

The Maryland Center of Excellence on Problem Gambling (the Center) is pleased to submit these comments to the Maryland Lottery and Gaming Control Agency (the Agency) on the proposed regulations published in the Maryland Register on November 15, 2024. The Center is a program of the University of Maryland School of Medicine and funded by the Problem Gambling Fund through the Maryland Department of Health, Behavioral Health Administration, to promote healthy and informed choices regarding gambling and problem gambling. Data from the 2022 Prevalence Study showed that 4% of Marylanders were identified as disordered gamblers (this includes both problem gamblers (less severe) or probable pathological gamblers (more severe)). The burden of gambling problems is not limited to the gambler. A gambling problem can be very harmful to an individual and the ones they love. It can cause financial problems, as well as physical and mental health issues, often placing a burden on the gambler's family, social networks, and the communities they live in. For every problem gambler, it is estimated that six or more other individuals are affected financially, socially, and psychologically. Problem gambling is a public health concern, increasing instances of incarceration, bankruptcies, crime, homelessness, domestic violence, child maltreatment, and more. As an organization focused on public health and problem gambling, we value the problem gambling protections that have been included in the regulations and are providing the following comments as ways to further enhance these protections.

COMAR 36.03.10.20 increases the amount a facility operator can accept from a player from \$250,000 in one day to \$500,000. While there is no set industry standard on a reasonable amount to accept from a player in a single day, increasing the amount this high is concerning. Placing a spending limit is an established responsible gambling tool but it is rendered ineffective if the limit is higher than a person can reasonably afford.

COMAR 36.04.02.02(C)(7) and (D)(6) both seem to have the potential of reducing the amount of the annual fee that facility operators pay each year. This annual fee is the primary source of funding for the Problem Gambling Fund and as the only fund that assists Marylanders needing help with a gambling problem, the Center does not support any regulations that would reduce this critical funding source.

COMAR 36.09.02.02(F) states that the Commission "may" maintain a publicly available list of approved registered fantasy competition operators. The Center recommends changing that to "shall" so that the list is made publicly available, as a best practice of responsible gambling.

COMAR 36.09.03.01(A) prohibits a person under the age of 18 from participating in a fantasy competition. Maryland law is inconsistent in its age restrictions on gambling – some being 21 and others being 18. The state should be consistent in creating a legal gambling age; just as the state has done with other addictive activities such as smoking and drinking, and change this requirement to 21 instead of 18.

COMAR 36.09.03.01(D) removes domestic partner from the list of individuals who are not allowed to participate in a fantasy competition. This is still a term that is used in Maryland law and describes a relationship that is not otherwise captured in this regulation. The Center recommends keeping “domestic partner” in the regulation.

COMAR 36.09.03.05 states that an operator may not offer a fantasy competition based on a sporting event featuring amateur athletes who are primarily under 18 years old. Betting on minors should never be a legal activity and the regulation should not include the word “primarily.”

COMAR 36.09.03.06 removes section D which does not allow advertisements depicting a school or college setting. The Center recommends keeping that section in because it is not captured elsewhere in the regulation. Simply prohibiting the depiction of a school does not go far enough to support this demographic that is at high risk of problem gambling. It is too easy for a student to relate to an advertisement if it shows a setting that is so relevant to their current lived experience. Depicting a school or college setting normalizes a dangerous behavior for this population.

COMAR 36.09.04.02(C)(1) allows an operator to indefinitely increase a player’s deposit limit above \$5,000 per calendar month. The Center agrees that the operator should confirm the financial ability of the player to afford losses before increasing this limit, but the annual review does not go far enough to support and protect players with a gambling problem. The Center recommends making this review quarterly or entirely removing the ability to increase the deposit limit.

COMAR 36.09.05.01(E) does not add a person directly to the Commission’s VEP list for fantasy sports but the Center recommends that it would be a better public policy to add a person directly to the Commissions VEP list for fantasy sports.

COMAR 36.09.05.02(A)(7) requires an operator’s responsible gaming plan to include placement of responsible gambling awareness materials on the fantasy competition platform. The Center would like to confirm that this material should be easily visible because it is not always easy for the public to find.

COMAR 36.09.05.02(D) states that an operator shall submit to the Commission an annual report describing the operation of the responsible gaming plan. The Center requests that this information be made publicly available.

The Center supports 36.10.13.45(C)(7) as a way to bring much needed funding to the Problem Gambling Fund.

The Center appreciates the opportunity to comment on these proposed regulations and looks forward to continued coordination with the Maryland Lottery and Gaming Control Agency. Should the Agency have any questions, please feel free to contact Mary Drexler at [mdrexler@som.umaryland.edu](mailto:mdrexler@som.umaryland.edu) or 667-214-2124.

A handwritten signature in cursive script, reading "Mary Drexler". The signature is fluid and elegant, with the first name "Mary" and last name "Drexler" clearly distinguishable.

Mary Drexler, MSW  
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Andrew Winchell  
[Andrew.winchell@betr.app](mailto:Andrew.winchell@betr.app)

December 5, 2024

***Via Email to [jbutler@maryland.gov](mailto:jbutler@maryland.gov)***

James B. Butler, Assistant Deputy Director/Chief of Staff  
Maryland Lottery and Gaming Control Commission  
1800 Washington Blvd, Suite 330  
Baltimore, MD 21230

**RE: Proposed Changes to Online Fantasy Competition Regulations**

Dear Assistant Deputy Director Butler:

My name is Andrew Winchell, and I am the Head of Government Affairs for Betr Holdings, Inc. ("Betr"), a fantasy sports and sports betting operator based in Miami, Florida. Betr offers fantasy sports contests to patrons in thirty-two jurisdictions and online sports betting in two jurisdictions, Ohio, and Virginia.

I write today to provide comments on behalf of Betr regarding the Maryland Lottery and Gaming Control Commission's ("Commission") proposed changes to Maryland's Online Fantasy Competition Regulations ("Proposed Regulations"). We thank you for the opportunity to share our perspective on the Proposed Regulations and have arranged our comments in two parts. Part I focuses on major issues of concern in the Proposed Regulations that may significantly impact the ability of fantasy contest operators to successfully operate in Maryland. Part II is focused on areas in the Proposed Regulations where adjustments can be made to improve the Proposed Regulations and/or clarify the intent of the Commission.

**Part I – Major Concerns.**

- ***Issue 1 – Prohibition on "pick 'em" style fantasy competitions.***

Sections 36.09.01.02(B)(3)(b)(ii)-(iv) of the Proposed Regulations add significant language prohibiting various fantasy contest formats which are enjoyed by patrons in dozens of jurisdictions across the country. The Proposed Regulations go far beyond the restrictions on fantasy competitions found in statute, limit consumer choice, and stifle innovation. As written, they also appear to misinterpret what constitutes "pick 'em" fantasy competitions as "wagers" or a series of "wagers."

