



Massachusetts Gaming Commission Meeting Minutes

Date/Time: December 8, 2022, 10:00 a.m.
Place: Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 778 3072

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 408th Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

Chair Judd-Stein stated that the Commission's principal responsibility in reviewing the sports wagering applications was to ensure the integrity of the gaming industry in Massachusetts. She stated that the Commission would maintain strict oversight of gaming establishments and sports wagering operators. She noted 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 engenders the confidence of the public, and maximizes the benefits to the Commonwealth. She then briefly explained the agenda for today's public meeting.

2. [Legal Framework Relative To The Award Of A Sports Wagering License](#) (05:54)

General Counsel Todd Grossman explained that this meeting was the Commission’s opportunity to evaluate the application for a category one sports wagering license submitted by Wynn MA, LLC, (d/b/a Encore Boston Harbor) (“EBH”). 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 EBH held a gaming license under G.L. Chapter 23K. He stated that a 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 the entities operating the 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 specified that the regulation sets out factors and considerations for the Commission to analyze in the evaluation process, but that the regulations did not set out a particular order to review factors in or assign particular weight to the factors. He stated that the Commission may require that the applicant provide additional information or documents the Commission deems appropriate.

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

General Counsel Grossman stated that any finding the Commission makes must be backed by substantial evidence, and that the heightened standard of clear and convincing evidence applied to 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 operations; the suitability of the applicant and qualifiers; and any other appropriate factor in the Commission’s discretion.

General Counsel Grossman stated that the Commission could determine temporary or durable findings of suitability, but that no preliminary finding needed to be entered. He noted that the

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

3. [Presentation Of Application For Category 1 Sports Wagering Operator License Submitted By EBH In Accordance With 205 CMR 218.06\(3\) \(22:37\)](#)

Encore Boston Harbor (“EBH”) Vice President and General Counsel, Jaqui Krum stated that EBH was focused on optimizing the customer experience while welcoming new guests. She stated that EBH had generated more than \$460 million in tax revenue for the Commonwealth of Massachusetts since opening. She reported that EBH had provided more than \$35 million to mitigate impacts to its host and surrounding communities. She added that EBH had contributed \$11 million to more than 300 charities in the Commonwealth and had created 3,000 jobs.

Ms. Krum detailed that EBH’s parent company was Wynn Resorts, LLC (“Wynn”) a publicly traded hospitality company. She stated that Wynn had extensive training programs for its employees and a comprehensive leadership development program. She stated that Wynn’s Las Vegas Sportsbook had generated \$200 million since 2017, which was 13% of the sports wagering handle for the Las Vegas Strip.

Ms. Krum explained that WynnBET was the operating subsidiary of Wynn Interactive Limited, which was majority controlled by Wynn. She stated that WynnBET was currently operating in nine jurisdictions, and anticipated launching in an additional six jurisdictions. She stated that WynnBET would provide advisory services, branding, and trading services to EBH.

EBH’s Director of Sponsorships, Joe Zarbano stated that EBH had invested \$20 million and constructed the WynnBET Sportsbook inside the property. He stated that the WynnBET Sportsbook included food offerings and a 123-foot-long video wall. He stated that the Sportsbar opened in September 2021 and if EBH was approved for a sports wagering license, ten live-betting windows and twenty-nine kiosks would be installed.

Mr. Zarbano explained that there would be multiple locations at EBH with kiosks to serve customers’ different needs. He stated that there would be a kiosk room with thirty-two kiosks, the WynnBET Express Sportsbook with twenty kiosks located in the parking garage, seven kiosks at the On Deck Sports Bar, a promo room with twenty-three kiosks, three kiosks in the poker area, and six kiosks in the high-limit area. He stated that there would be a way for patrons to build their bet on the EBH website and scan the QR code provided to them at the kiosks.

Ms. Krum presented the floor plan of the property and stated that EBH would be submitting a petition to amend the gaming floor in all areas where kiosks were anticipated to be placed. She stated that EBH proposed adding 13,747 square feet of gaming area at the casino level; adding

3,200 square feet of gaming area on the mezzanine level and adding 800 square feet of gaming area to the B1 parking level.

Ms. Krum stated that EBH intended to add 100 employees to their existing 3,479 employee workforce. She stated that EBH had hired Mark Marino as the Sportsbook Director. She noted that Mr. Marino had twenty years of industry experience. She stated that EBH reinstated its 401K match program, offered tuition reimbursement, and had over 26,000 volunteer hours from employees engaging with local charities.

