



State of New York
Franchise Oversight Board
State Capitol
Albany, NY 12224

MINUTES

Franchise Oversight Board Meeting
February 14, 2012
Conference Room 131, State Capitol, Albany, New York

I. The meeting was called to order at 12:37 PM by the Chair, Mr. Megna.

Members Present:

Robert Megna, Chair

John Crotty, Member

Gordon Medenica, Member

Richard Aurelio, Member (participated via videoconference)

Steven Newman, Member (participated via videoconference)

New York Racing Association Staff in attendance:

Charles Hayward

Patrick Kehoe

Ellen McClain

Jonathon Sack

Board, Executive Chamber, and Budget Division Staff in attendance:

Steven Lowenstein

Brad Allen

Public in attendance:

Natisha Alexander

Danielle Schittino

Laurie Burns

Michael Solomen

Bill Crowell

John Svare

David Lombardo

II. APPROVAL OF BOARD MEETING MINUTES FOR DECEMBER 19, 2011

ON A MOTION BY: Mr. Medenica

SECONDED BY: Mr. Crotty

APPROVED: 5-0

III. DISCUSSION OF NYRA'S 2011 OPERATING RESULTS

Ms. McClain presented NYRA's preliminary operating results for the 2011 calendar year. NYRA estimated that they were able to recover 36 percent of NYCOTB's handle, resulting in growth in NYRA's handle for 2011. NYRA mentioned that pension and other retirement costs are the largest driver of its operating loss. The Board asked numerous questions throughout the meeting regarding NYRA's marketing practices and strategies. NYRA stated that they are in the process of hiring a VP of marketing and would bring that VP to present to the Board a new marketing plan once hired.

IV. DISCUSSION OF NYRA'S TAKE-OUT PERCENTAGE ON EXOTIC WAGERS

Mr. Hayward provided an explanation of the circumstances that lead up to NYRA imposing the incorrect take-out on exotic wagering. Mr. Hayward, Ms. McClain, and Jonathan Sack (NYRA Integrity Counsel) answered questions from the Board regarding the take-out.

Background: In December 2011, it was discovered that NYRA had been incorrectly imposing a 26 percent take-out rate on exotic wagers since September 15, 2010, although the maximum rate allowed under Section 238 of the Racing, Pari-Mutuel Wagering and Breeding Law was 25 percent. NYRA subsequently reduced the take-out rate to 24 percent and agreed to provide refunds to bettors that can be identified. The Racing and Wagering Board, at the Request of the Franchise Oversight Board, has commenced an investigation of the circumstances leading to NYRA imposing the incorrect take-out rate.

NYRA staff stated that there was not any intentional wrongdoing and the imposition of the incorrect take-out rate was an oversight that the rate was not reduced when the authorization for the higher rate expired. Ms. McClain and Mr. Sack cited a failure of NYRA's internal controls to catch the incorrect take-out rate. Mr. Hayward stated that NYRA is cooperating with the Racing and Wagering Board in the investigation and to reimburse customers. Mr. Hayward stated that the incorrect take-out resulted in over-withholding of \$1.2 million by NYRA and \$7.9 million industry-wide, and NYRA would be able to provide \$500,000 in identifiable customer refunds.

V. DISCUSSION OF NYRA'S ADVANCED DEPOSIT WAGERING PRACTICES

Mr. Hayward provided a description of NYRA's "express funding" program. Mr. Hayward, Ms. McClain, and Mr. Kehoe answered questions from the Board regarding NYRA's advanced deposit wagering funding practices.

Background: A question came to the Board's attention as to whether NYRA was allowing "credit betting" for certain customers in violation of the Racing, Pari-Mutuel Wagering and Breeding Law. The Racing and Wagering Board has commenced an investigation of NYRA's advanced deposit wagering funding practices at the request of the Franchise Oversight Board.

Mr. Hayward explained that NYRA has an "express funding" program, which was approved by the Racing and Wagering Board, that allows customers to fund their wagering accounts up to \$500 per day and \$1,000 per week through their checking accounts. He also said that in about 1 percent of cases a check may bounce. Mr. Kehoe emphasized that accepting a check for payment is not extending credit to a customer. Ms. McClain explained that accepting a check that may bounce is normal business risk and NYRA takes appropriate steps to limit their exposure. The Board Members questioned NYRA about the level of losses suffered by NYRA due to bad checks.

