



Andrew Winchell
Andrew.winchell@fanduel.com

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Via Email to martin.manahan@partner.vermont.gov
Martin Manahan, Chair
Vermont Liquor and Lottery Board
1311 US-302 #100
Barre, VT 05641

Re: FanDuel Comments on Proposed “Sports Wagering Procedures”

Dear Chair Manahan:

I write to provide comments on behalf of FanDuel Group, Inc. (“FanDuel”) regarding the Vermont Liquor and Lottery Board’s (the “Board”) proposed “Sports Wagering Procedures” (“Proposed Procedures”). Based on our extensive experience as an operator in the sports betting industry and collaboration with regulators of sports wagering in many states in the development of their regulations, we offer constructive feedback on ways in which the Proposed Procedures can be improved for effectiveness and consistency with other state regulations.

Following the Supreme Court’s decision to strike down the Professional and Amateur Sports Protection Act (PASPA) in May of 2018, FanDuel has now become the leading sports wagering operator, and the largest online real-money gaming operator, in the United States. FanDuel currently operates twenty-eight (28) brick and mortar sportsbooks in sixteen (16) states plus the District of Columbia, and online sports wagering in nineteen (19) states plus the province of Ontario. We appreciate the opportunity to share our perspective on sports wagering regulation with you and have arranged our comments in three parts. Part I is focused on major issues of concern in the Proposed Rules that may significantly impact the ability of sports wagering operators to successfully operate in Vermont. Part II is focused on areas in the Proposed Rules where adjustments can be made to improve the regulation and operation of sports wagering. Finally, Part III is focused on grammatical clarifications and other minor errata.

Part I - Major Concerns.

- *Issue 1 – Requirement for independent testing labs to have access to source code.*

Section 2.1 of Part III of the Proposed Procedures requires Mobile Sports Wagering Operators to provide access to their platform’s source code to an independent testing laboratory as part of the testing and certification process for the platform. This is not necessary for the independent testing

laboratory to complete its review of critical files and thus should be removed. To address this concern, we suggest the following edits:

Part III, Section 2:

“Section 2.0 Testing and Certification of Mobile Sports Wagering Platform.

Prior to conducting Sports Wagering, and annually thereafter, the Mobile Sports Wagering Platform used in conjunction with the Sportsbook shall be submitted to a nationally recognized, independent testing laboratory approved by the Department for certification testing. Certification and Department approval must be received prior to the use of any Mobile Sports Wagering Platform to conduct Sports Wagering. The Sportsbook is responsible for all costs associated with testing and obtaining such certifications.

~~[1. Unless otherwise authorized by the Department, the independent testing laboratory must be provided access to the Mobile Sports Wagering Platform’s controlled software source code along with the means to verify compilation of such source code. The result of the compiled source code must be identical to that in the software submitted for evaluation.]~~

[2] 1. If the Mobile Sports Wagering Platform meets or exceeds the specifications set forth in these Procedures or other technical specifications as prescribed by the Department, the independent testing laboratory approved by the Department shall certify the Mobile Sports Wagering Platform. Sportsbooks are prohibited from offering Sports Wagering in Vermont without such certification.”

- *Issue 2 – Integration testing.*

Section 3 of Part III of the Proposed Procedures requires integration testing by an independent testing laboratory for any integration with a service provider or supplier. This is not a standard requirement in regulations of other jurisdictions. Additionally, as written, this is overbroad and likely includes integrations with service providers/suppliers that are not critical to the sports wagering operation. As such, the expansive scope of this regulation could materially impact multi-state updates for sports wagering operators going forward. We strongly urge the Board to remove this requirement entirely. Alternatively, we suggest the Board clearly limit the scope of this regulation to geolocation and age and identity verification service providers or suppliers.

Preferred solution:

Remove Part III, Section 3 entirely.

Alternative solution: amend Part III, Section 3, to read as follows:

Part III, Section 3:

“Section 3.0 Integration Requirements.

The Sportsbook shall be responsible for the Sports Wagering realized through other Service Providers and Suppliers, and other Sportsbooks where applicable.

3.1 The servers and other equipment of Service Providers and Suppliers **related to geolocation and age and identity verification** will be considered to this effect as part of the Sportsbook’s

Mobile Sports Wagering Platform and must comply with the specifications provided in these Procedures.

3.2 The Sportsbook must guarantee that any integration with the servers and other equipment of another Sportsbook is realized in a way that complies with the specifications provided in these Procedures.

3.3 An independent testing laboratory shall conduct integration testing and certification for each server and other equipment with the Sportsbook's Mobile Sports Wagering Platform prior to its deployment and as requested by the Department."

- *Issue 3 – Required fields for account signup.*

Section 1.3(b) of Part IV of the Proposed Procedures provides that a player signing up for a sports wagering account shall "Be informed on the account application which information fields are "required," which are not, and what will be the consequences of not filling in the required fields." This would require changes to existing user signup language and processes and would likely require development work to implement, introducing friction into the user onboarding experience and jeopardizing the ability to launch online sports wagering in a timely, and successful fashion. This is not a standard requirement in regulations in other jurisdictions and as such, we suggest that it be removed entirely.

- *Issue 4 – Clarification of acknowledgements during account signup.*

Section 1.3(d) of Part IV of the Proposed Procedures lists out numerous acknowledgements that players must make at the time of creating an account. However, these items are generally included in the Terms and Conditions which a customer must agree to pursuant to Section 1(3)(c), thus it is duplicative to have them provide an additional acknowledgement pursuant to this section. Further, this would require changes to existing user signup language and processes and would likely require development work to implement, putting at risk the ability to launch online sports wagering in a timely, and successful fashion. As this is not a standard requirement in regulations in other jurisdictions, we suggest eliminating this section. In the alternative, we would ask for the Board to provide clarification that these items may be satisfied through inclusion in the Terms and Conditions.

