

**Minutes of the 3rd Members Meeting of the Franchise Oversight Board
Held on December 22, 2008 at 11:00 A.M., Conference Room 143, State Capitol,
Albany, New York**

Members Present:

Laura Anglin, Chair

Gordon Medenica, Member

Sylvia Hamer, Member (participating via videoconference)

Steven Newman, Member (participating via teleconference)

The Chair called the meeting to order at 11:07 a.m. and asked the Members of the Board to identify themselves for the record. Following introductions, the Chair proceeded to the first item on the agenda, approval of the Board's meeting minutes for October 17, 2008. The Chair asked the Members if they had any questions or comments related to the minutes.

The Chair asked for a motion to approve the minutes. Member Medenica offered the motion, seconded by Member Hamer, and the motion was adopted unanimously.

The Chair proceeded to the next item on the agenda, Board review of the 2009 Operating Budget of the New York Racing Association (NYRA), which is legally mandated by Chapter 18 of the Laws of 2008. The Chair called upon Patrick Kehoe, NYRA General Counsel, and Irene Posio, NYRA Chief Financial Officer, to present an overview of NYRA's 2009 Operating Budget to the Board.

Mr. Kehoe and Ms. Posio presented the 2009 NYRA budget, highlighting projected gross revenues of \$283.3 million, with a net profit of \$2.5 million, which would make 2009 NYRA's first profitable year since 2000. Ms. Posio stated that the \$2.5 million profit projected for 2009 is achieved through enhanced non-handle revenue opportunities. Ms. Posio noted that NYRA is a labor intensive organization, with 65% of its employees represented by labor unions and 35% non-union administrative employees. Ms. Posio noted that between 2006 and 2007, all administrative and union employees forfeited a salary increase at some point. However, some contractual salary increases are scheduled to occur in 2009 and are factored into budget estimates. Additionally, Ms. Posio informed the Board that certain labor contracts are presently under negotiations. Ms. Posio also stated that while most of NYRA operating expenses consist of personal service costs, NYRA has little control over its fixed costs, such as utilities, fuel surcharges and insurance, but continues to manage fixed costs to the best of its ability. Concerning projected growth in revenue for 2009, Ms. Posio informed that a 5.5% projected decrease in handle would be offset by revenue gained through increasing prices that NYRA charges out-of-state venues for its product. Ms. Posio noted that the projected 5.5% decrease in handle is significantly less than other states are likely to experience. Some states, Ms. Posio noted, may experience double-digit decreases in handle. Ms. Posio concluded her presentation by inviting questions and/or comments from the Members.

The Chair asked Ms. Posio for additional information behind NYRA's projected handle decrease of 5.5% given the current state of the economy and that the horse racing industries of other states may experience double-digit decreases in handle. Ms. Posio responded that NYRA anticipates its handle to be at 2006 levels. Ms. Posio added that the 2009 Aqueduct season is likely to outperform its warm-weather competitors as many horse owners, who normally migrate racing operations to Florida in the winter, will remain in New York for the Aqueduct meet. Further, NYRA does not budget for a triple-crown year, which would skew projected revenues higher than normal. As 2008 was a Triple Crown year, NYRA used 2007 revenues from its winter meets as a basis for 2009 projected handle.

Member Medenica inquired as to what would happen if the projected decline in handle-related revenue for 2009 is greater than 5.5%. Ms. Posio indicated that purses would decline accordingly and that NYRA would look to maximize revenues from non-handle sources and reduce operating expenses where possible. Member Medenica asked what impact NYRA would sustain if handle revenue decreased by 10 percent rather than the projected 5.5%. Ms. Posio responded that it would depend on what part, or parts, of the handle sustained the decrease, as handle revenues come from in-state, out-of-state and advance wager and deposit organizations. Member Medenica inquired as to how NYRA is able to project increasing revenues from out-of-state venues. Ms. Posio explained that these increases were driven by prices NYRA is able to charge out-of-state venues for the NYRA product, so that even a decrease in handle from out-of-state sources is offset by revenue generated through price increases.

