

VIRGINIA RACING COMMISSION
DRAFT DOCUMENT #3
12-03-03

CHAPTER 45.
ADVANCE DEPOSIT ACCOUNT WAGERING.

11 VAC 10-45-10. Definitions.

The following definitions and interpretations shall apply to these rules unless otherwise indicated or the text otherwise requires:

"Account" means an account for account wagering with a specific identifiable record of deposits, wagers, and withdrawals established by an account holder and managed by the account-wagering licensee.

"Account Holder" means an individual who successfully completed an application and for whom the account-wagering licensee has opened an account.

"Advance Deposit Account Wagering" (hereafter account wagering) means a form of pari-mutuel wagering in which an individual may deposit money in an account with an account wagering licensee and then use the current balance to place pari-mutuel wagers in person or electronically.

"Account Wagering Center" means an actual location, equipment, and staff of an account wagering licensee and/or agents of the account wagering licensee involved in the management, servicing and operation of account wagering.

"Account Wagering Licensee" means an entity licensed by the commission to accept deposits and wagers, issue a receipt or other confirmation to the account holder evidencing such deposits and wagers, and transfer credits and debits to and from accounts.

"Applicant" means an individual who has submitted an application to establish an account with either (1) an account wagering licensee or (2) a company applying for an account wagering license from the commission.

"Commission" means the Virginia Racing Commission.

"Confidential Information" means

- a. The amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account,
- b. The amount of money wagered by a particular account holder on any race or series of races,
- c. The account number and secure personal identification code of a particular account holder,
- d. The identities of particular entries on which the account holder is wagering or has wagered,
- e. Unless otherwise authorized by the account holder, the name, address, and other information in the possession of the account wagering center and race meet licensee that would identify the account holder to anyone other than the commission or the account wagering licensee.

"Credits" means all inflow of money to an account.

"Debits" means all outflow of money from an account.

"Deposit" means a payment of money by cash, check, money order, credit card, debit card, or electronic funds transfer made by an account holder to the account holder's account.

"Individual" means any natural person at least 18 years of age, but does not include any corporation, partnership, limited liability company, trust, estate or other legal entity.

"Other Electronic Media" means any electronic communication device or combination of devices including but not limited to personal computers, the internet, private networks, interactive televisions and wireless communication technologies or other technologies approved by the commission.

"Principal Residence Address" means the street address identified by an applicant or a current account holder as that individual's residential address, as such address may be verified by the account wagering licensee.

"Proper Identification" means a form of identification accepted in the normal course of business to establish that the person making a transaction is an account holder.

"Racetrack Licensee" means any person holding a current unlimited license to own or operate a horse racetrack or satellite facility where pari-mutuel wagering is permitted.

"Secure Personal Identification Code" means either a numeric or an alpha-numeric character code chosen by an account holder as a means by which the account wagering licensee may verify a wager or account transaction as authorized by the account holder.

"Source Market Fee" means the fee payable by the account wagering licensee pursuant to the terms and provisions of the contractual agreement among the prospective account wagering licensee, the racetrack licensee and the recognized majority horsemen's organizations.

"Source Market Fee Area" means the Commonwealth of Virginia.

"Terms of Agreement" means the agreement, approved by the commission, between an account wagering licensee and an account holder that includes but is not limited to the deposits, credits, debits, withdrawals and the opening and closing of accounts.

"Withdrawal" means a payment of money from an account by the account wagering licensee to the account holder when properly requested by the account holder.

"Withdrawal Slip" means a form provided by the account wagering licensee for use by an account holder in withdrawing funds from an account.

11 VAC 10-45-20. Authorization to conduct account wagering.

- A. No person shall conduct account wagering in the

Commonwealth unless he has applied for and has been granted an account wagering license by the commission. No account wagering license shall be granted by the commission unless the applicant meets the criteria specified in the Act and these regulations.

