



Massachusetts Gaming Commission Meeting Minutes

Date/Time: June 29, 2023, 9:00 a.m.
Place: Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 112 381 9091

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 462nd 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](#) (00:22)

The *December 22, 2022, public meeting minutes* were included in the Commissioner's Packet on pages 3 through 21. The *January 3, 2023, public meeting minutes* were included in the Commissioner's Packet on pages 22 through 23.

Commissioner Hill moved that the Commission approve the minutes from the December 22, 2022, and January 3, 2023, public meetings that are included in the Commissioner's Packet subject to any necessary corrections for typographical errors or other non-material matters. 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.

3. [Administrative Update](#) (01:06)

a. Casino Update and Slot Machine and Denomination Breakdown Presentation

IEB Gaming Agents Division Chief Burke Cain stated that a sportsbook was under construction at Plainridge Park Casino (“PPC”). He stated that PPC was posting positions for the restaurant in the sports lounge. He noted that PPC continued to have live music on Fridays and Saturdays. Chief Cain stated that MGM Springfield (“MGM”) had opened a fifteenth poker table in the poker lounge and was planning on running a Christmas in July promotion. He stated that the City of Springfield had hosted an ironman competition which led to MGM seeing 50,000 patrons across four days. He stated that MGM would host their annual Fourth of July viewing party. Chief Cain stated that Encore Boston Harbor (“EBH”) had numerous promotions throughout July. He stated that EBH was assisting Pine Street Inn with preparing meals for those experiencing homelessness and that EBH had a volunteer program with the Greater Boston Food Bank.

Chief Cain explained that slot machines have become more computerized than in the past and had progressed to allow multi-denominational, multi-line, and multi-credits wagering. He presented a PowerPoint with topics including the number of games, slot machine change, slot denomination breakdown, and multi-denomination machines. The *presentation on slot machines* was included in the Commissioner’s Packet on pages 24 through 31. He stated that multi-denominational and multi-line functionality allowed operators to further customize their slot machines.

4. [Racing](#) (20:26)

a. Jockeys Guild Recognition

Chief Veterinarian and Director of Racing Dr. Alex Lightbown explained that General Law Chapter 128A § 5(h)(4) required the recognition of a representative group for jockeys in Massachusetts. She recommended that the Jockey Guild be recognized as the representative group. She stated that the Commission reviewed the statute in 2021 and found that recognition of a jockey group could still occur even without racing occurring. She stated that this \$65,000 in funding would be distributed to retired jockeys and jockeys with disabilities. A *memorandum regarding the recognition process* was included in the Commissioner’s Packet on pages 32 through 33.

Attorney Mindy Coleman from the Jockey’s Guild stated that the funds would go to eleven retired jockeys and four permanently disabled jockeys with injuries they sustained in Massachusetts. She noted that two jockeys who indicated that they were retired in previous years had ridden in fifty or more races.

Commissioner Hill moved that the Commission approve the Jockey Guild as the organization that represents the majority of jockeys to the purposes of M.G.L. Chapter 128A § 5(h)(4). 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.

b. [Request to Escrow Race Horse Development Funds that are Designated for Thoroughbred Purses](#) (25:16)

Dr. Lightbown stated the New England Horsemen’s Benevolent Protective Association (“NEHBPA”) had requested the Racehorse Development Funds designated for thoroughbred purses be placed into escrow. An overview of NEHBPA’s request was included in the Commissioner’s Packet on pages 36 through 38.

Dr. Lightbown explained that the Racehorse Development Fund divided its funds amongst thoroughbred and standardbred racing; and divided the funds further into the categories of purse money, money for breeders, and funding for health and welfare. She stated that the horseracing committee was tasked with determining how the money was divided. She noted that the committee shifted percentages to direct more funds to standardbred horses, as thoroughbred horses were not currently racing in Massachusetts. She stated that there was approximately \$22,000,000 in the thoroughbred purses account.

Associate General Counsel Judith Young then shared a presentation relative to NEHBPA’s request to escrow the funds designated for thoroughbred purses with topics including an overview of the racehorse development fund, the request from NEHBPA, escrowing funds, 205 CMR 149.03 and 205 CMR 149.04. The *Presentation on The Racehorse Development Fund Escrow Accounts* was included in the Commissioner’s Packet on pages 44 through 54. Associate General Counsel Young noted that the escrowing of accounts was not contemplated in the horseracing statutes and was discussed in the Commission’s regulations.

Commissioner Skinner noted that the funds going to standardbred racing had shifted to 92%, 75%, and 50%, and asked what the numbers were previously. Chief Financial and Accounting

Officer (“CFAO”) Derek Lennon stated that the numbers were reported monthly on the Commission website and that he would send the numbers to the Commissioners.

