

# OKLAHOMA HORSE RACING COMMISSION

## REGULARLY SCHEDULED MEETING

March 26, 2009

### MINUTES

#### CALL TO ORDER/ROLL CALL

Chairman Bledsoe called the March 26, 2009 Regularly Scheduled Meeting of the Commission to order at 9:35 a.m. in the Activity Center of Shepherd Mall, Oklahoma City, Oklahoma.

Commission members answering roll call were Commissioner Bledsoe, Commissioner Bollenbach, Commissioner Bowers, Commissioner Calvert, Commissioner Carter, Commissioner Grimmatt, Commissioner Savage and Commissioner Smicklas. Commissioner Barkett was absent from the meeting. Mr. Leader, Commission Counsel, was present as well as the following Commission staff members: Mr. Constantin A. Rieger, Ms. Mary Ann Roberts, Ms. Sue Chappell, Mr. Mike Corey, Ms. Bonnie Morris and Ms. E J Brees. Approximately twelve other persons attended and signed the registry which is part of the record.

#### APPROVAL OF MINUTES

Commissioner Grimmatt moved to approve the drafted Minutes from the February 19, 2009 Regularly Scheduled Commission Meeting. Commissioner Bollenbach seconded the motion. The vote was as follows:

Aye: Mr. Grimmatt, Mr. Bollenbach, Mr. Bowers, Mr. Calvert, Mr. Carter,  
Mr. Smicklas, Dr. Bledsoe

Abstain: Mr. Savage

Mrs. Barkett was absent from the meeting.

The motion passed on a 7-0-1 vote.

#### REPORT ON THE STATUS OF THE MEC BANKRUPTCY AS IT PERTAINS TO THE OPERATIONS OF REMINGTON PARK

On March 5, 2009, Magna Entertainment Corporation, the parent company of Remington Park, announced that it had filed for Chapter 11 bankruptcy protection, filing voluntary petitions for reorganization in the U.S. Bankruptcy Court for the District of Delaware.

Mr. Gregg Scoggins, National Director of Regulatory Affairs for Magna Entertainment Corporation (MEC), made a presentation about the Chapter 11 bankruptcy. Mr. Scoggins said that this type of bankruptcy would allow MEC to continue operating while it restructures its debt, particularly when several of its subsidiaries, such as Remington Park, are successful going concerns. As such, MEC is regarded as a Debtor-in-Possession (DIP) in the Bankruptcy Court. Only those subsidiaries that are loan guarantors or debtors, including Remington Park, were included in the bankruptcy.

Mr. Scoggins said that bankruptcy imposes a stay on creditors' ability to pursue any claims against the DIP made prior to filing bankruptcy. The period of bankruptcy allows the DIP and its creditors to work together to develop a plan for how the DIP comes out of bankruptcy, which must be approved by the Bankruptcy Court. MEC requested the Bankruptcy Court's approval for \$62.5 million in DIP financing for six months; the Court only approved \$14.3 million for one month with MEC scheduled to return to court April 3, 2009 to request approval for the rest of the financing. The financing allowed MEC to make payroll and pay purse obligations, taxes and insurance.

The DIP financing was provided by MI Developments, MEC's largest creditor and controlling shareholder of MEC. MI Developments and MEC entered a stalking horse agreement in which MI may bid to purchase certain assets that MEC owns. In this agreement, MID has the right to match any bid with respect to a property and become the owner.

Mr. Scoggins said that at the April 3, 2009 Court date, MEC plans to seek a permanent DIP financing order, an order to establish procedures and deadlines for handling the sale and auctioning of the assets under the MID stalking horse bid, and an order setting procedures and auctioning of assets not covered by the MID stalking horse bid. For the non-MID assets, including Remington Park, MEC has hired a sales broker, the Miller Buckfire Company, to manage bids and subsequent auction. MID would have the right to place such a bid. MEC has suggested an April 24, 2009 deadline for prospective bidders to submit instructions or interest. Then there would be a July 8, 2009 deadline for the closed submission of bids. On July 20, 2009, the bids would be opened and reviewed with eligible bidders identified. For multiple bids, an auction would be held on July 30, 2009 with the highest and best bid for an asset being the presumptive winning bidder. On August 7, 2009, MEC would ask the Bankruptcy Court to issue an order about the winning bidders.