Ms. Krum stated that the diversity inclusion advisory council focused on ensuring there was diversity at every level. She stated that EBH had met or exceeded its diversity goals related to minorities and veterans, and that EBH was still pursuing their goals related to women employed by EBH. She added that the 100 new employees would help to narrow the gap towards the goals. She stated that EBH had a workforce development and diversity plan, and that EBH reached out to partners within the community. She reported that EBH had met or exceeded all supplier diversity spending goals as of Q3 2022.

Ms. Krum stated that EBH would remain committed to responsible gaming and that EBH would adhere to all of its marketing and advertising commitments. She added that EBH employees were trained on an annual basis to identify signs of problem gaming amongst patrons. She noted that EBH had launched PlayMyWay in 2022 and worked closely with GameSense employees. She explained that following the interim approval of the REIT transaction, that EBH had completed the sale of the EBH real property assets on December 1, 2022.

4. [Presentations and Analysis Relevant To Review And Evaluation Of Application For Category 1 Sports Wagering Operator License Submitted By EBH \(1:07:10\)](#)

a. Technical Components

Chair Judd-Stein stated that GLI was the first company to develop and set gaming technical standards which were now considered an industry benchmark. She stated that GLI continued to innovate standards and regulators rely upon these standards to preserve the integrity of the industry.

GLI's Director of Client Solutions, Joe Bunevith stated that before the test lab could make submittals, the Commission would have to approve 205 CMR 138.00, 205 CMR 238.00, 205 CMR 247.00, and 205 CMR 248.00. 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 systems and hardware to GLI for testing. He stated that the code would be tested in a locked-down environment to verify compliance with regulations and GLI standards. He noted that additional testing would take place at the retail point-of-sale and that these tests would take two to three days to complete. He stated that GLI would also review operator's internal controls and procedures.

b. [Report on Suitability of the Applicant](#) (1:14:11)

Chief Enforcement Counsel Heather Hall explained that when evaluating EBH'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 2018, the Commission found EBH and its then qualifiers suitable in connection with its application under G.L. Chapter 23K. She stated that new qualifiers who joined the company also submitted to background check requirements. She noted that the applicant remained in good standing with its ongoing suitability requirements. She stated that EBH's REIT transaction had been closed.

Commissioner Skinner offered comment, noting that Wynn Interactive and WynnBET had a CEO in common with Wynn. She noted that WynnBET would be providing vendor services for EBH, but that WynnBET was not listed as an entity qualifier for EBH. She inquired if Craig Billings, in his capacity as CEO of Wynn would have to report on items related to WynnBET as part of the ongoing suitability process. Chief Enforcement Counsel Hall stated that once the applicant was awarded a license, it would be required to provide ongoing notifications to the IEB for continuing suitability. She noted that Mr. Billings was already investigated by the IEB and found suitable by the Commission.

Commissioner Skinner asked if Mr. Billings, in his capacity as a qualifier, would be required to report on items of concern related to WynnBET and Wynn Interactive. Chief Enforcement Counsel Hall stated that it might not be Mr. Billings, but the staff of those entities who sent the reports. She stated that if an entity was awarded a license, they would have the continuing duty related to suitability.

Commissioner O'Brien noted that Wynn Interactive and WynnBET were not named as entity qualifiers in the application. Chief Enforcement Counsel Hall stated that WynnBET was acting both as a vendor and as a category three applicant. Chair Judd-Stein stated that EBH's decision to use WynnBET as a vendor was a business decision and that they could still elect to choose another vendor to provide these services.

Chair Judd-Stein stated that if a license was awarded to EBH and WynnBET was an anticipated vendor, then WynnBET would have to be vetted by the Commission. Chief Enforcement Counsel Hall offered clarification that vendors were investigated at the IEB level, not the Commission level. She stated that it would be redundant to investigate WynnBET both as a vendor and as a sports wagering applicant.

Commissioner Skinner stated that she was interested in understanding what obligations Wynn had in reporting on Wynn Interactive. Commissioner O'Brien noted that EBH's application did not rely on the category three application in the way that previous applications had. Commissioner Skinner agreed but stated that her question was still relevant to sections F and G of the current application.

