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HAND DELIVERY

June 21, 2016

The Honorable Michael C. Burgess, M.D.
Chairman
Subcommittee on Commerce, Manufacturing and Trade
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Burgess:

Thank you for your letter of June 6, 2016, by which you transmitted additional questions for the record ("QFRs") for the hearing entitled, "Daily Fantasy Sports: Issues and Perspectives," held on May 11, 2016. My responses to those questions are below.

The Fantasy Sports Trade Association ("FSTA") represents hundreds of companies in the fantasy sports industry, along with businesses that serve the industry. As Chairman of FSTA, I have answered the QFRs based on my understanding of the industry and knowledge of general industry practices. In addition, to the extent that some of the questions touch upon detailed knowledge regarding individual companies, I have asked those companies to supplement the FSTA responses; those responses are included as well.

Questions from The Honorable Gregg Harper:

- 1. Self-exclusion for problem gamers is an issue that has been raised in this context because of the serious amount of money at stake in daily fantasy sports. How is the self-exclusion principle implemented in the daily fantasy sports marketplace? Is there a central hub for all of the operators to exchange information securely?**

The FSTA is aware of the concerns regarding problem behavior by a small number of players. Many of the FSTA's member companies have independently elected to adopt policies and practices to address this issue by allowing players to self-exclude from

contests or put limits on how many contests they may enter or how much money they can deposit. Furthermore, the FSTA has supported proactive steps to address this issue in state legislation and regulations. The FSTA supported laws passed in Virginia, Indiana, Tennessee, Mississippi, Colorado, Missouri and New York which provide consumer protections including self-exclusion requirements. The FSTA also supported the 2015 Massachusetts Attorney General's regulations in this area, which include measures regarding self-imposed contest entry limits and self-imposed deposit limits.

Due to legal and customer privacy concerns, as well as limitations in the various Terms of Use from individual companies, there is currently no central hub for all fantasy operators to exchange information regarding player self-exclusion.

- 2. Can you describe the different types of games available on your members' websites, particularly the different types of contests offered in the daily fantasy sports category. I've heard about head-to-head contests that could have entry fees as high as a thousand dollars. Would a player, who is signing onto a site for the first time, have any idea if they were playing in a head-to-head contest with a highly skilled player or "shark"?**

The FSTA has over 120 members offering a variety of free, paid, season-long and daily fantasy sports contests. For daily fantasy sports providers, the mix of offerings primarily includes head-to-head contests, 50/50 contests (where half the players win a prize), guaranteed prize pools (GPP) in which the number of entries may vary from just a few entries to several thousand, and there are private contests between two or more individuals.

Many of the FSTA's member daily fantasy sports companies have long offered beginner contests which enable beginning players to play in contests only against other users of the same experience level. The FSTA has also supported recent fantasy sports laws and regulations passed by states, many of which require operators to allow daily fantasy sports players the opportunity to see which of their fellow daily players are highly experienced. For example, in the law passed in Tennessee, a highly experienced player is defined as a person who has entered more than 500 contests or has won more than five prizes of \$2,500 or more, and that person must be identified as a highly experienced player to other users on the site. The Tennessee law also dictates that operators offer some fantasy sports contests that are open only to beginning players and exclude highly experienced players. The FSTA has supported regulations similar to those provided for in the Tennessee legislation, and many of our member companies voluntarily are adopting this framework for users in all states, for instance by displaying badges which appear next to usernames of highly experienced players and are viewable by all users on the site, regardless of location. A uniform approach by the states will help to provide a

consistent experience for players and avoid the prohibitive costs that would be incurred in providing a different system for each state.

Questions from The Honorable Frank Pallone:

- 1. FanDuel and DraftKings declined to testify and were instead represented by the Fantasy Sports Trade Association (FSTA), of which they are both members. As I mentioned during the hearing, I would like to follow up on some of the questions I have for FanDuel and DraftKings that the FSTA was unable to answer in the hearing.**

Many of the questions in this section are specific to two particular member companies of the FSTA, FanDuel and DraftKings. I am submitting as attachments the companies' supplemental responses to my answers below. Please refer to these attachments for those companies' responses.

- a. **What percentage of FanDuel's players win money in an average week? What about DraftKings?**

The number and percentage of players that win prizes in fantasy sports competitions may vary among the many fantasy sports operators that FSTA represents and among different types of games and formats. In fact, there is such variety in the kinds of games offered, the many options for winning prizes, the differences in our business depending on whether it is football season or baseball, for example, and the wide variety in the level of player engagement depending on the kind of game and the sport involved, there is no meaningful "average week" in our industry. Similarly, depending on the type of contest, there can be a wide variety in the number of players that "win money" – from 50% in head-to-head and 50/50 games to just one "winner" in a season-long fantasy league.

- b. **What percentage of FanDuel players lose money? What about DraftKings players?**

A fantasy sports competition is a game of skill in which only a limited number of players can win. Players do not "lose" money, as in gambling. They pay a fee to enter. The fee is a fixed amount and players understand that it will not be returned to them. Fantasy sports competitions are comparable to a golf tournament or a bowling tournament where only a limited number of contestants win prizes and only one may be the overall champion.

