



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Casino Control Commission (“Commission”)

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Regulation/Package Title (a general description of the rules’ substantive content):

3775-16-09 Promotions and bonuses amendment

Rule Number(s): 3775-16-09

Date of Submission for CSI Review: June 28, 2024

Public Comment Period End Date: July 12, 2024

Rule Type/Number of Rules:

New/ 0 rules

No Change/ 0 rules (FYR? No)

Amended/ 1 rule (FYR? No)

Rescinded/ 0 rules (FYR? No)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

As the Commission endeavors to fulfill its mission of upholding the integrity of sports gaming in Ohio, this proposed rule amendment is intended to expressly clarify how sportsbooks can target consumers following non-gaming transactions. The amendment is intended to assist the Commission as it fulfills its statutory mission to ensure the integrity of sports gaming in Ohio by ensuring that sports gaming promotions that target consumers following a non-gaming transaction still adhere to the requirements in Ohio law.

- **3775-16-09, titled “Promotions and bonuses.” (amendment).** This rule describes the manner and conditions under which sports gaming proprietors may offer promotions or bonuses. This includes ensuring that the promotions and bonuses, like advertisements, are clear and not misleading. The purpose of this rule is to ensure R.C. 3775.02’s advertising requirements on promotion are met and to establish the Commission’s oversight of promotional gaming credits contemplated by R.C. 3775.10. The rule is being amended to expressly clarify, in a manner consistent with R.C. 3775.02 and O.A.C 3775-16-08, the way sports gaming proprietors can offer promotions or bonuses in connection with or as a result of a non-gaming, consumer transaction.
3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**
3775.02 and 3775.10.

4. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

If yes, please briefly explain the source and substance of the federal requirement.

Not applicable.

5. **If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

This question is not applicable because the federal government does not regulate sports gaming in this state. Rather, sports gaming is permitted and controlled by Ohio's Sports Gaming Control Act (i.e., R.C. Chapter 3775).

6. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

R.C. Chapter 3775 requires the Commission to ensure the integrity of sports gaming and to prescribe rules for how sports gaming should be conducted, including rules related to promotions and bonuses. As the Commission endeavors to fulfill its mission of upholding the integrity of sports gaming in Ohio, the proposed rule amendment is intended to expressly clarify how sportsbooks can target consumers following non-gaming transactions. This amendment will ensure that sports gaming promotions that target consumers following a non-gaming transaction still adhere to the requirements in Ohio law.

7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Overall, the Commission will measure the success of this amendment in terms of whether it helps the Commission meet its statutory mission to ensure the integrity of sports gaming. This can be done in two ways: first, through evaluating whether the public benefit of implementing and enforcing this amendment outweighs its administrative and business costs. And second, through analyzing the regulated community's comments about requests for amendments to the rule or for waivers or variances to or from the rule.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Stakeholders were initially provided an informal comment period on the amendment on June 28, 2023, with a comment deadline of July 12, 2023. See Exhibits A and B for a copy of the informal stakeholder outreach as well as a list of contacted stakeholders. Stakeholders were then given a second informal comment period on November 9, 2023, with a comment deadline of November 30, 2023. See Exhibits D and B for a copy of the additional stakeholder outreach as well as a list of contacted stakeholders. Finally, stakeholders also had the opportunity to comment during the Commission's public meeting on June 18, 2024.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The Commission received comments from four stakeholders enclosed as Exhibit C. Generally, two comments were supportive of the amendment, one comment felt the amendment needed to be more specific, and one comment felt the amendment was too restrictive.

The Commission carefully considered the input provided by stakeholders and revised the amendment. Stakeholders were provided an additional informal comment period on the revised amendment on November 9, 2023, with a comment deadline of November 30, 2023. See Exhibits D and B for a copy of the additional stakeholder outreach as well as a list of contacted stakeholders. The Commission received comments from three stakeholders enclosed as Exhibit E. The Commission carefully considered this additional input, however, no changes were made to the amendment. The Commission strongly believes that responsible gaming is a cornerstone of the integrity of sports gaming in Ohio and this amendment furthers that mission.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

This question does not apply to this amendment because no scientific data was necessary to develop or measure its outcome. Instead, Commission staff reviewed the Commission's statutory mandates, the rules currently in effect in its other regulatory frameworks and looked at how other jurisdictions approached this topic.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

During its review, staff considered past practices of the Commission in its other regulatory frameworks, any stakeholder comments, and the current trends in the sports gaming regulatory environment. As such, this amendment has been crafted to meet Ohio law and further protect the integrity of sports gaming in Ohio.

13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

This question largely does not apply to this amendment because no other regulatory agencies in Ohio with licensing responsibility for sports gaming exist. Additionally, when the rule was originally adopted, no other regulations in this area currently existed with respect to sports gaming and the Commission reached out to and worked closely with several of the other named agencies in HB 29 (of the 134th General Assembly) to ensure that the Commission did not promulgate rules or standards that conflict with or encroach upon the regulatory authority of other Ohio agencies.

14. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Commission ensures any issues that arise are funneled through the respective division director and vetted with the Legal Division before being brought to the Executive Director, so that he can coordinate a consistent response and have staff conduct outreach to the regulated community. Specifically, any issues related to compliance are managed by the Commission’s compliance staff, which is overseen by a single director in the Commission’s central office. Moreover, the sanctioning of any license (other than the issuance of a provisional license) can only be approved by the Commission at a public meeting through vote. Therefore, the regulated community can expect consistent and transparent compliance decisions.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

The regulated business community consists of Type A, B, and C proprietors, as well as mobile management services providers and management services providers. These include Ohio’s professional sports teams and events, casinos, and racinos, as well as retail establishments, and sportsbook operators.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a representative business. Please include the source for your information/estimated impact.

