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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

October 21, 2005

Mr. William A. Levin  
Chairman  
New York State Thoroughbred Breeding  
and Development Fund Corporation  
Saratoga Spa State Park  
19 Roosevelt Drive, Suite 250  
Saratoga Springs, NY 12866

Re: Internal Controls Over Financial  
Operations  
Report 2004-S-57

Dear Mr. Levin:

Pursuant to Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law, we have audited the New York State Thoroughbred Breeding and Development Fund Corporation's system of internal controls over its financial operations for the period January 1, 2003 through March 31, 2004.

**A. Background**

The New York State Thoroughbred Breeding and Development Fund Corporation (Fund) was established in 1973 as a public benefit corporation of New York State and a regulatory body of the New York Breeding and Racing Program. It oversees the registration process of foals and stallions and distributes incentives awards to breeders, and owners of registered New York State-bred horses. The Fund gets its revenue from a share of total monies wagered on thoroughbred races in New York State. The Fund's \$13.4 million budget for 2003 included more than \$12 million for purse enrichment and awards to breeders and owners. The Fund is governed by an 11 member Board of Directors and employs a staff of eight.

**B. Audit Scope, Objective and Methodology**

The New York State Governmental Accountability, Audit and Internal Control Act of 1987 (Internal Control Act), highlighted the need for agency management to promote good internal controls. In 1999, the Legislature updated and made the Internal Control Act permanent in Chapter 510 of the Laws of 1999. The New York State Division of the Budget's Policy and Reporting Manual Item B-350 lists those State agencies and public authorities that are responsible for

establishing and maintaining an effective system of internal controls and a program of internal control review. These agencies must annually certify their compliance with important provisions of the Internal Control Act, and submit this certification of compliance to the Division of the Budget. While Bulletin B-350 does not currently list the New York State Thoroughbred Breeding and Development Fund Corporation, appropriate internal control systems should be implemented by the Fund as well. We audited the Fund's system of internal controls over its financial operations for the period January 1, 2003 through March 31, 2004. The objective of our performance audit was to assess the adequacy of the Fund's system of internal controls over its financial operations.

(In response to our draft report, the Fund's Chairman questions the State Comptroller's authority to do this audit because the Fund is not listed on Bulletin B-350.)

Auditor's Comment: The State Comptroller has both statutory and constitutional authority to audit the Fund. Furthermore, the Fund's management is responsible for establishing and maintaining an effective system of internal controls, regardless of the applicability of Bulletin B-350.

To accomplish our objective, we interviewed Fund officials and reviewed applicable policies and procedures governing the following financial operations: board oversight and governance, revenue and collections, cash and investments, payroll, procurement and contracting, equipment and asset management, budgeting and expenditure control, and accounting and information systems. We interviewed Fund staff responsible for these financial operations and performed limited compliance testing to provide assurance that Fund employees follow established policies and procedures.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and do our audit to adequately assess those procedures and operations included within the audit scope. Further, these standards require that we understand the Fund's internal control systems and compliance with those laws, rules and regulations that are relevant to the Fund's procedures and operations that are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions and recommendations.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

### **C. Results of Audit**

Our audit disclosed conditions which we believe represent material weaknesses in the Fund's system of internal control. A material weakness is a condition that precludes the entity's internal control from providing reasonable assurance that material errors or irregularities will be prevented or detected on a timely basis. There are material weaknesses with regard to the separation of duties related to the Fund's cash receipts and the purchasing and cash disbursements processes. For example, the same individual restrictively endorses the checks received, prepares the bank deposit, records the receipts in the accounting records and does the monthly bank reconciliations. The same individual also can initiate a purchase, receive the goods, record the purchase in the ledger, and prepare the payment documents. In addition, the Fund does not know how much money it should receive and relies on the thoroughbred racetracks and regional off-track betting corporations to remit the accurate amount to the breeding and development fund; it does not verify the amounts owed with pari-mutuel wagering records.

(Responding to our draft report, the Fund's Chairman disagrees that the conditions we cite about separation of duties for cash receipts, purchasing and cash disbursements are material internal control weaknesses. The Chairman points out that checks received are restrictedly endorsed by the Fund's Comptroller, monthly bank reconciliations are reviewed annually by the Fund's outside auditors and the lack of separation of purchasing tasks is compensated for because the person who controls the purchasing tasks cannot sign checks or authorize payments. The Chairman states that the Fund lacks regulatory and enforcement authority for determining that the Fund has received the revenue to which it is entitled from thoroughbred racing tracks and off-track betting corporations. The Chairman also maintains that the Fund does not have the managerial depth to provide internal controls suggested by our report.)

Auditor's Comments: We continue to maintain that the Fund has material weaknesses in its internal controls. Reliance on an outside auditor to review monthly bank reconciliations is not likely to detect the misappropriation of cash given the Fund's poor controls. Also, where there is no separation of duties in the procurement area, there is increased risk for inappropriate vendor payments. Moreover, the Fund should consider how to change its operations in ways that inherently strengthen internal controls without requiring allocation of more staff resources. For example, the Fund could utilize wire transfers and bank lock boxes to minimize its cash handling functions. Though the Fund may not have statutory authority with respect to revenues from thoroughbred racing tracks and off-track betting corporations, it should take steps to provide reasonable assurances that it is receiving the revenues that it is entitled to. For example, the Fund could utilize analytic review procedures to assess whether annual revenues appear reasonable.

The Fund paid its Executive Director \$107,000 during 2003. The Executive Director's residence is in the Albany area, and the Fund's offices are in Manhattan. In practice, the Executive Director generally works in Manhattan three days a week (Tuesday through Thursday) and in the Albany area two days a week (Monday and Friday). The Board does not have an employment contract with the Executive Director, setting forth the terms of his employment. In addition, the Board has not formally authorized the dual work locations and has not set any expectations for the Executive Director's work while in Albany. We found that the Executive Director does not maintain an appointment log of the people he sees while in Albany and there was no documentation of where

the Executive Director worked or what he did in Albany. In response to our inquiry as to where the Fund's Albany office is located, we were told that the Fund shares office space with the New York State Racing and Wagering Board in the Empire State Plaza. However, we were unable to locate the Fund's Executive Director at the Albany office when he should have been working in Albany.

(In response to the draft report, the Fund's Chairman stated that the Board was aware of the employment situation for the Executive Director and the Fund's arrangement to have office space in Albany ended in 2002.)

