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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** December 6, 2022, 10:00 a.m.  
**Place:** Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE: 112 251 8495

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

### **Commissioners Present:**

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

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

Chair Judd-Stein called to order the 406<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 began the meeting by stating that the Commission's principal responsibility in reviewing the sports wagering applications was to ensure the integrity of the gaming industry in Massachusetts. She stated that the Commission would maintain strict oversight of gaming establishments and sports wagering operators. She highlighted that awarding a sports wagering license was a privilege and that operators would be held to the highest standards of compliance on a continuing basis. She stated that the Commission's mission permits the creation of a fair, transparent process that engendered the confidence of the public and maximized the benefits to the Commonwealth. She then briefly explained the agenda for this public meeting.

#### 2. [Legal Framework Relative to the Award of a Sports Wagering License](#) (06:03)

General Counsel Todd Grossman stated that this meeting was the Commission's opportunity to evaluate the application for a category one sports wagering license submitted by Plainville

Gaming Redevelopment, LLC, (d/b/a Plainridge Park Casino) (“PPC”). He explained that under G.L. Chapter 23N, § 6(b)(1), the Commission shall issue a category one sports wagering license to any holder of a gaming license under G.L. Chapter 23K, provided that any holder of a category one sports wagering license shall not receive a category two sports wagering license.

General Counsel Grossman stated that PPC held a gaming license under G.L. Chapter 23K. He stated that category one sports wagering license was defined in G.L. Chapter 23N, § 3 as a license issued by the Commission that permits in-person sports wagering at a gaming establishment; and not more than two individually branded mobile applications or digital platforms approved by the Commission. He stated that entities operating mobile platforms would be required to have a category three sports wagering license.

General Counsel Grossman stated that 205 CMR 218 set out the application requirements, standards, and procedures. He stated that the Commission had convened a meeting to receive public feedback on the category one applications on December 5, 2022. He explained that the regulation set out factors and considerations for the Commission to analyze in the evaluation process, but that the regulations did not set out a particular order to review factors nor did the regulation assign particular weight to the factors. He stated that the Commission may require that the applicant provide additional information or documents that the Commission deemed appropriate.

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

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

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

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

205 CMR 220. General Counsel Grossman noted that an operator would also require an operations certificate before they could commence sports wagering operations.

Chair Judd-Stein sought further clarification regarding the description of suitability. General Counsel Grossman explained that category one applicants who hold gaming licenses had already submitted themselves to comprehensive background investigations and were deemed suitable under the gaming regulations. He stated that based upon this fact, the Commission may find that the applicant was suitable under G.L. Chapter 23N and award a durable finding of suitability. He stated that in contrast, the Commission could impose a preliminary finding of suitability which affords the IEB time to conduct a comprehensive background check of the applicants. He stated that a finding of preliminary suitability would allow a temporary sports wagering license to be awarded, and that a full investigation would follow.

### 3. Presentation of Application for Category 1 Sports Wagering Operator License Submitted by PPC in Accordance with 205 CMR 218.06(3) (28:39)

PPC's General Manager North Grounsell explained that PPC was part of Penn Entertainment ("Penn"). He stated that Penn had forty-three properties across twenty states and operated twenty-five retail sportsbooks. He added that Penn offered online sports wagering in fifteen jurisdictions, and that PPC had experience and expertise at a local level and across the company.

Mr. Grounsell stated that as of December 21, 2021, Penn had twenty-four retail sports wagering locations in ten states that had produced a handle of \$775 million and \$85 million in gross gaming revenue. He stated that PPC's estimates regarding the potential handle in Massachusetts were included in the unredacted version of the application.

Mr. Grounsell explained that if sports wagering was approved at PPC, PPC would then contract with Penn Sports Interactive ("PSI"), a wholly owned subsidiary of Penn Interactive and its parent company Penn. He stated that PSI would provide some key services, but that PPC would be operating the sportsbook.

Mr. Grounsell explained that PPC would initially open a temporary sportsbook near the Revolution Lounge with five tellers and eighteen kiosks. He noted that all kiosks would be located on the gaming floor and not in the horseracing area. He stated that Flutie's Sports Bar would soon be converted to a Barstool-branded sportsbook and restaurant. He added that this area was beyond the security podiums; and would require all patrons to be over the age of twenty-one to enter.

Mr. Grounsell stated that the sportsbook's marketing would be integrated with Penn's MyChoice loyalty program. He stated that there would be approximately ten-to-fifteen employees for the sportsbook and thirty-seven-to-forty-five employees in the restaurant area. He noted that staff would be added in proportion to business volume.

Mr. Grounsell stated that PPC planned to offer wagering on an estimated 5,000 wager markets and incorporate more than 1,000 domestic and international sports leagues across forty-five

sports. He stated that PPC had a history of commitment to responsible gaming and that PPC continued to implement the Commission-approved responsible gaming programs and support local GameSense advisors. He noted that PPC had an “exclude one, exclude all” policy, where any patron excluded from one of Penn’s properties would be excluded from all of Penn’s properties. He stated that Penn’s exclusion policy did not differentiate between types of gaming.

