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VIA EMAIL TO REGCOMMENTS@GCB.NV.GOV

Nevada Gaming Control Board
1919 E. College Parkway
Carson City, NV 89706

RE: Proposed Amendments to Regulations 5, 22 and 26C

Ladies and Gentlemen:

We are writing on behalf of BetMGM, LLC (“BetMGM”) to provide comments on the proposed amendments to Regulations 5, 22 and 26C (the “Proposed Amendments”). BetMGM is licensed as a manufacturer, distributor, and operator of an information service and registered as an information technology service provider (“IT Service Provider”).

The Proposed Amendments make certain changes to the Regulations governing the functions of an IT Service Provider and add new requirements for the use of licensed information services. We would like to gain a greater understanding of the Nevada Gaming Control Board’s (the “Board’s”) intent with regard to the Proposed Amendments.

In particular, we have the following questions and comments with regard to the following regulations included in the Proposed Amendments.

Regulation 5.240

The Proposed Amendments strike the word “management” from the definition of IT Service Provider in Regulation 5.240(2)(b). We are trying to understand whether the intent of this change is to prohibit IT Service Providers from engaging in the management of cashless wagering systems, associated equipment, games, gaming devices or race book and sports pool operations (“Gaming Systems”), or to remove “management” of such systems as an activity governed by Regulation 5.240.

NRS 463.677 authorizes the Commission to create regulations defining and governing service providers. That statute provides, in pertinent part, that “Technological advances have evolved which allow licensed gaming establishments to expose games, including, without limitation, system-based and system-supported games, gaming devices, interactive gaming, cashless wagering systems or race books and sports pools, *and to be assisted by* an interactive gaming service provider or *a service*

provider, as applicable, who provides important services to the public with regard to the conduct and exposure of such games.” NRS 463.677(1)(a) (emphasis added).

NRS 463.677 specifically allows a service provider to assist a licensee by providing “important services to the public with regard to the conduct and exposure of such games.” The intent of this statute was to provide licensees with more opportunities to take advantage of the expertise of service providers, as long as those service providers are properly regulated. The Commission has the authority to define by regulation who qualifies as a service provider under Regulation 5.240 and how they are regulated, but there is nothing in the statute that prohibits service providers from being involved in the management of Gaming Systems.

Regulation 5.240, by its terms, requires licensees to only use service providers who are registered or licensed, as applicable. See Regulation 5.240(3). Nothing in Regulation 5.240, however, prohibits licensees from using other contractors to perform various services, as long as those services are not included in the definition of one of the regulated service providers in Regulation 5.240. By excluding the word “management” from the definition, the Board is arguably saying that those who provide management of Gaming Systems do not need to be registered under Regulation 5.240, but we do not believe that is the Board’s intent.

Regulation 22.010

We support the change to Regulation 22.010. We believe this change clarifies the regulation and harmonizes it with the regulations recently adopted with regard to cloud computing service providers.

Regulation 22.025

While an operator of an information service has long been recognized in the Nevada Gaming Control Act, until recently, it was a license that was rarely used. An information service license is a nonrestricted license, requiring a full nonrestricted investigation before issuance.

In the past, Nevada bookmakers were extensively involved in setting odds and lines. With the explosion of legal sports betting across Europe and now, post-PASPA, across the United States, sophisticated services and computerized “feeds” for odds and lines have proliferated. The scale and automation they bring is now an essential tool for a modern sports pool operator.

NRS 463.01642 defines an “information service” as “a person who sells and provides information to a licensed sports pool that is used primarily to aid the placing of wagers on events of any kind.” Historically, the Board has interpreted this definition to apply to those companies that sell or provide lines, point spreads and odds directly to the licensed sports pool operator. Companies providing feeds to licensed information services who then pass those feeds through to the operator of the sports pool have not been required to be licensed.

The Proposed Amendments require an operator of an information service to demonstrate and affirm that:

- (1) It does not have any agreements with third parties designed to avoid the licensure of the third party as an information service;
- (2) It will generate its sports related facts, opinions and analysis internally or obtain them from multiple *unaffiliated* sources; and
- (3) It will generate a product for sports pools that is unique to the licensed information service.

