



**MEETING AGENDA  
MARCH 27, 2023**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM
2. CONSIDERATION OF MINUTES FOR MEETING OF FEBRUARY 27, 2023
3. REPORT OF THE EXECUTIVE DIRECTOR
4. RULEMAKING
  - A. RE-PROPOSED: SGC-29-22-00010-P INTERACTIVE FANTASY SPORTS
5. ADJUDICATION
  - A. IN MATTER OF TIMOTHY MURPHY
  - B. IN MATTER OF 135 EAST 3<sup>RD</sup> FOOD MART INC.
6. NEW & OLD BUSINESS
7. ADJOURNMENT

###

**New York State  
Gaming Commission**

**Minutes**

**Meeting of February 27, 2023**

A meeting of the Commission was conducted in New York, New York and Schenectady, New York. Two-way audio and video communications were maintained between locations for the duration of the meeting.

**1. Call to Order and Establishment of Quorum**

Executive Director Robert Williams called the meeting to order at 1:01 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In physical attendance in Manhattan were Chairman Brian O'Dwyer, and Members John Crotty, Marissa Shorenstein, and Jerry Skurnik. In physical attendance in Schenectady was Member Peter Moschetti and Christopher Riaño.

**2. Consideration of Minutes for Meeting of January 17, 2023**

The Commission considered previously circulated draft minutes of the meeting conducted on January 17, 2023. The minutes were accepted as circulated.

**3. Report of the Executive Director**

The Executive Director presented an update on the Additional Commercial Casino Process Request For Applications, noting that the deadline for Round 1 of questions by interested parties was February 3, 2023. He noted that the Gaming Facility Location Board received hundreds of questions, and that staff is reviewing the material for duplicate submissions, then drafting proposed responses for Board consideration, approval, and publication. The Director also mentioned that the Governor's Executive Budget was introduced on February 1, 2023 and that the gaming-related legislation could be found in the Article VII legislation, S.4009/A.4009, at Parts X through Parts AA. He concluded by stating that former thoroughbred trainer Richard E. Dutrow, Jr., whose ten-year revocation had concluded on January 17, 2023, had recently applied for a thoroughbred trainers license, which was reviewed by the Bureau of Licensing, in consultation with the Division of Racing. The Director noted that review found that Mr. Dutrow satisfied the penalty imposed by the Racing & Wagering Board, and that his record was bereft of transgressions during his period of revocation. Accordingly, the

Bureau determined to issue Mr. Dutrow a valid license to participate in New York horseracing.

**4. Rulemaking**

**A. ADOPTION: SGC-50-22-00008-P, Lottery Courier Service Advertising**

The Commission considered adoption of regulations to govern advertising by lottery courier services.

ON A MOTION BY: Commissioner Skurnik  
APPROVED: 5-1, Commission Crotty in the negative

**B. PROPOSED: Sports Wagering Advertising, Marketing and Promotions**

The Commission considered proposed rules to regulate sports wagering advertising, marketing, and promotion.

ON A MOTION BY: Commissioner Skurnik  
APPROVED: 6-0

**5. Adjudications**

**A. In the Matter of Sarah A M Deli & Grocery Corp**

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had determined upon a 6-0 vote to adopt the Hearing Officer's findings of fact, conclusions of law and recommendation of license suspension, and accept each of the exceptions noted by staff counsel.

**B. In the Matter of Tonys Deli and Grocery II Corp**

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had determined upon a 6-0 vote to adopt the Hearing Officer's findings of fact, conclusions of law and recommendation of license revocation.

**6. New & Old Business**

**a. New Business**

Chairman O'Dwyer provided a report on his activities, mentioning that the Standardbred Fund increased purse levels for all participants and made a substantial increase in donation to the 4-H, for the purposes of promoting standardbred awareness. The Chairman also noted that the Thoroughbred Fund conducted a ceremony at which they highlighted their recent grants to aftercare organizations, and another to the Racetrack Chaplaincy of America. Chairman O'Dwyer concluded by noting that the Commission would be conducting events with the Office of Addiction Supports and Services (OASAS) and the New York Council on Problem Gambling, designed to draw attention to problem gambling during Problem Gambling Awareness Month.

**b. Old Business.**

The scheduled old business, *Discussion of Mobile Sports Wagering Advertising, Marketing and Promotions*, was considered in context of the Item 4 (B) rulemaking consideration.

**7. Adjournment**

The meeting was adjourned at 1:39 p.m.

###



## Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500  
[www.gaming.ny.gov](http://www.gaming.ny.gov)

**To:** Commissioners

**From:** Edmund C. Burns

**Date:** March 17, 2023

**Re:** Proposed Rulemaking for Interactive Fantasy Sports (9 NYCRR Chapter VI)

For Commission consideration is a revised proposed rulemaking to govern interactive fantasy sports (“IFS”). In 2016, the legislature authorized certain types of IFS contests. See Racing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”) Article 14. Article 14 set forth various provisions governing IFS, including defining requirements for IFS contests, registration of IFS operators, required safeguards for IFS contestants, reporting requirements, levying of a State tax on IFS revenues and the imposition of regulatory costs on operators. The law directed the Commission to issue temporary permits only to those operators who had been offering IFS in New York prior to November 10, 2015, which the Commission did. See Racing Law § 1402(1)(b). The legislature directed the Commission to:

promulgate regulations to implement the provisions of and effectuate the policy and objectives of this article as the commission may deem necessary or advisable, including the development of the initial form of the application for registration. Such regulations shall provide for the registration and operation of contests in New York state and shall include, without limitation, responsible protections with regard to compulsive play and safeguards for fair play. Such regulations may regulate the conduct and operation of contests and platforms, protect contestants and promote the fairness, honesty and integrity of contests. [Racing Law § 1405(1)]

The Commission began to develop proposed regulations to foster strong consumer protections and ensure that IFS contests remain within the scope of activity the legislature authorized. The Commission did so after sharing a draft of the proposal with all New York temporary permittees and with industry trade associations. Commission staff met with representatives of those entities and discussed their comments, which were then incorporated, where appropriate, into a proposal.

While staff drafted the proposed regulations, the Commission was sued by plaintiffs alleging that Article 14 violated the New York State Constitution’s general prohibition against gambling. The Commission authorized the regulations in June 2017 and advanced them for potential publication in the *State Register* pursuant to the State Administrative Procedure Act, but while the proposed regulations were under pre-publication regulatory review, a judge in New York Supreme Court, Albany County declared Article 14 to violate the New York State Constitution’s general prohibition on gambling. *White v. Cuomo*, 62 Misc. 3d 877 (2018). The Appellate Division, Third Department affirmed, 181 A.D.3d 76 (2020), but in 2022 the Court of Appeals reversed, concluding that IFS was not gambling and upholding Article 14. 38 N.Y.3d 209 (2022). The Notice of Proposed Rulemaking was then published in the July 20, 2022 *State Register*, a copy of which is attached. The public comment period

for the proposed rulemaking expired on September 19, 2022. Six public comments were received, four from current IFS temporary permittees (DraftKings Inc., FanDuel, Inc., Fantasy Football Players Championship (“FFPC”) and Yahoo Fantasy Sports LLC (“Yahoo Fantasy Sports”)); one from Fantasy Sports & Gaming Association (“FSGA”), a trade association that claims to represent more than 150 companies offering fantasy sports contests to consumers; and one from Vivid Seats LLC (“Vivid Seats”), a company that is not current temporarily permitted in New York but that may wish to seek registration as an IFS operator after the Commission adopts regulations.

Some of the commentators expressed views on the same proposed rules. Accordingly, the summary that follows groups the comments by proposed rule and offers a staff response for each. Full copies of the submitted public comments are attached.

**Public comments**

Vivid Seats objects to proposed Rule 5601.1(a), which sets forth who is required to register. Vivid Seats requests an exception that would allow an entity that had not been operating in New York to operate provisionally until its registration application is acted upon.

**Staff response:**

[REDACTED]

DraftKings and FanDuel object to the definition of “dormant account” in proposed Rule 5600.1(b)(6). They observe that a contestant could be active without claiming funds, because prize winnings could be added to the contestant’s account and contest entry fees withdrawn by the operator without the contestant withdrawing funds from the contestant’s account.

**Staff response:**

[REDACTED]

Yahoo Fantasy Sports objects to the ownership disclosure requirements in proposed Rule 5601.1(b), which would require disclosures concerning officers and directors and direct and indirect owners of a 10% or more of an operator and its parent companies. Yahoo asserts that it will not operate in a jurisdiction that requires personal history disclosures from individuals with no oversight or management of its fantasy sports business.

**Staff response:**

[REDACTED]

Vivid Seats objects to proposed Rule 5602.1(a)(4), which would make explicit that contests shall not be based on proposition betting or contests that have the effect of mimicking proposition betting. Vivid Seats notes that it offers such contests outside New York.

**Staff response:**

[REDACTED]

DraftKings objects to proposed Rule 5602.1(c)(3), which would provide that the “value of prizes shall not be determined by the number of contestants entering such contests, as required by [Racing Law] section 1404(1)(n).” DraftKings wishes to offer contests with a bonus prize pool that would depend on the number of contestants. DraftKings suggests that the rule instead provide that the “minimum value of prizes” not be determined by the number of contestants.

**Staff response:**

[REDACTED]

FanDuel suggests revisions to proposed Rule 5602.1(d)(1), which would govern the number of permissible entries in contests with certain labels. FanDuel suggests that the proposed Rule repeat statutory requirements and include provisions for contests with exactly 100 entries.

**Staff response:**

[REDACTED]

DraftKings and FanDuel suggest a revision to proposed Rule 5602.2, which would regulate the required Commission approval of contest types before such are offered to contestants in New York. DraftKings suggests that a contest type be deemed approved by the Commission if no response is received within seven days of an IFS operator’s request for approval. Yahoo Fantasy Sports suggests that the Commission be required to make its contest-approval decisions within 30 days of a request. Vivid Seats suggests that the requirement of seeking a contest-type approval be limited to the offering of a “materially new” contest. FSGA suggests eliminating the proposed Rule and instead requiring operators to inform the Commission of new games, with the Commission empowered to “ask for modifications.”

**Staff response:**

[REDACTED]



DraftKings and FanDuel suggest that proposed Rule 5603.2(a)(2) be amended to account for the categorization of a contestant who has entered exactly 1,000 contests. DraftKings suggests categorizing a contestant who has entered exactly 1,000 contests as “highly experienced,” while FanDuel suggests that such a contestant be categorized as “intermediate.” DraftKings also notes that it uses a category of contestant called “casual,” which differs from the proposed rules’ categorization of contestants as “highly experienced,” “intermediate” and beginner,” in that its “casual” contestants are those who have entered more than 50 and fewer than 500 contests. DraftKings inquires whether such category would satisfy the proposed rules requirements for intermediate contestants.

**Staff response:**

[REDACTED]

DraftKings suggests amending proposed rule 5603.2(g)(1), which would require disclosure of the relevant rates of success of contestants. DraftKings suggests that instead of requiring data on the percentage of contests won by tiers of percentiles of contestants, the rule require data on the percentage of entry fees won, which DraftKings suggests is a truer data measure. Yahoo Fantasy Sports requests deletion of proposed Rule 5603.1(g), suggesting that the contest information the rule would require to be posted would be not useful and would be confusing to contestants.

**Staff response:**

[REDACTED]

DraftKings suggests that the disclosure of rules for breaking contest ties, as required by proposed Rule 5603.1(a)(11), be permitted to be contained in an operator’s terms of use instead of contest rules.

**Staff response:**

[REDACTED]

DraftKings requests clarification that the prohibition in proposed Rule 5603.5(a) against “autopicks” would not preclude the use of pre-draft rankings or a “snake draft” feature, in which the contestant drafting for a fantasy lineup last in a draft round then selects first in the next round. FanDuel also expressed concern that the prohibition on “autopicks” would prevent assisted-draft functionality and the use of preference rankings by a contestant in drafting. FSGA interprets the proposed Rule to preclude a contestant from prepared a list of selections ahead of a draft and objects to the proposed rule on that basis.

**Staff response:**

[REDACTED]

DraftKings objects to the requirement in proposed Rule 5604.1(b)(1) for an operator to provide a toll-free number to assist parents in establishing parental controls on IFS accounts and suggests that other means, such as email or electronic chat functions be permissible as well.

**Staff response:**

[REDACTED]

[REDACTED]

DraftKings and FanDuel object to the provision of proposed Rule 5604.1(d) that would make an operator strictly liable for allowing prohibited persons to enter its contests, while providing for mitigation of any possible penalty if the registrant demonstrates good-faith reliance on false or misleading information provided by the prohibited person and good-faith compliance with appropriate internal controls designed to prevent play by a prohibited person.

**Staff response:**

[REDACTED]

Yahoo Fantasy Sports and Vivid Seats object to proposed Rule 5604.1(f), which would require an IFS operator to provide the Commission with a list of the operator’s members, officers, employees and agents in order to facilitate the prevention of play by unauthorized persons. Yahoo Fantasy Sports suggests that the proposed rule would impose an administrative burden and appears to be geared toward operators who conduct IFS as their only line of business. In the alternative, Yahoo Fantasy Sports suggests that reporting be required within 30 days, instead of five. Vivid Seats proposes that personnel updates be required only once per calendar quarter.

**Staff response:**

[REDACTED]

DraftKings suggests that the requirement in proposed Rule 5604.2(c) to display a compulsive-play-assistance toll-free number approved by the Commission be modified to allow for either a local or national toll-free number.