The only adverse impact the Commission anticipates would be potential sanctions for noncompliance and employer time for compliance. Age verification requirements are already required for all sports gaming proprietors, so the amendment does not add any additional business impact to the sports gaming proprietors.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden*)

may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors).

No, although the proposed amendment seeks to clarify and reinforce provisions contained in O.A.C. 3775-16-08 regarding targeted consumer advertising. To the extent that the proposed amendment assists stakeholders in determining how to apply these advertising requirements to non-gaming consumer transactions, stakeholders may realize a benefit from such clarity in application.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The regulatory intent justifies any adverse impact because R.C. 3775 requires the Commission to ensure the integrity of sports gaming, specifically by licensing, regulating, investigating, and penalizing those involved in sports gaming in a manner consistent with the Commission's authority to do the same with respect to casino gaming. Moreover, R.C. 3775 gives the Commission specific and broad authority to adopt rules to ensure that sports gaming advertising, including promotions, do not target vulnerable individuals. As such, any business impact is justified as statutorily contemplated and inherent in the business of sports gaming.

Moreover, the regulatory intent justifies any adverse impact because sports gaming is a highly regulated industry and is accustomed to detailed regulations in every jurisdiction. Unregulated gaming poses a threat to public welfare and raises the potential for fraud and abuse. To mitigate these threats, the Commission, like other gaming regulatory bodies, is using its regulatory authority to establish a best practice framework in consultation with the regulated community.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Yes. This amendment provides exemption or alternative means of compliance through Ohio Adm.Code 3775-1-04, which permits the Commission, upon written request, to grant waivers and variances from the rules adopted under R.C. Chapter 3775, including this amendment, if doing so is in the best interest of the public and will maintain the integrity of sports gaming in the State of Ohio.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

R.C. 119.14 is likely inapplicable. To the extent R.C. 119.14 would apply to a violation of this amendment, the Commission will provide verbal and written notification to the small business to correct the paperwork violation. Thereafter, the Commission would allow the small business a reasonable amount of time to correct the violation. The Commission and its staff would also offer any additional assistance necessary to aid in remediation of the

violation. No administrative action would be taken unless the small business fails to remedy the violation within the reasonable time allotted by the Commission.

20. What resources are available to assist small businesses with compliance of the regulation?

The Commission and its staff are dedicated to working with members of the regulated community and the public to effectively and efficiently regulate sports gaming in this state. As a result, the following resources are available:

- Commission's mailing address:
100 E. Broad Street, 20th Floor
Columbus, Ohio 43215
- Commission's toll free telephone number: (855) 800-0058
- Commission's fax number: (614) 485-1007
- Commission's website: <http://www.casinocontrol.ohio.gov/>
- Commission's email: info@casinocontrol.ohio.gov and sportsgaming@casinocontrol.ohio.gov

Also, all members of the regulated community and public may, in accordance with rule 3772-2-04, request to address the Commission during a public meeting. Finally, all members of the regulated community may, pursuant to rule 3775-1-04, request waivers and variances from Commission regulations.

EXHIBIT A

From: [Morrison, Andromeda](#)
To: [Sports Gaming](#)
Subject: FAQ Update and Proposed Rule Stakeholder Comment Period
Date: Wednesday, June 28, 2023 3:00:23 PM
Attachments: [3775-16-09 Proposed changes.pdf](#)

Sports Gaming Stakeholders,

As you know, the Commission has developed a list of frequently asked questions to assist stakeholders in obtaining answers to common inquiries. The Commission continues to periodically update these FAQs and provide them to stakeholders.

The FAQs on advertising, marketing, and user recruitment have now been updated and are available [here](#). These FAQ changes have been made because the Commission has become aware of sports gaming promotions based on unrelated consumer transactions. These promotions are targeted to specific consumers based upon their consumer purchase with an affiliate company. These types of promotions target these consumers with a sports gaming promotion inducement specifically because of their unrelated consumer transaction. These types of promotions include offers made to a consumer following the consumer transaction on the affiliate marketer's website or application or made following the consumer transaction to the consumer's e-mail address, by mail, or other direct communication.

The Commission considers responsible gambling to be a cornerstone of the integrity of sports gaming in Ohio. These types of consumer promotions, if permitted, would contribute to the normalization of gambling—providing gambling rewards from simply engaging in non-gaming consumer spending activity. The Commission is cognizant that research demonstrates that the normalization of gambling increases the risk for problem gambling, especially among young people. Therefore, these types of promotions, offered to consumers based on their non-gaming related purchases, threaten the integrity of sports gaming in Ohio and are not permitted.

Moreover, these types of promotions, triggered to consumers based upon their purchase, are not “generally available” and are instead direct advertisements targeting a specific consumer. As such, even if these promotions were otherwise permitted, they would need to meet the requirements in Ohio Adm.Code 3775-16-08 including the ability to opt out of future offers, age verification, and ensuring the consumer is not a participant in an exclusion program.

The Commission requests that each operator confirm that it does not or has ceased offering any directed consumer promotions, based on non-gaming consumer transactions, no later than 5 p.m. Friday, July 7, 2023.

