileges and that he would prefer to discuss the specific changes in executive session.

Mr. Soriano stated that Penn entered into a consent agreement with the Indiana regulator on September 28, 2021, in which Penn was fined \$7,500 and Barstool was fined \$10,000. He stated that this incident should not have happened, and that Penn promptly notified regulators and took remedial actions.

Commissioner O'Brien stated that she had follow up questions regarding changes to controls. She asked if the account was associated with PSI or Barstool. Mr. Soriano stated that it was a Barstool affiliated account. He stated that the responsible gaming guardrails were competitively sensitive and that he could explain the changes in executive session.

Commissioner Skinner asked where she could access the content of the post. Commissioner O'Brien noted that the post was public at one point, and it might be something that could be discussed in public. Mr. Soriano stated that he did not have access to the TikTok post as it was taken down. He stated that Penn could provide the text of what was said to the Commission.

Commissioner O'Brien stated that she wanted more details regarding any consequences including personnel consequences, and what controls were put into place as a result. General Counsel Grossman stated that both of those questions were appropriate for executive session.

General Counsel Grossman asked if the Illinois matter was public information as he was not familiar with Illinois' confidentiality and privacy laws. Penn's Chief Legal Officer Harper Ko stated that the Illinois matter would be withheld entirely under Illinois' freedom of information laws and requested that the Commission discuss that topic in executive session.

Commissioner Skinner asked for a more legible copy of the settlement agreement for the Indiana matter. Ms. Ko stated that Penn did not have a better copy, but that Penn had made inquiries to get a new copy. Commissioner Skinner asked for the text of the video from the Indiana matter. Director Lillios stated that she would provide that text to the Commission.

Commissioner O'Brien requested a more detailed conversation related to projected revenue based on RSM's report. Chair Judd-Stein stated that the conversation regarding this application would be continued at the public meeting on the following day.

## 6. [Other Business \(3:13:31\)](#)

Chair Judd-Stein proposed that the Commission should begin to stream agenda-setting meetings to be more consistent with how it streams public meetings. Commissioner O'Brien asked to have a more fulsome conversation before streaming this week's agenda-setting meeting. Chair Judd-Stein stated that streaming agenda-setting was a matter of transparency and ease for the public.



Commissioner O'Brien stated that there were agenda items that needed to be discussed and that she was unsure of whether streaming would be helpful to discussing those matters. She stated that she was not raising a strong objection but wanted to know if any other Commissioner agreed.

Commissioner Skinner agreed with Commissioner O'Brien that the topic could be discussed further at the agenda-setting meeting. Commissioner Hill and Commissioner Maynard expressed support for streaming agenda-setting meetings.

Commissioner Skinner sought clarification regarding the 9:00 a.m. adjudicatory hearing the next morning. Chair Judd-Stein stated that it was part of an appeal. General Counsel Grossman stated that it was an adjudicatory deliberation but not a public hearing. Commissioner Skinner thanked General Counsel Grossman for the clarification.

Chair Judd-Stein stated that the agenda-setting meeting on Thursday would not be streamed. She recommended that the Commission come to a consensus during that meeting's discussion to promote transparency.

Executive Director Wells stated that RSM asked for feedback in advance of the meeting related to the untethered category three sports wagering applicants. She stated that the Commission had decided to look at the applications individually and then review the applications collectively at the end. She asked if it would be helpful to present their information in a PowerPoint so that the Commission would have information to reference back to. She asked if a side-by-side comparison of each item RSM reviewed would be helpful when looking at the applicants collectively.

The Commission reached a consensus to receive power point presentations from RSM and a side-by-side comparison of each item RSM reviewed when looking at the applications collectively.

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

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

*Roll call vote:*

*Commissioner O'Brien: Aye.*

*Commissioner Hill: Aye.*

*Commissioner Skinner: Aye.*

*Commissioner Maynard: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously, 5-0.*

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

1. [Notice of Meeting and Agenda dated January 3, 2023](#)



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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** January 4, 2023, 10:00 a.m.  
**Place:** Massachusetts Gaming Commission  
VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE: 112 343 4030

The Commission conducted this public meeting remotely utilizing collaboration technology. The 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 419<sup>th</sup> Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

#### 2. [Review And Evaluation Of Application For Category 3 Sports Wagering Operator License Submitted By Penn Sports Interactive, LLC In Accordance With 205 CMR 218.00 Including, But Not Limited To Consideration Of The Following Criteria:](#) (00:54)

##### a. Experience and Expertise related to Sports Wagering (205 CMR 218.06(5)(a))

Commissioner Skinner sought clarification for the reason behind Penn Sports Interactive's ("PSI") withdrawal of an application in Puerto Rico. Head of Penn Interactive ("PI") Benjie Levy stated that a business decision was made relative to the size of the market. He stated that one of PSI's partners was not interested in working in that jurisdiction. Commissioner Skinner asked him to elaborate. Mr. Levy explained that PSI had to decide where to allocate resources, and that the Puerto Rico market was forecasted to be less than fulfilling.