B. An account wagering license shall be valid for the calendar year in which it is issued.

C. An application shall include, on a form prescribed by the commission, the names, addresses and telephone numbers of all officers and directors. It shall solicit the same information for an account wagering license, to the extent relevant, as required for an unlimited license as specified in sections 11 VAC 10-20-30 (Applicant's Affidavit), 11 VAC 10-20-40 (Disclosure of ownership and control) 11 VAC 10-20-50 (Disclosure of character information) and 11 VAC 10-20-80.1 (a)(b)(c)(d)(e)(Disclosure of financial resources) of the commission's regulations, with the following modifications: (1) the first paragraph of the applicant's affidavit shall state that the application is made for a license to conduct account wagering in the Commonwealth; (2) the applicant must disclose any agreements or understandings that the applicant or any individual or entity identified pursuant to 11 VAC 10-20-40 has entered into with a person or persons other than the applicant regarding ownership or operation of the applicant and must provide copies of any such agreements or understandings with the application; and (3) the disclosure of character information that is required by 11 VAC 10-20-50 must be made if the applicant, any individual or entity that owns a 5% or greater equity interest in the applicant, or any person or entity that will exercise any degree of management or control of the applicant has committed any of the acts or otherwise meets any of the criteria listed in 11 VAC 10-20-50. Nothing in this subsection shall require an applicant to include with its application copies of employment agreements unless requested by the commission.

D. As part of the application process, the license applicant also shall submit a detailed plan, including a detailed budget of the cost of implementation, of how its proposed account wagering system would operate including internal controls procedures. The commission may require changes in a proposed plan of operations as a condition of granting a request. No

subsequent material changes in the system's operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request.

E. As part of the application process, the license applicant must provide a copy of the contractual agreement among the prospective account wagering licensee, the racetrack licensee, and representatives of the recognized majority horsemen's organizations. Included in such agreement shall be the agreed upon terms between the racetrack licensee and the recognized majority horsemen's organizations that details the distribution of retainage generated by account wagering within the source market fee area for each breed after the license fee to the commission has been paid.

F. The commission may conduct investigations or inspections or request additional information from the applicant for a license and its officers, directors, managers and equity holders, as applicable, holding 5% or more of the applicant's equity interest as it deems appropriate in determining if the applicant has the financial resources to conduct account wagering, and whether to allow the applicant to conduct account wagering.

G. Before being granted its original account wagering license, and every six (6) months thereafter, the account wagering licensee shall furnish the commission with proof that the account holders will be guaranteed the full value of their accounts regardless of the acts of the account wagering licensee or any other entity. If the proof offered to the commission is not acceptable to the commission, the commission may require the account wagering licensee to purchase a bond or other form of insurance guaranteeing that the account holders receive the full value of their accounts.

H. An application to renew an account wagering license for each succeeding calendar year is due in the offices of the commission by 5 p.m. on December 1 on a form prescribed by the commission.

11 VAC 10-45-30. Operations by account wagering licensee.

A. Before beginning operations in Virginia, the account wagering licensee must be qualified to do business in Virginia.

B. Any action that suspends or otherwise prohibits an account wagering licensee of the commission from operating in another state may be used as grounds for suspension of its account wagering license in Virginia pursuant to Virginia Code §59.1-385.C.

C. All employees working on behalf of the account wagering licensee's account wagering center must either have a Virginia commission permit or be licensed, permitted or otherwise authorized by the state where the account wagering center is located.

D. Within 45 days following the end of each quarter, the account wagering licensee shall provide to the racetrack licensee a summary report detailing wagering processed through the account wagering system by Virginia residents wagering on both in-state and out-of-state races and non-Virginia residents wagering on Virginia races. The reports shall be subject to review by the commission.

E. Only individuals who have established accounts with an account wagering company licensed by the commission may wager through an account and that account must be with an account wagering company licensed in Virginia.

F. Opening an account.

1. An account wagering licensee shall require from an applicant the following information including, but not limited to:

- a. Name,
- b. Principal residence address,
- c. Telephone number,
- d. Social security number,

e. Age, and

f. Other information necessary for the account administration.

2. The information obtained from the applicant shall be verified by the account wagering licensee using means acceptable to the commission.

G. Administration of an account.

1. Each account holder's wagering account shall be administered in accordance with the terms of agreement, which have been approved by the commission, including but not limited to:

- a. Deposits;
- b. Credits to accounts;
- c. Debits to accounts;
- d. Withdrawals;
- e. Minimum deposit; and
- f. Fees, if any, per wager.

2. A person may not directly or indirectly act as an intermediary, transmitter or agent in the placing of wagers for an account holder. A person may not place a wager on behalf of an account holder. Only an account holder may place an account wager. Direct or indirect involvement as an intermediary, transmitter or agent in the placing of wagers includes a system, known as a transfer account or master account, whereby funds are deposited to one account from another account. This section does not prohibit use of credit or debit cards specifically approved by the account wagering center or the use of checks, money orders or negotiable orders of withdrawal.

