

MEETING
STATE OF CALIFORNIA
HORSE RACING BOARD

In the Matter of)
)
Regular Meeting)
_____)

HOLLYWOOD PARK RACE TRACK
SUNSET ROOM
1050 SOUTH PRAIRIE AVENUE
INGLEWOOD, CALIFORNIA

THURSDAY, JUNE 28, 2012

9:38 A.M.

Reported by:
Martha L. Nelson, CERT 00367

APPEARANCES

COMMISSIONERS

Keith Brackpool, Chairperson

Steve Beneto, Commissioner

Jesse Choper, Commissioner

Bo Derek, Commissioner

Richard Rosenberg, Commissioner

Chuck Winner, Commissioner

STAFF

Kirk Breed, Executive Director

Robert Miller, Staff Counsel

Jacqueline Wagner, Assistant Executive Director

Mike Marten

Dr. Rick Arthur, Equine Medical Director

ALSO PRESENT

Rick Baedeker, SCOTWINC

Stuart Titus, Humboldt County Fair

Joe Morris, Golden Gate Fields

Calvin Rainey, Golden Gate Fields

Dan Cirimele, Golden Gate Fields

David Jerkens, Golden Gate Fields

Frank DeMarco, Pacific Racing Association

APPEARANCES (cont.)

ALSO PRESENT (cont.)

Carlo Fisco, CTT

John Sadler, CTT

John Hindman, Betfair US and TVG

Dennis Ehling, Blank Rome LLP

Richard Specter, Pacific Racing Association and LATC

Scott Daruty

Barry Broad, Jockeys' Guild

Tom Kennedy

Dan Schiffer, Pacific Coast Quarter Horse Racing Association

Gene Livingston, Greenberg Traurig

Brad Blackwell, Twinpires

Drew Couto, Global Betting Exchange

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P R O C E E D I N G S

9:38 a.m.

PROCEEDS BEGIN AT 9:38 A.M.

(The meeting was called to order at 9:38 a.m.)

INGLEWOOD, CALIFORNIA, THURSDAY, JUNE 28, 2012

MEETING BEGINS AT 9:38 A.M.

EXECUTIVE DIRECTOR BREED: I'm calling the meeting to order. Please take your seats again.

This is the regular noticed meeting of the California Horse Racing Board on Thursday, June 28th, 2012 at Hollywood Park Race Track, 1050 South Prairie Avenue, Inglewood, California.

Present at today's meeting are: Keith Brackpool, Chairman; Steve Beneto, Commissioner; Jesse Choper, Commissioner; Bo Derek, Commissioner; Richard Rosenberg, Commissioner; Chuck Winner, Commissioner.

Before we go on to the business of the meeting I need to make a few comments. The Board invites public comment on the matters appearing on the meeting agenda. The Board also invites comments from those present today on matters not appearing on the agenda during a public comment period if the matter concerns horse racing in California.

In order to ensure all individuals have an opportunity to speak and the meeting proceeds in a timely fashion, I will strictly enforce the three-minute time limit

1 rule for each speaker. The three-minute time limit rule
2 will be enforced during discussion of all matters on -- on
3 the -- stated on the agenda, as well as during the public
4 comment period.

5 There is a public comment sign-in sheet for each
6 agenda matter on which the Board invites comments. Also,
7 there is a sign-in sheet for those wishing to speak during
8 the public comment period for matters not on the Board's
9 agenda if it concerns horse racing in California. Please
10 print your name legibly on the public comment sign-in sheet.

11 When a matter is open for public comment your name
12 will be called. Please come to the podium and introduce
13 yourself by stating your name and organization clearly.
14 This is necessary for the court reporter to have a clear
15 record of who will speak. When your three minutes are up
16 the chairman will ask you to return to your seat so others
17 can be heard. When all the names have been called the
18 chairman will ask if there is anyone else who would like to
19 speak on the matter before the Board.

20 Also, the Board may ask questions of individuals
21 who speak. If a speaker repeats himself or herself the
22 chairman will ask if the speaker has any new comments to
23 make. If there are none the speaker will be asked to let
24 others make comments to the Board.

25 Mr. Chairman?

1 CHAIR BRACKPOOL: Thank you. Good morning,
2 everybody.

3 EXECUTIVE DIRECTOR BREED: Good morning.

4 CHAIR BRACKPOOL: I often think that part of the
5 phrase that says "if a speaker repeats himself" should
6 finish with "may get nominated to serve on the Board."
7 Anyway, with that, welcome to all of the other
8 commissioners, and we'll get moving right along.

9 Item number one, approval of the minutes of May
10 24th, 2012. Do -- do we have any comments from any
11 Commissioners? No? Can I get a motion to approve?

12 COMMISSIONER CHOPER: So moved.

13 CHAIR BRACKPOOL: So moved by Commissioner Choper.

14 COMMISSIONER WINNER: Second.

15 CHAIR BRACKPOOL: Seconded by Commissioner Winner.

16 All in favor?

17 ALL COMMISSIONERS: Aye.

18 CHAIR BRACKPOOL: Motion carries.

19 Item number two, public comment. I have one
20 speaker under public comment, Rick Baedeker.

21 MR. BAEDEKER: Good morning, Commissioners, Ladies
22 and Gentlemen. Rick Baedeker from SCOTWINC. I just wanted
23 to remind everyone in the room and invite everyone in the
24 room to the opening of the newest minisatellite at Santa
25 Clarita. It's the Santa Clarita Lanes. And it's scheduled

1 to open on July the 6th.

2 We have two outstanding items. You -- you gave us
3 a conditional approval. We have two outstanding items. I
4 have both of them to furnish the Board. So unless I hear
5 from staff that there's something else outstanding I believe
6 we can close the book on it.

