

**NEW JERSEY RACING COMMISSION
WEDNESDAY, MAY 13, 2015
“LIBRARY ROOM”
MONMOUTH PARK
OCEANPORT, NEW JERSEY**

A meeting of the New Jersey Racing Commission was held on Wednesday, May 13, 2015, in the Library Room, located at Monmouth Park, in Oceanport, New Jersey.

The following were present:

Pamela J. Clyne, Chairman
Anthony T. Abbatiello, Commissioner
Manny E. Aponte, Commissioner (by phone)
Michael J. Arnone, Commissioner
Anthony G. DePaola, Commissioner
David C. Gruskos, Commissioner
Francis X. Keegan, Jr., Commissioner
Peter T. Roselle, Commissioner (by phone)
Frank Zanzuccki, Executive Director
DAG Todd Wigder
DAG Susan C. Sharpe

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 Meetings Act,” and as per the requirements of the statute, notification of this meeting has been filed with the Secretary of State and with the following newspapers: Daily Racing Form, Bergen Record, Asbury Park Press, Courier-Post and the Newark Star Ledger.

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

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

1. Legal advice concerning the application, and the comments filed thereupon, of the New Jersey Thoroughbred Horsemen's Association, Inc. for the Pilot Program license pursuant to N.J.A.C. 13:74B-2.4.
2. Legal advice concerning the approval of an order directing all undistributed purse money accumulated at Atlantic City Race Course to be paid to the NJTHA, as the holder of thoroughbred racing permits, for use as thoroughbred purses.
3. Legal advice, pursuant to N.J.S.A. 5:5-189, considering the request of the NJTHA, as permit holder, and NJTHA, as horsemen's association, to utilize the total amount of the undistributed purse money accumulated at Atlantic City Race Course to fund assessments for the thoroughbred workers' compensation insurance coverage as provided in N.J.S.A. 34:15-134.
4. Legal advice concerning the request of the Thoroughbred Breeders' Association of New Jersey for approval of a revised Incentive Award Program for 2015.
5. Legal advice concerning the petition of Greenwood Racing, Inc. for approval of its corporate reorganization.
6. Legal advice concerning the approval of the NJSEA's petition to modify the Account Wagering Management Agreement, dated October 1, 2012, to provide that Darby shall act as the NJSEA's agent in accordance with the Appellate Division's decision: IMO Order of the New Jersey Racing Commission Approving the NJSEA's Application for Approval of an Account Wagering Management Agreement, Docket No. A-2194-12T1 and A-2353-13T1 (February 17, 2015) to provide that Darby shall act as the NJSEA's agent as ordered by the court.
7. Legal advice concerning the New Jersey Thoroughbred Horsemen's Association 2015 Budgets (2.9% Statutory and .06% Public Purpose).

8. Legal advice concerning the advertisement for public comment in the New Jersey Register of the readoption with amendment of the Racing Commission's rules for Casino Simulcasting which appear as Chapter 72 of Title 13 of the New Jersey Administrative Code and which are due to expire on May 22, 2015.
9. Legal advice concerning the matter of Pedro Granville v. NJRC, OAL Docket No. RAC 11817-2014S.
10. Legal advice concerning the following:
 - (a) Consider the matter of Alvin Callahan v. NJRC, OAL Docket No. RAC 05328-2014N, Marvin Callahan v. NJRC, OAL Docket No. RAC 05333-2014N and John Hollingsworth v. NJRC, OAL Docket No. RAC 05336-2014N.
 - (b) Consider the request of Alvin Callahan, Marvin Callahan and John Hollingsworth to rescind the stays previously granted in the above matter.
11. Other legal advice and/or status of pending litigation.

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

It was noted that Commissioner Aponte and Commissioner Roselle and DAG Todd Wigder are participating by telephone.

Commissioner Abbatiello motioned to adopt the resolution to adjourn. Chairman Clyne seconded the motion. The Commission then adjourned to Executive Session.

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

CONSIDER APPROVAL OF THE MINUTES OF THE PUBLIC AND EXECUTIVE SESSIONS OF THE MARCH 18, 2015 COMMISSION MEETING

Commissioner Abbatiello made a motion to approve the public and executive minutes of the May 13, 2015 public meeting. Commissioner Gruskos seconded the motion and all Commissioners voted yes.

CONSIDER RATIFICATION OF THE FOLLOWING HANDICAPPING CONTESTS:

- a) The New Meadowlands Racetrack's World Harness Handicapping Championship Super Qualifier conducted on Saturday, April 11, 2015;
- b) The New Meadowlands Racetrack's World Harness Handicapping Championship conducted on Saturday, April 25, 2015; and
- c) The New Meadowlands Racetrack's \$10,000 Championship Invitational handicapping Contest conducted on Saturday, May 9, 2015;
- d) Monmouth Park's Simulcast Series Challenge conducted on Saturday, April 11, 2015.

Chairman Clyne made a motion to approve ratification of the noted handicapping contests. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER RATIFICATION OF THE APPROVAL GRANTED TO THE NEW MEADOWLANDS RACETRACK AND FREEHOLD RACEWAY TO UNCOUPLE COMMON OWNER ENTRIES IN ANY RACE THAT REQUIRES AN ENTRY FEE, I.E., STAKES, EARLY CLOSERS AND LATE CLOSERS, REGARDLESS OF PURSE

Commissioner Keegan motioned to approve the request of the New Meadowlands Racetrack and included Freehold Raceway in the request to uncouple common owner entries in any race that requires an entry fee. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE NEW MEADOWLANDS RACETRACK FOR APPROVAL TO CANCEL LIVE RACING ON SATURDAY, FEBRUARY 21, 2015

