

NEW JERSEY RACING COMMISSION
WEDNESDAY, JUNE 20, 2012
LIBRARY ROOM
MONMOUTH PARK
OCEANPORT, NEW JERSEY

A meeting of the New Jersey Racing Commission was held on Wednesday, June 20, 2012, in the Library Room of Monmouth Park, located in Oceanport, New Jersey.

The following were present:

Anthony T. Abbatiello, Commissioner
Manny E. Aponte, Commissioner
Anthony R. Caputo, Commissioner
Francis X. Keegan, Jr., Commissioner
Frank Zanzuccki, Executive Director
DAG Judith A. Nason

The following were absent:

Peter J. Cofrancesco, III, Commissioner

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:

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1. Legal advice concerning the reconsideration of the distribution of Casino Simulcasting Special Funds accumulated in 2005 and 2006 pursuant to N.J.S.A. 5:12-205d.
2. Legal advice concerning the consideration of monies identified in P.L. 2011, c. 18, for the support of the New Jersey horse racing industry through the augmentation of purses.
3. Legal advice concerning the consideration of petitions filed by permit holders seeking a determination that the permit holder is making progress toward obtaining an off-track wagering license and establishing an off-track wagering facility pursuant to the requirements of N.J.S.A. 5:5-130(b)(1) sufficient to allow the permit holder to retain its share of off-track wagering facilities to be established, provided the permit holder continues to make progress on an annual basis.
4. Legal advice concerning the request New Meadowlands Racing, LLC, to acquire the Bayonne Off-Track Wagering facility license, a racing-related interest of the New Jersey Sports & Exposition Authority (“Authority”).
5.
 - a) Legal advice considering whether or not to grant the New Jersey Thoroughbred Horsemen’s Association, Inc. (“NJTHA”) an extension of time (from June 4, 2012 to June 20, 2012, or to a date as otherwise specified by the Commission), to comply with the requirements of conditions 36 and 37 of the Racing Commission’s Order of May 9, 2012, which conditions were imposed by the Racing Commission at the time (that is, on May 3, 2012) it approved the NJTHA’s application for the permit to conduct thoroughbred racing at Monmouth Park Racetrack.
 - b) Legal advice subject to its consideration of paragraph a) to this agenda item, immediately above, consider whether or not the NJTHA is in compliance, as of the date of the Racing Commission public meeting where this matter is to be

considered (that is, June 20, 2012), with conditions 36 and 37 of the Racing Commission's Order of May 9, 2012.

6. Other matters requiring the legal advice of counsel.

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."

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Commissioner Keegan then motioned to adopt the resolution to adjourn. Commissioner Abbatiello seconded the motion and the Commission adjourned to Executive Session.

The Commission ended the executive session and Commissioner Abbatiello motioned to return to public session. Commissioner Caputo seconded the motion and the public session resumed.

CONSIDER APPROVAL OF THE MINUTES OF THE PUBLIC AND EXECUTIVE SESSIONS OF THE MARCH 21, MARCH 30 AND MAY 3, 2012 COMMISSION MEETINGS

Commissioner Keegan made a motion to approve the public and executive session minutes of the March 21, March 30 and May 3, 2012 public meetings. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE BILLS

The Executive Director recommended that the bills be tabled because there were no bills presented at this meeting. Commissioner Caputo motioned to table the bills. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER RATIFICATION OF THE APPROVAL GRANTED CONCERNING THE FOLLOWING HANDICAPPING CONTESTS;

- a) Simulcast Series Challenge held at Monmouth Park on April 28, 2012.

- b) The Thoroughbred Simulcast Handicapping Contest held at the Meadowlands Racetrack on March 31, 2012.
 - c) The World Harness Handicapping Championship Qualifier held at the Meadowlands Racetrack on April 21, 2012.
 - d) Monmouth Park/Woodbine Racetrack handicapping contest on Sunday, June 3, 2012 at the Monmouth Park Racetrack.
 - e) Meadowlands/Mohawk Racetrack Handicapping challenge on Saturday, June 16, 2012 at the New Meadowlands Racetrack.
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Commissioner Caputo motioned to approve the noted handicapping contests. Commissioner Keegan seconded the motion and all Commissioners voted yes.
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CONSIDER RATIFICATION OF THE APPROVAL GRANTED TO THE BORGATA HOTEL, CASINO & SPA CONCERNING THE FOLLOWING HANDICAPPING CONTESTS: BORGATA 10K HANDICAP TOURNAMENT PLUS HORSE PLAYER WORLD SERIES CHALLENGE RULES AND REGULATIONS CONDUCTED ON JULY 7, 2012, SEPTEMBER 15, 2012 AND DECEMBER 1, 2012

Commissioner Caputo made a motion to ratify approval granted to the Borgata Hotel and Casino and Spa to conduct the contests scheduled for July 7, September 15 and December 1, 2012. Commissioner Abbatiello seconded the motion and all Commissioners voted yes with the exception of Commissioner Aponte who recused himself from the agenda item.

A) CONSIDER WHETHER OR NOT TO GRANT THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC. ("NJTHA") AN EXTENSION OF TIME (FROM JUNE 4, 2012 TO JUNE 20, 2012, OR TO A DATE AS OTHERWISE SPECIFIED BY THE COMMISSION), TO COMPLY WITH THE REQUIREMENTS OF CONDITIONS 36 AND 37 OF THE RACING COMMISSION'S ORDER OF MAY 9, 2012, WHICH CONDITIONS WERE IMPOSED BY THE RACING COMMISSION AT THE TIME (THAT IS, ON MAY 3, 2012) IT APPROVED THE NJTHA'S APPLICATION FOR THE PERMIT TO CONDUCT THOROUGHBRED RACING AT MONMOUTH PARK RACETRACK

B) SUBJECT TO ITS CONSIDERATION OF PARAGRAPH A) TO THIS AGENDA ITEM, IMMEDIATELY ABOVE, CONSIDER WHETHER OR NOT THE NJTHA IS IN COMPLIANCE, AS OF THE DATE OF THE RACING COMMISSION PUBLIC MEETING WHERE THIS MATTER IS TO BE CONSIDERED (THAT IS, JUNE 20, 2012), WITH CONDITIONS 36 AND 37 OF THE RACING COMMISSION'S ORDER OF MAY 9, 2012

Executive Director Zanzuccki read the following statement:

On May 3, 2012, among other things, the Racing Commission conditionally approved the issuance to the NJTHA of the thoroughbred race permits for Monmouth Park and the Meadowlands Racetrack, the license to operate the Woodbridge off-track wagering facility, and the ability of the NJTHA to receive a revenue stream in connection with the New Jersey account wagering system. A related Order of the Commission was issued on May 9, 2012. Thereafter, as required by law, the Attorney General approved the

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determination of the Commission as concerns the Woodbridge OTW license issuance, and with regard to the account wagering revenue aspect of the Commission's decision.

Of the various conditions imposed upon the NJTHA as part of the Commission's approval, condition No. 36 among other things required that the NJTHA, by June 4, 2012, demonstrate to the Commission's satisfaction that it has retained sufficient control, oversight and final decision making authorities with regard to the permits and license granted, pursuant to the management agreement the NJTHA entered into with Darby Development LLC and Elite Consultants LLC. Condition No. 37 required that the NJTHA further demonstrate that its by-laws permit it to take all actions necessary for the operation of the racing privileges granted. Condition No. 40 authorizes the Commission to extend the NJTHA's time for compliance with the two conditions.

Since the Racing Commission's determination on May 3rd, the Commission staff and NJTHA have exchanged correspondence related to the NJTHA's compliance effort with Conditions 36 and 37, and a copy of the relevant paperwork has been provided to each Commissioner. The Commission and its staff, in addition, have consulted with legal counsel as appropriate.

During the time that the NJTHA was making its submissions to the Commission, and prior to June 4th compliance date, the NJTHA requested an extension of time to comply with the conditions. Agenda item 6a), therefore, relates to this request.

Also during the Commission staff-NJTHA correspondence exchange period, as an alternative to the NJTHA's compliance with the conditions, the NJTHA proposed in a letter that the two racetrack permits and OTW license issued to it be assigned to DARBY. However, the racing laws and Commission's rules require that the requisite permit and OTW license applications be completed and filed before the Commission may consider such a proposal, and that the requisite investigations also be conducted as a condition precedent to any such consideration by the Commission. As no such applications were filed by DARBY, and no related investigation could therefore be conducted, the assignment request was not and is not ripe for consideration by the Commission, and this request of the NJTHA does not therefore appear on today's meeting agenda. We understand, however, as the result of a receipt of a letter from NJTHA legal counsel Michael Schottland, on June 14, 2012, that the NJTHA does desire that the Commission proceed with its consideration of agenda item 6b today.

Before we proceed with the consideration of this matter, Mr. Schottland, the Commission does have your correspondence in this matter, as well as the related filings you made on behalf of the NJTHA. If you would like to address the Commission, in view of the fact that we have a busy agenda today, I would ask that you limit your comments to matters new or in supplement to what has been filed. Michael Schottland, Esq., the attorney representing the NJTHA stated to the Commissioners that he believes his June 12, 2012 letter to the Commission makes the position of the NJTHA very clear in that it would like this matter finalized today. The Executive Director clarified that the only application before the Commission today is the NJTHA permit application and not Darby, LLC, and you indicated that you want the Commission to go forward with the NJTHA application. Mr. Schottland replied that was correct.

The Executive Director asked if the Commission has any questions and they did not.

The Commission proceeded to agenda item 6a):

Commissioner Keegan read the following motion:

I have reviewed the materials provided with regard to this matter. It is evident that the New Jersey Thoroughbred Horsemen's Association made sufficient efforts to comply with the June 4 suspense date for compliance with Conditions 36 and 37 of the Commission's May 9, 2012 Order. It appears from my reading of the materials that while compliance was not achieved by that date, the effort to comply was genuine and constituted a good faith effort. I, therefore, move that the extension of time be granted today, June 20, 2012. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

The motion having passed, the Commission proceeded to agenda item 6 b), which is to consider whether or not the NJTHA is in compliance, as of today, with conditions 36 and 37 of the Racing Commission's Order of May 9, 2012.

