



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

MINUTES

Franchise Oversight Board Meeting

April 22, 2013

Conference Room 131, State Capitol, Albany, New York

I. The meeting was called to order at 1:10 PM by the Chair, Mr. Williams. Establishment of a quorum was noted.

Members Present:

Robert Williams, Chair

Richard Aurelio, Member

(participated via videoconference)

John Crotty, Member

(participated via videoconference)

Steven Newman, Member

(participated via videoconference)

Board Staff in attendance:

Steven Lowenstein

Bradley Allen

NYRA Staff in attendance:

Susanne Stover, Senior Vice President and Chief Financial Officer

(participated via videoconference)

Kenneth Handal, Acting General Counsel and Chief Ethics and Compliance Officer

(participated via videoconference)

David O'Rourke, Vice President of Corporate Development

(participated via videoconference)

Patrick Mahoney, Senior Vice President of Pari-Mutuel Operations

(participated via videoconference)

Gaming Commission Staff in attendance

Thomas Casaregola

Public in attendance:

Jim Crane

Charles Kruzansky

Danielle Schittino

John Svare

II. APPROVAL OF BOARD MEETING MINUTES FOR JANUARY 18, 2012

Mr. Newman asked that the following clarifications be added to the minutes: That NYRA's charitable contributions were made primarily to organizations related to horse racing. Mr. Aurelio noted that there were a number of outstanding questions poised to NYRA at previous meetings. It was agreed that a list of those questions would be prepared and provided to NYRA for response.

APPROVED: 4-0

III. DISCUSSION OF TOTALIZATOR CONTRACT; CONSIDERATION OF RESOLUTION 13-01: APPROVAL OF TOTE CONTRACT BETWEEN NYRA AND AMTOTE

Mr. Williams stated that NYRA had submitted a draft contract between NYRA and Amtote for totalizator services for the approval of the Board.

Ms. Stover provided an overview of the process used to select the tote provider. Pursuant to NYRA's procurement policy, NYRA developed and issued an RFP in March 2011. NYRA received bids back from United Tote, Amtote and Sportech. NYRA established a review committee made up of members of NYRA's senior management. Members of the review committee individually evaluated the bids based on weighted criteria including technical operating environment, system capacity, tote service and staffing. Reporting capabilities, industry operating considerations, strategic considerations, management team, TRTB tote security systems, and overall fee proposal. Amtote was selected based on those evaluations.

Mr. Williams asked if transition costs were considered in the evaluation of costs. Ms. Stover replied that these cost, such as technical integration, training, and wiring were considered in the evaluation of the cost. Mr. Williams ask if NYRA's procurement manual afforded any post-award discussion with the losing bidder or award challenge. Ms. Stover replied that it did not and they did not have a process of explaining to losing bidders why they were not selected.

Mr. Aurelio asked if the NYRA Board reviewed the selection. Ms. Stover replied that Finance Committee reviewed the selection in January. A subcommittee was also formed, headed by Audit Committee Chairmen Spinelli and Finance Committee Chairman Subotnick to further review the selection. Mr. Handal added that the subcommittee held meetings with United Tote and Sportech on March 18th. Mr. Handle stated that at those meetings, United Tote stated that they had wished they received more information as the process went along and Sportech expressed that they had some confusion as to the specifications of the RFP, but neither made any allegations of fraud or collusion in the bid process.

Mr. Newman asked if the selection criteria was created after the receipt of the bids. Ms. Stover replied that they had a through RFP process but the specific criteria were developed after the bids were received. Mr. Newman and Mr. Williams stated that in

future RFPs that the selection criteria should be set prior to the RFP and to provide it to the bidders. Mr. Williams added that that the requirement should be added to NYRA's purchasing policy and procedures. Mr. Newman asked if the price was opened at the same time as the bid. Ms. Stover replied that they were. Mr. Newman suggested that the price be opened after the scoring of the bid. Mr. Williams and Mr. Newman suggested that uniform scoring method be established for the scoring criteria by evaluators.