Although the Commission considers these types of promotions to be impermissible, and directs all operators to immediately cease these promotions, the Commission is aware that further administrative rules in this area would assist the industry in ensuring compliance with Ohio law. To that end, the Commission is proposing the attached change to Ohio Adm.Code 3775-16-09. The Commission welcomes stakeholder comment on the proposed administrative rule change. Comments may be submitted to rulecomments@casinocontrol.ohio.gov no later than 5:00 p.m. Wednesday, July 12, 2023.

EXHIBIT B

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EXHIBIT C



Campaign for Fairer Gambling Comments on Proposed Changes to Regulation 3775-16-09 Promotions and Bonuses for Sports Betting

Dear Executive Director Schuler and Members of Ohio Gaming Control Commission,

On behalf of the Campaign for Fairer Gambling (CFG), we thank you for this opportunity to provide comments on your proposed updates to rule 3775-16-09 which speaks to the allowances and restrictions for promotions and bonuses in sports betting. CFG was recently relaunched here in the United States after much success in the U.K. This national campaign strives to provide an evidence-based approach to improving U.S. remote gambling policy, regulations, legislation, and enforcement standards; ultimately reducing gambling related harms. We believe with the right protections in place, gambling can be both enjoyable and safe for consumers and viable for businesses.

The campaign would like to offer its strong support of the following proposed provision: “(G) Sports gaming proprietors may not offer a promotion or bonus in connection with or as a result of a non-gaming consumer transaction. This paragraph does not prohibit a sports gaming proprietor from participating in a consumer loyalty program, as approved by the executive director.” The CFG does not support the utilization of promotions and bonuses in any market at any time. These ‘promotions’ and ‘bonuses’ are often misleading and attractive to vulnerable players. The recent increase in class action lawsuits across the United States illustrates that consumers are misled by promotions and bonuses and result in player expenditures much higher than intended. When bonuses are authorized and even incentivized during a non-gambling related transaction it only compounds the concerns, especially from a public health perspective. Consumers, particularly vulnerable persons, should not be exposed to and incentivized to engage with a known risky product. These risks are likely not being disclosed to them and if presented during a non-gambling related transaction, we must address the issue that the customers in question are now being exposed to something they may have never desired to seek out of their own volition or more importantly some customers may have explicitly requested via a self-exclusion enrollment to be protected from such promotions. Allowing bonus offers to be offered on non-gambling related platforms increases the risks of exposure for underage individuals and self-excluded persons that should have the freedom and ability to buy other products and services without fear of harm. It’s important to note, research highlights that the younger an individual is exposed to and engages with gambling or gambling like mechanics, the greater the chance they can struggle with a gambling problem later in life. Additionally, when promotions or bonuses are offered through affiliates some consumers may perceive that there has been an independent vetting process conducted by the affiliate. Consumers may not understand that there is a commercial relationship between the affiliate and the licensee. We therefore consider this to not be as fair as we believe sports betting should be. Gambling is not a risk-free activity and it’s the collective responsibility of all stakeholders to put the welfare of the public, vulnerable persons, and players at the heart of all

regulations. Further refining these regulations to include this new provision places consumer welfare at the nucleus of the discussion and only enhances your policies.

We believe this requirement and others that you have outlined continues to place Ohio as a national leader, helping to prevent and reduce the harm that has resulted already and will come for other individuals from legalized sports wagering. We appreciate this opportunity to comment. We'd be happy to answer all questions or concerns that you may have.

Sincerely,

Brianne Doura-Schawohl



Ohio Casino Control Commission
Matthew T. Schuler, Executive Director
100 E. Broad St.
20th Floor
Columbus, OH 43215
Sent via electronic mail

Re: Proposed Amendment to Ohio Adm.Code 3775-16-09

July 12, 2023

Dear Executive Director Schuler,

I write on behalf of FBG Enterprises Opco, LLC dba Fanatics Betting & Gaming ("FBG") in response to the Ohio Casino Control Commission's ("OCCC") proposed changes to Ohio Adm.Code 3775-16-09, as well as the updated sports wagering marketing restrictions shared via e-mail by General Counsel Morrison on June 28, 2023. We wish to express our concerns with the lack of grounding of this draft rule and the e-mail guidance in the enabling sports wagering statute and the degree to which the restriction appears to be targeted at FBG's business.

In the past few months, FBG has spoken at length with OCCC staff regarding its planned efforts to market the FBG sports wagering product to customers of its affiliate business, Fanatics, LLC ("Fanatics Commerce"), which operates, among other sites, the Fanatics.com consumer website. No provision of O.R.C. 3775 (the "Statute"), nor the Ohio Administrative Code, restricts FBG from advertising sports wagering promotions to individuals who visit and purchase licensed sports merchandise from Fanatics.com, or any other digital platform that is ultimately owned or operated by FBG's parent company, Fanatics Holdings, Inc. In fact, subpart .02(B)(10)(a-e) of the Statute charges the OCCC with the responsibility of developing advertising restrictions that cause licensees to comply with five enumerated advertising requirements. The broad draft rule and e-mail guidance in question go far beyond any of the advertising requirements contemplated in the Statute. It is also worth noting that FBG has not previewed any promotional offers to OCCC that run afoul of the advertising restrictions listed in the Statute.



Rather than cite a specific provision of the Statute that gaming offers to non-gaming purchasers violates, General Counsel Morrison's June 28 industry e-mail cite a belief that these types of offers "contribute to the normalization of gambling and threaten the integrity of sports gaming by increasing the risk of problem gambling." Yet, the OCCC has not cited any study or statistical basis for adopting this belief regarding risks of advertising to non-gaming purchasers, and FBG is not aware that any such evidence exists in the industry today. The advertising restriction put into place by the OCCC via the June 28 industry e-mail is, to our knowledge, the first of its kind in the industry.