Commissioner Keegan made the following motion:

I have reviewed the materials provided with regard to this matter. I would note that as part of its compliance effort with Conditions No. 36 and 37, the New Jersey Thoroughbred Horsemen's Association, DARBY and ELITE took various steps. These steps which are a matter of record include amendment to the New Jersey Thoroughbred Horsemen DARBY-ELITE Management and Development Agreement as well as provision of a signed narrative explanation of New Jersey Thoroughbred Horsemen's Association President John

Forbes. The New Jersey Thoroughbred Horsemen's Association submissions stand for the proposition as best said by Mr. Forbes in his narrative that the NJTHA retains ultimate control and decision-making authority overall all decisions affecting the horse

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racetrack industry at Monmouth Park, the Meadowlands and the OTWs including the Woodbridge OTW. As also stated by Mr. Forbes through his narrative explanation, the NJTAH Board will meet regularly to receive status reports from Darby and/or Elite and pursuant to the New Jersey Thoroughbred Horsemen's By-laws, the New Jersey Thoroughbred Horsemen's Association Board is authorized to oversee and manage DARBY and ELITE as these entities fulfill their obligations as subcontractors. Mr. Forbes has further explained that "Executive committee of the New Jersey Thoroughbred Horsemen's Association has been assembled to receive reports twice weekly from DARBY and ELITE."

Further, the NJTHA-DARBY-ELITE management agreement was amended to read as follows: "...notwithstanding anything to the contrary, nothing in this Agreement shall be read or construed to mean that DARBY or ELITE has any final decision making authority with regard to any matters subject to this Agreement. Each party understands that final decision making authority with regard to all matters subject to this Agreement has been retained by, is held by, and shall be exercised by the NJTHA..."

Reading the NJTHA submissions in their entirety, as well as the submissions from DARBY and/or ELITE, I am satisfied that the NJTHA has complied with the showing required by condition #36, and particularly, that the NJTHA retains sufficient control and oversight responsibilities as concerns its racing approvals, that it has adequately explained its responsibilities, and that it has not delegated final decision making authority to DARBY and/or ELITE in conflict with law, rules, or directives of the Commission.

As to condition #37, I also believe that the NJTHA has sufficiently demonstrated that the NJTHA by-laws permit it to take all actions necessary for the operation of its racetrack permits, as well as the Woodbridge OTW facility.

Accordingly, I believe, and through this motion propose that my fellow Commissioners find, that the NJTHA is in compliance with conditions #36 and #37. As part of this motion, I would also suggest that the NJTHA be required to notify the Racing Commission in writing, and seek Racing Commission approval, concerning any proposed actions which would impact the degree of control and responsibility it has with regard to DARBY and/or ELITE, or which would otherwise cause it to be out-of-compliance with the

two conditions. I would also note that the NJTHA is required to maintain compliance with the remaining conditions set forth in the May 9th Order of this Commission, and that any determination by the Commission consistent with this motion is limited to a determination that the NJTHA is presently in compliance with conditions 36 and 37 to the Commission's May 9, 2012 Order.

IT IS THEREFORE FURTHER ORDERED THAT the NJTHA has demonstrated, as of June 20, 2012, and to the satisfaction of the Commission, that it is in compliance with the condition #36 to the Racing Commission Order of May 9, 2012;
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IT IS THEREFORE FURTHER ORDERED THAT the NJTHA has demonstrated, as of June 20, 2012, and to the satisfaction of the Commission, that it is in compliance with the condition #37 to the Racing Commission Order of May 9, 2012;

IT IS THEREFORE FURTHER ORDERED THAT the NJTHA shall notify the Racing Commission in writing, and seek Commission approval, concerning any proposed actions which would impact the degree of control and responsibility the NJTHA has with regard to DARBY and ELITE, or which would otherwise cause the NJTHA to be out-of-compliance with conditions #36 and #37 of the Racing Commission's Order of May 9, 2012; and

IT IS FURTHER ORDERED THAT the NJTHA is also required to maintain compliance with the remaining conditions set forth in the Racing Commission's Order of May 9, 2012, and that the decision of the Racing Commission at its public meeting on June 20, 2012, is limited to a determination that the NJTHA is presently in compliance with conditions #36 and #37 to the Racing Commission Order of May 9, 2012.

Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER RATIFICATION OF THE APPROVAL GRANTED TO THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION REGARDING OFFICIALS MUTUEL POOLS POST-TIMES, ETC. FOR THE MEADOWLANDS RACETRACK AND MONMOUTH PARK 2012 RACE MEETS

Commissioner Abbatiello motioned to ratify approval granted to the NJTHA to approve the Meadowlands Racetrack (thoroughbred) and Monmouth Park 2012 race formats. Commissioner Keegan seconded the motion and all Commissioners voted yes.

RECONSIDER DISTRIBUTION OF CASINO SIMULCASTING SPECIAL FUNDS
ACCUMULATED IN 2005 AND 2006 PURSUANT TO N.J.S.A. 5:12-205d

At this time, the Racing Commission allowed oral comment from the industry.

Christopher McErlean, representing Pennwood-Freehold Raceway, indicated for the record that Pennwood submitted to the Commission a June 5 letter reviewing our previous submission and there was supposed to be May 16 meeting regarding this issue which was canceled due to insufficient information. He asked the Commission to clarify the insufficient information and the reason for that has not been provided. Executive Director Zanzuccki responded that the Commission had sought legal advice concerning the
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submissions presented by the industry, and a determination was made there was insufficient material in the record, so the record was expanded to include the information that was circulated to the parties.

Michael Schottland, Esq. inquired if the money will be awarded to the new Monmouth Park permit holder or the former. The Executive Director responded the money will be awarded to the former permit holder, the NJSEA.

Ralph Marra, Esq., representing the NJSEA, indicated that because this matter goes back to 2005 and 2006, it is really a Sports Authority matter, and states for the record that they rely on the previous submissions.

There were no further comments from the racetracks, horsemen's groups or members of the public.

Commissioner Keegan made a motion to close the record, provide a transcript of the oral comments and that a draft motion be provided to each Commissioner for discussion purposes only at the next meeting in public session. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER MONIES IDENTIFIED IN P.L. 2011, C. 18, FOR THE SUPPORT OF THE NEW JERSEY HORSE RACING INDUSTRY THROUGH THE AUGMENTATION OF PURSES

Executive Director Zanzuccki summarized the issue and the record before the Commission as follows:

In 2011, with the enactment of Public Law 2011, Chapter 18, provisions to assist the establishment of the Atlantic City Tourism District were put in place. This legislation identified certain monies to support the New Jersey horse racing industry through the augmentation of purses. This section, which has been codified at N.J.S.A. 5:5-223, provides that:

The New Jersey Racing Commission shall determine an amount to be allocated from the amounts collected by the Division of Gaming Enforcement pursuant to this section, in an amount not exceeding ... \$10,000,000 in the second State fiscal year.... The moneys collected pursuant to this subsection shall be allocated to the [Casino Reinvestment Development Authority], and allocated by the Authority to the New Jersey Racing Commission to the support of the horse racing industry in this State through the augmentation of purses.

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The amount of any funds to be collected and allocated in support of horse racing through the augmentation of purses must be established by the New Jersey Racing Commission at a regular meeting of the Commission. Any decision to distribute monies to the racing industry must be set forth in the minutes to this meeting which shall be delivered to the Governor for his review and action, if any, pursuant to N.J.S.A. 5:5-22.1.

Racing Commission's 2011 Decision

Last year, at the Commission's June 29, 2011 meeting, the Commission decided to allocate the maximum amount of monies available to augment purses for that fiscal year which was \$15 million. Upon review of the Commission's minutes, the Governor vetoed the Commission's decision, setting forth the basis for his determination in a letter dated July 1, 2011. The Thoroughbred Breeders' Association filed an appeal challenging the Governor's decision which is still pending before the court.

Submissions Before the Commission Regarding Monies to Augment Purses in
an Amount Not Exceeding \$10 Million

By letter dated March 9, 2012, the Commission notified the permit holders and horsemen's organizations that it would accept written submissions, pursuant to the procedure set forth in N.J.A.C. 13:70-1.35 and N.J.A.C. 13:71-1.30, setting forth their positions on the amount of monies the Commission should consider for the augmentation of purses in the current fiscal year. The Commission indicated that its consideration of the distribution of these monies was scheduled on the Commission's May 16, 2012 meeting. The Commission received timely submissions from Freehold Raceway, Atlantic City Race Course, New Meadowlands Racetrack, the Standardbred Breeders and Owners' Association of New Jersey, the New Jersey Thoroughbred Horsemen's Association and the Thoroughbred Breeder's Association of New Jersey.

By letter dated May 4, 2012, the Commission circulated these submissions among the permit holders and horsemen's organizations and indicated that further written comments would be accepted provided that the Commission received the comments on or before May 11, 2012 and the party submitting the comments served copies of its submission on all of the other interested parties on or before that date. The Commission also informed the interested parties that the applicable rules permit the Commission to allow interested parties to comment verbally at the scheduled meeting and that all requests to be heard must be received by the Commission on or before May 9, 2012.

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The Commission received further written comments, which were timely filed and served upon the other interested parties, from the NJTHA, Monmouth Park and the New Jersey Sports and Exposition Authority. The Commission also received a timely request from Freehold Raceway to comment verbally at the meeting.

Subsequently, due to unforeseen circumstances, the meeting scheduled for May 16, 2012 was cancelled. By letter dated May 21, 2012, the Commission notified all of the interested parties that it would consider their requests for purse augmentation monies at Commission's next scheduled meeting, which was June 20, 2012. With this letter, the

Commission provided the interested parties with copies of all submissions that had been filed with the Commission as of that date, including those submissions that had been circulated previously. Because of the new meeting date, the Commission provided the interested parties with the opportunity to submit additional written comments and indicated that any submissions must be received by the Commission on or before June 5, 2012. No additional comments were submitted.

The Executive Director noted that all of the interested parties' submissions have been provided to the Commissioners for their review and consideration and he provided a summary of the record before the Commission as follows.

Freehold Raceway's Request for \$1,250,000 in Purse Augmentation Monies

In its April 24, 2012 submission, Freehold asks the Commission for \$1,250,000. Freehold indicates that the receipt of any allocated funds would be immediately used for the following options:

1. 50% would be used to supplement overnight purses and that, based upon 90 live racing dates annually, these monies would increase the average daily purse at the racetrack by almost \$7,000 per day – which is approximately a 15% increase;
2. 30% of the funds would be used to increase purses for New Jersey owned-sired races and for New Jersey Sire Stake races; and
3. 20% of the funds would be used to create a special “stakes/series” event at the racetrack for the benefit of horses owned and/or sired in this State.