Preferred solution – strike Part IV, Section 1.3(d) as follows:

~~"[(d) Acknowledge that they are prohibited from:~~

~~(1) Transferring or selling an account or account balance;~~

~~(2) Using any technology that may obscure or falsify the player's physical location for the purpose of placing Sports Wagers;;~~

~~(3) Allowing any unauthorized person to access or use their account;~~

~~(4) Any form of collusion, cheating, or other unlawful activity;]"~~

Alternative solution – amend Part IV, Section 1.3(d) as follows:

“(d) Acknowledge that they are prohibited from:

- (1) Transferring or selling an account or account balance;
- (2) Using any technology that may obscure or falsify the player’s physical location for the purpose of placing Sports Wagers;
- (3) Allowing any unauthorized person to access or use their account;
- (4) Any form of collusion, cheating, or other unlawful activity;
- (5) **Subdivisions (1) through (4) may be satisfied through inclusion in the Terms and Conditions agreed to by the patron pursuant to subsection 1.3(c) of this section.**

- *Issue 5 – Clarification of ownership thresholds and extent of applicant licensing.*

Section 1.6 of Part IV of the Proposed Procedures provide that “A Sportsbook shall allow the player to update authentication credentials, registration information and the account used for financial transactions....” We are concerned with the requirement that operators “shall” allow for the player to update all of this information. For example, there is registration information that should not be subject to change by the patron (i.e., date of birth), and other information that should only be changed upon re-verification of the customer. We suggest that the Board amend this provision to state that a Sportsbook “may” allow the player to update such information. In the alternative, we would suggest that registration information be removed from this provision and addressed in a separate sentence.

Preferred solution – amend Part IV, Section 1.6 as follows:

“1.6 A Sportsbook [~~shall~~] **may** allow the player to update authentication credentials, registration information and the account used for financial transactions. A Multi-Factor Authentication process shall be employed for these purposes.”

Alternative solution – amend Part IV, Section 1.6 as follows:

“1.6 A Sportsbook shall allow the player to update authentication credentials[~~, registration information~~] and the account used for financial transactions. A Multi-Factor Authentication process shall be employed for these purposes. **A Sportsbook may allow the player to update registration information. A Sportsbook may require a re-verification of the player information in order to update certain registration information.**”

- *Issue 6 – Identity verification procedure.*

Section 2.2 of Part IV of the Proposed Procedures details the acceptable processes for age and identity verification. While this section is written broadly, we believe the Department should have the authority to approve alternative identity verification procedures that they deem acceptable. This would also give flexibility to utilize alternative procedures as technology develops. It is also important to note that issues with account registration and identity verification are the number one

driver of customer contacts and complaints during the launch process since it is a requirement before individuals are able to wager. Allowing for increased flexibility in the process will allow for the best customer experience and likely minimize complaints to the Department. To address this concern, we suggest the following edits:

Part IV, Section 2.2:

“2.2 At the time of account establishment the Sportsbook shall employ electronic verification using one or more secure online databases, which government or business regularly use to verify and authenticate age and identity, or by examination of photo identification and the review of a supplemental, contemporaneous photograph of the person, **or any other method approved by the Department,** in order to verify each player’s name, date of birth, and government identification number, or portion(s) thereof.”

- *Issue 7 – Specific information verification requirements.*

Section 2.3 of Part VI of the Proposed Procedures provides very specific requirements related to what information provided by a customer during account signup must exactly match and what information is permitted to be a flexible match. It is not standard in other jurisdictions for regulations to dictate the specifics of an operator's "Know Your Customer" ("KYC") identity verification process. Rather, operators generally provide information to regulators in their internal controls on their KYC process and in turn the process is reviewed and approved by the regulator. Requiring this level of specificity, and especially requiring address verification, will lead to significant increases in unnecessary KYC identity check failures, which will frustrate potential customers and likely send them back to the illegal market. It is also important to note that issues with account registration and identity verification are the number one driver of customer contacts and complaints during the launch process since it is a requirement before individuals are able to wager. Allowing for increased flexibility in the process will allow for the best customer experience and likely minimize complaints to the Department.

To address these concerns, we suggest removal of section 2.3 in its entirety.

- *Issue 8 – Requirement for player authentication.*

Section 2.4 of Part IV of the Proposed Procedures includes a requirement for player “authentication.” Very few jurisdictions require this type of user "authentication" requirement in addition to identity verification. We have found in those states that it leads to significantly higher failure rates for users attempting to create accounts and will frustrate potential customers and likely send them back to the illegal market. It is also important to note that issues with account registration and identity verification are the number one driver of customer contacts and complaints during the launch process since it is a requirement before individuals are able to wager. Allowing for increased flexibility in the process will allow for the best customer experience and likely minimize complaints to the Department.

To address these concerns, we suggest removal of section 2.4 in its entirety.

- ***Issue 9 – Fraudulent transactions.***

Section 7.4 of Part IV of the Proposed Procedures provides requirements around detecting and preventing fraudulent transactions. However, the scope of the regulation seems to be significantly broader than that found in other jurisdictions. In most jurisdictions, the provisions of this section specifically reference failed automated clearing house (“ACH”) transactions, not all failed electronic fund transfer transactions. We suggest the following edits to bring this section into conformity with a similar rule in Colorado¹:

Part IV, Section 7.4:

“7.4 Where financial transactions are conducted through **Automated Clearing House (“ACH”)** ~~[EFF]~~, the Sportsbook shall have security measures and controls to prevent ~~[EFF]~~ **ACH** fraud. A failed ~~[EFF]~~ **ACH** attempt is not considered fraudulent if the player has successfully performed an ~~[EFF]~~ **ACH** on a previous occasion with no outstanding chargebacks. Otherwise, the Sportsbook shall do all of the following:

- a. Temporarily block the player’s ~~[Sports Wagering Account]~~ **account** for investigation of fraud after five (5) consecutive failed ~~[EFF]~~ **ACH** attempts within a 10-minute period. If there is no evidence of fraud, the block may be vacated; and
- b. Suspend the player’s Sports Wagering Account after five (5) additional consecutive failed ~~[EFF]~~ **ACH** attempts within a 10-minute period.”

- ***Issue 10 – Adjustments to player accounts.***

Section 7.6 of Part IV of the Proposed Procedures requires that all adjustments to player accounts for \$500 or less must be periodically reviewed by “supervisory personnel,” whereas all other adjustments to player accounts must be authorized by a “critical employee” before being entered. We suggest that the term “critical employee” be replaced with “supervisory personnel” for consistency with both regulations in other states, including, among others, Colorado², Connecticut³, Illinois⁴, Indiana⁵, and Massachusetts⁶, and operators’ current internal processes.

