

**Minutes of the 6th Members Meeting of the Franchise Oversight Board  
Held on May 23rd, 2011 at 1:00 P.M., Conference Room 131, State Capitol, Albany,  
New York**

**Members Present:**

**Robert Megna, Chair**

**Gordon Medenica, Member**

**John Crotty, Member (participating via videoconference)**

**Steven Newman, Member (participating via videoconference)**

**Richard Aurelio, Member (participating via videoconference)**

The Chair called the meeting to order at 1:08 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 proceeded to the first item on the agenda, approval of the Board's meeting minutes for February 10th, 2010. The Chair asked the Members if they had any questions or comments related to the minutes. Member Aurelio pointed out an error with the minutes. Hearing no further comments concerning the minutes, the Chair asked for a motion to approve the minutes as amended. Member Medenica offered the motion, seconded by Member Newman, and the motion was adopted unanimously.

Before moving on, the Chair noted the next item on the agenda needed the Board's action because of timing issues. The Chair then stated that another Board meeting would be scheduled in the next few weeks to discuss other important Board issues including the review of the New York Racing Association (NYRA) budget and the telephone betting contract.

The Chair moved to the next item on the agenda which was the approval of documents associated with Genting New York, LLC's financing of their mortgage. The Chair asked Mr. Seth Agata of Governor's Counsel to present this item to the Board for consideration.

Mr. Agata explained that the item was before the Franchise Oversight Board (FOB) because the Racing, Pari-Mutuel Wagering and Breeding Law requires the Franchise Oversight Board to act on behalf of the State in any real property matters involving Aqueduct and as such is the landlord of that property. Mr. Agata stated that the leasehold of the property is now held by Genting and that the FOB's role was not to approve any loan but to act as the landlord in executing documents that will effectuate Genting's financing. The mortgage would be secured by the leasehold interest at Aqueduct. Mr. Agata continued that the FOB's role would be to execute three documents: the Attornment Agreement, a Side Letter Agreement, and a Certification that the tenant is currently not in breach of any obligations under the Ground Lease.

Mr. Agata explained that the Attornment Agreement would recognize the right of the bank to step in should Genting have a breach of some kind under the mortgage terms. He stated that the Agreement would be subject to all applicable New York State laws, particularly those concerning Video Lottery Terminals (VLTs). He continued that the document does give the bank the right to occupy and possess the premise in the same manner Genting has.

Mr. Agata explained that the second document is a Side Letter Agreement, which was requested at the behest of the State. Within the Side Letter, Mr. Agata stated that there is a legal description of the property, recognizes each party's right to future development, and the current intention of Genting in obtaining a 5-year mortgage on the property.

The Chair thanked Mr. Agata for his explanation of the documents and asked if the Members had any questions. Member Crotty asked a question regarding development of the premises. Mr. Agata responded that execution of this Agreement would not impact the underlying obligations or rights of any of the parties that exist under the Memorandum of Understanding (MOU). Member Crotty questioned whether allowing another party, the bank, into the equation would have some impact on the MOU. Mr. Agata responded that since the bank would be acting as a lender, the bank would have the right to occupy or possess the premises during the term of the mortgage but the bank would still be subject to all applicable New York State laws and licensing approvals.

Member Aurelio asked how many acres were involved in this Agreement. Mr. Agata responded that the property encompasses 72 acres. The Chair asked if any future developer would need to receive approval from the Board for any future development. Mr. Agata responded that the Board maintains authority over any development. Mr. Christian Goode, the Chief Financial Officer of Genting, replied that the MOU only allows Genting to erect a parking structure and operate in the Grandstand area. Member Newman asked if NYRA or the State could build a hotel. Member Medenica responded that the State is the landlord of the property and there are two tenants of the property, the horse racing facility and the casino. He continued that there is a third parcel that has the potential for future mixed-use development. Should the State wish to proceed in developing that parcel, a process would have to be defined to grant the right to possibly a third tenant for development of that parcel. Member Medenica continued that the State would maintain control of any future decisions regarding that parcel.

The Chair asked why this item was before the Board at this meeting. Mr. Agata responded that the need for approval at this meeting revolves around Genting's ability to obtain financing in short order at reasonable terms.

Member Newman asked Mr. Agata to further explain the loan amounts. Member Newman stated that the Side Letter cites \$225 million, the balance sheet shows \$200 million, and the commitment amount is \$265 million. Mr. Goode responded that the total amount that Genting has the ability to finance is \$265 million. He explained that Genting would be receiving \$225 million in a term loan, of which \$200 million would be used to pay off a HSBC loan. The pay off of the loan is scheduled for June 19th, 2011. The

remaining \$25 million would remain in escrow until the end of the project, at which time Genting would be able to draw that portion down. Mr. Goode further explained that there would be a \$40 million revolving line of credit, which would be used to bridge any funding gaps that may or may not arise. Member Newman asked why the \$25 million does not show up in the balance sheet. Mr. Goode responded that the current plan is to refrain from accessing the \$25 million until October so the \$25 million would represent a commitment but wouldn't show up on the balance sheet because it hasn't been drawn upon. Member Newman asked Mr. Goode to confirm that \$200 million would be accessed now. Mr. Goode responded affirmatively and further stated that \$25 million could be accessed in the future and \$40 million could be drawn upon as a revolving credit line if necessary. Member Newman asked if the Side Letter could be adjusted to reflect these figures. Mr. Agata replied that the Side Letter could be amended to account for the full financing picture. Mr. Goode asked if the amendments being made to the Side Letter could be conditional such that the Agreement would still be deemed approved so as to not delay Genting in obtaining financing.

Member Newman asked if the intercompany loan was actually a loan from some other part of the Corporation to Genting New York. Mr. Goode responded affirmatively. Member Newman asked if the ESDC grant was actually a grant and not a loan. Mr. Goode responded that ESDC had provided a grant.

The Chair asked the Members if they had any further questions or comments. Hearing no further questions, the Chair asked for a motion to adopt Resolution 11-01. Member Medenica offered the motion, seconded by Member Newman, and the motion was adopted unanimously.

Following the approval of the Resolution, the Chair again stated that the next meeting would be scheduled in a few weeks and the Secretary would be contacting the Members for available dates. 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 1:29 pm.