Comments on the Puerto Rico Sports Betting and Fantasy Contest Regulations Presented for the Virtual Public Hearing held by the Puerto Rico Gaming Commission on August 19, 2020.

This submission presents comments and concerns for consideration by the Puerto Rico Gaming Commission ("Gaming Commission") with respect to the Puerto Rico Sports Betting and Fantasy Contest Regulations (the "Proposed Regulation"), its application to the cockpits and cockfighting industry, and other considerations identified by Reichard & Escalera, LLC and presented by attorney Crystal N. Acevedo.

I. COCKPITS:

A. Operator Category

In enacting the Puerto Rico Gaming Commission Act (No. 81-2019) ("Act 81"), the Puerto Rico Legislature made it abundantly clear that it intended the cockfighting industry to be involved in the new Sports Betting and E-Sports Industry. To this point, Article 3.2 of Act 81 designates cockpits, together with other locations specified in the Act, as places authorized to conduct Sports Betting in Puerto Rico. Importantly, Article 3.2 dictates that "cockpits may be considered, at their option, as Operators or [Satellites]." (emphasis added). Yet, the Proposed Regulation exclude cockpits from the definitions of Class A or Class B Operators.

We respectfully request the Gaming Commission to explain or clarify why the Proposed Regulation excluded cockpits from the definitions of Class A and Class B Operators. And if the exclusion was due to an oversight, the Gaming Commission should indicate whether cockpits will be included in the definitions provided for either Class A or Class B Operators.

Further on this point, the only businesses that the Proposed Regulation currently classifies as Class A Operators, i.e. Casinos and Racetracks, are those that can be considered only as Main Operators, and which are prohibited from operating as Satellites. *See* Act 81, Art. 3.2 and definition of "Point of Sale or Satellite" under the Proposed Regulations. On the other hand, Act 81 gives cockpits the choice to operate as either Main Operators or Satellites, which suggests that cockpits should fall within the definition of Class B Operators. We seek clarification on this matter. Furthermore, we seek clarification on whether there are differences in terms of rights and obligations between Class A and Class B Operators, other than the prohibition of operating as Satellites and the higher internal control requirements imposed on Class A Operators pursuant to sections 6.6(D), 6.11(H) and 6.13(E) of the Proposed Regulation.

B. Definition of Cockpit

Article 3.5 of Act 81-2019 makes pellucid the legislative intent to incentivize the cockfighting industry to enter the Sports Betting industry. It states: "For the purpose of incentivizing the cockfighting industry, any cockpits lawfully operating as of December 31, 2018, shall not pay the licensing fees imposed by the Commission for the new methods of betting authorized herein during the first ten (10) years of operation." (Emphasis added). Section 2.2(A)(e) of the Proposed Regulation contains similar language but with significant differences, as it provides: "In order to encourage the rooster industry, those companies that were operating legally as of December 31, 2018, will not pay, for the first ten (10) years of operation, the rights identified for the licenses that are required by the Commission, for the new forms of betting authorized by this Law." (emphasis added).

We specifically note for the Gaming Commission's consideration that the Puerto Rico Roosters Act of the New Millennium, Act No. 98-2007 defines cockpits in terms of a "physical structure" not in terms of "companies". Specifically, "Cockpit" is defined as "The main component of the physical structure where the cockfights authorized by the Cockfighting Affairs Office are held. Any other activity conducted within said physical structure in which the cockpit is located may not interrupt cockfights. These shall be protected by the provisions of §§ 2251 *et seq.* of Title 3, known as the 'Small Business Administrative and Regulatory Flexibility Act'." (emphasis added).

In light of the above, we respectfully recommend that the Gaming Commission consider and address the following:

- Why is the Proposed Regulation drafted in terms of "companies" while Act 81-2019 refers to "cockpits", or if both terms are being used without distinction.

- The Proposed Regulation must delineate the process and criteria that it will be used to determine if a cockpit was lawfully operating as of December 31, 2018. Furthermore, the Gaming Commission should address whether or not a party and/or cockpit venue will be entitled to the "pre-authorized location" status and waiver of licensing fees under Articles 3.2 and 3.5 of Act 81 if such party purchases, leases or operates through a joint venture a cockpit that was legally operating as of December 31, 2018 after December 31, 2018.

