



Massachusetts Gaming Commission Meeting Minutes

Date/Time: October 27, 2022, 10:00 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 112 793 9916

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](#) (00:03)

Chair Judd-Stein called to order the 399th Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. [Approval of the Meeting Minutes](#) (00:31)

a. March 14, 2022

Commissioner Hill moved that the Commission approve the public meeting minutes from the March 14, 2022, April 28, 2022, and July 12, 2022, that were included in the Commissioner's Packet subject to any necessary corrections for typographical errors or other non-material matters.

Commissioner O'Brien offered a friendly amendment to the motion; noting that there were different quorums for each set of minutes and there would need to be separate votes. Commissioner Skinner stated that she would have to abstain from the April 28, 2022, minutes as she was not present for the entirety of the meeting. Chair Judd-Stein stated that Commissioner

Skinner could vote to approve the minutes to the extent she was present and presided over the meeting.

Commissioner Hill then moved that the Commission approve the minutes from the March 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. The motion was seconded by Commissioner O'Brien.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Abstain.

Commissioner Maynard: Abstain.

Chair Judd-Stein: Aye.

The motion passed unanimously, 3-0 with two abstentions.

b. [April 28, 2022](#) (3:32)

Commissioner Hill moved that the Commission approve the minutes from the April 28, 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.

Chair Judd-Stein suggested an edit to the minutes to remedy an error in transcription. Commissioner Hill noted that the edit had been made but was not reflected in the version included in the packet.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye, for so much of the meeting as she was present.

Commissioner Maynard: Abstain.

Chair Judd-Stein: Aye.

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

c. [July 12, 2022](#) (7:41)

Commissioner Hill moved that the Commission approve the minutes from the July 12, 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 Skinner.

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](#) (8:25)

Executive Director Karen Wells reported that the Charles River Media Group had been hired to ensure that the Audio - Visual streaming equipment in the public meeting room was functional and adequate. She stated that once the streaming equipment was operational, the Commission staff could meet in the meeting room and invite outside stakeholders to join. She stated that virtual participation would still be available, but those joining remotely would only be present for their particular section of the meeting.

Commissioner O'Brien inquired about the limitations on non-Commission participants. Executive Director Wells stated that the Commission has a limited number of laptops for the specific purpose of streaming, and that Commission staff has priority. Chief of the Communications Division, Thomas Mills, stated that the cameras would connect to the production system rather than personal laptops. Executive Director Wells stated that as long as the open meeting law remains the same, the Commission could continue to use virtual meetings. Chief Mills stated that hybrid meetings were an option for the Commission as well but cautioned that they were not ideal.

a. [Casino Update](#) (14:08)

Executive Director Wells introduced Bruce Band, Assistant Director of the IEB and Gaming Agents Divisions Chief. Assistant Director Band stated that MGM Springfield ("MGM") was holding job fairs, replacing slot machines, and converting the slot machines in the poker room to poker slots. He stated that Plainridge Park Casino ("PPC") had a drawing on October 29th with prizes and contests for the public. He concluded by stating that Encore Boston Harbor ("EBH") had filmed the New England Sports Network's *Ultimate Betting Show* at the WynnBet sports bar.

Chair Judd-Stein stated that it was a big deal for MGM to replace all of its slot machines. Assistant Director Band stated that it was significant, but not uncommon as newer slot machines would likely attract customers.

b. [MGC Covid Policy Update](#) (16:09)

Human Resources Manager Trupti Banda explained that in early 2022, the Center for Disease Control ("CDC") reduced the number of quarantine days from ten to five within their Covid-19 Guidelines. At that time, the Commission undertook a conservative approach, and maintained the ten-day quarantine requirement. She stated that all employees and guests were required to be vaccinated, and that the Commission developed a reliable reporting system to ensure employee safety and proper notifications. She stated that the Commission was now looking to adopt the CDC Covid-19 Guidelines; which required a five-day quarantine and an additional five days of mask-wearing in the office, with a high-quality mask.

Chair Judd-Stein expressed support for aligning with the CDC Guidelines. Commissioner O'Brien noted that when the CDC first amended the Covid Guidelines, the Commission was conflicted due to staffing challenges, and stated that she was now more comfortable with the CDC Guidelines than when the issue arose previously.

Commissioner Skinner inquired whether the revised Covid-19 measures should also consider revisiting the vaccination requirement to keep it in line with CDC Guidelines. Executive Director Wells stated that the Commission had adopted all of the CDC Guidelines with the exception of the quarantine requirement, and that this change would bring the Commission fully in line with the CDC's Covid-19 Guidelines.

With that, Commissioner Maynard moved that the Commission adopt the CDC's COVID-19 Guidelines with respect to isolation, and precautions for people with COVID-19, and further moved that the Commission rescind any portion or portions of its existing COVID-19 policy that conflicted with the CDC's COVID-19 Guidelines with respect to isolation and precautions for people with COVID-19.

Commissioner O'Brien offered a friendly amendment to include language for those with "known exposure to COVID-19 in addition to those with COVID-19". Commissioner Maynard accepted the amendment.

Chair Judd-Stein offered an amendment to include language to identify that the Commission would adopt the CDC's overall guidelines with respect to isolation and precautionary measures. Commissioner Maynard accepted the amendment. Commissioner O'Brien seconded the motion as amended.

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. [Sire Stakes Finals Update](#) (28:49)

Executive Director Wells introduced the Director of Racing and Chief Veterinarian, Dr. Alex Lightbown.