On the contrary and as previously discussed with OCCC staff, marketing to Fanatics Commerce customers is not only a sound business decision for FBG, but it is also a safer and lighter touch method of advertising. As demonstrated to OCCC staff, the vast majority of Fanatics Commerce purchasers are 21 or older, they have a propensity to be interested in or currently engaged in sports wagering, and the average Fanatics Commerce customer does not transact in high volume in a given year, limiting their exposure to sports wagering marketing on the Fanatics.com site. Given these facts, we fail to see how FBG's proposed marketing to Fanatics Commerce customers creates a heightened risk of a "normalization of gambling," especially when compared to the standard marketing tactics of the industry as further detailed in this letter.

Additionally, this newly developed marketing restriction appears on its face to be specifically targeted at FBG's business model. In General Counsel Morrison's June 28 industry e-mail, the OCCC expressed a concern around the potential negative impact should sports wagering operators be allowed to offer promotions to non-gaming consumers. However, the OCCC has not, to date, developed comparable restrictions for a host of other types of marketing that speak to non-gaming patrons, such as television commercials, radio ads, podcast reads, and in-venue stadium billboards. And, in fact, Ohio residents are presented the opportunity to engage with sports wagering at the nearly 1,000 non-gaming facilities that host sports wagering kiosks across the state, including restaurants, bars, bowling alleys, and even grocery stores. Throughout Ohio, non-gaming patrons – cable subscribers, restaurant diners, ticket holders for sporting events – see gaming promotions and are marketed to for sports wagering on a daily basis, and those individuals are more likely than Fanatics Commerce purchasers to be under 21. Given the volume and reach of these other forms of advertising, we respectfully offer that these types of marketing are far more likely to cause the "normalization of sports wagering" that the OCCC expresses



concerns around rather than FBG advertising to purchasers of a specific website who are almost entirely of the legal wagering age and are inclined to be interested in sports wagering.

Finally, General Counsel Morrison's June 28 industry e-mail notes that gaming offers to non-gaming purchasers, even if allowed, are not "generally available" and are therefore a form of direct marketing. While we cannot comment on the structure of our competitors' promotions, we would dispute any notion that the offers FBG has previewed to OCCC staff are not "generally available" to Ohio patrons. Under the terms of the "purchase match" offer we discussed with OCCC staff, all Ohio-based patrons could avail themselves of the offer subject to fulfilling two conditions: 1) purchasing merchandise from Fanatics.com and 2) being found eligible to engage in sports wagering (e.g., 21 or older, not self-excluded). To our knowledge, virtually all industry acquisition offers involve similar conditions in that a person must 1) take some type of action (e.g., Deposit X Get Y, Wager A Get B, etc.) and 2) be found eligible to engage in sports wagering. We disagree that incorporating a purchase condition makes an offer not "generally available" and therefore a form of direct marketing, but that a similar requirement to deposit or wager does not raise the same concern. In both cases, offers are made widely available through media and not directed at any certain person, while subject to certain qualifying conditions. Said otherwise, in the "purchase match" example, FBG does not reach out to particular persons in advertising the offer – it is available to all Fanatics Commerce customers in Ohio. And while not binding on the OCCC, we are not aware of any other gaming state taking the position that the particular qualifying conditions of a promotion determine whether the offer is a form of direct marketing. Rather, to our knowledge, all other gaming jurisdictions that speak to direct marketing define it as a particular means of transmission – e-mail, direct mail, or text message, in most cases.

On behalf of FBG, I want to reiterate that we share the same goal as the OCCC, in that we want the Ohio sports wagering market to be commercially successful, while being conducted in a safe and responsible manner. We greatly respect the OCCC's authority and expertise in these matters, and would not dispute a restriction on gaming promotions to certain specified categories of non-gaming patrons consistent with the Statute, such as customers of businesses largely frequented by teenagers. But we disagree with the scope of these new restrictions and assess these changes as targeted at FBG's business, while also holding that there is no objective basis to support the assumption that sports wagering promotions offered to non-gaming patrons increases the risk of problem gaming. For these reasons, we respectfully request that the OCCC reconsider adoption of this administrative rule change, as well as the restrictions outlined in General Counsel Morrison's June 28 e-mail.



We welcome the opportunity to further discuss these matters at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'AS', written over a horizontal line.

Alex Smith
Vice President, Regulatory Affairs

From: [Danielle Boyd](#)
To: [Morrison, Andromeda](#); [Sports Gaming](#)
Cc: [Robert.Wamsley@hrccincinnati.com](#); [Michael Prygoski](#); [Rich Bregazzi](#); [Drew Huffman](#)
Subject: RE: FAQ Update and Proposed Rule Stakeholder Comment Period
Date: Thursday, July 6, 2023 1:39:11 PM
Attachments: [image001.png](#)

Hi Andromeda and team,

After internal review of our promotions plan as well as all Ohio based marketing, we are responding to confirm that we have not and will not offer any directed consumer promotions based on non-gaming consumer transactions.

This is not a tactic we have used previously in any jurisdiction, and one we believe runs against a plain logic understanding and commitment to Responsible Gaming as highlighted by the Commission in its communications.

Please let this e-mail serve as our confirmation of such as requested in your communication dated June, 28th.

Of note, we have engaged Odds On Compliance to do a full audit of all our promotions to confirm our internal findings. We will certainly report anything that comes up at a later date, however, we do not anticipate any findings.

