

## CALIFORNIA GAMBLING CONTROL COMMISSION

### **Third-Party Providers of Proposition Player Services and Gambling Businesses Regulation Roundtable June 19, 2013**

#### **Meeting Notes**

#### **AGENDA**

##### Introductory Comments

Roll Call of Commissioners was not taken, but Chairman Richard Lopes, Commissioners Tiffany Conklin, Lauren Hammond and Richard Schuetz were present.

Chairman Lopes welcomed everyone to the roundtable discussion.

- He anticipates differences of opinion as we go through this process.
- He respects differences of opinion but wants to make sure that this is a respectful and thoughtful process.
- Part of this process is hearing from different stakeholders and ensuring whatever we promulgate, we can all live with.

##### Purpose of Meeting

Executive Director Tina Littleton provided a brief historical context of the regulations.

- Legislation to authorize the Commission to regulate third party providers was signed in 2000.
- The Commission adopted final regulations in 2005, including three emergency regulations.
- Since then, the industry has grown and evolved, and the Commission recognizes the need to update and clarify these regulations.

Executive Director Littleton indicated that Commission staff has begun a preliminary assessment of the third-party regulations, and identified four categories where updates may be needed, including:

- 1) Contracts,
- 2) Accounting and financial reporting requirements,
- 3) Playing books, and
- 4) Licensing.

Executive Director Littleton invited stakeholders to present comments on each category.

### Third-Party Providers of Proposition Player Services (TPPPS) Contracts

Executive Director Littleton introduced this topic by presenting issues from attachment. Issues include examining player collection fees, collection fees for third-party companies, examining tipping of the house dealer, as well as service categories and services identified in the contract.

#### Tipping Comments

- Any tipping arrangement between the third-party provider and the cardroom should be in the contract. No tipping arrangement should be outside of what is in the contract. The specific employee positions in which tipping arrangements are made between the third-party and the cardroom should also be specified to fully understand the arrangement. (Bureau)
  - These are good suggestions. Clarification is needed as to what is a tipping arrangement. If they are told not to tip, is this part of a tipping arrangement? Everything should be clear and consistent. (TPPPS)
  - Why are rebates in the initial contracts? Rebates are not really defined. What do you want to see in a rebate? (TPPPS)
- For this cardroom, tipping is in compliance with IRS requirements and in writing for the IRS in the employee tip agreements. While it may not be in the contract, it is defined and in writing. (Cardroom)
- If the arrangement is overly regulated in the contract, there are issues of compliance that can have unintended consequences, such as tipping for meals. (Cardroom)
- A primary tipping issue is a third-party provider tipping the floor supervisor and how that would impact the decision over a dispute in the game. There is a perception of collusion. (Bureau)
  - Decisions are reviewed and if the decision is a bad call, it will be reversed and severe consequences will occur. (Cardroom)
  - Not all cardrooms may have review procedures in place to protect against the perception of collusion. (Bureau)
- This is a tipped business. Everything works with tips. That's how the employees make their money. (Cardroom)
- Tipping arrangements should be simple. Tipping is normally about great guest service. But a contracted tipping arrangement is subsidizing the cardroom employees. The tip is automatically anticipated as a method of payment. (Commission)
  - When reviewing tipping, examine the prohibition of the gambling establishment from having any interest, whether direct or indirect, in funds wagered, lost or won. (Tribe)
- Any tipping arrangement should be clearly articulated and communicated to the Commission. This includes the form of the tip (checks, cash, chips, gifts, parties, vacations). (Commission)

#### Contract Services

- TPPPS services are currently a component of the contract. Specifics of what the Commission and Bureau want will be needed. (TPPPS)
  - One concern is clarity on the basis for the payment to better evaluate whether the payment is appropriate pursuant to the statute. (Commission)

