



January 22, 2016

Dear Attorney General Healey:

Thank you for the opportunity to testify on 940 CMR 34.00 the proposed regulations for Daily Fantasy Sports Contest Operators. We have appreciated the opportunity to work with your office and applaud you for taking action to address negative consequences of excessive fantasy sports play. It is important to note NCPG is neutral on legalized gambling and takes no opinion on whether fantasy sports contests are, or should be, legal or illegal.¹ As we have discussed with your office, recent changes in fantasy sports contests have raised concerns about the addictive potential of fantasy sports. Our concerns center on two areas: the structural characteristics of the games and the demographics of the players.

Traditional fantasy sports contests are structured with small entry fees, long seasons and minimal prizes offer little risk of gambling problems. However, daily fantasy sports offer frequent contests that allow multiple entries with entry fees that may be sizeable and significant prizes. Increased event frequency, high entry fees and larger prizes have all long been associated with an increased risk of gambling addiction.²

The reported demographic profile of fantasy sports participants—predominately young, male, skill-based sports enthusiasts—indicate they are at higher risk for gambling addiction. Reports from gambling operators that 40% of daily fantasy sports players play casino games (a significantly higher rate than the general population) indicate significant overlap between gamblers and DFS players.³ A recent study found college students who played fantasy sports were more likely to experience gambling problems.⁴

Fantasy sports players who become preoccupied, unable to stick to limits of time and money and therefore suffer harm to their emotional or financial health may meet gambling addiction criteria. Marlene Warner, Executive Director of the Massachusetts Council on Compulsive Gambling, provided an overview of the scope and consequences of gambling addiction in the Commonwealth in her testimony.⁵

However, there is still a great deal we do not know. We therefore urge government and operators themselves to fund reputable, independent researchers to provide additional

¹ NCPG Resolution on Daily Fantasy Sports, October 4, 2015.

² Griffiths, Mark. Gambling Technologies: Prospects for Problem Gambling. *Journal of Gambling Studies* 15(3) 1999.

³ Interview: Chris Sheffield, Managing Director of Interactive, Penn National Gaming. *iGaming Business North America*, Issue 21, October/November 2015.

⁴ Martin, R.J. & Nelson, S. Fantasy sports, real money: exploration of the relationship between fantasy sports participation and gambling-related problems. *Addictive Behaviors* 39 (10) October 2014.

⁵ See Testimony of Marlene Warner, Executive Director, Massachusetts Council on Compulsive Gambling.

information on these concerns specific to fantasy sports.⁶ DFSOs could provide a valuable contribution to this research by making de-identified data (e.g., demographic, session, game and transaction data) available.⁷ Analyzing actual player behavior leads to better understanding of gambling and problem gambling.⁸

NCPG worked with many stakeholders, including fantasy sports operators themselves, to develop and release our Fantasy Sports Consumer Protection Guidelines on December 7, 2015 (attached). This framework is a work in progress and it is expected to evolve in response to changes in legislation, regulation, operator practice and technology. The major sections of the guidelines are Policy; Staff Training; Informed Decision Making; Assisting Customers; Timeouts & Self Exclusion; Advertising and Website Features. We believe these guidelines are a good baseline and urge their incorporation into your proposed regulations as appropriate.

We would like to comment on several specific provisions of the proposed guidelines.

34.04(4) Gameplay by Minors: Parental Controls

The requirement for “parental control procedures that allow parents or guardians to exclude minors from access to DFS platforms” appears to be similar to third-party exclusion and raises similar issues that will be addressed in that section below.

34.07(4) Truthful Advertising; Limitations on Advertising Content: Advertisements to Include Information to Assist Problem Gamers

NCPG supports this section but notes that given the massive number of DFS participants and extensive advertising a requirement to include “ assistance for problem gam[b]lers...” may significantly increase calls to the helpline which will place additional burdens on operators. NCPG therefore recommends DFSO operators be encouraged to provide voluntary contributions to organizations running the promoted helplines and that a portion of any DFSO fine, tax or regulatory fee be devoted to programs to assist problem gamblers such as those operated by the Massachusetts and National Councils. NCPG also recommends that as DFS operations, advertising and players are nationwide, important for DFSO to promote a number that is available and accessible across the country.

34.10(5) Protections for Problem Gamers: Requests for Exclusion Made by Third Parties

NCPG is strong supporter of the concept of self-exclusion and helped create the first programs almost twenty years ago. Exclusion programs are a fairly limited tool and unlikely to be effective unless buttressed by comprehensive prevention and treatment

⁶See NCPG GRADE Social Casino Consumer Protection Guidelines. “Play data from social games sites should be made available to qualified independent researchers. Data must be de-identified to remove personally identifying information, consistent with Federal and state privacy, intellectual property and freedom of information laws. Research will help determine how to tailor policy and practice to minimize harm.”