Chair Judd-Stein inquired about PSI's multi-year agreements with its online sports wagering competitors. Mr. Levy stated that these agreements were related to skin partnerships, where PSI provided agreements to offer tethered partnerships. He stated that an example of this was that FBG Enterprises Opco, LLC d/b/a Fanatics ("Fanatics") had applied for a tethered category three sports wagering license connected to Plainridge Park Casino's ("PPC") sports wagering license. He stated that these partnerships provide Penn Entertainment ("Penn") with financial benefits as a result of regulatory schemes in various jurisdictions.

Commissioner Skinner stated that questions throughout PSI's application were answered from Penn's perspective. She stated that the Commission needed to be educated as to what to expect from PSI as an entity. Mr. Levy stated that PSI would respond in its own voice, but that PSI stands upon Penn's shoulders and uses Penn's groundwork and foundation, because PSI is a newer entity.

Commissioner O'Brien stated that she wanted to hear more about Penn's strategic partnership with Barstool Sports ("Barstool") as it related to PSI. She stated that this topic was discussed as it related to Penn and PPC in December, and asked if there was anything different about Barstool's relationship with PSI. Mr. Levy replied that it was the same relationship.

Commissioner Skinner stated that the question about intent to limit participation in any allowable sports events was not answered; and asked that PSI supplement their answer to that section. Mr. Levy stated that he believed the question was answered in the application, but that PSI would offer of a full complement of approved wagering events consistent with what the Commission allows.

The Commission then reached consensus that PSI met the Commission's expectations with regard to Section B of the application.

b. [Economic impact and other benefits to the Commonwealth if applicant is awarded a license \(205 CMR 218.06\(5\)\(b\)\)](#) (14:02)

Commissioner Maynard stated that PSI should open discussions and collaborations with the Massachusetts Lottery, and asked how that relationship would be translated into an online space. He stated that the Commission expected all licensees to have conversations with the Lottery.

Commissioner Hill asked if there were any new jobs proposed for Massachusetts through PSI. Mr. Levy stated that there were job opportunities at PPC and through a game studio operated in Greenfield, Massachusetts. He stated that twenty-seven employees worked at the Greenfield location, creating iCasino content. He noted that the iCasino content was not offered in Massachusetts, but PSI was leveraging that content in four other jurisdictions in the United States. He stated that there were plans to continually invest in PPC and the game studio.

Commissioner Hill stated that the revenue appeared to be largely based on wagering revenue rather than increased employment in the Commonwealth. Mr. Levy stated that as revenue related

to sports wagering it would largely be wagering revenue. He stated that Penn took an omnichannel approach to sports wagering, which has seen significant growth in the core younger demographic. He stated that this benefits the Commonwealth as online players are driven to a physical environment, which would create growth at PPC.

Commissioner Hill noted that a lot of the application referenced PPC's category one application. He stated that community involvement was a priority. He stated that PPC does a phenomenal job at community engagement, and asked PSI to elaborate on their plans for community engagement.

Mr. Levy stated that PSI leverages the great work Penn's retail operations provide to the community and supplements that with additional work with community organizations. He stated that PSI worked with small businesses for its VIP events and grassroots marketing events. He noted that the relationship with the retail property was leveraged, but that PSI stands on its own when engaging with the community. Commissioner Hill expressed that he hoped PSI would continue its efforts in the STEM field in Massachusetts. Mr. Levy highlighted that PSI recruited from universities in Massachusetts, and that PSI had a robust co-op program to bring students in for work terms.

Chair Judd-Stein asked what positions were being hired for the Greenfield offices. Mr. Levy stated that Greenfield employees were software engineers, product designers, and graphic designers for the iCasino products. Chair Judd-Stein stated that this was an opportunity for community engagement, and that employees could be drawn from colleges and universities in Western Massachusetts.

Commissioner Skinner asked if PSI was adding any additional positions in Massachusetts as a result of sports wagering. Mr. Levy stated that PSI operated out of Philadelphia and Toronto. He noted that the positions in Massachusetts would be related to Penn Games Studio and positions related to PPC.

Commissioner Skinner noted that the application did not appear to have a response to Section C (1). Commissioner O'Brien noted that the answer had been included in the recent version of the application within the PDF file in the shared drive.

Commissioner O'Brien stated that she was happy to hear there were jobs available in Greenfield. Chair Judd-Stein requested that PSI report on the employment numbers within the Commonwealth during future quarterly reports. Mr. Levy stated that PSI would report on that.

Commissioner O'Brien, Commissioner Hill, Commissioner Maynard, and Chair Judd-Stein stated that PSI had met their expectations with respect to Section C of the application. Chair Judd-Stein stated that the Commission would return to Commissioner Skinner's opinion once she was able to resolve the technical difficulties and access Section C (1) of the application.

c. [Applicant's willingness to foster racial, ethnic, and gender diversity, equity, and inclusion \(205 CMR 218.06\(5\)\(d\)\)](#) (29:58)

Commissioner O'Brien inquired about the diversity at the Greenfield location. Mr. Levy stated that he did not have the statistics on-hand for the Greenfield location, and that the diversity numbers presented during the prior meeting were for PSI at the national level.