**Staff response:**

[REDACTED]

Yahoo Fantasy Sports objects to proposed Rule 5604.3(d), which would require an annual report of information concerning self-excluded contestants. Yahoo Fantasy Sports expresses concern about the Commission’s maintenance of confidentiality and security of sensitive data and about how the

Commission may use the unique contestant ID required. Yahoo Fantasy Sports suggests that a statewide self-exclusion program would be desirable.

**Staff response:**

[REDACTED]

Yahoo Fantasy Sports objects to proposed Rule 5604.4(e), which would require an annual report of information concerning excluded contestants. Yahoo Fantasy Sports expresses concern about the Commission's maintenance of confidentiality and security of sensitive data and about how the Commission may use the unique contestant ID required. Yahoo Fantasy Sports suggests that the requirement would be burdensome.

**Staff response:**

[REDACTED]

Yahoo Fantasy Sports objects to proposed Rule 5605.1, which would require an IFS operator to prepare and file annual audited financial statements (unless specifically exempted by the Commission in writing) and allow the Commission to require an independent certified public accountant audit to perform an additional review of internal controls. Yahoo Fantasy Sports states that it does not maintain stand-alone financial statements "as one of many subsidiaries in a complex corporate structure" and instead undergoes a "specified element audit" that "focuses on the segregated cash and player liability balance sheet accounts to ensure the integrity of [IFS] contests offered." Yahoo Fantasy Sports further objects to the scope of Commission authority to require an internal-control audit.

**Staff response:**

[REDACTED]

Yahoo Fantasy Sports and Vivid Seats object to proposed Rules 5605.5 and 5605.6, which concern requirements to establish special purpose entities and designation of customer funds as funds held in trust, in order to enhance protection of customer funds from operator bankruptcy or misappropriation. Yahoo Fantasy Sports suggests that other methods, such as cash, cash equivalents or irrevocable letters of credit should be available tools to protect customer funds, in addition to the bond alternative set forth in proposed Rule 5605.7. Vivid Seats suggests that the proposed rules instead require a segregated bank account for customer funds that could be managed by the operator itself.

**Staff response:**

[REDACTED]

DraftKings, FanDuel and FSGA suggest that proposed Rule 5605.6(a)(2) would require separate bank accounts in order for customers' funds to be held in trust.

**Staff response:**

[REDACTED]

DraftKings and FanDuel suggest that the return of a customer's funds, as required by proposed Rule 5605.6(d), be required ordinarily to be accomplished in five business days, rather than two, to allow for the accomplishment of know-your-customer and fraud-prevention procedures.

**Staff response:**

[REDACTED]

DraftKings suggests eliminating the specific minimum anti-money-laundering ("AML") requirements beyond proposed Rule 5605.10(a)(1). FanDuel, FSGA and FFPC suggest eliminating

AML requirements entirely. FanDuel suggests, in the alternative, eliminating the requirement to file an annual AML compliance statement. Yahoo Fantasy Sports suggests eliminating AML requirements entirely or, in the alternative, eliminating the requirement for an internal and/or external audit. FFPC, in the alternative, suggests limiting AML requirements to operators who award prizes of \$50,000 or more per day.

**Staff response:**

[REDACTED]

[REDACTED]

Yahoo Fantasy Sports objects to the definition of “cybersecurity event” in proposed Rule 5600.1(b)(5) and to the requirement to report material cybersecurity events to the Commission at least every two years, as set forth in proposed Rule 5606.2(c)(6), asserting that the requirements could be read to apply to an operator’s business unrelated to IFS. FFPC suggests that cybersecurity is less of a risk in season-long IFS and recommends unspecified “reasonable security measures that small businesses can afford.”

**Staff response:**

[REDACTED]

DraftKings suggests eliminating the requirement in proposed Rule 5606.3(c)(6) to notify the Commission within 48 hours of any adjustment made to a customer’s account in response to a customer complaint, instead requiring the operator to log adjustments internally and make them available upon request.

**Staff response:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DraftKings suggests that proposed Rule 5607.1(a) regulating advertisements be limited to advertisements specifically targeting persons located in New York. FanDuel suggests eliminating almost all of the proposed compulsive-play-messaging advertising requirements because of operators' preferences to display nationwide advertising. DraftKings also notes that a typographical error in a cross-reference should be corrected.

**Staff response:**

[REDACTED]

[REDACTED]

DraftKings and FanDuel suggest that proposed Rule 5607.1(e) be revised to exclude requiring compulsive-play assistance messaging on a customer account page, on contest entry pages and on an operator’s social-media sites, limiting such messaging to each landing page and homepage.

**Staff response:**

[REDACTED]

DraftKings suggests a revision to proposed Rule 5607.3(a)(1) and (2) governing promotion disclosures, to allow for hyperlinking to full terms and conditions.

**Staff response:**

[REDACTED]

The FSGA and FFPC object to proposed Rule 5609.2, which would provide that the Commission may require an IFS operator to complete an independent compliance review. Each of those two commentators suggests eliminating this proposed Rule.

**Staff response:**

[REDACTED]

FanDuel and FFPC object to the requirement in proposed Rule 5609.3 that an independent testing laboratory certify that a registrant’s platform performs as the registrant represents to the public. FFPC suggests that an exemption be granted for operators with less than \$500,000 of revenue in the state (though no time period for measurement of such is suggested).



**Staff response:**

[REDACTED]

Yahoo Fantasy Sports objects to proposed Rule 5611.1(b), which would require a separate account designed to secure the payment of regulatory costs, asserting that it would create a financial and administrative burden.

**Staff response:**

[REDACTED]

Yahoo Fantasy Sports objects to proposed Rule 5612.1, which would require an IFS operator to investigate all complaints promptly, notify a complainant of the status of a complaint within 10 days and when a dispute is not resolved within 21 days, offer a dispute resolution process to be completed within 60 additional days. Yahoo Fantasy Sports suggests that operators be given 30 days to try to resolve complaints and that the time requirement for completion of dispute resolution be removed.

**Staff response:**

[REDACTED]

[REDACTED]

Yahoo Fantasy Sports objects to proposed Rule 5613.3(b), which would require an IFS operator to post a notice disclosing whenever its registration has been suspended or revoked. Yahoo Fantasy Sports suggests that such requirement be limited to users geolocated within New York.

**Staff response:**

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

cc: Robert Williams, Executive Director  
Thomas Anapolis, Director, Division of Gaming  
James Googas, Deputy Director, Division of Gaming

Text deleted from original proposed text appears in [brackets]  
Text added to original proposed text is underlined

**A new Chapter VI to Subtitle T of 9 NYCRR would be added as follows:**

**Chapter VI**

**Interactive Fantasy Sports**

**Part**

**5600 General**

**5601 Registration of Interactive Fantasy Sports Operators**

**5602 Permissible Contests**

**5603 Requirements for Contests**

**5604 Restrictions on Play**

**5605 Accounting Controls**

**5606 Internal Controls**

**5607 Advertising and Marketing**

**5608 Misconduct, Associations and Duties to Promote Integrity**

**5609 Reporting and Auditing**

**5610 Taxes and Fees**

**5611 Financial Stability**

**5612 Complaints**

**5613 Penalties and Sanctions**

**PART 5600**

**General**

Section

5600.1 Definitions

**§ 5600.1. Definitions.**

(a) Unless the context indicates otherwise, the definitions set forth in this section and the definitions set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1401 are applicable throughout this Chapter.

(b) *Definitions.*

(1) *Assisted-draft mode* means a feature of an interactive fantasy sports platform that allows a contestant to arrange for the automated selection of a roster of athletes for a contest based on criteria set by the contestant.

(2) *Autopick draft option* means a function in an interactive fantasy sports system that automatically selects athletes to an interactive fantasy sports roster of athletes, either without input from the interactive fantasy sports contestant or not based upon preferences set by such contestant.

(3) *Consumer complaint* means a complaint about a registrant's interactive fantasy sports contests or platform by a person who participates or attempts to participate in such contests, including, without limitation, complaints about the conduct of employees or independent contractors of the registrant.

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(4) *Contestant* means an authorized player as defined in Racing, Pari-Mutuel Wagering and Breeding Law section 1401(1) and any person who deposits money with an operator, registrant, or SPE that may be used to enter a contest.

(5) *Cybersecurity event* means any act or attempt, successful or unsuccessful, to gain unauthorized access to, disrupt or misuse an information system or information stored on such information system.

(6) *Dormant account* means an account [in] to which [funds remain unclaimed] a user has not logged in for three consecutive years.

(7) *Insider information* means any proprietary or non-public information about a contest that might provide an advantage to a contestant, including, without limitation, the frequency of athlete selections made by contestants.

(8) *Lock* means the point in time at which an athlete selected for a contestant's contest roster is not permitted to be changed or withdrawn.

(9) *Platform* means any website, smart-phone application or other portal providing access to an interactive fantasy sports contest for an entry fee.

(10) *Registrant* has the meaning set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1401(12). For purposes of Part 5610 of this Chapter, an interactive fantasy sports operator that has been granted a temporary permit pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1402 shall be deemed a registrant.

(11) *Registration* means an interactive fantasy sports registration issued pursuant to this Chapter.

(12) *Script* means a set of commands that an interactive-fantasy-sports-related computer program can execute to automate processes on a platform.

(13) *Session* means the time an interactive fantasy sports contestant spends logged into and is active on an operator's web site, mobile application or other user interface.

(14) *Special Purpose Entity* or *SPE* means a properly constituted entity described in section 5605.5 of this Chapter.

(15) *Sports event* has the meaning set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1401(17) and, in addition, the event shall be an athletic event or competition that involves a material degree of physical skill.

(16) *Youth sports event* means a sports event played predominantly by minors who are not professional athletes.

## **PART 5601**

### **Registration of Interactive Fantasy Sports Operators**

Section

5601.1

General

Text deleted from original proposed text appears in [brackets]  
Text added to original proposed text is underlined

5601.2	Application
5601.3	Filing
5601.4	Processing
5601.5	Amendment
5601.6	Investigation
5601.7	Registration determination
5601.8	Issuance of registration

### **§ 5601.1. General.**

(a) *Entities required to obtain an interactive fantasy sports registration.* Any interactive fantasy sports operator seeking to administer, manage or otherwise make available a platform hosting paid-entry contests to persons located in the State of New York is required first to obtain a registration.

(b) *Individuals required to submit a personal history disclosure form.* The commission shall require a personal history disclosure form for:

- (1) each person listed on an application as an officer, director or a shareholder owning a 10 percent or more equity interest, direct or indirect, in the applicant, if the applicant is a corporation; and
- (2) a person owning a five percent or more direct or indirect ownership interest in the applicant, if the applicant is an entity other than a corporation; and
- (3) each person listed on an application as an officer, director or a shareholder owning a 10 percent or more equity interest, direct or indirect, in the applicant's SPE.

(c) *Term of registration.* All registrations shall remain in effect for three years, as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1402(3).

(d) *Renewal.* Renewal applications shall be submitted in a form and manner approved by the commission. The commission may renew a registration for a term of three years or less, in the discretion of the commission.

(e) *Burden of proof.* It shall be the duty of each applicant to establish by clear and convincing evidence such applicant's qualifications for registration or renewal of registration.

### **§ 5601.2. Application.**

(a) *Requirements.* Each applicant for a registration shall file with the commission a registration application form and all other disclosure forms and produce all information, documentation and assurances as the commission may require.

(b) *Disclosure required of persons.* Each person listed in subdivision (b) of section 5601.1 of this Part shall, in addition to filing a personal history disclosure supplement to the registration form, produce all information, documentations and assurances as the commission may require. Each such person shall, at the time of the application and upon renewal, be fingerprinted under the supervision of the commission or a duly authorized authority approved by the commission. In the alternative, the commission may permit a person to submit sets of classifiable fingerprint impression cards the commission provides. If the commission cannot obtain usable fingerprints for processing after two

Text deleted from original proposed text appears in [brackets]  
Text added to original proposed text is underlined

good-faith attempts, the commission may in its discretion rely upon a search of a person's background via other means available to the commission. Nothing in this Part shall relieve a person who submits fingerprint sets pursuant to this subdivision from the duty to disclose any criminal arrests as required by this Part. Each applicant shall remit fingerprinting fees directly to the fingerprinting service provider approved by the commission. However, if the applicant is submitting fingerprints via fingerprint impression cards, the applicant shall remit the fee to the commission, payable to the fingerprinting service provider approved by the commission.

For the purpose of providing each person with an opportunity to correct erroneous criminal history information before the commission makes a determination to approve or deny an application, as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1403(4), the commission shall provide each subject of criminal history record information with a copy of such information in the following manner:

(1) Upon receiving notification that the commission has received such information, each person may obtain a copy by mail or email upon providing written confirmation to the commission, within 10 days of such notice, of such person's current mailing or emailing address to which the commission may send such information; or

(2) Each person may inspect a record of such information at the main office of the commission during normal working hours upon presenting satisfactory proof of identification that such person is the subject of the criminal history information.

(c) *Disclosure required of creditors.* Each applicant shall list in the application each creditor of the applicant that holds at least 10 percent of debt of the applicant, along with the full names and addresses of the officers and directors of such creditor and of those stockholders or other owners, direct or indirect, of more than 10 percent of such creditor. The commission may require any such creditor or such officer, director, owner, principal or partner of such creditor, to file with the commission a personal history disclosure form and produce all information, documentations and assurances as the commission may require to determine the qualifications of the applicant. The commission may also require such officers, directors, owners, principals and partners to submit fingerprints according to the procedures set forth in subdivision (b) of this section, as if such person were a person covered by the requirements of subdivision (b) of this section.