To address this concern, we suggest the following edits:

¹ Colorado Sports Betting Regulations Rule 7.11(6)

² Colorado Sports Betting Regulations Rule 7.11(8)

³ Regulations of Connecticut State Agencies §12-865-11(i)

⁴ Ill. Admin. Code tit. 11 §1900.1220(h)

⁵ 68 IAC 27-12-8

⁶ 205 CMR 248.13

Part IV, Section 7.6:

“7.6 All adjustments to Sports Wagering Accounts for amounts of five hundred dollars (\$500.00) or less must be periodically reviewed by supervisory personnel as set forth in the Sportsbook’s Internal Control System. All other adjustments must be authorized by ~~[an authorized Critical Employee]~~ **supervisory personnel** of the Sportsbook before being entered.”

- *Issue 11 – Requirement to re-affirm increases to player self-limits.*

Section 9.3 of Part IV of the Proposed Procedures requires that players must reaffirm any requested increases to their player self-limits, which runs the risk of disincentivizing players from utilizing the feature again in the future. This is not a standard requirement in other jurisdictions and likely will require development work to implement, putting at risk the ability to launch online sports wagering in a timely, and successful fashion. To address this concern, we suggest the following edits:

Part IV, Section 9.3:

“9.3 Any decrease to these limits shall be effective immediately or at the point in time (e.g., next login, next day) that was clearly indicated to the player. Any increase to these limits shall become effective only after the time period of the previous limit (e.g., day, week, month, etc.) has expired ~~[and the player reaffirms the requested increase].~~”

- *Issue 12 – Required disclosures when player takes a “timeout.”*

Section 10.2 of Part IV of the Proposed Procedures requires operators to lecture individuals who seek to utilize the timeout feature. This may make them less likely to utilize the feature again in the future. This is not a standard requirement in other jurisdictions and likely will require development work to implement, putting at risk the ability to launch online sports wagering in a timely, and successful fashion. Further, the information referenced on available resources will be on the sportsbook’s responsible gaming page. For the above reasons, we urge the Board to remove section 10.2 in its entirety.

- *Issue 13 – Information security forum.*

Sections 2.3 and 2.7 of Part V of the Proposed Procedures require operators to maintain an “information security forum.” This language is not a standard requirement in regulations in other jurisdictions and requires the creation of a specific function within operators that has formal meetings and minutes and must meet routinely. As such, sections 2.3 and 2.7 should be removed in their entirety.

- *Issue 14 – Annual financial audit.*

Section 4.1 of Part V of the Proposed Procedures requires sportsbooks to have an annual financial audit completed and to submit the results to the Department. However, we have two concerns with this provision. First, it requires that the audit be performed by an “independent certified public accountant currently authorized to practice in the state of Vermont.” Sportsbooks who are headquartered outside of Vermont are likely to already have audits conducted by firms which are licensed or registered in other jurisdictions. To prevent duplication of work that has already been completed, the Department would be best served to accept audit results that have been completed by an independent certified public accountant in any jurisdiction in the United States.

Second, this section does not appear to contemplate a situation where a sportsbook’s financial statements are audited at the parent company level. We suggest adding a clarification that in this case, the audited financial statements of the parent company may be submitted. To address these concerns, we suggest the following amendments:

Part V, Section 4.1:

“4.1. The financial audit must be performed by an independent certified public accountant currently authorized to practice in the state of Vermont, **or any other U.S. state or jurisdiction,** and presented in accordance with generally accepted accounting principles and contain the opinion of the independent certified public accountant as to its fair preparation and presentation in accordance with generally accepted accounting principles. **If a sportsbook’s audited financial statements are produced at the parent company level, the audited financial statements of the parent company may be submitted.**”

- *Issue 15 – Requirement to disclose potential tax liabilities to players.*

Section 8.2 of Part V of the Proposed Procedures requires sportsbooks to “disclose any potential tax liabilities to players at the time of aware of any Sports Wagering payouts in excess of limits set by the IRS.” Sportsbooks cannot possibly know the potential tax liability of players as that is the result of a multitude of other factors including but not limited to: other income of the player; other expenses of the player; any qualifications for tax deductions or credits; filing status; any gaming activity on other sportsbooks; and much more. This is not a standard requirement in other jurisdictions and is likely to create significant compliance issues. As such, we strongly urge the Board to remove section 8.2 in its entirety.

- *Issue 16 – Cap on promotions from lottery.*

Section 6.2 of Part VII of the Proposed Procedures provides that the Department will set a maximum value for which no promotional inducement, bonus, or credit shall exceed. This is a significant concern for two reasons. First, this will result in the Department dictating marketing strategies to sportsbooks, likely resulting in a less attractive offering than can be found in either bordering states or the illegal market. Second, VIP players for sportsbooks may receive significant

promotional credits or bonuses due to their player activity that significantly exceed standard promotions. To address these concerns, we suggest removal of section 6.2 in its entirety.

Part II – Secondary Concerns.

- *Issue 1 – Definition of terms “Affiliate” and “Key Person.”*

Sections 1.4 and 1.27 of Part I of the Proposed Procedures provide for the definitions of the terms “affiliate” and “key person.” When read together, the language of these sections creates a large population of individuals who are defined as “key persons.” While there is not language specifically calling out requirements of these “key persons” in the Proposed Procedures, we would expect from the structure of the language that individuals who are classified as “key persons” would be subject to disclosure requirements and/or licensing. As such, we believe the inclusion of “affiliate of the Applicant”, “A director of an affiliate of the Applicant”, and “A managerial employee of an affiliate of an Applicant that performs the function of principal executive officer, principal operations officer, or principal accounting officer” within the definition of “key person” provides a broader scope than is necessary for the Board to establish the suitability of an applicant. This will create significant amounts of unnecessary work for both applicants to provide information for disclosures and/or licensing and the Department to review such information.

Further, the Proposed Procedures authorize the Department or Commissioner to specifically designate individuals or business entities as “key persons”, thus if there is a specific need to expand the pool of “key persons” for a specific applicant, the Department or Commissioner are already empowered to do so. We suggest the following edits to address this concern:

Part I, Section 1.27:

“1.27 Key Person” means a person that is any of the following:

- (a) A director of the Applicant;
- (b) A managerial employee of the Applicant that performs the function of principal executive officer, principal operations officer, or principal accounting officer;
- (c) A person who holds more than five percent (5%) ownership interest in the Applicant;
- ~~[(d) An affiliate of the Applicant;~~
- ~~(e) A director of an affiliate of the Applicant;~~
- ~~(f) A managerial employee of an affiliate of an Applicant that performs the function of principal executive officer, principal operations officer, or principal accounting officer;]~~ or
- ~~[(g) d]~~ Any individual or business entity so designated by the Department or Commissioner.”

