



Massachusetts Gaming Commission

Meeting Minutes

Date/Time: September 22, 2022, 9:00 a.m.
Place: Gardner Auditorium – Massachusetts State House
24 Beacon Street
Boston, MA 02108

Commissioners Present:

Chair Cathy Judd-Stein
Commissioner Eileen O'Brien (*remotely using collaboration technology*)
Commissioner Bradford Hill
Commissioner Nakisha Skinner
Commissioner Jordan Maynard

1. [Call to Order](#) (10:14)

Chair Judd-Stein called to order the 395th Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five commissioners were present for the meeting. Commissioner O'Brien joined the meeting remotely using collaboration technology.

2. [Welcome and Opening Remarks](#) (11:22) Cathy Judd-Stein, Chair

Chair Judd-Stein stated that the meeting would be streamed on the Commission website. She explained that the sports wagering legislation allowed for up to seven full operating licenses for untethered category three sports wagering operators, and that there would be a competitive process. She stated that the provision related to temporary licensure did not set a limit on the number of temporary licenses that could be awarded. She stated that requiring temporary operators who did not receive full operating licenses would require the temporary operators have a process to dismantle operations. She stated that the meeting was open to the public but was not a public hearing and invited the representatives of the category three applicants to provide five-minute remarks answering two questions. The first question was related to consumer protections in the event of a temporary sports wagering operator not receiving a full operating license, resulting in their operations being shut down and the second question was related to the operator's preference for a staggered or simultaneous launch.

3. [Commissioners' Round Table on Mobile Sports Wagering](#) (16:46)

Commissioner Maynard stated that the process for temporary licensure would include technical testing, suitability, and the requirement of internal controls. He stated that any experience from other jurisdictions should be included in the answer.

Justin Smith, legal counsel representing Bally's Interactive North America, stated that they did not recommend the implementation of a temporary license scheme for all operator applicants that would require a majority of them to shut down. He explained from the operator perspective it was difficult to manage as customers usually placed wagers months in advance, and the operators would be required to manage substantial payments and withdrawals if they were forced to shut down. He stated that requiring all operators to start on the same date would likely put stress on the Commission. He suggested the Commission designate a date with the onus on the operators to meet that date.

Cynthia Hayes, Vice President of Compliance with BetFred USA Sport, echoed Attorney Smith's concerns, and raised concern related to the potential for bonus abuse among temporary operators. She stated that setup time and required expenses to become operational were prohibitive if the full operator's license was not granted. She stated that her client also recommended a universal launch date for both untethered and tethered category three mobile sports wagering operators. She stated that there was no issue with retail sportsbooks launching prior to mobile wagering.

Ashwim Krishnan, head of legal for Betr, explained that Betr focused on microbetting. He stated that Betr was in favor of consumer choice and providing a variety of platforms, and that they wanted equal footing amongst all operators. He advocated for a simultaneous universal launch date and requested a timeline for technical standards and internal controls.

Mark Hichar, attorney from Greenberg Traurig representing Caesar's sportsbook, stated that the process related to the launch timeline should be clear and transparent.

Chris Cipolla, Senior Director of Legal and Government Affairs at DraftKings, stated that DraftKings was founded in Massachusetts and headquartered in Boston. He stated all operators should be able to launch on the same day, whether retail or mobile, in order to prevent any competitive advantage. He stated temporary licenses had been used effectively in other jurisdictions. He recommended the operators work towards a start date, but if some are not able to operate on that date it should not delay the other operators who were ready.

Alex Smith, Vice President of Regulatory Affairs with Fanatics Betting and Gaming, stated that other jurisdictions had used temporary licenses successfully, but launching more temporary licenses than the market could bear would create consumer protection concerns. He stated that the universal start date had worked well in other jurisdictions.

Cory Fox, Vice President of Product and New Market Compliance at FanDuel, stated that FanDuel operated 27 retail sportsbooks. He explained that a successful launch required significant investment and resources, and he did not believe it was an effective use of resources

to offer more temporary licenses than available final licenses given the investments by both the operators and the Commission. He stated temporary licenses should expedite the launch of those who had already undergone a competitive process while finalizing the suitability investigation. He explained that in Pennsylvania, FanDuel was able to see a prolonged market benefit from an early launch, and that DraftKings had received similar results in Indiana. He recommended the Commission set a universal start date, as that approach had been successful in Arizona, Colorado, Kansas, Michigan, and New York.