Commissioner O’Brien inquired whether creating an escrow account would change how the interest accumulated. CFAO Lennon stated that the Commonwealth General Fund received the interest from the trust funds, whereas in escrow, the escrow account would bear the interest. Executive Director of NEHBPA, Paul Umbrello, stated that if the escrow received the interest that the funds could be used for the horses or fund days of racing.

Commissioner Skinner stated that she wanted to address the threshold question of whether the NEHBPA met the definition of an association eligible to make requests for escrow. Associate General Counsel Young stated that in order to qualify as a horseracing or harness-racing association, an association must be licensed to conduct a horseracing meeting. She expressed her opinion that NEHBPA would likely be considered a horseman’s association, but not an association as defined by regulations.

Mr. Umbrello stated that the request to escrow the funding was to help secure the funding for purses for potential future races. He noted that there has been interest in a new racetrack offering thoroughbred racing. NEHBPA Board Member Matthew Clarke stated that there was not a problem with shortage of investors or locations, but difficulty finding a location that would embrace a racetrack in their community. NEHBPA Board Member Kevin McCarthy stated that having money protected in an escrow account could attract investors. Mr. Umbrello stated that the Commonwealth did not have to go after the funds in the racehorse development fund because there was currently a surplus, but expressed concern that the legislature might attempt to take these funds if they were not in escrow.

Associate General Counsel Young stated that the Commission would not be able to escrow the funds independently, as the Treasurer manages all funds under control of a state agency. She stated that if the Commission wanted to put the funds in escrow, it would be under the purview and consent of the Treasurer’s Office. CFAO Lennon noted that if the accounts being set up were not the Commission’s typical banking situations, there could also be costs associated with maintaining those accounts. He stated that the Commission would need to work with the Treasurer’s Office to establish any account and make an ISA agreement with the Treasurer’s Office to reimburse any costs associated with maintaining the accounts.

Commissioner O’Brien inquired as to what the potential cost could be. CFAO Lennon stated that it depended upon which bank the Treasurer’s Office selected. He stated that the Treasurer would put it out to bid to their approved banks. Commissioner O’Brien asked if there would be additional administrative costs for this process. CFAO Lennon replied that it would be solely the banking costs.

Mr. Umbrello expressed concerns that the funds were not presently in an interest-bearing account. Commissioner O’Brien asked if the funds were not accruing interest. CFAO Lennon clarified that the fund accrued interest, but that the current structure was to benefit the

Commonwealth's General Fund. Mr. Umbrello stated that he had misunderstood and thought that the Racehorse Development Fund was not interest-bearing.

Chair Judd-Stein noted that the NEHBPA representatives had stated that escrow provided protections and sought clarification regarding what additional protections there would be. CFAO Lennon noted that the legislature would have to enact statutory change to General Law Chapter 23K in order to move the money from the active fund, but that if the legislature did, they could remove funds, even those placed within escrow. He stated that should the legislature take this course of action, the Commission would have to address the potential issues that arise, such as fines for breaking the terms of escrow.

Chair Judd-Stein sought clarification regarding time constraints on the potential escrow account. CFAO Lennon stated that per the Commission's regulation, the funds would be removed from escrow after three years and distributed based upon how the Racehorse Committee determines their percentages. He noted that if there was not a thoroughbred licensee, the funds would return to the Racehorse Development Fund. Chair Judd-Stein inquired whether the funds could go to another escrow account with permission from the Treasurer's Office. CFAO Lennon stated that was correct.

Mr. Umbrello reiterated the NEHBPA's concerns about legislative attempts to go after this funding. He noted that Pennsylvania had borrowed money from similar funds under the condition that the funds would later be repaid to go to the horsemen. He stated that if thoroughbred racing did not restart during the three-year escrow period, that the funds could be transferred to the standardbreds for them to continue their industry.

Chair Judd-Stein asked if there were any additional stakeholders the Commission should hear from on this issue. Associate General Counsel Young stated that more research had to be done based on the information presented by CFAO Lennon but that they could return for an additional discussion.

c. [Quarterly Local Aid Payments, Q3 FY23](#) (1:39:17)

Financial Analyst Chad Bourque explained that aid is payable to each city and town where racing activities are conducted. He noted that the amount of aid is calculated at 0.35% of the handle from the quarter that ended six months prior to the payable date. A *memorandum related to the FY23 Quarter Three Local Aid Payments* was included in the Commissioner's Packet on pages 60 through 62. Mr. Bourque stated that the Quarter Three payments were for the quarter that ended on March 31, 2023, and calculated using handles from July, August, and September of 2022.

Commissioner Hill moved that the Commission authorize FY23 Quarter Three local aid payments to the City of Boston in the amount of \$149,274.48, to the Town of Plainville in the amount of \$42,297.99, to the Town of Raynham in the amount of \$18,483.69, and to the City of Revere in the amount of \$74,659.64. 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.

d. [Quarterly Local Aid Payments, Q4 FY23](#) (1:42:37)

Mr. Bourque stated that the Quarter Four payments were for the quarter ending on June 30, 2023, and calculated using the handles from October, November, and December of 2022. A *Memorandum Related to the FY23 Quarter Four Local Aid Payments* was included in the Commissioner's Packet on pages 63 through 65.

