

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date **2/21/2013**
File #

In re: Petition for Declaratory Statement

Case No.

INVESTMENT CORPORATION OF
PALM BEACH,

Petitioners.

DS 2013-010

PETITION FOR DECLARATORY STATEMENT

COMES NOW, Investment Corporation of Palm Beach (the “Petitioner”), and hereby moves pursuant to Section 120.565, Florida Statutes (2012),¹ and Rule 28-105, Florida Administrative Code (2012), and requests the issuance of a declaratory statement by the Division of Pari-Mutuel Wagering (the “Division”) regarding the application of certain statutes to the Petitioners’ particular set of circumstances. In support of the Petition, the Petitioner state the following:

1. The Petitioner is formally known as Investment Corporation of Palm Beach, and its corporate offices are located at 1111 N. Congress Ave., West Palm Beach, Florida 33409. For purposes of this proceeding, the Petitioner’s address is that of its undersigned counsel.

2. The Division of Pari-Mutuel Wagering has licensed the Petitioner to conduct cardroom and pari-mutuel wagering performances at the Palm Beach Kennel Club facility located at 1111 N. Congress Ave., West Palm Beach, Florida 33409.

¹ All references herein to “Chapter” or “Section” are to the applicable chapter or section of the official 2012 version of the Florida Statutes.

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DBPR Agency Clerk

3. The affected agency is the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, located at Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399. The Division has jurisdiction over this proceeding pursuant to Section 120.565, Florida Statutes.

4. The Department, through its divisions discussed herein, is the state agency authorized to regulate the Licensed Facility, including the conduct of pari-mutuel wagering and totalisator companies. *See* §§ 550.0251 and 550.495, Fla. Stat. (2012).

The Totalisator Fees and Applicable Law

5. The Petitioner owns and operates a licensed greyhound facility located in Palm Beach County, Florida. The Petitioner is eligible to conduct intertrack and simulcast wagering under Florida law.

6. The Petitioner accepts wagers at its facility for both races conducted live on-site and races conducted at other facilities, including facilities outside of Florida. In this regard, the Petitioner is a host facility and a guest facility depending upon the factual circumstances.

7. The Petitioner is prohibited from directly receiving out-of-state thoroughbred signals and instead must receive such signals through an operating Florida thoroughbred facility. *See* § 550.6305(9)(g)1., Fla. Stat. (2012). Florida law requires such signals to be disseminated to the Petitioner if the Florida thoroughbred facility receives and wagers upon the out-of-state signal. *Id.* (“Any thoroughbred permitholder which accepts wagers on a simulcast signal must make the signal available to any permitholder that is eligible to conduct intertrack wagering under the provisions of ss. 550.615-550.6345.”).

8. The Petitioner is currently charged totalisator interface fees (the “Interface Fees”) from various totalisator companies. The Interface Fees are a result of different totalisator

companies exchanging wagering information and occur in multiple scenarios. For example, the Petitioner is charged Interface Fees when it accepts a wager on another live pari-mutuel facility that uses a different totalisator company than the Petitioner.

9. The Petitioner is also charged Interface Fees under certain circumstances even if the host thoroughbred track and Petitioner utilize the same totalisator company. While the Petitioner and out-of-state host thoroughbred track may share the same totalisator company,² the Petitioner is nevertheless charged Interface Fees because the in-state thoroughbred facility consenting to the Petitioner's receipt of the out-of-state signal uses a different totalisator company than the Petitioner.

10. The Petitioner is also charged *multiple* Interface Fees when the Petitioner, the host thoroughbred facility, and the in-state thoroughbred facility consenting to the Petitioner's receipt of the out-of-state signal all have different totalisator companies. This is commonly referred to as the "double-hop" because the wagering information makes two transitions between the Petitioner and the out-of-state facility.

11. In addition, the Petitioner has been advised that the Thoroughbred Racing Protective Bureau (TRPB) intends to implement a mandatory \$950 monthly license fee as a condition of accessing the Thoroughbred Racing Associations of North America (TRA) host track wagering pools. A true and correct copy of the TRPB's letter is attached hereto as Exhibit A.

12. The TRPB letter explains that the monthly license fee is designed to cover development costs associated with a "robust communication and database platform," known as the TRPB Tote Security System (TSS). According to the TRPB, the TSS will operate as follows:

² The Petitioner would also receive an interface fee charge if the out-of-state host thoroughbred track and the in-state thoroughbred facility share the same totalisator company and such company is different than the Petitioner's totalisator company.

