



Massachusetts Gaming Commission Meeting Minutes

Date/Time: March 23, 2023, 9:00 a.m.
Place: Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 091 8331

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 444th Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. [Meeting Minutes](#) (01:44)

a. October 27, 2022

The *October 27, 2022, public meeting minutes* were included in the Commissioner's Packet on pages 4 through 24.

Commissioner Hill moved that the Commission approve the minutes from the October 27, 2022, public meeting that are included in the Commissioner's Packet, subject to any necessary corrections for typographical errors or other non-material matters. 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.

3. [Administrative Update](#) (02:39)

Executive Director Karen Wells explained that the scheduled review of the Massasoit Greyhound Association's category two sports wagering license application on March 28, 2023, would be moved to an April date due to a scheduling conflict. She stated that holds had been placed on April 12, 2023, and April 26, 2023. The Commissioner reached a consensus to review the category two sports wagering application on April 12, 2023.

Chair Judd-Stein asked if the dates had been vetted with the applicant. Loretta Lillios, Director of the Investigations and Enforcement Bureau ("IEB") stated that the applicant was aware of the two dates, and that she was confident they would make themselves available for April 12, 2023.

a. [Exclusion List Plan Approval Update](#) (05:46)

Executive Director Wells stated that in a prior meeting, the Commission had discussed the applicants' requirement to submit an exclusion list plan. She stated that the plans were not submitted as quickly as expected and were still being reviewed. She stated that the Commission would be updated in a future meeting once the plans were approved.

b. [Casino Updates](#) (06:32)

Interim Gaming Agents Chief, Burke Cain stated that Plainridge Park Casino ("PPC") was preparing for the opening day for horseracing on April 10, 2023. He reported that PPC continued sports wagering operations in their temporary sportsbook, while the permanent sportsbook was being constructed.

Interim Chief Cain stated that MGM Springfield ("MGM") celebrated Saint Patrick's Day and participated in the parade. He stated that MGM was preparing for their Friday concert series to move outside, due to the warmer weather.

Interim Chief Cain stated that Encore Boston Harbor ("EBH") expanded Pit 36 in front of the Wynn Sports bar; replacing eighty-five slot machines with six table games. He noted that EBH had also sponsored a mixed martial arts event recently.

Interim Chief Cain noted that during the Covid-19 pandemic, the casinos reimagined what their floors could look like. He stated that the casinos gave more space between patrons at slot machines. A *Report On The Number Of Games And Table Games Changed At Each Casino* was included in the Commissioner's Packet on pages 25 through 29.

Commissioner Maynard asked why the number of slot machines at EBH began to fall in comparison with July of 2022. Interim Chief Cain stated that EBH took away slot machines to add more table games. Commissioner O'Brien asked if the increase of table games at EBH was only at Pit 36 by the sports bar. Interim Chief Cain stated that table games were added to connect the carnival games area with the main float at the center of the casino.

Commissioner O'Brien inquired whether EBH or MGM had discussed adding more poker tables. Interim Chief Cain stated that the operators had discussed adding more poker tables but that there was no firm plan.

Commissioner Skinner asked if the IEB reviewed the licensees' commitments made at the time of their application when approving changes to the gaming floor. She stated that the Commission should be mindful of what promises the licensees made at the time of licensure. Interim Chief Cain stated that some changes had to be made in response to the market and pandemic. Commissioner Skinner stated that while the changes made by casinos may be appropriate, the IEB and the Commission should have a fuller understanding of where licensees may fall short in terms of what was promised in their license applications.

4. [Finance](#) (23:29)

a. 205 CMR 240—Definition and Application of Location/Resident Percentage for Taxation of Daily Fantasy Sports

Chief Financial and Accounting Officer ("CFAO") Derek Lennon presented on the daily fantasy sports revenue allocation for taxation, with topics including: a request for revenue allocation model; the statutory definition; location and resident percentage allocation; and location and resident taxation in other states. The *Daily Fantasy Sports Taxation Presentation* was included in the Commissioner's Packet on pages 30 through 38.

Commissioner O'Brien asked whether a location resident percentage would require a statutory change. General Counsel Todd Grossman stated that this approach was used in multiple jurisdictions, and expressed his belief that the Commission had the discretionary authority to do the same.

Chair Judd-Stein asked if the Commission staff was working with the Attorney General's Office to identify registrants. CFAO Lennon explained that the Attorney General's Office was responsible for regulating daily fantasy sports operators, but that the Commission was responsible for taxing these operators. He stated that a regulation was in place to allow the

Commission to register daily fantasy sports operators. He stated that if an operator was not paying taxes, and refused to register, the Commission would have to reach out to the Attorney General's Office for enforcement action.

CFAO Lennon noted that each time an entity operating in the Commonwealth had been identified the entity quickly registered and paid taxes retroactively. He stated that the finance team needed to work with some of the fantasy sports operators as they were showing negative revenue.