In support of its request for these monies, Freehold points out the importance of its racetrack to our horse racing industry. Not only is Freehold the oldest racetrack in the State, it also conducts the largest number of live racing dates for any race meet in the State. Freehold notes that it regularly cards races exclusively for New Jersey owned and sired horses and gives them preference in all races. Freehold also notes that its track allows opportunities for New Jersey horsemen who may not be able to compete on a regular basis at the larger regional harness tracks and it affords developing horses a showplace to exhibit their talents.

Freehold points out that 59% of the annual \$5.4 million in purses it distributes annually to residents of this State are then circulated in the local and State economy. Noting that it employs hundreds of State residents, Freehold asserts that by paying \$1 million in annual property taxes, it is one of the largest taxpayers in Freehold Borough and Township. Freehold indicates that through its racing program, it also helps to enhance green space within the State and specifically within Monmouth County.

Regarding its proposal to use 30% of the purse augmentation monies to increase purses for New Jersey owned-sired races and for New Jersey Sire Stake races, Freehold states that this increase would reward horsemen and women who live in this State and who support our breeding program. Freehold adds that its proposal to use 20% of the requested funds to create a special event day to spotlight New Jersey horses would allow it to add work opportunities for employees given the potential for a larger attendance and wagering handle at such an event.

Freehold submits that for all of these reasons, the use of the monies it requests to augment purses would clearly benefit horse racing in the State of New Jersey. Freehold indicates that without additional funding to augment purses, it will be facing significant purse reductions. It points out that reduced purse funds and uncertainty over future funding have led Freehold to give up the rights for three years to the Cane Pace, one of harness racing's premier events and the first leg of pacing's Triple Crown.

Finally, Freehold indicates that it supports the same distribution of purse augmentation monies that it supported last year with 50% going to standardbred purses and 50% going to thoroughbred purses. Within each breed, Freehold takes the position that the funds should

be allocated based upon the percentage share of each track's purses from the prior year in relation to total overnight purses for that breed. Freehold notes that the THA's proposal appears to be consistent with Freehold's position of seeking a fair and equitable distribution of these monies.

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Atlantic City Race Course's Request for \$1 Million in Purse Augmentation Monies

In its April 28, 2012 submission to the Commission, ACRC requests \$1 million to augment purses. ACRC indicates that with these monies a Fall Turf Festival mimicking its Spring counterpart could be possible with a daily purse offering of \$150,000 to \$175,000 and the opportunity for a second small Stakes Race as a highlight. ACRC points out that the proposed meet, which would be short enough to gauge its popularity at that time of year, would be significant in several respects. In addition to answering the demand to bring more thoroughbred racing to South Jersey, it would be sensible because it would mirror what ACRC knows is already financially "doable." ACRC indicates that any choice of dates could be respectfully chosen with a view toward being mutually beneficial to the other New Jersey racetracks.

ACRC states that these additional race days would benefit horse racing in numerous ways and asserts that live racing at its track acts as "a tremendous boom to the region" especially for businesses within a 10-mile radius. ACRC adds that the fall season will capture different fans who are visiting the southern counties for conventions, post-summer rentals and Autumn events, thus giving post-Labor Day tourism a boost.

ACRC also indicates that the six additional days, with the 35 to 40 races it offers, allow New Jersey horsemen more opportunities to race and emphasizes again that dates mutually agreeable to the other racing venues in the State could be selected to avoid direct competition with racing at Monmouth Park or the Meadowlands. Finally, ACRC notes that it would welcome the input of the other racing interests in so far as coordinating the details of the proposed new Fall meet.

Submission of New Meadowlands Racetrack, LLC

In its April 17, 2012 submission, NMR states that “[w]hile any augmentation of standardbred purses at the Meadowlands Racetrack would improve our current racing product, we respectfully defer to the submission forthcoming from the Standardbred Breeders’ and Owners’ Association on this matter.”

Standardbred Breeders’ and Owners’ Association’s Request for 50% of the
Available Purse Augmentation Monies

In its April 23, 2012 submission, the SBOA indicates that it would support an allocation of 50% of all available purse augmentation monies to standardbred racing. Of Minutes of June 20, 2012

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these standardbred monies, the SBOA takes the position that 80% should be distributed to the Meadowlands and 20% to Freehold based upon total purses paid in 2011. The SBOA points out that with the limited number of racing days in this State its membership continues to suffer and the only solution, which is to offer more days of racing, is impossible without purse funding.

Comparing the purse monies paid in 2010 with 2011, the SBOA notes that the purses paid by Meadowlands dropped from \$28 million to \$17.8 million and the purses at Freehold dropped from \$8.8 million to \$4,427,000. The SBOA states that it would defer the best way to use these purse augmentation monies to the racetracks but indicates that the SBOA needs at least \$1 million of these monies for the New Jersey Sire Stakes program and adds that additional money for overnight purses would result in a greater number of race days.

Thoroughbred Breeders' Association’s Request for \$9 Million in Purse
Augmentation Monies

In its April 17, 2012 submission, the TBA asks for \$9 million in purse augmentation monies for New Jersey-bred horses. The TBA indicates that it would use \$6 million toward purses for New Jersey-bred restricted races. The TBA points out that due to the decrease in the overall purse structure at Monmouth Park, the number of New Jersey-bred races will decrease by 25% in 2012. The requested \$6 million would allow for more restricted races to

be written and increase the number of opportunities that New Jersey-bred horses have at Monmouth Park and the Meadowlands.

The TBA indicates next that \$1.5 million of the requested monies would be used for a bonus that is awarded to New Jersey-bred horses that finish first, second or third in open company races. The TBA states that New Jersey-bred owners have received this bonus annually since 2004 and at the present time, this bonus will be capped at \$500,000 for 2012, which is a 45% decrease from last year.

Finally, the TBA indicates that it would use \$500,000 of the requested monies for the New Jersey Thoroughbred Festival which is scheduled for September 15, 2012 and \$1 million for the New Jersey-bred stakes program to add two additional races and also to increase the purses in all stakes races.

In support of its request, the TBA states that the New Jersey-bred crop has declined by 60% over the last five years due to increased competition from New York and Pennsylvania which have alternate sources of gaming to increase their incentive awards programs. As an example, the TBA indicates that the New York-bred program is receiving
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an additional \$1 million per month from Resorts World Casino and points out that this money, along with the funds received through handle, enables New York to have an incentive program worth more than \$20 million per year -- in stark contrast to the New Jersey-bred program which distributed \$2.7 million in 2011.

Finally, the TBA notes that the \$9 million it is requesting will also benefit the State of New Jersey because these additional monies would encourage New Jersey breeders to keep their mares and foals on New Jersey farms, which would in turn help the State's economy.

New Jersey Thoroughbred Horsemen's Association's Requests for 50% of the
Available Purse Augmentation Monies

In the NJTHA's March 19, 2012 submission, John Forbes, President of the THA makes several compelling arguments for purse augmentation monies. Pointing out the industry's desperate need of purse money, Mr. Forbes cites, specifically, the huge challenge

the THA is facing as lessee of Monmouth Park which exposes the horsemen's association to the anticipated losses stemming from the operation of Monmouth Park and the Meadowlands thoroughbred permit. He indicates in an effort to preserve the quality of the Monmouth Park meet so that the racetrack can attract the caliber and quantity of horses necessary for a successful meet, the NJTHA has worked with the Monmouth Park Racing Office to drastically trim back monies dedicated to the Stakes Program and the Overnight Stakes Program to avoid cutting overnight purses. He notes that at the same time, the NJTHA is doing everything in its power to keep the purse funding for the New Jersey Breeder's Program intact.

Mr. Forbes indicates that 2012 is a crucial year for thoroughbred racing and "it is vitally important for the NJTHA to secure the proper purse funding to put on a successful meet in order to guarantee a future for Monmouth Park and the Meadowlands permit." Finally, Mr. Forbes advocates that based upon overnight purses paid in 2011, the thoroughbred purse augmentation monies should be distributed with 77.87% going to Monmouth Park, 19.41% going to the thoroughbred permit holder at the Meadowlands and 2.72% going to ACRC.

In the NJTHA's subsequent submission, dated May 8, 2012, Mr. Forbes states that the horsemen support an allocation of \$5 million in purse augmentation monies to thoroughbred purses and \$5 million to standardbred purses and revises the NJTHA's prior position regarding how the thoroughbred monies should be distributed. Mr. Forbes indicates that \$2.4 million should be distributed to the thoroughbred permit holder at the
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Meadowlands, \$2 million to the thoroughbred permit holder at Monmouth Park and \$600,000 to ACRC with the condition that it add 6 days of racing. Mr. Forbes states that the additional purse monies for Monmouth Park would enable it to be more competitive with other states and the additional purse monies for the Meadowlands would enable it to pay thoroughbred purse levels consistent with the Monmouth Park meet.

Monmouth Park's Request for \$2.4 Million in Purse Augmentation Monies

In its May 8, 2012 submission, Monmouth Park seeks the same allocation and distribution of purse augmentation monies as the NJTHA. Of the \$5 million for thoroughbred purses, Monmouth Park requests \$2.4 million. Monmouth Park states that it is

at a competitive disadvantage with other mid-Atlantic racetracks which receive slots and casino monies for purses. Pointing out that the racetrack's overall purse distribution will decrease by approximately \$8 million this year, Monmouth Park indicates that the receipt of the requested purse augmentation monies will allow thoroughbred racing to compete with our neighboring states.

Submission of the New Jersey Sports and Exposition Authority Opposing
the Allocation of Purse Augmentation Monies

In its May 11, 2012 submission, the New Jersey Sports and Exposition Authority takes the position that the Commission should not allocate any monies to augment purses for the current fiscal year. Citing the long-term lease agreements for both of its racetracks, the Authority states that its effort to create a self-sustaining course for the horse racing industry has achieved a successful beginning as track operations at both the Meadowlands and Monmouth Park have been shifted from the State to the private sector. The Authority points out that these agreements have been structured in a manner to eliminate the need for purse subsidies of any kind and it asserts that all of the parties to the negotiations have operated with the understanding that no such purse subsidies would be made available.

