



Massachusetts Gaming Commission Meeting Minutes

Date/Time: May 16, 2023, 10:00 a.m.

Place: Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292

PARTICIPANT CODE: 112 388 2007

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](#) (00:06)

Chair Judd-Stein called to order the 453rd Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five Commissioners were present for the meeting.

2. [Review of Meeting Minutes](#) (00:53)

a. November 29, 2022

b. December 1, 2022

Commissioner Hill moved that the Commission approve the minutes from the November 29, 2022, public meeting and the December 1, 2022, public meeting that were included in the Commissioner's Packet subject to any necessary corrections for typographical errors or other non-material matters. 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.

3. [Administrative Updates](#) (02:05)

Executive Director Karen Wells then referenced two administrative items. Firstly, she noted that John Scully, the Finance and Budget Office Manager, recently received a notice informing him that the Commission had earned an award from the Supplier Diversity Office for full participation in the annual reporting categories for FY 22. Executive Director Wells further noted that they had already hit the benchmarks for FY 23 in three Supplier Diversity Office categories, with spending in two other categories where the benchmark hadn't even been established yet. She announced that there would be a ceremony and luncheon on Thursday, June 1st to celebrate this award for FY 22.

Executive Director Wells then introduced the Director of Racing, Dr. Alexandra Lightbown, to give an update concerning how Massachusetts horse racing tracks protect the health and safety of horses, and what they do to prevent injuries and doping. Dr. Lightbown explained that all such tracks in the Commonwealth have numerous veterinary technicians on staff, and they do blood-gas testing on two randomly selected horses before each race, and for major races they test every horse in the race. She also stated that they have a veterinarian do post-race blood testing and further tests in the barn after the race for at least two more horses, including the winner of each race as well as one or more other horses selected by the judges, such as a favorite who was beaten or a horse that ran unexpectedly well in a race.

If any horse came up positive for a banned substance, Dr. Lightbown said that the trainer for that horse had the option to have the horse re-tested. She mentioned that the track at Plainridge Park was contractually bound to a turnaround of three business days for any negative tests for doping, but if a sample came up suspicious, they had a ten-business-day window to announce either an inconclusive or a positive result. If a trainer elected to have a "split sample" done then they had about eight accredited labs to which a sample could be sent, and if the split identified a drug, it showed the level of the drug and whether it was found in blood or urine. In that case the labs would have a further two or three days to respond back with the cost and expected turnaround time for thorough final testing, which can take four to six weeks. A hearing would then be scheduled, which could take place up to two months later, and then it could be another 16 days for a trainer to be notified of a decision and penalty, depending upon factors such as attorney involvement and other possible delays.

Dr. Lightbown then explained that Plainridge Park employed a vet known as the "Association Vet" who was responsible for watching over the horses as they warmed up to be sure they were fit to race. If they noticed any horse that looked lame, sickly, or had decreasing weight, the vet could have that horse scratched from a race or placed on the "veterinary list" which prevented the horse from racing for a period prescribed by the vet. She further stated that the Association Vet was also responsible for addressing any injuries to horses during a race, including getting injured horses off the track and administering emergency treatments to them. In addition, she

continued, there was a private veterinarian who worked for the trainers, and this vet could administer Lasix, a medication used to prevent respiratory bleeding in horses when running at high speed. She explained that this was the only drug permitted to be given to un-injured horses on race day.

Dr. Lightbown commented that the injury rate for standard-bred horses was much lower than that for thoroughbreds, due to their differing builds and gate patterns. She stated that some years had no horses that died at Plainridge Park, but on average there were one or two such deaths per year. She said that the track did have standard practices in place for attending to horses with fatal injuries, and an autopsy was performed on any horse that died while at the track. Dr. Lightbown next referenced the Commonwealth's longstanding requirement that racetracks be evaluated for safety by a recognized inspector before receiving a license to hold races, and mentioned that Nick Peterson, who inspected the track for the Kentucky Derby, also did such inspections at Suffolk Downs. She reported that the Horse-racing Integrity and Safety Authority ("HISA"), which is the federal agency responsible for the rules and regulations of thoroughbred racing, had recently imposed some new rules regarding track safety and racehorse veterinary records, and would be conducting a full review of recent incidents at the Kentucky Derby. She also touched on several safety improvements put into place at Santa Anita Park in California following a few serious horse injuries and fatalities during races there. She also commented that Plainridge Park confirmed they would cover the costs to return the ashes of a deceased horse to its owner after autopsy if the animal had sentimental value to the owner.

4. [Community Affairs Division](#) (19:13)

Community Affairs Division Chief Joe Delaney then introduced Jacqui Krum, SVP and General Counsel for Encore Boston Harbor ("EBH"), who presented the *EBH Quarterly Report for Q1 2023*, along with her colleagues Juliana Catanzariti from the EBH Legal Department and Tom Coffey, the Executive Director of Security at EBH. This *Report* was included in the Commissioner's Packet on pages 25 through 68.

a. [Encore Boston Harbor Quarterly Report for Q1 2023](#) (20:00)

Ms. Catanzariti gave a presentation of the EBH Quarterly Report, with the following topics: Gaming Revenue, Taxes and Lottery Sales; Workforce Statistics and Diversity; Operations Spending (including vendor diversity); Compliance; and Human Resources Initiatives (including focus groups and the results of an employee engagement survey); and Promotions, Marketing, Special Events and Volunteerism (including events to acknowledge Problem Gaming Awareness Month and celebrate National Employee Appreciation Day, both during March 2023).

Commissioner O'Brien recalled that the percentage of female employees at EBH had remained at 45 percent for the past several quarters, which was below the goal of 50 percent, and asked what EBH had been doing to increase that figure. Ms. Catanzariti responded that it would take a large volume of new hires to impact that figure. She explained that EBH has focused on re-training people who wished to move into new positions, to diversify some jobs not traditionally held by women or minorities. She added that they were also increasing outreach to gaming

schools and trying to get more women to enroll in those schools, which had been a non-traditional path for them.

Commissioner O'Brien noted that there had been some discussions about COVID's impact on service industries as the basis for the stagnation in female employment numbers. She asked if EBH felt like it had "maxed out" its staff, and its percentage of women on staff, since it had reopened. Ms. Catanzariti replied that the introduction of sports wagering, as well as the imminent opening of a new lounge, had allowed EBH to make some new hires recently, but this growth could no longer be attributed to re-staffing from COVID, but rather to a normal slow growth pattern in hiring.

Commissioner Skinner referred to an upcoming slide in the presentation and noted that EBH was exceeding its percentage goal for the employment of women in the sports wagering category. She inquired whether EBH had seen many women moving from gaming into sports wagering jobs. Ms. Catanzariti answered that there had been some female gaming cage cashiers becoming sports wagering kiosk cashiers. She pointed out that EBH recently administered a sports wagering job skills aptitude test and found that women scored significantly higher on that test than men did, and therefore they were able to hire or transfer more women into the new sports wagering roles. Commissioner Skinner then expressed her hope that EBH would continue its efforts to increase the recruitment of women into their non-sports wagering workforce as well. Ms. Catanzariti responded by highlighting her colleague Mr. Coffey and his continued search for more women to be security officers.

Commissioner Maynard reinforced Ms. Catanzariti's earlier point that only a large volume of new hires would significantly impact the percentage of female employees, although he appreciated EBH's efforts to increase the pool of qualified candidates. Chair Judd-Stein concurred with Commissioner Maynard's assessment. She asked what significant barriers EBH saw that prevented women from taking jobs in their organization, citing shift workers' possible difficulties getting childcare. Ms. Catanzariti answered that the main barrier was that many EBH jobs were in fields that women had not traditionally entered, and so the pool of female candidates from which to recruit was limited. To address this issue, Ms. Catanzariti pointed to EBH's campaign to draw more women applicants to its dealer school, as well as its staff outreach programs to help women feel more comfortable in underrepresented positions once they were hired.

