



Massachusetts Gaming Commission Meeting Minutes

Date/Time: March 2, 2023, 1:00 p.m.
Place: Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 619 5152

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 440th Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. [Legal](#) (03:55)

- a. 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.

Chair Judd-Stein stated that the Commission requested information as to whether there would be a positive or negative impact on operators or third-party marketing affiliates if a waiver was granted for the prohibition on cost per acquisition ("CPA") agreements and revenue share agreements temporarily through April 14, 2023. She stated that a letter was submitted by Attorney Jeff Ifrah of Ifrah Law, who had represented some of the third-party marketing affiliates at the roundtable. Commissioner Skinner noted that the proposed motion from the prior meeting for 205 CMR 256 was to offer a waiver for the prohibition on revenue share and CPA

agreements to the sports wagering operators and third-party marketing affiliates until April 14, and that those entities would be registrants for that time.

Executive Director Wells stated that two operators indicated that they would not be using affiliate marketing, one operator indicated that the waiver would be disruptive, another operator indicated that the waiver would be helpful. She stated that another operator stated that they use only two, third-party marketing affiliates, and that the waiver would not make an operational difference. She noted that one of the operators who did not use marketing affiliates did not plan to launch on March 10.

Chair Judd-Stein stated that Mr. Ifrah indicated that the marketing affiliates supported the waiver for both CPA agreements and revenue share agreements, and that the affiliates would have no problems amending their agreements for any additional guardrails put in place.

Commissioner O'Brien stated that the CPA model would have a deterrent effect on push marketing, which could not be said for revenue share. She stated that other states, such as New York, had moved towards prohibiting revenue share. She stated that the CPA model could be used to provide information for developing a research and responsible gaming agenda. She stated her preference that the prohibition remain for revenue share agreements. Chair Judd-Stein stated that revenue share was utilized by smaller entities which were newer to the market and may include minority-owned business enterprises.

Commissioner Maynard stated that he shared Commissioner O'Brien's concerns and that he supported a heightened licensure of revenue-sharing advertisers. He stated that he had heard that Connecticut was considering lifting their prohibition on revenue sharing. He expressed a preference for licensure of revenue-sharing advertisers and a waiver for CPA advertisers. He noted that the Commission could adjust their approach when more information became available.

Commissioner Skinner stated she agreed with Commissioner Maynard, and that she felt more comfortable with heightened licensure for marketing affiliates who used revenue share agreements. She stated that additional guardrails could be implemented prior to April 14, and that the Commission needed more information. She requested information as to whether any of the third-party marketing affiliates used push advertising. Chair Judd-Stein asked if the data from the waiver period would be helpful in determining guardrails. Commissioner Skinner replied that it would.

Commissioner Hill stated that his opinion had not changed since the prior meeting and that he would prefer a waiver for both forms of agreement. Chair Judd-Stein asked if the heightened licensure for revenue sharing should be implemented here or prior to the April 14 ending of the waiver period. Commissioner Skinner stated that she wanted to adjust the vendor licensure regulation prior to April 14.

Chair Judd-Stein inquired as to whether a heightened licensure for revenue sharing would impact the Investigation and Enforcement Bureau's ("IEB") work. Director of the IEB Loretta Lillios stated that the licensing division would be able to intake some reduced application material from the affiliates. She noted that it was important to acknowledge attestations required for temporary licensure. She stated that the licensing division should be able to accommodate the timeline with

prompt participation from the entities. She stated that the intake could be conditioned upon continued cooperation and an administrative completeness review after the launch date.

Director Lillios stated that these entities could be prioritized for the temporary licensing protocol post-launch and stated that there were few revenue sharing companies. Commissioner O'Brien inquired about the licensing and application fees. Director Lillios stated that the registrants must pay \$5,000 and the licensed sports wagering vendors were required to pay \$15,000 and investigative costs. Commissioner O'Brien asked who pays the investigation fee for the registrants. Director Lillios replied that the funds come from the sports wagering assessment. Executive Director Wells noted that the \$5,000 went toward investigative costs.