TSS, which will operate as a redundant communications system parallel to but independent from [Inter-tote System Protocol] ITSP, will enable Host racetrack associations to (1) better-manage central Race Day Control security and transparency over the entire pari-mutuel network; (2) secure each Host racetrack association's stop-betting control, and ensure all commands are immediately disseminated throughout the simulcast network; (3) authenticate each simulcast association's participation in Host racetrack association's races; (4) verify execution of all essential Race Day Control functions from every tote within the network; and (5) create a wagering transaction database enabling Host to audit bet detail and review scan Pick-n pools on a leg-by-leg basis.

Ex. A at 1.

13. The TRPB states that is mandatory monthly license fee will provide a guest facility with the following:

- (1) access to the pari-mutuel pools of any and all TRA Host racetrack association(s) with whom the retail association has a simulcast agreement, in which Host association(s) has made participation in TSS a contractual condition;
- (2) stop-betting redundancy, which will better-enable the retail association to comply with the Host racetrack's contractual requirement that the retail association not accept wagers after the start of a race, notwithstanding a failure within the Host's racetrack's communication network or within ITSP, for which the retail association is financially liable, and may necessitate a refund;
- (3) a secure pari-mutuel network in which to operate, the benefits of which can be effectively communicated by the retail association to its customers and regulator.

Ex. A at 2.

14. A "guest track" is defined by Florida law as a "track or fronton receiving or accepting an intertrack wager." § 550.002(12), Fla. Stat. (2012).

15. A "host track" is defined by Florida law as a "track or fronton conducting a live or simulcast race or game that is the subject of an intertrack wager." § 550.002(12), Fla. Stat. (2012).

16. Florida law mandates that “[a]ll costs of receiving the transmission of the broadcasts shall be borne by the guest track; and all costs of sending the broadcasts shall be borne by the host track.” § 550.615(10), Fla. Stat. (2012).

17. Section 550.495, Florida Statutes, requires totalisator companies to be licensed by the Division prior to conducting business within Florida. In addition, totalisator companies are required to comply with Florida statutes and rules governing pari-mutuel wagering or their annual license may be subject to discipline. *See* § 550.495(4), Fla. Stat. (2012). This obligation necessarily requires that totalisator’s billing practices conform to Section 550.615(10), Florida Statutes.

Conclusion

18. The Petitioner is in doubt as to whether the Interface Fees and the TRPB monthly license fee must be paid entirely by the guest facility, the host facility, or whether such fees must be equally split between the guest facility and the host facility pursuant to Section 550.615(10), Florida Statutes.

19. The Petitioner seeks a declaratory statement from the Division concerning how the operative provisions of Chapter 550, Florida Statutes, including any applicable administrative rules, will impact the questions presented regarding Interface Fees and the TRPB monthly license fee.

Questions Presented

Question 1: Whether Interface Fees, as described herein, must be paid entirely by the guest facility, the host facility, or whether such fees must be equally split between the guest facility and the host facility pursuant to Section 550.615(10), Florida Statutes.

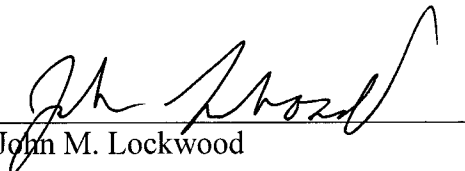
Question 2: Whether the TRPB monthly license fee, as described herein, must be paid entirely by the guest facility, the host facility, or whether such fees must

be equally split between the guest facility and the host facility pursuant to Section 550.615(10), Florida Statutes.

WHEREFORE, the Petitioner requests that the Division issue a Declaratory Statement answering the above-stated questions.

Respectfully submitted this 21st day of February, 2013.

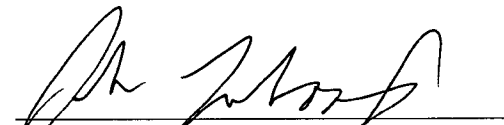
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By: 
John M. Lockwood

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing document was filed via hand delivery with the Agency Clerk of the Department of Business and Professional Regulation at 1940 North Monroe Street, Tallahassee, Florida 32399-1035 on this 21st day of February 2013.