7 And we're really excited about this one. And I
8 would invite you to come up on the 6th or at your
9 convenience. I can tell you that the ownership has invested
10 much more in capital improvements than they had to. They've
11 redone the entire area. They're negotiating for some very
12 exciting promotional things that are above and beyond what
13 they're required to do. And so I really do think that this
14 could -- this could equal or better the numbers at San
15 Clemente over a period of time.

16 So I just wanted to let everybody know, that's
17 July the 6th, Friday. Thank you.

18 CHAIR BRACKPOOL: Thank you, Rick.

19 MR. BAEDEKER: Thank you.

20 CHAIR BRACKPOOL: I have no further speaker cards
21 on non-specific agenda items. So with that we'll move right
22 along, Jackie, to item number three, discussion and action
23 by the Board on the application for license to conduct a
24 horse race meeting of the Humboldt County Fair at Ferndale,
25 commencing August 15th, 2012 through August 26th, 2012,

1 inclusive.

2 So do I have representatives from Humboldt here?

3 MR. TITUS: Good morning.

4 CHAIR BRACKPOOL: Name and affiliation for the
5 record, please.

6 MR. TITUS: Stuart Titus, General Manager,
7 Humboldt County Fair.

8 CHAIR BRACKPOOL: Good morning.

9 MR. TITUS: Good morning.

10 CHAIR BRACKPOOL: Well, I see that the -- the
11 application is in order two months before, just fire
12 clearance, so good.

13 I guess my question, first of all, would be, you
14 know, we sat here the last three years and we've -- race
15 dates' meetings, this has always been, you know, the thing
16 of contention. This particular year, and I think we did it
17 in this room, didn't we -

18 MR. TITUS: We did.

19 CHAIR BRACKPOOL: -- you know, back in whenever it
20 was, but, you know, we -- October, I think, we managed to
21 get it worked out again with the cooperation of Golden Gate
22 and Del Mar. And, you know, the message that I think this
23 Board left you pretty strongly at the time was you can't
24 keep doing it with, you know, the support of the other two
25 without the local area being supportive, as well.

1 I did receive a letter from your chair which
2 detailed the efforts that have been made, and it was an
3 impressive list of efforts that were being made on the path
4 towards self-sufficiency. But effort alone doesn't give us
5 the results. So perhaps you could just give me a little
6 update on -- on where we are and where -- how we're heading
7 towards self-sufficiency for a meet that I, for one, would
8 very much like to see keep going, but keep going on a self-
9 sufficient basis.

10 MR. TITUS: Yes. You're -- just -- just briefly,
11 as we indicated in the letter to you and -- and also in
12 our -- touched upon in our marketing plan, there -- there
13 are a number of things that we've done internally to turn
14 things around on the -- on the financial end. We've
15 examined virtually every -- every part of the operation of
16 the fair. We, of course, will have to wait for that event
17 to -- to occur to see what the final results are. But we're
18 optimistic that they will -- they will be positive.

19 In addition to that, we have, in a relatively
20 short period of time, formed a 501(c)(3) nonprofit locally.

21 And to compliment the operational changes that we've made
22 we have a group of local people who have stepped up to help
23 us with -- with a fundraiser this year that will just
24 proceed the fair.

25 That all pencils out very favorably when held up

1 against some of the numbers that we discussed in previous
2 meetings here. And we have every reason to believe that the
3 results will be positive.

4 CHAIR BRACKPOOL: Do you have a projection
5 internally as to what you think those results are going to
6 deliver?

7 MR. TITUS: I think the first -- in the first year
8 we're looking at probably \$100,000 to \$150,000 with -- with
9 attendance matching what -- what we hope it will this year,
10 and -- and with the fundraiser and other local support
11 efforts coming in as we hope they will.

12 CHAIR BRACKPOOL: The reason I ask is that the
13 next time we're going to see you in front of us is going to
14 be, you know, race dates -

15 MR. TITUS: Correct.

16 CHAIR BRACKPOOL: -- allocation. And, you know, I
17 implore you to come to us with every bit of ammunition
18 you've got, not what has the appearance sometimes of a help
19 sign.

20 MR. TITUS: We have every intention of doing that,
21 Mr. Chairman.

22 CHAIR BRACKPOOL: Okay. Do I have other comments
23 from other -- other Commissioners? Okay.

24 Application is in order. I'd be more than happy
25 to make a motion to -- to approve the license.

1 COMMISSIONER ROSENBERG: Second.

2 CHAIR BRACKPOOL: Seconded by Commissioner
3 Rosenberg. All in favor?

4 ALL COMMISSIONERS: Aye.

5 CHAIR BRACKPOOL: Have a great fair.

6 MR. TITUS: Thank you very much.

7 CHAIR BRACKPOOL: Thanks, Stuart.

8 Item number four, discussion and action by the
9 Board on the application for license to conduct a horse race
10 meeting of the Pacific Racing Association II -- it's like a
11 sequel to the movie -- at Golden Gate Fields, commencing
12 August 17, 2012 through September 16, 2012, inclusive, and
13 the reallocation of same dates from the Los Angeles Turf
14 Club to Pacific Racing Association II.

15 We are joined by -

16 MR. MORRIS: Joe Morris, General Manager at Golden
17 Gate Fields.

18 MR. RAINEY: Calvin Rainey, Assistant General
19 Manager at Golden Gate Fields.

20 MR. CIRIMELE: Dan Cirimele, Director of
21 Marketing, Golden Gate Fields.

22 MR. JERKENS: David Jerkens, Racing Secretary,
23 Golden Gate Fields.

24 CHAIR BRACKPOOL: Thank you, everybody. I think
25 maybe just a two-minute summary for those that don't have

1 the advantage of all of the papers we do about what -- what
2 PRA II is to compared to LATC.

