

**NEW JERSEY RACING COMMISSION
FRIDAY, NOVEMBER 30, 2012
RACING COMMISSION OFFICE
140 EAST FRONT STREET, FOURTH FLOOR
TRENTON, NEW JERSEY
TELEPHONE MEETING**

A telephonic meeting of the New Jersey Racing Commission was held on Friday, November 30, 2012, in the Racing Commission office located at 140 East Front Street, in Trenton, New Jersey.

The following were present:

Anthony T. Abbatiello, Commissioner
Manny E. Aponte, Commissioner
Pamela J. Clyne, Commissioner
Peter J. Cofrancesco, III, Commissioner
Francis X. Keegan, Jr., Commissioner
Frank Zanzuccki, Executive Director
DAG Judith A. Nason

The following were absent:

Anthony R. Caputo, Commissioner

It was noted that this meeting is being conducted by telephone. A roll call of those individuals participating by phone indicated the presence of: Commissioners Abbatiello, Aponte, Clyne, Cofrancesco and Keegan. In attendance in the Commission's Trenton office were Executive Director Zanzuccki, Deputy Director Vukceвич and staff, DAG Nason and members of the public.

Executive Director Frank Zanzuccki read the following statement:

“This meeting today conforms with Chapter 231, P.L. 1975, called the “Open Public Meeting Law,” and as per the requirements of the statute, notification of this meeting has been filed with the Secretary of State and with the following newspapers: Daily Racing Form, Bergen Record, Asbury Park Press, Courier-Post and the Newark Star Ledger.

WHEREAS in order to protect the personal privacy and to avoid situations wherein the public interest might be disserved, the Open Public Meetings Act permits bodies to exclude the public from that portion of a meeting at which certain matters are discussed.

NOW, THEREFORE, be it resolved that consistent with the provision of N.J.S.A. 10:4-12(b), the New Jersey Racing Commission will now adjourn to executive session to obtain legal advice protected from disclosure by the attorney-client privilege on the following matters:

1. Legal advice concerning the allocation of racing dates to the standardbred permit holder at FR Park Racing, LP for 2013;
2. Legal advice concerning the petition of Freehold Raceway, and related entities, for approval to renew the Toms River Township OTW for the period January 1, 2013 through December 31, 2013;
3. Legal advice concerning the application of the New Jersey Sports & Exposition Authority (“Authority”) for Racing Commission approval, pursuant to N.J.S.A. 5:5-140c and Chapter 74 of the New Jersey Administrative Code (“Off-Track Wagering and Account Wagering”), inclusive of N.J.A.C. 13:74-4.2, of a contract (that is, an “account wagering management agreement”) between the Authority account wagering licensee), and the New Jersey Thoroughbred Horsemen’s Association, Inc., New Meadowlands Racetrack, LLC, and Darby Development, LLC (“Darby”), whereby Darby is proposed, consistent with the terms of the “account wagering management agreement”, to manage the day-to-day affairs and business of the account wagering system;
4. Legal advice concerning the approval of the New Jersey Racing Commission program budgets for FY 2013; and
5. Other legal advice and/or status of pending litigation.

Discussion of the above matters fall within the exceptions under the law; specifically matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the Commission’s attorney to exercise her ethical duties as a lawyer and/or matters involving pending or anticipated litigation.”

Commissioner Keegan motioned to adopt the resolution to adjourn. Commissioner Cofrancesco seconded the motion. All Commissioners concurring, the Commission adjourned to Executive Session.

The Commission ended the execution session and Commissioner Abbatiello moved to reconvene the public session. Commissioner Keegan seconded the motion and the Commission concurring, the public session resumed.

CONSIDER ALLOCATION OF RACING DATES FOR STANDARDBRED PERMIT HOLDER FR PARK RACING, LP FOR 2013

Executive Director Zanzuccki noted that Howard Bruno, on behalf of Freehold Raceway was present. The Executive Director did not see a representative from the SBOA, however, he noted that the Commission had received the written consent of the Standardbred Breeders' and Owners' Association to the date request. Mr. Bruno was called upon to address the Commission and he stated that Freehold Raceway submitted a revised request to the Commission which comprises in the winter/spring, a 62-day meet beginning January 3 through May 18, racing Thursday, Friday and Saturday, in addition to Monday holidays (Martin Luther King and Presidents' Day), and a 48-day meet in the fall, with the opening on August 28 to December 14, also racing three days a week, Thursday, Friday and Saturday, plus Monday, Labor Day.

