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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** May 23, 2023, 12:00 p.m.  
**Place:** Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE: 111 007 3445

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 455<sup>th</sup> 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](#) (00:55)

#### a. December 5, 2022

The *December 5, 2022, Public Meeting Minutes* were included in the Commissioner's Packet on pages 3 through 5.

Commissioner Hill moved that the Commission approve the minutes from the December 5, 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 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. [Research and Responsible Gaming](#) (01:43)

#### a. Responsible Gaming Considerations in Promo Play Taxation

Chair Judd-Stein noted that the Commission had previously reviewed the treatment of promotional play for tax deduction purposes. She stated that the majority of the Commission believed that the statute allowed for enough flexibility for the Commission to have discretion in deciding whether promotional play should be taxed. Chair Judd-Stein noted that Commissioner O'Brien and she felt that the law was clear that promotional play should not be permitted to be tax deductible.

Director Mark Vander Linden stated that there were research and responsible gaming considerations involved in determining whether promotional play should be taxed. A *Memorandum Related To The Responsible Gaming Considerations* was included in the Commissioner's Packet on pages 6 through 9.

Director Vander Linden stated that a study performed by the SEIGMA team the previous year found that at-risk and problem gambling behavior was higher amongst sports bettors. He stated that sports wagering had a chance of increasing the rates of problem gambling in the population. He noted that the magnitude of these impacts was expected to be modest due to the small number of persons expected to engage in sports wagering in Massachusetts. He stated that certain groups that were not previously identified, such as adolescent young adults, immigrants, and college athletes were at greater risk of gambling problems.

Director Vander Linden stated that the National Council on Problem Gambling had a study that found sports wagering carried a rate of risk that was two to three times greater than other types of gambling. He stated that a study from Australia had found that promotional play and other sports wagering inducements encouraged more frequent bets and higher betting expenditure.

Director Vander Linden explained that there were increased calls to problem gambling helplines due to sports wagering but noted that some individuals had called the helpline for information not related to problem gambling related behavior.

Director Vander Linden explained that nine percent of tax revenue generated from sports wagering went towards the Public Health Trust Fund to help mitigate problem gambling and carry out the Commission's annual research agenda. He explained that allowing operators to deduct promotional play from taxes without a cap could result in eliminating an operator's tax

obligations entirely. He noted that Virginia, Colorado, and Maryland had rescinded their previously unrestricted deduction of promotional play for tax purposes.

4. [RSM US LLP Presentation: US Online Sports Betting – Promotional Play and Financial Performance Overview](#) (13:33)

Director of Financial Consulting with RSM, Connor Loughlin, and Consulting Principal with RSM, Theresa Merlino, presented on promotional play and financial performance with topics including comparable states, understanding promotional play, promotional play types, the impact of promotional play on taxable revenue, responsible gaming, and promotional play projections for Massachusetts temporary applicants. The *Presentation* was included in the Commissioner's Packet on pages 10 through 84.

a. [Executive Session](#) (47:48)

Chair Judd-Stein stated that the Commission anticipates that it may meet in executive session in accordance with G.L. c. 30A, § 21(a)(7) and G.L. c. 23N, § 6(i), in order to review financial projections, including revenue and handle, provided by Category 1 and Category 3 sports wagering licensees as part of the respective applications for an operator license, as analyzed by RSM,US, LLP in the context of the taxation of promotional play, as such information is competitively-sensitive and if disclosed publicly would place the respective applicant, now temporary licensee, at a competitive disadvantage. The Chair stated that the open session of the Commission meeting would reconvene at the conclusion of the executive session.

Commissioner O'Brien moved that the Commission go into executive session on the matters and for the reasons just stated by the Chair. 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.*

*Transcriber's Note: A screensaver was shared, and the Commission entered executive session. The Commission reconvened the public meeting at [1:33:03](#) in the video.*

Chair Judd-Stein noted that a question was posed in the executive session that was of a topic that belonged in the public meeting session. Commissioner Hill inquired how many of the existing sports wagering jurisdictions taxed promotional play and how many jurisdictions allowed for the deduction of promotional play.

Mr. Loughlin reported that thirty-one states had legalized sports wagering. He stated that twenty-three of those jurisdictions did not have tax exclusions for promotional play, three jurisdictions

had partial exclusions, three jurisdictions had promotional play excluded completely, and that two jurisdictions used hybrid models. He stated that the vast majority of states did not have tax exclusions for promotional play.

Chair Judd-Stein asked which states completely deducted promotional play from taxes. Ms. Merlino noted a correction that there were four states that allowed the complete deduction of promotional play from taxes, and that they were Arizona, Maryland, Pennsylvania, and Louisiana. She stated that there were twenty-two states that did not allow the exclusion of promotional play.

