



Massachusetts Gaming Commission Meeting Minutes

Date/Time: October 13, 2022, 10:00 a.m.
Place: Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 706 4284

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](#) (00:10)

Chair Judd-Stein called to order the 397th 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 provided opening remarks and noted that the Commission had posted the scoping survey for prospective applicants to complete on the Commission's website. She explained that the scoping survey was a required portion of the sports wagering application for Category One, Two, and Three sports wagering operators' licenses. She continued that all prospective operators must file the scoping survey, and that it was due by Monday October 17, 2022, by 5:00 P.M. EST. She affirmed that prospective operators must meet that posted deadline. She added the application for sports wagering operator's licenses had been posted for public comment and recommended that interested applicants review the application and begin to gather materials required.

2. [Approval of the Meeting Minutes](#) (4:32)

a. April 14, 2022

Commissioner Hill moved that the Commission approve the minutes from the April 14, 2022, public meeting that were included in the Commissioner's Packet subject to any necessary corrections for typographical errors or other non-material matters. Commissioner O'Brien seconded the motion.

April 14, 2022, Public Meeting Minutes were included in the Commissioner's Packet on pages 4 through 14.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Abstain.

Chair Judd-Stein: Aye.

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

3. [Research and Responsible Gaming](#) (7:27)

a. Massachusetts Council on Gaming and Health GameSense Q1 Report

Chair Judd-Stein introduced Director of Research and Responsible Gaming, Mark Vander Linden. Director Vander Linden introduced: GameSense Advisor from Encore Boston Harbor ("EBH") Winnie Li; GameSense Senior Advisor from Plainridge Park Casino ("PPC") Ken Averill; and the Executive Director of the Massachusetts Council on Gaming and Health Marlene Warner to present the GameSense Quarterly report.

The presentation included topics including interaction data from each casino; Responsible Gaming Month and Recovery month; an update on the PlayMyWay ("PMW") launch at EBH; the GameSense excellence awards; highlights from the National Council on Responsible Gaming ("NCPG") conference; preparations for sports wagering; and GameSense family engagement. The *GameSense Quarterly Presentation* was included in the Commissioner's Packet on pages 15 through 28.

Commissioner Hill asked if the statistic that 30,000 users signed up for the PMW program at PPC was accurate. Mr. Averill confirmed and explained that PPC had utilized PMW longer than the other casinos, and that the number of users was accurate. Director Vander Linden noted that PMW was initially launched at PPC in 2015, and that the success of PMW there informed the approach in implementing PMW at MGM Springfield ("MGM"), and eventually EBH.

Commissioner Hill noted that GameSense may have an opportunity for further work with the Commission with sports wagering. Commissioner O'Brien expressed an interest in hearing any suggestions from GameSense related to this process. Commissioners agreed. Executive Director Warner added that she wished to thank Commissioner Skinner and Commissioner Maynard for attending recent strategy meetings.

Chair Judd-Stein suggested that PMW as a program could be featured more prominently in the press and stated that she was glad to hear about the collaboration with the Department of Public Health, concerning recovery centers. Ms. Warner agreed and confirmed that the number of recovery centers had expanded; noting that there were now more than twenty recovery centers.

Chair Judd-Stein expressed her interest and support in the family intervention work being performed by the Addiction Service Subcommittee. She stated that for each person struggling with a gambling problem, multiple other friends or family members also feel that pain. Commissioners added their support for the program.

The presentation then moved to the GameSense awards, a program that rewards casino employees with gifts and tokens of gratitude from GameSense for their support and commitment to Responsible Gaming and assisting patrons with access to, and information on GameSense. Commissioners thanked Ms. Warner, Director Vander Linden and the GameSense team for their hard work and the presentation.

4. [Investigations and Enforcement Bureau](#) (42:21)

a. EBH/Realty Income REIT Transaction – Description of Transaction, Trust, & Institutional Investor Issue

Chair Judd-Stein introduced Director of the Investigations and Enforcement Bureau (“IEB”) Loretta Lillios, and IEB Chief Enforcement Counsel Heather Hall to present on the EBH and Realty Income Corporation (“Realty”) Real Estate Investment Trust transaction (“REIT”). The *Description of the REIT Transaction* from the IEB was included in the Commissioner’s Packet on pages 36 through 44.

Before continuing the presentation, General Counsel Grossman explained that in accordance with section 9(d) of the Enhanced Code of Ethics, three Commissioners had filed section 23(b)(3) disclosures on this matter due to holdings of Vanguard related funds. He stated that Chair Judd-Stein, Commissioner O’Brien, and Commissioner Maynard had filed their disclosures with their appointing authorities. He explained that while the disclosures were to avoid appearances of potential conflicts of interest, the Commission was not expected to act or engage in votes. This meant that the matter would remain a 23(b)(3) appearance matter and not a section 6 financial conflict of interest matter. He then paused for additional comments from Commissioners. Commissioner O’Brien and Commissioner Maynard stated that General Counsel Grossman summarized the disclosures accurately.

