



**NEW YORK STATE
THOROUGHBRED BREEDING AND DEVELOPMENT FUND CORPORATION**

WEB SITE <http://www.nybreds.com>

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Frank Patone, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

February 7, 2013

Regarding:

New York State Office of the State Comptroller
Audit Report 2011-S-36, November 2012

Dear Mr. Patone:

As a member of the Fund's Audit Committee for 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 November 2012 Audit Report on Selected Operating Practices (Report 2011-S-36). It is our hope that our response satisfies your concerns.

Fund's Response to Audit Recommendations:

1. OSC Recommendation:

"Implement controls to periodically ensure that the Fund is receiving the correct amount of statutory commissions from wagering facilities."

Fund's Response:

The Fund appreciates the audit recommendation of the OSC. For the year ended December 31, 2012, 99% of the Fund's revenue of approximately \$16,650,000 was verified back to statute and independently recalculated (specific netted revenue streams not currently verified are reported below). The bases on which these revenues were calculated, such as total handle and total Net Win for VLT revenue, were reported to us by the various sources of our revenue stream. These base totals for 2012 will be tied to audited financial statements of the various entities when they become available. (Potential challenges to overcome include entities reporting on a fiscal year vs. the Fund's calendar year, and obtaining audited financial data for privately held entities that do not release financial data).

The Fund established an annual revenue accrual worksheet to capture the monthly data necessary to do this verification and worked with entities in order to receive the information necessary to perform the computations with precision. In addition, it is the intent of the Fund to review statutes annually and make notations in the current year's revenue accrual schedule of planned rate changes to facilitate accuracy. This verification and accrual process is now in place.

The Fund will continue its efforts to verify revenue streams, as staffing allows, especially in the following areas:

- Understanding and verifying on a test basis the NYRA Pro-ration for simulcast transmissions from Finger Lakes to Saratoga for Zone 2 to Zone 1 (reduction of revenue to the Fund of \$147,785 in 2012).
- Understanding and verifying on a test basis the OTB entities pro-ration of handle (reduction of revenue to the Fund of \$211,860 in 2012).
- Verification of Breakage revenue on a test basis (source of additional revenue to the Fund of \$564,363 in 2012).
- Currently establishing a consistent revenue reporting process for special event revenue relating to the Derby, Preakness and the Breeder's Cup.

The Fund will continue to pursue clarification from legal advisors and regulators for interpretations of statutes. This includes:

- Obtaining a written opinion with regard to 3% of Super Exotic Bets, for 2012, and into 2013 as new statutes (Section 129) become effective February 1, 2013.
- NYRA's Pro-ration for simulcast transmissions from Finger Lakes to Saratoga for Zone 2 to Zone 1.
- NYRA's pay rate for out-of-state simulcast transmissions (under the interpretation that sections 1016 and 1018 govern, the Fund received \$1,196,994 more than it should have from 9/12/2008 through 3/31/2012).

2. OSC Recommendation:

"Discontinue the inappropriate practice of offsetting administrative and promotional expenses with ancillary fees collected by the Fund. Report all Fund revenues as revenues on Fund financial statements."

Fund's Response:

During the Fund's January 18, 2013, Board of Directors' meeting, a resolution was passed, effective with the reporting for fiscal year ending December 31, 2013, to report all registration and web advertising fees as distributable revenue on the Fund's financial

statements and to discontinue the practice of offsetting administrative and promotional expenses with ancillary fees collected by the Fund.

3. OSC Recommendation:

"Work with NYTB officials to explain the level of quarterly report detail necessary for Fund officials to make informed comments and decisions. If NYTB officials to not agree to incorporate an audit clause in the contract, consider placing the contract out for bid."

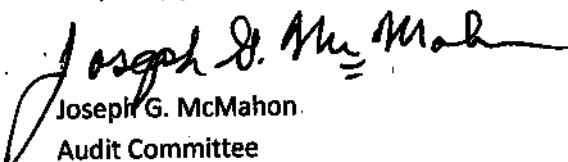
Fund's Response:

Subsequent to the OSC audit, the level of detail in the NYTB quarterly accountability reports has increased significantly. This is evidence of NYTB's good faith efforts to make improvements in accountability reporting to the Fund. In addition, pursuant to a request from the Fund's Board of Directors to NYTB representatives at the November 29, 2012, Board of Directors' meeting, the following audit clause, highlighted in italics below, was added to the 2013 contract signed December 14, 2012 in the amount of \$215,000:

As a material condition to this contract, NYTB and its officers, directors and employees, shall cooperate with the Fund to the fullest extent in connection with the Fund's obligations to ensure the proper expenditure of its assets. In this regard, by the 30th day of January, April, July and October, NYTB shall submit to the Fund a detailed accounting of the services provided on behalf of the Fund during the immediately preceding three month period. *The Fund shall submit any questions or inquiries, in writing, regarding said accounting to NYTB within (Thirty (30) days of receipt of accounting. NYTB shall respond to any such inquiry within Fifteen (15) days. Upon request, NYTB shall provide the Fund with paid receipts, cancelled checks, invoices and the like related to the services it provides under this Agreement to the extent of \$215,000. Inquiries from the Fund shall be limited to disbursements and charges solely related to the \$215,000 advanced by the Fund for services provided under this Agreement and for the calendar year of this Agreement or as requested during the first three (3) months after the end of the calendar year in question. In the event that the parties are not able to resolve a dispute related to the accounting, the parties shall submit the dispute to arbitration with the American Arbitration Association for resolution with the cost to be shared equally by both parties.* In addition, representatives from NYTB shall attend at least one (1) Board meeting each year, as determined by the Fund in its sole discretion, to address any issues that the Board may raise with respect to NYTB's delivery of the services contemplated by this agreement.

If you or anyone in your Office would like to discuss the Fund's response, please feel free to contact Tracy Egan, Executive Director of the Fund, at your convenience.

Very truly yours,


Joseph G. McMahon
Audit Committee

cc. Fund's Board of Directors
Tracy Egan
Kyle Flaherty, Esq.