

**NEW YORK STATE THOROUGHBRED BREEDING AND  
DEVELOPMENT FUND CORPORATION  
MINUTES OF THE MEETING OF THE BOARD OF  
DIRECTORS HELD DECEMBER 12, 2023**

A meeting of the Board of Directors of the New York State Thoroughbred Breeding and Development Fund Corporation (the “Fund”) was held at 11:00 a.m. on December 12, 2023 at the Fasig Tipton Stables in Saratoga Springs, New York.

Present

Brian O’Dwyer	Chairman
Elizabeth Wolters	Dep. Commissioner, Agriculture & Markets
Joseph McMahon	Member
William Wilmot, DVM	Member
Najja Thompson	NYTB, Executive Director
Patricia Cifuentes, DVM	Member
John Hicks	Member
Tracy Egan	Executive Director
Kim Kurtzner	Comptroller
Adam Lawrence	Registrar
Kyle Flaherty	Counsel

Upon noting a quorum, Chairman O’Dwyer called the meeting to order. The first order of business was a review of the Minutes of the September 11, 2023 Board of Directors’ meeting, which draft had been amended prior to the meeting to reflect that Deputy Commissioner Elizabeth Wolters had been in attendance at the September meeting as designee for Commissioner Richard Ball, and that Board member Dr. William Wilmot had not been in attendance at that meeting. **After review, a motion to adopt the September 2023 Minutes was duly made and seconded and was unanimously approved, with Dr. Wilmot abstaining from the vote.**

Chairman O’Dwyer then asked Fund Comptroller Kim Kurtzner to review the Fund’s Financial Report through October 2023. Ms. Kurtzner referred the Board members to a 14-page Summary Report through October 2023 and reviewed with them the Fund’s financial position through the first ten months of the year. Ms. Kurtzner reported that on a year-to-date basis, Fund revenue is up from the same period in the prior year and expenses are down from the same prior year period. She noted that awards continue to be lower in 2023 from the prior year and well below the amount budgeted for the year. Ms. Kurtzner also reviewed various trends that were noted with respect to number of race days as compared to the prior year. Ms. Kurtzner directed the Board members’ attention to the Aging Accounts Receivable page of her report and noted that, as of the meeting date, the Fund’s revenues sources are generally current with the exception of Catskill OTB, which will be addressed later in the meeting. **A motion to accept the Financial Report was duly made and seconded and was unanimously approved.**

Next, Chairman O'Dwyer noted that representatives from the UHY accounting firm are in attendance to present their findings regarding the time allocation study that they had conducted for the Breeding Fund. UHY auditor Brian Kearns began his presentation by reminding the Board that, by statute, no more than 5% of the Fund's revenues may be allocated for administrative purposes and that no more than 6% of the Fund's revenues may be allocated for promotional purposes. He also noted that it is common for certain Fund employees to perform both administrative and promotional activities in the course of their days. With that background, he explained to the Board the process that his firm undertook in performing a time allocation study over an 8-week period in 2023. He informed the Board that Fund staff had advised that the types of work that would be performed by Fund staff during that 8-week period would be representative of the types of work they perform regularly throughout the year. Based upon that time study, Mr. Kearns reported that 63% of the staff's overall hours were allocable to administrative functions while 37% of their overall hours were allocable to promotional work. He noted that this allocation supports the Fund's current 70/30 administration/promotion allocation, which UHY determines is reasonable. Chairman O'Dwyer stated that if the auditors are concluding that the actual allocation of 63/37 (administration to promotion), it may be more appropriate, on a going forward basis, for the Fund to use a 63/37 allocation instead of the 70/30 allocation that the Fund has used historically. The auditors from UHY noted that a revised allocation of 63/37 (administration to promotion) would certainly be appropriate in light of their study. When asked how frequently a time allocation study should be performed, the auditors stated that it need not be done annually and recommended that it be done once every five years or so, unless there is a significant change in staffing or operations. The auditors explained that the results of their study are currently in draft form but will shortly be circulated into a final document. The Board members thanked them for their work and excused them from the meeting.