- *Issue 2 – Clarification on prohibition of wagering on outcomes of replay reviews.*

Section 1.2(d) of Part II of the Proposed Procedures prohibits wagers on “Any outcome of replay reviews.” While we support prohibitions on wagers being placed on individual replay reviews, the language as currently written could be interpreted to prohibit wagers on an underlying occurrence/non-occurrence that is the subject of a review. For example, if a wager is placed on a football team scoring a touchdown on a specific drive and there is a replay review to determine whether or not the receiver successfully caught the ball in the end zone, this language could be interpreted to prohibit not only a wager on whether or not the call on the field stands, but also any wagers on the underlying event of a touchdown. We suggest the following edits to improve clarity:

Part II, Section 1.2(d):

“1.2 A Sportsbook shall not offer wagering on:

...

(d) Any ~~[outcome of replay reviews]~~ officiating decisions;”

- *Issue 3 – Requirement to include proposed house rules and any technology to be used for any request for approval of a new event or wager type.*

Section 2.2(e)(2) of the Part II of the Proposed Procedures requires sports wagering operators to provide “A draft of the proposed house rules including a description of any technology that would be utilized to offer the Sports Event or Type of wager;” This is likely to require unnecessary restatement of information, especially when simply requesting the addition of a new league for an already approved sporting event. Since this information will be required as part of the house rules and/or internal controls, both of which must be approved by the Department, we suggest removal of this requirement as follows:

Part II, Section 2.2(e)(2):

“2.2 A petition for a proposed new Sports Event or Type of Wager shall be in writing and shall include, at a minimum, the following information:

...

(e) A complete and detailed description of the Sports Event or Type of Wager for which approval is sought, including:

...

~~[(2) A draft of the proposed house rules including a description of any technology that would be utilized to offer the Sports Event or Type of Wager;]~~”

- *Issue 4 – Requirement to provide exhaustive list of events and wager types that are not accepted in the house rules.*

Section 5.2(1) of Part II of the Proposed Procedures requires that sports wagering operators include a description of the “events and wager types on which Sports Wagers may not be accepted under the Act and these Procedures” in their house rules. Generally, the house rules cover the handling of wagers which may be accepted and do not require an exhaustive list of events and wager types

that are prohibited. Further, as the Department reviews requests to approve and remove events and wager types, this would require unnecessary changes to operator house rules, and then approval from the department, every time an event or wager type was approved or prohibited. To address this concern, we suggest removal of this provision through the following edits:

Part II, Section 5.2(l):

“5.2 The house rules must address the following items regarding Sports Wagers, at a minimum:

...

(l) Description of Ineligible Persons~~[, an events and wager types on which Sports Wagers may not be accepted under the Act and these Procedures];~~”

- *Issue 5 – Penalties for violations of house rules.*

Section 5.3 of Part II of the Proposed Procedures provides for potentially significant penalties, up to and including criminal penalties, for a sportsbook failing to act in accordance with its house rules. This seems to be overly aggressive and beyond what is provided for in statute. We suggest the following edits to clarify that any penalties shall be consistent with statutory provisions:

Part II, Section 5.3:

The Sportsbook shall not implement any changes or modifications of the practices, procedures, or representations upon which the approval was based without the prior written approval of the Department. Failure by a Sportsbook to act in accordance with the house rules may result in ~~[monetary penalties, suspension or termination of operator’s Vermont operations, civil damages, injunctive relief and/or criminal liability]~~ penalties pursuant to 31 V.S.A. § 1324 and 31 V.S.A. § 1325.”

- *Issue 6 – Requirement to provide “a brief description” of sporting events and wagering propositions.*

Section 7.1 of Part II of the Proposed Procedures requires sports wagering operators to display “a brief description of the Sports Event and wagering proposition” along with the lines or odds being offered. This would likely require significant amounts of unnecessary text to be added to relatively limited space on mobile devices. Further, customers can look up information on the wagers in the house rules. To address this concern, we suggest removing this requirement through the following edits:

Part II, Section 7.1:

“7.1 Available wagers must be displayed to players on the Mobile Sports Wagering Platform. The display must include the lines or odds, the wager type, and event being wagered upon ~~[and a brief description of the Sports Event and wagering proposition].~~

- *Issue 7 – Cancellation and Voiding of Wagers.*

Section 8 of Part II of the Proposed Procedures provides for the process of cancelling and voiding wagers. This section has a number of issues. First, Section 8.1 requires sports wagering operators to cancel or void a sports wager under numerous circumstances. This should be changed to provide that operators “may” void or cancel in these circumstances which will be covered by their house rules as approved by the Department. Second, there are multiple references to documentation “in the Internal Control System” detailing circumstances which may lead to cancellation or voiding. We believe these should be references to the house rules, which would contain information for customers on when such cancellations or voiding would occur.

Third, Section 8.8 provides that the Department may order a Sports Wagering Operator to honor a sports wager that it declared cancelled or voided if a patron requests review by the Department and the Department or its designee “concludes there is no reasonable basis to believe there was obvious error in the placement or acceptance of the Sports Wager...” However, this ignores all the other reasons listed in Section 8.1 for cancelling or voiding a sports wager. As such, this section should be updated to include the reasons set forth in Section 8.1 for cancellation or voiding.

Finally, Section 8.9 requires approval of an authorized “Critical Employee” for cancellation or voiding of wagers. We believe that this should be amended to allow any authorized employee to void or cancel wagers.

To address these concerns, we suggest the following edits:

Part II, Section 8.0 Cancelled or Voided Wagers:

“A Sportsbook shall not cancel or void any Sports Wager except in accordance with this section.

1. Cancellation of an otherwise validly placed Sports Wager by a Sportsbook shall be nondiscretionary. A Sportsbook ~~[shall]~~ **may** cancel or void a Sports Wager without prior authorization of the Department under the following circumstances:

a. Any Sports Wager where after a player has placed a Sports Wager, the Sports Event is cancelled, postponed or rescheduled to a different date prior to completion of the Sports Event;

1. In the case of a Sports Wager on a portion of a Sports Event, that Wager shall be valid when the event is canceled, postponed, or rescheduled if the outcome of the affected portion was determined prior to the cancelation, postponement or rescheduling; or

2. A Sportsbook may establish a timeframe in which an event may be rescheduled or postponed without canceling the Sports Wager. This timeframe shall be tied to specific Sports Events, subject to the approval of the Department, and documented in the ~~[Internal Control System]~~ **house rules**.