Commissioner O'Brien stated that the Commission had received a clear letter from the representatives of the Senate President's office regarding the Legislature's opinion. She stated that her view had not changed regarding promotional play not being tax deductible. Chair Judd-Stein stated that the language allowing the tax deduction was removed by the Senate, and that the version signed by the Governor was the Senate's interpretation.

Commissioner Maynard expressed his belief that the Commission had the authority to determine whether promotional gaming credits were subject to tax. He stated that he reflected on the review of promotional play, the letters received from legislators, feedback from the Attorney General's Office, revenue data post-launch, and information from this meeting. He stated that he understood that promotional play should be included as part of the operators' gross sports wagering receipts and not be tax deductible.

Commissioner Hill stated that he believed in helping out businesses where possible. He stated after hearing details from the Commission's experts that he believed the licensees should be taxed on promotional play. He stated that it would benefit the Commonwealth in terms of taxation and help to fund the Public Health Trust Fund. He noted that there were no comments from operators raising further issues regarding this taxation.

Commissioner Skinner stated that she was in alignment with Commissioner Maynard and Commissioner Hill. She expressed her belief that the Commission had the authority to determine the definition of gross gaming revenue. She stated that it was not the right direction policy-wise to allow promotional play to be tax deductible.

Commissioner O'Brien stated that allowing promotional play to be deducted would negatively impact tax revenue and responsible gaming programs as a result. She stated that allowing promotional play to be tax deductible would likely result in more promotions which would have an impact on both responsible gaming and advertising.

Chair Judd-Stein stated that she agreed with Commissioner O'Brien and that allowing promotional play to be tax deductible would impact the Public Health Trust Fund. Chair Judd-Stein expressed her belief that promotional play should not be deducted.

Commissioner Maynard moved that the Commission find that funds received by a sports wagering operator that were issued and those that will be issued to the patron for purposes of

promotional play shall be included in the calculation of the sports wagering operator's adjusted gross sports wagering receipts.

Commissioner O'Brien offered an amendment that the motion include the term "promotional gaming credit" from the definitions regulation. Commissioner Maynard accepted the amendment. 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.*

## 5. [Sports Wagering](#) (1:58:17)

Sports Wagering Director Bruce Band explained that the Commission had adopted 205 CMR 255 by emergency regulation on May 9. He stated that mobile sports wagering operators had submitted requests for waivers from this regulation. He stated that Gaming Laboratories International ("GLI") and the Research and Responsible Gaming Division had reviewed the requests for waivers and found them to be reasonable. He stated that GLI indicated that they would like to inspect the software prior to use. A *memorandum detailing the waiver requests* was included in the Commissioner's Packet on pages 85 through 90.

Commissioner Hill asked why the extension times of the waiver requests were so different. Director Band stated that Barstool Sportsbook was switching their software to a new platform in July, and that it would take that operator longer to modify the software. He explained that each of the seven operators who has requested a waiver had different changes to make to be compliant with the regulation.

Commissioner Skinner stated that 205 CMR 255.03 had two requirements, and asked if the operator's request for waiver was for the provision as a whole. She suggested that there may be ways to mitigate short-term harm to patrons during the waiver period. Director Band stated that he would look into that issue.

Deputy General Counsel Carrie Torrisi explained that the requirement was still in place under 205 CMR 248.16. She stated that the regulation the operators had requested a waiver from was more about the technical pieces built into the software system. She stated that operators were still required to notify patrons of the options available to them. Commissioner Skinner asked if any temporary substitutions could accomplish the same goal, such as a direct email to the patron rather than an in-platform notification. Director Band stated that he would look into that topic.

Commissioner Skinner noted that one of the operator's letters referenced data the Commission expected with respect to 205 CMR 255.045. She clarified that the Commission desired monthly

reports containing data and other information related to play management programs. She requested that the Commission discuss this topic further in the near future. Commissioner O'Brien stated that a monthly reporting requirement was consistent with the requirement for PlayMyWay.

Commissioner Skinner noted that BetR was seeking a waiver from 205 CMR 255.022, related to allowing a default limitation in limiting the amount of a deposit to \$2,500 for patrons under the age of twenty-five. She noted that this was not addressed in the draft motions and stated that this provision likely required Commission consideration of the request to waive. Commissioner O'Brien suggested a language change to the proposed BetR motion to incorporate a waiver to 205 CMR 255.022, while limiting the waiver so that it was not overly broad.