(d) *Disclosure of SPE information.* Each applicant shall list in the application each SPE that shall perform services for the registrant pursuant to sections 5605.5 and 5605.6 of this Chapter, along with the full names and addresses of the officers and directors of such SPE and of those stockholders or other owners, direct or indirect, of more than 10 percent of such SPE. The commission may require any such SPE or such officer, director or owner of such SPE to produce all information, documentations and assurances as the commission may require to determine the qualifications of the applicant for registration. The commission may also require such officers, directors and owners to submit fingerprints according to the procedures set forth in subdivision (b) of this section.

(e) *Description of contests.* An applicant for registration shall describe how each type of contest will be conducted and will comply with Article 14 of the Racing, Pari-Mutuel Wagering and Breeding law and the requirements for permissible contests set forth in this Chapter. An applicant shall specify the underlying sport and sports league, association or other organization upon which each type of interactive fantasy sports contest is based. The applicant shall provide rules of play for each contest.

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(f) *Internal controls*. An applicant for registration shall provide internal controls as required by Part 5606 of this Chapter.

### **§ 5601.3. Filing.**

No application for a registration shall be deemed filed with the commission pursuant to this Part until:

(a) all papers presented conform to all requirements relating to format, signature, oath or affirmation, attorney certification, if applicable, and copies, as the commission may require;

(b) all appropriate application exhibits and disclosure forms have been properly completed and submitted.

(c) all required consents, waivers and fingerprints have been properly submitted;

(d) all other information, documentation, assurances and other materials required or requested at the filing stage have been submitted properly; and

(e) all required fees, if any, have been paid.

### **§ 5601.4. Processing.**

The commission shall process only complete applications. The processing of any application shall not constitute any agreement or acceptance by the commission that the requirements of Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Chapter have been satisfied.

### **§ 5601.5. Amendment.**

(a) Each registrant shall file promptly with the commission an update explaining any new or changed facts or circumstances whenever any material new or changed fact or circumstance occurs with respect to any matter set forth in the application.

(b) All applicants and registrants shall have an obligation to ensure that information, documentation and assurances submitted to the commission are not misleading in light of the circumstances in which such information, documentations and assurances were submitted.

(c) The commission may permit any applicant to file an amendment to its application at any time prior to the commission's final action thereon.

(d) The failure of an applicant or registrant to comply with this Chapter shall be grounds for denial of the application or for suspension or revocation of a registration.

### **§ 5601.6. Investigation.**

The commission, or the commission's designee, shall make or cause to be made an inquiry or investigation concerning an applicant or registrant and any owners (direct or indirect), officers, directors, principals and partners, as the commission may deem appropriate, at the time of the initial application and at any time thereafter.

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

### **§ 5601.7. Registration determination.**

(a) *Disqualifying criteria.* In evaluating an application, the commission shall apply the disqualifying criteria set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1403(4)(a) through (d) to each registration applicant and any owner (direct or indirect), officer, director, principal or partner.

(b) *Criminal history.* In evaluating an application, the commission may consider whether the criminal history of the registration applicant and any owner (direct or indirect), officer, director, principal or partner compromises the promotion of fairness, honesty or integrity of contests.

(c) *Experience, character or general fitness.* The commission may deny a registration if the commission finds that the experience, character or general fitness of any person associated with the registration applicant is such that the participation by such person in interactive fantasy sports would be inconsistent with the public interest, convenience or necessity or with the best interests of interactive fantasy sports generally.

(d) *Denials.* The commission shall deny a registration to an applicant who, or that, has failed to implement the criteria set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1404. The applicant may request a de novo hearing to review the denial. Such hearing shall then be held pursuant to the procedures set forth in this Subtitle.

(e) *Determination of application.* Upon completion of an investigation of each applicant, the commission shall either:

- (1) grant the application for registration;
- (2) grant the application with conditions the commission deems necessary or advisable; or
- (3) deny the application.

### **§ 5601.8. Issuance of registration.**

The commission shall notify an applicant in writing if the commission grants a registration and shall add the trade name and entity name of the registrant to a list the commission maintains on the commission's website.

## **PART 5602**

### **Permissible Contests**

Section

5602.1 Requirements for permissible contests; restrictions

5602.2 Commission approval of new contests

### **§ 5602.1. Requirements for permissible contests; restrictions**

(a) *Requirements.* An interactive fantasy sports contest in which contestants pay a fee to enter, in order to be offered or made available to contestants physically located in the State of New York at the time of entering the contest, shall be structured to meet the requirements set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1404 and this Part.



Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(1) Contest outcomes shall reflect the skill of contestants and the relative knowledge and understanding that contestants possess of sports events and athletes participating in such sports events, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(o).

(2) Contest outcomes shall be determined predominantly by accumulated statistical results of the performance of individual athletes who have been selected to a contestant's fantasy roster in sports events, as required by Racing, Pari-Mutuel Wagering and Breeding Law sections 1400(1)(b) and 1404(1)(o). Each contest shall be based on a contestant's roster of selected athletes and shall not be based on discrete occurrences or statistics within a sports event unrelated to rosters of athletes selected by contestants.

(3) Contest outcomes shall not be based on the score, point spread or performance of a single sports team, or any combination of such teams, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(p).

(4) Contests shall not be based on proposition betting or contests that have the effect of mimicking proposition betting. Contests in which a contestant must choose, directly or indirectly, whether an individual athlete or a single team will surpass an identified statistical achievement, such as points scored, are prohibited.

(5) Contest outcomes shall not be based solely on any single performance of an individual athlete in a single sport or athletic event, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(q).

(6) Contest outcomes shall not be based, in whole or in part, on statistics or results of any high school or college sports event or horse racing event, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(r), or on statistics or results of any youth sports event.

(7) Contests shall maintain rules that comply with the requirements set forth in section 5601.2 of this Chapter.

(b) *Approval of sports events.* The commission may, in the exercise of discretion, withhold approval of any proposed contest type that directly or indirectly violates any requirement for permissible contests or that the commission determines does not comply fully with the policy and objectives of Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law. A registrant shall comply with every commission request for information about any sports event that such registrant proposes to use as a basis for a contest.

(c) *Entry fees and prize structure.*

(1) A registrant, in order to offer or make available a contest for entry by contestants physically located in the State of New York at the time of entering a contest, shall define clearly, and make known to any contestant in advance of such contest, the fee required to enter such contest.

(2) A registrant shall ensure that the value of any prizes to be awarded to contestants are established and made known to such contestants in advance of the contest, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(n).

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(3) The value of prizes to be awarded to contestants who submit a prize-winning entry shall not be determined by the number of contestants entering the contest or the amount of entry fees paid by contestants entering such contest, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(n).

(4) A registrant shall disclose to users of such registrant's platforms how many contestants have entered each contest and the amount of prizes distributed following conclusion of each contest and archive such contest results so that the commission may gain access to such results for a reasonable amount of time following each contest and in no event for fewer than 30 days.

(5) A registrant shall identify any highly experienced player, as defined in Racing, Pari-Mutuel Wagering and Breeding Law section 1401(6), who entered a contest by a symbol attached to such contestant's username or by a different but easily visible method of identifying a highly experienced player.

(d) *Maximum entries per contest.*

(1) A registrant shall restrict the number of entries submitted by a single authorized player in a contest [in accordance with] to a maximum of 150 entries or three percent of the total entries by all players in such contest, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(2), with the exception of contests with [fewer than] 100 or fewer entries or contests regulated by paragraph (2) of this subdivision. For contests with [fewer than] 100 or fewer entries, a registrant shall not allow a contestant to submit more than:

- (i) one entry in any IFS contest involving 12 or fewer entries;
- (ii) two entries in any IFS contest involving 13 to 36 entries; or
- (iii) three entries in any IFS contest involving 37 to 100 entries.

(2) A registrant may establish contests in which there is no restriction on the number of entries, so long as:

- (i) the number of such contests is less than 2% of the total number of contests such registrant offers;
- (ii) the registrant clearly discloses there are no limits on the number of entries by each contestant in any such contest; and
- (iii) the cost to a contestant to participate in such a contest is \$50 or more per entry.

**§ 5602.2. Commission approval of new contests.**

(a) *Approval.* Commission approval is required before a registrant is permitted to introduce a new type of contest or an existing contest type for a sport, league, association or organization not previously offered by such registrant. To obtain commission approval, a registrant shall specify the underlying sport and sports league, association or organization upon which the proposed type of contest is based, provide rules of play for the contest and demonstrate that the new type of contest will comply with Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law and the requirements for permissible

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

contests set forth in this Chapter. Following review of the proposed contest type, the commission shall inform such registrant whether the proposed contest type is approved or denied or whether additional information from such registrant is required.

(b) *Variations*. A registrant may introduce minor variations of permissible types of contests without seeking commission approval. A registrant is not required to amend a previously approved submission to describe a minor variation. Minor variations of permissible contests that may be introduced without commission approval include, without limitation:

- (1) the size of the contest and number of entries permitted;
- (2) non-material changes to entry fee and prize structure;
- (3) the number of athletes that a contestant selects to fill a roster when completing an entry;
- (4) the positions that must be filled when completing an entry; and
- (5) adjustments to a salary cap.

## **PART 5603**

### **Requirements for Contests**

Section	
5603.1	Disclosures to contestants
5603.2	Contest rules and game play
5603.3	Contest entry and lock requirements
5603.4	Prohibition on using insider information in contests
5603.5	Autopick and additional features and modes
5603.6	Computerized contestants
5603.7	Scripts
5603.8	Game display
5603.9	Concurrent sessions
5603.10	Prohibition on extension of credit

#### **§ 5603.1. Disclosures to contestants.**

(a) *Displays*. The requirements set forth in this Part apply to the contest information, display and help screens including any written, graphical and auditory information provided to a contestant either directly from the contestant interface or from a page accessible to a contestant from the contestant interface or from a page accessible to a contestant from a contestant interface via a hyperlink located in a conspicuous location.

- (1) Contestant interface and contestant device usage instructions, contest payout information and rules of participation shall be complete and unambiguous and shall not be misleading or unfair to the contestant. Any ambiguity shall be construed in a manner most favorable to the contestant.
- (2) Help screen information, including all contest eligibility, entrance fees, contest rules, prizes and scoring criteria shall be accessible by a potential contestant without the need for purchasing an entry;

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(3) Contest payout information shall include all possible winning positions, rankings and achievements, along with their corresponding payouts, for any available entry option.

(4) Any prizes that are offered in the form of merchandise, annuities, lump-sum payments or payment plans instead of cash payouts shall be explained clearly and conspicuously to a potential contestant for each contest that offers such a prize.

(5) Instructions presented aurally also shall be displayed in writing.

(6) Instructions shall be rendered in a color that contrasts with the background color to ensure that all instructions are clearly legible.

(7) A contest display shall state clearly the rules for payments of prizes where multiple wins are possible.

(8) A potential contestant or a contestant shall be able to view information on all available contest types, including by specific sports, entry fees required, number of entries allowed and prize structure for the contest.

(9) Statistical data made available to a potential contestant or a contestant pertaining to a contest shall be accurate and reasonably updated.

(10) A contest's starting time, including time zone, shall be clearly identified to a potential contestant.

(11) The rules available to a potential contestant and a contestant shall state clearly how contest winners are determined and shall state clearly the handling of an award in any case in which a tie is possible.

(12) The maximum percentage a registrant retains for each contest or entry shall be displayed fully in a platform's help screens or in an alternative manner approved by the commission.

(b) *Account history.* A contestant interface shall make a contestant account history readily accessible. Such account history shall include all credits and debits to an account for a period of no less than six months, or from the time the account was opened, if the contestant's account has been opened for fewer than six months.

(c) *Acknowledgment of entry.* Each contest entry, or related series of entries (such as bulk entries), shall be acknowledged to make clear the acceptance of each entry, so a contestant is in no doubt as to which entries have been accepted into a contest.

(d) *Contest results.* The results of each contest shall be displayed clearly to all contestants such that each contestant's entry is identified and credited with the associated prize, if any.

(e) *Payout adjustments.* The rules made available to a potential contestant and a contestant shall state clearly circumstances in which the payouts are to be adjusted, including, without limitation:

(1) when cancelled entries will be refunded; and

Text deleted from original proposed text appears in [brackets]  
Text added to original proposed text is underlined

(2) when and for what reason or reasons contests will be cancelled.

(f) *Explanation of rules.* A registrant shall disclose to a potential contestant and a contestant, through a help screen or rules explanation (or the equivalent), how contest points are calculated. If a contest will round or truncate statistics at a certain decimal place, a registrant shall disclose how many decimal places will be used in such calculations. A registrant shall disclose rules on how a contest is resolved in the event of a tie among contestants.

(g) *Data on rates of success.* A registrant shall maintain a webpage on such registrant's platform that provides information about relevant rates of success of contestants, including, without limitation, the performance of beginner contestants. Such webpage shall be accessible from a registrant's internet and mobile application home page and from any page from which a contestant may enter a contest. Such webpage shall include, without limitation:

(1) the percentage of such registrant's [contests] entry fees that are won by the top one percent, five percent and 10 percent of such registrant's contestants over each of one-month, three-month and six-month time periods; and

(2) statistics about the percentage of contestants who are net winners and net losers, as measured by the aggregate value of prizes received minus the aggregate entry fees paid, over relevant time periods, including at least over a one-week and a one-month period. Such information may be conveyed in regard to specific sports.

## **§ 5603.2. Contest rules and game play.**

(a) *Categorizing contestants.* A registrant shall categorize contestants based on experience.

