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AMENDED ORDER OF THE NEW JERSEY RACING COMMISSION

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

WHEREAS, the New Jersey Racing Commission ("Racing Commission"), on October 2, 2012, received from the New Jersey Sports & Exposition Authority ("Authority"), together with a request for Racing Commission approval thereof, a copy of an "account wagering management agreement" ("management agreement") between the Authority, Darby Development, LLC ("Darby"), and the two tenants of the Authority's racetrack properties, New Meadowlands Racetrack, LLC ("NMRLLC") and the New Jersey Thoroughbred Horsemen's Association, Inc. ("NJTHA").



WHEREAS, on November 14, 2012, the Authority filed a formal petition with the Racing Commission as concerns this matter, through which it proposed to appoint Darby to manage the day-to-day affairs and business of the New Jersey account wagering system, pursuant to the management agreement.

WHEREAS, the following industry groups ("industry groups") were provided with a copy of the Authority's petition and related filings, and were each afforded the opportunity to submit written filings with the Racing Commission, as well as to comment orally at the Racing Commission public meeting where this matter was to be heard: each party to the management agreement [that is, the Authority, Darby, NMRLLC and NJTHA]; each party to the New Jersey "account wagering participation agreement" [that is, the Authority and New Jersey Account Wagering, LLC ("NJAW")].

WHEREAS, the Racing Commission investigated the matter subject of the Authority's petition, including the qualifications of Darby to serve as manager of the account wagering system.

WHEREAS, this matter was scheduled for consideration by the Racing Commission, at a public meeting on November 28, 2012, which meeting was rescheduled to November 30, 2012.

WHEREAS, this matter was considered by the Racing Commission, at a public meeting on November 30, 2012, with the following Racing Commissioners in attendance: Anthony T. Abbatiello, Manny E. Aponte, Peter J. CoFrancesco, III, Pamela J. Clyne, and Francis X. Keegan, Jr.

WHEREAS, following the receipt of testimony, and oral comment from the Authority and each industry groups who elected to provide oral comment, and from members of the public, Racing Commissioner Francis X. Keegan, Jr., at the November 30, 2012, public meeting of the Racing Commission, made the following motion:

This motion addresses the Petition filed by the New Jersey Sports & Exposition Authority ("Authority") seeking Racing Commission approval of the appointment of Darby Development, LLC ("Darby") to manage the day-to-day affairs and business of the account wagering system, pursuant to a management agreement entered into by the Authority and Darby, as well as the racetrack property tenants of the Authority, the New Jersey Thoroughbred Horsemen's Association, Inc. ("NJTHA") and New Meadowlands Racetrack, LLC ("NMRLLC").

In considering this matter, the Racing Commissioners were provided with the written submissions of the Authority, NMRLLC, NJTHA and New Jersey Account Wagering, LLC ("NJAW"). The Commissioners also received the results of staff's investigation, as concerns the proposed management agreement, which investigation was supplemented as a result of the proceedings today. We have heard and relied on the parties' answers to the questions we asked today. The Commission further consulted with the Racing Commission's legal counsel as appropriate.

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

Let me first address the general nature of the Authority's Petition which seeks, for the first time since the inception of account wagering in 2004, our approval to appoint a manager to operate the account wagering system. To date, the Authority has functioned, not only as the account wagering license holder, but also as the manager of the system. This is because the legislature, in enacting the Off-Track and Account Wagering Act, specifically at N.J.S.A. 5:5-128, declared

that "the Authority, by virtue of its experience in the operation of parimutuel wagering facilities and other entertainment projects in this State, is particularly well-suited to ensure the fiscal soundness and technical reliability of an account wagering system...." Notwithstanding this declaration, the legislature, through N.J.S.A. 5:5-140c, allowed for the Authority to appoint a manager for the system. I read these statutes as an indication from the legislature that, when account wagering was first introduced to New Jersey, its newness required the expertise of the Authority to get it going smoothly and efficiently in this State, which I believe the Authority has certainly, and to its credit, accomplished. Had the Authority made a request to turn over the management function to another shortly after the introduction of account wagering in our State in 2004 or 2005, I would have fully objected to the request in light of the described legislative declaration within N.J.S.A. 5:5-128. This is because, I believe, that to read that statute and N.J.S.A. 5:5-140c logically and consistently, this Commission must find that the Authority has done its job in effectively implementing account wagering in this state. In other words, we must find that the transition from the Authority to a management company is being proposed at a point in time consistent with the ability for the account wagering system to run smoothly and without disruption.

