

Joint Public Hearing

**Mobile Sports Betting in New York:
A First Year Review & Its Budget Impact**

**Senate Standing Committee on Racing, Gaming, and Wagering
Senator Joseph P. Addabbo, Jr., Chair**

**Assembly Standing Committee on Racing and Wagering
J. Gary Pretlow, Chair**

**Legislative Office Building
Van Buren Hearing Room A**

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The following material was developed with the capable assistance of Commission Deputy Executive Director Steven Lowenstein, Division of Gaming Director Thomas Anapolis and Deputy Division of Gaming Directors James Googas and Scott McLear, however, even if characterized as being of the Commission or staff, all opinions are wholly my own.

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Mobile Sports Wagering In New York: A First Year Review

First Year Results

Upon the one-year anniversary of mobile sports wagering in New York State was January 8, 2023. Through January 7, the total mobile sports wagering handle reached \$16,595,732,482 and generated a total net revenue to education of \$709,247,358. An additional \$200 million in licensing fees were also collected, generating a total of more than \$909 million in revenue.

In comparison to other jurisdictions, New York has achieved eight out of the top 10 highest handle generated months in the history of mobile sports wagering.

Greatest Historical Monthly Mobile Sports Revenue			
	State	Month	Handle
1	New York	January 2022	\$1,686,263,898
2	New York	March 2022	\$1,644,789,642
3	New York	November 2022	\$1,564,164,673
4	New York	February 2022	\$1,555,051,187
5	New York	October 2022	\$1,534,078,893
6	New York	April 2022	\$1,396,791,941
7	New Jersey	January 2022	\$1,348,860,083
8	New Jersey	October 2021	\$1,303,198,342
9	New York	May 2022	\$1,269,862,570
10	New York	September 2022	\$1,265,023,090

<https://sportshandle.com/2022-in-review-new-york-mobile-sports-betting/>

According to GeoComply, a software firm used by sports books to ensure geolocation requirements, more than 3.8 million unique player accounts have been created since launch in January of 2022, conducting over 1.2 billion transactions.

In addition to the education aid, for Fiscal Year 2023-2024 and annually thereafter, revenues from mobile sports wagering also provide \$5 million to fund sports programs for underserved youths and \$6 million to fund problem gambling education and treatment.

A. How Did We Get Here?

1. Statutory Authority

Chapter 59 of the Laws of 2021 amended N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1367 and added § 1367-a to authorize mobile sports wagering when the sports wager is made through virtual or electronic means from a location within New York and is transmitted to and accepted by electronic equipment located at a licensed commercial casino gaming facility. The statute also directed the Commission to conduct a competitive bidding process to award licenses to not less than two Mobile Sports Wagering Platform Providers that would host no less than four Mobile Sports Wagering Operators.

2. Request For Applications

Pursuant to that authority, on July 9, 2021 Commission staff issued a Request For Applications or RFA.

On August 9, 2021, the Commission received six applications in response to the RFA, with a cumulative associated 14 operators. The primary applicant of the six bids were:

- Hillside (New York) LLC dba bet365
- Sports Information Services Limited dba Kambi, and colloquially referred to as Kambi #1
- Betfair Interactive US LLC dba FanDuel Sportsbook
- TSG Interactive US Services Limited dba FOX Bet
- Sports Information Services Limited dba Kambi and colloquially referred to as Kambi #2
- Score Digital Sports Venture Inc. dba theScore Bet

In awarding a Mobile Sports Wagering License to a Platform Provider, the Commission was required to follow the provisions of § 1367-a, which required the evaluation of an applicant based on factors designed to ensure maximized sustainable, long-term revenue for the State.

3. Evaluation Criteria and Scoring

An Evaluation Committee reviewed and scored each by consensus on the evaluation criteria set forth in Section 7.2 of the RFA. That section

provided that an applicant must meet or exceed a specific technical score threshold to advance for consideration for potential licensure.

Applications were evaluated based on specific criteria:

- Expertise in the market by the Applicant and the Applicant's Proposed Operators was valued at up to 25 points
- Integrity, sustainability and safety of the Mobile Sports Wagering Platform were valued at up to 20 points
- Past relevant experience of the Applicant and the Applicant's Proposed Operators were valued at up to 15 points
- Advertising and promotional plans were valued at up to 7.5 points
- Capacity to rapidly and efficiently bring Authorized Sports Bettors into the Applicant's Platform were valued at up to 2.5 points
- Applicant's efforts to foster racial, ethnic, and gender diversity in Applicant's workforce and the each of the Applicant's proposed Operators' workforce were valued at up to 2.5 points and
- Other factors impacting revenue to the State were valued at up to 2.5 points

The maximum cumulative score for Technical Factors was 75 points, with a bonus possibility of 5 additional points dependent upon whether an applicant had a signed agreement or agreements that provides for revenue-sharing related to mobile sports wagering with Native American tribes or nations that are party to a compact with the State.

Only those with a Technical Factor Score - excluding the Native American bonus, if any - at or exceeding 60 points out of 75 points were deemed to be a Qualified Applicant.

Of the six bids received, only three were advanced as Qualified Applicants. Those advanced were:

- Hillside (New York) LLC dba bet365
- Betfair Interactive US LLC dba FanDuel Sportsbook
- Sports Information Services Limited dba Kambi #2

Pricing was only considered for the three advancing applicants after the finalization of the Technical Factor scoring. Points for pricing were, pursuant to RFA Section 7.2, based on a sliding scale, with a tax of:

- 12.5 percent up to 30 percent valued at up to 3 points
- 30 percent up to 40 percent valued at up to 10 points
- 40 percent up to 50 percent valued at up to 15 points and

- 50 percent valued at 20 points

A Qualified Applicant was also awarded an additional point for each full percentage point over 50 percent.

A Qualified Applicant's final total score was computed by adding the Technical Factor Score, the Tribe or Nation Bonus (if any), and the Pricing Factor Score.

4. Establishment of the Selected Applicant

The Evaluation Committee identified Kambi #2 as the Selected Applicant, meaning their application received the highest Total Score. Since their application reached the minimum requirement of two Platform Providers and four Operators without inclusion of other applications, Kambi #2 was the sole applicant selected for initial award.

Their proffered tax rate was 64 percent.

Accordingly, pursuant to Section 7.4 of the RFA the Evaluation Committee established the Kambi #2 Tax Rate Matrix as the Final Tax Rate Matrix and, on October 18, 2021, all Qualified Applicants were sent the Final Tax Rate Matrix and informed they had five business days to amend their RFA Appendix B: Pricing Matrix submission to conform with the Final Tax Rate Matrix.

All did, enabling the Evaluation Committee to proceed to an additional license evaluation.

The Evaluation Committee unanimously advanced for licensing award as a Platform Provider:

- Sports Information Services Limited dba Kambi, with American Wagering, Inc. dba Caesars Sportsbook; Empire Resorts, Inc. dba Resorts World; PointsBet New York LLC dba PointsBet; Rush Street Interactive NY, LLC dba Rush Street Interactive; and WSI US, LLC dba WynnBET as Platform Providers and/or Operators.

5. Additional License Review

Pursuant to Section 1367-a(4)(d) of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law, the Evaluation Committee could recommend award of additional licenses to Qualified Applicants if the

Committee determined that such additional awards were in the best interests of the State, provided all additional licensees pay the same tax rate as contained in the Final Tax Rate Matrix.