Mr. Neal Leader, Commission Counsel, asked if the terms and conditions of the sale of an ongoing racetrack, such as Remington Park, would include that the DIP would continue to operate the racetrack until the new purchaser obtains an organization license. Mr. Scoggins said that it will be handled on a case-by-case basis since each racing jurisdiction has its own license requirements. The sales contract includes information about the governmental approval process that the new owner would have to meet as a condition to closing the sale. Mr. Scoggins added that the time frame between current and new owner would be short so that MEC hopes that background checks can be done in an expedited fashion so that there is no interruption in racetrack operation. Mr. Scoggins suggested that

a state's statute might be amended in the case of a bankruptcy that the prospective bidder could actually conduct operations of the racetrack pending the outcome of a review and analysis. In response, Mr. Leader suggested that MEC seek an order from the Bankruptcy Court to allow potential buyers to file documents with the particular racing jurisdiction on a confidential basis ahead of the actual sale date. Commissioner Calvert suggested that MEC could ask the Bankruptcy Court to allow the DIP to continue operating the racetrack and defer the closing date until the licensing process is completed with an adjustment of the purchase price for the operating profits made during that interim period.

Mr. Constantin Rieger, Commission Executive Director, advised the Commission that he had requested assistance from the Attorney General to track the bankruptcy proceedings, and the Attorney General appointed an Assistant Attorney General to assist the Commission.

Mr. Rieger asked Mr. Scoggins to address the issue of simulcasting host fee payments to which Mr. Scoggins said that Bankruptcy Courts in New York and Louisiana have treated money room settlements and host fee payments as prepetition claims. He added that MEC's intention is to pay these claims although payment may not be as prompt as before the bankruptcy filing.

Mr. Ron Shotts, Director of Racing at Fair Meadows at Tulsa (FMT), requested a copy of the Bankruptcy Court's order regarding money room settlements so that he could share the document with the Tulsa Fair Board related to FMT taking simulcast signals from MEC-owned racetracks. Mr. Scoggins said that the order would not specifically state 'money room settlements' but would allow the DIP to continue to operate as a going concern, including the ability to pay these simulcasting fees.

Mr. Joe Lucas, Thoroughbred trainer, asked if the Oklahoma City Zoo had been kept in the communication loop about the ongoing efforts to sell Remington Park. Mr. Scott Wells, President and General Manager of Remington Park, responded that he had met with the Zoo officials several times since the March 5, 2009 bankruptcy filing. He added that the Zoo is very interested in Remington Park remaining a going concern.

Ms. Debbie Schauf, Executive Director of the Oklahoma Quarter Horse Racing Association, asked about the ability for a creditor, such as another racetrack, to request faster payment of the simulcasting fees. Mr. Scoggins said that any creditor has the opportunity to file such a request with the Bankruptcy Court. Ms. Schauf then asked about the possibility of the Bankruptcy Court not approving the additional financing to which Mr. Scoggins said several options had already been discussed. Mr. Wells added that, since Remington Park is a cash-positive flow business that could operate on its own.

No action was taken by the Commission.

**POSSIBLE FINAL ACTION ON PROPOSED RULE AMENDMENTS THAT  
HAVE BEEN SUBJECT TO BOTH PUBLIC HEARING AND PUBLIC  
COMMENT**

**Background**

At the January 22, 2009 meeting, the Commission authorized publication in *The Oklahoma Register* and scheduling of a Public Hearing on proposed rule amendments as well as proposed new rules as follows:

**Proposed Rule Amendments to Racing Rules**

- 325:75-1-2, Definitions
- 325:75-1-3, Definition of Accredited Oklahoma-Bred Thoroughbred
- 325:75-1-4, Registration of Oklahoma-Bred
- 325:75-1-5, Administration of Oklahoma-Bred Program
- 325:75-1-7, Registration Required for Oklahoma-Bred Eligibility
- 325:75-1-8, Inspection of Horses
- 325:75-1-9, Decision as to Eligibility of Oklahoma-Bred
- 325:75-1-10, False Statements Concerning Oklahoma-Bred Registration
- 325:75-1-12, Registration Requirements, Categories and Fees for Quarter Horses, Appaloosas or Paints
- 325:75-1-14, Establishment of Oklahoma-Bred Added Money and Award Payments at Race Meetings
- 325:75-1-16, Disposition of Unexpended Oklahoma-Bred Funds Generated at a Race Meeting
- 325:75-1-19, Embryo Transfer

**Proposed New Racing Rules**

- 325:75-1-3.1, Definition of Accredited Oklahoma-Bred Quarter Horse, Paint or Appaloosa
- 325:75-1-12.1, Application Requirements, Categories and Fees for Thoroughbreds, Beginning with an Effective Date of January 1, 2010
- 325:75-1-13.1, Dual Breed Application Categories and Fees

**Proposed Rule Amendments to Gaming Rules**

- 325:80-9-1, Application for Manufacturer, Distributor, or Manufacturer/Distributor License
- 325:80-9-2, Manufacturer's, Distributor's, or Manufacturer/Distributor's Employee License
- 325:80-11-2, Vendor License
- 325:80-11-3, Vendor Employee License
- 325:80-15-1, Application Required

The Notice of Rulemaking Intent was published in the February 17, 2009 issue of *The Oklahoma Register*, and the Public Hearing is scheduled for March 19, 2009.

**Current Consideration**

Commissioner Calvert made a motion to amend Rule 325:75-1-3, Definition of Accredited Oklahoma-Bred Thoroughbred, regarding the section on broodmares serviced by out-of-state stallions to clarify when the requirement would begin. He proposed the following wording be added for the sentence to read:

In order for the broodmare to produce successive foals eligible for accreditation in the Oklahoma-Bred Program, beginning with foals born in 2011, she must produce a foal in Oklahoma in alternating years by an accredited stallion standing in Oklahoma.

Commissioner Smicklas seconded the motion. The vote was as follows:

Aye: Mr. Calvert, Mr. Smicklas, Mr. Bollenbach, Mr. Bowers, Mr. Carter,  
Mr. Grimmatt, Mr. Savage, Dr. Bledsoe  
Mrs. Barkett was absent from the meeting.  
The motion passed on an 8-0 vote.

Commissioner Calvert made a motion to adopt all proposed rule amendments and proposed new rules to Chapter 75, Oklahoma-Bred Program, of OHRC *Rules of Racing*. Commissioner Carter seconded the motion. The vote was as follows:

Aye: Mr. Calvert, Mr. Carter, Mr. Bollenbach, Mr. Bowers, Mr. Grimmatt,  
Mr. Savage, Mr. Smicklas, Dr. Bledsoe  
Mrs. Barkett was absent from the meeting.  
The motion passed on an 8-0 vote.

Commissioner Calvert made a motion to adopt all proposed rule amendments to Chapter 80, Gaming Licensing Requirements, of the OHRC *Rules for Racetrack Gaming*. Commissioner Carter seconded the motion. The vote was as follows:

Aye: Mr. Calvert, Mr. Carter, Mr. Bollenbach, Mr. Bowers, Mr. Carter,  
Mr. Grimmatt, Mr. Savage, Mr. Smicklas, Dr. Bledsoe  
Mrs. Barkett was absent from the meeting.  
The motion passed on an 8-0 vote.

**PROPOSED FY-2010 PARI-MUTUEL AND GAMING AUDITING CONTRACTS BETWEEN THE COMMISSION AND THE OFFICE OF STATE AUDITOR AND INSPECTOR (SA&I)**

The proposed auditing contracts between the Commission and the Office of State Auditor and Inspector for FY-2010 [July 1, 2009 through June 30, 2010] were provided

in the Agenda Packet. The pari-mutuel contract proposes a \$48,000 annual budget. The gaming contract proposes a \$255,000 annual budget. There were no changes in the contracts from FY-2009 except for dates.

