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## Massachusetts Gaming Commission Meeting Minutes

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**Date/Time:** February 27, 2023, 10:00 a.m.  
**Place:** Massachusetts Gaming Commission

VIA CONFERENCE CALL NUMBER: 1-646-741-5292  
PARTICIPANT CODE: 111 1431 1966

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 437<sup>th</sup> Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted, and all five Commissioners were present for the meeting.

#### 2. [Marketing Affiliates Round Table Discussion and 205 CMR 256.01\(3\)](#) (1:08)

##### a. Opening Remarks and Introduction of Round Table Participants

Chair Judd-Stein stated 3 documents had been sent to the Commission prior to this meeting, a PowerPoint submitted on behalf of the affiliates, a letter from Gaming Associates, and a directive from New Jersey that addressed a similar issue. She stated that the Commission wanted to hear from stakeholders on the issue of how to handle affiliate marketers as the regulation resulted in unexpected issues.

Chair Judd-Stein introduced the participants of the round table: Vice President and General Counsel Jennifer Roberts from WynnBet, Chief Marketing Officer Alan Stremsel from

WynnBet, Vice President of Product and New Marketing Compliance Cory Fox From FanDuel, Senior Director of Compliance Sarah Brennan from BetMGM, Chief Compliance Officer Rhea Loney from BetMGM, General Manager of Plainridge Park Casino North Grounsell, Deputy Chief Compliance Officer Samantha Haggerty from Penn Entertainment, Government Affairs Manager Matt Scalf from DraftKings, Consultant regarding Problem and Responsible Gambling Policy Brianne Doura-Schawohl, Vice President Max Bichsel from GDC America, CEO Michael Daly from Catena Media, Head of Legal from Better Collective USA Katie McCord, Attorney Jeff Ifrah from Ifrah Law, CEO Jaymee Messler from Gaming Society, and COO Matt Volk from NESN.

b. Topics of Discussion: (8:37)

i. Description of Industry and Its Various Compensation Arrangements and Agreements In Other Jurisdictions

Mr. Ifrah presented the PowerPoint providing a brief overview of affiliate marketing. He stated that the affiliate groups present in the meeting represented approximately 75% of the media affiliate assets available. He explained that affiliates populated search engines with articles, educational materials, and responsible gaming materials. He stated that affiliates invest money so that Massachusetts consumers can find regulated sportsbooks when they search for them.

Mr. Ifrah stated that illegal sportsbooks have operated much longer than legally regulated sportsbooks and had more of an internet presence. He noted that marketing affiliates drove 30% of consumers to legally operated platforms. He stated that consumers look for organic search results over advertisements, and that affiliates helped to elevate. He stated that the majority of states allowed revenue sharing and cost per acquisition in marketing.

Mr. Bichsel stated that affiliate marketing develops and creates expert content that helps direct consumers to the legal sports books. He stated that it was in the state and consumer's interest that the regulated sportsbooks appeared and were recommended by the search engine algorithms. He stated that if revenue share and cost per acquisition deals were prohibited there would be no incentive for these marketing affiliates to provide their services to Massachusetts.

Ms. McCord stated that marketing affiliates work hard to appear first in searches. She stated that there was not a viable alternative to the affiliate model as affiliates bring in 30% of new customers. She expressed concern that a prohibition on cost per acquisition and revenue share marketing would create an uncompetitive environment and result in a consolidation of the sports wagering market.

Mr. Bichsel noted that Caesars Sportsbook had represented that they would not use affiliate's marketing in Massachusetts if the regulation remains as was. He stated that illegal offshore operator markets would continue to advertise and cause confusion as to what was legal in the Commonwealth.

Ms. McCord noted that there could also be unintended consequences of more mass media advertisements and untargeted advertisements. She also raised the issue that consumers would not have access to the educational features that affiliates provide. Mr. Daly stated that affiliates provide the consumer with the opportunity to understand risks, compare value, and educate themselves. He noted that affiliates report on operators' fines and help to hold operators accountable.

Mr. Ifrah stated that 66% of states did not require marketing affiliate licensure and that more than thirty states approved revenue share and cost per acquisition deals. Ms. Messler stated that Gaming Society focused on having diverse voices in the industry and creating inclusivity, education, and accessibility. Mr. Fox noted that cost per acquisition deals were much more common than revenue share and that allowing cost per acquisition deals may be a middle ground option.