In conducting the additional license review, the Evaluation Committee considered:

- the likelihood that the Selected Applicant would be able to achieve full market potential without additional licensees
- the likelihood that adding the next highest scoring Applicant would result in a larger aggregate market and
- the impact on long-term revenue to the State by adding the next highest scoring Applicant.

To make this determination, the Evaluation Committee reviewed the market analysis materials submitted by the Applicants and its own supplemental analysis to determine whether the aggregate revenue to the State was higher than the aggregate revenue without the additional Platform Provider(s) and Operator(s) associated with the next-highest-scoring remaining Qualified Applicant.

The supplemental analysis was to provide a check to the market analysis materials submitted by applicants, which were generally prepared in a manner to advance their position rather than provide independent analysis.

a. Inclusion of Additional Licensee

Pursuant to RFA Section 7.5, the Evaluation Committee considered the remaining Qualified Applicants sequentially, taking the highest-ranking applicant based on Technical Scoring first.

The Evaluation Committee determined that inclusion of Betfair Interactive US LLC dba FanDuel Sportsbook as an additional Platform Provider and Operator with Bally's Interactive, LLC dba Bally Bet; BetMGM, LLC; and DraftKings as Platform Providers and Operators was in the best interests of the State.

Inclusion of this bid lowered all tax rates to 51 percent. Per the Final Tax Rate Matrix.

b. Evaluation and Rejection of Final Qualified Bidder

The Evaluation Committee then considered whether the addition of bet365 would be in the best interests of the State. The inclusion would reduce the overall tax rate from 51 to 50 percent and increase the number of Platform Providers from 8 to 9 and the number of Operators from 9 to 10.

The Committee was unable to make a positive determination that an additional license award to bet365 would be in the best interests of the State as the totality of the information reviewed could not support a finding that their licensure would expand the mobile sports wagering market and increase the aggregate revenue in the State.

6. Commission Action

At the Commission meeting of November 8, 2021, conducted by conference call in conformity with Part E of Chapter 417 of the Laws of 2021, the Commission considered and unanimously accepted the Report of the Evaluation Committee established for the purposes of evaluating bids submitted pursuant to the N.Y.S. Gaming Commission Request For Applications For Mobile Sports Wagering Platform Providers and accepted the award of licensure at a tax rate of 51 percent to the following Platform Providers and Operators:

Applicant	Platform	Operators
Betfair Interactive US LLC dba FanDuel Sportsbook	Betfair Interactive US LLC dba FanDuel Sportsbook	Betfair Interactive US LLC dba FanDuel Sportsbook
	Bally's Interactive, LLC dba Bally Bet	Bally's Interactive, LLC dba Bally Bet
	BetMGM, LLC	BetMGM, LLC
	DraftKings	DraftKings
Sports Information Services Limited dba Kambi	Sports Information Services Limited dba Kambi	Rush Street Interactive NY, LLC dba Rush Street Interactive
	American Wagering, Inc. dba Caesars Sportsbook	American Wagering, Inc. dba Caesars Sportsbook
	WSI US, LLC dba WynnBET	WSI US, LLC dba WynnBET
	PointsBet New York LLC dba PointsBet	Empire Resorts, Inc. dba Resorts World PointsBet New York LLC dba PointsBet

At the same meeting, the Commission considered and unanimously adopted Rule No. SGC, 35-21-00010-P, Mobile Sports Wagering and Sports Wagering at Gaming Facilities, which governs mobile sports wagering and related amendments to the regulations governing in-person sports wagering at the four licensed commercial casinos.

7. License Term Establishment

Finally, pursuant to RFA Section 8.1, TERM OF LICENSE, the Commission accepted term of license awarded, which was designated to correspond to the Final Tax Rate Matrix. Under the RFA, a three-year Term of License would be granted if the Final Tax Rate were 12.5 percent up to 30 percent, 5 years if the Final Tax Rate were 30 percent up to 50 percent, and 10 years if the Final Tax Rate were 50 percent and over.

Given the accepted bids at a Tax Rate of 51 percent, a term of ten-years was established.

8. Rulemaking

Immediately following the passage of the statute, staff were besieged with requests to meet to discuss the new law and the likely implementation process. To ensure a consistency in response, staff internally met to tabulate anticipated questions regarding the new law and the likely process leading to award of licenses. This document, which ultimately included 152 questions and answers, was included in the RFA as Appendix C.

Staff also determined as part of the RFA development, to create draft proposed regulations to provide insight into the anticipated regulatory environment governing mobile sports wagering. These draft regulations were caveated as being a pre-proposal document subject to commissioner consideration and proposal with notice that the proposal might be revised during the administrative rulemaking process. These pre-proposal rules were seconded to the RFA, as Appendix A.

The RFA process itself contained two rounds of questions and answers, resulting in over 200 unique inquiries. The Commission received 94 comments regarding the draft regulations, of which 42 were duplicative. Nine simply sought clarification of terms, meaning there were 43 comments seeking change to the pre-proposal document.

Preliminary to the rulemaking processing itself, staff reviewed and accepted 14 comments in full or in part. The modified rules were presented to the Commission for proposal consideration.

a. Proposal

The proposed rulemaking was to establish regulations for mobile sports wagering in a new Part 5330, which would address definitions; various licensing requirements, system requirements; operational aspects and requirements, integrity protections; accounting and financial records requirements; patron account requirements; promotions; regulatory costs; and anti-money laundering program requirements. Where appropriate, the proposed mobile sports wagering requirements mirrored regulatory requirements already in place for sports wagering at the commercial casinos.

The Rule proposal also sought to amend the existing Part 5329 to incorporate new statutory requirements and update statutory cross-references, definitions, and nomenclature to distinguish regulatory requirements applicable to the sports wagering operated by commercial casinos and the potential mobile sports wagering operations. Wagering restrictions for casino and mobile sports wagering employees and related persons were also standardized.

The Commission unanimously voted on August 16, 2021 to propose the draft rules. Mobile Sports Wagering and Sports Wagering at Gaming Facilities were published in the 1 September 2021 New York State Register as Proposal No. SGC-35-21-00010-P. Accordingly, the public comment period was set to expire on November 1, 2021.

b. Adoption

The Commission met on November 2, 2021 and, *inter alia*, considered adoption of the proposed rule. The Commission considered comments from seven entities: Bulletproof; Draft Kings; The New York Racing Association, Inc.; New York Thoroughbred Breeders, Inc.; New York Thoroughbred Horsemen's Association, Inc.; Penn National Gaming; and Sportradar. Many of the comments were accepted, but none required a substantive change to the rules proposed.

Accordingly, the Commission adopted the rules, as technically amended.

A full review of the comments, their content and Commission analysis can be found at the N.Y. State Register of November 24, 2021, pp. 15-19. The Rules became effective upon publication.

9. Pre-Launch

a. Licensing

Chapter 59 of the Laws of 2021 did not create a new licensing scheme for Mobile Sports Wagering. Rather, the RFA and the proposed rules to be considered for Commission adoption have Platform Providers licensed equivalent to a Casino Vendor Enterprise. Additionally, entities offering goods and services that directly relate to gaming activity with a Mobile Sports Wagering Platform Provider are also required to be licensed equivalent to a Casino Vendor Enterprise.

As part of the RFA process, each bidder was required to submit materials necessary for licensing of the Platform Provider and all associated or affiliated operators within the bid. All complied, and the Commission processed all materials necessary for selected Platform Providers and their Operators.