Commissioner O'Brien moved that the Commission authorize FY23 Quarter Four local aid payments to the City of Boston in the amount of \$100,380.05, to the Town of Plainville in the amount of \$29,051.93, to the Town of Raynham in the amount of \$16,482.33, and to the City of Revere in the amount of \$50,205.09.

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. [Research and Responsible Gaming](#) (1:56:33)

Director of Research and Responsible Gaming Mark Vander Linden stated that GameSense had a new website gamesensema.com. He stated that the Research and Responsible Gaming Division had worked with the marketing firm ASG. He stated that the website added sports wagering, a live chat function, remote enrollment for voluntary self-exclusion, and a google translate feature.

a. [Voluntary Self Exclusion Update](#) (2:01:17)

Program Manager Long Banh explained that the Expanded Gaming Act included mandates such as the establishment of a list of self-excluded persons from gaming establishments. He stated that G.L. Chapter 23K § 45 (f) directed the Commission to develop procedures for the placement, removal, and transmittal of the self-excluded persons list to gaming establishments. He stated that the system had since evolved to allow both in-person enrollment and remote enrollment. He stated that an application was being developed where gaming establishments could access the self-excluded person list in real time through a secure process.

Mr. Banh presented on voluntary self-exclusion with topics including voluntary self-exclusion list (“VSE”) enrollments and reinstatements, VSE enrollment terms, demographic data for those who enrolled, and enrollments requesting a follow-up. The *Presentation On The Voluntary Self-Exclusion List* was included in the Commissioner’s Packet on pages 67 through 87.

Commissioner O’Brien noted that the data presented supported the projections regarding gender and age breakdowns for sports wagering. Mr. Banh stated that the Commission staff surmised that sports wagering would trend to a younger audience, and that the data helped illustrate what that meant for Massachusetts.

b. [GameSense Quarterly Report](#) (2:18:14)

Mr. Banh explained that General Law Chapter 23K, § 21 required that operators provide an on-site space for independent substance abuse, compulsive gambling, and mental health counseling service in addition to establishing a program to train gaming employees in identification and intervention with patrons. He stated that GameSense was developed to address this requirement. He stated that the Commission contracted with the Massachusetts Council on Gaming and Health (“MACGH”) to operate the GameSense information centers located on-site at Massachusetts casinos.

Chief Operations Officer from MACGH, Chelsea Turner, and Chief Program Officer from MACGH, Odessa Dwarika, provided the GameSense Quarterly report with topics including interaction numbers, an update on PlayMyWay, sports betting, telephone recovery support, capacity building, GameSense excellence awards, community events, and a personnel update. The *GameSense Quarterly Report* was included in the Commissioner’s Packet on pages 89 through 108.

Commissioner O’Brien noted that the presentation found that gambling literacy is lower in Massachusetts than other jurisdictions, and asked if that was also true for sports wagering. Ms. Turner stated that sports wagering had yet to be launched when research was carried out regarding that topic. Director Vander Linden stated that the study was performed in 2020, before sports wagering was legalized, and that gambling literacy was not broken down based upon gambling type. Commissioner O’Brien expressed an interest in seeing information related to sports wagering gambling literacy.

Chair Judd-Stein requested further detail regarding the telephone recovery service. Director Vander Linden stated that the telephone recovery support helps get those who enrolled in the VSE to the next step in their recovery journey. He stated that it is intended to provide connection to other services, and that it was good to see the number of people taking advantage of this program was increasing.

Mr. Banh stated that the Research and Responsible Gaming Division wanted to explore different technological advantages in providing these services, such as texting and having a drop-in virtual space.

c. [Presentation of “Views and Perspectives of Springfield Hispanic Residents Towards the MGM Casino, their Homes, Community and Neighborhoods](#) (3:03:14)

Research Manager Dr. Bonnie Andrews stated that the expanded gaming act established an annual research agenda to understand the social and economic effects and mitigate the negative consequences of Casino Gambling in Massachusetts. She stated that the Commission funded Neighbor 2 Neighbor, a community-action organization based in Massachusetts, in partnership with JSI Research and Training to conduct a study on the effect of a casino on housing related issues primarily among Hispanic residents in Springfield. She noted there is little research into the effect of the casino on housing related issues.

Principal Investigator from Neighbor 2 Neighbor, Zulma Lee Rivera, and JSI Consultant, Rodolfo Vega, presented a report on the views and perspectives of Springfield Hispanic residents towards the MGM Casino, their homes, community, and neighborhoods. Topics highlighted in the presentation included neighborhood indicators, neighborhood perceptions, interviews with neighbors of the casino, crime perception, quality of life, and recommendations. The *Research And Presentation* were included in the Commissioner’s Packet on pages 111 through 175.

