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VIA EMAIL

January 22, 2016

State of Massachusetts
Office of the Attorney General
c/o DFS Regulations
One Ashburton Place
Boston, MA 02108

RE: Proposed Adoption of 940 CMR 34.00 (Daily Fantasy Sports Contest Operators)

Dear Attorney General Healey:

DraftDay Gaming Group, Inc. ("DraftDay") hereby provides its written comments to your Office's proposed regulations for the daily fantasy sports industry operating in the Commonwealth of Massachusetts. We appreciate the thought and effort that your Office has undertaken to take a first step in the right direction towards implementing sound and well-reasoned regulations, which will benefit players of daily fantasy sports, as well as the daily fantasy sports industry as a whole.

By way of background, on December 8, 2015, in conjunction with the National Council on Problem Gambling ("NCPG"), DraftDay announced its implementation of an industry-defining consumer protection initiative to differentiate DraftDay from other operators within the daily fantasy sports industry. To date, DraftDay has partnered with market-leading companies, such as GeoComply USA, Inc., IDology, Inc., and Paysafe (formerly Optimal Payments) to employ the same comprehensive Know Your Customer ("KYC") solutions used in the regulated terrestrial and online gaming markets in the U.S. DraftDay, along with the NCPG, has established new safety guidelines for skill-based daily fantasy sports to serve as a model for the industry.

Since Sportech, Inc. ("Sportech") and Viggie, Inc. acquired DraftDay, our immediate priority has been to bring the same safety and consumer protection to DraftDay that Sportech provides to its customers in the regulated U.S. and worldwide gaming markets. With increased calls for stricter consumer protection by many state governments, including the Commonwealth of Massachusetts, DraftDay created a set of skill-based daily fantasy sports consumer-oriented policies to address each state's increased demands for safety and accountability from daily fantasy sports operators.

In general, we agree with the approach taken by your Office in the drafting of 940 CMR 34.00 and the fundamental goal of ensuring that consumers are adequately protected when playing daily fantasy sports, and that daily fantasy sports operators are held accountable by ensuring



compliance with regulations such as those proposed by your Office. With that said, we offer the following comments specific to certain of the proposed regulations:

940 C.M.R. 34.00: Daily Fantasy Sports Contest Operators in Massachusetts

34.03 Definitions

Minors: Persons under the age of 21.

COMMENT: DraftDay recommends that persons eighteen (18) years and older should be allowed to play daily fantasy sports in Massachusetts. This age is consistent with the minimum age required for customers to engage in lottery, pari-mutuel betting, and charitable games, including Bingo and pull-tabs, in Massachusetts.

34.04 Gameplay by Minors; Restriction on Games Based on Student Sporting Events

(1) No Gameplay by Minors: No DFSO will allow a Minor to participate in any contest, whether or not a Prize is offered in that contest.

COMMENT: Persons eighteen (18) years and older should be allowed to participate in all contests, including those that do not offer a Prize.

(3) No DFS Games Based on Student Sporting Events: DFSOs shall not offer DFS contests that include college, high school or student sporting events.

COMMENT: DraftDay is in favor of not allowing DFSOs to offer DFS contests that include high school or student sporting events, but does not support the exclusion of college sporting events. Daily fantasy sports make the experience of watching sporting events more fun, and excluding intercollegiate sports fans from participating in daily fantasy sports alongside the games they readily watch and already participate in season-long fantasy sports tournaments would be a mistake.

34.05 Protection of Consumer Funds on Deposit and Compliance With Data Security Requirements

(1) Data Security: DFSOs will comply with all applicable state and federal requirements for data security.

COMMENT: The regulations should specifically identify the applicable Massachusetts requirements for data security.



(4) Prompt Refunds on Closed Accounts: When a DFS Consumer account is closed, the DFSO will refund all funds in the account no later than the close of business on the next full business day.

