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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** October 20, 2022, 10:00 a.m.  
**Place:** Massachusetts Gaming Commission  
VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE: 111 722 8016

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

### **Commissioners Present:**

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

#### 1. [Call to Order](#) (00:05)

Chair Judd-Stein called to order the 398<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 reported that the Commission had received nearly thirty scoping surveys, and that the Commission would uphold its commitment to the residents of the Commonwealth by delivering the strongest consumer protections to benefit them. She stated that the Commission would continue to update the public during its meetings and by other means to maintain transparency. She announced that applications for prospective sports wagering operators were due by November 21, 2022.

#### 2. [Approval of the Meeting Minutes](#) (05:51)

##### a. March 31, 2022

The *March 31, 2022, Public Meeting Minutes* were included in the Commissioner's Packet on pages 3 through 14.

Commissioner Hill moved that the Commission approve the minutes from March 31, 2022, public meeting that were included in the Commissioner's Packet; subject to any necessary

corrections for typographical errors or other non-material matters. The motion was seconded by Commissioner O'Brien.

*Roll call vote:*

*Commissioner O'Brien: Aye.*

*Commissioner Hill: Aye.*

*Commissioner Skinner: Aye.*

*Commissioner Maynard: Abstain.*

*Chair Judd-Stein: Aye.*

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

### 3. [Administrative Update](#) (6:37)

#### a. Casino Update

Executive Director Karen Wells introduced Assistant Director of the Investigations and Enforcement Bureau ("IEB") and Gaming Agents Division Chief, Bruce Band. Assistant Director Band stated that MGM Springfield ("MGM") was nearing completion of a new coffee shop, would host a classic car show on October 8, 2022, and had begun hosting poker tournaments every Saturday in their poker room. Assistant Director Band stated that Plainridge Park Casino ("PPC") hosted entertainment in their Revolution Lounge on Fridays and Saturdays and would also be conducting live horse racing four days a week in October, and three days a week in November. He reported that Encore Boston Harbor ("EBH") was operating its poker room daily from 10 A.M. to 4 A.M., and that they would add nine more tables by the end of the month, for a total of twenty-four tables.

Assistant Director Band reported to the Commission that for the fiscal year, the Commission assisted the Department of Revenue to retrieve \$3,601,569 in unpaid taxes and child support payments. He explained that the gaming agents within the gaming establishments checked for arrears in those who won jackpots, and that the team worked in cooperation with the Department of Revenue to intercept the funds. He stated that the amount retrieved was a \$200,000 increase from the prior year.

### 4. [Sports Wagering Process Updates](#) (9:55)

#### a. Gaming Labs International (GLI) Presentation

Executive Director Wells introduced Kevin Mullally, Senior Vice President of Government Relations & General Counsel from Gaming Laboratories International ("GLI"). Executive Director Wells shared that Mr. Mullally was responsible for all of GLI's risk management policies, that he was previously the Executive Director for the Missouri Gaming Commission, and that he was on the board of directors for the National Council on Problem Gambling from 2001 to 2015. Executive Director Wells explained that GLI was an independent testing laboratory that provided services to operators, vendors, and regulators for casino gaming and sports wagering. She added that GLI would assist the Commission in drafting regulations, review of internal controls submissions, and platform testing.

Mr. Mullally stated that GLI had done a review of Massachusetts regulations so that they could ask more pointed questions, and that GLI staff was reviewing the timeline prepared by Commission staff to offer potential suggestions from other jurisdictions. He shared that GLI had nine or ten former regulators within their government regulatory team.

Mr. Mulally stated that while GLI knew a great deal about the technology and risk, and mitigation related to sports wagering, there was not one singular way to implement it. He further explained that what might work for one environment may not work in another. He stated that GLI relies upon local knowledge, and the skillset of the organizations they work with to provide customized solutions.

b. [Sports Wagering Vendor Regulation, Penalties Analysis](#) (23:32)

Chair Judd-Stein informed the meeting participants and viewers that this item had been taken off the agenda prior to the meeting and would be discussed at the next the agenda setting meeting to be moved to a future meeting date.

c. [Divisional Updates](#) (23:51)

Executive Director Wells stated that Chief Information Officer Katrina Jagroop-Gomes was not present, so there would be no IT presentation, but confirmed that that the updates would be given from IEB and the Legal Divisions, respectively.

