

**Minutes of the 5th Members Meeting of the Franchise Oversight Board
Held on February 10th, 2010 at 2:00 P.M., Conference Room 143, State Capitol,
Albany, New York**

Members Present:

Robert Megna, Chair

Gordon Medenica, Member

Tim Gilchrist, Member (participating via videoconference)

Steven Newman, Member (participating via teleconference)

The Chair called the meeting to order at 2:00 pm and asked the Members of the Board to identify themselves for the record. Following introductions the Chair noted that the Board had a quorum. The Chair also noted that Member Newman was participating via broadband and asked George Westervelt, Secretary to the Board, to acknowledge that he was in possession of a letter from Member Newman authorizing Mr. Westervelt to vote on Mr. Newman's behalf and in accord with his wishes. Mr. Westervelt affirmed this to be the case.

The Chair proceeded to the first item on the agenda, approval of the Board's meeting minutes for May 28, 2009. The Chair asked the Members if they had any questions or comments related to the minutes. There were no further questions pertaining to this matter. The Chair then asked for a motion to approve the minutes. Member Medenica offered the motion, seconded by Member Newman, and the motion was adopted unanimously.

The Chair then stated that the next item on the agenda was a review of the 2010 operating budget of the New York Racing Association (NYRA), which required board action. However, prior to taking up that review, the Chair asked Charles Hayward, NYRA CEO, to provide a brief overview of NYRA's financial position from the inception of the 2008 bankruptcy proceedings until the present. Mr. Hayward also summarized the main tenants of the bankruptcy and franchise agreements which stipulated that NYRA transfer the titles and deeds of the Aqueduct, Belmont and Saratoga tracks to the State in exchange for \$105 million in aid which comprised \$25 million in operating subsidies, until the Aqueduct VLT's came online, and \$80 million to repay debtors. Mr. Hayward also noted that bankruptcy settlement agreement provided for forgiveness from repaying State loans extended by the Division of the Lottery and the franchise agreement required the State to negotiate with good faith with NYRA, in relation to further operational subsidies, if Aqueduct VLTs did not come online by March 31, 2009. Mr. Hayward further noted that in association with the bankruptcy and franchise agreements, the Tax law was amended to require the Aqueduct VLT vendor to repay the state for any operating subsidies provided to NYRA while waiting for VLT's to come online. Mr. Hayward stated that NYRA emerged from bankruptcy with approximately \$41.5 million, which included \$16 million in cash and \$25 million in operating aid from the State. Mr. Hayward then turned the discussion over to Ellen McClain, CFO of NYRA, who explained roughly \$10.5

million of the subsidy was allocated for capital maintenance projects necessary for maintaining adequate conditions at the thoroughbred tracks. The discussion then turned to issues pertaining to NYRA's 2010 budget projections where Ms. McClain explained that the 2010 budget assumed full payment by NYC OTB, but in actuality, NYRA's 2010 budget year began with payments still owed by NYC totaling \$15 million. Ms. McClain noted that the Association projects that it will run out of cash, defined as experiencing a cash balance of \$5 million or less, sometime in June or July 2010 or even earlier if NYC OTB shuts down operations. Ms. McClain closed her remarks with a general summary of the NYRA 2010 budget, stating it reflects NYRA's commitment to properly maintain its racing facilities, results in no material increases in headcount, and assumes a decreasing revenue stream from handle partially offset by additional revenue from four additional race days at Saratoga. Ms. McClain concluded her remarks by stating that the Association's 2010 cash flow does assume prompt and regular payments from NYC OTB but not revenues from Aqueduct VLTs. Mr. Hayward expressed that NYRA could be profitable from racing operations if certain initiatives were put into place. Such initiatives include the construction of a state-of-the-art sports bar/simulcast facility at Aqueduct which would yield significant net annual profits, a regulatory change that would provide for an expanded number of entries in horse races to generate additional handle, legislation authorizing NYRA to have its own internet racing/betting platform, and a takeover of NYC OTB. Mr. Hayward also stated that the \$31 million in annual VTL revenues NYRA expected to receive from an Aqueduct VLT facility would be split between capital investments (\$18 million) and operations (\$13 million). Mr. Hayward concluded the NYRA budget presentation by providing information to the board highlighting the quality of NYS thoroughbred racing industry and its importance to the state's economic infrastructure.

