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*Via E-mail to [rsherman@pa.gov](mailto:rsherman@pa.gov) & [lburd@pa.gov](mailto:lburd@pa.gov)*

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**Attention: Public Comment on Regulation # 125-217**

Dear Mr. Sherman & Ms. Burd:

DraftKings Inc. submits the following comments for the Pennsylvania Gaming Control Board's ("PGCB") consideration regarding Regulation # 125-217 (58 Pa. Code Chs. 1401—1406).

**§ 1402.2. Sports wagering operator application and standards.**

As an emerging industry in this country, many U.S.-based sports wagering operators are relatively young companies which are privately-held and financed by a large number of shareholder investors. The stringent shareholder disclosure requirements imposed by §1402.2(a)(4) (requiring an application for every principal under Chapter 433a of the PGCB's regulations) will make it difficult or impossible for some of these operators to obtain the disclosures necessary to apply for a sports wagering operator license in Pennsylvania. This requirement could have the effect of blocking the entry of some of the most well-recognized brands in the space from the Pennsylvania market, thereby doing a great disservice to Pennsylvania customers as well as taxpayers because of the diminished potential revenue that sports wagering may generate for the Commonwealth.

Sections 433a.3 and 433a.4 of the PGCB's regulations require all individuals and entities with a 1% or greater indirect ownership interest in a privately held applicant to apply for licensure as a principal. Meanwhile, individuals and entities whose indirect ownership in an applicant is held through a publicly traded corporation are required to apply for principal licensure only if their ownership is 5% or greater of the outstanding voting securities of the publicly traded corporation. See 58 Pa. Code §§433a.3(e) and 433a.4(e). Many sports wagering operators, including DraftKings, are privately-held companies with dozens of individuals and entities meeting the 1% ownership threshold. These shareholders hold the shares for investment purposes and do not possess the ability to exercise control of the company. As comparatively small investors the burden of completing the lengthy and invasive principal licensure process is far out of proportion to their ability to influence the applicant.



Rather than applying the standard set forth in Chapter 433a with a different threshold for public and private companies, DraftKings suggests that the sports wagering regulations should apply a uniform disclosure requirement to both public and private entities. Specifically, the sports wagering regulations should adapt the wording of §433a.3(e) and §433a.4(e) and provide that an individual or entity “whose indirect ownership interest in a licensee consists of less than 5% of the voting securities of an entity will not be required to be licensed as a principal.” Furthermore, the regulations should provide an institutional investor waiver similar to that of 433a.5, but which is not limited to publicly traded corporations.

There is good cause for increasing the disclosure threshold for individuals and entities whose indirect ownership of an applicant consist of less than 5% of the voting securities of a privately held entity. First, applying a 5% ownership threshold achieves the PGCB’s goal of thoroughly investigating those persons and entities with a significant stake in an operator. The PGCB may retain discretion to investigate any shareholder it wishes, and therefore may choose to investigate shareholders below 5% on a case by case basis. See 58 Pa. Code §§ 433a.3(h) and 433a.4(i); §1402.2(b)(3).

Second, applying a uniform standard will give all operators an equal chance to enter the market rather than disadvantaging privately held but well-established brands that appeal to Pennsylvania customers.

Third, opening up licensure opportunities to more operators will make it possible for the Commonwealth to generate more revenue from this new form of gaming which has been hobbled by a high fee and tax rate which have posed a significant barrier to entry.

Fourth, it is appropriate to apply a different standard to sports wagering operators than to the slot machine, management company, manufacturer, supplier, and manufacturer designee licensees to whom Chapter 433a was written to apply. Historically, outcomes in casino gambling in Pennsylvania have been determined by chance-based events occurring on casino premises and possibly under the control, supervision, or influence of the licensee. It could be possible for an unscrupulous licensee to rig or influence the outcome of such events. In sports wagering however, the outcome of wagers depends on sporting events occurring offsite and not under the control or influence of the sports wagering operator. In this respect sports wagering operators are more analogous to fantasy sports operators, who also offer a product where the outcome of the sporting events are not under the control or influence of the operators, and to which the 1% indirect shareholder licensure threshold does not apply.

Fifth and finally, the sports wagering law itself is silent on the subject of disclosure thresholds for sports wagering operators and therefore it is within the discretion of the PGCB to implement a standard which best achieves the goal of the Commonwealth to implement a robust, well-regulated, and profitable sports wagering industry.



## **§ 1401.5. Conduct of sports wagering generally.**

Section 1401.5(c) provides that “sports wagering certificate holders may employ the services of one sports wagering operator licensee to assist its sports wagering operations through any or all of the means identified in subsection (b).” This provision is unnecessarily restrictive and will likely have the effect of stifling the market by providing limited options for both certificate holders and consumers. To create the most vibrant sports betting marketplace, certificate holders should be permitted to team with more than one sports wagering operator.

Pennsylvania casinos already face significant profitability hurdles for sports wagering due to the \$10 million fee and 36% tax mandated by law. Limiting each casino to a single operator partner prevents a casino from leveraging multiple brands to appeal to a wide spectrum of customers. Furthermore, requiring the same operator partner to provide the retail and mobile products prevents casinos from evaluating those platforms independently and selecting the strongest operator for each space.

Section 1401.5(a)(5) of the temporary regulations further restricts casinos’ options by requiring that each certificate holder offer online sports wagering “through a single interactive web site or mobile application.” This limitation to a single website or mobile application needlessly restricts the potential for innovation for the casino and its operator partner. Any certificate holders and operators making the enormous investment to obtain a certificate to operate these products should not be unduly limited in their ability to innovate. The one app limitation would prevent operators from providing different apps for mobile phones, TVs, and other interfaces. It would also prevent casinos and operators from breaking a specific type of sports betting product into its own app, such as an app that only features brackets.

Section 1401.5(a)(5) further provides that the app and website must “clearly and prominently display the name of the sports wagering certificate holder.” This provision should be modified to confirm that websites and apps may primarily feature the operator’s branding as long as the certificate holder’s identity is properly disclosed. This places more control with the casinos to decide what is in their own business interest, as some may find that leveraging a partner’s well-known brand will be beneficial in attracting customers.

Section 1401.5(i) of the temporary regulations provides that a certificate holder or operator may not offer sportsbook in the Commonwealth “until the Board approves all necessary associated applications, including applications of key employees, gaming employees, manufacturers, suppliers and gaming service providers.” This section should specifically reference that approval includes the conditional authorization provided to sports wagering operator applicants pursuant to §1402.1(b). It should further provide that the Board can grant conditional approval on the applications of key employees, gaming employees, manufacturers, suppliers, and gaming service providers in order to expedite the ability for certificate holders and operators to go



live with their sports wagering products in the Commonwealth. This will ensure that sports wagering revenue is generated promptly and without undue delay.

**§ 1405.9. Duty to investigate.**

Section 1405.9(a) of the temporary regulations provides that a sports wagering certificate petitioner or sports wagering operator applicant “shall investigate the background and qualifications of the applicants for sports wagering gaming service provider registration or certification with whom it intends to have a contractual relationship or enter into an agreement.” While an operator should conduct due diligence on entities with whom it enters a contractual relationship, imposing a legal obligation on an operator to “investigate the background and qualifications” of a provider is not something that operators are equipped for or best positioned to do. DraftKings suggests striking this obligation in light of the fact that service providers are already subject to review, investigation, and fingerprinting by the PGCB pursuant to Section 1405.3.

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Thank you for your consideration of DraftKings’ comments regarding the proposed regulations.

Sincerely,  
DraftKings Inc.