



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

MINUTES

Franchise Oversight Board Meeting
April 17, 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

Gordon Medenica, Member

Richard Aurelio, Member (participated via videoconference)

John Crotty, Member (participated via videoconference)

Steven Newman, Member (participated via videoconference)

New York Racing Association Staff in attendance:

Charles Hayward

Susanne Stover

Ellen McClain

Jonathon Sack (participated via

Patrick Kehoe

videoconference)

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

Steven Lowenstein

Brad Allen

Mark Massaroni

Public in attendance:

Natisha Alexander

Tom Precious

Bill Crowell

Danielle Schittino

Jim Odato

II. APPROVAL OF BOARD MEETING MINUTES FOR FEBRUARY 14, 2012

ON A MOTION BY: Mr. Newman

SECONDED BY: Mr. Medenica

APPROVED: 5-0

III. DISCUSSION OF NYRA'S 2011 AUDITED FINANCIAL STATEMENTS

Ms. McClain introduced NYRA's new Chief Financial Officer, Suzanne Stover.

Ms. McClain presented NYRA's audited financial statements for the year ended December 31, 2011. NYRA noted that there were no material changes from the preliminary financial

results provided to the Board at the February meeting, but noted that the audited financial statements did reflect the new relationship with Resorts World to construct a sports bar at Aqueduct.

Mr. Newman asked questions regarding “other” assets and liabilities, revenue from Video Lottery proceeds, percent of NYRA’s workforce that is unionized, and trend increases in healthcare expenses. NYRA responded that the other assets represented its ownership stake in Equibase and the other liability represents the leaseholder improvements allowance related to work performed by Resorts World’s. NYRA stated that 46 percent of its workforce is unionized and NYRA projects its health insurance cost to increase at an annual rate of 7.3 percent based on historical trends.

NYRA also presented its 2011 Accounting and Internal Control Compliance Report. Mr. Newman noted that only one control had been amended since 2008 and asked if any reviews of other controls had been performed. Mr. Kehoe responded that NYRA’s law department was currently reviewing controls and hoped to file updated policies and procedures with the Board later in the year.

IV. DISCUSSION OF NYRA’S FIRST QUARTER 2012 FINANCIAL RESULTS

Ms. McClain presented NYRA’s first quarter financial results. NYRA reported that they had achieved double digit increases in handle and nearly achieved the projected half a horse increase in field size. Ms. McClain and Mr. Hayward answered questions from the Board regarding NYRA’s first quarter results.

The Board and NYRA had a discussion of the GAAP accounting of VLT capital funding as to if that funding source should be included as NYRA revenue. The Board and NYRA also discussed the allowable use of the fund for maintenance and repair. The Board and NYRA agreed to further examine these issues.

The Board and NYRA discussed the impact of increased purses on the field sizes, quality of racing, and purse yield. Board Members question whether the purse increase had resulted in increased quality of racing at NYRA and if higher purses are the best use of resources in order to grow the business. NYRA stated that the purse increases have resulted in top trainers and jockeys coming to NYRA and large increases in handle.

The Board and NYRA continued discussions from prior meetings on NYRA’s marketing efforts. NYRA stated that they have not yet hired a marketing director. NYRA agreed that they have not done enough in marketing NYRA, partially due to limited resources, but they plan to improve their marketing effort going forward. NYRA expressed that they would be better able to discuss their marketing plan once a marketing director is in place.

V. DISCUSSION OF SOLE SOURCE AND EMERGENCY PROCUREMENTS THROUGH MARCH 31, 2012

Mr. Hayward presented a report on NYRA’s first quarter sole source, single source and emergency procurement. The Board raised questions regarding NYRA’s contract for their media purchaser.

VI. DISCUSSION OF THE STATUS OF INVESTIGATIONS INTO NYRA'S TAKE-OUT RATE ON EXOTIC WAGERING

Mr. Hayward and Mr. Kehoe provided the Board with an update on NYRA's response to the imposition of the incorrect take-out rate on exotic bets.