Commissioner O’Brien sought clarification regarding the ZIP Codes that had different perspectives regarding the casino. Dr. Vega stated that MGM was located between the 01103 and 01105 ZIP Codes. He stated that residents of the 01103 ZIP Code were 47% Latino while residents of the 00105 ZIP Code were 78% Latino. Ms. Rivera stated that there was more criminal activity a couple of blocks from the casino in the High Street area.

Chair Judd-Stein noted that some of the recommendations were outside of the Commission’s control and suggested highlighting the recommendations to other stakeholders and distributing the results of the study. Director Vander Linden stated that the report was shared with the Springfield Health Department and MGM.

Ms. Rivera stated that the interviews took thirty minutes per participant and said that there were opportunities to delve deeper into the participants’ understanding of their lived experiences. Director Vander Linden stated that community-based participatory research taps into the human condition and experience in ways other methodologies could not. He stated that a casino jobs impact report would be released this Summer, as well as a Springfield public safety report. He stated that work was beginning on a study examining the casinos’ effect on human trafficking across the Commonwealth.

6. [Sports Wagering Division](#) (4:16:52)

a. Category 3 Sports Wagering Operator Lottery Update

Sports Wagering Business Manager Crystal Beauchemin stated that almost all category three operators had introductory meetings with the Lottery. A *Summary Detailing The Responses Received from the Category Three Sports Wagering Operators Regarding Communications with The Lottery* was included in the Commissioner’s Packet on pages 176 through 183. Ms.

Beauchemin stated that the lottery indicated they are in the process of evaluating these conversations and proposals to determine what is best for their organization. She stated that all operators would be required to include a brief summary update on their work with the Lottery in their quarterly reports going forward.

Commissioner Skinner noted that an operator had commented regarding a regulation that was expected to be promulgated. She requested that the Sports Wagering Division and Legal Division check to see if there was any action to take to strengthen the application requirements related to mitigation of harm to the Lottery.

7. [Finance](#) (4:20:16)

a. FY24 Budget Final Review

CFAO Lennon stated that the Commission staff had gone through the annual process for developing a budget and presented it to the Commission on June 1, 2023. He noted at that meeting the discussion included hiring a FTE position to assist the Executive Director as well as adding \$750,000 to the sports wagering control fund to alleviate timing of expansion or additional contracted assistance. He stated that the budget submitted for this meeting included those two additions, and that no public comments were received. He stated that the recommended operational budget was \$55.79m to fund 134 FTEs and 6 contract employees. The *FY24 Budget Recommendation* was included in the Commissioners' packet on pages 184 through 256.

CFAO Lennon stated that the proposed budget represents a \$6.4 million increase over the currently approved FY23 budget. He stated that the budget had revised the cost allocation across programs and shifted 28.5% of the lease costs from the Gaming Control Fund to the Sports Wagering Control Fund. He recommended a FY24 budget of \$37.46 million for the Gaming Control Fund to cover regulatory and statutorily required costs. He stated that the Community Mitigation Fund was consistent with the figures presented at the June 1, 2023, meeting at \$385,000. He recommended an FY24 budget of \$9.12 million for the sports wagering control fund and \$5.9 million for the Public Health Trust Fund.

CFAO Lennon stated that the budget required assessments on the licensees for the Gaming Control Fund in addition to \$5 million for the Public Health Trust Fund. He stated that the apportionment of the assessment is based upon gaming positions and slot machine counts from the licensees. He stated that the difference between the Gaming Control Fund Budget and revenue estimates amounts to \$33.65 million which will be assessed upon gaming licensees as required by G.L. Chapter 23K. He stated that the same proportions based upon gaming positions will be used to divide the \$5 million assessment for the Public Health Trust Fund.

CFAO Lennon stated that the budget required two assessments on sports wagering licensees, one for the sports wagering control fund and another \$1 million assessment for the Public Health Trust Fund. He stated that apportionment of this assessment was calculated based upon adjusted gross sports wagering receipts from the licensees from implementation to the end of May 2023.

He stated that the finance division recommended an assessment of \$8.16 million for the Sports Wagering Control Fund divided amongst the thirteen sports wagering licensees. He stated that the number would be revised to use data through June 30, 2023, upon the first quarterly update. He noted that two sports wagering licensees would not have adjusted gross sports wagering receipts by the end of May, and that they would pay equal to the lowest licensee which was 0.25%. He noted that the 0.5% would be removed from the highest assessed licensee.

Chair Judd-Stein asked how that reassignment of that 0.5% of the assessment would affect DraftKings. CFAO Lennon explained that in order to maintain a 100% split amongst the operators the 0.5% being paid by the licensees who were not active was to be removed from the operator paying the largest percentage of the assessment.

Commissioner Skinner moved that the Commission approve the FY24 budget as included in the Commissioner's Packet and 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.