- Perhaps the contract should be included as part of the background investigation presented to the Commission. (Commission)
  - The Commission does not have authority in the statute to approve contracts. (Commission)
  - It is an awkward position for the Commission to be able to see something that it cannot do anything about if the Commission determines there is an issue. (Commission)
- The service categories and reimbursement structures in the current regulations are too broad and some clarification or refining is needed. The costs included in the contracts seem high, and it is concerning how much of the day-to-day costs of the cardroom are going to be passed on to the third-party. (Bureau)
  - The guidelines provided by the regulations are very broad and must be difficult for an auditor to review. (Commission)
  - We agree that the contracts should specify what is actually being reimbursed. (Tribe)
- The services should meet all regulations and rules, specifically addressing the systematic rotation of the button for the third-party provider. There should be some form of notification to the Bureau or the Commission if there is a game that is not in compliance. This needs to be a specific criteria examined when approving the contract. (Tribe)
- Review of the necessity of regulated requirements is needed. (Commission)

#### Collection Fees

- Collection fees are a powerful economic tool that will affect what cardroom or tribal casino a patron would visit. Statistics, as other states perform, would be a useful tool in monitoring this economic situation. (Commission)
  - It has always been the intent of the law and the regulations that a collection fee be required, and is a big distinction between California games and Tribal gaming. (Tribe)
- Further clarification or examination of Section 12200.7(b)(12) is needed. This requires the collection fee charged by the house for participation in a controlled game shall be the same as those charged to other participants. However the third-party providers are treated as a separate entity, rather than a player at the table, so the collection schedule is lower for the players than it is for the third-party. (Bureau)
  - The collection fees aren't actually a part of the contract, but instead set for each individual game that is submitted for review. So each game has a different collection fee schedule. (TPPPS)
- Games without collection fees for the patrons allow cardrooms to compete. If the patrons are required to pay a collection fee, most businesses in this area will likely go under. (TPPPS)
  - Historically all California games had a collection fee. Then there was a submission for promotional games to draw patrons to a certain game. With the economy and competition, zero collection has become more frequent. Now more cardrooms, and neighboring cardrooms, are submitting requests for zero collections. (Bureau)

### General Contract Terms

- Perhaps the contract criteria should be presented as a form. (TPPPS)
- The Commission should understand the financial relationships that exist between the owner of the third-party provider and the owner of the cardroom. Only one contract should exist between these two entities – the lease agreement. There should not be other agreements for a franchise or licensing agreement. (Commission)
- A third-party's access to surveillance should be examined. (Tribe)
- The termination provision of 12200.7(f), which mandates a term to be included in the contract to allow the Commission to terminate the contract upon a material violation of any required term of the contract, should be reviewed. It is currently very narrow, and only available upon recommendation by the Bureau. (Tribe)
- The reporting requirements should be adjusted to match what the cardroom is required to report. (Bureau)

### Accounting and Financial Reporting Requirements

Executive Director Littleton introduced the topic by stating that currently there are no regulations for accounting and financial reporting requirements for TPPPS. TPPPS reporting requirements should mirror the cardroom reporting requirements, and accounting procedure minimum standards should be established.

- Reporting through the player's book form follows the player. To follow the money to review for accounting issues, the recording should follow the game. (TPPPS)
  - Other third-party providers do track by the game and table as well as the person. (TPPPS)
- The Bureau agrees the reporting requirements should mirror the cardroom requirements. (Bureau)
  - The third-party providers are not aware of the cardroom reporting requirements and are unable to comment at this time. (TPPPS)
- The Bureau's auditing capabilities are limited by only being able to audit files and documentation that are actually on the gambling establishment premises under Business and Professions Code section 19827(a)(1)(E). However, some owners keep their records at home or otherwise off the premises. We would like further clarification or a statutory change to allow the Bureau to audit wherever the gambling establishment or third-party documents are held. (Bureau)
- Minimum internal control standards should also be reviewed or created. (Commission)
  - The standards should keep in mind the different tiers for space and resources so that the regulations are fair and do not put people out of business. (Commission)
- Individual bank responsibility should be required. That is one person responsible for that particular bank, rather than someone else signing on to be responsible for the bank during breaks. (Commission)
- Strong dual signatory controls should be required. This is two people signing off on the transaction every time there is a fund transfer. (Commission)

