

Fantasy Sports Rivals DraftKings, FanDuel Ink Merger

By **Chelsea Naso**

Law360, New York (November 18, 2016, 1:28 PM EST) -- DraftKings Inc. and FanDuel Inc. on Friday unveiled a merger of equals, confirming rumors that the daily fantasy sports companies were mulling a tie-up in the wake of months of litigation and lobbying costs.

Boston-based DraftKings and New York-based FanDuel's plan to join forces for an undisclosed amount follows rumors that the two had been holding merger talks amid scrutiny from several state attorneys general and other regulators over the legality of daily fantasy sports, or DFS, contests.

But over the past few months, some of the dust has begun to settle — most notably, the end of legal threats from New York Attorney General Eric Schneiderman, who sought to shut the companies down prior to state lawmakers stepping in to expressly legalize DFS.

Reports from earlier this month suggested a prospective merger deal between the companies was "imminent," spurred by the companies' economic concerns. There have been indications that the legal battles and lobbying efforts have taken a toll on their finances. The companies have reportedly been struggling to meet their bills, and they also negotiated to spread payments on \$6 million settlements with the New York attorney general for leftover false advertising claims over the next three years.

DraftKings and FanDuel said that together they will be in a better position to “work with government officials to continue to develop a standard regulatory framework” for the emerging DFS industry, according to a statement.

"Being able to combine DraftKings and FanDuel presents a tremendous opportunity for us to further innovate and disrupt the sports industry," Nigel Eccles, FanDuel CEO, said in a statement.

The companies also lauded their plans to combine as a way to cut costs, offer new products and features to customers and broaden advertisers' reach.

“We have always been passionate about providing the best possible experience for our customers and this merger will help advance our goal of building a transformational global sports entertainment platform,” Jason Robins, DraftKings CEO, said in a statement. “Joining forces will allow us to truly realize the potential of our vision, and as a combined company we will be able to accelerate the pace of innovation and bring a richer experience to our customers than we ever could have done separately.”

DraftKings and FanDuel plan to maintain two headquarters, with one in New York and the other in Boston, according to a statement. DraftKings' Robins will serve as CEO of the combined company and FanDuels' Eccles will become chairman of the combined company's board of directors.

The companies plan to continue to operate under their respective names, according to a representative.

The tie-up of DraftKings and FanDuel — the No.1 and No. 2 fantasy sports companies — is likely going to draw intense antitrust scrutiny, experts say. Even so, the companies may be able to overcome their combined market power due to the unique and relatively small DFS industry.

DraftKings and FanDuel expect the transaction to close in the second half of 2017.

Cooley LLP and Ropes & Gray LLP are advising DraftKings. Latham & Watkins LLP advised DraftKing's board of directors.

The Cooley team includes Al Browne, Barbara Borden, Nicole van de Leuv, Murtaza Hassonjee, Layne Jacobs, Derek Colla, Hayden Smith, Matthew Silverman, Paris Waterman, Danny Bloom, Jackie Bell, Alya Randell-Khan, Justin Stock, Joshua Friedman, Lindsey Crump, Natasha Kaye, Kristin Leavy, Anniki Laine, Aaron Archer, Charles Haley, Mark Woodroffe, Reshma David, Aaron Pomeroy, Kevin Gibson, Randy Sabett, Adaku Nwachukwu, Stephanie Gentile, Chelsea Smith, Adam Chase, Jeremy Naylor, Paula Holland and Rebecca Ross.

The Ropes & Gray team includes antitrust partners Michael McFalls, Chong Park and Jonathan Klarfeld and associates Amy Paul and Frank Qi.

Latham's corporate deal team is led by partner Stephen Amdur with associate Michael Bookman and includes benefits and compensation partner Bradd Williamson; antitrust partner Amanda Reeves; and litigation partners Benjamin Naftalis and Christopher Clark.

A Davis Polk & Wardwell LLP team including partner Brian Wolfe and associate Evan Rosen and tax partner Neil Barr and associate Kay Ng is advising DraftKings shareholder Comcast Corp.

Wilson Sonsini Goodrich & Rosati PC is advising FanDuel. Orrick Herrington & Sutcliffe LLP advised a group of FanDuel shareholders on the transaction.

The Orrick team is led by partners Shawn Atkinson and Ed Denny and includes associates Emma Raleigh, Bridget Winters, Stacy Kim, Jose Campos, Alice Edwards, Katrina Murphy and Rhian Saley.

--Additional reporting by Zachary Zaggar. Editing by Stephen Berg.