8. [Legal](#) (4:33:26)

a. 205 CMR 255: Play Management – Review of Regulation and Amended Small Business Impact Statement for final adoption, and filing

Deputy General Counsel Carrie Torrisi explained that 205 CMR 255 was in effect by emergency and that the Commission had received public comments. The *draft 205 CMR 255, Public Comments, and Amended Small Business Impact Statement* were included in the Commissioner's Packet on pages 258 through 276.

Outside Counsel from the law firm Anderson and Krieger Attorney Annie Lee stated that on January 20, the Commission had discussed components of technological feasibility regarding what was proposed. She stated that the regulation was revised to address some of those concerns with the input of Gaming Laboratories International ("GLI"). She stated that the regulation was promulgated by emergency on May 4, 2023, and that the Commission later received follow-up comments regarding concerns related to the technological aspects. She stated that the technological components commented on were the operators' requirement to remind players on a monthly basis regarding play management and the requirement to conspicuously display notification to patrons that play management is available when they first access the platform. She noted that six operators had requested waivers from provisions of this regulation and that the Commission approved all wagers on May 23.

Ms. Lee stated that another comment requested that operators be able to impose additional or more restrictive play management options if they submit a request and the Commission grants approval. She stated that this is the only change recommended for the regulation over the version presented in May. Deputy General Counsel Torrasi noted that the regulation was promulgated by emergency and that the emergency expires on August 9. She stated that the final version would be filed on July 21 and go into effect on August 4. She stated that this would allow operators to have time to submit their requests.

Chair Judd-Stein inquired whether approval of these requests could be delegated to the Sports Wagering Division. Deputy General Counsel Torrasi stated that the language could be changed to allow that. Commissioner O'Brien expressed an interest in ensuring that the requests only be more restrictive forms of play management and not less restrictive. Ms. Lee responded that was the intent of the change. Commissioner O'Brien asked if additional language could be added to clarify that the change must be more restrictive. Ms. Lee stated that clarifying language could be added.

Chair Judd-Stein asked the Commission if they would be willing to delegate approval of these requests to the Sports Wagering Division. Executive Director Karen Wells stated that efficiencies could be created in allowing staff to make decisions as appropriate. Commissioner Hill expressed that he had no problem delegating the approval to the Sports Wagering Division but suggested that language be included to allow the issue to come before the Commission if needed.

Commissioner Skinner suggested that the authority be delegated to the Responsible Gaming Division as play management was a responsible gaming tool. Executive Director Wells stated that the Sports Wagering Division was more regularly in contact with the new operators, but that there could be collaboration and cooperation between the divisions. Commissioner Skinner stated that she would want the Responsible Gaming Division to have a more active role, and potentially sign off on the requests.

Commissioner O'Brien suggested that the requests require approval from both the Sports Wagering Division and the Responsible Gaming Division. Commissioner Maynard stated that with two different divisions with veto power he would want to ensure that Commissioner Hill's suggested language that the request can go to the Commission was included.

Commissioner Skinner moved that the Commission approve the amended small business impact statement and the draft of 205 CMR 255 as included in the Commissioner's Packet and discussed here today and further that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth to finalize the regulation promulgation process. Commissioner O'Brien seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.
Chair Judd-Stein: Aye.
The motion passed unanimously, 5-0.

b. [205 CMR 256.05](#): Sports Wagering and Advertising – Discussion and Review of Regulation and Small Business Impact Statement for possible emergency adoption, and/or authorization to begin the promulgation process (4:52:08)

Deputy General Counsel Torrisi stated that the Commission had requested comments from operators and interested parties. She stated that a waiver was currently in place through June 30. The *draft 205 CMR 256.05, public comments, and amended small business impact statement* were included in the Commissioner’s Packet on Pages 279 through 298

Attorney Mina Makarios from Anderson and Krieger stated that the first comment received was from the owners of TD Garden and Fenway Park and noted that their comments requested the reference to branding be removed. Mr. Makarios noted that during the prior Commission discussion there was an interest in creating a distinction between branding on clothing items and the use of a logo on fixed signage. He stated that Fanatics, DraftKings, and Penn Sports Interactive also proposed removing the word branding from this provision.

Mr. Makarios stated that Penn Sports Interactive had sought clarification as to whether this provision would only apply to logos and trademarks related to sports wagering. He noted that if a brand had a separate logo for sports wagering, the provision would only apply to the sports wagering affiliated branding. He stated that WynnBet suggested that the language indicating that sports wagering is intended for audiences aged twenty-one and up be limited to audiences where 25% or more of the audience is anticipated to be over the age of twenty-one. He stated that the suggested language was less restrictive than what the legal team envisioned.

Commissioner O’Brien suggested adding the language “related to sports wagering” to address Penn Sports Interactive’s request for clarification. She suggested that language as simple as “21+” could satisfy this provision. She noted that the submissions from the sports teams referenced fantasy sports being playable at eighteen, and stated that was incorrect as patrons must be twenty-one or older to participate in fantasy sports and sports wagering in Massachusetts.

