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**New York State Office of the State Comptroller**  
Thomas P. DiNapoli

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Division of State Government Accountability

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## **Selected Operating Practices**

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# **Thoroughbred Breeding and Development Fund**

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Report 2011-S-36

November 2012

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# Executive Summary

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## Purpose

To determine whether the New York State Thoroughbred Breeding and Development Fund (Fund) has been receiving all of the statutory commissions it is due from New York State-based racetracks, off-track betting corporations (OTBs), and Video Lottery Terminal (VLT) operators. In addition, our objective was to assess whether the commissions were used in compliance with statutory guidelines. Our audit covered the period January 1, 2008 through January 26, 2012.

## Background

The Fund is a public benefit corporation established to promote and encourage the breeding, raising, and racing of quality thoroughbred horses in New York. The Fund provides cash awards to the breeders and owners of registered New York State-breds and registered New York State-based stallions. The Fund receives its operating monies (commissions) from a statutory percentage of VLT revenues and a statutory percentage of wagers placed on in-State thoroughbred race meets. In calendar year 2010, the Fund received commissions of \$11.4 million, and paid cash awards totaling \$9.6 million. The Fund's operating expenses for administration and promotion average about \$1.5 million a year.

## Key Findings

- The Fund has been receiving the statutory commissions due from the tracks, OTBs, and VLT operators. However, while assessing the statutory commission rates due the Fund, we found that the New York Racing Association (NYRA) had shortchanged winning bettors by approximately \$7.4 million between September 15, 2010 and December 21, 2011. This happened because NYRA was not complying with statutory retainage rates on exotic bets. As a result of our finding, which was identified in December 2011, an investigation was conducted by the NYS Racing and Wagering Board which led to the firing of two senior NYRA officials: its President/Chief Executive Officer and its Senior Vice President/General Counsel.
- The Fund improperly underreported statutorily limited administrative expenses and promotional expenses by \$399,908 for calendar years 2009 and 2010.

## Key Recommendations

- Continue to ensure that the appropriate amount of commissions is received from tracks, OTBs and VLT operators.
- Ensure that administrative and promotional expenses are properly reported.
- Work with NYTB officials to explain the level of quarterly report detail necessary for Fund officials to make informed comments and decisions.

## Other Related Audits/Reports of Interest

[New York Racing Association: Cost Savings Actions - Follow Up \(2011-F-16\)](#)

[New York State Thoroughbred Breeding and Development Fund: Internal Controls Over Financial Operations \(2004-S-57\)](#)

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**State of New York  
Office of the State Comptroller**

**Division of State Government Accountability**

November 14, 2012

Ms. Tracy Egan  
Executive Director  
NYS Thoroughbred Breeding and Development Fund  
Saratoga Spa State Park  
19 Roosevelt Drive, Suite 250  
Saratoga Springs, NY 12866

Dear Ms. Egan:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is our report of the Fund's *Selected Operating Practices*. This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 255 of the Racing, Pari-Mutuel Wagering and Breeding Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*

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This report is also available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us)

## Background

The New York State Thoroughbred Breeding and Development Fund (Fund) is a public benefit corporation established in 1973 to promote and encourage the breeding, raising, and racing of quality thoroughbred horses in New York State. To accomplish this objective, the Fund issues various financial incentives and awards to State thoroughbred breeders and owners. The Fund finances these incentives and awards, as well as its own administrative expenses, with statutory commissions it receives from the State's thoroughbred racetracks, Off-Track Betting facilities, and Video Lottery Terminal (VLT) operators located at the State's racetracks. The Fund also administers the registration of foals and stallions.

In calendar year 2010, Fund commissions totaled \$11.4 million. From these monies, the Fund paid Breeder Awards of \$6.6 million, Stallion Awards of \$1.6 million, Owner Awards of \$860,000, and purse enhancements of \$575,000. The Fund reported administrative expenses of \$563,508 and promotional expenses of \$668,243, both of which are limited by statute. In addition, the Fund makes statutory annual payments to the Zweig Foundation for Equine Research and to the State's thoroughbred racetracks for purse enhancements. For calendar year 2010, the payments to the Foundation totaled about \$1.1 million.

