

**NEW JERSEY RACING COMMISSION
THURSDAY, MAY 3, 2012
RACING COMMISSION OFFICE
140 EAST FRONT STREET, FOURTH FLOOR
TRENTON, NEW JERSEY**

A meeting of the New Jersey Racing Commission was held on Thursday, May 3, 2012, in the Racing Commission office located at 140 East Front Street, in Trenton, New Jersey.

The following were present:

Anthony T. Abbatiello, Commissioner
Peter J. Cofrancesco, III, Commissioner
Francis X. Keegan, Jr., Commissioner
Frank Zanzuccki, Executive Director
DAG Judith A. Nason

The following were absent:

Anthony R. Caputo, Commissioner
Manny E. Aponte, Commissioner

It was noted that Commissioner Cofrancesco was participating by telephone.

Executive Director Frank Zanzuccki read the following statement:

WHEREAS in order to protect the personal privacy and to avoid situations wherein the public interest might be disserved, the Open Public Meetings Act permits bodies to exclude the public from that portion of a meeting at which certain matters are discussed.

NOW, THEREFORE, be it resolved that consistent with the provision of N.J.S.A. 10:4-12(b), the New Jersey Racing Commission will now adjourn to executive session to obtain legal advice protected from disclosure by the attorney-client privilege on the following matters:

1. Legal advice concerning the proposal of rules, pursuant to N.J.S.A. 5:5-186, establishing and regulating a pilot program authorizing wagering on horse racing through electronic wagering terminals located in a limited number of eligible taverns, restaurants, and similar venues, which rules shall be located at N.J.A.C. 13:74B-1.1, 1.2, 2.1, 2.2, 2.3, 2.4 , 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 4.1, 4.2, 4.3, 4.4, 5.1, 6.1 and 7.1.
2. Consider the adoption of the proposed amendments to N.J.A.C. 13:74-1.1, 1.2, 2.1, 2.2 and 2.3 and new rules N.J.A.C. 13:74-2.2 and 2.4 and the proposal of amendments and new rules to the extent required by P.L. 2011, c. 205 (effective December 31, 2011)
3. Legal advice concerning the application of the New Jersey Thoroughbred Horsemen's Association, Inc. ("NJTHA"), pursuant to a lease and related agreements entered into with the New Jersey Sports & Exposition Authority ("Authority"), to acquire the permit to operate Monmouth Park Racetrack (that is, to conduct thoroughbred racing and to operate the racetrack facility).
4. Subject to any Racing Commission approval regarding item 3) above, consider:
 - i) Approval for the NJTHA to transmit and receive, at Monmouth Park, interstate and intrastate simulcast horse race meetings/races to and from all horse racing racetracks/outlets that are presently approved for permit holder Authority/Monmouth Park;
 - ii) Approval for the NJTHA to participate in casino simulcasting to the same extent that is presently approved for permit holder Authority/Monmouth Park Racetrack.

5. Legal advice concerning the application of the NJTHA, pursuant to a lease and related agreements entered into with the Authority, to acquire the permit to conduct live racing at the Meadowlands Racetrack (that is, to conduct thoroughbred racing at the racetrack facility consistent with the said lease and related agreements, and consistent with an agreement between the NJTHA and New Meadowlands Racing, LLC/Mr. Jeffrey Gural);
6. Subject to any Racing Commission approval regarding item 5) above, consider:
 - i) Approval for the NJTHA to transmit and receive, at Meadowlands Racetrack, interstate and intrastate simulcast horse race meetings/races to and from all horse racing racetracks/outlets that are presently approved for permit holder Authority/Meadowlands Racetrack;
 - ii) Approval for the NJTHA to participate in casino simulcasting to the same extent that is presently approved for permit holder Authority/Meadowlands Racetrack.
7. Legal advice concerning the request for Racing Commission approval, on the effective date that NJTHA assumes operational control of Monmouth Park, for the NJTHA to be issued a license authorizing it to assume operation and control of Favorites at Woodbridge, an off-track wagering facility, pursuant to an assignment by the Authority.
8. Legal advice concerning the request for Racing Commission approval, on the effective date that the NJTHA assumes operational control of Monmouth Park, whether the NJTHA is suitable as a “qualifier” to the account wagering license held by the Authority, and if so, whether the NJTHA may therefore acquire a revenue share from the account wagering licensee (the Authority) consistent with the lease and related agreements between the Authority and NJTHA.
9. Other legal advice or updates regarding any pending matter or litigation.

Discussion of the above matters fall within the exceptions under the law; specifically matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the Commission’s attorney to

exercise her ethical duties as a lawyer and/or matters involving pending or anticipated litigation.”

The Commission ended the execution session and Commissioner Keegan moved to reconvene the public session. Commissioner Abbatiello seconded the motion and the Commission concurring, the public session resumed. At this time, the Executive Director read the following statement:

"This meeting today conforms with Chapter 231, P.L. 1975, called the "Open Public Meeting Law," and as per the requirements of the statute, notification of this meeting has been filed with the Secretary of State and with the following newspapers: Daily Racing Form, Bergen Record, Asbury Park Press, Courier-Post and the Newark Star Ledger.