Dr. Lightbown reported that the Sire Stakes Finals was the largest single-day purse in Massachusetts for horseracing. She explained that, with the help of PPC, one hundred horses' temperatures were scanned to ensure the health of horses prior to racing, given the heat. She stated that among the eight full field races and different divisions, there were winners among 16 owners, 8 trainers, 6 breeders, and 5 different drivers. She stated that the finals day had a

million-dollar purse, with \$125,000 awarded per race. She thanked the participants, PPC and the Standardbred Owners of Massachusetts for their cooperation.

4. [Sports Wagering Process Updates](#) (32:39)

a. Sports Wagering Studies Update

Executive Director Wells introduced Mark Vander Linden, Director of Research and Responsible Gaming. Director Vander Linden stated that General Law Chapter 23N, the Act Regulating Sports Wagering, extended the Commission's commitment to gaming research. He stated that the Commission was directed to develop an annual research agenda to understand the social and economic effects of sports wagering in Massachusetts, and obtain information relative to neuroscience, psychology, sociology, epidemiology, and etiology of gambling. He stated the G.L. Chapter 23N directed the sports wagering agenda to perform: an assessment of problem sports wagering and whether it co-occurs with problem gambling; an assessment of whether individuals participating in sports wagering are different from those participating in other forms of gaming or gambling; and an assessment of the impact of sports wagering on youth under the age of 25.

Director Vander Linden stated that this section of the sports wagering research agenda had yet to be fully adopted, but that the Research and Responsible Gaming Division had just finished data collection for the follow-up general population study that would provide a baseline understanding for the launch of sports wagering. He noted that the final report on the follow-up general population study was anticipated to be presented in Spring 2023.

Director Vander Linden stated that two studies were set to begin immediately. He explained that G.L. Chapter 23N, § 20 required a study examining the feasibility of allowing retail locations in the Commonwealth to operate sports wagering kiosks. He stated that the scoping document for this study was being developed and that research consultants were actively being recruited.

Director Vander Linden stated that per the Treasurer of the Commonwealth Deborah Goldberg's request during the September 8, 2022, public meeting, the study would consider the impacts of Sports Wagering on the lottery, as retail locations would offer lottery products in addition to sports wagering kiosks. He stated that the scoping document would inform the development of the competitive RFR, with an anticipated release in December.

Commissioner Skinner stated that Treasurer Goldberg's request went beyond what was noted in the memo in the Commissioner's Packet, and that her office also requested to participate in the preparation of the study. Director Vander Linden confirmed that his Division intended to include the Treasurer's Office in drafting the RFR for the study.

Commissioner Hill inquired how the Division would be interacting with retail operations and restaurant owners who wished to be involved in the study, as he had received calls from interested parties. Director Vander Linden explained that their involvement was considered in the scoping document, which discussed the methods that could be approached.

Director Vander Linden explained that a second study was required by G.L. c. 23N, § 25. He stated that the research study was required to study the participation of minority-owned business enterprises (“MBEs”), women-owned business enterprises (“WBEs”), and veteran-owned business enterprises (“VBEs”) in the sports wagering industry in the Commonwealth. He stated that the scoping document was being developed and that the study would include the assistance of two research consultants. He explained that because the study required the sports wagering industry to be active in the state, he would not recommend the RFR be released until later in 2023, or a date determined by the Commission.

Commissioner Maynard stated that it was important for the representatives in the research discussions to include MBEs, WBEs, and VBEs. Chair Judd-Stein stated that whoever was completing the study should be diverse as well and represent the interested parties. Director Vander Linden stated that while developing the competitive RFR, he would emphasize the importance of the diversity aspect.

Chair Judd-Stein stated that while the study would not take place until sports wagering was live, the Sports Wagering Operator application process included a separate section on diversity, and she welcomed innovation in finding diversity, including joint ventures. Chief People and Diversity Officer David Muldrew stated that he could meet with the Research and Responsible Gaming Division to be involved from a DEI standpoint.

Chair Judd-Stein inquired how the research team would follow up on sports wagering in respect to social and economic impacts. Director Vander Linden stated that the language in G.L. c. 23N, § 23 largely followed the process the Commission currently utilized within G.L. c. 23K, §71. He stated that he could consider advancing the community engaged research agenda and incorporate sports wagering into that line of research.

Director Vander Linden continued and stated that baseline data would be collected upfront to determine who was engaged in sports wagering and their ages. He noted that an area of research the Commission wasn’t currently working on was underage participants in sports wagering and the effects of that behavior. Commissioner O’Brien stated that she was glad to hear underage participants were being considered for a study and requested if that the study could consider daily fantasy sports wagering behavior, as the market doesn’t separate behaviors in the same way the statutes governing sports wagering and daily fantasy sports do.

Director Vander Linden noted that G.L. c. 23N, § 23 called for the assessment of whether those participating in sports wagering were different than those who participate in other forms of gambling, and that daily fantasy sports and wagering could be examined within that assessment.

b. [Public Comments Regarding Sports Wagering Application](#) (55:39)

Executive Director Wells presented public comments on the sports wagering application developed by the Commission, from FanDuel and Penn Entertainment. She stated that Commission staff met internally on this issue and provided recommendations to address the comments. The *Public Comments Regarding the Sports Wagering Application* were included in the Commissioner’s Packet on pages 37 through 67.

Referring to FanDuel's comments regarding public records disclosures, General Counsel Todd Grossman stated that 23N provided that all applications for operator licenses are public records, but that trade secrets and competitively sensitive or other proprietary information provided in the course of an application for operator's license, the disclosure of which -would cause the applicant to be at a competitive disadvantage-, may be withheld from disclosure.