Mr. Grounsell stated that responsible gaming committees existed at both corporate and property levels. He stated that employees were trained regarding responsible gaming and regularly received refresher training. He stated that PPC offered self-exclusion, financial restrictions, and limitations setting in both their retail and online settings. He stated that PPC would continue to use responsible gaming language and follow the American Gaming Association’s (“AGA”) code of conduct for responsible gaming.

Mr. Grounsell stated that all newly hired team members receive an orientation that covers the company’s history, background, and values and includes training in guest services, work policies, and department specific training. He stated that PPC had an emerging leaders’ program for team members interested in pursuing management opportunities, and that PPC participated in job fairs.

Mr. Grounsell explained that PPC had diversity employment goals of 15% diverse employees, 2% veteran employees, 50% women employees, and 35% local employees. He stated that PPC currently had 24% diverse employees, 5% veteran employees, 43% women employees and 35% local employees. He stated that the percentage of women team members was likely to increase with the opening of the sports bar. He noted that the diversity levels in management also exceeded these goals. He stated that Penn had exceeded its supplier diversity goals with spending on 12% women-owned business enterprises, 8% minority-owned business enterprises, and 9% veteran-owned business-enterprises

Mr. Grounsell stated that Penn was committed to DEI and had an annual diversity scholarship fund with forty-seven recipients. He stated that in 2021 and 2022, Penn was ranked first on the Forbes list of “America’s Best Employers for Diversity”. He reported that Penn had implemented corporate policies, such as the supplier diversity initiative, to make DEI a priority. He noted that Penn also had the small business incubator program that onboarded minority businesses and assisted them in growing from local suppliers to national suppliers.

Mr. Grounsell explained that Penn’s lease adjusted net debt leverage was well below industry standard. He stated that Penn had \$2.6 billion in liquidity as of its most recently reported period. He explained that historically, Penn performed better than the Las Vegas Strip following the 2008 downturn in the economy. He stated that PPC had appreciated its relationship with the Commission, the Commonwealth, and the local and surrounding communities for the past seven years.

#### [4. Presentations and Analysis Relevant to Review and Evaluation of Application for Category 1 Sports Wagering Operator License \(1:14:24\)](#)

a. Technical Components

Chair Judd-Stein provided an initial overview of GLI. She explained that GLI was the first company to develop and set gaming technical standards, which are now considered an industry benchmark. She stated that GLI continued to innovate standards; and that regulators relied upon these standards to preserve the integrity of the industry. She introduced GLI's Senior Vice President of Government Relations, Kevin Mullally and GLI's Director of Client Solutions, Joe Bunevith.

Mr. Mullally stated that the Massachusetts technology framework was consistent with other strictly regulated sports wagering jurisdictions. He stated that GLI-33 was modified to align with Massachusetts statutes and regulatory structures. He explained that the framework was augmented by operational risk control requirements that included change control regulations and boundaries for guidance with regard to internal control standards.

Mr. Mullally stated that sports wagering was more dynamic than retail gaming operations. He stated that initial testing and certification was just the beginning, and that operators would be required to have continued cooperation with regulators to manage these systems. He encouraged the Commission to continue engagement with the Regulators Network Securities Task Force.

GLI's Director of Client Solutions, Joe Bunevith, explained that before the test lab could make submittals, the Commission would need to approve 205 CMR 138, 205 CMR 238, 205 CMR 247, and 205 CMR 248. He noted that those regulations were scheduled for a vote in the following week. He stated that after those regulations were approved, the operators would submit the code for their sports wagering system and hardware to GLI for testing. He explained that the code would be tested in a locked-down environment to verify compliance with regulations and GLI standards and Massachusetts specific requirements. He remarked that additional testing would take place at the retail point-of-sale and that these tests would take two to three days. He concluded by stating that GLI would also review operators' internal controls and procedures.

b. [Report on Suitability of the Applicant](#) (1:25:50)

Chief Enforcement Counsel Heather Hall explained that when evaluating PPC's suitability for a sports wagering license, the Commission could utilize information obtained from suitability investigations related to G.L. Chapter 23K. She stated that in 2013, the Commission found PPC and its then Qualifiers suitable in connection with its application for a gaming license under G.L. Chapter 23K. She stated that new qualifiers who joined the company also submitted to those same background check requirements. She explained that the applicant, PPC, had remained in good standing with its ongoing suitability requirements.

c. [Financial and Economic Impact Analysis](#) (1:29:20)

Partner from RSM US, LLP, ("RSM") Greg Naviloff, stated that RSM had reviewed sections of the application pertaining to finance. He introduced Jeff Katz, RSM's Strategic Finance Practice

Leader, Theresa Merlino, RSM's National Gaming and Hospitality Leader, and Connor Loughlin, RSM's Director of Financial Consulting.