CONSIDER THE REQUEST OF THE NEW MEADOWLANDS RACETRACK FOR APPROVAL TO OFFER A NEW WAGER, SUPERFECTA +1, AT MEADOWLANDS

Commissioner Keegan made a motion to approve the new wager. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE APPROVED ATLANTIC CITY CASINOS TO PAY A FEE IN EXCESS OF 3.5 PERCENT TO THE SENDING TRACK FOR THE BLACK-EYED SUSAN CONDUCTED AT PIMLICO RACE COURSE ON MAY 18, 2012

Commissioner Keegan motioned to approve the request of the approved Atlantic City casinos to pay six percent for the Black-eyed Susan on May 18, 2012. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER THE PROPOSAL OF RULES, PURSUANT TO N.J.S.A. 5:5-186, ESTABLISHING AND REGULATING A PILOT PROGRAM AUTHORIZING WAGERING ON HORSE RACING THROUGH ELECTRONIC WAGERING TERMINALS LOCATED IN A LIMITED NUMBER OF ELIGIBLE TAVERNS, RESTAURANTS, AND SIMILAR VENUES, WHICH RULES SHALL BE LOCATED AT N.J.A.C. 13:74B-1.1, 1.2, 2.1, 2.2, 2.3, 2.4 , 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 4.1, 4.2, 4.3, 4.4, 5.1, 6.1 AND 7.1

Commissioner Keegan motioned to approve the advertisement of proposed rules concerning a Pilot Program authorizing wagering on horse racing through electronic wagering terminals. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER THE ADOPTION OF THE PROPOSED AMENDMENTS TO N.J.A.C. 13:74-1.1, 1.2, 2.1, 2.2 AND 2.3 AND NEW RULES N.J.A.C. 13:74-2.2 AND 2.4 AND THE PROPOSAL OF AMENDMENTS AND NEW RULES TO THE EXTENT REQUIRED BY P.L. 2011, C. 205 (EFFECTIVE DECEMBER 31, 2011)

Commissioner Abbatiello motioned to table the adoption of the Off-Track Wagering and Account Wagering rules noted on the agenda. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE APPLICATION OF THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC. ("NJTHA"), PURSUANT TO A LEASE AND RELATED AGREEMENTS ENTERED INTO WITH THE NEW JERSEY SPORTS & EXPOSITION AUTHORITY ("AUTHORITY"), TO ACQUIRE THE PERMIT TO OPERATE MONMOUTH PARK RACETRACK (THAT IS, TO CONDUCT THOROUGHBRED RACING AND TO OPERATE THE RACETRACK FACILITY)

SUBJECT TO ANY RACING COMMISSION APPROVAL REGARDING ITEM 6) ABOVE, CONSIDER:

- i) APPROVAL FOR THE NJTHA TO TRANSMIT AND RECEIVE, AT MONMOUTH PARK, INTERSTATE AND INTRASTATE SIMULCAST HORSE RACE MEETINGS/RACES TO AND FROM ALL HORSE RACING RACETRACKS/OUTLETS THAT ARE PRESENTLY APPROVED FOR PERMIT HOLDER AUTHORITY/MONMOUTH PARK;
- ii) APPROVAL FOR THE NJTHA TO PARTICIPATE IN CASINO SIMULCASTING TO THE SAME EXTENT THAT IS PRESENTLY APPROVED FOR PERMIT HOLDER AUTHORITY/MONMOUTH PARK RACETRACK.

CONSIDER THE APPLICATION OF THE NJTHA, PURSUANT TO A LEASE AND RELATED AGREEMENTS ENTERED INTO WITH THE AUTHORITY, TO ACQUIRE THE PERMIT TO CONDUCT LIVE RACING AT THE MEADOWLANDS RACETRACK (THAT IS, TO CONDUCT THOROUGHBRED RACING AT THE RACETRACK FACILITY CONSISTENT WITH THE SAID LEASE AND RELATED AGREEMENTS, AND CONSISTENT WITH AN AGREEMENT BETWEEN THE NJTHA AND NEW MEADOWLANDS RACING, LLC/MR. JEFFREY GURAL)

SUBJECT TO ANY RACING COMMISSION APPROVAL REGARDING ITEM 8) ABOVE, CONSIDER:

- i) APPROVAL FOR THE NJTHA TO TRANSMIT AND RECEIVE, AT MEADOWLANDS RACETRACK, INTERSTATE AND INTRASTATE SIMULCAST HORSE RACE MEETINGS/RACES TO AND FROM ALL HORSE RACING RACETRACKS/OUTLETS THAT ARE PRESENTLY APPROVED FOR PERMIT HOLDER AUTHORITY/MEADOWLANDS RACETRACK;
- ii) APPROVAL FOR THE NJTHA TO PARTICIPATE IN CASINO SIMULCASTING TO THE SAME EXTENT THAT IS PRESENTLY APPROVED FOR PERMIT HOLDER AUTHORITY/MEADOWLANDS RACETRACK.