Commissioner Hill commended those recruitment efforts and mentioned that it was also a priority for the Commission to limit any possible harm that gaming in the Commonwealth did to its traditional lottery. He pointed to the large year-over-year percentage and total cash increases in lottery sales at EBH, and asked whether this was due to an overall increase in patrons at EBH, or just more patrons buying lottery tickets. Ms. Catanzariti said she had not noticed a significant increase in traffic at EBH over the last quarter and speculated that the increase in lottery sales might be due to recent lottery promotions running at the casino, as well as the draw of large lottery jackpots. Commissioner Hill then asked if EBH partnered with the lottery or had regular discussions with their representatives to find ways to increase sales figures. Ms. Catanzariti replied that EBH had an agreement with the lottery that laid out areas of cooperation and goals to work toward. She pointed out that this agreement specified the locations of lottery ticket

machines in the casino and required that EBH monitor these machines to track which ones produced high sales volumes and which ones underperformed. She also said that the EBH promotions team met regularly with the lottery to discuss opportunities for expansion of lottery sales, as well as to plan what promotions could run and when.

Chair Judd-Stein then asked whether either of the two online sports wagering platforms associated with EBH had reached out to the lottery to discuss partnerships involving those platforms. Ms. Catanzariti answered that she would reach out to her colleagues who ran those online platforms to find out about that. Chair Judd-Stein pointed out that the Treasurer of the Commonwealth had requested that lottery promotions on sports wagering platforms be encouraged, similarly to the Commission's earlier commitment under MGL Chapter 23K to protect and promote the lottery in connection with casino gaming. She said she was looking forward to hearing some creative ideas coming from sports wagering operators on how to partner with the lottery.

Commissioner O'Brien then asked about EBH's efforts to recruit more women for supervisory roles. In response, Ms. Catanzariti referred to the leadership training programs at EBH, which emphasized the importance of diversity in management positions, and made special outreach to women and minority employees. She stated that whenever a person from an underrepresented group is promoted into management, other minorities might be encouraged to apply to work under that person, thus expanding the role of women and other minorities in their department.

Ms. Catanzariti said EBH that was focused on increasing the number of women and minorities in management, and further stated the VP of Diversity and Inclusion, who came to Boston once each quarter from the home office of Wynn Resorts in Las Vegas, was currently developing a leadership outreach series to further encourage women and minorities to apply for management roles at EBH. Commissioner O'Brien then asked whether EBH could either hire a diversity manager based in Boston, or else have that person come to Boston more frequently than once a quarter. Ms. Catanzariti replied that the VP of Diversity and Inclusion would probably come to Boston more often if EBH asked her to do so.

Ms. Catanzariti recalled Commissioner Skinner's earlier observation that 52 percent of these employees were women, and pointed out that 52 percent were minorities. Commissioner Hill expressed concern that there were zero veterans employed in the sports wagering area. He questioned whether EBH did outreach to veterans' organizations, pointing out that the state government had an entire department dedicated to finding jobs for veterans. Ms. Catanzariti replied that EBH partnered with veterans' employment agencies to find candidates for open positions, and that it had been generally successful in that endeavor. She noted that many of the sports wagering employees had been trained and hired from within EBH and was unsure of why there were zero veterans currently working in that area. She also stated that sports wagering employees may not necessarily self-identify as veterans.

Chair Judd-Stein questioned whether the total cash spent on diverse vendors had been higher in the past. Ms. Catanzariti replied that this total for Q1 2023 was largely consistent with past totals for this metric. She then introduced her colleague Mr. Coffey, who discussed the EBH compliance and security statistics for Q1 2023. Mr. Coffey reported that 49 fake IDs had been

discovered during that time, including four such IDs that defeated the verification technology used at EBH, one of which was a repeat violator. He explained that these IDs were sent to the technology vendor so they could use them to improve their systems. He said that several of the minors were intercepted at alarmed doors leading into various gaming areas, while others were caught by security cameras. He also admitted that seven underage guests made it onto the gaming floor before being identified, although none of those were known to have wagered or drank alcohol. Mr. Coffey said that if a security officer made a mistake and missed an unauthorized person, they were counseled on how to avoid such an error. He discussed one case of an underage guest with a particularly convincing fake ID who came onto the gaming floor multiple times over a three-day period. He also commended EBH for giving him ample security resources to catch violators.

Commissioner O'Brien questioned which methods violators used to evade security, and whether a particular method was trending upward. Mr. Coffey replied that the violators were able to get on the gaming floor mostly because security officers were either distracted or subjectively thought the person in question was older than they were. New EBH security officers were given 20 hours of ID training, Mr. Coffey continued, but catching fake IDs can still be challenging. He stated that his staff is always looking to improve on the number of violators missed due to human error, and that officers checking IDs were rotated every two hours. Commissioner O'Brien asked for further detail on the incident bulleted below the chart where a minor spent 5 hours and 38 minutes on the casino floor before being interdicted. Mr. Coffey answered that this referred to the repeat violator, who had two very good fake IDs. Chair Judd-Stein asked what this minor did before being caught, and what his actual age was. Mr. Coffey replied that he was 20 years old and was seen on camera at many locations in the gaming area.

Chair Judd-Stein inquired whether it was known if any of the minors under 18 reflected on the chart were accompanying parents or guardians onto the gaming floor. Mr. Coffey responded that several of them were accompanied and explained that they would be counted on the chart even if they were on the gaming floor for under a minute, such as little kids running onto the gaming floor before being quickly called back. He referenced a case of a father bringing three young children onto the gaming floor but was just passing through and had no ill intent. Chair Judd-Stein commented that it was important to clarify for the public that the incidents shown on the chart were not necessarily teenagers intending to gamble, but instead could be very young kids who followed adults onto the gaming floor. Mr. Coffey said this was correct but explained that there were a few teens caught trying to gamble during this period, including a boy who pushed through security using the ploy that he had to use the restroom. He was quickly escorted out, Mr. Coffey said, but the incident was still counted on the chart. Commissioner Skinner commended Mr. Coffey's efforts, and said she appreciated the details he gave about the incidents he was seeing, and his understanding that compliance reporting was a high priority. She recalled that she had not seen the same level of transparency during previous compliance presentations, and she hoped that it would continue.

b. [Plainridge Park Casino Quarterly Report for Q1 2023](#) (57:20)

Chief Delaney then introduced Mr. North Grounsell, General Manager for Plainridge Park Casino ("PPC"), who presented the *PPC Quarterly Report for Q1 2023*, along with his

colleagues Heidi Yates-Akbaba, the VP of Finance for PPC, and Kathy Lucas, the VP of HR for PPC. This *Report* was included in the Commissioner's Packet on pages 69 through 82.

Ms. Yates-Akbaba began the presentation of the PPC Quarterly Report with the following topics: Gaming Revenue and Taxes; Sports Wagering Revenue and Taxes; Lottery Sales; Operations Spending (including spending within each state where PPC and its parent company Penn Entertainment operates, spending by PPC locally within Massachusetts, and vendor diversity); Employment Statistics and Diversity; and PPC Cares Community and Team Events.

Commissioner O'Brien asked if there was any way that Penn's spending on Massachusetts vendors could be increased. Ms. Yates-Akbaba answered in the affirmative, and then asked whether the Commission would like future reports on Penn's efforts to increase such spending in Massachusetts, to which Commissioner O'Brien said that would be helpful.

Ms. Yates-Akbaba then reported that PPC had hit its overall goal for spending on diverse vendors for Q1 2023. She mentioned that the decrease in diversity spending between Q4 2022 and Q1 2023 was due to the completion of a capital project during Q4 2022 that would not be repeated in Q1 2023. Commissioner Skinner asked if there were any plans to offset that spending for upcoming quarters, and how PPC planned to get those spending numbers back up to meet future goals. Ms. Yates-Akbaba replied that PPC always made sure to keep working with their diverse vendors for future capital projects as much as possible. She emphasized that the drop in the minority-owned vendor spending for Q1 2023 represented a temporary decline in that one category, although the overall diversity spending goal for the quarter was still exceeded by one percent. Commissioner Skinner said she understood.