VI. DISCUSSION OF NYRA'S IMPLEMENTATION OF THE OFFICE OF STATE COMPTROLLER'S AUDIT RECOMMENDATIONS

Mr. Hayward and Ms. McClain answered questions from the Board regarding the recent follow-up letter from the Office of the State Comptroller regarding NYRA's implementation of recommendations made by OSC in previous audits.

Background: On January 24, 2012, the Office of the State Comptroller sent a letter to NYRA regarding the status of recommendations made by OSC in audit reports issued in 2010. In the letter, OSC was critical of NYRA for the lack of progress in implementing the recommendations, citing that four of the nine recommendations were not implemented and the other five were only partially implemented.

Mr. Hayward expressed his disagreement with the assertions made in OSC's press release concerning the audit recommendations. Specifically, Mr. Hayward mentioned that NYRA did not believe it would be a wise use of resources to do a survey of industry practices; the shipping of horses between tracks was a revenue generating expenditure; and NYRA presents its business plan through its budget and review of financial results to the Franchise Oversight Board. Board Members indicated that NYRA should be able to comply with the recommendation for surprise cash audits.

VII. DISCUSSION OF NYRA'S RFP FOR MARKETING AND PUBLIC RELATIONS FOR THE SARATOGA MEET

Mr. Hayward, Ms. McClain, and Mr. Kehoe answered questions from the Board regarding NYRA's RFP for marketing and public relations services and NYRA's procurement practices.

Background: The Board became aware of questions regarding NYRA's RFP for marketing and public relations services for the Saratoga Meet. Board staff reviewed the RFP and NYRA's procurement procedures and provided NYRA with a list of concerns regarding the RFP and recommendations to improve NYRA's procurement practices.

Mr. Hayward stated the NYRA had received comments and recommendations from the Board staff and would review them with NYRA's purchasing department. He also said that NYRA received 19 requests for the RFP and got back 3 bids (plus one that was disqualified for being received after the deadline). Board Members expressed concerns with the RFP, specifically with the lack of details of scoring and evaluation requirements, the amount of outreach performed by NYRA to find potential bidders, and the limited amount of time allowed for potential bidders to request the RFP.

VIII. DISCUSSION OF NYRA'S CONTRACT WITH ROBERTS COMMUNICATION NETWORK

Mr. Hayward provided a presentation and answered questions regarding Roberts Communication Network's (RCN) business relationship with NYRA.

Background: During the December 19, 2011 meeting, a contract with Robert's Communication Network appeared on NYRA's Single, Sole and Emergency Source Procurement Report. Members requested that NYRA provide additional information to the Board regarding NYRA's entire business relationship with RCN.

RCN provides NYRA with satellite transmission services and video steaming and playback services. The Board requested additional information on the history of NYRA's relationship with RCN and the industry's use of RCN's services.

IX. DISCUSSION OF NYRA'S BUSINESS PLAN FOR PARI-MUTUEL WAGERING AT NEW YORK CITY BARS AND RESTAURANTS

Mr. Hayward provided a presentation of NYRA's business plan to offer pari-mutuel wagering at bars and restaurants within New York City. The plan would allow NYRA to enter the NYC market by placing self-service terminals within bars and restaurants within the City. NYRA would like to have 10 locations operating within a year, and grow that number to 40 within 3 years. The initial locations would be former NYCOTB locations, and NYRA projects these 10 locations could generate an additional \$9 million in revenue and \$2.5 million in profit. Mr. Hayward stated that NYRA would like legislation to proceed with the plan, but could be able to do it under the current tele-theater statute. Mr. Kehoe added that under the current statute, NYRA would need the approval of the Mayor, City Council and the Racing and Wagering Board to proceed.

X. CHAIR'S REPORT

The Chair announced that the next meeting of the Board would be held on Tuesday, April 17, 2012.

XI. NEW BUSINESS/OLD BUSINESS

Mr. Megna provided the Board with an update on the potential convention center development at the Aqueduct Racetrack. Mr. Megna stated that the Governor believes it would be a good idea for a private entity to build a convention center in New York City with no State investment, and the Governor thinks Genting would be willing to do that at Aqueduct. No final decisions have been made on the proposal and discussions are continuing.

Mr. Megna also led a discussion of VLT revenue projections for the Aqueduct Resorts World Casino. Mr. Hayward told the Board that NYRA was preparing to adopt a purse structure based on NMI of 350 per machine rather than the 380 original used in the budget and that NYRA could adjust their spending to accommodate lower income. Mr. Medenica suggested that NYRA should plan on NMI of 330, based on actual NMI to date.

XII. The Chair adjourned the meeting at 3:14 PM.