CONSIDER THE REQUEST FOR RACING COMMISSION APPROVAL, ON THE EFFECTIVE DATE THAT NJTHA ASSUMES OPERATIONAL CONTROL OF MONMOUTH PARK, FOR THE NJTHA TO BE ISSUED A LICENSE AUTHORIZING IT TO ASSUME OPERATION AND CONTROL OF FAVORITES AT WOODBRIDGE, AN OFF-TRACK WAGERING FACILITY, PURSUANT TO AN ASSIGNMENT BY THE AUTHORITY

CONSIDER THE REQUEST FOR RACING COMMISSION APPROVAL, ON THE EFFECTIVE DATE THAT THE NJTHA ASSUMES OPERATIONAL CONTROL OF MONMOUTH PARK, WHETHER THE NJTHA IS SUITABLE AS A "QUALIFIER" TO THE ACCOUNT WAGERING LICENSE HELD BY THE AUTHORITY, AND IF SO, WHETHER THE NJTHA MAY THEREFORE ACQUIRE A REVENUE SHARE FROM THE ACCOUNT WAGERING LICENSEE (THE AUTHORITY) CONSISTENT WITH THE LEASE AND RELATED AGREEMENTS BETWEEN THE AUTHORITY AND NJTHA

The Executive Director acknowledged the presence of Michael D. Schottland, Esq., who is the attorney for the NJTHA, and opened the floor to him to provide the

Commission with a brief description of the transaction between the New Jersey Sports and Exposition Authority and the New Jersey Thoroughbred Horsemen's Association and any statements they wish to make to the Commission.

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Mr. Schottland asked the Commission if they would like him to have the application materials moved into evidence, or would the Commission consider all documents filed by the NJTHA as part of the record before the Commission. The Executive Director indicated that the Commissioners have been provided with all materials submitted in connection with the application and these materials are part of the record.

Mr. Schottland informed the Commission that John Forbes, Michael Musto and Robert Kulina were present and could respond to questions.

A table of organization of the NJTHA, which was attached to the NJTHA's application as Exhibit J, was projected on a screen for the Commission.

Robert Kulina made the presentation to the Commission on behalf of the NJTHA. First, Mr. Kulina explained the organizational structure among the NJTHA, DARBY and ELITE. The Executive Director asked Mr. Kulina which entity has control over the permit in that it appears the THA has given all decision making to DARBY. Mr. Kulina replied that the NJTHA Board of Directors is the ultimate decision-maker consistent with the regulatory requirements on a permitholder. He indicated that DARBY/ELITE will meet with the NJTHA Board of Directors once a month to seek the Board's approval in regard to management issues. Mr. Kulina indicated that the NJTHA Board has authorized DARBY to conduct the May 4, 2012 and May 5, 2012 race meet at the Meadowlands Racetrack.

The Executive Director sought clarification from Mr. Kulina by pointing out that the management agreement filed with the Commission says otherwise and he asked whether there have been adjustments to that agreement because "you've set up this temporary structure so that you will be meeting on a monthly basis to retain your decision-making authority consistent with the permit holder? Is that correct?" John Forbes indicated this was correct. The Executive Director then asked that the THA provide written confirmation of this change to the Commission within a reasonable time frame and Mr. Forbes indicated he would.

Mr. Kulina indicated that the NJTHA will conduct 75 days of racing, specifically,

51 days conducted at the Monmouth Park facility and 24 days to be run at the Meadowlands Racetrack.

Mr. Kulina outlined his substantial experience in operating racetracks and indicated that approximately 95 percent of the existing staff at the racetracks will continue to work there as well as nearly 100 percent of the Woodbridge OTW staff will remain.

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The Executive Director asked Robert Kulina if the NJTHA has the financial ability to move forward with the permit application in the event the financial backing from Sportech LLC does not take place. Mr. Kulina responded that the financial ability is present due to the NJTHA's access to State grants, loans and the revenue generated by the Woodbridge Off-Track Wagering facility. Mr. Kulina also indicated that the NJTHA has the financial resources to build the next OTW even if the Sportech deal falls through.

The Commission called upon Ralph Marra, Esq., representing the New Jersey Sports and Exposition Authority and lessor of Monmouth Park. Mr. Marra confirmed that the information presented by the NJTHA in regard to their application is accurate and he approves of the presentation made.

A proposed motion was read by the Executive Director:

On February 29, 2012, the New Jersey Thoroughbred Horsemen's Association, Inc. ("NJTHA"), filed applications to acquire a permit to conduct the thoroughbred horse race meeting at Monmouth Park Racetrack and at the Meadowlands Racetrack, to acquire the Woodbridge Off-track wagering facility license, and to acquire a financial interest related to the account wagering license, all pursuant to a signed ground lease and related agreements it has with the New Jersey Sports & Exposition ("Authority"). Pursuant to the NJTHA-Authority transaction, the NJTHA will lease and operate the Monmouth Park Racetrack premises. Although the NJTHA proposes to conduct thoroughbred racing at the Meadowlands Racetrack, the ground lease for that racetrack premises shall continue to be held by New Meadowlands Racetrack, LLC, whose principal is Mr. Jeffrey Gural, which entity also holds and shall continue to hold the harness racing permit for the Meadowlands Racetrack.