COMMENT: Refund of all funds by the close of business on the next full business day is not recommended because it is not practically feasible. The DFSO may need to verify information before processing a withdrawal, which may not be able to be performed and completed within twenty-four (24) hours. Any new bank account details for refunds should be verified to avoid fraudulent transactions, including a copy of the first page of the account to be submitted to the DFSO's customer service in order to verify that the DFS Consumer's name and address are associated with the bank account. Accordingly, DraftDay suggests three (3) business days.

6) Account Closures Due to Inactivity; Unclaimed Funds in DFS Consumer Accounts:

a. A DFSO will close any DFS Consumer account that is inactive for two years and notify the account holder that the account has been closed by email and by mail to the account holder's last known address.

COMMENT: DraftDay recommends that the DFSO be permitted to charge a dormant account fee of a fixed amount of no more than \$20 to cover administration and operational costs to close a DFS Consumer account.

c. In the event that funds in a closed DFS Consumer account cannot be refunded and remain unclaimed, the DFSO will provide annual notice of the existence of funds to the DFS Consumer no less often than semi-annually for three years. Such notice will be provided by email and by mail to the account holder's last known address and will provide a process for claiming the funds.

COMMENT: DraftDay recommends that the DFSO be permitted to charge a dormant account fee of a fixed amount of no more than \$20 semi-annually for a maximum of three (3) years to cover administration and operational costs to notify a DFS Consumer account.



34.06 Limitation to One Account Per DFS Player

(2) Identification of Players by DFSOs: DFSOs will take commercially and technologically reasonable measures to verify DFS players' true identities and addresses to the greatest extent possible and will use such information, at a minimum, to enforce subsection 34.06(1).

Note: 'Greatest extent possible' is a vague term and would be difficult to subjectively benchmark. DraftDay recommends language that provides the DFSO must use the services of a third-party vendor in the business of providing standard industry tools and services to verify persons and KYC data.

(4) Termination of Players that Establish More than One Account: DFSOs will implement procedures designed to terminate all accounts of any DFS player that establishes or seeks to establish more than one username or more than one account, whether directly or by use of another person as proxy.

COMMENT: DraftDay recommends that, instead of terminating all accounts of any DFS player that establishes or seeks to establish multiple accounts, the original account be permitted to remain open and all subsequent account(s) be immediately closed by the DFSO. In such a case, and upon terminating the other account(s), the DFSO shall notify the DFS player that only one account is permitted, and that if they repeatedly attempt to open other accounts, whether by another person as a proxy or not, that all accounts will be closed.

34.10 Protections for Problem Gamers

(5) Requests for Exclusion Made by Third Parties: DFSOs will develop and Prominently Publish procedures for honoring requests of third parties to exclude DFS Consumers (or to set deposit or loss limits).

a. These procedures will include provisions for honoring requests to exclude DFS Consumers for whom the requestor can provide documentary evidence of sole or joint financial responsibility for the source of any funds deposited with a DFSO for gameplay, including

i. proof that the requestor is jointly obligated on the credit or debit card associated with the DFS Consumer's account;

ii. proof of legal dependency of the DFS Consumer on the requestor under state or federal law; and



- iii. other situations in which the requestor may be legally obligated for the debts of the person for whom exclusion is requested.
- b. The procedures established under this subsection will also provide for exclusion in situations in which the requestor can establish the existence of a court order requiring the DFS Consumer to pay unmet child support obligations.

COMMENT: Any third-party self-exclusion is problematic from operational and legal perspectives. Privacy laws may be implicated if a DFSO is required to conduct a background check to ensure that a requestor's data is consistent with a DFS Consumer's data without authorization from the DFS Consumer. This requirement places the DFSO in a position of incurring liability from both the requestor and the DFS Consumer. It is recommended that the DFSO should be required to comply with any court-issued order requiring that it comply with a third-party requestor's request of exclusion of a DFS Consumer.

(6) Limitations on Consumer Deposits: DFS Consumer deposits will be limited to no more than \$1,000 in any calendar month; provided however that a DFSO may establish and Prominently Publish procedures for temporarily or permanently increasing a DFS Consumer's deposit limit, at the request of the DFS Consumer, above \$1,000 per calendar month.