John M. Lockwood



FRANKLIN J. FABIAN
PRESIDENT

THOROUGHBRED RACING PROTECTIVE BUREAU

420 Fair Hill Drive
Suite 2
Elkton, MD 21921

cc Sent to
-benny lookwood

November 15, 2012

Mr. Michael Glenn
General Manager
Palm Beach Kennel Club
1111 North Congress Avenue
West Palm Beach, FL 33409

Dear Mr. Glenn,

Beginning in 2013, it will be a requirement for retail associations offering pari-mutuel wagers on thoroughbred races hosted by racetrack associations affiliated with the Thoroughbred Racing Associations of North America (TRA) to be integrated within the TRPB Tote Security System as a condition to access TRA Host track wagering pools.

In March 2011, the Thoroughbred Racing Protective Bureau (TRPB), a wholly-owned subsidiary of the TRA, together with its technology vendors (InCompass Solutions/The Jockey Club Technology Services, AmTote International, Sportech Racing LLC, United Tote, and Roberts Communications Network), commenced development of a robust communication and database platform, known as the TRPB Tote Security System (TSS), pursuant to a mandate from its TRA corporate ownership.

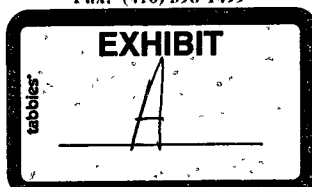
The impetus for TSS stemmed from a perceived increasing lack of public confidence in the current tote system, in large part due to a series of tote system communication failures, resulting in failures of host racetrack wagering pools to close prior to the start of a race. Late-odds shifts inherent within Inter-tote System Protocol (ITSP), which promulgates fractional odds throughout the network in cycles taking as long as 60-seconds to refresh, fueled this perception and exacerbated the frustration of bettors. Regulators increasingly required vendor-provided "wagering monitoring systems", which to date have proven to be both costly and ineffective.

TSS, which will operate as a redundant communications system parallel to but independent from ITSP, will enable Host racetrack associations to (1) better-manage central Race Day Control security and transparency over the entire pari-mutuel network; (2) secure each Host racetrack association's stop-betting control, and ensure all commands are immediately disseminated throughout the simulcast network; (3) authenticate each simulcast association's participation in Host racetrack association's races; (4) verify execution of all essential Race Day Control functions from every tote within the network; and (5) create a wagering transaction database enabling Host to audit bet detail and review scan Pick-n pools on a leg-by-leg basis.

Phone: (410) 398-2261

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E-Mail: ffabian@trpb.com



THOROUGHbred RACING PROTECTIVE BUREAU

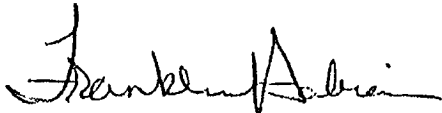
By design, the cost of developing, implementing and maintaining TSS is borne fairly and equitably by every retailer of racing content across the entire pari-mutuel network. All retail associations offering wagering on racing content emanating from one or more TRA-racetrack associations will, as part of the racetrack association's simulcast agreement with the retail association, *be required to execute a TRPB Tote Security System Retailer's Agreement and be integrated into the TRPB TSS network as a condition to access TRA Host track wagering pools.* The monthly license fee for TSS network integration is \$950, for which the retail association receives the following:

- (1) access to the pari-mutuel pools of any and all TRA Host racetrack association(s) with whom the retail association has a simulcast agreement, in which Host association(s) has made participation in TSS a contractual condition;
- (2) stop-betting redundancy, which will better-enable the retail association to comply with the Host racetrack's contractual requirement that the retail association not accept wagers after the start of a race, notwithstanding a failure within the Host's racetrack's communication network or within ITSP, for which the retail association is financially liable, and may necessitate a refund;
- (3) a secure pari-mutuel network in which to operate, the benefits of which can be effectively communicated by the retail association to its customers and regulator.

Shortly, TRA-member racetrack associations will begin incorporating language in their simulcast agreements regarding the necessity that retailer associations participate in TSS. Retailer associations will first be required to execute a TRPB Tote Security System Retailer's Agreement with TRPB, and subsequently integrate into the TSS network at such time as the retail association's tote company is capable of doing so. (It is anticipated that TSS will be fully deployed across the North American pari-mutuel network by October 31, 2013. Retail associations will not be assessed the monthly TSS license fee until integration of their retail location into TSS is achieved, and benefits there from are realized.)

On January 14, 2013, TRPB will forward to all North American pari-mutuel retail associations a TRPB Tote Security System Retailer's Agreement for their review and execution. In advance of this action, additional information pertaining to TSS, a sample Agreement, and FAQ sheet can be accessed at <http://www.trpb.com/tss.htm>.

Sincerely,



Franklin J. Fabian