205 CMR 239.00: CONTINUING DISCLOSURE AND REPORTING OBLIGATIONS OF SPORTS WAGERING LICENSEES

Section

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239.01: Access to and Maintenance and Production of Operator Records

(1) The Commission shall have access to, and may inspect, the premises of a Category 1 Sports Wagering License or Category 2 Sports Wagering License Operator.

(2) An Operator shall maintain complete, accurate, and legible records of all transactions pertaining to the revenues and costs associated with its Sports Wagering operation, including those required in accordance with 205 CMR. General accounting records shall be maintained on a double entry system of accounting with transactions recorded on the accrual basis. Detailed, supporting, subsidiary records sufficient to meet the requirements of 205 CMR shall also be maintained.

(3) The Commission may request the production of records of an Operator in accordance with the provisions of 205 CMR 142.00: *Regulatory Monitoring and Inspections* and 205 CMR 241.00: *Surveillance and Monitoring*.

239.02: Fiscal Year

The Operator shall establish a fiscal year for accounting purposes and shall advise the Commission of such.

239.03: Reports and Information to Be Filed with the Commission

(1) The following reports and information shall be filed with the Commission, or its designee, in the manner and time provided:

(a) A detailed annual, and at other times as directed by the Commission, statistical report on the number, job titles, benefits, race, gender, veteran status, and salaries of employees hired and retained in employment in the Commonwealth by the Operator;

(b) A detailed annual, and at other times as directed by the Commission, statistical report on the total dollar amounts contracted with and actually paid to minority business enterprises, women business enterprises and veteran business enterprises by the Operator. The annual statistical report shall also identify the amounts so contracted as a percentage of the total dollar amounts contracted with and actually paid to all firms;

(c) On an annual basis, and at other times as directed by the Commission, a report explicitly stating the Operator's progress on meeting each of the stated goals and stipulations put forth in its application for a Sports Wagering Operator License;

(d) Any reports prescribed by the Commission relative to Occupational Licenses;

(e) Quarterly reports in accordance with 205 CMR 239.05;

(f) Documents and other materials required to be submitted in accordance with the terms of the Sports Wagering Operator License;

(g) An Operator's House Rules, system of internal controls, amendments thereto, and any documents or information required to be submitted in accordance with the approved system of internal controls;

(h) Any declared event of default related to any debt obligation maintained by the Operator, affiliate, holding company or intermediary company thereof shall be immediately reported to the Commission, in writing, along with any plans to address or cure such default;

(i) A bi-monthly (twice per month) disbursement report relative to vendors licensed or registered in accordance with 205 CMR 234.00: *Sports Wagering Vendors*, which shall contain the same information as is required in a disbursement report filed pursuant to 205 CMR 138.06(2);

(j) An annual problem gaming plan in accordance with M.G.L. c. 23N, § 4(d)(2)(vii);

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(k) Daily, monthly, and annual Adjusted Gross Sports Wagering Receipts and Adjusted Gross Fantasy Sports Receipts remittance and reconciliation reports as required in accordance with 205 CMR 240.00: *Adjusted Sports Wagering Receipts and Adjusted Gross Fantasy Sports Receipts Tax Remittance and Reporting*;

(l) An underage person report containing the information required in accordance with 205 CMR 250.04; and

(m) A quarterly report, covering all complimentary services offered or engaged in by the Operator during the immediately preceding quarter. The reports shall identify regulated complimentary services or items including, but not limited to, food and beverage, hotel and travel accommodations, and promotional Sports Wagering credits. The reports shall be aggregated by, at a minimum, the costs of the complimentary services or items, and the number of people who received each service or item for the quarter. The report shall also document any services or items valued in excess of $2,000 that were provided to patrons, including detailed reasons as to why they were provided. Valuation shall be performed in accordance with M.G.L. c. 23K, § 28(c).

(2) Promptly upon discovery, the Operator shall notify the Commission or its designees assigned to the Operator of any violation, or suspected violation, of M.G.L. c. 23N, 205 CMR, or any Sports Wagering related law and file any requested written report. In accordance with M.G.L. c. 23N, § 12(a)(i), "suspected violations" shall include irregularities in volume or changes in odds that could signal suspicious activities.

(3) An Operator shall promptly notify the Commission or its designees assigned to the Operator if an individual on the voluntary self-exclusion list established in accordance with 205 CMR 233.00: *Sports Wagering Voluntary Self-exclusion* is found to have engaged in Sports Wagering.