Commissioner O'Brien asked what percentage of affiliate deals were cost per acquisition as opposed to revenue share. Mr. Fox replied that almost 100% of affiliate deals FanDuel used were cost per acquisition. Mr. Daly reported that, in the United States, Catena Media was approximately 90% cost per acquisition. Mr. Bichsel noted that GDC America's numbers were similar. Ms. Loney explained that the majority of agreements BetMGM entered into, were cost per acquisition.

Commissioner O'Brien inquired if continuing to prohibit revenue share would impact affiliates' involvement with the market. Mr. Daly and Mr. Bichsel stated that their models would be based upon cost per acquisition payable upon delivery of an active player to the operator. Ms. Messler noted that smaller affiliates tend to use revenue share models.

Chair Judd-Stein asked if other states used elevated licensing for revenue share agreements. Mr. Ifrah explained that other states had required elevated licensure. Chair Judd-Stein inquired whether he knew about New Jersey's licensing requirements. Mr. Ifrah explained that New Jersey treated revenue share as requiring a CSIE license, which was higher than their registered vendors. He suggested doing cost per acquisition deals on a registered vendor basis while requiring further licensing for revenue share deals.

Mr. Bichsel stated that the three marketing affiliates in the call had done the registration process for Massachusetts and that they would be happy to satisfy any requirement for licensure the Commission requires. Ms. McCord noted that the affiliates could be bumped to a higher licensing standard, but that the licensing process may not be complete by the March 10 category three sports wagering launch.

ii. [Regulation's Implications For The Industry And Regulated Market](#) (48:08)

Ms. Roberts explained that WynnBet utilized the flexibility of both cost per acquisition deals and revenue share options. Mr. Fox noted that illegal operators do not adhere to the same requirements as regulated operators; and that denying the use of cost per acquisition agreements could give those illegal entities an advantage.

Commissioner O'Brien inquired what efforts were being made at the federal level to address this issue. Mr. Daly stated that lobbyists for the industry of online space were trying to raise this issue on the federal level. Mr. Bichsel noted that success was found in partnering with media organizations in each jurisdiction. He stated that media focus on regulated operators helped to combat the illegal market by taking up search real estate.

Mr. Ifrah reported that the American Gaming Association ("AGA") had written letters to law enforcement and the Attorney General of the United States, but that there had not been much of a response. He stated that networks were directly messaged regarding not including lines from illegal markets. Mr. Fox stated that FanDuel used its relationships with advertising networks and search engines to move them in the right direction.

Mr. Volk reported that cost per acquisition bounty programs were a standard business practice in the sports wagering industry. He explained that targeted engagement helps to convert patrons to the regulated market. He expressed concern that not having a cost per acquisition program could lead to a saturated mass-marketing approach.

Commissioner Maynard asked what results would appear if he googled sports wagering in Connecticut, where revenue share was illegal. He asked if the regulated operators would still appear first even without revenue share deals. Mr. Bichsel explained that there were approximately thirty to fifty regulated operators in the United States as opposed to the hundreds of unregulated operators. He stated that without affiliates the offshore operators could be more pervasive in their marketing. Commissioner Maynard noted that there seemed to be a long-term volume issue. He noted that a search for Connecticut's sports wagering operators showed the regulated operators first. Mr. Daly explained that heavy investments were made in Connecticut during the early stages, but over time the offshore operators can climb up the search listings without affiliates releasing content.

iii. [How Do Marketing Affiliates and Their Compensation Arrangements Impact The Promotion of Responsible Gaming And Consumer Choice](#) (1:06:06)

Ms. Doura-Schawohl stated that the affiliates heard from here were leaders and allies from a consumer advocacy standpoint related to responsible gaming. She expressed concern about mass saturation of marketing and the effects on vulnerable populations. She noted that the targeted marketing discussed here ensures that those involved were interested parties. She stated that during her review of regulatory fines in other jurisdictions, the majority of errors were made by advertising other than affiliates.