- c. **What was the most amount of money deposited into a FanDuel account by one player, one username, and/or one IP address in one given day? For DraftKings?**

Many of our member companies have long imposed deposit limits which restrict how much a given user may deposit into his or her account in a day, week, or month. On those sites, players must affirmatively apply to the company and provide proof of financial ability in order to increase a user's deposit limit. FSTA has supported state legislation and regulations which provide for reasonable deposit limits. For example, the regulations issued by the Massachusetts Attorney General impose a deposit limit of \$1000 per month, and operators must assess the income or asset information of a user

applying for a higher limit in order to determine their financial ability to afford a higher limit.

- d. **What was the most amount of money won by one participant, username, and/or IP address playing FanDuel, across all games, contests, etc. in one day? And for DraftKings?**

The fantasy sports industry has grown and its games have diversified to serve a wide variety of consumers. Today players can compete for cash prizes or for no prize beyond "bragging rights." Cash prizes may range from a few dollars to over one million dollars.

- e. **What is the rake that FanDuel collects on each contest? What about DraftKings?**

"Rake" is a term that is generally used in gambling operations. In fantasy sports competitions, a fee model is typical. Contest operators collect a management fee that may vary but most operators collect a fee of approximately ten percent. In some cases, there is no fee at all.

2. **Last year, DraftKings applied for and received a gambling license in the United Kingdom. FanDuel also applied for a gambling license in the U.K. Yet, in the U.S. both companies maintain that DFS is not gambling.**

- a. **What is DraftKings' rationale for getting a gambling license in the UK if DFS is not gambling?**
- b. **What is FanDuel's rationale for getting a gambling license in the UK if DFS is not gambling?**

As I stated at the May 11th hearing, the laws of the U.S. and United Kingdom are substantively different; they define games of skill and games of chance differently. In the U.K., any contest with even the slightest element of luck or chance requires a gambling license. In the U.S., the laws of most jurisdictions are written differently - they define "gambling" in a way that means contests are not gambling if they are primarily a game of skill. This is a fundamental difference.

3. **Last fall, Ethan Haskell, a DraftKings employee, was accused of using information he obtained in the course of his work to help his play on FanDuel's platform. An independent investigation cleared him of any wrongdoing, noting that he did not receive the information until his lineup was locked.**

- a. **The report prepared by the law firm that conducted the "independent" investigation was not publicly released. Why did DraftKings not release that report?**
- b. **Where did the information received by Mr. Haskell come from? Who sent it to him? Was that person playing DFS? Did that person gain an advantage from the information?**

Please see the attached response to this question from DraftKings.

4. DraftKings prohibits its own employees and employees of other daily fantasy sports operators from playing on its site. FanDuel prohibits its employees from playing on its own site or other DFS sites.

- a. **How does DraftKings ensure that employees of other DFS operators are not playing? Do competitors share their employee lists with DraftKings?**
- b. **How does FanDuel ensure that its employees are not playing on another DFS site? Do competitors share lists of users with FanDuel?**
- c. **As Professor Kurt Eggert mentioned in his testimony, employees have access to spreadsheets that show the players who are the biggest losers on the DFS sites. How does FanDuel ensure that those lists are not being used to invite those "losers" to head-to-head matches? What about DraftKings?**

Many of the FSTA's member operators have policies limiting employees' participation in contests on their site as well as other operators' sites. The FSTA has supported legislation which codifies the requirement that employees cannot play in fantasy contests on their own employer's website, or in other paid fantasy sports operators' contests. For example in all seven states where laws regarding fantasy sports were passed in 2016, along with the consumer protection regulations issued by the Massachusetts Attorney General, employees of a fantasy sports operator are barred from playing on other operators' fantasy sports sites. In each case, these measures provide for penalties for lack of compliance.

5. We have heard a number of complaints about daily fantasy sports advertising. And I do not just mean the overabundance of their ads. Some are concerned that the advertisements suggest the ability to win more than is truly possible or fail to mention the statistical chance of actually winning. How does DraftKings ensure that its advertisements are not deceptive? What about FanDuel?

Fantasy contests do not have odds or a "statistical chance" of winning because their outcomes are determined by the skill of the players participating. However the FSTA strongly encourages the most forthright and accurate advertising practices by our members and others in the fantasy sports industry. The FSTA has worked closely with state legislators who feel it is important to mandate limitations on advertising and ensure that ads are not misleading. For example, the Massachusetts Attorney General's consumer protection measures for daily fantasy sports contains a section on Requirements for Fair and Truthful Advertising, and the Tennessee fantasy sports law requires that representations in ads be fair and not misleading. The laws passed in Missouri, Tennessee, and Indiana as well as the Massachusetts Attorney General regulations also have restrictions on advertising to minors. The FSTA supported these measures and has supported similar measures in bills being debated in several states.

Thank you for this opportunity to respond further to the Committee's questions.

Sincerely,

A handwritten signature in cursive script that reads "Peter Schoenke". The signature is written in black ink and is positioned above the printed name.

Peter Schoenke
Chairman, Fantasy Sports Trade Association

Enclosures

cc: The Honorable Jan Schakowsky, Ranking Member, Subcommittee on Commerce,
Manufacturing and Trade