- a. If established by a DFSO, such procedures will include evaluation of information, including income or asset information, sufficient to establish that the DFS Consumer can afford losses that might result from gameplay at the deposit limit level requested.
- b. When a temporary or permanent deposit level limit increase is approved, the DFSO's procedures will provide for annual evaluation of a player's financial ability to afford losses.

COMMENT: DraftDay considers the \$1,000 limit on deposits to be too low. DraftDay recommends a monthly limit of \$5,000, with the ability of the DFSO to temporarily or permanently increase a DFS Consumer's deposit limit upon request. In addition, the requirement that the DFSO evaluate – initially and annually – a DFS Consumer's financial information is not practical and potentially leads to additional issues regarding access to confidential DFS Consumer information, and retention of such data.

34.12 Fairness of DFS Contests

(3) No Gameplay by Athletes and Others Connected with DFS Contest Outcomes: No DFSO will allow a professional or amateur athlete whose individual statistics or performance may be used to determine any part of the outcome of any DFS contest, or a sports agent, team employee, referee or a league official associated with any competition



which is the subject of DFS contests, to enter DFS contests in the sport in which they participate. Nor may such athlete, sports agent, team official, team representative, referee or league official play through another person as a proxy.

a. DFSOs will make commercially reasonable efforts to obtain lists of such persons for the purpose of implementing this provision.

b. DFSOs, upon learning of a violation of this rule, will bar the individual committing the violation from playing in any DFS contest by suspending such individual's account and banning such individual from further play, will terminate any existing promotional agreements with such individual and will refuse to make any new promotional agreements that compensate such individual.

c. DFSOs will make these restrictions known to all affected individuals and corporate entities.

(4) Restriction on Sharing Non-Public Information that May Affect DFS Gameplay:

No DFSO will knowingly permit an athlete, sports agent, team employee, referee or league official to provide proprietary or non-public information to any DFS player, or to provide such information to a DFS player before such information is made public.

COMMENT: It is not technologically feasible for a DFSO to implement this requirement as it pertains to professional or amateur athletes. DFSOs do not have access to sufficient information to determine whether a DFS Consumer is a professional or amateur athlete, sports agent, team employee, referee, or league official. Moreover, the proposed regulation lacks sufficient definition of the terms "professional", "amateur", and "athlete". The requirement that a DFSO restrict sharing of information amongst a DFS player and a third party is not practical to enforce as the DFSO is not privy to such relationships.

(8) Prohibition of Scripts: No Scripts will be allowed. Existing scripts will be removed. A DFSO will bar any individual or corporation found to be using an unauthorized Script from playing in any DFS contest by terminating such individual or corporate account and by banning that individual or corporation from DFS Contest Platforms.

COMMENT: While DraftDay supports the prohibition against Scripts, the issue of scripting is a technically complicated one, which is not comprehensively addressed by the definition of "Scripts" as set forth in the draft regulations, and additional best practice models will need to be considered in order to minimize or eradicate the use of Scripts.



(11) Restrictions on Number of Entries by Contest:

d. DFSOs will not allow DFS players to submit more than 3% of all entries in any contest involving more than 100 entries.

COMMENT: DraftDay recommends that 3% be changed to 7%, provided that regulations involving Scripts are properly implemented.

On behalf of the entire DraftDay team, thank you for the opportunity to participate in this process by providing comments to your Office's proposed daily fantasy sports regulations. DraftDay supports your Office's efforts to implement well-reasoned consumer protections that will benefit both consumers and daily fantasy sports operators alike.

Please feel free to contact us if you have any questions or if we can be of further assistance to you.

Best regards,

A handwritten signature in black ink, appearing to read "Richard C. Roberts", is positioned above the typed name.

Richard C. Roberts
Chief Executive Officer
DraftDay Gaming Group, Inc.