

PENN NATIONAL GAMING INC  
Form DEFA14A  
May 25, 2012

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of  
the Securities Exchange Act of 1934 (Amendment No. )

Filed by the Registrant  X

Filed by a Party other than the Registrant  O

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material under §240.14a-12

PENN NATIONAL GAMING, INC.  
(Name of Registrant as Specified In Its Charter)

N/A  
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
  - (1) Title of each class of securities to which transaction applies:
  - (2) Aggregate number of securities to which transaction applies:
  - (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
  - (4) Proposed maximum aggregate value of transaction:
  - (5) Total fee paid:
- Fee paid previously with preliminary materials.
- Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
  - (1) Amount Previously Paid:
  - (2) Form, Schedule or Registration Statement No.:
  - (3) Filing Party:
  - (4) Date Filed:

May 25, 2012

Dear Shareholder:

We have previously sent to you proxy material for the Annual Meeting of the shareholders of Penn National Gaming, Inc. to be held on June 6, 2012. **Your Board of Directors has unanimously recommended that shareholders return the enclosed proxy card voting FOR proposals 1-3 and AGAINST proposal 4.**

**Your vote is important**, no matter how many or how few shares you may own. **If you haven't already done so, please vote TODAY by telephone, via the Internet, or by signing, dating and returning the enclosed proxy card in the envelope provided to ensure that your votes are validly received prior to the Annual Meeting.**

Sincerely,

/s/ Robert S Ippolito

Robert S. Ippolito  
*Secretary*

**REMEMBER:**

**You can vote your shares by telephone, or via the Internet.**

**Please follow the easy instructions on the enclosed card.**

If you have any questions, or need assistance in voting

your shares, please call our proxy solicitor,

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**INNISFREE M&A INCORPORATED**

**TOLL-FREE, at 1-888-750-5834.**

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(12,302

)

963

(11,339

)

Income tax expense

(71

)

(61

)

(132

)

Net loss

(12,373

)

902

(11,471

)

Net loss per common share, basic and diluted

(0.42

)

0.03

(0.39

)

	Nine months ended September 30, 2017		
	As previously reported	Adjustments	As adjusted
<b>Revenue:</b>			
Subscription and support	\$ 100,590	\$ 2,967	\$ 103,557
Professional services and other	14,381	(1,718 )	12,663
Total revenue	114,971	1,249	116,220
<b>Cost of revenue:</b>			
Professional services and other	8,729	179	8,908
Gross profit	81,892	1,070	82,962
<b>Operating expenses:</b>			
Sales and marketing	62,429	(3,833 )	58,596
Loss before income taxes	(37,893 )	4,936	(32,957 )
Income tax expense	(207 )	(176 )	(383 )
Net loss	(38,100 )	4,760	(33,340 )
Net loss per common share, basic and diluted	(1.31 )	0.17	(1.14 )

Select unaudited consolidated statement of cash flows line items, which reflect the adoption of Topic 606, are as follows (in thousands):

	Nine months ended September 30, 2017		
	As previously reported		As Adjusted
<b>Cash flows from operating activities:</b>			
Net loss	\$(38,100)	\$ 4,760	\$(33,340 )
Accounts receivable, net	(17,620)	350	(17,270 )
Prepaid expenses and other assets	(2,229 )	361	(1,868 )
Deferred commissions	—	(3,833 )	(3,833 )
Deferred revenue	37,331	(1,639 )	35,692
Net cash used in operating activities	3,922	—	3,922

Issued accounting pronouncements

In February 2016, the FASB issued ASU No. 2016-02, Leases, requiring recognition of a right-of-use asset and a lease liability on the balance sheet for all leases with the exception of short-term leases. Long-term leases will continue to be classified as either operating or finance leases in the financial statements. Lessor accounting is similar to the current model but updated to align with certain changes to the lessee model. Lessors will continue to classify leases as operating, direct financing or sales-type leases. The new standard must be adopted using a modified retrospective transition and requires application of the new guidance at the beginning of the earliest comparative period presented. The updated standard is effective for us beginning in the first quarter of 2019. We are currently evaluating the effect that the updated standard will have on our consolidated financial statements and related disclosures.