The Executive Director asked if there was any member of the industry or member of the public who wished to be heard on the Freehold Park application. He reiterated that the Commission has received written confirmation from the SBOA that they have approved the reduction in the mandatory written number of race dates required by statute to 110 dates, and noted as such, it appears that all issues related to this request have been resolved. The Executive Director again asked if any person wished to be heard on the date request. Commissioner Keegan commented that he was glad the parties reached an agreement as it is a benefit to racing in New Jersey. There being no further comments, Commissioner Abbatiello made a motion to approve the revised 2013 standardbred race dates for Freehold Raceway which include 110 dates. Commissioner Keegan seconded the motion and all Commissioners voted yes.

The Executive Director pointed out that Agenda Items A3, 4, 5, 6 and 7 all relate to Freehold Raceway approvals that the Commission was not able to grant at the November 14, 2012 meeting. He recommended, in the interest of time because of the other items on the agenda, that the Commission consider these agenda items together and in one motion. The

Commissioners agreed with this approach and voted unanimously to take action on Agenda Item Nos. A3, 4, 5, 6 and 7 in one motion. Agenda items A3, 4, 5, 6 and 7 are as follows:

- A3 CONSIDER THE PETITION OF FREEHOLD RACEWAY, AND RELATED ENTITIES, FOR APPROVAL TO RENEW THE OFF-TRACK WAGERING LICENSE FOR TOMS RIVER TOWNSHIP FOR THE PERIOD JANUARY 1, 2013 THROUGH DECEMBER 31, 2013

SIMULCASTING

A. Casino Simulcasting

Consider approval of Freehold Raceway to conduct casino simulcasting (to casinos approved or to be approved), through December 31, 2013, for dates granted pursuant to their 2013 annual racing dates application

B. Racetrack Simulcasting

Consider the request of Freehold Raceway to conduct inter and intra-state, common pool and separate pool simulcasting with approved racing facilities and off-track betting locations

C. New Jersey Account Wagering and Off-Track Wagering

Consider the application of Freehold Raceway for approval to participate in simulcasting (with off-track wagering facilities approved or to be approved) through December 31, 2013.

- A5 CONSIDER THE REQUEST OF FREEHOLD RACEWAY, TO CONDUCT ADVANCE WAGERING (FULL OR PARTIAL CARD) ON THE FOLLOWING RACES OF NATIONAL INTEREST: ARC DE TRIOMPHE, BELMONT STAKES, BREEDERS CROWN DAY, BREEDERS CUP (ULTRA PICK 6), CANE PACE, CLAIMING CROWN, DUBAI RACING, ELITOPP (SWEDEN), FLORIDA DERBY, KENTUCKY DERBY, HAMBLETONIAN ELIMINATIONS DAY, HAMBLETONIAN DAY, HASKELL INVITATIONAL, JAPAN CUP, MEADOWLANDS PACE DAY, MELBOURNE CUP, PENNSYLVANIA DERBY, PREAKNESS, PRIX D' AMERIQUE RACE, SANTA ANITA DERBY, SANTA ANITA HANDICAP, TRAVERS, AND WOODFORD RESERVE

A6 CONSIDER THE REQUEST OF FREEHOLD RACEWAY TO OFFER 2013 SPECIAL WAGERS OF NATIONAL INTEREST AND CONDUCT ADVANCE WAGERING

A7 CONSIDER APPROVAL OF FREEHOLD RACEWAY'S 2013 HARNESS WAGERING FORMAT, ADMISSION PRICES, DEPARTMENT HEADS, ETC.