All recommended bidders were positioned to receive an award of temporary license and were conditionally licensed after the Commission adopted the proposed rules applicable to mobile sports wagering.

b. Server Location

Each Qualified Bidder was informed that they may themselves select the Gaming Facility wherein to house its servers, with the Commission retaining final approval of the location, not to be unreasonably withheld, as well as the review and approval of reasonable and actual costs of physically housing and securing the servers. All, excepting Rush Street Gaming, determined to house in a secure location within Resorts World Catskills.

c. Pre-Operational Approvals

Each licensed Platform Provider also needed to get their software tested and approved by an independent testing laboratory to ensure it operates in accordance with any Commission published standards, satisfy all other statutory and regulatory obligations such as provision and approval of final internal controls governing the approved activity, assurances regarding geofencing of State borders, and pay licensee fees.

Practically, each licensed platform and operator was obligated to submit for review and approval Entity and Occupational Licensing and Registration documents, a Server Location Agreement, System of Internal Controls, House Rules, Know Your Customers documentation, Platform and Operator Agreements, a Responsible Gaming Plan, undergo a Patron Account Demonstration, Racing Law §1367-a (4) procedural requirements, provide Commission access to Back-Office functions, illustrate a Geolocation Certification, obtain Promotions Approval, provide Independent Game Testing Laboratory certification, and obtain Wagering System Approval.

Operationally, this, in large measure, left to licensee control to submit materials, gain approvals, and then to establish when they wished to commence operations.

10. Commencement of Activities

Four licensed Mobile Sports Wagering Operators - Caesars Sportsbook, DraftKings, FanDuel, and Rush Street Interactive – were first, having on January 6, 2022 satisfied all statutory and regulatory requirements necessary to accept and process mobile sports wagering activity and were approved to commence operations with launch effective no earlier than Saturday, January 8, 2022 at 9 a.m. Eastern Standard Time.

After that launch effective date, each of Caesars Sportsbook, DraftKings, FanDuel, and Rush Street Interactive were authorized to commence accepting wagers, based upon their own business capabilities and readiness. All four launched on January 8, 2022, with the first accepted wager being a \$21 over wagering on the Dallas Cowboys versus the Philadelphia Eagles game accepted by Fan Duel at 9:00.46 a.m.

The remaining five conditionally licensed mobile sports wagering operators commence operations between January 17, 2022 and July 7,

2022, when the final licensed operator – Bally Bet – became operational.

B. First Year Challenges

1. Wagering Menu Evaluation

Unlike many jurisdictions, the Commission determined from the outset to control the wagering menu offered by its licensed operators. Many jurisdictions allow the operator to determine what it wishes to offer its patrons, with the regulator interjecting only when it finds the offering problematic. The Commission, keeping in mind that the statutory purpose of mobile sports wagering was to ensure maximized sustainable, long-term revenue for the State, determined that most wagering activity is conducted on a limited number of sports. Accordingly, we chose to initially focus on these, leaving for later consideration those wagering opportunities that likely would have little revenue impact.

The other reason for control over wagers was the strong statutory language regarding consumer protections. Our pathway was consistent to what the Commission and its regulatory predecessors established in the realm of pari-mutuel wagering on horse racing, for bingo and games of chance conducted by certain charitable organizations, within the three Indian gaming compacts and within commercial casinos.

Regardless, the law limited the options of what is allowable as a sports wager. As "Sports wager" is defined by § 1367(1)(w) of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law as cash or cash equivalent that is paid by an authorized sports bettor to a casino or a mobile sports wagering licensee to participate in sports wagering offered by such casino or mobile sports wagering licensee.

The most organic limitation is that a wager must meet the definition of a "sports event" which is defined at § 1367(1)(t) of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law. The definition provides that a "Sports event" means any professional sport or athletic event and any collegiate sport or athletic event, except a prohibited sports event. The term "Prohibited sports event" is itself defined at § 1367(1)(s) of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law as meaning a sport or athletic event in which any New York college team participates regardless of where the event takes place, or high school sport or athletic event. That means a collegiate tournament occurring in New York is not prohibited so long as no New York college team is participating in that particular sports event.

The Commission's first consideration is whether a proposed wager is allowable under law. Many wagers allowed in other jurisdictions are not allowable in New York. For instance, wagers on the Academy Awards, the Antoinette Perry Award for Excellence in Broadway Theatre (Tony's), or the Grammy Awards are not sports wagers.

Likewise, while popular, wagers on events whose outcome is determined by a subjective vote are prohibited by statute. These include wagering on the Heisman Trophy winner, or post-season awards such as Most Valuable Player or Cy Young Award.

By practice, the Commission has determined to disallow wagers having a negative implication to the outcome of a sporting event, e.g., missed field goals in football or basketball, double faults in tennis, missed putts in golf, errors in baseball, turnovers or penalties and fouls. In the same manner, the Commission has not authorized player-specific proposition wagers within an approved collegiate athletic event or regarding officiating of a sports event, e.g., number of fouls called.

From a practical sense, when considering whether to authorize a wager staff will evaluate the rules of wager play and the methodology of wager resolution. In both instances, the Commission is interested in wagering rules that are readily understandable and clear as to winning and losing determination.

2. Sports and Leagues Evaluation

As with wager determination, the Commission also limits sports and leagues accepted for sports wagering. This enables the Commission to have some measure of control over events exposed for wagering and allows some level of balance between risk with the activity itself and reward, being revenue potential. As with wager determination, many regulatory jurisdictions leave these determinations to their licensees.

The Commission remained mindful that the purpose of the mobile sports wagering was to ensure maximized sustainable, long-term revenue for the State and are cognizant that any scandal involving sports integrity would likely have a deleterious revenue effect. Accordingly, we have determined to be cautious in sport and league approval.

Practically, staff considers the likely revenue generated by such league itself, their history of compromised events, the likelihood of widespread interest in the sport or league, and whether other jurisdictions have

permitted or authorized wagering on such sport or league and their history of experience.

The Commission also considers the level of competition, the strength of league control over its activities and participants, the pay structure for its participants, partnerships with integrity monitoring providers, and any information provided by a requesting operator relative to the sport or league and propriety of the activity conducted.

With numerous requests, the Commission has sought to balance interest in sports or leagues against defined weaknesses, such as low remuneration of its participants. In these cases, the Commission has limited forms of wagers authorized and/or limited the amount of wagering allowed. The theory is to limit exposure on these events and reduce the ability for a bad actor to make a large score from lesser competition.

Overall, wagering activity has been authorized on over 20 sports: including Auto Racing, Baseball, Basketball, Boxing, Cycling, Fighting, Golf, Hockey, Lacrosse, Rugby, Soccer, Softball, Tennis, and Volleyball. Each of those sports consist themselves of various approved sanctioning bodies or leagues. Those sports competition with restricted stakes include Athletes Unlimited (Basketball, Lacrosse, Softball, Volleyball), American Cornhole, National Lacrosse League and NCAA Division 1 Lacrosse, Professional Fighters League, U.S.F.L. and Indoor Football League, Australian Football League, Cricket, Professional Darts Corporation, World Snooker Championship, World Tennis, International Table Tennis Federation, European Table Tennis Union and Sao Paulo Challenger.

Sport	Leagues, Levels or Sanctioning Bodies	Wager Variations Allowed
Auto Racing	9	31
Baseball	5	143
Basketball	14	154
Boxing	6	20
Cycling	2	3
Fighting	2	8
Football	4	261
Golf	8	112
Hockey	9	53
Lacrosse	1	5
Rugby	2	10
Soccer	37	124

Softball	1	5
Tennis	5	70
Volleyball	1	2
	106	1,001

3. Advertisements and Promotions Evaluation

The N.Y. Racing, Pari-Mutuel Wagering and Breeding Law contains a few specific limitations regarding mobile sports wagering advertising.