Auditor's Comments: While the Chairman's response indicates that the arrangement for Albany office space ended in 2002, we observed in April 2004 that the office in question still had the Executive Director's name on the door and there was a computer on a desk in the office along with numerous storage boxes. If the Executive Director is no longer assigned to this office space, we question where he works while in Albany. We maintain there is lack of accountability over the Executive Director's Albany work-related activities.

The Fund also pays for the Executive Director's travel between Albany and Manhattan and for commuting costs, such as train tickets and E-ZPass costs, and per-diem expenses while he is in New York City, the location of the Fund's office. The Board also allows the Executive Director to use the Fund's credit card for personal purchases and to identify purchases as either a reduction of his per-diem expenses or as amounts he owes for these personal purchases. Furthermore, although Fund employees must fill out travel expense vouchers for business travel, the Executive Director handles his travel expense reimbursement through credit card payments and does not provide an accounting for his travel. There is also a lack of documentation for these travel expenses (e.g., original sales receipts).

(In response to our draft audit report, the Fund's Chairman takes exception to any inference that the Executive Director used the Fund's credit card to pay for personal purchases. The Chairman indicates that the Executive Director explained to our auditors that when his expenses billed to his credit card exceeded his per diem allowance, he would pay that overage by personal check directly to the credit card company.)

Auditor's Comments: On a monthly basis, the Executive Director paid the credit card company the difference between his personal expenses charged to the credit card and what he considered as due to him for his per diem travel expense allowance. For example, for 2003 the Executive Director claimed that he charged the Fund's credit card \$6,328 for personal items. He also claimed that the Fund owed him \$1,838 for per diem expenses. Accordingly, the Executive Director paid the credit card company the net difference of \$4,490. Clearly, the Executive Director used the Fund's credit card for personal purchases as our report indicates. The personal use included expenses incurred at a golf course, for a rental car on a personal trip, for cigars and for various meals and beverages. Personal expenses should not be charged to the Fund's corporate charge card.

In addition, we also noted the following instances in which the Fund could either improve its system of internal controls, or strengthen the adherence to existing policies and procedures. Fund officials indicated that they are currently reviewing their overall operations and will seek to formalize, improve or update policies and procedures over several areas. (A summary table

addressing specific questions related to each of the Fund's basic financial operations is attached as Table 1.)

1. Responsibility for good internal controls rests with management. However, Fund management has not implemented any written policies and procedures related to cash receipts and collection procedures, bank account collateral, cash disbursements, credit card use, time and attendance, payroll changes, equipment acquisitions and dispositions, personal use of equipment, or accounting and information systems.

(In response to our draft report, the Fund's Chairman indicated that our findings on the lack of policies and procedures are untrue. He included attachments of existing written policies and procedures to support his assertion.)

Auditor's Comments: Repeatedly throughout the audit we asked the Fund to provide its written policies and procedures, but none were provided. Moreover, we note that policies and procedures now included in the Fund's response to the draft report are not dated and it is not determinable when or whether they were actually implemented. For these reasons, we do not attest to the use of the policies and procedures during the period covered by the audit.

2. The Board needs to make changes in the way it operates to ensure there is proper transparency and accountability for its actions. The Board has not adopted a code of ethics. The Board should develop a Code of Ethics because it provides the framework within which business and professional activities by board members and employees operate. The Board also does not review/approve investment policies or procurement guidelines annually as required by the Public Authorities Law, Section 2925. In addition, there has been a vacant Board position (an appointment of the State Assembly leader) for more than six years. Furthermore, the Board's public meeting minutes are not available to the public on its Internet website as some other public authorities do, such as the New York Power Authority, to provide public disclosures and accountability.
3. The Fund relies solely on the management of the thoroughbred racetracks and regional off-track betting corporations to remit the accurate amount to the breeding and development fund. It does not periodically validate the amounts owed with pari-mutuel wagering records.
4. Controls are very weak in cash processing. The Fund does not require the maintenance of a daily cash receipt log or the prompt restrictive endorsement of checks received. Additionally, the Fund does not separate key cash processing functions to provide adequate internal controls: one individual opens all mail, forwards handle and breakage checks received to the Fund's Comptroller and forwards registration fees received to the employee who maintains the State-bred horse registry. The Fund's Comptroller restrictively endorses the checks, prepares the bank deposit, records the receipts in the accounting records and prepares the monthly bank reconciliations. The employee who maintains the registry (the official record of thoroughbred horses born and stabled in New York State) prepares the deposit slip and gives the information to the Fund's Comptroller who does the remaining cash processing functions.

5. The Fund's bank accounts balances are often over the \$100,000 which is the maximum amount covered by FDIC insurance. For example, the Fund's combined bank balances on December 31, 2003 exceeded \$500,000. However, the Fund does not require additional collateral to protect these accounts.
6. Fund staff use the Fund's corporate credit card to make purchases that should be done through the normal procurement and payment process. Examples include \$8,450 for computer consultant fees and \$14,230 for accounting services. The computer consultant fees, require evidence of competition and Board approval.

(In response to our draft report, the Fund's Chairman indicates that the computer consulting fees were actually a down payment on computer equipment where the purchase was made on-line thus requiring use of the credit card. He explained that the payment for accounting fees was made by credit card to facilitate a payment that had become overdue.)

Auditor's Comments: The response does not fully clarify why standard procurement procedures were not followed in these instances.

7. We reviewed employee time sheets for three months and found five instances where the time sheets were not signed either by the employee or the employee's supervisor.
8. The Fund has an attorney on its payroll who was paid \$40,000 during 2003. He gets health and dental coverage and is reported as a full-time employee to the New York State Employee Retirement System. However, the attorney has no Fund-provided office, no set hours, works only as needed and as such, gives the appearance of an independent contractor. While the Fund's Chairman stated that this is a beneficial arrangement, it would be more appropriate to pay the attorney a retainer.

(In response to our draft report, the Fund's Chairman reiterates that the arrangement with the attorney benefits the Fund in terms of access, availability and affordability. He adds that the absence of an office for the attorney does not diminish the service provided and that the finding is not relevant to Fund internal controls.)

Auditor's Comments: We continue to recommend that the Fund examine the current practice of treating the attorney as an employee rather than having him on retainer since he acts more as an independent contractor than an employee.