Walter Sullivan, legal counsel for FanLogic stated that licensing should not occur until after the regulatory framework was in place. He suggested the Commission look towards the licensing schemes utilized by the Massachusetts Cannabis Control Commission, and that the Commission should not grant temporary licenses in excess of the amount of final operator's licenses. He stated that the Commission had not considered equity in planning, and should give consideration to operators who would promote equity. He stated that the sports wagering legislation did not have the same in-depth licensing requirements the expanded gaming act had, and stated the Commission should include equity requirements. He recommended a staggered launch giving priority for applicants that met equity requirements.

Brian Hall, Director of Regulatory Affairs for FSST Interactive, stated that FSST Interactive was a tribal operated business operated by the Flandreau Santee Sioux Tribe of South Dakota. He stated that due to the significant invest required to enter a market, it would increase risk to the operator if they may be required to shut down within a year. He suggested that if the Commission did decide to follow a temporary license scheme, a caveat should be included that was clear on the pathway to permanent licensure. He stated that more information on the full licensing requirements would help assess the risk of investment. He echoed support for a universal launch date to ensure a level playing field between operators.

Danielle Boyd, Vice President of Regulatory and Compliance from Hard Rock Digital, did not recommend the issuance of temporary licenses to all potential untethered category three applicants due to the time and resources required. She recommended a simultaneous launch on a universal start date, as it would allow for greater competition. She stated that as a regulator for West Virginia and Tennessee she believed Tennessee's success in launching was due to the simultaneous launch date.

Joe Cassole, as a consultant for Maximbet, stated his client was interested in temporary licensing for untethered category three operators. He stated that disruption from the closure of a sportsbook could be mitigated by clear communication to customers through multiple mediums related to the closure; the operator could stop taking bets well before the closure date; all active bets should be voided and returned prior to the shutdown; and the operator could refund all account balances for current players or keep them active after closure to allow for withdrawals. He stated the timeline for operations should be clear, and that revocation of a temporary license within a year can cause uncertainty and distrust in the market. He recommended simultaneous launch dates as even a three-day head start had led to a lasting material impact on market share in the state of Virginia. He stated that staggering the launch of retail and mobile operators was equitable in comparison to staggering mobile launches, as an estimated 90% of all bets would be mobile bets.

Joe Cassole, as a consultant for Novibet, stated that there was risk in the cost of setting up operations prior to knowing if the company would be chosen for a final license. He stated that Novibet would implement controls to notify customers of potential shutdown and maintain cash reserves and guidelines for cancellations of opening wagers should they not receive a final license and be required to shut down. He stated Novibet wanted a simultaneous launch for mobile operators, with retail launching first.

Chair Judd-Stein stated that the next groups called to speak were from category one and category two licensees.

Patrick Hanley, legal counsel for Commonwealth Equine and Agricultural Center LLP, stated that the first question was not relevant to the category one and two operators. He explained that the group he represented intended to apply for a thoroughbred horse racing license pursuant to General Law Chapter 128A, for racing at Great Meadowbrook Farm in Hardwick, Massachusetts. He stated that the expectation was to apply for a sports wagering license if the horse racing license is granted. He stated that delay in eligibility for the sports wagering license should not be a barrier to eligibility, as the plan to develop sports wagering was later in the process due to G.L. Chapter 128A guidelines.

Daniel Miller, Director of Compliance for MGM Springfield, introduced Josh Wyseman, Senior Manager of Licensing from BetMGM. Mr. Miller stated that the untethered temporary license should be equal in number to the final licenses. He stated that having more temporary licenses than final licenses was problematic and unprecedented. He suggested a universal simultaneous launch date for tethered and untethered mobile operators.

North Grounsell, General Manager at Plainridge Park Casino, stated that written comments addressing the two questions had been submitted to the Commission. He noted that getting a temporary license without receiving a permanent license could negatively impact the potential of receiving licenses in other jurisdictions, as it is viewed unfavorably when an operator had withdrawn an application in other jurisdictions. He suggested a staggered launch in phases, first launching retail, then tethered mobile operators, then untethered mobile operators.