In § 1367-a (4)(a)(iv), an operator is obligated as a condition of license to ensure that when referencing the chances or likelihood of winning in advertisements or upon placement of a sports wager to ensure they do not make any inaccurate or misleading statements concerning the chances of winning and the number of winners. That same section, at 1367-a (4)(e), provides that advertisements for contests and prizes offered by an operator shall not target prohibited sports bettors, minors, or self-excluded persons.

The Commission has not yet regulated within this arena, beyond problem gambling notice requirements which are discussed *infra*.

The Commission requires all promotions to be approved by staff prior to exposure by a mobile sports wagering operator. While this is undertaken through authority to ensure proper placement of problem gambling messaging, staff also reviews each promotion for content, considering clarity to patrons regarding terms and manner of operation.

Practically, staff considers a variety of considerations, primary of which is the clarity to patrons regarding terms and manner of operation. Obviously, the promotion must be based on an approved wager or sport, must contain the dates of operation, clearly reference how it is engaged, and must have some tenable connection to benefit furtherance of the State’s mobile sports wagering industry.

The Commission has limited the types of acceptable promotions to Odds Boost, Profit Bets, Earn and Get, Parlay Insurance, Bet and Get, Sign-Up Bonus, and Risk-Free Bets.

- Odds Boosts are a promotion that increases the odds in favor of the bettor to drive additional wagers to a certain offering. Patrons opt-in to the promotion and are paid in cash if the wager wins.

- Profit Boosts are an increasing of odds in favor of the bettor to drive additional wagers to a certain offering. Patrons opt-in to the promotion and are paid in free bets/site credits if the wager wins. These boosts differ from Odds Boosts in that they are offered at a higher value to the patron and they are paid using free bets or site credits.
- Earn and Get promotions are where a patron is incentivized to wager on a specific market and receives an incentive for doing so. These promotions are designed to drive additional wagers to a certain market to potentially increase market visibility to players that may not wager on such. Patrons opt-in to the promotion and receive cash or free bets or site credits or other valuables for placing the wager.
- Parlay Insurance is a promotion where a patron receives all or a portion of a specific wager back if the wager or a specific portion of a wager loses. These promotions are designed to drive additional wagers to a certain market to potentially increase the markets visibility to patrons who do not wager on such. Patrons opt-in to the promotion and receive cash or free bets or site credits if the wager or a specific portion of a wager loses.
- Bet and Get promotions are where a patron is incentivized to place a wager on a specific market and receives a larger payout if the market wins. These promotions are typically used as sign-up offers and are designed to incentivize customers to the operator platform. Patrons typically use a promotional code during sign-up, place a wager and, if their wager wins, receive enhanced payout odds in free bets or site credits.
- Sign-Up Bonus promotions are an additional sum of free bets or site credits given to a patron upon creating an account and making a deposit of money. These promotions are designed to attract customers to the operator platform.
- Risk-Free Bets are when a patron receives the amount of a wager in free bets or site credits if the wager loses. These promotions are typically used as sign-up offers and are designed to incentivize customers to an operator platform. Bettors typically use a promotional code during sign up, place their first wager, and, if that wager loses, are refunded the amount in free bets or site credit.

4. Customer Complaint Intake and Review

Per N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1367-a. (4)(f), every operator must develop and prominently display procedures on the main page of their mobile sports wagering platform for the filing of a complaint by a patron. The same section of law requires an initial response be given by an operator to such complaining patron within forty-eight hours. A complete response is required to be provided by the operator to a complaining patron within ten business days. The statute also specifically provides that an aggrieved patron may file a complaint alleging a violation of law directly with the Commission.

By Commission Rule 5329.23, a mobile sports wagering operator must investigate diligently all patron complaints within five calendar days. Where a complaint is made to Commission staff, the Commission reserved unfettered access to all information related to the patron's wager specifically and all information relative to patron complaints generally. Operators are also charged to immediately bring to the attention of the Commission all patron complaints regarding wagers or payouts in excess of \$5,000.

Practically, the Commission receives complaints in several forms.

Patron complaints can be generated via direct telephone call to Commission offices, via electronic mail to Commission accounts, and referenced from the N.Y.S. Office of the Inspector General or N.Y.S. Office of the Attorney General. Finally, Commission Rules obligate certain patron complaints be referenced by operators themselves.

Patron Complaints Sourcing, 2022	
Type	Number
Direct to Commission from Patron	632
From Operator, pursuant to Regulation	0
From Attorney General	18
From Inspector General	156

In 2022, we received 806 patron complaints. 632 directly from patrons, 18 from the Attorney General and 156 from the Inspector General. No more than \$5,000 complaints were referenced from operators.

Once received, Staff undertakes complaint triage, dividing those alleging a potential statutory or regulatory violation or what would amount to a potential violation of operator Internal Controls or House Rules from those complaints regarding customer service, for which the

Commission is not responsible. The latter accounts for the vast majority.

Review of the complaints finds 785, or 97.3 percent, regarded customer service. The balance, 21, or 2.70 percent, regarded allegation of statutory, regulatory, internal control or house rules.

Patron Complaints Received, 2022		
Type	Number	Percent
Allegation Involving Statutory, Regulatory, Internal Control or House Rule	21	2.70
Allegation Involving Customer Service	785	97.3

The Commission requires each operator designate a single point of contact for the receipt of patron complaints from the Commission. Accordingly, following triage, patron complaints are forwarded to the appropriate designated operator contact for their review and management. Practically and appropriately, this results in an operator representative making direct contact with their customer to resolve the complaint.

Following resolution, each operator must provide a written summary to the Commission detailing their process of resolution and their subjective understanding whether the patron is satisfied with the resolution.

Our review identified 791, or 98.13 percent, that we were satisfied with the result. 15, or 1.86 percent, remain unresolved to our satisfaction and remain pending.

Patron Complaints Received, 2022		
Type	Number	Percent
Resolved to Commission's Satisfaction	791	98.13
Unresolved	15	1.86

The Commission maintains a log of complaints received by operator, complainant, category, and resolution. This log is managed by senior staff, who regularly review to ensure both statutory and regulatory timeframes have been adhered and to ensure all have been resolved or are in states of active resolution.

As a curiosity, of 806 complaints received, only 15 involve patrons who have complained on more than one occasion. Note that there are over 3.8 million unique registered accounts.

5. Deductibility of Promotions

At the conclusion of the first week of operation, mobile sports wagering licensees contested the Commission's interpretation that promotional credits were taxable under New York law. In support of their position, the licensees advanced arguments that:

- They were unaware of the Commission's interpretation until guidance on completing the tax submission forms was provided on Friday, January 8, 2022, shortly before the commencement of wagering;
- They argue that promotional credits do not qualify as "cash equivalents" paid by a bettor, and therefore wagers placed using promotional credits do not meet the definition of a "sports wager"; and
- If wagers placed using promotional credits are not "sports wagers" they cannot be taxed under the definition of "sports wagering gross revenue".

a. Commission Position

Despite protestations otherwise, the Commission's position on deductibility of promotional credits had been well publicized.

In a pre-RFA Question and Answer document provided to all interested parties on July 1, 2021, the Commission provided the following answer:

Mobile Sports Operation, 11.

Q: Will operators be allowed to deduct free play and promotional credits from gross gaming revenue?

A: No.

