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Lowering the NYRA Takeout

On Wednesday June 25, the New York State Racing and Wagering Board [Board] postponed any decision on the request of the New York Racing Association [NYRA] to lower its takeout on multiple and straight wagers. Faced with significant opposition from the State's off-track betting corporations [OTB's], the Board put off its decision for another day. It is our expectation and hope that under the law the Board will soon give approval to NYRA's request.

The New York State Budget, passed over the Governor's veto, made significant changes in the State's racing laws. One of these changes¹ enables the State's racetracks, within certain ranges to establish the takeout rates.² These changes can be implemented once per calendar quarter. For NYRA, the ranges established for takeout are between 12% and 17% for regular wagers,³ between 14% and 21% for multiple wagers,⁴ and between 15% to 25% for exotic wagers.⁵ Currently, by statute, the takeout rate at NYRA is 14% for regular bets, 17.5% for multiple wagers, and 25% for exotic wagers.

NYRA in late June applied to the Board to lower the takeout on both regular and multiple wagers. NYRA had to apply to the Board because the statute states that "the retention rate to be established is subject to the prior approval of the racing and wagering board."⁶ It proposed to lower the takeout on regular takeout from 14% to 13% and the multiple takeout from 17.5% to 17%. No changes were proposed for exotic wagers.

The NYRA proposal was opposed by the State's OTB's. The OTB's feared that their retention of bets made on NYRA would be reduced thereby hurting their financial position, and ultimately their ability to raise funds for local government.

The problem for the OTB's is that the law should be read as giving racetracks the right to set their own rates within the designated ranges. As long as the application is timely and the rates they have chosen are within the statutory guidelines, the Board must approve the takeout rates requested by the racetracks. This interpretation comes straight from a reading of the legislative history of the bill.

The language that was passed by the legislature has its direct origin in a budget bill submitted by the Governor. The NYRA flexible takeout language in the bill that was enacted by the legislature⁷ is the exact same language that was used in the Governor's

¹ See Assembly Bill No. 2106-B, Part F3.

² Takeout refers to the percentage of the patron's wagers which are retained by the track and not returned to winning bettors. If you lower the takeout, additional funds are returned to winning bettors.

³ Regular horse wagers are bets on one horse. These are your basic win, place and show bets.

⁴ Multiple wagers are bets on two horses. These include exactas, daily doubles and quinellas.

⁵ Exotic wagers are bets on more than two horses. These include Pick Sixes, Pick Threes, trifectas and superfectas.

⁶ Section 229.1 of the Racing, Pari-Mutuel Wagering and Breeding Law [Racing Law].

⁷ Assembly Bill No. 2106-B, Part F3, §3.

bill, A. 2106.⁸ It is the Governor's proposal. In his message submitting the proposal, the Governor stated that his proposal would "eliminate the fixed takeout percentages and allow each track and OTB to establish its own takeout rates within specified ranges for each type of wager."⁹ The clear unambiguous intent of the sponsor of the legislation was to enable the racetracks to set their takeout rates within specified ranges. NYRA has done what the Governor requested, and complied with the substance and procedure established by the statute. The Board, per the Governor's memorandum, is limited to a procedural review of the application. The case for NYRA's lowered takeout rates is an open and shut one. The Board should have no discretion to deny NYRA's application to lower the takeout rates.

Even assuming *arguendo* that the Racing Board has some discretion to review the NYRA application, the application should be approved. Almost all of the equities are on NYRA's side.

First of all, the NYRA request is well within the takeout ranges established by statute. Based on NYRA's compliance with the statute, the NYRA request should be entitled to a presumption that it should be granted.

Secondly, the NYRA request is truly modest. Currently on-track at NYRA, 37% of wagers are on regular bets, 36% on multiples and 27% are on exotic wagers.¹⁰ Traditionally, the percentage bet on regular wagers is much lower on bets taken at OTB's.¹¹ No matter whose data you use, the takeout reduction requested by NYRA amounts to less than a 3% reduction from current takeout rates.¹² It's not going to break anyone's finances.

Additionally, the OTB's are protected in part from any NYRA takeout reduction. The newly enacted budget altered §527 of the Racing Law to state "In the event a track elects to reduce its retained percentage from any or all of its pari-mutuel pools, the payments to the track holding the race and the regional track required by paragraphs a and b of this subdivision shall be reduced in proportion to such reduction."¹³ While there is some ambiguity in the language here,¹⁴ the fact is that if NYRA chooses to reduce its takeout by 3%, OTB payouts to NYRA should be reduced by 3%. The legislature already took action to protect OTB's against the possible downside of a NYRA takeout decrease, which again adds greater authority to the belief that there is a significant presumption supporting a racetrack's right to chose to lower its takeout within

⁸ Assembly Bill No. 2109, Part I, §3.

⁹ Memorandum of Support, A. 2109.

¹⁰ The information is garnered from the 2001 annual report of the Racing and Wagering Board.

¹¹ For example, per the Racing and Wagering Board, only 28% of the bets at New York City OTB on NYRA racing are in the form of regular wagers.

¹² By contrast, the 2001 statutory takeout reduction at NYRA was more than twice as large on a percentage basis than the current NYRA request.

¹³ Assembly Bill No. 2106-B, Part F3, § 10.

¹⁴ It is unclear if the reduction refers only to statutory payments to NYRA or to all (statutory and contractual) payments from an OTB to NYRA.

the statutory framework. It also should be noted that if a racetrack increases its takeout, there is no authority for the OTB's to pay additional moneys to a racetrack.

The budget legislation also provided OTB's with a series of significant benefits. They are entitled to unlimited out-of-state harness racing. They now can simulcast out-of-state thoroughbred races during the evening. While OTB's were previously limited to two out-of-state thoroughbred tracks during the time period that NYRA was racing, they now can take unlimited simulcasts. The OTB's are now in no ways dependent on NYRA racing. The OTB's were given significant benefits by the legislation. Part of this quid pro quo ought to be that OTB's bear this very limited burden of lower NYRA takeout.

Since there should be a presumption favoring NYRA's request, the OTB's need to make a strong case against NYRA's request. The extent of the case, thus far, is that NYRA handle at OTB's did not increase after NYRA takeout was lowered by the legislature in 2001. Since the OTB's retained less on NYRA racing, they believe they were hurt by the NYRA takeout reduction. Accordingly, the OTB's believe that they will be further hurt by an additional NYRA takeout reduction. This, however, is not totally dispositive. A decrease in NYRA takeout should have returned more money to OTB customers, and it may be that these OTB customers may have chosen to bet this added money on non-NYRA racing. Thus, it is possible that the lowered takeout at NYRA may actually have helped or at least not harmed the OTB's. The OTB's have not laid out a strong case that they were significantly hurt by the previous lowering of the NYRA takeout.

Finally, the main role of a racing commission is to help protect the betting public. It is the racing fan that is being served by the racing commission. Almost nothing helps the betting fan more than lowered takeouts. It's lowering the taxes for bettors. The NYRA takeout reduction of 2001 may not have proven to be the ultimate wonder drug for NYRA's fiscal health, but it did help out the racing fan. A racing commission is hardly serving the public well if it blocks a racetrack's effort to benefit its fans by decreasing takeout.

The members of the Racing Board in New York State are intelligent, diligent, and thoughtful. They are about as good as it gets in the world of racing regulation, and it does not seem likely that they will deny NYRA's request to lower its takeout.