Executive Director Wells stated that the IEB had received 29 scoping surveys and introduced Director of the IEB, Loretta Lillios. Director Lillios stated that 18 of the scoping surveys were for untethered category three sports wagering licenses. She stated that IEB was prepared to review these initial entities. She added that the submission deadline for the Business Entity Disclosure form (“BED”) the Commission required was November 21, 2022. Executive Director Wells explained to Commissioners that an individual qualifier review would occur until the applicant pool had been narrowed down to up to seven applicants. She confirmed however that the IEB would perform background checks on individual qualifiers at the same time the Commission would performing the operation certificate process.

Executive Director Wells explained that other jurisdictions, such as New Jersey, had accepted the Multi-jurisdictional Personal History Disclosure form (“MJPHD”) submitted in other jurisdictions within the past year. Chair Judd-Stein asked if the MJPHD forms were in respect to the applications or the individuals. Executive Director Wells explained that BED was for corporate information, litigation history, and compliance, while the MJPHD was for corporate officers to submit their personal history. Director Lillios stated that the Commission would likely need updated fingerprint submissions from the individuals if they provided a MJPHD from another jurisdiction.

Commissioner O’Brien expressed concern about not performing an open search on readily identifiable individual qualifiers, and asked if GLI or another contractor could aid in performing

those searches. Director Lillios reported that an open search would be incorporated for inside directors, and that it could be performed by the Gaming Enforcement Unit or a contractor.

Commissioner O'Brien inquired if the open search would occur before or after the initial scoping review. Director Lillios replied that it would occur after the initial scoping. Commissioner O'Brien explained she would prefer open-source feedback prior to narrowing the number of applicants moving forward. Chair Judd-Stein asked if a temporary employee could run the open search check for the individuals. Director Lillios explained that scoping would have to occur first, as IEB must designate which individuals identified in the forms would be designated "Qualifiers".

Commissioner O'Brien inquired if the vendors assisting with standing up, or initializing sports wagering could assist with the open-source review. Director Lillios confirmed that the open-source review could easily be performed, if desired, but may affect the timeline. Executive Director Wells stated that the information could be given to the Commission prior to a final decision on narrowing down the applicants and would not have to be by the November 21 deadline.

Commissioner Skinner asked what the scoping process would resemble under the expedited timeline. Director Lillios stated that the IEB had two teams working on scoping, and that it was expedited by relying on the submissions and interview via a telephone conference, rather than several internal and external meetings.

Commissioner Skinner asked whether the Commission should clarify the deadline for the BED as November 21, more clearly. Chair Judd-Stein stated that the BED was part of the application, and applicants should understand the general components of the application. Executive Director Wells stated that the general application incorporated by reference the BED, MJPHD and Massachusetts supplement forms. She added that the applicants generally know who in their organization will be required to complete the forms based upon general practice and previous experience. Commissioner Maynard agreed, stating that many of potential applicants have the availability of information, as they had likely filled out similar forms in other jurisdictions. Commissioners thanked Director Lillios.

Providing an update for the Legal Division, General Counsel Grossman stated that the development of the regulatory framework was the division's primary objective. He noted that the Legal Division was working with GLI in developing technical standards, internal controls, and the development of sports wagering regulations. He reported that the Legal Division anticipated presenting a series of regulations in the following week for the Commissioners to review.

Commissioner Skinner inquired when a good time to discuss criteria for granting an applicant extension of time to file. General Counsel Grossman stated that 205 CMR 211.10 allowed applicants to file for an extension, and that extraordinary circumstances were required if they filed past the November 21, 2022, deadline. Commissioner Skinner stated that the Commission should consider the IEB's timeline, and response for scoping expectations as part of the extraordinary circumstances.

Commissioner Hill requested that the excel spreadsheet detailing the stages of sports wagering regulations be updated and disseminated to Commissioners. Deputy General Counsel, Caitlin Monahan confirmed that she would send an updated chart to the Commissioners shortly.

Director Lillios also introduced the new Chief of Licensing Division, Karalyn O'Brien to the Commission. Chief O'Brien stated that she was excited to begin working for the Commission and assist in moving the process along.