The Authority notes that both lease agreements provide for the licensees having access to the NJSEA's rights to off-track wagering facilities, account wagering operations and other potential horse racing-related revenue sources. The Authority adds that both of the licensees have committed to investing millions of dollars in racing-related enterprises that will help reverse the trend of economic contraction in the industry. The Authority concludes that "[b]ased upon the parameters of the agreements that have been reached, and the fact that all material participants have been operating with the knowledge that the State would not provide for purse subsidies in any way, shape or form, the NJSEA believes that the Racing Commission should not provide for any allocation of these funds."

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Request to Comment Verbally at the Scheduled Meeting

Pursuant to the Commission's rules, Freehold Raceway filed a timely request to comment verbally at this meeting regarding the submissions before the Commission. The decision whether to hear verbal comment lies in your discretion. If the Commission decides

to allow Freehold to make verbal comments, the Commission's rules require that you also give the other permit holders and the horsemen's organizations the opportunity to also make verbal comments. The Commission offered the opportunity for verbal comment.

Freehold Raceway reiterated its need for purse money and indicated it would rely on its April 24, 2012 submission. The Executive Director asked if any of the permit holders wished to comment and each indicated no. The Executive Director asked the NJSEA if it had comments and it responded that it did not.

Michael Campell, Executive Director of the TBA, asked that a portion of the money be specifically provided to the TBA for their purse structure.

Michael Schottland, Esq. indicated that he represents the TBA which appealed the Governor's veto last year. He indicated that if the Governor vetoes the Commission's decision to allocate monies this year, the TBA intends to add this veto to the pending appeal. He asked that the Commission not be intimidated by the Governor's veto authority and authorize the allocation of money.

None of the other horsemen's organizations wished to comment.

Commissioner Caputo stated that as Commissioners, we must do what we think is philosophically right for the industry and he made the following motion:

This Commission is required by statute to determine whether the distribution of monies identified in Public Law 2011, Chapter 18, would benefit the New Jersey horse racing industry through the augmentation of purses. This statute limits the monies that may be distributed in the second fiscal year after its enactment to a maximum of \$10 million. The Commission has solicited and circulated all of the submissions filed by the permit holders and horsemen's organizations.

All of the current permit holders and the horsemen's organizations have asked for monies to augment purses. The NJSEA is the only entity which has taken the position that the Commission should not allocate any of these monies. Citing the long-term lease agreements for both of its racetracks, the Authority states that its effort to create a self-
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sustaining course for the horse racing industry has achieved a successful beginning as track operations at both the Meadowlands and Monmouth Park have been shifted from the State to the private sector. The Authority points out that these agreements have been structured in a manner to eliminate the need for purse subsidies of any kind and it asserts that all of the parties to the negotiations have operated with the understanding that no such purse subsidies would be made available. The Authority notes that both lease agreements provide for the licensees having access to the NJSEA's rights to off-track wagering facilities, account wagering operations and other potential horse racing-related revenue sources.

The Authority adds that both of these lessees have committed to investing millions of dollars in racing-related enterprises that will help reverse the trend of economic contraction in the industry.

The Commission does not know what the understanding among the parties may have been during these negotiations. However, the fact of the matter is that all of these parties, the New Meadowlands Racetrack, the New Jersey Thoroughbred Horsemen's Association and the Standardbred Breeders' and Owners' Association, have asked the Commission to allocate monies.

First, in reaching a decision whether the allocation of purse supplement monies would benefit horse racing, we must be mindful that there are four racetracks in this State and each are important to our racing industry. Although the Authority asserts that the agreements reached in connection with its shift of track operations at the Meadowlands and Monmouth Park to the private sector have been structured in a manner to eliminate the need for purse subsidies of any kind, Freehold Raceway and the ACRC do not benefit from these agreements. Both Freehold and ACRC have requested the allocation of these monies and each track has proposed a plan for the use of these monies that will clearly benefit racing in this State.

Moreover, the lessees of the NJSEA's racetracks have also asked the Commission to allocate monies to augment purses. Although NMR deferred to the submission of the SBOA, which asked that 50 percent of the available purse augmentation monies be distributed to the standardbred industry, the NJTHA makes several compelling arguments for purse augmentation monies. Pointing out the industry's desperate need of purse money, the NJTHA cites, specifically, the huge challenge it is facing as lessee of Monmouth Park which exposes the horsemen's association to the anticipated losses stemming from the operation of Monmouth Park and the Meadowlands thoroughbred permit. The NJTHA, through its President, urges that the Commission allocate \$2.4 million for its use as the thoroughbred

permit holder at the Meadowlands and \$2 million for its use as permit holder at Monmouth Park.

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Purse money is essential to the success of the racing industry. Without sufficient purse money, horsemen will race their horses elsewhere.

Based upon the formula it proposed to ensure a fair and equitable distribution of purse supplement monies between the two breeds and among the four racetracks, Freehold has asked for \$1,250,000. With these monies, Freehold indicates that it would be able to increase purses by approximately \$7,000 per day thus providing a significant benefit to the horse racing industry of this State through the augmentation of purses.

There has been much attention and a great deal of good work accomplished in executing the agreements to lease the two racetracks owned by the NJSEA. These agreements are of benefit to our racing industry and we are, in no way, unmindful or unappreciative of the dedication and perseverance shown by those who made this happen.

But, at the same time, let this not blind us to the importance of the other two racetracks in this State. Freehold is the oldest racetrack in this State and it conducts the largest number of live racing days of any New Jersey racetrack. As Freehold pointed out in its submission, 59 percent of its purses are awarded to New Jersey residents. These monies remain in New Jersey and benefit the local and state economy. Freehold employs hundreds of New Jersey residents and is one of the largest taxpayers in the Borough and Township of Freehold.

Atlantic City Race Course is also an important part of the racing industry in this State.

In its submissions to the Commission, ACRC has asked for \$1 million which it would use to fund a 6-day Fall Turf meet. The requested allocation would result in additional racing opportunities as well as additional recreational and business opportunities for South Jersey. The allocation of the requested monies would clearly benefit the horse racing industry in this State.

In its April 23, 2012 submission, the SBOA indicates that it would support an allocation of 50% of all available purse augmentation monies to standardbred racing. Of these standardbred monies, the SBOA takes the position that 80% should be distributed to the

Meadowlands and 20% to Freehold based upon total purses paid in 2011. The SBOA points out that with the limited number of racing days in this State its membership continues to suffer and the only solution, which is to offer more days of racing, is impossible without purse funding.

Comparing the purse monies paid in 2010 with 2011, the SBOA notes that the purses paid by Meadowlands dropped from \$28 million to \$17.8 million and the purses at Freehold dropped from \$8.8 million to \$4,427,000. The SBOA states that it would defer the best way to use these purse augmentation monies to the racetracks but indicates that the SBOA needs at least \$1 million of these monies for the New Jersey Sire Stakes program and adds that additional money for overnight purses would result in a greater number of race days. Providing these much needed monies would clearly benefit racing.

In its April 17, 2012 submission, the TBA asks for \$9 million in purse augmentation monies for New Jersey-bred horses. The TBA indicates that it would use \$6 million toward purses for New Jersey-bred restricted races. The TBA points out that due to the decrease in the overall purse structure at Monmouth Park, the number of New Jersey-bred races will decrease by 25% in 2012. The requested \$6 million would allow for more restricted races to be written and increase the number of opportunities that New Jersey-bred horses have at Monmouth Park and the Meadowlands.

The TBA indicates next that \$1.5 million of the requested monies would be used for a bonus that is awarded to New Jersey-bred horses that finish first, second or third in open company races. The TBA states that New Jersey-bred owners have received this bonus annually since 2004 and at the present time, this bonus will be capped at \$500,000 for 2012, which is a 45% decrease from last year.

Finally, the TBA indicates that it would use \$500,000 of the requested monies for the New Jersey Thoroughbred Festival which is scheduled for September 15, 2012 and \$1 million for the New Jersey-bred stakes program to add two additional races and also to increase the purses in all stakes races.

In support of its request, the TBA points out that the New Jersey-bred crop has declined by 60% over the last five years due to increased competition from New York and Pennsylvania which have alternate sources of gaming to increase their incentive awards programs. As an example, the THA indicates that the New York-bred program is receiving an additional \$1 million per month from Resorts World Casino and points out that this money, along with the funds received through handle, enables New York to have an incentive

program worth more than \$20 million per year -- in stark contrast to the New Jersey-bred program which distributed \$2.7 million in 2011.

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Finally, the THA notes that the \$9 million it is requesting will also benefit the State of New Jersey because these additional monies would encourage New Jersey breeders to keep their mares and foals on New Jersey farms, which would in turn help the State's economy.

Racing in this State is at a crossroads. Annual purse supplements of \$30 million is a thing of the past. Public Law 2011, Chapter 18, which establishes a maximum of \$10 million in the second fiscal year and \$5 million in the third can be viewed as establishing a transitional period intended to wean the horse racing industry away from reliance on monies from the casino industry. As the Governor has repeatedly pointed out, horse racing will not succeed in this State, cannot exist in this State, unless we figure out a way of making it financially self-sufficient.

However, the submissions before the Commission clearly establish the need for additional purse money now. For the reasons set forth in these submission and those addressed above, I move that the Commission allocate the following money. Commissioner Caputo noted that the amount to be allocated and how the monies are to be distributed must be discussed and entered but indicated that he would conclude the remaining portion of his motion first.

The Commission's decision today is, of course, subject to the Governor's review in accordance with N.J.S.A. 5:5-22.1. The Executive Director is hereby directed to deliver a true and certified copy of the minutes of this meeting to the Governor. If the Governor takes no action on these minutes within the statutorily-allotted time frame or if he approves the Commission's decision, the Executive Director shall notify the Division of Gaming Enforcement that the Commission has established the amount of money for the support of horse racing through the augmentation of purses as required by the Act. Once the Commission receives the allocation of these monies from the Casino Reinvestment

Development Authority pursuant to the procedure set forth in the Act, the Commission will distribute these monies consistent with this decision.

If the Governor vetoes the decision of the Commission, the establishment of these monies for the support of horse racing through the augmentation of purses shall be rendered legally null and void to the extent and under the terms determined by the Governor.

The Executive Director indicates that the Commission as to determine how the money should be distributed and should be based upon your motion. The Executive Director indicated that he believes the parties are in agreement that 50 percent should be set aside for the thoroughbred industry and 50 percent for the standardbred industry.