Chair Judd-Stein noted that this exception only applied during the course of the application process. She noted that it would be hard for the Commission to guess what the applicant's trade secrets were at the outset, and that the Commission could request a redacted application from applicants.

General Counsel Grossman noted there were three options. The first option was that the Commission could determine what materials were exempt, but it would take a long time. The second option was for the applicants to flag and redact the parts of their submission they believed met the statutory exemption or any other exemption to the public records law. He stated that the third option was used in the RFA2 process, where the Commission determined which questions in the application presumptively called for the submission of information or documentation that would be exempt from the public records law.

Commissioner Maynard asked if there would be a legal review of the redacted material in the second option. General Counsel Grossman confirmed and stated that option two would still take some time reviewing the proposed redacted sections of the documents, but any information not flagged and redacted could presumptively be released.

Chair Judd-Stein noted that the balancing was not just of the time and privacy concerns, but also the transparency with public records requestors' access to materials. Executive Director Wells suggested the Commission adopt option two and stated that she would meet with potential applicants to communicate the expectations that there would only be good faith redactions appropriate under the public records law. Commissioner O'Brien suggested that the discussion be streamed for transparency.

Commissioner Skinner inquired if the redaction would occur when the Commission received a public records request. Executive Director Wells stated that applicants would submit a redacted application and their legal reasoning behind each redaction. General Counsel Grossman added that the Commission had already received a public records request for the scoping surveys.

Executive Director Wells stated that as public records requests were expected, the Commission could post the redacted applications on the website. Chair Judd-Stein agreed and added that the Secretary of the Commonwealth urges agencies to put frequently requested records online. The Commission reached unanimous consensus to adopt option two and have the applicants submit a redacted application, and then post redacted applications online for transparency.

Executive Director Wells stated that FanDuel commented that the Legislature did not identify economic developments or community engagement as considerations for licensure, and FanDuel

suggested striking that portion of the application. Commissioner Hill noted that the Commission discussed these issues at length and felt strongly about including these issues in the application. Commissioners O'Brien and Skinner voiced their agreement on this point as well.

Executive Director Wells reported that FanDuel commented that the requirements for the financial security and integrity section of the application were additional burdens. She stated that the Chief of Financial Investigations went through the requirements and found them to be necessary.

Executive Director Wells stated that the last two brief comments from FanDuel were regarding clarification of application requirements. She stated that section B(4) was examining readiness; or how ready the applicant was to move forward, and that a comment clarifying the question would be posted to the Commission website. She stated that section G(3) wanted a general summary of the applicants' experience with internal controls such as an audit committee; if minutes were maintained; and if there were any external controls over finances.

Director of the Investigations and Enforcement Bureau ("IEB") Loretta Lillios stated that companies of this nature are likely to have dealt with financial reporting and corporate governance, and that the application required summary information on the compliance structure, audit structure, and governance structure. Chair Judd-Stein asked if the application would need to be amended. Executive Director Wells stated that the application would not need to be amended, but a clarification of these questions could be posted on the Commission website.

Chair Judd-Stein asked if the Commission staff could begin consultation meetings with the applicants to clarify these questions. General Counsel Grossman stated that 205 CMR 218.00 allowed consultation meetings to give applicants guidance on application procedures. Commissioner O'Brien recommended that beginning the consultation meetings should wait until 205 CMR 218.00 was discussed later in the agenda.

Executive Director Wells stated that Penn Entertainment, LLC's ("PENN") comments were predominantly clarifications that would not require changes to the application. She stated that PENN recommended the addition of language to address that applicants have an additional 30 days to provide information requested by the Commission. She noted that the additional 30 days were handled by regulation, and no change was necessary to the application.

Executive Director Wells reported to the public and for potential applicants listening that the format of the electronic application should be a signed document, submitted in a searchable pdf format. She noted that PENN had asked about submitting a redacted table of calculations, which should be fine, given that the Commission had opined on having the applicant submit a redacted application. She added that PENN asked if parent company applicants could cross-reference each other's applications and stated that if the applicant believed information that pertained to their parent company, they should include it in their own application.

Executive Director Wells explained that with respect to B(3) of the application, the Commission was looking for an overview summary of the entities' operations, including who they are connected with and if there is current affiliation or integration with other sports wagering

operators. She noted that PENN’s question regarding B(4) was addressed during FanDuel’s comments, and that it would be posted on the Commission website. She clarified that section C(1) of the application was asking about job creation and the benefits to the Commonwealth.

Executive Director Wells stated that the Commission staff met internally and did not find that the effort to maximize revenue to the Commonwealth needed the qualifier of being in good faith, as it was self-explanatory. She stated that applicants could include information about spending outside of Massachusetts in their diversity, equity and inclusion responses, and stated she was unsure if additional language was needed. Chief Financial and Accounting Officer (“CFAO”) Lennon stated that information regarding diversity was not limited to Massachusetts, and could reflect the applicant’s commitment on a national level.

Executive Director Wells noted that some questions within the application may not apply to each category of operator, and they could respond “not applicable” if they do not have an answer. She clarified that the IEB would subsequently inform applicants of whom would be considered a qualifier.

Director Lillios stated that the IEB would not ask for a new submission of the multi-jurisdictional personal history disclosure form (“MJPHD”) if the applicants submitted the same information for another form of licensure.