The Chair proceeded to the next item on the agenda, Board review and recommendations related to the 2010 Operating Budget of the New York Racing Association (NYRA), which is legally mandated by subsection 6 of section 212 of the Racing, Pari-Mutuel Wagering and Breeding Law. The Chair reminded the members that in 2008, the Board asked NYRA to restructure its budget presentation to provide the board with a better understanding of the Association's operations and stated that NYRA's 2010 budget presentation reflected what was requested in those discussions. The Chair then began the Board's review of NYRA's 2010 budget by stating that a review of the State's taxation over several years NYRA reflected a substantially lower tax burden while, at the same time, state aid to NYRA has increased significantly. Based upon this information the Chair further remarked that it would appear that the racing industry is in a serious state of decline and asked NYRA officials what they perceive the next five years to be like with regard to the racing industry. Mr. Hayward admitted that the pari-mutuel tax has declined over the past several years, but explained that the tax is connected to their live betting business that twenty years prior, represented 85% of NYRA's business but presently represents 12% of their business. Mr. Hayward also noted that the NYS thoroughbred racing industry is taxed at a rate double than those operating in other States and that most states with thoroughbred racing have eliminated the pari-mutuel tax. Mr. Hayward noted that the decline in live track handle results from the ongoing decrease in attendance and that, with the age of their facilities, NYRA has been looking to see what

improvements to their facilities could be made, assuming a VLT revenue stream, to increase attendance and on-track revenue. Such ideas include the construction of a sports bar/simulcast facility, the "Brooklyn Waterworks" at the Aqueduct facility that would attract more customers. The Chair, referring to NYRA's budget presentation, then proceeded to note that in recent years net revenues decline while operating expenses stay flat or increase slightly. The Chair expressed concern that, even with additional mitigating actions, this trend would appear to continue due to decreasing handle. Mr. Hayward responded that prior to the downturn in the economy in 2008, pari-mutuel handle was declining at about one percent annually. While, after 2008, handle declined by nine percent, Mr. Hayward stated that he believed the annual decline in industry handle would be between one and three percent and that NYRA would continue to monitor this revenue trend closely. Mr. Hayward mentioned that several contingency plans have been developed to address continued revenue declines and such plans were presently before the NYRA board for consideration. Mr. Hayward also noted that strict controls over spending have allowed for a net spending increase of just 1.8 percent over the previous year. The Chair then turned the discussion to labor issues, noting that the State is looking to take any number of actions to reduce labor costs in light of the current financial conditions. The Chair then asked NYRA officials if the Association was undertaking similar endeavors to find ways to reduce payroll expenses. Mr. Hayward responded in the affirmative saying that NYRA has been working with the unions representing their workforce and convince them that accommodating changes in business practices would be beneficial for union employees in the long run. Mr. Hayward deferred to Mr. Patrick Kehoe, NYRA's chief counsel, to discuss the upcoming contract negotiations with its two largest collective bargaining units - maintenance workers and pari-mutuel clerks. Mr. Kehoe explained that in these negotiations, NYRA will attempt to address difficult structural and institutional issues that need to change, such as making the union work week equivalent to the NYRA race week to achieve savings and efficiencies. Mr. Kehoe assured the Board that the Association scrutinizes every collective bargaining agreement to find areas of improvement to address in contract negotiations. Mr. Kehoe also reminded the Board, that unlike the State, NYRA was not a public agency and therefore is not protected from union workforce strikes making negotiations delicate as NYRA embarks on its 2010 business year. **The Chair then directed the discussion to the issue of NYRA executive salaries stating that the issue of their public disclosure keeps coming up in the context of requests for this information by the Franchise Oversight Board by the State Comptroller and that it would be beneficial to all parties to receive this information and put the issue to rest especially if it is true that these salaries are in line with others in the racing industry in other states.** Mr. Hayward expressed agreement with the Chair and stated that NYRA would provide the Board with NYRA executive salary information as requested. Mr. Hayward also proposed that, in conjunction with the provision of this information, executive salary information of other racing companies, similar in size to NYRA, would be presented for comparative purposes, in order that NYRA executive salaries can be viewed in the proper context. **The Chair stated that he believed receiving that information would reflect real progress on this issue and then opened the discussion on the NYRA budget to the other members.** Member Newman asked if revenues related to phone and internet betting were mixed in with on-track revenue in the NYRA