Mr. Rieger asked Mr. Jacky Muse, Manager of the Horse Racing and Gaming Division, Office of State Auditor and Inspector, if the auditors would follow purse deposits more frequently. Mr. Muse responded that there had been difficulty in getting the racetracks, except Fair Meadows at Tulsa, to forward the deposit information on the purse accounts on a timely basis. Mr. Rieger said that he would advise the other racetracks to send the information necessary for the auditors to report on the purse deposits.

Commissioner Calvert made a motion to adopt the proposed FY-2010 pari-mutuel and gaming auditing contracts with the State Auditor and Inspector's Office conditional on the availability of funding. Commissioner Bowers seconded the motion. The vote was as follows:

Aye: Mr. Calvert, Mr. Bowers, Mr. Bollenbach, Mr. Carter, Mr. Grimmert,  
Mr. Savage, Mr. Smicklas, Dr. Bledsoe  
Mrs. Barkett was absent from the meeting.  
The motion passed on an 8-0 vote.

## **LEGISLATIVE REVIEW OF LEGISLATIVE BILLS AFFECTING THE HORSE RACING INDUSTRY**

The First Regular Session of the 52<sup>nd</sup> Oklahoma Legislature has been in session since February 2, 2009. Commission Staff advised that all bills have passed in their house of origin and are now progressing through the opposite house.

Mr. Rieger discussed SB 820, the bill seeking to amend Section 208.3, Oklahoma Breeding Development Fund Special Account, of Title 3A, Horse Racing Act, to add a new purpose for the fund to provide funding to any non-profit entity exempt from taxation for the purpose of providing care of retired and unwanted Oklahoma-Bred racing stock and to allow the Commission to use up to 15% [rather than 10%] of the prior year's receipts into the Oklahoma Breeding Development Fund Special Account for administration of the program. The proposed Oklahoma-Bred fee increases for Thoroughbreds would fund the care of the retired and unwanted horses. Mr. Rieger stated that he had recently heard there might be some action at the Capitol by other horse breeds opposed to SB 820's passage.

## **RULEMAKING REPORT**

On March 2, 2009, Governor Henry approved proposed amendments to the following rules:

### **Racing Rules**

- 325:10-1-6, Duty of a Licensed Organization
- 325:20-1-2, Definitions
- 325:20-1-15, Duties of the Paddock Judge
- 325:20-1-24, Duties of the Horse Identifier
- 325:45-1-6, Authorized Medications
- 325:75-1-15, Distribution of Funds for Oklahoma-Bred Pari-Mutuel Races

### **Gaming Rules**

- 325:80-5-5, Conditions of a Racetrack Gaming Operator License
- 325:90-5-1, Unresolved Patron Disputes

Legislative inactive approval occurred on March 25, 2009, so the earliest effective date will be April 25, 2009.

## **ANY MATTER NOT KNOWN ABOUT OR WHICH COULD NOT HAVE BEEN REASONABLY FORESEEN PRIOR TO POSTING THE AGENDA**

There were no items not known in advance of posting the agenda.

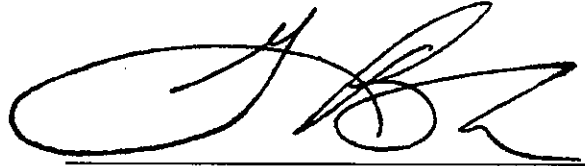
## **ANNOUNCEMENTS**

All three independent testing laboratories accepted their respective CY 2009 License Orders.

**ADJOURNMENT**

By acclamation, the Commission meeting was adjourned at 11:05 a.m.

Approved this 21<sup>st</sup> day of May, 2009.



Dr. Gene Bledsoe, Chairman

On Behalf of the Commission:  
ATTEST:



Constantin A. Rieger, Executive Director  
CAR/ejb/4/7/09; bjm/4/17/09, 5/21/09