3 MR. MORRIS: We will -- I'll hand that over to
4 Frank DeMarco who put the corporation together for us.

5 CHAIR BRACKPOOL: Okay. I don't want a long legal
6 description.

7 MR. MORRIS: Right.

8 CHAIR BRACKPOOL: I just want a very brief summary
9 so that everybody knows what we're talking about here.

10 MR. DEMARCO: Mr. Chairman and Commissioners,
11 Frank DeMarco. I'm the general counsel for Pacific Racing
12 Association.

13 Last fall when we were here we had a similar
14 situation where Santa Anita was applying to run dates at
15 Golden Gate for the same reason, that you've allocated too
16 many race dates to the northern zone. So at that time the
17 Board expressed some concern and some confusion about that
18 because they thought, in your words, Mr. Chairman, that we
19 were schlepping around. So the idea was to clear the
20 situation and actually have a different organization apply
21 for these other dates. So we're following your lead and the
22 lead of Vice Chairman Israel to form another company with a
23 name that would identify who's actually running at the
24 physical location.

25 So we formed a new company called Pacific Racing

1 Association Roman II. And we posted the \$100,000 bond
2 that's required by a new association that's never run
3 before. And the financial statements have been prepared by
4 Gina Lavo who will answer any questions you have on that.
5 But basically this was to cure the confusion that the --
6 that some of the members of the public had and that the
7 Board had about Santa Anita running at Golden Gate.

8 CHAIR BRACKPOOL: Right.

9 MR. DEMARCO: Actually, we didn't have a whole lot
10 of confusion because the betters traditionally bet -- in
11 their minds they're betting at the place where the horses
12 are running so all of the satellite entities and everybody
13 else that owed us money or bet up there were not confused,
14 but this clears it up. We don't have a LATC at Golden Gate.
15 We've got Pacific Racing -- Pacific Racing Association II
16 at Pacific Racing Association's track at Golden Gate Fields.
17 And, basically, that's the reason.

18 CHAIR BRACKPOOL: Go ahead, Commissioner
19 Rosenberg.

20 COMMISSIONER ROSENBERG: I noticed in the
21 application that you make reference to the fact that a
22 company called TSG Developments -- Developments Financing,
23 Inc., formally MI Developments, is the major shareholder
24 that controls -

25 MR. DEMARCO: Right. It's a Silicon Valley --

1 right.

2 COMMISSIONER ROSENBERG: -- Pacific Racing;
3 correct?

4 MR. DEMARCO: Yes.

5 COMMISSIONER ROSENBERG: But we've heard the name
6 Stronach Group before -

7 MR. DEMARCO: Yeah.

8 COMMISSIONER ROSENBERG: -- referred to as the
9 entity. Is this part of the Stronach Group?

10 MR. DEMARCO: Yes, it is.

11 COMMISSIONER ROSENBERG: So it's a separate
12 corporation owned by and controlled by the Stronach Family?

13 MR. DEMARCO: Exactly. Ultimately, by the
14 Stronach Family Trust.

15 COMMISSIONER ROSENBERG: Okay.

16 CHAIR BRACKPOOL: I think the real point here, and
17 this is something, Counsel and Jackie, we need to make sure
18 we get in the applications, right, we have to have an
19 ultimate ownership defined in these applications.

20 MR. DEMARCO: Right.

21 CHAIR BRACKPOOL: So I don't really care if there
22 are 15, 20, 30 intervening, you know, sole purpose entities.
23 The name of the entity is not relevant, it's who controls
24 the entity that's -- that's relevant here.

25 COMMISSIONER ROSENBERG: The application in number

1 nine actually is answered. I think they answered this.
2 It's answered incorrectly, the application, I believe. It
3 says, "If more than 50 percent of the shares are held by a
4 parent corporation or are paired -- or are paired with any
5 other corporation give the name of it," and it says, "none."

6 But isn't it -

7 MR. DEMARCO: Right.

8 COMMISSIONER ROSENBERG: -- technically it is
9 owned by another corporation.

10 MR. DEMARCO: Well, that question is directed to
11 the shares of the -- of the applicant, and that is 100
12 percent owned by the company that you mentioned the TSG
13 company. That company in turn is owned by the Stronach -

14 CHAIR BRACKPOOL: That's my point -

15 MR. DEMARCO: -- Family Trust.

16 COMMISSIONER ROSENBERG: Oh, that's -

17 CHAIR BRACKPOOL: -- is that it was not of any use
18 to anyone having some standalone sole purpose entity named
19 as the applicant.

20 COMMISSIONER ROSENBERG: And it -

21 CHAIR BRACKPOOL: We need to know who controls the
22 applicant.

23 COMMISSIONER ROSENBERG: And it goes on to say a
24 number -- list the questions. If the answer to number nine
25 had been yes it goes on to list the questions that have to

1 be answered, including the names of all persons, other than
2 the officers and directors, that hold five percent of more
3 of the stock. So there should be a disclosure of the
4 ownership of TSG.

5 MR. DEMARCO: Well, that, of course, is the -- the
6 Stronach Family Trust. We can amend the application --

7 COMMISSIONER ROSENBERG: I think --

8 MR. DEMARCO: -- and put that in writing, if you
9 wish.

10 COMMISSIONER ROSENBERG: -- well, yeah, that's
11 important.

12 CHAIR BRACKPOOL: Yeah. We would like you to
13 amend the application -

14 MR. DEMARCO: All right.

15 CHAIR BRACKPOOL: -- and put that in writing.

16 And, Jackie, from now on we have to make
17 absolutely clear that applications have to denote the
18 ultimate beneficial ownership and control here. That's the
19 sole purpose of them. These aren't forms to be filled out
20 for the fun of filling out forms. Thank you.