Jed M. Nosal, counsel from Womble Bond Dickinson, LLP and representing the Petitioners, Wynn MA, LLC (“Wynn”) and Realty were requesting interim authorization to close a contractual transfer to all title rights and interests in the Encore Boston Harbor, including real property and improvements that comprise the EBH gaming establishment from Wynn to Realty. He confirmed to Commissioners that the transfer of ownership of the property would not equate to a change in control or possession of the license; meaning Wynn MA, LLC would remain responsible for the operation of EBH, and all regulatory responsibilities and duties to the Commission.

Mr. Nosal continued his presentation, adding that should the transaction be approved by the Commission, Wynn would continue the day-to-day operations of the casino, but would lease the entire property from Realty. Given this arrangement, he stated that Realty would need to be evaluated as a potential qualifier for Wynn.

With that, Mr. Nosal introduced: Sumit Roy, Chief Executive Officer, and President for Realty; Michelle Bushore, Executive Vice President, Chief Legal Officer, General Counsel and Secretary for Realty; Shannon Jensen, Senior Vice President and Associate General Counsel for Realty and Vice President; and Jacqui Krum, Senior Vice President, and General Counsel for EBH. Mr. Nosal added that representatives for Vanguard were also present including attorneys Ali Bartlett and Phil Sicuso from the firm Bose, McKinney and Evans, LLP ; as well as Vanguard's Associate General Counsel, Brian Murphy.

Chief Executive Officer Roy stated that Realty was founded in 1969, was listed on the New York Stock Exchange in 1994, and became listed on the S&P 500 in 2015. He explained that Realty specialized in acquiring casino assets and entering long term leases with operators.

Ms. Bushore provided Commissioners with an overview of the transaction between EBH and Realty. The agreement, if approved, would create a long-term lease for 30 years; with the option to renew it for another 30 years. She explained that the initial total rent paid by Wynn would be \$100 million with an annual growth of 1.75% for the first ten years, and the greater option of 1.75% or consumer price index capped at 2.5% for the remainder of the lease term. She stated that Realty intended to close the transaction in the fourth quarter of 2022.

Ms. Jensen confirmed that the transaction was structured as an "entity level" transaction, and that Wynn will continue to operate the casino throughout the lease. She explained that the lease was a triple net lease, that would require Wynn to be responsible for all taxes, insurance, maintenance, and obligations of the property. She stated that Wynn would also be required to comply with all existing gaming regulations, and fully maintain the property in compliance with their capital expenditure agreement with the Commission.

Chair Judd-Stein asked if the current structure of the transaction was final or subject to further review or adjustment by parties. Mr. Nosal answered that the current structure of the transaction was final, but still would be subject to approval by the Commission, which was noted in a footnote of their report.

Mr. Nosal explained to Commissioners that part of the transaction involved the inclusion of new qualifiers in the petition for Commission approval of the contractual transfer; which must be accompanied by an executed agreement in the form of a trust, in this case called the "Mystic Nominee Trust." He stated that this process was required and consistent with the regulations related to interim authorization. The *Request for Trust Approval for the Mystic Nominee Trust* was included in the Commissioner's Packet on pages 45 through 56.

Mr. Nosal explained that the purpose of the trust was to allow the casino ownership and operation during the Commission's determination of suitability related to the transfer, pursuant

to 205 CMR 116.10(6). He added that the trustee for this transaction was Jacqui Krum, who had already been licensed, and reviewed by the Commission.

Mr. Nosal noted that a provision in the trust allowed for the option that the interested subject of the transaction could be transferred back to Wynn, should an issue arise due to suitability. He stated that even if Wynn utilized the option for the property to transfer back to them, they would still be required to place rent in escrow during the process. Mr. Nosal noted two corrections in the Trust Instrument to increase clarity and asked that the Commission approve the trust subject to those corrections.

General Counsel Grossman explained that the trust process was set out in 205 CMR 116.10. He noted that the option of the transferred interest returning to Wynn, should an issue arise, was similar language to trust agreements previously reviewed by the Commission in the past, and that it increased levels of protection. He detailed that the trust was a regulatory requirement, and not set out by G.L. c. 23K. He stated that he and Chief Enforcement Counsel Hall had each reviewed the trust, and that the trust met the requirements detailed in the regulation.

Chair Judd-Stein noted that the transaction would occur at the end of the year, and added that suitability reviews would continue, however. She then inquired whether IEB had identified additional qualifiers. Counselor Hall stated that qualifiers had been identified, and that IEB's interim authorization investigation was underway. She confirmed that IEB would present on the interim authorization in mid-November, and if interim authorization is granted by the Commission, the IEB would report on a full suitability investigation before the Commission within six to nine months.