- Separate supervisory control should be considered. This is requiring signatures to be done by employees or supervisors not directly connected in a chain of command. An employee should not be instructed to sign off on a transaction by their immediate supervisor. (Commission)
- A running journal of the bank should be put in place for auditors and law enforcement. (Commission)

### Licensing

Executive Director Littleton opened the discussion by expressing the desire for ideas to revise and streamline the current licensing regulations. This includes reviewing and updating the regulations for necessity, review the annual fee collection schedule, consider streamlined registration and licensing, the possibility of portable player registrations, the feasibility of eliminating the gambling business license category as a whole, and consider deleting the withdrawal section.

- The gambling businesses conduct third-party services without a contract. The Commission staff believes a third-party provider should always work with a contract when working in a cardroom. (Commission)
  - This cardroom generally supports eliminating the gambling business license, but there should then be some prohibition on conducting a gambling business. Sometimes there are groups of people who want to collaboratively act as the player/dealer and share funds. Cardrooms are currently able to exclude these people as they are not licensed as a gambling business. If the category is removed, there would need to be another legal basis to exclude this activity from the cardrooms. (Cardroom)
  - The Bureau supports eliminating the gambling business license. (Bureau)
- The relationship between third-party owners and cardroom owners should be defined and limited. For example, familial relationships. A cardroom owner related by blood to a third-party provider should not be able to enter into an agreement within that cardroom because of the perception of collusion. (Bureau)
  - Over time, we have seen more of a relationship between these two business entities, blurring the line of financial sources. This may be something that has to be handled at the legislative level. (Bureau)
  - We may not be able to preclude someone from doing business with a relative. This industry is also very small and tight-knit, and many will be related or very closely connected. Finally, how detailed will “blood-related” (familial) become? Would it include third-cousin or step-child? Review of the money relationships, rather than the DNA, may be a better option. (Commission)
  - This issue may lead to the elimination of the gambling business license, to ensure the agreements are controlled by a contract. (Commission)
- Temporary licensing and temporary registration should be maintained. It is hard to find people to fill the positions, so it is important to allow people to work after some level of background check without having to wait an inordinately long period of time for the completion of the full background examination. People will need to work, or they will move on. (TPPPS)

- Perhaps the turnaround for a temporary player license could mirror the process for a temporary work permit for a dealer. (TPPPS)
  - The work permit for a dealer is first issued at the local level. If the local jurisdiction does not issue work permits, then the Commission does. Also the work permit does not require full licensure like the Gambling Control Act requires of players, so the temporary license cannot mimic the temporary work permit. However, we can look at streamlining the licensing process. (Executive Director)
- There is a concern regarding the perception of house banking, financial sources, and cross banking. The cardroom creates a TPPPS company that banks for the cardroom. (Bureau)
  - These issues may not be able to be resolved in regulations. (Commission)
- The portable registration or license is a good idea. (TPPPS)
- Perhaps each third-party provider could be assigned a set amount of temporary badges based on their size so that people could be trained and work right away. Even waiting for the temporary license for four to six weeks hurts the industry when there are several people sick or absent. (TPPPS)
- When performing the process from registration to licensing, currently the company as a whole has to turn in the paperwork at the same time. While being processed, people are promoted, people leave, and that results in a lot of paperwork for the Bureau and for the third-party provider. Perhaps the process could be streamlined by being broken down into stages: first the owners and the company, then the supervisors, then the players. (TPPPS)
- The annual fee should be based on gross gaming revenue. To tax a system based upon number of employees results in a penalty for hiring. (Commission)
  - An annual fee based upon the number of employees also makes hiring part-time employees prohibitive. (TPPPS)
- If the withdrawal process is deleted, does that eliminate the entire avenue for someone to request a withdrawal or is there reliance upon the other statute? (Bureau)
  - It is the Commission's intent to use existing sections of regulations and including the third-parties, so there is no need to duplicate those efforts. (Executive Director)