Ms. Merlino stated that RSM's presentation was based upon documentation received as of December 2, 2022. She noted that the presentation was subject to change if new information became available. She reported that PPC provided retail market share for other jurisdictions, but did not include an estimated market share for PPC. She stated that external research was used to understand the Massachusetts sportsbook market size in order to understand PPC's assumptions. Mr. Katz stated that RSM had extrapolated a low end and high end for market share based on its analysis. He stated that based upon the historical breakdown between retail and online sports wagering in other jurisdictions, PPC's forecast was within the range of the third-party research relied upon by RSM. He stated that PPC's estimated hold percentage and estimated gross gaming revenue ranges were within the range of reasonableness.

Ms. Merlino stated that the estimated projections by PPC appeared to be in alignment with the industry overall; and those assumptions seemed to be based on performance in other jurisdictions. She stated that non-gaming revenue projections were included in the application, but the calculations as to how those numbers were reached were not included in the application. She stated that it may be beneficial for the Commission to understand how non-gaming revenue projections compared to historical performance of the sports bar in this space.

Ms. Merlino stated that there had been issues in the industry with combining databases from traditional loyalty programs and sportsbook loyalty. She stated that the Commission may want to know PPC's intended approach to linking the existing loyalty program with the planned sportsbook platform as noted in the application.

Ms. Merlino stated that the proposed construction timeline was comparable with other remodel projects and was consistent with the industry standard. She stated that there was not a significant risk of supply chain issues.

Mr. Loughlin stated that as of September 30, 2022, Penn had a debt balance of \$13 billion. He stated that Penn historically and currently maintained ample capital and liquidity to support operations. He stated that Penn maintained an average total liquidity position of \$2 billion. He stated that as of September 30, 2022, Penn had \$2.7 billion in total available liquidity, with \$1.7 billion in cash on hand, and \$1 billion in availability under its current credit facility.

#### [5. Review and Evaluation of Application for Category 1 Sports Wagering Operator License Submitted by PPC in Accordance with 205 CMR 218.00 including, but not Limited to Consideration of the Following Criteria](#) (2:04:41)

Chair Judd-Stein then asked General Counsel Grossman to advise the Commission in navigating the review of facts in regard to the redacted copies of the application. General Counsel Grossman explained that a redacted version of the sports wagering application was posted to the Commission's website. He stated that this was done for the purpose of transparency regarding a topic of public interest. He stated that the Commission had asked the applicants to redact their

applications consistent with G.L. Chapter 23N, § 6(i). He stated that each applicant redacted their applications consistent with the statute and other public records law exceptions. He noted that the Commission staff did not make the redactions, and that the redacted applications were available online for public review.

Chair Judd-Stein asked how the Commission would be guided if a topic might fall within the public records law exception within G.L. Chapter 23N, § 6(i). General Counsel Grossman stated that the most efficient method would be to put the onus on the applicant to flag areas of concern to the Commission. He stated that the Commission could then pause proceedings and make a determination as to whether the information discussed would fall into the confines of a public record law exemption. He noted that there must be specificity as to what can be discussed in the executive session, and that all other topics must be discussed in a public forum.

a. [Experience and Expertise Related to Sports Wagering - 205 CMR 218.06\(5\) \(a\)](#)  
(2:10:43)

Commissioner O'Brien stated that she had no concerns regarding PPC's experience and expertise based on its application and presentation. Commissioner Hill and Commissioner Maynard agreed.

Commissioner Skinner noted that PPC's application relied heavily on the expertise of category three applicant, PSI. She asked for clarification regarding the nature of the contractual relationship between PPC and PSI. Mr. Grounsell stated that there was an intercompany agreement where PSI would provide services to PPC as a vendor. He stated that the relationship was similar to how PPC used vendors with specific expertise for building slot machines. He explained that PPC would operate the equipment, but that the PPC staff did not have the expertise to create their own hardware and would require vendor support. He stated that it was also common in sports wagering to have another party manage markets.

Commissioner Skinner asked if PSI would be operating the retail sportsbook at PPC. Mr. Grounsell explained that the team-members operating the equipment would be PPC employees, and that PSI was more akin to a vendor. Commissioner Skinner asked if PSI's involvement included marketing services. Mr. Grounsell stated that PSI would not provide marketing services. Commissioner Skinner asked who would be purchasing the equipment. Mr. Grounsell stated that PSI would provide the equipment and certain trading services, such as line setting. Commissioner Skinner noted that PSI would be new to the Massachusetts market both as a vendor collaborating with the retail sportsbook and also as a mobile operator. She asked what the Commission's obligation was with respect to reviewing PSI as a potential qualifier for PPC and noted that the current suitability finding did not touch upon PSI.

Chief Enforcement Counsel Hall stated that the IEB provided an executive summary to the Commission that had information pertaining to the suitability of PPC and its qualifiers. She stated that PPC was found suitable following a full investigation into the context of its gaming license under G.L. Chapter 23K. She stated that while PSI was tethered to PPC, PSI's suitability would be reviewed in relation to their category three sports wagering license application. She

stated that the analysis of PSI's suitability would include a report reflecting a review for preliminary suitability based upon the submissions by the applicant, its Qualifiers, and an open-source review. She noted that PSI was currently being reviewed as a category three applicant.