Commissioner O'Brien asked if the Commission's website listed registered daily fantasy sports operators. CFAO Lennon replied that a detailed list of registered operators had been made and confirmed that it would be posted to the Commission website.

Chair Judd-Stein suggested that the Commission reorder the agenda due to scheduling concerns. Executive Director Wells recommended moving the Sports Wagering Division's presentation to be the next agenda item.

5. [Sports Wagering](#) (37:00)

a. Clarification on Rules for Russian and Belarus Participants in Sports Wagering Events

Sports Wagering Operations Manager, Sterl Carpenter stated that clarification was sought regarding the interpretation of the language restricting wagering on Russian and Belarusian players and events. He stated that DraftKings wanted to know whether wagers could be offered on players born in Russia or Belarus competing under a neutral flag.

Commissioner O'Brien noted that Colorado had similar restrictions. She stated that sports' success could be used as some form of propaganda tool. She stated that allowing athletes to participate under a neutral flag could be the exception that swallows the rule. She expressed support for exempting athletes born in Russia or Belarus that had no country affiliation.

Commissioner Skinner expressed concern that allowing athletes to compete under a neutral flag could bypass the intent of the regulation. Mr. Carpenter stated that the neutral flag language was proposed by DraftKings. Chair Judd-Stein asked if the Commission staff had alternative proposed language. Mr. Carpenter posed that if an athlete completes individually or on a team in an approved event outside of Russia or Belarus; and does not represent those countries, then wagering would be permitted.

Commissioner O'Brien expressed an interest in having stronger language so that the regulation could not be circumvented. Commissioner Skinner expressed an interest in a test to determine whether an athlete was representing these countries. General Counsel Grossman stated that it would have to be determined on a case-by-case basis. He noted as well that an athlete born in a country was not necessarily performing on behalf of their country.

Mr. Carpenter stated that for the Olympics some athletes wanted to participate and stated that they did not represent Russia. Commissioner Maynard stated that he shared Commissioner O'Brien and Commissioner Skinner's concerns, but that he did not want to bar wagering on all Russian and Belarusian born participants.

Commissioner O'Brien stated that the word "affiliation" should also be included in the language to alleviate some of the Commission's concerns. Commissioner Skinner suggested that examples be listed for further clarity. Commissioner Hill expressed support for the language proposed by Commissioner O'Brien. He stated that wagering on athletes born in these countries was acceptable as long as they were not directly affiliated with their country. Chair Judd-Stein requested that the Sports Wagering Division change the language and present it to the Commissioners later in the meeting.

6. [Legal](#) (1:06:44)

- a. 205 CMR 232: Discipline of Sports Wagering Operators and Other Licensees, and Registrants - Regulation and Amended Small Business Impact Statement for final review and possible adoption

Attorney Mina Makarios, outside counsel from the law firm Anderson and Krieger, presented the changes to 205 CMR 232. The *Small Business Impact Statement, public comments, and draft of 205 CMR 232* were included in the Commissioner's Packet on pages 81 through 88.

Mr. Makarios stated that one comment was received from BetMGM requesting that the word "knowingly" be included with respect to violations that might subject an entity to discipline. He recommended against adopting this change. He stated that knowledge may factor into discipline, but it should not be a threshold as to whether there was a violation in the first place. He noted that the regulation had remained unchanged since the last time it was presented to the Commission.

Commissioner O'Brien moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 232 as included in the Commissioner's Packet and discussed here today; and further moved 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.

[b. 205 CMR 239: Continuing Disclosure and Reporting Obligations of Sports Wagering Licensees - Regulation and Amended Small Business Impact Statement for final review and possible adoption](#) (1:10:18)

Mr. Makarios presented the changes to 205 CMR 239. The *Small Business Impact Statement, public comments, and draft of 205 CMR 239* were included in the Commissioner's Packet on pages 89 through 103.

Mr. Makarios stated that a comment requested monthly rather than bi-monthly disbursement reporting. He explained that he had spoken with the Finance Division and IEB, and that these reporting requirements were bi-monthly under 205 CMR 138. He recommended against making their suggested change.

Mr. Makarios stated that a question was received regarding 205 CMR 239.03(6); inquiring why promotional wagering credits were included in the quarterly reports covering complimentary services. He explained that promotional credits were complimentary gifts to patrons, and that similar offerings were required in the past under 205 CMR 139.

Mr. Makarios noted that a comment stated that annual business plans contain sensitive competitive information. He explained that 205 CMR 239.04 did not require Operators to file the reports with the Commission, just their maintenance of records and possible Commission access to the records.

Mr. Makarios stated that BetMGM had asked if they would need to prepare a state-specific balance sheet for 205 CMR 239.06(1). He stated while a separate requirement was not listed, the language proposed by BetMGM was covered in the regulation.

Mr. Makarios stated that multiple comments questioned whether patron information obtained through this process could be promptly deleted, erased, or destroyed once it was no longer needed. He stated that information regarding player characteristics and statistics was critical information for understanding the misuse of data. He stated that it was up to the operator to ensure this information was properly and safely maintained.