Executive Director Wells stated that she would post clarifying responses to the Commission website and put out a request for redacted applications to address the public records request concerns.

c. [Divisional Updates](#) (1:33:00)

Director Vander Linden reported that the Research and Responsible Gaming Division was working on moving forward with studies and working with Gaming Laboratories International (“GLI”) on integrating responsible gaming measures into draft regulations.

Director Lillios reported that the IEB had received 24 online operator scoping survey responses and stated that the Licensing Division had reviewed each response. She stated that individuals and entities had been identified as qualifiers, and that the Licensing Division would send designation letters to each operator with the identified qualifiers by email the following day.

Director Lillios stated that entity qualifiers required the business entity disclosure form (“BED”), and individual qualifiers required the MJPHD and Massachusetts Supplemental form. She noted that certification regarding suitability would be codified in regulations later in the agenda, and that those who qualified as institutional investors could request a waiver from the Commission. She noted that applicants could submit BED and MJPHD forms they submitted in other jurisdictions within the past year.

Director Lillios stated that the designation email would have clarification on two BED questions; and instructions on how to submit the forms as one packet. She noted that the email would provide instructions on fingerprint cards where required, and information about where to submit

the non-refundable \$200,000.00 fee before the November 21, 2022, deadline. She invited the applicants to submit their applications earlier if possible and requested that the potential operators identify vendors they required to “go live” or launch their operations.

Director Lillios noted that the three casinos had already submitted their vendor lists, and that once the Licensing Division received the list of vendors, they would contact the applicants with instructions and details for the vendor licensing process. She noted that the regulation regarding vendors was promulgated by emergency, filed with the Secretary of the Commonwealth, and that it accommodated the launch dates anticipated by the Commission.

Executive Director Wells asked if the applicants were informed in writing about submitting the BED and MJPHD from other jurisdictions. Director Lillios stated she would review the communication and include the language if it was not already there.

General Counsel Grossman stated that the Legal Division continued to work on the sports wagering framework, and that today’s agenda included regulations regarding and application and evaluation process for the sports wagering applicants. He stated that regulations regarding technology standards would be presented shortly, and that the Legal Division was on schedule.

Executive Director Wells stated that Chief Information Officer Katrina Jagroop-Gomes was unavailable but would provide an update at the next meeting.

CFAO Lennon reported that three regulations were being considered to govern and implement the collection of assessments and fees by the Commission. He added that the Financial Division was working on setting up appropriations, revenue sources, and bank accounts that would be needed once the process was approved.

5. [Legal Division: Regulations](#) (1:58:49)

Deputy General Counsel Carrie Torrisi introduced attorneys Mina Makarious and Paul Kominers from Anderson and Krieger. Commissioner Skinner inquired whether the overview could discuss the substantive differences between the casino gaming regulations and the sports wagering regulations. Mr. Makarious stated that the overview would cover the differences, as the overall framework of the regulations was designed to mirror the RFA2 process within the gaming regulations.

Mr. Makarious noted that the suitability process for sports wagering was folded into the determination process rather than being a stand-alone process, which was a distinction due to the different timeline for sports wagering versus gaming. Chair Judd-Stein noted that suitability was a required first step under G.L. Chapter 23K.

Mr. Makarious stated that 205 CMR 212, 214, 215, and 218 were similar in their processes to the casino gaming regulations. He noted that 205 CMR 219 had no analog in the gaming regulations, as it was a requirement of Section 6 of the sports wagering act to provide for provisional licensure pending the completion of the remainder of the suitability review. He noted that 205 CMR 220, regarding the conditions of licensure, distinguished itself from 205 CMR 120, as

many conditions in the casino gaming context came from external processes such as Host-Community Agreements, impacted live entertainment venues, and the MEPA process. He stated that the key condition in 205 CMR 220 was that licensure does not permit operations until an operator's certificate was awarded. He stated that the operations certificate regulation is still being developed and was proposed to be 205 CMR 251.

Mr. Makarios stated that 205 CMR 221 largely mirrored 205 CMR 121. He noted that the statutory fees are \$1,000,000 for temporary licensure and \$5,000,000 for full licensure, and that 205 CMR 221 details how the fees are to be paid.

a. [Sports Wagering Operator Licensing Framework](#) (2:12:02)

i. 205 CMR 212: Additional Information Requested of Applicants and Continuing Duty for initial review, and possible emergency adoption

The *draft of 205 CMR 212* was included in the Commissioner's Packet on pages 71 through 73.

Mr. Makarios stated that 205 CMR 212 mirrored 205 CMR 112, and stated the requirements of applicants, licensees, and qualifiers to cooperate and provide additional information to the Commission, putting them on notice that the Commission may request that of them during the evaluation process.

Commissioner O'Brien inquired whether the regulation referred to business days or calendar days. General Counsel Grossman stated that if the number of days was over seven, it is calendar days, and business days if it was under seven.

Commissioner Skinner asked if language should specify for-cause terminations in paragraph 5(i). Director Lillios stated that the IEB wanted to know about all separation from qualifiers and employees, not just those for cause. She stated that language regarding for-cause terminations would be a follow-up question asked of applicants.

Commissioner Skinner asked why the fine listed in 5(k) began at \$250,000. Director Lillios stated that it was consistent with the gaming regulations, and that the number may be significant with SEC reporting as well.

ii. [205 CMR 214](#): Application and Investigation Fees for initial review and possible emergency adoption (2:21:58)

The *draft of 205 CMR 214* was included in the Commissioner's Packet on pages 74 through 75.