### Use of Electronic Playing Books

Executive Director Littleton asked for feedback regarding the use of electronic playing books. Currently the regulations require hard-copy books, but a lot of providers are using electronic versions. We would like to consider the development of minimum standards for a software program to include an anti-tampering function as well as examine the feasibility of requiring certification of software programs.

- The Bureau supports utilizing electronic playing books. (Bureau)
  - Individual Commissioners voiced support for utilizing electronic playing books, as long as the option for hard-copy remains. (Commission)

- When drafting the regulations, self-certification by GLJ should be considered. The Bureau does not have the expertise to verify the security of the software to be used. (Bureau)
- Electronic playing book software should be secure, the providers should not be able to tamper with the software, and the providers should not be able to change entries. (Bureau)
  - It might be best to rely on the industry to bring to the Commission appropriate software standards and certification requirements. (Commission)
  - Keep in mind it is very expensive to come up with proprietary software, so guidelines of what the Commission and the Bureau will need is useful. To develop software just to find out the Commission or the Bureau doesn't like it or needs to tweak something is very expensive. (TPPPS)
  - When the minimum standards are developed, the providers may still go above and beyond that level and require more detailed information. But will we be able to edit that information out so that it is not too much information for the Bureau, or will that become a security issue for the Bureau? (TPPPS)
- The electronic playing book should include all the requirements, expectations, and concerns that the hard-copy book meets for tracking, auditing, and retaining the records. (Bureau)
  - We should also make sure all the requirements are being utilized and are indeed still required. (Commission)
  - The playing books determine how much money the third-party providers are bringing in and to verify revenue, as well as to ensure the game is being played in accordance with game rules, what player was sitting at the table, etc. The accounting regulations may replace some of these uses for the playing books. The playing books will still be need for some auditing purposes, however. (Bureau)
  - If the player banks were to be treated as cages, it may reduce the need for the other reasons for the playing books. (TPPPS)
- The playing books should include the requirement to record the manner in which the player/dealer position is continuously and systematically rotated. (Tribe)

### Miscellaneous

Executive Director Littleton introduced this category by identifying some of the other ways we want to look at that include:

- 1) Cleaning up our definitions (deleting or refining),
  - 2) Adding outstanding fees to disciplinary regulations, organization chart and employee report (what do we use this for), and
  - 3) Transfer and sales agreements (review for consistency on the cardroom side) and require these transfers and sales agreements to come before the Commission for approval.
- The issue of what is a “session of play” needs to be reviewed. (TPPPS)
  - Subsection (i) of Business and Professions Code section 19852 should be incorporated into the definition of “owners” for Sections 12200 and 12220. (Bureau)

- The Bureau would like to remove the requirement for the players and supervisors supplemental information package to be due when they summon the provider. It would be easier for these to come in after the provider was approved, in case the provider was denied or withdrew the application. They would save time and money on the backgrounds for these persons. (Bureau)

#### Other Items

None.

#### Next Steps

Executive Director Littleton requested suggestions for the priority order of these categories.

- Accounting and financial reporting should be priority number one. (Bureau)
- The contracts should be done fairly early in the process. (Tribe)
- The Commission staff may be able to work on two categories simultaneously. If that is possible, we can start with accounting and contracts, then finish up with playing books and then licensing. (Commission)

Executive Director Littleton concluded the comments by explaining the next step would be individual workshops for each category to talk about the areas in that particular section we want to amend before drafting actual language. The Commission will not begin drafting language until the second workshops.

#### **ADJOURNMENT:**

Executive Director Littleton adjourned the meeting at 12:15 p.m.