5. [Community Affairs](#) (1:04:05)

a. Community Mitigation Fund Draft Guidelines

Chief of the Community Affairs Division, Joe Delaney presented the Community Mitigation Fund Draft Guidelines. The Guidelines topics included eligibility requirements; application requirements; grant categories; projects of regional significance; and gambling harm reduction. The *Community Mitigation Fund Draft Guidelines* were included in the Commissioner's Packet on pages 16 through 28.

Commissioner Hill inquired whether the Commission had discretion to move the regional funds to another region for a larger project. Chief Delaney stated that while there had previously been language to that effect in the guidelines, it had subsequently been removed. He noted that Region B had expressed opposition in the sharing of regional Community Mitigation Fund resources.

Chief Delaney explained that another option would be to borrow funds from the next year's allotment, provided the money was already in the fund. Commissioner Hill expressed an interest in the flexibility of moving funds to the western region if they presented a strong project to the Commission. Commissioner Maynard echoed Commissioner Hill's interest in the flexibility of transferring funds. Commissioner Hill suggested adding language addressing this concern prior to the public comment period.

Commissioner O'Brien stated that she was not inclined to include language about the Commission's full discretion to re-allocate and re-distribute funds within the Guidelines. Chair Judd-Stein suggested adding a provision that the region's funds be restored if they were ultimately applied to another region.

Commissioner O'Brien noted that there should be a way to address the western region's concerns; and requested that some language be included for public comment. Chair Judd-Stein expressed concern that a region may be less inclined to submit smaller projects if a larger project may take the majority of the allocated regional funds. Chief Delaney explained that Region B was aware of the funding disparity, with Region A having significantly more funds in the Community Mitigation Fund but noted that representatives had expressed opposition to sharing funds in the Local Advisory Subcommittee meeting on October 19, 2022.

Commissioner Hill noted that it appeared the Commissioners did not have a consensus, and the language could be considered when the guidelines return in front of the Commission in the future.

Commissioner Skinner inquired if the funds could be moved even if the language was not included in the finalized guidelines. Chief Delaney stated that the answer was likely yes, but that he would need to confirm with the Legal Division. Commissioner Hill asked if it would fall within the Commission’s waiver process. Chair Judd-Stein stated that the Commission could waive regional allocations, in theory.

b. [Member Reappointment Request for Gaming Policy Advisory Committee Community Mitigation Subcommittee](#) (1:39:10)

Moving onto the next segment, Chief Delaney requested the reappointment of Richard Sullivan for the Regional Economic Development Representative for Region B’s Local Community Mitigation Advisory Committee. The Memorandum supporting the appointment was included in the Commissioner’s Packet on pages 29 through 30.

Commissioner Hill moved that the Commission reappoint Richard Sullivan as the Region B Regional Economic Development Representative to the Local Community Mitigation Advisory Committee for an additional one-year term. 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.*

6. [Sports Wagering License Evaluation Process Discussion](#) (2:02:35)

- a. Draft 205 CMR 218: General Sports Wagering Application Requirements, Standards, and Procedures; and Small Business Impact Statement (“SBIS”)

General Counsel Grossman presented a draft version of 205 CMR 218, which set out the application process for a sports wagering operator’s license. He stated that the regulation was designed with both flexibility and discretion in mind, to ensure the best possible process. A draft of 205 CMR 218 and accompanying SBIS was included in the Commissioner’s Packet on pages 31 through 51.

Chair Judd-Stein asked her fellow Commissioners had a consensus as to whether Executive Director Wells could conduct consultation meetings with the applicants. Commissioners reached a unanimous consensus in favor of the Executive Director going forward with the consultation meetings. Commissioner Skinner asked if any public comments had been received for the draft of 205 CMR 218. General Counsel Grossman stated that no comments had been received.

General Counsel Grossman then explain that language within the regulation allowed the Commission to have discretion to adjust the submission deadline for any of the three categories. Chair Judd-Stein noted that an application for a new license to operate a racetrack was currently being considered, and that this language would allow for the Commission's discretion regarding that applicant's deadline, should a racing license ultimately be awarded. Commissioner Skinner suggested the language could also be utilized if there was a gap in the time required for the IEB's scoping work and the deadline of November 21, 2022. General Counsel Grossman agreed, stating that the regulation was designed to afford flexibility in the situations that may arise.