Chair Judd-Stein asked what the Commission would learn about the qualifiers in the November stage. Counselor Hall replied that the IEB would have performed a truncated review of individual and entity qualifiers. She stated the individuals were in leadership roles at Realty and that two entity qualifiers had been identified. She stated that Ms. Krum was a qualifier as well, but she already had license, so a suitability review would not be required for her.

Commissioner Maynard inquired whether the truncated review process would include attestations for qualifiers. Director Lillios explained that the review for interim authorizations for a REIT transaction aligned with the review IEB performs for temporary licensure of vendors and key employees for sports wagering. She stated that they did not require separate attestation forms as discussed in this context, but that the standard forms are attested to and signed under the pains and penalties of perjury.

After no further discussion, Commissioner Hill moved that the Commission find that the Mystic Nominee Trust as discussed and in the Commissioner's Packet would, upon execution, comply with the requirements set out in 205 CMR 116.10(6). The motion was seconded by Commissioner Skinner.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.
Commissioner Maynard: Aye.
Chair Judd-Stein: Aye.
The motion passed unanimously, 5-0.

Counselor Hall stated that Vanguard Group Inc. (“VGI”) had been identified as a possible qualifier in this transaction. She stated that VGI doesn’t directly or indirectly own any stock in Realty, but that individual Vanguard Funds owned stock in Realty. She stated that VGI provided advisory and administrative ownership of those funds, and that while the total of the funds is greater than 15%, each individual fund percentage was below 5%. The *IEB Memorandum Related to VGI* was included in the Commissioner’s Packet on pages 30 through 35.

Counselor Hall noted that neither VGI nor Vanguard Funds exercised control or direction over Realty or Wynn, and for that reason VGI was not a qualifier to the transaction. She stated that the IEB would require status updates from VGI related to individual fund ownership status on a bi-annual basis. She noted that if any fund ownership exceeded five percent ownership, they would be required to file an institutional investor waiver with the IEB.

5. [Racing Division](#) (1:29:43)

a. Plainridge Request for Promotional Fund Reimbursement for the Summer Handicapping Series

Chair Judd-Stein introduced Dr. Alex Lightbown, Director of Racing and Chief Veterinarian, and Chad Bourque, Senior Financial Analyst. Mr. Bourque stated that PPC had three requests for funds from the Harness Horse Promotional Trust Fund. He explained that licensees could use these funds to engage customers, and that distributions were paid upon the Commission’s approval of the licensee’s requests for consideration, and/or request for reimbursement. The *request for reimbursement* was included in the Commissioner’s Packet on pages 57 through 59.

Mr. Bourque stated that the first request was for reimbursement for \$26,000 for payouts to the winners of the summer handicapping series. He noted that the licensee’s request for consideration was approved by the Commission in a public meeting on July 12, 2022. He stated that he reviewed the request and supporting documentation, and that each prize was paid in the manner stated in the consideration. He stated that the Harness Horse Promotional Trust Fund had a balance of more than \$270,000 and that he recommended approval for the request for reimbursement.

Mr. Bourque then introduced Steve O’Toole, Plainridge Park Casino’s Director of Racing. Mr. O’Toole stated that the contest had excellent participation, and that PPC was interested in doing more events like this in the future.

Commissioner O’Brien moved that the Commission approve the amount of \$26,000 for reimbursement as described in the memorandum in the Commissioner’s Packet and discussed today, and further that the Chief Financial and Accounting Officer be authorized to deposit such

funds from the Harness Horse Promotional Trust Fund to the licensee Plainridge Park in accordance with G.L. c. 128A, § 5(g). 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.

b. [Plainridge Requests for Promotional Fund Consideration](#) (1:36:11)

i. Penultimate Handicapping Contest

Mr. Bourque stated that PPC's next two requests for consideration from the Harness Horse Promotional Trust Fund were for two additional handicapping events. He stated that the first request was for \$25,000 for the Penultimate Handicapping Contest and the second request was for \$2,500 for a survivor contest. Mr. Bourque stated that the documents submitted met the statutory requirements and that he would recommend approval of both requests. The *Requests for Consideration* were included in the Commissioner's Packet on pages 60 through 65.

Mr. O'Toole noted that the survivor contest distinguished itself from the prior handicapping series as everyone picked the whole card, and the last patron standing gets the prize. He stated PPC had done survivor contests in the past, and that this one was co-sponsored with the Standardbred Owners of Massachusetts to bring attention to Sire Stakes Day. He noted that the expenses will be shared for a \$5,000 prize, and that the race would be held on Monday October 24, 2022. Chair Judd-Stein stated that as the races were different it made sense to do two separate votes.

Commissioner Hill moved that the Commission approve the expenditure of \$25,000 from the Harness Horse Promotional Trust Fund in accordance with G.L. c. 128A, § 5(g) for the purposes described in the materials in the Commissioner's Packet and as discussed today. The motion was seconded by Commissioner Maynard.

Chair Judd-Stein suggested an amendment to clarify the funds were for the Penultimate Handicapping Contest. Commissioner Hill accepted the amendment.