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A discussion occurred whether the Commission can await the veto decision of the Governor and then determine how the specific amounts of the maximum monies of \$10 million are awarded.

Commissioner Keegan seconded Commissioner Caputo's motion to award the ten million dollars.

Commissioner Aponte disagreed with the motion and stated that he is not convinced that the submissions warrant the funds to be allocated, and he references the Governor's veto letter issued in 2011 wherein it is stated that the Racing Commission's decision to allocate state subsidies for the support of New Jersey's horse racing industry contradicts and jeopardizes the goal of creating a self-sustaining course for the horse racing industry. Based upon information received by the Commission's legal counsel he strongly suggests that the Commission does not vote for this motion.

Executive Director Zanzuccki asked the Commissioners if they have a proposal on how to distribute the \$10 million because the Commission has to decide and distribute the money before the end of the fiscal year.

Commissioner Keegan recommended the following for the thoroughbred portion:

Atlantic City Race Course	\$600,000 (with the condition to add six days of racing)
Monmouth Park Racetrack	\$2,400,000

Meadowlands Racetrack (thoroughbred) \$2,000,000
No money allocated to the TBA

Commissioner Caputo noted that the suggestion in the submission of the SBOA was that the standardbred money be split 80 - 20. Freehold Raceway indicated that they would direct the \$1,250,000 targeted to Sire Stakes races. Commissioner Abbatiello recommended the following:

Freehold Raceway \$1,250,000
New Meadowlands Racetrack \$3,750,000

Commissioner Caputo amended his previous motion to include the above noted distribution.

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Commissioner Abbatiello seconds the motion. A roll call of the Commissioners indicates the following vote: Commissioner Abbatiello voted yes, Commissioner Aponte voted no, Commissioner Caputo voted yes and Commissioner Keegan voted yes
(ON JUNE 25 , 2012, THE RACING COMMISSION'S ACTION TAKEN ON THIS AGENDA ITEM WAS VETOED BY GOVERNOR CHRIS CHRISTIE.)

CONSIDER PETITIONS FILED BY PERMIT HOLDERS SEEKING A DETERMINATION THAT THE PERMIT HOLDER IS MAKING PROGRESS TOWARD OBTAINING AN OFF-TRACK WAGERING LICENSE AND ESTABLISHING AN OFF-TRACK WAGERING FACILITY PURSUANT TO THE REQUIREMENTS OF N.J.S.A. 5:5-130(B)(1) SUFFICIENT TO ALLOW THE PERMIT HOLDER TO RETAIN ITS SHARE OF OFF-TRACK WAGERING FACILITIES TO BE ESTABLISHED, PROVIDED THE PERMIT HOLDER CONTINUES TO MAKE PROGRESS ON AN ANNUAL BASIS

Executive Director Zanzuccki read the following statement:

On February 23, 2011, the Legislature amended the Off-Track and Account Wagering Act ("Act") with Public Law 2011, chapter 26. This legislation provided that any off-track wagering facility that has not received a license under N.J.S.A. 5:5-133 by January 1, 2012

shall no longer be considered part of a permit holder's share unless the Commission finds that the permit holder is making progress toward obtaining *an* off-track wagering license and establishing *an* off-track wagering facility according to specified benchmarks developed by the commission provided that the permit holder continues to make progress on an annual basis.

At its December 20, 2011 meeting, the Commission established a January 31, 2012 deadline for the submission of petitions by permit holders seeking to retain the rights to off-track wagering facilities within their share that are not licensed by January 1, 2012 by establishing that it is making progress toward obtaining an off-track wagering license and establishing an off-track wagering facility according to the benchmarks adopted by the Commission in N.J.A.C. 13:74-2.1.

However, on January 17, 2012, the Legislature again amended the Act with Public Law 2011, chapter 205, which became effective retroactively to December 31, 2011. This latter legislation amended certain provisions that had been enacted in February 2011. Of particular importance for our purposes today, this legislation provided that each off-track wagering facility that has not received a license on December 31, 2011 shall be subject to a cash deposit, a bond, or an irrevocable letter of credit in the amount of \$1 million which shall be paid to the commission on or before June 28, 2012. The Legislature retained the provision referenced above in N.J.S.A. 5:5-130(b)(1) which states that:

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“if the commission finds that a permit holder is making progress toward obtaining an off-track wagering license and establishing an off-track wagering facility according to specified benchmarks developed by the commission, the commission may allow a permit holder to retain its share of the off-track wagering facilities to be established, provided the permit holder continues to make progress on an annual basis.”

The enactment of this legislation rendered the January 31, 2012 date for the filing of petitions showing progress unnecessary because pursuant to its terms, permit holders, at a minimum, would be able to retain its share of unlicensed off-track wagering facilities until June 28, 2012.

As a result, the Commission notified the permit holders, that the January 31, 2012 deadline was no longer necessary and the Commission requested that any permit holder

seeking to extend its rights to unlicensed off-track wagering facilities beyond June 28, 2012 file its petition detailing the facts upon which the permit holder is relying no later than March 31, 2012. The Commission indicated that compliance with this request will allow the Commission time to evaluate the petitions and make a determination prior to June 28, 2012.

The Commission received petitions from all of the entities which were permit holders at that time. On May 21, 2012, the Commission circulated copies of the petitions it had received among: the New Jersey Sports and Exposition Authority; Freehold Raceway; Greenwood ACRA; New Meadowlands Racetrack, LLC; Darby Development, LLC; New Jersey Thoroughbred Horsemen's Association; Standardbred Breeders and Owners Association of New Jersey and the Thoroughbred Breeders' Association. The Commission indicated that it was circulating the petitions to allow the other permit holders and the horsemen's organizations to submit written comments regarding these petitions to the Commission on or before June 5, 2012. The only submissions received by the Commission, dated June 5, 2012, were filed on behalf of Freehold and ACRA.

The petitions received by the Commission are summarized as follows:

New Meadowlands Racetrack, LLC petition dated January 31, 2012.

New Meadowlands Racetrack, LLC filed two petitions with the Commission by letter dated January 31, 2012 and by letter dated April 3, 2012. NMR submitted the January 2012 petition to provide the Commission with an overview of the progress being made by NMR

toward obtaining an OTW license and establishing the OTW facility located at Route 440 and 5th Street Connector, Bayonne, New Jersey. In the petition, NMR has provided the Commission with a true and accurate copy of all agreements it references.

By way of background, NMR references the Racetrack Ground Lease Agreement, dated December 19, 2011, between NMR and the NJSEA which provided for NMR's lease and operation of the Meadowlands Racetrack. Contemporaneously with the execution of the Ground Lease, the NJSEA agreed to assign to NMR the right to develop and operate four of its nine OTW facilities. The Bayonne OTW facility was included as one of these four OTW facilities.

NMR asserts that it has made progress toward obtaining the license and establishing the Bayonne OTW facility consistent with the benchmarks promulgated by the Commission in N.J.A.C. 13:74-2.4 and, as a result, the Commission should allow NMR to retain its share of the Bayonne OTW facility.

NMR points out that it is the current permit holder for the Meadowlands Racetrack and it has made an application to obtain the license for the Bayonne OTW facility. It indicates that in its petition, NMR has demonstrated that the facility is in a suitable location, has obtained a leasehold interest in the property for a period of not less than 5 years and has obtained sufficient financial resources for the design, construction development and other costs necessary to establish the Bayonne OTW facility and begin operation.

NMR has provided the Commission with a copy of a detailed project development budget, a copy of an Escrow Agreement NMR entered into with the NJSEA and Wells Fargo Bank, N.A., as escrow agent, to fund into escrow - amounts equal to the projected cost of construction of the Bayonne OTW and documentation evidencing that as of the date of the petition, NMR has satisfied all funding requirements.

Finally, NMR included documentation in its petition intended to demonstrate to the Commission that the operational capacity and market feasibility of the Bayonne OTW facility will benefit the New Jersey horse racing industry. NMR provided the Commission with a copy of the Market Analysis for NJSEA, dated February 10, 2011; a Bayonne OTW Income Statement prepared by NMR detailing the projected revenues and expenses through the year 2020; and a Table of Organization detailing the key individuals and the proposed staffing necessary to operate the Bayonne OTW facility.

Based upon the information and documentation submitted in its January 2012 petition, NMR submits that it has complied with the requirements in N.J.S.A. 5:5-130.

New Meadowlands Racetrack, LLC petition dated April 3, 2012.

In its April 3, 2012 petition, NMR asserts that it has satisfied the standards set forth in N.J.S.A. 5:5-130(b)(1) for demonstrating that it has made progress towards establishing the three “Remaining OTW Facilities” which the NJSEA transferred to NMR. N.J.S.A. 5:5-130(b)(1) states that:

“a permit holder shall be deemed to have made progress toward establishing its share of off-track wagering facilities, and shall not be subject to a cash deposit or be required to post a bond or irrevocable letter of credit as set forth in this section, if it has entered into an agreement, in connection with good faith negotiations over the sale or lease of a racetrack under the permit holder's control, to transfer allocated off-track wagering licenses or facilities to an individual or entity that is a bona fide prospective purchaser or lessee....”

NMR includes true and accurate copies of all of the documents it references in the petition.

NMR once again references the Racetrack Ground Lease Agreement, dated December 19, 2011, between NMR and the NJSEA which provided for NMR's lease and operation of the Meadowlands Racetrack. In the April petition, NMR indicates that on the same date, NMR and the NJSEA entered into an “Off-Track Wagering Agreement” which set forth the terms and conditions governing the proposed assignment of the NJSEA's rights to four OTW licenses to NMR. In accordance with this Agreement, as well as the Transfer of Rights and Assumption of Obligations under the Participation Agreement, dated March 15, 2012, (effective December 19, 2011), the NJSEA's ownership, operation and economic interests in the four OTW facilities and licenses have been transferred to NMR.

Based upon the information and documentation submitted in its April 2012 petition, NMR submits that it satisfies the standards set forth in N.J.S.A. 5:5-130(b)(1), quoted above, which allows it to retain its rights to the three unlicensed OTW facilities within its share without being subject to a cash deposit or being required to post a bond or irrevocable letter of credit. NMR indicates that it meets this standard because the NJSEA and NMR have

entered into an agreement, in connection with the lease of the NJSEA's racetrack, to transfer three of the NJSEA's allocated off-track wagering licenses or facilities to NMR

which is bona fide lessee of the racetrack. NMR acknowledges that if permitted to retain its three OTW facilities without deposit, bond or letter of credit, NMR must continue to make progress on an annual basis.

