



Massachusetts Gaming Commission Meeting Minutes

Date/Time: March 1, 2023, 11:15 a.m.
Place: Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 1431 1966

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 439th Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. [Administrative Update](#) (01:18)

Executive Director Karen Wells stated that the launch of category three mobile sports wagering was scheduled for March 10, 2023, but there was not a publicly stated time for operators to start. She recommended a 10:00 a.m. start time. The Commission reached a consensus to launch category three sports wagering at 10 a.m. Eastern Standard Time on March 10.

Commissioner Hill asked why an earlier start time was not considered. Executive Director Wells stated that if there were issues the Commission staff should be on duty for the launch.

Commissioner Skinner asked if the Commission was required to be involved on the launch date. Executive Director Wells stated that mobile operators had no locations to inspect. Chair Judd-

Stein stated that the certificate of operations would be voted for on March 9, 2023, and that all testing would be done prior to that date.

Executive Director Wells noted that only operators planning to launch on March 10 would have their operations certificates voted for on March 9 to allow Gaming Laboratories International (“GLI”) to focus testing efforts on operators ready to launch. She stated that she was meeting with GLI to confer as to whether potential changes to 205 CMR 254 and 205 CMR 238 would impact their review of internal controls.

Director of Sports Wagering Bruce Band stated that internal controls may not be completed by March 9 due to the changes in 205 CMR 238 and the responsible gaming regulation. Executive Director Wells stated that more information would be gathered that afternoon, and it may require both interim approval for launch and final approval after launch.

3. [Legal](#) (10:43)

- a. 205 CMR 138.00: Uniform Standards of Accounting Procedures and Internal Controls for Gaming: Regulation and Amended Small Business Impact Statement for final review and possible adoption.

Outside counsel from the law firm Anderson and Kreiger Attorney Mina Makarious presented the new comments relative to 205 CMR 138. The *Amended Small Business Impact Statement, draft of 205 CMR 138, and public comments* were included in the Commissioner’s Packet on pages 1 through 99.

Mr. Makarious noted that the Commission had not received any public comments prior to the morning of February 28. He noted that the comment proposing a change to 205 CMR 138.05 was addressed at the previous meeting, and that the remainder of the comments were regarding the data security protocols in 205 CMR 173. He noted that the title of the regulation was changed to remove “from gaming” due to the discussion at the prior meeting.

Mr. Makarious explained that DraftKings had suggested a change to 205 CMR 138.05 to add language to include “modifying relevant responsibilities. He noted that the Investigations and Enforcement Bureau (“IEB”) had recommended against this change. He expressed concern related to the vagueness of the term relevant responsibilities and stated that it could lead to inefficiency in determining whether the employee was removed from the network. He noted that the procedure for suspension only suspended duties and envisioned the employees being reassigned. He stated that the Investigations and Enforcement Bureau (“IEB”) preferred the existing language and recommended against adopting this change.

Mr. Makarious stated that there were requests to remove 205 CMR 138.73 and rely on background data privacy laws. He stated that the legal team wanted to strike a balance between ensuring there was adequate data security for patrons' information but not an overly prescriptive set of requirements. He recommended leaving 205 CMR 138.731 and 205 CMR 138.732 with minor changes and striking the remainder of the provision.

Mr. Makarios explained that 205 CMR 138.731 required personally identifiable information to be protected to the level of state laws and regulations. He stated that provisions related to the details of patron's access to information and the destruction of data, when necessary, would be appropriate to address in a separate regulation. He proposed that the Commission return to this regulation with additional provision or develop a separate regulation in the future.

Commissioner O'Brien suggested the legal team discuss sports wagering applications mobile security with the Attorney General's Data Privacy and Security Division as they had reached out to at least one licensee. Mr. Makarios stated that the legal team would do so. He stated that the substantive change to 205 CMR 138 would be to strike all subsections past 205 CMR 138.73(2) and remove "for gaming" from the title of the regulation. Commissioner O'Brien asked if the legal team was comfortable with the recommended deletions in terms of addressing privacy protections required under statute. Mr. Makarios stated that he was comfortable with the change. Director of Client Solutions from GLI Joe Bunevith stated that GLI was in alignment with the recommendation.