Until the advent of VLT's, the Fund's largest statutory commissions were received from the New York Racing Association (NYRA), which operates the three main thoroughbred tracks in New York (Belmont, Saratoga, and Aqueduct). The Fund's current largest revenue source is VLT commissions. With the opening of the Resorts World Casino at Aqueduct, total Fund commissions from wagering facilities are projected to soon exceed \$17 million annually.

Thoroughbred Breeding and Development Fund Sources of Revenue				
Sources of Commissions	2012 (Estimated)	2011*	2010*	2009*
Racetracks	\$ 7,620,000	\$ 8,135,678	\$ 9,646,460	\$11,131,343
VLTs	9,650,000	2,792,363	1,735,077	1,464,604
Totals	\$17,270,000	\$10,928,041	\$11,381,537	\$12,595,947

\* Source: 2011 Fund's Audited Financial Statements

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## Audit Findings and Recommendations

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We found that the Fund has been receiving the statutory commissions due from the tracks, OTBs, and VLT operators. However, Fund officials were not performing their own tests to determine that the Fund was receiving the proper commissions. Further, as part of our audit of the statutory commissions, we found that NYRA had been over-retaining the amounts it was entitled to resulting in underpaid winning bettors.

We note that with respect to the disposition of pari-mutuel pools by the State's thoroughbred racetracks to the Fund, we accepted the Fund's and the New York State Racing and Wagering Board's position regarding the applicable distribution rates, for purposes of this audit. However, we note that recently enacted legislation is changing the relevant rates in October 2012.

### Controls Over Fund Revenue

To assure that the Fund is receiving the proper commissions, Fund management should periodically compare commissions received to the percentages outlined in the statutes applied against reported wagering at OTBs, VLT facilities and racetracks. In a prior audit of the Fund (2004-S-57), we found that Fund management was not performing this comparison and we recommended that this control should be implemented.

During our current audit, we found that Fund officials did not implement this recommendation from the previous audit. We therefore performed our own revenue comparisons for the Fund's largest revenue sources during the audit scope period. We concluded that the Fund had been receiving the commissions owed. We noted, however, that the Fund reimbursed several of the Off-Track Betting facilities an aggregate of \$370,000 in 2008 due to a failure of those facilities to reduce their commission rate based on a statutory change made in 2007. Although this particular error was in the Fund's favor, the periodic comparisons we had recommended may have identified the discrepancy sooner, and avoided the administrative work necessary to verify and correct the error.

In response to our draft report, Fund officials said that they plan to fully implement the recommendation above.

#### *NYRA Take-out*

When working with OSC's legal staff to assess the validity of the commission rates being paid to the Fund, we noted that several changes in rates had occurred during the review period. In this regard, we examined how NYRA allocated its handle between statutory commissions, payouts to winning bettors, etc., to determine whether the aggregate payouts and retainage added up to 100 percent. Our review found that NYRA was charging a 26 percent takeout rate (the amount of the total betting pool retained by NYRA) on certain exotic bets, instead of the statutory 25 percent that went into effect on September 15, 2010, thus underpaying winning bettors. The total amount over-withheld by NYRA for the period September 15, 2010 through December 21,

2011, was \$7.4 million. Of this amount, \$1.1 million was attributed to wagers placed directly with NYRA (e.g., on-track, telephone wagering, etc.); while the remaining over-withholdings related to wagers placed on NYRA races at non-NYRA facilities (e.g., Off-Track Betting parlors, etc).

In December 2011, our Office brought this error to the attention of the New York State Racing and Wagering Board (RWB), which has oversight responsibility for both NYRA and the Fund. The RWB acted on this information, and required NYRA to lower its take out rate and reimburse those bettors who had been shortchanged as a result of NYRA's failure to withhold the correct retainage percentage. We followed up with NYRA and found that it was able to identify and reimburse those bettors who were enrolled in NYRA's electronic wagering program and those who had received wagering related tax forms during the noted period. These bettors accounted for approximately half of the total over-withholdings resulting from wagers placed at a NYRA facility. NYRA has also lowered its take-out rate on these wagers to 24 percent, 1 percent below the statutory maximum, as a means of prospectively reimbursing affected bettors.

