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April 5, 2018

VIA E-MAIL

R. Douglas Sherman
Chief Counsel
Pennsylvania Gaming Control Board
Verizon Tower, 5th Floor
Strawberry Square
303 Walnut Street
Harrisburg PA 17101

Re: Comments to Temporary Fantasy Contest Regulations

Dear Attorney Sherman:

This firm represents FanDuel Inc. ("FanDuel"). We have reviewed Rulemaking No. 125-212 (Temporary Fantasy Contest Regulations). As an experienced operator of fantasy sports contests currently licensed under similar regulatory regimes in multiple states¹, FanDuel believes it can provide the Board with productive and constructive comments regarding the rulemaking.

While FanDuel intends to submit comments through the rulemaking process, given the need to submit an application by the end of the month and FanDuel's prior experience meeting with regulators in most of the eighteen states where they are currently similarly regulated, we

¹ FanDuel is currently licensed by the Missouri Gaming Commission, the Indiana Gaming Commission, the Tennessee Secretary of State, the Virginia Department of Agriculture and Consumer Services, and the Colorado Department of Regulatory Agencies. FanDuel has applications pending in several other jurisdictions including Mississippi and New Jersey.

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respectfully suggest that a meeting to discuss the issues outlined below would be helpful. We are happy to make ourselves available at your earliest convenience.

Most importantly, we would like to meet to discuss the following sections of the proposed temporary rules on fantasy contests:

- § 1201.2 and 1202.4 – These sections define a principal as any person (or entity) directly holding any beneficial interest in the securities or ownership of an applicant for a fantasy contest license. This is a broad definition and encompasses a wide number of persons and entities who would be required to file as principals. We suggest that a framework similar to that which applies to certified gaming service providers under 58 Pa. Code § 437a.4 would be more appropriate in that it would provide exemptions to those who hold small fractions of ownership. It would impose a very burdensome, if not insurmountable, requirement to require all owners of greater than 1% to submit to full licensure as a principal, for very little benefit given the small amount of influence these owners hold.
- §1205.2(b)(2) – This subsection provides that “[n]o participant outside of the Commonwealth may participate in a fantasy contest under this part.” While this language could be read to prohibit users in the Commonwealth from playing against users in other jurisdictions, such a reading would be directly in conflict with the definition of the term “participant” found in 4 Pa.C.S. § 302 (“An individual who participates in a fantasy contest, whether the individual is located in this Commonwealth or another jurisdiction.”). Also, the Board’s Fantasy Contest Frequently Asked Questions (available here: https://gamingcontrolboard.pa.gov/files/legislation/fantasy_FAQ.pdf) provide that persons may participate in fantasy contests who are located outside of the Commonwealth, but in states where fantasy contests are legal. We request that the Board modify this subsection to clarify any confusion and bring it in line with the statute and the FAQ.
- § 1204(i) – This subsection requires that an operator maintain an office within the Commonwealth and keep and make available to the Board at that office access to the licensed operator’s database. These databases are electronically maintained. We suggest that while an operator should be required to make access to the database available on demand, that there is no need to have an office located in the Commonwealth for this purpose. We suggest that while a registered agent remain as required, no physical office be required, and that an operator be required to make available to the Board, at the Board’s offices, the database for the licensed operator.
- §1205.5(a)(13) – Consistent with 4 Pa.Cs. § 325(10), the restrictions contained in this provision should be limited to fantasy contests that are open to the “general

public.” Persons affiliated with licensed operators should be permitted to participate in contests closed to the general public. Also, this provision should be amended to expressly permit employees of a licensed operator to participate in contests open to the public when using a test account (and in such cases, a person utilizing the test account will not be eligible to win prizes or limit the ability of other participants to win prizes).

- §1206.1(f) – This subsection should be amended to require prior Board approval (or expiration of the 30-day waiting period) only in the case of “substantive” or “material” changes to a licensed operator’s internal controls. Otherwise stated, a licensed operator should be permitted to make non-substantive (and non-material) changes to its internal controls without seeking the prior approval of the Board. In such cases, the licensed operator should be required to submit a copy of the modified internal controls after the non-substantive change(s) is made.
- § 1209 – The self-exclusion requirements described in this subsection would create a cross-platform self-exclusion for fantasy sports, which would be first in the nation. The fantasy sports industry, including FanDuel, has found it effective and less invasive to offer platform specific self-exclusion for a variety of time-periods including less than one year. This allows users a wide variety of options for managing their play and limits the amount of information they must disclose in order to self-exclude, reducing privacy concerns and possibly making it more likely a user would choose to utilize these tools.

We respectfully suggest that a meeting to discuss these suggestions in more detail may be helpful, and, to that end, are happy to make ourselves available at your convenience.

Very truly yours,



Christopher L. Soriano

CLS:jr