9. The Racing, Pari-Mutuel Wagering and Breeding Law 247(2)(f) states that administrative costs shall be no more than four percent of total revenue. However, the Fund offsets its administrative costs by the amount of registry fees received. Fund officials assert that this is an acceptable practice and it is properly disclosed in the footnotes to the Fund's financial statements. However, this practice does not disclose the Fund's true administrative costs in relation to its total revenues as the Law intends. For 2003, if the Fund did not reduce administrative costs by the amount of registry fees received, its administrative costs would have exceeded the four percent maximum allowable by \$205,678.

(In response to the draft report, the Fund's Chairman states that revenues from registering State-bred horses were not anticipated in the Fund's enabling legislation and contends that such revenues are not subject to the administrative cost restriction in the Law. He adds that Section 247(1) of the Law specifies that only handle and breakage revenue are held to the administrative cost restriction. The Fund's Chairman also points out that the Fund's financial statements properly report the registry income in accordance with Generally Accepted Accounting Principles.)

Auditor's Comments: We do not dispute that the treatment of the registry income by the Fund for financial statement purposes is correct. However, Section 247(2) of the Law talks about distributing all monies the fund receives under Sections 222 through Section 705 of the Law. State-bred registered horses are included in these sections and, therefore should be used when distributing revenues according to the Law.

10. For services which exceed \$5,000, Fund procedures, require that written quotes or competitive bids be obtained, that contracts be entered into, and that the contracts be approved by the Fund's Board. For 2003, we found two instances where payments to vendors totaled \$19,600 and \$15,200 respectively. However, competition was not solicited and contracts were not entered into and approved by the Board. Payments to these vendors were also significant in the prior year. Thus, the Fund should have anticipated that contracts would be necessary.

(In response to the draft report, the Fund's Chairman stated that, according to the Fund's purchasing guidelines; these purchases did not need to be competitively bid because of the nature of the work.)

Auditor's Comment: The Fund was remiss in not entering into formal contracts for these services as is required in its purchasing guidelines.

11. The Fund does not maintain equipment inventory records and has no policies restricting personal use of equipment (e.g., vehicles, Internet). Additionally, it has not established adequate internal control procedures for the Fund's three vehicles, such as usage logs, to distinguish between business and personal use. The Fund also does not affix identification tags to its equipment items to identify it as the owner.
12. Fund employees are not required to change their computer access passwords on a regular basis.

### **Recommendations**

1. *Improve cash handling controls by separating accounting responsibilities such as receiving checks, maintaining a log of checks received, preparing bank deposits, maintaining related accounting records, restrictively endorsing checks when they are received, and reconciling the bank accounts.*
2. *Separate the functions of initiating purchases, receiving goods, recording the transactions and preparing payment documentation.*

3. *Periodically verify that funds transmitted by the thoroughbred racetracks and regional off-track betting corporations are correct.*
4. *Enter into a formal agreement with the Executive Director regarding duties and work expectations, work locations and travel costs that are eligible for reimbursement.*

(In a letter dated February 22, 2005, the chairman advised us that the Fund's office was relocated to Saratoga Springs, New York.)

5. *Require that the Executive Director submit travel statements for travel expenses claimed, and do not allow him to use his assigned credit card for personal expenses.*
6. *Establish a code of ethics for Board members and Fund staff.*
7. *Require that the Board review the Fund's investment and procurement policies and procedures annually as required by Law.*
8. *Develop written policies and procedures for the Fund's various business processes.*
9. *Request that the vacant Board of Director's position be filled.*
10. *Publicize minutes of Board public meetings on the Fund's website.*
11. *Discontinue the practice of reducing administrative costs by the amount of registry fees received.*
12. *Obtain additional collateral when the Fund's bank account balance exceeds \$100,000.*  
  
(In a letter dated February 22, 2005, the chairman advised that since January 2005 all of the Fund's accounts are now fully collateralized.)
13. *Ensure that employees who handle disbursements have no duties related to cash receipts or bank account reconciliations.*
14. *Process Fund bills through the normal vendor payment process.*
15. *Establish formal work schedules for employees. Ensure that all employee time sheets are signed by the employee and his/her supervisor.*
16. *Examine the practice of including the Fund's attorney on the payroll because this individual's functions give the appearance of an independent contractor and not an employee of the Fund. In addition, determine what adjustments are needed for previously submitted New York State Retirement System reports.*
17. *Adhere to the Fund's procurement guidelines. Enter into contracts and obtain Board approval for purchases exceeding \$5,000.*

18. *Maintain equipment inventory records. Tag or number equipment placed under inventory control and conduct physical inventories of equipment at least annually.*
19. *Require that mileage logs be maintained for Fund vehicles to distinguish between business and personal use. Restrict employee's use of Fund vehicles for personal use.*
20. *Require that staff change their computer access passwords at regular intervals.*

A draft copy of this report was provided to the New York State Thoroughbred Breeding and Development Fund Corporation officials for their review and comment. The Fund disagrees with many of our audit findings and conclusions. The Fund's responses have been taken into account in preparing this final report and, in several instances, are shown parenthetically in the body of this report. Our rejoinders, as appropriate, are shown as "Auditor's Comments". A complete copy of the Fund's response is included as Appendix A.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the New York State Thoroughbred Breeding and Development Fund Corporation shall report to the Governor, the State Comptroller, and the leaders of the Legislature and its fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Major contributors to this report were Gerald Tysiak, Roger C. Mazula, Kenneth Ring, Brenda Maynard, Charles Johnson, Unal Sumerkan, and Eric Swanson.

We wish to thank the management and staff of the New York State Thoroughbred Breeding and Development Fund Corporation for the courtesies and cooperation extended to our auditors during this examination.

Very truly yours,

Carmen Maldonado  
Audit Director

cc: Robert Barnes, Division of Budget

**NEW YORK STATE THOROUGHBRED BREEDING AND  
DEVELOPMENT FUND CORPORATION  
INTERNAL CONTROLS OVER FINANCIAL OPERATIONS**

A colored “traffic light” legend is included in the table below to assist management in focusing an appropriate level of attention on the issues summarized in the table. As part of our audit, we sought answers to a series of questions and reviewed selected Fund records related to certain basic financial operations. Our questions in each area, along with a summary of the Fund’s activities and our comments concerning these activities, are included in the table.