Commissioner Hill moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 138 as included in the Commissioner's Packet and discussed here today and further that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth to finalize the regulation promulgation process. 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.

b. [205 CMR 238](#): Uniform Standards of Accounting Procedures and Internal Controls for Sports Wagering: Regulation and Amended Small Business Impact Statement for final review and possible adoption. (31:00)

Mr. Makarios noted that there were no additional comments on 205 CMR 238 past the ones discussed in the prior meeting. The *Amended Small Business Impact Statement, draft of 205 CMR 238, and public comments* were included in the Commissioner's Packet on pages 100 through 154.

Mr. Makarios stated that the word "additional" would be added to the title of the regulation to help clarify that 205 CMR 138.00 applies to sports wagering and gaming. He reiterated that the changes relevant to sharing information with the sports governing bodies, aligned with the comments made during the roundtable discussion. He reiterated that 205 CMR 238.32 was changed to align the terms to match other regulations and address tethered operators. He noted

that 205 CMR 238.33(1) added a reference to 205 CMR 152. He stated that 205 CMR 238.35(1) was changed to clarify that the reasons to cancel a placed wager were mandatory in subsections a through k.

Mr. Makarios stated that the next change was to allow placing a wager that may result in a payout of \$10,000 or more at a kiosk. He noted that the collection of the payout would still occur at the ticket window. Chair Judd-Stein stated that the amount of \$5,000 was discussed regarding tax implications and wondered if the amount should be changed. Commissioner O'Brien questioned whether the regulation should be reviewed to be more aggressive in compliance with delinquent child support and tax obligations.

Deputy General Counsel Caitlin Monahan stated that if the payout was over \$5,000 with 300:1 odds it was required to go through the intercept process. Commissioner O'Brien asked if it could create confusion by not including it in this provision. General Counsel Todd Grossman stated that the \$10,000 was the money laundering threshold while the \$5,000 with 300:1 odds was the tax withholding and intercept threshold. Commissioner Skinner inquired whether the threshold amount for child support was \$1,200. General Counsel Grossman noted that the \$1,200 threshold was applicable to slot machines. He explained that Massachusetts had tethered their intercept for child support to the federal law regarding events that require tax recording or withholding.

Mr. Makarios suggested listing both thresholds in one place. Commissioner O'Brien asked if there was a regulation that cross-referenced the \$5,000 threshold. General Counsel Grossman stated that 205 CMR 138.56 required that operators have intercept procedures in place and that it was also governed by the operators' Memorandums of Understanding with the Department of Revenue. Mr. Makarios noted that 205 CMR 238.15 and 205 CMR 238.16 contained provisions related to compliance with tax withholding and IRS requirements.

Chair Judd-Stein noticed that the provision did not mention child support. Commissioner O'Brien asked if child support was a withholding requirement of the Department of Revenue. Sports Wagering Operations Manager Sterl Carpenter noted that General Law Chapter 23N, § 24 referenced the Internal Revenue Code regarding child support and the federal government code number for taxation.

Mr. Makarios explained that 205 CMR 238.36 was related to what a sports wagering kiosk could do without requiring a patron to go to the window. Mr. Makarios read the modified language of the provision which delineated that kiosks prohibited the payout of wagers in excess of the \$10,000 threshold and the limits set by the IRS; rather than prohibiting both the acceptance of wagers and payouts. The Commission reached a consensus in support of the change. Commissioner Skinner suggested a few grammatical changes to the regulation for clarity.

Commissioner Skinner moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 238 as included in the Commissioner's Packet and discussed here today; and further that staff be authorized to take the steps necessary to file the

required documentation with the Secretary of the Commonwealth to finalize the regulation promulgation process. Commissioner Hill 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.

c. [205 CMR 254](#): Temporary Prohibition from Sports Wagering: Regulation and Amended Small Business Impact Statement for final review and possible adoption. (1:00:18)

Attorney David Mackey from Anderson and Krieger presented the new public comments to 205 CMR 254. The *Amended Small Business Impact Statement, draft of 205 CMR 254, and public comments* were included in the Commissioner's Packet on pages 211 through 232.