Commissioner Keegan motioned to approve the request of the New Meadowlands Racetrack to cancel live racing on February 21, 2015. Commissioner Gruskos seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF FREEHOLD RACEWAY TO RESCHEDULE TWO OF THE THREE WEATHER-RELATED RACE DAYS PREVIOUSLY CANCELED TO BE RACED ON FRIDAY, MAY 22, 2015 AND SATURDAY, MAY 23, 2015

Commissioner Abbatiello motioned to approve the request of Freehold Raceway to reschedule two race days to be conducted on May 22 and May 23, 2015. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE APPLICATION, AND THE COMMENTS FILED THEREUPON, OF THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC. FOR THE PILOT PROGRAM LICENSE PURSUANT TO N.J.A.C. 13:74B-2.4

Executive Director Zanzuccki introduced the matter by stating that, in July 2014, the New Jersey Thoroughbred Horsemen's Association filed a Pilot Program license application with the Commission to acquire the license to establish one electronic wagering terminal at Jamie's Cigar Bar and Restaurant, which is located at 915 Bloomfield Avenue, Clifton, New Jersey. The record before the Commission is voluminous and only certain portions of it will be highlighted.

The NJTHA takes the position that the establishment of the Pilot Program will enable it to offset the operation costs of Monmouth Park and supplement thoroughbred purses in New Jersey. The NJTHA states that the establishment of the Pilot Program will benefit the entire horse racing industry in New Jersey, as it will attract new bettors by placing wagering terminals in locations where wagering could not previously occur. It maintains that the Pilot Program will bring new bettors to the State's racetracks, particularly New Meadowlands Racetrack ("NMR"), due to its proximity to Jamie's.

Pursuant to N.J.A.C. 13:74B-2.4(a), the applicants must demonstrate their suitability for licensure by clear and convincing evidence. The NJTHA's oversight of the Pilot Program will mirror the oversight it currently maintains over the operation of its other licensed interests. Darby Development LLC will manage the Pilot Program and routinely

apprise NJTHA management of developments, progress and issues. It will also request Board meetings as necessary. The NJTHA and Darby are well known to the Commission and staff's investigation has not resulted in any derogatory information that would contraindicate licensure.

The NJTHA, through Darby, has contracted with Jamie's as host location for the first proposed Pilot Program wagering terminal. Jamie's is a New Jersey corporation owned by James S. Finkle, Sr. and James S. Finkle, Jr. It is a full-service, high quality restaurant serving an extensive lunch and dinner menu with alcoholic beverages and cigar smoking services in the restaurant and bar. The Pilot Program terminal will be located in the bar area in direct sight of the managing bartender on duty. Eight members of Jamie's managerial staff will have involvement with the Pilot Program and each of these employees will apply to the Commission for the appropriate licenses. Staff's investigation has not resulted in any derogatory information that would contraindicate licensure.

The NJTHA has entered into a Joint Venture Agreement with Darby and Social Gaming Technologies, Inc. to provide the electronic wagering terminal service. SGTI is a private Delaware corporation. It provides simulcast services and account deposit wagering platforms through a self-serve, teller-less wagering terminal called a kiosk. The kiosk consists of a single computer which controls all wagering access and patron interaction. The kiosk communicates with Sportech's hub computer in New Jersey and with SGTI's main database server via secure connections. SGTI will train the employees at Jamie's to operate and maintain the kiosk.

The kiosk has the ability to accept and disburse cash, print vouchers and race programs, scan state-approved forms of identification, and transmit simulcast live horse races from around the world in accordance with the rules of each jurisdiction. To wager, patrons must become SGTI members through the submission and verification of personal information conducted directly at the kiosk. ID must include government-issued photo identification. Members are required to swipe a member card and enter a PIN.

The kiosk has the capacity to deploy slave tablets which allow additional access to wagering patrons. Each tablet exists on a closed loop system where all wagering transactions are directly connected to the kiosk computer. If the kiosk computer shuts down, or if a tablet is taken outside of the preset wagering area, the tablet is rendered useless.

The kiosk can be fully monitored and controlled remotely. In the event of equipment failure, SGTI will dispatch personnel to resolve the issue. SGTI will employ an individual located in New Jersey for this purpose. A toll-free telephone number is provided

for customer service and dispute resolution. SGTI advised that most issues can be resolved remotely. Staff's investigation has not resulted in any derogatory information that would contraindicate licensure.

By letter, I informed all permit holders, off-track wagering licensees and horsemen's associations of the selected location for the Pilot Program venue and the date the Commission would consider the application at a public meeting. I also informed them that they have the opportunity to submit written comments to the Commission which are limited, by rule, to the issue of whether the grant of a license for the establishment of electronic wagering terminals at the selected venue "would be inimical to the interests of a planned or existing racetrack, off-track wagering facility, or simulcasting facility in this State."

The Commission received comments filed by NJTHA, as permit holder and Pilot Program applicant, and joint comments filed by ACRA Turf Club, LLC ("ACRA") and Freehold Raceway Off Track ("FROT"). I circulated copies of these comments to the industry and the Commission received further comments filed on behalf of ACRA, FROT and the NJTHA. These three entities have also asked to comment verbally here today. All of the written comments are part of the record.

ACRA and FROT have asked the Commission to "table the NJTHA's application, stay the implementation of the Pilot Program Act regulations, or simply deny the application." ACRA and FROT take the position that their request has met the factors set forth in Crowe for granting a stay as well as the requirements of N.J.A.C. 13:70-1.39 which authorizes the Commission to waive specific provisions of its rules.

In support of this request, ACRA and FROT point out that last year, the Commission stayed the OTW benchmarks pending resolution of ACRA Turf Club v. Zanzuccki by the federal court. They ask the Commission to stay any action on the Pilot Program application until this litigation is fully resolved.

