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CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS
A History of Shaping Futures

INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

To the Members
New York State Thoroughbred Breeding and Development Fund

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the New York State Thoroughbred Breeding and Development Fund (the Fund), a component unit of the State of New York, as of and for the year ended December 31, 2020, and the related notes to the financial statements, which collectively comprise the Fund's basic financial statements, and have issued our report thereon dated March 23, 2021.

Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered the Fund's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Fund's internal control. Accordingly, we do not express an opinion on the effectiveness of the Fund's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or, significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Fund's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the of financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards* and which are described below.

2020-001 Compliance with New York State Racing, Pari-Mutuel Wagering and Breeding Law

Criteria: NYS Racing, Pari-Mutuel Wagering and Breeding Law limits the disposition and distribution of the moneys received based on the category of expenditure. Promotion expenditures are to be distributed not in excess of 6% of revenue. Administrative expenditures are to be distributed not in excess of 5% of revenue.

Condition: Promotion expenditures were distributed at 7.5% of revenue. Administrative expenditures were distributed at 6.3% of revenue.

Cause: The Fund was not in compliance with the applicable percentages of revenue disbursed as noted in the Criteria due to the everchanging environment and circumstances associated with the COVID-19 pandemic.

Effect of Condition: The effects of the noncompliance are unknown due to facts and circumstances surrounding the pandemic. It is unclear what the State's response is or would be to the noncompliance.

Views of responsible officials: As a result of the Covid-19 pandemic, New York State racing and gaming facilities were shut down for most of the year. These closures adversely affected the Fund's total 2020 revenues in a profound manner. The Fund's total revenue for 2020 was $7.7 million less than the revenue the Fund received in 2019 – nearly a 40% decline. Upon learning of the racing and gaming closures and recognizing the severe impact that these closures would have on the Fund's overall revenues for 2020, the Fund's Board of Directors, the Audit Committee and/or Fund management had a series of meetings and discussions, with Fund counsel, to explore how the Fund could reduce expenses to stay within promotion and administration caps imposed upon the Fund by the Racing Law while still maintaining the integrity of the New York State breeding program and the Fund's awards program. As a result of those meetings and discussions, the Fund proactively instituted numerous cost-saving measures, including eliminating all non-essential purchases, implementing staff furloughs and re-negotiating existing contractual arrangements. As a result of these measures, the Fund was able to reduce its promotional and administrative expenditures significantly; nonetheless, since the Fund's total revenue was $7.7 million less than anticipated and since the statutorily prescribed limits on promotion and administration expenditures are based upon percentages of total revenue, the Fund slightly exceeded those statutorily prescribed limits for the year. This anomalous event was a direct result of the Fund's dramatic decline in total revenues for 2020 due to the pandemic and the Racing Law's rigid percentage-based limitations on promotion and administration expenditures.

Recommendations: Since the Fund' promotion and administration expenditure caps are created by statute, there are no State authorities from which the Fund can obtain an approval or a waiver for non-compliance with the statute.

In the event the Fund encounters a similar issue in the future, the Fund's Board of Directors may consider seeking an opinion from the New York State Attorney General's Office with respect to the Fund's requirements to comply with statutorily imposed caps under circumstances where it may not be possible or feasible to do so.

Context: As part of audit procedures, compliance with the NYS Racing, Pari-Mutuel Wagering and Breeding Law is reviewed.

Fund's Response to Findings

The Fund's response to the findings identified in our audit is described previously. The Fund's response was not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Fund's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Fund's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Marvin and Company, P.C.

Latham, NY
March 23, 2021