Mr. Newman asked what the criteria strategic considerations was. Mr. O'Rourke replied that it was a subjective evaluation of the relationship with the bidders and how they would fit with NYRA's operations. Mr. Aurelio asked if they had evaluated tote operations at other tracks. Mr. O'Rourke replied that they had observed all the totes in operation at other locations. Mr. Newman inquired about the TRTB Tote Security System and why the bidders were scored how they were on this criterion. Mr. Mahoney replied that this was an initiative to improve the security of the tote system and that Amtote scored the highest because of their commitment to the initiative, while it was not a priority for United Tote and Sportech had a history of not performing on other industry initiatives.

Mr. Newman and Mr. Williams asked about the ability to integrate tote operations with the OTBs. Mr. O'Rourke replied that the contract with Amtote could be extended to the OTBs. Mr. Aurelio asked if NYRA implement new technologies such as apps, would they be able to work with the tote system. Mr. O'Rourke replied that there were provisions to allow for that.

Mr. Aurelio raised concerns regarding NYRA's request that the contract be exempt from the Freedom of Information Law. Ms. Stover stated that Amtote had express concern that information contained in the contract, especially pricing models and staffing, would harm Amtote's competitive position if revealed. Mr. Allen clarified that if the Board was FOILED, the Board would make an independent determination as to if certain information should be redacted.

Mr. Crotty asked if NYRA could provide an overview of the process of switching tote providers. Mr. Mahoney replied that under the Amtote contract, NYRA would move from an on-track system to a system operated off a hub in Baltimore, Maryland with a back-up hub in Portland, Oregon. NYRA would maintain an additional on-track back-up system. Connections from the track to the hub are maintained through phone lines with a redundant wireless internet connection. Amtote is providing NYRA with all new terminals and NYRA is working with Amtote to ensure all reporting requirements are met and they both understand the importance of a good opening. The new tote will go live four days before the opening of the Belmont fall meet, and NYRA will have those four days of simulcasting to rectify any problems. Amtote will be providing staff for the opening of all three tracks to assist customers with the new terminals. Mr. Crotty asked if the terminals were the same used by NYC Off-Track Betting Corporation and expressed concern regarding the quality of the interface. Mr. Mahoney replied that they were, but that there had been improvements made to the terminals. Mr. Crotty asked if NYRA could provide the Board with updates on the transition as it moves forward. Mr. O'Rourke replied that NYRA would provide those updates.

Mr. Williams stated that Board Counsel Bradley Allen had reviewed the draft agreement and asked if counsel any issues that should be considered by the Board. Mr. Allen stated that he did not. Mr. Williams noted that if Board Counsel determines that a material change has been made to the executed contract, NYRA must again request Board approval.

*BOARD RESOLUTION 13-01
ON A MOTION BY: Mr. Crotty
SECONDED BY: Mr. Aurelio
APPROVED: 4-0*

IV. PRESENTATION REGARDING NEW YORK OFF-TRACK BETTING CORPORATIONS FINANCIAL CONDITIONS BY THOMAS CASAREGOLA, NYS GAMING COMMISSION

Mr. Casaregola, Director of the Office of Audits and Internal Control for the Gaming Commission, provided a presentation on the financial condition of New York's Off-Track Betting Corporations. Mr. Casaregola reported that handle in New York had dropped from its level of \$2.7 billion ten years ago, with just over \$2 billion bet at New York OTBs. In 2011, on-track handle exceeded OTB handle as a result of NYCOTB's closure.

Mr. Casaregola provided the Board with some comparison statistics between the OTBs. He explained that some difference between the OTB regions made it difficult to truly compare across these statistics. Mr. Casaregola provided a snapshot of the OTBs current balance sheets and explained that in all but one case, current liabilities exceed current assets, which he explained that ratio as measure of ability to pay debts.

Members asked question about what had happened to the handle previously wagered at NYCOTB. Mr. Casaregola replied that NYRA had been able to recapture approximately one-third of that handle and that Nassau OTB did have a bump in handle in 2011 following NYCOTB's closure.