The Executive Director asked if anyone wished to be heard regarding A3, 4, 5, 6 and 7. There being no comment, Commissioner Abbatiello motioned to approve the agenda items concerning Freehold Raceway. Commissioner Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF DARBY DEVELOPMENT, LLC FOR APPROVAL TO CANCEL AND NOT RESCHEDULE 2 RACING DATES (NOVEMBER 2 AND 3, 2012) DUE TO THE EFFECTS OF HURRICANE SANDY

Executive Director Zanzuccki stated that in addition to the race dates on November 2 and 3, October 19 was also cancelled due to weather concerns. Commissioner Aponte made a motion to approval the cancellation of the racing dates of Darby Development, LLC. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE NEW JERSEY RACING COMMISSION PROGRAM BUDGETS FOR FY 2013

The Executive Director indicated that the Commission has been asked by counsel to defer this item for one more meeting. Commissioner Aponte motioned to table the agenda item. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER THE APPLICATION OF THE NEW JERSEY SPORTS & EXPOSITION AUTHORITY ("AUTHORITY") FOR RACING COMMISSION APPROVAL, PURSUANT TO N.J.S.A. 5:5-140C AND CHAPTER 74 OF THE NEW JERSEY ADMINISTRATIVE CODE ("OFF-TRACK WAGERING AND ACCOUNT WAGERING"), INCLUSIVE OF N.J.A.C. 13:74-4.2, OF A CONTRACT (THAT IS, AN "ACCOUNT WAGERING MANAGEMENT AGREEMENT") BETWEEN THE AUTHORITY (THE ACCOUNT WAGERING LICENSEE), AND THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC., NEW MEADOWLANDS RACETRACK, LLC, AND DARBY DEVELOPMENT, LLC ("DARBY"), WHEREBY DARBY IS PROPOSED, CONSISTENT WITH THE TERMS OF THE "ACCOUNT

WAGERING MANAGEMENT AGREEMENT,” TO MANAGE THE DAY-TO-DAY AFFAIRS AND BUSINESS OF THE ACCOUNT WAGERING SYSTEM

The Commission called on Ralph Marra, Esq., on behalf of the New Jersey Sports and Exposition Authority who made the following opening statements in support of the Authority’s petition seeking Commission approval of the management agreement.

Mr. Marra pointed out that the petition filed by the NJSEA outlines the support for transferring certain management functions from the NJSEA to Darby. He reminded the Commission that both of the leases for the Authority’s racetracks contain a provision requiring the NJSEA, at some convenient point, to transfer the Authority’s account wagering interests to the lessees, who are NMR and the NJTHA. Mr. Marra stated that in discussing and analyzing this transfer with the lessees, the Authority believed that the best way to proceed was in two steps with the first step being a management agreement with Darby. Mr. Marra indicated that Darby was selected by the lessees, Darby is in a position to handle account wagering, and its selection made the most sense.

The Executive Director asked Mr. Marra several questions on behalf of the Commission regarding the NJSEA’s petition. First, noting that the NJSEA’s petition states that the NJSEA is exercising its discretion pursuant to Section IV(e) of the Participation Agreement to retain Darby as a vendor to manage the day-to-day operations of the Account Wagering System, the Executive Director asked Mr. Marra to describe the duties Darby will be performing pursuant to the management agreement. Referencing the multiple account wagering functions the Authority currently performs which include opening accounts for customers (cash or check or credit cards), making bank deposits, handling settlements on all the transactions, entering into simulcast contracts and preparing budgets, Mr. Marra stated that all of these functions are management functions which the NJSEA would like to turn over to Darby.

The Executive Director asked what oversight the NJSEA will maintain in regards to the Account Wagering System if the Racing Commission approves the Authority’s petition.

Noting that Darby has been managing Monmouth Park since May 2012, Mr. Marra responded that the Authority, as the landlord, and Darby Monmouth, as the tenant and operator, regularly confer. He indicated that the Authority has worked with Darby on a variety of issues related to racing and also on functions related to the storm. Pointing out that the NJSEA interacts regularly with Darby, Mr. Marra stated that the Authority anticipates

that they will continue that interaction, with the addition of the Account Wagering System, which will include regular meetings, phone calls and periodic reports from Darby.

In response to the question of whether the management agreement provides for any compensation to Darby, Mr. Marra responded no.

Noting that the NJSEA's petition states that Darby is well-qualified to manage the day-to-day operations of the Account Wagering System, the Executive Director asked what factors the NJSEA considered in making that determination. Mr. Marra responded that the Authority considered two primary factors. First, Darby's history for seven months of managing Monmouth Park, which has included the opening of accounts for simulcasting, the engagement of host contracts, and management decisions on a host of issues. Second, Mr. Marra indicated that NJSEA employees that handle account wagering will either continue with NJSEA and be used by Darby, or they will be transferred over to Darby, subject to employment laws, until there may be a new platform provider that is a turnkey-type operation which can take over those functions.