Commissioner O'Brien asked about PSI's response regarding diverse vendors being limited at the national level. Mr. Levy stated that PSI was a technology led business, and that PSI was focused on increasing opportunities in an industry with historic underrepresentation. He stated that PSI was starting to make inroads by leveraging the programs implemented at Penn's properties. He stated that PSI was working with PPC on supplier diversity.

Commissioner Maynard stated that PSI's application did not list any specific goals related to vendor spend. Mr. Levy stated that PSI was still learning and that it was premature to set a dollar or percentage of spend threshold as the industry was changing and evolving. He stated that PSI had engaged a diversity vendor strategist. He stated that PSI intended to grow the amount of diverse spend year-on-year.

Commissioner Maynard stated that he would like to condition the license to require PSI to submit diversity vendor spending goals. He stated that applicants could not be held to a standard without the Commission understanding what their goals were. Mr. Levy stated that PSI could work with the Commission to establish appropriate goals. Commissioner Skinner agreed with Commissioner Maynard. Chair Judd-Stein stated that the state's Operational Services Division might be able to provide PSI with resources that could help in establishing goals.

Commissioner Skinner stated that she would also want PSI to introduce goals relative to diversifying its workforce. Mr. Levy stated that PSI could work with the Commission to establish reasonable goals.

Chair Judd-Stein asked for more detail regarding PSI's corporate governance. Mr. Levy stated that PSI was a wholly owned subsidiary with a nominal board and a small number of senior officers. Chair Judd-Stein asked how many employees PSI had on a nationwide basis. Mr. Levy stated that PSI had approximately 1,200 employees.

Chair Judd-Stein asked how the diversity, equity, and inclusion ("DEI") program was implemented. Penn's Senior Vice President of Regional Operations Justin Carter stated that Penn's diversity team included team members from PI. He stated that the diversity team also had activities specific to PSI. Mr. Levy stated that PI had its own level of DEI work including mentorship, recruitment, and opportunities for growth. He stated that PSI and the retail properties had representation on Penn's diversity committee.

Penn's Senior Vice President of Regional Operations Erin Chamberlain stated that the same process applied to the WLP program which was implemented at both Penn and PSI. General Manager of PPC North Grounsell stated that 27% of PSI's team members identified as diverse, 27% identified as women, 2.5% identified as veterans, and 30% of employees in management positions were women. Commissioner Hill noted that DEI was a big issue for the Commission.

The Commission reached consensus that PSI met the Commission's expectations with regard to Section D of the application.

d. [Proposed measures related to responsible gaming \(205 CMR 218.06\(5\)\(c\)\)](#) (45:18)

Commissioner O'Brien reiterated her concerns about PSI branding through Barstool. She noted that PSI's presentation stated that Penn monitored gambling content posted to social media and asked whether Penn monitored other content put out by Barstool. Mr. Levy stated that the monitoring was focused on gaming content and responsible gaming. He stated that once Penn acquired Barstool in February all content produced by Barstool would be monitored. Commissioner O'Brien asked if monitoring was restricted to gaming content and responsible gaming. Mr. Levy stated that PSI saw most content put out by Barstool, but the most active monitoring was regarding gaming content and the responsible gaming guardrails.

Commissioner O'Brien asked what the role of PayPal was for PSI. Mr. Levy stated that PayPal permitted funding betting accounts. He stated that PSI works with PayPal to restrict secondary funding via credit cards, as required by the statute.

Commissioner O'Brien stated that she wanted the condition that was attached to Penn's license that no one under the age of twenty-one attend live Barstool College Football Shows to be applied to PSI's license.

Chair Judd-Stein sought clarification about Zendesk as a vendor. Mr. Levy stated that Zendesk provided the customer service platform for patrons which included access to responsible gaming tools. He stated that the customer support team could leverage information from Zendesk during patron interactions.

Commissioner Maynard thanked the applicant for the in-depth information related to its promotions style. Chair Judd-Stein expressed appreciation that the application linked to the responsible gaming media programs. She asked if the paid Twitter campaign advertising responsible gaming would be extended. Mr. Levy stated that PSI would continue to invest resources into the creation of responsible gaming content. He stated that the initial trial period was successful, and that PSI would continue to use paid social media advertising for responsible gaming content.

Chair Judd-Stein noted that PSI's marketing budget was lower than other applicants. Mr. Levy stated that PSI used an integrated media and gaming strategy that was different from its competitors' marketing strategies. He explained that PSI relied on more organic content and media integrations.

Chair Judd-Stein asked what innovations could be made to make advertising more organic. Mr. Levy stated that PSI's view was that advertising should be product-led, and that customers should be given a reason to choose to engage with your business. He stated that marketing was supplemental to the product, and that marketing should not be the lead focus.