Mr. Newman asked that with NYCOTB closed and Suffolk OTB in bankruptcy, what was the prognosis for the other OTBs. Mr. Casaregola replied that based on projection provided by the OTBs, Nassau would be in a negative cash position but could access capital funds, and Suffolk would be in a similar position.

Mr. Aurelio and Mr. Crotty asked questions about what was being done to address the situation. Mr. Casaregola replied that the OTBs are actively attempting to address the situation through changes in operations and that they had advanced legislative proposals for relief. Ms. Stover replied that NYRA did not have a comprehensive legislative plan. Mr. Williams added that the Executive Chamber was facilitating meeting with NYRA and OTBs to examine if there were any efficiencies that could be achieved through cooperation.

Mr. Aurelio asked NYRA to follow up with its strategy to improve the health of the industry in New York. Ms. Stover replies that NYRA would do that.

Mr. Aurelio stated that he believes that the Board needed to take action to address the financial condition of the OTBs. Mr. Williams replied that this presentation was the first step and the next would be to invite a couple of the OTBs to a Board meeting to provide their prospective.

Note: Board Member Crotty left following this discussion at 3:00 PM.

**V. DISCUSSION OF SOLE SOURCE AND EMERGENCY PROCUREMENT FOR:
A) THE QUARTER ENDED DECEMBER 31, 2012 AND B) THE QUARTER
ENDED MARCH 31, 2013**

Ms. Stover answered question regarding NYRA sole source and emergency procurement. Mr. Williams asked what incremental costs NYRA incurred from the contract with Ottis for escalator repair if the service should have been provided under the shared services agreement with Genting. Ms. Stover replied that there was no incremental cost because NYRA would have been billed for the services under the shared services agreement.

Mr. Newman asked if Morrisville Auxiliary Testing had any competitors. Ms. Stover replied that they were the testing lab approved by the State and NYRA had to use that lab.

Mr. Newman asked about the selection of Event Kings. Ms. Stover replied that they had been selected to provide services to NYRA for the Belmont spring meet through an RFP process, and when NYRA decided to put on an event during the fall meet on short notice that they contracted with Event Kings to provide these services.

Mr. Newman asked if the contracts with Simply Say were related to the switch in Tote providers. Ms. Stover replied that these services were to make current systems compatible with the new Tote. Mr. Williams asked if these costs were considered in the transition cost to a new Tote when evaluating the Tote bids. Ms. Stover replied that they were.

Mr. Newman asked about the purchase of an equine ambulance from the University of Wisconsin. Ms. Stover replies that it had been donated to the University but they did not have a need for it. NYRA was able to purchase it to fill a need at a low cost.

Mr. Williams asked why a contract with an engineering firm (Dolph Rotfeld) would be single source. Mr. Stover replied that they had done work at Belmont for decades and had unique knowledge of the project. Mr. Williams ask if Mr. Rotfeld had previously been a Member of the NYRA Board. Mr. O'Rourke replied that he had.

Members asked questions on a number of individuals to provide production and host services for NYRA TV. Ms. Stover replied that these individuals were contracted with based on the recommendations of the production staff.

Mr. Newman asked how a contract with Wayne Hartley went from being awarded for \$40,000 to being worth \$475,000. Ms. Stover replies that Mr. Hartley was hired to perform wiring work. When the need for additional work immersed, NYRA was unable to find adequate resources to preform that work at a lower price.

Mr. Aurelio asked if the Board could discuss a draft of requested reporting requirements for NYRA on its procurement requirements. The draft request would include that NYRA would report monthly on all contracts executed with a value of \$50,000 or more, that NYRA provide the Board with all RFPs issued with an expected cost of \$1 million or more, and that NYRA provide 30 days notification prior to entering into a single or sole source contract with a value of \$500,000 or more. Mr. Aurelio stated that he thought it was a good suggestion and had no objections. Mr. Newman stated that he would like a lower threshold for advanced notification of single and sole source procurement. A threshold of \$200,000 was agreed to by Board Members.

Note: Board Member Newman left following this discussion at 3:45 PM.