Chair Judd-Stein sought clarification as to how “related to sports wagering” would change the provision. Mr. Makarios stated that it would allow operators to use different branding for sports wagering and non-sports wagering operations. Chair Judd-Stein asked if requiring language regarding age would be too impactful. Commissioner O’Brien stated that a distinction can be drawn between logo on a shirt which is different from signage in a fixed location.

Commissioner Skinner expressed an interest in seeing evidence whether a disclaimer regarding age requirements would deter underage sports wagering. She stated that she wanted to know if the impact was greater than the challenge operators may have in implementing the requirements.

Commissioner Maynard stated that he had seen fixed location signage for a Cannabis Control Commission regulated company and that the signage included twenty-one or older language. Chair Judd-Stein inquired whether it was an advertisement or a logo. Commissioner Maynard stated that while it was an advertisement, he did not see a distinction between advertisements and logos if the logos are being used to attempt to attract customers.

Chair Judd-Stein asked if the operators would have to change their logo for sports wagering purposes. Mr. Makarious stated that the language would give the operator the choice of adding a “21+” to any logo on fixed signage or choose to develop a distinguishable sports wagering logo.

Commissioner Hill stated that it was common sense that patrons had to be twenty-one or older to sports wagering, and that he did not believe the branding needed to clearly indicate the age restrictions. Commissioner O’Brien stated that the public comments from the sports team mis-identified the age requirement for fantasy sports. She stated that advertisements already require the age restriction language, and she expressed an interest in ensuring that the age restrictions were clear.

Commissioner Hill sought clarification as to what changes Commissioner O’Brien was suggesting. Commissioner O’Brien stated that the language “21+” would satisfy the requirement, and that the requirement of this provision for branding would be limited to logos placed on fixed signage.

Chair Judd-Stein expressed her opinion that branding should be removed from this provision, as a requirement that operators change their branding for Massachusetts would be onerous. Commissioner Skinner stated that she supported branding being removed from the provision if the provision addressed branding related to sports wagering on a fixed structure.

Commissioner Skinner asked if that language would include Fanatics logos at the ballpark that were not related to sports wagering. Mr. Makarious stated that if an operator chose to use the logo for their sports wagering business it would be considered a sports wagering logo. He stated that the operator could maintain a single logo with the age restrictions indicated or develop a second logo specific to their sports wagering line of business.

Chair Judd-Stein expressed concern that this requirement could be overzealous and affect licensees’ branding decision. Commissioner O’Brien noted that several operators already had sports wagering specific logos. Commissioner Maynard stated that Barstool had a separate logo for their sports wagering branding, and that it would not be overly broad to require this of operators.

Chair Judd-Stein noted that the age restriction language was not required for casino signage. Commissioner O’Brien stated that the Commission did not have statutory instruction regarding advertising in G.L. Chapter 23K like they did under G.L. Chapter 23N. Commissioner Maynard noted that there was also a physical checkpoint at the casinos which is not available for the category three licensees. Chair Judd-Stein stated that the category three licensees had a verification process, but that the discussion should be about branding and logos.

Commissioner Skinner stated that the decision regarding branding should limit the requirement to fixed signage at venues. She reiterated her request for evidence that the age restriction language would affect the rate of underage sports wagering. She asked if any other jurisdictions had the requirement of age restriction language being used on branding.

Commissioner O'Brien suggested that the language "related to sports wagering" and the idea that "21+" is sufficient be communicated to the operators so that they could comment. Mr. Makarios stated that the operators were clear that they would like branding removed from this provision. He suggested that any logo or trademark shown on fixed signage where it could be seen by underage youths should include a message that patrons must be twenty-one years of age or older to participate. He stated that this language would allow the logo to be used on hats, shirts, business cards, and coasters as discussed previously.

Chair Judd-Stein noted that other similarly regulated industries, such as alcohol, did not have signage requirements this strict. Commissioner Maynard asked if this language would affect signage at the company headquarters. Mr. Makarios stated that it would if the signage was visible from a public area. Commissioner Skinner expressed that she was not comfortable with the change if it affected the signage at the company headquarters. Commissioner Maynard agreed.

Commissioner O'Brien stated that she did not believe there was a difference between advertising, marketing, and branding as the main purpose of these activities was to receive brand loyalty and sell their product to consumers. She stated that practically speaking logos in a private office space were different. Chair Judd-Stein stated that logos were different than a form of advertising.

Commissioner Maynard offered a compromise that the provision apply to fixed signage in public venues. Commissioner O'Brien stated that she was agreeable and that her main concern was prominent branding in venues where people under the age of twenty-one would be present. Commissioner Skinner stated she was comfortable limiting this requirement to sports venues.