Chair Judd-Stein stated that the Commission might not be considering EBH's legitimate business decision to use WynnBET as a vendor for these services. She noted that this might be a topic that EBH was required to answer in this process, however. Commissioner Skinner noted that she had asked the same question during the discussions related to MGM Springfield and Plainridge Park Casino's applications as well.

c. [Financial and Economic Impact Analysis](#) (1:33:27)

Partner from RSM US, LLP, ("RSM") Greg Naviloff stated that RSM reviewed sections of the EBH sports wagering application related to finance. He introduced RSM's strategic Finance Practice Leader, Jeff Katz, RSM's National Gaming and Hospitality Leader, Theresa Merlino, and RSM's Director of Financial Consulting, Connor Loughlin. Mr. Naviloff stated that RSM's presentation was based upon documentation received as of December 2, 2022, and was subject to change if new information became available.

Ms. Merlino stated that EBH's estimated retail market was a conservative amount, but was reasonable compared to other markets. She noted that in other jurisdictions, the retail sports wagering market made up only five to fifteen percent of the total sports wagering market. She stated that EBH's estimated significant capture rate for the metro Boston retail market seemed reasonable based upon their advantageous location. She stated that the expected interest in the retail market was higher for the first year due to mobile sports wagering needing additional time to launch. She stated that the revenue estimates submitted by EBH aligned with their current market share for the Commonwealth.

Mr. Loughlin explained that EBH was financially supported by Wynn through its access to sources of capital and liquidity. He stated that as of September 30, 2022, Wynn had approximately \$12.2 billion in total debt commitments with \$9.2 billion in senior bonds and loans, \$1.5 billion in total term loans, \$1.5 billion outstanding with the company's revolving credit facilities, and \$100 million in total lease liabilities. He stated that the debt commitments were \$1 billion lower than year-end in 2020. He stated that Wynn would be able to support continuing operations.

Mr. Loughlin stated that Wynn maintained an average total liquidity position of \$2.9 billion from 2018 through September 2022. He stated that Wynn had approximately \$2.8 billion in total available liquidity which was comprised of \$1.9 billion cash on hand and \$835 million available through its current revolving credit facilities.

Ms. Merlino stated that it was not clear whether the non-gaming revenue listed in the application was incremental non-gaming revenue or if it was consistent revenue from the addition of a sportsbook. She stated that the Commission might want to understand whether this revenue was from incremental impact. She stated that EBH's design with easier access to kiosks was advantageous to the patron's wagering experience and would prevent lines from forming. She stated that EBH anticipated demand of the metro Boston market.

Ms. Merlino noted that the retail sportsbook had already been built. She stated that it was unclear whether the venue was currently classified as a gaming area or if EBH would have to seek Commission approval to amend the gaming space. She stated that the Commission may want to understand EBH's projected demand for the Express Sportsbook located in the garage and whether EBH intends to repurpose the assets located there once demand decreases in correlation to the launch of mobile sports wagering.

Ms. Merlino explained that square footage had little correlation with revenue. She stated that EBH's proposed square footage was comparable to larger venues in other jurisdictions. She stated that the area seemed reasonable given the location and industry demand.

5. [Review and evaluation of Application for Category 1 Sports Wagering Operator License Submitted By EBH In Accordance With 205 CMR 218.00 \(1:50:51\)](#)

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

Commissioner O'Brien noted that the application stated twenty-three kiosks would be placed in the garage area, but that the presentation listed only twenty. Mr. Zarbano explained that currently twenty-three kiosks were anticipated to be placed in the garage. He stated that one or two kiosks might be moved between spaces based with demand.

Commissioner O'Brien asked if EBH planned to request an expansion of the gaming floor to include the garage area. Ms. Krum confirmed and stated that EBH would make that request before installing kiosks. Commissioner O'Brien expressed that she was still skeptical of putting kiosks in the garage venue due to potential security issues.

Commissioner O'Brien asked if the Express Sportsbook in the garage was planned to be temporary or long-term. Ms. Krum stated that it would be a long-term feature. She stated that there would be fifteen-minute parking limits and that security would be stationed in this area around the clock. Commissioner O'Brien stated that she had concerns about cash transfers at this location. Ms. Krum stated that EBH could provide information about the potential security concerns, but that she did not feel comfortable discussing this topic in a public setting. Gaming Agents Division Chief Bruce Band stated that Commission staff was collaborating with EBH and the state police, and that he was satisfied with the proposed security of the garage area.

Commissioner Maynard asked how EBH planned to address children being left in cars. Ms. Krum stated that there would be security and parking attendants in the area who would monitor parking spaces. She detailed that there would be a fifteen-minute parking limit and a signage system that would track parking time. She explained that patrons would have to exit the car and go through a security checkpoint before placing their wager and returning to their car. She stated that the temporary nature of the parking spaces helped mitigate the issue of people leaving children in cars.