budget document. NYRA officials affirmed that this was the case. Member Newman then stated that it would be helpful if future presentations break out revenue numbers related to phone and internet betting. NYRA agreed with Member Newman's perspective and Mr. Hayward then explained to the Board that revenues from phone betting and internet betting by NYRA rewards customers were about equal, \$30 million each, and that on-track betting from these same customers totaled \$35 million. Member Newman noted that there were no expenditures for debt service in the budget document and stated that he assumed therefore that expenditures for capital improvements were included in operating expenses. Ms. McClain affirmed that to be the case. Member Newman asked if spending for capital expenses fell under the category of "capital expenses - facilities" in the budget document. Ms. McClain informed that capital expenses are allocated in different categories, as appropriate and that there are capital expenditures that run through their cash flow statements and get reflected on their balance sheet. Member Newman requested clarification on whether capital expenditures were funded by NYRA revenues as reported in their budget document. Member Hayward affirmed that that was the case as the cash flows illustrated. Member Hayward asked Ms. McClain to provide information on NYRA's recent capital expenditures. Ms. McClain informed the Board that capital expenditures for NYRA totaled \$2 million in 2008, \$8 million in 2009 and a projected \$10 million for 2010. Ms. McClain further informed the Board that when NYRA's audited financial statements are published, capital expenses will be found on the cash flow statement. Chairman Megna expressed that he understood Member Newman's original question to be that since there was no line for debt service in the budget document, could it be assumed that NYRA did not have, or was not paying, interest on outstanding debt? Ms. McClain affirmed that NYRA had no debt for borrowed money and no debt for capital leases. Member Newman asked whether the budget was a cash or accrual budget. Ms. McClain replied that it was an accrual budget. Member Newman reflected that NYRA's budget shows handle decreasing by nine percent while net revenues decrease by five percent and then asked NYRA officials to explain. Mr. Hayward explained that NYRA has been able to offset some of the reduction in handle through revenue increases in other areas, such as those received from companies that provide advanced deposit wagering services to NYRA customers. Chairman Megna asked if NYRA expected to maintain these rates and associated revenues with its simulcast contractor. Mr. Hayward stated that normally NYRA is able to negotiate rate increases, even if they are small, but the real goal is to have its own account wagering business with real stream video to maximize wagering revenue potential. Member Newman noted that while the budget reflected a decrease in overall business, there were employee additions in certain areas such as human resources, maintenance/cleaning services and group sales. Member Newman added that while he could see additions in group sales to increase business, he didn't understand increases in human resources and maintenance/cleaning services in light of the decline in business. Ms. McClain replied that maintenance of NYRA facilities must be done and this justifies the need for such employees. The Chair replied that State agencies have been asked to take significant cuts and yet still provide the same level of services, so economizing on labor must be something that must be done by all entities in this context of the current economic environment. Ms. McClain agreed and stated that NYRA was working very hard, within the context of their current labor contracts, to take such actions. Member Gilchrist