Commissioner O'Brien asked if PSI tracks which responsible gaming tools are being used and what is working. Mr. Levy stated that patrons were informed of responsible gaming tools during onboarding, frequent email communications, and social channels. He stated that there was a mandatory time check feature. He stated that deposit limits were the most commonly used responsible gaming feature. He stated that there was a balance between providing a wide variety of options to patrons without inundating them with too much choice. Commissioner O'Brien asked if there were statistics related to how many patrons have been enrolled in responsible gaming features. Mr. Levy stated that 10% of users had used a responsible gaming tool, aside from the mandatory check-in which was required for all users.

The Commission reached consensus that PSI met the Commission's expectations with regard to Section E of the application.

e. [Technology that the applicant intends to use \(205 CMR 218.06\(5\)\(e\)\)](#) (59:04)

Chair Judd-Stein stated that portions of Section F and Section G of the application were going to be discussed in executive session. She stated that the explanation regarding suspicious wagering activity was helpful for her. Commissioner Maynard stated that all of his questions relative to Aristotle and Kambi were answered by the applicant.

Chair Judd-Stein asked how Kambi chose not to offer certain events where integrity could not be guaranteed. Mr. Levy stated that lower-level leagues and matches may have integrity concerns related to the underlying event. He stated that due to an abundance of caution based upon information from Kambi's monitoring partners, Kambi may choose not to offer these events.

Chair Judd-Stein asked if the number of offerings listed in PSI's application was average for the industry. Mr. Levy confirmed that was correct. Chair Judd-Stein stated that this information might inform the Commission's thinking about what offerings to approve in Massachusetts.

The Commission reached consensus that PSI met the Commission's expectations with regard to Section F of the application.

f. [Suitability of the applicant and its qualifiers \(205 CMR 218.06\(5\)\(f\)\)](#) (1:03:38)

Commissioner O'Brien reiterated that she had concerns regarding the branding relationship with Barstool, she noted that PSI had branded their sportsbook platform as "Barstool Sportsbook". She stated that she wanted the same conditions that were placed on PPC in December, to cooperate with the Investigation and Enforcement Bureau's ("IEB") investigation without limitations regarding the branding efforts of Barstool in connection with the branding of Penn and PSI. Mr. Levy stated that PSI was willing to have that condition applied. She stated that the rest of her questions were more appropriate to be discussed in executive session. She requested that the Commission enter executive session before reaching a consensus as to whether PSI met the Commission's expectations in regard to this section of the application.

Commissioner Skinner noted that she was all set with Section C of the application. The Commission reached consensus that PSI met the Commission's expectations with regard to Section C of the application.

6. [Executive Session](#) (1:09:41)

General Counsel Grossman stated that the Commission should make clear what issues it wanted to discuss in executive session. He stated that the Commission outlined some issues for executive session at the previous day's meeting. He stated that the first issue was relating to the Indiana matter from September of 2021. He stated that the Commission requested to hear what changes were made to the companies' internal control procedures relate to social media posting and the consequences for operating outside of those controls. He stated that this topic met the standard of being competitively sensitive information that would place the applicant at a competitive disadvantage if discussed publicly.

General Counsel Grossman stated that the second topic was regarding a complaint filed in Illinois He stated that the matter was confidential, and the documents were not subject to public disclosure. He stated that he reviewed the documents and was satisfied that they implicate matters of personal privacy that if discussed publicly would violate the privacy interests of those individuals discussed. He stated that the Commission may discuss this topic in executive session under the exemption found in G.L. c. 30A, § 21(a)(7).

General Counsel Grossman stated that the third topic was related to the financial information related to the evaluations performed by RSM. He stated that the topics for executive session revolved around market share projections, revenue projections, and hold percentages. General Counsel Grossman stated that these topics and a discussion relative to the operation of skin-partner arrangements would fall under G.L. c. 23N, § 6(i) as competitively sensitive information.

General Counsel Grossman stated that the fifth topic for executive session was the branding arrangement PSI has with Barstool as it related to suitability components and marketing practices. He stated that both G.L. c. 23N, § 6(i) and privacy interest exemptions would apply here.

Chair Judd-Stein then read the statement into the record, noting that "the Commission anticipated that it would meet in executive session in conjunction with its review of the Penn Sports Interactive, LLC application in accordance with G.L. c. 30A, § 21(a)(7) and G.L. c. 23N, § 6(i) to consider information submitted by the applicant in the course of its application for an operator license that is a trade secret, competitively sensitive or proprietary and which if disclosed publicly would place the applicant at a competitive disadvantage and/or G. L. c. 4, § 7(26)(c) (the privacy exemption) to consider information submitted in the application materials related to named individuals, the disclosure of which may constitute an unwarranted invasion of personal privacy."



Commissioner O'Brien moved that the Commission go into executive session for the reasons just stated by the Chair and General Counsel on the record. 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.*

Chair Judd-Stein noted that the public session of the Commission meeting would reconvene at the conclusion of the executive session.