As the next order of business, Chairman O'Dwyer asked Ms. Egan to address the Board members regarding the next two items on the agenda, i.e., Consideration of adjusting breeder award rates in 2024 and Consideration of distribution of 2023 excess funds. Ms. Egan first noted that Fund counsel has advised that under the Fund's rules and regulations, if the Board wishes to amend award rates for a given year, the Board must adopt those new rates before the beginning of that year. Ms. Egan also noted that there appears to be a consensus among the Board that since the Fund typically has a significant amount of excess revenue at the end of the year, it may be better policy to make improvements to the Fund's awards schedules so that improved awards are paid out sooner as opposed to continuing a program whereby excess funds accumulate during a given year and get distributed to breeders later. The Board members agreed that, as a general rule, it would be better to distribute monies to stakeholders sooner in a given year than later, provided that this can be done in a prudent manner. With this goal in mind, Ms. Egan stated that the Fund office had run a number of different scenarios concerning the adjustment of breeder award rates for 2024 for New York-sired and non-New York-sired New York bred. Ms. Egan reminded the Board members that currently, the Breeding Fund pays breeders awards at the following rates: New York-sired first place finishes at 30%, second place finishes at 15% and third place finishes at 15% and non-New York-sired first place finishes at 15%, second place finishes at 7.5% and third place finishes at 7.5%. As an improvement to those current rates, Ms. Egan proposed one scenario whereby the Breeding Fund would pay New York-sired first place finishes at 40%, second place finishes at 20% and third place finishes at 20% and non-New York-sired first place finishes at 15%, second place finishes at 7.5% and third place finishes at

7.5%. Another scenario offered by Ms. Egan would be to pay New York-sired first place finishes at 35%, second place finishes at 20% and third place finishes at 20% and non-New York-sired first place finishes at 15%, second place finishes at 10% and third place finishes at 10%. It was noted that these scenarios are designed to provide greater support for the New York-sired population as there has been a significant decline in New York-sired thoroughbreds over the past several years. After some discussion, Dr. Wilmot stated that, in his view, the proposed scenarios are problematic because they move away from the traditional 2:1 ratio that currently exists in award rates for New York-sired versus non-New York-sired New York-breds. Dr. Wilmot recommended that in considering an appropriate rate improvement, the Board maintain the existing 2:1 ratio. To that end, Dr. Wilmot proposed a new breeder rate scenario for 2024 whereby the Breeding Fund would pay New York-sired first place finishes at 40%, second place finishes at 20% and third place finishes at 10% and non-New York-sired first place finishes at 20%, second place finishes at 10% and third place finishes at 5%. He noted that, if necessary, the Breeding Fund could increase the distribution holdback from 10% to 20% to provide a cushion against adverse or unanticipated experience. Several Board members stated that they support this scenario as it would significantly improve breeder awards across the board while maintaining the 2:1 ratio as between New York-sired and non-New York-sired New York breds. Other Board members expressed concern that this scenario provides too much assistance for breeders of non-New York-sired New York breds and/or may not be affordable. After a lengthy discussion, the following motion was made and duly seconded:

**Effective January 1, 2024, the Breeding Fund shall adjust breeder award rates for New York-sired New York-breds to 40% for first place, 20% for second place and 10% for third place finishes and shall adjust breeder award rates for non-New York-sired New York-breds to 20% for first place, 10% for second place and 5% for third place finishes, subject to the Breeding Fund's determination that such changes are economically feasible for the Breeding Fund.**

This motion was passed unanimously. Chairman O'Dwyer then asked Ms. Egan and Ms. Kurtzner to conduct an expeditious review of this conditional rate change to determine whether, in their view, it would be economically feasible applying reasonable assumptions, and to advise the Board of their determination in that regard. Chairman O'Dwyer also noted that he would host an informational Zoom call, if necessary, on December 19 to review the Fund Office's feasibility determination.

As the next order of business, it was noted that with regard to the Breeding Fund's distribution of 2023 excess awards, the Board has a standing order that excess funds, if any, are to be paid out on a pro rata basis across all awards categories based on awards earned in 2023. **A motion to this effect was made, duly seconded and unanimously adopted.**

Chairman O'Dwyer then asked Ms. Kurtzner to review with the Board members the status of the Breeding Fund's purse enrichment arrangements with Finger Lakes Racing Association and NYRA as the Board considers whether to renew the Fund's purse enrichment agreements with those racing associations. Ms. Kurtzner stated that she is receiving, on a monthly basis, all of the required information from FLRA. However, Ms. Kurtzner noted that NYRA has not been providing information that they are contractually required to provide to allow the Breeding Fund to monitor the purse enrichment provided. Chairman O'Dwyer stated that he is concerned that the Breeding Fund is not receiving all of the information from NYRA that the Fund should be

receiving and suggested that the Fund increase its enforcement efforts on NYRA. The Board then considered whether the Breeding Fund should renew its purse enrichment agreements for 2024 with NYRA and FLRA. **After discussion, a motion was made, seconded and approved unanimously to renew the purse enrichment agreements with NYRA and FLRA for 2024.**

As the next order of business, Chairman O'Dwyer asked Ms. Egan to provide an update on the 2023 New York foal crop. Ms. Egan then circulated a one-page document entitled "2023 FOAL CROP" and reported that there were 1,446 foals dropped in New York in 2023, 888 of which are foals by non-New York stallions and 558 of which are foals by New York stallions. Ms. Egan noted that this was a decline of 54 foals from the prior year (3.6% decline).