21 MR. MORRIS: All right, sir.

22 CHAIR BRACKPOOL: Okay, Joe, tell us about the --
23 the meeting itself.

24 MR. MORRIS: Okay. So we -- we -- we're going to
25 go 17 days. It starts on August 17th and it goes to

1 September 16th. It's -- it's five weekends. We're going to
2 go three days a week, Friday, Saturday, Sunday, plus we will
3 race on September 3rd, Labor Day, and we will race on
4 September 5th, a Wednesday, which is Del Mar's closing day.

5 We'll be lapped onto Del Mar for the first three weekends
6 through September 5th, and with the fair for the -- for the
7 last two weekends.

8 Post times will be 3:45, going alongside Del Mar
9 on the Fridays when we do happy hour racing. And we tried
10 with -- with Hollywood for the last four or five weeks and
11 it's worked well for us, and it will be at 1:15 p.m. on the
12 Saturday and Sundays. We've moved our post time which
13 historically was 12:45 which we thought was too early, and
14 we've made it 1:15. And that -- that's worked better for us
15 also.

16 We'll have eight races on the Fridays. We'll have
17 nine races on the Saturdays and Sundays. And there's
18 three -- three days, at the bigger days at Del Mar where --
19 where we will run ten races.

20 Marketing budget is -- on a per-day basis is more
21 than it was a year ago. We ran 22 days a year ago with a
22 marketing budget of around \$325,000. And we've got around
23 \$315,000 in the marketing budget for this year. And if you
24 want we can have Dan Cirimele hit some of the high points of
25 the marketing days. But basically we have something going

1 on every day we're open for the -- for the 17 days.

2 COMMISSIONER CHOPER: You're going at 1:15 and Del
3 Mar starts at 2 o'clock. So you got a 45 minute --

4 MR. MORRIS: Yes.

5 COMMISSIONER CHOPER: -- hiatus there.

6 MR. MORRIS: Yeah. And in the past we were at
7 12:45 on -- on a 2 o'clock, which was --

8 COMMISSIONER CHOPER: Yes.

9 MR. MORRIS: -- which was a longer hiatus.

10 COMMISSIONER CHOPER: By a little bit. Uh-huh.

11 MR. MORRIS: We're going to try to stick with the
12 1:15 for the year.

13 COMMISSIONER CHOPER: For the whole year?

14 MR. MORRIS: For the whole year, and just leave
15 that as our post time. And -- and we think that matches us
16 up better, not only with the California tracks but with the
17 rest of the country --

18 COMMISSIONER CHOPER: Uh-huh.

19 MR. MORRIS: -- for our simulcasting.

20 COMMISSIONER CHOPER: Yeah. Good.

21 CHAIR BRACKPOOL: Does that mean you have to
22 change your class schedule so that you can be there, Mr.
23 Choper?

24 COMMISSIONER CHOPER: I'm just taking a look at
25 when it starts. Yeah. Go ahead.

1 CHAIR BRACKPOOL: I actually have a question on
2 the Friday issue.

3 MR. MORRIS: Yeah.

4 CHAIR BRACKPOOL: Because you said that -- because
5 this has been a continual debate amongst all of you and the
6 Board, and we've got to somehow try to get this Friday thing
7 right because I think it can get -- can get done.

8 So you said that you've been going 3:45 because,
9 you know, Hollywood, and it's been going okay.

10 MR. MORRIS: 3:15.

11 CHAIR BRACKPOOL: But Hollywood -

12 MR. MORRIS: Yeah, we did 3:15 with Hollywood.

13 CHAIR BRACKPOOL: Okay. But Hollywood right now
14 is not starting until 7:05.

15 MR. MORRIS: Right. So --

16 CHAIR BRACKPOOL: So what do you have, two races
17 left --

18 MR. MORRIS: Well, when --

19 CHAIR BRACKPOOL: -- to -- at the end?

20 MR. MORRIS: You know, we -- we closed on June
21 17th. But the last weeks when we were doing the Fridays we
22 went at 3:15, and we finished at quarter of 7, so that we
23 would -- so you'd go with our last race right into
24 Hollywood's first race. And -- and that worked. That
25 worked well for us. We don't have lights. Now I have some

1 lighting to where we can get through dusk, but we can't do
2 night racing.

3 CHAIR BRACKPOOL: So --

4 MR. MORRIS: So we need to --

5 CHAIR BRACKPOOL: So when you go 3:45 on the --
6 with Del Mar -

7 MR. MORRIS: We'll be --

8 CHAIR BRACKPOOL: -- you stay --

9 MR. MORRIS: -- alternating races.

10 CHAIR BRACKPOOL: -- to their -- their last race?

11 MR. MORRIS: Yeah. And they'll -- I'm not -- I'm
12 not sure if they're going to go eight or seven. We'll run
13 eight. But it will be just like a regular afternoon where
14 we'll run a race, they'll run a race, we'll run a race, and
15 we'll alternate throughout it, with bands and a happy hour
16 like atmosphere. So --

17 CHAIR BRACKPOOL: Good. Good. And -- and you
18 don't find the traffic of 3:45 is, you know --

19 MR. MORRIS: The traffic -- the traffic is an
20 issue. But the -- the Del Mar signal is, you know, one of
21 the stronger signals we have out here. And with the
22 bands -- and we're going to do some -- some ethnic theme
23 days, also, to give people different reasons to fight
24 through the traffic to -- to get to Golden Gate.