...

g. A material change in circumstances for a given Sports Event or Type of Wager occurs, provided:

1. The Department approves the material change; **and**
- ~~2. The Sportsbook documents the material change in its [Internal Control System] **house rules**; **and**~~
3. ~~The Sportsbook displays the material change to a player at the time of placement of the Sports Wager;~~

...

8.8 A player may request the Department or its designee review any Sports Wager declared cancelled or voided by a Sportsbook. If the Department or its designee concludes there is no reasonable basis to believe there was obvious error in the placement or acceptance of the Sports Wager, **and the reason for cancellation is not otherwise set out in section 8.1**, the Department or its designee may order the Sports Wagering Operator to honor the Sports Wager.

8.9 A Sports Wager shall not be declared canceled or voided without the approval of an authorized [~~Critical Employee~~] **employee** of the Sportsbook....”

- *Issue 8 – Requirement for annual audits of change management process.*

Section 4.1(c) of Part III of the Proposed Procedures requires all sportsbooks to have their change management processes audited annually by an independent testing laboratory. The costs for such audits can be significant, and with the requirements for quarterly change reports in section 4.2 and annual full certification in section 4.3, the necessity for an annual audit of the change management processes is not necessary.

Part III, Section 4.1:

“4.1 These change management processes must be:

- (a) Developed in accordance with the Gaming Laboratories International’s GLI-CMP: Change Management Program Guide, as amended or modified; **and**
- ~~(b) Approved by the Department prior to its deployment[;]~~
- (c) ~~Audited at an annual interval by the independent testing laboratory].~~

- *Issue 9 – Geolocation requirements.*

Section 5.1 of Part III of the Proposed Procedures requires that geolocation services “ensure that the player is located in the authorized geographic boundaries within the State of Vermont when placing any Sports Wager....” We believe this language should be more focused on the processes utilized by geolocation services to reasonably detect the location of an individual. For example, Colorado requires that sports betting operators “Utilize a geofence system to reasonably detect the physical location of a patron....”⁷ To address this concern, we suggest the following edits:

Part III, Section 5.1:

“The Sportsbook must utilize geolocation services to **reasonably** ensure that the player is located in the authorized geographic boundaries within the State of Vermont when placing any Sports

⁷ Colorado Sports Betting Regulations Rule 7.10(1)(a)(i)

Wager and to monitor and block unauthorized attempts to place Sports Wagers when an individual or player is physically outside the authorized geographic boundaries within the State of Vermont at the time the Sports Wager is placed.”

- *Issue 10 – Clarification of server location requirements.*

Section 7.0 of Part III of the Proposed Procedures requires that any equipment “directly related to the placing of Sports Wagers” must be located in the State of Vermont. This language may be overbroad and subject to interpretation as to what is included beyond the server which receives and processes wagers. Other jurisdictions, like Colorado, clearly limit the scope of the equipment location requirement to “the server responsible for the acceptance and storage of patron wagers.”⁸ To address this concern, we suggest the following edits:

Part III, Section 7.0:

“Unless otherwise approved by the Department in writing, a Sportsbook must place its primary server **responsible for the acceptance and storage of** [~~or other information technology equipment directly related to the placing of~~] Sports Wagers in secure locations in the state of Vermont and which, upon request, shall be accessible by the Department.”

- *Issue 11 – Terms and conditions.*

Section 4.0 of Part IV of the Proposed Procedures provides that “All terms and conditions and privacy policies for Sports Wagering Accounts must be included in the Internal Control System of the Sportsbook...” We suggest that the terms and conditions and privacy policies not be included as part of the internal controls. Otherwise, this will require re-approval of the terms and conditions, privacy policies, and the internal controls themselves, anytime there is a request for a change to the terms and conditions. To address this concern, we suggest the following edit:

Part IV, Section 4.0:

“All terms and conditions and privacy policies for Sports Wagering Accounts [~~must be included in the Internal Control System of the Sportsbook and~~] shall be readily accessible to the player before and after registration and notices when materially updated (i.e., beyond any grammatical or other minor changes).

- *Issue 12 – Multi-Factor Authentication.*

Section 6.3 of Part IV of the Proposed Procedures provides that “Players must be given the option to use a Multi-Factor Authentication process when accessing their Sports Wagering Account.”

⁸ Colorado Sports Betting Regulations Rule 7.6(2)(a)

Other states have moved toward requiring Multi-Factor Authentication, including Pennsylvania. We suggest that the Board consider adopting the following guidelines from Pennsylvania⁹:

Multi-Factor Authentication Requirement:

The Pennsylvania Gaming Control Board (“PGCB”) is requiring Interactive Gaming Operators to implement a mandatory Multi-Factor Authentication (“MFA”) process for all Interactive Gaming Accounts. Operators can use one of the following methods to achieve compliance with this requirement.

- *A One-Time Password/Code sent to a device or account that is confirmed to be owned/possessed by the owner of the interactive gaming account.*
- *Use of software tokens (authentication apps or software such as Google Authenticator or Microsoft Authenticator)*
- *A face ID or fingerprint verification*
- *Other method as approved by the PGCB*

Additional details of the requirement:

When a patron attempts to access their interactive gaming account from any device, MFA must be performed and successfully completed, prior to allowing access to the interactive gaming account. Once a successful MFA has been completed for a specific device, that device is not required to perform another MFA verification for a period of 14 days. Each new device used by a patron attempting to log into their account, must perform an MFA verification and be successfully authenticated, prior to allowing access to the interactive gaming account. Once the device has successfully completed the MFA verification, that device will not require another MFA verification for a period of 14 days.

- ***Issue 13 – Denied transaction notification.***

Section 7.1(c) of Part IV of the Proposed Procedures requires that operators give “a descriptive message” for denied transactions as to why a transaction was not completed as initiated. It is not necessarily the best practice to provide detailed information on why a transaction was denied (e.g., in cases of suspected fraud or failure of certain checks). Generally, a customer is only given detailed information related to a failed transaction where it is actionable by the customer (e.g., a transaction was denied due to insufficient account balance). To address this concern, we suggest the following edits:

Part IV, Section 7.1:

⁹ Pennsylvania Gaming Control Board Interactive Gaming Accounts Multi-Factor Authentication (MFA) Requirement Guidance – 7.1.2022.

