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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** January 12, 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 423rd Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted and all five commissioners were present for the meeting.

#### 2. [Executive Session](#) (00:35)

Chair Judd-Stein explained that the Commission was resuming its review of the category three sports wagering application submitted by FBG Enterprises Opco, LLC, d/b/a Fanatics ("Fanatics"). She stated that this meeting was resuming the public meeting convened on January 11, 2023 and that while the Commission went through many of the executive session items, there were still some topics to review in executive session. She stated that General Counsel Todd Grossman had advised that the Commission could enter directly into executive session based upon the prior vote to enter executive session that took place at the January 11, 2023 public meeting.

Commissioner O'Brien noted that there was also a matter raised in the previous meeting which could be discussed in the public session of the meeting. She inquired if this topic should be raised before or after the executive session. Chair Judd-Stein stated that the public session of the Commission meeting would reconvene at the conclusion of the executive session.

Commissioner O'Brien stated that an open-source check had surfaced articles regarding Mr. Ruben's divestiture of ownership shares in professional teams, and another matter related to the signing of James Harden by the NBA team, the Philadelphia 76ers. Commissioner O'Brien asked if anyone from Fanatics could speak to the publicly available information on those topics.

Attorney Adam Berger, counsel for Fanatics from the law firm Duane Morris, LLP, stated that the company viewed those articles as unfounded and untrue media speculation. He stated that there was nothing to substantiate those articles. He stated that the company and its principles would be happy to speak to any further questions raised by the Investigations and Enforcement Bureau ("IEB"). He reiterated that the articles were completely unsubstantiated. Commissioner O'Brien thanked Mr. Berger for addressing the topic publicly.

*Transcriber's Note: The Commission entered executive session. The Commission reconvened the public session of the meeting at [56:20](#). A roll call was taken and all five Commissioners were present.*

Reconvening the public meeting, Chair Judd-Stein announced that all topics intended for the executive session had been addressed by the Commission. She stated that there was a brief clarification for the public record from a representative from Fanatics. Mr. Berger stated that all pleadings related to Fanatics' three open legal proceedings were publicly available. He invited the Commission to review all of the documents available in those matters. He noted that in each of the three cases, an intent to file a motion to dismiss had been filed, and that the motions to dismiss would speak for themselves. Commissioner O'Brien requested that a copy of the complaint and the motions be forwarded to the Commission. Mr. Berger confirmed that Fanatics would forward those documents to General Counsel Grossman.

The Commission reached a consensus that Fanatics met the Commission's expectations with regard to Sections B, C, E and G of its application. Commissioner O'Brien stated that the only caveat she had was a proposed condition that Fanatics adopt its responsible gaming plan by a board vote at their anticipated January 25, 2023 meeting.

Mr. Berger stated that Fanatics would be amenable to the condition and requested that there be some flexibility in the date should a scheduling conflict arise for the January 25, 2023 meeting. Commissioner O'Brien requested that the Commission receive notice prior to the date if the vote on the responsible gaming plan was not going to happen at the January 25, 2023 meeting. She reiterated that she wanted the responsible gaming plan to be approved at the board level before Fanatics launched in Massachusetts. Mr. Berger stated that approving the responsible gaming plan before launch was Fanatics' intent.

Chair Judd-Stein noted that the application process only requested a draft of the responsible gaming plan. Commissioner O'Brien noted that each other applicant had approved responsible gaming plans, whereas Fanatics did not have a responsible gaming plan approved at the corporate level whatsoever.

4. [FBG Enterprises Opco, LLC's \(Fanatics\) license application determination by the Commission in accordance with 205 CMR 218.07](#) (1:03:55)

General Counsel Grossman stated that 205 CMR 218.06(5) was the standard for the Commission to evaluate a sports wagering application. He reiterated that the factors the Commission would evaluate would be the applicant's experience and expertise related to sports wagering, the economic impact and benefits to the Commonwealth, the applicant's proposed measures related to responsible gaming, the description of the applicant's willingness to foster racial, ethnic, and gender DEI, the technology the applicant intends to use in operation, the suitability of the applicant and qualifiers, and any other appropriate factor in the Commission's discretion.

General Counsel Grossman stated that according to 205 CMR 215, the Commission must find substantial evidence in the record to support a finding of preliminary suitability. He stated that the Commission should also consider what conditions it wanted to attach to the applicant. He noted that Commissioner O'Brien had requested that the Fanatics Board of Directors vote to adopt the responsible gaming plan prior to the commencement of operations in the Commonwealth. He noted that the applicant had supplemented all information the Commission requested, and that there would likely not be a condition associated with those requests.

