



New York Thoroughbred Breeders, Inc.

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State of New York Racing and Wagering Board
1 Broadway Center, Suite 600
Schenectady, NY 12305-2553

Re: Solicitation of Comments/When Statutory “Indirect Commission” Payments Are Required to Be Made by Off-Track Betting Corporations Pursuant to the New York State Racing, Pari-Mutuel Wagering and Breeding Law

To Chairman, John D. Sabini:

As the Executive Director of New York Thoroughbred Breeders, Inc. (NYTB), the official authorized representative of the Thoroughbred breeding industry in New York State, I very much appreciate the opportunity to provide breeder input to the Racing and Wagering Board (RWB) as the RWB develops its position concerning the timing of payments of “Indirect Commissions” by New York City Off-Track-Betting (NYCOTB) and other Off-Track Betting Corporations (OTBs) in response to the request for the RWB position by the United States Bankruptcy Court for the Southern District of New York (8/5/2010).

Before 2009, and for nearly four decades, all OTBs (including NYCOTB) fulfilled their statutory obligations to the NY Breeding and Development Fund (the Fund) in a timely manner. Consistent with the statutory framework, OTBs made regular quarterly payments to the Fund which enabled the Fund to make regular distributions of breeder, stallion, and owner awards. In other words, the issue of the “timing” of OTB payments on in-state and out-of-state revenue has never before come into question.

After NYCOTB became insolvent in 2009, NYCOTB fell significantly short of its statutory obligations to the Fund, paying approximately only \$2.69 million in out-of-state revenue in 2009, or 64% of the \$4.2 million it was supposed to have paid for the calendar year. This \$2.1 million shortfall remains outstanding as a pre-petition claim of the Fund. As it relates to the issue at hand, NYCOTB’s delinquency in paying the Fund and other industry stakeholders in 2009 casts a very dubious light on the absolutely unprecedented policy NYCOTB adopted in 2010 of deferring payments on out-of-state revenue to the Fund without committing itself to a payment schedule or deadline by which it would meet its obligations. By putting statutory payments to the Fund on indefinite hold in 2010, NYCOTB is on track to owe the Fund \$2.5 million by the end of the year, with no apparent plan for repayment or, currently, any constraint to do so.

NYTB takes the position that (1) NYCOTB should immediately release the all monies owed the Fund which have been placed under the umbrella of “indefinite deferral” and (2) the RWB should advise the bankruptcy court that immediately and going forward all OTBs are obligated by law to make statutory payments to the Fund (derived from both in-state and out-of-state revenue) in full and on a quarterly basis.



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NYTB's position is based upon the recently enacted "Fund Bill" signed into law (Chapter 473) by Governor Paterson on August 30, 2010 (Senate Bill S7578 = Assembly Bill A11130) which explicitly states that, "The fund is authorized and directed to collect and receive [money owed] ON A QUARTERLY BASIS in each calendar year from any racing corporation or regional off-track betting corporations." The provision converts accepted business practice – practice that OTBs have followed for nearly four decades – into law. We request that the RWB's determination be guided by past history between the Fund and the various OTBs, the principles of accepted business practice and the law of New York State.

It is impossible to overstate the importance to breeders of the Fund receiving statutorily mandated payments from OTBs in full, regularly and on time. Shortfalls in payments by NYCOTB in 2009, compounded by the "indefinite deferral" policy adopted in 2010, have left the Fund unable to make its advertised awards payments to breeders either as scheduled, or in full. This has had a devastating impact both on New York's breeding industry and on the overall integrity of the program.

Last year, two of the largest commercial breeding operations in the state – Sequel Stallions NY, in Hudson and Sez Who Thoroughbreds in Stillwater – closed their doors. A significant number of smaller-scale breeders, many of whom depend on awards to help make ends meet from year-to-year, have been unable to afford to breed their mares or been forced out of business altogether. The foal crop in New York is forecasted to drop precipitously this year and again in 2011. Needless to say, under current circumstances the program is in no position to attract new business to the State.

NYCOTB's delinquency has hurt our breeders seriously and compromised the integrity of an otherwise strong awards program. Before we can revitalize the business of breeding in New York, we must restore faith in the program, and the only way to do so is by guaranteeing our incentive awards. That guarantee depends on all OTBs making their payments to the Fund both in full, and on a regular schedule. As this crossroad I certainly hope the RWB will reach a determination that will help to put our Racing and Breeding Program back on top – both in fact and in perception – where it belongs.

Respectfully yours,

Jeffrey A. Cannizzo
Executive Director
New York Thoroughbred Breeders, Inc.