“7.1 Sportsbooks shall provide the player written confirmation or denial of every financial transaction initiated, including:

- (a) The type of transaction (deposit or withdrawal); **and**
- ~~(b) The transaction value[; **and**~~
- (c) ~~For denied transactions, a descriptive message as to why the transaction did not complete as initiated].~~

- *Issue 14 – Withdrawal request timelines.*

Section 7.5(c) of Part IV of the Proposed Procedures provides that a sportsbook must honor a player’s request to withdraw funds within 5 business days. While this is a reasonable timeframe for most withdrawals, we suggest that it be amended to allow up to 14 days for check processing. To address this concern, we suggest the following edits:

Part IV, Section 7.5(c):

“(c) A Sportsbook must honor the player’s request to withdraw funds within five (5) business days after the request, unless the conditions set forth in subsection 7.5(d) are met. **However, for withdrawals via check, a Sportsbook must honor the player’s request within fourteen (14) days after the request, unless the conditions set forth in subsection 7.5(d) are met.**

- *Issue 15 – Declined withdrawals for fraud or unlawful activity.*

Section 7.5(d) of Part IV of the Proposed Procedures provides that, if a sportsbook declines to honor a withdrawal request due to suspicion of fraudulent or unlawful conduct, they must provide notice to the player of the nature of the investigation and provide additional written notice every tenth business day. We are concerned that this could be interpreted to require notifying a player of investigations related to suspicion of financial crimes such as money laundering. If that is the case, it may be a federal crime to inform the player of the existence of an investigation. We suggest that the Board reconsider the requirements of section 7.5(d)(1) and (2), or at a minimum, add clarification that nothing in this section would require sportsbooks to make disclosures in violation of federal or state law.

- *Issue 16 – Requirement to remove suspended players from marketing distribution lists.*

Section 11.2(g) of Part IV of the Proposed Procedures requires that for any account placed in suspended status for any reason the player must be removed from any advertising or marketing distribution lists. While we understand that any individual whose account is suspended for responsible gaming issues should be removed from advertising or marketing distribution lists, not all suspensions, especially if they are temporary and/or done for technical reasons, should mandate such a removal. As such, we suggest removal of Section 11.2(g) in its entirety.

- *Issue 17 – Dormant accounts.*

Section 13 of Part IV of the Proposed Procedures provides for the handling of dormant accounts. We suggest that this section be updated to have such accounts be handled in accordance with state unclaimed property laws. To address this concern, we suggest the following edits:

Part IV, Section 13:

“Any Sports Wagering Account with no **patron-initiated** activity for at least three (3) years ~~may be closed. When a Sports Wagering Account is closed the Sportsbook shall issue any funds, less processing fees, within five (5) business days to the player]~~ **shall be presumed abandoned and treated as unclaimed property under 27 V.S.A. Chapter 18.**”

- *Issue 18 – Amendments to Internal Control System.*

Section 1.1 of Part V of the Proposed Procedures provides that the Department has 30 business days to respond to any amendments requested by a sportsbook to their internal controls. As sportsbooks likely will be amending internal controls across multiple jurisdictions at the same time to implement new company wide procedures or product improvements, we suggest that this timeframe be reduced to 10 business days in order to ensure that such a timeframe will not unnecessarily delay multi-state changes. To address this concern, we suggest the following edits:

Part V, Section 1.1:

“1.1 Amendments to any portion of the Internal Control System must be submitted to the Department for approval. If within ~~[thirty (30)]~~ **ten (10)** business days the Department has not approved, denied, or otherwise provided written notice, an Operator may implement the amended internal controls as submitted with the Department retaining its authority to require further amendment, approval, or denial;...”

- *Issue 19 – Jobs compendium.*

Section 1.3(f) of Part V of the Proposed Procedures requires sportsbooks to include in their internal controls a “jobs compendium” which consists of all titles of all personnel engaged in the operation of Sports Wagering including detailed job descriptions, chains of command, and lines of authority. This is not a standard requirement as part of internal controls in other jurisdictions and would be an almost unmanageable requirement to have to do internal control updates every time a new position was created, a position was eliminated, or an individual’s job description was adjusted. As such, section 1.3(f) should be removed in its entirety.

- *Issue 20 – Real-time data sharing mandate.*

Sections 12.1-12.3 of Part V of the Proposed Procedures provide that, upon request of a sports governing body, a sportsbook must provide “real-time” data sharing of wagering data with the sports governing body. While there are a number of jurisdictions with similar requirements,

generally these requirements are included in statute as they are a significant public policy decision. Since 31 V.S.A. chapter 25, § 1322 provides that data sharing for integrity purposes is not mandatory, we suggest that the legislature has made clear their view on the issue. As such, we suggest removal of Sections 12.1-12.3 in their entirety.

- ***Issue 21 – Player complaint form.***

Section 13.1 of Part V of the Proposed Procedures provides a specific procedure that must be followed by sportsbooks to document any player complaints. This is a procedure commonly used in the brick-and-mortar casinos but is unnecessary and unduly burdensome for online sportsbooks. As such, we suggest removal of section 13.1 in its entirety.

- ***Issue 22 – Player complaint process.***

Section 13.7 of Part V of the Proposed Procedures requires a sportsbook to notify the Department of any complaints that cannot be resolved to the satisfaction of the player. This is overly burdensome on operators and should be removed, especially in light of the provisions of section 13.6 whereby sportsbooks are required to provide information to customers on their right to submit a complaint directly to the Department. To address this concern, we suggest removal of section 13.7 in its entirety.

- ***Issue 23 – Independent Audit of Internal Control Systems.***

Section 20 of Part V of the Proposed Procedures requires an independent audit of the internal control system at least once every two years. These audits can be costly and section 1.3(b)(2) of Part V already requires an annual audit of accounting controls. Therefore, we suggest removal of section 20 in its entirety.

- ***Issue 24 – Information required for self-exclusion.***

Section 2 of Part VI of the Proposed Procedures provides for the operation of the self-exclusion list. However, it does not make clear the information that must be provided by the player in order to sign up for the list. We suggest additional language that requires at least the following information (which is also required for the involuntary exclusion list in section 3.3 of this part) be provided as part of the list: the full name; date of birth; the date the person was placed on the self-exclusion list; partial or full Social Security Number, or an equivalent government identification number for a noncitizen, such as a passport or taxpayer identification number; and residential address.