VI. DISCUSSION OF NYRA'S 2012 AUDITED FINANCIAL STATEMENTS

Ms. Stover gave a presentation on the changes required to the financial statements as a result of the change in GAAP reporting standards from FASB to GASB as a result of the establishment of the Reorganization Board. These changes include significant differences in financial statement presentation and disclosures, changes in statement names, captions and subcategories, different method of cash flows, requirement for a MD&A, changes to footnotes, required supplementary schedules, and re-measurement of pension and post-employment obligations. Operating revenues exclude VLT revenue under GASB whereas under FASB it was included; however the VLT purse expense is still included in operating expenses.

Ms. Stover provided an overview of the 2012 audited financial statements. NYRA had working capital of \$2.5 million in 2012 compared to a deficit of \$804,000 in 2011. Total liabilities increased by \$6.2 million, largely due to increased horsemen's liabilities. Accrued pension liabilities increased by \$2.5 million and other post-retirement benefit liabilities increased by \$3.7 million. Operating revenue increased by 8.7 percent to \$274.4 million and pari-mutuel and simulcast revenue increase 10.9 percent. Operating expenses increased 18.4 percent, largely driven by VLT purse expense. The operating loss was \$20.5 million; however, including VLT purse revenue and excluding pension, post-retirement and pension costs, and depreciation, the operating loss would have been \$5.6 million.

Mr. Williams asked about the sales tax audit expense. Ms. Stover replied that NYRA had made the determination that programs were exempt from sales tax as a newspaper because the program included a section on significant events. That determination was incorrect and sales tax was owed on those sales. Mr. Williams asked about the expiration of NYRA's telebet contract. Mr. O'Rourke replied that it expired in April 2014 and that were having discussions about possibly consolidating phone rooms with the OTBs and were examining other possibilities.

Capital expenditures in 2012 were \$13.3 million compared to \$8.3 million in 2011. Mr. Aurelio commented that the amount spent at was inadequate. Ms. Stover replied that in total the amount spent at Aqueduct was less than the other tracks, but more was spent at Aqueduct for patron area improvements than at the other tracks.

Mr. Williams asked about any analysis behind attributing handle increases to increased purses and field size. Ms. Stover replied that additional horsemen did come and NYRA made changes to the race cards that lead to more competitive races, resulting in increased handle. Industry wide in 2012, handle increase by 1 percent compared to a 12 percent increase in wagering on NYRA races. NYRA contributed 5 percent of the total industry race days, offered 13 percent of the purses, and generated 20 percent of thoroughbred handle across the US and every dollar invested in purses at NYRA in 2012 yielded \$14.69 in handle compared to \$9.68 industry wide.

Mr. Williams asked about the status of unsettled labor contracts and the treat of any disruptions. Ms. Stover replied that 10 contracts are expired and discussions are ongoing with the unions. She did not think there is a significant risk to NYRA's operations.

Mr. Aurelio asked about the mention of an improved technology platform that you were developing for the ADW. Ms. Stover replied that that was GBE. Mr. Aurelio asked if GBE was just advanced deposit wagering. Mr. O'Rourke replied that is the primary function but they also integrating it into the track and hospitality and providing customer resource management.

Mr. Williams commented that in the 2011 audited financial statements, the combined pension and retirement liabilities were \$180 million but under the GASB restatement it's listed at \$49.68 million. Ms. Stover replied that those were the major changes due to the restatement along with a change in accrued environmental liability of about \$500,000.

Mr. Williams asked if the Supplemental DIP loan was reflected in NYRA's financial statements. Ms. Stover replied that the loan was a liability on old NYRA.

Mr. Williams asked about a letter NYRA had sent the Thoroughbred Breeding and Development Fund stating that NYRA had overpaid the fund by \$1.1 million and asked if the Fund had responded. Mr. Williams also asked about additional amounts that were outstanding to NYRA. Ms. Stover replied that the fund had not replied, that the additional amounts are less than \$1.1 million but more than de minimis, and that NYRA would have further correspondence with the Fund regarding these amounts.