*Transcriber's note: Commissioners returned to the public meeting and continued discussions.*

The Commission confirmed its consensus that PSI met the Commission's expectations with regard to Section F of the application. The Commission reached consensus that PSI met the Commission's expectations with regard to Section G of the application, subject to the conditions discussed by the Commission that were previously applied to Penn.

7. [Penn Sports Interactive, LLC license application determination by the Commission in accordance with 205 CMR 218.07](#) (1:32:04)

Chair Judd-Stein asked for General Counsel Grossman to clarify the factors the Commission was to use to evaluate the application. General Counsel Grossman reiterated that the factors the Commission would evaluate would be: the applicant's experience and expertise related to sports wagering; the economic impact and benefits to the Commonwealth; the applicant's proposed measures related to responsible gaming; the description of the applicant's willingness to foster racial, ethnic, and gender DEI; the technology the applicant intends to use in operation; the suitability of the applicant and qualifiers; and any other appropriate factor in the Commission's discretion.

General Counsel Grossman stated a durable finding of suitability could only be awarded if an applicant had been through an adjudicatory proceeding pursuant to 205 CMR 101. He stated that there had not been an adjudicatory proceeding for PSI. He stated that a preliminary finding of suitability may be awarded based upon certifications made by the applicant and within the IEB's report.

General Counsel Grossman asked what conditions were proposed for the license. Commissioner O'Brien stated that she wanted two conditions that mirrored the conditions placed upon Penn's category one license that was awarded in December. She stated that the two conditions were that efforts be made to ensure that all audience members of live Barstool College Football Shows

were twenty-one or older and that PSI and Penn cooperate with the fulsome investigation into Barstool's branding efforts relative to the branding efforts of PSI.

General Counsel Grossman stated that the third condition identified was that the applicant and licensee promptly update the Commission and the IEB relative to any material proceedings including the outcome of the Illinois matter that was discussed in executive session.

Commissioner O'Brien noted that Commissioner Maynard and Commissioner Skinner had proposed a condition requesting PSI's diversity goals. Commissioner Skinner stated that she wanted both diverse suppliers spending goals and employment diversity goals. She noted that another applicant had this condition imposed, and that the language should be kept consistent. Commissioner O'Brien noted that the condition on the other applicant was only relative to supplier diversity. General Counsel Grossman stated that in the written decision the language of the condition would mirror the other applicant's condition.

Chair Judd-Stein stated that the workforce diversity condition and the supplier diversity condition should be separate conditions to be consistent with the other applicants as they were two different requirements. Mr. Levy noted that no other applicants had conditions relative to workforce diversity and asked that the condition be applied to all category three applicants equally. Chair Judd-Stein stated that the distinction was that PSI had no goals set. Commissioner O'Brien stated that other applicants provided goals in their application, and that if the goals were not provided the applicant would be subject to a condition. Commissioner Maynard stated that the Commission did not apply a condition if the question was answered in the application.

General Counsel Grossman stated that a series of automatic conditions were attached to licensure. He stated that whether preregistration could occur might be better addressed by regulation. He stated that the automatic conditions that attach to the license are that: the operator obtain an operations certificate before conducting sports wagering; the operator comply with all terms and conditions of the license and operations certificate; the operator comply with G.L. Chapter 23N and all rules and regulations of the Commission; the operator make all required payments to the Commission in a timely manner; the operator maintain its suitability to hold a sports wagering license; and the operator conduct sports wagering within its approved system of internal controls and in accordance with its approved house rules and 23N, § 10(a).

Commissioner O'Brien moved that the Commission find, based on the application and what was discussed before the Commission both yesterday and today, that the applicant, Penn Sports Interactive d/b/a "Barstool Sportsbook" has shown by substantial evidence that they have satisfied the criteria set forth in G.L. c. 23N, as well as 205 CMR 218.06(5) that the license award would benefit the Commonwealth and lastly, that they have established their qualification for preliminary suitability in accordance with 205 CMR 215.01(2) and 205 CMR 218.07(1) and that the approval be subject to the requirements set forth in G.L. c. 23N, the requirements set forth in 205 CMR 220.01, and subject to the following five conditions:

- (1) that PSI agrees to make efforts that no one under the age of twenty-one attend any of the live Barstool College Football Shows;

- (2) that PSI cooperate fully with the IEB conducting an investigation without limitation of Barstool Sports Inc. in connection with branding for PSI;
- (3) that PSI provides any updates to the IEB relating to the Illinois matter discussed in executive session;
- (4) that PSI provide diversity goals on its supplier spend; and
- (5) that PSI supply diversity goals for workforce.

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.*

The Commission congratulated PSI and thanked PSI's representatives for their time.