Mr. Makarios noted that DraftKings also questioned the bi-monthly reporting requirements. He stated that while no change was recommended, the language may be changed to "every two weeks" for clarification.

Chair Judd-Stein asked if the comments from the Attorney General's Office regarding data privacy could be implemented in this regulation. Mr. Makarios noted that the Attorney General's Office did not provide comment for 205 CMR 239. He stated that the comments from the Attorney General's Office were proposed edits to 205 CMR 137, 205 CMR 238, 205 CMR 247, and 205 CMR 248. He stated that a standalone data privacy regulation was being developed.

Commissioner Hill moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 239 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 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.

c. [205 CMR 241: Surveillance and Monitoring - Regulation and Amended Small Business Impact Statement for final review and possible adoption](#) (1:24:39)

Mr. Makarious presented the draft of 205 CMR 241. He stated that no comments were received and that there were no suggested edits. The *Small Business Impact Statement and draft of 205 CMR 241* were included in the Commissioner’s Packet on pages 104 through 106.

Commissioner Maynard moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 241 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.

d. [205 CMR 106: Information and Filings – Regulation and Amended Small Business Impact Statement for final review and possible adoption](#) (1:26:29)

Attorney Annie Lee, from Anderson and Krieger, presented the draft of 205 CMR 106. She stated that no comments were received and that there were no proposed changes. The *Small Business Impact Statement and 205 CMR 106* were included in the Commissioner’s Packet on pages 44 through 49.

Commissioner Skinner moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 106 as included in the Commissioner’s Packet and discussed here today; and further moved 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 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.

e. [205 CMR 107: Professional Practice - Regulation and Amended Small Business Impact Statement for final review and possible adoption](#) (1:28:43)

Ms. Lee presented the draft of 205 CMR 107. She stated that no public comments were received and that there were no proposed changes. The *Small Business Impact Statement and 205 CMR 107* were included in the Commissioner’s Packet on pages 50 through 53.

Commissioner Hill moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 107 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.

f. [205 CMR 109: Emergency Action - Regulation and Amended Small Business Impact Statement for final review and possible adoption](#) (1:30:25)

Ms. Lee presented the draft of 205 CMR 109. The *Small Business Impact Statement, public comments, and 205 CMR 109* were included in the Commissioner’s Packet on pages 54 through 58.

Ms. Lee stated that one comment from BetMGM requested that the Commission give advance notice if it was likely to condition, suspend, or revoke a license pursuant to an emergency

situation. She stated that the comment was not relative to any amendments proposed to the regulation, and recommended the Commission not accept the comment.

Commissioner O'Brien moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 109 as included in the Commissioner's Packet and discussed here today; and further moved 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.

g. [205 CMR 213: Withdrawal of an Application - Regulation and Amended Small Business Impact Statement for final review and possible adoption](#) (1:33:05)

Attorney Paul Kominers, from Anderson and Krieger, presented the draft 205 CMR 213. He stated that there were no public comments and no proposed edits. The *Amended Small Business Impact Statement and draft of 205 CMR 213* were included in the Commissioner's Packet on pages 68 through 70.

Chair Judd-Stein asked what steps were required for a withdrawal of an application. Mr. Kominers stated that applicants for a sports wagering license, individuals in the process of being qualified, and or sports wagering registrants may file a notice of withdrawal. He stated that the withdrawal could occur without Commission approval unless there had already been a hearing or other formal evaluation process. He noted that the Commission could condition a withdrawal, and that there were limitations on the surrender of individual credentials.

Commissioner Skinner moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 213 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 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.

h. [205 CMR 229: Review of a Proposed Transfer of Interest - Regulation and Amended Small Business Impact Statement for final review and possible adoption](#) (1:36:25)

Mr. Kominers presented the draft of 205 CMR 229. He stated that no public comments were received and that all changes were technical edits. The *Small Business Impact Statement and draft of 205 CMR 229* were included in the Commissioner's Packet on pages 71 through 80.

Commissioner Skinner moved that the Commission approve the Amended Small Business Impact Statement and draft of 205 CMR 229 as included in the Commissioner's Packet and discussed here today; and further moved 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.

i. [205 CMR 202: Authority and Definitions - Regulation and Amended Small Business Impact Statement for final review and possible adoption](#) (1:38:23)

Deputy General Counsel Carrie Torrisi noted that Mr. Makarios would not be available from 11:00 a.m. to 12:00 p.m. She requested that the Commission proceed with the Racing Division's agenda items before returning to discussions of 205 CMR 256.

Mr. Makarios presented the draft of 205 CMR 202. He stated that no public comments were received, and the only changes were to add a few definitions. The *Small Business Impact Statement and draft of 205 CMR 202* were included in the Commissioner's Packet on pages 59 through 67.