## 2. Net Loss Per Share

Basic net loss per share is computed by dividing net loss by the weighted average number of common shares outstanding for the period. Diluted net loss per share is computed by giving effect to all potential dilutive common stock equivalents outstanding for the period. For purposes of the diluted net loss per share calculation, options to purchase common stock, common stock warrants and restricted stock units are considered to be common stock equivalents.

A reconciliation of the denominator used in the calculation of basic and diluted loss per share is as follows (in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
<b>Numerator:</b>				
Net loss	\$(11,472)	\$(11,471)	\$(35,878)	\$(33,340)
<b>Denominator:</b>				
Total weighted average common shares				
outstanding—basic	34,895	29,535	33,934	29,120

Dilutive effect of share equivalents resulting from stock				
options, restricted stock units, common stock warrants				
and common stock subject to repurchase				
	—	—	—	—
Weighted average common shares outstanding-diluted	34,895	29,535	33,934	29,120
Net loss per common share, basic and diluted	\$(0.33 )	\$(0.39 )	\$(1.06 )	\$(1.14 )

For all periods presented, we incurred net losses and, therefore, the effect of our outstanding stock options, restricted stock units and common stock warrants was not included in the calculation of diluted loss per share as the effect would be anti-dilutive. The following table contains share totals with a potentially dilutive impact (in thousands):

	As of	
	September 30,	
	2018	2017
Options to purchase common stock	1,378	2,489
Common stock warrants	—	17
Restricted stock units	1,611	1,566
Total	2,989	4,072

## 3. Property and Equipment

Property and equipment consisted of the following (in thousands):

	September 30, 2018	December 31, 2017
Computer and office equipment	\$ 5,964	\$ 5,726
Purchased software	1,071	1,071
Capitalized software development costs	20,285	14,755
Furniture and fixtures	4,522	3,924
Leasehold improvements and other	15,337	13,379
Total property and equipment	47,179	38,855
Less accumulated depreciation and amortization	(20,155 )	(14,929 )
Total	\$ 27,024	\$ 23,926

Accumulated amortization for capitalized software development costs was \$7,775,000 and \$4,570,000 at September 30, 2018 and December 31, 2017, respectively. Amortization expense for capitalized software development costs was \$1,217,000 and \$639,000 for the three months ended September 30, 2018 and 2017, respectively, and \$3,205,000 and \$1,645,000 for the nine months ended September 30, 2018 and 2017, respectively. Amortization expense for capitalized software development costs is recorded within cost of revenue on the consolidated statements of operations.

## 4. Goodwill and Intangible Assets

Goodwill was \$12,354,000 as of September 30, 2018 and December 31, 2017.

Intangible assets consisted of the following (in thousands):

	Average Remaining Useful Life	September 30, 2018	December 31, 2017
Domain names	8 Months	\$ 1,268	\$ 1,268
Trademarks	59 Months	120	120
Software	10 Months	620	620
Capitalized learning content	37 Months	400	400
Trade names	26 Months	320	320
Developed technology	38 Months	5,320	5,320
Customer relationships	26 Months	2,910	2,910
Accumulated amortization		(4,022 )	(1,910 )
Total		\$ 6,936	\$ 9,048

Amortization expense for intangible assets was \$673,000 and \$71,000 for the three months ended September 30, 2018 and 2017, respectively, and \$2,112,000 and \$330,000 for the nine months ended September 30, 2018 and 2017, respectively.