Member Newman referred to a chart in the supplement to the NYRA budget which compared 2008 and 2009 budget estimates and inquired as to what the 2008 budget numbers represented. Ms. Posio stated that the 2008 number represented ten months of actuals with the last two months projected. Member Newman noted that retirement benefits increase significantly in 2009 and sought an explanation for the increase. Ms. Posio noted that the rising cost of health care for unionized, retired employees is driving the increase. Member Newman asked Ms. Posio to explain a statement in NYRA's budget summary wherein it was mentioned that NYRA pays health benefits on hourly wages, including overtime wages. Ms. Posio informed that, with respect to unionized employees, NYRA does not pay a health care premium for these employees. Rather, contractual labor agreements require NYRA to contribute a certain dollar amount per hour worked toward health care insurance premiums which labor unions pay for their members. These contributions are required for overtime hours worked as well as regular hours worked. Member Newman asked whether Ms. Posio knew if unions broke even in the purchase of health care premiums through NYRA's hourly wage contributions or if health insurance contributions for overtime hours were also needed as well. Ms. Posio stated she did not know the answer to that question. Member Newman suggested that this was something that was worth looking into as NYRA's health care contributions for each overtime hour worked was unique and differed from other contracts with which Member Newman was familiar. Such agreements limited contributions to regular hours worked. Ms. Posio duly noted Member Newman's concern and stated that such an arrangement would have to be negotiated with each affected bargaining unit. Member Newman then

inquired about NYRA's 2009 projected cash flow which reflects a beginning balance of \$20 million and an ending balance of \$10 million. Ms. Posio stated that planned capital expenditures explain the reduced cash balance. Member Newman asked whether NYRA planned capital expenditures in 2010. Ms. Posio affirmed that NYRA planned to make capital expenditures in 2010, but that the extent of such would be dictated by available cash balance and other pertinent factors. Member Newman asked Ms. Posio to explain NYRA's decision to provide free parking at Aqueduct to achieve cash savings. Ms. Posio stated that a cost-benefit analysis revealed that unionized manpower costs associated with the management of facility parking actually exceed admission/parking revenues. Therefore, NYRA will actually save operational costs by providing free parking at the Aqueduct race track. Member Newman asked Ms. Posio if the Belmont racetrack facility held an annual flea market like the Aqueduct facility. Ms. Posio responded by saying that only the Aqueduct facility held an annual flea market event, Belmont did not.

The Chair thanked Member Newman for his participation and then asked Member Hamer if she had any further questions regarding the NYRA budget. Member Hamer asked Ms. Posio to clarify whether NYRA was currently negotiating union contracts. Ms. Posio replied that some union contracts were currently under negotiation. Member Hamer inquired as to the timing of the expiration of those contracts and whether NYRA assumed salary increases related to their settlement in its 2009 budget estimates. Ms. Posio affirmed that such anticipated increases were accounted for in the proposed 2009 budget and that, out of the 26 or 27 separate union contracts that NYRA is party to, four contracts are currently under negotiation.

Member Newman inquired as to whether NYRA, in its current contract negotiations, was attempting to address previous stipulations that required NYRA to make health care contribution for each overtime hour worked by union employees. Ms. Posio affirmed that NYRA was addressing this issue.

The Chair inquired as to whether the Members had additional questions. No additional questions were asked. The Chair then took opportunity to thank Mr. Kehoe and Ms. Posio for their presentation to the Board and for their cooperation in providing supplementary information for the Board's review. The Chair then expressed concern regarding the revenue and expenditure assumptions that form the basis of NYRA's 2009 budget. The Chair stated that such assumptions were of particular significance, not only due to external economic factors that will impact NYRA's financial performance, but also to furthering the Board's understanding of how the new NYRA is managing its finances on behalf of the State and the thoroughbred racing industry. In light of these issues, the Chair expressed to Ms. Posio and Mr. Kehoe that the Board would need additional information regarding NYRA's personal service expenditures, including its salary structure and non personal service expenses, prior to offering a formal resolution on the budget. The Chair further informed Ms. Posio and Mr. Kehoe that the Board would be reaching out to them shortly to discuss the format and content of the additional information requested. The Chair then concluded the discussion of NYRA's 2009 operating budget by requesting that NYRA staff prepare and provide the Board monthly operating data in a format to be prescribed by the Board's staff.