**Legend:**

	Activities/Comments contain matters that should be of immediate concern to management.		Activities/Comments do not contain issues that require management’s immediate consideration.
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	QUESTION	FUND ACTIVITIES	COMPTROLLER’S COMMENT
	<b><u>Board Oversight &amp; Governance:</u></b>		
	Does the Fund’s Board of Directors function in a manner that promotes an ethical business climate within the organization and encourages and supports full compliance with all applicable laws, rules and regulations?	The Fund has an 11 member Board of Directors who meet at least four times per year.	The Board had not adopted a code of ethics.  The Board does not review/approve investment policies or procurement guidelines annually as required.  There has been a vacant Board position (an appointment of the State Assembly Leader) since December 1997.
	Has the Board of Directors established appropriate internal controls that promote the economic, efficient and effective operation of the Fund consistent with its statutory public benefit mission and that provide for transparency and	Board meetings are announced on the Fund’s website. Minutes of Board meetings are prepared.	The Board’s public minutes are not publicized on the Fund’s website.

**TABLE 1 (CONT'D)**

	<b>QUESTION</b>	<b>FUND ACTIVITIES</b>	<b>COMPTROLLER'S COMMENT</b>
	accountability in pursuing its strategic business objectives?		
<b>Revenue &amp; Collections:</b>			
	Do the Fund's internal controls provide assurance that revenues are billed timely and accurately and are recorded properly in the accounting records?	The Fund receives fees from horse owners to register foals and stallions, a percentage of handle and breakage revenues from pari-mutuel wagering pools at thoroughbred racetrack and off-track betting corporations in the State, and interest income from its investments. A Fund official contacts the management of the State's thoroughbred racetracks and regional off-track betting corporations monthly and asks how much is owed for the preceding month. An entry is made to the accounts receivable records for this amount.	<p>The Fund does not prepare bills. It relies solely on the management of the thoroughbred racetracks and regional off-track betting corporations to remit the accurate amount to the breeding and development fund. It does not validate the amounts owed with pari-mutuel wagering records.</p> <p>The Fund properly records these payments and interest income as revenue, but records registration fees received to maintain the New York-bred registry as an offset to its administrative costs.</p>
	Do the Fund's internal controls provide assurance that revenues are being collected timely?	The Fund does not have written policies and procedures to provide assurance that revenues are collected timely. The Fund considers unpaid receivables more than 60 days old to be delinquent. We were told that, in practice, the Fund's Comptroller calls the entities if the expected payments are late.	<p>None of the Fund's collection activities are documented; this is an important feature if the Fund's Comptroller should vacate his position, especially since there are very few employees at the Fund.</p> <p>Our audit tests showed that the thoroughbred racetracks and regional off-track betting corporations paid the Fund within 60 days of the end of the month.</p>
<b>Cash &amp; Investments:</b>			
	Do the Fund's internal controls provide assurance that cash and investments are properly safeguarded, accounted for, and deposited into the appropriate accounts?	The Fund receives registration fees and pari-mutuel revenue as checks in the mail. One individual opens all mail, forwards handle and breakage checks, and the fees for stallion registration to the Fund's Comptroller and the fees for	Controls are very weak in cash processing. A daily log of cash receipts should be kept and all checks should be restrictively endorsed when received. An employee independent of those responsible for receiving and depositing cash and maintaining

**TABLE 1 (CONT'D)**

	<b>QUESTION</b>	<b>FUND ACTIVITIES</b>	<b>COMPTROLLER'S COMMENT</b>
		<p>foal registration to the employee who maintains the foal registry. The Fund's Comptroller restrictively endorses the checks, prepares the bank deposit, records the receipts in the accounting records and performs the monthly bank reconciliations. The individual who maintains the foal registry prepares the deposit slip and gives the checks and supporting information to the Fund's Comptroller who does the remaining cash processing functions. In addition, the Fund does not maintain a daily cash receipts log.</p> <p>The Fund has five accounts at one bank. They include the: disbursement, awards, payroll, payroll taxes, and registry accounts. The Fund invests money not needed for immediate use in U.S. Treasury Bills.</p>	<p>the accounting records should reconcile the bank accounts.</p> <p>The Fund has a written investment policy, but it is silent regarding collateral for bank accounts. The Fund has had combined balances in its bank accounts in excess of the amount covered by FDIC insurance but it does not require additional collateral to protect these cash balances. For example, on December 31, 2003, the Fund had combined bank account balances over \$500,000 and only had protection for \$100,000.</p>
	<p>Do the Fund's internal controls provide assurance that cash disbursements are properly authorized and recorded?</p>	<p>The Fund's system for authorizing, and recording cash disbursements is not in writing. The Fund's Comptroller processes cash receipts, initiates and records disbursements, prepares checks, and performs the bank reconciliations. Two signatures are needed on all checks. The Fund uses a signature stamp when processing award checks, which are done under the supervision of Fund managers; other checks are supposed to be signed by two authorized</p>	<p>The Fund and responsibility for all expenditures should be set forth in a general policy manual developed under the supervision of the Fund head. Additionally, the functions of processing disbursements, handling cash receipts and performing bank reconciliations should be done by different individuals.</p> <p>We also found that the Executive Director made some payments using his corporate credit card instead of following the normal payment process. Such payments</p>

**TABLE 1 (CONT'D)**

	<b>QUESTION</b>	<b>FUND ACTIVITIES</b>	<b>COMPTROLLER'S COMMENT</b>
		signatories.	included computer consultant fees (\$8,450) and accounting services (\$14,230).
<b>Payroll:</b>			
	Do the Fund's internal controls provide assurance that employee time and attendance records are accurate and that leave time is accounted for and recorded properly?	The Fund has written policies and procedures in place for vacation and sick leave accruals, but none for time and attendance. We were informed that time sheets are reviewed and signed.	The Fund does not have written policies and procedures for employee time and attendance and has not established formal work schedules for its employees. Our review of time sheets for a three-month period, determined that five time sheets were not signed either by the employee or the supervisor.
	Do the Fund's internal controls provide assurance that payroll changes (e.g., additions, deletions, and overtime) are processed accurately and timely?	The Fund does not have any written policies and procedures in place for payroll changes.	Our audit test included the 2003 calendar year. During this period, one employee was deleted from the Fund's payroll and no employees were added. We reviewed the supporting documentation for the employee who was deleted from the Fund's payroll and found that the deletion was processed timely and accurately.
<b>Procurement &amp; Contracting:</b>			
	Do the Fund's internal controls provide assurance that purchases are authorized, received, and recorded properly?	The Fund has procurement guidelines that require formal contracts and Board approval for purchases in excess of \$5,000, but allows sole source selection for editorial work, horse racing journalists, and accounting services. The Board has also approved a sole source contract worth \$175,000 a year for marketing services.	Our tests disclosed that, on at least two occasions, the Fund did not obtain written quotes and bids for services obtained. The Fund did not enter into contracts with these vendors and, although payments to these vendors exceeded \$5,000, they were not approved by the Fund's Board as required. These services did not fit the exemptions provided in the Fund's procurement guidelines. The Fund should also consider preparing requests for proposal for the services that are currently done through a sole source such