"Pick 'em" fantasy competitions follow the same guidelines that traditional daily fantasy sports competitions follow, which trace their origin to the Unlawful Internet Gambling Enforcement Act of 2006 (" UIGEA "). The language of which informed the statutory definition of a fantasy competition found in State Government Article, §§9-1D-01(d), Annotated Code of Maryland. "Pick 'em" fantasy competitions require patrons to pay an entry fee in order to utilize their skill to select a lineup consisting multiple athletes, from multiple teams, whose statistical performance will determine whether or not they win a prize that is established and made known to the participants in advance of the competition.



We strongly urge the Commission to reconsider their insertion of additional, non-statutory, restrictions on the types of fantasy contests which may be offered to patrons located in Maryland.

- **Issue 2 – Prohibition on fantasy competitions where a player competes directly against another player.**

Section 36.09.01.02(B)(3)(b)(i) of the Proposed Regulations creates a prohibition on fantasy competitions “where a player competes directly or only against another player’s fantasy lineup.” Head-to-head fantasy competition formats have been in wide use by online fantasy operators for over a decade, including some of the largest daily fantasy sports operators like DraftKings<sup>1</sup> and FanDuel<sup>2</sup>. Such a prohibition would likely require the cessation of numerous fantasy contests that residents of Maryland currently enjoy and is not a standard requirement among jurisdictions which regulate fantasy sports in the United States.

We strongly urge the Commission to reconsider the proposed prohibition on head-to-head fantasy competitions.

## **Part II – Secondary Concerns and Clarifications.**

- **Issue 1 – Inclusion of fantasy competitions where there is no entry fee paid.**

Section 36.09.01.02(B)(3)(a)(v) of the Proposed Regulations amends the definition of a fantasy competition to provide that “Players may pay an entry fee.” This dramatically extends the scope of contests subject to regulatory oversight to include all free-to-play fantasy competitions since payment of an entry fee is no longer required to trigger oversight. We suggest the Commission clarify that the regulations only apply to fantasy competitions with an entry fee, either through utilizing the existing language of the regulation (“One or more players are subject to and may pay an entry fee”) or through the following edit:

Section 36.09.01.02(B)(3)(a)(v):

“(v) Players **[may]** pay an entry fee;..”

- **Issue 2 – Authorization for the use of scripts.**

Section 36.09.03.04(A) of the Proposed Regulations amends the restrictions on the use of unauthorized third-party scripts. However, the edits proposed the Commission appear to prohibit the use of any script which facilitates changes in “many” lineups at one time, or submitting entry fees or adjusting the athletes selected by a fantasy competition player, regardless of whether or not the script is authorized and/or offered directly by the fantasy competition operator to all patrons. This is likely to require operators to remove existing features from their platforms that Maryland patrons utilize every day to simplify the management of their fantasy competition lineups. We suggest that the Commission reconsider this change and revert these edits to the original language of this section, or at a minimum limit the restrictions on scripts to only those offered by third parties.

- **Issue 3 – Change in threshold for requiring annual financial audit.**

<sup>1</sup> <https://help.draftkings.com/hc/en-us/articles/24817099427859-Contest-Type-Head-to-Head-H2H-Overview-US>

<sup>2</sup> <https://support.fanduel.com/s/article/Which-types-of-contests-are-available#:~:text=Head%20to%20Heads,any%20FanDuel%20user%20can%20play.>



Section 36.09.04.04(A) of the Proposed Regulations changes the threshold for requiring a fantasy competition operator to undergo an annual financial audit. The existing language requires fantasy competition operators who conduct competitions which require an entry fee that generate “gross annual revenues” of \$250,000 or more in Maryland to undergo an annual financial audit. The Proposed Regulations remove the requirement for the competitions to require an entry fee and removes the requirement that the \$250,000 in “gross annual revenues” come from Maryland.

This dramatically extends the scope of operators subject to the annual financial audit requirement. Further, as “gross annual revenues” is not a defined term, and is not tied to fantasy competitions in Maryland, this would be all inclusive of revenues from all business lines nationwide for a fantasy competition operator. This is likely to require many small operators to be subject to a costly annual financial audit requirement to continue to offer their competitions in Maryland and may lead to smaller operators leaving the state.

Additionally, when combined with the proposed change to 36.09.01.02(B)(3)(a)(v) which asserts regulatory oversight over free-to-play fantasy competitions, this creates a situation where businesses whose primary source of revenue is not fantasy competitions, but who offer free-to-play fantasy competitions, will be not only subject to licensing and regulatory requirements, but also subject to this annual financial audit requirement. For example, if a sports media company offers free-to-play fantasy contests and has nationwide “gross annual revenues” of \$250,000 or more from advertising or other business lines, they appear to be subject to all of these requirements.

We suggest the Commission clarify that the financial audit requirement only applies to operators who have fantasy competition “proceeds” of \$250,000 or more in Maryland through the following edit:

Section 36.09.04.04(A):

“A. An operator that generates [~~gross annual revenues~~] **fantasy competition proceeds** of \$250,000 or more **in Maryland** shall ensure that a financial audit of its fantasy competition operations is performed annually by a certified public accountant.”

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

\*\*\*\*\*

Sincerely,

Andrew Winchell  
Head of Government Affairs



**VIA E-MAIL**

Maryland Lottery and Gaming Control Agency  
1800 Washington Blvd., Suite 330  
Baltimore, MD 21230  
Attn: James B. Butler, Assistant Deputy Director

Subject: Yahoo Comments on Draft Regulations for Online Fantasy Competitions

Dear Assistant Deputy Director Butler:

On behalf of Yahoo Fantasy Sports LLC, thank you for the opportunity to submit comments on the Maryland Lottery and Gaming Control Agency's Draft Regulations for Fantasy Competitions ("Proposed Regulations"). Yahoo has proudly delivered fantasy sports games to users for over 20 years. We now have millions of loyal users playing both season-long fantasy sports leagues and daily fantasy contests on Yahoo. Yahoo prides itself on ensuring that players are treated fairly while making contests more transparent and fun for all users. Maryland is an important market for our fantasy sports offerings, and Yahoo is committed to offering paid fantasy sports contests to Maryland residents.

In the spirit of cooperation and the desire to continue operating fantasy sports contests in the state of Maryland, we would like to share our comments on the Proposed Regulations. Our comments derive from our long-standing experience in the fantasy sports industry and operation throughout the U.S. We have attempted to organize our comments by listing the most relevant and concerning items first.

**1. Fantasy Competition Definition - Head-to-Head Contests**  
**Regulation Reference: 36.09.01.02.B.3(b)(ii)**

**Comment on Regulation:** We strongly disagree with the explicit exclusion of Head-to-Head ("H2H") competitions from the definition of "Fantasy Competition". These types of contests are offered in all other jurisdictions where we offer paid fantasy sports. Traditional salary cap H2H contests have been a part of the Yahoo Fantasy Sports offering since 2016 and are popular with our users. The relative skill of the participants demonstrated in H2H contests is no different than fantasy contests with three or more participants.. We fail to see the necessity for



excluding a popular game format that could limit the interest users have in fantasy competitions. While we understand the Agency's potential desire to limit pick'em and prop betting style contests, as a result of these Proposed Regulations, the Agency is also excluding traditional salary cap daily fantasy peer-to-peer contest formats. Prohibiting traditional salary cap H2H competition may impede us from operating in the state.