The Executive Director asked what Darby's role would be in connection with the selection of a platform provider. Mr. Marra stated that there are currently two proposals, with the possibility that there will be a third, and Darby's role will be to evaluate those proposals and select the one that is in the best interest of the Account Wagering System. Mr. Marra indicated that it is anticipated that a meeting of the Project Operating Board will be convened, assuming a quorum of directors can be obtained, and Darby will discuss its reasons for a selection and solicit feedback from the Board members. Mr. Marra stated that while Darby will take that feedback into account, ultimately, Darby will make the decision.

The Executive Director asked if Darby will be selecting between current proposals or will they have the ability to negotiate new proposals. Mr. Marra answered that Darby will be free to engage in discussions regarding the submitted proposals.

In response to the Executive Director's question as to which entity will actually enter into the contract. Mr. Marra answered that it will be Darby.

The Executive Director asked if the NJSEA can represent to the Racing Commission that there are no, nor will there be, arrangements or agreements of any kind between Darby and Sportech, between Darby and TVG or between the THA and any provider of platform services to provide financing or other benefits to the THA in return for an award of the contract for platform services. Mr. Marra responded that there will definitely be no such arrangement. He noted that TVG and Sportech provide a wide variety of services to every

racetrack in this industry, those service contracts are separate and Darby will be instructed to keep those contracts separate.

In response to the question, can you represent to the Racing Commission that the management agreement with Darby comports with the legal requirements of the New Jersey Sports and Exposition Authority Act, Mr. Marra responded yes.

Finally, the Executive Director asked how account wagering will be impacted if this management agreement, and subsequent agreement with an account wagering platform provider, are not in place before the end of this year. Mr. Marra answered that the contract with the platform provider is expiring as of December 31. He noted that he has talked briefly with Sportech about possible extensions, if necessary, but indicated that all parties would like to start fresh with a new contract as soon as possible because both proposals have some interesting new aspects to them. He added that the Authority's lessees are eager to engage one of the platform providers in the hopes of expanding the business.

No Commissioners had any further questions for Mr. Marra.

The Commission called on Robert Kulina on behalf of Darby Development, LLC ("Darby"). Mr. Kulina commented that Darby is very proud of what they have accomplished in the last seven months and noted that their relationship with the NJSEA could not be any better. He added that Darby looks forward to growing their business and having racing survive in New Jersey.

The Executive Director asked Mr. Kulina several questions on behalf of the Commission regarding Darby's proposed involvement in account wagering. First, he asked how Darby is qualified to manage the day-to-day operations of the Account Wagering System and perform the functions required by the management agreement. Mr. Kulina answered that he can start with the qualifications of the people that work for Darby. He indicated that he has forty years of experience in the racing industry and added that when Darby took over for the NJSEA, they retained over 95 percent of their employees. Mr. Kulina mentioned that Darby plans to offer the account wagering team at the NJSEA employment with Darby. Mr. Kulina stated that rolling the racing operations into one unit is an economy of scale.

The Executive Director asked about the reporting requirements Darby will have in order to keep the NJSEA apprised of Darby's activities? Mr. Kulina responded that Darby plans to meet with the board on a regular basis and will have whatever meetings the Commission requires.

In response to the question regarding Darby's role in connection with the selection of a platform provider, Mr. Kulina responded that Darby will review and analyze the contracts, including any new contracts, and recommend a decision to the Project Operating Board. Mr. Kulina clarified that Darby will be making the final decision.

The Executive Director asked if Darby will select between the current proposals by Sportech and TVG or negotiate new proposals with each of them or with other parties. Mr. Kulina indicated that Darby will consider the contracts currently presented to them, but will be able to negotiate based on the proposals to achieve what Darby believes is the best business decision.

The Executive Director asked if Darby will discuss the selection of the platform provider with the Project Operating Board and consider the Board's recommendation. Mr. Kulina answered that Darby will provide the board with a recommendation and will accept their feedback, however, at the end of the day, Darby will make the final decision.