Many thanks and please let me know if you have any questions,

Danielle



Danielle Boyd
Hard Rock Digital
Vice President- Regulatory and Compliance
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From: Andromeda.Morrison@casinocontrol.ohio.gov
<Andromeda.Morrison@casinocontrol.ohio.gov>
Sent: Wednesday, June 28, 2023 3:00 PM
To: sportsgaming@casinocontrol.ohio.gov
Subject: FAQ Update and Proposed Rule Stakeholder Comment Period

Sports Gaming Stakeholders,

As you know, the Commission has developed a list of frequently asked questions to assist stakeholders in obtaining answers to common inquiries. The Commission continues to periodically update these FAQs and provide them to stakeholders.

The FAQs on advertising, marketing, and user recruitment have now been updated and are available [here](#). These FAQ changes have been made because the Commission has become aware of sports gaming promotions based on unrelated consumer transactions. These promotions are targeted to specific consumers based upon their consumer purchase with an affiliate company. These types of promotions target these consumers with a sports gaming promotion inducement specifically because of their unrelated consumer transaction. These types of promotions include offers made to a consumer following the consumer transaction on the affiliate marketer's website or application or made following the consumer transaction to the consumer's e-mail address, by mail, or other direct communication.

The Commission considers responsible gambling to be a cornerstone of the integrity of sports gaming in Ohio. These types of consumer promotions, if permitted, would contribute to the normalization of gambling—providing gambling rewards from simply engaging in non-gaming consumer spending activity. The Commission is cognizant that research demonstrates that the normalization of gambling increases the risk for problem gambling, especially among young people. Therefore, these types of promotions, offered to consumers based on their non-gaming related purchases, threaten the integrity of sports gaming in Ohio and are not permitted.

Moreover, these types of promotions, triggered to consumers based upon their purchase, are not “generally available” and are instead direct advertisements targeting a specific consumer. As such, even if these promotions were otherwise permitted, they would need to meet the requirements in Ohio Adm.Code 3775-16-08 including the ability to opt out of future offers, age verification, and ensuring the consumer is not a participant in an exclusion program.

The Commission requests that each operator confirm that it does not or has ceased offering any directed consumer promotions, based on non-gaming consumer transactions, no later than 5 p.m. Friday, July 7, 2023.

Although the Commission considers these types of promotions to be impermissible, and directs all operators to immediately cease these promotions, the Commission is aware that further administrative rules in this area would assist the industry in ensuring compliance with Ohio law. To that end, the Commission is proposing the attached change to Ohio Adm.Code 3775-16-09. The Commission welcomes stakeholder comment on the proposed administrative rule change. Comments may be submitted to rulecomments@casinocontrol.ohio.gov no later than 5:00 p.m. Wednesday, July 12, 2023.

CAUTION: This is an external email and may not be safe. If the email looks suspicious, please do not click links or open attachments and forward the email to csc@ohio.gov or click the Phish Alert Button if available.



GRACE H. FLANAGAN
Vice President of Regulatory Affairs & Chief Compliance Officer

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July 12, 2023

Ohio Casino Control Commission
c/o Andromeda Morrison
100 East Broad Street, 20th Floor
Columbus, Ohio 43215

Re: Proposed amendments to O.A.C. 3775-16-09, Promotions and bonuses

Dear Ms. Morrison:

Thank you for the opportunity to provide input on the proposed amendments to O.A.C. 3775-16-09, Promotions and bonuses, as attached to your email dated June 28, 2023. On behalf of Parx Interactive Ohio Inc. (Parx), I would like to thank the Commission for emphasizing the importance of responsible gaming and related marketing messaging and support your efforts in this respect. I would also like to raise a question regarding the application of the rule to instances where a direct promotion may target a customer of our partner, a licensed sports gaming proprietor, and respectfully request changes to the proposed regulations to address this.

As you know, Parx operates as the Mobile Management Service Provider to MVGC Subsidiary, Inc., aka Muirfield Village Golf Club (Muirfield), which currently holds a Type A Sports Gaming Proprietor license. As such, our partner is subject to the know your customer and advertising requirements in O.A.C. 3775-16-08.

Our current reading of the proposed new rule suggests that promotions directed at the customers of a partner *who is also* a licensed gaming company would not be allowed. Promotions targeted at our gaming company partner's customers, using their customer database, would be different in character than the scenario we believe the Commission is trying to address with this rule change, i.e., a gaming company advertising to the customers of their own non-gaming affiliate.

Where both the advertiser and the partner company are licensed gaming companies and already subject to all of your requirements, this prohibition is unnecessary and is not a further normalization of gaming. As such, we believe that the proposed rule and FAQ should be revised to allow cross-marketing, including promotions, to customers of licensed gaming companies by



their licensed gaming company partners, as well as to distribution lists that Parx or our sports wagering proprietor partner maintain that are not directly linked to a specific non-gaming consumer transaction.

While we are not currently offering these, examples of promotions we might offer that we propose be excluded from the prohibition include an email with a signup bonus promotion to Muirfield's members, or a text message with a signup bonus to participants of a tournament at Muirfield, only after having removed from distribution those underaged and on excluded lists and otherwise complying with regulatory requirements.