(1) A *highly experienced contestant*, as set forth in Racing, Pari-Mutuel Wagering and Breeding Law 1401(6), is an authorized player who has:

(i) entered more than 1,000 contests offered by a single operator or registrant; or

(ii) won more than three prizes valued at one thousand dollars each or more from a single operator or registrant.

(2) An *intermediate contestant* means an authorized contestant who has entered more than 50 and [fewer] no more than 1,000 contests on such registrant's platforms and who is not a highly experienced contestant.

(3) A *beginner contestant* means an authorized contestant who has entered 50 or fewer contests on such registrant's platforms and who is not a highly experienced contestant.

(b) *Contests for beginner contestants.* Each registrant shall offer contests that are limited to beginner contestants and shall keep non-beginner contestants from entering, such contests. A registrant shall suspend the account of any non-beginner contestant who enters, directly or through another person as a proxy, a contest designated for beginner contestants and shall ban such contestant from further play for one year from the date of the latest violation, except that a registrant may allow an intermediate contestant to enter up to 10 beginner contests in any sport in which such contestant has not already entered 20 contests.

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(c) *Contests excluding highly experienced contestants.* Each registrant shall offer contests in which highly experienced contestants cannot enter. A registrant shall suspend the account of any highly experienced contestant found to enter a game, directly or through another person as a proxy, that excludes highly experienced contestants and shall ban such contestant from further play for one year from the date of the latest violation.

(d) *Resources for beginner contestants.* Each registrant shall make available resources for beginner contestants to learn the mechanics of contest play, how to identify low-cost contests and how to recognize highly experienced contestants.

(e) *Changes to contests.* A registrant shall not permit any material change to an announced contest rule unless such change is made with the informed consent of all contestants.

### **§ 5603.3. Contest entry and lock requirements.**

(a) *Disclosure of lock times.* A registrant shall disclose, for each contest, the time at which no further entries are permitted for such contest.

(b) *Disclosure of lock requirements.* A registrant shall disclose, for each contest, the lock requirements for such contest.

(c) *Multiple lock times.* The rules for a contest may allow for multiple lock times in situations in which underlying sports events begin at different times.

(d) *Posting and enforcement.* A registrant shall post and strictly enforce all rules governing lock times.

### **§ 5603.4. Prohibition on using insider information in contests.**

(a) *Prohibited disclosure of insider information.* No prohibited player, as defined in subdivisions (a), (b) or (c) of Racing, Pari-Mutuel Wagering and Breeding Law section 1401(14), shall disclose any insider information to any person who may make contest roster selections. A registrant shall not knowingly permit a prohibited player who is associated with such registrant in a manner described in such subdivisions (a), (b) or (c) of Racing, Pari-Mutuel Wagering and Breeding Law section 1401(14) to make any such disclosure and shall take reasonable measures to prevent any such disclosures.

(1) A registrant, upon learning of a violation of this section, shall bar the contestant committing the violation, as well as the contestant receiving such information, from entering any contest, by suspending the affected account or accounts and banning such contestant from further contests. A registrant also shall terminate any existing individual promotional agreements with any athlete, sports agent, team employee, referee or league official who violates this section and shall refrain from making any subsequent promotional agreements with such person.

(2) A registrant shall make these restrictions known to all affected persons and entities.

(b) *Prohibited disclosure to provide advantage.* A prohibited player as defined in subdivisions (d) or (e) of Racing, Pari-Mutuel Wagering and Breeding Law section 1401(14) shall not disclose any non-public information with the intent to provide an advantage to a person who may enter a contest or when knowing that it is probable that such information shall be used in such manner.

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(c) *Avoidance of facilitating prohibited disclosures.* A person who may enter a contest shall not solicit, obtain, accept, use or disclose to another person any information described in subdivisions (a) or (b) of this section. A registrant shall not provide such information to a contestant before such information is made public, shall not knowingly permit any contestant to obtain or provide another contestant with any such information and shall take reasonable measures to avoid facilitating any such disclosures.

(d) *Penalties.* A person (including a registrant) found to be in violation of this section shall be penalized as set forth in Part 5613 of this Chapter.

### **§ 5603.5. Autopick and additional features and modes.**

(a) *Autopick prohibited.* A registrant shall not offer an autopick draft option in any contest.

(b) *Permitted resources.* A registrant may offer contests that contain a resource, such as a data stream, that a contestant may use to facilitate fantasy roster selection, so long as the contestant interface:

(1) clearly describes to all contestants that such resource is available and the advantage such resource offers;

(2) discloses the method for obtaining such resource; and

(3) provides contestants with sufficient information to make an informed decision, prior to participation, as to whether to compete against other contestants who may possess such a resource.

(c) *Permitted advice.* A registrant may offer contests that support a feature that offers advice, hints or suggestions to contestants, so long as such feature meets the following requirements:

(1) the contestant advice feature shall describe clearly to a contestant that such feature is available and what options exist for selection;

(2) any contestant advice that is offered for purchase shall disclose clearly the cost and benefit;

(3) any contestant advice shall not be misleading or inaccurate and must be consistent with the rules of play for a contest;

(4) contest design shall prevent access to any information storage such that data related to the contest is not readily available through software tampering;

(5) any contestant advice feature shall allow a contestant the option of accepting the advice and shall not force a contestant to accept such advice; and

(6) the availability and content of contestant advice shall remain consistent and shall not adapt based upon prior participation or contest events.

(d) *Assisted-draft mode.* A registrant may allow contestants to use assisted-draft mode in a draft, provided that the assisted-draft mode meets the following requirements:

(1) assisted-draft mode shall offer the contestant an option to terminate the mode at any time; and

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(2) assisted-draft mode shall not disregard or override any contest information display requirements as compared to the manual mode of athlete drafting.

(e) *Preference rankings permitted.* A registrant may allow contestants, in drafting a roster, to rank roster candidates in order of preference, such that the highest available preferred roster candidate would be selected in the event a contestant fails to make a roster selection in the allotted time.

#### **§ 5603.6. Computerized contestants.**

A registrant shall not employ artificial contestant software to act as a contestant, except:

(a) the software may employ the use of artificial intelligence to facilitate participation for demos, free contests or training modes;

(b) the use of artificial intelligence software shall be explained clearly in help menus; and

(c) all computerized contestants shall be marked clearly in contests so that contestants are aware of which contestants are not human.

#### **§ 5603.7. Scripts.**

(a) *Unauthorized scripts prohibited.* A registrant shall not permit unauthorized scripts to be used on any platform and shall use commercially reasonable efforts to monitor for and to prevent use of such scripts.

(b) *Use of unauthorized scripts.* A registrant shall bar any person found to be using an unauthorized script from participating in any contest by terminating such person's account and by permanently banning such person from further contests.

(c) *Scripts that provide a competitive advantage.* A registrant shall not authorize scripts that are not made available to all contestants and therefore provide a contestant with a competitive advantage over another contestant. A script shall be deemed to provide a competitive advantage if, without limitation, such script could be used to:

(1) facilitate entry of multiple contests with a single lineup;

(2) facilitate changes in many lineups at one time;

(3) facilitate use of commercial products designed and distributed by third parties to identify advantageous game strategies; or

(4) gather information about the performance of others for the purpose of identifying or entering contests against competing contestants who are less likely to be successful.

(d) *Authorized scripts.* Authorized scripts shall either be incorporated as a game feature or be prominently published and thereby made available to all contestants.



Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

### **§ 5603.8. Game display.**

No registrant shall offer a display or interface that uses video or mechanized reels or symbols or any other depiction of gambling games (e.g.: slots, poker, blackjack, craps or roulette). No registrant shall use a contest result or results as the direct or indirect equivalent of a results-generator for a game or activity that appears to contestants to be an activity other than interactive fantasy sports.

### **§ 5603.9. Concurrent sessions.**

A registrant's platform shall reflect any action a user undertakes, while logged in, in any concurrent session.

### **§ 5603.10. Prohibition on extension of credit.**

A registrant shall not extend credit to any contestant.

## **PART 5604**

### **Restrictions on Play**

#### Section

5604.1	Prevention of play by prohibited persons
5604.2	Compulsive play plan
5604.3	Self-excluded contestants
5604.4	Excluded contestants
5604.5	Prizes won by prohibited, self-excluded and excluded persons

### **§ 5604.1. Prevention of play by prohibited persons**

(a) *Participation prohibited.* A prohibited player, as defined by Racing, Pari-Mutuel Wagering and Breeding Law section 1401(14), shall not participate in an approved interactive fantasy sports contest.

(b) *Operator procedures to prevent prohibited play.* A registrant shall submit for commission approval procedures to prevent prohibited players from participating in approved interactive fantasy sports contests. A registrant shall implement any changes to such procedures as the commission may direct at any time. Such plan shall include the following, in regard to prevention of play by a minor:

(1) specification of parental controls procedures to allow parents and guardians to exclude persons under the age of 18 from participating in an interactive fantasy sports contest. The registrant shall explain what information is made available about the specific steps a parent or guardian may take to implement parental controls, including the toll-free number that the registrant provides for individuals seeking help in establishing such parental controls, or other means of communication for such purpose that the commission may approve;

(2) detailed explanation of the steps taken to prevent persons under the age of 18 from entering a contest via the registrant's platform. The registrant shall explain what types of native or third-party age verification procedures are implemented to verify that each person registering for an account with such registrant's platform is not under the age of 18;

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(3) procedures used to identify and deactivate accounts created or used by persons under the age of 18 and to exclude such persons from all contests offered through such registrant's platforms;

(4) verification that any deposit made by a person under the age of 18 shall be refunded, less any prizes already awarded, within no more than two business days of discovery, pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(b)(i). The registrant shall also explain how deposits will be refunded; and

(5) procedures to ensure that persons under the age of 18 do not receive promotional materials that relate to interactive fantasy sports.

(c) *Required terms of use.* A registrant shall specify in the terms of use applicable to such registrant's platform or such registrant's contest rules that each class of individuals identified in Racing, Pari-Mutuel Wagering and Breeding Law section 1401(14) is prohibited from entering contests in which a contestant is required to pay an entry fee.

(d) *Operator liability for violations.* A registrant shall be strictly liable for permitting any prohibited player, as defined by Racing, Pari-Mutuel Wagering and Breeding Law section 1401(14), to enter a contest that such registrant conducts. The commission shall consider, however, before imposing any penalty or sanction upon a registrant for a violation of this section, other than a mandatory penalty set forth in subdivision (e) of this section, any circumstances that such registrant presents in writing to the commission as mitigating factors for the commission's consideration, including, without limitation, good-faith reliance on false or misleading information provided by the prohibited person and good-faith compliance with appropriate internal controls designed to prevent play by a prohibited person.

(e) *Mandatory sanctions for allowing play by minors.* The commission shall penalize a registrant found to have violated Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(b), unless such registrant has complied fully and in good faith with adequate age verification procedures approved pursuant to subdivision (b) of this section, as follows:

(1) for a first violation, a fine of \$5,000 or the amount accepted as an entry fee from a minor in a contest, whichever is greater;

(2) for a second violation within one year of a violation, a fine of \$20,000 or the amount accepted as an entry fee from a minor in a contest, whichever is greater;

(3) for a third violation within one year of a violation, a fine of \$25,000; and

(4) for a fourth violation or subsequent violation within one year of a violation, a fine of \$25,000 and such further action as the commission may deem appropriate, which may include, without limitation, the suspension or revocation of registration.

(f) *Reporting to commission.* A registrant shall submit to the commission a list of such registrant's members, officers, employees and agents. A registrant shall provide an updated submission to the commission, after the initial submission, that reflects additions and deletions to the personnel roster within five business days of such personnel change. The commission shall maintain such list and transmit the information in a manner to be determined by the commission.

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

### **§ 5604.2. Compulsive play plan.**

A registrant shall submit to the commission a compulsive play plan that includes the following:

- (a) the goals of the plan, including procedures and timetables to implement the plan;
- (b) identification of the individual responsible for implementation and oversight of the plan;
- (c) compulsive play assistance message and toll-free number approved in writing by the commission, to be displayed on each website page of the registrant's platform, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1404(1)(m);
- (d) procedures to identify and exclude contestants exhibiting compulsive play behavior;
- (e) procedures to limit or prevent marketing programs from reaching contestants exhibiting compulsive play behavior; and
- (f) procedures for providing information to contestants and responding to contestant requests for information in regard to any community, public and private treatment services designed to prevent, treat or monitor compulsive play and to counsel family members.

### **§ 5604.3. Self-excluded contestants.**

(a) *Request for self-exclusion.* In accordance with Racing, Pari-Mutuel Wagering and Breeding Law section 1404(d), an authorized contestant may request from a registrant to be self-excluded from such registrant's platform.

(b) *Required procedures.* A registrant shall submit for commission approval:

- (1) the method for authorized contestants to request self-exclusion;
- (2) identifying information required from an authorized contestant requesting self-exclusion;
- (3) procedures to monitor and remove self-excluded contestants from such registrant's platform;
- (4) time periods for self-exclusion;
- (5) procedures to prevent self-excluded contestants from receiving targeted communications and advertisements; and
- (6) procedures to cancel a self-exclusion request.

(c) *Account.* Upon receiving a self-exclusion request, a registrant shall not accept any new paid entries or deposits from the authorized contestant requesting such self-exclusion, but such authorized contestant shall be allowed to withdraw any amounts from such contestant's account and the registrant shall acknowledge such withdrawals to such contestant.