The Executive Director asked Mr. Kulina if he can represent to the Racing Commission that there are no, nor will there be, arrangements or agreements of any kind between Darby and Sportech, between Darby and TVG or between THA and any provider of platform services to provide financing or other benefits to the THA that are contingent upon an award of the contract for platform services?

Mr. Kulina responded that any deal that Darby makes with any other vendors will be outside of the account wagering system. The Executive Director asked Mr. Kulina to clarify that there would not be any side deals with anyone and Mr. Kulina indicated that there would not.

There were no further questions from the Commissioners for Mr. Kulina.

Executive Director Zanzuccki asked the New Meadowlands Racetrack and the New Jersey Thoroughbred Horsemen's Association if they wished to supplement their written submission filed with the Commission with verbal comment. Jason Settlemoir, General Manager and CEO of NMR, introduced the new Director of Racing Operations, Darin Zoccali. Mr. Settlemoir indicated that the NMR supports the agreement of the NJSEA with Darby Management. Michael Musto, on behalf of the NJTHA, commented that the THA will rely on Darby to evaluate all deals and hopefully they will make the best deals possible for racing and for the THA. The Executive Director asked Mr. Musto if the THA joins in on the petition as requested by the NJSEA and Mr. Musto responded yes.

Executive Director Zanzuccki indicated that in their written submissions filed with the Commission, New Jersey Account Wagering asked to comment verbally at today's meeting. He asked if anyone from that organization was present. No representative was present.

The Executive Director indicated that the Commission's usual procedure is to allow members of the public to comment, but the decision whether to do so lies within the discretion of the Commissioners. Commissioner Abbatiello made a motion to allow comments to be heard for a limited time of five minutes each. Commissioner Keegan seconded the motion and all Commissioners voted yes.

Howard Bruno, General Manager of Freehold Raceway, asked to be heard. He indicated that Freehold Raceway had submitted two letters to the Commission, one letter to Mr. Zanzuccki and one letter to Mr. Vukceovich, from Christopher McErlean. He asked that the letters be included as part of the record. The Executive Director indicated that those letters were circulated to the Commissioners prior to today's meeting and they are part of the record.

Gil Brooks, Esq., of the law firm Duane Morris asked to be heard on behalf of Sportech, Inc. Mr. Brooks stated that Sportech, which is the current account wagering platform operator in New Jersey, has made a bid to continue to be the account wagering platform operator. Mr. Brooks indicated that they have reviewed the NJSEA's petition and stated he was at the meeting to address Paragraph 33. Referencing the NJSEA's anticipation that Darby will make the decision as to who should be selected as the account wagering vendor, Mr. Brooks indicated that Sportech takes the position that the NJSEA has certain responsibilities and requirements under New Jersey law, one of which is to make sure that a competitive public bidding process takes place with awards of contracts that exceed \$36,000. Mr. Brooks stated that the contract with the selected account wagering platform operator will exceed that threshold amount and indicated that it is Sportech's position that the NJSEA is asking the NJRC to approve something that would not comply with New Jersey law because as a consequence of the management agreement, there is anticipation that there will not be a competitive bidding process in connection with the selection of the account wagering platform operator. Noting that the selection of the platform provider was competitively bid in 2007, Mr. Brooks submitted that Sportech would recommend and argue that the NJRC should not approve the petition as it is currently fashioned because the ultimate election of an account wagering platform operator without public bidding is not in the best interest of the public of New Jersey or anyone else. Mr. Brooks stated there is a strong public policy in New Jersey to allow for competitive bidding and Sportech's position is that it should be carried out in this particular case. Alternatively, he argued that under Section 13:74-4.2d of the Commission's regulations, the Racing Commission has the ability

to place conditions on any determination to approve the NJSEA's petition with respect to the management agreement. Finally, Mr. Brooks stated that Sportech respectfully suggests that any such approval should be conditioned upon the requirement that the selection of the account wagering platform operator be done by way of the competitive bidding process.

