THE NEW YORK RACING ASSOCIATION, INC. P.O. Box 90, Jamaica, New York 11417-0090 (718) 659-3537
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CHRISTOPHER K. KAY
Chief Executive Officer and President

September 8, 2016

Mr. Ryan Wendolowski and Mr. Keith Dickter
Office of the New York State Comptroller
110 State Street
Albany, New York 12236

Re: Report 2015-S-21 – Financial Condition and Selected Expenses

Dear Sirs:

The New York Racing Association Inc. (NYRA) is pleased to note that the OSC's Report 2015-S-21, issued on June 10, 2015 found that "NYRA's overall financial condition, as a result of VLT revenue subsidies, is sound." In your report, you have requested that the Chairman or Chief Executive Officer of NYRA report to the State Comptroller "advising what steps were taken to implement the recommendations contained in this report, and where the recommendations were not implemented, the reasons why." It is the view of NYRA that the issues relevant to the recommendations were appropriately addressed by NYRA in its response, dated April 25, 2016, to the OSC's draft of Report 2015-S-21. Nevertheless, NYRA through Christopher Kay, CEO, offers the following additional responses as requested:

OSC's Recommendation 1: To calculate the results of NYRA's racing-related financial operations, include all ordinary and necessary expenses, such as pension contributions, OPEB, and depreciation.

We do not understand the purpose of this recommendation, or its possible value. NYRA's financial statements are prepared in conformity with generally accepted accounting principles (GAAP) for governments, as prescribed by the Governmental Accounting Standards Board (GASB). All of NYRA's operating expenses have been and are consistently accounted for under this framework. NYRA has had net income every year since 2012, and this has been reported each year in our annual financial statements, which are in the public domain. NYRA's financial statements are audited by KPMG, one of the "Big Four" global accounting firms, which has issued to NYRA "clean" and unqualified audit opinions year after year. Also in accordance with GASB, our financial statements include a Management Discussion & Analysis regarding operating performance. NYRA's "bottom line" is clearly indicated in our audited financial statements that are available to the public.

Beyond "bottom line" reporting, in 2013 NYRA's board (led by then Chairman David Skorton and which included the Governor's Director of Budget Affairs, Robert Megna)) added a tool to measure management's performance. It assessed whether NYRA was able to break even or better on the basis of the daily racing operations, exclusive of the revenues and expenses that are statutory in nature and/or fixed and not subject to change by the management team. Accordingly, NYRA excluded both 1) VLT revenue and 2) non-operating expenses (including taxes, depreciation, interest, pension and post-employment benefit expenses).

Excluding such non-operating items (known as "non-GAAP measures") is a common management practice. It is clearly noted in our financial reporting, which reflected profits from racing operations in 2014 and 2015; and is consistent with our commitment to complete transparency in our financial statements. It provides those reviewing our financial performance with an additional means to evaluate and compare from period to period our operating performance specific to the racing segment in a meaningful and consistent manner. As to NYRA's racing operations only, we reported surplus of $1.7 million in 2014 and $3.6 million in 2015. This practice is in addition to also providing the public with the "bottom line" profitability of the organization that includes all revenues and all expenses. And whether one looks at the "bottom line" approach that reflects annual profits including all our budgeted VLT funds and expenses, or whether one looks at the operating revenues derived from the racing operations exclusive of the operating VLT funds and non-operating expenses, NYRA has consistently generated a profit under the leadership of the new NYRA board and management. In short, NYRA is profitable in both in our overall budget and our horseracing operations; our financial reporting is available to the public, is transparent and audited by KPMG.

OSC's Recommendation 2: To develop a detailed plan to eliminate NYRA's annual deficits from racing operations (excluding VLT subsidies) with specific actions to enhance racing and track-related revenues and diminish unnecessary and unsupported expenses.

As to excluding VLT "subsidies" from our annual plan: Pursuant to the State Settlement Agreement ("Agreement") of September 12, 2008, in exchange for due consideration, including the transfer of valuable property, NYRA is entitled to receive the VLT funds until 2033. The operating VLT funds are to be used by NYRA for the support of its "racing operations and satisfaction of NYRA's operating expenses, including, without limitation, the payment of New NYRA's pension plan obligations." The Agreement (and the legislation enacted by the legislature and executed by the Governor) is absolutely clear that NYRA will receive these VLT funds and use them for racing operations, but it further creates the business plan for NYRA by dictating how those funds are to be spent: for purses, capital improvements and operating expenses such as taxes, pension fund obligations and retiree benefits. This was the deal agreed in 2008, it is still the deal today, and NYRA has adhered to all its terms. This is the law today, and NYRA has followed the law.

The OSC suggests that the VLT funds may potentially diminish over time. But this speculation is contrary to actual events, as VLT revenues at Resorts World have grown every year—reflected by the fact the State's Education Fund has received over $1.6 billion since the facility opened in 2012. Planning around this would be entirely speculative.