Ms. Yates-Akbaba then turned back to her colleague Mr. Grounsell, who discussed the PPC compliance and security statistics for Q1 2023. Mr. Grounsell began by showing a chart of the recorded number of minors escorted from the gaming floor by PPC staff during Q1 2023, of which only one was found, as well as the recorded number of minors prevented from drinking alcohol or playing slots during the quarter, of which none were found. Mr. Grounsell pointed out a new column on this chart for minors prevented from sports wagering, of which none were found during the quarter. Commissioner O'Brien asked for additional details on the one minor escorted from the gaming floor by PPC staff. Mr. Grounsell answered that the person was on the floor in February for less than ten minutes before security staff discovered them.

After Ms. Lucas's summary of PPC employment statistics for Q1 2023, Commissioner O'Brien recalled that the 45 percent figure for female employment at PPC matched EBH's number for Q1 2023. She then asked if that current level was primarily due to the post-COVID labor shortage, or whether there were other reasons preventing the company from reopening some amenities and increasing hiring levels. Ms. Lucas replied that PPC had yet to reopen its restaurant, which would enable the filling of 20 to 30 additional roles that had been traditionally held by women. She added that the closure of the restaurant during COVID caused a significant decline from 2020 employment levels. She highlighted, however, that PPC's recent recruiting efforts had enabled the hiring of women into typically male-dominated jobs, which offset some of the percentage losses in female employment over the past two quarters. Ms. Lucas also pointed out that the opening of sports wagering had allowed the hiring of several female cashiers for the Barstool Sportsbook at PPC. Commissioner O'Brien asked if PPC had a timeline for the

restaurant reopening. Mr. Grounsell responded that construction was ongoing, and PPC was targeting late summer 2023 for that reopening.

Ms. Lucas then highlighted the company's focus on leadership development and talent acquisition programs, which created more opportunities for women and minorities in these senior roles. Lastly, Ms. Lucas showed some pictures of community outreach and volunteer efforts by PPC employees during Q1 2023, including participation in local job fairs and sponsorship of charity events. Mr. Grounsell pointed out that PPC was developing a stronger partnership with the culinary program at Bristol County Community College based upon a comment from Commissioner Hill at a prior meeting.

c. [Encore Boston Harbor East of Broadway Expansion Discussion](#) (01:28:52)

Chair Judd-Stein then turned back to Chief Delaney, who provided a brief overview of the EBH East of Broadway Expansion project. A *Memorandum* on the planning for this project was included in the Commissioner's Packet on pages 83 through 87. He explained that EBH's original plans for this expansion in February 2022 did not include new gaming spaces, but their revised design submitted in the fall of that year included a new sports betting area and poker room. He recalled that after requesting additional information, the Commission voted in February 2023 that the original Referendum passed in June 2013 in Everett was sufficient to allow gaming at the expanded location. Commissioner O'Brien commented that the vote had not been unanimous, passing by a margin of 4-1. A Public Hearing on the project was held in Everett at the end of April 2023, Chief Delaney continued, and it generated significant oral and written comments from the community. The Commission therefore decided to hold an additional public hearing virtually, which Chief Delaney said was scheduled for June 6, 2023, to ensure that all interested parties had the opportunity to comment. Chair Judd-Stein confirmed this date.

Commissioner Skinner asked if there would be any advance outreach to the city of Everett so that they could post notice of the meeting to their platforms to the extent possible. Chief Delaney answered that he would request notice to be placed on community message boards for not only Everett, but all cities surrounding the EBH property. He added that messages had previously been sent out to those communities to inform them of the virtual meeting, but they had not yet been specifically advised to post it to their platforms. Chief Delaney stated that the next order of business for the Commission should be to review and approve the EBH expansion plans, including (1) an amendment to the EBH gaming license to reflect its expanded property, and (2) a corresponding amendment to the EBH operations certificate.

Chief Delaney recalled several smaller scale amendments in the past and confirmed that regulations were already in place to facilitate such changes. He stated that the Community Affairs staff had recently reviewed the gaming law and associated regulations pertaining to development of gaming properties, and considered comments received on these matters from interested parties and the public. He said that his staff had determined that some parts of existing regulations were inappropriate for the EBH expansion. For example, he cited the requirement for a bond issue with a timely opening date for the original casino developments and explained that timely opening would no longer be a concern for the expansion of an existing licensed property. He then enumerated a list of items, included in his *Memorandum*, for EBH to address as part of a

formal submission of their expansion plans. He invited the Commissioners to give their feedback on possible additions or deletions from this list. He specifically mentioned requests from surrounding communities to reopen the Mitigation Agreements between EBH and those communities under 205 CMR 127 for further discussion. He stated that the Commission was not a party to those Agreements, but that they should ask EBH how they intended to deal with those requests.

Commissioner O'Brien asked whether the Mitigation Agreements were required to be executed before the original EBH gaming license was issued. General Counsel Todd Grossman answered that all mitigation and arbitration issues had to be resolved in advance of the EBH gaming license being granted. Chair Judd-Stein added that the Agreements were signed before the 2013 Referendum on EBH was proposed in Everett. Commissioner O'Brien questioned whether there needed to be a deadline for the cities to consider amending those Mitigation Agreements before the EBH expansion could be approved. Chief Delaney replied that the approval of any plans EBH submitted could be conditioned upon the resolution of any open issues with the Mitigation Agreements by a certain time. He reminded the Commission that the regulations provided for an arbitration process that would be triggered if there were any outstanding issues between EBH and surrounding communities related to the expansion. Commissioner Skinner commented that she wanted to see Everett engage its citizens as fully as possible in its negotiations with EBH over amending the Host Community Agreement ("HCA").

Chair Judd-Stein questioned who the required signatories were for the HCA and the Mitigation Agreements with the surrounding communities, and whether the Commission should consider all of these Agreements together in its discussion of a timeline for resolution of amendments. Chief Delaney responded that EBH could propose whether the Agreements should be addressed separately or as a package, for instance if they wanted to reopen the HCA but didn't believe their expansion would have much impact upon the other surrounding cities. Commissioner O'Brien suggested asking EBH to notify the cities of their intentions in this regard. Chief Delaney answered that the Commission could instruct its staff to write a letter to EBH, either asking for a separate report of what they would do regarding each Agreement, or else request a report on their intentions for the HCA and then the other surrounding community Agreements grouped together.

Chief Delaney then addressed the concerns he heard from the public regarding transportation and traffic issues around EBH. He stated that MassDOT takes the lead on traffic and transportation issues, but the Commission did have a role in this via its Section 61 reviews of gaming development projects. He recalled that EBH had submitted an Environmental Impact Statement for its expansion that is currently under review by MassDOT. He reminded the Commission that it had historically waited for MassDOT to issue its Section 61 findings on transportation issues, and then delivered its own Section 61 report in reference to those items, thus allowing the Commission to exert some influence concerning traffic issues. He suggested requesting EBH to provide the Commission with an executive summary of where the MassDOT review of the expansion project stood as of the date they submitted their application for Commission approval of that project, including the key points in the 2,500-page Environmental Impact Statement, such as how much traffic might increase due to the expansion, as well as EBH's traffic mitigation plans. Commissioner O'Brien recalled several outstanding Section 61 conditions during the discussion of the original EBH license and opined that the Commission should also request an

update on how many of those conditions remained outstanding. Chief Delaney agreed that such a request would be appropriate.