Chair Judd-Stein asked if responsible gaming messaging would be incorporated into the bring-your-own-device platform. Ms. Krum stated that responsible gaming messaging would be included throughout the application, on the kiosks, and at the betting windows. Chair Judd-Stein asked if the bring-your-own-device platform would allow EBH to collect more know your customer (“KYC”) information. Ms. Krum stated that EBH would receive information when patrons registered for the application.

Commissioner Skinner asked how the bring-your-own-device system would address a change in odds between when a selection was made on the platform, and when the bet was scanned into the kiosk. Mr. Zarbano explained that if the odds were changed, the patron would be notified upon entering the bet into the kiosk and before their wager was accepted.

Commissioner Skinner stated that EBH’s presentation stated that it would receive advisory services from WynnBET, but that the application referenced WSI US, LLC. Ms. Krum explained that WSI US, LLC was the entity that owned WynnBET. Commissioner Skinner asked what advisory services would entail. Ms. Krum stated that the primary service was related to trading; to ensure that EBH would be consistent with the odds offered in other jurisdictions. She stated that WynnBET had extensive experience and expertise with sports wagering. Commissioner Skinner stated that she considered trading services to be a form of control over an operation, and that the nature of services provided was important to know.

Chair Judd-Stein sought clarity as to how trading services interacted with corporate governance. Ms. Krum stated that the trading services were utilized in setting the price, but not governing decisions. She stated that the WynnBET trading team would create odds and prices for the placement of bets, but that they would not be involved operationally. Chair Judd-Stein asked if WynnBET in its capacity as a trading service provider would be able to control decision-making at EBH. Ms. Krum stated that WynnBET and EBH both report to Wynn, but that there were separate compliance structures for each organization. Commissioner Skinner asked if EBH would have oversight over determinations made by WynnBET. Ms. Krum confirmed that EBH would have oversight of all odds being provided.

Commissioner Maynard asked if the information gathered by bring-your-own-device would be shared with the WynnBET mobile application. Ms. Krum stated that WynnBET would have the patron’s information and could reach out to encourage them to register for the WynnBET application. She stated that the information would not automatically be transferred to the platform.

Chair Judd-Stein stated that the Commission had previously discussed cultivating information and pre-registration. Mr. Bunevith stated that there were no laws preventing operators from gathering information or account creation, provided there was no actual betting. He stated that the practice of cultivating information was common in the industry. Chair Judd-Stein asked if other jurisdictions had regulations that would restrict the collection of this information. Mr. Bunevith stated that he was unaware of any other jurisdiction that restricted this kind of information collection.

Ms. Krum noted that some other jurisdictions restricted pre-registration where bonuses were offered for loading funds. Commissioner O'Brien stated that she was concerned about sign-up bonuses being offered when the Commission had yet to discuss how to address promotional play. Chair Judd-Stein inquired how pre-registration could be addressed by the Commission. General Counsel Grossman stated that it could be addressed either as a condition on a license or via regulation.

Commissioner Maynard stated that he was concerned about an equity issue if some operators were able to gather information and accept bets while others were not. Ms. Krum noted that the bring-your-own-device was a separate application software, and not on WynnBET's platform. Mr. Zarbano stated that the bring-your-own-device was a weblink that would not download an application. Mr. Bunevith stated that no jurisdiction he was aware of restricted pre-launch deposits for mobile sports wagering.

The Commissioners reached a consensus that EBH had met the Commission's expectations in regard to this section of the application, except for the security issue related to the sports wagering area in the parking garage that would be discussed in executive session.

b. [Economic Impact and Other Benefits to The Commonwealth if Applicant is Awarded a License \(205 CMR 218.06\(5\)\(b\)\)](#) (2:24:48)

Commissioner Hill sought clarification as to whether the kiosks would be compliant with the Americans with Disabilities Act ("ADA"). Ms. Krum stated that there were two ADA compliant wickets on either side of the sports wagering windows. She stated that EBH was looking into ADA compliance for the kiosks with their kiosk supplier. She explained that the way in which a kiosk was mounted might affect how it could be utilized. She stated that EBH had staff available to assist any patron who needed assistance. Commissioner Maynard complimented the applicant on their continued work toward ADA compliance.

Commissioner O'Brien stated that some kiosks had the capacity to have surveillance cameras and asked to discuss that security feature in executive session. Ms. Krum explained that if any kiosks did not have cameras there would be full surveillance coverage.