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.

ii. [Survivor Handicapping Contest](#) (1:40:32)

Commissioner O'Brien moved that in conjunction with the survivor contest the Commission approve the expenditure of \$2,500 from the Harness Horse Promotional Trust Fund in accordance with G.L. c. 128A, § 5(g) for the purposes described in the materials in the Commissioner's Packet and as discussed today. 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.

c. [Plainridge Request for Capital Improvement Funds Considerations](#) (1:41:16)

i. Capital Improvement Fund Consideration for Tractor

Mr. Bourque stated that the next two requests were submitted by PPC for the Harness Horse Capital Improvement Trust Fund. He explained that these funds could be used to repair, maintain, or improve the property where racing activities are conducted. He stated that distributions would be made upon the Commission approval of a request for consideration followed by approval of a request for reimbursement.

Mr. Bourque stated that the first request for consideration was in the amount of \$76,900 for the purchase of a new tractor, and that the second request for consideration was in the amount of \$99,350 for the purchase and installation of a new digital tote display. Mr. Bourque stated he had reviewed the documentation, including an opinion letter from Dixon Salo Architects Inc. confirming the need for the two items, and he recommended approval for both requests. The *Requests for Consideration* were included in the Commissioner's Packet on pages 66 through 79.

Mr. O'Toole stated that the tote display was old technology from 1999, that had been repaired multiple times due to interference from lightning. He stated that irreparable damage had occurred in the last storm. He stated that tractors run non-stop at PPC, and that he would like to have them replaced and brought up to par for grooming the racetrack. Commissioner Hill asked how much money was in the Harness Horse Capital Improvement Trust Fund. Mr. Bourque replied that there was a little more than \$750,000. Chair Judd-Stein sought clarification if both requests qualified as capital improvements. Mr. Bourque stated they did, as equipment.

Commissioner O'Brien moved that the Commission approve the expenditure of \$76,900 from the Harness Horse Capital Improvement Trust Fund in accordance with G.L. c. 128A, § 5(g) for

the purchase of a tractor described in the materials in the Commissioner's Packet and as discussed here today. 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.

ii. [Capital Improvement Fund Consideration for Tote Board](#) (1:46:05)

Chair Judd-Stein expressed her concern that lightning had such an adverse effect on the equipment at PPC. Mr. O'Toole agreed; stating that lightning had affected the tote board and timing devices, and that PPC had switched to radio signal for timing devices to limit the lightning's impact. He expressed hope the new system's fiberoptics would not have interruptions.

Commissioner O'Brien moved that the Commission approve the expenditure of \$99,347 from the Harness Horse Capital Improvement Trust Fund for the purchase of a tote board in accordance with G.L. c. 128A, § 5(g) for the purpose described in the Commissioner's Packet and discussed today. 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.

d. [Quarterly Aid Local Payment](#) (1:47:57)

Mr. Bourque explained that local aid was payable to each city and town where racing activities were conducted, and that the amount of aid was equal to .35% of the handle from the quarter that ended six months prior to the payable date. The *Memorandum regarding Quarterly Aid Local Payment* was included in the Commissioner's Packet on pages 80 through 82.

With that, Mr. Bourque stated that the City of Boston would receive \$107,717.53; the Town of Plainville would receive \$18,179.72; the Town of Raynham would receive \$16,623.88; and that the City of Revere would receive \$53,874.92; totaling \$214,000. Commissioner O'Brien questioned if the total aid payment reported by Mr. Bourque was incorrect; stating that the Commissioner's Packet showed the total of \$196,396.05. Mr. Bourque agreed; offering his apology that he had read the number from the previous quarter.

Commissioner Maynard then moved that the Commission authorize the quarterly local aid payments for the final quarter of 2022 to the City of Boston, Town of Plainville, Town of Raynham, and City of Revere in the specific amounts outlined in the memorandum in the Commissioner's Packet and discussed here today totaling \$196,396.05. The motion was seconded by Commissioner Skinner.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

6. [Legal Division](#) (1:53:29)

Associate General Counsel Judith Young presented four regulation amendments in 205 CMR 138.00 as a part of the Commission's Regulatory Review project. She stated that the regulations began the promulgation process in June after the Commission's approval, and that this was the final step required to approve through the regulatory changes before filing them with the Secretary of State's Office. She noted that a public hearing for the regulations was held on September 29, 2022; and presided over by Commissioner Maynard. She reported that the changes had received no public comments at or in advance of the hearing.

Walking Commissioners through the regulations, Associate General Counsel Young explained that the edit to 205 CMR 138.02: *Licensee's System of Internal Controls*, added a thirty-day implementation requirement for any new internal controls submitted to and approved by Executive Director Wells. She stated that the change was to ensure protocols approved by the Commission were implemented by the licensees in a timely manner.