The NJTHA amended its applications on various occasions. Although materials submitted with its applications discloses future goals and aspirations related to its role and participation in New Jersey racing and gaming generally, through its applications as amended,

the NJTHA now seeks Commission approval for the specific relief as follows, as consistent with the Authority-NJTHA transaction:

Approval, pursuant to the ground lease and related agreements it has entered into with the Authority, to acquire the permit to operate Monmouth Park Racetrack (that is, to conduct thoroughbred racing and to operate the racetrack facility).

Subject to any Racing Commission approval thereof, the NJTHA also asks for:

- approval for it to transmit and receive, at Monmouth Park, interstate and intrastate simulcast horse race meetings/races to and from all horse racing racetracks/outlets that are presently approved for permit holder Authority/Monmouth Park; and
- approval for the NJTHA to participate in casino simulcasting to the same extent that is presently approved for permit holder Authority/Monmouth Park.

The NJTHA also requests from the Commission:

Approval, pursuant to the ground lease entered into with the Authority, to acquire the permit to conduct live racing at the Meadowlands Racetrack (that is, to conduct thoroughbred racing at the racetrack facility consistent with the ground lease and consistent with an agreement between the NJTHA and NMRLLC);

Subject to Racing Commission approval regarding this specifically, the NJTHA also asks for:

- approval for it as to transmit and receive, at the Meadowlands Racetrack, interstate and intrastate simulcast horse race meetings/races to and from all horse racing racetracks/outlets that are presently approved for permit holder Authority/Meadowlands Racetrack; and

- approval for the NJTHA to participate in casino simulcasting to the same extent that is presently approved for permit holder Authority/Meadowlands Racetrack.

Additionally, the NJTHA has applied to the Commission for:

Approval, on the effective date that NJTHA assumes operational control of Monmouth Park, for the NJTHA to be issued a license authorizing it to assume operation and control of Favorites at Woodbridge, an off-track wagering facility, pursuant to an assignment by the Authority; and

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Approval, on the effective date that the NJTHA assumes operational control of Monmouth Park, as to whether the NJTHA is suitable as a “qualifier” to the account wagering license held by the Authority, and if so, whether the NJTHA may therefore acquire a revenue share from the account wagering licensee (the Authority) consistent with the ground lease.

The NJTHA operates as a non-profit entity, and as it states in its filing with the Commission, intends to continue to so operate. Its President is Mr. John Forbes, and its Executive Director is Mr. Michael Musto. On behalf of the NJTHA, and pursuant to the authorities vested in him as NJTHA President, Mr. Forbes entered into a “Management and Development Agreement” (“management agreement”) with two New Jersey entities formed for such purpose, and described by the NJTHA as “independent contractors”, Darby Development, LLC (“DARBY”) and Elite Consultants, LLC (“ELITE”). DARBY’s managing members are Ronald S. Drazin and Brian D. Drazin, and its President is Mr. Robert Kulina. The sole managing member of ELITE is Mr. Dennis Drazin, former President of the NJTHA, and former Racing Commission Chairman.

According to the NJTHA, it contracted with DARBY for the management and development of the rights acquired under the Authority-NJTHA ground lease. Under the NJTHA structure, DARBY among other things will manage, oversee, and provide for the day-to-day operations and capital improvements to the facilities at Monmouth Park, the

Meadowlands Racetrack, the Woodbridge Off-track wagering facility, as well as the future development of OTW's, EZBets associated with bars and restaurants as consistent with law. The NJTHA explains that DARBY hired ELITE as an "independent contractor" for advice and consultation purposes. As explained by the NJTHA, ELITE provides advice to DARBY and ultimately to the NJTHA, as DARBY fulfills its mission. Accordingly, if the Racing Commission approves the NJTHA applications, as a result of the NJTHA/DARBY/ELITE management agreement, the NJTHA operations will be run by this management structure.

In considering this matter, the Racing Commissioners were provided with the results of the staff's investigation, as concerns the Authority-NJTHA transaction, as concerns the NJTHA proposed racing plan, and as concerns the principals of the various entities involved. We also received information from the parties to the transaction, both prior to today and at this proceeding. We also consulted with Racing Commission legal counsel as appropriate.

In making this motion, I note that the Commission is only addressing the matters before us as outlined above and set forth in our related public meeting agenda. Any decision the Commission arrives at today should not be considered as approval for any licenses or approvals related to the future rights or conditional rights the NJTHA has acquired as a result

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of the Authority-NJTHA transaction. Also, while the NJTHA has indicated its intention to continue to operate as a non-profit entity, any decision we render should not be interpreted as a determination or affirmation in that regard, as that is not within our regulatory authority, and the maintenance of its desired corporate status is the responsibility of the NJTHA in consultation with its legal counsel. Also, while we have considered the overall financial stability of the NJTHA as the potential permit and license holder, which includes the potential impacts of the management agreement to the NJTHA's financial stability relevant to its successful conduct of racing, any determination of the Commission pursuant to this motion should not be viewed as an evaluation or approval of the structure chosen by the NJTHA, or of the management agreement costs to the NJTHA. While the history of a New Jersey permit holder conducting operations through a management company is limited, such is not uncommon in the gaming industry generally, and where the costs are not considered as inconsistent with the ability to carry out the responsibilities incident to the permits or license issued, the balance between the benefits and costs of such is a discretionary determination which here lies with the NJTHA Board of Directors.