Chair Judd-Stein asked if the Commission staff had spoken with other jurisdictions about using higher licensure for revenue sharing. Director Lillios stated that other jurisdictions used heightened licensure based on the perceived risk around responsible gaming issue and vulnerable population. She noted that the IEB received feedback from the other jurisdictions on what to look for during investigations.

Commissioner O'Brien stated that the advertising regulations and vendor licensing regulations seemed intertwined and that it would be beneficial to have the licensing language figured out to help with decisions regarding the waiver. Commissioner Skinner agreed and stated that the language for 205 CMR 234 addressing licensure should be looked at in parallel to 205 CMR 256.

Commissioner O'Brien clarified that if the Commission agreed to allow revenue sharing that she wanted a higher licensure but expressed that she wanted to prohibit revenue sharing. Commissioner Skinner stated that without revenue sharing the smaller marketing affiliates may not be able to engage with operators. Commissioner O'Brien stated that as revenue share agreements were not yet lawful no marketing affiliates fall into that category, and that it was uncertain if there will be interest in revenue share. Commissioner Skinner stated that the potential deprivation of a vendor from entering the Massachusetts market concerned her.

Commissioner Skinner stated that allowing the waiver would not preclude the Commission from later maintaining the current prohibition of revenue share. She stated that the waiver would level the playing field for all entities until the Commission had a better understanding of the industry. Commissioner Hill noted that the proposed motion from the previous meeting waived both CPA and revenue sharing. He suggested bifurcating the motion and having a vote on a waiver for CPA as there seemed to be a consensus on that issue.

Chair Judd-Stein suggested having a sunset provision of April 14 for the waiver of the advertising regulation, but no sunset provision on the requirement of licensure in 205 CMR 234. Deputy General Counsel Caitlin Monahan stated that the vendor licensure regulation would be an amendment to a regulation that would begin the promulgation process and could be changed through the final vote. The Commission reached a consensus to waive the prohibition on CPA agreements through April 14, 2023.

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 until April 14, 2023; as granting the waiver meets the

requirements specified in 205 CMR 102.03(4) and was consistent with the purposes of General Laws Chapter 23N. Commissioner Hill seconded the motion.

Commissioner O'Brien noted that her opinion on CPA agreements was different as they had a positive impact on reducing push marketing and saturation.

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 234](#): Sports Wagering Vendors: Amended Regulation (regarding third-party marketing entities, disciplinary action, and related issues) and Small Business Impact Statement for review and approval to commence the promulgation process and/or adoption via emergency. (54:41)

Outside counsel from the law Firm Anderson and Krieger Attorney Paul Kominers presented three changes to 205 CMR 234. He explained that he had formalized the IEB's request that third-party marketing affiliates be registered rather than licensed, changed the discipline provision to be in line with 205 CMR 232, and dealing with the heightened licensure requirement for revenue sharing agreements.

Commissioner O'Brien asked why the licensure for revenue-sharing advertisers included the language "regularly" in the definition. Mr. Kominers stated that the language came from the definition of sports wagering vendor, but that it could be removed for the revenue-sharing advertisers' definition. Commissioner O'Brien expressed concern about potential third-party marketing affiliates who only occasionally provided revenue sharing services. She stated that she would prefer all affiliates with revenue sharing contracts were licensed.

Chair Judd-Stein noted that the term "regularly" had been used throughout the regulation. Director Lillios stated that it was in the gaming regulations as well and was used to allow licensees to have flexibility in taking care of their operational needs. She stated that licensure would not work well with one-off contracts as the scope of their services would be completed before the investigation. Commissioner O'Brien asked if any of the licensees used this exception for advertising as opposed to maintenance. Director Lillios stated that it had not been used by advertisers in the past. Commissioner O'Brien stated that advertising was a different industry and that it may be an issue. Chair Judd-Stein expressed concern with the inconsistency of requiring the language elsewhere but not her.

Commissioner Skinner stated that she was comfortable with the language as it was. She sought clarification as to whether a one-off revenue sharing agreement would be required to register. MR. Kominers stated that a non-sports wagering vendor would have to be disclosed to the IEB, and that the IEB would have the option to upgrade them to a registrant depending on the details of the contract. Commissioner O'Brien suggested that the one-off revenue sharing agreements be

considered registrants automatically. Mr. Kominers stated that the language would need tweaking, but that it was possible.