The next item on the agenda was a review of the Breeding Fund's Shared Services Agreement with the Gaming Commission. Chairman O'Dwyer noted that he will recuse himself from this discussion. It was noted, however, that this item will be addressed at the Board's next meeting in March 2024.

Next, Chairman O'Dwyer asked Dr. Wilmot to report to the Board on the Zweig Fund and the important research initiatives that the Zweig Fund is undertaking. Dr. Wilmot then provided an update to the Board on the various equine research projects that the Zweig Fund is funding.

Under new business, Mr. McMahon noted that reduced field sizes for thoroughbreds is a growing concern at NYRA tracks. In an effort to address this issue, Mr. McMahon stated that the Breeding Fund should consider encouraging NYRA to begin writing races for New York-breds and New York-sired horses foaled anywhere with the express understanding that while New York-sired horses that are not New York-breds would not be eligible to earn breeder awards. It was noted that this change would not require the Breeding Fund to make any changes in its program; this would simply require a change in how NYRA writes its races. NYTB Executive Director Najja Thompson stated that NYTB members are concerned that this type of change may have unintended consequences and should be considered further before it is formally proposed to NYRA. Mr. McMahon noted that this change, if implemented by NYRA, would improve field sizes and would be good for New York stallion owners. Others suggested that NYTB should conduct a survey or do additional research on this measure to gauge the impact it may have on New York breeders as it could affect New York farms and would have the affect of increasing competition for New York breds.

Chairman O'Dwyer asked Mr. Flaherty to provide a brief Legal Report regarding the status of the Catskill OTB litigation. Fund counsel then provided an update and noted that since discussions with Catskill OTB's counsel have not been productive, it will be necessary to move forward in pursuing the litigation. The Board members agreed. Chairman O'Dwyer then reported that Mr. Flaherty will be transitioning to a new firm, Pierson Ferdinand LLP, effective January 1, 2024 as a partner of that firm and asked Mr. Flaherty to provide more information to the Board on that transition. Mr. Flaherty then briefly explained to the Board that he had recently given notice to his current firm and that, effective January 1, 2024 he will become a partner at the Pierson Ferdinand firm and that, in that new firm, he hoped to continue representing the Breeding Fund as he has done for many years. **After some discussion, a motion was made, duly seconded and unanimously approved for the Breeding Fund to engage Pierson Ferdinand LLP as Fund counsel under the same terms and conditions as are currently in effect at FisherBroyles LLP.**

It was noted that in 2024, it is anticipated that there will be five (5) regularly scheduled Board meetings. After some discussion regarding dates for such meetings, the Board tentatively decided that the dates of those meetings will be as follows: Tuesday, March 26, Tuesday, June 11, Tuesday, July 23, Tuesday, September 10, and Tuesday, December 10.

Under new business, Ms. Egan stated that the Breeding Fund continues to hold approximately \$52,000 of the long-defunct Quarter Horse Fund's money and continues to await direction from the Gaming Commission as to the proper disposition of those monies. Chairman O'Dwyer asked Ms. Egan to provide him information about those funds so that this matter can be addressed by the Commission.

Finally, Dr. Wilmot noted that the Breeding Fund's Promotion Committee has approved, subject to full Board approval, an expenditure of \$134,000 to be paid to the NY Race Track Chaplaincy and to ten (10) different TAA approved aftercare facilities in New York. He circulated a draft of the Minutes of the Promotion Committee's meeting conducted on December 11, 2023 explaining the process that the Committee undertook in considering worthy recipients and identifying each of the aftercare facilities that would be receiving support from the Fund. Dr. Wilmot reported on the process the Committee followed and the rationale for the various levels of financial support that the Committee is proposing. **After further discussion, a motion was made, duly seconded and unanimously approved to adopt the recommendations of the Promotion Committee with respect to these expenditures and to authorize the Breeding Fund to make these expenditures to the NY Race Track Chaplaincy and to each of the aftercare facilities as approved by the Board.**

With no further business pending before the Board, the meeting was adjourned.