Chief Delaney then referenced public comments regarding EBH's impact on police and fire services, stating that such safety issues were part of the HCA, and the extra costs of these could be covered by the Community Mitigation Fund. He suggested that the Commission should ask EBH for an update on how they would mitigate any additional police and fire needs that might arise from their expansion. He then commented that the expansion of the EBH gaming space would likely impact the Gaming Enforcement Unit of the State Police, and that the Commission should also request an update on that as well. Chair Judd-Stein asked if the Commission could be apprised of the impact of the EBH expansion on public safety coverage in the Everett community, recalling prior concerns about the safety of the bridge and garage exits, as well as security measures at entrances and exits to the expansion in general. Chief Delaney replied that an additional category could be added to the Commission's letter to EBH to ask about their updated security and public safety plans.

Commissioner Hill expressed frustration that the Commissioners were not able to interact with the public at the April 2023 Hearing as much as he would have liked. He suggested that the Commission staff put together some information on community impact mitigation efforts in advance of the upcoming virtual hearing, so that Commissioners would be better able to demonstrate those efforts to the public and address any further concerns that might arise. Chief Delaney agreed to do so.

Chief Delaney then suggested that EBH should update the Commission on the sustainable development aspects of its planned expansion, noting that its original casino was LEED certified, and the company aspired to make it a net zero facility. He then referenced the labor harmony provision of MGL Chapter 23K Section 18 and said the Commission should ask whether EBH planned to use union labor for its expansion. Next, he touched upon construction and operations diversity, recalling that this was a significant component of the initial construction of EBH and the other Massachusetts casinos. He stated that there are diversity provisions in many of the gaming regulations, and that EBH should report on its plans to ensure diversity in the construction and operations of its expansion. He also said this was an opportunity to reassess the facility's original diversity plans if necessary. Commissioner O'Brien suggested that EBH's presentation on its expansion should also include a separate discussion of any planned modifications to the footprint of its original building. Chief Delaney agreed.

Chief Delaney stated that there were many public comments asking how many construction jobs would be created by the expansion, and he thought it made sense to pose this question to EBH. Lastly, he referred to the regulations that required the monitoring and reporting on the construction of gaming facilities to the Commission. He said that some of these provisions were not pertinent to expansion but noted that the Commission needed to request access to the construction site for inspections and compliance purposes, as a condition of approval for the expansion. He suggested that quarterly construction updates might be added to the regular EBH quarterly reports. Commissioner Skinner disagreed, stating that construction updates separate from the regular EBH quarterly reports made more sense to her, although they did not need as much detail as those for the original EBH construction. Chief Delaney replied that the

construction updates would be from a different EBH team than the one that presented the regular operations reports, so they could easily be separate documents.

Commissioner O'Brien recalled a discussion of the original casino licensees committing to fund the construction of a certain number of affordable housing units in their host city as a condition of being licensed, and she wondered where in the original construction process this was agreed to, and if the expansion required EBH to fund additional units. Chief Delaney answered that only MGM had made such a commitment to Springfield, and it had committed to fund market-rate housing units. He added, however, that there were some current discussions about EBH possibly committing to fund affordable housing units in Everett as part of its expansion. Commissioner O'Brien stated that the Commission should ask EBH for more details about any such commitments. Chair Judd-Stein asked whether any Everett residents would be displaced by the EBH expansion, and Chief Delaney replied that the land for the EBH expansion was currently occupied by parking lots. He said he believed any residential properties in the EBH footprint were already acquired and cleared as part of the original casino construction. Chair Judd-Stein requested confirmation that no additional residents would be displaced by the expansion.

Commissioner Skinner asked if there were any significant issues discussed as part of the initial RFA2 process for the EBH expansion that were left out from today's memorandum. Chief Delaney replied that there were many items that he left out as superfluous, such as the bonding requirement stipulating fines if a casino was not opened by a particular time. He stated that this item would not be applicable to an expansion, since the casino facility was already open, and imposing an aggressive timeline for opening the expansion was not necessary to generate revenue for the Commonwealth. General Counsel Grossman added that the strict financing and capital structure review requirements imposed on the initial casino development proposals were also omitted for the expansion planning process, since financing is less of a concern for an established casino.

General Counsel Grossman confirmed, however, that all the important principles originally applicable to the development of the gaming establishments would continue to guide the development of the EBH expansion, although all the details of the expansion proposal were not included in the Memorandum. Commissioner Skinner commented that she would like to have more details on the conditions and requirements of the expansion proposal for her own education, if possible. Chief Delaney replied that regulation 205 CMR 119 outlined the entire RFA2 process, and he would be willing to walk through it as it related to the EBH expansion, for any Commissioner who wanted a more detailed discussion offline. Commissioner O'Brien commented that such a detailed discussion might be helpful for all the Commissioners. Commissioner Maynard also agreed that items like financing and capital structure for the expansion should be reviewed in more detail prior to approving the project. Chief Delaney replied that he would set up some smaller virtual meetings with the Commissioners for more in-depth discussions. He also offered to draft a letter to EBH to request more information on the specific items discussed today, along with any other items of concern. Commissioner O'Brien suggested holding off on drafting a letter yet, since there was an additional public meeting scheduled to further discuss the EBH proposal and get additional public feedback. Chief Delaney proposed that the Commission reconvene as soon as possible after that public hearing in order to finalize the letter to EBH.

5. [Division of Racing – Review of Updated Delegation of Authority Memorandum](#) (02:21:56)

Chair Judd-Stein then recognized Dr. Lightbown to present an *Updated Delegation of Authority Memorandum* regarding “track matters” for the Division of Racing, which was included in the Commissioner’s Packet on pages 88 through 91. Dr. Lightbown explained that these track matters had historically been handled by the former Massachusetts Racing Commission but were delegated to the Director of Racing under the Gaming Commission in June 2013. She said it had been ten years, so this seemed like a good time to update the Delegation of Authority Memorandum. She pointed out that proposed changes had been redlined against a PDF of the original 2013 Memo.

Among the key changes, Dr. Lightbown continued, were including the Legal Division in the sending of Notice and Demand letters and extending the authority of the Division of Racing to violations other than just collecting the statutorily required payments. Also, reference to the execution of Show Cause Orders was eliminated, since nobody could recall an instance where the Division of Racing had performed this function, and Dr. Lightbown felt that it was something more appropriately handled by the Legal Division. She added that such Orders would be unlikely to require emergency action, and therefore could be brought up directly to the Commission. She stated that the reference to approval of premium-free simulcast days since this was now included in the application process for racing dates. She explained that this too would not be a time-sensitive matter, meaning that it could also be brought to a Commission meeting if necessary. Lastly, Dr. Lightbown pointed out the addition of authority to approve other routine ministerial or administrative matters that required prompt attention in the judgment of the Director of Racing.

Commissioner Maynard, who had assisted in editing the Delegation of Authority Memorandum, commented that in 2013 when the original Memorandum was written, the Director of Racing was an attorney, but the edits were made in part to make it more friendly for a Director of any background. He said Dr. Lightbown had highlighted several areas of the Memo where the Commission would already be involved in an issue, so delegation was no longer needed. In other areas, he recalled that General Counsel Grossman had recommended giving clearer authority to the Legal Division. Also, Commissioner Maynard said that he wanted to make sure that the Commission received timely notification of some items, and that Dr. Lightbown got a bit more flexibility to make routine decisions more quickly. Commissioner Hill agreed that this updated Memo was a good product.

Commissioner Skinner questioned the delegation of authority to approve racing officials, since she recalled that they were approved directly by the Commission. Dr. Lightbown replied that the list of approved officials was approved by the Commission in March of each year. She explained that this delegation of authority would only be used in emergency situations where an official became unavailable for a race unexpectedly, and the track needed to bring in a provisional replacement official quickly. She added that such an official would then be approved by the Commission at a future meeting. Commissioner Skinner asked for an edit to the language of the Memo to clarify that the delegation of authority to approve race officials would be used only in emergencies outside of the Commission’s annual approval of officials. Dr. Lightbown

recommended adding language specifying that the Director of Racing would advise the Commission at their next scheduled meeting of an action taken under the authority granted by the Memo. Executive Director Wells then directed the Legal Division to finalize these suggested edits to the Memo and present the final document to the Commission for approval at a future meeting.