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(d) *Reporting to commission.* In addition to the requirement set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1406(f), a registrant shall submit to the commission annually an excluded contestant report that contains, for each excluded contestant, the:

- (1) unique contestant ID;
- (2) date the self-exclusion commenced; and
- (3) date the self-exclusion ended or is scheduled to end, if applicable.

#### **§ 5604.4. Excluded contestants.**

(a) *Authority to exclude.* A registrant may exclude an authorized contestant from such registrant's platform. During registration, the authorized contestant shall be notified of the terms and conditions upon which a contestant may be excluded from the platform. In addition, the commission may exclude an authorized contestant from a registrant's platform found to be in violation of this Chapter or Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law. The notice to an excluded contestant shall provide general instructions for resolution of any challenge to such exclusion.

(b) *Freezing of account.* Upon excluding an authorized contestant, a registrant may freeze the account of such contestant and shall allow at least 10 days from the date such registrant notifies such contestant of the exclusion for such contestant to challenge with such registrant such exclusion.

(c) *Account of excluded contestant.* A registrant shall not accept new paid entries or deposits from an excluded contestant, but an excluded contestant shall be allowed to withdraw any amounts from such contestant's account and the registrant shall acknowledge such withdrawals to such contestant.

(d) *Communications to excluded contestant.* A registrant shall prevent an excluded contestant from receiving targeted communications and advertisements for interactive fantasy sports contests and products.

(e) *Reporting to commission.* A registrant shall submit to the commission annually an excluded contestant report that contains, for each excluded contestant, the:

- (1) unique contestant ID;
- (2) date the exclusion commenced;
- (3) date the exclusion ended or is scheduled to end, if applicable;
- (4) reason for the exclusion; and
- (5) number of times the contestant has been excluded.

#### **§ 5604.5. Prizes won by prohibited persons, self-excluded and excluded contestants.**

Any prize won by a prohibited person, other than prizes that may be used as offsets pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1404(b)(i), shall be null and void and a registrant may pursue recovery of any such prize from the prohibited person who won such prize. Upon discovery

Text deleted from original proposed text appears in [brackets]  
Text added to original proposed text is underlined

within one year of the conclusion of a contest that a prohibited person has won or may be entitled to win a contest prize, a registrant shall recalculate all prize winnings for such contest as if such prohibited person had not entered such contest and shall for each contestant award and credit to each contestant the difference between the recalculated prize award and the prize already awarded, if any. A registrant may submit to the commission, for review and approval, a plan that establishes alternative benefits to contestants in lieu of recalculated prize awards.

## **PART 5605**

### **Accounting Controls**

Section	
5605.1	Audited financial statements
5605.2	Accounting and financial records
5605.3	Submission of standard financial and statistical reports
5605.4	Review, examination of records
5605.5	Special purpose entity
5605.6	Protection of contestant funds
5605.7	Bond in lieu of special purpose entity and trust accounts
5605.8	Contestant withdrawals
5605.9	Unclaimed funds
5605.10	Anti-money laundering

#### **§ 5605.1. Audited financial statements.**

(a) *Annual audit requirement.* A registrant, unless specifically exempted by the commission in writing, shall, at such registrant's own expense, cause such registrant's annual financial statements to be audited in accordance with generally accepted auditing standards by an independent certified public accountant licensed to practice.

(b) *Requirements for audited statements.* The annual financial statements required by subdivision (a) of this section shall be prepared on a comparative basis for a registrant's current and prior standard financial year. Such statements shall present financial position and results of operations in conformity with generally accepted accounting principles.

(c) *Other financial information.* The commission may require other financial information, in a format the commission prescribes, to be included as supplementary information in relation to the audited financial statements as a whole. Such information shall be subjected to auditing procedures as required by generally accepted auditing standards and include the independent auditors' report on such supplementary information.

(d) *Filing with commission.* A copy of a registrant's audited financial statements, together with the report thereon of the registrant's independent certified public accountant, shall be filed with the commission within 10 business days of the completion of the annual independent audit of the registrant's financial statements.

(e) *Management letter.* In addition to a registrant's audited financial statements, each registrant shall submit a copy of the management letter prepared by the independent certified public accountant that lists any internal control or operational weaknesses noted during the financial statement audit and

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

recommendations for improvement. The registrant shall prepare a response to the issues outlined in the management letter that describes any corrective actions taken or planned to be taken and include a copy of this response with such registrant's submission to the commission.

(f) *Additional requirements.* In addition to the management letter, the commission may require a registrant to engage an independent certified public accountant approved by the commission to perform an additional review of internal controls for the operation of interactive fantasy sports, cause such registrant's business and managerial practices to be audited and review specified expenditures that conform to specifications the commission prescribes. The commission shall notify a registrant of the type of report required, the scope of such report and the frequency with which such report should be performed. This review shall be performed at the expense of the registrant unless the commission determines otherwise. A registrant shall respond to recommendations in such report, noting any corrective actions taken or planned to be taken. A registrant shall submit to the commission two copies of such report, including the required response to the commission, within 120 days following the end of the periods covered by such report, unless the Commission instructs otherwise.

(g) *Publicly held registrant.* If a registrant, or any of its affiliates, is publicly held, such registrant or the affiliate shall make available and provide written notice to the commission any report. Such reports include, without limitation, forms S-1, 8-K, 10-Q, 10-K, proxy or information statements and all registration statements required to be filed by such licensee or affiliates with the United States Securities and Exchange Commission or other domestic or foreign securities regulatory agency, at the time of filing with the such agency.

(h) *Resignation or dismissal of accountant.* If an independent certified public accountant who was previously engaged as the principal accountant to audit a registrant's financial statements resigns or is dismissed as such registrant's principal accountant, or another independent certified public accountant is engaged as principal accountant, then:

(1) such registrant shall file a report with the commission within 10 days following the end of the month in which such event occurs, setting forth the following:

(i) the date of such resignation, dismissal, or engagement;

(ii) whether in connection with the audits of the two most recent years preceding such resignation, dismissal or engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements if not resolved to the satisfaction of the former accountant would have caused such accountant to make reference in connection with such accountant's report to the subject matter of disagreement, including a description of each such disagreement. The disagreements to be reported shall include those resolved and those not resolved; and

(iii) whether the principal accountant's report on the financial statements for any of the past two years contained an adverse opinion or disclaimer of opinion or was qualified. The nature of such adverse opinion, disclaimer of opinion or qualification shall be described; and

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(2) such registrant shall request the former accountant to furnish to the registrant a letter addressed to the commission stating whether that accountant agrees with the statements made by the registrant in regard to the requirements of subparagraph (ii) of paragraph (1) of this subdivision.

(i) *Additional audit.* The commission shall have the authority to conduct, or to have conducted at a registrant's expense, an audit or review of any of such registrant's financial controls and records.

## **§ 5605.2. Accounting and financial records.**

(a) *Record of transactions.* A registrant shall maintain complete, accurate and legible records of all transactions pertaining to such registrant's revenues, expenses, assets, liabilities and equity in conformance with generally accepted accounting principles. The failure of a registrant to maintain such records according to such principles shall be a violation of this section.

(b) *Accounting requirements.* The accounting records maintained by the registrant shall be maintained using a double-entry system of accounting with transactions recorded on the accrual basis and supported by detailed subsidiary records. Such subsidiary records shall include, at a minimum, each of the following:

- (1) detailed general ledger accounts identifying all revenue, expenses, assets, liabilities and equity for such registrant;
- (2) a record of all investments, advances, loans and accounts receivable balances due to such registrant;
- (3) a record of all loans and other accounts payable by such registrant;
- (4) a record of all accounts receivable written off as uncollectible by such registrant;
- (5) records that identify total entry fees and total winnings paid out:
  - (i) on each contest; or
  - (ii) by another accounting period pre-approved in writing by the commission;
- (6) records that support the revenue and tax determination of the applied New York resident percentage;
- (7) records required by such registrant's system of internal controls;
- (8) work papers supporting the monthly reconciliation of cash accountability; and
- (9) other records that the commission may require, in writing, to be maintained.

(c) *Retention period.* Notwithstanding anything in this section to the contrary, each accounting record shall be kept for a period of not less than five years from date of creation of such record.

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

### **§ 5605.3. Submission of accounting records and reports.**

(a) *Maintenance of records.* Registrants shall maintain accurate and complete accounting records that correctly record and explain the transactions and financial position for the registrant's interactive fantasy sports operations. Such records shall be maintained in accordance with generally accepted accounting principles. All such records shall be made available to the commission upon request.

(b) *Submission of reports and statements.* Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1409(2), each registrant shall submit, in a form and manner approved by the commission, a monthly report and reconciliation statement to the commission on or before the 10th business day of each month with respect to gross revenues and deposits received and made during the preceding month.

### **§ 5605.4. Review, examination of records.**

The commission or the commission's designee may:

(a) conduct periodic examinations of the accounting and financial records of registrants and of any SPE that has performed services for the registrant as required by sections 5605.5 and 5605.6 of this Chapter;

(b) review the accounting principles and procedures used by registrants and of any SPE that has performed services for the registrant as required by sections 5605.5 and 5605.6 of this Chapter; and

(c) request the registrant and any SPE that has performed services for the registrant as required by sections 5605.5 and 5605.6 of this Chapter to file copies of tax returns, tax records and tax adjustments with the commission.

(d) The registrant shall require that any SPE performing services as required by sections 5605.5 and 5605.6 of this Chapter for the registrant shall provide the foregoing to the commission or the commission's designee directly or through the registrant.

### **§ 5605.5. Special purpose entity.**

(a) Each interactive fantasy sports operator or registrant shall establish and maintain a special purpose segregated account that is maintained and controlled by a properly constituted entity that is not the operator or registrant and whose governing board includes one or more corporate directors who are independent of the operator or registrant and of any corporation affiliated with or controlled by the operator or registrant. Such special purpose corporate entity (which is defined as SPE in paragraph (14) of subdivision (b) of section 5600.1 of this Part) must require a unanimous vote of all corporate directors to file bankruptcy and must have articles of incorporation or organization, or other governing documents, that prohibit commingling of funds with those of the operator or registrant, except as may occur by the payment of a trust claim by the SPE pursuant to paragraph (3) of subdivision (b) of section 5605.6 of this Part. Such SPE must also be:

(1) restricted from incurring debt other than the obligation as trustee to pay trust claims, including to contestants;



Text deleted from original proposed text appears in [brackets]  
Text added to original proposed text is underlined

(2) restricted from taking on obligations of the operator or registrant other than trust claims payable to contestants; and

(3) prohibited from dissolving, merging or consolidating with another company (other than an SPE established by another operator or registrant that meets the requirements of this section) while there are unsatisfied obligations to contestants, including, without limitation, the obligations set forth in section 5605.6 of this Part.

(b) Each operator or registrant shall implement and prominently publish procedures that:

(1) prevent unauthorized withdrawals from contestant accounts by operators or registrants or others;

(2) make clear that the funds in the segregated account do not belong to the SPE or the operator or registrant and are not available to creditors other than a contestant whose funds are being held; and

(3) prevent commingling of funds in the segregated account with other funds, including, without limitation, funds of the operator or registrant; and

(4) establish a protocol for responding to and reporting on complaints by IFS contestants that their accounts have been misallocated, compromised or otherwise mishandled.

(c) Notwithstanding anything to contrary in this Chapter, all funds of an interactive fantasy sports contestant shall be deposited directly with the SPE of the interactive fantasy sports operator or registrant. The SPE shall receive and hold such funds in trust in a trust relationship whose legal existence is created solely by this Part and that is governed by the provisions of section 5605.6 of this Part. No such funds, including any prize or award won by a contestant, shall be deposited with the interactive fantasy sports operator or registrant or otherwise paid to such operator or registrant except as may be paid as a trust claim by the SPE pursuant to subdivision (b) of section 5605.6 of this Part.

#### **§ 5605.6. Protection of contestant funds.**

(a) *Contestant deposits in trust.*

(1) Funds deposited by contestants with the SPE of an interactive fantasy sports operator or registrant shall be, by operation of this section, received as assets of a trust for the purposes set forth in this section, not property belonging to such SPE or the operator or registrant. Such deposits shall include, without limitation, any funds provided on a contestant's behalf by a credit card processor and any prize or award won by a contestant in a contest offered by the operator or registrant that is credited to such person's contestant account.

(2) Pursuant to the trust relationship and obligations created by operation of this Part, the funds deposited by each contestant shall be a separate trust and the SPE of the operator or registrant shall be the trustee of each such trust, commencing with deposits on or after the effective date of this section, and shall continue with respect to every asset of the trust until every trust claim arising at any time has been paid or discharged for the purposes of the trust and the trust has been terminated (e.g., by the closing of the contestant account by the contestant) and the trust assets

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

distributed pursuant to this section. Such trust relationship is created by virtue of this section and shall apply regardless of the type of bank account that the SPE uses to hold the funds pursuant to paragraph (3) of this subdivision.

(3) Each SPE of an operator or registrant shall deposit and maintain all of the funds held in trust in an account in a branch of a national or State chartered banking institution.

(4) Funds held in trust shall not be commingled with other funds. The SPE shall not be required to keep in separate bank accounts or deposits the funds of the separate trusts of which such SPE shall be trustee pursuant to this section, so long as the books of account of such SPE for the operator or registrant shall show clearly the allocation to each trust of the deposits in and withdrawals from such account holding the funds held in trust.

(5) The books or records with respect to each trust shall contain entries of trust assets receivable, trust accounts payable, trust funds received and trust payments made with trust assets including without limitation the entry fees paid and prizes or awards won by a contestant in a contest. Such entries shall be sufficient to identify the party, amount, date, bank or depository and other pertinent information for each account entry.