Executive Director Wells suggested edits to the draft regulation to clarify that the MJPHD does not have the same deadline as the rest of the application. Attorney Mina Makarious from Anderson and Krieger explained that the Commission was within its power to change the deadline whether or not further clarifications were made but agreed that the suggested edits should occur for transparency.

Chair Judd-Stein inquired if an extension in time for the MJPHD would be communicated to the applicants. Director Lillios confirmed that the deadlines would be communicated to potential applicants prior to scoping, and that initial written communications to applicants will confirm the November 21 deadline for the BED form.

Commissioner O'Brien asked if the regulation made clear that the continuation of the deadline was within the Commission's discretion. Mr. Makarious stated that changes to 205 CMR 218.04 allowed for additional information to be submitted at the Commission's discretion. Chair Judd-Stein asked if it was realistic to designate individual and entity qualifiers at the same time. Director Lillios replied that it was attainable.

Executive Director Wells stated that administrative completeness checks were also a concern due to the timeline and the number of scoping surveys received. She stated that if an applicant did not submit the application materials properly, and the Commission gave the applicant a chance to remedy the deficiency, it could impact the timeline. Director Lillios confirmed, stating that administrative completeness reviews were an integral part of the submission process, and that applications were not transferred to the IEB until the Licensing Division had performed their review. She noted that applications were only sent back if they had a meaningful deficiency.

Commissioner Skinner stated that she was not in favor of deducting points or rejecting applications for not being administratively complete if the applications did not receive the benefit of a regular administrative completeness review.

Executive Director Wells noted that the 205 CMR 218 allowed the Executive Director discretion in allowing the applicants to cure deficiencies prior to the deadline. Commissioner O'Brien stated that discretion shouldn't be required prior to the deadline for an applicant to correct a deficiency. Commissioner O'Brien explained that the Commission also needed to define "extraordinary circumstances," which were required to request an extension of the application deadline.

Executive Director Wells noted her concerns about the Commission's capacity to get back to applicants about deficiencies in their applications in an efficient manner. Chair Judd-Stein added that there was not a deadline on reviewing identified qualifiers, however.

Commissioner O'Brien shared that details such as this were among her concerns with the aggressive timeline. She further inquired if more specific processes could be added to the regulations to be fundamentally fair to both the applicant, and the Commission's timeline. Director Lillios stated that she was confident that scoping could be performed in a concentrated period of time to minimize the timespan when applicants learn designations of qualifiers.

Commissioner Skinner noted that the Commission was tasked with initializing sports wagering but was not required by the Legislature to do it by the Superbowl or March Madness. Chair Judd-Stein stated that the Commission had reached a decision on the timeline. Commissioner O'Brien stated that the last amendment to the timeline was based upon the number of applications received, however, the Commission had received more than the anticipated number of applicants. Chair Judd-Stein requested that Commissioners discuss the current agenda item and return to discussion of the timeline later on in the agenda.

Commissioner Maynard asked if there could be a truncated administrative completeness review, with the normal process taking place later. Commissioner O'Brien suggested having the Commission check the applications for administrative completeness. General Counsel Grossman stated that if administrative completeness were not required, the applications could move ahead for evaluation. He expressed concerns about inequity in giving an applicant time to cure an application deficiency, as it was time not afforded to all applicants. He stated that the administrative completeness review was a gatekeeping function, designed to ensure all materials and information were included. He summated by saying that there were legal risks associated with of not completing an administrative completeness review.

Mr. Makarios stated that the RFA2 process allowed a prescribed number of days for the applicants to cure deficiencies in their application once they received a notice of deficiency. Director Lillios noted that she would be uncomfortable asking staff to review applications with the discretion of deciding what answers were relevant. Commissioner O'Brien suggested marking fields as "required," which would render the application deficient if certain areas were not filled. Chair Judd-Stein asked whether an applicant who omitted critical information should be allowed to advance.

Executive Director Wells stated that there were two competing interests for an administrative completeness, to knock out applications that weren't complete, or to give the applicants the opportunity to cure defects. Chief Financial and Accounting Officer ("CFAO") Derek Lennon stated that for bids, the deadline set by the Commission is final; especially on the competitive side. He suggested against editing to ensure equal footing amongst applicants, stating that allowing supplemental information was essentially changing the submitted application and increasing risk. Chair Judd-Stein echoed CFAO Lennon's sentiments.