ACRA and FROT assert that a stay must be granted because it will preserve the status quo and avoid further litigation. They argue that the issuance of a Pilot Program license would impair their constitutional rights. They also argue that granting a stay will allow the NJTHA to save money it might otherwise lose if the federal court declares the Pilot Program unconstitutional. Finally, ACRA and FROT argue that a stay should be granted because the NJTHA have not met the regulatory criteria set forth in the Commission's rules.

The NJTHA opposes the stay request. It argues that the criteria for waiving the Commission's rules have not been met and that ACRA and FROT have failed to meet the well-established factors set forth in Crowe which govern stay requests. The NJTHA argues that the grant of a Pilot Program license will not divide the industry. If the Pilot Program is successful, the entire industry benefits. If it is unsuccessful, none of the industry members suffer harm except for the NJTHA. The NJTHA adds that unlike the statute requiring progress in establishing OTWs, the statute which created the Pilot Program does not take away any rights.

Finally, the NJTHA points out that to date, ACRA and FROT have been unsuccessful in convincing the federal court that the Pilot Program Act violates their constitutional rights. The NJTHA urges the Commission to move forward on its application for a license.

The Commission has been provided with all of the arguments on both sides of the issue. The Commission also had the opportunity for legal advice earlier today in Executive Session. This matter is now open for public discussion. ACRA, FROT and the NJTHA have all asked to comment verbally on the stay request, and it is up to the Racing Commission if you wish to grant that. Staff recommends that you do grant that request, but based on the size of today's agenda we would ask that we limit comments to no more than five minutes per party.

Chairman Clyne made a motion to consider verbal comment on the issue of the stay request. Commissioner Keegan seconded the motion and all Commissioners voted yes to consider verbal comment.

Kellen Murphy, Esq., of Riker, Danzig, on behalf of ACRA and FROT, stated that our position is clearly set forth in the letters submitted to the Commission on April 27 and May 1. He added that one of the concerns is the proximity to an operating racetrack and the precedent that it sets by having a Pilot Program established so close. The second comment Mr. Kellen stated is the statute requires there be a geographic proximity criteria under N.J.S.A. 5:5-186, and the actual regulation at N.J.A.C. 13:74B-2.3 doesn't have a standard or criteria, rather it has considerations so they take the position that the regulation itself does not comply with the actual statutory requirement. Mr. Murphy asked that the Commission grant a stay pending the outcome of this pending litigation.

Christina Harvey, Esq. of Lomurro, Munson, Comer, Brown & Schottland, on behalf of the NJTHA asked that the Commission deny the stay and grant the NJTHA's application. She stated that the Legislature envisioned an experiment to help the industry and the NJTHA has developed the Pilot Program at Jamie's to attract new bettors so that they can expand the industry. In addition, she stated under the Pilot Program scheme, everyone will receive a portion of the revenue similar to that of an OTW so there is no harm to any of the industry members. Under the regulation, Mr. Murphy pointed out that there was a proximity issue, however, Ms. Harvey pointed out the regulation specifically advises the Commission to look at who is objecting and whether or not the other parties consent or take no position. In the documents submitted by the NJTHA, Ms. Harvey stated the New Meadowlands Racetrack, the closest in proximity, had actually consented by agreement and they did not take a formal position so under the regulation, the NJTHA would argue that this factor should be used to deny the stay and also to support a grant of their application.

Ms. Harvey further stated that the Legislature saw the slow progress to develop OTWs and saw the Pilot Program as a smaller scale to see if revenue can be obtained outside of state subsidies. In the federal litigation, as noted by Mr. Zanzuccki, the ACRA and FROT have been unsuccessful in obtaining an injunction and a determination that the Pilot Program violates their constitutional rights.

Ms. Harvey noted that while Jamie's is in close proximity mileage-wise to the New Meadowlands Racetrack, it is actually beneficial to the racetrack in that if people are turned on to being new bettors to this industry, then they will want to visit the racetrack. Finally, Ms. Harvey indicated that under the N.J.A.C. 13:70-1.39, you cannot waive when there is a specific regulation on point, and the Pilot Program comments today should be limited to whether the application is inimical to the interest of an actual OTW or raceway and the party has not met that burden because ACRA or FROT is not the New Meadowlands Racetrack and that racetrack has actually consented.

Dennis Drazin, Esq. stated that the litigation that referenced will most likely be appealed to the Third Circuit Court of Appeals and may not have a decision for years so if the Commission was inclined to grant a stay. He suggested that ACRA and FROT be required to post a bond so that they if are ultimately wrong, there would be bond a for the horsemen to collect against.

Commissioner Grusko made a motion to deny the stay. Commissioner Keegan seconded the motion and all Commissioners voted yes.

Executive Director Zanzuccki stated that the Commission must now consider the NJTHA's application for the Pilot Program license. Regarding the NJTHA's application for the Pilot Program license, ACRA and FROT take the position that the Commission must deny the NJTHA's application for the Pilot Program license because the NJTHA has not satisfied the applicable regulatory criteria. They complain that Jamie's is only 2.8 miles away from NMR and it only takes 11 minutes to travel between the two facilities. They also complain that Jamie's is only 13.9 miles from the Bayonne OTW and it takes 30 minutes to travel there. Based upon this information, ACRA and FROT conclude that "NMR and the Bayonne OTW facility will inevitably lose patrons to, and be detrimentally impacted by, the Clifton facility."

ACRA and FROT point out that the NJTHA "has failed to provide any wagering data or a market analysis of the impact of the Clifton facility on the surrounding racetracks, off-track wagering facilities, or simulcasting facilities." They argue the NJTHA "has failed to provide a plan for attracting a new wagering population."