(6) Failure of the SPE, as trustee, to keep the books or records required by this subdivision shall be presumptive evidence that the SPE, as trustee, has applied or consented to the application of funds actually received in trust by the SPE as money or an instrument for the payment of money for purposes other than a purpose of the trust as specified in this section. The SPE may be assisted by the operator or registrant to maintain such records.

(b) *Trust claims.* Such trust assets shall be held and applied by the SPE, as trustee, for the payment of trust claims. *Trust claims* means the following claims for payment for which the SPE, as trustee pursuant to the trust relationship and obligations created by operation of this Part, is authorized to use, in this order, the funds held in trust:

(1) A claim by a person to withdraw from such person's contestant account any funds that are not designated as an entry fee in an ongoing contest.

(2) A claim by a contestant for the prizes or awards won in a contest offered by the operator or registrant upon the completion of the contest. Such claims shall be paid by crediting the winnings and debiting the entry fees, and recording such credits and debits in the books and records of the SPE, with respect to the contestant account of each contestant.

(3) A claim by the operator or registrant for funds held in trust that were designated as entry fees in a contest by a contestant, after paying the claims to the contestants for the prizes or awards won by the contestants, upon the completion of such contest. The SPE of the operator or registrant may delay the payment of all or part of this trust claim for the purpose of orderly bookkeeping, including to implement a standard reconciliation of funds request submitted from the operator or registrant to initiate the payment of such claims by the SPE, and ensuring the payment of superior trust claims.

(c) *Payments to contestants.* An SPE, as trustee, is not authorized to determine the order of payment of trust claims of the contestants. An SPE, as trustee, shall apply assets held in trust in the order in

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

which the contestants request a distribution or withdrawal of each such person's contestant account funds.

(d) *Termination of accounts.* The beneficial interest in the remaining assets in each person's contestant account, upon the termination of the trust by such person having elected to close any contestant account and by payment or discharge of all the trust claims, shall vest in such person, and the SPE, as trustee, shall distribute same to such person within [two] five business days, unless the completion of fraud-prevention procedures necessitates a delay, in which case the operator shall so notify such person of the delay and the time in which the payment is anticipated to be made.

(e) *Diversion of trust assets.* Any transaction by which any contestant funds held in trust by operation of this Part are paid, transferred or applied for any purpose other than a purpose of the trust as stated in this section, before payment or discharge in order of all trust claims and the termination of the trust, is a diversion of trust assets, whether or not there are trust claims in existence at the time of the transaction. If the diversion occurs by the voluntary act of the SPE, as trustee, or operator or registrant or by the consent of the SPE, as trustee, or operator or registrant, then such act or consent is a breach of trust.

(f) *Embezzlement referrals.* The commission shall report to the gaming inspector general and to appropriate law enforcement officials, for possible action in regard to the embezzlement of such funds:

(1) any activity that constitutes an application or consent to an application of trust funds received in trust pursuant to this Part by the SPE, as trustee, as money or an instrument for the payment of money for any purpose other than the purposes of that trust; and

(2) any accessorial conduct, facilitation, solicitation, conspiracy or attempt by an operator or registrant to cause or benefit from a misapplication of such trust funds.

(g) *Disclosure of terms and conditions of trust accounts.* Each operator or registrant shall display prominently on such operator or registrant's platform a complete and unambiguous description that contestant deposits are held in trust and of the obligations of the SPE, as trustee, established by this section.

(h) *Unrelated services and products.* This section shall not apply to the purchase by a person from an interactive fantasy sports operator or registrant of any service or product that is unrelated to interactive fantasy sports or whose purchase is independent from entering any such contest.

#### **§ 5605.7. Bond in lieu of special purpose entity and trust accounts.**

In lieu of establishing an SPE and trust accounts as required by sections 5605.5 and 5605.6 of this Part, an operator or registrant may furnish a bond, with sufficient sureties, in an amount equal to the total value of all funds deposited by contestants (including any prizes and awards credited to contestant accounts) and sufficient to pay all claims including all prizes and awards offered. Such bond, if any, shall be in favor of the State of New York, which shall distribute, by the commission, such funds to contestants in the event the State collects from the surety. A copy of the surety bond shall be filed with the commission and shall be in a form approved by the commission. The monies secured by such surety bond shall at all times equal the total amount of outstanding funds deposited by contestants.

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

### **§ 5605.8. Contestant withdrawals.**

Each interactive fantasy sports registrant shall establish a protocol by which contestants can withdraw funds maintained in their accounts, whether such accounts are open or closed. Such requests for withdrawals must be honored by the later of five business days of the request or 10 business days of submission of any tax reporting paperwork required by law, unless the registrant believes in good faith that the contestants engaged in either fraudulent conduct or other conduct that would put the registrant in violation of this Chapter, in which case the registrant may decline to honor the request for withdrawal for a reasonable investigatory period until such investigation is resolved if such registrant provides notice of the nature of the investigation to the contestant. For the purposes of this paragraph, a request for withdrawal will be considered honored if such request is processed by the registrant but delayed by a payment processor, credit card issuer or by the custodian of a financial account.

### **§ 5605.9. Unclaimed funds.**

A registrant shall remit all unclaimed funds in dormant accounts of customers domiciled in New York in accordance with Abandoned Property Law section 1315.

### **§ 5505.10. Anti-money laundering.**

(a) *Minimum requirements.* For purposes of this section, a registrant shall, at a minimum:

- (1) establish a system of internal policies, procedures and controls to assess anti-money-laundering-related risks present within its business, considering, among other things, play volume and character, range of financial services offered, characteristics of certain games, contestant behaviors and contestant characteristics;
- (2) designate an anti-money laundering compliance officer and file the name of such officer with the commission;
- (3) conduct an internal and/or external independent audit to test for compliance and provide copies to the commission;
- (4) train appropriate employees in reportable currency transactions and identifying unusual or suspicious transactions;
- (5) assign an individual or group of individuals to be responsible for day-to-day compliance; and
- (6) employ the use of automated programs to aid in assuring compliance when automated processing systems are in use.

(b) *Submissions to commission.* To ensure compliance with this section, each registrant shall submit to the commission by June 30 of each year a compliance finding statement on a form issued by the commission and duly executed by the registrant's designated anti-money laundering compliance officer. Nothing in this section shall relieve the registrant from any related reporting requirements under any other state or Federal laws.

Text deleted from original proposed text appears in [brackets]  
Text added to original proposed text is underlined

## **PART 5606**

### **Internal Controls**

Section	
5606.1	Submission of internal controls
5606.2	Data security
5606.3	Retention requirements

#### **§ 5606.1. Submission of internal controls.**

In addition to the requirements set forth in Part 5601 of this Chapter, a registration applicant shall submit to the commission for approval a written description of its initial system of internal controls that meets the requirements set forth in this Part.

#### **§ 5606.2. Data security.**

(a) *Cybersecurity program requirements.* Each registrant shall establish a cybersecurity program designed to ensure the confidentiality, integrity and availability of information systems that performs five core cybersecurity functions:

- (1) identification of cyber risks;
- (2) implementation of policies and procedures to protect unauthorized access or use or other malicious acts;
- (3) detection of cybersecurity events;
- (4) responsiveness to identified cybersecurity events to mitigate any negative events; and
- (5) recovery from cybersecurity events and restoration of normal operations and services.

(b) *Cybersecurity standards.* A cybersecurity program as set forth in subdivision (a) of this section shall meet or exceed industry standards for website and payment data security, as the commission may announce by bulletin.

(c) *Chief information security officer.* Each registrant shall designate a chief information security officer responsible for overseeing and implementing the registrant's cybersecurity program and enforcing such registrant's cybersecurity policy. The chief information security officer shall make a written report to the commission every two years or upon commission request, to:

- (1) assess the confidentiality, integrity and availability of information systems;
- (2) detail exceptions to cybersecurity policies and procedures;
- (3) identify cyber risks;
- (4) assess the effectiveness of the cybersecurity program;
- (5) propose steps to remediate any inadequacies identified; and

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(6) include a summary of all material cybersecurity events that affected the registrant during the time period addressed by the report.

(d) *Policies and procedures.* Each registrant shall establish and implement policies and procedures designed to ensure the security of information systems and nonpublic information accessible to, or held by, third parties and include the following:

(1) identification and risk assessment of third parties with access to such information systems or such nonpublic information;

(2) minimum cybersecurity practices required to be met by such third parties;

(3) due diligence processes used to evaluate the adequacy of cybersecurity practices of such third parties;

(4) changes to the provision of services, including maintaining and improving existing information security policies, procedures and controls, taking into account the criticality of business systems and processes involved and re-assessment of risks;

(5) periodic assessment, at least annually, of third parties and the continued adequacy of the cybersecurity practices of such parties; and

(6) the access rights of third-party service providers shall be removed upon termination of contract or agreement or adjusted upon change.

(e) *Contestant location.* A registrant shall ensure that a platform reasonably detects the physical location of an authorized contestant attempting to access such platform and blocks contestants who attempt to enter contests from the IP addresses of known proxy servers.

(f) *Disaster recovery plan.* Each registrant shall prepare a disaster recovery plan that minimizes loss to contestant funds and prize winnings in the event the interactive fantasy sports system is rendered inoperable.

(g) *Technical standards.* The commission, by directive, may issue technical standards, or adopt existing technical standards, for the certification of a registrant's platform.

### **§ 5606.3. Retention requirements.**

(a) *Information required.* Each registrant shall retain the following information for five years, with the platform clock used for time stamping. The information required under this section shall be made available, in report format, within two business days of such request by the commission:

(1) For each contestant account, the information to be maintained, backed up and made available upon commission request shall include, without limitation, the following:

(i) unique contestant identification number not associated with the contestant's personal identifying information;

(ii) contestant identity details including verification method;

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

- (iii) contestant agreement to the terms and conditions and privacy policy;
- (iv) account history and current balance. Such account history shall include all credits and debits to an account for a period of no less than six months, or from the time the account was opened, if account has been opened for fewer than six months;
- (v) contestant experience category for each sport, where applicable;
- (vi) any self-imposed restrictions and exclusion status;
- (vii) previous accounts, if any, and reason for de-activation; and
- (viii) date of registration and physical address associated with the account.

(2) For each contestant account transaction, the information to be maintained, backed up and made available upon commission request shall include the following:

- (i) the date and time of the transaction;
- (ii) unique transaction identification;
- (iii) unique contestant identification number not associated with the contestant's personal identifying information;
- (iv) type of transaction;
- (v) amount of transaction;
- (vi) total account balance before transaction;
- (vii) total account balance after transaction;
- (viii) total amount of fees paid for transaction (if applicable);
- (ix) transaction status;
- (x) name of contestant's financial institution and last four digits of account number for deposit and withdrawal transactions, if applicable;
- (xi) method of deposit/withdrawal;
- (xii) user identification and employee name handling the transaction, if assisting contestant; and
- (xiii) the location, identified by ZIP code or latitude and longitude, of where a contest entry was placed.

(3) For each entry purchased, the information to be maintained, backed up and made available upon commission request shall including the following:

- (i) the date and time the contest started and ended;

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

- (ii) the contestant's selected roster of athletes, individual contest salary of the selected athletes and salary cap for the contest, if applicable pursuant to the rules of such contest;
- (iii) the total number of points earned for the fantasy team;
- (iv) total account balance at the start of the contest;
- (v) total account balance at the end of the contest;
- (vi) total amount of entry fees paid;
- (vii) total amount won for the prize;
- (viii) amount of any promotional credits paid;
- (ix) amount of any promotional credits won;
- (x) unique contestant identification; and
- (xi) contest identifier.

(4) For each fantasy sports contest the information to be maintained, backed up and made available upon commission request shall include the following:

- (i) the date and time the contest started and ended;
- (ii) unique contestant identification for each contestant participating, points earned, amount of entry fee paid and date paid;
- (iii) total amount of entry fees collected;
- (iv) the results of the contest in a format that displays the aggregation of all statistics used to arrive at the winning result;
- (v) unique contestant identification of each winning contestant, points earned, amount paid to winner and date paid;
- (vi) total amount of winnings paid to contestants;
- (vii) total amount refunded;
- (viii) amount of any promotional credits received;
- (ix) amount of any promotional credits awarded;
- (x) amount collected by the registrant for administering the contest;
- (xi) contest identifier; and
- (xii) the rules applicable to such contest.



Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(5) Significant event information to be maintained, backed up and made available upon commission request shall include the following:

- (i) failed system side login attempts;
- (ii) program error or authentication mismatch;
- (iii) firewall audit log full, where supported;
- (iv) remote access;
- (v) significant periods of unavailability of the platform or any critical component;
- (vi) wins in excess of \$5,000;
- (vii) transfers of funds, single and aggregate over one year, in excess of \$5,000;
- (viii) system voids, overrides and corrections;
- (ix) mandatory deactivation of a contestant;
- (x) changes to live data files occurring outside of normal program and operating system execution;
- (xi) changes to operating system, database, network and application policies and parameters;
- (xii) changes to date and/or time on master time server;
- (xiii) adjustments to a contestant account balance;
- (xiv) changes made to information recorded in a contestant account;
- (xv) any other activity requiring employee intervention and occurring outside of the normal scope of system operation;
- (xvi) changes made by the registrant to contest parameters;
- (xvii) contestant exclusions including reason for exclusion, requests to lift exclusion and actual lifting of exclusion;
- (xviii) irrecoverable loss of contestant-related data; and
- (xix) other significant or unusual events.