Commissioner Skinner asked what the Commission's responsibility was with respect to PSI as a vendor of PPC, as PSI was heavily intertwined with PPC's sports wagering endeavors. She stated that she would like further clarification regarding how to review PPC's application without having the opportunity to review PSI's application as it was related. She stated that PSI could potentially exercise control over the operation as they held the contract as the vendor. Executive Director Karen Wells stated that the Commission did not need to vote in this meeting and could receive more information when reviewing the tethered operators' applications. Mr. Grounsell noted that PSI was a wholly owned subsidiary of Penn, and that a lot of the resources PPC was relying upon were from Penn.

Commissioner O'Brien highlighted that the applications from the category one applicants did interact with the tethered operators' applications. She stated that Commissioner Skinner had a good point, and that some issues may arise due to interplay with the category three applications. Commissioner Maynard agreed and stated that he would like to get more information from PSI's presentation.

Commissioner Skinner stated that she had confidence in PPC's experience and expertise related to sports wagering. Chair Judd-Stein noted that she appreciated the consensus; and added that this topic would be revisited when additional information was provided as part of PSI's presentation.

Chair Judd-Stein noted that RSM had raised concerns regarding the integration of loyalty programs and asked for further clarification. Ms. Merlino explained that there were operational challenges as sports wagering platforms were outside of the traditional gaming IT framework, as sports wagering was more heavily software driven. She stated that in other jurisdictions, there was sometimes a disconnect with the loyalty program at the sportsbook level and retail gaming level; and that it could be difficult to merge accounts. Ms. Merlino said that the application was neutral regarding PPC's plans to integrate its loyalty program. Mr. Grounsell reported that PPC's loyalty program was already fully integrated into a single account per player. Chair Judd-Stein stated that it was helpful to know the issue was primarily an integration issue.

Chair Judd-Stein asked whether it was common for operators to cultivate their online database to have accounts set up. Mr. Bunevith stated that it was standard in the sports wagering industry to onboard customers quickly when moving into new markets. Chair Judd-Stein inquired whether operators could allow customers to set up sports wagering accounts in advance of the sports wagering framework being in place. Mr. Bunevith stated that there were no prohibitions in place to stop that.

Chair Judd-Stein asked if any regulators had precluded deposits prior to sports wagering being legal within their jurisdiction. Mr. Bunevith stated that restrictions on pre-registration were not common, but he would have to research if another jurisdiction had a regulation that would do so.



Chair Judd-Stein asked if PPC or its tethered partners had considered pre-registration. Mr. Grounsell stated that PPC had not begun pre-registration as the Commission had yet to decide whether pre-registration was allowed. Mr. Bunevith stated that operators typically used a pre-registration process when the market is not open for bets. He stated that this process signs up customers and speeds up the know-your-customer (“KYC”) process. He stated that this mostly applied to mobile operators.

Mr. Mullaly stated that pre-registration was the norm in the industry and allowed for operators to provide KYC, geolocation, and payment provider services. He added that pre-registration also provided regulatory benefits. Chair Judd-Stein stated that the Commission would provide guidance on pre-registration either through internal controls or a regulation. She stated that she had concerns about equity, and asked whether the risks were lower to the consumer with pre-registration.

Mr. Mullaly stated that allowing pre-registration at this point was low risk and would avoid bottlenecks. He stated that there was no technical reason to say yes, or no. Mr. Grounsell stated that PPC would continue to watch for the Commission’s direction regarding pre-registration. General Counsel Grossman stated that this would be a good topic to discuss as part of license conditions. He stated that there should be uniformity for all operators. Mr. Grounsell added that PPC did not offer account-based wagering at the retail level. He stated that customers could establish a loyalty account, but money could not be pre-loaded at the retail level.

Commissioner Maynard stated that when the Commission voted on not re-opening the timeline, his vote was predicated on there being a level playing field. He stated that the easiest way to set that level playing field seemed to be to allow all applicants to begin curating data. He stated that it was important to address this equity issue. Executive Director Wells stated that another prospective sports wagering licensee had inquired regarding the same issue and requested details regarding the parameters of pre-registration.

Chair Judd-Stein inquired what issues were involved with the redacted sections regarding the overview of wagering activity. Mr. Grounsell stated that there were specific details regarding the determinations of wagering volume, and that the calculations would be considered trade secrets. He stated that the information was based on other jurisdictions with similar population sizes.

Chair Judd-Stein inquired as to whether other states were launching sports wagering and extensive offering. Mr. Grounsell stated that the traditional approach was to have a larger list of offerings that are approved by the regulator. He stated that the suggested catalog was reasonable based on knowledge of certain markets and player preference.

Ms. Merlino stated that sportsbooks had reliance upon volume of wagers, and that fewer options limited the public’s interest. She stated that the public received value in having a variety of regulated games to wager on. She noted that more offerings also increased the benefit to the Commonwealth. Mr. Bunevith stated that what might seem extensive for a new jurisdiction would not be considered so expansive in a jurisdiction that had been conducting sports wagering for long periods.