Pointing out that only two OTWs have been opened in northern New Jersey, ACRA and FROT assert that "[t]he establishment of a Pilot Program facility at the Clifton Facility will only further delay the opening of any such OTW facility in North Jersey, by further saturating the off-track wagering market and making the opening of additional non-Pilot Program OTW facilities less profitable and less attractive." According to ACRA and FROT, "even with only one terminal, significant sums of money may be wagered at the Clifton Facility, some of which may have otherwise been wagered at NMR or the Bayonne OTW facility." ACRA and FROT do not accept the NJTHA's representation that it is establishing only one wagering kiosk and they believe that the NJTHA is "attempting to open another, competing off-track wagering facility at the Clifton facility." They argue that "once a Pilot Program license is granted, the NJTHA will be able to establish up to a total of 20 terminals at the Clifton Facility, without further approval from the NJRC." To remedy this possibility, ACRA and FROT suggest that the Commission's order should expressly limit the number of wagering terminals at Jamie's to one.

In its comments, the NJTHA takes issue with ACRA and FROT's assertion that the Pilot Program application is "dividing the industry." Pointing out that ACRA and FROT have no interest in the Pilot Program area in northern New Jersey, the NJTHA faults ACRA and FROT for improperly attempting to raise issues which can only be raised by NMR. NMR did not file comments. The NJTHA does not agree that NMR and the Bayonne OTW will lose patrons to Jamie's and notes that Jamie's is actually located 8 miles -- not 2.8 miles -- away from NMR. The NJTHA adds that the close proximity to NMR may prove to be a benefit "because once a bettor learns to love the sport, he or she will travel to a larger facility where the bettor can experience live racing." The NJTHA asserts ACRA and FROT's claims that the Pilot Program will saturate the OTW market are unsupported and have no basis in reality.

First the Commission must determine whether the location of the selected venue would be inimical to the interests of a planned or existing racetrack, off-track wagering facility, or simulcasting facility in this State. The rules require the Commission to consider 6 geographic proximity and impact criteria:

Two factors are the distance in miles between the proposed selected venue and the racetrack, off-track wagering facility, or simulcasting facility and the time it takes to travel there. In comments filed by ACRA and FROT, they assert that the Pilot Program location is 2.8 miles away from NMR and that it takes 11 minutes to travel between them. The NJTHA states that they are 8 miles apart. Research conducted by Commission staff on Google Maps and Mapquest indicated various routes ranging from 5.75 miles through 7.9 miles which could take anywhere from 9 minutes through 20 minutes, depending on traffic.

Regarding the nearest OTW, ACRA and FROT state that the Pilot Program location is 13.9 miles from the Bayonne OTW and that it takes 30 minutes to travel between them. Research conducted by staff indicated various routes ranging from 19.4 miles through 22.4 miles which could take from 41 minutes through 49 minutes, depending upon traffic.

Next, the Commission must consider any available wagering data or market analyses evaluating the wagering population, its saturation, and the wagering draw areas in proximity to the racetrack, off-track wagering facility, or simulcasting facility in proximity to the proposed selected venue. None have been submitted by the applicants.

The Commission must also consider any proposed plans intended to attract a new wagering population and whether the racetrack, off-track wagering facility, or simulcasting facility in proximity to selected venues opposes, consents, or takes no position regarding the licensure of the selected venues. Although ACRA and FROT clearly object, NMR, which also holds the license for the Bayonne OTW, did not file any comments either supporting or opposing the selected venue.

Finally, the Commission must consider any other information relevant to the impact that pari-mutuel wagering through electronic wagering terminals at a proposed selected venue may have on the interests of a planned or existing racetrack, off-track wagering facility, or simulcasting facility in this State.

N.J.A.C. 13:74B-2.4 governs the Commission's determination whether to grant or deny a license. Pursuant to 2.4(a), the Commission must refuse to issue a license "if it finds that the pilot program applicant has failed to demonstrate its suitability for licensure by clear and convincing evidence."

2.4(b) requires the Commission to deny a license if, in the opinion of the Commission, the issuance would be inimical to the interests of a planned or existing racetrack, OTW or simulcasting facility – even if the selected venue has otherwise met all other criteria.

2.4(c) requires the Commission to deny a license if, in the opinion of the Commission, the applicant or selected venue has not met its burden of establishing the various factors set forth therein which include proof of financial resources sufficient to establish and operate pari-mutuel wagering; appropriately staffed and managed operations; evidence of honesty, competency and integrity; and compliance with all requirements imposed on OTWs by N.J.A.C. 13:74-5.8.

Finally, 2.4(d) provides that the Commission shall refuse to issue a license or renewal of a license if the application and internal control procedures do not provide adequate security to ensure the safety of its patrons and to enhance the integrity of wagering as well as necessary safeguards to ensure that persons under the age of 18 years are unable to wager.

The matter is now before you for consideration. The entire record has been provided to the Commission which has had the opportunity for legal advice earlier in Executive Session. This matter is now open for public discussion. ACRA, FROT and the NJTHA have all asked to comment verbally on the determination as to whether to whether the Commission should issue the Pilot Program license.

Kellen Murphy, Esq. resubmitted the comments that he said before and noted that the NJTHA has not met the market analysis. He then asked the Commission if the license is issued, could the Commission give a time frame as to when the program will go into operation.

Christina Harvey, Esq. stated that the NJTHA has put forth enough evidence to show that the Pilot Program application should go through, that the Legislature envisioned us as an experiment to help the industry and based upon their submissions, it shows that the other OTW permit holders and racetracks have a benefit to the application. It should be noted that the New Meadowlands Racetrack has not filed any objection and under the regulatory criteria, she asks that the Commission grant the application.

Commissioner Abbatiello asked whether Jeff Gural of the New Meadowlands Racetrack does not object to the Pilot Program. Ms. Harvey answered that there has been no opposition and Mr. Gural has consented to the program. Commissioner Abbatiello asked if the New Meadowlands Racetrack is the only permit holder affected by the Pilot Program and Ms. Harvey responded that is correct.