Ms. Doura-Schawohl stated that there was merit in heightened licensing and that guardrails could be put up in the form of enforcement actions. She noted that some smaller affiliates did not have the resources for legal compliance departments. She noted that the neutrality of the affiliates content was beneficial compared to paid socials without content.

Commissioner O'Brien inquired as to whether other jurisdictions had limited the pervasiveness of paid social advertising. Ms. Doura-Schawohl reported that Ohio was a leader in the industry and that New York was revisiting their requirements. She stated that licensing seemed to be a trend. She stated both quantity and quality of marketing should be addressed, and that best practices can be taken from multiple jurisdictions.

Ms. Messler stated that prohibition of revenue share could limit the ability of smaller affiliates from participating in the Massachusetts market. Ms. Doura-Schawohl explained that affiliates generated commentary and knowledge that help consumers navigate sports wagering. Commissioner Skinner stated that elevating the licensure of revenue sharing, thus affecting smaller affiliates, was a serious consideration.

Chair Judd-Stein requested the operators' perspectives. Ms. Brennan stated that affiliate marketing enabled patron access to the Massachusetts gaming helpline number and patron protection resources. She stated that affiliate marketing assisted in providing a platform with integrity. Mr. Scalf stated that he agreed with the opinions expressed by the other operators and affiliates. Chair Judd-Stein stated that information the affiliates provide would be helpful if the Commission chose to go the route of higher licensure.

Commissioner O'Brien inquired if any jurisdictions required a logo that confirms an operator was a licensed operator. Ms. Brennan stated that the only jurisdiction that required a logo indicating an entity was a licensed operator was Ontario, and that they only required that logo for the first six months after launch. Mr. Ifrah stated that a trade group was working with the AGA on creating a verified seal for legal and regulated operators licensed in at least two states and committed to responsible gaming and advertising.

General Counsel Todd Grossman stated that the discussion had been helpful, and that the Legal Division had enough information to make any necessary adjustments to the regulations. Chief of the Licensing Division Karalyn O'Brien agreed with General Counsel Grossman.

Commissioner O'Brien asked if increasing the licensing requirements would affect the Licensing Division's workload. Chief O'Brien stated that if a larger group of affiliates than anticipated required increased licensure, then a grace period for the March 10 category three sports wagering launch should be contemplated.

Mr. Bichsel stated that it can take time for affiliates and operators to coordinate and that receiving notice that the Commission authorized the use of affiliate marketing programs as soon as possible would be beneficial. Ms. McCord agreed. Ms. Brennan stated that it took time for the operator to review and audit the affiliates' content material to ensure messaging was appropriate with responsible gaming provisions. Mr. Daly expressed an interest in receiving information as to what forms were required for potential higher licensure.

The Commission reached a consensus to further discuss this issue in a public meeting on Thursday, March 2, 2023. Chair Judd-Stein requested that the Legal Division develop and present options for regulatory changes for the Commission to consider. Commissioner O'Brien

expressed an interest in exploring a monetary cap rather than a blanket allowance of revenue share due to her concerns regarding the vulnerability of consumers with aggressive revenue share programs.

Commissioner O'Brien inquired if any jurisdictions had controls or regulations on revenue share similar to what she proposed. Mr. Ifrah stated that no jurisdictions he knew of in the United States had a similar provision. Ms. Doura-Schawohl stated that provisions that address problematic play in other jurisdictions could be used to mitigate the effect of pervasive marketing. She noted that New Jersey and Colorado required that operators have behavioral algorithms in their platforms to track problematic behaviors. She stated that emerging best practices could curb predatory spending.

Commissioner O'Brien noted that she wanted to address saturation in the role of affiliates and that the roundtable was helpful. Commissioner Hill thanked the participants and stated the discussion was informative. Commissioner Skinner echoed Commissioner Hill's statements and extended her thanks to the participants. Commissioner Maynard stated that it was important to constantly reevaluate while striking a balance.

### 3. [Other Business](#) (1:50:27)

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

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

*Roll call vote:*

*Commissioner O'Brien: Aye.*

*Commissioner Hill: Aye.*

*Commissioner Skinner: Aye.*

*Commissioner Maynard: Aye.*

*Chair Judd-Stein: Aye.*

*The motion passed unanimously, 5-0.*

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

1. [Notice of Meeting and Agenda](#) dated February 23, 2023