3. An account wagering licensee shall maintain for at least one year all records of the opening and closing of accounts, wagers, earnings and withdrawals;

4. An account wagering licensee may close accounts for violation of its terms of agreement or other appropriate

reasons;

5. An account wagering licensee may close wagering on any particular race or racetrack;

6. An account wagering licensee shall provide the account holder with appropriate identification materials and the terms of agreement; and,

7. The principal residence address provided in writing by the account holder at the time of application is deemed to be the proper address for the purposes of mailing checks, statements of account, account withdrawals, notices, or other appropriate correspondence. The mailing of checks or other correspondence to the address given by the account holder shall be at the sole risk of the account holder.

11 VAC 10-45-40. Account wagering licensee requirements.

A. An account wagering licensee shall conduct its operations with account holders in accordance with the terms of agreement, previously approved by the commission.

B. No employee or agent of the account wagering licensee shall divulge any confidential information related to the placing of any wager or any confidential information related to the operation of the account wagering center, except:

1. To the account holder as required by these rules;
2. To the commission;
3. To the account wagering licensee, and its affiliates;
4. To the racetrack licensee as required by the agreement between the account wagering licensee and the racetrack licensee; and,
5. As otherwise required by state or federal law.

C. All wagering conversations, transactions or other wagering communications through the account wagering system, verbal or electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of

such communications shall be kept by the account wagering center for a period of one year. These tapes and other records shall be made available to commissioners, employees and/or designees of the commission on request.

D. The recording of the confirmation of the transaction as reflected in the voice or data recording records, shall be deemed to be the actual wager, regardless of what was recorded by the pari-mutuel system.

E. An account wagering licensee shall not accept wagers, if its transcribing system is not operable;

F. An account wagering license shall be administered in accordance with its terms of licensure and the previously approved terms of agreement; and

G. The commission may review and monitor the equipment, staff and records of an account wagering licensee and any of the transactions conducted by the account wagering licensee in regards to wagers made by account holders.

11 VAC 10-45-50. Fees.

A. Application for Account Wagering License:

1. A non-refundable application fee of \$5,000 must be submitted with the application.

2. The applicant will be billed and shall be responsible for any costs involved in the background checks and review of the application in excess of \$5,000.

B. Annual Fees:

1. An annual fee of \$1,000 shall be payable to the commission on issuance of the original license and thereafter on or before January 1 of each year. The licensee will be billed and shall be responsible for any costs in excess of \$1,000 associated with the review of the annual renewal application.

2. .5% of gross total handle from the source

market area, shall be payable to the commission on the 10th day of each month for the previous month.

C. Distribution for Source Market Fees -- single racetrack licensee:

1. The account wagering licensee shall distribute source market fees, and host fees if applicable, to the racetrack licensee on the 10th of each month for the previous month.

2. The racetrack licensee shall distribute the horsemen's shares to the respective Partners Accounts within 48 hours after receipt from the account wagering licensee.

D. Distribution of Source Market Fees -- more than one racetrack licensee:

1. If more than one racetrack licensee operates in Virginia, then the source market fees shall be distributed as follows:
 - a. All source market fees derived from account wagers placed by account holders with a principal residence address located within a 50-mile radius (the "50-mile radius") of any track or satellite wagering facility operated by a racetrack licensee shall be distributed to each such licensee;
 - b. All source market fees derived from account wagers placed by account holders with a principal residence address located outside any 50-mile radius shall be shared among the racetrack licensees in proportion to each licensee's respective capital expenditures on such licensee's track and satellite wagering facilities in Virginia.

- c. If an overlap exists between two 50-mile radii, the racetrack licensee to first operate a track or satellite wagering facility in such area shall receive the source market fees from account wagers placed within the overlapping area.

11 VAC 10-45-60. Enforcement and penalties.

A. The commission shall have all of the rights, powers and remedies provided for in the Act to ensure compliance with these regulations, including, but not limited to, injunctive relief and the imposition of fines and suspensions.

B. Additionally, with respect to any entity that engages in account wagering in Virginia without a license issued by the commission, the commission may take such measures as it deems necessary, including referral to the appropriate regulatory and law enforcement authorities for civil action or criminal prosecution.

11 VAC 10-45-70. Use of certain Commonwealth computers prohibited.

No pari-mutuel wager may be made on or with any computer owned or leased by the Commonwealth, or any of its subdivisions, or at any public elementary or secondary school, or any public college or university.