The RFA also included two items that addressed promotions. RFA Appendix A was a Draft Regulation Part 5330 (including draft changes to Part 5329). As mentioned, at a functional level this document was draft regulations to govern mobile sports wagering in a pre-proposal format. Included as Appendix C was the pre-RFA Question and Answer document referenced above. These two documents were specifically incorporated into the

RFA pursuant to RFA § 1.4, RFA APPENDICES,
ATTACHMENTS, AND EXHIBITS.

With respect to the pre-proposal regulations, Draft Regulation 5330.29 (g) read:

Promotions. Promotional spend shall not be deducted from revenue or added to loss when calculating gross gaming revenue.

The draft language was included in the proposed regulation and final, adopted regulation and may be located at Commission Regulation 5330.29 (g). Review of the comments received during rulemaking found no submission addressing this proposed rule.

b. Use of the Term “Cash Equivalents”

The licensees argued that the meaning of “cash equivalents” should be limited to assets that are readily convertible to cash. They buttress this argument with the position that since promotional credits cannot be “cashed out” by an account holder, these promotional credits do not qualify as “cash equivalents.”

Their argument ignored the context in which the term is used in mobile sports wagering. While promotional credit may not be cashed out, they are precisely converted to cash in the context of placing a wager - as the mobile sports wagering operator provides their customer with a wager at a dollar value - in exchange for the promotional credit.

The Commission also found it unlikely that the Legislature envisioned an account holder staking convertible securities when they used the term “cash equivalents”, finding it more likely that the term was specifically limited to promotional credits.

c. Sports Wagers

The licensees also argue that promotional credits cannot be considered as a “cash equivalent that is paid by an authorized sports bettor.” However, the Commission found this argument flawed by the fact that if the use of promotional credits fell outside of the definition of a “sports wager,” the licensee is not authorized to legally accept or pay-off the wager itself.

As the licensees indicated, the term “sports wager” is defined by N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §1367(w) as “cash or cash equivalent that is paid by an authorized sports bettor to a casino or a mobile sports wagering licensee to participate in sports wagering offered by such casino or mobile sports wagering licensee.”

Simply, the statute does not allow for a wager funded with anything other than cash or cash equivalent paid by the bettor. Therefore, the acceptance of a wager placed with promotional credits is a recognition that the promotional credit is a “cash equivalent” paid by an authorized sport bettor.

Taking the analysis to its end, if wagers placed utilizing promotional credits constituted a legal sports wager, per N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1367(y), the value of the promotional credit paid for the wager must be included in “the amount equal to the total of all sports wager” and therefore is properly included within Sports Wagering Gross Revenue.

d. Statutory Interpretation

The licensees hinted that the exclusion of promotional credits was intended by the statute. The Commission disagreed.

A reading of N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 13, finds this interpretation strained. The statutory structure for commercial gaming facilities identifies a specific deduction of approved promotional gaming credits and a substantial limitation of deductibility. See N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1351.2. The fact is that deductibility of promotional credits from the gaming facility gross gaming revenue is specifically provided, while in the sports wagering authorization there is no provision for the deduction of promotional credits from gross revenue. Accordingly, it is logical to find the Legislature had no intent to exclude promotional credits from taxation of mobile sports wagering revenue.

This interpretation is further supported by review of the definition of licensed gaming facility’s gross gaming revenue as reflected by N.Y. Racing, Pari-Mutuel Wagering and Breeding

Law § 1301.25. Here, the section requires “the total of all sums actually received by a gaming facility licensee from gaming operations” be included within gross gaming revenue. If one were to accept that promotional credits did not represent a dollar value **paid** by an authorized sports bettor, it follows that promotional credits are not within the sums **actually** received by a gaming facility licensee. Such interpretation would render meaningless the language regarding the deductibility of promotional credits from a gaming facility’s gross gaming revenue. Therefore, the Commission found such interpretation ran contrary to the actual language of Article 13.

C. Continuing Concerns

1. Problem Gambling

a. Historic Commission Concern

Since our 2013 establishment, the Commission has been sensitive to problem and responsible gambling concerns. Upon establishment, senior Commission staff were surprised to find the State's gambling regulatory structure had not established any formal relationship regarding policy development with either the two major organizations involved with problem gambling – The New York Council on Problem Gambling and the OASAS.

The lack of relationship led to the creation of the Responsible Play Partnership, a tripartite organization formed, in part, to ensure the New York Council on Problem Gambling has direct and continuing access to Commission and OASAS leadership.

Since its founding, members of the RPP have met quarterly to discuss policy issues and development, work on appropriate messaging, and, for the Commission, obtain input on Responsible Gambling practices and messaging. The RPP have assisted the Commission with the conduct of a Problem Gaming Forum, conducted in conjunction with the issuance of the first RFA for commercial casinos. The RPP has also labored to assist with language development for RFPs and RFAs to ensure Responsible Gaming practices are included and appropriately considered. They have also assisted with our development of Age Verification campaigns, Problem Gaming Awareness Month presentations, voluntary self-exclusion policy development and implementation, and integration of the State into annual messaging campaigns of the National Council on Problem Gambling.

These concerns also ambled into our approach to mobile sports wagering.

b. Mobile Sports Wagering, by Law and Regulation

N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1367-a(4) requires mobile sports wagering operator to, as a condition

of licensure, implement a variety of measures related to problem gambling.

First, when an account holder's lifetime deposits exceed \$2,500, the operator must prevent wagering activity until the patron acknowledges that they met the deposit threshold. At that time, the patron may elect to establish responsible gaming limits or close the account. After the triggering of the initial \$2,500 lifetime deposit threshold, the patron must annually acknowledge whether they elect to establish responsible gaming limits or close the account.

Second, each operator is required to maintain a publicly accessible internet page dedicated to responsible play and must maintain a link to their dedicated responsible play page on their website and in any mobile application or electronic platform on which wagers may be placed. The responsible play page must include a statement of the operator's policy and commitment to responsible gaming; information regarding, or links to information regarding, the risks associated with gambling and the potential signs of problem gaming; the availability of self-imposed responsible gaming limits; a link to a problem gaming webpage maintained by the OASAS and such other information or statements as the Commission requires by rule.

Lastly, each operator must initially submit and continually update their problem gaming plan to the satisfaction of the Commission in consultation with the OASAS. The updates must illustrate any changes to the objectives of and timetables for implementing the initially approved plan, identification of persons responsible for implementing and maintaining their plan; procedures for identifying users with suspected or known problem gaming behavior, procedures for providing information to users concerning problem gaming identification and resources, procedures to prevent gaming by minors and self-excluded persons, and such other problem gaming information as the Commission requires by rule.

In addition to the aforementioned, the Commission, in conjunction with the OASAS is required to annually cause a report to be prepared and distributed to the Governor and the Legislature on the impact of mobile sports wagering on problem gamblers in New York, including an analysis of demographics which are disproportionately impacted by the problem gambling.

The Commission has authority to assess the costs associated with the preparation and distribution of the report to mobile sports wagering licensees.

Commission Rule 5329.34 obligates each sports wagering operators – including mobile sports wagering operators - comply with problem gaming, self-exclusion and excluded person requirements.