25 CHAIR BRACKPOOL: Okay.

1 COMMISSIONER CHOPER: I noticed that -- I'm sorry.
2 If you're done -- are you done with the times?

3 CHAIR BRACKPOOL: Yeah.

4 COMMISSIONER CHOPER: I looked at that -- that --
5 I forget the name of the bet already, the one where you
6 substitute it for the trifecta.

7 MR. MORRIS: Yeah. The Tri-Super.

8 COMMISSIONER CHOPER: Are -- are you doing away
9 with that?

10 MR. MORRIS: Yes.

11 COMMISSIONER CHOPER: Good. That's -- that's all
12 right.

13 MR. MORRIS: We tried two new bets. One of them
14 worked, one of them didn't. But we gave it a try and
15 we're --

16 COMMISSIONER CHOPER: No, no, no, no.

17 MR. MORRIS: -- we're hoping --

18 COMMISSIONER CHOPER: There's nothing wrong
19 with --

20 MR. MORRIS: -- we'll be trying more in the
21 future.

22 COMMISSIONER CHOPER: Nothing wrong with trying.

23 MR. MORRIS: But I pulled that one.

24 COMMISSIONER CHOPER: Which is the one that works?

25 MR. MORRIS: The 50 cent Pick 5.

1 COMMISSIONER CHOPER: Oh, yeah.

2 CHAIR BRACKPOOL: Any other questions from the
3 commissioners? Okay.

4 Then, Commissioner Choper, would you like to
5 the --

6 COMMISSIONER CHOPER: Absolutely. Thank you very
7 much.

8 CHAIR BRACKPOOL: -- the motion?

9 COMMISSIONER CHOPER: Right.

10 CHAIR BRACKPOOL: Motion moved by Commissioner
11 Choper. Seconded --

12 COMMISSIONER BENETO: Second.

13 CHAIR BRACKPOOL: -- seconded by Commissioner
14 Beneto. All in favor?

15 ALL COMMISSIONERS: Aye.

16 CHAIR BRACKPOOL: Motion carries. Have a good --

17 MR. MORRIS: Thank you.

18 MR. RAINEY: Thank you.

19 CHAIR BRACKPOOL: Item number five, discussion and
20 action by the Board regarding and affirmation of the prior
21 decision to suspend for 12 months the use of clenbuterol by
22 all breeds at a California -- California -- at all
23 California race tracks, and to acknowledge initiation of the
24 recommended 21-day withdrawal pursuant to the provision of
25 CHRB Rule 1844.1, Suspension of Authorized Medication.

1 Item number two of this issue has been withdrawn
2 by the -- by the applicant. So it's just the affirmation of
3 our previous decision.

4 I have one speaker on the issue. Would you like
5 to go first, Chuck, or --

6 COMMISSIONER WINNER: No, no, no.

7 CHAIR BRACKPOOL: Okay.

8 COMMISSIONER WINNER: Let them go first.

9 CHAIR BRACKPOOL: I have one speaker, Carlo Fisco
10 of CTT.

11 MR. FISCO: Good morning. Carlos Fisco of CTT.
12 Just a point of clarification. I haven't had a chance to
13 speak with Dr. Arthur. But with the 21-day withdrawal
14 period, it -- logically it's possible because it is our
15 belief that every claimed horse, especially in the north, is
16 not tested by definition. So it is possible that a horse
17 may be claimed and start back within that 21-day period,
18 thus exposing the subsequent trainer to perhaps a
19 clenbuterol situation.

20 And I see Dr. Arthur already has the answer. So
21 we were just looking for clarification on that issue.

22 DR. ARTHUR: Yes. Dr. Arthur, Equine Medical
23 Director. The question about claimed horses being tested,
24 we, frankly, do not have the logistical capability to test
25 every -- every horse that's claimed. At Del Mar one -- one

1 time we had six horses claimed out of one race. We just
2 don't have the room. And, frankly, taking a blood test,
3 which we can do, doesn't solve the problem.

4 However, what Dr. Stanley and I have been working
5 on, it's the same solution that we had for anabolic steroid
6 testing, and that is that trainers can submit the horse to
7 be tested for clenbuterol after the race to assure
8 themselves that there's no clenbuterol in a claimed --
9 claimed horse. And there is a fee, just like there was with
10 clenbuterol, since it's a private entity having the test
11 done. It's \$125 for blood and urine, which is quite
12 reasonable.

13 MR. SADLER: Hey, Rick, John Sadler, President of
14 CTT. Do we have a turnaround time on -- on the -- on the
15 testing with Dr. Stanley? Because when we had the steroid
16 warning period they talked about having -- being able to
17 return those tests in a week, and -- and they ran way far
18 behind.

19 DR. ARTHUR: I'm unaware of tests running far
20 behind. But the schedule is that if you have the tests into
21 the receiving barn by Sunday you will have the results by
22 Friday afternoon. And if you ship them directly yourself,
23 which you can do, if they're at the laboratory by Wednesday
24 at ten o'clock, which is when FedEx arrives, you will have
25 the answer on Friday.

1 CHAIR BRACKPOOL: Can I -- can I just make a point
2 that you both have telephones. I don't know why we're
3 having this discussion in an open forum in front of
4 everybody who's spent their day coming down here. So this
5 is -- this is a sort of management issue that you'll work
6 out with Dr. Arthur as to how this -- how this works out.
7 But I don't think this is really to take the public's time
8 to listen to a conversation between two people who can pick
9 up the telephone.

10 DR. ARTHUR: And whose offices are about --

11 CHAIR BRACKPOOL: Right. So --

12 DR. ARTHUR: -- 50 feet from each other.

13 CHAIR BRACKPOOL: Thank you very much.

14 MR. FISCO: Thank you very much. Thank you.

15 CHAIR BRACKPOOL: Okay. Commissioner Winner?

16 COMMISSIONER WINNER: I would like to ask for a
17 legal clarification with respect to the all breeds that we
18 included in the language of the 21-day and whether or not
19 that can be confused with the quarter horse complete ban.
20 Once included all breeds does that supersede the quarter
21 horse language that was previously adopted?