Commissioner Skinner noted that FanDuel had requested a waiver related to the provision that if an individual is seeking to unenroll regarding daily limits that the unenrollment won't take effect until 72-hours following the request. She asked if that would meet the regulation's requirements. Deputy General Counsel Torrisi stated that they had requested a waiver for the entirety of the provision. She noted that the operator had asked if the current timeframe could be considered additional limitations, and that the legal division was looking into the issue further. She stated that the legal division planned to resolve the issue before the waiver on that section expired.

a. Requests for Temporary Waiver from Provisions of 205 CMR 255: Play Management

I. [BetMGM Request for Waiver](#) (2:20:02)

Commissioner Skinner moved that in accordance with 205 CMR 202.02(3) the Commission issue a waiver to BetMGM from the requirements outlined in 205 CMR 255.03(1), 255.03(2), and 255.03(3) through August 10, 2023, as granting the waiver meets the requirements specified in 205 CMR 102.03(4) and is consistent with the purposes of General Laws 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.*

II. [BetR Request for Waiver](#) (2:21:20)

Commissioner O'Brien moved that in accordance with 205 CMR 202.02(3) the Commission issue a waiver to BetR Holdings Inc. D/B/A BetR from the requirements outlined in 205 CMR 255.03(2) through August 17, 2023, from the requirements outlined in 205 CMR 255.04(4) through July 2, 2023, and a waiver of 205 CMR 255.02(2) only in connection with the specified under twenty-five year of age limit included in the Commissioner's Packet as granting the

waiver meets the requirements specified in 205 CMR 102.03(4) and is consistent with the purposes of General Laws Chapter 23N. 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.*

### III. [DraftKings Request for Waiver](#) (2:22:32)

Commissioner Hill moved that in accordance with 205 CMR 202.02(3) the Commission issue a waiver to DraftKings from the requirements outlined in 205 CMR 255.03(1), 205 CMR 255.03(2), and 205 CMR 255.04(4) through August 31, 2023, as granting the waiver meets the requirements specified in 205 CMR 102.03(4) and is consistent with the purposes of General Laws Chapter 23N. 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.*

### IV. [Fanatics Request for Waiver](#) (2:23:42)

Commissioner Skinner moved that in accordance with 205 CMR 202.02(3) the Commission issue a waiver to FBG Enterprises Opco, LLC, D/B/A Fanatic from the requirements outlined in 205 CMR 255.03(2), though August 31, 2023, as granting the waiver meets the requirements specified in 205 CMR 102.03(4) and is consistent with the purposes of General Laws 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.*

### V. [FanDuel Request for Waiver](#) (2:24:51)

Commissioner Maynard moved that in accordance with 205 CMR 202.02(3) the Commission issue a waiver to FanDuel from the requirements outlined in 205 CMR 255.03(1) and 205 CMR 255.04(4) through May 31, 2023, and the requirements outlined in 205 CMR 255.03(2) through July 17, 2023, and from the requirements outlined in 205 CMR 255.03(5) through July 31, 2023, as granting the waiver meets the requirements specified in 205 CMR 102.03(4) and is consistent with the purposes of General Laws Chapter 23N. 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.*

VI. [Penn Sports Interactive Request for Waiver](#) (2:26:23)

Commissioner Hill moved that in accordance with 205 CMR 202.02(3) the Commission issue a waiver to Penn Sports Interactive D/B/A Barstool Sportsbook from the requirements outlined in 205 CMR 255.03 through September 30, 2023, as granting the waiver meets the requirements specified in 205 CMR 102.03(4) and is consistent with the purposes of General Laws Chapter 23N. 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.*

VII. [WynnBET Request for Waiver](#) (2:27:42)

Commissioner Skinner moved that in accordance with 205 CMR 202.02(3) the Commission issue a waiver to WynnBET from the requirements outlined in 205 CMR 255.02(1)(a) until June 20, 2023, and from the requirements outlined in 205 CMR 255.03(2) through August 31, 2023, as granting the waiver meets the requirements specified in 205 CMR 102.03(4) and is consistent with the purposes of General Laws Chapter 23N. Commissioner Hill seconded the motion.

Deputy General Counsel Torrisi noted that the June 20, 2023, date use the language “until”, while all other dates used the language “through”. She suggested changing the language to be consistent with the other motions. Commissioner Maynard offered this change as an amendment. Commissioner Skinner accepted the amendment.

*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.*

6. [Other Business](#) (2:29:56)

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

Commissioner Maynard moved to adjourn. The motion was seconded by Commissioner Hill.

*Roll call vote:*  
*Commissioner O'Brien: Aye.*  
*Commissioner Hill: Aye.*  
*Commissioner Skinner: Aye.*  
*Commissioner Maynard: Aye.*  
*Chair Judd-Stein: Aye.*  
*The motion passed unanimously, 5-0.*

**List of Documents and Other Items Used**

1. [Revised Notice of Meeting and Agenda](#) dated May 19, 2023
2. [Commissioner's Packet](#) from the May 23, 2023, meeting (posted on massgaming.com)