**TABLE 1 (CONT'D)**

	<b>QUESTION</b>	<b>FUND ACTIVITIES</b>	<b>COMPTROLLER'S COMMENT</b>
		<p>The Fund's Comptroller can initiate a purchase, receive the goods, record the purchase in the ledger, and prepare the payment documents.</p>	<p>as editorial work and accounting services.</p> <p>The Fund's Comptroller has too much responsibility in the purchasing area. The purchasing, receiving and payment functions should be separated.</p>
	<p>Do the Fund's internal controls provide assurance that purchases are reasonable and necessary and made in an economical and efficient manner?</p>	<p>The Fund has assigned credit cards to its staff. Seven staff have an American Express credit card. Recently, the Executive Director required that the staff submit travel vouchers for reimbursement of business travel expenses, including receipts to support such expenses. The Fund pays the amount on the credit card.</p> <p>The Fund does not require that the Executive Director submit travel vouchers and original sales receipts. The Fund's Executive Director spent about \$41,727 of the total \$60,909 in American Express credit bills paid during 2003. He claimed that \$6,328 of his \$41,728 in charges that year was for personal purchases. He also claimed that the Fund owed him \$1,838 in per diem travel expenses, so he repaid the Fund the net amount of \$4,490 that year.</p>	<p>The way the Executive Director handles travel expense reimbursement - through credit card payments - is contrary to the established process for all other Fund employees who have to prepare detailed travel expense vouchers and it may conceal the nature and actual amounts of his travel. The Fund pays the Executive Director's commutation cost to work from the Albany area to the Fund's main office in New York City.</p> <p>There is a complete lack of travel documentation in the form of original sales receipts for credit card sales. Also, the Fund allows the Executive Director to use the Fund credit card for personal use. The Fund leaves it up to this official to accurately report all personal credit card use. We were unable to determine whether all of the credit card charges that the Fund paid for were for legitimate business purposes.</p>
<b><u>Equipment &amp; Asset Management:</u></b>			
	<p>Do the Fund's internal controls provide assurance that equipment acquisitions</p>	<p>The Fund has not established an equipment inventory system and it does not have policies</p>	<p>We recommend that the Fund create and maintain a complete inventory of its equipment. The</p>

**TABLE 1 (CONT'D)**

	<b>QUESTION</b>	<b>FUND ACTIVITIES</b>	<b>COMPTROLLER'S COMMENT</b>
	and dispositions are authorized and recorded properly, and that a comprehensive inventory of equipment is maintained?	and procedures in place to provide assurance that equipment acquisitions and dispositions are authorized and recorded properly.	Comptroller's Standards for Internal Controls in New York State Government recommends that annually a physical inventory be taken. Furthermore, the Fund needs to develop formal written policies and procedures for handling equipment acquisitions and dispositions. Such policies should be created to ensure that the transactions are properly authorized and recorded.
	Do the Fund's internal controls provide assurance that equipment is secured properly and used as intended?	<p>Equipment is not tagged or identified as belonging to the Fund. Also, the Fund has no policy restricting personal use of equipment (e.g. vehicles, internet).</p> <p>The Deputy Executive Director and the two field investigators are assigned vehicles, but they are not required to maintain mileage logs.</p>	<p>To safeguard the equipment and facilitate identification when physical inventories are performed, equipment should be placed under inventory control, tagged and numbered.</p> <p>The Fund should also establish policies and procedures restricting personal use of its equipment. Mileage logs should be maintained for motor vehicles to distinguish between business and personal use.</p>
<b>Budgeting &amp; Expenditure Control:</b>			
	Do the Fund's internal controls provide assurance that the Fund's annual budget is prepared accurately and timely?	<p>Budgeted amounts for revenues and expenditures are conservatively estimated based on prior year experience. The budgets are prepared and approved timely by the Board of Directors.</p> <p>The Fund's enabling legislation limits administrative costs to four percent of revenue. For 2003, the Fund allocated its costs between promotional and administrative costs and then reduced the administrative portion by the amount of registry fees collected. The</p>	<p>We found that the Fund prepares its budget timely and accurately.</p> <p>The Law states that administrative costs shall be no more than four percent of total revenue. However, the Fund offsets its administrative costs by the amount of registry fees received. Fund officials assert that this is an acceptable practice and it is properly disclosed in the</p>

**TABLE 1 (CONT'D)**

	<b>QUESTION</b>	<b>FUND ACTIVITIES</b>	<b>COMPTROLLER'S COMMENT</b>
		resulting amount equals exactly four percent of the Fund's total handle and breakage revenue and interest income.	footnotes to the financial statements. However, it clouds the Fund's true administrative costs in relation to its total revenues. For 2003, if the Fund did not reduce administrative cost by the amount of registry fees received, its administrative costs would exceed the four percent maximum allowable by \$205,678.
	Do the Fund's internal controls provide assurance that actual operating results are monitored against budgeted estimates and that appropriate revisions to current and future budgets are made as warranted by these operating results?	The Fund's uses the accrual basis of accounting. Operating results are accumulated monthly and compared to the budget.	For 2003, the Fund monitored revenues and expenditures monthly and adjusted its expenditure level based on revenues received.
<b>Accounting &amp; Information Systems</b>			
	Do the Fund's accounting and information systems provide assurance that management has access to timely, accurate and relevant information?	The Fund has a manual system for financial records. Monthly financial statements are prepared using a personal computer. The Fund also obtains reports from the Jockey Club's information system which is used to make their award payments.	We determined that the Fund's accounting and information systems provide timely and accurate information.
	Do the Fund's internal controls provide assurance that the accounting and information systems are secure and that the information is recoverable in case of system failure?	The Fund does not have written policies and procedures for its accounting and information systems. There is nothing in writing stipulating the type of passwords that should be used or when they should be changed.  For computer applications, the Fund creates back-up tapes that are stored off-site.	The Fund should develop written policies and procedures for accounting and information systems.  Certain employees have access to files, such as the breeders and awards files, although their job responsibilities do not require such access. Access to files should be password restricted, based on job duties, to prevent unauthorized entries.