Daniel O'Brien, CPA representing Raynham Park, stated that while question one did not affect Raynham Park, there was a risk to the Commonwealth and public perception to grant temporary licenses that would be revoked quickly. He stated that the temporary licensure process as described would divert the Commission's limited resources away from the permanent licensing process and cause delays. He recommended category one and two licenses be permitted to launch prior to category three licenses as those applicants are known operators who had already undergone suitability investigations. He stated that the category one and two operators had invested in facilities for retail sports operators and waiting for category three's competitive process would delay their opening.

Jacqui Krum, General Counsel and Senior Vice President for Encore Boston Harbor, suggested three separate launch phases with a designated universal start date for each phase. She stated

category one and two operators had already been found suitable by the Commission and had most of the required infrastructure in place.

Bruce Barnett, an attorney from DLA Piper representing Suffolk Downs, stated that his client did not have suggestions related to question one. He echoed Encore Boston Harbor and Plainridge Park Casino's interest for three launch dates. He stated that his understanding of the regulatory structure was that mobile operations might require additional regulations, and that retail operations should not be delayed as a result. He stated that the legislature separating tethered licenses from the cap of seven untethered mobile operators suggested that tethered and untethered operators could be treated differently when assigning launch dates.

Chair Judd-Stein stated that written comments had been submitted and would be read into the record by Executive Director Wells. The comments were included on pages 4 through 12 of the Commissioner's Packet.

Executive Director Karen Wells read the written comments from G3 Esports LLC. They stated that the significant time and financial expense required to operate mobile sports wagering operations would be a risk if the operator was forced to shut down, and that there would be substantial market and consumer confusion if an operator had their temporary license revoked within a year. They stated that revoking temporary licenses can erode consumer trust and risk player data being used in non-desired ways. They stated there would be a severe material impact on smaller operators that would preclude minority owned companies from entering the Massachusetts market in a sufficient manner. G3 Esports LLC recommended temporary licenses should be for up to three years, and that companies who did not receive final licensure should receive their \$1 million deposit back. They stated that staggered launches would allow for better early consumer adoption and better monitoring by the Commission.

General Counsel Todd Grossman read the written comments from Digital Gaming USA. They stated that they had never encountered licensing implementation similar to what the Commission had suggested in other jurisdictions. They stated that temporary licenses should have a preliminary assessment investigation. They stated that while allowing for more temporary licensing would increase the speed to market, it would disincentivize businesses from applying due to the high risk of expending funds without receiving a full license. They recommended designating a universal start date to allow stakeholders time to prepare and ensure fairness.

Executive Director Wells read the written comments from Victory Game Challenge Inc. They recommended the Commission look towards the Third Party Providers of Propositional Players concept from California's retail gambling law. They explained that a similar collaboration could occur where temporary operators would forward any future wagers to an operator who was awarded a full license, which would incentivize both sides with predetermined compensation to help offset the initial investments. They supported simultaneous sports wagering launch dates.

Crystal Beauchemin, Chief Administrative Officer to the Chair and Special Projects Manager, read the written comments from Fubo Gaming. They noted an interest in the opportunity for temporary licensure. They said that consumer protection safeguards could be implemented through messages notifying customers of shutdowns, limits on future wagers, and a way to return

account balances to customers. They stated that simultaneous launch would be the best environment for consumers, as staggered launches give advantage to those operators who launch sooner and create market confusion.

a. [Commissioner Follow-up Questions](#) (2:04:23)

Commissioner O'Brien asked Cynthia Hayes from BetFred how much time operators would require internally prior to launching and taking bets. Ms. Hayes stated that it depended on the regulations and the development that would need to occur, but that it would likely be a 9-12 month process.

Commissioner O'Brien asked Danielle Boyd from Hard Rock Digital her opinion as a former regulator related to consumer protection impacts of launching retail sports wagering prior to mobile sports wagering. Ms. Boyd stated that some retail operators had everything in order and operational controls reviewed in order to launch. She stated that operator's promotions could be reviewed and approved and that operational controls should be in place. She stated that processes existed to protect consumers regardless of whether the launch is simultaneous or staggered.

Commissioner Hill asked Ms. Hayes and Mr. Cassole if they were accepting of launching retail sports wagering prior to launching mobile sports wagering. Ms. Hayes stated that BetFred was receptive to allowing retail sports wagering launch first provided tethered and untethered category three operators launched on the same date. Mr. Cassole stated that both Novibet and Maximbet were in favor of separate launch dates for retail and mobile operations.