Next, Associate General Counsel Young explained that 205 CMR 138.05: *System for Ensuring Employees are Properly Licensed or Registered* was changed to remedy Scribner's error. Section (j) would be re-added, where it was previously cut off in previous publications. She then moved on to explain that 205 CMR 138.07: *Floor Plans* was changed to add a timing requirement for licensees refiling or resubmitting approved floorplans with the IEB. She noted there had not previously been a time requirement for submission of floorplans, and that the regulation was changed to insert the phrase "every three months or at the request of the IEB."

Commissioner O'Brien inquired why the changes to 205 CMR 138.07 did not have the header that was shown on the other regulations sections. Associate General Counsel Young apologized and clarified that the regulation did have a section header as well, but given its length, only the bottom portion of the regulation, where the change was made, was included in the Commissioner's Packet.

Associate General Counsel Young explained that 205 CMR 138.62: *Payment of Table Game Progressive Payout Wagers; Supplemental Wagers Not Paid from the Table Inventory* was changed to modify the existing protocol for how licensees pay out progressive jackpots. She stated that the change would create a more equitable split when two patrons won a progressive jackpot at the exact same time. Regulatory Compliance Manager Sterl Carpenter stated that the rule was changed for progressive jackpots at the same table, as winners at different tables could be determined through use of surveillance system time stamps. He stated that this process was already used at EBH and MGM but would codify the practice in regulation.

Moving on to the Amended Small Business Impact Statement, Associate General Counsel Young stated that the changes to the regulations affected gaming licensees and would have little to no impact on small businesses. The *Regulations and Amended Small Business Impact Statement* were included in the Commissioner's Packet on pages 83 through 92.

Commissioner Skinner moved that the Commission approve the amended small business impact statement relative to 205 CMR 138.02, 205 CMR 138.05, 205 CMR 138.07, and 205 CMR 138.62 as included in the Commissioner's Packet; and further that the Commission approve the amendments to 205 CMR 138.02, 205 CMR 138.05, 205 CMR 138.07, and 205 CMR 138.62 as reflected in the Commissioner's Packet and discussed here today, and that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth and finalize the regulation promulgation process. The motion was seconded by Commissioner Hill.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

7. [Finance Division](#) (2:09:11)

a. FY22 Budget Close-Out

Chair Judd-Stein introduced Chief Financial and Accounting Officer ("CFAO") Derek Lennon, CFAO Lennon presented the Fiscal Year 2022 Gaming Control Fund Close-Out Report. He stated that after adjustments, the Commission's revised budget was \$33.25 million and required a \$27.6 million assessment on licensees. He explained that the actual spending for Fiscal Year 2022 was \$32.47 million, and revenue was \$33.9 million. He noted that \$401,000 of reimbursements had not been received until the start of fiscal year 2023.

CFAO Lennon stated that 205 CMR 121.00 described how the Commission shall assess operational costs on licensees, including paying overages back as a credit in the next fiscal year. CFAO Lennon stated that final spending was \$1.437 million less than revenue, and after adding \$401,000 from the independent monitor reimbursement, the Commission would credit \$1.83

million to the licensees' FY23 assessment. The FY22 Budget Close-Out Report was included in the Commissioner's Packet on pages 93 through 99.

Commissioner O'Brien noted that the Gaming Enforcement Unit ("GEU") had challenges with staffing, and that it was impressive that the GEU had managed their overtime so well, given the staffing limitations. Chair Judd-Stein asked how much was sent back as credit the previous year. CFAO Lennon stated that it was \$2.2 million.

8. [Sports Wagering Process Updates](#) (2:18:51)

a. Review of Public Comments regarding Sports Wagering Application

Executive Director Wells provided a brief update to the Commission on the roll-out of sports wagering and the application process. She stated that the Commission had not received any public comments on the sports wagering application that had been posted publicly, but Commission staff was aware of one entity who indicated they would send comments shortly.

b. [Update on Contractual Services for Sports Wagering Implementation](#) (2:19:31)

Executive Director Wells stated that the IEB, with assistance from the Finance Division selected RSM to provide consulting services to assist with the background review process for sports wagering applications. She stated that RSM was a leading provider of audit, tax, and consulting services both in the United States and internationally. She added that RSM had significant experience in the gaming environment and had provided consulting services to tribal and state gaming regulatory agencies in other jurisdictions as well.

Executive Director Wells stated that in addition to their engagement with RSM, the IEB also contracted with private investigators, including former members of the State Police and GEU for services. She explained that these investigators would assist with the suitability review of applicants at the operator, vendor, and employee level, as required by statute. She stated that the scoping survey was due Monday October 17, and was the trigger point where investigators could begin to identify qualifiers.

Executive Director Wells stated that the Commission had contracted with Gaming Laboratories International ("GLI") which was an important step for the implementation timeline. She stated that GLI was uniquely qualified for assistance in sports wagering implementation, noting that they had worked with many regulatory bodies in other jurisdictions. She explained that GLI would assist with drafting technical standards, internal controls, responsible gaming initiatives, testing standards, and drafting regulations. She stated that once sports wagering licenses were granted, GLI could provide services to review internal controls submissions from licensees.