continued the budget discussions noting that, in his view, NYRA was not a public entity providing a service, but one that was selling a product. Member Gilchrist then asked that in light of NYRA's revenue stream declining and their product being used less, what was NYRA doing to reduce their cost structure accordingly. Mr. Hayward replied that significant cost savings could result from capital investments provided a revenue stream was made available. One option would require a one-time investment of \$2 million to consolidate barn operations at Aqueduct and Belmont to save over \$3 million annually. Another area where costs could be saved is through replacement of live teller betting with machine tellers betting. Mr. Hayward acknowledged that the increase of 23 staff in the cleaning function justified the provision of more detail for the Board. Mr. Kehoe added that, with respect to these positions, NYRA found out that it was cheaper to hire and maintain in-house staff than to contract for these services. Mr. Hayward informed the board that NYRA has also undertaken cost saving initiatives, such as running its own simulcasting operation, rather than contracting it out to an outside vendor at a cost of \$4 million per year. Member Medenica asked NYRA that given the long-term decline of the thoroughbred racing industry, was there a business model by which NYRA could operate without a permanent state subsidy from the State which would include revenues from VLTs. Mr. Hayward replied that if NYRA were able to make capital investments like the Brooklyn Waterworks at Aqueduct, get certain legislative and regulatory changes accomplished, implement a more robust statewide video streaming operation for races, consolidate OTBs under its operations, and undertake other initiatives, it could operate without subsidization. Member Newman mentioned that the federal government is contemplating legalizing online poker gaming and asked whether NYRA perceived that as a risk to its gaming income. Mr. Hayward stated that it would probably pose some risk. Member Gilchrist asked for an explanation for the decline in handle. Mr. Hayward explained that it was related, not a loss of customers, but the amount of money wagered per customer. Member Newman asked how comfortable NYRA was with a budgeted net revenue decline of six percent when NYC OTB projects a much higher decline in statewide handle revenue. Mr. Hayward acknowledge that in recent months, OTB handle has decreased more than NYRA handle and more than out-of-state handle which could put NYRA in position of exposure. The Chair asked Mr. Hayward, that given the reality of declining revenues, does NYRA's budget properly balance potential risks, or will there be more downside to address. Mr. Hayward replied that NYRA's handle estimate for each track would not drop more than what is projected. Mr. Hayward further stated that, as NYRA has experienced declines in group sales and sponsorships, that remained an area of risk for 2010, but such risk was assumed in the budget. Mr. Hayward identified the NYC OTB as the major risk to the NYRA budget, but reminded the members that contingency plans will be soon be presented to the NYRA board for action and that NYRA would be happy to share the details of such plans with the Franchise Oversight Board following approval. Member Newman asked Mr. Hayward where the simulcasting center was located at the Aqueduct track. Mr. Hayward explained that it was located on the second floor at the back side of the facility and this area could be renovated contingent on funding. The Chair expressed thanks to NYRA officials for their participation and cooperation. The Chair then concluded the discussion by asking the Board to entertain a motion to adopt board resolution 10-01, which acknowledges the Board's review of the NYRA budget and requests NYRA to provide the Board with

quarterly updates of its revenue and expenditure performance. The Chair then raised the motion and asked one of the members to second the motion. Member Medenica seconded the motion which was subsequently unanimously adopted by the Board.

The Chair moved to the third item on the Agenda, Board approval of NYRA's contract for audit services related to the development of NYRA's annual financial statements and asked Mr. Hayward to present this item to the Board. Mr. Hayward deferred to Mr. Kehoe who provided a brief history of the competitive bidding process by which NYRA selected UHY to provide audit services to NYRA. Following Mr. Kehoe's presentation the Chair asked the members if there were any questions pertaining to this item. Member Newman asked the NYRA officials how long has NYRA used UHY for audit services. Mr. Kehoe informed that, including the contract before the Board, a total of five years. The Chair then acknowledged that some concern regarding NYRA's long term relationship with the same audit firm, UHY, has been expressed in the past and proposed that before the next RFP is released by NYRA for these services, NYRA share the RFP with the Board so that the Board could be a little more involved in the process. NYRA officials accepted this proposal as did the members of the Franchise Oversight Board. The Chair asked the members if there were any additional questions related to this item. As there were no additional questions the Chair moved to entertain a motion to adopt Board resolution 10-02, approving NYRA's contract for auditing services with UHY. The Chair then raised the motion and asked one of the members to second the motion. Members Medenica and Newman seconded the motion which was subsequently unanimously adopted by the Board.

The Chair moved to the third item on the Agenda, Board approval of NYRA's proposed procurement policy and informed the Board that this item is brought to this board pursuant to the provisions of Section 212 of the State's Racing law which stipulates that the Oversight Board is authorized to approve all purchasing policies. The Chair also provided a brief history of this issue, stating that in early 2009, NYRA provided the Board with its draft Procurement Policy and, at that time, the Board asked staff from the Lottery Division's Office of General Counsel to review the draft policy and work with NYRA to address any deficiencies or issues that resulted from that review. The Chair concluded his introductory remarks on this item by stating that those efforts were now complete and he asked the Member Gordon Medenica, the Director of the NYS Lottery Division, to discuss this item. Member Medenica informed that the Lottery Division's Chief Procurement Officer and General Counsel reviewed NYRA's procurement policies, as they exist in their current form, and then worked together with NYRA officials to produce a new set of procurement procedures that are, in tone, style, and effect very close to the procurement procedures utilized by the State. Recognizing that NYRA is not a state agency, but a business entity that operates differently from state agencies, Member Medenica nevertheless asserted that the Lottery Division is confident that the new procurement procedures proposed by NYRA meet the objectives of the Franchise Oversight Board and should be adopted immediately, especially because the existing procedures are not fully adequate. Member Medenica also stated that the procurement policy should be considered a living document, in need of reevaluation and modification as business conditions and circumstances change. Member Medenica concluded his