There being no further comments or questions, Commissioner Keegan, who was in attendance by telephone, asked Executive Director Zanzuccki to read a proposed motion on his behalf. The Executive Director read the following proposed motion:

This motion addresses the Petition filed by the New Jersey Sports & Exposition Authority ("Authority") seeking Racing Commission approval of the appointment of Darby Development, LLC ("Darby") to manage the day-to-day affairs and business of the account wagering system, pursuant to a management agreement entered into by the Authority and Darby, as well as the racetrack property tenants of the Authority, the New Jersey Thoroughbred Horsemen's Association, Inc. ("NJTHA") and New Meadowlands Racetrack, LLC ("NMRLLC"). In considering this matter, the Racing Commissioners were provided with the written submissions of the Authority, NMRLLC, NJTHA and New Jersey Account Wagering, LLC ("NJAW"). The Commissioners also received the results of staff's investigation, as concerns the proposed management agreement, which investigation was supplemented as a result of the proceedings today. We have heard and relied on the parties' answers to the questions we asked today. The Commission further consulted with the Racing Commission's legal counsel as appropriate.

I believe that the Petition of the Authority, to the extent it seeks our approval for the appointment of Darby as the management company for the account wagering system, is appropriate for Racing Commission review based upon N.J.S.A. 5:5-140c and N.J.A.C. 13:74-4.2a. In this case, while we have been presented with the signed management agreement, I understand that the agreement is not effective in view of a condition precedent, that is, the prior approval of the Authority's appointment of Darby, as manager for the account wagering system, by this Commission. Pursuant to the cited law, our responsibility here is to determine whether the Authority's request to appoint Darby, as manager, is consistent with law, and if we find such, whether it has been demonstrated that Darby is qualified to perform the functions subject of the management agreement. It is not our role, however, to approve the specific terms and nuances of the management agreement itself. The management agreement is a private contract among the parties. Accordingly, in making this motion, I note that the Commission is only addressing the matters before us, as I have outlined. I would also note, therefore, in making this motion, that any decision the Commission arrives at today should not be considered as approval for any future rights concerning the account wagering system, inclusive of any assignment of the account

wagering license which may be proposed, which license shall continue to be held by the Authority notwithstanding our decision today.

Let me first address the general nature of the Authority's Petition which seeks, for the first time since the inception of account wagering in 2004, our approval to appoint a manager to operate the account wagering system. To date, the Authority has functioned, not only as the account wagering license holder, but also as the manager of the system. This is because the legislature, in enacting the Off-Track and Account Wagering Act, specifically at N.J.S.A. 5:5-128, declared that "the Authority, by virtue of its experience in the operation of parimutuel wagering facilities and other entertainment projects in this State, is particularly well-suited to ensure the fiscal soundness and technical reliability of an account wagering system...." Notwithstanding this declaration, the legislature, through N.J.S.A. 5:5-140c, allowed for the Authority to appoint a manager for the system. I read these statutes as an indication from the legislature that, when account wagering was first introduced to New Jersey, its newness required the expertise of the Authority to get it going smoothly and efficiently in this State, which I believe the Authority has certainly, and to its credit, accomplished. Had the Authority made a request to turn over the management function to another shortly after the introduction of account wagering in our State in 2004 or 2005, I would have fully objected to the request in light of the described legislative declaration within N.J.S.A. 5:5-128. This is because, I believe, that to read that statute and N.J.S.A. 5:5-140c logically and consistently, this Commission must find that the Authority has done its job in effectively implementing account wagering in this state. In other words, we must find that the transition from the Authority to a management company is being proposed at a point in time consistent with the ability for the account wagering system to run smoothly and without disruption.

In making this motion, I have reached the following findings and ask that my fellow Commissioners confirm your agreement with these findings with your affirmative vote. I find that the transition from the Authority to a management company is, in fact, being proposed at an appropriate time, consistent with the ability for the account wagering system to run smoothly and without disruption. I find that rather than being in a stage of infancy, the account wagering system is mature and operating effectively and reliably. This being true, I further find that the appointment by the Authority of a management company at this time, to manage the day-to-day affairs and business of the account wagering system, is consistent with the statutes and legislative intent of those relevant laws.