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

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

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

Although the Authority and its racetrack lessees, the NJTHA and NMRLLC, each support the Authority's request, I have paid much attention to the concerns of the NJAW in not only objecting to the Authority's request, but also objecting to the Racing Commission's present consideration of this matter from a procedural perspective. In terms of the latter, I have reviewed the Racing Commission Executive Director's letter on the subject, dated November 21, 2012, which was distributed to the industry parties. I believe that the

Executive Director's letter clearly disposes of NJAW's concerns, and I find that the Commission may properly consider this matter today. With regards to NJAW's substantive concerns, while I find that the Commission action I propose here is entirely consistent with law, and that many of NJAW's concerns are private contractual disputes not appropriate for resolution by this Commission, I do wish to particularly address NJAW's allegation that Darby is presented with a conflict of interest by functioning as the management company for the NJTHA racing concerns, while at the same time functioning as the management company for the account wagering system.

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

would appear prudent for the Commission to impose a condition directed toward preventing a true conflict from arising. As part of this motion, I will therefore propose a condition in this area.

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

- 1) In connection with this approval, and notwithstanding that Darby is licensed by the Racing Commission with regard to its role as the management company for the racing-related interests of racetrack permitholder NJTHA , Darby, within fourteen (14) days of the date of this approval, shall apply for and secure a separate license with the Racing Commission with regard to its role as management company for the account wagering system. As Darby is presently licensed by the Racing Commission, and as Darby has been determined by the Racing Commission as part of its present approval to be qualified for such additional licensing as the management company for the account wagering system, this licensing requirement shall not preclude Darby from immediately assuming its duties pursuant the management agreement.
- 2) Each employee of Darby, who shall perform functions pursuant to Darby's management responsibilities with regard to the account wagering system, unless presently licensed by the Racing Commission, shall within seven (7) days secure a license from the Commission. Any person who Darby intends to employ with regard to the account wagering system (unless presently licensed by the Commission), prior to assuming such duties on behalf of Darby, shall first be licensed by the Racing Commission.
- 3) Within seven (7) days, in writing to the Racing Commission, Darby shall designate the name and title of any employee or non-employee agent (person or entity) of Darby, performing any functions for or on behalf of it in connection with its management of the account wagering system. This filing shall include, but not be limited to, any persons or entities acting on behalf of Darby who, prior to the effectiveness of the management agreement, performed the same or similar functions for the Authority as manager of the account

wagering system. Darby shall be obligated to revise this written filing with the Racing Commission, and thereby keep it current, on a continual basis.

- 4) As the account wagering licensee, the NJSEA shall maintain sufficient oversight responsibilities over Darby as concerns Darby's management of the account wagering system.
- 5) The Authority will not choose any replacement director for its seats on the Account Wagering Project Operating Board until after that Board makes its recommendation regarding the selection of the account wagering platform provider to Darby.
- 6) Darby shall provide the Commission with a detailed written bi-monthly status report, by the first of each month due, with the first report being due February 1, 2013, reporting on significant developments (both positive and negative) concerning the account wagering system.
- 7) Darby shall immediately notify the Racing Commission, in writing and through its Executive Director, of any significant event or occurrence which could negatively impact the continued operation of any aspect of the account wagering system.
- 8) In the event there is a change in the compensation, either directly or indirectly, to be provided to Darby, or to any other person or entity, in connection with Darby's assuming and/or performing the role of management company with regard to the account wagering system, the Darby shall notify the Racing Commission in writing before entering into any such compensation agreement and before any such compensation is paid.
- 9) Darby shall be responsible for the regulatory requirements and conditions previously imposed upon the Authority, as concerns the particular functions being assumed by Darby as a result of the management agreement. If Darby is of the view that any of these conditions should not apply, Darby must make written application to the Racing Commission Executive Director for such conditions to be removed.

- 10) Darby, as authorized by N.J.A.C. 13:74-4.2e, shall be responsible for the Racing Commission costs associated with its investigation, review and conditional approval of this matter.
- 11) The parties to the management agreement, including the Authority and Darby, shall cooperate with the Racing Commission's continuing investigation into this matter, and each shall cooperate with the Racing Commission in all account wagering related investigations and matters.
- 12) Any 2013 totalisator provider to the account wagering system, and any platform provider to the account wagering system, shall not be permitted to perform such responsibilities unless first licensed by the Racing Commission consistent with the rules of the Commission.
- 13) Darby shall adopt meaningful written internal control procedures or guidelines relating to its management function with regard to the account wagering system which shall include procedures or guidelines directed toward ensuring that no actual conflict of interest arises as a result of Darby also functioning as management company with regard to the NJTHA's racing concerns. A copy of these procedures or guidelines shall be filed with the Racing Commission no later than February 1, 2013.