Commissioner O'Brien asked about the reference to using conference space to set up events. Ms. Krum stated that having kiosks in the conference center for events, such as playoff parties, was part of EBH's future goals. Commissioner O'Brien asked if that would require the gaming floor to be redefined either temporarily or permanently. Ms. Krum stated that this item was not contemplated in the current application before the Commission.

Chair Judd-Stein asked if the workforce development program had been effective in advancing employees. Ms. Krum stated that the workforce development program was available for any employee in a leadership position, and enabled employees to be more effective managers.

Chair Judd-Stein asked if the non-gaming revenue listed in the application was an incremental increase of existing non-gaming revenue or an addition from sports wagering. Ms. Krum stated that it was an incremental increase anticipated due to the extra volume of patrons. Chair Judd-Stein asked if EBH anticipated excitement related to retail sports wagering to reduce over time. Ms. Krum stated that the main projected reduction would be due to the launch of mobile sports wagering.

Chair Judd-Stein asked if there were patrons that preferred to place bets in-person as opposed to mobile sports wagering. Ms. Krum stated that some customers would never use a mobile device to place a bet. She stated that some people preferred the anonymity of in-person wagering. Chair Judd-Stein asked how EBH planned to verify age and other gaming-related concerns. Ms. Krum stated that it would be similar to slot machines where patrons are asked for identification if they appeared below the appropriate age. She stated that surveillance would monitor for excluded persons and those on the trespass list as well.

Chair Judd-Stein asked if the proposed Express Sportsbook in the garage was intended to recapture money that was going to neighboring states. Ms. Krum stated that EBH had diversified their offering to attract different types of customers. She stated that EBH wanted to get Massachusetts bettors back to Massachusetts.

Chair Judd-Stein sought clarification regarding EBH's plan with respect to the lottery. Ms. Krum stated that EBH had an existing relationship with the lottery and had lottery terminals throughout the property. She stated that lottery ticket giveaways were some of EBH's most successful promotions. Mr. Zarbano stated that there would be lottery kiosks at the sports bar. Commissioner Hill asked if lottery machines would be included in the new area being opened for sports wagering. Commissioner O'Brien asked if EBH could track the sales on each lottery machine. Ms. Krum confirmed that EBH tracked how the lottery machines were performing; and made adjustments if there were changes in sales.

The Commission reached a consensus that EBH 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\(5\)\(d\)\)](#) (2:43:27)

Commissioner Hill asked for more details related to diversity hiring and promotion opportunities. Ms. Krum stated that EBH focused on its diversity goals and has had great success collaborating with organizations throughout the Commonwealth. She stated that EBH provides training and opportunities for growth to its employees.

Commissioner O'Brien asked for details regarding post-COVID attempts to increase women in the workforce. Ms. Krum expressed that the 100 new positions was a way to bring women employment up at EBH. She stated that covid had a disproportionate effect on the women workforce and that EBH had put thought into increasing their women workforce. She stated that EBH constantly

advertised different schedules that would accommodate childcare schedules. Chair Judd-Stein commended Wynn for the diversity on its board of directors. Ms. Krum stated that EBH's executive committee was also a majority women.

The Commission reached a consensus that EBH 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\(5\)\(c\)\)](#) (2:51:07)

Commissioner O'Brien sought clarification regarding participation in EBH's responsible gaming committee. Ms. Krum stated that the responsible gaming committee meets on a quarterly basis with its Las Vegas counterparts. She stated that WynnBET representatives would also be included in future meetings. She stated that input received from GameSense was reviewed in these meetings and the committee discussed trainings to be implemented.

Commissioner O'Brien asked if there were areas where Boston would be different from Las Vegas. Ms. Krum stated that Boston used a different model than Las Vegas. She stated that the presence of GameSense at EBH was an advantage. She stated that Wynn and EBH wanted to have an independent role in training employees to look for signs of problem gaming. She stated that information had been taken from GameSense in developing those trainings.

Director of Research and Responsible Gaming, Mark Vander Linden stated that it would be beneficial to have a two-way communication with GameSense, and include GameSense in these committee meetings, even if on a quarterly basis. Ms. Krum stated that if GameSense wanted to participate they could be included.

Commissioner O'Brien sought clarification regarding EBH's efforts to not target those under twenty-one with advertising. Ms. Krum stated that the marketing team had received training on this issue. She added that the marketing team had rejected requests from universities that would promote EBH's hotels to students' families. She detailed that EBH was not also promoting hotels, restaurants, or gaming in any way to college publications. Ms. Krum noted that EBH did not use advertisement images that might be attractive to underage individuals. Mr. Zarbano stated that EBH had also turned down opportunities such as concerts on college campuses.

