



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

## **MINUTES**

Franchise Oversight Board Meeting

May 13, 2014

Conference Room 131, State Capitol, Albany, New York

**I. The meeting was called to order at 11:38 AM by the Chair, Mr. Williams. Establishment of a quorum was noted.**

**Members Present:**

**Robert Williams, Chair**

**Elizabeth Garvey, Member**

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

**Joseph Rabito**

**James Towne, Jr.**

Board staff in attendance:

Steven Lowenstein

Bradley Allen

NYRA staff in attendance:

Christopher Kay, President and Chief Operating Officer

(participated via videoconference)

Susanne Stover, Senior Vice President and Chief Financial Officer

(participated via videoconference)

Kevin Rogan, Chief Compliance Officer

(participated via videoconference)

Pasquale Viscusi, Assistant General Counsel

(participated via videoconference)

Dolph Rottfeld, Consultant

(participated via videoconference)

Public in attendance:

David Lombardo

John Kiernan

Danielle Schittino

Scott Wexler

**II. APPROVAL OF BOARD MEETING MINUTES FOR December 2, 2014**

*APPROVED: 5-0*

### **III. CONSIDERATION OF RESOLUTION 14-01: DESIGNATION OF THE BOARD AS SEQRA LEAD AGENCY FOR THE REVIEW OF NYRA'S BELMONT PARK DORMITORY PROJECT AND ISSUANCE OF A NEGATIVE DECLARATION**

Mr. Williams stated that NYRA intends to construct a new three-story 94-bed dormitory at Belmont Park. A function of the Board is to represent the interests of the State of New York through the review and approval of capital investments to Aqueduct Racetrack, Belmont Park, and Saratoga Race Course. Therefore, the Board is the agency principally responsible for State Environmental Quality Review Act (SEQRA) review and approval of proposed Belmont improvements. NYRA has submitted a full environmental assessment form part one for the project, which was reviewed by the New York State Office of General Services (OGS), whom the Board has contracted with to assist with appropriate reviews and permitting. Staff of the Board and OGS has recommended that the Board declare that it be the SEQRA lead agency and that a negative declaration be issued finding that the Belmont Dormitory project will result in no significant adverse impacts on the environment.

Mr. Rottfeld, NYRA's consultant on the project, answered questions on the project. Mr. Towne asked what the plans were for the six cottages that were being replaced by the new dorm. Mr. Rottfeld replied that these cottages would be renovated to the extent possible. Mr. Towne asked if areas of the six cottages that were closed due to violations had been secured. Mr. Rottfeld replied that they had. Ms. Garvey asked if it is anticipated that upon completion would the new dorm be fully occupied and if all residents would be due to relocations from other dorms on-track. Mr. Rottfeld replied that the dorm would be fully occupied and some of the occupants would be coming from outside the track.

*BOARD RESOLUTION 14-01  
ON A MOTION BY: Mr. Rabito  
SECONDED BY: Mr. Towne  
APPROVED: 5-0*

### **IV. CONSIDERATION OF FINDINGS FOR THE PERFORMANCE STANDARD REVIEW OF THE NEW YORK RACING ASSOCIATION, INC. FOR THE PERIOD 2008 THROUGH 2012**

Mr. Williams stated that New York Racing, Pari-Mutuel Wagering and Breeding Law places a responsibility on the Board to monitor and enforce compliance with definitive documents that comprise the Franchise Agreement between the State and NYRA. Both the Franchise Agreement and Racing Law section 206 contains several performance standards that NYRA is on obligated to meet. The Board has a responsibility to review NYRA's performance every four years.

Mr. Williams added that staff formulated a draft report which sought to establish objective criteria by which performance measurement against standards could be reviewed. Once the draft was completed and reviewed by Board Members, it was provided to NYRA staff for review and written response. Their written response is included within this report and Board staff then prepared a commentary regarding the NYRA responses.

Mr. Williams concluded that The Board has not find that any individual failure to meet a performance standard constituted a material breach of the franchise agreement, or repeated failures taken together and viewed in the aggregate constituted a material breach. The Board did however find NYRA failed to meet 2 of the 11 innumerate standards and only partially satisfied three standards.

Mr. Towne remarked that he was taken aback by the tone of NYRA's responses. He found that there was an undertone of an argumentative attitude and sort of a petulant response in several places that he found inappropriate and counterproductive. He added that he views the Board's role as one of trying to make it possible for NYRA to succeed and that Board just wants NYRA to address shortcomings identified in the report.