C. License Fees

Another area of concern is related to the payment of licensing fees. The Proposed Regulation should clarify whether cockpit Operators will be required to pay the licensing fees for the myriad categories of employees that are required to obtain a license by the Gaming Commission. On this point, Article 3.5 of Act 81 provides a 10-year waiver of license fees for cockpits, which by its terms applies to "the rights identified for the licenses that are required by the Commission" without limitation. Therefore, the Proposed Regulation must be clear as to the

types of license fees that cockpits will be required to pay, if any, considering the language in Article 3.5 of Act 81 and Section 2.2.A(e) of the Proposed Regulation.

II. OPERATORS AND TECHNOLOGY PLATFORM PROVIDERS:

Act 81 and the Proposed Regulation provide for different types of Operators, including 1) Main Operator; 2) Satellites, and 3) Internet Wagering Operator. Yet, it is unclear:

- whether the Proposed Regulation allows cockpits to be Internet Wagering Operators, and

- whether the Proposed Regulation allows for cockpits or other entities to be both Main Operators and Internet Wagering Operators.

Section 1.3 of Act 81 and Section 1.3 of the Proposed Regulation dictate that "The Technology Platform Provider that renders (provides) services to an Operator in Puerto Rico may not be an Operator in Puerto Rico." (emphasis added). However, Act 81 is not clear as to whether an Operator may use its own technology platform and if a Technology Platform Provider that currently provides services to Operators in other jurisdictions may become an Operator in Puerto Rico and use its own technology platform.

On this point, Section 7.1(4) of the Proposed Regulation seems to suggest that an Operator and the Technology Platform Provider may be the same person or entity. It states that "[t]he Operator and Technology Platform Provider **where separate** shall be allowed to seek approval for extension beyond the annual approval if hardship can be demonstrated." (emphasis added). Hence, it must be clarified whether an Operator can be its own Technology Platform Provider and, if so, in which instances would this permission apply.

III. VIRTUAL EVENTS:

Section 7.2 of the Proposed Regulation provides, as pertinent to this question, as follows:

> A. Wagers may not be accepted or paid by the Operator in any of the following instances:
>
> 1) …
>
> 2) ...
>
> 3) …
>
> 4) Any virtual event unless:
>
> a) An approved Random Number Generator is used to determine the outcome(s);
>
> b) A video of the virtual event is offered to all players which displays an accurate representation of the outcome(s) of the virtual event; and
>
> c) The virtual event is approved pursuant to the

procedures set forth in subsection (F) of this section;

It is respectfully requested that the Gaming Commission indicate whether Virtual Sports, which may be defined as video-displayed, scheduled, fixed odds games that simulate real sports competitions where players can place bets on one or more outcomes that are pre-determined by a random number generator, would classify as a "virtual event" under section 7.2(A)(4) of the Proposed Regulation.

IV. HOSTING CENTER:

The Proposed Regulation defines "Hosting Center" as "[a]n entity **unaffiliated with an Operator** and hosting on its premises any part(s) of Commission regulated hardware or software". (emphasis added).

The first paragraph in section 11.5(2) of the Proposed Regulation contains a general obligation that an entity licensed to accept participation in Sports Betting must "locate its primary operation in a Hosting Center **or** other secure area authorized by the Commission." Contrary to subsections (2) and (3) of Section 11.5(2), which mandate that "the backup equipment and the servers used" "be located within the territorial limits of Puerto Rico," the general obligation in the first paragraph does not indicate clearly that the Hosting Center must be located in Puerto Rico. We respectfully seek the Gaming Commission's clarification as to whether an Operator may be authorized to locate its Hosting Center outside of Puerto Rico (e.g. MS Azure in the U.S.).

On the other hand, subsection (4) of section 11.5.(2) of the Proposed Regulation states that "In the event that the Authorized Location is the Operator of Sports Betting and/or Fantasy Contests, it must locate its primary operation, including the facilities, equipment, servers and personnel directly involved in carrying out the Sports Betting and Fantasy Contests activity, within a restricted area in the facilities designated by them for this purpose." The lack of reference to a Hosting Center in subsection (4) suggests that when the Authorized Location is the Operator, said Operator cannot use a Hosting Center for its primary operation but is required to host in its own facilities. We respectfully seek the Gaming Commission's confirmation or clarification regarding this matter.

We hope this discussion will serve to address certain concerns, answer questions, and that other approaches are taken into consideration to address the Sport Betting Industry. If you have any questions or concerns, feel free to contact Reichard & Escalera, LLC.