In furtherance of this, we respectfully request Revised Code 3775-16-09 be modified to clarify that consumer membership or licensure with a sports gaming proprietor should not be considered a "non-gaming consumer transaction", and promotions sent to a database, even if built in part from non-gaming consumer transactions, not be prohibited, provided they do not directly arise from the purchase:

(G) Sports gaming proprietors may not offer a promotion or bonus ~~in connection with or~~ as a direct result of a non-gaming consumer transaction], which means a non-gaming good or service purchased by an individual consumer for personal use, excluding sports gaming proprietor licenses and memberships]. This paragraph does not prohibit a sports gaming proprietor from participating in a consumer loyalty program, as approved by the executive director.

Parx respectfully submits that these changes are in keeping with the spirit of the Commission's intention to limit the expansion of gaming, while supporting sports clubs as holders of sports wagering licenses under the act. Please feel free to contact me if you have any questions or would like to discuss these comments in further detail.

Sincerely,

/s/Grace H. Flanagan

Grace H. Flanagan

EXHIBIT D

From: [Ohio Casino Control Commission](#)
To: [Abbott, Catharine](#)
Subject: Sports Gaming Rule for Comment
Date: Thursday, November 9, 2023 2:41:11 PM

[View this email in your browser](#)



Sports Gaming Stakeholders,

The Ohio Casino Control Commission (“Commission”) thanks you for your feedback regarding proposed amendments to Ohio Adm. Code 3775-16-09. The Commission has reviewed the comments, made changes, and is welcoming further comments on the proposed amendments to this rule.

You can view the current proposed language [here](#).

If you would like to provide formal written comments on these amendments, please email them to rulecomments@casinocontrol.ohio.gov by 5:00 p.m., Thursday, November 30, 2023.

As always, please feel free to forward this communication to anyone else you think may be interested.



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Ohio Casino Control Commission 100 E. Broad St 20th Floor COLUMBUS, OH 43215 USA

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EXHIBIT E

Cory Fox
cory.fox@fanduel.com

November 30, 2023

Via Email to rulecomments@casinocontrol.ohio.gov
Matt Schuler, Executive Director
Ohio Casino Control Commission
100 East Broad Street, 20th Floor
Columbus, OH 43215

Re: FanDuel comments on proposed amendments to “Ohio Adm. Code 3775-16-09.”

Dear Executive Director Schuler:

I write to provide comments on behalf of FanDuel Group, Inc. (“FanDuel”) regarding the Ohio Casino Control Commission’s (“Commission”) proposed amendments to “Ohio Adm. Code 3775-16-09.” (“Proposed Amendments”). Based on our extensive experience as an operator in the sports betting and fantasy sports industries and collaborator with regulators of sports betting in many states in the development of their regulations, we offer constructive feedback on ways in which the Proposed Amendments can be improved for effectiveness and consistency with other state regulations.

We thank the Commission for taking the time to review our concerns and consider the significant impacts the Proposed Amendments may have. All our suggested changes will be shown as follows: proposed additional text will be bolded and underlined and all text to be deleted will be bolded, bracketed, and struck through. For the sake of clarity our suggested edits will be in red, and the Commission’s edits will be in black.

We have two significant concerns with the language of the Proposed Amendments. First, the requirement to “verify” that a recipient of a bonus or promotion offered in connection with a non-gaming consumer transaction is unprecedented and is unmanageable in practice. Sports gaming proprietors have all account holders engage in a thorough “Know-Your-Customer” (“KYC”) process at the time of account creation. This process is specifically designed to ensure that all account holders are at least 21 years old and not participating in the Voluntary Exclusion Program (“VEP”). However, it is not feasible for that same level of verification to be applied to individuals engaged in non-gaming consumer transactions, especially when such transactions take place with a third party. Requiring such a standard would, in effect, be a blanket ban on sports gaming proprietors partnering with third party businesses in Ohio to provide promotions to their customers. We strongly suggest the Commission remove this requirement entirely, or at a minimum, require sports gaming proprietors to engage in commercially reasonable efforts to prevent individuals who are under 21 or participating in the VEP from receiving the bonus or promotion.



Second, the text of the Proposed Amendments is not clear on how directly the “non-gaming, consumer transaction” must be to the promotion or bonus in order to trigger the age and identity verification requirements of the Proposed Amendments. We suggest that clarification be added to Proposed Amendments to limit the scope to situations where promotions or bonuses are directly contingent upon the non-gaming consumer transaction (i.e. spend x on non-gaming product/service, get y in bonus bets/promotional credits/other benefit) as opposed to including any promotion or bonus offered to an individual due to them being on a marketing list of a third-party which they may have had a non-gaming consumer transaction with at some point previously.

To address this concern, we suggest the following preferred and alternative edits to the Proposed Amendments:

PREFERRED:

Section 3775-16-09(G):

“(G) Sports gaming proprietors must not offer a promotion or bonus **directly** in connection with or **directly** as a result of a non-gaming, consumer transaction unless the promotion or bonus:

1) Does not target individuals under the age of twenty-one, other individuals who are ineligible to participate in sports gaming, individuals with gambling problems, or other vulnerable individuals;

~~[2) Is offered only to individuals who [have been verified as being twenty-one years of age or older and not participating in the Ohio Voluntary Exclusion Program;]~~
and

~~[3]2) Complies with the requirements in rule 3775-16-08(C) of the Administrative Code.”~~

ALTERNATIVE:

Section 3775-16-09(G):

“(G) Sports gaming proprietors must not offer a promotion or bonus **directly** in connection with or **directly** as a result of a non-gaming, consumer transaction unless the promotion or bonus:

1) Does not target individuals under the age of twenty-one, other individuals who are ineligible to participate in sports gaming, individuals with gambling problems, or other vulnerable individuals;

2) Is offered only ~~[to individuals who have been verified as being]~~ when the sports



gaming proprietor has engaged in commercially reasonable efforts to ensure the individuals receiving the promotion or bonus are twenty-one years of age or older and not participating in the Ohio Voluntary Exclusion Program; and

3) Complies with the requirements in rule 3775-16-08(C) of the Administrative Code.”