Based on the recorded intangible assets at September 30, 2018, estimated amortization expense is expected to be as follows (in thousands):

Years Ending December 31,	Amortization Expense
Remainder of 2018	\$ 674
2019	2,626
2020	2,386
2021	1,250
2022	—
Total	\$ 6,936

## 5. Revenue

## Disaggregation of Revenue

Revenue by geographic region, based on the physical location of the customer, is (in thousands):

	Three Months Ended		Nine Months Ended		
	September 30, 2018	September 30, 2017	September 30, 2018	September 30, 2017	
		*As Adjusted		*As Adjusted	
United States	\$44,790	\$36,613	\$124,586	\$100,339	
Foreign	10,449	6,590	28,707	15,881	
Total revenue	\$55,239	\$43,203	\$153,293	\$116,220	
Percentage of revenue generated outside of the United States	19	% 15	% 19	% 14	%

\* See Note 1 for a summary of adjustments

## Deferred Revenue and Performance Obligations

During the three months ended September 30, 2018, 75% to 85% of revenue recognized was included in our deferred revenue balance at the beginning of the period. During the nine months ended September 30, 2018, 55% to 65% of revenue recognized was included in our deferred revenue balance at the beginning of the period.

## Transaction Price Allocated to the Remaining Performance Obligations

As of September 30, 2018, approximately \$470 million of revenue is expected to be recognized from remaining performance obligations. We expect to recognize revenue on approximately 69% of these remaining performance obligations over the next 24 months, with the balance recognized thereafter.

## 6. Deferred Commissions

Deferred commissions primarily consist of sales commissions that are capitalized as incremental contract origination costs and were \$19,418,000 and \$18,246,000 as of September 30, 2018 and December 31, 2017, respectively. For the three months ended September 30, 2018 and 2017, amortization expense for deferred commissions was \$2,787,000 and \$1,956,000, respectively, and there were no impairments of deferred commissions. For the nine months ended September 30, 2018 and 2017, amortization expense for deferred commissions was \$7,331,000 and \$5,191,000, respectively, and there were no impairments of deferred commissions.

## 7. Marketable Securities

Our investment policy is consistent with the definition of available-for-sale securities. We do not buy and hold securities principally for the purpose of selling them in the near future nor do we intend to hold securities to maturity. Rather, our policy is focused on the preservation of capital, liquidity and return. From time to time, we may sell certain securities but the objectives are generally not to generate profits on short-term differences in price.

The following table summarizes, by major security type, our assets that are measured at fair value on a recurring basis (in thousands):



	September 30, 2018			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Corporate debt securities	\$34,285	\$ —	\$ (3)	\$ 34,282
Government treasury bills	26,116	—	(8)	26,108
	\$60,401	\$ —	\$ (11)	\$ 60,390

	December 31, 2017			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Corporate debt securities	\$5,698	\$ —	\$ (1)	\$ 5,697
	\$5,698	\$ —	\$ (1)	\$ 5,697

There were no gross realized gains or losses from the sale or maturity of marketable securities during the nine months ended September 30, 2018 and 2017.

During the nine months ended September 30, 2018, we recognized gross interest income on securities of \$499,000. Interest income was inclusive of accretion income of \$432,000 and offset by amortization expense on securities of \$36,000 during the nine months ended September 30, 2018, and reported net within interest income on the consolidated statements of operations.

During the nine months ended September 30, 2017, we recognized gross interest income on securities of \$125,000. Interest income was offset by amortization expense on securities of \$9,000 during the nine months ended September 30, 2017, and reported net within interest income on the consolidated statements of operations.

The estimated fair value of investments by contractual maturity is as follows (in thousands):

	September 30, 2018	December 31, 2017
Due within one year	\$ 60,390	\$ 5,697
Total	\$ 60,390	\$ 5,697

## 8. Stockholders' Equity and Stock-Based Compensation

### Common Stock

As of September 30, 2018 and December 31, 2017, there were 200,000,000 shares of common stock authorized. As of September 30, 2018 and December 31, 2017, there were 35,053,594 and 30,860,241 shares issued and outstanding, respectively. Each share of common stock has the right to one vote on all matters submitted to a vote of stockholders. The holders of common stock are also entitled to receive dividends whenever funds are legally available and if declared by the board of directors, subject to prior rights of holders of all classes of stock outstanding having priority rights as to dividends. No dividends have been declared or paid on the common stock through September 30, 2018.