Chair Judd-Stein asked if EBH retained control over all marketing content as it was passed down through third-party marketing affiliates. Ms. Krum explained that more than 90% of EBH's marketing content was created in-house. She stated that EBH contracted with a third-party affiliate for email drops, but that EBH developed the emails and recipient lists. She stated that EBH's marketing staff was familiar with all statutory and regulatory restrictions.

Commissioner Maynard asked if stops would be added or changed for EBH's shuttle bus program due to the launch of sports wagering. Ms. Krum stated that EBH was looking at changing routes to make them more effective, but that this change was not related to sports wagering.

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

e. [Technology that the Applicant Intends to Use \(205 CMR 218.06\(5\)\(e\)\)](#) (4:08:40)

Chair Judd-Stein noted that the Commission had technical difficulties in accessing some of the application materials, and that there appeared to be an upload error. She noted that EBH had sent the files to the Commission over the lunch break. General Counsel Grossman stated that 205 CMR 211.01(10) allowed the Commission to extend the time to file a complete application to allow an applicant to cure a deficiency in the application. He noted that 205 CMR 218.04(c) allowed the Commission to request an applicant to submit additional documentation. Chair Judd-Stein stated that the Commission received sections F(1) and F(2), but that F(3) was inadvertently omitted.

Commissioner Hill stated that the failure to upload section F(3) seemed like an honest mistake, and that he was willing to accept the documents. Commissioner Maynard noted that the missing section was seven pages out of a nearly thousand-page application. He stated that he would be willing to accept additional documentation to remedy the clerical error.

Commissioner O’Brien moved that the Commission authorize the late submission today of so much of EBH’s category one application that pertained to sections F(3) subsections (a) through (f), consistent with the Commission’s discretion under 205 CMR 211.01(10). Commissioner Skinner seconded the motion.

Roll call vote:

Commissioner O’Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

Chair Judd-Stein sought clarification regarding EBH’s relationship with WynnBET and US Integrity for integrity monitoring services. Ms. Krum stated that WynnBET would monitor wagers being submitted, and if an integrity issue was flagged, they would notify EBH so that EBH could implement procedures to stop wagering. Ms. Krum stated that US Integrity would also monitor bets across all sports and notify subscribers to their platforms if an issue arose.

The Commission reached a consensus that EBH 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\(5\)\(f\)\)](#) (4:22:46)

Commissioner Skinner stated that WynnBET's response to sections G(3) and G(4) of the application would be helpful to her review of this section of EBH's application. General Counsel Grossman stated that EBH did not rely as much on reference to the tethered mobile operator's application as other applicants had. He stated that this would limit inquiry into the other application. Commissioner Skinner asked if EBH could invite a colleague from WynnBET to answer questions related to the relationship between WynnBET and EBH.

Chair Judd-Stein stated that these questions had been answered as part of WynnBET's category three sports wagering application. She stated that similar questions were not asked with respect to EBH's other vendors. Commissioner Skinner stated that the distinction was that WynnBET was providing a service to EBH in relation to its retail operations. She stated that this was distinct from the other vendors EBH was working with. She stated that it was important to understand WynnBET's compliance history.

General Counsel Grossman stated that the Commission would need to be able to draw distinctions between this situation and the other applicants so as not to treat applicants dissimilarly. Commissioner O'Brien stated that there was a complexity in the way suitability for category one applicants coalesces into the suitability of tethered mobile sports wagering partners. She stated that it was difficult to parse out where the line was drawn. She stated that she did not want to move forward until all Commissioners were comfortable with making a decision.

General Counsel Grossman stated that discussing WynnBET was appropriate as it clearly related to the retail operation. He stated that the Commission would have to detail how it was different from the issues that arose from the previously reviewed applicants. Commissioner O'Brien stated that the applications connections to their tethered mobile operators were all slightly different.

Commissioner Skinner stated that the applications were different, and that she did not feel as if she could make a determination on MGM Springfield's application without first reviewing the BetMGM application. She stated that she felt more comfortable with making a determination on EBH's application without having WynnBET's application in front of her. She stated that she would like EBH or WynnBET to speak to the items in Section G of WynnBET's application. She noted that a lack of response would not be an impediment to the Commission moving forward in its deliberations, however. General Counsel Grossman stated that WynnBET's application could be reviewed to address the category one license, so long as no judgments were made regarding WynnBET's application.

Ms. Krum offered to have a WynnBET employee join the call to answer questions. She stated that if any of EBH's vendors breached a regulation or internal control it would ultimately be EBH that would accept responsibility.