Commissioner Hill noted that some of the new definitions were relevant to 205 CMR 256 and suggested a vote on 205 CMR 202 be held until the Commission had reviewed 205 CMR 256 as well.

7. [Commissioner Updates](#) (1:43:31)

Chair Judd-Stein explained that in January, the Commission discussed whether promotional play should be tax deductible. She stated that the majority of the Commission thought the law was

sufficiently ambiguous to allow for the Commission to decide whether promotional play was taxable. She stated that interested stakeholders from the media, public policy researchers, and a legislative office had recently submitted inquiries regarding promotional play.

Commissioner O'Brien inquired what the queries were regarding. Communications Chief Thomas Mills stated that all questions were regarding whether promotional play would be deductible for operators. Commissioner O'Brien asked if there was more information regarding who sent the inquiries. Chief Mills stated that the questions were received from the office of Massachusetts State Senator William Brownsberger, a public policy researcher with Boston University. Chief Mills stated that he would get the Commission the names of the individuals who submitted the queries.

Commissioner O'Brien expressed an interest in inviting stakeholders to comment. Commissioner Hill requested that dates for this topic be discussed at an agenda setting meeting. Commissioner Skinner and Commissioner Maynard agreed. Commissioner O'Brien reiterated that she did not think the language was ambiguous. She stated that promotional play should not be deductible. She noted that she would like to put this topic out for comment from interested parties.

Commissioner Hill inquired if there was an opportunity to have a round table on this issue. Commissioner O'Brien stated that it would be beneficial to have a list of interested parties before scheduling a round table. Chair Judd-Stein recommended inviting the Attorney General's Office, the Treasurer's Office, and the Governor's Office due to the potential impact on revenue. Commissioner Maynard stated that he would like to hear about how promotional play affects responsible gaming as well. He stated that the operators should also explain their thought process. Chair Judd-Stein suggested inviting RSM as well.

Commissioner O'Brien then inquired if the Commission staff should proactively reach out to the identified groups. Chair Judd-Stein suggested that the Commission also examine research from other jurisdictions. Chief Financial and Accounting Officer ("CFAO") Derek Lennon stated that promotional play was typically used to attract customers, and that the numbers at launch may not compare well to a jurisdiction's steady state.

8. [Racing](#) (2:04:20)

a. Suffolk Downs Request for Approval of DK Horse, LLC as an Account Wagering Provider

Director of Racing and Chief Veterinarian Dr. Alex Lightbown stated that Suffolk Downs had requested the approval of DK Horse, LLC, as an account wagering provider. She noted that DK Horse, LLC, was an affiliate of DraftKings. *Suffolk Downs' Request* was included in the Commissioner's Packet on pages 187 through 192.

Director Lightbown stated that since the memorandum was written, DK Horse, LLC, had been approved in Colorado, Indiana, Washington, and West Virginia. She stated that the Racing Division recommended approval of this request. Chief Operating Officer of Suffolk Downs Michael Buckley noted that this relationship was similar to the Caesars Racebook relationship approved by the Commission in December.

Commissioner O'Brien sought clarification regarding the reference to the August 1, 2023, expiration. She asked if that expiration was for racing in general or specific to greyhound racing. Director Lightbown noted that it was specific to greyhound racing. Financial Analyst, Chad Bourque noted that only one advanced deposit wagering platform offered wagering on greyhound races. Mr. Buckley stated that DraftKings Horse, LLC, would not be providing greyhound racing on their advance deposit wagering platform. Director Lightbown stated that the language was included because the legislature included a July 31, 2023, end date for advanced deposit wagering on greyhound races in the racing legislation.

Commissioner Hill moved that the Commission approve DK Horse, LLC, as an advanced deposit wagering vendor for Suffolk Downs for parimutuel wagering purposes only, on the condition that if DK Horse, LLC, accepts wagering in Massachusetts on greyhound racing, it may do so only until August 1, 2023, consistent with Chapter 128 of the Acts of 2022. 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.

b. [Plainridge Park Racecourse Request for Approval of Racing Officials and Key Operating Personnel](#) (2:15:03)

Director Lightbown stated that each year, the Commission was required to approve operating personnel and racing officials. She noted that the list of officials submitted was nearly identical to the list from the prior year. She added that all individuals on the list had been licensed in the past. Director of Racing from PPC, Steve O'Toole expressed that PPC was happy to have the returning personnel and officials. *PPC's Request and Racing Officials List* were included in the Commissioner's Packet on pages 180 through 181.