**TABLE 1 (CONT'D)**

	<b>QUESTION</b>	<b>FUND ACTIVITIES</b>	<b>COMPTROLLER'S COMMENT</b>
			Periodically, hard copy reports that include confidential information are prepared. The information is not shredded before it is taken to the basement for disposal.



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Joseph A. Spadro

COMPTROLLER

William D. McCabe, Jr.

COUNSEL

James F. Gill

November 8, 2004

Carmen Maldonado  
Audit Director  
State of New York,  
Office of the State Controller  
110 State Street  
Albany, New York 12236

Re: New York State Thoroughbred Breeding and Development Fund  
Corporation; Internal Controls Over Financial Operations: Report 2004-S-57

Dear Ms. Maldonado:

As the Chairman of the New York State Thoroughbred Breeding and Development Fund ("the Fund"), and on behalf of the management of the Fund, I am writing in response to your October 8, 2004 Working Draft of the New York State Comptroller's Internal Control's Audit of the Fund (the "Working Draft"). It is our hope that you will consider the thoughts, reactions and observations set forth below and amend the Working Draft as appropriate.

As an initial matter, we note that the Fund is not among the various state agencies or public authorities that are listed in the New York State Division of the Budget's Policy and Reporting Manual Item B-350. We, therefore, question whether this audit concerning the internal controls of the Fund's financial operations was statutorily authorized. Nonetheless, we agree generally that the Fund should utilize appropriate internal controls and, as indicated below, will continue and/or implement policies and practices that provide such internal controls.

Before we address any of the specific comments and/or criticisms contained in the Working Draft, we must emphasize three (3) critical facts and considerations which

Carmen Maldonado  
November 8, 2004  
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apply generally to the issue of the Fund's internal controls and to other criticisms contained within the Working Draft:

- First, while Fund management continually strives to improve its operations, it should be noted that the Fund is nationally recognized as one of the best breeding incentive programs of its kind throughout the United States, fostering and encouraging agricultural growth within New York and returning to breeders and other industry participants nearly \$300 million in awards over the past 30 years.
- Second, the Fund has a staff of eight (8) employees, only four (4) of whom work in the Fund's office. The other four (4) employees work exclusively in the field and have no office responsibilities. Of the Fund's four (4) office staff, only the Executive Director and the Comptroller (Martin Kinsella and William McCabe, respectively) act as officers of the Fund. The other two (2) employees (Barbara Devine and Eileen Sanford) provide general office and clerical staff support. In other words, the Fund is extremely lean at the managerial level and simply does not have the managerial depth to provide certain of the internal controls that are suggested in the Working Draft.
- Third, every check issued by the Fund requires at least two (2) signatures, and only three (3) individuals have signatory authority: myself as the Chairman of the Fund; Michael Hoblock, as the Chairman of the Racing Wagering Board and Martin Kinsella, the Fund's Executive Director. The Fund's Comptroller has no check signing authority -- and has never had check signing authority -- for the Fund.

#### The Fund's System of Internal Controls

The Working Draft identifies as a "material weakness" that "the same individual [the Fund's Comptroller] restrictively endorses the check received, prepares the bank deposit, makes the deposit, records the receipt in the accounting records and does the monthly bank reconciliations." Working Draft, pp. 2-3. First, this is untrue. The Fund's Comptroller does not deposit checks. That function is typically done by Eileen Sanford.

Second, we see no "material weakness" in the above arrangement. Your Working Draft admits that the Fund's Comptroller makes restrictive endorsements only (i.e. for deposit only; the Fund name and Fund account number). Moreover, the monthly bank reconciliations are reviewed annually by the Fund's auditors, Goldstein Golub. Given the size of the Fund's operations, the restrictive of nature of the endorsements, the oversight of the Fund's outside auditors and the remote likelihood of abuse, we frankly see little merit to your concern in this area.

The Working Draft is similarly critical of the fact that the "same individual, [i.e. the Fund's Comptroller] can also initiate a purchase, receive the goods, record the purchase in the ledger, and prepare the payment documents." Working Draft, p. 3. Your Working Draft, however, does not allude to that fact that while the Comptroller performs those ministerial functions, he cannot sign

Carmen Maldonado  
November 8, 2004  
Page 3

checks or otherwise authorize payment for such purposes. Without authority for that individual to sign checks or otherwise authorize payment, we are not aware of any abuse in the Fund's purchasing functions. Consequently, we again see little merit to the concern that you have raised in this area.

The Working Draft correctly states that "the Fund does not know how much money it should receive and relies on the thoroughbred racetracks and the regional off track betting corporations to remit the accurate amount" to the Fund. Working Draft, p. 3. The Fund's Board and Fund management are aware of this issue, and have been for years, but have properly recognized that the Fund's enabling statute provides it with no regulatory or enforcement authority in this area. Rather, the Fund's Board understands that only the New York State Racing and Wagering Board has jurisdiction to audit and verify the remittances to the Fund from these various sources.

#### The Fund's Executive Director

The Working Draft is generally critical of several aspects of the Executive Director's employment arrangement with the Fund. Working Draft, p. 3. During the course of the audit, we advised your auditors of the following facts, and ask that you now take them in consideration in amending the Working Draft. First, in June 1999, the Fund's Board hired Martin Kinsella to serve as the Fund's new Executive Director. Mr. Kinsella, who resided in the Albany area, had advised the Board that he would serve as the Fund's Executive Director with the understanding that he would not be required to relocate from the Albany area. The Board was aware of this arrangement at the time it decided to hire Mr. Kinsella in that capacity.

Since his employment with the Fund, Mr. Kinsella (as his predecessor before him) typically has worked, at my request, from the Capital Region for some portion of the week, and this arrangement has been particularly valuable to me and this Fund. Mr. Kinsella has been reimbursed for commuting costs between Albany and Manhattan, and has received per diem expenses while in New York City. While the Board may have never formally authorized this arrangement, the Board was aware of it. Indeed, this arrangement was the same arrangement that Mr. Kinsella's predecessor had during her tenure with the Fund. Moreover, all of these expenses have been disclosed in each of the Fund's monthly financial reports, which have been distributed to all of the Board members on a regular basis.