Chair Judd-Stein sought clarification as to whether the requirement would be limited to sports venues or all public venues. Commissioner O'Brien stated that the branding requirement could be limited to sports stadiums of a certain size. Mr. Makarios stated that the branding language could be limited to a fixed structure in or at a sports venue. Commissioner O'Brien, Commissioner Maynard, and Commissioner Skinner agreed with the proposed language. Commissioner Skinner stated that she would like to see the language "related to sports wagering branding" included as discussed earlier.

Mr. Makarios presented the final proposed language changes and stated, "provided that branding consisting only of a display of an operator's logo or trademark related to sports wagering shall not be required to comply with this provision unless it is or intended to be displayed on signage or a fixed structure in a sports venue where it is likely to be viewed by persons under twenty-one years of age".

Commissioner O'Brien moved that the Commission approve the small business impact statement and the draft of 205 CMR 256.05 as included in the Commissioner's Packet and as further discussed here today, specifically adding the words related to sports wagering and sporting venue as discussed by Attorney Makarious, and further that staff be authorized to take the steps necessary to file the required documentation with the Secretary of the Commonwealth by emergency and thereafter to begin the regulation promulgation process and further that staff be authorized to modify chapter or section numbers or titles to file additional regulation sections as reserved or to make any other additional changes as necessary to execute the regulation promulgation process. Commissioner Maynard seconded the motion.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Nay.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Nay.

The motion passed, 3-2.

Commissioner Skinner asked if these changes would go into effect immediately. Deputy General Counsel Torris stated that the changes would go into effect upon filing with the Secretary of the Commonwealth the next day. She stated that the existing waiver also expired the next day.

Commissioner O'Brien moved that in accordance with 205 CMR 202.023 that the Commission issue a waiver through ninety days starting tomorrow to all sports wagering operators from the requirement outlined in 205 CMR 256.05(1) and that the edits made today in a previous vote as granting the waiver meets the requirements specified in 205 CMR 102.034 and is consistent with the purposes of General Law 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.

9. [Review of Selection Process for Permanent Executive Director](#) (5:55:14)

Mr. Makarious stated that due to the open meeting law requirements there were restrictions as to when the Commission could enter executive session to review applicants. He stated that there was a carveout for screening committees under the open meeting law in order to maintain confidentiality as needed.

Mr. Makarious stated that there were three options for a process to get the best candidates possible. He stated that the first option was for one Commission or staff member to do all the

preliminary screening. He stated that the second process was for all applicants to be vetted by the entire Commission in a public meeting. He stated that the third option was to use a screening committee, but that the committee could not include a quorum of the Commission. He noted that the screening committee could include other employees or individuals with knowledge and experience regarding the position. He stated that the screening committee would cull the number of applicants down to a manageable number for the Commission to review and perform the final interviews.

Mr. Makarios stated that successful screening committees are given clear charge of their task and that developing the job description would aid in that process. He stated that it would be beneficial to have an understanding regarding when the committee would check back in with the Commission. He stated that multiple applicants must interview in public with the Commission, but that the screening committee could be requested to keep that number narrower or broader.

Mr. Makarios stated that screening committees often work with a contracted or delegated search firm. He stated that it is important to be clear regarding the process of submitting the application and the public interview.

Commissioner O'Brien stated that she would like to address the Executive Director job description and whether the Commission would hire a Deputy Executive Director. She stated that during the previous process the Commission used an outside agency and stated that the Commission should discuss which Commissioners would move forward on the screening committee. Chair Judd-Stein noted that CFAO Lennon had indicated that the Commission had sufficient funding to hire for the Deputy Executive Director position.

Chair Judd-Stein asked if a search firm could also assist in developing the job description. Mr. Makarios stated that a search firm could, provided they receive clarity as to what the Commission's expectations are. Commissioner Skinner stated that the discussion relative to the Executive Director's role could also be used as an opportunity to create efficiencies with the expectations of the Executive Director and how other divisions do their work.

Commissioner Hill expressed an interest in all five commissioners being involved in the screening process. Mr. Makarios stated that there were limitations regarding executive sessions, but that the Commission could have regular check-ins with the subcommittee or screening committee. He noted that the screening committee would have to be careful in what they present to ensure what is conveyed cannot be considered pre-negotiation. He stated that the presentation can be adjusted without risking interference with the quality of the search process.

Commissioner Hill stated that he would prefer to have each commissioner review the full pool of applicants. Mr. Makarios stated that it was possible but expressed concern about all applicants' names being in the public. Commissioner Hill stated he was uncomfortable with not knowing who had applied. Chair Judd-Stein stated that if there was a screening committee she would take herself out of the running to allow others the opportunity.

Commissioner Hill expressed that he did not support the use of search firms as he had seen search firms put forward choices that were not good fits in the past. He reiterated that he would like all five commissioners to be able to work together in picking the next Executive Director. Chair Judd-Stein stated that the Commission could use internal HR assistance rather than a search firm.