Mr. Mackey stated that three of the new comments were already addressed as they related to the notification requirement that had previously been struck. He stated that the change suggested in DraftKings' comment related to patron acknowledgement in 205 CMR 254.02(3) was not recommended as acknowledgement was a significant step and the patron would be more likely to understand the contents of the notification if they were required to acknowledge them.

Mr. Mackey stated that FanDuel's suggestion relative to 205 CMR 254.03(1) had already been addressed as the five timeframes in the initial draft had since been removed. He noted that DraftKings had suggested that the patron should only be able to extend the cooling-off period once the initial cooling-off period had expired. He stated that a patron should be able to extend their cooling-off and take advantage of responsible gaming tools at any time. He recommended against adopting this change.

Chair Judd-Stein asked if there were technological limitations in extending the cooling-off period while the initial cooling-off was still active. Mr. Mackey noted that the commentor's concerns were based on the action violating 205 CMR 254.02, but that the provision had since been amended to allow access to the application to engage with responsible gaming tools or withdraw funds. Chair Judd-Stein asked if GLI had identified any technology issues with implementing this. Mr. Bunevith stated that if a platform requires a change in functionality, it may take additional time to implement.

Commissioner O'Brien asked if DraftKings was the only operator to raise this issue. Deputy General Counsel Monahan confirmed that was correct. Commissioner Skinner stated that their comment did not seem to be based on a technological problem and stated her preference for keeping the language as it was. Commissioner O'Brien agreed.

Chair Judd-Stein noted that past requirements the Commission developed were technologically challenging to implement, and that she wanted to ensure this change was possible. Senior Director of Engineering from GLI Joe Carlon stated that there should not be a technological problem with patrons in their cooling-off period being able to access the platform, withdraw their funds, and extend exclusion.

Mr. Mackey stated that comments from DraftKings and FanDuel had addressed the notification and duration requirements of the cooling-off period. He explained that the specific time periods and notification requirement had been removed from the regulation and addressed in a previous discussion. Commissioner Skinner expressed an interest in adding a date to the comments submitted to gain a better understanding of their timing within the promulgation process.

Commissioner Hill moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 254.00 as included in the Commissioner's Packet and discussed here today; and further that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth to finalize the regulation promulgation process. 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.

d. [205 CMR 247](#): Uniform Standards of Sports Wagering: Regulation and Amended Small Business Impact Statement for final review and possible adoption. (1:31:39)

Attorney Paul Kominers from Anderson and Krieger presented the new comments to 205 CMR 247. The *Small Business Impact Statement, draft of 205 CMR 247, and public comments* were included in the Commissioner's Packet on pages 155 through 185.

Mr. Kominers explained that Maine and Ohio required all material terms to be on the face of advertisements, and that the change to 205 CMR 247.092 was no longer recommended. He stated that BetMGM expressed opposition to the requirement of using official league data for tier one data. He noted that the regulation did not contain that requirement regarding tier one data. He stated that BetMGM had also proposed not requiring the licensure of providers of data service as sports wagering vendors. He noted that the definition of sports wagering vendor in 205 CMR 202 explicitly included entities providing data to operators. He did not recommend these changes to be adopted. He noted that the only substantive change was to add a provision for operators to provide previous versions of house rules to patrons.

Commissioner Skinner moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 247 as included in the Commissioner's Packet and

discussed here today and further that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth to finalize the regulation promulgation process. 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.

d. [205 CMR 248](#): Sports Wagering Account Management: Regulation and Amended Small Business Impact Statement for final review and possible adoption. (1:39:33)

Mr. Kominers presented the new comments to 205 CMR 248. The *small business impact statement, draft of 205 CMR 248, and public comments* were included in the Commissioner's Packet on pages 186 through 210.