⁷ Statement of Keith S. Whyte, Executive Director, National Council on Problem Gambling. Internet Gaming: Is There a Safe Bet? United States House of Representatives, Energy & Commerce Committee, Commerce, Manufacturing & Trade Subcommittee. Tuesday, October 25, 2011

⁸ See The Transparency Project “The Transparency Project aims to collect and archive high quality addiction-related privately-funded data from around the world. The purpose of this project is to make data available to scientists so that they can advance the available empirical evidence and knowledge base about addiction.”

services and adequate enforcement. It is important to keep in mind is that these programs are 1) primarily designed for problem gamblers and 2) grounded in the therapeutic concept of relapse prevention. Therefore special care needs to be taken with the development of these programs and a defined “duty of care” to clarify the rights and responsibilities of each stakeholder.

While the responsibility for exclusion programs lies on a continuum between the individual and the DFSOs it is widely agreed and important that the primary responsibility remains with the self-excluder.⁹ Third party exclusion in other countries is usually restricted to first-degree family members. Singapore comes closest to the proposed regulation by creating an automatic exclusion from its casinos for any citizen who has filed for bankruptcy or who receives public assistance.¹⁰ Such restrictive provisions seem unlikely to be adopted in other jurisdictions.

NCPG notes the Massachusetts Legislature recently created a third party exclusion program through the Expanded Gaming Act. The approach of the Massachusetts Gaming Commission is a model of excellence and their Responsible Gaming Framework which will likely become best practice as well.¹¹ Briefly the process allows the third party to petition district court for an order and a hearing is scheduled allowing both parties to present evidence. If the court approves the petition the MGC adds the individual to the list of excluded persons. The MGC regulations also provide a removal process.

As DFSOs operate across the nation they will likely implement consumer protection measures for all players, rather than state by state. Gamblers often participate in multiple types of gambling and cross state and tribal boundaries. As discussed in Warner’s statement, problem gamblers are particularly likely to participate in multiple forms of gambling.¹² Most self-exclusion programs are limited to a specific industry and/or jurisdiction, which may dramatically reduce the effectiveness of the program since gamblers can simply go to another property, a different form of gambling, or a neighboring state. So we hope required programs are sensitive to, or at least able to encompass sharing participants and information across state lines.

Some advocates have proposed that DFSOs allow non-customers to exclude themselves as a preventative measure. NCPG supports the concept but notes that currently the individual would have to open an account, going through the age and ID verification process, before they could access the exclusion options. They would then

⁹ Briefing note on the national self exclusion scheme. UK Gambling Commission, May 2015 “Self-exclusion is widely accepted as an important harm minimisation tool for some people who have recognised that they have a problem with their gambling and have made a commitment to dealing with it and for others who wish to use measures such as this to better manage their gambling activities. One of the principal benefits of self exclusion is the formal acknowledgement by the individual that they are experiencing problems with their gambling and wish to take steps to address these problems. The individual is expected to make a serious commitment to abide by their self-exclusion agreement.”

¹⁰ Government of Singapore, Casino Control Act, §33A EXCLUSION FROM CASINO — SOCIAL ASSISTANCE PROGRAMME AND SUBSIDY SCHEME (2013)

¹¹ MA GL 23K section 45(1)(1). See also *Responsible Gaming Framework, Version 1*. Massachusetts Gaming Commission (March 3, 2014)

¹² Warner, *ibid*

have to repeat each step with each unique DFSO. This is inefficient and exposes the individual to the very activity they wish to avoid. It is hard to envision how “preventive” self-exclusion can be effective within the regulations as proposed.

While NCPG has extensive self-exclusion provisions in our Fantasy Sports Consumer Protection Guidelines we did not include third party exclusion in part due to the issues raised above. We look forward to working with advocates, regulators, operators and vendors to provide consumers with better options for exclusion. DFS and gambling participation appears to have a great deal of overlap. Therefore it would be beneficial for a DFSO exclusion program to harmonize with existing exclusion programs for other forms of legal gaming.

34.12(7) Fairness of DFS Contests: Onboarding Procedures for New Players

Include in procedures for new players explanation of the consumer protection features available on the site and how to use them. In general, the graphical and interactive structure of DFSO sites provides an opportunity to create informed consumers with access to a variety of information designed to encourage safe choices and discourage unsafe behavior.

I would like to thank you for the opportunity to submit my remarks for the record and I would be happy to respond to any questions.

I have been Executive Director of NCPG since October 1998. My prior public policy experience includes positions at the American Gaming Association, American Bar Association and the U.S. Department of Health and Human Services. I am a graduate of Hampden-Sydney College.