**Proposed Change:** We urge the Agency to modify this regulation and allow Head-to-Head competitions for traditional salary cap daily fantasy contests to continue to be offered by Fantasy Competition Operators in the state of Maryland.

**2. Fantasy Competition Definition - Entry Fee**  
**Regulation Reference: 36.09.01.02.B.3(a)(v)**

**Comment on Regulation:** The "Fantasy Competition" definition should be limited to competitions that require entry fees only. The inclusion of the new language, "Players may pay an entry fee" creates unnecessary ambiguity as it relates to free fantasy games and competitions. No other jurisdiction where we offer paid fantasy sports regulates free fantasy competitions.

**Proposed Change:** We respectfully request the Agency modify the current definition of a Fantasy Competition to include only those competitions that require an entry fee. This would require the Agency to delete or modify sub-section (v) which states "Players may pay an entry fee". We suggest the Agency update its definition to be in line with other jurisdictions. For example, the Pennsylvania Gaming Control Board defines a Fantasy Contests as "*(i) An online fantasy or simulated game or contest with an entry fee and a prize or award in which all of the following apply:*

- A. The value of all prizes or awards offered to winning participants is established and made known to participants in advance of the contest and the value is not determined by the number of participants or the amount of any fees paid by those participants.*
- B. All winning outcomes reflect the relative knowledge and skill of participants and are determined by accumulated statistical results of the performance of individuals, including athletes in the case of sports events.*





*C. The winning outcome is not based on the score, point spread or performance of a single actual team or combination of teams, or solely on a single performance of an individual athlete or player in a single actual event.*

In conclusion, Yahoo Fantasy Sports very much appreciates the opportunity to provide comments on the Proposed Regulations and respectfully requests that the above suggested changes be adopted to maintain a consistent, fair playing field for Fantasy Competition Operators. We appreciate your time and consideration of our comments and would be happy to discuss at your convenience.

A handwritten signature in blue ink that reads "Meredith Yu". The signature is written in a cursive, flowing style.

Meredith C. Yu  
Head of Compliance, Yahoo  
Fantasy Sports  
[mcheek@yahoosports.com](mailto:mcheek@yahoosports.com)



December 16, 2024

James Butler, Chief of Staff  
Maryland Lottery and Gaming Control Agency  
1800 Washington Blvd, Suite 330  
Baltimore, MD 21230

Via E-mail to [jbutler@maryland.gov](mailto:jbutler@maryland.gov)

Re: Proposed changes to COMAR 36.09

Dear James,

SidePrize, LLC d/b/a PrizePicks is a daily fantasy sports operator based in Atlanta, Georgia and is currently not a fantasy competition operator under the authority of the Maryland Lottery and Gaming Control Agency (“MLGCA”). Some of the proposed changes to COMAR 36.09 would further discourage PrizePicks from entering the Maryland market and offering our popular fantasy games to Marylanders. PrizePicks respectfully submits the following comments regarding the MLGCA’s proposed changes to COMAR 36.09.01.02(B)(3).

1. *The restriction of “single-player” fantasy contests, which goes beyond the statutory definition of “fantasy competition”, unnecessarily restricts the category of fantasy competitions that may be offered in Maryland*

The proposed regulations include a definition of “fantasy competition” that adds a specific restriction to the definition of “fantasy competition” in Md. State Government Code Ann. § 9-1D-01(d), namely that fantasy competition players must compete against each other and not against the operator. This restriction on fantasy competitions excludes an entire category of fantasy competition, so-called “single-player” fantasy, that several fantasy competition operators, including PrizePicks, offer in over twenty (20) US jurisdictions. The MLGCA’s restriction on single-player fantasy predates the current rulemaking, but the instant rulemaking creates the conditions for the MLGCA to remove the restriction.

Single-player fantasy is a popular form of fantasy competition. Single-player competitions comply with the same legal framework as other fantasy competitions, as expressed in the statutory definition of “fantasy competition”. For example, PrizePicks’ single-player fantasy competition (1) requires participants to select an imaginary team of real-world individuals, (2) publishes available prizes prior to a participant entering a contest, (3) has winning outcomes that (a) reflect the skill of a participant relative to the skill of other participants and (b) are determined by statistics of the real-world individuals, (4) requires all imaginary teams to be made up of multiple real-world individuals from multiple real-world teams, and (5) does not allow the real-world teams or team outcomes



to be part of the imaginary team. In addition to being the essential features of PrizePicks' single-player fantasy competition, these are the elements of "fantasy competition" in statute. Md. State Government Code Ann. § 9-1D-01(d). The MLGCA should recognize the important role of "single-player" fantasy competitions to the growth and sustainability of the fantasy sports marketplace and use this rulemaking to remove the prohibition on these competitions.

2. *The proposed definition of what is not a "fantasy competition" invites confusion in pursuit of undesirable policy goals*

The proposed rulemaking contains a number of prohibitions on features of fantasy competitions that would have the effect of freezing the fantasy sports landscape and making Maryland a difficult place for innovation in the fantasy sports category.

Some proposed prohibitions are more concerning than others. For example, (b)(iii) would prohibit: "[a] wager in which a player chooses between two or more lineups, athletes, outcomes, or similar statistical groupings, and commonly referred to as pick'em". This description does not describe what PrizePicks considers a "pick 'em" fantasy competition. First, a game "in which a player chooses between two or more... athletes..." describes fantasy competitions that have existed for decades and presumably are allowed in Maryland today. Season-long fantasy football, for example, requires choices between two or more athletes at two points in the game; first, during the draft, and second, when a participant chooses his or her weekly lineup, but these games are not considered "pick 'em" games. DFS salary cap games could also be considered "pick 'em" and prohibited by the proposed regulation; every salary cap game requires a participant to select between two or more athletes while building an entry that does not exceed the salary cap. Second, using the term "wager" invites multiple interpretations; because PrizePicks contests are games of skill, not chance, an entry into a PrizePicks contest cannot be a "wager" and the prohibition in (b)(iii) therefore does not apply to its fantasy competitions. All uses of "bet" or "wager" in the proposed regulations would invite this interpretation. By tying a term like "pick 'em" to a definition that invites multiple reasonable interpretations, the proposed rulemaking creates confusion in the marketplace and likely will not achieve its policy goal.

Other proposed restrictions in (b), including those in (b)(ii), (b)(iv), (b)(v), and (b)(vi), are also subject to multiple interpretations, for example regarding the use of "bet" or "wager" as described above. This is reason enough to rethink the proposed restrictions in (b).

PrizePicks also disagrees with the policy goal of tightening the fantasy marketplace to include only those competitions that can navigate the additional restrictions. The policy goal of a fantasy sports regulatory framework should be to encourage innovation and increase revenue to the state while ensuring appropriate consumer protections. The proposed restrictions do not track with those goals and should be removed from the rulemaking.