6. [Legislative Update](#) (02:35:37)

Chair Judd-Stein then recognized Grace Robinson, in her capacity as Special Projects and External Relations Manager. Ms. Robinson provided a summary of the *2023-2024 Legislative Session Update Memorandum*, which was prepared in consultation with Commissioner Hill. This Memorandum was included in the Commissioner's Packet on pages 92 through 96. Firstly, she referenced several bills to extend the authorization of simulcasting for horse racing through either 2024 or 2028, and to broaden the Commission's authority over simulcasting and racing in general. Chair Judd-Stein reminded the Commission that simulcasting was traditionally extended for only one year at a time. Commissioner Hill recommended that extending this authorization out to two or three years would be helpful not only to the operators but to the Commission as well.

Commissioner O'Brien recalled that renewing the simulcast authorization for only one year had proven disruptive and tedious in the past. She also referenced a previous Commission proposal to repeal and rewrite the existing MGL Chapters 128A (Horse and Dog Racing Meetings) and 128C (Simulcast Wagering of Horse and Dog Racing) and combine those provisions into a new MGL Chapter 128D, as one of the current bills proposed. She therefore speculated that the Commission might be asked to provide comments on this bill soon, and it should be prepared. Chair Judd-Stein noted that no action had ever been taken before on that proposal, and so she recommended putting aside that large item for the Commission to review at a future meeting, possibly bringing in Legal to help craft a proposed bill on behalf of the Commission. Commissioners O'Brien and Hill agreed to propose a limited comment for now, referencing the broader issues with the simulcast statutes. Commissioner Skinner commented that it would be helpful to understand why the simulcast authorization was never extended beyond one year. Chair Judd-Stein replied that the legislature had simply chosen to do it annually, but they were now proposing a longer extension. Commissioner Hill agreed with the Chair's assessment and stated that some legislators have realized that annual renewal may not be beneficial to the operators.

Commissioner Skinner asked for assurance that there was no substantive reason that the legislature had not proposed simulcast authorization in the past for more than one year at a time. Chair Judd-Stein said there was no reason beyond what the legislature happened to propose. The Chair recalled having to remind the legislature to renew it before, and watching for it to be passed right before the deadline as it could mean job losses if the authorization was allowed to expire.

Commissioner Hill suggested a letter of support for the three-year bill but said anything would be preferable to one year. Commissioner Maynard agreed that a longer-term authorization would be better for stability. Commissioner O'Brien reiterated her support for a deeper discussion of

the statutes, which would provide an opportunity for a permanent solution to this issue. Commissioner Skinner agreed with Commissioner O'Brien's suggestion to give a "nod" to a broader discussion of the statutes in the Commission's letter of support for the long-term authorization bill.

Ms. Robinson then referenced the next two proposed bills related to racing authority. She stated that there was one bill that would apply the provisions of M.G.L. c. 93A, § 2 (Regulation of Business Practices for Consumer Protection) to sports wagering advertising. Chair Judd-Stein stated that she had invited Senator Keenan, the author of this bill, to appear before the Commission to address it, as well as asking the Legal Division to review Senator Keenan's recommendations regarding sports wagering advertising, to determine how his bill would impact the sports wagering regulations if it passed. Commissioner Skinner asked if the Commission had received correspondence from Senator Keenan about his bill, and Commissioner Hill answered that he had gotten two letters from the Senator's office. Commissioner Skinner noted that she was not aware of those letters. Ms. Robinson said she would get copies of them to her shortly.

In the area of gaming, Ms. Robinson mentioned an Amendment to the House version of the Budget bill for 2024 that would grant authority to the Alcoholic Beverages Control Commission to regulate distribution of alcohol within a "gaming establishment" but not within a "gaming area". She recommended that the Commission staff might reach out to the legislature to seek clarification of this proposed language. Commissioner Hill agreed that the Commission should ascertain what the legislature's intent was with this proposal, and then draft a letter to voice its concerns and either support the proposal or not. Director Loretta Lillios of the Investigations and Enforcement Bureau ("IEB") raised a question about how this proposed language would interact with statutory provisions such as M.G.L. c. 10, § 72A, regarding the Alcoholic Beverages Control Commission, as well as two provisions of Chapter 23K, Section 26. Chair Judd-Stein directed the staff to seek further clarification from the legislature. Commissioner Hill mentioned that this language had been adopted into the House budget bill, but may not be adopted by the Senate, which would begin their budget process soon.

Ms. Robinson then summarized the other proposed gaming bills. Commissioner O'Brien asked whether the bill to allow veterans organizations to operate up to five slot machines had the same language about which the Commission had sent a letter several years back. Commissioner Hill replied that it was the same concept, and the Commission staff was currently studying possibilities for where to place slot machines. He said his recommendation was to defer action on this bill, because the veterans' organizations were part of that study. Chair Judd-Stein pointed out that the Commission would have concerns about its ability to regulate those machines if the proposal moved forward. Commissioner O'Brien agreed with this sentiment. Commissioner Skinner suggested that the Commission resend its letter about the veterans' organization slots bill, possibly with updates, to reinforce their position on the bill. Chair Judd-Stein suggested revisiting this issue at an upcoming meeting.

Ms. Robinson referenced the proposed Finance, Budgets, and Appropriations bills related to gaming, and then noted a few gaming-related bills pending in jurisdictions outside Massachusetts, including a bill sent to the governor to sign in Vermont to legalize online sports wagering, adding that the governor said he intended to sign that bill. Commissioner Maynard

commented that he was aware of a similar online sports wagering legalization bill recently signed by the governor in Kentucky. He added that several Commission staff were approached by regulatory staff from Kentucky, requesting help with crafting regulations. Commissioner Skinner asked if the Commission could consult with Chief Katrina Jagroop-Gomes and the Information Technology Division to get more details on the proposed bill directing the Commission to adopt certain federal standard data security and privacy requirements. Executive Director Wells replied that she would reach out to Chief Jagroop-Gomes, as well as to the Legal Division. Commissioner Hill reminded the Commission that this was a proposed Amendment to the Senate version of the budget, so it had yet to be debated yet, and it may or may not move forward.

7. [Legal](#) (03:42:54)

Chair Judd-Stein then skipped ahead to the Legal part of the Agenda (originally Item 9) to accommodate a team member's schedule. She recognized Deputy General Counsel Caitlin Monahan, who presented several regulations to the Commission for discussion. Ms. Monahan explained that the first regulation, 205 CMR 222.00: Capital Investment and Monitoring of Project Construction, had been discussed at two previous meetings but had not yet been voted upon. She then reported that the second regulation, 205 CMR 239.00: Continuing Disclosure and Reporting Obligations of Sports Wagering Licensees, had previously been voted upon but an updated draft was being presented for amendment. Lastly, she submitted the third regulation, 205 CMR 256.00: Sports Wagering Advertising, which was also a revised draft of one previously voted upon. Ms. Monahan then introduced Attorney Mina Makarious, outside counsel from the law firm Anderson and Krieger, to outline the latest changes to these regulations.

- a. [205 CMR 222.00](#): Capital Investment and Monitoring of Project Construction – Regulation and Small Business Impact Statement for review and approval to commence the promulgation process and/or adoption via emergency. (03:43:54)

Mr. Makarious explained that a *Background Memorandum* was included in the Commissioner's Packet on pages 180 and 181, and a *Marked Draft of Regulation 205 CMR 222 and its associated Small Business Impact Statement* were included in the Commissioner's Packet on pages 182 through 190. He then highlighted the key changes to the regulation, which were intended to reflect the feedback from the Commission meeting on May 4, 2023.