Chairman Clyne read the following motion:

“I move that the Commission grant the Pilot Program license to the NJTHA to establish an electronic wagering terminal in Jamie’s Cigar Bar and Restaurant in accordance with the requirements of the Pilot Program Act, the rules and the Commission’s order. I ask that my fellow Commissioners indicate their agreement with the findings set forth in this motion by voting yes on this motion.

I believe that the applicants have demonstrated their suitability for licensure by clear and convincing evidence. As mentioned in the introduction, the NJTHA and Darby are well known to the Commission. Their suitability for licensure has been continuously demonstrated in their operation of Monmouth Park, the thoroughbred meet at NMR and the Woodbridge OTW. There is no reason to believe that either will falter in establishing and operating the Pilot Program.

Although Jamie’s Cigar Bar is new to the Commission, the applicants have demonstrated, through the application process, that they possess sufficient financial resources to establish and operate the Pilot Program at the selected venue and that it will be appropriately staffed and managed. I believe that the applicants have met the burden imposed on them by rule 2.4(c).

Rule 2.4(d) requires that the NJTHA and Jamie’s demonstrate adequate security to ensure the safety of its patrons as well as the integrity of the wagering that will take place at the selected venue. They must also demonstrate that they have established necessary safeguards that will prevent underage gambling. I believe that they applicants have met this burden.

The Pilot Program terminal will be located in the bar area in direct sight of the managing bartender on duty. Eight members of Jamie’s managerial staff will be trained and have involvement with the Pilot Program. Each of these employees will apply to the Commission for the appropriate licenses. Although the kiosk will have portable tablets, the tablets will be rendered useless if it is taken outside of the preset wagering area in the bar.

To wager, patrons must become SGTI members through the submission and verification of personal information conducted directly at the kiosk. Once completed, a photo of the individual is taken in the kiosk, which is compared to the government-issued photo ID on file for authentication. If verified, the patron is allowed to wager and conduct other related business through the kiosk. If a mismatch is detected, the patron's account is locked and they are provided with directions on how to fix the issue.

The NJTHA has contracted with Social Gaming Technologies, Inc. to provide the electronic wagering terminal service. The kiosk communicates with Sportech's hub computer in New Jersey and with SGTI's main database server via secure connections. SGTI will train the employees at Jamie's in the operation and maintenance of the electronic wagering terminal. The kiosk can be fully monitored and controlled remotely. Most issues can be effectively resolved remotely. However, in the event of equipment failure, SGTI will dispatch personnel to resolve the issue. SGTI has also provided a toll-free telephone number for customer service and dispute resolution. Investigation by Commission staff did not identify any information that would indicate that licensure was not warranted.

Finally, I do not believe that the grant of the Pilot Program license would be adverse to the interests of a racetrack or OTW. I am mindful of the arguments made by ACRA and FROT who actively oppose the issuance of the Pilot Program license. They firmly believe that issuance of the Pilot Program license will further delay the opening of OTWs in northern New Jersey, will saturate the off-track wagering market and make the opening of traditional OTWs less profitable and less attractive. ACRA and FROT argue that even with only one terminal, significant sums of money might be wagered at Jamie's -- money which might otherwise be wagered at New Meadowlands Racetrack or the Bayonne OTW. For the reasons set forth in their comments, ACRA and FROT take the position that the Commission must deny the NJTHA's application for the Pilot Program license.

However, at the same time, another permitholder and OTW licensee asks the Commission to grant the Pilot Program license. The NJTHA takes the position that the Pilot Program will enable it to offset the operation costs of Monmouth Park and supplement thoroughbred purses. The NJTHA believes that the Pilot Program will benefit New Jersey's horse racing industry by attracting new bettors. The NJTHA points out that ACRA and FROT have no interest in northern New Jersey and argues that the close proximity to NMR may prove to be a benefit if Jamie's attracts new bettors who then travel to NMR to bet on live racing. The NJTHA asserts ACRA and FROT's claims that the Pilot Program will saturate the OTW market are unsupported.

I agree with the NJTHA's position that the Pilot Program may benefit the racing industry by attracting new bettors. Based upon the record before us, I do not find that the issuance of the license would be adverse to any planned or existing racetrack or OTW. As the NJTHA points out, the racing industry will benefit if the Pilot Program is successful. If it fails, only the NJTHA will be harmed. With the many challenges before it, our horse racing industry faces an uncertain future. I believe that the Legislature gave New Jersey's racing industry an important opportunity when it created the Pilot Program. The NJTHA is willing to take on that opportunity and accept the risk of failure. Because the applicants have demonstrated all requirements of licensure, I believe the Commission should grant them the license and allow them to move forward.

I also move that the Commission direct the Executive Director to issue an order on the Commission's behalf for the review and approval of the Attorney General as required by the Off-Track and Account Wagering Act. The Executive Director is ordered to select and attach conditions to the Pilot Program license which are consistent with the conditions imposed upon current OTW licensees. As required by the Pilot Program Act, the Executive Director shall inform the Pilot Program licensee that the license is temporary. Subject to application, review and renewal on an annual basis, the Pilot Program license shall expire three years from the date of its initial issuance. The Executive Director shall require the Pilot Program licensee and the selected venue to sign a waiver showing that each of them understands the terms and conditions of the license.

This completes my motion."

Commissioner DePaola seconded the motion and all the Commissioners voted yes with the exception of Commissioner Aponte who abstained.

CONSIDER APPROVAL OF AN ORDER DIRECTING ALL UNDISTRIBUTED PURSE MONEY ACCUMULATED AT ATLANTIC CITY RACE COURSE TO BE PAID TO THE NJTHA, AS THE HOLDER OF THOROUGHBRED RACING PERMITS, FOR USE AS THOROUGHBRED PURSES

Executive Director Zanzuccki stated that at our March 18, 2015 meeting, the Commission tabled its consideration of the undistributed purse monies currently held by Greenwood ACRA as a result of the closure of the Atlantic City Race Course. Greenwood ACRA has notified the Commission that as of April 30, 2015, it is holding \$1,137,319.81 in money statutorily designated for thoroughbred purses as well as \$29,739.25 in uncashed tickets and \$33,766.79 in uncashed vouchers.