3. *The proposed regulations exceed the authority given to the MLGCA by the General Assembly and venture into policymaking*

“The Commission shall adopt regulations to carry out the provisions of this subtitle.” Md. State Government Code Ann. § 9-1D-05(a). The proposed changes to the MLGCA’s regulations go beyond this authority into policymaking based on goals that may or may not be valid, but in either event were not expressed by the General Assembly in Subtitle 1D. Importantly, Subtitle 1D does not include provisions related to defining what is and is not a fantasy competition beyond the statutory definition, deciding where to draw lines between fantasy competitions and sports wagering, or what is or is not a “wager”, but the proposed rulemaking does all of these things. PrizePicks concludes, therefore, that the proposed rulemaking exceeds the Agency’s authority to adopt regulations under Md. State Government Code Ann. § 9-1D-05(a) and should be revised to comply therewith.

PrizePicks recommends that the MLGCA reverse its course in altering the statutory definition of “fantasy competition”. To do so most effectively, it should amend COMAR 36.09.01.02(B)(3) to read only as follows: ““Fantasy competition” has the meaning stated in State Government Article, § 9-1.D-01, Annotated Code of Maryland.”

PrizePicks appreciates the work of the MLGCA and thanks you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Packer', written in a cursive style.

Adam Packer  
SVP, Legal & Compliance



December 16, 2024

Via Email to [jbutler@maryland.gov](mailto:jbutler@maryland.gov)

James Butler, Assistant Deputy Director, Chief of Staff  
Maryland Lottery and Gaming Control Agency  
1800 Washington Boulevard, Suite 330  
Baltimore, MD 21230

**RE: Proposed Regulations related to Online Fantasy Competition and Sports Wagering**

Assistant Deputy Director Butler:

In response to the regulations related to Online Fantasy Competition and Sports Wagering proposed by the Maryland Lottery and Gaming Control Agency (“MLGCA”), which were published in the November 15, 2024 Issue of the Maryland Register, DraftKings Inc. (“DraftKings”) submits the following comments and questions for consideration. As a leading sports wagering and daily fantasy sports (“DFS”) operator in the United States, DraftKings has first-hand experience with regulatory frameworks that address both verticals and submits these comments based on its operational knowledge in multiple regulated jurisdictions. The following comments are organized in the order in which they appear within the Maryland Register. With respect to how the amendments below have been formatted, existing regulation language appears as such, MLGCA-proposed amendments appear as such, and DraftKings-proposed amendments appear as such.

**36.09.01.02 Definitions**

Comment: DraftKings respectfully requests the MLGCA consider amending the following provision to make clear that head-to-head fantasy competitions may be offered by fantasy competition operators. To the extent the proposed provision that relates to head-to-head fantasy competitions is meant to prohibit exchange wagering, the language proposed in 36.09.01.02(B)(3)(b)(i) sufficiency addresses the MLGCA’s concern. The language proposed in 36.09.01.02(B)(3)(b)(i) excludes from the definition of fantasy competition “Sports wagering under State Government Article, §§ 9-1E-01 et seq., Annotated Code of Maryland[.]” “Sports wagering” is defined as “the business of accepting wagers on any sporting event by any system or method of wagering, including single-game bets, teaser bets, parlays, over-under, moneyline, pools, exchange wagering, in-game wagering, in-play bets, proposition bets, and straight bets [emphasis added].” Exchange wagering is specifically included in the definition of “sports wagering” and therefore excluded from the definition of “fantasy competition” under Proposed Regulation 36.09.01.02(B)(3)(b)(i). As such, Proposed Regulation 36.09.01.02(B)(3)(b)(ii) is not necessary to ensure that fantasy competitions exclude exchange wagering.

Moreover, exchange wagering and head-to-head fantasy competitions are entirely distinct activities. “Exchange wager” is defined as “a wager in which a bettor wagers with or against another bettor through a sports wagering licensee.” Exchange wagers can include various types



of sports wagers, such as moneyline, point spreads, and props. Exchange wagering is a form of peer-to-peer sports wagering. Ordinary sports wagers are made against a sports wagering licensee (i.e., a bookmaker) who sets the odds and assumes the risk. In exchange wagering, wagers are made between bettors who set odds themselves. As bettors offer and accept wagers, odds fluctuate like a stock exchange. The sports wagering licensee serves as the platform to facilitate exchange wagers. Currently, there are no sports wagering licensees in Maryland that offer exchange wagering.

Head-to-head fantasy competitions are a form of fantasy competitions in which two participants compete directly against each other. The contests otherwise operate the same as traditional fantasy competitions. Participants build virtual teams by selecting athletes from a pool of available players within specific contest constraints (e.g., salary caps) - as fixed variables determined by the fantasy competition operator - meaning a player does not have the ability to themselves propose a variable like in exchange wagering. Contest outcomes are determined by statistics generated by the athletes selected by each participant and reflect the relative skill of the participants. Winners are awarded monetary or other prizes. While head-to-head fantasy competitions involve only two participants, they otherwise function like other fantasy competitions offered by licensed fantasy competition operators in Maryland.

The key distinction between fantasy competitions and sports wagering is that fantasy competition winners are determined by the two fantasy participants' ability to apply specific skills inherent in fantasy sports based on the competition type presented by the operator, such as evaluating player performance based on the competition's scoring criteria and assessing long-term player potential. This process mirrors how coaches and general managers evaluate player talent and make strategic decisions in professional sports. In contrast, sports wagering involves risking money on the outcome of a specific sports event. This distinction remains true for head-to-head fantasy competitions and exchange wagering. Exchange wagering involves participants betting against each other on which team or player will win or perform in a certain way. Head-to-head fantasy competitions do not involve wagers at all. Rather, two participants compete in a skill-based contest provided by an operator for guaranteed prizes.

MLGCA-proposed Language:

**(3) Fantasy Competition.**

**(a) "Fantasy competition" means any online fantasy or simulated game or contest such as fantasy sports, in which:**

**(i) Participants own, manage, or coach imaginary teams;**

**(ii) All prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest;**

**(iii) The winning outcome of the game or contest reflects the relative skill of the participants and is determined by statistics generated by**



actual individuals (players or teams in the case of a professional sport);

(iv) No winning outcome is based solely on the performance of an individual athlete or on the score, point spread, or any performances of any single real-world team or any combination of real-world teams;

(v) Players may pay an entry fee;

(vi) The operator offering the competition receives compensation for organizing the fantasy competition; and

(vii) Fantasy competition players compete against other fantasy competition players and not the operator.

(b) "Fantasy competition" does not include:

(i) Sports wagering under State Government Article, §§ 9-1E-01 et seq., Annotated Code of Maryland;

(ii) A fantasy competition where a player competes directly or only against another player's fantasy lineup;

(iii) A wager in which a player chooses between two or more lineups, athletes, outcomes, or similar statistical groupings, and commonly referred to as pick'em;

(iv) A wager in which a fantasy competition operator sets a number for a statistic in a fantasy competition, and a player wagers that the actual result in the competition will be higher or lower than the number set by the operator and commonly referred to as an over-under wager or bet;

(v) A wager that involves two or more wagers combined into one wager and commonly referred to as a parlay; or

(vi) A wager on an individual action, statistic, occurrence, or non-occurrence which is determined during a fantasy competition and commonly referred to as a proposition wager or bet.