NCPG’s mission is to lead state and national stakeholders in the development of comprehensive policy and programs for all those affected by problem gambling. Our purpose is to serve as the national advocate for programs and services to assist problem gamblers and their families in order to improve health and wellness by reducing the personal, social and economic costs of problem gambling. NCPG is neither for nor against legalized gambling.



National Council on Problem Gambling
Fantasy Sports Consumer Protection Guidelines

Adopted by the NCPG Board of Directors December 4, 2015

OVERVIEW:

Fantasy Sports contests, and particularly Daily Fantasy Sports contests, that involve entry fees and the award of cash prizes (referred to herein as 'game-play') require a set of consumer protection guidelines. The development and implementation of these guidelines should be a collaborative effort endorsed by all stakeholders of internet-based Fantasy Sports contests, including operators, investors, professional sports teams and leagues, regulators, consumer protection advocates, contest customers and the public.

The framework outlined below is a work-in-progress intended to assist stakeholders in developing guidelines and are subject to specific regulatory requirements that may be implemented specifically for Fantasy Sports contests.

POLICY GUIDELINES:

The acknowledged policy of all stakeholders should demonstrate a clear commitment to responsible game-play. Fantasy Sports contest operators should identify expectations for corporate behavior and specify the roles and responsibilities of staff and customers.

Corporate strategy for responsible Fantasy Sports contests should include measures that provide a responsible game-play environment with defined goals and a clear plan of action.

STAFF TRAINING

Senior managers should be responsible for the development and implementation of responsible game-play policies and procedures. Such policies and procedures should include the requirement of regular reminders, which are documented, about responsible game-play to all Directors, managers and staff who develop contests, advertising and messaging, who interact with customers or who supervise staff who develop such contests, advertising and messaging or who interact with customers.

All staff who develop such contests or advertising or who interact with customers, including customer service agents, as well as administrative and corporate staff members, should be trained in responsible game-play at their hiring and attend retraining at least annually. These staff members should also be knowledgeable of the operator's responsible game-play policies and procedures and taught skills and procedures specific to their position in order to respond to customer requests for responsible game-play information, and to reply accordingly if a customer discloses they may have a problem. Training should be documented and tested or reviewed annually with staff and evaluated by senior management.

INFORMED DECISION MAKING

The operator's website should provide a variety of information and tools to assist customers in making informed decisions about their participation in Fantasy Sports contests, including information that could assist customers in determining risks, including, but not limited to, financial risks, as well as frequency and volume of participation. The responsible game-play information and tools should include, but not be limited to:

- Practical tips on how to determine and participate within time, frequency and financial limits
- Information on rules and anticipated payouts of specific contests
- Preventing participation by individuals under the age of 18 years of age (or the specific age for participation determined by state regulations)
- Tools that permit customers to set time, frequency and financial limits, timeouts and self-exclusion
- Risks associated with participating in Fantasy Sports contests, particularly contests that involve the risking of money
- Signs and symptoms of problems and addictions related to Fantasy Sports contest participation
- Self-exclusion
- Where to seek help if the customer develops a problem

Websites should include a hyperlink to at least one consumer protection advocate/organization and at least one agency/organization dedicated to helping people with addictions. Regular testing for functionality should be conducted for all website hyperlinks to ensure the functionality is in place.

Customers should have convenient access to their play history including money spent, games played, previous line-ups and prizes awarded and provide the customer with the ability to clearly track their spending, including the ability to download such information. Customers should have access to their account details including all deposits amounts, withdrawal amounts and bonus information including how much is left on any pending bonus and how much has been released to the customer.

Customers should have the ability to receive live updates during game-play in their 'account balance' about money spent in 'completed buy-ins' and account balances in cash as well as the amount available (if any) of pending bonus. In addition 'pending buy-ins' should also be displayed for future contests/tournaments which have not yet locked (closed).

Customers should be encouraged to set daily, weekly or monthly financial deposit limits online via settings on the website or via telephone or online chat with an operator's customer service agent. Customers should be permitted to lower their account deposit limits at any time.

The setting of account deposit limits and lowering account deposit limits should be able to take effect immediately. Customers should also be able to request increases in or removal of their account deposit limits, after a cooling-off period.

ASSISTING CUSTOMERS

Clear policies should be in place for assessing and handling situations in which a customer indicates they are in distress or experiencing problems. Staff should be able to immediately freeze the account of customers under such circumstances.

Customer service agents should be knowledgeable about applicable helpline(s), setting account deposit limits, temporary and permanent self-exclusion, responsible game-play, rules and payout ratios, age limits and addiction resources and should be able to provide such information on request.