Commissioner Skinner stated that safeguards to prevent unintentional human error should also be considered. Commissioner O'Brien expressed concern that if the Commission did not agree on



what was required to deem the application “complete, that there could be an argument of disparate treatment. Mr. Makarios stated that the administrative completeness review was not intended for the staff to make judgement calls, but to simply ensure the application was fully completed. He stated that if a review occurs, it should not be done by the Commission. Director Lillios stated that missing questions in the application could affect the IEB’s ability to investigate the entity, however.

Commissioner O’Brien stated that some questions on the application had to be answered for the application to proceed and suggested flagging the bare minimum questions required of applicants. Commissioner Hill voiced his agreement with CFAO Lennon’s approach, but expressed his concern that smaller entities might not have sufficient staff to thoroughly review their materials prior to submission. He inquired if it was too late in the timeline to mark fields as required for the application to move forward.

General Counsel Grossman reported that it would be exceedingly difficult to draw a distinction regarding which field of the application was required or preferred by the Commission and stated that each question was included within because it was seeking materially important information. Director Lillios agreed, stating that the suitability forms had been vetted for years, and that everything in the form was necessary to perform a suitability review.

Mr. Makarios agreed that it would be difficult to discern what was required from what was preferred, and unwise to try to distinguish questions on the suitability forms. He stated that the casino gaming regulations allowed for a timeline where the applicant had seven days after receiving a notice of deficiency to cure the issue. He noted that in the present instance, the timeline may be impacted if applicants were given time to cure deficiencies.

Commissioner O’Brien noted that deficiencies in the application may be cured prior to the deadline. Executive Director Wells added that time may become an issue if Commission staff were inundated in the days leading up to the deadline. General Counsel Grossman explained that the process may differ by each category of applicant.

Chair Judd-Stein posed that the untethered category three applicants may be the most difficult to manage, given the sheer number of applicants, and suggested hiring additional assistance for the review process. She asked if the applications could be given to the Commissioners contemporaneously during the administrative review, while the Commission awaited further information to cure deficiencies. General Counsel Grossman stated it was possible for the Commission to receive the application at that time.

Executive Director Wells stated that frequently items are missing, or pages are not initialed and that it may take a while to finish the administrative completeness review, and that more resources would help. She noted that the IEB cannot compile their reports without correctly completed forms.

CFAO Lennon posed that supplemental information should not better the application, but clarify existing information related to the entity’s suitability; and that the competitive process should be graded upon the information in the application. Commissioner Maynard stated his hope that the

discussion from this meeting served a public service announcement about the importance of ensuring the applications include all necessary information. Chair Judd-Stein stated that the applicant may not be disqualified but could receive a lesser evaluation if information was missing. She stated that the regulation allowed for the Commission to receive supplemental information, but that the Commission would be careful not to be unfair.

Chair Judd-Stein explained that the application consisted of four parts: the BED, MJPHD, Massachusetts supplemental forms, and the evaluative application. She noted that the evaluation application was not a form the IEB was familiar with, but that the IEB had used the BED and MJPHD previously. She suggested that IEB should not have to perform an administrative completeness review for the evaluative application, and recommended adopting CFAO Lennon's suggestions.

Director Lillios stated that it would be helpful for the Licensing team to remove the evaluative application from the administrative completeness review. She stated that IEB should review the BED, MJPHD, and Massachusetts Supplement forms, as she was uncomfortable with licensed Operators being able to commence without IEB's ability to engage in a full suitability review.

Chair Judd-Stein asked if the review could occur simultaneously with the Commission's evaluation process. Executive Director Wells stated that it would be dependent upon the number of applications received, which would not be known until application fees were submitted.

Executive Director Wells asked if the Commission would issue licenses once the applicant pool was narrowed down to seven entities or would make a preliminary finding with later licensing. Commissioner O'Brien stated that as written, the regulation does not differentiate the application section, and requested that the regulation be changed to allow the IEB to continue administrative review for the portions of the application they were familiar with.