Mr. Kominers stated that an edit was made to clarify that the operator needs to maintain records of patron's acknowledgements that only they may use their sports wagering account, consent to monitoring and recording use of the sports wagering account, and affirmation that personal identifiable information provided by the patron was accurate. He noted that GeoComply had recommended the Commission shorten the time period to reverify a potentially compromised account. He recommended accepting this change.

Mr. Kominers stated that a commentor suggested patrons who had their accounts suspended should have the right to be told why their account was suspended. He noted that this can cause difficulty in suspensions involving integrity issues as it could reveal the existence of an investigation. He stated that GLI and the Sports Wagering Division had compromised on operators informing suspended patrons of how to submit a complaint to the operator or the Commission.

Mr. Kominers stated that BetMGM requested to use hashing instead of encryption for certain purposes. He explained that GLI stated encryption was the industry standard in other jurisdictions, and that operators would be able to comply with the requirement. He stated a comment requested the ability to destroy patron's personally identifying information that was not necessary for legal and enforcement purposes. He noted that all information the operator was required to collect was useful for those purposes, and that he did not want to invite confusion about what could be destroyed. He recommended against adopting these changes. He recommended against adopting BetMGM's comment regarding the sharing of information as he was unsure how much of a burden it would be on operators or how useful it would be to patrons. He stated that the request could be incorporated into a discussion on data privacy and security.

Mr. Kominers stated that GeoComply’s request for monitoring and consumer protection measures were addressed elsewhere in the regulations. He stated that BetMGM requested that logging in to the account be added to the list of activities that prevent escheatment. He noted that Massachusetts Treasurer Deborah Goldberg asked that accounts be escheated after a certain period of inactivity. He stated that the activities to prevent escheatment were based on Iowa’s regulations and were limited to depositing funds, withdrawing funds, or placing a wager.

Mr. Kominers stated that the Treasurer’s regulations list a series of activities that demonstrate an owner’s interest in maintaining accounts and that logging in was not defined as sufficient. He noted that BetMGM’s reliance on the Securities and Exchange Commission (“SEC”) guidance was not a conflict as the SEC was concerned with brokerage accounts and not sports wagering accounts. He noted that the document from the SEC was an informal advisory and not a law, and that state laws govern escheatment. He stated that BetMGM’s third argument was related to players not in the financial or emotional position to engage with their account. He stated that withdrawal of funds was also a permissible form of activity to keep an account active. He stated that no other operator raised issues with this provision and that he did not recommend adopting BetMGM’s suggested changes.

Commissioner Hill moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 248.00 as included in the Commissioner’s Packet and discussed here today and further that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth to finalize the regulation promulgation process. 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.

f. [205 CMR 256](#): Sports Wagering Advertising: Discussion re: 205 CMR 256.01(3) (regarding revenue sharing and cost per acquisition agreements and related issues) and potential waiver. (2:36:50)

Deputy General Counsel Monahan stated that the Commission’s decision of whether to allow cost per acquisition (“CPA”) agreements and revenue sharing agreements would impact the discussion of the vendor regulation. She stated that 205 CMR 256.00 was in the promulgation process with a final vote on March 23, 2023. Chair Judd-Stein inquired about where the vendor regulation was in the promulgation process. Deputy General Counsel Monahan stated that the vendor regulation was in effect and would need to be changed via amendment.

Chair Judd-Stein asked how 205 CMR 256.00 intersected with the vendor regulation. Deputy General Counsel Monahan stated clarity was needed as to whether third-party marketing entities

would require licensing or registration and that the change would need to occur in the vendor regulation. She noted that the current waiver allowed marketing affiliates to be registered, and that an amendment would be needed to formalize that change.

Commissioner Hill sought clarification as to how CPA and revenue sharing agreements affected responsible gaming. Director of Research and Responsible Gaming Mark Vander Linden stated that it impacts the Commission's ability to protect vulnerable populations, effectively regulate sports wagering advertising, and prevent saturation of the advertising market. He stated that he was not fully versed in the positives and negatives of CPA and revenue share, and that he wanted to ensure the protections in the regulation are enforced.