Mr. Makarios stated that 205 CMR 214 outlined the process for receiving application fees and additional fees for investigations. He noted that the Sports Wagering Control Fund was established in G.L. Chapter 23N, § 15. He stated that portions of the legislation contained a typographical error that mistakenly referred to as 'Section 14'. He stated that the method of establishing costs was the same as listed within 205 CMR 114.

iii. [205 CMR 215](#): Suitability Determinations, Standards, and Procedures for initial review and possible emergency adoption (2:24:37)

The *draft of 205 CMR 215* was included in the Commissioner's Packet on pages 81 through 86.

Mr. Kominers explained that 205 CMR 215 was related to suitability determinations and the determination of qualifiers. He explained that the language was tweaked to account for items in G.L. Chapter 23K, that were not present in G.L. Chapter 23N.

Executive Director Wells suggested adding clarifying language to 205 CMR 215 to address the preliminary nature of the suitability. Mr. Kominers noted that the only other cross-reference to this section was a provision providing for the award of a temporary license, but that he would include 'preliminary' where relevant. Commissioner O'Brien agreed and stated that she believed the inclusion would assist in clarifying the regulation.

Commissioner O'Brien expressed concern that a "catch-all" approach with respect to findings of suitability similar to G.L. Chapter 23K was not present; and stated she wanted to ensure statutory provisions for G.L. Chapter 23K were not lost in the sports wagering regulations. Mr. Kominers stated that considerations under G.L. Chapter 23N § 6(e) as well as 23K, were not excluded from the Commission's considerations. Commissioner O'Brien stated that she would like to have the language included for clarity.

Commissioner Skinner asked if the references to 205 CMR 115.04 and 205 CMR 115.05 were intentional. Mr. Kominers explained that the regulations referenced were for the process of suitability determination in the gaming context, and the suitability determination process for sports wagering context should be consistent. Mr. Makarious stated that when developing the regulation, they wanted the process to be consistent without creating a new process altogether.

Chair Judd-Stein stated that the majority of suitability determinations would occur in public meeting, but she wanted the option to discuss sensitive topics in private, as she did not want the forum to hinder the Commission's ability to ask critically important questions. General Counsel Grossman stated that the Commission should be clear as to the process regarding suitability and whether the Commission envisioned the suitability review would be conducted during an adjudicatory proceeding or not. Chair Judd-Stein stated that the Commission had discussed doing the suitability review during an adjudicatory proceeding to keep it streamlined.

General Counsel Grossman stated that the adjudicatory proceeding on suitability would have to occur prior to reviewing the application, or the review would have to be paused while the suitability process occurred. He stated that it was important to recognize that there were two separate proceedings: an adjudicatory proceeding for suitability; and the proceeding in the public meeting reviewing the applications.

Chair Judd-Stein stated that a full suitability report would not be available at that point from the IEB. Director Lillios stated that a preliminary report on suitability would be available

summarizing self-disclosed areas on the application, and an open-source check into the applicant and qualifiers.

Commissioner O'Brien raised as a possibility the concern that the applicants may feel uncomfortable answering certain questions arising from public comment. Mr. Kominers stated that the regulation sets out what the Commission may act upon to have a preliminary finding of suitability, and it did not exclude the IEB from reporting to the Commission, or the Commission taking account or notice of information arising from other channels. He stated that if a question arises from public comment, the Commission could request additional information.

Chair Judd-Stein voiced concern that there could be confusion if the Commission did not delineate the two suitability processes. Mr. Makarios stated that part of the reason for including flexibility was because category 1 applicants had already been found suitable for gaming, and he was unsure the Commission would want to subject them to an additional adjudicatory proceeding. He stated that the processes could be split into temporary suitability and durable suitability, with the caveat that temporary suitability may not be a separate process.

Chair Judd-Stein stated that the Commission could only look at materials applicants submitted during the evaluative process. General Counsel Grossman stated that applicants do not have constitutional rights attached at the point of preliminary suitability, as it was an initial finding of suitability, and they are not entitled to an adjudicatory proceeding at that instance.

Commissioner Skinner asked what the Commission reviewed during the preliminary suitability evaluation. General Counsel Grossman answered that the Commission would review attestations, the IEB report, and publicly available information.

Commissioner Skinner asked if sensitive information was revealed during the process that would require an adjudicative hearing and an executive session, did language have to exist to allow for it in the temporary suitability process. Chair Judd-Stein answered that full suitability had constitutional stakes, but that preliminary suitability did not, and that the public meeting for temporary suitability did not have a method to enter an executive session.

General Counsel Grossman stated one executive session provision may apply, related to discussing one's reputation, but explained that the party would have to be present with counsel with restrictions on what could be discussed. Mr. Makarios then added that the language for full suitability referred back to the casino gaming regulations.

Chair Judd-Stein stated that the IEB could submit concerning information to the Commission for use on a comparative basis, but there would not be a finding of suitability at that time. Commissioner Skinner stated that the Commission might want to question the applicant on information discovered by the IEB, but had concerns about discussing sensitive information in a public form. General Counsel Grossman shared that the casinos had sensitive and uncomfortable information discussed in public during their evaluation process.

Mr. Makarios stated that applicants may be found not suitable upfront if there were false attestations or certifications found within their materials. Chair Judd-Stein asked if they would be

considered disqualified. Director Lillios stated that lack of truthfulness was an automatic disqualifier and was usually discovered in an independent verification process. Executive Director Wells stated that the Commission could return to discussing the issues in this subsection and review the remaining regulations on the meeting's agenda.