DraftKings-proposed Language:

(3) Fantasy Competition.



(a) “Fantasy competition” means any online fantasy or simulated game or contest such as fantasy sports, in which:

(i) Participants own, manage, or coach imaginary teams;

(ii) All prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest;

(iii) The winning outcome of the game or contest reflects the relative skill of the participants and is determined by statistics generated by actual individuals (players or teams in the case of a professional sport);

(iv) No winning outcome is based solely on the performance of an individual athlete or on the score, point spread, or any performances of any single real-world team or any combination of real-world teams;

(v) Players may pay an entry fee;

(vi) The operator offering the competition receives compensation for organizing the fantasy competition; and

(vii) Fantasy competition players compete against other fantasy competition players and not the operator.

(b) “Fantasy competition” does not include:

(i) Sports wagering under State Government Article, §§ 9-1E-01 et seq., Annotated Code of Maryland;

~~(ii) A fantasy competition where a player competes directly or only against another player’s fantasy lineup;~~

(iii) A wager in which a player chooses between two or more lineups, athletes, outcomes, or similar statistical groupings, and commonly referred to as pick’em;

(iiiv) A wager in which a fantasy competition operator sets a number for a statistic in a fantasy competition, and a player wagers that the actual result in the competition will be higher or lower than the number set by the operator and commonly referred to as an over-under wager or bet;





*(iv) A wager the involves two or more wagers combined into one wager and commonly referred to as a parlay; or*

*(vi) A wager on an individual action, statistic, occurrence, or non-occurrence which is determined during a fantasy competition and commonly referred to as a proposition wager or bet.*

### **36.09.02.06 Enforcement Action**

Comment: DraftKings respectfully requests the MLGCA consider amending the following provision to provide the MLGCA with more flexibility with respect to the types of enforcement actions they can take as it relates to online fantasy competitions. The MLGCA should not be confined to only enforcing upon operators through suspension or termination of an operator's registration but should expand the methods of enforcement action to also include an imposition of a monetary penalty or any other remedial action the MLGCA deems appropriate. Having three clear levels of enforcement action as well as a "catch all" enforcement action allows the MLGCA to account for the full spectrum of potential enforcement actions. This ensures less significant compliance shortfalls don't amount to the suspension or termination of an operator's registration simply as a matter of the MLGCA only being limited to those two enforcement actions. For this reason, DraftKings respectfully requests the MLGCA consider the suggested language below.

MLGCA-proposed Language:

***B. Enforcement action may include:***

***(1) Suspension of an operator's registration; or***

***(2) Termination of an operator's registration.***

DraftKings-proposed Language:

***B. Enforcement action may include:***

***(1) Suspension of an operator's registration; ~~or~~***

***(2) Termination of an operator's registration;***

***(3) Imposition of monetary penalty not to exceed \$1,000 per enforcement event; or***

***(4) any other remedial action the Commission deems appropriate.***

### **36.09.03.03 Athletes and Affiliates Prohibited from Fantasy Competition Play**

Comment: DraftKings respectfully requests the MLGCA consider reverting the following provision to its current language by striking "handler" from the enumerated list of individuals that are prohibited from participating in a fantasy competition. We believe regulations should set express guidelines for licensees and in the absence of a definition of "handler" the term is too broad to ensure compliance with the provision. If the MLGCA wants to include handlers on the



prohibited persons list, they must properly define what a “handler” is, which in turn could help leagues and players associations get this message to these individuals, and also potentially create a more easily identifiable way to determine these individuals. For instance, how does the MLGCA distinguish “sports agent” from “handler”? No other jurisdiction in the country that regulates fantasy competitions includes handlers (that have not been defined by an independent statute or regulation) within their prohibited person requirements and in the absence of a definition provided by the MLGCA, operators are only able to ensure compliance based on a user’s attestation (through their acceptance of an operator’s terms of use and conditions) that they themselves don’t fall into one of the prohibited person categories. Should a user accept an operator’s terms and conditions of use when making an account and then proceed to violate those terms by participating in a contest as a prohibited person, they will have committed a crime. For this reason, DraftKings respectfully requests the MLGCA consider making no changes to this provision, as reflected in the suggested language below.

MLGCA-proposed Language:

**A. An athlete, sports agent, team employee, ~~handler~~, referee, or league official, or a member of ~~[that]~~ the individual’s immediate family, is prohibited from ~~[entering]~~ participating in a fantasy ~~[competitions]~~ competition that is based on an underlying sporting ~~[events]~~ event in which the individual ~~[is a participant]~~ is affiliated.**

**B. An athlete, sports agent, team employee, ~~handler~~, referee, or league official, or a member of that individual’s immediate family, may not enter fantasy competitions based on underlying sporting events in which the individual is a participant through another person as a proxy.**

DraftKings-proposed Language:

**A. An athlete, sports agent, team employee, ~~handler~~, referee, or league official, or a member of ~~[that]~~ the individual’s immediate family, is prohibited from ~~[entering]~~ participating in a fantasy ~~[competitions]~~ competition that is based on an underlying sporting ~~[events]~~ event in which the individual ~~[is a participant]~~ is affiliated.**

**B. An athlete, sports agent, team employee, ~~handler~~, referee, or league official, or a member of that individual’s immediate family, may not enter fantasy competitions based on underlying sporting events in which the individual is a participant through another person as a proxy.**

#### **36.09.03.04 Player Protections**

Comment: DraftKings respectfully requests the MLGCA consider providing clarification as to what the MLGCA’s intent is with respect to the below provision related to scripts. There are two separate potential scrivener’s errors within the proposed language that makes it difficult to understand the MLGCA’s intent. Specifically, (A)(1)(b), which states, “*Facilitating use of a commercial products designed to identify advantageous game strategies,*” and (A)(2), which states, “*Scripts shall be available to all fantasy competition players by incorporation as a game*



feature **or prominently displayed.**” Does this entire provision apply only to unauthorized scripts? If so, does the MLGCA intend to prohibit third party lineup construction tools or third party entities that aggregate results?

MLGCA-proposed Language:

**A. ~~[Fantasy Competition] Scripts.~~**

**(1) A fantasy competition operator may not permit the use of ~~[unauthorized scripts] a script on a [fantasy competition] platform [and shall use commercially reasonable efforts to monitor for and prevent use of such scripts.] if the script would allow a player to gain a competitive advantage by:~~**

**~~[(2) For the purpose of §A(1) of this regulation, scripts shall be treated as offering a competitive advantage if potential uses include:]~~**

**(a) ~~Facilitating changes in many [line-ups] lineups at one time;~~**

**(b) ~~Facilitating use of a commercial [products] products designed [and distributed by third parties] to identify advantageous game strategies;~~**

**(c) (text unchanged)**

**(d) ~~Gathering information about the performance of others for the purpose of identifying or entering competitions against other less successful fantasy competition players [who are less likely to be successful].~~**

**~~[(3)] (2) [Authorized scripts] Scripts shall be available to all fantasy competition players by incorporation [shall either be incorporated] as a game feature or [be] prominently displayed [and thereby made available to all fantasy competition players].~~**

### **36.09.01.03 New or Modified Fantasy Competition Rules**

Comment: DraftKings respectfully requests the MLGCA consider providing clarification as to what “the same format” constitutes with respect to an operator needing to seek approval for a new or modified fantasy competition where only minor modifications to a competition have been made. A completely new offering that provides for a contest for a sport that has not been previously offered should require approval, but minimal adjustments within an existing offering should not require independent approval. For example, the amount of athletes a user would select within a competition (i.e. 5 vs. 7) or adjustments to a scoring system related to the



number of points a player may obtain should be considered minor modifications that do not require independent approval, and as such should be considered the “same format”.