Commissioner O'Brien noted that in Section G(1) of the application, EBH had included information regarding joint venture agreements, and stated that she had some responsible gaming questions related to Caesars. She asked if she could reserve her questions related to joint ventures until the

review of Caesars' category three application. Chief Enforcement Counsel Hall confirmed that any questions regarding Caesars could be addressed during the category three application review.

Ms. Krum stated that conversations with Commission staff led EBH to include all tethered agreements in response to that section. Commissioner O'Brien noted that the agreement's inclusion made it difficult to draw the line between the two applications. She stated that she was comfortable holding questions until the Commission reviewed Caesar's application.

Chair Judd-Stein asked if any matter was flagged related to the applicant's financial stability. Mr. Loughlin stated that no issues were identified. Commissioner Skinner asked if statements from a WynnBET representative would be able to be discussed in the executive session. General counsel Grossman stated that the agenda only noticed an executive session for issues that arose under G.L. Chapter 23N, § 6(i). He stated that if there were issues that needed to be discussed in executive session that did not arise from G.L. Chapter 23N, § 6(i) that they would have to be considered as matters not reasonably anticipated at the time the agenda was posted.

Chair Judd-Stein expressed concern that the information Commissioner Skinner was seeking was outside the scope of review for EBH's application. She stated that she wanted to be cautious of the scope of review while striking a balance with the information the Commission was seeking. She asked if the executive session regarding the security issues related to the garage would be considered properly noticed.

General Counsel Grossman stated that notice regarding executive sessions should be included on meeting agendas in accordance with the open meeting law. He stated that the Commission had historically always identified issues being discussed on the agenda. He stated that if the Commission entered executive session it would have to be clear about what exactly would be discussed to ensure all open meeting law requirements are met. He stated that the security of kiosks in the garage could be considered the discussion of deployment of security personnel, devices, or strategy which is an exemption that allows for an executive session. He stated that the details would have to be discussed further to ensure the requirements for an executive session were met.

Commissioner Maynard asked if the Commission could hypothetically take a five-minute break to review Section G of WynnBET's application. General Counsel Grossman stated that the Commission could review WynnBET's application, but noted that EBH or WynnBET may not want to discuss the information publicly. Chair Judd-Stein stated that Commissioner Maynard's solution made sense.

Commissioner Hill asked why the Commission was not waiting until WynnBET's application review to deliberate as it had for the two previous applications. Chair Judd-Stein stated that each application had different legal issues, and that the applications should not be conflated.

Commissioner O'Brien stated that the executive sessions could be noticed for the day of WynnBET's application review. Commissioner Skinner noted that she had asked the same

questions of each category one applicant. She stated that she was comfortable with Commissioner Maynard's proposal of taking some time to review WynnBET's application. She stated that this differed from BetMGM where she wanted to review the whole application, whereas for WynnBET she only wanted to review a smaller section.

Chair Judd-Stein stated that she did not think the Commission could require an applicant to bring forward a vendor to answer questions related to the application. Commissioner Skinner stated that EBH had offered to bring a WynnBET representative on the call, and that it would not be forced. Ms. Krum stated that a colleague from WynnBET was willing to join the conversation. Chair Judd-Stein requested a fifteen-minute break to review WynnBET's application.

Transcriber's Note: The Commission took a fifteen-minute break and shared a screensaver. Commissioners returned to the public meeting after 15 minutes.

Commissioner Skinner stated that she did not believe it was necessary to go into executive session for her previous question. She stated that after reviewing WynnBET's application, her only concerns were relative to online sports wagering operations. She stated that she struggled to draw the line between these affiliated entities. General Counsel Grossman noted that the sections of WynnBET's application that were reviewed were marked as confidential by the applicant.

Chair Judd-Stein reiterated her belief that the review of WynnBET's application was outside the scope of the review of EBH's application. Commissioner O'Brien stated that WynnBET was performing dual functions, and it was difficult to parse where WynnBET was considered a vendor for the purpose of suitability, or as an entity qualifier for an applicant. She stated that she was comfortable with WynnBET as a vendor within the four corners of the application, but might have a different posture when it comes to WynnBET's category three application review.

Commissioner Skinner stated that based upon Ms. Krum's indications that EBH would ultimately be responsible for retail sports wagering operations, that she was comfortable with Section G of the application. Commissioner Maynard echoed Commissioner O'Brien's comments that it was difficult to divorce some of the tethered applications. He stated that he would have more questions for the category three applicants but that he was comfortable moving forward on EBH's application. Commissioner Hill stated that he viewed the category one applications as standalone. He stated that for the purpose of reviewing EBH's application, he viewed WynnBET as a vendor. He stated that he felt comfortable moving forward with EBH's application.