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
Government Affairs and Product Counsel Vice President



Ohio Casino Control Commission
Andromeda Morrison, General Counsel
100 E. Broad St.
20th Floor
Columbus, OH 43215
Sent via electronic mail

Re: Proposed Amendment to Ohio Adm.Code 3775-16-09

November 30, 2023

Dear Attorney Morrison,

On behalf of FBG Enterprises Opco, LLC ("FBG"), I write to provide feedback on the Ohio Casino Control Commission's ("OCCC") proposed revisions to Ohio's sports gaming promotional marketing rules (specifically 3775-16-09). Our Company thanks you and the wider OCCC team for your engagement with the industry on this draft rule, and we appreciate the opportunity to provide feedback and seek further clarification, which is set forth below.

FBG has previously noted to OCCC staff the Company's strong belief that executing on a marketing strategy that focuses on speaking to Fanatics customers when they engage with Fanatics businesses is not just a sound business decision, but a more responsible means of marketing. FBG previously shared with staff statistical support demonstrating that Fanatics Commerce customers are overwhelmingly 21 or older, and a significant percentage of those customers are interested in or currently engaged in sports wagering. If the contemplated rule revisions are implemented, to compete in the Ohio market, FBG will shift marketing resources towards other mediums (i.e., TV, out of home) where a higher percentage of minors and Voluntary Exclusion Program ("VEP") participants, the very people the OCCC is seeking to limit exposure for, will view FBG's offers.

FBG shares OCCC's goal of preventing a rise in problem gaming in the state, but respectfully disagrees that marketing the Fanatics Sportsbook to Fanatics consumers, in particular, presents



an increased risk of problem gaming and/or a normalization of gambling relative to other forms of allowable marketing. With that view in mind, FBG has engaged OCCC staff on several occasions the past several months in an attempt to determine a more narrowly tailored solution that would not force FBG to widen the audience the Company primarily markets to, or otherwise face a competitive disadvantage. As such, we hope to continue working constructively with OCCC staff to address any wider industry marketing concerns, while still remaining free to execute on our core business strategy.

1. OCCC should clarify the overall scope of the new rule

The lead-in language to the new draft rule provides as follows:

(G) Sports gaming proprietors must not offer a promotion or bonus in connection with or as a result of a non-gaming, consumer transaction unless the promotion or bonus:

FBG believes the industry would benefit from the OCCC clarifying what is meant by a “in connection with or as a result of a non-gaming, consumer transaction.” Should the draft rule be read to imply a *purchase* is necessary for the rule to take hold, while potentially exempting, for instance, promotional marketing to a non-gaming patron who creates an account with a media platform? And is there a temporal element to the draft restriction, such that sports gaming proprietors can make promotional offers available to third-party consumers after some period of time so it is not “in connection with or as a result of” a transaction?

In discussing our own marketing strategy with OCCC staff, FBG has detailed how promotional marketing to third-party consumer businesses is commonplace in the sports wagering industry, both through on-site offers and subsequent direct marketing. While FBG marketing to the Fanatics Commerce business is but one example, sports gaming proprietors in Ohio regularly make sports wagering offers available to Ohio customers of national media companies, various consumer businesses and website visitors, and even patrons who previously purchased tickets from Ohio-based professional sports teams. In spirit, FBG feels strongly that there is no



rational distinction between FBG marketing its platform to Fanatics Commerce customers, and one of FBG's competitors marketing to account holders of a national media company, for instance. However, as currently drafted, FBG believes the draft rule could be read to only implicate scenarios where there is a consumer *purchase*, while exempting essentially the same types of promotional offers sent by operators to other non-gaming patrons.

2. The draft rule should be clarified to applied to traditional forms of direct marketing, and not on-platform, generally available digital offers

FBG recommends that the OCCC clarify that the draft rule in question applies to direct marketing offers and promotions, where direct marketing is defined as personalized offers transmitted to a patron via mail, email, or text message, which FBG believes is the majority approach in the industry. In FBG's view, the draft rule should not be read to capture, for instance, a banner ad or pop-up reminder of a generally available sign-up offer (e.g., Bet X Get Y) following a purchase, when that same offer could be displayed in a compliant fashion on a digital page just before a patron clicks the word "purchase."

3. OCCC should clarify the definition of "target"

Sub-part 1 of the draft rule is as follows:

1) Does not target individuals under the age of twenty-one, other individuals who are ineligible to participate in sports gaming, individuals with gambling problems, or other vulnerable individuals

FBG requests that the OCCC clarify the definition of "target" in this context, and in the rules more broadly. FBG's view is that the word "target" in this context necessarily implies 1) an intent to communicate to a patron and 2) a certain level of either known or implied knowledge about a specific patron or a targeted population. On the contrary, FBG does not believe "target" can or should be read to create a strict liability standard, such that operators have "targeted" a



patron simply by making a promotional offer available to them, absent further details. This is especially true when the operator has no reason to know or suspect the recipient of a promotional offer is under 21 or a VEP participant, and an offer is subject to a condition that the patron is eligible to wager and able to create a sports gaming account. To this point, certain other sports gaming jurisdictions have approached this topic either by adding some type of knowledge or effort standard regarding a specific recipient,¹ or by focusing on an operator's presumed knowledge of a targeted population.²

To avoid issues of interpretation, FBG recommends the OCCC define "target" in this context such that promotional offers would be prohibited where 1) the sports gaming proprietor has access to data indicating that the recipient of a particular offer is under 21 or a VEP participant, or 2) the proprietor could reasonably infer that a meaningful percentage of recipients (such as the 25% standard adopted by the Massachusetts Gaming Commission) of an offer are under 21 or a VEP participant based on known or inferred details of a targeted population. Such a standard would align with the OCCC's position on other marketing restrictions, where a sports gaming proprietor may, for instance, freely advertise a sign-up offer for sports wagering in a commercial during a NFL game, but may not advertise that same offer on the Disney Channel.