22 DR. ARTHUR: Yes.

23 COMMISSIONER WINNER: So under -- if -- if that is
24 correct does that mean that quarter horses --

25 CHAIR BRACKPOOL: We don't want it -- we don't

1 want it to -- to do that, plainly.

2 COMMISSIONER WINNER: Yeah.

3 CHAIR BRACKPOOL: So we need to make a motion to
4 make it extremely clear that - -

5 COMMISSIONER WINNER: Right.

6 CHAIR BRACKPOOL: -- that the -- that this is for
7 all breeds, apart from quarter horses, and the quarter
8 horse --

9 COMMISSIONER WINNER: Correct.

10 CHAIR BRACKPOOL: -- ban that we passed it
11 absolute.

12 COMMISSIONER WINNER: Okay. But that --

13 CHAIR BRACKPOOL: It's not a 21-day.

14 COMMISSIONER WINNER: -- that -- that's my point.

15 CHAIR BRACKPOOL: Right. Right. So I just think
16 the record has to reflect --

17 COMMISSIONER WINNER: Right.

18 CHAIR BRACKPOOL: Excellent point. I think the
19 record has to reflect that the previous vote by this Board
20 on the total ban of clenbuterol in quarter horses stands.

21 COMMISSIONER WINNER: Essentially, yeah.

22 CHAIR BRACKPOOL: And this -

23 COMMISSIONER WINNER: Essentially.

24 CHAIR BRACKPOOL: -- is every other breed --

25 COMMISSIONER WINNER: Right.

1 CHAIR BRACKPOOL: -- racing that this Board --
2 COMMISSIONER WINNER: Right.
3 CHAIR BRACKPOOL: -- is in control of --
4 COMMISSIONER WINNER: Other than --
5 CHAIR BRACKPOOL: -- has 21 days.
6 COMMISSIONER WINNER: There should be --
7 CHAIR BRACKPOOL: Exactly.
8 COMMISSIONER WINNER: -- some other than quarter
9 horses.
10 CHAIR BRACKPOOL: Is there something --
11 COMMISSIONER WINNER: We should clarify that.
12 CHAIR BRACKPOOL: Is there something different
13 you're going to say, Rick?
14 CHAIR BRACKPOOL: Yes, I am. And that is that the
15 intention is to administer all the breeds in exactly the
16 same way, which is a 21-day ban, which basically it
17 simplifies it for the laboratory and is really not
18 consequential between the breeds.
19 COMMISSIONER WINNER: Yeah. But we passed, and it
20 was before I was on the Board, but my understanding is that
21 we passed a complete ban on clenbuterol with the support of
22 both the quarter horse men, as well as Los Alamitos,
23 etcetera.
24 CHAIR BRACKPOOL: We don't want to go back to 21
25 days --

1 COMMISSIONER WINNER: And we don't want to --

2 CHAIR BRACKPOOL: -- with Los Al.

3 COMMISSIONER WINNER: -- go back to 21 days for
4 quarter horses.

5 DR. ARTHUR: We -- we can do it either way.

6 CHAIR BRACKPOOL: I understand. And I said the
7 way that we'd like to do it as -- as a Board that I think
8 is -- is the way that everyone wants to do it --

9 COMMISSIONER WINNER: Exactly.

10 CHAIR BRACKPOOL: -- we want to keep the total ban
11 of quarter horses, and will go with the -- the 21-day on all
12 other breeds we -- we regulate; right?

13 COMMISSIONER WINNER: Yes.

14 CHAIR BRACKPOOL: So let's just make sure that the
15 motion accurately reflects that desire.

16 And so I guess we need another vote as an
17 affirmation with that. So with that motion --

18 COMMISSIONER WINNER: I'll move that.

19 CHAIR BRACKPOOL: -- moved by Commissioner Winner.

20 COMMISSIONER DEREK: Second.

21 COMMISSIONER DEREK: Seconded by Commissioner
22 Derek. All in favor?

23 ALL COMMISSIONERS: Aye.

24 CHAIR BRACKPOOL: Motion carries.

25 Item number six, discussion and action by the

1 Board regarding the proposed addition of CHRB 1927.1,
2 Tampering with Smoke Detectors Prohibited, to include
3 penalties relative to tampering with fire safety equipment,
4 i.e. smoke detectors.

5 Commissioner Derek?

6 COMMISSIONER DEREK: Yes. This is something we've
7 been discussing at the committee for a long time. A lot of
8 recommendations were made, and this is the -- the solution
9 that finally seems to have stuck. It's meant to be a
10 deterrent. It certainly wouldn't have any -- any
11 application to the damage that could happen because of a
12 fire. But hopefully this will be -- I look at this similar
13 to the first-time gelding rule. Hopefully there might --
14 there might be a few violations in the beginning, and then
15 hopefully we'll never see them again.

16 CHAIR BRACKPOOL: Exactly. Jackie, do you have
17 anything from staff to report on this issue.

18 MS. WAGNER: Jackie Wagner, CHRB staff. The
19 proposal is as Commissioner Derek outlined. The language in
20 the rule will provide that no licensee shall tamper with --
21 tamper with or dismantle or disable any automatic fire alarm
22 system or smoke detector that's located in the -- in the
23 barn area. The fines for violation of that rule will be
24 \$25.00, not less than \$25.00, and the stewards would also be
25 able to impose a fine of not less than \$100 on the trainer

1 who employs the person to be found in violation.