Freehold Raceway Off-Track, LLC Petition, dated March 29, 2012.

By letter dated March 29, 2012, a petition was filed on behalf of Freehold Raceway Off-Track, LLC ("FROT") to retain its rights to three off-track wagering facilities to be established in Bordentown, Maple Shade and Middlesex County. In the petition, FROT indicates that it has complied with the Commission's benchmarks set forth in N.J.A.C. 13:74-2.1(h)(2)(i)(2). First, FROT points out that in compliance with N.J.A.C. 13:74-2.1(h)(2)(i)(2)(A), it has identified suitable locations for the three unlicensed OTW facilities within its share at 183 US Highway 130, Bordentown New Jersey; 2834 Route 73 North, Maple Shade, New Jersey; and 257 Route 18, East Brunswick, New Jersey.

Second, regarding the proposed Bordentown, FROT indicates that it is in compliance with N.J.A.C. 13:74-2.1(h)(2)(i)(2)(C) because its parent, Pennwood Racing, Inc., has entered into a letter of intent with 130 Crabco Realty, NJ, LLC to acquire a 10-year lease for the property with two optional 5-year extensions. FROT submitted a copy of the executed letter of intent which is dated November 18, 2011.

Regarding the proposed Maple Shade location, FROT indicates that it is also in compliance with N.J.A.C. 13:74-2.1(h)(2)(i)(2)(C) because Penn NJ OTW, LLC, a wholly-owned subsidiary, has entered into a letter of intent with Kimco Realty Corporation to acquire a 10-year lease for the property with two optional 5-year extensions. In its petition, FROT submitted a copy of the executed letter of intent which is dated December 27, 2011. The proposed Maple Shade location was also the subject of a letter petition, dated December 28, 2011, that was filed with the Commission by Penn National Gaming Inc. which confirms the information set forth in FROT's March 2012 petition.

Regarding the proposed East Brunswick location, FROT indicates that Pennwood Racing, Inc. submitted a proposed letter of intent to the owner of the property on December 28, 2011 to acquire a 10-year lease with two optional 5-year extensions but the property owner chose to accept an offer to purchase the property from a different entity instead. In its petition, FROT submitted a copy of the proposed letter of intent. FROT indicates that it is currently working with Davis Commercial Real Estate to identify suitable real estate in Middlesex County. The proposed East Brunswick location was also the subject of a letter petition, dated December 30, 2011, that was filed by FROT.

Third, FROT points out that N.J.A.C. 13:74-2.1(h)(2)(i)(2)(B), which requires that the permit holder demonstrate that it has entered into an agreement for a payment in-lieu-of taxes with the local municipality within which the proposed off-track wagering facility is to be located, is inapplicable because FROT will lease and not purchase the above-referenced properties.

In its petition, FROT also asks the Commission to consider, generally, other activities which demonstrate its progress. FROT indicates that it has retained the services of several professionals in the legal, design and consulting areas to assist in the development of its Bordentown, Maple Shade and Middlesex County OTW facilities and it has retained an architect who has prepared schematic floor plans for the Bordentown facility which FROT included with its petition. FROT points out that it is an existing OTW licensee which will help expedite the licensure process for the three proposed OTW facilities. In addition, FROT indicates that it can fund the development of the Bordentown, Maple Shade and Middlesex County OTW facilities without any outside financing source.

Finally, FROT states that no other entity could license, construct and operate a new OTW facility in Burlington, Camden, Mercer, Gloucester and portions of Ocean and Middlesex counties faster than it can and it asserts that the exemption of FROT's Bordentown, Maple Shade and Middlesex County OTW facilities from forfeiture or the posting of security is in the best interests of racing.

Freehold Raceway Off-Track, LLC Petition, dated June 5, 2012.

By letter dated June 5, 2012, FROT supplemented its petition with an affidavit of its President. Citing its licensed and operating OTW facility in Toms River, New Jersey, FROT asserts that it has made substantial progress toward obtaining an OTW license and establishing an OTW facility and that pursuant to N.J.S.A. 5:5-130(b)(1), FROT may therefore retain its share of OTW facilities to be established. FROT also points out that it has established 25% of its share of OTW facilities and in doing so, it has established a greater percentage of its share than any original share holder other than ACRA Turf Club, LLC.

ACRA Turf Club, LLC Petition, dated March 29, 2012.

By letter dated March 29, 2012, a petition was filed on behalf of **ACRA Turf Club, LLC (“ACRA”)** to retain its rights to an off-track wagering facility to be established at 6055

Black Horse Pike, Egg Harbor Township, New Jersey. In this petition, ACRA indicates that it has complied with the Commission's benchmarks set forth in N.J.A.C.

13:74-2.1(h)(2)(i)(2). First, ACRA points out that in compliance with N.J.A.C. 13:74-2.1(h)(2)(i)(2)(A), it has identified a suitable location for the proposed Egg Harbor OTW facility.

Second, ACRA indicates that it is in compliance with N.J.A.C. 13:74-2.1(h)(2)(i)(2)(C) because its owner, Greenwood ACRA, Inc., has entered into a letter of intent with 130 Crabco Realty, NJ, LLC to acquire a 10-year lease for the property with two optional 5-year extensions. ACRA submitted a copy of the executed letter of intent which is dated November 18, 2011.

Third, ACRA points out that N.J.A.C. 13:74-2.1(h)(2)(i)(2)(B), which requires that the permit holder demonstrate that it has entered into an agreement for a payment in-lieu-of taxes with the local municipality within which the proposed off-track wagering facility is to be located, is inapplicable because ACRA will lease and not purchase the Egg Harbor property.

In its petition, ACRA also asks the Commission to consider, generally, other activities which demonstrate its progress. ACRA indicates that it has retained the services of several professionals in the legal, design and consulting areas to assist in the development of the proposed OTW facility and it has retained an architect who has prepared schematic floor plans for the proposed Egg Harbor facility which ACRA included with its petition. ACRA points out that it is an existing OTW licensee which will help expedite the licensure process for the proposed OTW facility. ACRA also indicates that it can fund the development of the proposed OTW facility without any outside financing source.

Finally, ACRA points out that it has developed, licensed and is operating 50% of its OTW allocation and states that no other entity could license, construct and operate a new OTW facility in Atlantic, Cumberland, Cape May or Salem counties faster than it can. ACRA asserts that the exemption of the ACRA Egg Harbor OTW facility from forfeiture or the posting of security is in the best interests of racing.

ACRA Turf Club, LLC Petition, dated June 5, 2012.

By letter dated June 5, 2012, ACRA supplemented its petition with an affidavit of Greenwood ACRA, Inc. Citing its licensed and operating OTW facility in Vineland, New Jersey, ACRA asserts that it has made substantial progress toward obtaining an OTW license and establishing an OTW facility and that pursuant to N.J.S.A. 5:5-130(b)(1), ACRA may therefore retain its share of OTW facilities to be established. ACRA also points out

that it has established 50% of its share of OTW facilities and in doing so, it has established a greater percentage of its share than any original share holder.

New Jersey Sports and Exposition Authority Letter Petition, dated May 10, 2012.

By letter dated May 10, 2012, the NJSEA submitted the following facts for the consideration of the Commission. In this letter, Ralph J. Marra, Jr., Esq., Senior Vice President, Legal and Government Affairs, reported that the NJSEA executed a lease agreement for the Meadowlands Racetrack with NMR on December 23, 2011 which provides for the transfer of four of the NJSEA's OTW licenses to NMR which immediately began construction on the Bayonne OTW facility and that the expected opening date for this OTW facility is the first week of July 2012.

Mr. Marra also reported that the NJSEA executed a lease agreement with the New Jersey Thoroughbred Horsemen's Association for Monmouth Park in a transaction which closed on May 3, 2012. Mr. Marra indicated that pursuant to the lease agreement, the NJSEA agreed to transfer five of its OTW licenses, including the license for the Woodbridge OTW facility, to the NJTHA and that the NJTHA has agreed to benchmarks for the build-out of the additional OTWs. Mr. Marra indicated thus, the NJSEA can advise the Commission of its significant success so far in its plan to attract private investment for the build-out of its OTW allotment and that the Authority expects to report further progress in the near future.

New Jersey Thoroughbred Horsemen's Association Petition, dated May 10, 2012.

Finally, by letter dated May 10, 2012, John H. Forbes, President of the New Jersey Thoroughbred Horsemen's Association referenced the fact that the NJTHA is the new lessee of Monmouth Park and that as part of the deal, it received the rights to four OTW facilities, in addition to the Woodbridge OTW facility. Pointing out that the NJTHA was not a lessee or permit holder until the Commission conditionally approved its applications on May 3, 2012, Mr. Forbes filed the petition to satisfy the requirements under the OTW law in order to preserve the THA's ability to construct OTWs in the future.

Applicable Benchmarks For Determining Progress

As discussed above, pursuant to N.J.S.A. 5:5-130(b)(1), any OTW facility that has not received a license by December 31, 2011, shall be subject to the deposit requirements

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unless the Commission determines that the permit holder is making progress toward obtaining an off-track wagering license and establishing an off-track wagering facility according to specified benchmarks developed by the Commission. Upon a permit holder's demonstration of such progress, the Commission may allow a permit holder to retain its share of the OTW facilities to be established provided that the permit holder continues to make progress on an annual basis.

On May 20, 2011, through a special adoption procedure specifically authorized by the Legislature, the Commission adopted amendments to N.J.A.C. 13:74-2.1 and 2.2 (which was recodified as 2.3) and new rules N.J.A.C. 13:74-2.2 and 2.4 which set forth the benchmarks required by the legislation. The specially-adopted amendments and rules were published in the New Jersey Register on June 20, 2011 at 43 N.J.R. 1445(a).