Mr. Makarios stated that search firms were not a legal requirement or recommendation. He stated that he had seen similar situations to the one Commissioner Hill alluded to where the candidate selected by the search firm might not have been the best fit. Mr. Makarios stated that one requirement that is needed is a final decision made by the Commission. He stated that the size of the group of finalists that is presented to the Commission is a policy decision, and that larger groups can mitigate Commissioner Hill's concern about loss of transparency.

10. [Review of Executive Director Job Description](#) (6:20:04)

Commissioner O'Brien stated that it would be beneficial to discuss the role of the Executive Director with Executive Director Wells. She agreed with Commissioner Hill's concerns regarding search firms. She stated that the Commissioners could discuss the job description with Executive Director Wells in two-by-twos so that a quorum was not created.

Commissioner O'Brien stated that the discussion regarding the job description should be done with the full Commission. Commissioner Hill and Commissioner Maynard agreed. Commissioner Skinner stated that Executive Director Wells was working on a transition document and that it would be beneficial to review that document before the next discussion. Executive Director Wells stated that the transition document would be ready in the following week. Chair Judd-Stein stated that the discussion would be set for the meeting on July 11.

Commissioner O'Brien noted that in the screening committee meeting for the Interim Executive Director on Monday Commissioner Skinner had requested information regarding the process for evaluating the presumptive Interim Executive Directors. Commissioner O'Brien requested that information be made available to all of the Commissioners, to the extent it could be anonymized and distributed. Mr. Makarios stated that it could be done if anonymized and properly noticed.

Chair Judd-Stein stated that it was the same process as when the last Executive Director gave notice. She explained that she gathered each of the Executive Director's reports and the Director of the IEB. She stated that this group had a discussion regarding what they liked about the Executive Director's leadership style, and asked if any of this group were interested in serving as interim or permanent Executive Director.

Commissioner O'Brien suggested a discussion be held regarding the succession plans for the interim Executive Director. Commissioner Skinner expressed that she would have preferred to have the discussion as a Commission and make the appointment outright rather than having a screening process. She stated that it was important to have a discussion regarding how the Commission will appoint future interim Executive Directors as part of the discussion regarding

the roles and responsibilities of the Executive Director. Commissioner Maynard agreed that the Commission should develop a succession plan.

11. [Succession of Officers and Positions Document Review](#) (6:37:47)

Commissioner O'Brien stated that the Commission had a policy decision as to whether they would have the Commissioners cycle in and out of the Treasurer and Secretary positions or have two Commissioners swap in and out for each position. Chair Judd-Stein stated that she thought it was acceptable if a commissioner wanted a second term. *A document regarding the process for succession of officers and positions* was included in the Commissioner's Packet pages 297 through 298.

Commissioner Hill expressed support for the first option. Commissioner Skinner asked if two commissioners were stepping down as Treasurer and Secretary and two other commissioners were stepping into those roles, how would it be determined which commissioner receives which role. Commissioner O'Brien stated that commissioners would take whichever office they had yet to hold or whichever position they are temporally furthest from holding.

Commissioner Skinner inquired how it would be decided if a commissioner had yet to serve in either role. Commissioner O'Brien stated that it would be based on whoever was first to arrive at the Commission. Commissioner Skinner expressed that she did not like using seniority, but that it was a neutral way to make the decision.

Commissioner Skinner asked if the commissioners had the ability to decline an office. Commissioner O'Brien stated that there was nothing in the process that would prohibit a commissioner from declining. She stated that this process was to establish the presumptive nominees. Commissioner O'Brien stated that rotation would work but would occasionally have to be deviated from dependent upon when commissioners are appointed.

Commissioner Skinner stated that she did not have a preference for either version. Commissioner Hill reiterated his preference for the first version. Commissioner O'Brien and Commissioner Maynard stated that they were okay with version one. Commissioner O'Brien clarified that this vote was to approve the process and that the vote on the positions would be on July 15.

Commissioner O'Brien moved that the Commission approve the procedures for presumptive nominations and rotations of Commission officer positions and specifically adopt the version one language as included in the Commissioner's Packet and discussed here today. Commissioner Hill seconded the motion.

Roll call vote:

<i>Commissioner O'Brien:</i>	<i>Aye.</i>
<i>Commissioner Hill:</i>	<i>Aye.</i>
<i>Commissioner Skinner:</i>	<i>Aye.</i>
<i>Commissioner Maynard:</i>	<i>Aye.</i>
<i>Chair Judd-Stein:</i>	<i>Aye.</i>

The motion passed unanimously, 5-0.

12. [Other Business](#) (6:44:29)

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

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

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 5-0.

List of Documents and Other Items Used

1. [Revised Notice of Meeting and Agenda](#) dated June 27, 2023
2. [Commissioner's Packet](#) from the June 29, 2023, meeting (posted on massgaming.com)