With regard to Darby, particularly, and its qualifications, I find as follows. While Darby is a recently formed entity, since it was approved by the Racing Commission on May 3, 2012, to serve as management company for the NJTHA's racing operations, it has gained

experience as the management company for Monmouth Park, for the NJTHA thoroughbred race meet at the Meadowlands Racetrack, and for the Woodbridge off-track wagering facility. Moreover, as a newly formed company, it took on these endeavors in an effective and sound manner. We found, when we first addressed the qualifications of Darby in May of this year, that two of Darby's managing members, Ronald S. Drazin and Brian D. Drazin, were of limited experience. However, in our approval of Darby as the management company for the NJTHA racing concerns, we took notice of the vast experience of Robert Kulina, Darby's President, in the area of racing management. Clearly, in my estimation, Darby and Mr. Kulina have met the challenges in effectively operating, to date, the NJTHA racing concerns. With regard to the ability of Darby to manage the account wagering system, I again point to Mr. Kulina's extensive racing management background, and expertise. While he has not directly managed an account wagering system, he is a proven and highly respected manager in the area of racing and, as part of his management experience, he has certainly been exposed to computer wagering and telephone wagering. Significantly, I understand that the NJSEA and then Darby, if necessary, will for the present time continue to utilize certain key employees now in the employ of the Authority, who have been directly involved in the oversight and operation of the account wagering system until a turnkey account wagering platform provider is selected and operational. Accordingly, recognizing the present level of racing management of Darby, which is greater now than it was when we first approved Darby earlier this year, and taking notice of Mr. Kulina's experiences in racing management, all coupled with the continued utilization of the NJSEA employees, while necessary, in connection with its management duties to the account wagering system, I find that Darby is qualified. Specifically, as part of this motion, and in recognition of related conditions I intend to propose as part of this motion, I find that it has been demonstrated, by clear and convincing evidence, that Darby is qualified to manage the account wagering system as proposed by the Authority.

Although the Authority and its racetrack lessees, the NJTHA and NMRLLC, each support the Authority's request, I have paid much attention to the concerns of the NJAW in not only objecting to the Authority's request, but also objecting to the Racing Commission's present consideration of this matter from a procedural perspective. In terms of the latter, I have reviewed the Racing Commission Executive Director's letter on the subject, dated November 21, 2012, which was distributed to the industry parties. I believe that the Executive Director's letter clearly disposes of NJAW's concerns, and I find that the Commission may properly consider this matter today. With regards to NJAW's substantive concerns, while I find that the Commission action I propose here is entirely consistent with law, and that many of NJAW's concerns are private contractual disputes not appropriate for resolution by this Commission, I do wish to particularly address NJAW's allegation that Darby is presented with a conflict of interest by functioning as the management company for

the NJTHA racing concerns, while at the same time functioning as the management company for the account wagering system.

In a letter to the Commission, which was circulated among those entities that have filed written submissions regarding this matter, the NJTHA denies the specific NJAW conflict claim, which is that Darby should be precluded from functioning as manager of the account wagering system because the NJTHA hopes to receive financing from Sportech Racing LLC, and Darby, as the management company for the account wagering system, will be involved in selecting the 2013 account wagering platform provider (which Sportech is being considered for). In other words, NJAW contends that Darby might attempt to advance the interests of Sportech, in continuing as the platform provider, in order to encourage the interests of the NJTHA in securing financing from Sportech. Based upon my review of this matter, the written submissions, and what I heard here today, NJAW's allegations in this regard are adequately addressed by the NJTHA, and unsubstantiated. Moreover, it must not be overlooked that the Authority itself has simultaneously functioned as the manager of the account wagering system, the holder of the account wagering license, the operator of racetrack properties and the operator of an off-track wagering facility, which multiple roles are specifically permitted by law. In the case of Darby, whose role is limited to being the management company to the NJTHA and the management company to the account wagering system, in the event of our approval, its functions will not be as broad. The account wagering license will continue to be held by the Authority, and the NJTHA will continue to be the holder of the Monmouth Park and Meadowlands thoroughbred permits as well as the holder of the license for the Woodbridge off-track wagering facility. Darby's concurrent service as the management company for the NJTHA racing concerns and the account wagering system is not prohibited by law, and the potential for an actual conflict arising is, in my estimation, speculative. However, out of an abundance of caution, it would appear prudent for the Commission to impose a condition directed toward preventing a true conflict from arising. As part of this motion, I will therefore propose a condition in this area.