Executive Director Wells stated that the Commission was also looking at contracts to provide project management assistance to manage the increased workload in the upcoming months.

c. [Finance - Daily Fantasy Sports Registration and Tax Filing Forms](#) (3:05:26)

CFAO Lennon stated that at the public meeting on October 6, 2022, the Commission voted to promulgate 205 CMR 240 by emergency, so that it would immediately be in effect in advance of sports wagering. He explained that the regulation addressed the taxation of sports wagering operators and fantasy sports wagering operators, and that part of the regulation required fantasy contest entities or individuals to register with the Commission, and then complete a form that the Commission would approve. A draft of the *Registration Form and Gross Fantasy Wagering Receipts Monthly Tax Form* were included in the Commissioner's Packet on pages 100 through 102.

Commissioner O'Brien inquired whether the "contact name" section was designed to identify who could accept service of process if the entity was not a Massachusetts corporation. CFAO Lennon stated that he would want to work with the Attorney General's office on that matter, and he would address Commissioner O'Brien's concerns in a follow-up.

Chair Judd-Stein asked what the next steps would be if the form was confirmed by the Commission today. CFAO Lennon reported he would work with Communications Division Chief, Thomas Mills to distribute the forms as wide as possible and begin partnerships with those entities or individuals hosting fantasy sports wagering. CFAO Lennon stated that an issue that may arise would be identifying all operators, but he hoped that the competitive side of these entities would help to identify those who hadn't yet registered.

Commissioner O'Brien suggested a placeholder be added on the website that lists all known fantasy sports wagering entities. CFAO Lennon stated that he would work with Mr. Mills on developing that list. General Counsel Grossman noted that the obligation to pay taxes would accrue from August 10, 2022, and that funds would still be owed even if a fantasy sports wagering entity did not register immediately.

Chair Judd-Stein asked if language related to the retroactivity of the tax obligations would be included in publications. CFAO Lennon answered that tax language could be included in all distributed notifications, and that registrants could also be directed to the public meeting recording where taxation was thoroughly discussed.

Commissioner Skinner moved that the Commission adopt the daily fantasy sports registration and taxation forms as included in the Commissioner's Packet and discussed today. 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.

d. [Divisional Updates](#) (3:13:26)

I. Investigations and Enforcement Bureau

Executive Director Wells stated that the biggest update for the IEB was the contractual services update with respect to RSM and private investigators. She added that the Commission had a new Chief of Licensing, Kara O'Brien. Commissioners expressed their enthusiasm for Ms. O'Brien to join the Commission.

Executive Director Wells also added that a critical first step for the IEB's review of sports wagering applicants was their scoping survey. She stated that the deadline for the scoping survey was Monday October 17, 2022, and that the IEB had received several surveys already.

II. [IT](#) (3:15:50)

Executive Director Wells stated that technology was a crucial aspect to sports wagering and online sports wagering; and that the IT Division had been researching industry standards in other jurisdictions. She reported that the IT Division would require assistance with technical testing standards and would collaborate with GLI to develop and draft the technical regulations. She stated that operators were required to contract to have their platforms tested to Massachusetts specifications, and that operators should be aware of whom they need to engage to get that testing completed.

Commissioner Hill inquired how many scoping survey forms had been received by the Commission. Mr. Mills stated that approximately five operators, and some vendors, had submitted scoping surveys. He stated that the Communications Division was working with the Licensing Division to compile all documents in one place.

Chair Judd-Stein inquired whether the Commission should be aware of the applicants at this stage. General Counsel Grossman stated that the Commission may know who is in the applicant pool, but not the content of the submissions.

Commissioner O'Brien queried whether the scoping surveys and other application components should be reviewed on a rolling basis, or if the Commission should look at them at the same time. Chair Judd-Stein stated she was hesitant to have the Commission look at the scoping surveys until they were affirmatively told they could.

Commissioner O'Brien inquired about how the Commission would keep track of launch costs related to this process. CFAO Lennon stated that a regulation that detailed the cost of investigations was being reviewed by the Legal Division, and included an overhead rate for anything that was not a direct cost into background suitability and investigation. He reported that the statutory language allowed for direct, or ancillary costs. He added that the recommended rate and explanation of how the rate was reached would be posted on the Commission website.

III. [Legal](#) (3:24:44)

General Counsel Grossman stated that the Legal Division was focusing on the development of regulations that would establish a framework for sports wagering. He stated that licensees would

be required to comply with regulations upon licensure, and that draft regulations would be presented in the coming weeks that would help clarify issues discussed by the Commission. He stated that he anticipated some regulations being presented at the next meeting, and that GLI would offer guidance and assistance with the regulations as well.

e. [Preliminary Discussion of Licensing Evaluation Process](#) (3:26:55)

General Counsel Grossman presented a potential sports wagering license evaluation process based upon the Commission discussion during the October 6, 2022, open meeting. He noted that the language in the draft was modeled after the RFA2 process used for casino licensing set out in 205 CMR 118 and 205 CMR 119.03. He stated that the casino language was intentionally left in the draft so the Commission could view a whole picture of the process, but that some areas did not directly apply to sports wagering.