Mr. Kominers presented 205 CMR 215, Section 2. Chair Judd-Stein noted that the language in G.L. Chapter 23N was slightly different in regard to institutional investors. Director Lillios stated that under G.L. Chapter 23K institutional investors could not be waived if they controlled over fifteen percent of the entity, but that provision was not in G.L. Chapter 23N. She stated that the IEB maintained the fifteen percent threshold, but that the applicant has the ability to seek a waiver as an institutional investor. Mr. Kominers stated that those determined to be qualifiers, who believed they should not be, may appeal to the Commission.

iv. [205 CMR 219](#) - Temporary Licensing Procedures for initial review and possible emergency adoption (4:08:14)

The *draft of 205 CMR 219* was included in the Commissioner's Packet on pages 87 through 88.

Mr. Kominers stated that the regulation was designed to track the specific process set out in the sports wagering act for the issuance of temporary licenses. He stated that the subparagraphs cross-referenced to section 205 CMR 218 where the Commission could find the applicant preliminarily suitable or durably suitable.

Commissioner Skinner asked if the requirement that an applicant also obtain an operations certificate should be included in this regulation. Executive Director Wells stated that the untethered category three mobile sports wagering operators would be preliminarily picked; reducing the field down to up to seven operators. From there, the IEB would investigate individual qualifiers, and GLI would check their internal controls, house rules and other processes for the operations certificate.

Commissioner Skinner asked why that process wasn't embedded into the regulations presented. General Counsel Grossman stated that the technical standards and house rules subject to the operations certificate had not been developed yet. He stated that once the Commission made a licensing decision, if full suitability had not been completed, they will not receive a full operator's license, but would be eligible to request a temporary license by following the steps in this regulation.

Commissioner Skinner asked when the companion regulations would be presented, and asked if the vote on this regulation should be held until those regulations are received. General Counsel Grossman stated that administratively it made sense to move on the whole package of regulations presented in this meeting to the extent the Commission was comfortable. Mr. Kominers stated that the companion regulations would be presented soon.

Commissioner Skinner inquired whether the Commission could vote on each regulation separately to vote on the regulations that did not need additional information. General Counsel

Grossman stated that the Commission could approve them separately, but it was helpful to file all of the regulations together at the same time with the Secretary of the Commonwealth.

Mr. Makarios stated that drafting the operations certificate was not cumbersome as it would follow the process in 205 CMR 151, but that the Commission would have to ensure applicants knew what the application process entailed if they chose to wait until the operations certificate regulation to vote. Commissioner Skinner stated that she did not want to hold a vote on the entire regulation package, but she wanted to see the certificate of operations process before voting on 205 CMR 219.

Chair Judd-Stein noted that several regulations interact with each other. Commissioner O'Brien expressed that she shared Commissioner Skinner's hesitations, and asked if the operational regulations were still scheduled for internal review for the current week. She stated that if there was only a week's wait, the regulations could still be batched together.

Chair Judd-Stein asked if Commissioners could clarify if something was wrong with the regulation as written. Commissioner O'Brien stated that she had two concerns, that it wasn't explicitly made clear in the four-corners of the regulation that the operations certificate was required, and the terms of details regarding the operations certificate requirement regulations. Commissioner Skinner stated that she was comfortable with 205 CMR 219, but that she wanted to view it in conjunction with the regulation that would govern the operation certificate process.

Chair Judd-Stein agreed that language could be added to address the certificate of operations requirement. Mr. Kominers stated that the language existed in 205 CMR 218. Commissioner O'Brien stated that the language did not specifically say 'operations certificate,' but that it was broad enough to assume the operations certificate was included. Mr. Kominers stated that the regulation was drafted more expansively to not have any inadvertent exclusions. General Counsel Grossman stated that ideally, it would include specific regulations, but the regulation could not be filed with the Secretary's office with a cite to a regulation that did not yet exist.

Chair Judd-Stein inquired whether certificate of operations would be defined in the definitions regulation. Mr. Kominers stated that he would want further time to consider whether the operations certificate was considered a condition or independent requirement. He stated that he was confident there could be a way to incorporate it into this regulation but had to think about the overall structure of the regulations. He suggested moving to 205 CMR 220, and assessing the Commission's comfort after that discussion.

v. [205 CMR 220](#) - License Conditions for initial review and possible emergency adoption (4:30:44)

The *draft of 205 CMR 220* was included in the Commissioner's Packet on page 89.

Mr. Kominers explained that there were conditions placed on all licenses, that the operator must comply with all terms and conditions of the license, operations certificate, G.L. Chapter 23N, all rules and regulations of the Commission, and maintain suitability.

Commissioner O'Brien expressed discomfort with the five-year term of the temporary license. Deputy General Counsel Caitlin Monahan stated that the five-year period was in case of an unprecedented situation occurring during suitability evaluations. Commissioner O'Brien stated that five years seemed long. Director Lillios shared that the temporary license for primary vendors was three years.

Commissioner O'Brien stated she would want the Commission to receive an update prior to five years. Commissioner Skinner agreed with Commissioner O'Brien. Chair Judd-Stein asked if there was a way to address this concern, and give the Commission discretion.

Mr. Kominers stated that the Commission receives information from the IEB past the issuance of a temporary license, and stated that he was inclined to include the requirement in operational regulations rather than license issuance as it is an issue regarding existing operators.