(b) *Advertisements*. All registrants shall retain copies of all advertisements for at least four years from the date of the last use of that advertisement and shall retain records sufficient to identify where such advertisements were placed. If an advertisement cannot be maintained in its original form, the advertising copy shall be retained.

Text deleted from original proposed text appears in [brackets]  
Text added to original proposed text is underlined

(c) *Complaints*. Each registrant shall maintain for a period of two years a record of each user complaint, the inquiry or investigation undertaken by the registrant, action taken by the registrant to resolve the complaint and the final disposition of the complaint. Such records shall contain the original or copies of the complaint, all written communications between the registrant and the complainant, all documents or telephone recordings created in connection with a complaint and any documentation provided to the consumer by the registrant. Such consumer complaint records shall include:

- (1) the name and address of the complainant;
- (2) the purpose of the complaint;
- (3) the date the complaint was received by the registrant;
- (4) the complaint denial whenever a complaint is denied
- (5) any additional information used by the registrant in determining how to resolve the complaint; and
- (6) how the complaint was resolved by the registrant, including any adjustment to a customer's account. In the event of an adjustment to a customer's account in excess of \$500, the registrant shall [notify] log each such adjustment and provide to the commission [within 48 hours of the] an annual report listing each such adjustment, the reasons therefore and the time taken to finalize such adjustment [having occurred], unless the commission requests a registrant to make more frequent reports.

The registrant also shall maintain a permanent record summarizing the number and nature of consumer complaints and the resolution or outcome of such complaints.

(d) *Disclosures*. A registrant shall retain for review for all contestants the disclosures required under this section for one month after a contest is completed.

(e) *Duration*. Such records as required under this Chapter shall be maintained for at least five years after the relationship is terminated between the contestant and the registrant, unless otherwise provided in this Chapter.

## **PART 5607**

### **Advertising and Marketing**

Section	
5607.1	Advertisements generally
5607.2	Advertisement restrictions
5607.3	Marketing, promotion and advertising disclosures
5607.4	Marketing restrictions

#### **§ 5607.1. Advertisements generally.**

(a) *Requirements*. Advertisements and promotions used by a registrant shall comply with Racing, Pari-Mutuel Wagering and Breeding Law section 1404(3) and contain a compulsive play assistance message as set forth in section [5604.3] 5604.2 of this Chapter.

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(b) *Print*. For signs, direct-mail marketing materials, posters and other print advertisements, the height of the font used for the compulsive play assistance message shall be the greater of:

(1) the same size as the majority of the text used in the sign, direct mail marketing material, poster or other print advertisement; and

(2) two percent of the height or width, whichever is greater, of the sign, direct mail marketing material, poster or other print advertisement.

(c) *Billboards*. For billboards, the height of the font used for the compulsive play assistance message shall be at least five percent of the height or width, whichever is greater, of the face of the billboard[;].

(d) *Video and television*. For video and television, the compulsive play assistance message shall be visible for either the entire time the video or television advertisement is displayed, in which case the height of the font used for the compulsive play assistance message must be at least two percent of the height or width, whichever is greater, of the image that will be displayed; or

(e) *Websites*. For websites, including platforms, social media sites, mobile phone applications, third-party platforms over which the registrant has actual or constructive control:

(1) the compulsive play assistance message shall be posted on each landing page, website homepage, customer account page and contest entry page or pages and on any interactive fantasy sports-related advertisement posted on the webpage or profile page;

(2) the height of the font used for the compulsive play assistance message shall be at least the same size as the majority of the text used in the webpage or profile page; and

(3) for advertisements posted on the webpage or profile page, the height of the font used for the compulsive play assistance message shall comply with paragraph (2) of this subdivision.

## **§ 5607.2. Advertisement restrictions.**

(a) *Prohibitions*. A registrant shall not display advertisements or promotions that:

(1) contain content that contradicts contest rules or terms and conditions of the site;

(2) depict a person under the age of 18, students, schools or colleges, or school or college settings, except where such images may incidentally depict a minor;

(3) state or imply an endorsement by a person under the age of 18, college athletes or college athletics or associations; or

(4) represent that a contestant is a winner or has been selected, or is otherwise being involved in a select group for receipt of a prize or that a contestant is entering a contest from which a winner or select group of winners will receive a prize or opportunity, when, in fact, the contest is simply a promotional scheme designed to make contact with prospective contestants or a substantial number of those entering to receive the same prize.

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(b) *Deceptive or misleading statements.* In addition to the requirements set forth in subdivision (a) of this Part, an advertisement or promotion shall not contain deceptive or misleading statements as to:

- (1) chances of winning;
- (2) the number of winners;
- (3) the value of the prizes;
- (4) availability of the prize;
- (5) entry fee, service charge, purchase or similar consideration in order to enter;
- (6) the rules, terms or conditions of participation; and
- (7) the date when the contest will terminate and the prizes that will be awarded.

**§ 5607.3. Marketing, promotion and advertising disclosures.**

(a) *Marketing, promoting and advertising.* In connection with the marketing, promoting, advertising or offering of any promotion or displaying or offering of such on a registrant's platform or platforms, or on any platform or platforms over which a registrant exercises actual or constructive control, such registrant shall:

- (1) clearly and conspicuously disclose material facts, terms and conditions of the promotion to potential contestants;
- (2) clearly and conspicuously disclose to consumers material limitations to the promotion; and
- (3) obtain express informed consent from any consumer who must deposit money to take advantage of the promotion.

(b) *Contestant performance.* A registrant shall disclose to potential contestants material facts concerning the performance of contestants on such registrant's platforms where a marketing, promotion, advertisement or offering makes specific or general statements about such performance.

(c) *Winnings.* A registrant shall disclose to potential contestants material facts concerning any representations of past winnings, average winnings or expected performance or outcomes when such representations are made.

(d) *Federal rules.* A registrant shall follow all rules concerning endorsements, including, without limitation, rules of the Federal Trade Commission.

(e) *Retention.* A registrant shall maintain records of each television, radio, print, digital or other advertisement for a period of at least four years from the date such advertisement last appears and shall make each such record available to the commission upon request.

Text deleted from original proposed text appears in [brackets]  
Text added to original proposed text is underlined

**§ 5607.4. Marketing restrictions.**

(a) *Marketing or advertising as gambling prohibited.* A registrant shall not market or advertise such registrant's platforms as gambling in the State of New York.

(b) *Embedded keywords.* A registrant shall not use misleading embedded keywords or similar methods in its platform to

- (1) attract minors, self-excluded contestants or persons who are or may be problem gamblers; or
- (2) accomplish any other misleading or deceptive purpose.

**PART 5608**

**Misconduct, Associations and Duties to Promote Integrity**

Section	
5608.1	Misconduct and improper associations
5608.2	Duties to report
5608.3	Duties to give evidence
5608.4	Prohibited actions

**§ 5608.1. Misconduct and improper associations.**

The commission may impose penalties or take other appropriate action against a registration if the commission finds that any registrant, or any person employed by or associated with a registrant:

- (a) is associating, consorting or negotiating with bookmakers or other persons of similar pursuits in regard to unlawful activity in the State of New York;
- (b) is associating, consorting or negotiating with persons who have been convicted of a gambling or gambling-related crime;
- (c) is guilty of any fraud or has attempted any fraud or misrepresentation in connection with interactive fantasy sports contests or otherwise;
- (d) has violated any law, rule or regulation with respect to interactive fantasy sports or sports gambling in any jurisdiction; or
- (e) has violated any rule, regulation or order of the commission.

**§ 5608.2. Duties to report.**

- (a) *Dishonest or unlawful acts.* In the event that a registrant becomes aware, or reasonably suspects
- (1) a person has obtained a personal benefit or a benefit for another person by a dishonest or unlawful act affecting the conduct or playing of a contest or a sports event, the results of which formed the basis, in whole or in part, of a contest; and/or

Text deleted from original proposed text appears in [brackets]  
Text added to original proposed text is underlined

(2) there has been an unlawful act that has affected a contest or a sports event the results of which formed the basis, in whole or in part, of a contest,

such registrant shall immediately give the commission a written notice advising the commission of all material facts known about the matter and any documents or other evidence in the possession or control of the registrant in connection with the matter.

(b) *Bribes.* If any person employed by or associated with a registrant is approached with an offer or promise of a bribe or with a request or a suggestion for a bribe or for any improper, corrupt or fraudulent act or practice in relation to a contest or a sports event relating to a contest or with a suggestion that any contest or sports event relating to a contest be conducted otherwise than in accordance with the rules and regulations of the commission, it shall be the duty of such person to report such suggestion, offer, promise or bribe immediately to the commission. Failure to so report shall subject such person or persons and such registrant associated with such person to the penalties and other actions the commission may take.

(c) *Suspicious activity.* A registrant shall report to the commission any other suspicious activity involving such registrant in the operation of interactive fantasy sports contests, whether such acts are committed by the registrant or its employee or agent, or whether such acts are committed against the registrant, including, without limitation, criminal activity, financial irresponsibility, fraud, misrepresentation, security breaches, breach of confidentiality of a contestant's personal information or any violation of Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law or this Chapter.

(d) *Money laundering.* In the event the registrant becomes aware or reasonably suspects that there is a fraudulent or suspicious transaction in the operation of interactive fantasy sports contests that may involve money laundering, or an activity similar to money laundering, the registrant shall report in writing the suspicious activity to the commission. Nothing in this section shall relieve the registrant from any related reporting requirements under any other state or Federal laws. Such registrant shall make available to the commission any documents or access to computer or other data systems that the commission may request in connection with the matter.

### **§ 5608.3. Duties to give evidence.**

(a) *Testimony and evidence.* It shall be the duty of each registrant and each employee or other person associated with each registrant to report promptly when requested or ordered to do so by any official of the commission in furtherance of an investigation or hearing pursuant to this Part and to testify under oath concerning any facts within such registrant or such person's knowledge and to produce any books, records, written matter or other evidence within such registrant or such person's possession or control relevant to such matter.

(b) *Access to documents and computer or other data systems.* A registrant shall make available to the commission any documents and access to computer or other data systems used in connection with paid-entry interactive fantasy sports contests that the commission may request in connection with any matter reported pursuant to this Part. This duty applies to activity in connection with a registrant and contests offered by a registrant, whether such acts are committed by the registrant or the registrant's employees, agents, representatives, affiliates, contractors, customers, potential customers or contestants.

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(c) *Penalties.* The commission may impose such penalties or take such action as the commission may deem appropriate in the event of a failure to appear when directed to do so by any official of the commission in furtherance of an investigation or hearing or to testify under oath concerning any facts within such registrant's or person's knowledge and produce any books, records, written matter or other evidence within such person's possession or control relevant to such matter.

#### **§ 5608.4. Prohibited actions.**

(a) *Dishonest obtaining of a benefit.* No authorized or prohibited contestant shall, in relation to an authorized contest, dishonestly obtain a benefit by any act, practice or scheme or otherwise dishonestly obtain a benefit through the use of any device or item.

(b) *Alteration or falsification of information.* Any person who knowingly alters or falsifies information recorded on any record, document or report required under this Chapter, at the time of the transaction or after the fact, for any purpose, including, without limitation, for the purpose of concealment, deception, or circumvention of internal control minimum procedures, may be subject to the penalties and other actions the commission may take pursuant to law (e.g., a fine, penalty or revocation of registration by the commission).

### **PART 5609**

#### **Reporting and Auditing**

##### Section

5609.1	Reporting of changes
5609.2	Reporting of compliance
5609.3	Testing and reporting requirements
5609.4	Monitorships

#### **§ 5609.1. Reporting of changes.**

Each registrant has a continuing duty to disclose any material change or changes in such registrant's business form or activity. A registrant must disclose any change in information provided to the commission in the registration application, amendments to the application, information provided to contestants, information provided to investors or information provided in an annual report or statutory report to the commission.

#### **§ 5609.2. Reporting of compliance.**

(a) *Independent compliance review.* The commission may require any registrant to engage, at the expense of such registrant, an independent firm to review such registrant's compliance with Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law and this Chapter, or any portion thereof, and report thereon to the commission, as the commission may direct.

(b) *Requirements for independent firm.* The independent firm that intends to review a registrant's compliance shall, at a minimum:

- (1) be independent from any registrant or third-party provider of interactive fantasy sports systems;

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(2) be accredited by an international accreditation body to demonstrate that such firm is competent and qualified; and

(3) be able to test, evaluate, conduct analyses or forensic examination, verify, certify, inspect and render opinions for portions of the interactive fantasy sports systems and any components thereof or modification thereto that the commission deems essential to the integrity of the operation.

### **§ 5609.3. Testing and reporting requirements.**

(a) *Independent testing laboratory.* The commission, in the commission's discretion, may require a registrant to provide a certification by an independent testing laboratory approved by the commission that such registrant's platform performs as such registrant represents to the public. The commission may consider any relevant factor in the exercise of such discretion, including, without limitation, the number of contestants who use the platform, the amount of money paid by contestants to such registrant, the amount of prize money offered by the registrant, size and complexity of the registrant's platform and the difficulty presented for the commission to conduct such technical and financial audits using commission employees, to determine when and to what extent a registrant shall be required to provide such a certification. The registrant shall be solely responsible for the expense of such certification.