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, commenced an investigation of the circumstances leading to NYRA imposing the incorrect take-out rate.

Mr. Hayward and Mr. Kehoe reported that NYRA had completed the first part of the response by identifying approximately 15,000 customers that been over withheld on exotic wagers and provided credits to those customers of nearly \$600,000. The total amount over withheld from NYRA customers due to the higher take-out was approximately \$1.2 million.

Mr. Kehoe stated that NYRA is doing its best to comply with the Racing and Wagering Board's investigation. They have produced over 8,500 pages of documents for the Racing and Wagering Board and are currently reviewing another 8,000 pages and preparing a log of non-responsive documents. He stated that Racing and Wagering has been frustrated with the speed of NYRA's compliance, but said NYRA is doing its best with the resources available to produce documents.

VII. DISCUSSION OF HORSE BREAK-DOWNS DURING THE 2011-12 AQUEDUCT WINTER MEET

Mr. Hayward provided the Board with an update on the New York Task Force on Racehorse Health and Safety. The task force was created to review the circumstances surrounding the high number of fatal breakdowns that occurred at Aqueduct during the winter meet, especially during the three week period beginning February 25th.

Background: During the 2011-2012 winter meet at Aqueduct, there was a large spike in the number of equine deaths that occurred on track. In March, Chairman Megna and Deputy Secretary for Gaming Liebman sent a letter to NYRA advising NYRA to hire a qualified independent investigator to review the circumstances involving these breakdowns.

Mr. Hayward notified the Board that the members of the task force had been appointed. The task force is comprised of two veterinarians, Dr. Scott Palmer and Dr. Mary Scollay, former jockey Jerry Bailey, and Alan Foreman represents the horsemen. The task force has met at Aqueduct and conducted interviews with vets, trainers and jockeys. The task force is examining track conditions, past performance of the horses, the purse structure, among other factors. Mr. Hayward did not want to speculate on any conclusions prior to the task force releasing their findings.

VIII. DISCUSSION OF THE NYRA REWARDS PROGRAM

Mr. Medenica raised a question about the potential for abuse from the use of rebate programs and how NYRA addresses those concerns. Mr. Hayward responded that he does not think there is abuse, but there are large bettors that use computer assisted wagering betting through entities that provide large rebates to their customers. Mr. Hayward provided an example that if that entity was buying the signal for eight or nine percent, and the take-out was twenty percent, and it cost a half a percent to process the transaction, they would be able to return eight to ten percent back to the bettor. This rebate effectively lowers the take-out for these bettors and provides a higher return on their wagers. Mr. Hayward stated that NYRA performs a review of not only the entity allowing the computer assisted wagering, but also vets all of the individuals that wager through that entity. Mr. Hayward also stated that customers who wager through NYRA's rebate program, NYRA rewards, only earn rebates on average of less than three percent.

Board Members raised questions whether these large computer assisted wagers were receiving an unfair advantage over other bettors because of their ability to receive these rebates and their ability to place wagers in a manner that allow their bet to be placed at the last second so that other bettors could not see the impact on the odds these bets had.

Mr. Crotty asked a number of questions regarding the price NYRA charges for its simulcast signal. Mr. Crotty stated that he believes that NYRA should use its market share to command a higher price for its signal. NYRA responded that they agreed, that they spend significant time on pricing, and that they have had success in increasing their price. However, Mr. Hayward stated that a public meeting is not the correct forum to discuss details of NYRA's pricing strategy.

IX. NEW BUSINESS/OLD BUSINESS

None.

X. CHAIR'S REPORT

The Chair announced that the next meeting of the Board was preliminarily scheduled for Tuesday, June 19, 2012. Mr. Hayward requested that the meeting be held the following week due to a scheduling conflict and the Chair agreed to move the meeting.

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