The OSC also claims that NYRA would have generated operating deficits without the VLT monies, and then speculates what NYRA's financial situation would have been in earlier years under that scenario. But NYRA did not generate deficits, as reflected in our financial records and tax returns. NYRA received VLT funds, made money, and paid taxes on those profits.

It is worth noting note that by using the proceeds as contemplated in the Agreement, NYRA serves as the cornerstone of an industry that generates over $2 billion in annual economic impact to the State of New York and creates 17,000 jobs.

With regard to specific actions to enhance racing and track-related revenues, as previously discussed with the OSC and previously reported publicly, NYRA has undertaken a number of initiatives to enhance revenues, including, but not limited to, the following:

- Upgrading facilities to improve the guest experience
- Improving the quality of racing by creating several "must see" racing days with bigger purses and bigger race cards, leading to significant handle
- Launching NYRA Bets, NYRA's proprietary national ADW platform.
- Launching Belmont Live and Saratoga Live –live racing, on national television
- Appropriately increased prices for admission, seating and parking.
- Securing market value for NYRA's superior racing content in simulcast signal to other race tracks and casinos.
- Increasing the amount of sponsorship revenue
- Increased income from content fees and group sales events.

With respect to "unnecessary and unsupported expenses" we do not agree that these exist in any significant way.

In particular regard to operating expenses, NYRA has implemented a number of initiatives starting in 2013 and on-going to reduce costs, including:

- Negotiating more favorable terms with key vendors.
- Savings in marketing and advertising expenses.
- Closing the Aqueduct training facility during select non-racing months downstate.
- Reducing legal and consulting expenses.
- Reducing costs related to phone wagering.
- Reducing overall labor expenses.
- Improving efficiency throughout the entire organization.

OSC's Recommendation 3 : Formally assess the propriety of the questionable expenses the OSC identified and develop and implement written policies to minimize the risk of excessive payments for the goods and services in question.

NYRA has considered the propriety of the expenses identified by the OSC, and has the following reply:

Performance Incentives: As we have earlier indicated in detail, the CEO's performance bonus was appropriate and the decision was made according to the agreed and considered process. We add that the CEO has driven new revenues and overseen considerable technology-based improvements.

Horse Transportation Services. NYRA's decision to pay for the shipment of a small number of international horses to Belmont has been made by executives with deep knowledge of the horseracing industry using their best judgment for the benefit of the business. This initiative is reviewed periodically to ascertain its ongoing efficacy. In 2014, NYRA estimates that it made a profit of approximately $34,000 on this initiative.

Consultants. NYRA requires contracts with standard terms and conditions for all significant engagements with consultants. NYRA's Procurement Department operates under a strict policy for procuring outside services. The State's Franchise Oversight Board ("FOB") has approved that policy, and actively monitors NYRA's compliance. The OSC has identified a *de minimis* number of expenditures that appear to have supporting documentation but not contracts. One of those incidents (the Belmont Stakes investigators) involved an emergency requirement from the NYS Gaming Commission. In any event the total expenditure for all of these contracts was $26,657, in the context of NYRA's annual operating budget of $150MM. Nevertheless, we continue to review our processes to ensure that all relevant engagements are supported by contract.

Assistant Starters. The assistant starters work the Saratoga Race Course meet and, as an incentive to retain these workers for a continuation of work in the fall, NYRA pays each one of them $1,500 to assist in housing costs. This expenditure of $7,500 was immaterial (0.0026%.) to NYRA's budgeted and approved expenses. We will ensure that future such payments will be appropriately documented in accordance with our robust policies and procedures.

OSC's Recommendation 4: Determine general horse racing industry practices regarding the questionable expenses the OSC identified and other material cost items and identify opportunities to enhance revenues and reduce costs. Survey other tracks as necessary or use other available information sources to obtain information on general industry and best practices.

NYRA does not agree that we have "questionable expenses". But as to identifying opportunities to enhance revenues and reducing costs we have demonstrated – in this document, in our conversations with the OSC, in other public documents, and in our performance -- that our management team is focused like a laser beam on these issues. For example, in 2014 NYRA hosted a conference for Racing Secretaries from around the county to share ideas and information on best practices; and NYRA has initiated steps to obtain uniform information regarding salaries for specific racing-operation positions. NYRA is the national leader in the industry, and many of our executives and employees have worked at other tracks around the country and have significant insights on these issues. They are in touch with their counterparts at other tracks and, as appropriate, share information in formal and informal ways. In many ways, NYRA leads the pack on these issues. Although doing business in New York has unique challenges, we believe the formal and informal contacts described herein are the most effective way to understand the industry and develop best practices.

Sincerely,

Christopher K. Kay

Christopher K. Kay