Commissioner Hill stated that other industries also have vulnerable populations and expressed that the Commission's current regulations provide better protections. He stated that he needed more information on the positives and negatives of these forms of marketing arrangements. He recommended removing that prohibition on CPA and revenue sharing, and returning to the regulation if an issue arose as a result.

Director Vander Linden stated that the roundtable exhibited that marketing affiliates being allowed was not necessarily bad. He suggested adding guardrails for how marketing affiliates operate so that they are held accountable alongside the operators. Chair Judd-Stein stated that a strength in the Commission's regulations was that operators were responsible for the content and conduct of their vendors regardless of the contractual relationship type.

Commissioner O'Brien noted that the prohibition was initially placed in the regulation due to a training where a Michigan regulator had commented that marketing affiliates could result in saturation of the market. She noted that the roundtable suggested that the attempt to prohibit affiliate marketers could result in more saturation. She stated that she wanted safeguards in place before eliminating the restrictions on CPA and revenue share agreements. She noted that New York had voted to ban revenue share agreements since the roundtable. She stated that revenue share agreements could be seen as counter to responsible gaming and the protection of vulnerable people.

Commissioner O'Brien stated that not all marketing affiliates would be as active with responsible gaming as the ones who participated at the roundtable. She expressed an interest in guardrails to mitigate potential damage. She stated that Kansas capped the number of marketing affiliate contracts an operator could have. She recommended licensure of marketing affiliates to ensure Massachusetts received suitable corporations. She recommended reporting requirements for third-party marketing affiliates data that could help feed research into the impact of third-party marketers and the development of intervention and responsible gaming protocols. She also suggested a sunset provision prohibiting revenue share after a certain time period.

Commissioner Skinner sought clarification regarding the difference between CPA and revenue sharing models. Deputy General Counsel Monahan stated that CPA was payment upon account creation while revenue sharing was based on a percentage of the operator's revenue. Commissioner Skinner stated that she was unsure if the Commission was informed enough to

take a position on whether to keep the language in this provision. She asked if there were marketing affiliates who used push marketing that could result in oversaturation of the market. She agreed with Commissioner O'Brien that the prohibition should not be eliminated without proper controls in place.

Commissioner Skinner noted that Connecticut prohibited CPA and revenue sharing and that Illinois prohibited revenue share agreements. She inquired as to what their reasoning was for the ban. Commissioner O'Brien noted that New York had also prohibited revenue share. Deputy General Counsel Monahan stated that the language in the regulation was based on these jurisdictions, but that she was unaware of the reasoning behind their prohibitions.

Commissioner Maynard expressed worry about the proliferation of advertisements. He noted that the marketing affiliates at the roundtable used pull advertising, where the advertisement was targeted to individuals who had expressed interest in sports wagering. He stated that someone who uses google will get a result and that he would prefer the results to be generated by regulated sportsbooks and their marketing instead of illegal offshore books. He agreed with Commissioner O'Brien that there should be a heightened level of review for affiliates who engage in revenue sharing agreements.

Chair Judd-Stein stated that marketing affiliates could add a responsible gaming component. She expressed an interest in registration for CPA agreements and licensure for revenue sharing agreements, with follow-up research as suggested by Commissioner O'Brien and Commissioner Skinner.

Commissioner Skinner asked if it made a difference to the underlying values whether profits were attained from push advertising or pull advertising. Chair Judd-Stein stated that push advertising was sent to everyone while pull advertising was targeted to those interested in sports wagering. Commissioner Skinner stated that marketing works with affiliates across all industries and questioned whether it was appropriate to take issue with because the Commission was regulating sports wagering.

Commissioner Skinner inquired as to whether some affiliates did push advertising rather than pull advertising. Commissioner O'Brien suggested it might be different between the more established responsible entities and those intending to make a quick profit and leave the jurisdiction. Commissioner O'Brien stated that the waiver was a short-term solution, and that it should be changed in a way most effective in stopping saturation.