With respect to the Working Draft's reference to the Executive Director's use of the Fund's credit card for personal purchases (Working Draft, p. 3), that portion of the Draft is misleading and incomplete. Indeed, during the audit, Mr. Kinsella explained to your auditors that when his expenses billed to his credit card exceeded his per diem allowance (as determined by the State), he would pay that overage by personal check directly to the credit card company. As worded, the Working Draft creates the implication that Mr. Kinsella is using the Fund's credit card to pay for personal purchases, an implication that is simply not true.

Finally, for the record, the Working Draft incorrectly states that your office had been "told that the Fund shares office space with the New York State Racing and Wagering Board in the Empire

Carmen Maldonado  
November 8, 2004  
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State Plaza". Working Draft, p. 3. This is simply not true. We did advise your auditors that as far back as 2000 - 2001 Mr. Kinsella maintained an office in the Racing and Wagering Board's offices to conduct Fund business, but we also stated that that arrangement had ended in 2002.

Consequently, the reference to attempting to locate Mr. Kinsella at those Offices is puzzling, since we had advised you that he has not maintained an office there since 2002. Please amend the Working Draft accordingly.

#### Other Areas for Improved Internal Controls

The Working Draft sets out twelve (12) instances in which the Fund could either improve its system of internal controls or strengthen its adherence to existing policies and procedures. Without addressing each of the items referenced (and recognizing that some have been addressed above), we comment as follows:

- (1) Item 1 asserts that "Fund Management has not implemented any written policies and procedures relating to cash receipts and collection procedures, bank account collateral, cash disbursements, credit card use, time and attendance, payroll changes, equipment acquisitions and dispositions, personal use of equipment or accounting and information systems". Working Draft, p.3. Much of this assertion is untrue. We attach the Fund's existing written policies clearly pertaining to cash receipts, cash disbursements, vacation and sick leave policies, credit card use and reporting and use of automobiles for Fund business.
- (2) Item 6 criticizes Fund management for utilizing the Fund's credit card to make a down payment on computer equipment because the purchase was made on-line, and payment by credit card was required. While this was explained to the auditors, it is not included within the Working Draft. With respect to the credit card payment of \$14,230 for the Fund's accounting fees, that payment was made in that manner in order to facilitate payment (which had become overdue).
- (3) Item 8 notes that the Fund has its own salaried counsel on staff, with medical benefits and pension coverage, and suggests that it would be more appropriate to pay the attorney on retainer. Working Draft, p. 4. We disagree. For the past 25 years, the Fund has always had its own counsel on staff and has benefited enormously from that arrangement in terms of access, availability and affordability of legal counsel.

Over the past ten (10) years, James F. Gill has served as counsel to the Fund, initially at an annual salary of \$25,000 (now at \$40,000). In that capacity, Mr. Gill, along with his colleagues at the Bryan Cave law firm, have provided legal advice on a whole array of legal issues, including litigation, tax, real estate and employment matters, providing legal services far in excess of the value of his annual salary. While the value of the legal services rendered has greatly exceeded the value of his salary (and benefits) from the Fund, neither Mr. Gill nor the Bryan Cave firm has ever presented a legal bill for services rendered to the Fund. Mr. Gill and/or his colleagues at the Bryan Cave firm

Carmen Maldonado  
November 8, 2004  
Page 5

have attended or participated in every board meeting since becoming counsel to the Fund ten years ago. The fact that Mr. Gill (as his predecessor, former Fund counsel John Clark,) does not have or require an office in the Fund's offices does not diminish the fact that he has consistently and skillfully served as counsel to the Fund. The Board sees no reason to change this extremely beneficial arrangement. Finally, we fail to see how this issue concerns the Fund's internal controls. It is purely a personnel matter, and as such, appears to be beyond the scope of this audit.

- (4) *Item 9 takes issue with the Fund's long standing practice of offsetting its administrative costs by an amount equal to its registry fees received. Working Draft, pp.4-5. We disagree with your Office's position in this area.*

First, contrary to your Working Draft, Section 247(2)(f) of the Racing, Pari-Mutuel, Wagering and Breeding Law does not provide that administrative costs shall be no more than 4% of the Fund's total revenue. Rather, reading Section 247 as a whole, (including Section 247(1)), it is clear that the Fund is required to allocate no more than 4% of the handle and breakage revenue that it receives pursuant to statute. To the extent that the Fund receives income from other sources, for example from its registry, (an income source not contemplated by the Fund's enabling statute), that revenue is simply not subject to Section 247(2)(a)-(g) of the statute. Accordingly, the Fund's practice of utilizing that revenue to offset the administrative costs associated with maintaining the registry is properly within the Fund's discretion.

Please note that the Fund's disposition of its registry income is and always has been disclosed on its monthly financial statements, and has been approved by the Fund's auditors in prior audits (i.e. Deloitte & Touche and Golub Goldstein), each of them noting that the Fund's treatment of registry income is in accordance with generally accepted accounting principles.

- (5) With respect to item 10, please note that in accordance with the Fund's Procurement Contract Guidelines (attached), "competitive bidding shall not be required for editorial work [or] for the services of journalists selected to write on matters relating to the breeding of horses". This exception to the need for competitive bidding was created in recognition of the unique nature and skills of individuals with whom the Fund contracts for these services. The two contracts that you reference in Item 10 (i.e. the Fund's personal services contracts with Art Solutions -- the firm which designs and updates the Fund's website -- and Stuart Kirshenbaum -- writer, director, producer and editor of the Fund's video spots), are not subject to competitive bidding under the Fund's Procurement Guidelines.

We hope that your Office considers each of the comments set forth above and makes appropriate adjustments to the Working Draft and to the recommendations contained therein. Of course, if you

Carmen Maldonado  
November 8, 2004  
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or anyone in your Office would like to discuss any of these issues or our comments, please feel free to call Mr. Kinsella or me at your convenience.

Very truly yours,

A handwritten signature in cursive script, appearing to read "William A. Levin".

William A. Levin  
Chairman

Enclosures

cc: Board of Directors  
Martin Kinsella  
James F. Gill, Esq.