Commission Rule 5325.2 defines our problem gaming plan requirement. This Rule obligates the operator produce for approval a problem gambling plan which must include the goals of the plan, including procedures and timetables to implement the plan; identification of the individual who will be responsible for implementation and maintenance of the plan; policies and procedures that clearly illustrate: the commitment of the gaming facility licensee to train appropriate employees; the duties and responsibilities of the employees designated to implement or participate in the problem gambling plan; procedures for compliance with the Commission's self-exclusion program; procedures to identify patrons and employees exhibiting suspected or known problem gambling behavior; procedures to limit or prevent loyalty and other rewards and marketing programs for patrons exhibiting suspected or known problem gambling behavior; procedures for providing information to individuals and responding to patron/employee requests for information in regard to the self-exclusion program and any community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat or monitor problem gamblers and to counsel family members; the provision of printed material to educate patrons and employees about problem gambling and to inform them about the self-exclusion program set forth in Part 5402 of this Title and treatment services available to problem gamblers and their families. The gaming facility licensee shall provide examples of the materials to be used as part of its problem gambling plan, including brochures and other printed material and a description of how the material will be disseminated; advertising and other marketing and outreach to educate the general public about problem gambling and the Commission's self-exclusion program; an employee training program including sample training materials to be used and a plan for periodic reinforcement training and a certification process established by

the gaming facility applicant to verify that each employee has completed the training required by the plan; procedures to prevent underage gambling; procedures to prevent patrons impaired by drugs or alcohol, or both, from gambling; and a signage plan containing information on gambling treatment and on the Commission's self-exclusion program. Each operator must also maintain a list of community, public and private treatment services, gamblers anonymous programs and similar treatment therapy programs designed to prevent, treat, or monitor problem gamblers and to counsel family members and procedures for making such list available upon request.

The Commission's standards for self-exclusion and excluded persons are set forth in Commission Rule Parts 5327 and 5402 respectively.

c. Anecdotal HOPEline Experiences

By regulation, all advertisements by a mobile sports wagering licensee must comply with advertising guidelines issued by the National Council on Problem Gambling. Commission Rules require each advertisements contain a problem gambling assistance message comparable to "If you or someone you know has a gambling problem, help is available. Call (877-8-HOPENY) or text HOPENY (467369)" or "Gambling problem? Call (877-8-HOPENY) or text HOPENY (467369)".

Media accounts have discussed an increase in the number of calls to the New York HOPEline since the introduction of mobile sports wagering. The Commission has played a role in this, as every single advertisement for sports wagering is required by regulation to include problem gambling messaging and the HOPEline number. The advertising by mobile sports wagering companies has resulted in unprecedented exposure for the HOPEline and I am encouraged that people are using it.

All problem gambling assistance messaging must meet specific guidelines.

- For signs, direct mail marketing materials, posters and other print advertisements, the height of the font used for the problem gambling assistance message must be the greater of the same size as the majority of the text used in the sign, direct mail marketing material, poster or other print

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

- For billboards, the height of the font used for the problem gambling assistance message must be at least five percent of the height or width, whichever is greater, of the face of the billboard.
- For video and television, the problem gambling assistance message must 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 problem gambling assistance message must be at least two percent of the height or width, whichever is greater, of the image that will be displayed; or from the first time a table game, table game device, slot machine, associated equipment or gaming facility name is displayed or orally referenced, and on a dedicated screenshot visible for at least the last three seconds of the video or television advertisement. If the operator elects to use this option, the height of the font used for the problem gambling assistance message displayed during the advertisement must be at least two percent of the height or width, whichever is greater, of the image that will be displayed; and on the dedicated screen shot must be at least eight percent of the height or width, whichever is greater, of the image that will be displayed.
- For websites, including social media sites and mobile phone applications, the problem gambling assistance message must be posted on each webpage or profile page and on any gaming-related advertisement posted on the webpage or profile page; the height of the font used for the problem gambling assistance message must be at least the same size as the majority of the text used in the webpage or profile page.
- Finally, for advertisements posted on a webpage or profile page, the height of the font used for the problem gambling assistance message must be the height of the font used for the problem gambling assistance message must be at least the same size as the majority of the text used in the webpage or profile page.

Practically, operators have submitted advertising prototypes for compliance evaluation. Accordingly, nearly all mobile sports wagering advertisings have been reviewed by Staff. While many advertising proposals have been rejected, operators have – sometimes reluctantly – been compliant with the requirements.

2. Additional License Consideration

Since the Commission awarded the licenses for mobile sports wagering, there have been repeated news stories regarding the possibility of mandatory increase in licensees. While the determination to increase the number of licensees remains a legislative prerogative, the first year of operation allows consideration of the potential effect of such increase.

As mentioned, the statute and the RFA contained language requiring the consideration of license award in the context of a competitive tax rate evaluation. The Commission fulfilled this obligation by creating the Tax Rate Matrix process, wherein the Preferred Bidder's Tax Rate Matrix was offered to all Qualified Bidders, who had an ability to match if they wished further license consideration.

All matched, leading to an undertaking of acceptable tax rates dependent upon competitive market conditions.

In short, for the eight platform and nine operator scenario the accepted tax rate was 51 percent. Inclusion of additional platforms or operators would have reduced the Tax Rate to 35 percent.

Should the goal be to maintain the State retention equal, for purposes of education and other beneficiaries, then a simple algebraic formula can be created to understand the gross gaming revenue necessary to maintain the present levels.

In 2022, \$16,595,732,482.20 in wagering handle generated gross gaming revenue of \$1,390,681,094.43, which at a 51 percent tax realization netted the State \$709,247,358.

Had the effective tax rate been 35 percent, the gross gaming revenue needed to equalize State retention at 51 percent would require a gross gaming revenue of \$2,026,421,022.85, or an increase of \$635,739,928.85 or 68.62 percent.

As the following chart illustrates, four operators accounted for 93.76 percent of the overall state market share and 95.15 percent of the gross gaming revenue. The remaining five operators accounted for 6.23 percent of the handle and 4.85 percent of the gross gaming revenue.

First Year, By Operator				
Operator	Handle	Percentage	GGR	Percentage
FanDuel	\$6.68 billion	40.26	\$667.63 million	48.01
DraftKings	\$4.66 billion	28.10	\$362.70 million	26.08
Caesars	\$2.84 billion	17.16	\$218.32 million	15.70
BetMGM	\$1.36 billion	8.25	\$81.64 million	5.87
	\$15.56 billion	93.76	\$1.32 billion	95.66
PointsBet	\$452.5 million	2.73	\$27.08 million	1.95
BetRivers	\$421.8 million	2.54	\$23.36 million	1.68
WynnBet	\$95.3 million	0.57	\$6.37 million	0.46
Resorts World Bet	\$58.5 million	0.35	\$3.18 million	0.23
Bally Bet	\$6.0 million	0.04	\$331,967	0.02
	\$1.03 billion	6.23	\$60.00 million	4.34

All things being equal, should the inclusion of additional operators reduce the State tax realization to 35 percent, an operator the equivalent of FanDuel would be necessary to keep the State held harmless. Be mindful that the introduction of such an operator is not all that is necessary, rather, the new operator equivalent to FanDuel would have to grow the market by the equivalence of a FanDuel while not cannibalizing any of the existing market share. Commission staff are unconvinced that this could be achieved.

3. Integrity

A lingering Commission concern regards event integrity. Obviously, the lifeblood of sports wagering is the expectation that the competition is fair and conducted without prejudice. We are fortunate in that the concerns over event security are shared.

All governing sports leagues have a shared interest in ensuring their events are conducted free of influence or corruption. Likewise, all sportsbooks are vigilant, as they would bear the responsibility for payout. Their vigilance in two illustrative cases, one historical and one present, is detailed below.

Additionally, New York law and regulation requires licensed mobile sports wagering to obtain the services of an independent monitor, who examines present betting activities against historical wagering

activities, seeking anomalies that may be indicative of concern. A recent illustrative example of their work is detailed below.

During the last eighteen months, Commission staff have cultivated relationships throughout the industry. These relationships assist with information sharing and problem solving in all aspects of mobile sports.