Chair Judd-Stein noted that it was not a waiver but a suspension of the rule. She asked for the Licensing Division's opinion. Chief of the Licensing Division Karalyn O'Brien stated that the division was working through vendor applications in anticipation of the March 10 launch date. Chief Enforcement Counsel Heather Hall stated that she did not have a specific recommendation and was waiting for Commission Guidance.

Deputy General Counsel Monahan stated that the Commission could waive the prohibition in 205 CMR 256.013 of CPA relationships or revenue sharing relationships. She stated that the

Commission could decide to issue a waiver for a limited time through the launch with the directive that the legal team return with regulations for protections. She stated that the time provided by the waiver would allow the legal team to research other jurisdictions and collaborate with the research and responsible gaming division. Commissioner Maynard noted that the language in the draft motion had a waiver until April 14, 2023, and asked if there was a reason for that date. Deputy General Counsel Carrie Torrisi stated that April 14 would be the date the final version of the advertising regulation would go into effect. She stated that if the language was adjusted for the final version of the regulation, then a waiver would not be needed past that date.

Commissioner Hill expressed an interest in doing a waiver for the CPA and revenue sharing prohibition and requesting that the legal team return with suggestions for safeguards. Chair Judd-Stein expressed unease with removing the restrictions altogether through April 14. She recommended CPA agreements undergo the registrant process and revenue sharing affiliates be licensed. She stated that this approach was used in Illinois, Colorado, and New Jersey. Commissioner O'Brien stated that she agreed with Commissioner Hill. She stated that she did not believe CPA agreements were without risk and that she preferred to do a short waiver while the Commission staff researched different approaches.

Commissioner Skinner expressed concern that an elevated level of licensure would not adequately address the issue and that she wanted to explore other available options. She stated that there was not enough information to make a sound decision at this time. She noted that the marketing industry frequently uses marketing affiliates and that she was unsure if putting limitations on these entities was the correct approach.

Commissioner Maynard stated that his understanding was that most affiliate marketing used the pull marketing method. He stated that he was comfortable moving forward with the CPA model and that he agreed there should be a heightened level of scrutiny for revenue sharing. He stated that it would take time to develop the heightened scrutiny. He recommended allowing CPA agreements and providing a temporary waiver for revenue share agreements until safeguards were available.

Chair Judd-Stein stated that the prohibition of these agreements was the most conservative approach. She stated that the roundtable recommended CPA deals be allowed but recognized that revenue share agreements might have a degree of risk. She questions why these agreements would be allowed without any available guardrails during the launch of category three sports wagering.

Commissioner O'Brien stated that she would prefer to not lift the prohibition until the guardrails were established, but that she was concerned that leaving the ban in place could result in an oversaturation of the advertising market. She expressed that she was okay with CPA agreements moving forward in the short term as guardrails were developed. Chair Judd-Stein asked if Commissioner O'Brien would do the same for revenue sharing agreements. Commissioner O'Brien noted that the vast majority of third-party affiliates were not using revenue sharing, and that she did not believe it was troublesome to allow the minority of affiliates to use revenue

sharing for a short period of time. She stated that she was more comfortable with CPA than revenue share.

Commissioner Hill stated that he wanted to learn more about some issues due to this discussion and expressed that he believed his suggestion was a compromise. Commissioner Skinner agreed with Commissioner Hill and stated that she needed to reevaluate the underlying principle of regulating this well-known practice in the advertising industry.

Chair Judd-Stein stated that the Commission should also consider the impact of prohibiting revenue sharing on smaller media and marketing affiliates. She stated that higher licensure was a good option for the less experienced marketing affiliates that would be reliant on revenue sharing. She asked what the typical term of a third-party marketing agreement would be; and if these contracts could be formed for the waiver period. Deputy General Counsel Monahan stated that she did not know the typical length of the contractual relationships in the industry, but that the division could look into the matter further.