8. [Presentation of Application for Category 3 sports wagering operator license submitted by FBG Enterprises Opco, LLC including demonstration of technology and user experience in accordance with 205 CMR 218.06\(3\) \(2:39:25\)](#)

Chair Judd-Stein stated that the Commission's principal responsibility in reviewing the sports wagering applications was to ensure the integrity of the gaming industry in Massachusetts. She stated that the Commission would maintain strict oversight of gaming establishments and sports wagering operators. She stated that awarding a sports wagering license is a privilege and that operators would be held to the highest standards of compliance on a continuing basis. She stated that the Commission's mission permits the creation of a fair, transparent process that engenders the confidence of the public and maximizes the benefits to the Commonwealth.

General Counsel Todd Grossman stated that this meeting was the Commission's opportunity to evaluate the application for a category three sports wagering license submitted by Fanatics. General Counsel Grossman stated that G.L. Chapter 23N, § 6(3) allowed the Commission to issue a category three sports wagering license to any entity that offered sports wagering through a mobile application or platform. He stated that there was a cap of seven category three licenses that could be awarded that were not connected to a category one or two sports wagering license. He stated that this applicant was tethered to Plainridge Park Casino, ("PPC") which was awarded a category one sports wagering license. He noted that only two tethered category three operators could be connected to a category one operator.

General Counsel Grossman stated that 205 CMR 218 set out the application requirements, standards, and procedures. He stated that the regulation sets out factors and considerations for the Commission to analyze in the evaluation process, but that the regulations did not set out a particular order to review factors in or assign particular weight to the factors. He stated that the

Commission may require that the applicant provide additional information or documents the Commission deems appropriate.

General Counsel Grossman noted that the evaluation of this application was being conducted in public and that all deliberations made by the Commission must take place in public. He stated that G.L. Chapter 30A § 21,(a)(7) allowed the Commission to move into executive session to comply with or act under the authority of any general law, such as G.L. Chapter 23N, § 6 (i) regarding competitively sensitive information in the course of the application process. He stated that if the Commission requests competitively sensitive information the applicant could request to move the meeting to executive session.

General Counsel Grossman stated that any finding the Commission makes must be backed by substantial evidence, and that the heightened standard of clear and convincing evidence applied to suitability pursuant to 205 CMR 215.

General Counsel Grossman stated that the factors the Commission would evaluate would be: the applicant's experience and expertise related to sports wagering; the economic impact and benefits to the Commonwealth; the applicant's proposed measures related to responsible gaming; the description of the applicant's willingness to foster racial, ethnic, and gender diversity, equity, and inclusion ("DEI"); the technology the applicant intends to use in operation; the suitability of the applicant and qualifiers; and any other appropriate factor in the Commission's discretion.

General Counsel Grossman stated that the Commission could determine temporary or durable findings of suitability, but that no preliminary finding needed to be entered. He noted that the Commission could use any information received pursuant to G.L. Chapter 23K, G.L. Chapter 128A, G.L. Chapter 128C, or information from other jurisdictions where the operator was authorized to operate. He stated that conditions could be placed on a license pursuant to 205 CMR 220.

General Counsel Grossman stated that the tethered category three sports wagering license did not permit untethered operation. He stated that after a decision was made on the license, a written decision would be prepared and issued to commemorate the Commission's decision. He noted that the operator would require an operations certificate before they could begin sports wagering operations.

Fanatics' Vice President of Regulatory Affairs, Alex Smith, introduced Fanatics' CEO, Matt King, Fanatics' Chief Business Officer, Ari Borod, Fanatics' Chief Product Officer, Scott McClintic, Fanatics' Chief Financial Officer, Andrew Ellis, Fanatics' Chief Marketing Officer, Jason White, and Fanatics' outside counsel from the law firm, Duane Morris, Adam Berger.

Attorney Berger noted that there may be instances in the presentation where Fanatics' representative would request an executive session to discuss matters related to trade secrets, proprietary information, and other competitively sensitive information.

Mr. King stated that Fanatics was a subsidiary of Fanatics Holding Inc. (“FHI”) which also operates Fanatics Commerce and Fanatics Collectibles. He stated that Fanatics was launching its sports wagering platform in quarter one of 2023. He stated that Fanatics intended to be active all major markets by the end of 2023. He stated that Fanatics’ category three sports wagering license application was tethered to PPC’s category one sports wagering license.

Mr. King stated that Fanatics was an innovator in the sports wagering market with experienced leadership and a commitment to responsible gaming. He stated that Fanatics’ parent company FHI ended 2022 with \$2 billion in cash on the balance sheet and very little debt. He stated that FHI was on pace to do north of \$6 billion in revenue for this year.

Mr. King stated that Fanatics had built a diverse team with a lot of experience. He stated that Fanatics’ product was built to scale and powered by AWS. He stated that the platform was engineered to be built to scale and stable for patrons. He stated that Fanatics licensed software from Amelco, which provided sports wagering platforms in seventeen jurisdictions both in the United States and internationally. He stated that Fanatics was working closely with local businesses in the Commonwealth. He stated that Caesars would provide 24/7 support to patrons via chat, text, and voice. Mr. King noted that Fanatics held sports wagering licenses in Maryland and Ohio, with applications pending in five other jurisdictions.