## **Administrative and Promotional Expense Caps**

Until August 2010, the Racing Law capped the Fund's annual administrative costs at 4 percent of Fund revenue, and promotional costs at 5 percent of Fund revenue. On August 30, 2010 the cap for administrative costs increased to 5 percent, and the cap for promotional costs increased to 6 percent. These increases were subsequently extended to October 28, 2012 to coincide with the one year anniversary of the VLT operations opening at Aqueduct. The caps are intended to ensure that maximum funding is available for awards.

The Fund charges registration fees ranging from \$75 to \$500 for each registered foal or stallion, and \$100 for box advertisements displayed on the Fund's website. Instead of recording these fees as revenues in accordance with generally accepted accounting principles, Fund staff has historically reported the registration fees collected as an offset to administrative expenses and advertisement fees as an offset to promotional expenses. As a result, the Fund is able to spend more on administration and promotion than is permitted under the statutory caps. In addition, Fund revenue is understated and monies available for awards were reduced. During our audit period, the amount of the understated revenue was \$399,908. This amount could have been awarded to breeders and owners, or added to purses, but instead was used to fund administrative and promotional expenses.

Despite prior recommendations from both OSC and the RWB to report these ancillary fees as revenues, Fund officials told us that they plan to continue to report them as offsets to expenses. (See Fund Comments and State Comptroller's Comment)

## **Propriety of Fund Expenses**

### *Awards*

The State has established eligibility requirements for the various awards offered by the Fund.

For example, when a New York bred horse wins, places or shows, a “Breeder’s” award is paid to whoever was the owner of the mare at the time the winning horse was foaled. The amount of the award paid is based on the registration status of the associated stallion. A foal sired by a registered New York-based stallion qualifies for a higher award than one sired by an out-of-state or non-registered stallion.

We selected a judgment sample of 100 awards paid by the Fund for the period January 1, 2008 through August 31, 2011 (50 Breeder awards, 25 Stallion owner awards, and 25 Owner awards) to determine whether all of their respective eligibility requirements were met prior to award payment. Our review found that all sampled awards were appropriate.

### *Contract with the New York Thoroughbred Breeders, Inc.*

In addition to making awards, the Fund promotes New York’s thoroughbred breeding industry through publicizing and disseminating information about the benefits of breeding and racing New York-breds. The Fund contracts with the New York Thoroughbred Breeders, Inc.,(NYTB) to help it execute these responsibilities through the publication and distribution of industry brochures, directories, and monthly newsletters; the sponsorship of industry-related meetings, receptions, and seminars; and publishing the annual stallion roster magazine. Prior to 2012, the contract called for the Fund to pay NYTB a sum equal to 37 percent of its annual promotion budget, not to exceed \$215,000 annually. The contract for 2012 raises this ceiling to \$300,000 without a stated percentage.

Under the terms of its agreement with NYTB, by the 30th day of January, April, July, and October of each year, NYTB shall submit to the Fund a detailed accounting of the services provided on its behalf during the immediately preceding three month period. These reports serve to document what NYTB has done in return for the contracted payments. The quarterly reports also provide Fund officials with the opportunity to comment on those activities or the lack thereof.

We reviewed the seven NYTB reports provided to the Fund from January 2010 through July 2011 to determine whether these reports were prepared, and whether they included the required details necessary for decision makers. We found the reports to be lacking in sufficient detail. For example, the reports list generic income and expense account titles (e.g., salaries, promotions, materials, etc.) with no explanation of the individual transactions resulting in the reported account balances. For example, the reports do not explain who received the reported salaries, what specific promotional endeavors were executed on behalf of the Fund, or what materials were purchased. As such, Fund officials have limited assurance that the money the Fund is paying to NYTB is spent in the best interest of the Fund.

Fund officials told us that a contract “audit clause” would allow them look at the detailed transactions they are interested in. However, for the past two years, Fund officials have requested that NYTB officials agree to an audit clause being added to the contract to no avail.

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## Recommendations

1. Implement controls to periodically ensure that the Fund is receiving the correct amount of statutory commissions from wagering facilities.
2. Discontinue the inappropriate practice of offsetting administrative and promotional expenses with ancillary fees collected by the Fund. Report all Fund revenues as revenues on Fund financial statements.
3. Work with NYTB officials to explain the level of quarterly report detail necessary for Fund officials to make informed comments and decisions. If NYTB officials do not agree to incorporate an audit clause in the contract, consider placing the contract out for bid.