General Counsel Grossman presented the licensing evaluation process with topics including preapplication consultations; application submission timing; Commission review of applications deemed administratively complete; host and surrounding community approval; types of licenses; evaluation of the application; evaluation criteria; and supplemental suitability decisions. The draft sports wagering license evaluation process was included in the Commissioner's Packet on pages 103 through 109.

Executive Director Wells suggested that questions submitted in writing and answers should be posted to the Commission website as another option to implement pre-application consultations and ensure every applicant receives the same answers.

Commissioner Skinner asked if pre-application consultations used in the RFA2 process were for the benefit of the applicant, or benefit of the Commission. General Counsel Grossman stated that the meeting was at the staff level and not with the Commission and was intended for the benefit of applicants to clarify answers to their questions.

Chair Judd-Stein asked if the regulation regarding the scoping survey passed in the prior open meeting was consistent with the timing language. General Counsel Grossman explained that the scoping piece was a prerequisite and applicants could not move forward with the application if scoping was not completed. Commissioner Skinner noted that the regulation gave flexibility for extraordinary circumstances, but extraordinary circumstances were not defined. General Counsel Grossman stated that during the RFA2 process applicants who submitted late appeared before the Commission to offer explanations, but the Commission denied their request.

Commissioner Skinner asked if the Licensing Division was involved in the RFA2 completeness review. General Counsel Grossman explained that the licensing division did not exist at the time the RFA2 was used. Commissioner Skinner stated that the Commission should not receive any incomplete applications if the licensing division reviews them for administrative completeness. General Counsel Grossman stated that there was a difference between not submitting a response and submitting a deficient response, and that a procedure to cure deficiency was included in the RFA2 application.

Chair Judd-Stein asked if an application could be cured past the application submission date. Commissioner O'Brien stated that if sections were missing, the application would not be sent to the IEB for investigations until it was deemed complete, and that the burden was on the applicant to complete the application. Commissioner Skinner noted that the administrative completeness review process was to ensure each part of the application was answered and required attachments were referenced but did not include a review for substantive comment.

Executive Director Wells stated that if substantial things were missing from the application, and the applicant required time to cure, the timeline would have to be changed to accommodate that time. CFAO Lennon stated that during the RFA2 licensing process, consultants were allowed to clarify points of their application to the Commission but were not allowed to add supplemental information; as extending the timeline would be unfair to competitors, and that the timeline would have to be extended to other applicants. General Counsel Grossman stated that deficiencies could be cured prior to the deadline, but after the deadline, the applicant would have to appear before the Commission to request an extension.

General Counsel Grossman noted that the court ruled in favor of the process the Commission used in the RFA2 process when there was an allegation the Commission was unfair. He stated that it would be beneficial to include language that the applicants could supplement information to clarify points during the review section, but not after the administrative completeness stage.

Chair Judd-Stein asked if the process to retain professional consultants would happen in public. General Counsel Grossman stated that the provision authorized Executive Director Wells to directly retain consultants, but it was likely to be discussed in a public meeting as well. Chair Judd-Stein asked if the consultants included were the consultants for the applicant scoring process discussed in the previous open meeting. General Counsel Grossman confirmed that it was the same consultant, and that the language could also be adjusted to allow the Commission to direct the hiring, rather than the Executive Director.

Commissioner O'Brien stated that she did not foresee the consultant being involved in the decision-making process. Chair Judd-Stein confirmed that the consultant would be neutral but would assist in keeping track of the scoring process utilized by the Commission. Commissioner O'Brien agreed with that assessment; and noted that keeping track of the information didn't seem too complex. She then inquired if a consultant was ultimately required. CFAO Lennon stated that it could be harder to track, depending upon the number of applicants, and that it might be useful to have a consultant.

Commissioner O'Brien asked if licensing decisions would need to be drafted in terms of rationale to prevent potential litigation. General Counsel Grossman stated that was correct. General Counsel Grossman stated that the Commission may permit applicants to provide additional documents during the Commission's review process. Commissioner Maynard asked what other jurisdictions had done for sports wagering regarding supplemental documents. General Counsel Grossman explained that the Legal Division reviewed processes in other states and used some principles from other jurisdictions, when considering supplemental materials.

Commissioner Maynard asked if Illinois, Virginia, or any other jurisdiction allowed supplemental information, and stated it would be helpful in forming an opinion. General Counsel Grossman stated that he could gather information from those jurisdictions to present to the Commissioners. Chair Judd-Stein recalled that the Commission had been challenged on this issue related to casinos. General Counsel Grossman explained that the previous challenge was dissimilar, as it challenged amendments made during a public hearing.