- ***Issue 25 – Sharing of self-exclusion list and involuntary exclusion list.***

Section 4.3 of Part VI of the Proposed Procedures limits the number of eligible entities with which a sportsbook may share the self-exclusion list or the involuntary exclusion list. While this information should be kept confidential, the language as written does not allow for the sharing of this information with service providers who would need such access to ensure compliance with other requirements of the Proposed Procedures (e.g., marketing and KYC vendors). To address this concern, we suggest the following edits:

Part VI, Section 4.3:

“4.3 The Self-Exclusion List and Involuntary Exclusion List shall not be publicly disclosed by the Operator, its Service Providers, employees, affiliates or other persons authorized to access the lists. However, the Operator may share the lists with **service providers necessary to effectuate the exclusions**, other designated Operators in the State of Vermont or its affiliates in other jurisdictions for the purpose of assisting in the proper administration of responsible gaming programs.”

- *Issue 26 – Handling of pending wagers for those who self-exclude.*

Section 4.5 of Part VI provides for the requirements on sportsbooks related to individuals who self-exclude or are on the involuntarily excluded list. However, it is unclear as to how sportsbooks should handle wagers placed by players prior to self-excluding. We strongly suggest that those wagers be allowed to settle in due course with winnings remitted to the player so as to prevent individuals from (i) being discouraged from self-excluding for fear their existing wagers will not stand and (ii) using exclusion to get out of wagers they have made. To address this concern, we suggest adding the following language as subdivision (h) of section 4.5:

Part VI, Section 4.5:

“(h) In the event that a player places a wager prior to self-excluding or being added to the involuntary exclusion list, such wager shall be allowed to settle in the normal course of business with any winnings paid to the excluded individual.”

- *Issue 27 – Requirement for advertising and marketing plan.*

Section 5.0 of Part VII of the Proposed Procedures requires sportsbooks to develop and submit an advertising and marketing plan to the Department. We believe that this is an unnecessary constraint on sportsbooks to adjust their marketing plans routinely as dictated by the market. Further, this is unnecessary when coupled with the regulatory prohibitions around advertising contained within this part. As such, we suggest removal of section 5.0 in its entirety.

Part III - Requests for Clarification and Minor Errata

- *Issue 1 – Clarification of definition of “Critical Employee.”*

Section 1.14 of Part I of the Proposed Procedures provides a broad definition of individuals who may be determined to be “Critical Employees.” While the rest of the Proposed Procedures are not clear on what, if any, licensing requirements are associated with “Critical Employees”, we are concerned that this language could lead to unnecessary licensing requirements for a large number of customer service employees. Specifically, subdivision (d) provides that “any individual who has the capability to directly affect the outcome of a Sports Wager or a payout to a player” is included in the definition of “Critical Employee.” With the language of this subdivision granting discretion to the Department to determine what positions directly impact the integrity of sports wagering, it is unnecessary to specifically include these categories. As such, we suggest the following edits:

Part I, Section 1.14:

“1.14 “Critical Employee” means any employee whose duties directly impact the integrity of Sports Wagering in Vermont, including:

...

(f) Any other individual who directly impacts the integrity of Sport Wagering as determined by the Department~~[, which shall include, but not be limited to, any individual who has the capability to directly affect the outcome of a Sports Wager or payout to a player].”~~

- *Issue 2 – Definition of “Ineligible Person.”*

Section 1.22 of Part I of the Proposed Procedures provides a definition of “Ineligible Person” which restricts the ability of certain individuals to engage in sports wagering. While this definition contains most standard categories of ineligible bettors, it does not specifically call out individuals who are attempting to place wagers on behalf of another (i.e., proxy wagering). We suggest that this be added to the list of “Ineligible Persons.” To address this concern, we suggest the following edits:

Part I, Section 1.22:

“1.22 “Ineligible Person” means:

- (a) Any Underage Person;
- (b) Any Prohibited Sports Bettor;
- (c) Any Involuntarily-Excluded Person;
- (d) Any Voluntarily-Excluded Person;
- (e) Any individual wagering while not in the authorized geographic boundaries within the state of Vermont;
- (f) Any individual wagering in violation of state, local, or federal law;
- (g) **Any individual wagering on behalf of another;** or
- (h) Other Ineligible Persons as determined by the Department.”

- *Issue 3 – Clarification of definition of “owner of a team.”*

Section 1.38 of Part I of the Proposed Procedures provides that the definition of “Prohibited Sports Bettor” for purposes of the Proposed Procedures has the same meaning as it does in 31 V.S.A. § 1301(9). This statutory definition includes a reference to prohibiting any...owner...of a team...if the sports wager is based in whole or in part on a sport or athletic event overseen by the governing body that oversees the individual’s sport.” However, there is no clarity on what it means to be an “owner of a team.” For example, the Green Bay Packers football team is a publicly held non-profit corporation and has 539,000 individual shareholders¹⁰. This would require sports wagering operators to prohibit any individual shareholder of the Packers from betting on the NFL. To address this issue, we suggest the addition of a definition for “owner of a team” to clarify that such term only references individuals who own more than five percent of a team.

Insert the following after Section 1.32 “Operator”:

“1.33 “Owner Of A Team” means a person who holder more than five percent ownership interest in a team.”

- ***Issue 4 – Clarification of definitions of “Service Providers” and “Suppliers”***

Section 1.44. of Part I of the Proposed Procedures provides for the definition of the term “Service Provider” and Section 1.54 provides for the definition of the term “Supplier.” However, these terms are partially overlapping and confusing. We suggest the following clarifying edit distinguish “Service Providers” from “Suppliers”:

Part I, Section 1.54:

“1.54 “Supplier” means a person that provides services, goods, software, or other components necessary for the creation of Sports Wagering markets and determination of Sports Wager outcomes, directly or indirectly, to any Operator or Service Provider involved in the acceptance of Sports Wagering, including any of the following: providers of data feeds and odds services, [~~internet platform providers,~~] risk management providers, integrity monitoring providers, and other providers of supplier services as determined by the Department.”

- ***Issue 5 – Clarification on authorization for “Virtual Sports Events.”***

Section 1.2(b) of Part II of the Proposed Procedures provides the authorization for sports wagering on “Virtual Sports Events” under certain circumstances. However, the definition of “Virtual Sports Event” in Section 1.57 of Part I is incredibly broad and only imposes the limitation that a random number generator must be used for determining results. There is no additional clarity on the matter to be found in statute. Without any additional constraints, it appears that the language of the Proposed Procedures could be read to allow for “Virtual Sports Events” which mimic casino games, such as roulette, poker, blackjack, or other card, dice, or ball games.