General Counsel Grossman added that a series of automatic conditions were attached to licensure in accordance with 205 CMR 220. He stated that whether pre-registration could occur may be better addressed by regulation. He stated that the automatic conditions that attached to the license were that the operator obtain an operations certificate before conducting sports wagering, the operator comply with all terms and conditions of the license and operations certificate, the operator comply with G.L. Chapter 23N, and all rules and regulations of the Commission, the operator make all required payments to the Commission in a timely manner, the operator maintain its suitability to hold a sports wagering license, and the operator conduct sports wagering within its approved system of internal controls and in accordance with its approved house rules and G.L. c. 23N, § 10(a).

Chair Judd-Stein stated that the condition proposed regarding the responsible gaming plan should give latitude to the applicant that the plan be approved prior to launching. Commissioner O'Brien proposed the language should be that if Fanatics was a licensee, they are required to have a board approved responsible gaming plan prior to any launch in the Commonwealth of Massachusetts, and that the approved responsible gaming plan be provided to the IEB and Commission.

Chair Judd-Stein noted that the other applicants were not asked to have their draft responsible gaming plans adopted. She noted that while the other applicants had responsible gaming plans in place, the Commission did not fully review them. She stated that the Commission was treating this applicant differently. Commissioner O'Brien stated that each other applicant had an official responsible gaming plan or policy approved at the corporate level, and that the responsible gaming plan was absent in this application. She expressed that she just wanted to ensure that Fanatics had a responsible gaming plan at the corporate level before launching. Chair Judd-Stein stated that Commissioner O'Brien's request was fair and noted that the Commission had received Fanatics' draft responsible gaming plan and information regarding responsible gaming training.

Mr. Berger noted that due to Fanatics' governance structure, it would be the Compliance Committee approving the responsible gaming plan through its delegated authority. He stated that it would not be per se Board approval, but the Compliance Committee providing the approval. Commissioner O'Brien stated that the Commission was looking for what was consistent with Fanatics' internal operating procedures.

Commissioner Maynard asked if Fanatics had a responsible gaming plan adopted related to sports wagering in any jurisdiction. Mr. Berger stated that Fanatics was in the process of approving all plans in preparation for launching its platform. Commissioner Maynard stated that he shared Chair Judd-Stein's discomfort in treating the applicant differently, but that he would join Commissioner O'Brien on requiring the responsible gaming plan approval as a condition.

Commissioner Maynard suggested that the Commission review its prior decisions regarding draft responsible gaming plans. Commissioner O'Brien noted that the condition had nothing to do with Fanatics' plans, ability, intention, or past track record. She reiterated that she simply wanted to see the plans to be formalized before Fanatics launched sports wagering in the Commonwealth.

Moving onto the next topic, General Counsel Grossman stated that a preliminary finding of suitability would make the applicant eligible to apply for a temporary license. He stated that the remaining question was whether the Commission believed there was substantial evidence on the record to conclude that awarding a license to this applicant would benefit the Commonwealth, and that each factor previously outlined was also supported by substantial evidence.

Commissioner Maynard moved that the Commission find based on the application and what was discussed before it today, yesterday January 11, as well as last week, that the applicant FBG Enterprises Opco, LLC, d/b/a Fanatics has shown by substantial evidence that they have satisfied the criteria set forth in G.L. c. 23N, as well as 205 CMR 218.06(5); that the license award would benefit the Commonwealth, and further that they have established by substantial evidence their qualification for preliminary suitability in accordance with 205 CMR 215.01(2) and 205 CMR 218.07(1)(a) and that this approval be subject to the requirements of G.L. c. 23N and the requirements set forth in 205 CMR 220.01 with the additional condition, by Commissioner

O'Brien, that Fanatics have a board approved responsible gaming plan in accordance with their corporate policies and procedures prior to launch in the Commonwealth. 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.*

The Commission congratulated the representatives from Fanatics. The representatives from Fanatics thanked the Commission for its time.

#### 5. [Other Business](#) (1:25:28)

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

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

*Roll call vote:*

*Commissioner O'Brien: Aye.*

*Commissioner Hill: Aye.*

*Commissioner Skinner: Aye.*

*Commissioner Maynard: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously, 5-0.*

### **List of Documents and Other Items Used**

1. [Notice of Meeting and Agenda dated January 5, 2023](#)