Chair Judd-Stein expressed concern about inadvertently creating an unfair barrier for smaller licensing affiliates who were reliant on revenue share. She expressed concern with one-off revenue sharing agreements being required to jump through licensing hoops. She noted that the participants of the roundtable expressed that revenue share was relied upon by smaller businesses and stated that she did not want to shut down opportunities for diversity, equity, and inclusion.

Commissioner O'Brien stated that while there was a promising entity at the roundtable, she was uncertain if revenue share agreements would actually increase diversity, equity, and inclusion. She stated that she would prefer entities using one-off revenue share agreements, rather than to default to being registrants. Commissioner Skinner stated that she did not want to impose barriers upon small businesses. She suggested an exemption process that would allow these vendors to apply for an exemption to the licensing process. Mr. Kominers stated that an exemption could be drafted, provided that the Commission develops criteria required to meet the exemption. Commissioner O'Brien's stated that she liked Commissioner Skinner's idea.

Director Lillios stated that it would be helpful for the IEB to have guidance from the Commission as to what specific criteria third-party marketing affiliates must meet to be registered. Mr. Kominers said that it would be beneficial to have more time to implement changes from the Commission's discussion in this meeting.

Chair Judd-Stein stated that there appeared to be a consensus to waive the prohibition on revenue share agreements, if they had a heightened licensure requirement. Commissioner O'Brien stated that her agreement was contingent upon all entities utilizing revenue share being registered at a minimum. Chair Judd-Stein suggested a provision be added that any third-party marketing affiliate not required to be licensed due to lack of regularity would be registered.

Commissioner Skinner reiterated that she was comfortable with the language as written. She noted that the Commission would return to these regulations when they return for a final promulgation vote. Mr. Kominers requested a five-minute break to write a potential carve-out provision for third-party marketing affiliates using revenue share agreements as a one-off.

After a short break, Mr. Kominers suggested a proposed change of removing "regularly" from the definition of revenue-sharing advertiser in 205 CMR 234.011(f)(i) and moving it to 205 CMR 234.01(1)(f)(ii) which sets out the licensing standard. He also presented a new catch-all clause that stated that no revenue-sharing advertiser could conduct business unless registered. Commissioner O'Brien suggested an edit to fix some typos. She stated that she was comfortable with the proposed revision. Commissioner Skinner stated that she was satisfied with the suggested language.

Mr. Kominers presented the changes to 205 CMR 234.00. The *Amended Small Business Impact Statement and draft 205 CMR 234* were included in the Commissioner's Packet on pages 280 through 301.

Commissioner Skinner moved that the Commission approved the Amended Small Business Impact Statement and the draft 205 CMR 234.00 as included in the Commissioner’s Packet and discussed here today. 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.

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

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.

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 revenue sharing agreements until April 14, 2023, as granting the waiver meets the requirements specified in 205 CMR 102.03(4) and was consistent with the purposes of General Laws Chapter 23N. Commissioner Hill seconded the motion.

Roll call vote:

Commissioner O’Brien: Nay.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed, 4-1.

3. [Other Business](#) (1:57:09)

Commissioner O’Brien expressed her concern to her fellow Commissioners that she had seen an advertisement saying that a sports wagering account could be loaded by a credit card in Massachusetts. She stated that FanDuel was responsive and pulled the advertisement. She stated that she would like to discuss this issue at some point. Commissioner O’Brien noted that the revised advertisement mentioned a prepaid FanDuel card, and asked Director of Sports Wagering

Bruce Band to look into whether this would be an issue with the prohibition on fundings sports wagering accounts with credit cards, or payment methods one-step away from a credit card.

Chair Judd-Stein expressed an interest in getting an update on universal wallet issues that had arisen. She stated that she had heard of an issue with a sports wagering kiosk not having security near it. She noted that she was unsure whether there was an affirmative requirement that security be near each kiosk, but that it was an expectation of the Commission.

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

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

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 28, 2023
2. [Commissioner's Packet](#) from the March 2, 2023, meeting (posted on massgaming.com)
3. [Additional Meeting Materials](#) from the March 2, 2023, meeting