Chair Judd-Stein stated that she thought the temporary license was only for one year under the statute. Commissioner Maynard stated that there should be a deadline for when full suitability should be complete as the temporary license was tied to suitability in the statute. Director Lillios stated she wanted to be cautious if there was an investigative issue that required more work such as interviews or subpoenas. She stated updates could be given to the Commission in a way to preserve impartiality.

Commissioner Maynard stated that there should be a target date with regular updates to the Commission. Commissioner O'Brien expressed an interest in a two and a half year to three-year range with language included for extensions to up to five years, provided that the IEB provides limited information updates. Director Lillios proposed a three-year range. Mr. Makarios stated that the regulation had a five-year range to prevent applicants from seeking a longer temporary licensing period.

Commissioner Skinner inquired whether G.L. Chapter 23N had language that would prevent the Commission from attaching conditions to the extension of a temporary license, such as the payment of additional fees. Mr. Makarios responded that some conditions could be imposed, but assigning a financial value to the temporary process would foreseeably be challenged. He stated that conditions could limit a full operator's license until further suitability was conducted.

Commissioner O'Brien stated that ideally, the temporary license would be annual, but the breadth of work conducted by IEB would make that unrealistic. She stated that she liked the three-year period, and would want updates during that time. Commissioner Hill stated that he would like a three-year range as well. Commissioner Maynard stated he would defer to Director Lillios, and that he was most comfortable with a shorter temporary process.

Commissioner O'Brien suggested that the temporary license be for no greater than three years unless the IEB returns to the Commission with grounds for continuance, and that the continuance not extend past five years. The Commission reached a unanimous consensus on a three-year temporary license.

vi. [205 CMR 221](#) - Licensing Fees for initial review and possible emergency

adoption (4:53:50)

The *draft of 205 CMR 221* was included in the Commissioner's Packet on pages 90 through 92.

Mr. Makarios explained that 205 CMR 221 regarded fees; requiring \$1,000,000 for temporary licenses and \$5,000,000 for full licenses. He explained that the payment of the licensing fee was upon award of the license, and that the \$1,000,000 fee was credited towards the \$5,000,000 payment. He stated that the process ensured the regulatory costs of the Commission were covered.

CFAO Lennon stated that the process followed the statute and referenced the budgetary process from 205 CMR 121. He stated that operators were required to contribute to the Public Health Trust Fund, with the exception of category one operators as they were already required to pay \$5,000,000 to the Public Health Trust Fund. Chair Judd-Stein asked if the contributions to the Public Health Trust Fund were prorated. CFAO Lennon stated that it was prorated to the operator's share of gross sports wagering receipts, based on anticipated gross sports wagering receipts as included in the application.

b. [Revisions to Sports Wagering License Evaluation](#) (4:58:19)

i. Draft 205 CMR 218: General Sports Wagering Application Requirements, Standards, and Procedures; and small business impact statement

General Counsel Grossman presented the amendments to the draft of 205 CMR 218 incorporating the Commission's comments from the previous week. The *amended draft 205 CMR 218 and small business impact statement* were included in the Commissioner's Packet on pages 105 through 120.

Executive Director Wells asked if the applicant could petition the Commission if they missed the deadline. General Counsel Grossman stated that it was discussed in 205 CMR 218.02(1)(a) and could be further clarified if the Commission wanted broader discretion to accept an application that was late and did not meet the listed requirements.

Commissioner Skinner asked about the rationale for substituting sufficiency for completeness. General Counsel Grossman stated that completeness suggested there would be a very thorough review, where the review is just high level to ensure everything is present. Mr. Kominers stated that the review was to ensure portions of the application were sufficient for the IEB to perform its job. Commissioner O'Brien stated that the shift to sufficient was to make the regulation more clear.

Chair Judd-Stein asked if the attorneys from Anderson and Krieger thought the amount of discretion afforded to the Commission in subsection six was acceptable. Mr. Kominers stated that there was a great deal of discretion embedded in that subsection. General Counsel Grossman clarified that there were not any adjustments to that subsection from the prior draft.

Chair Judd-Stein clarified that the Commission did not have to find any applicant unsuitable at this juncture of the application process and could deny the application. Mr. Kominers agreed and stated that many grounds for a finding of unsuitability were also grounds to deny a license.

Chair Judd-Stein stated that the first set of regulations should be presented once revisions had been made, but asked to vote on 205 CMR 218 to prevent a delay. General Counsel Grossman stated that a vote could be taken, and the regulation could wait to be filed with the Secretary of the Commonwealth with the rest of the regulations in the following week.

Chair Judd-Stein asked if waiting to file the regulation would affect the filing process. Deputy General Counsel Torrasi stated that delaying filing 205 CMR 218 would be ideal as it cross-cites the other regulations considered at this meeting and they would need to be filed together. Commissioner Skinner stated she would prefer to vote on all of the regulations at the same time.

Commissioner O'Brien asked if the Commission could vote on the small business impact statement and language discussed in this meeting, and include a motion for the emergency promulgation in the following week while approving the other regulations. Deputy General Counsel Torrasi explained that emergency regulations go into effect upon filing, and not when they are voted on. She added that the regulations could be voted on without filing, and then filed when the full set of regulations was voted on.

Commissioner O'Brien moved that the Commission approve the small business impact statement as well as the draft of 205 CMR 218, the *General Sports Wagering Application Requirements Standards and Procedures* as discussed and further edited 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.

Commissioner O'Brien moved that the Commission authorize staff to take the steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency and thereafter begin the regulation promulgation process; and further that staff be authorized to modify chapter or section number or titles to file additional regulation sections as reserved or make any other administrative changes as necessary to execute 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.