Commissioner Skinner asked if the circumstances that would constitute good cause to waive the requirements under 205 CMR 222.02 (2) paragraph (b) should be more specific. Mr. Makarious answered that this language was left intentionally broad to provide flexibility for the Commission to either determine that good cause existed due to unforeseen circumstances, or else to decide after questioning an applicant that their claim of good cause was not justified.

Commissioner Hill and Chair Judd-Stein questioned whether the 50 percent cap on the cost of simulcasting equipment allowed to be counted toward a capital investment made by a Category 2 Sports Wagering licensee under 205 CMR 222.07 (2) paragraph (g) was too high. Commissioner Skinner asked about the purpose for that cap. Mr. Makarious clarified that the cap was 50 percent of the cost of sports wagering equipment, not 50 percent of total project cost. He then replied that

the question at the last meeting was about whether purchasing equipment should count as a capital investment in the first place, without knowing what kinds of equipment were needed. He recalled that the intent was to make sure that equipment costs were not more than most of the total investment for a project and added that this percentage could be reduced as the Commission deemed appropriate.

Commissioner Skinner asked if the intent of 205 CMR 222.07 (2) paragraph (g) was to keep the costs of simulcasting equipment on par with that of sports wagering equipment, and if that was the case, why wouldn't the regulation say that simulcasting equipment costs should not exceed the costs associated with sports wagering equipment, rather than limiting simulcasting equipment costs to one half of the project total. Mr. Makarious responded that for an example project with a one-million-dollar cost for sports wagering equipment, the regulation would limit the cost for simulcast equipment to less than 500 thousand dollars, so it would not allow a one-to-one balance. Commissioner Skinner asked why not, and what the policy justification for that limit was. Mr. Makarious explained that the legislation upon which this regulation was based wanted to encourage new capital investments in sports wagering, as opposed to equipment upgrades or renovation of existing simulcast facilities. There were some concerns about over-spending on simulcast equipment, so the regulation sought to limit the counting of that expenditure as capital. Chair Judd-Stein commented that simulcasting was the link enabling Category 2 licensees to have sports wagering, so it made sense for some part of their investment in a project to be counted towards that, just not too much.

With that, Commissioner Skinner moved that the Commission approve the updated draft of 205 CMR 222 and its associated Small Business Impact Statement as included in the Commissioner's Packet and discussed here today, and that the staff be authorized to take steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency and thereafter to begin the regulation promulgation process. She further moved that the 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 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 239.00](#): Continuing Disclosure and Reporting Obligations of Sports Wagering Licensees – Regulation and Small Business Impact Statement for review and approval to commence the promulgation process and/or adoption via emergency. (03:56:26)

Mr. Makarious then turned to the *Marked Draft of Regulation 205 CMR 239 and its associated Small Business Impact Statement*, which were included in the Commissioner's Packet on pages

191 through 199. He stated that the Legal team, in consultation with the IEB, re-examined this regulation in the context of Category 2 licensing and determined that no substantive updates were needed because of that review. He stated that only minor stylistic or typographical edits were made and provided a brief overview of those.

Chair Judd-Stein asked if the parenthetical addition to 205 CMR 239.03 (1)(i) had addressed the concern raised by Executive Director Wells at a previous meeting about how the Commission wanted sports wagering licensees to make their vendor disbursement reports. Mr. Makarious answered that this regulation required quarterly reporting in a similar form to regulation 205 CMR 239.05. He clarified that 205 CMR 239.03 asked for information such as a statement in which the operator attested to the accuracy of the last quarterly report. He added that this reporting could be done as part of a public presentation, but that method was not required by 205 CMR 139 or any other regulation.

Chair Judd-Stein asked whether the casino operators' public presentations were in any way mandated by the regulations. General Counsel Grossman replied that the contents of those public presentations were not specified by regulations, and in fact were just things that have evolved over the years as useful tools for the Commission to gain understanding of the operators' businesses. He explained that the intent of regulation 205 CMR 239.03 was to ensure that both gaming and sports wagering operators had someone on record certifying the financial health of their operations, like certain attestations required by the SEC in the wake of the Enron accounting scandal.

Executive Director Wells asked for clarification of whether the regulations would require each licensee to present its quarterly reports at public meetings, given the expanding volume of licensees needing to give these reports. Ms. Monahan explained that the customary reports that the Commission wanted from licensees in public meetings were different than any of the formal reporting required by the regulations. Commissioner Maynard stated that he would rather see more reporting from the operators than less, especially given the new category of sports wagering operators. He added that if reporting became too taxing for the operators, the Commission could later adjust its requirements. Chair Judd-Stein also agreed that more reporting was better, even if it wasn't always done by presentations in public meetings.

Executive Director Wells commented that the issue of how much reporting the Commission wanted, and whether it should be presented at public meetings, did not need to be settled immediately but was just something to consider. She then suggested developing a template for licensees to use for their quarterly reporting. Commissioner Skinner agreed that standard criteria for reporting expectations would be useful as a way for the Commission to ensure that operators were keeping the commitments, they made during their license application process. Chair Judd-Stein agreed with the template idea. Mr. Makarious commented that the Legal team was working on a "process document" to facilitate incident reporting of possible regulatory violations, and the Commission could further consider the issue of incident reporting when that document was drafted.

Commissioner Hill moved that the Commission approve the updated draft of 205 CMR 239 and its associated Small Business Impact Statement as included in the Commissioner's Packet and

discussed here today, and that the staff be authorized to take steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency and thereafter to begin the regulation promulgation process. He further moved that the 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.

- c. [205 CMR 256.00](#): Sports Wagering Advertising – Regulation and Small Business Impact Statement for review and approval to commence the promulgation process and/or adoption via emergency. (04:12:30)

Mr. Makarios explained that a *Background Memorandum* was included in the Commissioner's Packet on pages 200 and 201, and a *Marked Draft of Regulation 205 CMR 256 and its associated Small Business Impact Statement* were included in the Commissioner's Packet on pages 202 through 212. He then conveyed a policy question he had received from an operator, who wondered whether the use of the word "net" with respect to sports wagering revenue as currently described in regulation 205 CMR 256.01 (3) meant that an operator would be prohibited only from sharing losses versus sharing based upon total amount wagered. He then gave the example of an operator entering into a third-party marketing affiliate agreement wherein they paid 10 percent of the total amount wagered by an individual, and asked if this would be permissible according to the Commission's policy preferences.

If the Commission did not wish to allow any revenue sharing agreements based on amount wagered, Mr. Makarios suggested that the word "net" be deleted from the regulation to avoid any confusion. He noted that the Legal team had discussed this with New Jersey regulators, and they said that although they used this language in their regulation as well, it had never been an issue directly for them because that state allowed revenue sharing agreements based on amount wagered, and it was just a matter of needing a higher category of license to enter such agreements.

Commissioner O'Brien expressed confusion that the Background Memorandum referred to pay-per-click as a type of revenue sharing agreement. Chair Judd-Stein clarified that pay-per-click was not considered revenue sharing. Commissioner O'Brien recalled that her intent was not to allow revenue sharing based upon total amount wagered. Commissioner Skinner stated that was her intent as well, and she remembered that the Commission was concerned about marketing affiliates potentially steering patrons towards larger and riskier wagers. She also recalled that they did not intend to allow a mechanism for marketing affiliates to benefit from patron losses, therefore she favored amending regulation 205 CMR 256.01 (3) to remove the word "net".