Commissioner Maynard moved that the Commission approve Plainridge Park Casino's list of operating personnel and racing officials for the 2023 racing season, as included in the Commissioner's Packet and discussed here today, subject to the conditions that such operating personnel and racing officials obtain the necessary licensure and satisfactorily complete their background checks by the Massachusetts State Police. 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. [Plainridge Park Racecourse Request for Waiver of 205 CMR 3.12\(7\) Qualifying Race Requirement](#) (2:19:59)

Director Lightbown explained that PPC had requested a waiver from 205 CMR 3.12(7) since 2018 and that the Commission had approved it for each year. She stated that qualifiers give horses a chance to get back into racing shape and give lines for future betting. Mr. O'Toole stated that the regulation gives thirty days for qualifiers, whereas most other jurisdictions give forty-five to sixty days. He noted that the horsemen supported the approval of this waiver. *PPC's Request For Waiver* was included in the Commissioner's Packet on pages 182 through 183.

Commissioner O'Brien moved that the Commission waive the requirement set out in 205 CMR 3.12(7), that all horses not showing a satisfactory race line during the previous thirty days do a qualifying mile at a race before the judges and change the thirty-day period to forty-five days for the 2023 racing season for the reasons discussed here today and included in the Commissioner's Packet. 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.

Commissioner Hill suggested that the Commission amend the regulation rather than approving a waiver each year. Director Lightbown stated that the regulation explicitly allows for the association to request a waiver of this requirement. Commissioner Hill stated that there seemed to be enough evidence and data to amend the regulation to forty-five days.

d. [Plainridge Park Casino requests for Promotional Fund Reimbursement for Handicapping Contests](#) (2:24:52)

Mr. Bourque stated that PPC had requested reimbursement for the handicapping contests approved by Commission on October 13, 2022. He explained that each month, funds were deposited into the Harness Horse Promotional Trust. He stated that PPC could use these funds to engage customers, increase attendance, and increase handle. He stated that distributions from the

Harness Horse Promotional Trust were made upon the Commission’s approval of a request for consideration and a subsequent request for reimbursement.

Mr. Bourque stated that PPC was requesting \$25,000 for the Penultimate Handicapping Contest and \$2,500 for the Survivor Handicapping Contests. He noted that the fund had a balance of more than \$280,000 and stated that he recommended approval of the requests.

PPC’s Request For Reimbursement For The Penultimate Handicapping Contest was included in the Commissioner’s Packet on page 185. *PPC’s Request For Reimbursement For The Survivor Handicapping Contest* was included in the Commissioner’s Packet on page 186.

Commissioner Hill moved that the Commission approve the expenditure of \$25,000 from the Harness Horse Promotional Trust Fund to Plainridge Park Casino in accordance with General Law Chapter 128A, § 5(g) for the Penultimate Handicapping Contest, as included in the Commissioner’s Packet and discussed here today, and further that the Commission approve the expenditure of \$2,500 from the Harness Horse Promotional Trust Fund to Plainridge Park Casino in accordance with General Law Chapter 128A § 5(g) for the Survivor Handicapping Contest, 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.

9. [Sports Wagering](#) (2:31:27)

a. Clarification on Rules for Russian and Belarus Participants in Sports Wagering Events (Continued Discussion)

Mr. Carpenter presented the newly drafted language regarding the restriction on wagering on athletes representing or affiliated with Belarus and Russia. He stated that the clarifying language was:

“No wager shall be offered or accepted in the Commonwealth of Massachusetts by a licensed sports wagering operator on an event or league overseen by a Russian or Belarusian governing body, a body headquartered in Russia or Belarus. Further, no wager shall be offered or accepted on any athlete competing individually or on any team in an event authorized in the Commonwealth’s catalog, if the individual or team is known to represent Russia or Belarus.

Wagering is permitted on a Russian- or Belarusian-born, based, or affiliated athlete competing individually or on a team in an event authorized in the Commission’s catalog if the event is scheduled to be conducted outside of Russia or Belarus and they are not known to represent or promote these countries.”

Commissioner Skinner stated that the intent of the language was clear, and asked where the language would be posted. Mr. Carpenter stated that the language would be in the guidelines tab in the sports wagering catalog located on the Commission’s website. Commissioner Skinner suggested that the Sports Wagering Division include examples for further clarification.

Commissioner O’Brien moved that the Commission amend the adopted sports wagering catalog for all licensees in Massachusetts by replacing the restriction prohibiting wagers on “any sports or sporting event overseen by Russian or Belarusian governing bodies, leagues, events, or players,” with the language most recently read by Sterl Carpenter at today’s meeting at approximately 11:45 a.m., and as further discussed here today. 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.

10. [Legal](#) (3:28:43)

j. 205 CMR 256: Sports Wagering Advertising - Regulation and Amended Small Business Impact Statement for final review and possible adoption

Mr. Makarios presented the draft of 205 CMR 256. *The Small Business Impact Statement, public comments, and draft of 205 CMR 256* were included in the Commissioner’s Packet on pages 107 through 179.

Mr. Makarios stated that several operators had submitted comments requesting clarity that the regulation only applied to sports wagering and not their other lines of business. He stated that the term “sports wagering” was added in several provisions of this regulation.