## Audit Scope and Methodology

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We audited selected Fund operating practices for the period January 1, 2008 through January 26, 2012. Our objectives were to determine whether the Fund has been receiving all of the statutory commissions it is due from the designated wagering facilities and to assess whether these monies were used in compliance with statutory guidelines.

To accomplish our objectives, we reviewed applicable laws, interviewed Fund staff, reviewed relevant Fund records including income and expense records, and attended selected Fund Board meetings. We also reviewed the approved and actual take-out rates for the New York Racing Association (NYRA) when performing our revenue tests. We reviewed a judgment sample of awards to determine whether they were paid to only eligible owners and breeders.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

## Authority

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The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, Article II, Section 8 of the State Finance Law, and Section 255 of the Racing, Pari-Mutuel Wagering and Breeding Law.

## Reporting Requirements

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A draft copy of this report was provided to Fund officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of this report.

Fund officials agree with Recommendations 1 and 3, but disagree with Recommendation 2. They believe they are properly accounting for registration and advertising fees in compliance with generally accepted accounting principles.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chairman or Executive Director of the Thoroughbred Breeding and Development Fund shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

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## Contributors to This Report

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**Frank Patone**, Audit Director  
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**Todd Seeberger**, Audit Supervisor  
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To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

# Agency Comments



**NEW YORK STATE  
THOROUGHBRED BREEDING AND DEVELOPMENT FUND CORPORATION**

WEB SITE <http://www.nybreeds.com>

**DIRECTORS**

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September 19, 2012

Frank Patone  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236

**Re: New York State Thoroughbred and Development Fund;  
Selected Operating Practices Audit Report 2011-S-36**

Dear Mr. Patone:

As the Chairman of the New York State Thoroughbred Breeding and Development Fund (the "Fund"), and on behalf of the management of the Fund, I am writing in response to your August 2012 Draft ("Draft") of the New York State Comptroller's Selected Operating Practices Audit (Report 2011-S-36) of the Fund (the "Audit"). It is our hope that you will consider the comments set forth below and amend the Draft as appropriate.

According to the Draft, the purpose of the Audit was to determine whether the Fund, during the period January 1, 2008 through January 26, 2012, (i) had received all of its statutory revenue from its various revenue sources and (ii) had utilized that revenue in compliance with its statutory guidelines. As it pertains to the Fund, the Draft's Key Findings assert that the Fund has been receiving its "statutory commissions due from the tracks, OTBs and VLT operators," but that the Fund had "improperly underreported statutorily limited administrative expenses and promotional expenses by \$575,464 for calendar years 2008, 2009 and 2010."

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\* See State Comptroller's Comment, Page 16.

\*  
Comment  
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The Draft contains three Recommendations:

1. Implement controls to periodically ensure that the Fund is receiving the correct amount of statutory commissions from wagering facilities.
2. Discontinue the inappropriate practice of offsetting administrative and promotional expenses with ancillary fees collected by the Fund. Report all Fund revenues as revenues on Fund financial statements.
3. Work with NYTB officials to explain the level of quarterly report detail necessary for Fund officials to make informed comments and decisions. If NYTB officials do not agree to incorporate an audit clause in the contract, consider placing the contract out for bid.

The Fund responds to each of these recommendations below.

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## 1. Controls Over Fund Revenue

The Draft states that while the Fund has been receiving “statutory commissions due from the tracks, OTBs, and VLT operators,” management has not been performing its own periodic tests to monitor this receipt of revenue. The Draft notes that in order to ensure that the Fund is receiving proper revenue from its funding sources, “Fund management should periodically compare commissions received to the percentages outlined in the statutes applied against reported wagering at OTBs, VLT facilities and racetracks.” The Fund has determined that it will implement this practice and make it a regular part of its internal revenue controls.

## 2. Administrative and Promotional Expense Caps

As indicated above, the Draft asserts that the Fund improperly under reported statutorily limited administrative and promotional expenses by \$575,464 for calendar years 2008, 2009 and 2010. The Fund strenuously disagrees with this finding as unsupported by an appropriate reading of the Fund’s enabling statute.