Commissioner Hill stated that vendors' suitability was reviewed by the IEB, not the Commission. He stated that if there was an issue with a vendor, the IEB would report it to the Commission. Chief Enforcement Counsel Hall stated that the IEB had not yet reviewed vendors attached to the licensees for sports wagering functions. She stated that the IEB had yet to perform a preliminary or full review of sports wagering vendors, unless they had been previously reviewed as gaming vendors.

Chair Judd-Stein stated that the other issue to discuss in executive session was the security issues for the kiosks located in the garage. Commissioner O'Brien stated that an executive session on this topic could be held when EBH submits a request to expand their gaming floor to include the garage area. She stated that this issue did not need to hold up the application process.

Chair Judd-Stein stated that she agreed with the proposed process. She stated that a condition could be attached to the license with the clear understanding that the discussion regarding security issues would occur at EBH's request to expand the gaming floor.

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

22. [Encore Boston Harbor License Application Determination by the Commission in Accordance with 205 CMR 218.07](#) (5:47:19)

Chair Judd-Stein stated that the Commission's agenda reserved the right to make a determination on EBH's application. General Counsel Grossman stated that the Commission would have to have substantial evidence that all factors were satisfied before awarding the license. Chair Judd-Stein asked for clarification regarding the process.

General Counsel Grossman stated that the factors for awarding a license are found in 205 CMR 218.06(5), based upon the standard of whether the license being awarded would benefit the commonwealth. He stated that the criteria follow the substantial evidence standard, requiring such evidence as a reasonable mind might accept as adequate to support a conclusion. Commissioner O'Brien noted that the Commission had reached consensus on each criterion during the review, but asked General Counsel Grossman to list the criteria for the record.

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

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

Chair Judd-Stein stated that a condition limiting pre-registration would be an exceptional measure for the Commission to take based upon GLI's explanation of industry norms. She stated that pre-registration should be explored in the regulatory context. Commissioner O'Brien opined that approval of a sports wagering license under 205 CMR 218 had no bearing on the Commission's adjudication on the request to expand EBH's gaming floor.

Chair Judd-Stein sought clarification regarding the different types of suitability findings. General Counsel Grossman stated that the two options were a durable finding of suitability or a preliminary finding of suitability. He stated that the durable finding of suitability required that the applicant and all qualifiers had been found suitable by clear and convincing evidence. He stated that if the Commission found a durable finding of suitability, a full sports wagering license could be awarded.

General Counsel Grossman explained that preliminary suitability was appropriate when more investigation was required. He stated that if an operator received a preliminary finding of suitability, it would make the operator eligible for a temporary sports wagering license while the background investigation was being completed. Chief Enforcement Counsel Hall stated that EBH and all of its qualifiers were found suitable after a full investigation and finding of suitability by the Commission. She stated that EBH and its qualifiers remained in good standing. Executive Director Karen Wells noted that a durable finding of suitability would require a \$5 million licensure fee as opposed to the \$1 million for the temporary licensure fee.

Commissioner O'Brien moved that the Commission find that the applicant EBH, through its application submitted and as discussed here today, had established by substantial evidence, and met the criteria set forth in 205 CMR 218.06(5) subsections (a) through (e) and (g) and further, that any awarding of a category one license to the applicant would be in the benefit of the Commonwealth. Commissioner Hill seconded the motion.

Chair Judd-Stein asked if conditions should be included in this motion, or whether they would be attached to the suitability motion. Commissioner O'Brien stated that a line about conditions could be added to the next 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.

Commissioner O'Brien moved that the Commission find that the applicant EBH be found to have established by its application filing, the review by the IEB, and discussion here today, had established by clear and convincing evidence its suitability consistent with 205 CMR 218.06(5)(f).

and that any conditions subject to a finding of suitability in this connection reference the obligations in 205 CMR 220.01. Commissioner Maynard seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

24. [Other Business](#) (6:10:59)

Commissioner Skinner thanked her fellow Commissioners for allowing each Commissioner to be fully heard and supported in this process. She thanked RSM, GLI, and the IEB for their presentations as well. Hearing no other business, Chair Judd-Stein requested a motion to adjourn.

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

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

List of Documents and Other Items Used

1. [Notice of Meeting and Agenda](#) dated November 30, 2022