MLGCA-proposed Language:

**(2) Minor modifications to an approved fantasy competition are permitted and may include:**

**(a) A previously offered competition that is in the same format;**

### **36.09.04.02 Limits on Deposits**

Comment: Given this proposed regulation does not propose amendments to the deposit limit itself, DraftKings would like to flag it may open a dialogue with the MLGCA during next year’s annual regulatory review regarding this provision.

### **36.09.04.07 Tax Laws and Disclosures**

Comment: DraftKings respectfully requests the MLGCA consider amending the following provision to allow for notice of State and federal tax reporting and withholding requirements to be met a player’s acceptance of a fantasy contest operator’s terms and conditions of use on its fantasy competition platform. If the MLGCA does not believe this solution meets the intent of the proposed provision, fantasy contest operators will need to create a Maryland-specific site experience that will allow for this Maryland-specific notice requirement to appear in a pop notification prior to players entering into each individual contest. Creating a Maryland-specific site experience will be costly, burdensome and will extend the amount of time a fantasy contest operator will need to be compliant with these newly proposed regulations. If the MLGCA believes the requirement can be properly met through a player’s acceptance of a fantasy contest operator’s terms and conditions of use on its fantasy competition platform, DraftKings has proposed language below that would clarify that ability below.

MLGCA-proposed Language:

**B. A fantasy competition operator shall [~~disclose~~] provide a player with notice of State and federal tax reporting and withholding requirements [~~to fantasy competition players before the fantasy competition begins and again at the time of award of any prize in excess of \$600~~]:**

**(1) Before a fantasy competition begins; and**

**(2) When a player receives winnings in excess of \$600.**

DraftKings-proposed Language:

**B. A fantasy competition operator shall [~~disclose~~] provide a player with notice of State and federal tax reporting and withholding requirements [~~to fantasy~~**



competition players before the fantasy competition begins and again at the time of award of any prize in excess of \$600]:

(1) Before a fantasy competition begins; and

(2) When a player receives winnings in excess of \$600.

a. For the purposes of §B(1) of this regulation, notice of State and federal tax reporting and withholding requirements can be met by a player's acceptance of a fantasy contest operator's terms and conditions of use on its fantasy competition platform.

\* \* \* \* \*

The comment submission hereafter will focus specifically on those proposed regulations that are relevant to Sport Wagering.

### **36.10.13.37 Bettor Complaints**

Comment: DraftKings respectfully requests the MLGCA consider amending the following provision to clarify that "7 days" allows for "7 business days" and that bettors are the only party who can determine whether a bettor complaint has been resolved to their satisfaction. Providing clarity within the provision that sports wagering licensees benefit from a full 7 business days is helpful to ensure compliance certainty. Also, retaining language within the provision that makes clear the burden of satisfaction rests on the bettor, who has the ability to escalate their complaint to the MLGCA following 7 business days of dissatisfaction ensures a proper fail-up process that will limit MLGCA intervention but also still allow for an objective third-party to resolve complaints as needed. For these reasons, DraftKings respectfully requests the MLGCA consider adopting the language suggested below.

MLGCA-proposed Language:

**A. A sports wagering licensee shall attempt to timely resolve a dispute with a bettor concerning the licensee's sports wagering operation or payment of alleged winnings within 7 days after receiving the complaint.**

**~~B. [A sports wagering licensee who is unable to satisfactorily resolve a dispute with a bettor within 3 days of notice of the dispute shall notify the Commission of the dispute]~~ A sports wagering licensee shall maintain, in a retrievable format approved by the Commission, a copy of all bettor complaints and all documentation of the licensee's response.**

**~~C. [On receipt of notice by the sports wagering licensee of the dispute, the Commission shall provide the bettor with a Commission bettor complaint form together with instructions for completing and submitting the form.~~**



~~D. The Commission shall investigate a complaint submitted to the Commission and notify the bettor and sports wagering licensee of its determination.~~

~~E. The Commission may provide a bettor with a complaint form at any time upon request.] On receipt of a complaint, the Commission shall investigate and notify the bettor and sports wagering licensee of its determination.~~

DraftKings-proposed Language:

A. A sports wagering licensee shall attempt to timely resolve a dispute with a bettor concerning the licensee's sports wagering operation or payment of alleged winnings within 7 business days after receiving the complaint. If the dispute is not resolved within 7 business days to the satisfaction of the bettor, the bettor may submit a complaint to the Commission.

~~B. [A sports wagering licensee who is unable to satisfactorily resolve a dispute with a bettor within 3 days of notice of the dispute shall notify the Commission of the dispute] A sports wagering licensee shall maintain, in a retrievable format approved by the Commission, a copy of all bettor complaints and all documentation of the licensee's response.~~

~~C. [On receipt of notice by the sports wagering licensee of the dispute, the Commission shall provide the bettor with a Commission bettor complaint form together with instructions for completing and submitting the form.~~

~~D. The Commission shall investigate a complaint submitted to the Commission and notify the bettor and sports wagering licensee of its determination.~~

~~E. The Commission may provide a bettor with a complaint form at any time upon request.] On receipt of a complaint, the Commission shall investigate and notify the bettor and sports wagering licensee of its determination.~~

#### **36.10.13.40 Security of Funds and Data**

Comment: DraftKings respectfully requests the MLGCA consider amending the following provision to allow for clarity with respect to how a sports wagering licensee can meet "documentable consent" within this context. By clearly allowing for documentable consent to be met through a bettor's consent to the personally identifiable information sharing practices described in a sports wagering licensee's privacy policy it reduces friction for the bettor and ensures the sports wagering licensee does not have to create an independent off-platform process for meeting documentable consent with respect to third party information sharing. Ease of process is critical in this circumstance because sports wagering licensees are required to collect and share bettor information with third parties to comply with other requirements outlined by the MLGCA. Specifically, licensees on a routine basis share certain aspects of bettor



information with sports governing bodies, integrity monitoring vendors, KYC vendors, payment processors, and many other third parties that help sports wagering licensees remain compliant with their statutory and regulatory obligations. Moreover, every sports wagering licensee must disclose a bettor's IP address simply as a means for that bettor to make a legal wager within the jurisdiction. Thus, practically speaking, every single legal bettor in Maryland would need to provide the documentable consent provided for in this provision to be able to place a legal wager in the state. As such, specific clarity regarding the manner in which a sports wagering licensee can meet documentable consent on behalf of the bettor is necessary and reflected within the suggested language below.