2 CHAIR BRACKPOOL: But this to send out for --

3 MS. WAGNER: This is to send out --

4 CHAIR BRACKPOOL: -- the 45-day --

5 MS. WAGNER: -- for the 45-day comment period.

6 CHAIR BRACKPOOL: Right. Exactly. So we have
7 nobody speaking. Any other Commissioners --

8 COMMISSIONER WINNER: I would just --

9 CHAIR BRACKPOOL: Commissioner Winner?

10 COMMISSIONER WINNER: -- want to point out that as
11 Commissioner Derek said, this was discussed at length at our
12 medication committee meeting. And this is -- after the
13 discussion this is what we agreed on. This is what we
14 agreed on and we should move ahead and sum it up.

15 CHAIR BRACKPOOL: Excellent. Motion by -- oh, do
16 you have some --

17 COMMISSIONER CHOPER: Yeah.

18 CHAIR BRACKPOOL: Commissioner Choper.

19 COMMISSIONER CHOPER: I was just getting
20 straightened by Commissioner Derek. So if someone wants to
21 cook in the whole area you can't do it, in effect? Is
22 that -- I mean, is that the bottom line or should there be
23 some attempt, at least an area -- I mean, I don't -- I don't
24 really know how it works at all. But do people want --
25 people obviously want to cook there; is that right? Cook

1 food.

2 COMMISSIONER WINNER: Well, what happens is
3 they -- they disconnect the --

4 COMMISSIONER CHOPER: No, that I understand.

5 COMMISSIONER WINNER: -- the smoke detector in
6 order -- in order to cook for those who want to cook. Is
7 your suggestion --

8 COMMISSIONER CHOPER: So what do -- what do those
9 who want to cook --

10 COMMISSIONER WINNER: Yeah.

11 COMMISSIONER CHOPER: -- do if they want to obey
12 the rules?

13 COMMISSIONER WINNER: That's -- that's an
14 interesting question. And probably there -- there maybe be
15 ought to be some set-asides or something. But --

16 COMMISSIONER CHOPER: Yes. I mean, I think so.

17 COMMISSIONER WINNER: -- that's between the
18 trainer and the people who want to cook.

19 COMMISSIONER CHOPER: Because someone ought to
20 think about that, I mean, because, you know, some of these
21 people don't want to have to go out to eat and stuff --

22 COMMISSIONER WINNER: Right.

23 COMMISSIONER CHOPER: -- and so forth, which I can
24 well understand. I mean, if we can make some reasonable
25 accommodation for them -

1 COMMISSIONER WINNER: Right.

2 COMMISSIONER CHOPER: -- but at the same time
3 avoid the fires, I think that would be a good idea.

4 COMMISSIONER WINNER: I agree with you.

5 CHAIR BRACKPOOL: Well, hopefully that comes up
6 during the comment period; right?

7 COMMISSIONER CHOPER: Okay.

8 COMMISSIONER DEREK: Excellent.

9 CHAIR BRACKPOOL: So -- so I have a motion by
10 Commissioner Derek to send this out for 45 days.

11 COMMISSIONER WINNER: Second.

12 CHAIR BRACKPOOL: Seconded by Commissioner Winner.

13 All in favor?

14 ALL COMMISSIONERS: Aye.

15 CHAIR BRACKPOOL: Send the rule out for comment
16 for 45 days. Thank you.

17 Item number seven, public hearing and action by
18 the Board regarding the proposed addition of CHRB Rule
19 1489.1, Suspension of License Due to Delinquent Tax Debt, to
20 require the suspension of an occupational license if a
21 license's name appears on the Franchise Tax Board or Board
22 of Equalization's list of 500 top largest tax delinquencies
23 pursuant to MR. BALCH: 1424, Chapter 455 Statutes of 2011.
24 This concludes the 45-day period.

25 You know, I have -- I have read all of this;

1 right? So in summary, an assembly bill was passed, signed
2 by the governor, etcetera, that said all state agencies have
3 to suspend, you know, licensees of the state if they appear
4 on this list. Right. So I get -- so we don't, you know,
5 have too much to do about it.

6 But let me ask you a question about this. Just
7 because you're on the list doesn't actually mean it's been
8 proven that you owe that money?

9 MS. WAGNER: That's correct.

10 CHAIR BRACKPOOL: It's the contention of the
11 Franchise Tax Board that you do.

12 MS. WAGNER: That's correct.

13 CHAIR BRACKPOOL: This is a terrible bill. This
14 is a terrible, terrible bill.

15 EXECUTIVE DIRECTOR BREED: It's the law.

16 CHAIR BRACKPOOL: It may be the law, but it's a
17 terrible law. The assumption is that because somebody in
18 the Franchise Tax Board put you on the list all of your
19 other state rights are taken away immediately. It doesn't
20 mean you owe them money.

21 COMMISSIONER CHOPER: Where are we, in Casablanca?
22 In California? I'm shocked.

23 CHAIR BRACKPOOL: Do we have to vote for this? If
24 it's the law, why do we have to vote for it?

25 COMMISSIONER DEREK: Yeah.

1 COMMISSIONER CHOPER: Well, you got to have the
2 rules, I guess.

3 CHAIR BRACKPOOL: Why?

4 MS. WAGNER: You have to vote for it, because we
5 have to have a rule that implements the law. And this rule
6 gives the guidelines to our -- our constituents, our
7 stakeholders as to how we would handle such a situation. We
8 are provided with the list from the Board -- Board of
9 Equalization and the Franchise Tax Board. If a licensee's
10 name appears on that list they need to know what our
11 recourse is and what they need to do in order to get it
12 rectified.