Chair Judd-Stein remembered that the heightened licensure category was removed from the regulation because the Commission wanted to prohibit revenue sharing based upon total amount wagered. Commissioner Maynard also wanted to prohibit this type of revenue sharing and recalled that the Attorney General's Office ("AGO") had strongly opposed it as well. He did point out, however, that there was a national conversation about this issue, and many states were allowing it. Commissioner Hill also remembered the Commission's consensus being against revenue sharing based upon total amount wagered. Chair Judd-Stein commented that there had been concern that eliminating this revenue sharing opportunity could hurt smaller operators and affiliates, such as the Garnett company from which the Commission had received a letter, but that the ultimate decision was to prohibit it based on the AGO's recommendation. Chief Karalyn O'Brien of the Licensing Division commented that she had received some questions from potential sports wagering marketing affiliates, but that most of them still wanted to register as such in Massachusetts even though they understood that revenue sharing would no longer be allowed after the waiver period expired on April 1st. Executive Director Wells stated this it was her understanding that the heightened level of licensure was not necessary, since revenue sharing was no longer allowed, therefore any applicants who had paid the extra fee for that level of licensure should be refunded. Chair Judd-Stein said that was correct.

Mr. Makarios then explained that the second change he had for regulation 205 CMR 256 was an addition to the "patrons must be 21 years of age or older to wager" disclaimer provision in regulation 205 CMR 256.05 (1) to create an exemption for basic branding such as an operator's logo or trademark, unless that logo was displayed in a location where it was likely to be viewed by those under 21 years old. He said that this edit was based upon prior discussion with the Commission. Commissioner O'Brien said that she had recommended this change to create a narrow exclusion for non-fixed branding such as business cards or clothing. The Commissioners then discussed various examples where the disclaimer would or would not be required for fixed branding based upon the location of the branding and the probable age percentage of the audience.

Chair Judd-Stein then commented that the regulation as written would require placing the disclaimer on logos that may not currently be associated only with gaming, and forcing display of that disclaimer on all public branding for operators might encourage an association with gaming where none was intended. Commissioner O'Brien took the opposite view, stating that blurring the distinction between gaming and non-gaming brands was exactly what some advertisers intended, to create brand loyalty to potential patrons before they are 21 years old, which is why a very narrow exclusion specific to non-fixed logos was necessary. Commissioner Hill mentioned the logistical challenges presented by a regulation requiring a disclaimer to be added to a logo in certain contexts. Commissioner O'Brien said that such challenges were not insurmountable and should not prevent a regulatory change if it was the right thing to do. She reiterated her opinion that public, fixed branding should almost always carry a disclaimer, since a logo was inherently marketing, and it could tend to encourage gaming even if it was not exclusively a gaming brand. Commissioner Skinner requested more time to consider her position on this language before voting.

Chair Judd-Stein summarized the change to the regulation by stating that any fixed branding for a gaming company must carry a disclaimer if it is in a location where more than 25 percent of viewers are likely to be under 21 years old, even if it was just a logo with no other advertising included. Mr. Makarios confirmed that the summary was correct. Commissioner Hill gave an example of an MGM Resorts logo displayed prominently at Fenway Park, and Mr. Makarios opined that this logo would not need the disclaimer, since MGM Resorts was separate from the BetMGM sports wagering brand, even though sports wagers may be placed at the resort. He stated that a disclaimer would be required, however, on public fixed logos for pure gaming brands like DraftKings, or for companies like Fanatics that use the same branding for their gaming and non-gaming businesses.

After a prompt from Commissioner Skinner, Mr. Makarios explained that public branding for other age-restricted products like alcohol carried no regulatory requirement for an age disclaimer, although such requirements may be imposed by the owners of the space where the branding was placed, such as the MBTA, or by the terms of legal settlements, as in the case of tobacco company settlements with state attorneys general. Commissioner Skinner commented that she would like to hear the operators' opinions on whether they thought this regulation would be onerous. Mr. Makarios stated that the suggested change now under discussion came about because an operator had requested more nuanced language that made a clear distinction between branding on paraphernalia and fixed signage.

Chair Judd-Stein and Commissioner Skinner both stated that they would accept striking the word "branding" from regulation 205 CMR 256.05 (1) without adding the narrow exclusion for non-fixed branding, thus continuing to allow gaming company logos on fixed public signage without a disclaimer if they were not accompanied by other advertising. Commissioner Maynard said that, like Commissioner O'Brien, he would be in favor of keeping the word "branding" and adding that narrow exclusion, thus requiring a disclaimer for gaming company logos on fixed public signage. Commissioner Hill stated that he would favor continuing to allow gaming company logos on fixed public signage without a disclaimer, since he was concerned about the unforeseen consequences of forcing the disclaimer onto all such public logos.

Chair Judd-Stein confirmed that she saw an informal 3-2 vote, with reservations, for continuing to allow gaming company logos on fixed public signage without a disclaimer. She then asked how long until the compliance waiver for this regulation would expire, and Ms. Monahan confirmed that it was in place until May 25th. Commissioner Hill said he would accept extending the waiver so the operators could weigh in. Ms. Monahan suggested voting to accept the change to regulation 205 CMR 256.01 (3) and to extend the waiver for regulation 205 CMR 256.05 (1). Mr. Makarios raised doubts about whether a finer exclusion was possible in the language of 205 CMR 256.05 (1), so he favored adding the exclusion language now and then reassessing it later if it gets significant pushback from operators. He did not see the point of extending the waiver. Commissioner Skinner suggested getting feedback from the Research and Responsible Gaming Division on this language. Chair Judd-Stein asked Ms. Robinson to suggest a new date for extension of the waiver. Chair Judd-Stein then asked Ms. Robinson to place this issue back on the agenda for mid to late June.

Commissioner O'Brien then moved that in accordance with 205 CMR 202.02 (3), the Commission issue a waiver to all licensed sports wagering operators from the requirement outlined in 205 CMR 256.05 (1) that branding state that "patrons must be 21 years of age or older to participate" through June 30, 2023, as granting this waiver meets the requirements specified in 205 CMR 102.03 (4) and is consistent with the purposes of MGL Chapter 23N. 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.

Commissioner O'Brien also moved that the Commission approve the draft of 205 CMR 256.01 (3) as updated to strike the word "net", and its associated Small Business Impact Statement as included in the Commissioner's Packet and discussed here today, and that the staff be authorized to take steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency and thereafter to begin the regulation promulgation process. She further moved that the 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 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.

8. [Sports Wagering Division](#) (05:40:00)

Chair Judd-Stein recognized Chief Bruce Band of the Sports Wagering Division, who then introduced his colleague Mr. Sterl Carpenter, Regulatory Compliance Manager for the Sports Wagering Division, to discuss three items.

a. [BetR Holdings, Inc. – Update to House Rules](#) (05:40:21)

First, Mr. Carpenter submitted several proposed changes to the House Rules for sports wagering licensee BetR Holdings, Inc. to add definitions for "Scripts," "Legs" and "Combo" to the types of wagers accepted, as well as to make clarifying edits to the "Parlay-Wager-related rules" section. A *Background Memorandum* marked to show these changes was included in the Commissioner's Packet on pages 97 and 98.

Commissioner Skinner asked if “Scripts” and “Combo” were new wager types. Mr. Carpenter replied that these were essentially more specific kinds of parlay wagers. Commissioner Skinner recalled that the Commission had approved a series of wager types in January 2023 as part of the Sports Wagering Events Catalogue. She asked why BetR was making this request as an addition to their House Rules rather than as a broader request to add wager types to the Events Catalogue, which would make those types open to all operators. Mr. Carpenter explained that BetR was just defining the way they name certain wagers, but they are not really any different from Parlay Wagers or Round Robin Wagers as currently defined in the Events Catalogue.

Commissioner O’Brien worried that creating new definitions for approved wager types would create confusion for customers. She suggested making it clear in the House Rules that BetR’s new terms still refer to known wager types by saying something like “Parlay Wagers will be called Combos”. Mr. Carpenter answered that BetR also has a definition of Parlay Wager as well. He also said he believed that BetR had a representative on the meeting call if Commissioner O’Brien wished to pose her question to them directly.