Deputy General Counsel Torrisi explained that the Secretary of the Commonwealth's office stated that when the Commission files emergency regulations, if the intervening regulations had not yet been allocated, they would be published as reserved sections. Commissioner O'Brien asked when the reserved pages would expire. Deputy General Counsel Torrisi stated that it would be ninety days from the date of the emergency filing. Commissioner O'Brien asked if the emergency regulations were queued for public comment for the permanent process. Deputy General Counsel Torrisi stated that as soon as the emergency filing occurs, the Legal Division begins the permanent promulgation process, and uploads the regulation to the MGC website where the public can comment until the regulation is finalized.

Transcriber's note: Chair Judd-Stein stated that the remaining regulations under agenda item 5(c) would need to be discussed in a future meeting due to time constraints.

6. [Commissioner Updates](#) (5:42:59)

a. Discussion on Request from DraftKings for Reconsideration of Commission Vote on Staggered launch

Chair Judd-Stein stated that a letter was received from DraftKings, LLC requesting that the Commission reconsider its vote to allow Category 1 retail sports wagering operators to launch at the end of January prior to the Category 3 mobile sports wagering operators' launch in March. She stated that at the round table meeting of potential sports wagering operators on September 22, 2022, the online operators did not object to a staggered launch, provided that all online operators launched on the same day, with DraftKings being the only party that voiced objection. Chair Judd-Stein noted that Executive Director Wells and the Legal Division reviewed the request and believed that there had been no change in facts or circumstances since the Commission's vote.

Commissioner Hill expressed that he did not believe the launch dates had to be revisited. He noted that eighty percent of betting in other jurisdictions was done by mobile betting, and he did not agree that a staggered launch would provide an advantage to retail sports wagering operators based upon reports from other jurisdictions. Commissioner O'Brien agreed and stated that procedurally there were no new considerations or corrections of the record to warrant a new discussion. She stated that motions to reconsider were typically based off new information or a change in circumstances. Commissioner Skinner and Commissioner Hill agreed with Commissioner O'Brien's sentiments.

Commissioner Maynard expressed concern about potential equity issues if information could be gathered at a sports wagering kiosk by category one operators, and distributed to their tethered category three mobile operators to create an advantage. He stated that discussing the issue further could change the timelines and create problems for the March launch date, and that he wanted to stick to the staggered launch timeline the Commission had voted on.

The Commission reached a consensus to rely on the previous vote and not revisit the issue of a staggered sports wagering launch.

b. [Sports Wagering Evaluation Project Manager Update](#) (5:51:37)

CFAO Lennon stated that on October 24th, the Commission assembled a procurement team to draft a request for quotes for a statewide contract for project management consultant services. He listed the key items intended to be used in the quote including timeline, scope of work, procurement evaluation criteria, procurement questions, and vendor skills

Chair Judd-Stein stated that the attorneys from Anderson and Krieger had cautioned the Commission on using the word ‘scoring,’ and suggested that the term ‘assessment,’ be used instead. CFAO Lennon stated that the concern had been considered and the language in the request for quotation may have that language.

Commissioner O’Brien asked if there were concerns about Commission missing anything due to the truncated procurement process. CFAO Lennon stated that it was off of a statewide contract list, and the vendors on the list were in-depth. He stated that smaller vendors may be precluded due to not having the resources, however. Commissioner O’Brien asked if the smaller vendors could partner together and submit a bid. CFAO Lennon stated that if a vendor did not meet the requirements, they could partner with other vendors.

7. [Community Affairs](#) (6:05:29)

a. MGM Springfield (“MGM”) Quarterly Reports - Q2 and Q3

Joe Delaney, Chief of the Community Affairs Division introduced Vice President and Legal Counsel from MGM Augustine “Gus” Kim. Mr. Kim presented the MGM quarterly reports for Q2 and Q3 with topics including gaming revenue and taxes; lottery sales; diversity spend; local spend; compliance; employment numbers; community outreach; internal and external development; and entertainment. The *MGM Q2 and Q3 Reports* were included in the Commissioner’s Packet on pages 161 through 189.

Commissioner O’Brien inquired whether MGM had identified its vulnerability with the issue of minors accessing the game floor. Mr. Kim stated that the main issue was the floor plan, as there were multiple sources of entry available, and it was difficult to police every entry point. He stated that the open floorplan was constructed to be a family friendly venue. He confirmed that MGM was working with the IEB to minimize the issue. Commissioner O’Brien expressed an interest in getting an update on efforts to secure the floor from minors prior to the next quarterly update. Mr. Kim agreed.

Chair Judd-Stein noted to her fellow Commissioners that MGM had previously been fined for this issue, and that she wanted to hear from IEB about the coordination with MGM and possible solutions to address the issue as well. Chair Judd-Stein inquired how MGM would address youth

entering with cellphones and potentially placing sports wagering bets at kiosks. Mr. Kim stated that MGM would develop a plan to address that concern, and that MGM was still working on procedures and methodologies to prevent youth wagering.

Chair Judd-Stein asked about MGM's hiring initiatives. Mr. Kim stated that MGM had a diverse community they engaged with and was exploring different avenues for hiring. MGM's Director of Compliance Dan Miller stated that MGM hosted weekly hiring events in their hotel lobby, and job fairs. Commissioners thanked MGM representatives for their presentation.

8. [Other Business](#) (6:27:19)

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 20, 2022
2. [Commissioner's Packet](#) from the October 27, 2022, meeting (posted on massgaming.com)