The Commission reached a consensus that PPC had met the Commission's expectations in regard to this section of the application.

b. [Economic Impact and Other Benefits to The Commonwealth if Applicant is Awarded a License \(205 CMR 218.06\(5\)\(b\)\) \(2:58:35\)](#)

Commissioner O'Brien asked if the anticipated increase in employees for the sportsbook area was a net increase in jobs over pre-Covid numbers or adding to the existing job numbers. Mr. Grounsell stated that the employees at the bar would be roughly equivalent to pre-Covid numbers, but that the sportsbook employees would be a net add of ten-to-fifteen employees. He stated that during busier sports seasons, the numbers would fluctuate and there would likely be more team members.

Commissioner Skinner noted that Flutie's had been closed since Covid and asked how PPC planned to recruit for these spaces. Mr. Grounsell stated that this outlet traditionally had a higher percentage of women employees, and that most net jobs added in America over the past few months had been in the hospitality and leisure sectors. He stated that recruitment efforts would continue and that PPC made all members eligible for benefits on their first day of employment. He stated that PPC was also utilizing hiring bonuses in its recruitment initiatives.

Commissioner Hill asked if PPC would continue to work with chambers of commerce and nearby community colleges. Mr. Grounsell stated that PPC would continue these practices, and noted that the relationships with local colleges had proved fruitful in bringing in interns.

Commissioner Maynard asked if PPC was committed to ensuring that women and diverse candidates were also entering management positions, or if the new positions would be largely entry level. Mr. Grounsell stated that the largest number of new positions would be at entry level. He stated that management would continue to bring forward diverse candidates and that this was supported by the Emerging Leaders Program. Mr. Grounsell noted that PPC included its statistics regarding diversity in supervisory and above positions in its quarterly reports to the Commission. He stated that the team had not only met its diversity goals, but also exceeded them.

Commissioner Skinner inquired about the IEB's involvement in PPC's proposal to expand the gaming area. Bruce Band, Assistant Director of the IEB's Gaming Agent's Division stated that the IEB was working closely with PPC. He stated that construction had started and that PPC had been cooperative with all IEB requests. He stated that the IEB had no concerns at this time. Chair Judd-Stein asked if a request to expand the gaming area was required. Assistant Director Band stated that the gaming floor would need to be changed for the permanent sportsbook, but that it would not be required for the temporary sportsbook. Commissioner Skinner asked if Commission approval was required for the temporary space. Assistant Director Band noted that the temporary sportsbook was already on the casino floor.

Chair Judd-Stein noted that the Commission was scheduled to discuss the issue of taxation regarding promotional play on December 12, 2022. She asked if PPC's tax calculations assumed

a deduction for promotional play. Mr. Grounsell stated that PPC was aware that the Commission had yet to deliberate on this issue, but that he would prefer to discuss the calculations in the executive session. Commissioner Hill stated that it might be beneficial to hold the executive session on this topic at the December 12, 2022, meeting. He noted that it was possible all licensees would have to adjust their numbers.

Chair Judd-Stein asked if the construction of the temporary space raised any concerns for RSM. Ms. Merlino stated that there were no concerns regarding the construction, and that the only concerns were regarding supply chain concerns. She stated that based on RSM's review there did not appear to be major issues that would impact the ultimate opening.

Chair Judd-Stein asked if there were any concerns about underage individuals accessing the kiosks. Mr. Grounsell stated that the temporary sportsbook was located in an existing gaming space near the Revolution lounge which required patrons to pass a security podium to access.

Commissioner Maynard asked if erecting a temporary cage was standard, and if the IEB was comfortable with the temporary structure. Assistant Director Band stated that PPC had agreed to make whatever modifications the Commission requested to ensure the safety of the structure.

Commissioner Hill asked how sports wagering would enhance PPC's community involvement. Mr. Grounsell stated that PPC was engaged with New Hope, Boston Pearl, the Town of Plainville, the City of North Attleborough, the Attleborough YMCA, the United Regional Chamber of Commerce, and Habitat for Humanity. He stated that PPC had a commitment to continued community engagement.

Chair Judd-Stein noted that PPC had a partnership with the lottery as required by G.L. Chapter 23K. She stated her expectation that PPC would continue to collaborate for the benefit of the lottery moving forward. Commissioner Maynard asked if the existing Memorandum of Understanding ("MOU") with the lottery would be sufficient to cover sports wagering. Mr. Grounsell stated that PPC's relationship with the lottery would remain, and that sports wagering would be covered by the existing MOU

Commissioner Skinner noted that the application listed five ticket-windows in the temporary sportsbook, but only four in the permanent sportsbook. Mr. Grounsell stated that based upon Penn's experience in other jurisdictions, there was typically a surge in customers once sports wagering operations began that dwindles at the retail level when online sports wagering was launched. He stated that the reduction of ticket windows aligned with that statistic.