remarks by stating that the new procurement policy proposal is an excellent start, that experience with the new procedures will help determine future modifications, and that the new policy deserves the Board's approval. The Chair asked Mr. Hayward if he had any further comments on this item. Mr. Hayward expressed that he was in agreement with Member Medenica's presentation and Mr. Kehoe expressed NYRA's gratitude to the Lottery Division for working together with the Association to produce the new procurement policy and looked forward to its implementation. The Chair then asked if the members had any questions concerning this item. Member Newman expressed that it would be helpful to have some system of review for sole source and emergency contracts in a periodic manner. The Chair informed that he was apprised of this particular issue prior to the meeting and that he didn't perceive there would be any objection if the Board were to work with NYRA on this issue. As there were no such objections expressed, the Chair suggested that this issue be put on the agenda for the next meeting of the Board. The Chair then solicited any further questions from the members. Member Gilchrist noted that there were provisions in the new procurement policy related to reaching out to the Governor's Office of Minority and Women's-Owned Business for a list of vendors and asked NYRA officials if they could brief the Board at the next meeting regarding what actions NYRA takes to publicize the availability of contracts to such disadvantaged communities as well as to the small businesses that surround NYRA facilities. The Chair then summarized that the next meeting there would be two items related to procurement - emergency contracts and MWBE - for Board discussion. The Chair thanked Member Medenica and his staff at the Lottery for their work on the NYRA procurement policy and NYRA for their cooperation. The Chair then asked for a motion to adopt resolution 10-03, approving NYRA's Procurement Guidelines. Member Medenica raised the motion, Member Newman seconded the motion, and the motion was then unanimously adopted by the Board.

The Chair moved to the fourth item on the Agenda, Board approval of resolution 10-04, delegating authority to the Secretary to negotiate on the Board's behalf with the State Office of General Services and NYRA with regard to the issuance of building permits. The Chair directed Mr. David Rose of the Governor's Counsel's Office to present this item to the Board. Mr. Rose explained that the Governor's Office has been working with NYRA and OGS on this issue of attaining building permits. Because the State owns the racing facilities, OGS is the permitting agency that NYRA has to work with to obtain building permits. Mr. Rose explained further that this resolution would provide a mechanism whereby OGS could issue permits on behalf of the Board to NYRA and NYRA would reimburse the State for the cost associated with this process. The Chair asked for examples of what kind of items would be typically included in this permitting process. Mr. Kehoe informed that items such as the installation of tents at the tracks or minor construction projects require permits. The Chair asked if this resolution would serve to streamline the process and perhaps reduce costs. Mr. Kehoe affirmed that this resolution would streamline the permitting process but could not speak to cost savings. The Chair asked if this process would essentially authorize OGS to issue permits and NYRA to reimburse OGS. Mr. Kehoe affirmed this to be the case. The Chair asked the members if there were any additional questions related to this item. As there were no additional questions, the Chair then asked for a motion to adopt resolution 10-04, raising

the motion himself. Member Medenica seconded the motion which was subsequently unanimously adopted by the Board.

The Chair then moved to the last item on the agenda, the Chair's report. The Chair took the opportunity to announce the tentative schedule of board meetings for the remainder of 2010 and stated, that unless otherwise noted, all future meetings will take place in Capital room 143, at 2pm.

Following the conclusion of the Chair's report, the Chair stated that the list of actions before the Board, in accordance with that day's agenda, was concluded. The Chair then asked the members if they had any further business to bring before the Board. As there were no such matters the Chair adjourned the meeting of the Franchise Oversight Board at 3:17pm.