Chair Judd-Stein recalled that when the Commission interviewed BetR as part of their licensing process, they had said that they used an approach that tried to be friendlier to newer wagerers, and that might be different from other operators. She thought these definitions may be part of that approach, to remove some of the mystery around wagering. Commissioner O’Brien stated that if they wanted to use their own terms, then they could still cross-reference to the more commonly known lingo. Alex Ursa from BetR commented that his company could certainly add additional language to their House Rules to clearly link their new definitions and the more common wager type terminology. He also remarked, however, that FanDuel had trademarked the term “Same Game Parlay” and so BetR wanted to find another term for the wager type they use, to avoid possible legal challenges. Chair Judd-Stein commented that the Commission could wait on approving the revision to BetR’s House Rules until that additional language was added. Commissioner Hill added that BetR’s existing definitions would be familiar to anyone in the sports wagering community, and it would be obvious they are referring to a parlay wager. Commissioner O’Brien suggested conditional approval of the new language that gives BetR a certain number of days to add the appropriate cross-references.

Commissioner Skinner asked for further information about the term “stakes” in reference to BetR’s other proposed edits. Mr. Carpenter replied that as more legs were added to a wager, the value of that wager increased exponentially. Commissioner Skinner further asked what precipitated these edits, and Mr. Carpenter said that BetR was being proactive in clarifying their policy, since they had several questions from patrons when legs were voided from a parlay and their stakes/odds, and thus expected winnings, were greatly reduced. BetR therefore wanted to explicitly reserve the right to remove or not offer certain legs and scale back those stakes to reduce their risk. Commissioner Skinner asked whether that discretion was consistent with regulations and industry standards, and Mr. Carpenter confirmed that it was.

Commissioner Hill then moved that the Commission approve the amendments to the House Rules as submitted by the category 3 sports wagering licensee BetR Holdings, Inc. d/b/a BetR, as included in the Commissioner's Packet and discussed here today, and further moved that BetR

provide clarifying language defining “Parlay” as discussed here today. 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. [Betfair Interactive \(FanDuel\) – Update to House Rules](#) (06:09:10)

Mr. Carpenter then presented several proposed changes to the House Rules for sports wagering licensee Betfair Interactive, Inc. DBA FanDuel to adjust language in response to an email exchange from the Commission regarding Round Robin wager settlement terms, and to make various changes as reviewed and approved at a prior Commission meeting, as well as minor technical edits. A Background Memorandum marked to show these changes was included in the Commissioner’s Packet on pages 99 through 151.

Commissioner O’Brien asked why language should not be inserted to say that, in accordance with a particular regulation, the Commission must approve cancelled bets except in certain narrow circumstances where FanDuel may cancel them. Mr. Carpenter replied that what FanDuel’s language means is that if somebody has selected a leg inside of a round robin wager that is redundant or too close to another leg, and FanDuel didn’t catch this error earlier, then they just want to void it and to reduce the total bet, and of course the patron would not see the voided leg but just the settled wager. Commissioner O’Brien remarked that if FanDuel would just settle the wager with the voided leg, that would seem to run afoul of the regulation stipulating that all voids would be reviewed by the Commission.

Andrew Winchell, FanDuel’s Regulatory Affairs Director, countered that their system should normally filter out voided legs so that the wagerer would only be charged for their bets on valid legs. He stated that the settlement language in question would only apply if such an obviously voided leg had not been caught earlier due to a system malfunction, so that correction would be made when the bet is settled. He stated, however, that FanDuel was willing to include language that this correction was done pursuant to the applicable regulation and only with the approval of the Commission, as he recalled such language was added to their rules for other jurisdictions such as Connecticut whenever they talked about voided bets. Commissioner O’Brien then asked for confirmation that FanDuel’s language was not seeking to expand their authority to void bets that were not such obvious errors, and Mr. Winchell said that was correct, and the language only applied to such errors that had been accidentally overlooked.

Commissioner O’Brien queried whether all the sport-specific edits to FanDuel’s House Rules were only in response to rule tweaks made by the governing body of the sport in question. Mr. Winchell replied that most of them did indeed arise from rule changes within sports, but some resulted from responses to patron disputes, such as the change regarding period score wagers in

ice hockey, while some were necessitated by the way FanDuel received data feeds for certain sports. Commissioner Hill questioned whether there had been a large number of disputes related to the hockey period wagers. Mr. Winchell answered that there were at least a few significant incidents. Mr. Carpenter added that the hockey issue came up in Massachusetts, and one dispute was about clarification of whether a bet had been made on goals scored within a period versus total goals scored in a game as of the end of a period.

Chair Judd-Stein asked whether FanDuel would include the “pursuant to the applicable regulation and only with the approval of the Commission” language, and Commissioner O’Brien inquired if anyone had a copy of the similar language used for Connecticut. Mr. Winchell confirmed that the Connecticut language just said that FanDuel reserves the right to void invalid legs “subject to regulatory approval” and reiterated that he would be comfortable adding such language for Massachusetts as well. Commissioner O’Brien asked that the language include a citation of the specific Massachusetts regulation that applied, but she suggested a conditional approval to be cleaned up later. Mr. Carpenter found that regulation 205 CMR 238 subsection 35 was regarding canceled or voided wagers, but Executive Director Wells wasn’t sure that was the right one, because it said that operators may (not shall or must) seek approval from the Commission to void wagers.

Commissioner O’Brien then moved that the Commission approve the amendments to the House Rules as submitted by the category 3 sports wagering licensee Betfair Interactive, Inc. DBA FanDuel Sportsbook, as included in the Commissioner’s Packet and discussed here today, and further moved that FanDuel provide clarifying language that cancelled or voided wagers were “subject to regulatory approval” as discussed here today. 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. [FBG Enterprises Opco, LLC \(Fanatics\) – Approval of Certificate of Operations](#)
(06:35:14)

Lastly, Chief Band presented a request for approval of a Certificate of Operations for the category 3 sports wagering operator FBG Enterprises Opco, LLC DBA Fanatics Betting and Gaming. He stated that all preliminary documentation was approved and in order, and that Fanatics was prepared to begin operations in Massachusetts at the end of May 2023 pending final approval. A Background Memorandum summarizing this request was included in the Commissioner’s Packet on pages 152 through 154.

Commissioner Hill then moved that the Commission find that the requirements outlined in regulation 205 CMR 251 have been satisfied and that an Operations Certificate be awarded to

FBG Enterprise Opco, LLC DBA Fanatics for the purpose of operating a category 3 sports wagering operation commencing May 16, 2023, conditional upon completion of operational audits of wagering procedures and practices and technical security controls as required by the Commission's technical standards governing sports wagering in regulations 205 CMR 243.01(1) subsections (s) and (x) within 90 days of the commencement of sports wagering operations. 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.

9. [Finance – 3rd Quarter 2023 Budget Update](#) (06:40:55)

Chair Judd-Stein noted that this item was going to be rolled over to the next public meeting of the Commission. It was placed on the agenda for Monday, May 22, 2023.

10. [Executive Session Regarding MGC Office Lease Update](#) (06:42:00)

Chair Judd-Stein then announced that, pending a vote, the Commission would be meeting in executive session in accordance with M.G.L. c. 30A, § 21(a)(6) to consider the lease of real property, specifically the Commission's office space at 101 Federal Street in Boston and associated considerations, as discussion at an open meeting may have a detrimental effect on the negotiating position of the Commission. The Chair noted that this public meeting of the Commission would not reconvene at the conclusion of the executive session.

Commissioner Maynard then moved that the Commission go into executive session on the matters and for the reasons just stated by the Chair. Commissioner Skinner seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated May 16, 2023
2. [Commissioner's Packet from the May 16, 2023](#), meeting (posted on massgaming.com)