



Massachusetts Gaming Commission

Meeting Minutes

Date/Time: January 11, 2023, 8:00 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 112 692 3016

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 422nd Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting.

2. [Opening Remarks](#) (00:48)

Chair Judd-Stein noted that early meetings were scheduled on January 12 and January 13 to continue the evaluation of FBG Enterprises Opco, LLC d/b/a Fanatics ("Fanatics") category three untethered sports wagering application. She stated that the Commission had previously entered an executive session to address the applicant's new technology, and that the Commission had also reviewed Fanatics' application publicly. She stated that there were several outstanding issues, and that some of the topics required the Commission to enter an executive session.

3. [Continuation of Review of Category 3 Sports Wagering Application Submitted by FBG Enterprises Opco, LLC \(Fanatics\) commenced at the January 5, 2023 Public Meeting](#) (02:11)

Chair Judd-Stein asked General Counsel Grossman to outline which topics were outstanding and which topics the Commission anticipated it wanted to discuss in executive session. General Counsel Grossman noted that many of the items supplemented coincided with the topics for the executive session.

General Counsel Grossman explained that the Commission had received the suitability certification from Michael Ruben that was requested. He stated that Fanatics had submitted additional information related to workforce and supplier diversity goals. Chair Judd-Stein asked if the additional information provided satisfied the Commission's request for goals. Commissioner Skinner and Commissioner Maynard expressed that they were satisfied with the information provided.

General Counsel Grossman stated that another outstanding topic was that the Commission had requested information as to how Fanatics' responsible gaming plan was to be amended or supplemented to incorporate how Fanatics intended to implement GameSense and other Massachusetts requirements. Chair Judd-Stein stated that Fanatics' responsible gaming plan was scheduled for formal adoption at the January 25, 2023 committee meeting. Commissioner O'Brien requested that the Commission receive an overview of the changes that were made.

Alex Smith, Fanatics' Vice President of Regulatory Affairs, explained that Fanatics did a read-through of the GameSense logic model and the intended outputs and outcome of the responsible gaming framework Massachusetts had adopted. He stated that the responsible gaming plan was changed to more clearly include 205 CMR 233 and requirements around self-exclusion. He stated that points were added regarding responsible gaming training that all Fanatics employees would be required to take. He stated that Fanatics was committed to working with its training vendor to ensure that training was on point with each of Massachusetts requirements. He stated that the tools and resources available would be aligned with the GameSense model. He noted that once advertising regulations were published Fanatics would incorporate those requirements as well.

Commissioner O'Brien sought clarification as to whether the vote to formally adopt the responsible gaming plan had been officially advanced to January. Mr. Smith stated that the responsible gaming committee called a meeting for January 25, 2023 and that the plan would be reviewed at that meeting. General Counsel Grossman noted that Fanatics had also submitted information regarding its training program.

General Counsel Grossman stated that those were all of the topics the Commission had requested supplemental information from the applicant. He stated that the first topic for the executive session was the Commission's request that the applicant provide information relative to the posture of its technology platform. Chair Judd-Stein asked if this topic was considered for the executive session under G.L. c. 23N § 6(i), or the technology exemption. General Counsel Grossman stated that this topic fell under both the cybersecurity exemption and G.L. c. 23N, § 6(i).

General Counsel Grossman stated that the second topic for the executive session was the request for information related to an October 2021 matter in New York where Fanatics Inc. and its affiliates agreed to pay \$1.5 million for knowingly under-collecting tax for online sales.

He stated that the third topic for executive session was 2019 litigation in Florida captioned *EEOC v. Fanatics Retail Group Fulfillment LLC*, and the corresponding consent decree. He stated that outstanding questions related to these matters may fall under G.L. c. 23N, § 6(i) or the privacy exemption.

Commissioner O'Brien asked what systematic changes were implemented as a result of that settlement beyond the warehouses in Florida. Adam Berger, outside counsel for Fanatics from the law firm Duane Morris, LLP, stated that Fanatics would prefer to discuss anything beyond the public complaint and EEOC settlement regarding the Florida matter and the New York matter in executive session. He explained that the information was proprietary.

General Counsel Grossman stated that the fourth topic for executive session was the information the Commission requested related to a 2022 class action lawsuit in the federal court in New York alleging violations of the Sherman Anti-Trust Act. He stated that any changes made to controls and any defenses would be appropriate topics for the executive session.

General Counsel Grossman stated that the fifth topic for executive session was information relative to the corporate governance structure, and where Fanatics fits into that framework.

He stated that the sixth topic for discussion in the executive session would be Fanatics and RSM's information related to financial projections, trends, and associated methodology. He noted that Fanatics was a privately held company, and the topic was appropriate for the executive session as the information was not publicly available.

General Counsel Grossman stated that the seventh topic for the executive session was information related to the liquidity, leverage, and profitability ratios of the applicant. He stated that this would include any associated information related to the applicant's financial standing and suitability.

General Counsel Grossman stated that the eighth topic for the executive session was the applicant's use of its customer database for marketing and associated purposes. He stated that questions that arose relative to this topic were whether there were opt-in or opt-out options for the database, and whether there was technology that could screen underage individuals from marketing. He explained that this topic also encompassed the relationship between the commerce company and Fanatics for marketing purposes. He noted that this topic was appropriate for an executive session because it was competitively sensitive information. He stated that the Commission had also requested specific information as to how the e-commerce database reflected potential betting patrons.

General Counsel Grossman stated that the ninth topic for the executive session was related to information regarding ownership interests. Commissioner O'Brien noted that she wanted more details regarding fundraising and ownership interest in some professional sports leagues. She stated that the ownership interests did not trigger qualifier status, but that she wanted to understand whether there was influence and control, as the sports betting platform could offer bets on those leagues. General Counsel Grossman stated that this topic, and all of the other topics qualified for discussion in executive session under G.L. c. 23N § 6(i).

6. [Executive Session](#) (15:47)

Chair Judd-Stein stated that the Commission anticipated that it would meet in executive session in conjunction with its review of the FBG Enterprises Opco, LLC d/b/a Fanatics application in accordance with G.L. c. 30A, § 21(a)(7) and G.L. c. 23N, § 6(i) to consider information submitted by the applicant in the course of its application for an operator license that was a trade secret, competitively-sensitive or proprietary and which if disclosed publicly would place the applicant at a competitive disadvantage, and/or G. L. c. 4, § 7(26)(c), the privacy exemption, to consider information submitted in the application materials related to named individuals, the disclosure of which may constitute an unwarranted invasion of personal privacy, and/or G. L. c. 4, § 7(26)(n), certain records for which public disclosure is likely to jeopardize public safety or cybersecurity, to consider information submitted in the application materials related to the security or safety of persons or buildings, structures, facilities, utilities, transportation, cybersecurity or other infrastructure located within the Commonwealth, the disclosure of which is likely to jeopardize public safety or cybersecurity.

Commissioner O'Brien moved that the Commission move into executive session on the nine matters delineated by General Counsel Grossman and for the reasons stated by the Chair on the record. 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: The Commission entered executive session. Commissioner O'Brien did not rejoin the public session of the meeting. Chair Judd-Stein, Commissioner Hill, Commissioner Skinner, and Commissioner Maynard rejoined the public session of the meeting after the executive session.

8. [Other Business](#) (1:51:21)

Chair Judd-Stein informed meeting participants that this meeting would be reconvened the following day at 8:00 a.m. She stated that the meeting would briefly meet in public, then return to the executive session to conclude discussion on the topics identified earlier in this meeting.

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

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

Roll call vote:

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously, 4-0.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated January 6, 2023