Mr. Williams asked about what NYRA was planning to do with monies received as a result of the incorrect take-out that NYRA was unable to return to betters. Ms. Stover and Mr. Handal replied that for legal reasons they could not discuss that

Mr. Aurelio asked about the related party transaction between NYRA and the Jockey Club. Ms. Stover replied that the Jockey Club provided NYRA with web hosting and statistical reporting, and that several Members of NYRA's Board of Directors were also Members of the Jockey Club Board.

Mr. Williams asked if there were any audit findings or recommendations as a result of the audit. Ms. Stover replied that there were not.

VII. DISCUSSION OF NYRA'S FIRST QUARTER 2013 FINANCIAL RESULTS

Ms. Stover provided an overview of NYRA's first quarter 2013 financial results. NYRA earned net revenue from racing operations of \$24.9 million, a decrease of 3 percent, primarily due to 13 fewer race days compared to last year. Internet wagering continued to grow, increasing 11 percent, and average daily total handle and average daily on-track handle increased. VLT revenue of \$26.2 million increased 19 percent and exceeded expectations. Operating expenses of \$30.6 million increased 3 percent. NYRA spent about \$2.2 million on capital improvements including about \$510,000 from 2012 related projects.

NYRA generated \$404.5 million in total handle, a decrease of about 17 percent compared to last year. Daily average total handle increased 4 percent compared to last year. Export handle of \$280 million decreased 21 percent due to the decrease in live race days, as average daily of the export handle was about flat. Average field size of 7.06 down from 7.45 last year. Ms. Stover stated that there had been a decrease in shippers due to the December 2011 medication rule change. There were 52 shippers for the quarter compared to 188 last year.

Mr. Aurelio asked about horse fatalities during the meet. Mr. Handal responded they drop compared the previous year, with 6 compared to 27 in 2012. Mr. Aurelio asked what NYRA was doing with respect to horse health and safety. Mr. Handal answered that there's a Board committee on equine health and safety, they were instituting increased testing during certain periods, they were increasing security during certain periods of time, and established a hotline for the vets and jockeys to report problems that they see immediately in connection with races. Mr. Williams asked if NYRA could provide a gap analysis prepared by Dr. Palmer as to where NYRA was based upon the recommendations that were included in the 2012 task force.

Mr. Aurelio stated that he was disappointed that NYRA had not done anything different for the Wood Memorial.

VIII. NEW BUSINESS/OLD BUSINESS

Mr. Aurelio asked a series of questions regard open issues from prior meetings. Mr. Aurelio asked for further explanation of technology to be provided under a proposed contract with Global Betting Exchange. Ms. Stover replies that a presentation was prepared for the NYRA Board regarding GBE that would explain the technology and that would be shared with the Board Members.

Mr. Aurelio asked if the Moneygram proposal discussed at the last meeting had been implemented. Ms. Stover replied that it had not and NYRA was looking to have it implemented in June.

Mr. Aurelio asked about the status of a comprehensive marketing plan. Ms. Stover stated that Mr. Workman had created that plan and would be available to present it at a future meeting. Mr. Williams stated that he would like to have that presentation at the next meeting.

Mr. Aurelio asked about the status of Longshots. Ms. Stover replied that demolition work had begun but there had been a subsequent delay due to the discovery of asbestos.

Mr. Aurelio asked if there had been any determinations made regarding the strategic issues regarding future of Aqueduct. Ms. Stover answered that there had not. The NYRA Board had created a Long-Term Planning Committee which would develop a long-term strategic plan for NYRA, including Aqueduct, and that they would make cost effective investments and facility improvements that would improve the look of Aqueduct in the meantime.

Mr. Aurelio asked about the status of Trakus. Mr. O'Rourke stated that it had been approved by the NYRA Board and that they hope to go live with it at the start of the Belmont fall meet.

Mr. Aurelio asked if a comprehensive study of the impact of VLT purse enhancements had been completed. Ms. Stover replied that that had discussed the issue in Committees, but they had not done a full scale analysis.

IX. CHAIR'S REPORT

Mr. Williams noted that the next Board meeting is anticipated to be in May. The Secretary will work with Members and NYRA to set a final date.

X. The meeting was adjourned at 4:40 PM.