Mr. Borod stated that Fanatics sought a significant market share in Massachusetts that would drive an economic benefit for the Commonwealth through tax revenue. He stated that Fanatics would leverage its brand databases to attract a broader customer base. He stated that Fanatics employed 400 people within Massachusetts, and that FHI provided e-commerce websites for the New England patriots, Boston Red Sox, the Boston Celtics, the Boston Bruins, and the New England Revolution.

Mr. Borod stated that Fanatics had a database of 94 million sports fans including 2 million residents of Massachusetts. He stated that this allowed Fanatics to bring a fan-centric approach to its sports wagering product that catered to its customers’ needs. He noted that Fanatics had customer service available through email, chat, and voice 24/7. He stated that the customer service was currently only provided in English, but that Fanatics endeavored to add multiple languages to fill customers’ needs.

Mr. Borod stated that FHI and its subsidiaries employed 400 people in Massachusetts, with eight working directly for Fanatics. He stated that Fanatics continued to hire remote workers and partner with existing businesses in Massachusetts.

Mr. White explained that marketing responsibility was integral to Fanatics’ business. He explained that Fanatics had adopted best industry practices, included responsible gaming messaging in all marketing materials, did not advertise in areas where the predominant audience was under the age of twenty-one, required marketing affiliates to adhere to content controls, required regular reviews of responsible marketing practices, and removed self-excluded and prohibited patrons from marketing efforts.

Mr. Smith explained that all Fanatics employees received responsible gaming training. He explained that customer-facing employees received enhanced training, and that there were also annual refresher trainings. He stated that Fanatics had a compliance committee and was planning on approving a responsible gaming plan. He stated that there were currently two internal team members on the compliance committee. He stated that Fanatics had dedicated responsible gaming staff and responsible gaming focused data scientists. He stated that Fanatics' platform offered all regulatory required responsible gaming tools and resources.

Fanatics' Lead People Officer, Kristen Lachtman stated that Fanatics was committed to building a diverse and tolerant workplace. She stated that Fanatics leveraged third-party data to expand training, update recruiting practices, and form employee resource groups. She stated that Fanatics created the Inclusion, Diversity, Equality, Advocacy ("IDEA") program.

Ms. Lachtman stated that 48% of Fanatics' employees identified as racially or ethnically diverse and 54% of employees identified as women. She stated that 19% of directors and higher positions were racially or ethnically diverse, and that 33% of employees in director or higher positions were women. She stated that 58% of new hires identified as racially or ethnically diverse and that 51% of new hires were women. She stated that 23,000 of the completed learning and development courses were IDEA related. She stated that all hiring managers received unconscious bias training.

Ms. Lachtman stated that Fanatics included compensation ranges on all job postings to create a more equitable compensation structure throughout the company. She explained that Fanatics hosted two annual DEI summits which provided training, seminars, and the opportunity to provide input. She stated that Fanatics had developed the Fanatics' Ally Network with six employee led resource groups.

Ms. Lachtman stated that FHI prioritized diverse suppliers, and that Fanatics Commerce had increased its diverse spend by 80% between 2020 and 2021. She stated that Fanatics had begun procuring DEI efforts and would establish a baseline to determine how many companies it did business with were diverse. She stated that KPIs would be developed to track this metric. She stated that Fanatics initial target goal was a 3% annual growth in diverse spending company wide. She stated that supplier contracts were being updated to require the organizations commitment to DEI. She stated that Fanatics was using Supplier.io to help build new relationships.

Ms. Lachtman stated that Fanatics was involved with several community engagement initiatives. She stated that Fanatics partnered with the REFORM alliance to transform probation and parole laws, the All-In Challenge to address food insecurity, Make-A-Wish, and the 2022 Special Olympics Games.

Mr. McClintic stated that all of Fanatics' vendor partners had experience with sports wagering. He explained that Fanatics was using Amelco for its sports wagering platform, GLI for testing, GeoComply for geolocation services, Socure for know-your-customer services, and Paysafe for payment processing. He stated that Amelco's system was previously certified by GLI and was in

use in several U.S. markets. He stated that Fanatics received data feeds from SportRadar, Genius Sports, IMG Arena, and Stats Perform. He stated that Fanatics used AWS cloud services and Optimove for marketing.

Mr. Berger requested that any product demonstration be done in executive session as Fanatics had yet to launch its sports wagering platform publicly. He stated that many of the platform's unique features had not been seen outside of Fanatics' internal company. He stated that the platform was competitively sensitive and appropriate for executive session.

9. [Executive Session](#) (3:50:32)

Chair Judd-Stein asked if it was appropriate to enter executive session at this juncture. General Counsel Grossman stated that the request on its face would meet the standard set out in G.L. c. 23N, § 6(i). Chair Judd-Stein asked if Fanatics' platform was presented for its Maryland or Ohio license. Mr. Berger stated that neither jurisdiction required a public hearing with a demonstration. He stated that this would be the first time Fanatics' product was seen outside of internal channels. He stated that the look, feel, and operation of the sports wagering platform were proprietary trade secrets.