(b) *Requirements for independent testing laboratory.* An independent testing laboratory that intends to test and certify interactive fantasy sports systems and any components thereof or modification thereto for use by a registrant shall be approved by the commission. An independent testing laboratory shall:

(1) be independent from any registrant or third-party provider of interactive fantasy sports systems and any components thereof or modification thereto;

(2) be accredited by an international accreditation body approved by the commission to demonstrate that such laboratory is competent and qualified to test scientifically and evaluate technology related to the operation and control of interactive systems;

(3) be able to demonstrate experience in the development of technical standards and testing of interactive fantasy sports systems;

(4) be able to test, evaluate, conduct analyses or forensic examination, verify, certify, inspect and render opinions for portions of the interactive fantasy sports systems and any components thereof or modification thereto that the commission deems essential to the integrity of the operation; and

(5) demonstrate reasonable competence for the task at hand.

### **§ 5609.4. Monitorships.**

(a) *Generally.* In the event the commission determines that the integrity of interactive fantasy sports, or public confidence in such integrity, requires particular supervision of a registrant's operations, compliance or other activities, the commission may require such registrant to engage, at such registrant's expense, a monitor acceptable to the commission. If the commission orders the establishment of a monitorship, such monitorship shall last for such time as the commission may prescribe. The terms and conditions of such monitorship shall be subject to the review and approval of



Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

the commission. Such monitorship may include the monitoring of activities conducted within New York State and outside of New York State, as the commission may determine. All costs and expenses of such monitorship shall be paid directly by such registrant. The commission may impose a fine or other sanctions for failure to pay the reasonable costs and expenses of a monitor.

(b) *Notice of monitorship.* The commission shall provide written notification to a registrant informing such registrant that such registrant will be placed under monitorship. Such notice shall include a brief description of the facts that serve as the rational basis for requiring such monitorship, the scope of the monitorship, actions that such registrant must take to comply with the monitorship and a description of the time period of the monitorship or the conditions that must be satisfied in order for the monitorship to be rescinded. The commission may, for good cause, amend the terms and conditions of such monitorship at any time.

(c) *Appeal of commission determination.* A registrant may contest the imposition of a monitorship by filing with the commission a written appeal within 15 calendar days of receiving the notice of monitorship. The only bases upon which a registrant may challenge the imposition of a monitorship are:

- (1) lack of a rational basis to impose a monitorship;
- (2) a mistake of fact; and/or
- (3) a mistake of law.

A registrant bears the burden of proof to demonstrate whether any basis set forth in this subdivision is established. If such a challenge is filed, the commission shall conduct a hearing pursuant to this Subtitle.

(d) *Challenge of cost.* A registrant may contest the cost of a monitorship. Such registrant bears the burden of proof to demonstrate that the cost of such monitorship is unreasonable.

(e) *Request to suspend or terminate monitorship.* A registrant under monitorship may request that the commission suspend or terminate a monitorship upon a showing that the registrant has satisfied all the conditions that served as the basis for imposing the monitorship.

(f) *Termination of monitorship.* The commission shall terminate monitorship upon the expiration of any time period, as amended, set forth for such monitorship or upon a commission finding that all the conditions set forth for termination of such monitorship have been satisfied.

## **PART 5610**

### **Taxes and Fees**

Section	
5610.1	Report of gross revenue and tax
5610.2	Annual report
5610.3	Failure to file
5610.4	Payment of taxes, fees, assessments and fines

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

### **§ 5610.1. Report of gross revenue and tax.**

(a) *Requirements for report.* On the 10<sup>th</sup> day of each month, each registrant shall submit a report of interactive fantasy sports gross revenue and monthly tax on Form IFS-1, as prescribed by the commission. The form shall be certified as complete and accurate and signed by an officer of the registrant. If the form is prepared by a paid preparer, the form also shall be signed by such person. Completed forms shall be returned to the commission in any manner the commission may direct.

(b) *Amended reports.* A registrant may, by written request and commission approval of said request, submit an amended monthly report for any of the following reasons:

- (1) carryover of the awarding of a claimed prize to a subsequent month;
- (2) correcting or reconciling errors, substantiated by supporting documentation, in a prior report; or
- (3) due to errors identified by another government agency or independent audit.

### **§ 5610.2. Annual report.**

(a) *Required report.* Each registrant shall submit a report of activity to the commission on or before June 30, containing, for the 12 months ended on the preceding March 31:

- (1) the information required by Racing, Pari-Mutuel Wagering and Breeding Law section 1406;
- (2) a certification by an officer of the registrant that each report of interactive fantasy sports gross revenue and monthly tax submitted to the commission for each of the 12 months ended on the preceding March 31 is accurate and complete;
- (3) a statement of assets and liabilities of the registrant;
- (4) a statement of the aggregate balance of dormant contestants' accounts and action taken pursuant to Abandoned Property law section 1315; and
- (5) any additional information the commission requires or requests, including, without limitation, current financial statements and other reports and records of any SPE that has performed services for the registrant as required by sections 5605.5 and 5605.6 of this Part.

(b) *Audit.* If the commission determines to conduct an audit, as authorized by Racing, Pari-Mutuel Wagering and Breeding Law section 1406(2), the commission may do so with commission staff and/or an auditor contracted for such purpose. The registrant audited shall pay all costs relating to such audit. The commission shall determine the scope of the audit. The commission, in the exercise of discretion, may amend the scope of any such audit, either before or during such audit. The commission, in the exercise of discretion, may reopen any audit that has been completed.

### **§ 5610.3. Failure to file.**

A registrant that fails to submit a monthly tax report without having first obtained in writing an extension from the commission shall be subject to penalty, as set forth in 5614.4.

Text deleted from original proposed text appears in [brackets]  
Text added to original proposed text is underlined

#### **§ 5610.4. Payment of taxes, fees, assessments and fines.**

(a) *Remittance.* The payment of State tax required by Racing, Pari-Mutuel Wagering and Breeding Law section 1407 shall be remitted by electronic fund transfer (*EFT*) to the commission no later than 10 days after the end of each month. Electronic fund transfers shall be coordinated with the commission.

(b) *Requirements for remittance.* Payment of any fee, assessment or fine demanded or invoiced by the commission other than State tax, the collection of which is prescribed in subdivision (a) of this section, shall be remitted to the commission within 30 days of such demand or invoice. EFTs shall be acceptable and shall be coordinated with the commission. To set up EFT payments by automated clearing house credit, a registrant shall contact the commission at a contact point the commission shall designate.

### **PART 5611**

#### **Financial Stability**

Section	
5611.1	Criteria
5611.2	Approval required
5611.3	Failure to demonstrate financial stability

#### **§ 5611.1. Criteria.**

(a) *Financial stability required.* Each registrant, and each of such registrant's principals, shall establish and maintain throughout the duration of such registrant's registration sufficient financial stability to ensure such registrant's ability to perform the duties and responsibilities of an interactive fantasy sports operator. The commission may consider any relevant evidence of financial stability.

(b) *Sufficient funds.* Each registrant shall be able to pay, as and when due, all local, State and Federal taxes, including the tax on gross revenues and regulatory costs imposed by Racing, Pari-Mutuel Wagering and Breeding Law sections 1407 and 1408, and any costs associated with the registration process. Registrants shall establish and maintain an account with sufficient funds to cover regulatory cost estimates, as provided by the commission. Such account shall be used solely for the purpose of maintaining balances to pay regulatory expense estimates. The commission may adjust regulatory expense estimates at any time. The registrant shall provide records demonstrating the ability to pay regulatory cost estimates upon request of the commission.

(c) *Debt.* Each registrant shall be able to pay, exchange, refinance or extend debts, including long-term and short-term principal and interest and capital lease obligations, that will mature or otherwise come due and payable during the registration term, or to otherwise manage such debts and any default with respect to such debts. Each registrant shall advise the commission of such registrant's plans to meet this standard with respect to any material debt or debts coming due and payable within 12 months after the end of the registration term.

#### **§ 5611.2. Approval required.**

No registrant shall consummate any transaction, including a material debt transaction, that would preclude such registrant's ability to meet the requirements set forth in section 5611.1 of this Part, without prior written approval by the commission.

Text deleted from original proposed text appears in [brackets]  
Text added to original proposed text is underlined

### **§ 5611.3. Failure to demonstrate financial stability.**

In the event a registrant fails to demonstrate financial stability as required by this Part to the satisfaction of the commission, the commission may take such action as is necessary to fulfill the purposes of the Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law and to protect the public interest, including, without limitation, issuing conditional or temporary registrations, approvals or determinations; establishing an appropriate cure period; imposing reporting requirements in excess of those otherwise mandated by this Chapter; requiring the maintenance of reasonable reserves or the establishment of dedicated or trust accounts to insure future compliance with the financial stability standards; requiring a special audit, with such audit plan to be approved by the commission and conducted by an independent accounting firm at the expense of the registrant; suspending, revoking or denying registration; and such other action as the commission determines appropriate in accordance with this Chapter.

## **PART 5612**

### **Complaints**

Section	
5612.1	Receipt of complaints
5612.2	Duty to investigate, report and resolve
5612.3	Proof of compliance
5612.4	Registrant flexibility

### **§ 5612.1. Receipt of complaints.**

(a) *Procedures.* Each registrant shall establish a procedure for receiving and responding to all consumer complaints, including, without limitation, complaints by contestants that their contestant accounts have been misallocated, compromised or otherwise mishandled. Such complaint resolution procedures shall be easy to locate on a registrant's platform or platforms and help links of the registrant.

(b) *Details of complaint.* A complaint shall contain clear and unequivocal information about the complainant's identity and shall give all relevant details that gave rise to the complaint.

(c) *Investigation or referral.* Where a complaint is made to the commission, the commission may investigate the complaint or may refer the complaint to the registrant.

### **§ 5612.2 Duty to investigate, report and resolve.**

(a) *Timing.* A registrant shall inquire immediately into any complaint made to the registrant in respect to the operation of a contest and shall resolve diligently each and every complaint as soon as practicable.

(b) *Investigation and corrective action.* A registrant shall investigate all complaints promptly and fully and also shall take corrective action with respect to any matter that such registrant determines is not in compliance with the law or the rules and orders of the commission.

(c) *Status of complaint.* A registrant shall inform each complainant, and the commission where a complaint was referred to the registrant by the commission, by notice in writing or telecommunication

Text deleted from original proposed text appears in [brackets]  
Text added to original proposed text is underlined

of the status of the inquiry of the registrant within 10 days from the date such complaint was made to the registrant.

(d) *Dispute resolution.* A complainant who is not satisfied with the resolution of a complaint within 21 days shall be offered by the registrant the option of dispute resolution in a neutral and expeditious forum, such as arbitration, to be completed within 60 additional days, unless the registrant notifies the commission that unusual circumstances exist, explains such circumstances and proposes an alternative timeframe for resolution, subject to commission approval.

### **§ 5612.3. Proof of compliance.**

The registrant shall maintain any information and materials necessary to demonstrate such registrant's compliance with this Part. Registrants may be required by the commission to maintain additional records and information where there is cause to believe the registrant is not complying with this Part.

### **§ 5612.4. Registrant flexibility.**

Each registrant shall establish a procedure for receiving and responding to all consumer complaints. Except as may be directed otherwise by the commission, each registrant may determine the specific policies and procedures such registrant will adopt and the methods by which such registrant will implement such policies and procedures so long as such policies and procedures are designed reasonably to achieve the objectives set forth in this Part. A registrant shall have flexibility to determine such policies and procedures and methods in light of the size, nature and scope of the registrant's operations, including, for example, the volume of contestants and entries, the aggregate amount of prize offerings and the number and the registrant's history of consumer complaints.

## **PART 5613**

### **Penalties and Sanctions**

Section	
5613.1	Commission authority
5613.2	Suspension and revocation
5613.3	Effect of suspension or revocation
5613.4	Penalties for non-payment of fines, assessment and other fees

### **§ 5613.1. Commission authority.**

The commission may impose on any person, including an entity, any penalty or sanction authorized by the Racing, Pari-Mutuel Wagering and Breeding Law or this Chapter.

### **§ 5613.2. Suspension and revocation.**

The commission may suspend or revoke a registration for:

(a) fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the fairness or integrity of any interactive fantasy sports contest;

(b) violation of the commission's instructions or directives pursuant to law;

Text deleted from original proposed text appears in [brackets]

Text added to original proposed text is underlined

(c) failure to file any report, to keep records or to pay any tax or regulatory cost as required by Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law or this Chapter;

(d) failure to demonstrate financial stability; or

(e) violation of any provision of Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law or this Chapter.

### **§ 5613.3. Effect of suspension or revocation.**

(a) *Blocking of access.* If a registration is suspended or revoked, a registrant, or former registrant, in the case of a revocation, immediately shall block access to all platforms of such registrant or former registrant, in the case of a revocation, to any potential contestant located in New York State and shall take such action with respect to contestant accounts as the commission may direct.

(b) *Posting of notice.* A registrant whose registration is suspended or revoked immediately shall post, verbatim, on such registrant's website, viewable to anyone who obtains access to the registrant's website while located in New York, whatever notice of the suspension or revocation that the commission directs to be so posted.

(c) *Pending contests.* In the event of a suspension or revocation of registration, the commission may direct the cancellation or suspension of any pending contests of such registrant from being offered to customers within New York State and the refunding of entry fees collected from contestants located within New York State at the time of a contest entry.

### **§ 5613.4. Penalties for non-payment of taxes, fines, assessments and other fees.**

If a registrant fails to submit payment of:

(a) State tax within 10 days after the 10<sup>th</sup> day of the month; or

(b) a fine or fee within 30 days of the date such fine or fee is due pursuant to written notice from the Commission,

the commission shall charge interest as permitted by law and impose a fine of at least \$100 for each day that such payment is late. The commission may take such other action against such registrant as the commission deems appropriate, including, without limitation, the suspension or revocation of a registration.