Executive Director Wells stated that the application was due on November 21, 2022. She stated that the Commission would receive the general application, while the IEB and Licensing Division would review the BED, Massachusetts Supplement and MJPHD when they are received and review them for administrative completeness. Commissioner O'Brien suggested that language be added to the regulation clarifying that the evaluative application itself would not be reviewed for administrative completeness. Chair Judd-Stein agreed that the regulation needed to be rewritten and asked the Legal Division to provide edits consistent with the discussion.

Executive Director Wells stated that if there were deficiencies in the documents submitted to the IEB, the entity would be sent a deficiency letter and would have a set period of time to cure the deficiencies. She continued that if the deficiency was not cured within the allotted time of thirty days, the application would not move forward. The Commissioners expressed a unanimous consensus in support of this method of curing deficiencies. Executive Director Wells stated that the number of applicants may be an issue as the current timeline would work if only ten to twelve applicants applied.

Chair Judd-Stein asked if the Commissioners could review applications as they were received, rather than waiting until the due date. General Counsel Grossman stated that the IEB could

commence review once the applications were received and that he did not believe there was an issue with the Commission beginning to review as applications are received. He noted that the Commission should not deliberate or score in any way until all applications were before the Commission.

Commissioner Skinner asked why the Commission could view the applications as they were received but could not do the scoping surveys on a rolling basis. Chair Judd-Stein clarified that the scoping documents were for the IEB's review and investigations, not the Commission.

General Counsel Grossman stated that in the absence of an administrative completeness review, there was no harm in reviewing applications on a rolling basis as long as they were not substantively evaluated or scored. Commissioner O'Brien recalled that in the procurement process, the staff doesn't look at applications until the deadline had passed, and inquired whether there was a distinction. General Counsel Grossman stated he was not an expert in procurement, but that the concern was regarding potential bias against future applicants by beginning the review too early.

Chair Judd-Stein suggested that the IEB could begin reviewing on a rolling basis, but that the Commission would not need to. Commissioner Skinner expressed concerns that the potential number of applicants might be overwhelming, and the Commission could use the jumpstart to meet the timeline. Chair Judd-Stein stated she was confident the Commission could put in that work.

Commissioner O'Brien stated that she was aware rolling basis review was frowned upon in procurement, but she would utilize rolling basis review if it was permitted. General Counsel Grossman stated that the regulatory language is not affect it, but that the Commission could address rolling basis review at a later point in order to discuss the risks at more length. The Commission expressed unanimous consensus that the general application would be subject to the Commission's review instead of undergoing an administrative completeness review by the IEB. Commissioner O'Brien stated that she wanted to normal process to be followed by the IEB for suitability.

Commissioner O'Brien suggested striking the language allowing the Executive Director discretion in the curing of deficiencies prior to the application deadline. Chair Judd-Stein asked if the Commission was comfortable allowing thirty days for the applicants to cure deficiencies once notified. Executive Director Wells stated that the period could also be lowered to fourteen days. She suggested language regarding the deficiency notice letter be added to the regulation, and that if the deficiency was not cured, the Commission has the right to deny the application.

Director Lillios stated that fourteen days was reasonable to cure deficiencies. Commissioner O'Brien suggested moving the language related to extending the deadline due to extraordinary circumstances to a more suitable section. Commissioner Skinner asked when the fourteen-day window to cure a deficiency would begin. Director Lillios stated that the time began once the letter of deficiency was received. Commissioner Skinner asked if the deficiency letters would be sent on a rolling basis. Director Lillios confirmed that the letters would go out as the applications were received.

Commissioner Skinner sought clarification regarding the term “merits of the request,” and asked what “the request” referred to. General Counsel Grossman clarified that it was the request for a license and stated that the language can be changed to refer to the application, if desired by the Commissioners. Commissioner O’Brien suggested that it be clarified to include “timely filed”.

Chair Judd-Stein inquired whether the Commission would want to reserve the right for discretion to request supplemental information prior to the evaluation hearing. CFAO Lennon stated that the RFA2 process allowed the Commission to request clarifying information, but not supplemental information, as supplemental information effectively changed the application.

Commissioner Hill sought clarification on what clarifying information included. CFAO Lennon stated that it could include distinctions between how many employees are full time versus part time. He stated that requests for clarifying information were often used in procurement, and that the Commission should weigh the risks of allowing supplemental information with the Legal division. Commissioner Hill stated he would be hesitant to use the tool to request supplemental information, but he liked the discretion of having it available.