239.04: Reports and Information to Be Compiled and Maintained by the Operator

The following reports and information shall be compiled and maintained by the Operator, or where applicable the Operator's holding company, intermediary company, qualifying subsidiary, or entity qualifier thereof, in the manner provided as follows or as required by the governing body responsible for the oversight of the subject information, and shall be made available and provided upon request by the Commission, or its designee:

(1) Up to date records regarding the business structure, capital structure, and controlling interest of the Operator, where applicable, and the Operator's holding company, intermediary company, qualifying subsidiary, or entity qualifier thereof including, at a minimum:

(a) Certified copies of incorporation and formation documents and any amendments thereto;

(b) By-laws, shareholders agreements, governing and/or operating agreements or documents, partnership agreement, intercompany transactions, joint venture agreements, merger and acquisition agreements, and other relevant corporate documents;

(c) Current listing of officers, directors, members, partners;

(d) Minutes of all meetings of shareholders;

(e) Detailed records regarding all record and beneficial owners of any class of non-publicly traded securities, including both equity and debt securities, issued by the Operator, its holding company, intermediary company, qualifying subsidiary or entity qualifier thereof, including the names and addresses of record and beneficial owners of such equity or debt securities, date(s) acquired and the number of equity securities held or face amount of debt securities held, as applicable;

(f) Detailed records regarding all record and beneficial owners of 5% or more of any class of publicly traded securities, including both equity and debt securities, issued by the Operator, its holding company, intermediary company, qualifying subsidiary or entity qualifier thereof, including the names and addresses of record and beneficial owners of such equity or debt securities held in street name or other name, date(s) acquired and the number of equity securities held or face amount of debt securities held, as applicable;

(g) Detailed records regarding distributions to equity holders holding 5% or more of the entity;

(h) Detailed records regarding all remuneration paid to officers, directors, partners and members;

(i) (for the Operator only) Detailed records regarding all capital contributions;

(j) (for the Operator only) Detailed records regarding any equity transfers;

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(k) Essential details of any debt obligations including loans, covenants, borrowings, installment contracts, guarantees, leases, or any other debt; and

(l) Any other records as the Commission deems appropriate.

(2) Copies of any securities filings submitted to federal, state, or other domestic or foreign securities regulatory authorities, regarding any of the securities, either in existence or proposed, including, but not limited to, United States Securities and Exchange Commission forms S-1,8-K, 10-Q and 10-K, proxy or information statements and all registration statements filed by the Operator, or holding company, intermediary company, qualifying subsidiary and entity qualifier thereof.

(3) Copies of any United States Securities and Exchange Commission Schedules 13D or 13G served upon the Operator, or holding company, intermediary company, qualifying subsidiary and entity qualifier thereof.

(4) Copies of the federal and state tax returns and any related forms filed by the Operator, and its holding company, intermediary company, qualifying subsidiary or entity qualifier thereof.

(5) The system of financial accounting, in accordance with generally accepted accounting principles, to be utilized by the Operator designed to ensure the accurate recording and reporting its assets, liabilities, equity, revenue and expenses. The Operator's system of financial accounting shall provide a level of detail so as to allow it to accurately compute Adjusted Gross Sports Wagering Receipts, and to report the Operator's drop, win, and hold percentage for each form of Sports Wagering activity, the value of complimentary goods or services and promotional credits issued during the accounting period, and any other information necessary to allow the Commission to understand the Operator's results of operations. The Operator shall maintain detailed information and documentation to support all amounts reported to the Commission as being the Operator's assets, liabilities, equity, revenue and expenses.

(6) Data derived from the Operator's player card/rewards card/loyalty program, player tracking software, sports wagering equipment or other similar information systems including:

(a) The amount of money spent and lost on Sports Wagering (excluding the value of promotional credits wagered, but including any amounts that were subject to discretionary discounting for marketing or other similar purposes) by patrons who have been issued a player card or rewards card or sports wagering account, aggregated by, at a minimum, the patron's age, gender and home zip code provided by the patron and compiled on an annual basis or as otherwise directed by the Commission; and

(b) Information, compiled by year, on player characteristics for patrons of the Operator including, but not limited to, gender, age and region of residence, player behavior including, but not limited to, frequency of wagering, amounts wagered and characteristics of sporting events and wager categories wagered on.

(7) An annual business plan for the Operator, which will include financial projections in format as prescribed by the Commission no later than 30 days prior to the commencement of the fiscal year.

(8) A compliance plan and any amendments thereto, for the Operator and its holding company or intermediary company outlining the practices and protocols implemented, or to be implemented, designed to ensure compliance with all applicable federal or state laws.

(9) Copies of the minutes of all board of directors or equivalent governing authority meetings and committee meetings, for the Operator or holding company or intermediary company thereof.

239.05: Quarterly Reports

(1) On a quarterly basis, the Operator shall create and file with the Commission a report that provides a continuing view of the Operator's financial position including key performance measures, and narrative commentary on operating results. The quarterly report shall be attested to by any two of the following: the Chief Executive Officer, Chief Financial Officer, Treasurer, Financial Director, Controller, or their functional equivalent.

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(2) The quarterly report required in accordance with 205 CMR 239.05(1) shall be accompanied by a statement attested to by the Operator's Chief Financial Officer, or their functional equivalent, that the Operator satisfies the following:

(a) It has maintained for the previous quarter, and has the ability to maintain for the upcoming quarter, a gaming bankroll or equivalent provisions adequate to pay winning wagers to Sports Wagering patrons when due.