### Audit Finding

The Draft finds that the “Fund charges registration fees ranging from \$75 to \$500 for each registered foal or stallion, and \$100 for box advertisements displayed on the Fund’s website. Instead of recording these fees as revenue in accordance with generally accepted accounting principles, Fund staff has historically reported the registration fees collected as an offset to administration expenses and advertising fees as an offset to promotion expenses. As a result, the Fund is able to spend more on administration and promotion than is permitted under the statutory caps. In addition, Fund revenue is understated and monies available for awards were reduced. During our audit period, the amount of the understated revenue was \$575,464. This amount could have been awarded to breeders and owners, or added to purses, but instead was used to fund administrative and promotional expenses.”

### Statutory Background

The Fund’s purpose, simply summarized, is to promote, develop and improve the breeding of thoroughbreds and to retain in the state of New York home-bred thoroughbreds in order to sustain racing at New York race courses. Section 253 of the Racing Law describes the powers of the Fund, which includes the power “to perform such other acts and engage in such other activities as may be necessary and proper for exercising its powers.” Section 254 (2) of the Fund’s enabling statute provides that the Fund “is authorized to dispose and distribute *the moneys received by it pursuant to this chapter* and in accordance with distribution schedules” that contain statutorily prescribed administration and promotional limitations, or caps. Under this provision of the Racing Law, it is clear that any Fund revenues that are generated by statutory mandate must be disposed of and distributed in accordance with the promotional and advertising caps set by the statute. The Racing Law, however, does not address how the Fund is obligated to dispose of moneys that it receives outside of the statute, e.g., registry and website advertisement fees.

### Registry and Advertising Fees

The Fund is required to award funds to “New York-bred” thoroughbreds, which necessitates a registry process to determine award eligibility. The original statute (section 172) defined “New York-bred” as follows: “A thoroughbred foaled in New York state and registered in the New York state-bred registry administered by New York’s breeding associations.” Registry activities by the Fund, including both registry fees and expenses, were not considered when the statute was written. However, maintaining an accurate and up-to-date registry is a necessary and proper activity to enable it to perform its primary purpose, the awarding of funds.

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Similarly, the Fund was created in the pre-Internet age, and lawmakers could not have foreseen both the opportunities for promotional activity from web-based activity, the costs associated with these activities and the potential request for placement of advertisements by industry associations on the Fund's website. Hosting a website is a necessary and proper activity to provide a web-based industry presence. Maintaining the registry and website, although not the primary purpose of the Fund or specifically addressed by statute, are activities that fall under the powers of the Fund to conduct "other activities" in order to perform its duties. The fees that are generated from the registry and web advertisements are not funds falling within the statutory mandate of the Racing Law. They are peripheral inflows that the Fund utilizes to offset the related expenses associated with these "other activities".

*Accounting Treatment of Registry and Advertising Fees*

In the Fund's financial statements, the Fund has consistently netted registration fees received with administrative costs. It has also consistently netted advertisement fees with promotional costs. This policy is disclosed in footnotes with appropriate disclosure of the magnitude of these activities. The Financial Accounting Standards Board has established Concept Statements upon which accounting standards are based. FASB Statement of Financial Accounting Concepts #6, Elements of Financial Statements, defines the terms "revenues," "expenses," "gains" and "losses," and provides guidance on how they should be presented in the financial statements as follows:

Definitions in "Highlights" of Concept Statement #6:

- *Revenues* are inflows or other enhancements of assets of an entity... from... activities that constitute the entity's ongoing major or central operations.
- *Expenses* are outflows or other using up of assets... from... carrying out... activities that constitute the entity's ongoing major or central operations.
- *Gains* are increases in equity (net assets) from peripheral or incidental transactions of an entity.
- *Losses* are decreases in equity (net assets) from peripheral or incidental transactions of an entity.