TIMEOUTS

Customers should have the option of setting time limits (timeouts). Timeouts are instant stops in participation in game-play that are at least 1 hour but less than 30 consecutive days.

SELF-EXCLUSION

Self-exclusion should be offered as a customer-initiated restriction on their ability to participate in game-play. It should be available on the website or via telephone or online chat with an operator's customer service agent.

Customers should be able to select the length of the self-exclusion. Self-exclusion, regardless of the length, should be irrevocable during the period specified. Self-exclusion should stay in effect until the customer completes a reinstatement process after the length selected.

Self-excluded customers should not receive direct marketing promotional materials.

Customers who self-exclude should, at the time of self-exclusion, receive information about available addiction resources (e.g., helpline number, counseling information, Gamblers Anonymous information).

Customers should, at the time of self-exclusion, receive clearly worded information that outlines the conditions of the self-exclusion. Customers should also receive the outline of the conditions of the self-exclusion by email following such request for self-exclusion, which includes:

- Length of self-exclusion
- The closure process for any accounts opened by the customer and restrictions on opening new accounts during the self-exclusion
- Requirements for reinstatement at the conclusion of the length selected for self-exclusion
- The manner in which reward points and remaining deposit account balances are handled
- Help access points should a problem exist

The customer's account should be closed or suspended during self-exclusion so that no account deposits or buy-ins can be made. Any new accounts detected following a customer's self-exclusion should be closed so that no account deposits or buy-ins can be made.

There should be a process in place for customers to request reinstatement at the conclusion of the length selected for self-exclusion. Information on reinstatement requests and responsible game-play tools should be provided to the customer along with addiction resources (e.g. tips on determining risks,

as well as frequency and volume of participation and encouragement to use the website's responsible game-play features).

For the self-exclusion process, websites should put in place technical and operational measures to verify the identification of the customer. Such identification verification measures should include requiring the website to use a reputable independent third party that is commonly in the business of verifying an individual's personal identity information online.

Customers should be able to renew or extend their self-exclusion by contacting a customer service agent by email, telephone or chat. Customers who renew or extend their self-exclusion should, at the time of renewal or extension, receive information about addiction resources.

ADVERTISING AND PROMOTION

The operator should have a clearly articulated commitment to responsible advertising. Advertisements should not misrepresent the frequency or extent of winning or target people with game-play problems or minors and should include information on where to seek help if customers develop a problem. Advertising and promotions should not be included on any website pages that are geared toward responsible game-play.

Operators should provide "unsubscribe" functionality for customers to opt out of future direct marketing and promotional email messages.

FANTASY SPORTS CONTESTS AND WEBSITE FEATURES

Fantasy Sports contests should always display the entry fee, net wins, and deposit account balances as cash.

The website should not allow customers to engage in game-play automatically using an auto play feature. The website should avoid reinforcing myths, particularly related to frequency or extent of winning.

Operators should not allow scripting which is the automatic entry to the maximum financial limit of unique line-ups in a contest.

All potential new contests and site technology should be reviewed for possible impacts on problematic game-play, utilizing a risk assessment protocol.

Customers should receive responsible game-play information during registration, agree to the terms before starting game-play and receive this information by email following registration. Terms should be provided to customers upon registration, including information about bonuses, account deposits and withdrawals and the disposition of customer funds. The self-exclusion list should be checked by the operator during the registration process to ensure that self-excluded customers are denied access.

Customers should be geolocated, to ensure that they are not attempting to participate from a restricted or excluded state, as part of registration process, when making account deposits and when entering a "Freeroll" contest or tournament.

Customers should not be allowed to have multiple accounts on the same website.

“Freeroll” contests should have the same payout as entry fee contests and tournaments. “Freeroll” contests and demonstration websites should have the same restrictions and requirements as entry fee contests including the prohibition of participation by underage individuals. “Freeroll” contest and demonstration websites should provide the same responsible game-play information as the entry fee contest websites.

The website should not utilize practices, messages or advertising to induce customers to continue participation when game-play is in session, when the customer attempts to end a game-play session, or when a customer wins or loses a contest or tournament. Communications with customers should not intentionally encourage customers to: (a) increase the amount of time spent or funds in deposit accounts beyond pre-determined limits, (b) participate continuously, (c) re-play winnings, and (d) chase losses.

Websites should put in place technical and operational measures to prevent access by those who are underage. The age verification process should be required as a part of registration and/or at the time of depositing funds and/or when entering a tournament (including any “freeroll” contest). Such age verification measures should include requiring the website to use a reputable independent third party that is commonly in the business of verifying an individual’s personal identity information online. The website policy should describe repercussions when an underage player is identified including immediate stoppage of participation, deposit account closure and confiscation of winnings.

Customers should not be able to obtain a line of credit from the website.