

**NEW YORK STATE THOROUGHBRED BREEDING AND
DEVELOPMENT FUND CORPORATION
MINUTES OF THE MEETING OF THE BOARD OF
DIRECTORS HELD MARCH 28, 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 March 28, 2023 at the Fasig Tipton Stables in Saratoga Springs, New York.

Present

Brian O’Dwyer	Chairman
Richard Ball	Commissioner, Agriculture & Markets
Joseph McMahon (remote)	Member
William Wilmot, DVM	Member
Najja Thompson	NYTB, Executive Director
John Hicks	Member
Patricia Cifuentes, DVM	Member
Tracy Egan	Executive Director
Kim Kurtzner	Comptroller
Adam Lawrence	Registrar
Kyle Flaherty (remote)	Counsel
Ralph Scunziano	Guest, Gaming Commission
Chris Healy	Mengel, Metzger, Barr and Co.

The meeting was called to order by Chairman O’Dwyer. As the first order of business, the Chairman noted that there is quorum. Next, Chairman O’Dwyer sought approval of the Minutes of the December 13, 2022 Board of Directors’ meeting. After review, a motion to adopt the December 2022 Minutes was duly made and seconded and was unanimously approved.

As the next order of business, Chris Healy of Mengel, Metzger, Barr and Company was invited to speak with the Board regarding his firm’s annual audit of the Fund. Mr. Healy proceeded to review his firm’s Financial Statement Audit of the Fund for the year ended December 31, 2022 and noted that no significant control deficiencies were found in the financial management of the Fund. Mr. Healy then referred to the Independent Audit Report and stated that his firm has issued a clean, unmodified opinion in the Audit Report of the Fund for the 2022 year. Mr. Healy then drew the members’ attention to the Management Discussion and Analysis section of the Financial Statements, which provides a high-level summary of the Audit and certain of the specific items that the Audit team reviewed during the course of the Audit. Mr. Healy also reviewed his firm’s report on the Fund’s internal controls on financial reporting. He noted that there were no weaknesses in this area and noted that their Audit did not reveal any issues with respect to the Fund’s compliance with its statutory obligations in managing the finances or the

affairs of the Fund. He noted that overall, the entire auditing process for 2022 went very smoothly and that his firm did not encounter any material issues with respect to their review of the Fund's finances or operations.

At the end of the auditor's presentation, Chairman O'Dwyer raised an issue with regard to the fact that a portion of the Fund's promotion budget is used to pay administrative expenses of the Fund and he questioned the basis for that allocation. Chairman O'Dwyer noted that he is concerned that by using a portion of the Fund's promotion budget to pay administrative expenses, the Fund may not be in compliance with the law, and he asked Mr. Healy his opinion on that question. Mr. Healy responded that from an audit perspective, they only look at whether issues have a material impact and stated that he did not believe the Fund's use of promotion money to cover administrative expenses was material. Chairman O'Dwyer expressed his view that the amount at issue is material and that he is concerned that the Fund may not be in compliance with the statutory maximum for its administration expenditures for 2022. Fund Counsel Kyle Flaherty stated that the Fund has regularly used a portion of its promotion budget to pay a portion of the Fund's staff's salaries and fringe benefits under the theory that certain employees serve both administrative and promotional functions in their daily work functions. He added, however, that in order to support such an allocation, the Fund should periodically perform time studies of any employees whose salaries are allocated in this manner. Chairman O'Dwyer asked Mr. Healy whether the auditors had reviewed any time studies to support this allocation; Mr. Healy responded that they had not. It was noted that the Fund had performed time studies in the past and Mr. Healy stated that the allocation as among the administrative and promotion budget for certain staff was carried forward based on those earlier time studies. A lengthy discussion then ensued with regard to how the Fund should proceed in order to be comfortable that the use of allocations as between administrative and promotion budgets is reasonable. Chairman O'Dwyer stated that on a going-forward basis, the Fund needs to conduct time studies on a regular basis in order to evaluate the propriety of the allocations.

After further discussion, a motion was made, duly seconded, and unanimously approved to direct the Fund to reestablish the basis upon which allocations are made as between the Fund's administrative and promotion budgets through the use of time studies. Thereafter, a new motion was made, duly seconded, and unanimously approved authorizing and directing the Fund to seek bids from qualified firms to conduct time allocation studies of the Fund's personnel. After some discussion, a motion to accept the audit firm's financial report as presented was made, duly seconded and approved, with Chairman O'Dwyer abstaining from the vote.

Comptroller Kim Kurtzner presented the Fund's Financial Report through February 2023 and proceeded to walk through the report with Board. Ms. Kurtzner noted that on a year-to-date basis, the Fund's revenue is tracking higher than it was during the same period in 2022. Ms. Kurtzner directed the Board members' attention to the last page of her report concerning delinquencies due and owing to the Fund and noted that some of those delinquencies, including Capital OTB, have since been paid. She noted, however, that Catskill OTB is still delinquent in its obligations to the Fund. A motion to accept the Financial Report was made, duly seconded, and unanimously approved.

As the next order of business, Chairman O'Dwyer asked Ms. Egan to review with the Board members a recent request to support New York Race Track Chaplaincy programs. Ms. Egan reviewed their request for support, which monies would be used by the organization to support summer camp programs for children of backstretch employees. She explained that this total request for 2023 is \$15,000, with \$10,000 of that to be paid soon to support the summer camp programs and the remaining \$5,000 to be paid at a later date in 2023. Ms. Egan noted that the Promotion Committee recommends that the Board approve this request. A motion was made, seconded and unanimously approved authorizing the Fund to provide this level of support to the New York Race Track Chaplaincy programs.

As the next order of business, Chairman O'Dwyer noted that the Fund and NYRA have agreed to terms on a 2023 purse enrichment agreement, a copy of which has been provided to the Board members. Ms. Egan reviewed the terms of that agreement with the Board members. A motion was made, seconded, and unanimously approved authorizing the Fund to enter into this NYRA purse enrichment agreement. Board member Najja Thompson recused himself from the discussion and the action on this motion.

Chairman O'Dwyer next asked Ms. Egan to review with the Board members the policies that the Fund maintains, copies of which have been provided to the Board members. After some discussion, a motion was made, seconded and unanimously approved to maintain all of the Fund's policies in their current form.

Under new/old business, Chairman O'Dwyer and Ms. Egan discussed the need to engage a law firm to commence an action against Catskill OTB in an effort to recover the significant statutory payment obligations that Catskill OTB owes to the Fund. Chairman O'Dwyer noted that he is currently exploring whether the Fund may retain FisherBroyles on an off-retainer basis to commence such an action and further noted that, if so, it may be beneficial for that firm to represent the Harness Fund as well in a joint representation. After some discussion, a motion was made to authorize the Fund, contingent upon getting approval from the State, to engage FisherBroyles to commence an action against Catskill OTB to collect delinquencies owed to the Fund. This motion was duly seconded and unanimously adopted.

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