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**BEFORE THE WASHINGTON STATE GAMBLING COMMISSION**

In the Matter of the Petition of Big Fish Games,  
Inc. for a Declaratory Order

**[PROPOSED] DECLARATORY ORDER**

**I. INTRODUCTION**

THIS MATTER came before the undersigned Commissioners of the Washington State Gambling Commission (“Commission”) at the Commission’s regularly scheduled meetings on July 12 and August 9, 2018 in Tacoma, and Pasco, Washington, respectively, on Big Fish Games, Inc.’s Petition for Declaratory Order pursuant to RCW 34.05.240 and WAC 230-17-180, where petitioner was represented by Beth Brinkmann and Emily Henn of Covington & Burling LLP. Specifically, Big Fish Games seeks a declaratory order stating “that its Big Fish Casino suite of online video games (‘BFC’) does not constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237, and therefore is not subject to the Commission’s regulatory or enforcement jurisdiction.”

The Commission considered the Petition for Declaratory Order, dated July 3, 2018, and accompanying declarations of Gary Rubman of Covington & Burling LLP and Andy Vella of Big Fish Games; Big Fish Games’ presentations at the July 12 and August 9 meetings and its July 26, August 2, and September 30, 2018 letters to the Commission; and numerous submissions by interested members of the public, both in written form, which were publicly posted, and at presentations at the Commission meetings. After consideration of all of these materials, the Commission concludes that the record supports the Findings of Fact, Conclusions of Law, and Declaratory Order specified below.

1 **II. FINDINGS OF FACT**

- 2 1. BFC allows players to play its social video games for free by providing virtual tokens for free to  
3 players at the start of play, and at various intervals during play; players may also purchase additional  
4 tokens.
- 5 2. BFC games’ virtual tokens exist, and can be used, only within BFC games.
- 6 3. BFC game players cannot win money or anything else of real-world value by playing the games.
- 7 4. BFC games’ Terms of Use prohibit their virtual tokens from being redeemed for money or  
8 anything else of real-world value.

9 **III. CONCLUSIONS OF LAW**

10 **A. RCW 34.05.240 & WAC 230-17-180**

11 The petition satisfies the criteria for the issuance of a declaratory order in RCW 34.05.240(1) and  
12 WAC 230-17-180(1). Granting the petition would not substantially prejudice the rights of any person  
13 who would be a necessary party and who has not consented in writing to the determination of the matter  
14 by a declaratory order proceeding. RCW 34.05.240(7); WAC 230-17-180(5).

15 **B. The Gambling Act, RCW 9.46**

- 16 1. The Gambling Act defines “gambling” to mean “staking or risking something of value upon the  
17 outcome of a contest of chance or a future contingent event not under the person’s control or influence,  
18 upon an agreement or understanding that the person or someone else will receive something of value in  
19 the event of a certain outcome.” RCW 9.46.0237.
- 20 2. The Gambling Act defines “thing of value” to mean “any money or property, any token, object or  
21 article exchangeable for money or property, or any form of credit or promise, directly or indirectly,  
22 contemplating transfer of money or property or of any interest therein, or involving extension of a service,  
23 entertainment or a privilege of playing at a game or scheme without charge.” RCW 9.46.0285.
- 24 3. The virtual tokens that have been used in BFC games are not “thing[s] of value” within the  
25 meaning of RCW 9.46.0285 because they cannot be redeemed for money or anything else of real-world  
26 value.
- 27 4. Playing BFC games does not involve the “staking or risking something of value” within the  
28 meaning of RCW 9.46.0237.

1 5. BFC games do not award “something of value in the event of a certain outcome” within the  
2 meaning of RCW 9.46.0237.

3 6. BFC games therefore are not “gambling” within the meaning of RCW 9.46.0237.

4 **IV. ORDER**

5 The Commission hereby orders that Big Fish Games, Inc.’s Petition for Declaratory Order is  
6 GRANTED for the reasons specified herein.

7  
8 DATED this \_\_\_ day of October, 2018

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BUD SIZEMORE, Chair

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JULIA PATTERSON, Vice Chair

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CHRISTOPHER STEARNS

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ALICIA LEVY