Pursuant to Public Law 2011, chapter 26, the specially-adopted amendments and new rules, which were effective for a period not to exceed 180 days, were scheduled to expire on November 16, 2011. However, this expiration date was extended by 180 days to May 14, 2012, pursuant to N.J.S.A. 52:14B-5.1c, because the Commission timely filed a Notice of Proposal to Readopt the Specially-Adopted Amendments and New Rules with the Office of Administrative Law prior to the original November 16, 2011 expiration date. This Notice of Proposal to Readopt was published at 44 N.J.R. 42(a) on January 3, 2012 and the 60-day comment period closed on March 3, 2012. In meeting these filing deadlines, the Commission's goal was to consider the comments filed in connection with this proposal, and if appropriate, to readopt the specially-adopted amendments and new rules prior to their expiration on May 14, 2012.

In addition to rendering the January 31, 2012 deadline for petitions showing progress unnecessary, the enactment of Public Law 2011, chapter 205 on January 17, 2012 resulted in further administrative complications. The specially-adopted amendments and new rules, which the Commission proposed for readoption in the January 3, 2012 New Jersey Register, were promulgated in accordance with Public Law 2011, chapter 26. The subsequent statutory amendments rendered parts of these rules inconsistent with law, thus necessitating legal review and redrafting of certain provisions in these previously-adopted amendments and

new rules as well as the proposal of new rules and amendments to implement the changes in law. As a result, the Commission was unable to meet its goal to readopt the specially-adopted amendments and new rules prior to their expiration.

However, it is important to note that at the time the petitions were filed with the Commission, the Commission's rules and the benchmarks set forth therein were duly-promulgated, effective rules.

The following comments were received from the industry:

Dennis Dowd, on behalf of the SBOA, made comments indicating his belief that he does not believe the Freehold and Atlantic City permit holders have demonstrated good progress toward establishing an off-track wagering facility. He indicated that his clients have visited the proposed locations identified by Freehold and Atlantic City and argued that these locations are not suitable for OTW facilities.

Thomas Luchento, on behalf of the SBOA, indicated that the horsemen are willing to open an off-track wagering facility in Bordentown, New Jersey and he feels that Freehold and Atlantic City permit holders are not making substantial progress in moving forward with off-track wagering facilities.

Michael Schottland, Esq. objected to any extension in regard to the petitions submitted by Freehold and Atlantic City and advanced arguments, including legal arguments, as to why the Commission should not find that Freehold and Atlantic City have made progress. He asserted that these permit holders have failed to meet the Commission's benchmarks and that they have not established that they have made aggressive progress.

John Pellechia, Esq., on behalf of Atlantic City and Freehold, stated that the Commissioners have the facts and the permit holders are in compliance with the law and should be recognized that these facts have met the criteria as a demonstration of progress.

Christopher McErlean, stated that Pennwood Racing continues to work with the respective landlords, however, they are troubled by the statutory changes so their ability to go forward has been stymied. He indicated that Pennwood has made good faith efforts and intend to pursue opportunities.

Joe Wilson, on behalf of Atlantic City, stated that they have secured a commitment for an off-track wagering facility and he believes the location is suitable.

John Forbes, President of the NJTHA, voiced concern for the need to establish off-track wagering facilities in that the OTWs provide revenue to fund purses. He cited the progress the NJTHA has already made in establishing its share of OTW facilities.

Commissioner Aponte made the following motion:

In considering the petitions filed by the permit holders, the Commission must first consider the issue of the applicable benchmarks. In filing these petitions, certain permit holders referenced and relied on the applicable benchmarks set forth Commission's rules. At the time of filing these petitions, these rules were valid and still in effect. The petitioners' reliance upon these duly-promulgated benchmarks is reasonable, appropriate and warranted. The Commission has proposed the readoption of these benchmarks. Although these benchmarks expired prior to their readoption, fundamental fairness and the basic tenants of administrative due process dictate that the Commission uniformly apply the administrative standards in effect when these petitions were filed.

For these reasons, I move, as part of this motion, that the Commission consider the petitions before it in accordance with the benchmarks set forth in N.J.A.C. 13:74-2.1(h).

1. First, let's turn to the petition filed by New Meadowlands Racetrack, LLC demonstrating its progress in establishing the Bayonne OTW facility. In its petition, NMR establishes its clear dedication in connection with the Bayonne OTW facility. Upon entering into the numerous agreements reached in connection with its lease of the Meadowlands Racetrack and the assignment of the right to develop, license and operate four of the NJSEA's nine OTW facilities, NMR acted expeditiously to obtain sufficient financial resources for the design, construction development and other costs necessary to establish the Bayonne OTW facility and begin operation. NMR immediately began construction on the Bayonne OTW facility and, as a result, the expected opening date for this OTW facility is the first week of July 2012. I think that NMR should be commended for its clear dedication to the horse racing industry in this State and hope that other permit holders follow Jeffrey Gural's example.

In its petition, NMR establishes its compliance with the benchmarks set forth in N.J.A.C. 13:74-2.4. These benchmarks, which actually apply to determinations as to whether a permit holder continues to make progress on an annual basis, require compliance with standards that are more stringent than those applicable NMR's retention of its rights to the Bayonne facility.

First, as discussed in the summary of the record before the Commission, the deposit requirements in N.J.S.A. 5:5-130(b)(1) apply to any facility that has not received a license under N.J.S.A. 5:5-133 on December 31, 2011. The Bayonne OTW facility was licensed prior to this date.

However, NMR's petition in connection with the Bayonne facility is understandable because of the statutory language N.J.S.A. 5:5-130(b)(1) which requires that a permit holder subject to the participation agreement shall have made progress since the signing of that agreement toward establishing its share of the 15 OTW facilities. Because the Bayonne OTW facility is part of NMR's share, NMR therefore filed its petition to establish the progress it has made in connection with that facility.

Second, as NMR correctly points out in its April 2012 petition, NMR qualifies for the exemption set forth in N.J.S.A. 5:5-130(b)(1) from the deposit requirements because the NJSEA and NMR have entered into an agreement, in connection with the lease of the Meadowland's racetrack, to transfer the Bayonne OTW facility to NMR which is bona fide lessee of the racetrack.

For these reasons, I move, as part of this motion, that the Commission determine that NMR shall not be subject to the deposit requirements of N.J.S.A. 5:5-130 in connection with the Bayonne OTW facility.

2. Let's now turn to the April 2012 petition filed by NMR demonstrating its progress in establishing the three remaining OTW facilities within its share. In its petition, NMR correctly cites and applies the statutory provision in N.J.S.A. 5:5-130(b)(1). As set forth above, this provision N.J.S.A. 5:5-130(b)(1) mandates that:

“a permit holder shall be deemed to have made progress toward establishing its share of off-track wagering facilities, and shall not be subject to a cash deposit or be required to post a bond or irrevocable letter of credit ... if it has entered into an agreement, in connection with good faith negotiations over the sale or lease of a racetrack under the permit holder's control, to transfer allocated off-track wagering licenses or facilities to an individual or entity that is a bona fide prospective purchaser or lessee...”

As we have already pointed out, NMR meets this standard because of its lease agreement with the NJSEA and the Authority's transfer of three of its allocated off-track wagering licenses or facilities to be established to the bona fide lessee of the racetrack.

FOR THESE REASONS, I MOVE, as part of this motion, that the Commission determine that NMR shall not be subject to the deposit requirements of N.J.S.A. 5:5-130 in connection with the three remaining OTW facilities within its share.

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The Commission takes this opportunity to remind NMR that in order to retain the rights to these three remaining OTW facilities, NMR must comply with the requirements of the statute and continue to make progress on an annual basis.

Next, let us address the NJTHA's petition regarding the four unlicensed OTW facilities within its share. The NJTHA also qualifies for a determination pursuant to N.J.S.A. 5:5-130(b)(1) that it has made progress toward establishing its share of four off-track wagering facilities and it shall not be required to make a cash deposit or post a bond or irrevocable letter of credit. The NJTHA meets this standard because it has entered into an agreement with the NJSEA, in connection with its lease of Monmouth Park, for the transfer of four of the NJSEA's allocated off-track wagering licenses or facilities to the NJTHA which is bona fide lessee of the racetrack. The NJTHA's petition is supplemented and supported by the NJSEA's May 10, 2012 letter summarized above.

For these reasons, I move, as part of this motion, that the Commission determine that the NJTHA shall not be subject to the deposit requirements of N.J.S.A. 5:5-130 in connection with the four OTW facilities within its share.

In order to retain the rights to these four OTW facilities, the NJTHA must, of course, comply with the requirements of the statute and continue to make progress on an annual basis.

3. Now, let us consider Freehold Raceway Off-Track, LLC's petition to retain its rights to the three off-track wagering facilities within its share. In its petition, FROT sets forth facts and documentation which establish that it has complied with each of the applicable benchmarks that were promulgated by the Commission in the specially-adopted amendments to N.J.A.C. 13:74-2.1. If a permit holder has not been involved in an agreement for the sale or lease of a racetrack and the related transfer of the racetrack's allocated OTW licenses or facilities as provided for in N.J.A.C. 13:74-2.1(h)(2)(i)(1), the permit holder must demonstrate to the Commission that it has complied with the benchmarks set forth in N.J.A.C. 13:74-2.1(h)(2)(i)(2).

These benchmarks require that the permit holder must demonstrate that (A) it has identified a suitable location for the proposed off-track wagering facility; (B) it has entered into an agreement with the local municipality for a payment in-lieu-of taxes; **and** (C) it has complied with one of the following four factors: the permit holder has either (I) obtained fee title ownership of the proposed property; (II) obtained a leasehold interest in the proposed property for a period of not less than five years; (III) entered into an option agreement with a property owner to acquire either (I) or (II) above; or (IV) executed a letter

of intent with the current property holder in sufficient detail to demonstrate the material factors of a purchase or lease or agreement.

As detailed in the summary of the petitions filed with the Commission, FROT has demonstrated compliance with these benchmarks. In establishing (A), FROT has identified suitable locations for two of the three of OTWs in its share. FROT documented its attempt to obtain a suitable location for its third OTW in East Brunswick, however, its proposed letter of intent to acquire a 10-year lease for the property with two optional 5-year extensions was ultimately rejected.

FROT's failure to identify a suitable location for the third OTW facility does not undermine its demonstration of progress. N.J.S.A. 5:5-130(b)(1) clearly states that "if the commission finds that a permit holder is making progress toward obtaining **an** off-track wagering license and establishing **an** off-track wagering facility according to specified benchmarks developed by the commission, the commission may allow a permit holder to retain its share of the off-track wagering facilities" Here, FROT has identified suitable locations for two of the OTW facilities within its share.