MLGCA-proposed Language:

**B. ~~[A sports wagering]~~ Unless a bettor provides documentable consent to the sports wagering licensee, the licensee may not share information that could be used to personally identify a bettor or their gaming habits with any third party other than the Commission, law enforcement with a warrant or subpoena, or a credit-reporting agency when determining whether an individual is credit-worthy.**

DraftKings-proposed Language:

**B. ~~[A sports wagering]~~ Unless a bettor provides documentable consent to the sports wagering licensee, the licensee may not share information that could be used to personally identify a bettor or their gaming habits with any third party other than the Commission, law enforcement with a warrant or subpoena, or a credit-reporting agency when determining whether an individual is credit-worthy. Documentable consent may be obtained through a bettor's consent to the personally identifiable information sharing practices described in a sports wagering licensee's privacy policy.**

#### 36.10.18.04 Geolocation Systems

Comment: DraftKings respectfully requests the MLGCA consider amending the following provision to strike the annual geolocation system test requirement as this type and frequency of testing would be burdensome and unscalable for testing laboratories and costly for sports wagering licensees. Geolocation testing is not traditional "on site" testing that happens within the testing laboratories, but rather it requires coordinated travel all over the jurisdiction to test boundaries. Because of this level of activity on behalf of the testing laboratories, an annual testing requirement, merely as a means to ensure maintenance and not to address compliance shortfalls by a specific licensee, would be very costly for sports wagering licensees, especially in the absence of any changes to a sports wagering licensees' geolocation functionality. As the MLGCA already requires, Level 3 releases are required to be certified by testing laboratories, which would include things like a licensee changing to a new geolocation vendor or making adjustments to the way a licensee complies with their geolocation requirements. Furthermore, Level 2 changes relevant to geolocation requirements would continue to be submitted to the MLGCA per the existing change management guidelines, which provides transparency and



does not require the additional expense of an annual geolocation system test by a testing laboratory. As a compromise, the MLGCA could consider striking the annual testing requirement but retaining the authority to require geolocation testing for a sports wagering licensee on an ad hoc basis, as the suggested language below states. This compromise allows the MLGCA to retain its authority to require geolocation system testing by an approved testing laboratory after commencing operations as needed to address compliance shortfalls by a licensee on an independent basis, without requiring every licensee to submit to a burdensome and costly annual testing requirement that is largely already accounted for within the existing change management regulatory framework already put in place by the MLGCA.

MLGCA-proposed Language:

**E. ~~[The Commission may require additional geolocation requirements.] A sports wagering licensee shall:~~**

**(1) Prior to commencing operations, and annually thereafter, ensure its geolocation system is tested by a Commission approved testing laboratory;**

**(2) Ensure that testing of the geolocation system includes:**

**(a) Attempts to place wagers at locations from outside of the State from multiple locations within varying distances from the State border;**

**(b) Attempts to place wagers at locations within the State from multiple locations within varying distances from the State border;  
and**

**(c) Attempts to place wagers in which the tester crosses the State border;**

**(3) For all geolocation testing, ensure that the frequency of geolocation check is documented and tested;**

**(4) Ensure that testing confirms that a geolocation check occurs immediately upon a change of IP address;**

**(5) Ensure that testing includes static and mobile connections; and**

**(6) Ensure that testing is completed on all device types using the most prevalent versions available.**

**F. A sports wagering licensee shall grant the Commission read only access to its geolocation system as required by the Commission.**





G. In addition to the requirements in this regulation, the Commission may require a sports wagering licensee to implement other geolocation features.

DraftKings-proposed Language:

E. ~~[The Commission may require additional geolocation requirements.]~~ A sports wagering licensee shall:

(1) Prior to commencing operations, and ~~annually thereafter as required by the Commission~~, ensure its geolocation system is tested by a Commission approved testing laboratory;

(2) Ensure that testing of the geolocation system includes:

(a) Attempts to place wagers at locations from outside of the State from multiple locations within varying distances from the State border;

(b) Attempts to place wagers at locations within the State from multiple locations within varying distances from the State border; and

(c) Attempts to place wagers in which the tester crosses the State border;

(3) For all geolocation testing, ensure that the frequency of geolocation check is documented and tested;

(4) Ensure that testing confirms that a geolocation check occurs immediately upon a change of IP address;

(5) Ensure that testing includes static and mobile connections; and

(6) Ensure that testing is completed on all device types using the most prevalent versions available.

F. A sports wagering licensee shall grant the Commission read only access to its geolocation system as required by the Commission.

G. In addition to the requirements in this regulation, the Commission may require a sports wagering licensee to implement other geolocation features.

\* \* \* \* \*



Thank you for your consideration of DraftKings' comments regarding the MLGCA's proposed rulemaking for Online Fantasy Competition and Sports Wagering. Please feel free to reach out should you or anyone else at the MLGCA have any questions about our submission or our experience in other regulated jurisdictions.

Sincerely,

DraftKings Inc.



Cory Fox  
Cory.Fox@fanduel.com

December 16, 2024

*Via Email to jbutler@maryland.gov*  
James B. Butler – Assistant Deputy Director  
Maryland Lottery and Gaming Control Agency  
1800 Washington Blvd., Suite 330  
Baltimore, MD 21230

**Re: FanDuel comments on proposed amendments to Maryland’s Sports Wagering and Online Fantasy Competition regulations.**

Dear Assistant Deputy Director Butler:

I write to provide comments on behalf of FanDuel Group, Inc. (“FanDuel”) regarding the Maryland Lottery and Gaming Control Agency’s (the “Agency”) proposed regulations to Maryland’s Sports Wagering and Online Fantasy Competition regulations. Based on our extensive experience as an operator in the online sports betting and fantasy sports industries and collaborator with sports betting and fantasy sports competition regulators in many states in the development of their regulations, we offer constructive feedback on the Agency’s consideration of the proposed amendments to its regulations.

FanDuel thanks the Agency for taking the time to review our comments and consider the impacts the proposed amendments may have. We also thank the Agency for engaging with the industry and public during its annual regulatory review process and giving serious consideration to the recommendations offered during that process. FanDuel has two recommendations on the proposed regulations, along with two comments in support of the proposed regulations. For the sake of clarity, proposed additions will be shown in **bold and underlined** text and proposed deletions will be shown in [~~bold, bracketed, and struck through~~] text.

36.09.01.02: Definitions

FanDuel appreciates the Agency’s commitment to providing clear distinctions between regulated skill-based fantasy competitions, and regulated sports wagering operations through the proposed regulations in Title 36, Subtitle 09. Establishing clear definitions of what is and is not a “fantasy competition” is beneficial for consumers to understand the difference between skill-based fantasy competition entries, and permissible sports wagering offerings by sports wagering licensees.