Accordingly, I find that the Petition of the Authority to appoint Darby as manager of the account wagering system, consistent with the terms of the signed management agreement, should be approved. As part of this motion, I find that Darby is qualified to serve as the management company. In the event the Commission agrees with this motion, I believe the following conditions should be imposed:

Conditions

- 1) In connection with this approval, and notwithstanding that Darby is licensed by the Racing Commission with regard to its role as the management company for

- the racing-related interests of racetrack permitholder NJTHA, Darby, within fourteen (14) days of the date of this approval, shall apply for and secure a separate license with the Racing Commission with regard to its role as management company for the account wagering system. As Darby is presently licensed by the Racing Commission, and as Darby has been determined by the Racing Commission as part of its present approval to be qualified for such additional licensing as the management company for the account wagering system, this licensing requirement shall not preclude Darby from immediately assuming its duties pursuant the management agreement.
- 2) Each employee of Darby, who shall perform functions pursuant to Darby's management responsibilities with regard to the account wagering system, unless presently licensed by the Racing Commission, shall within seven (7) days secure a license from the Commission. Any person who Darby intends to employ with regard to the account wagering system (unless presently licensed by the Commission), prior to assuming such duties on behalf of Darby, shall first be licensed by the Racing Commission.
 - 3) Within seven (7) days, in writing to the Racing Commission, Darby shall designate the name and title of any employee or non-employee agent (person or entity) of Darby, performing any functions for or on behalf of it in connection with its management of the account wagering system. This filing shall include, but not be limited to, any persons or entities acting on behalf of Darby who, prior to the effectiveness of the management agreement, performed the same or similar functions for the Authority as manager of the account wagering system. Darby shall be obligated to revise this written filing with the Racing Commission, and thereby keep it current, on a continual basis.
 - 4) As the account wagering licensee, the NJSEA shall maintain sufficient oversight responsibilities over Darby as concerns Darby's management of the account wagering system.
 - 5) The NJSEA will not choose any replacement director for its seats on the Account Wagering Project Operating Board until after that Board makes its recommendation regarding the selection of the account wagering platform provider to Darby.
 - 6) Darby shall provide the Commission with a detailed written bi-monthly status report, by the first of each month due, with the first report being due February 1,

- 2013, reporting on significant developments (both positive and negative) concerning the account wagering system.
- 7) Darby shall immediately notify the Racing Commission, in writing and through its Executive Director, of any significant event or occurrence which could negatively impact the continued operation of any aspect of the account wagering system.
 - 8) In the event there is a change in the compensation, either directly or indirectly, to be provided to Darby, or to any other person or entity, in connection with Darby's assuming and/or performing the role of management company with regard to the account wagering system, the Darby shall notify the Racing Commission in writing before entering into any such compensation agreement and before any such compensation is paid.
 - 9) Darby shall be responsible for the regulatory requirements and conditions previously imposed upon the Authority, as concerns the particular functions being assumed by Darby as a result of the management agreement. If Darby is of the view that any of these conditions should not apply, Darby must make written application to the Racing Commission Executive Director for such conditions to be removed.
 - 10) Darby, as authorized by N.J.A.C. 13:74-4.2e, shall be responsible for the Racing Commission costs associated with its investigation, review and conditional approval of this matter.
 - 11) The parties to the management agreement, including the Authority and Darby, shall cooperate with the Racing Commission's continuing investigation into this matter, and each shall cooperate with the Racing Commission in all account wagering related investigations and matters.
 - 12) Any 2013 totalisator provider to the account wagering system, and any platform provider to the account wagering system, shall not be permitted to perform such responsibilities unless first licensed by the Racing Commission consistent with the rules of the Commission.
 - 13) Darby shall adopt meaningful written internal control procedures or guidelines relating to its management function with regard to the account wagering system which shall include procedures or guidelines directed toward ensuring that no

actual conflict of interest arises as a result of Darby also functioning as management company with regard to the NJTHA's racing concerns. A copy of these procedures or guidelines shall be filed with the Racing Commission no later than February 1, 2013.

There was no discussion following the motion. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

There being no further discussion or comments from the public, Commissioner Aponte moved that the meeting be adjourned subject to the provisions of the "Open Public Meeting Act." Commissioner Keegan seconded the motion and it was approved unanimously.

ATTEST:



Executive Director Frank Zanzuccki