(b) It has paid in the previous quarter and has the ability to pay when due all local, state and federal taxes, including the tax on Adjusted Sports Wagering Receipts imposed and any fees imposed under M.G.L. c. 23N or 205 CMR.

(c) It has the ability to pay, exchange, refinance or extend debts, including long-term and short-term principal and interest and capital lease obligations, which will mature or otherwise come due and payable during the license term, or to otherwise manage such debts and any default with respect to such debts.

239.06: Annual Audit and Other Reports

(1) On an annual basis an Operator shall, at its own expense, cause an audit to be prepared by an independent certified public accountant of its financial statements relevant to the operation of its Massachusetts Sports Wagering Operations. The Operator may satisfy this requirement by submission of the audit of the consolidated financial statement, including applicable notes, of the Operator's holding company or intermediary company provided that such audit is accompanied by a supplemental information, appendix, or other financial information section specific to the Operator which includes an audited financial statement containing, at a minimum, a balance sheet, income statement, and a statement of cash flows for the Operator. In either event, the independent certified public accountant shall attest to the financial condition of the Operator, disclose whether the accounts, records and control procedures examined are maintained by the Operator as required by M.G.L. c. 23N and 205 CMR, and opine as to whether there are material weaknesses in the Operator's system of internal controls.

(2) In the event that the audit makes recommendations to improve the system of internal controls, or to increase the Operator's level of compliance, the Operator's Chief Financial Officer shall respond, in writing, to the recommendations of the independent certified public accountant and provide the Commission with a copy of its response.

(3) To ensure the independence of the annual audit, at least every five years an Operator, whose holding company or intermediary company is not publicly traded, shall rotate the lead (or coordinating) audit partner having primary responsibility for the audit, and the audit partner responsible for reviewing the audit. For an Operator, whose holding company or intermediary company is publicly traded, lead (or coordinating) audit partner rotation shall comply with the requirements of federal law, including the requirements of the United States Securities and Exchange Commission and/or the Public Company Accounting Oversight Board.

(4) In the event the annual audited financial statements differ from financial statements maintained by the Operator throughout the year, the Operator shall provide a summary of these differences as part of the annual audit.

(5) The annual audit and associated statements required in accordance with 205 CMR 239.06(1) shall be filed with the Commission within three months following the end of the quarter following the end of the Operator's fiscal year.

(6) In cases where an Operator's parent or holding company is not publicly traded, in the event the Operator's independent certified public accountant shall resign or be removed as the Operator's principal accountant or auditor, the Operator shall submit a written report to the Commission within 20 days of such resignation or removal, signed by its Chief Financial Officer and Chair of its Audit Committee, outlining the cause or nature of the resignation or removal, stating whether the resignation or removal was related to material differences between the parties as to financial statement presentation issues, disclosures, or the adequacy of the Operator's system of internal accounting control and, if so, a complete and detailed description of the differences for consideration by the Commission. The Operator shall submit as an exhibit to this report a letter from the former independent certified public accountant stating whether they agree with the statements made by the Operator in the report submitted to the Commission.

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(7) In cases where an Operator's parent or holding company is publicly traded, the Operator shall file with the Commission copies of such information and documents as are required to be filed with the United States Securities and Exchange Commission and/or the Public Company Accounting Oversight Board upon the resignation or removal of the publicly traded holding company's independent certified public accountant.

(8) To the extent possible, any adjustments resulting from the annual audit required in accordance with 205 CMR 239.06 shall be recorded in the accounting records of the year to which the adjustment relates. In the event the adjustments were not reflected in the Operator's quarterly report for the fourth quarter and the Commission concludes the adjustments are significant, a revised quarterly report for the fourth quarter may be required from the Operator. The revised filing shall be due within 30 calendar days after notification to the Operator, unless an extension is granted by the Commission.

239.07: Audit of Operator Operations by Commission

The Commission shall have the discretion to audit on an annual basis, and at other times the Commission, the Bureau, or the Sports Wagering Division determines necessary the accounts, programs, activities, and functions of an Operator or any aspect of Sports Wagering Operation and compliance with any provision of the Operator's system of internal controls. To conduct the audit, authorized officers and employees of the Commission shall be given access by the Operator to such accounts at reasonable times and may require the production of books, documents, vouchers and other records relating to any matter within the scope of the audit; provided however, that an Operator's tax returns will not be audited by the Commission. All audits shall be conducted in accordance with generally accepted auditing standards established by the American Institute of Certified Public Accountants and the standards established by the Public Company Accounting Oversight Board. In any audit report of the accounts, funds, programs, activities and functions of an Operator issued by the Commission containing adverse or critical audit results, the Commission may require a response, in writing, to the audit results. Such a response shall be forwarded to the Commission within 15 days of notification by the Commission. Where possible, efforts will be made not to audit areas that were the subject of, and satisfactorily addressed by, the annual audit required in accordance with 205 CMR 239.06.

REGULATORY AUTHORITY

205 CMR 239.00: M.G.L. c. 23N, § 4.