Concept Statement #6, Paragraph 87: "Revenues and gains are similar, and expenses and losses are similar, but some differences are significant in conveying information about an enterprise's performance. Revenues and expenses result from an entity's ongoing major or central operations and activities—that is, from activities such as producing or delivering goods, rendering services, lending, insuring, investing, and financing. In contrast, gains and losses result from incidental or peripheral transactions of an enterprise with other entities and from other events and circumstances affecting it. Some gains and losses may be considered "operating" gains and losses and may be closely related to revenues and expenses. Revenues and expenses are commonly displayed as gross inflows or outflows of net assets, while gains and losses are usually displayed as net inflows or outflows."

Based on the above definitions, the Fund's position is that registry and advertising fees are not revenues because they are not activities that constitute ongoing major or central operations. Registry and advertising fees are peripheral or, in the Draft's language, "ancillary" to the Fund's operations. Based on the reporting guidance in paragraph 87, the Fund's position is that registry and advertising fees are peripheral operating inflows to be netted with administration and promotion outflows. The Fund's current practice of netting fees and expenses for peripheral or ancillary operating activities is in accordance with Generally Accepted Accounting Principles (GAAP).

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Summary

While the Racing Law expressly regulates the Fund's disposition of revenues that are mandated by statute, it does not place such restrictions on the Fund's use of fees that are generated outside of its statutory mandate, including fees generated from registration and advertising activities. The Fund's authority to collect these fees falls under its power to engage in activities necessary and proper to perform its duties, and the Fund's disposition of these monies is simply not subject to the statutory caps that are imposed on the statutorily generated revenue of the Fund. The accounting practice of considering related peripheral/ancillary fees and costs as net inflows or outflows is in accordance with GAAP, as evidenced by the definition of revenue in Concept Statement #6 and its guidance on presentation of peripheral activity as net inflows or outflows in Concept Statement #6, Paragraph 87. It is our position that this practice should be continued for both financial statement presentation and disclosure, and in calculations of funds available for awards and administrative/promotional spending caps.

**3. Contract with New York Thoroughbred Breeders, Inc.**

The Draft states that the Fund's contract with NYTB to provide promotional services does not require NYTB to provide sufficient disclosure of its activities under the agreement or expenses associated with those activities. The Draft notes that while NYTB is required to provide, and does provide, quarterly reports of its promotional activities to the Fund, those reports "are lacking in sufficient detail" for the Fund to assess whether the money it pays under that agreement is being spent in the best interests of the Fund. The Draft recommends that the Fund "work with NYTB" to increase the level of disclosure provided to the Fund and seek an audit clause in its next contract. The Fund has determined that it will follow these recommendations in its dealings with NYTB.

We hope that your Office considers the comments set forth above and makes appropriate adjustments to the Draft and to the recommendations. If you or anyone in your Office would like to discuss any of our comments, please feel free to call Tracy Egan at your convenience.

Very truly yours,



John D. Sabini,  
Chairman

cc: Board of Directors  
Tracy Egan  
Kyle Flaherty, Esq.

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## State Comptroller's Comment

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1. Fund officials support their method of accounting for registration and advertising fees by asserting that these fees are ancillary to the Fund's mandated purpose and therefore not subject to the administrative and promotional expense limitations set forth in Section 254 of the Racing Law. As such, they cite Concept Statement #6 (Statement 6) promulgated by the Financial Accounting Standards Board (FASB) as guidance for how these revenues should be treated. According to Statement 6, self-described as a guideline to be considered where specific accounting principles do not exist, an entity may recognize the peripheral or incidental revenues it receives (i.e., revenues not derived from its ongoing major or central operations) as a gain (net asset) as opposed to a revenue. We disagree with the Fund's position and interpretation of the Law. First, the limitations of Section 254 apply to "all monies received by the Fund pursuant to this chapter", i.e. the Racing Law. Since the registration and advertising fees are in fact received by the Fund pursuant to the Racing Law, they would be subject to the statutory limitations set forth in Section 254.

Our position has also been endorsed by the NYS Racing and Wagering Board (RWB Report 10/2011), whose Chairman is also Chairman of the Fund, which notes that "Board staff continues to believe that such reporting (i.e., the Fund's reporting of registration and advertising fees) distorts cost limitation tests as set forth in statute,..."

As such, we maintain our position that the Fund's registration and advertising fees should be classified and reported as Fund revenues as opposed to offsets to administrative and promotional expenses.