Mr. Makarios stated that 205 CMR 256.01(3) banned agreements between sports wagering operators and third-party marketing affiliates where the agreement provided for compensation dependent upon the volume of patrons who sign up or wagers placed. He noted that a universal waiver was currently in place for this provision, and the licensing of vendors and registrants was changed. He stated that the Attorney General’s Office requested this section be retained.

Chair Judd-Stein stated that the waiver was effective through April 14, 2023. Commissioner O'Brien stated that the Commission had to make a decision whether to adopt the language in the regulation, change the language, or strike this provision. She noted that once the waiver expired, the regulation would go into effect as written.

Chair Judd-Stein sought clarification that the Commission had in fact decided there would be elevated licensure for revenue sharing agreements. Mr. Makarious stated that was correct, but that the licensure was captured in 205 CMR 234, and not the current regulation. Commissioner O'Brien noted that there were different forms of cost-per-acquisition agreements, that some were to the point of know-your-customer and others required the patron to place a wager.

Commissioner O'Brien asked how the language could be modified without repealing the entire provision. Mr. Makarious stated that the language could mirror what was set up in 205 CMR 234. Commissioner Skinner expressed that her understanding of revenue share agreements was that the compensation would not be increased by the amount wagered by the patron. She stated that the language in this provision was an added protection. Commissioner O'Brien stated that revenue share gives the marketing affiliates a portion of what is bet. Commissioner Skinner stated that revenue share pays the marketing affiliate for each bet the patron makes. Commissioner O'Brien proposed that revenue share could be based on a percentage of each bet or based upon number of bets. Commissioner Skinner stated that the proposed language should prohibit that scenario.

Commissioner Skinner asked for a formal clarification regarding how revenue share agreements worked, so the Commission could have a clearer understanding. Mr. Makarious stated that he would provide the Commission with that information. Commissioner O'Brien asked if the language should be changed to "gross or net" rather than just "net". Mr. Makarious stated that the language was tied to the language in 205 CMR 234, but that the Commission could choose whether the prohibition scopes farther.

Mr. Makarious stated that the Commission could consider this provision further and decide whether it wants to keep the language or modify the language at the next meeting. Commissioner Hill inquired how other jurisdictions address third-party marketing affiliates. Mr. Makarious stated that Connecticut and Illinois prohibit cost-per-acquisition and revenue-share agreements. He stated that some jurisdictions used the enhanced licensing approach. Commissioner O'Brien stated that New York recently passed a ban on cost-per-acquisition and revenue-share agreements. Commissioner Maynard stated that he heard that Connecticut might reverse its ban.

Commissioner Maynard asked if the comments from the Attorney General's Office considered the Commission's discussions and round table on this topic. Deputy General Counsel Caitlin Monahan stated that the round table was on February 27, 2023, and that the Commission discussion was the next day. She stated that the Attorney General's Office submitted its letter on March 7, 2023. Commissioner Maynard stated that he did not want to decide before reviewing

the comments sent by the Attorney General's Office. Commissioner O'Brien agreed that the Commission should have time to digest all comments.

Commissioner Skinner stated that she would like to discuss why revenue-share agreements were assumed to be more detrimental to the market than cost-per-acquisition agreements.

Commissioner O'Brien stated that the round table had discussed evidence that cost-per-acquisition agreements reduced general push marketing, which was a benefit. She stated that there was additional concern that revenue share agreements might induce patrons to gamble more.

Commissioner Skinner stated that she had a different recollection of the roundtable discussion, and that she did not want to decide based on a potential misunderstanding. Chair Judd-Stein recommended that the Commissioners review their notes from the round table and then re-discuss this provision further at the meeting on March 27, 2023.

Chair Judd-Stein expressed concern that banning revenue-share agreements may impact smaller, and more diverse vendors. She stated that the elevated licensure requirements seemed to be the best practice, in her opinion.

Commissioner Skinner stated that the Attorney General's Office expressed concerns about third-party marketing affiliates providing advice on prospective wagers. She sought further clarification as to whether third-party marketing affiliates engage in that conduct. Mr. Makarious stated that 205 CMR 256.04 restricts vendors or registrants from directing or suggesting a particular bet. He stated that he would look into whether marketing affiliates engage in this behavior. Commissioner Skinner stated that it should be prohibited outright.

Attorney Christina Marshall, from Anderson and Krieger, stated that Caesars had requested that this regulation not apply to national advertising. She stated that while an advertisement might be shown in other states, it did not remove the Commission's jurisdiction to regulate the advertisement. She recommended against adopting this change.

Mr. Makarious stated that the Attorney General's Office suggested that 205 CMR 256.02(1) have a clearer indication that G.L. Chapter 93A, The Consumer Protection Act, and other consumer protection laws still apply. Mr. Makarious expressed concern that explicitly listing statutes might inadvertently omit a relevant statute. He stated that the language was changed to be broader, so that it was clear all other relevant statutes applied in addition to the regulation.

Chair Judd-Stein asked whether the proposed language for 205 CMR 256.02(1) captured all relevant laws. Mr. Makarious responded that it did. He noted that the word "existing" could be removed to be inclusive of future statutes as well.