Given the closure of the racetrack, it is clear that ACRA cannot use the monies which have been statutorily designated for thoroughbred purses for their intended purposes. Only thoroughbreds raced at Atlantic City, as a result, the purse monies must be used for thoroughbred purses. The NJTHA is the only remaining thoroughbred permit holder in New Jersey. This fact suggests that the only feasible course of action would be for the Commission to order that the purse monies held by Greenwood ACRA be paid to the NJTHA.

Before the Commission does so, it must address what documentation the Commission will require Greenwood ACRA to submit to verify the exact monies in its possession. Although the best documentation would be a full and complete audit conducted by an independent, certified public accountant, this type of audit can be costly. Alternatively, the Commission could consider ordering a full and complete audit conducted by Greenwood ACRA's accountants or ordering that a high-ranking officer of Greenwood ACRA certify the total monies in its possession.

Staff would recommend that the Commission's order: 1) specify the type of accounting Greenwood ACRA must provide; and 2) direct staff to review Greenwood ACRA's accounting to determine compliance and accuracy before requiring that the monies be transferred to the NJTHA.

The Executive Director noted that the uncashed tickets that are being held expire six months from the date of issue and unclaimed cash vouchers expire after three years.

Commissioner Abbatiello asked how the Commission can obtain a true accounting if there is still uncashed tickets. The Executive Director explained that the amount of uncashed tickets will be validated and Greenwood ACRA will certify what the total amount of dollars is outstanding as of a particular date and time.

The Executive Director stated that the Commission can go forward and approve this request to transfer all of the money once the amount of money is known and certified to, either by one of the three methods that staff has provided.

Commissioner Aponte made a motion to approve all undistributed ACRA purse money be paid to the NJTHA subject to Condition No. 2 which is to have their internal accountants provide an audit to the Commission. The Executive Director suggested that Commissioner Aponte amend his motion to include that a high-ranking officer of the corporation certify that the information provided is true and accurate. Commissioner Aponte amended his motion to subject the approval to Condition Nos. 2 and 3. Commissioner DePaola seconded the motion.

At this time, comment was heard from Dennis Drazin, Esq. who asked that the Commission consider the operator's share of the money that ACRA collected from January 1 through January 16, 2015. He indicated the Commission should decide whether to divide it between the industry, give it to retired race horses of both breeds or put it toward Commission regulatory costs. Mr. Drazin took the position that it should not be kept by corporate ownership because they had no ability or authority since they aren't racing to keep that money that was earned in January of 2015. Commissioner Arnone asked what the estimation of that money would be and Mr. Drazin responded that if the accounting that the Commission receives from January 1 through January 16 is the statutory amount, then they are deducting the balance and putting it in their corporate coffers.

Executive Director Zanzuccki indicated that the issue raised by Mr. Drazin was not on the agenda. He stated the issue raised by Mr. Drazin today requires advice from counsel before the Commission can take further action.

Thomas Luchento, President of the NJ SBOA, stated that when Garden State Park closed, both breeds received a share of the undistributed purse money. Executive Director Zanzuccki explained that the Garden State Park facility conducted both breeds of racing, while Atlantic City Race Course is a thoroughbred facility, therefore, the purse money is being directed to the thoroughbred permit holder.

A roll call of the Commissioners revealed that all Commissioners voted yes to approve all undistributed ACRA purse money be paid to the NJTHA subject to ACRA filing an audit by their internal audit team to be certified by a high-ranking officer of the corporation to be accurate and complete.

PURSUANT TO N.J.S.A. 5:5-189, CONSIDER THE REQUEST OF THE NJTHA, AS PERMIT HOLDER, AND NJTHA, AS HORSEMEN'S ASSOCIATION, TO UTILIZE THE TOTAL AMOUNT OF THE UNDISTRIBUTED PURSE MONEY ACCUMULATED AT ATLANTIC CITY RACE COURSE TO FUND ASSESSMENTS FOR THE THOROUGHBRED WORKERS' COMPENSATION INSURANCE COVERAGE AS PROVIDED IN N.J.S.A. 34:15-134

Executive Director Zanzuccki stated that the NJTHA is seeking Commission approval to use the purse monies it will receive from Greenwood ACRA to pay workers' compensation insurance premiums for thoroughbred "horse racing industry employees."

On April 15, 2015, the Commission received a letter request from John Heims, Esq. which was filed on behalf of the NJTHA. Attached to the letter was a revised contractual agreement, which the THA reached with itself, in its dual capacity as thoroughbred permitholder and thoroughbred horsemen's association. Pursuant to the terms of the Agreement, the NJTHA has agreed that all monies received from Greenwood ACRA shall be utilized "for the difference between the actual costs of horsemen's worker's compensation insurance premiums for the calendar year 2016 and the statutory contributions to horsemen's worker's compensation insurance premium costs for the same time period." The Agreement specifies that "[a]ny additional funds shall be utilized for the difference between the actual costs of horsemen's worker's compensation insurance premiums and the statutory contributions to horsemen's worker's compensation insurance premiums costs in successive subsequent years." All monies received from ACRA will be placed in an interest-bearing escrow account held by Darby Development LLC and utilized for the strict purposes identified above. Finally, the Agreement requires that all income and expenditures from the escrow account shall be accounted for pursuant to the applicable statutes and rules.