General Counsel Grossman noted that public sentiment was not as important as it was during the RFA2 process, as mobile sports wagering operators would not have physical locations like casinos. Commissioner O'Brien stated she would still want public feedback about customer experience, vendor experience, and other more general public feedback, however. Chair Judd-Stein agreed; stating that a series of public hearings could be held to receive that input.

Commissioner Hill asked if other jurisdictions who had undergone a competitive process had information related to their licensing structures on their website. General Counsel Grossman stated he could get that information to the Commission.

General Counsel Grossman stated that any of the methods included in the process could be used for evaluation, and that the Commission had discretion in the process. He noted that in the RFA2 process the applicant was given time to present their application, and that the Commission could request best and final proposals.

Attorney Lon Povich, from Anderson and Krieger, stated that the Commission had great discretion in devising the methods they will use to review applications. He stated that the Commission should avoid firm metrics and discouraged numerical processes. He stated that the statute and jurisprudence supported a wholistic review process, and stated broadness and flexibility was best in devising methods of evaluation.

General Counsel Grossman stated that specifics could be added to the criteria and sub-criteria to make the evaluation easier. Chair Judd-Stein noted that some sub-criteria were included in the application. Chair Judd-Stein inquired about the distinction between threshold suitability and overall suitability. Executive Director Wells stated that threshold suitability was whether the applicant could receive a license, and overall suitability was to identify the applicant best suited to hold the license.

General Counsel Grossman stated that he also wanted to capture the sentiments expressed by the Commission when developing conditions on the licenses. Chair Judd-Stein stated that maximizing benefits and mitigating potential harms to the Commonwealth should be top concerns. General Counsel Grossman suggested additional language to clarify what is meant by promoting Responsible Gaming as well. He noted that General Law Chapter 23N did not set out criteria for conditions on licenses, and that the Commission had discretion to implement the criteria they choose.

Chair Judd-Stein stated that the Commission had considered a multi-stage review process for the selection of final applicants. General Counsel Grossman explained that a scoring process could occur to reduce the number of potential applicants, followed by a wholistic review of the

remaining applications by the Commission. He stated that the right to a multi-tiered process could be preserved in the regulations.

Commissioner O'Brien noted that the Commission had been cautioned against using numerical scoring, however. General Counsel Grossman stated that he was not suggesting scoring every application, but that a wholistic review might be an overwhelming task depending upon the number of applications received. Commissioner O'Brien suggested that each Commissioner could have their own score, as the Commissioners have different values on certain criteria. Commissioner Maynard expressed an interest in the tiered review, but stated he did not think numerical scores were required to get to the next tier. General Counsel Grossman advised that the Commission wanted to avoid a situation where their decision could be considered arbitrary or capricious, and that some metric should be applied.

Attorney Povich emphasized that flexibility was important for the evaluation process. He stated that tiering the review of applicants should be a separate and longer discussion. Chair Judd-Stein stated for transparency that the Commission was considering using two tiers. Attorney Povich stated that having multiple rounds could provide flexibility, and that using a numbered scoring was easier to dispute.

General Counsel Grossman stated that he would take the comments and observations from this discussion to incorporate them into the regulations, and that he hoped to present an updated draft to the Commission the following week. He stated that he would post the process for public comment after making those edits. Commissioner Skinner stated she would likely need more time with the regulations to offer her impressions and address additional questions. Chair Judd-Stein stated that there would be further review of the process in the next week.

9. [Commissioner Updates](#) (5:01:13)

Chair Judd-Stein stated that she wanted to give permission to CFAO Lennon to begin the procurement process for a consultant. Commissioner O'Brien inquired if the consultant was an administrative aid to the Commission's process. Chair Judd-Stein stated she believed the position would be more than administrative. CFAO Lennon confirmed; stating that this consultant would assist with scoring and project management within the Commission.

Commissioner Maynard stated he would like to keep the consultant team small; and that he did not want to abrogate the Commission's decision-making authority. Commissioner O'Brien expressed an interest that the Commission design the scoring process. Chair Judd-Stein asked if a consultant was ultimately required. Commissioner O'Brien stated that with the expected number of applicants and the accelerated timeline, the Commission would likely need outside help, but that she was unsure how expansive the consultant's role should be. CFAO Lennon stated he could put together bullet points for the Commission to consider, and that they could ultimately be placed into the management consultant contract.

Chair Judd-Stein asked if CFAO Lennon could have the list ready to present by the October 27, 2022, public meeting. CFAO Lennon confirmed that he would have the requested materials prepared for the next meeting.

10. [Other Business](#) (5:11:05)

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

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

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated October 11, 2022, revised on October 11, 2022
2. [Commissioner's Packet](#) from the October 13, 2022, meeting (posted on massgaming.com)