Mr. Makarios stated that an operator had asked if the Commission would allow a variety of ways to limit what language has to be included regarding terms and conditions or exclusions to promotions, such as “void where prohibited”. He recommended keeping the language as it was.

Mr. Makarios noted that operators had requested changes to 205 CMR 256.04 to use the Ohio model, where terms and conditions can be available one-click away rather than on the face of the advertisement. He stated that the proposed change was to require material terms to be on the face of the advertisement with other details being one-click away. He stated that this standard was slightly more rigorous than Ohio’s.

On this topic, Commissioner O’Brien stated that if an operator could not fit all the details of a promotion into an advertisement, then the advertisement should be in a different medium. She asked if there were any more restrictive jurisdictions. Mr. Makarios stated that the language came from regulations in Ontario and Virginia. He stated that Pennsylvania and New York required conspicuous disclosure of terms.

Mr. Makarios stated that FanDuel requested 205 CMR 256.04(5)(c) be changed to a clear and conspicuous standard. He stated that in prior meeting the Commission requested more details be added to certain provision, and that he did not recommend adopting this change.

Commissioner Skinner asked if the comments relative to the use of pop-up messaging applied to 205 CMR 256.04(5)(b). Mr. Makarios stated that unsolicited pop-ups were addressed later in the regulation. Ms. Marshall stated that DraftKings had requested that the provision Commissioner Skinner referenced be removed, but that the legal team recommended against removing it.

Mr. Makarios stated that the Attorney General’s Office requested a paragraph be added to 205 CMR 256.04(1) to clarify that mobile application design elements could constitute unfair or deceptive advertising, marketing, or branding for sports wagering. He stated that he wanted to review the language to make sure it made sense with other changes.

Mr. Makarios stated that Caesars had requested clarification regarding 205 CMR 256.04(4) as to whether this provision prohibited promotional activity from the operator’s vendors. Mr. Makarios stated that it was permissible to say that there was a game the patron might be interested in wagering on, but that the advertisement could not say that that a team was a good pick.

Mr. Makarios stated that the Attorney General’s Office requested that 205 CMR 256.04(6) include a prohibition of using individuals to provide purported expertise or wagering advice where employed by contract or otherwise compensated by professional or amateur sports leagues, teams, or broadcast networks. He stated that the idea was to limit encouragement of bets from persons and entities affiliated with an operator.

Ms. Marshall stated that a slight change was made to 205 CMR 256.05(3) where a comma was removed to clarify the provision. She stated that 205 CMR 256.05(4) received comments claiming that the language was vague. She stated that edits were made to have the language align with other subsections. She stated that the Attorney General's Office proposal would collapse subsections a and b into one subsection. She stated that this would accomplish the same goal, and that it was a matter of Commission preference.

Mr. Makarios clarified that the limitation on advertising on college campuses and universities did not apply to media available that was not related to the college, such as streaming a show. He noted that one comment requested that 205 CMR 256.05(4)(f) be removed as it was redundant. He noted that this was intended to be a catch-all provision and was not redundant.

Mr. Makarios stated that some broadcasters had requested the reference to moderate or high risk of gambling addiction be removed from 205 CMR 256.06(1). He stated that this language was modelled after the language in the Ontario and Ohio regulations, and recommended the language not be removed. He stated that the Attorney General's Office requested the word "intentionally" be removed that he recommended making that change.

Mr. Makarios stated that the Attorney General's Office requested a requirement that all operators disclose the steps they take to comply with this section on a monthly basis in a publicly available document. He stated that this suggestion would be further discussed in the upcoming meeting on March 27, 2023, as there may not be a way to reasonably digest that information.

Mr. Makarios stated that Penn National commented that including branding in 205 CMR 256.06(2) would include logos, merchandise, or other passive advertising that did not contain a call to action. He stated that it would make sense in this context to remove branding from this provision to strike a reasonable approach.

Mr. Makarios stated that pursuant to G.L. Chapter 23N, the Commission received input from the Department of Public Health regarding what messaging and problem gambling hotline was required to be displayed upon log-in to a sports wagering platform. He stated that operators had requested to use a national hotline rather than a Massachusetts specific hotline for national advertisements. He noted that it was possible to tailor advertisements for Massachusetts. He stated that the responsible gaming team was working to ensure the amount of responsible gaming messaging was not overwhelming.

Executive Director Wells stated that G.L. Chapter 23N, § 4(d)(3) required the messaging upon log-in, but that there was no statutory requirement to include this language for advertising. She stated that requiring responsible gaming messaging for advertisements was within the Commission's regulatory discretion. She noted that the Commission may be conflating platform and advertising requirements. She stated that the Department of Public Health requested that the Commission only use the language approved by the Department of Public Health, as including

GameSense language could cause confusion. Mr. Makarios confirmed that the log-in requirements within the statute were captured in 205 CMR 247.