Cooperative relationships have been developed with each of the eight platforms and nine operators, and with vendor GeoComply, a software firm used by mobile sports wagering companies to ensure wagers are made in New York State. The Commission also has maintained strong relationships with U.S. Integrity, a North American-based company that analyzes changes in betting data against a benchmark of normal betting activity, and monitors data to identify discrepancies with player or coaching events, officiating abnormalities, or events that may be indicative of misuse of insider information. The Commission also interacts with the International Betting Integrity Association, a European not-for-profit membership association that offers a monitoring and alert platform designed to detect and report suspicious activity in sports betting markets.

The Commission is also a member of the Sports Betting Regulators Association, designed for government agencies assigned responsibility for the regulation of sports betting within their jurisdiction that presently has 21 members states. The SBRA goal is to bring together government regulatory entities and affected constituencies to develop consistent regulatory policies to ensure the integrity of sports betting.

League contacts are also important, as each governing jurisdiction has self-interest in ensuring their respective competition is conducted fairly and honestly. Commission staff have had numerous contacts with sports leagues, including but not limited to the National Football League, Major League Baseball, the National Basketball Association, the Professional Fighters League, the United States Football League and Athletes Unlimited.

Within the State, Commission staff have continued interaction with N.Y.S. State Police, the Office of the Inspector General, the Office of the Attorney General, and the N.Y.S. Athletic Commission regarding matters of sports wagering activity. On the federal side, staff have also opened productive relationships with the Federal Bureau of Investigation.

a. Illustrative Vigilance Examples

i. Stevin Smith

In 1994, Las Vegas bookmakers' vigilance uncovered a basketball point-shaving scandal led by Arizona State University player Stevin Smith and fellow Arizona State student Benny Silman. The collusion and scandal involved trying to keep Arizona State from covering point spreads in four Pac-10 college basketball games.

The first affected game occurred against Oregon State on January 27, 1994. Arizona State won 88-82, failing to cover the 14.5-point spread. Smith had a career-high 39 points, hitting 10 of 16 from three-point range. Associates of Silman traveled to Las Vegas with about \$500,000 to wager, betting amounts of \$9,000 or less to avoid Internal Revenue Service reporting requirements.

The same process was followed in games against Oregon and the University of Southern California. Arizona State was favored against Oregon, winning by six, but not covering the point spread, while losing to Southern California outright as a five-point favorite.

Vinny Magliulo, who was in charge at Caesars Palace sportsbook at the time, suspected an issue after the fourth game, against the University of Washington, a weak team. Magliulo indicated he and his fellow books operators such as Jack Franzi at the Barbary Coast, shared information that each had experienced unknown individuals with substantial cash seeking to bet on Washington. Magliulo indicated warning factors were present: the bettors were unknown, substantial money was being wagered, and the bettors were willing to keep betting as the line dropping from 11 down to about three or four.

Magliulo and his fellow operators looked at the betting patterns for this game and previous Arizona State games and soon suspected issues. The point spread was adjusted more than 40 times in 24 hours because of the heavy betting action.

Jimmy Vaccaro, who ran the sportsbook at The Mirage notified the Nevada Gaming Control Board, the Pacific-10 Conference, and the Federal Bureau of Investigation. The result was a full-scale investigation and criminal convictions several years later. Silman ultimately pled guilty to five counts of sports bribery that he bribed Smith and another Arizona State basketball player - Isaac Burton - to ensure the Sun Devils failed to cover the point spread in the four games. Silman was sentenced to approximately four years in a federal prison. Smith and Burton pled guilty to commit sports bribery charges, with Smith being sentenced to just over one year in prison.

Magliulo articulated the lessons from the experience as: know-your-customers, understand abnormal wagering patterns, network together to share information, and promptly notify law enforcement when concerns are developed.

ii. UFC Fight Night 214

Under Commission Regulations, each mobile sports operator is obligated to use the services of an integrity monitor. In New York, all nine operators are subscribers of U.S. Integrity as their regulatorily required integrity monitor.

Accordingly, US Integrity was engaged in monitoring wagering activity associated with a November 5, 2022 Ultimate Fighting Championship Fight Night 214 event that took place in Las Vegas, Nevada. One fight, between featherweights Darrick Minner and Shayilan Nuerdanbieke, raised concerns.

US Integrity reported a representative from a multi-state operator reported seeing abnormal one-sided action on Nuerdanbieke, and specifically on the prop bet of “Nuerdanbieke to win by 1st round KO.” The operator also reported receiving abnormal action on “Total Rounds UNDER 2.5”. The operator also noted that they had shorter odds on the “Nuerdanbieke to win by 1st round KO” proposition bet - three dollars less than the market – but bettors were still betting.

After aggregating information, U.S. Integrity issued an incident alert at 3:27 PM PT to all operators.

Initial Observations

Hours before the bout rumors emerged that Minner had injured his leg while training. During the bout, Nuerdanbieke stopped Minner by first-round technical knockout after Minner threw a left kick and appeared to injure his leg.

Review of wagering activity on fighter's recent bouts found no reported significant betting on the first-round KO prop on either of Minner's last two fights, meaning no bets over \$50. There was also no reported significant betting on the first-round KO prop on either of Nuerdanbieke's last two fights, meaning no bets over \$50.

U.S. Integrity noticed an abnormally high wagering volume on "Nuerdanbieke ML" from various operators, and multiple operators around the country pulled the card off the board in response to either their own observed abnormal wagering volumes or the U.S. Integrity incident alert.

New York

In New York, only Caesars experienced abnormal betting patterns. They reported their concerns promptly to U.S. Integrity.

One Caesars patron activity triggered concern.

Caesars New York Experience			
Wager	State Handle	Patron	Percentage
Nuerdanbieke	\$11,617	\$5,000	43.04
Fight to Go Distance	\$699		
Nuerdanbieke TKO	\$17,323	\$17,000	98.13
Fight to End in Round 1	\$38,930	\$38,770	99.58
Rounds Over/Under	\$5,229	\$5,000	95.62
Total Handle	\$73,798	\$65,770	89.12

Historically, the Caesars' patron had made 31 bets lifetime with Caesars, 19 of which were on the subject UFC fight. None of their 12 previous wagers exceeded \$1,000. The irregular betting pattern compared to their historic pattern led Caesars to report suspicions to US Integrity. Caesars has thus far held the patron's winnings; however, the patron has not tried to redeem anything.

On December 2, 2022, Minner was released from the UFC amid an investigation into the suspicious betting patterns. Subsequently, both Minner and his coach James Krause were indefinitely suspended by the Nevada State Athletic Commission for failing to disclose the injury Minner had sustained prior the fight.

Fall Out

Multiple government agencies are investigating, including the Federal Bureau of Investigation. Krause and Minner have been suspended indefinitely by the Nevada State Athletic Commission, and the UFC informed all fighters who train with Krause or at his gym that they would be banned from events pending outcome of the government investigations.

The Alcohol and Gaming Commission of Ontario, which has jurisdiction over sports wagering in the province, had suspended all wagering on UFC bout following Fight Night 214. They reinstated UFC events for betting following UFC partnering with U.S. Integrity to help protect against betting fraud and corruption.

The observations regarding this event are that the monitoring services are properly functioning, and that the sportsbooks are appropriately making notifications and working cooperatively when they observe issues.