Commissioner Skinner noted that PPC's application stated that PPC would engage local police for periods of extraordinary volume, and asked how PPC intended to anticipate when those periods would be. Mr. Grounsell explained that PPC already engaged police for high-volume days such as the Kentucky Derby. He stated that Penn could predict what days might have increased volume based upon data from other jurisdictions. He stated that there was also increased betting volume around certain events like the Super Bowl and March Madness.

Chair Judd-Stein asked if Kambi or a PPC employee set the line for wagers. Mr. Grounsell explained that Kambi facilitates the market, but that PPC employees would make the decision whether to post certain offerings. Chair Judd-Stein stated that the Commission would learn more about Kambi's role in the technology section of the application.

Commissioner Skinner asked how responsible gaming messaging worked with respect to kiosks. Mr. Grounsell stated that he could provide a more fulsome answer to this question in executive session. Chair Judd-Stein requested that the Commission's Responsible Gaming Division also weigh in on this topic. Mark Vander Linden, Director of Research and Responsible Gaming stated that kiosks would need to have information related to GameSense and other responsible gaming tools. He stated that players gambling with a player-card should have full access to a range of limit setting options. He stated that the Commission would discuss this further in an upcoming meeting.

Chair Judd-Stein stated that she wanted to ensure that responsible gaming tools available for casino gaming would also be available for retail sports wagering. She noted that this topic could be discussed more in the executive session.

The Commission reached a consensus that PPC had met the Commission's expectations in regard to this section of the application.

c. [Applicant's Willingness to Foster Racial, Ethnic, and Gender Diversity, Equity, and Inclusion \(205 CMR 218.06\(5\)\(d\)\)](#) (4:12:50)

Commissioner O'Brien commended PPC for their DEI statistics and program that advances women into leadership roles. She then requested that PPC provide further details regarding their supplier diversity. Mr. Grounsell explained that some suppliers were not qualified spend, as they came from a sole source that could not be bid out. He stated that sports wagering spending was included in the overall spend, and that PPC's procurement team met monthly to ensure continued progress with diverse spending. He stated that PPC's numbers were good because the procurement team worked diligently to develop a diverse supplier vendor base. Mr. Grounsell stated that a lot of the spending was local, but not with towns that PPC had surrounding community agreements with. He stated that this spending wasn't designated as 'local' but was still from nearby communities in the Commonwealth. He stated that PPC planned to continue its existing procurement efforts. Commissioner Skinner commended PPC for their 13% increase in diversity spend between 2020 and 2021.

Commissioner Maynard expressed support for the LEAD program and PPC's involvement with the New Hope Program. Mr. Grounsell explained that the Women Leading at Penn Program allowed for women executives to focus on bringing more women into Penn's team. He stated that mentors were available to show that advancement was possible. Commissioner Skinner expressed her support for Penn's small business incubator program.

The Commission reached consensus that PPC had met the Commission's expectations in regard to this section of the application.

d. [Proposed Measures Related to Responsible Gaming \(205 CMR 218.06\(5\)\(c\)\)](#) (4:23:46)

Commissioner O'Brien stated that while Barstool Sports ("Barstool") was not an applicant, Penn was co-branding with Barstool since quarter three of 2021. She stated that there had recently been press coverage regarding individuals from Barstool and their advertising practices. She stated that this raised both a responsible gaming issue and a suitability issue. She stated that the sportsbook at PPC would be in a Barstool branded sports bar and expressed concern about the historical marketing associated with Barstool. She stated that there was recent coverage in the New York Times regarding Barstool's conduct, and expressed concern about potential advertising to college-aged students.

Chair Judd-Stein noted that there was a supplement to the IEB report as a result of a New York Times article related to Penn's relationship with Barstool. Chief Enforcement Counsel Hall stated that Penn disclosed to the IEB that it was aware that this article was going to be released. She noted that the article in question was published in the New York Times on November 20, 2022, and was titled "*A Risky Wager: Desperate for Growth, Aging Casino Company Embraced 'Degenerate Gambler'*". Chair Judd-Stein stated that some suitability questions may evolve based on the article.

Commissioner O'Brien stated that the article discussed an incident in 2022, where David Portnoy and other members of Barstool were discussing marketing near the University of Tennessee. She stated that the AGA's marketing guidelines stated that operators were not meant to deliberately advertise where it was reasonably expected that less than 73.6% of the target audience would be under the legal gaming age, and to not advertise on college campuses. She stated that she was concerned from the responsible gaming context that PPC would be co-branding with Barstool. She stated that she wanted to know how Penn intended to address this issue.

Penn's Chief Compliance Officer Christopher Soriano stated that responsible gaming was an evolving area being monitored by the industry. He stated that it was important to the team to ensure that Penn was in compliance. He reported that Penn would not target underage persons with marketing and that KYC programming would prevent underage persons from signing up to wager.

Mr. Soriano stated that Barstool was very active in the media space - with over 100 different channels of distribution. He stated that since Penn became affiliated with Barstool, strict guardrails had been imposed, including regular training and coordination. He noted that Barstool had prepared responsible gaming messages and weaved them organically into their content. He stated that the corporate responsible gaming committee also discussed Barstool's responsible gaming marketing. He stated that Penn worked with responsible gaming stakeholders to collaborate with experts in the industry. Erin Chamberlin, Penn's Senior Vice President of Regional Operations stated that Penn was not sponsoring any colleges or universities from a marketing perspective.