We will start with sub-paragraph (2) of Regulation 22.025(2)(b), as proposed, because we believe it will significantly impact sub-paragraphs (1) and (3). With regard to sub-paragraph (2), we are unclear whether obtaining sports related facts, opinions and analysis from multiple unaffiliated sources eliminates the need to generate that information internally. Will there be a requirement to mix or merge various parts of the multiple sources? Or, will the information service be able to use one feed as its primary feed and a second feed as a way of double-checking the information in the primary feed, making occasional adjustments to the primary feed?

Some information services receive a primary feed from one source for football and different primary feeds from other sources, with more particularized knowledge, for basketball, baseball, hockey or soccer. Will that be considered multiple sources?

Will the licensed information service be allowed to pass through the primary feed for in-play wagering where speed is of the essence, or will it have to find a way to compare and analyze each in-play proposition before it is passed through to the licensed operator? The disjunctive “or” in the language of sub-paragraph (2) suggests that the use of multiple sources is a sufficient alternative to developing the information internally, but we would like to clarify this provision.

We also want to understand the definition of “unaffiliated”? Will the multiple sources need to be unaffiliated with the licensed information service, unaffiliated with each other, or both? We assume that they cannot be affiliated with each other to ensure that they are truly multiple sources.

However, licensees routinely structure their operations in multiple affiliated companies that operate interchangeably and provide services to the company that is the ultimate licensee, whether that licensee is a casino operator, operator of a race book or sports pool, an information service, or manufacturer. Because “affiliates” are already subject to the jurisdiction of the Board and Commission, *see* NRS 463.4825 (definition of “Affiliated Company”), we believe that a feed received from an affiliated company of a licensed information service should be considered to be generated internally.

With regard to sub-paragraph (1), if the third party is one of the multiple sources received by the licensed information service, does that fact indicate that the agreement to receive the feed is not designed to avoid licensure of the third party as an information service? What if the feed from that third party is the primary source relied upon by the information service, even though information from other sources is also received?

With regard to sub-paragraph (3), most sources use the same information as the basis of their analysis. Many of the sources are substantially similar. The sources of information used by almost every licensed information service and licensed sports pool include the lines offered at competing sports pools. Under these circumstances, we are concerned that it will be difficult to determine what qualifies as “unique”.

We are not suggesting that data feed companies be insulated from regulation and believe that some regulation of the feed providers is appropriate. The industry relies upon these feeds, however, and requiring them to suddenly cease using the feeds from unlicensed services would cause significant disruption in the industry.

Many licensed information services and even licensed sports pool operators have affiliated companies that centralize the provision of sports information and analysis to all of their affiliated companies in various jurisdictions where the organization does business. One possibility is to consider opinions and analysis developed by these affiliated companies to have been developed internally, as discussed above.

Another possibility is to require those who provide feeds to licensed information services, as opposed to those who provide the feeds directly to licensed sports pools, to be registered as service providers. As noted above, NRS 463.677 gives the Commission great latitude in determining who should be considered a “service provider” subject to registration.

Requiring all of the data providers to go through a full, Nevada, nonrestricted license investigation may cause some of those providers to forego providing information to Nevada licensees. We are concerned that denying the use of these feeds to Nevada licensees, when they are commonly used in other jurisdictions around the United States, would put Nevada licensees at a competitive disadvantage. Allowing them to be registered as service providers, however, would give the Board jurisdiction over them (including the ability to require applications for findings of suitability in appropriate cases) without placing such a heavy burden on the providers of data feeds that they choose to bypass Nevada altogether.

Finally, if the Board is determined to require all data feed providers to obtain licenses as operators of information services or decides to require them to be registered as service providers, we strongly believe that there needs to be an appropriate period during which such data providers may continue

to operate as long as they have applied for appropriate licenses or registrations on or before a particular date. This is especially true where, as in this case, the Proposed Amendments are contrary to a long-held interpretation of the existing statute relating to information services.

Conclusion

We are hoping that the workshop process will give us the opportunity to understand the Board's intent and ensure that the language of the Proposed Amendments accomplishes that intent, without unduly burdening the industry. If we may answer any questions, or provide any other information with regard to the comments provided above, or the Proposed Amendments, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Scott Scherer/mc". The signature is written in a cursive style with a horizontal line through the middle of the name.

Scott Scherer