D. Horizon Issues

1. Marketing to University and College Students

The Commission has consciously monitored marketing and advertising practices of our licensed operators. Hence, we review advertisements for the purposes of ensuring they contain mandatory problem gambling messaging and are not patently misleading. We are, however, cognizant that such marketing and advertising should be consumed and marketed to adults. In our reviews, we found the American Gaming Association's June 21, 2022 Responsible Marketing Code for Sports Wagering thoughtful and will consider adopting relevant content by regulation.

The most significant of the AGA Code are:

- Sports wagering advertising and marketing should not be designed to appeal primarily to those below the legal age for sports wagering by depicting characters or by featuring entertainers or music that appeal primarily to audiences below the legal age.
- That sports wagering advertising and marketing should only be placed in broadcast, cable, radio, print or digital communications where at least 73.6 percent of the audience is reasonably expected to be of legal gambling age, which aligns with the percentage of people who are of legal gambling age; and
- No sports wagering advertising and marketing - including logos, trademarks, or brand names - should be used or licensed for use on clothing, toys, games, or game equipment intended primarily for persons below the legal age for sports wagering.

Commission Chairman Brian O'Dwyer has publicly raised concern with sports wagering advertising on campuses of New York's colleges and universities. He has requested staff be prepared to discuss this issue at our next public meeting, which is scheduled for February 27th.

Accordingly, staff will likely propose the Commissioners consider rules that address the aforementioned, and one that will prohibit sports wagering from promoted or advertised in college or university-owned news assets such as school newspapers, radio or television broadcasts or advertised on college or university campuses.

Seeking a market from an alumni base is one thing, but such marketing must be balanced against the exposure to those who have not yet reached legal gambling age for sports wagering.

2. Advertising and Promotions

Legislation has been introduced that would add a new section to § 104 of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law, to require the Commission to promulgate rules and regulations regarding predatory sportsbook bonuses in mobile sports betting. While the term “predatory” was not defined, illustrative examples included deposit matching, risk free betting, free money, free bets, site credits and profit boosts promotions.

The Legislative Memorandum of Support indicated that it was the sponsors’ belief that new gamblers are often drawn by marketing campaigns citing “free bets” or even “free money”, not understanding that sometimes the promotion is a reward for betting many times or as an incentive to return and wager. The sponsor also indicates that “risk free” betting provides patrons refunds only following a losing bet which must be used towards the placement of a new wager.

The sponsor also indicated that mobile sports betting industry uses targeted advertising personally tailored to “lure” new customers from their homes, arguing that multitudes of people who have not been before exposed to these practices “will fall susceptible to gambling addiction” that could have otherwise been avoided.

As illustrated above, the Commission has concerns regarding certain advertising and promotions. We proactively review and analyze each promotion to ensure that we find the concept and activity acceptable. New York already substantially limits the ability of operators to promote their product by not permitting the deduction of promotional expenses.

We are mindful that the Commission is the operator of the New York Lottery, which itself engages in substantial marketing and promotion, and reject the premise that engagement in gambling is an inherently dangerous activity. For most people, gambling is an accepted and enjoyable form of entertainment. For some, it is not.

The Commission has strived to identify and maintain an appropriate balance between allowing licensed entities to engage and promote an activity explicitly approved by an act of the State Legislature while

trying to establish clear limits on acceptable conduct. We also understand and accept our limitations and will embrace discussions on whether we should adjust our positions.

3. Underage Access

An issue that the Commission takes seriously regards underage access to mobile sports wagering.

N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1367-a 4.(a)(iii) obligates as a condition of license that each mobile sports wagering operator implement measures to prohibit minors from participating in any sports wagering activity. Additionally, as part of Commission Rules 5325.2(b)(x)(5) and (4)(a)(xv), applied through Commission Rule 5329.34, each operator was obligated to submit for approval, a problem-gaming plan that includes procedures to prevent gaming by minors.

The Commission is confident that the procedures used to establish and fund an account prevent minors from doing so.

Commission Rule 5330.37 obligates a mobile sports wagering operator to verify a person seeking to establish a patron account by obtaining and verifying several points of patron information. The Rule requires capture of the patron's: full name; physical residential address; date of birth; no less than the last four digits of their Social Security Administration Number; driver license or an equivalent identification number if the person has no Social Security Number such as a passport or taxpayer identification number; and email address and telephone number. Such information must be verified through Know-Your-Customer identity-verification software or other remote multi-factor authentication before an account.

Once an operator has verified an individual's identity, the establishing patron must confirm they are at least 21 years of age; not a prohibited sports bettor; that information provided upon registering for an account is accurate and that only the account holder shall have access to such account; that the account is not transferable; that they accept the terms and conditions of establishing a mobile sports wagering account.

If an establishing patron cannot be verified, the associated account will not be created, and the patron will be prompted to submit additional identity information. Additionally, similar Know-Your-Customer

provisions are used for withdrawal requests, to ensure the patron is not being defrauded and the withdrawal is being deposited to the correct account.

However, neither the Commission nor mobile sports wagering operators have an ability to police parents, relatives or friends that have themselves lawfully established an account and then allowing an underaged person to participate. Additionally, there is little ability to control when an authorized account holder leaves available their account, affording an underage person from participating.

The ability to control for this type of transgression is limited unless the authorized account holder later raises concern. Fortunately, we have no rational reason to believe this type of activity is commonplace. Through the close of 2022, the Commission was informed of 58 alleged occasions of underaged participation through lawfully created accounts. In all circumstances, the subject account was closed.

4. Continued Concerns with Problem Gambling

We are reluctant to speak definitively as we are at best laypeople relative to problem gambling research and treatment. However, as mentioned, the Commission has a long history of sensitivity to problem gambling.

The introduction of mobile sports wagering has, by some, been pictured as opening New York to ever-continuing scene of addiction. While we share these concerns, our expectation is moderated by research.

Overall, research illustrates that disordered gambling has been a relatively stable phenomenon during the past 40 years despite an unprecedented increase in opportunities and access to gambling through lotteries, commercial and Indian casinos, and mobile gambling.

One theory, called the exposure model, finds increases in the rate of gambling-related problems soon after new opportunities to gamble become available. However, research also indicates that the prevalence rate of gambling disorders increases only in the short-term as over time the prevalence rate stabilizes and then tends to decline. New York has a well-developed gambling marketplace, meaning those with a predilection towards gambling have ample ability to satisfy themselves.

Additionally, problem gambling does not appear to be a progressive disorder, and research has found that individuals move in and out of problem gambling.

A prominent problem gambling researcher once testified that it was important to correct certain assumptions about disordered gambling. Specifically, that once someone becomes a disordered gambler only professional treatment will arrest the problem. The researcher noted that in addition to professional treatment, there are many different pathways out of disordered gambling, advising that Gamblers Anonymous is perhaps the best known. He also indicated that research had not identified reliable methods for determining which gamblers will develop gambling disorders, or who will recover with or without treatment.

At the risk of discussing matters with limited insight or knowledge, perhaps consideration should be given to increasing funding for such programs as Gamblers Anonymous. Problem Gambling Resource Centers have played an effective role, but perhaps focus should be broadened.

Additionally, it is clear from research that certain segments of the population, for example adolescents, have historically been measured with elevated prevalence rates. Accordingly, I think further research is needed into what drives those increases, as well as research into what can be done to limit an adolescent problem gambler from becoming an adult problem gambler.

Finally, for those whose lives are affected by problem gambling, there is nothing more important than having options. While the Commission has a minor role to play, we will continue to do our best to make the HOPEline noticeable, enabling someone who seeks assistance able to easily locate assistance. We look forward to further working with our Responsible Play Partners, OASAS and the New York Council on Problem Gambling.