Mr. Newman commented that he had not been provided sufficient time to review the final document and that he would prefer that consideration of the report be laid over to the next meeting. Mr. Towne and Ms. Garvey concurred. Mr. Williams announced that the consideration of the report would be held over until the next meeting.

## **V. DISCUSSION OF NYRA'S 2013 AUDITED FINANCIAL STATEMENTS**

Ms. Stover commented that she was unaware that the 2013 Audited Financial Statements were on the agenda for the meeting. She added that NYRA did have an operating loss for 2013, but that they did have a good audit of their financials and that they received an unqualified opinion from KPMG and they expressed concerns about going concerns.

Mr. Newman commented that it would be useful to have the KPMG partner in charge of the NYRA audit present when the Board reviews audited financial statements. Mr. Towne added that he had some issues that he would like to have addressed for the next meeting, including if KPMG sees any going concern issues going past 2014 and what are the financial trends being observed without significant changes. Mr. Towne also inquired if recent settlements with the former president and chief council was covered by insurance. Ms. Stover responded that was confidential. Mr. Towne questioned the validity of that response. Mr. Newman asked for specific details on how NYRA determined the payment of Mr. Kay's bonus.

## **VI. DISCUSSION OF NYRA'S FIRST QUARTER 2014 FINANCIAL RESULTS**

Ms. Stover provided an overview of NYRS's first quarter 2014 financial results. She explained that the quarter had been impacted by extreme weather conditions resulting in seven race day cancelations. Total handle for the quarter was \$412.3 million, one percent above the same period last year but below budget projections. NYRA earned net revenue from racing operations of \$22.5 million, one percent lower than the prior year due to lower on-track and NY OTB revenue. Operating expenses were \$32.7 million, five percent higher than the first quarter of 2013, primarily due to increase labor costs.

Mr. Williams asked about cost-savings measures being implemented by NYRA. Ms. Stover replied that they took actions during the first quarter, the impacts would not be

seen until later in the year. Actions include efforts to streamline operations and improve efficiencies. Mr. Kay added that they had reduced personnel and combined departments to create a more effective sales department.

Mr. Towne asked about electricity costs and possibility of utilizing solar power. Mr. Kay responded that they were in the process of conducting a comprehensive study of their electricity costs. Mr. Newman commented that he would prefer to see a financial presentation with VLT revenue included after operation results. Ms. Stover replied that they provide an analysis without VLT revenue elsewhere in the presentation.

Mr. Newman asked if the reduction in marketing expense had resulted in the reduction in attendance. Mr. Kay responded that he did not believe that it had and the reduction was the result of weather during the quarter. Mr. Kay added that they are improving the way they use marketing dollars towards a call to action and attracting new fans to the sport. Mr. Kay also described the entertainment that NYRA is planning for Belmont Stakes day and a new Stars and Stripes day on July 5th.

Mr. Williams asked about upgrades made at Aqueduct. Ms. Stover replied that new murals had been placed throughout the facility, including a large mural on the outside of the building, improved the cleanliness of the facility, replaced seating, and that the Longshots simulcast center had opened. Mr. Kay added that the facility had been painted in a new light blue and white paint scheme and noted that NYRA had hired a Spanish speaking race caller.

Mr. Kay introduced Mr. Rogan as NYRA's new Chief Compliance Officer, noting a desire to reduce outside integrity counsel costs through the creation of this position. Mr. Kay also noted that NYRA had college handicapping tournament on Kentucky Derby day and planed on increasing on-track entertainment next year for the Kentucky Derby.

## **VII. NEW BUSINESS/OLD BUSINESS**

Mr. Newman asked about a contract awarded for the removal of chickens and roosters. Ms. Stover and Mr. Kay explained the necessity of the contract. Mr. Newman asked about a sole source contract for video board maintenance. Ms. Stover and Mr. Kay replied that NYRA felt that this maintenance needed to be performed by the manufacturer of the video boards. Mr. Newman suggested that NYRA include maintenance as part of the bid to purchase future video boards.

Mr. Williams asked for an update on the Tote conversion. Mr. Kay responded that they were pleased with the conversion and that most problems had been resolved. Mr. Williams asked the progress of the GBE contract. Mr. Kay responded the contract was going well, but the timeframe had been delayed due to a longer search time for a facility to house the mainframes. Mr. Williams asked about any impact of the increase in admission prices at Belmont. Mr. Kay replied that there was a positive response to the ticket prices.

## **VIII. The meeting was adjourned at 12:54 PM.**