Commissioner Skinner asked how many affiliates using revenue share agreements planned to enter the Massachusetts Market. Chief O'Brien stated that the Licensing Division had received lists of hundreds of marketing affiliates prior to the advertising regulations being put in place. She noted that there was a process for temporary licensure under the vendor regulations, and suggested if that could be used as opposed to registration. Commissioner Skinner asked how many of the marketing affiliates used revenue share agreements. Chief O'Brien stated that the number was not split out at the time of this meeting. Deputy General Counsel Monahan stated that Colorado had approximately 250 affiliates with CPA agreements and 7 with revenue share agreements.

Commissioner Skinner moved that in accordance with 205 CMR 202.02(3) the Commission issue a waiver to all licensed sports wagering operators from 205 CMR 256.01(3) that allows cost per acquisition agreements and revenue sharing agreements until April 14, 2023, as granting the waiver meets the requirements of 205 CMR 102.03(4) and was consistent with the purposes of General Law Chapter 23N. Commissioner Hill seconded the motion.

Chair Judd-Stein noted her preference that the vote on this motion be held until the Commission received more information about how these third-party marketing agreements impacted the industry. She noted that the Commission did not presently know whether this change could have an impact on the industry. Commissioner Skinner asked Chair Judd-Stein how long it would take to gather this information. Chair Judd-Stein stated that it could likely be ready by the next day's meeting.

Chair Judd-Stein explained that she was not comfortable in not knowing whether there was a practical implication in allowing these agreements. Commissioner Skinner stated that she felt the reverse sentiment and was concerned about not knowing the impact of prohibiting these agreements. Chair Judd-Stein restated her preference of using licensure as a guardrail. Executive Director Wells stated that a vote in the next day's meeting would give the Licensing Division clarity on how they approach applications, but that she wanted to ensure there was sufficient time

for the Licensing Division to address marketing affiliates' applications prior to the March 10 launch. Commissioner Skinner withdrew her motion to allow for further discussion.

Commissioner O'Brien asked if any of the CPA agreement applicants had gone through the registrant process. Chief O'Brien stated that some had. Executive Director Wells inquired what information the Commission was looking to receive. Commissioner O'Brien stated that she wanted to know if a waiver until April 14, 2023, would make a difference in an operator's entrance in the market. Chair Judd-Stein asked if the lack of certainty behind the temporary nature of the waiver would impact the decision to do business with marketing affiliates. Executive Director Wells stated that she would ask whether a waiver on the prohibition of CPA and revenue sharing agreements until April 14, 2023, would negatively impact business operations, especially if further restrictions were added after the date. Commissioner O'Brien inquired whether a six-week waiver would be disruptive or helpful to the operators' business operations.

Commissioner Maynard stated that it would be beneficial for Commissioners to receive the operators' input; knowing that the Commission could add additional safeguards in the future. Commissioner Skinner expressed concern that marketing affiliates not being in place by launch could allow illegal operators to populate search results. Commissioner O'Brien stated that the roundtable participants explained that it did take some time for illegal markets to take hold in search engine results. She noted that she also wanted to minimize advertisement saturation for the launch. Commissioner Skinner stated that she shared Commissioner O'Brien's concerns about saturation.

3. [Annual Report](#) (4:15:40)

Sports Wagering Business Manager, Crystal Beauchemin submitted a final draft of FY22 Annual Report from the Commission. She requested Commission approval to finalize and release the report. The Commissioners offered no further edits.

Commissioner Skinner moved that the Commission approve the FY22 Annual Report as included in the Commissioner's Packet and discussed here today and authorize its release. Commissioner O'Brien 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.

4. [Other Business](#) (4:18:00)

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

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

Roll call vote:

Commissioner O'Brien: *Aye.*

Commissioner Hill: *Aye.*

Commissioner Skinner: *Aye.*

Commissioner Maynard: *Aye.*

Chair Judd-Stein: *Aye.*

The motion passed unanimously, 5-0.

List of Documents and Other Items Used

1. [Notice of Meeting and Agenda](#) dated February 27, 2023
2. [Commissioner's Packet](#) from the March 1, 2023, meeting (posted on massgaming.com)
3. [Additional Meeting Materials](#) from the March 1, 2023, meeting