Chair Judd-Stein asked if clarifying questions could be asked to a single applicant, or if they would be asked to all applicants. CFAO Lennon explained that clarifying questions could be focused on one applicant, but that they could be posted to the Commission website in case other applicants wanted to provide the same information. He warned against receiving answers verbally, suggesting the Commission should receive the answers in email form and post them in a public place.

Commissioner O’Brien suggested edits to clarify the language regarding designees. General Counsel Grossman stated that he wanted to ensure the evaluative decision was not based on the contents of specific applications or number of applications, and that no decision should be made until all applications had been reviewed. Mr. Makarios stated that the Commission was allowed to draw distinctions between the applications, but that the Commission must hold on making a decision until all applications had been reviewed.

General Counsel Grossman noted that regulations regarding the operations certificate were being drafted. He noted that getting a license did not allow the applicant to formally launch their operations but made them eligible to pursue an operations certificate.

Mr. Makarios stated that the language was added to the regulation pursuant to section six of the Chapter 23N regarding temporary licensing. Executive Director Wells sought clarification that the temporary licensing fee of \$1 million would be collected at the time of temporary licensure, but not the full \$5 million until full suitability had been completed. Mr. Makarios stated that was correct, and that the concept was also reflected in 205 CMR 214 and 205 CMR 221, which the Legal Division anticipated presenting to Commissioners in the following week.

Commissioner O’Brien asked if the language in the regulation limited the temporary licenses to no more than seven untethered category three applicants. General Counsel Grossman confirmed and stated that the temporary licenses would be granted to those selected in the competitive

process. He stated that once the Commission awarded a positive determination of suitability, the temporary licensee could pay the additional \$4 million licensing fee and receive their full license.

Commissioner O'Brien asked if the temporary license would expire when the permanent license was granted. Mr. Makarios explained that the temporary license would expire as included in 205 CMR 219, which would be presented to the Commissioners in the coming weeks. Chair Judd-Stein asked if the Commission would collect the full \$5 million from applicants if the temporary licensing process was not required. General Counsel Grossman explained that if temporary licensure was not included in General Law Chapter 23N, the Commission would likely award conditional licenses on the conditions of receiving the \$5 million license fee, and after a positive suitability finding. He noted however that because that temporary licensure was in the statute, it did need to be recognized by the Commission and incorporated into the regulatory framework.

Chair Judd-Stein asked what would occur if the Commission granted less than seven licenses for untethered category three applicants. General Counsel Grossman stated that the statute's language stated up to seven licenses could be awarded but did not mandate that seven licenses must be issued. Mr. Makarios added that a new deadline could be made for the remaining spots temporary licensure, and that the regulations could be amended for the Commission to decide if they wanted provisional licenses.

Chair Judd-Stein inquired whether the language should clarify that applicants could not begin operating until an operations certificate was granted even if they had been awarded a license. General Counsel Grossman stated that a cross-reference could be incorporated to recognize that the operations certificate process within another regulation must be satisfied prior to commencement of operations. Attorney Paul Kominers from Anderson and Krieger stated that 205 CMR 251 referenced the process regarding the operations certificates. Mr. Makarios stated that the operations certificate requirement was cross-referenced in 205 CMR 218.7(b), but that it could be included in the prior subsection of the regulation as well.

Chair Judd-Stein thanks parties for their work on the regulation and the discussion. She then summated the discussion by listing the edits that needed to occur on the regulation including: extracting the general application from the administrative completeness review; allowing the IEB to perform the administrative completeness review on the BED, Massachusetts Supplement, and MJPMD forms; the process and time period to cure deficiencies; allowing the Commission to receive the applications; and considering the Commission's ability to review the applications on a rolling basis. General Counsel Grossman confirmed these changes and noted that the Legal Division team would update the draft and present the new regulation at the meeting in the following week.

## 7. [Other Business](#) (6:09:41)

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

Commissioner O'Brien moved to adjourn. 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.*

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

1. Notice of Meeting and Agenda dated October 17, 2022
2. [Commissioner's Packet](#) from the October 20, 2022, meeting (posted on massgaming.com)