Also in making this motion, I am very cognizant of the critical times facing thoroughbred racing in this State. As my fellow Commissioners know, we spent much time investigating, considering and approving the racing-related aspects of the NJSEA-Morris Bailey transaction, which as this proposed transaction does, involved the transfer of the racing rights and obligations of the Authority concerning Monmouth Park and the Woodbridge off-track wagering facility. It was in the aftermath of the unfulfilled hopes and expectations surrounding that transaction, which heightened uncertainties related to the continued viability of thoroughbred racing in this State, and its ability to prosper, that the NJTHA application was presented to this Commission.

While the Commission's investigation into the NJTHA application has been substantial, and continues, it reflects that the NJTHA structure has changed and evolved in recent months. It is also reasonable to expect, as would be the case with any new structure, that it will continue to evolve as the NJTHA and its agents for the first time are injected into the business complexities associated with the operational aspects of horse racing.

I believe that the NJTHA proposal presents a viable business plan, and with proper and sufficient monitoring through regulatory conditions, I am convinced that a grant of the relief the NJTHA seeks will have two positive consequences. First, the NJTHA's assumption of these thoroughbred racing privileges and responsibilities will address the critical situation which our thoroughbred industry faces, which shall serve to insure the continuation of racing and the Woodbridge OTW facility's operation in this State, and therefore, the preservation of the recreational opportunities and the many jobs which the

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sport of horse racing supports. Second, the conditions attendant to such grant which I will later propose, should my fellow Commissioners agree, will satisfy the limited regulatory concerns presented through the NJTHA application, which I will also describe.

In evaluating the NJTHA application, I note that it reflects a diverse balance of individuals, who have different roles in the common goal of carrying out the NJTHA operational plan. The members of the NJTHA Board of Directors have vast and broad experience in thoroughbred racing in their individual capacity, and as an elected body, in their important role of continually overseeing and advancing the interests of their constituency.

Indeed, as this Commission and our racetracks well know, the NJTHA Board has historically and vigorously acted to ensure that the interests of its constituents are advanced. While the

NJTHA has not before held a racing related permit or OTW facility license in this State, it has determined to engage DARBY and ELITE which, while newly created for this very purpose, also have experienced personnel. While the investigation revealed that the two managing members of DARBY do not possess a great deal of experience in horse race management or OTW facility operations, they are licensed attorneys in this State with various experiences, and as I understand it, will draw upon those experiences in carrying out their duties regarding the structure's developmental plans and racing operations going forward. Significantly, Robert Kulina, the former Manager of Monmouth Park, whose experience in racing management is a matter of record, was named as the President of DARBY, and will be directly immersed in the day-to-day racing and DARBY operations. I also take great comfort in the decision of the applicant to substantially draw upon the present on-site Monmouth Park Racetrack and Woodbridge OTW facility workforce of the Authority, who are experienced and currently licensed. As concerns Dennis Drazin, while his function with ELITE represents a new role for him, he is well versed and experienced in the minutia of racing and off-track wagering. Clearly, based upon the Commission's investigation, it is evident that the NJTHA views the participation of Mr. Drazin in his represented role with ELITE as an essential ingredient to the successful conduct of its business. Also, from our investigation, it appears that the NJTHA structure was devised with a goal of insuring that the experience of Dennis Drazin could be drawn upon to the extent consistent with his obligation to ensure that his actions are consistent with statutory restrictions imposed upon him as result of his having recently served and resigned as Chairman of this Commission.

While each of the principals of the NJTHA, DARBY and ELITE appear of suitable integrity according to our investigation to date, my concern relates to the relative balance of responsibilities between the three. Based upon a review of the transaction and management agreement specifically, I believe that racetrack permit conditions, as well as OTW license conditions, are needed to further assure that the NJTHA Board of Directors will maintain

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sufficient controls and oversights with regard to the proposed structure. The delegation of all, or substantially all, responsibility for the management, operation and control of racing and off-track wagering to an independent contractor, with no or insufficient oversight on the part of the NJTHA to take steps to ensure fulfillment of law and regulatory requirements, would be inconsistent with N.J.S.A. 5:5-47 and N.J.S.A. 5:5-130.

Further, while the NJTHA structure and related operational plan of vision appears to be

consistent with financial stability considerations, anticipated revenues and expenditures are, under the NJTHA structure, to be handled not by the NJTHA as the permit holder, but by recently formed entity DARBY. For integrity assurance purposes, so that the Commission may properly monitor the receipt and expenditure of those revenues by DARBY to confirm conformance with the racing laws (inclusive of the “Off-Track and Account Wagering Act”), and so that the Commission may monitor the financial aspects of the permit holder’s operations as relevant to our continued financial stability evaluation, I will also propose conditions in this regard. I believe that these conditions, as they include a simultaneous reporting responsibility to the NJTHA Board, will also prove to be of benefit to the Board in insuring that its overall mission is responsibly met, and therefore, that the interests of its constituents are being advanced.