General Counsel Grossman stated that an executive session would be appropriate, and that if anything did not fall into that category, the Commission could return to the public session. Commissioner O'Brien asked if any information was public in the five jurisdictions where Fanatics had submitted applications. Mr. Berger stated that the information had not been shared publicly with any jurisdiction.

Chair Judd-Stein reminded the Commission of a timing limitation requiring the meeting to end at 3:30. The Commission reached consensus to end this session of the public meeting and continue with the product demonstration in executive session at the public meeting to be held on January 5, 2023.

10. [Other Business](#) (4:04:01)

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

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

*Roll call vote:*

*Commissioner O'Brien: Aye.*

*Commissioner Hill: Aye.*

*Commissioner Skinner: Aye.*

*Commissioner Maynard: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously, 5-0.*

**List of Documents and Other Items Used**

1. [Notice of Meeting and Agenda dated December 28, 2022](#)





## **MEMORANDUM**

**TO:** Interim Chair Jordan Maynard  
Commissioner Eileen O'Brien  
Commissioner Bradford Hill  
Commissioner Nakisha Skinner

**FROM:** Zachary Mercer, Enforcement Counsel, IEB

**CC:** Caitlin Monahan, Director, IEB  
Kathleen Kramer, Interim Chief Enforcement Counsel/Asst. Director, IEB  
Justin Stempeck, Deputy General Counsel

**DATE:** September 5, 2024

**RE:** Sports Wagering Noncompliance Matter

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At the September 12, 2024 Public Meeting, the IEB will be presenting the following Sports Wagering Noncompliance matter to the Commission:

1. Crown MA Gaming LLC, d/b/a DraftKings, Temporary Category 3 Sports Wagering Operator, 2024-SWN-046: This matter relates to whether on August 13, 2024, the operator transmitted an email to individuals on the Voluntary Self-Exclusion List in contravention of 205 CMR 233.06, 205 CMR 133.06 (3), and 205 CMR 256.07(1). The Operator erroneously sent an email pertaining to a specific golf wager intended for thirteen (13) Massachusetts recipients to a list of 1,230,520 Massachusetts residents or Massachusetts DraftKings registered users. Within that list, the email was sent to one hundred eighty-four (184) individuals on the Massachusetts Voluntary Self-Exclusion List.



Massachusetts Gaming Commission





*Sports Wagering Division*

The MA Event Catalog currently allows, and has allowed since the launch of sports wagering and the initial event catalog in 2023, sports wagering operators the opportunity to offer the Fédération Internationale de Football Association (FIFA) for wagering as an approved soccer governing body. The CFA falls within the Asian Football Conference (AFC) of FIFA and is the governing body that oversees the Chinese national team, the Chinese FA Cup, as well as the four professional tiers of Chinese soccer for the men and women.

On Tuesday, September 10, the MGC Sports Wagering Division received an alert from US Integrity regarding bans and suspensions for players and officials for match-fixing. The alert revealed at least 120 matches have been fixed involving 41 teams.

The bans come after a two-year investigation into match-fixing and gambling within the top tiers of Chinese soccer. <sup>[1]</sup> US Integrity further stated this investigation is ongoing and may have additional updates in the weeks ahead.

Also related to this investigation, last month, the former Vice President of the CFA, Li Yuyi, received an 11-year prison sentence and was fined ¥1 million yuan for his involvement in taking bribes. This comes after Li pleaded guilty in March to using his position to accumulate money and gifts worth over \$1.7 million between 2004 and 2021. <sup>[2]</sup>

Lastly, the former CFA Chairman, Chen Xuyuan, was sentenced this past March to life in prison for accepting more than \$10 million in bribes. <sup>[3]</sup>

Sport	Governing Body	League
Soccer	International Federation of Association Football (FIFA)	International and domestic events sanctioned by FIFA or FIFA member federations.
<a href="#">Return to Index</a>	International Champions Cup	International Champions Cup
	NCAA	NCAA

<sup>1</sup> Per Reuters article dated 9/10/24 : <https://www.reuters.com/sports/soccer/china-bans-43-soccer-players-officials-life-match-fixing-2024-09-10/>

<sup>2</sup> Per The Standard article dated 8/20/24: <https://www.thestandard.com.hk/section-news/section/4/265474/11-year-jail-term-huge-fine-for-ex-CFA-executive-in-bribery-scandal>

<sup>3</sup> Per Reuters article dated 3/26/24: <https://www.reuters.com/sports/soccer/ex-head-china-football-association-sentenced-life-prison-state-media-report-2024-03-26/>



*Sports Wagering Division*

**CONCLUDING STATEMENT:**

The Sports Wagering Division recommends the suspension of all wagering on the Chinese Football Association (CFA), including all tiers of the men's and women's Chinese league and the Chinese FA Cup until further investigation is completed.