WHEREAS, the aforesaid motion of Racing Commissioner Francis X. Keegan, Jr., was unanimously acted upon favorably by the Racing Commission, subject to the stated conditions.

WHEREAS, on December 6, 2012, the Racing Commission issued the following order with conditions.

WHEREAS, on February 17, 2015, the Appellate Division issued its decision in IMO Order of the New Jersey Racing Commission Approving New Jersey Sports and Exposition Authority's Application for Approval of an Account Wagering Management Agreement, Docket Nos. A-2194-12T1 and A-2352-13T1 (App. Div. 2015) and ordered that the Racing Commission modify this order.

WHEREAS, the Racing Commission voted at its March 18, 2015 public meeting to amend this Order consistent with the Appellate Division's decision.

IT IS THEREFORE ORDERED THAT the application of the Authority, to appoint Darby to manage the day-to-day affairs and business of the account wagering

system, pursuant to the management agreement entered into by the Authority and Darby, as well as the racetrack property tenants of the Authority, NMRLLC and the NJTHA, is approved subject to the following conditions:

- 1) Notwithstanding that Darby is licensed by the Racing Commission with regard to its role as the management company for the racing-related interests of racetrack permit holder NJTHA, Darby, within fourteen (14) days of the date of this approval, shall apply for and secure a separate license with the Racing Commission with regard to its role as management company for the account wagering system. As Darby is presently licensed by the Racing Commission, and as Darby has been determined by the Racing Commission as part of its present approval to be qualified for such additional licensing as the management company for the account wagering system, this licensing requirement shall not preclude Darby from immediately assuming its duties pursuant to the management agreement.
- 2) Each employee of Darby, who shall perform functions pursuant to Darby's management responsibilities with regard to the account wagering system, unless presently licensed by the Racing Commission, shall within seven (7) days secure a license from the Commission. Any person who Darby intends to employ with regard to the account wagering system (unless presently licensed by the Commission), prior to assuming such duties on behalf of Darby, shall first be licensed by the Racing Commission.
- 3) Within seven (7) days, in writing to the Racing Commission, Darby shall designate the name and title of any employee or non-employee agent (person or entity) of Darby, performing any functions for or on behalf of it in connection with its management of the account wagering system. This filing shall include, but not be limited to, any persons or entities acting on behalf of Darby who, prior to the effectiveness of the management agreement, performed the same or similar functions for the Authority as manager of the account wagering system. Darby shall be obligated to revise this written filing with the Racing Commission, and thereby keep it current, on a continual basis.
- 4) As the account wagering licensee, the NJSEA shall maintain sufficient oversight responsibilities over Darby as concerns Darby's management of the account wagering system.

- 5) The Authority will not choose any replacement director for its seats on the Account Wagering Project Operating Board until after that Board makes its recommendation regarding the selection of the account wagering platform provider to Darby.
- 6) Darby shall provide the Commission with a detailed written bi-monthly status report, by the first of each month due, with the first report being due February 1, 2013, reporting on significant developments (both positive and negative) concerning the account wagering system.
- 7) Darby shall immediately notify the Racing Commission, in writing and through its Executive Director, of any significant event or occurrence which could negatively impact the continued operation of any aspect of the account wagering system.
- 8) In the event there is a change in the compensation, either directly or indirectly, to be provided to Darby, or to any other person or entity, in connection with Darby's assuming and/or performing the role of management company with regard to the account wagering system, the Darby shall notify the Racing Commission in writing before entering into any such compensation agreement and before any such compensation is paid.
- 9) Darby shall be responsible for the regulatory requirements and conditions previously imposed upon the Authority, as concerns the particular functions being assumed by Darby as a result of the management agreement. If Darby is of the view that any of these conditions should not apply, Darby must make written application to the Racing Commission Executive Director for such conditions to be removed.
- 10) Darby, as authorized by N.J.A.C. 13:74-4.2e, shall be responsible for the Racing Commission costs associated with its investigation, review and conditional approval of this matter.
- 11) The parties to the management agreement, including the Authority and Darby, shall cooperate with the Racing Commission's continuing investigation into this matter, and each shall cooperate with the Racing Commission in all account wagering related investigations and matters.