Turning now to the actual racing plan, The NJTHA has indicated that it intends to continue racetrack operations/race schedules of Monmouth Park and the Meadowlands Racetrack consistent with the approvals secured by the Authority for 2012, including as concerns race dates. The NJTHA intends to run a total 51 days at Monmouth Park under the Monmouth Park permit (beginning May 12, 2012, and concluding September 3, 2012), and a total 24 days to be run under the Meadowlands thoroughbred permit. Ten of those dates, as follows, will be run at the Meadowlands Racetrack: May 4 and 5, 2012; October 12, 13, 19, 20, 26 and 27, and November 2 and 3, 2012. The remaining fourteen dates, which are to be run under the Meadowlands thoroughbred permit at Monmouth Park, will be as follows: August 9, 16, 23 and 30, 2012, which is “twilight racing” beginning at 4:00 p.m.; September 8, 9, 15, 16, 22, 23, 29, and 30, 2012; and October 6 and 7, 2012.

I believe that the application of the NJTHA, for a permit to conduct thoroughbred racing at, and to fully operate Monmouth Park, and to hold the thoroughbred permit for the Meadowlands Racetrack, with the continuation of live racing at each facility consistent with the present permit holder’s approvals, would be in the public interest as set forth in N.J.S.A. 5:5-22 et seq., specifically as provided in N.J.S.A. 5:5-43 and 44. Additionally, the grant of the NJTHA request to receive the Woodbridge OTW facility operational license would also be consistent with public interest considerations. I also believe that the issuance of such conditional permits and a conditional OTW license, and approval of the respective race Minutes of May 3, 2012

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schedules as requested for the two racetracks, is consistent with the interests of the applicant, the industry participants, and the public.

Such an approval, as concerns the racetrack permits specifically, is additionally consistent with the goal of achieving reasonable continuity in thoroughbred racing this year. The approval of the NJTHA racetrack applications will continue to serve to promote the thoroughbred industry, maintain and enhance the employment which thoroughbred racing provides, encourage horses to stay in New Jersey, provide the maximum possible revenue to the state and to our horsemen, help maintain the competitive position in relation to neighboring states, and provide a continuation of recreational opportunities for New Jersey residents who desire to attend Monmouth Park and Meadowlands Racetrack thoroughbred racing. Similarly, the issuance of the Woodbridge OTW facility license to the NJTHA will not only enhance employment and recreational opportunities within the State, but will allow for a continuation of the beneficial revenue streams which OTW wagering produces.

I therefore move that the Commission approve the issuance of a Monmouth Park thoroughbred race permit, and Meadowlands thoroughbred race permit, to the NJTHA consistent with its agreement with the Authority, subject to the following conditions:

- 1) The permits shall be conditional;
- 2) The final approval of the permit shall be subject to the continuing investigation of the Commission;
- 3) All conditions applicable to the Authority's operation of Monmouth Park and the Meadowlands Racetrack shall equally apply to the NJTHA, and if the NJTHA believes that any such condition(s) should not apply in either case, it must seek to have those conditions removed in writing through application to the Executive Director;
- 4) The issued permits shall be conditional upon compliance with all laws, rules, and directives of the Commission which may be implicated;
- 5) All employees of the NJTHA, or entities (and the employees or personnel of such entities) utilized by the NJTHA in connection with the management and operation of Monmouth Park and the Meadowlands Racetrack (including the employees/personnel of the racetracks), consistent with Commission rules and practice, shall secure licensure from the Commission before engaging in such employment or related activities;

- 6) The NJTHA shall advise the Commission, in writing, of any arising facts, immediately upon recognition of any issue existent, that could potentially be disruptive to racing and/or racing related activities and the conduct of parimutuel wagering at Monmouth Park and/or the Meadowlands Racetrack; and
- 7) The supplemental conditions designated below shall apply.

With regard to the NJTHA's request to engage in interstate and intrastate simulcasting at Monmouth Park and the Meadowlands Racetrack, the NJTHA has indicated that it presently intends to engage in simulcasting activities to the same extent as the Authority. I believe that the NJTHA's requests, which are essentially to conduct intrastate and interstate common pool and separate pool simulcasting with the facilities presently approved for the Authority at Monmouth Park and the Meadowlands Racetrack, is consistent with the Simulcasting Racing Act, N.J.S.A. 5:5-110 et seq. and our related rules. I, as part of this motion, therefore advocate approval subject to the following conditions:

- 8) Approval is conditioned upon the continuing investigation;
- 9) All conditions applicable to the Authority's simulcast operations at Monmouth Park and the Meadowlands Racetrack shall equally apply to the NJTHA, and if the NJTHA believes that any such condition should not apply, it must seek to have those conditions removed through application to the Executive Director; and
- 10) The conditional relief granted shall be subject to compliance with all laws, rules, and directives of the Racing Commission which may be implicated.
- 11) The supplemental conditions designated below shall apply.