Commissioner O'Brien stated that concern was previously raised that too much information could be hard for the consumer to grasp. She expressed support for including the GameSense language, as it was complimentary and different from the language from the Department of Public Health.

Mark Vander Linden, Director of Research and Responsible Gaming stated that the problem gambling helpline was a resource intended for those seeking community-based resources for problematic gambling. He stated that GameSense advisors were trained to connect with patrons and enroll them remotely in the Voluntary Self Exclusion program and discuss ways to reduce risk for those not ready to enroll. He stated that both programs hold important, but complimentary spaces.

Executive Director Wells stated that operators had inquired about what language was needed for advertisements. Chair Judd-Stein stated that the Commission staff could work with the Department of Public Health to develop a concise way to list the hotline, a tag line, and a game sense logo. She stated that the message could be both concise and powerful. Commissioner Skinner expressed an interest in having the Department of Public Health weigh in on this issue. Mr. Makarios stated that one comment asked whether responsible gaming messaging had to be displayed on every single page of a website or displayed on the home page of the website. He stated that he consulted Director Vander Linden, and that displaying the message prominently on the website was acceptable. He stated that the messaging would still be required on every advertisement.

Ms. Marshall stated that a comment requested that the font requirement for responsible gaming messaging on billboards be changed to 2%. She recommended against making this change as 5% was consistent with New York and Pennsylvania's regulations.

Mr. Makarios stated that 205 CMR 256.07 was the relevant provision related to unsolicited pop-up advertisements. He stated that several commenters noted that they should not be responsible for unsolicited pop-up advertisements sent to those who are voluntarily excluded if the operator did not know who the message was going to. He noted that the language in this provision prohibits messages that are directed, and that a knowing standard applied.

Mr. Makarios noted that the Attorney General's Office suggested that the language in 205 CMR 256.07(3) be moved to 205 CMR 256.06. He stated that the language could go in either provision. Mr. Makarios stated that 205 CMR 256.08 was slightly changed to keep it closer in line with statutory authority.

Mr. Makarios stated that operators sought clarification regarding what would make advertising overly saturated. He stated that an example of advertising would be considered overly saturated

if a sporting venue, such as Fenway Park, had all of its advertisements bought out by a single operator.

Mr. Makarios stated that the Attorney General's Office requested that 205 CMR 256.09(2) include a provision that endorsements should require a disclosure of the relationship in addition to the other regulatory requirements for advertisements. He stated that he was still reviewing this comment, and whether it would work with national advertisements. He stated that the Attorney General's Office referenced the Federal Trade Commission's guide regarding the use of endorsements or testimonials. He noted that the guide was not a law or regulation but could be referenced as a standard of conduct.

Mr. Makarios stated that multiple licensees raised concern regarding maintaining information as required by 205 CMR 256.10. He stated that he recommended against making a change, as the information was important if there would ever be an enforcement action or patron complaint. Mr. Makarios noted that a broadcaster's group sought clarification as to whether the Commission intended to control social media accounts. He stated that the Commission might need access to determine whether an advertisement was properly limited, but that the Commission did not want to control what was posted. He stated that the Attorney General's Office suggested language that records maintained are sufficient to describe all targeting parameters.

Mr. Makarios stated that typographical changes were made to 205 CMR 256.11. He stated that operators generally supported pre-review of advertisements as an enforcement mechanism rather than a requirement.

Chair Judd-Stein inquired whether the District Attorney's Office suggested that the Commission review promotional language. Mr. Makarios stated that the review of promotional language was one of the comments the District Attorney's Office offered for 205 CMR 247. He stated that suggestion would require the review of promotions but not all advertisements.

Commissioner Skinner noted that an operator commented they were required to submit advertisements outside of compliance related matters, and she asked for clarification. Mr. Makarios stated that he was aware of the comment referenced, and that the operator had indicated it wanted interactions with Commission staff to clarify what advertisements were appropriate.

Commissioner Skinner asked where the six-year retention period in 205 CMR 256.10 came from. Mr. Makarios stated that it matches the statute of limitations for contract actions in Massachusetts. He noted that the Attorney General's Office requested that an eleventh section be added to 205 CMR 256 regarding targeted advertising and push alerts. He stated that targeted advertising and push alerts would be included in the data privacy and data use regulation.

10. [Other Business](#) (5:35:25)

Executive Director Wells noted that a category two license evaluation was scheduled for April 12, 2023. She stated that a comment was received from a woman-owned business entity inquiring whether there would be diversity, equity, and inclusion requirements for construction, as there was with the casinos. Executive Director Wells noted that the proper avenue to address these concerns would be at a public hearing. The Commission unanimously agreed that a public hearing would be scheduled.

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

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

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

List of Documents and Other Items Used

1. [Notice of Meeting and Agenda](#) dated March 20, 2023
2. [Commissioner's Packet](#) from the March 23, 2023, meeting (posted on massgaming.com)