Mr. Grounsell stated that Barstool employees regularly discussed bets they lost and not just bets they had won. Ms. Chamberlin stated that responsible gaming was often reduced to boilerplate information or checking a box. She stated that one creative way Barstool addressed responsible gaming was by allowing their personalities to explain why responsible gaming was important in their own voices. She stated that this different approach resonated more with younger demographics and could be used in addition to standard industry-wide approaches.

Commissioner O'Brien noted that the Tennessee example listed in the New York Times article included co-marketing for an alcoholic drink on a college campus. She asked if there were additional facts that the Commission may find relevant about that situation.

Mr. Soriano stated that the Barstool College Football Show was produced by Barstool Media and not Barstool Sportsbook. He stated that the program was a generic college football program rather than a targeted sportsbook promotion. Commissioner O'Brien asked if this show discussed betting. Mr. Soriano stated that betting was discussed, but that it was not a sportsbook specific advertisement.

Chair Judd-Stein stated that the Commission was at a crossroads due to the timing of the New York Times article, and that the Commission had an obligation to reconcile the public information related to Barstool with what was included in the application. She stated that aside from the Barstool issue, PPC's application was commendable regarding responsible gaming.

Chair Judd-Stein stated that the AGA code of conduct requested measures to ensure that marketing reached its target audience and not underage or vulnerable populations. She stated that this was a concern because TikTok was a primary Barstool platform. She stated that the New York Times article also raised questions regarding Barstool's advertising and marketing.

Mr. Grounsell stated that the Tennessee incident did not take place on a college campus. He noted that college football games were large events that include both the student body and other spectators over the age of twenty-one. He expressed that Penn understood the Commission's concern and strived to remain transparent regarding any breaches.

Mr. Soriano added that Penn regularly communicated with its regulators, and that Penn proactively gave the information regarding Barstool to the IEB. He stated that Penn could provide additional data regarding Barstool's audience reach and metrics if that would be helpful to the Commission.

Commissioner O'Brien stated that the additional information would be helpful. She noted that she appreciated the context, but that there was still concern related to Barstool. She reiterated that Penn's application was otherwise great in relation to responsible gaming. She stated that tying the branding to Barstool was a concern, and that she would like to see the audience metrics in an executive session. Ms. Chamberlin confirmed that Penn would be able to provide data regarding its in-house advertising guidelines in an executive session.

Chair Judd-Stein stated that in Penn's annual 10K filing, it noted that Barstool may result in potential adverse reactions, negative publicity, or changes to business, regulatory, or other stakeholder relationships. She stated that none of the Commission's concerns regarding Barstool were news to Penn as they were anticipated in the 10K filing.

Chair Judd-Stein stated that while there was focus on the advertising at universities, that she was also concerned about messaging she perceived as excessive gambling. She stated that she could be convinced with data, but that there would have to be a reconciliation between the messaging and responsible gaming programs.

The Commission reached a consensus to discuss the responsible gaming impacts of PPC's relationship with Barstool in an executive session. Commissioner Hill noted that the kiosk question raised by Commissioner Skinner that pertained to underage patrons could also be discussed in the executive session.

e. [Technology that the Applicant Intends To Use \(205 CMR 218.06\(5\)\(e\)\)](#) (4:59:15)

Chair Judd-Stein noted that PPC had a national monitoring system and was using Kambi as an integrity monitor. She asked how the monitoring systems were integrated into PPC staffing. Mr. Grounsell stated that the integrity monitor would check betting patterns that might indicate that a customer was acting illegally or trying to exploit a market. He noted that he was not comfortable discussing how it was performed in public. He stated that the monitors would look for suspicious activity and coordinate with other operators. Chair Judd-Stein asked who would have the contract with Kambi. Mr. Grounsell stated that PSI would contract with Kambi and that PPC would contract with PSI.

Commissioner Maynard asked if the monitoring systems would have the infrastructure in place to prevent data breaches. Mr. Grounsell noted that retail customers would not have registered accounts, and that Kambi's integrity monitoring was not for the retail market. Commissioner Maynard stated that he would raise this question again when reviewing PSI's application.

Commissioner Skinner asked GLI for guidance on whether the applicant's answers regarding the technical components of the application were sufficient. Mr. Bunevith stated that Kambi had been certified in over twenty-five jurisdictions and provided sports wagering platforms for fifteen years in European markets. He stated that GLI regularly worked with Kambi. He stated that Kambi's systems would be thoroughly tested, but that GLI was also familiar with their system. Commissioner Skinner stated that she was comfortable with the technology section to the extent she understood it. She confirmed that she would want further detail regarding which components were relevant to retail sportsbooks as opposed to online sportsbooks.