As concerns the NJTHA's request to participate in casino simulcasting at Monmouth Park and the Meadowlands Racetrack, the NJTHA has indicated that it presently intends to engage in casino simulcasting activities to the same extent as the Authority. I believe that Commission approval of the NJTHA's request would be consistent with the Casino Simulcasting Act and Chapter 72 of the New Jersey Administrative Code (Casino

Simulcasting). I recommend, as part of this motion for approval of the request, the following conditions:

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12) Approval is conditioned upon the continuing investigation;

13) All conditions applicable to the Authority's casino simulcast operations related to Monmouth Park and the Meadowlands Racetrack shall equally apply to the NJTHA, and if the NJTHA believes that any such condition should not apply, it must seek to have those conditions removed through application to the Executive Director; and

14) The conditional relief granted shall be subject to compliance with all laws, rules, and directives of the Commission which may be implicated.

15) The supplemental conditions designated below shall apply.

Let me now turn specifically to the NJTHA application, to be granted a license to operate the Woodbridge OTW, which license is now held by the Authority. Here, the Commission is not at this time approving any future rights that the NJTHA may have with regard to the New Jersey Off-Track wagering system. The Racing Commission's decision is limited to the Woodbridge OTW, and particularly, the assignment of the operational and financial rights to the Woodbridge OTW consistent with the Authority-NJTHA agreement.

I believe that the investigation, and what we have heard here today, demonstrates that the NJTHA is qualified to conditionally hold the OTW license. The applicant has indicated that, for the present time, it intends to use the existing on-site staff of the Woodbridge OTW to a substantial extent, and therefore, few if any persons will for the time being require investigation as individual license applicants. Accordingly, I conclude that the NJTHA has established by clear and convincing evidence that: its intended management personnel for the OTW facility are qualified in all aspects; that the on-site employees to be utilized at and with regard to the OTW facility, being substantially the same ones now employed by the Authority and licensed by this Commission, are qualified in all aspects; that the NJTHA is qualified to hold the license for the Woodbridge OTW; that the transfer of the Woodbridge OTW license will not be inimical to the best interests of the public and the horse racing industry in this

State; and that all of the requirements of the “Off-Track and Account Wagering Act” and the Commission’s rules have been met. I therefore believe that approval of this request of the NJTHA’s application to receive the license to operate the Woodbridge OTW facility is warranted if the following conditions are attached to the license. As a result, consistent with the Off-Track and Account Wagering Act and Title 13, Chapter 74 of the Commission’s rules, including N.J.A.C. 13:74-4.1, I move that the Commission issue the license to operate the Woodbridge OTW to the NJTHA subject to the following conditions:
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- 16) The issuance of the OTW license is subject to the review and approval of the Attorney General who, pursuant to statute, shall have the authority to render the final decision upon all applications for an off-track wagering license.
- 17) Conditioned upon final approval of NJTHA’s racetrack permits, and the Commission’s continuing investigation;
- 18) That all conditions applicable to the Authority’s Woodbridge OTW license, as related to the Woodbridge OTW, shall equally apply to the NJTHA, and if the NJTHA believes that any such condition should not apply, it must seek to have those conditions removed through application to the Executive Director;
- 19) The applicant intends, until further notice to the Commission, to operate the Woodbridge OTW in a manner consistent with the way it has been operated by the Authority this year;
- 20) All employees of the NJTHA, or entities (and the employees or personnel of such entities) utilized by the NJTHA in connection with the management and operation of the Woodbridge OTW facility (including the employees/personnel thereof), consistent with Commission rules and practice, shall first secure licensure from the Commission before engaging in such employment or related activities;
- 21) The NJTHA shall advise the Commission, in writing, of any arising facts, immediately upon recognition of any issue existent, that could potentially be disruptive to racing-related activities or the conduct of parimutuel wagering

at the Woodbridge OTW facility;

22) The conditional relief granted shall be subject to compliance with all laws, rules, and directives of the Commission which may be implicated;

23) The NJTHA shall not receive a transfer of the license to operate the Woodbridge OTW, or related rights, until and unless the Attorney General favorably reviews and approves this determination in writing;

24) The supplemental conditions designated below shall also apply.

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The NJTHA's intended present interest with regard to the account wagering system is to receive an approximate 50% revenue stream from the Authority's revenue as derived from its continued operation of the New Jersey account wagering system, consistent with the Authority-NJTHA transaction. Because of the significant financial interest that the NJTHA is to assume with regard to revenues accruing to the Authority, as a result of its account wagering operation, while it (that is, the NJTHA) is not required to hold an account wagering license as a result of this interest, the NJTHA must "qualify" to the personal background/good character suitability standards which would enable it to in fact hold such license. This, I find it has done. I move, however, that the Commission's approval shall be subject to the following conditions:

25) Conditioned upon final approval of the NJTHA Monmouth Park Racetrack permit and the continued investigation;

26) The interest of the NJTHA is limited to the 50% share of the Authority's revenue in account wagering as described in Authority - NJTHA transaction, less the retention percentage of the Authority;

27) That the Commission is not at this time approving any future rights that the NJTHA may seek with regard to the New Jersey account wagering system. The Commission's decision today is in all respects limited to the application before it, and here particularly, to the assignment of revenue rights derived by the Authority incident to its operation of the account wagering system;

28) That the Commission's action is subject to review and approval of the Attorney General. Neither the NJTHA, or any related entity, may receive a revenue interest from the account wagering licensee until and unless the Attorney General favorably reviews and approves this determination in writing.