¹⁰ Information on Green Bay Packers shareholders available here: <https://www.packers.com/community/shareholders>

We request the Board offer additional clarification around what types of “Virtual Sports Events” would be authorized.

- ***Issue 6 – Clarification on prohibition of pari-mutuel wagering on dog or horse races.***

Section 1.2(j) of Part II of the Proposed Procedures prohibits wagers on “Any pari-mutuel wagering on dog or horse races.” In relation to horse racing, 31 V.S.A. § 1301(12) provides that ““Sports event” means an event at which two or more persons participate in a sports or athletic event. “Sports event” also means horse racing and equestrian events.” The provisions of these sections raise two concerns for which it would be helpful for the Board to provide additional clarity.

First, in relation to the prohibition on pari-mutuel wagering on horses, we suggest the Board clarify that this would not prohibit sports wagering operators who are authorized to conduct advanced deposit wagering (“ADW”) on horse racing in Vermont from enabling access points to their ADW platforms in their online sports wagering platforms to improve ease of access for customers in Vermont.

Second, is it to be understood from the language of these sections that the Board intends to authorize fixed odds wagering on horse racing in Vermont? If so, will there be any additional regulations forthcoming on fixed odds wagering on horse racing?

- ***Issue 7 – Grammatical fix – pluralizing the phrase “Data Sources.”***

Section 4.0 of Part II of the Proposed Procedures requires all sportsbooks to report to the Department “the Data Source that it uses to resolve Sports Wagers.” Sportsbooks often utilize multiple data sources for different sports, leagues, or wager types. To address this concern, we suggest the following edit:

Part II, Section 4.0:

“A Sportsbook shall report to the Department the Data Source(s) that it uses to resolve Sports Wagers....”

- ***Issue 8 – Clarification of geolocation check requirements***

Section 5.2(a) of Part III of the Proposed Procedures requires “A geolocation check prior to the placement of the first wager after login or upon a change of IP address;.” Can the Board provide clarification on whether this provision requires geolocation checks when either occurrence happens?

- ***Issue 9 – Requirements for third-party system security testing contractors.***

Section 8.3(c) of Part III of the Proposed Procedures requires that in order to qualify as a “third-party contractor” for purposes of system security testing, the contractor must “Have at least five (5) years’ experience performing system security testing on Mobile Sports Wagering Platforms.” However, the United State Supreme Court decision in *Murphy v. NCAA* which struck down the Professional and Amateur Sports Protection Act (PASPA) was issued on May 14, 2018, just over 5 years ago. As such, the growth of the online sports betting industry outside of Nevada did not start until late 2018 and 2019. The language of this provision effectively blocks any potential contractor from offering these services unless they were involved in the limited online market in Nevada prior to the repeal of PASPA. As such, this requirement should be removed entirely.

- ***Issue 10 – Grammatical fix to add missing word.***

In Section 11.1 of the Proposed Procedures the word “be” appears to be missing from the first sentence. We suggest the following edit to address this concern:

Part IV, Section 11.1:

“11.1 A Sports Wagering Account may **be** placed into a suspended mode by the Sportsbook under any of the following conditions:...”

- ***Issue 11 – Clarification on inclusion of procedures in Internal Control System.***

Section 1.3(h) of Part V of the Proposed Procedures requires sportsbooks to have a “detailed narrative description of the administrative and accounting procedures... including the following...(h) All applicable policies and procedures require pursuant to this Part.” We request the Board provide clarification that this would only require sportsbooks to reference existing procedures in their internal controls, rather than include the full text of all procedures they have in the text of the internal controls. We are concerned that requiring the latter would prove unwieldy and require nearly continuous review and approval by the Department of ministerial amendments to procedures.

- ***Issue 12 – Clarification of minimum reserve amount.***

Section 6.1(b) of Part V of the Proposed Procedures includes the minimum amount of reserve that a sportsbook must maintain. However, the text provides that the minimum shall be “twenty-five thousand dollars” and the number provided is “(\$50,000).” We suggest changing the number to conform with the text requirement of twenty-five thousand dollars. To address this concern, we suggest the following edits:

Part V, Section 6.1(b):

“(b) The reserve must be not less than the greater of twenty-five thousand dollars [~~(\$50,000)~~ **(\$25,000)**] or the sum of the following amounts:...”

- *Issue 13 – Clarification of player opt-out of marketing communications.*

Section 1.1(f) of Part VII of the Proposed Procedures requires operators to provide the ability to “opt-out” of any advertising or marketing distribution lists. While we understand the desire to provide such an opportunity, we suggest that the most viable way to address this concern is to limit the scope of this provision to email marketing. To address this concern, we suggest the following edits:

Part VII, Section 1.1(f):

“(f) **If sent via email,** include a means for the receiver to opt out of any **email** advertising or marketing distribution lists.”

- *Issue 14 – Clarification of description of available resources.*

Section 2.0 of Part VII of the Proposed Procedures includes a reference to requiring “information concerning assistance available to problem gamblers” in an advertisement. We support the premise of this provision however we suggest the following clarifying edits be made related to the description of such resources:

Part VII, Section 2.0:

“An Operator shall include in an advertisement, information concerning [~~assistance~~] **national resources** available to **assist** problem gamblers, or shall direct players to a reputable source of that information, including a toll-free crisis help telephone number approved by the Department. If an advertisement is of insufficient size or duration to provide the information required, the advertisement shall refer to a website or application that does prominently include such information.”

- *Issue 15 – Clarification of prohibition on advertising targeting a college campus.*

Section 4.2 of Part VII of the Proposed Procedures prohibit targeting advertising to a college or university campus. However, section 4.2 does not provide the same exclusion for generally available advertising that is provided in section 4.1. (relating to postsecondary schools). We suggest adding the same exclusion for consistency to section 4.2. To address this concern, we suggest the following edits:

Part VII, Section 4.2:

“4.2 An Operator shall not advertise in a manner that targets the area of a college or university campus, **except for generally available advertising, including television, radio, and digital advertising.**”

We appreciate your time and consideration of our comments and would be happy to discuss them at your convenience.

Sincerely,



Andrew Winchell
Director, Regulatory Affairs