Commissioner Maynard stated that he agreed with Commissioner Skinner and stated that it was unclear how much crossover there was between the mobile applications, sports wagering kiosks, and windows at retail locations. Mr. Grounsell explained that kiosks presented lines with underlying software within the purview of Kambi's protection service. He stated that at the

property and corporate level, Penn conducted security compliance meetings to ensure there were no data breaches.

Commissioner Skinner stated that she was struggling with PPC's reliance upon PSI's application and asked GLI to explain the difference in technology. Chair Judd-Stein asked if GLI found anything of concern in PPC's application. Mr. Bunevith stated that the application seemed fairly standard from the technical perspective. He stated that data and risk management were fed into the main sports wagering engine server, where all bets were placed. He stated that the engine server was physically located in Massachusetts to satisfy the wire act.

Mr. Bunevith explained that the primary difference between retail and mobile sports wagering was the lack of account-based wagering at the retail level. He showed a visual of the technology framework for sports wagering systems. Commissioner Skinner stated that the visual was helpful.

The Commission reached consensus that PPC had met the Commission's expectations in regard to this section of the application.

f. [Suitability of the Applicant and its Qualifiers \(205 CMR 218.06\(5\)\(f\)\)](#) (5:17:45)

Chair Judd-Stein asked if there were any further questions regarding suitability. Commissioner O'Brien noted that her concerns regarding to Barstool were both related to responsible gaming and suitability. She stated that the PPC sportsbook was going to be Barstool branded. She noted that there were concerns regarding David Portnoy as the main marketer of Barstool. She stated that this connection between PPC and Barstool merited further discussion by the Commission. Chair Judd-Stein clarified that the Commission was reviewing the suitability of qualifiers for PPC, which was why Barstool remained in the discussion.

6. [Executive Session](#) (5:40:10)

General Counsel Grossman explained that G.L. Chapter 23N, § 6(i) allowed for the Commission to meet in executive session to discuss proprietary information provided in the course of an application, the disclosure of which would place an applicant at a competitive disadvantage. He stated that the Commission would need to conclude that the information was a trade secret, competitively sensitive, or proprietary, and that it would place the applicant at a competitive disadvantage if discussed publicly. He stated that the topics must be narrowed as specifically as possible to meet the exemption.

General Counsel Grossman stated that the two topics raised for executive session discussion were advertising information relative to Barstool, and the associated data and information about responsible gaming messaging on kiosks. He explained that the data in reference to Barstool's advertising and marketing would likely meet the definition of competitively sensitive data. Mr. Grounsell stated that the demographic breakdown was a trade secret that was not publicly available. He explained that the kiosk information fell into a public records law exemption related to the safety of people and buildings.



Chair Judd-Stein asked what exemption could be used to discuss PPC’s suitability regarding their relationship with Barstool. Commissioner O’Brien stated that it would likely fall under the definition of competitively sensitive information. General Counsel Grossman explained that suitability related to Barstool was an issue separate from advertising information related to Barstool.

Chair Judd-Stein read the following in the record, “the Commission anticipated that it may meet in executive session in conjunction with its review of the application in accordance with G.L. c.30A, §21(a)(7), for purposes of compliance with G.L. c. 23N, §6(i), to specifically discuss advertising issues related to Barstool and a review of associated data, to discuss the use of kiosks related to responsible gaming, and to discuss the suitability of Barstool as these matters relate to trade secrets, competitively sensitive information, or proprietary information the discussion of which if disclosed publicly would place the applicant at a competitive disadvantage.” Commissioner O’Brien noted that the issue related to suitability was as to PPC due to their connection with Barstool.

With that, Commissioner O’Brien moved that the Commission enter executive session on the matter and for the reasons just articulated by the Chair. Commissioner Skinner seconded the motion.

*Roll call vote:*

*Commissioner O’Brien: Aye.*

*Commissioner Hill: Aye.*

*Commissioner Skinner: Aye.*

*Commissioner Maynard: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously, 5-0.*

General Counsel Grossman inquired as to whether the Commission would return to the public session of the meeting. Commissioner O’Brien stated that some of the questions posed would be answered more clearly when evaluating PSI’s application in connection with PPC’s application. She stated that it made sense to defer a determination until further discussion occurred.

The Commission reached a consensus in favor of postponing a deliberation regarding the approval or denial of the application until the review of PSI’s application on December 13, 2022.

Commissioner Maynard asked if delaying the deliberation would affect the timeline for sports wagering. Executive Director Wells stated that the operators would be able to submit their internal controls once the regulation was approved regardless of whether a vote was held. Commissioner Maynard expressed support for getting more information prior to voting.

Chair Judd-Stein stated that she could reserve the right to return to the public session of the meeting should information come out in the executive session that would prompt additional

questions related to the application. Commissioner Hill stated that he did not believe that to be necessary. Commissioner O'Brien agreed with Commissioner Hill. Commissioner Skinner noted her preference that any outstanding questions could be addressed during the review of PSI's application on December 13, 2022.

*Transcriber's note: The Commission then entered an executive session and did not return to the public session of the meeting.*

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

1. [Notice of Meeting and Agenda](#) dated November 30, 2023