Regarding the benchmark in (B), FROT correctly points out that an agreement for a payment in-lieu-of taxes with the local municipality within which the proposed off-track wagering facilities are to be located, is unnecessary because FROT will lease and not purchase the above-referenced properties.

Finally, in establishing its compliance with (C)(IV), FROT provided the Commission with documentation of an executed letter of intent with 130 Crabco Realty, NJ, LLC to acquire a 10-year lease with two optional 5-year extensions for the Bordentown location. FROT also provided the Commission with documentation of an executed letter of intent with

Kimco Realty Corporation to acquire a 10-year lease for the property with two optional 5-year extensions for the Maple Shade location.

For these reasons, I move, as part of this motion, that the Commission determine that FROT has demonstrated its compliance with the benchmarks in N.J.A.C. 13:74-2.1(h)(2)(i)(2) and that FROT shall, therefore, not be subject to the deposit requirements of N.J.S.A. 5:5-130 in connection with the three OTW facilities within its share.

As it has done with the permit holders addressed above, the Commission reminds FROT that in order to retain the rights to these three OTW facilities, FROT must comply with the requirements of the statute and continue to make progress on an annual basis.

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4. Finally, let us address ACRA Turf Club, LLC's petition to retain its rights to the one off-track wagering facility within its share. In its petition, ACRA sets forth facts and documentation which establish that it has complied with each of the applicable benchmarks promulgated by the Commission in N.J.A.C. 13:74-2.1(h)(2)(i)(2). In establishing (A), ACRA has identified a suitable locations for the proposed OTW facility in Egg Harbor, New Jersey. Regarding the benchmark in (B), ACRA also correctly points that this benchmark is inapplicable because it will lease and not purchase the proposed property. Finally, in establishing its compliance with (C)(IV), ACRA provided the Commission with documentation of an executed letter of intent with 130 Crabco Realty, NJ, LLC to acquire a 10-year lease with two optional 5-year extensions for the proposed property.

For these reasons, I move, as part of this motion, that the Commission determine that ACRA has demonstrated its compliance with the benchmarks in N.J.A.C. 13:74-2.1(h)(2)(i)(2) and that ACRA shall, therefore, not be subject to the deposit requirements of N.J.S.A. 5:5-130 in connection with the OTW facility within its share.

The Commission reminds ACRA, of course, that in order to retain the rights to this OTW facility, ACRA must comply with the requirements of the statute and continue to make progress on an annual basis.

This concludes my motion.

There was no second to the Commissioner's motion. The Executive Director asked if a Commissioner would second the motion so that the motion could be discussed. Commissioner Abbatiello seconded the motion and a discussion ensued concerning evidence of good faith progress being made by the permit holders. The issues discussed included the lack of progress certain permit holders have made since the enactment of the Off-Track and Account Wagering Act numerous years ago. Concerns were raised that a finding of progress would allow some of the permit holders to continue to do nothing in developing their share of their OTWs. The application of progress benchmarks promulgated by the Commission for determining whether a permit holder has "made progress" in connection with the \$1 million deposit required were discussed. It was pointed out to the Commission that if they find at the meeting that the permit holders have made progress that the permit holders must "continue to make progress on an annual basis" in accordance with the Commission's benchmarks currently set forth in N.J.A.C. 13:74-2.4(b). The Executive Director reminded the Commissioners that they have been provided with legal advice in executive session on this issue and asked the Commissioners if they wish to adjourn to executive session.

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Commissioner Aponte motioned to move into executive session to obtain legal advice. Commissioner Abbatiello seconded the motion and all Commissioners voted yes. The Commission then convened to executive session.

Commissioner Aponte made a motion to reconvene to public session. Commissioner Caputo seconded the motion and the public session continued.

Commissioner Aponte amended his motion to include the condition that the four permit holders shall submit written monthly progress reports to the Executive Director and that the permit holders shall return to the Commission in six months in order for the Commission to evaluate the progress made on the facilities as contained in the progress reports. Commissioner Caputo recommended establishing a sub-committee to review the progress.

Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE NEW MEADOWLANDS RACING, LLC, TO ACQUIRE THE BAYONNE OFF-TRACK WAGERING FACILITY LICENSE, A

RACING-RELATED INTEREST OF THE NEW JERSEY SPORTS AND EXPOSITION AUTHORITY (“AUTHORITY”)

Stephen Pearlman, Esq., on behalf of the New Meadowlands LLC, addressed the Commission. He indicated that the Bayonne City OTW facility will have an opening date of July 10 and the Commissioners are invited to a walk-through of the facility on July 2, 2012.

Commissioner Caputo made the following motion:

Through its application, NMRLLC seeks the license to operate the Bayonne City OTW facility, which license is now held by the Authority. As my fellow Commissioners know, while this is the first application of NMRLLC for an OTW license, a conditional license has already been issued to the Authority for the Bayonne City facility. NMRLLC, through this application, seeks an assignment of the Authority’s license, which assignment is part of the overall NMRLLC-Authority racing-related transaction.

At the public meeting of December 20, 2011, this Commission determined that NMRLLC, as well its principal Jeffrey Gural, were qualified in all respects to hold the harness racing permit for the Meadowlands Racetrack. Although we did not then consider or approve the assignment of the license, we did approve a design change plan for the facility the previous month, at our public meeting on November 30, 2012.

In connection with this matter, the Racing Commission's investigative unit conducted an investigation. The Commission received and considered the application, related materials, the results of the investigation, and considered testimony here today. The Commission also consulted with legal counsel as appropriate.

I believe that NMRLLC, pursuant to N.J.A.C. 13:74-6.1, has confirmed and demonstrated through its application, by clear and convincing evidence, that: the plan and specifications for the proposed off-track wagering facility, including its size, seating capacity, parking and services to be provided reflects appropriate standards of quality; and that plan and specifications of the facility promote maximum comfort and safety for patrons and efficient operation of the facility, as well as viewing simulcast races by patrons in a comfortable manner, which is not obtrusive to the additional amenities offered.

I believe that the Commission's investigation, and what we heard hear today, demonstrates that NMRLLC is qualified to hold the OTW license applied for. I would note that, during the period of its licensure as the permit holder for the Meadowlands Racetrack, no noteworthy derogatory event has occurred with regard to the permit holder. In fact, the transition of the racetrack permit, from the Authority to NMRLCC, occurred in a seamless manner.

With regard to its intended opening and operation of the Bayonne City OTW facility, NMRLLC has indicated that it intends to use certain of its existing staff, some of whom are former employees of the Authority and were instrumental in making the Woodbridge OTW facility a success, to insure that the Bayonne OTW opens and operates smoothly and without complication. I further understand that any new employees, or NMRLLC agents, will obtain a Racing Commission license before beginning to work at or in connection with the facility.

Accordingly, I conclude that Mr. Jeffrey Gural and NMRLLC have established by clear and convincing evidence that: NMRLLC and its presently licensed employees, to be utilized at or in connection with the Bayonne OTW facility, are qualified in all aspects to hold the license applied for; that the assignment of the Bayonne City OTW license to it will not be

inimical to the best interests of the public and the horse racing industry in this state; and that all of the requirements of the “Off-Track and Account Wagering Act” and the

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Commission’s rules have been met, including that NMRLLC has satisfied the participation agreement requirement criteria of the Act. I therefore believe that approval of this request of NMRLLC is warranted. I thus move that the application of NMRLLC be conditionally approved consistent with the “Off-Track and Account Wagering Act” and Title 13, Chapter 74 of the Commission’s rules. This approval, which includes NMRLLC’s ability to participate in account wagering at the facility upon its opening, is subject to the following conditions:

- 1) that the Commission’s action is subject to review and approval of the Attorney General. NMRLLC may not receive a transfer of the Bayonne OTW license, or related rights, until and unless the Attorney General favorably reviews and approves this determination in writing;
- 2) as the facility has not yet opened, and as it cannot therefore be said that its actual operation is within our rule structure, approval would be subject to our continuing investigation;
- 3) that all conditions applicable to the Authority’s Bayonne City OTW issued license, as set forth in the Commission’s Order of November 23, 2009, with the exception of condition #10, shall equally apply to NMRLLC, and if NMRLLC believes that any such conditions should not apply, it must seek to have those conditions removed through written application to the Executive Director;
- 4) that the Racing Commission is not at this time approving any other matter anticipated in the Authority-NMRLLC transaction, relating to any future rights that NMRLLC may have with regard to the New Jersey Off-Track wagering system. The Racing Commission’s decision is limited to the Bayonne City OTW facility, and particularly, the assignment of the operational and financial rights to the Bayonne OTW consistent with the Authority-NMRLLC transaction; and
- 5) the conditional relief granted shall be subject to compliance with all laws, rules, and directives of the Racing Commission which may be implicated.

This, my fellow Commissioners, concludes my motion.

Commissioner Aponte seconded the motion and all Commissioners voted yes.

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Stephen Pearlman, Esq. thanked the Commission and requested that since the matter is subject to the Attorney General's approval, the Commission expediously forward the order to the Attorney General's office in order that the opening dates can be met.

CONSIDER THE REQUEST OF THE NEW MEADOWLANDS RACETRACK, LLC TO AMEND THE 2012 STANDARD BRED RACING SCHEDULE

Commissioner Keegan motioned to approve the cancellation of August 18, 2012 due to a preseason football game and another race date will be scheduled at a later time. Commissioner Aponte seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE NEW JERSEY ACCOUNT WAGERING TO OFFER ONLINE DEPOSITING THROUGH PINPOCKET, LLC

Commissioner Aponte motioned to approve the request of the New Jersey Account Wagering system to offer PinPocket, LLC, subject to the New Jersey Account Wagering being required to update its internal control documentation to include all necessary items related to this agreement, and provide its account holders with policies and procedures related to the services to be provided by PINPocket. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

AGENDA ITEMS FOR DISCUSSION AND INFORMATION

Executive Director Zanzuccki acknowledge receipt of audited financial statements for the period ending December 31, 2011, for the Thoroughbred Breeders' Association, the Standardbred Breeders' and Owners' Association and the Thoroughbred Horsemen's Association.

There being no further discussion or comments from the public, Commissioner Aponte moved that the meeting be adjourned. Commissioner Keegan seconded the motion and it was approved unanimously.

ATTEST:

Frank Zanzuccki, Executive Director