Chair Judd-Stein stated that she had heard opposition to allowing retail sports wagering to launch earlier than mobile and invited Mr. Cipolla from DraftKings to comment. He stated that he agreed with putting mobile operators on the same playing field, and that retail should be treated the same way. He stated other jurisdictions had launched both retail and mobile wagering at the same time, and that it is possible to have a simultaneous launch.

Commissioner Skinner inquired as to whether other jurisdictions had required temporary operators to shut down if not extended a full operating license. Mr. Cipolla stated that to his knowledge no other jurisdiction had implemented temporary licenses in that way, and that the competitive process typically took place prior to the temporary licensure. Commissioner Skinner asked if he was aware of any mobile operator required to shut down for other reasons. Mr. Cipolla replied that he was uncertain and would have to return to the Commission with that information.

Commissioner Skinner sought clarification from Mr. Hall related to the risk of investment for mobile operators and asked if there was a risk on the technical side of operations. Mr. Hall stated that the risk was largely in customer acquisition. He stated that technical risk would be whether the technology aligned with the technical certification requirements, and that development costs depended upon the rules and regulations and if they were similar to other jurisdictions. He explained that customer acquisition was a larger risk as costs were front-heavy and the operators would not see returns on investment for years.

Commissioner Maynard asked if other jurisdictions had operated on a staggered launch with mobile sports wagering operators tied to retail locations launching at a different time from the retail location. Josh Pearl, Senior Director of New Markets and Strategic Initiative from Penn Interactive, stated that Massachusetts was unique in the way tethered and untethered licenses work. He stated that the most similar jurisdiction was Illinois, where retail operations went live three months before mobile operations.

Chair Judd-Stein asked if other entities would like to respond to Commissioner Hill's question related to launching retail sports wagering prior to mobile operations. There were no further comments in opposition.

Chair Judd-Stein stated that the Commission understood that the licensing process under G.L. Chapter 23K required significant capital investment and asked how category one and two operators investments should be addressed. Mr. Cipolla stated that it would be most equitable to have both tethered and untethered operators launch at the same time. He noted that DraftKings was not an existing licensee but they had also made a significant investment in the Commonwealth with their headquarters employing 1,500 employees. Chair Judd-Stein asked if the 1,500 employees were in Massachusetts. Mr. Cipolla stated that the DraftKings headquarters on Boylston Street employed 1,500 employees, and that there may be more employees elsewhere in Massachusetts.

Chair Judd-Stein stated that she believed the lack of a limit on temporary licenses was an inadvertent development and that the Commission wants to meet the standards the legislature expected. She asked how the operators would protect customers if their entity was not granted a full license and required to shut down. Mr. Cipolla stated that other jurisdictions had conducted the competitive process prior to awarding temporary licenses. Chair Judd-Stein asked how the companies would protect consumers if the Commission chose to allow more than seven temporary licenses. Mr. Cipolla stated that safeguards could be built into the sports wagering platforms, and that they would be centered on clear communications with the customers. He stated that clear parameters should be available to both operators and consumers.

Commissioner Maynard asked if Mr. Cipolla would be comfortable in limiting temporary licenses to seven. Mr. Cipolla responded that would be preferable as it was a process used in other jurisdictions who performed the competitive process to narrow the applicants down prior to granting temporary licenses. He stated this method worked efficiently in other jurisdictions.

Chair Judd-Stein asked Mr. Fox from FanDuel how he would notify customers regarding the risk of addressing future bets if there was a possibility of shutdown. Mr. Fox stated that FanDuel would look to the Commission for guidance and would ensure users could access their funds. He stated that it would be up to the Commission whether the operators could settle future bets upon shutdown. He stated that investments made in year one are typically designed to receive return on investment after several years.

Commissioner Skinner asked for the applicants to submit information related to any operator required to shut down for Commission consideration. Commissioner O'Brien asked the applicants to submit responses to the questions asked if they had further comment.

Executive Director Wells stated that Commissioner O'Brien's question related to timelines may be helpful for all applicants to answer as it would inform the Commission of the operators' expectations of a timeline. She stated that a competitive process prior to temporary licensure would extend the timeline, and that the operator's expectations would inform the Commission's timeline for regulations.

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

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 meeting was adjourned.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated September 19, 2022
2. [Meeting Packet](#) from the September 22, 2022, Open Meeting