The NJTHA is seeking the Commission's approval pursuant to N.J.S.A. 5:5-189. This statute states that a permit holder conducting thoroughbred racing may enter into a contractual agreement with the NJTHA to provide that a portion of statutorily designated purse monies will be expended for a use which the Commission approves. The Commission may approve the agreement only if it determines that the new use "directly advances, preserves, and enhances the overall economic well-being of the thoroughbred horse racing industry in New Jersey."

The New Jersey Horse Racing Injury Compensation Board Act expressly allows a percentage of gross overnight purses to be used to pay the costs of workers' compensation insurance. N.J.S.A. 34:15-134(b) specifically authorizes "deductions from gross overnight purses paid to owners, so long as such deductions do not exceed 3% of standardbred purses or 4% of thoroughbred purses, as applicable. . . ." As a result, it appears that this use of purse monies, is consistent with the Act. However, the determination as to whether using the purse monies to pay the workers' compensation premiums "advances, preserves, and enhances the overall economic well-being of the thoroughbred horse racing industry in New Jersey" lies within the Commission's expertise and discretion.

Commissioner Gruskos asked how do the thoroughbred horsemen police the trainers to ensure that all their workers are properly documented and paying their share into the fund. Michael Musto, Executive Director of the NJTHA answered that they verify the number of stalls and request a copy of the trainer's payroll and this allows the THA to determine how

many individuals are employed by a trainer. Executive Director Zanzuccki clarified that thoroughbred trainers do not contribute to the workers' compensation premium. The premium is paid by a 4% deduction in thoroughbred purses, however, this deduction is not sufficient to cover the cost of the premium on an annual basis and this is the reason the THA has elected to utilize the undistributed purse money from ACRA to fund the premium.

The Executive Director indicated that the thoroughbred permit holder must advise the Commission how the use of the statutory purse money to fund the workers' compensation program will advance, preserve and enhance the overall economic well-being of the thoroughbred horse racing industry. Dennis Drazin, Esq. responded that the way that the use of the money enhances and preserves the economic well-being of the thoroughbred industry is that one of the reasons Monmouth Park can attract trainers is because this benefit is offered to the industry. He believes that if the thoroughbred horsemen did not offer this benefit and required the trainers to pay into the premium, some of those trainers would experience a 25 to 30 percent increase in the cost of doing business and may choose to race in another state. This unique program attracts a number of outfits to New Jersey and certainly enhances the thoroughbred racing industry. In regard to the question asked of Commissioner Gruskos, he explained that while the trainers do not contribute to the premium, the insurance carrier reserves the right to do an audit each year and they can explore whether or not they are receiving the proper information. The Executive Director added that the insurance carrier does perform an annual audit and in most cases the program experiences a refund because the calculations used in the beginning of the year to determine payroll may have been overstated.

Commissioner Gruskos made a motion to approve the request of the NJTHA. Commissioner Arnone seconded the motion and all Commissioners voted yes with the exception of Commissioner Roselle who was disconnected from the conference call.

CONSIDER THE REQUEST OF THE THOROUGHBRED BREEDERS' ASSOCIATION OF NEW JERSEY FOR APPROVAL OF A REVISED INCENTIVE AWARD PROGRAM

Executive Director Zanzuccki stated that the TBA is requesting approval to change the Incentive Award Program retroactive to January 1, 2015 and notes that the TBA has indicated that the proposed changes have been approved by the Board of Trustees and were discussed at a general membership meeting without any suggested changes. He stated that the TBA found the revisions necessary from an economic standpoint by ensuring the Program will not experience a shortfall since incentive awards will now be based on a percentage of actual revenue generated.

The Executive Director called upon Michael Campbell, Executive Director of the TBA, to explain to the Commission why these revisions are necessary and why the Committee has decided that it is necessary to pay breeders' incentive awards when their horses compete outside the state of New Jersey. Mr. Campbell stated that it is important to change the program based on the revenue they have because they have experienced a shortfall the last few years and with the closing of the Atlantic City Race Course, the program will lose approximately \$70,000 in revenue and in regard to the out-of-state awards program, with only 71 days of thoroughbred racing in New Jersey, the out-of-state awards will give New Jersey breeders the opportunity to earn money ten months out of the year. He noted that there will be no out-of-state awards earned while there is live racing in New Jersey, but only during the time there is no live racing in the state.

Dennis Drazin, Esq. supported the revisions but had a concern in the event there are claims that arise, he feels it should be the breeders' responsibility as opposed to any other entity such as the racetrack operator, the Commission or the State. His concern is the law requires that a 100% of in-state awards be paid before any out-of-state awards are distributed. The breeders through this decision are taking 15% of the money available for the regular award program and shifting it to an out-of-state award program which, under his view, would not be permitted.

The Executive Director recommended that prior to the Commission acting on this request, the matter be tabled to allow staff to review the legal issue as raised by Mr. Drazin.

Commissioner Arnone motioned to table the item. Commissioner Keegan seconded the motion and all Commissioners voted yes. Commissioner Roselle rejoined the meeting by telephone and voted yes.

CONSIDER THE PETITION OF GREENWOOD RACING, INC. FOR APPROVAL OF ITS CORPORATE REORGANIZATION

The Executive Director stated that Greenwood Racing, Inc. is requesting the Commission to approve its plan for corporate reorganization. The closing date of this transaction, which includes a \$450 million debt restructuring provision is June 2, 2015. The refinancing requires Greenwood Racing, Inc. reorganization be completed before the closing. In summary, the reorganization consists of the creation of two holding companies – ACRA Real Estate Holding Company and NJ Op Holding Company, for Greenwood's New Jersey businesses. The Executive Director pointed out that none of the permits or licenses held by the New Jersey racing operations or off-track wagering facilities in which Greenwood Racing, Inc. has any interest will change ownership, and staff is satisfied based on the investigation and responses to the application that the Commission should approve the reorganization.