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**COUNSEL**

James F. Gill

**From:** Martin Kinsella

**Subject:** Cash Disbursement/Cash Receipts

**CASH DISBURSEMENTS**

Invoices shall be presented to Bill McCabe (Comptroller) who will prepare them for payment upon verification that the service or material has been received in acceptable condition. Advertising bills will be discussed and approved by Joe Spadaro (Advertising Director). Mr. McCabe will issue check requests and record these in the Fund's General Ledger. The Comptroller will give these check requests to E. Sanford who will prepare the check for signature. The Comptroller will then proof read the checks and upon his satisfaction present them to Martin Kinsella (Executive Director) for his approval and signature. Upon his approval and signature the checks with the backup is presented to William A. Levin (Chairman) for his approval and second signature. All checks must be signed by two of the following three:

- 1) Martin G. Kinsella - Executive Director
- 2) William A. Levin - Chairman
- 3) Michael J. Hoblock - Vice Chairman

Awards Breeder, Stallion and Open Company Owners shall be prepared by the Comptroller based upon racing results obtained from the Jockey Club. The racing results will be compared by computer to our files and awards will then be calculated. Prior to the preparation of the checks a report shall be received by E. Sanford from the Jockey Club. This report will be compared to the in house award calculations to confirm that the Breeder Award payees agree with the Jockey's Club breeder of record. The Open Company Owner Awards calculations will then be compared to the weekly starts which we receive from the Jockey Club (NYBF24). This is done to confirm that the recipient of the award is the same person or entity whose name appears on the actual race programs.

At present awards are paid out every two months at 90% of the published award rate. At the end of the year, when the Fund management confirms the level of funds, the 10% reserve shall be paid out at 100% or prorated if a shortage exists.

Any Supplementals shall be paid out using the Board's guidelines established in 2002.

The award check, due to the large number, are issued using a signature machine. This machine requires two keys to operate, one key is in the possession of the Comptroller and the second key is held by the Executive Administrator, the signature plate is in possession of another staff member. To sign the checks the staff member must get both keys. To imprint the signatures, using the machine, it must be under the direct supervision of the Executive Director and the Comptroller. Upon completion the plate is taken out of the machine, locked in a safe place, and the keys are returned to the proper parties.

### **CASH RECEIPTS**

All checks are received by E. Sanford ( Administrative Assistant) in the daily mail. These checks are recorded by her in a journal, which she keeps, prior to giving them to the Comptroller or Registrar. The Comptroller records all check received in the Funds General Ledger and he and the Registrar prepare deposits. The deposits are then given to Ms. Sanford to deposit at the bank. Prior to making the deposits Ms. Sanford goes over the deposit and checks off the checks in her journal. If a check is outstanding she shall check with the Comptroller or the Registrar in regard to the checks status.



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Joseph A. Spadro

COMPTROLLER

William D. McCabe, Jr.

COUNSEL

James F. Gill

**To:** NYS Breeding Fund Staff  
**From:** Martin Kinsella  
**Subject:** Automobile Policy

In the event the Fund provided a vehicle to an employee to assist in the employees duties, the following rules apply:

- 1) A log of mileage shall be kept daily and provided to the Fund Comptroller on a monthly basis. Each individual trip on behalf of the fund should be recorded as accurately as possible, **ALL** mileage driven on a vehicle must be accounted for.
- 2) Fund vehicles are not intended for personal use and should be used on Fund business only. In the event that personal use is unavoidable, the mileage incurred in such a trip should be noted in the log. Please note that all personal miles will be compiled, converted to dollars on a cents per mile basis, and reported as a benefit for tax purposes.
- 3) In the event that travel on behalf of the Fund is required by the employee's supervisor and a Fund vehicle is not available, reimbursement for the use of an employee's personal vehicle at the current rate approved by the State Comptroller's office will be utilized.



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COUNSEL

James F. Gill

**To:** NYS Thoroughbred Breeding Fund Staff  
**From:** Martin Kinsella  
**Subject:** T & E Expenses

In an effort to streamline the procedure for credit card expenses and travel expense reporting, I am requiring a **monthly** report to be sent to Bill McCabe w/**accompanying receipts** for meals, hotels and gas purchases.

Monthly for should include:

1. Date card was used
2. Description of expense
3. Reason for expense
4. Which card was used (Mobil, Am/Ex, etc.)

Hotel rates must comply with the published NYS hotel rate list based on geographic region. Any overages or unexplainable expenses are considered unauthorized and will be deducted from paychecks.



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Joseph A. Spadro

COMPTROLLER  
William D. McCabe, Jr.

COUNSEL  
James F. Gill

To: NYS Breeding Fund Staff  
Fr: Martin Kinsella  
Dt: 9/20/00

Subject: **Vacation and Sick Leave Policies and Procedures**

1) The Fund staff shall accumulate annual leave pursuant to the following schedule:

(Annual Leave)

<u>Service</u> (anniversary date)	<u>Accumulate</u>	<u>Buy-Out</u> (following service)*
1-5 yrs.	2 weeks annually	4 weeks total
6-10 yrs.	3 weeks annually	6 weeks total
11-15 yrs.	4 weeks annually	8 weeks total
16+ yrs.	5 weeks annually	10 weeks total

2) **Sick leave**

Sick leave is accumulated at the rate of 6 hours per month of service and may be carried over to the following year.

- A) For those Fund employees who remain ineligible to receive state pension due to age/time served, unused sick days shall be applied to the extension of existing health insurance coverage not to exceed 120 calendar days.\*
- B) For those Fund employees who retire from the Fund and meet all of the conditions set forth in the attached memo (dated 3/6/89), any unused sick leave shall be forfeited.

3) **Personal Leave**

Personal leave is accumulated at the rate of 1/2 of one day (3.75 hours) per month. It is not transferrable and lost upon retirement or involuntary termination from the Fund.

4) **Floating Holidays**

Floating holidays are to be used 60 days from such time that they were accrued. They are lost upon retirement or involuntary termination from the Fund.

5) **Non-comp.**

Non-comp. overtime must be documented and pre-approved by immediate supervisor. Such time shall accrue in an hourly increment and must be used within 30 days of accrual and prior to any other leave category other than sick leave.

\*Annual leave buy-out and health care coverage extension are subject to the following conditions:

- A) Voluntary termination requires a 2 week written notice. Failure to do so shall void buy-out provision.
  - B) Involuntary termination may not include any criminal wrong doing. Other professional mis-conduct shall be considered by the Chairman of the Board in conjunction with the Executive Director of the Fund and it may be determined that annual leave buy-out may not be permitted.
- 6) Fund employees, upon determination of Executive Director, in conjunction with the Fund Comptroller, shall be permitted to "cash-in" unused annual leave not to exceed 1 pay period (10 business days) in January of the year following the accrual year.

cc: Chairman Levin