The Chair moved to the third item on the Board's agenda, the presentation of the Board's annual report to the Governor and the Legislature. The Chair explained that this report is due by December 31st of each year pursuant to Section 212 of the Racing, Pari-Mutuel Wagering and Breeding Law. The annual report is to include findings and recommendations to implement policy and legislative changes needed to encourage high quality thoroughbred racing in the State and to protect the legitimate interests of the State and the thoroughbred industry. The Chair informed the Members that under the Board's enabling statute, the Board itself could not be constituted until the "New NYRA" was duly organized and established, which occurred on September 12, 2008. Therefore, since the Board was created so recently, its activities have been limited to organizational matters necessary to discharge its statutory duties to 'protect the legitimate interests of the State and the industry.' Accordingly, the Chair explained, the 2008 report does not include broad policy or legislative recommendations and that, with these organizational issues resolved and clarified, the Board will be in position to more fully consider policy and legislative matters in 2009. The Chair then inquired as to whether the Members had any questions or issues regarding the annual report. As there were no questions or concerns expressed, the Chair stated that she would entertain a motion to adopt the report. Member Medenica so motioned to adopt the report, Member Newman seconded the motion, and the motion was adopted unanimously. The Chair affirmed the adoption of the motion.

The Chair moved to the fourth item on the Agenda, the presentation of the Chair's report. Regarding the first item of discussion, the Chair informed the Board that, pursuant to Resolution 08-03 adopted at the Board's October 17th meeting, letters were sent to the appropriate local authorities seeking appointments for the Saratoga and Aqueduct Local Advisory Boards, with the Saratoga County Board of Supervisors and the NYRA-Aqueduct appointments received to date. The Chair informed the Board that the Board's Secretary, George Westervelt, had been asked to follow up with the remaining appointing authorities and with hopes of announcing additional appointments at the next board meeting.

The Chair then turned the discussion to the matter of NYRA's draft procurement policies which must be submitted to, and approved by, the Board in accordance with statutory requirements. The Chair noted that, prior to presenting the policy to the board for approval, the Secretary asked staff from the Lottery Division's counsel's office to review the draft policy. Lottery's initial review suggested a need for some revision prior to presentation to the Board. The Chair then informed the Members that Lottery and NYRA staff were working together to refine the draft procurement policy and that a revised policy is expected to be presented to the Board in the near future. Additionally, the Chair apprised the Members that, in early 2009, the Board will need to perform a number of reviews of NYRA's operating policies and activities as enumerated within the Board's statute. Such reviews would encompass the following areas: NYRA's accounting, internal control and security procedures; NYRA's revenue and expenditure policies; collective bargaining agreements and management and employee compensation plans; NYRA's corporate governance protocols; and NYRA's Annual Capital Plan, among others.

With regard to NYRA's 2009 Annual Capital Plan, the Chair asked NYRA representatives, Ms. Posio and Mr. Kehoe if they had an estimated submission date to the Board. Mr. Kehoe stated that it would be submitted to the Board shortly after the commencement of the new year.

The Chair also noted that the Board Secretary has been instructed to consult with staff and the Members to establish a regular Board meeting schedule for 2009. Based upon those discussions, a proposed meeting schedule will be presented to the Members shortly.

Following the conclusion of the Chair's report to the Board, the Chair concluded the meeting by asking the Members if there was any further business to come before the Board. All the Members responded in the negative. Member Newman offered to reach out to Community Board 10 to encourage the appointments for its Local Advisory Board.

There being no further business, the Chair made a motion to adjourn; Member Medenica seconded the motion and the meeting was adjourned at 11:36 a.m.