Commissioner Aponte made a motion to approve the petition of Greenwood Racing, Inc. Commissioner DePaola seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE NJSEA'S PETITION TO MODIFY THE ACCOUNT WAGERING MANAGEMENT AGREEMENT, DATED OCTOBER 1, 2012, TO PROVIDE THAT DARBY SHALL ACT AS THE NJSEA'S AGENT IN ACCORDANCE WITH THE APPELLATE DIVISION'S DECISION: IMO ORDER OF THE NEW JERSEY RACING COMMISSION APPROVING THE NJSEA'S APPLICATION FOR APPROVAL OF AN ACCOUNT WAGERING MANAGEMENT AGREEMENT, DOCKET NO. A-2194-12T1 AND A-2353-13T1 (FEB. 17, 2015) TO PROVIDE THAT DARBY SHALL ACT AS THE NJSEA'S AGENT AS ORDERED BY THE COURT

Executive Director Zanzuccki stated that based upon advice of counsel, staff is recommending that this matter be tabled.

Chairman Clyne motioned to table the item. Commissioner DePaola seconded the motion and all Commissioners voted yes.

CONSIDER THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION 2015 BUDGETS (2.9% STATUTORY AND .06% PUBLIC PURPOSE)

The Executive Director recommended that this matter be tabled to allow for further discussion between staff and the NJTHA.

Commissioner Abbatiello motioned to table the item. Chairman Clyne seconded the motion and all Commissioners voted yes with the exception of Commissioner DePaola who had briefly left the room.

CONSIDER THE ADVERTISEMENT FOR PUBLIC COMMENT IN THE NEW JERSEY REGISTER OF THE READOPTION WITH AMENDMENT OF THE RACING COMMISSION'S RULES FOR CASINO SIMULCASTING WHICH APPEAR AS CHAPTER 72 OF TITLE 13 OF THE NEW JERSEY ADMINISTRATIVE CODE AND WHICH ARE DUE TO EXPIRE ON MAY 22, 2015

Executive Director Zanzuccki indicated that by law, the Commission's rules expire every seven years. In order for the Casino Simulcasting rules to not lapse, staff is requesting authorization to advertise the readoption for public comment. The Executive Director noted that the proposed readoption does contain amendments which will make the Racing Commission regulations consistent with the regulations of the Division of Gaming Enforcement regulations.

Dennis Drazin, Esq. inquired if the recent passage of the law regarding a casino's ability to negotiate directly with the out-of-state racetracks result in the Commission amending its rules regarding that issue. The Executive Director responded that the change in law does not need to be addressed in this readoption.

Commissioner Arnone made a motion to propose the readoption of Chapter 72. Chairman Clyne seconded the motion and all Commissioners voted yes with the exception of Commissioner Roselle who was disconnected from the conference call.

CONSIDER THE MATTER OF PEDRO GRANVILLE V. NJRC, OAL DOCKET NO. RAC 11817-2014S

Chairman Clyne motioned to adopt the OAL Initial Decision which upheld the Board of Stewards' decision to order a 15-day license suspension and \$500 fine on the license of trainer Pedro Granville for violation of the trainer responsibility requirements. Commissioner Keegan seconded the motion and all Commissioners voted yes including Commissioner Roselle who had returned to the conference call.

CONSIDER THE MATTER OF ALVIN CALLAHAN V. NJRC, OAL DOCKET NO. RAC 05328-2014N, MARVIN CALLAHAN V. NJRC, OAL DOCKET NO. RAC 05333-2014N & JOHN HOLLINGSWORTH V. NJRC, OAL DOCKET NO. RAC 05336-2014N

Executive Director Zanzuccki stated standardbred trainers Alvin and Marvin Callahan violated several regulations including conduct detrimental to racing, intent of medication rules, trainer responsibility requirements, possession of drug or drug instruments, and conspiracies. Both Alvin and Marvin Callahan were issued a five-year suspension and \$5,000 fine. John Hollingsworth who was licensed as a groom also was found in violation of several rules which include conduct detrimental, trainer responsibility, and conspiracy and he was issued a one-year suspension and \$1,000 fine. The penalties were appealed by the parties and the matters were transmitted to the OAL. The Commission is now in receipt of an Initial Decision which upheld the penalties issued to Alvin and Marvin Callahan and upheld the one-year suspension issued to John Hollingsworth but reduced the fine to \$250. The matter is now before the Commission to reject, accepted or modify.

Commissioner DePaola motioned to adopt the decision of the OAL. Chairman Clyne seconded the motion and all Commissioners voted yes with the exception of Commissioner Roselle who was still disconnected from the conference call.

CONSIDER THE REQUEST OF ALVIN CALLAHAN, MARVIN CALLAHAN AND JOHN HOLLINGSWORTH TO RESCIND THE STAYS PREVIOUSLY GRANTED IN THE ABOVE MATTER

Commissioner Aponte motioned to deny the request to rescind the stays. Chairman Clyne seconded the motion and all Commissioners voted yes.

AGENDA ITEMS FOR DISCUSSION AND INFORMATION

Financial Statements

The Commission acknowledged receipt of the Thoroughbred Breeders' Association of New Jersey Audited Financial Statements for the year ended December 31, 2014.

Other

A discussion occurred concerning Federal Grand Jury indictments issued against four veterinarians in connection with the treatment of race horses competing at Penn National Racetrack in Grantville, Pennsylvania. Executive Director Zanzuccki highlighted the seriousness of the conduct exhibited by the four veterinarians. It was recommended that Commission staff meet with representatives of the Office of the Attorney General to develop a policy applicable to referring such matters for criminal proceedings. Discussion occurred on how to provide notice to veterinarians who engage in similar conduct and the consequences that would result. It was also recommended that the Veterinarian Committee meet with all licensed practicing veterinarians to discuss this policy and subsequently disseminate the policy information.

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

ATTEST:



Executive Director Frank Zanzuccki