On February 15, 2018, we entered into an underwriting agreement (the "Underwriting Agreement") with Morgan Stanley & Co. LLC and Credit Suisse Securities (USA) LLC (collectively, the "Underwriters"), relating to the issuance and sale (the "Offering") of 2,500,000 shares of our common stock, par value \$0.0001 per share. The price to the public in the Offering was \$39.50 per share, and the Underwriters have purchased the shares from us pursuant to the Underwriting Agreement at a price of \$38.315 per share. In addition to the sale of 2,500,000 shares, the Underwriters exercised a 30-day option to purchase an additional 375,000 shares of our common stock. All of the shares in the offering were sold by us and the net proceeds to us from this Offering were \$109.8 million, after deducting underwriting discounts and commissions and other offering expenses payable by us.

## Employee Equity Plans

Our 2015 Equity Incentive Plan (the “2015 Plan”) serves as the successor to our 2010 Equity Incentive Plan (the “2010 Plan”). Accordingly, no shares are available for issuance under the 2010 Plan; however, any outstanding options granted under the 2010 Plan will remain outstanding and subject to the terms of that plan until exercised, terminated or expired by their terms. As of September 30, 2018, options to purchase 950,474 shares of common stock remained outstanding under the 2010 Plan. Pursuant to the terms of the 2015 Plan, the share reserve automatically increased by 1,388,709 shares in January 2018. As of September 30, 2018, we had 2,718,483 shares of common stock available for future grants under the 2015 Plan.

Additionally, as part of our acquisition of Practice XYZ, Inc. (“Practice”) we assumed Practice’s 2014 Equity Incentive Plan (the “2014 Plan”). No shares are available for issuance under the 2014 Plan; however, any outstanding options granted under the 2014 Plan will remain outstanding and subject to the terms of that plan until exercised, terminated or expired by their terms. As of September 30, 2018, options to purchase 1,093 shares of common stock remained outstanding under the 2014 Plan.

We also have a 2015 Employee Stock Purchase Plan (the “ESPP”). The ESPP allows eligible employees to purchase shares of our common stock at a discount through payroll deductions of up to 15% of their eligible compensation, subject to any plan limitations. Our board of directors approves the ESPP offerings. The offerings need not be identical, but each offering may not exceed 27 months and may specify one or more shorter purchase periods within the offering. Pursuant to the terms of the ESPP, the share reserve increased by 308,602 shares in January 2018. As of September 30, 2018, 556,089 shares of common stock were available for issuance under the ESPP.

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The following two tables show stock-based compensation expense by award type and where the stock-based compensation expense was recorded in our consolidated statements of operations (in thousands):

	Three Months		Nine Months	
	Ended		Ended	
	September 30, 2018	September 30, 2017	September 30, 2018	September 30, 2017
Options	\$751	\$939	\$2,177	\$3,123
Restricted stock units	4,281	2,812	12,212	7,109
Employee stock purchase plan	651	516	1,713	1,475
Total stock-based compensation	\$5,683	\$4,267	\$16,102	\$11,707

	Three Months		Nine Months	
	Ended		Ended	
	September 30, 2018	September 30, 2017	September 30, 2018	September 30, 2017
Subscription and support cost of revenue	\$336	\$211	\$872	\$528
Professional services and other cost of revenue	267	161	706	422
Sales and marketing	1,385	1,255	4,404	3,405
Research and development	2,026	1,637	5,953	4,375
General and administrative	1,669	1,003	4,167	2,977
Total stock-based compensation	\$5,683	\$4,267	\$16,102	\$11,707

### Stock Options

The following table summarizes stock option activity for the nine months ended September 30, 2018 (in thousands, except per share data and years):

	Shares	Weighted-	Weighted-	Aggregate
	Underlying	Average	Average	Intrinsic
	Options	Exercise	Remaining	Value
		Price	Life	
			(in years)	
Outstanding at December 31, 2017	2,010	\$ 9.09	6.5	\$ 48,266
Granted	243	34.72		
Exercised	(771 )	7.43		
Forfeited or cancelled	(104 )	20.25		
Outstanding at September 30, 2018	1,378	13.71	6.7	30,626
Vested and expected to vest—September 30, 2018	1,378	13.71		