Considering this important difference, FanDuel is seeking clarification on certain elements of the “fantasy competition” definition, specifically the language in 36.09.01.02(B)(3)(b) on what a “fantasy competition” does not include. The proposed language states, “‘Fantasy Competition’ does not include: (ii) A fantasy competition where a player competes directly or only against another player’s fantasy lineup;”. Head-to-Head contests, commonly referred to as H2H, are popular daily fantasy offerings among users and are offered by licensed fantasy operators in jurisdictions within the United States. In the H2H format, a user selects a fantasy lineup composed of multiple real-world athletes from different teams and competes directly



against another user’s fantasy lineup, with winning outcomes determined by the aggregate performance of the real-world athletes. H2H is popular among users due to the competitive nature of the offering and because the entry fee can be individually tailored to the users’ preference. This offering also holds significant appeal to users because it closely replicates the style of traditional, season-long fantasy offerings, where competitors face off directly against individuals on a weekly basis.

H2H contests are consistent with the statutory language provided in MD Code §9-1D-01(d), which defines “fantasy competition” as “...any online fantasy or simulated game or contest such as fantasy sports, in which: (1) participants own, manage, or coach imaginary teams;”. This definition does not specify any restriction on the number of participants required to participate in a fantasy competition. The current regulation language on “Fantasy competition” in 36.09.01.02(B)(3), which is proposed to be removed, directly references and affirms this statutory definition.

To date, there is no jurisdiction in the United States that has prohibited H2H. Further, numerous jurisdictions that have regulated fantasy competitions have also regulated sports wagering and continue to successfully offer H2H fantasy competitions. Given this information, the concerns raised, and the other proposed language in subsection (3)(b), which is sufficient to distinguish the core features of a fantasy competition from a sports wager, FanDuel respectfully recommends that the Agency remove the language in 36.09.01.02(B)(3)(b)(ii) in its entirety.

*36.09.01.02: Definitions*

(3) Fantasy Competition.

(b) “Fantasy competition” does not include:

(i) Sports wagering under State Government Article, §§ 9-1E-01 et seq.;

~~[(ii) A fantasy competition where a player competes directly or only against another player’s fantasy lineup;~~

~~[(iii)]~~ (ii) A wager in which a player chooses between two or more lineups, athletes, outcomes, or similar statistical groupings, and commonly referred to as pick em;

~~[(iv)]~~ (iii) A wager in which a fantasy competition operator sets a number for a statistic in a fantasy competition, and a player wagers that the actual result in the competition will be higher or lower than the number set by the operator and commonly referred to as an over-under wager or bet;

~~[(v)]~~ (iv) A wager ~~[the]that~~ involves two or more wagers combined into one wager and commonly referred to as a parlay; or

~~[(vi)]~~ (v) A wager on an individual action, statistic, occurrence, or non-occurrence which is determined during a fantasy competition and commonly referred to as a proposition wager or bet.

To the extent the Agency intended to restrict H2H contests because of concerns about exchange wagering, FanDuel believes the approach is somewhat misguided. Exchange wagering is a form of sports wagering where sports wagering customers place wagers against one another through a platform offered by a sports wagering operator. This is distinct from a H2H fantasy competition, where (i) users select a fantasy lineup composed of multiple real-world athletes from different teams, (ii) winning outcomes are based on the aggregate performance of the selected athletes chosen using users’ relative skill and strategies, and (iii) accumulated fantasy points are the ultimate determinant of whether an individual wins or loses. As outlined above, H2H contests closely replicate the style of traditional, season-long fantasy offerings, where competitors face off directly against individuals on a weekly basis. By contrast, exchange wagers are still



sports wagers, and they would still be differentiated from impermissible fantasy competitions if the Agency adopts our proposed changes above.

36.10.13.06: Annual Audit and Other Regulatory Reports

FanDuel is committed to providing the Agency with a comprehensive accounting of its financial statements, as required by applicable law and regulations. The proposed regulations seek to expand the existing language of 36.10.13.06(B) by requiring Maryland-specific audited financial statements if the revenue and assets of the Maryland sports wagering licensee operations are less than 75 percent of the combined total of the operator's parent.

FanDuel believes that this requirement would cause undue administrative and financial burdens on licensed operators in Maryland. Providing state-specific audited financial statements would represent a first-of-its-kind requirement among the legally regulated states, and, in our opinion, a redundant exercise given the statements currently provided to the Agency, which include annually audited financial statements and monthly cash attestations with daily calculations. Instead, the proposed regulation could be clarified to ease the administrative burden by permitting parent company audited financials without restrictions, which are better positioned to reflect the realities of the operations of these businesses while also providing insight into their positions as a going concern. Given the concerns raised and the financial documentation operators already provide to the Agency, FanDuel respectfully recommends that the Agency remove the language in 36.10.13.06(B)(2) in its entirety while adding a clarification that parent company audited financial statements may be submitted.

*36.10.13.06: Annual Audit and Other Regulatory Reports*

B. The annual financial statements shall be~~;~~

~~(1) Prepared~~ **prepared** on a comparative basis for the current and prior fiscal year and present financial position and results of operations in conformity with generally accepted accounting principles in the United States. **If a Maryland sports wagering licensee's audited financial statements are produced at the parent company level, the audited financial statements of the parent company may be submitted;** and

~~(2) If the revenue and assets of the Maryland sports wagering licensee operations are less than seventy five percent of the combined total of the operator's parent, Maryland specific audited annual financial statements of the sports wagering licensee revenue and assets].~~

In the alternative, FanDuel would recommend permitting operators to submit unaudited P&L statements to address a Maryland-specific breakout requirement, which more appropriately balances the needs of the Agency with the administrative and financial burdens a second audit requirement would place on sports wagering operators.

36.10.14.06: Reserve and 36.10.18.05 (Bettor Accounts)

FanDuel offers its full support to the proposed regulations to 36.10.14.06 (Reserve) and 36.10.18.05 (Bettor Accounts). Concerning reserve regulation 36.10.14.06, FanDuel is committed to always maintaining a cash reserve in an amount necessary to ensure the ability to cover the outstanding liability for our online sports



wagering obligations, as required by applicable regulations. We agree with the Agency's determination that licensees can satisfy their reserve obligations by adding sufficient funds to cover the calculated requirement prior to the end of the next business day. This flexibility properly appreciates and balances the realities of the United States banking system and unpredictability of sporting events with the protections reserve requirements afford consumers by providing relief to licensees on non-business days.

Regarding bettor accounts regulation 36.10.18.05, FanDuel believes that mandatory Multi-Factor Authentication ("MFA"), accompanied by trusted device allowances, enhances consumer protection by meaningfully improving account security without introducing significant user friction. We agree with the Agency's determination that MFA once every 14 days for each unique device is the best path forward for balancing consumer protection and user friction. Embracing trusted device functionality in this manner provides a mechanism to adequately protect bettor accounts, while ensuring the user experience in Maryland remains consistent with the majority of other states that currently require, or are considering, MFA for sports wagering accounts.

\*\*\*\*\*

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cory Fox', written over a light blue horizontal line.

Cory Fox  
Vice President for Product and New Market Compliance