4. A verification standard for third-party consumer marketing is impossible for sports gaming proprietors to comply with

Sub-part 2 of the draft rule provides as follows:

2) Is offered only to individuals who have been verified as being twenty-one years of age or older and not participating in the Ohio Voluntary Exclusion Program; and

¹ See, e.g., Colorado 1 CCR 207-2 9.3(2)(obligating operators to use "all reasonable measures" to suppress direct marketing to prohibited participants); Virginia 11VAC5-80-120(C) (restricting operators from "knowingly directing" marketing to prohibited persons).

² See, Massachusetts 205 CMR 256.05(4) (prohibiting, among other things, advertising "where 25% or more of the audience is presumed to be under twenty-one years of age").



This sub-rule would introduce a requirement for sports gaming proprietors in certain circumstances to “verify” the age and VEP status of consumers prior to offering certain promotions. Read plainly, a “verification” standard would suggest sports gaming proprietors must conduct the same type of rigorous know-your-customer (“KYC”) check that Ohio patrons submit to when establishing a sports gaming account.

As the OCCC is aware, sports gaming proprietors always “verify” an Ohio patron’s eligibility when signing up for a sports gaming account by collecting multiple pieces of data from the patron, including date of birth and at least the last four digits of a patron’s Social Security Number, and then matching that information via third-party KYC providers against official record databases. Given that collection of such personal identifiable information (“PII”) is essentially unheard of in any type of consumer transaction, sports gaming proprietors will likely never be able to “verify” with perfect accuracy the age or VEP standing of a patron in a third-party consumer database given the lack of PII obtained by third-party businesses. As such, a verification standard in the rule would serve to effectively ban the forms of promotional marketing the draft rule is meant to contain. Such a standard would, to our knowledge, be the first rule of its type in the country, and would create a standard Ohio sports gaming proprietors cannot meet.

FBG respectfully submits that OCCC should remove sub-part 2 of the draft rule, and rely on the language in sub-part 1 that restricts sports gaming proprietors from targeting underage or VEP participants with promotional offers. FBG believes a rule that makes clear operators cannot target ineligible patrons with marketing offers would achieve OCCC’s goal in this regard.

Conversely, the OCCC could adopt a “commercially reasonable efforts” standard in sub-part 2 of the rule. Said otherwise, the OCCC could charge sports gaming proprietors through the draft rule with the obligation of utilizing commercially reasonable efforts, based on the data held by the third-party commercial partner, to determine whether a consumer recipient of a promotional offer is 21 or older, and/or a VEP participant, before engaging in marketing to that consumer. Such a standard would still impose upon sports gaming proprietors a meaningful



obligation to take efforts to suppress promotional marketing to ineligible consumers as the draft rule intends, while not creating a standard that is so strict that it practically cannot be met.

We hope you find these comments and requests for clarification helpful, and we look forward to further engaging with OCCC staff in this rulemaking process.

Metzler, Tessa

From: Jamie Salsburg <jamie@dyveagency.com>
Sent: Friday, November 10, 2023 4:41 PM
To: Rule Comments
Subject: Code 3775-16-09

Follow Up Flag: Follow up
Flag Status: Flagged

As the person who brought the Fanatics promotion to light as problematic, this revision does not address the primary concerns.

Primary Concerns

1. Dollar for Dollar Matching of Non-Gambling Purchases
 - a. Creates Truly Free Bets
 - i. When a promotion offers a dollar for dollar promotional bonus on purchases of non-gambling items, the offeror is creating an opportunity where the offeree places a truly free bet. They are not gambling as they have no financial investment in the bet. They have the item purchased and an opportunity to win a bet. A loss leaves them with their original purchased item, so they truly cannot lose. Gambling involves risk and this promotion removes it, making it a poor introduction to the product.
 - b. Fear of Missing Out (FOMO)
 - i. Promotions with a dollar-for-dollar matching bonus create a fear of missing out in the consumer. They purchased a non-gambling item, but now also have acquired a truly free bet which they can use to begin sports betting. A savvy consumer will recognize that not placing the bet means missing out on the full value of their purchase. Creating this entanglement for a consumer that was making a non-gaming purchase feels like a predatory approach.

For additional context and discussion, you can review Episode 23 of the Dyve Agency Audio podcast where the promotion is discussed at length.

<https://open.spotify.com/episode/1ML2hEF9G0rFpdWCOgpr7E?si=0ead8f6bcdd44a44>

Additionally, ChatGPT highlights some of the ethical issues, some of which have been addressed by the updated language, but others which are not. I find it to be an interesting list to review.

<https://chat.openai.com/share/6f5e048c-e2c2-429d-adbc-93ba073be7ab>

JAMIE SALSBURG

dyve

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