29) The additional supplemental conditions below shall also apply.

In addition, as part of this motion, I propose the following supplemental conditions:

30) The conditional permit grant to the NJTHA, regarding the thoroughbred race permit for the Meadowlands Racetrack, is subject to all rights granted, and incident to, the harness and racetrack operating permit held by NMRLLC.

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31) The NJTHA, DARBY, and ELITE shall comply in a timely manner with all reasonable requests of the Commission for information in connection with the NJTHA's permit and license conditions.

32) The NJTHA shall supply a complete, final and executed management agreement setting forth with specificity the rights, duties obligations, and responsibilities of the NJTHA, DARBY and ELITE.

33) The NJTHA shall promptly report in writing to the Commission any material changes regarding information the NJTHA submitted in connection with its applications including, but not limited to, any proposed changes to the NJTHA/DARBY/ELITE management agreement, or its employees or personnel, in advance thereof.

34) The NJTHA shall require DARBY and ELITE to provide, on an annual basis, and to the attention of the NJTHA Board of Directors with copy to the Commission, the results of a full and complete independent audit (conducted by a certified public accounting firm licensed in New Jersey, chosen from a list of such firms compiled by the Commission) of all funds directly or indirectly referenced in the management agreement and under the direct or indirect control of DARBY and/or ELITE (including but not limited to:

funds held on behalf of the NJTHA; funds expended on behalf of the NJTHA; funds collected and disbursed with regard to any activity which is racing-related, parimutuel wagering related, gaming-related, OTW-related, EZBet related, etc.; fees and reimbursements to DARBY, fees and reimbursements to ELITE, fees, costs and reimbursements to Drazin and Warsaw P.C., etc.); and

- 35) The NJTHA shall provide the Commission with a written bi-monthly status report, by the first of each month with the first report being due July 1, 2012, reporting on the status of significant developments (both positive and negative) concerning each aspect of the Racing Commission's conditional approval this date. The report shall include analysis, with specificity, concerning the financial stability of the NJTHA's overall racing related parimutuel wagering operations (live racing, simulcasting, OTW, etc.).

- 36) Additionally, within 30 days of the date of this conditional approval, the NJTHA shall demonstrate to the satisfaction of the Commission that, under the terms of the management agreement, it retains sufficient control and oversight responsibilities as concerns the thoroughbred permits at Monmouth Park and the Meadowlands Racetrack, as well as concerns the Woodbridge OTW facility. The NJTHA shall set forth with specificity its responsibilities as to all aspects of the day-to-day operation of the two tracks, and shall describe in detail all reporting requirements by DARBY/ELITE to the NJTHA. In addition, the NJTHA must demonstrate to the satisfaction of the Commission that it has not delegated any final decision making authority for any aspect of the operation of the tracks or off-track wagering facility that would conflict with applicable laws, rules or directives of the Commission.
- 37) Additionally, within 30 days of the date of this conditional approval, the NJTHA shall demonstrate to the satisfaction of the Commission that the

NJTHA by-laws permit it to take all actions necessary for the operation of the thoroughbred permits at Monmouth Park and the Meadowlands Racetrack, as well as the operation of the Woodbridge OTW facility.

38) The permits, and related authorities incident to our decision today, are issued based upon the representation of the NJTHA that temporary measures have been implemented by the NJTHA to insure that the purposes of conditions 36 and 37, above, are in-place.

39) Should any of the foregoing conditions not be met within the time periods provided, the Commission may in its sole discretion, immediately revoke the NJTHA's permits and/or license.

40) Any time limits described herein may be extended at the sole discretion of the Commission.

This, my fellow Commissioners, concludes my motion.

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Howard Bruno, General Manager of Freehold Raceway, asked the Commission if they received the letter of protest to today's meeting which was filed by John Pellecchia, Esq. The Executive Director acknowledged receipt of the letter and advised that it was circulated to the Racing Commissioners and a response had been issued earlier that day.

Thomas Luchento, President of the New Jersey Standardbred Breeders' and Owners' Association asked to make a comment which the Commission allowed. Mr. Luchento indicated that the SBOA is opposed to the NJTHA application because contracts between Jeffrey Gural and Monmouth Park have not been finalized.

Paul Josephson, Esq., the attorney representing John Brunetti, owner of Hialeah Racetrack, confirmed to the Commission that the protest involving the NJTHA's bid to lease Monmouth Park has been settled.

Commissioner Abbatiello made a motion to approve the draft motion as read by the Executive Director. Commissioner Keegan seconded the motion and all Commissioners voted yes.

There being no further discussion or comments from the public, Commissioner Cofrancesco moved that the meeting be adjourned. Commissioner Abbatiello seconded the motion and it was approved unanimously.

ATTEST:

Executive Director Frank Zanzuccki