13 CHAIR BRACKPOOL: But what's their appellant --
14 appellant process with us?

15 EXECUTIVE DIRECTOR BREED: They're non-compliance.

16 MS. WAGNER: They're non-compliance, absolutely.
17 And then, really, we are doing this at -- according to the
18 law. It's incumbent upon the licensee, basically, to get it
19 straightened out with the Franchise Tax Board and the Board
20 of Equalization. We really don't -- do not have any other
21 recourse. If we do not receive a release from either one of
22 those agencies their license is suspended.

23 COMMISSIONER DEREK: And they have 90 -- over 90
24 days to do that.

25 MS. WAGNER: That's correct, pursuant to the -- to

1 the law.

2 COMMISSIONER WINNER: So we don't have -- as I
3 understand it, Mr. Chairman, we have no choice.

4 CHAIR BRACKPOOL: That's what we're being told.

5 COMMISSIONER WINNER: I mean, basically we're
6 being told that we have to move forward.

7 MS. WAGNER: Right. No choice.

8 CHAIR BRACKPOOL: And I was confused. I thought
9 we lived in a democracy. I mean, I guess we have to vote
10 for it. I'm not making the motion though. I think this is
11 truly double-trouble jeopardy, whatever. I think this is
12 just terrible, absolutely terrible.

13 COMMISSIONER DEREK: A government agency has to
14 sign off at 90 days?

15 MS. WAGNER: The California Horse Racing Board has
16 to receive notification from --

17 COMMISSIONER DEREK: Yeah.

18 MS. WAGNER: -- the Franchise Tax Board or the B
19 of E that this has been taken care of, and they have 90 days
20 to do that.

21 COMMISSIONER WINNER: What happens if you don't?
22 What would be the -- the ramifications if we just said we're
23 not going to? I'm not suggesting we do that. But if we
24 just said that we're not going to do it, we're not going to
25 vote for it.

1 MS. WAGNER: We would -- we would have to follow
2 the law. The -- the procedure will -- will still be
3 implemented. The down sides of that is --

4 COMMISSIONER WINNER: Yes.

5 MS. WAGNER: -- if we do have a licensee that's
6 name does appear they would not really know how the CHRB
7 would be processing. This gives them a notice of the
8 procedures --

9 COMMISSIONER WINNER: Process? So this is --

10 MS. WAGNER: -- that we will have to take --

11 COMMISSIONER WINNER: This -- okay.

12 MS. WAGNER: -- against their license.

13 COMMISSIONER WINNER: So this is a procedural
14 matter?

15 MS. WAGNER: They need to know what the CHRB's
16 obligations are.

17 COMMISSIONER WINNER: Right. So we're really
18 approving the procedure?

19 MS. WAGNER: Correct.

20 COMMISSIONER WINNER: We're not approving the law?

21 MS. WAGNER: No. No. The law --

22 COMMISSIONER CHOPER: Someone came up with the way
23 it's implemented, that's all. That's it. The way the
24 implementation of --

25 MS. WAGNER: It would, taking up the law.

1 COMMISSIONER CHOPER: -- for our purposes, which
2 we're obligated to do.

3 MS. WAGNER: Absolutely.

4 COMMISSIONER WINNER: Right.

5 COMMISSIONER CHOPER: So I move that we do it.

6 COMMISSIONER ROSENBERG: Well, since we have to be
7 official about it I think I'll make the motion.

8 CHAIR BRACKPOOL: All right. You make the motion.

9 COMMISSIONER CHOPER: Second.

10 CHAIR BRACKPOOL: Seconded by the professor of
11 law, Commissioner Choper.

12 COMMISSIONER CHOPER: The law's the law.

13 CHAIR BRACKPOOL: All in favor?

14 ALL COMMISSIONERS: Aye.

15 CHAIR BRACKPOOL: Reluctantly, aye. Terrible law.
16 Okay. Motion passes. Okay.

17 On with the real business of the -- of the day.
18 Do I really have to read these 27 rules out? Can I take it
19 as the agenda item is read?

20 MS. WAGNER: That will work.

21 CHAIR BRACKPOOL: I think so. Everybody's got it.
22 They'd fall asleep if I read all of this. But this is a
23 public hearing and action by the Board regarding the
24 proposed addition of Article 27, Exchange Wagering and the
25 following CHRB Rules as denoted on the public agenda.

1 Let me just -- I've got many, many, many speaker
2 cards here. And let me just tell you the process that we're
3 going to try and go through here. We have four separate
4 agenda items on this issue. We have the public hearing and
5 action by the Board on the proposed addition of the rules
6 and all of the specific rules. We then have two separate
7 applications from licensees wishing to become a licensed
8 provider of exchange and wagering, items nine and ten. And
9 then on item number 11 we have a specific application for
10 one of the would-be applicants to enter into an arrangement
11 to provide exchange wagering with the Los Al -- Los Alamitos
12 and Pacific Coast Quarter Horse Racing Association.

13 The agenda item is structured this way because if
14 we don't approve item number eight we won't be hearing items
15 number 9, 10, and 11 because they will be moot at this time.

16 Even if we adjourn item number 8, we can't hear items
17 number 8, 10, and 11. Similarly, if we weren't to approve
18 item number 9, we couldn't approve item number 11, and so on
19 and so on.

20 I think from reading the comment letters, from
21 reading everything over the last two weeks, I think most of
22 the comments tend to fall into all four categories anyway.
23 So I don't think in the public comments I'm probably going
24 to be able to keep a lot of you from expressing your wishes
25 as to -- or comments on all of them. But in terms of the

1 way we're going to conduct this hearing, the -- the hearing
2 right now is on the issue of number eight, which are the
3 rules.

4 And I think probably the fairest way to do this is
5 probably to allow the -- the public comments to start.
6 We'll go through the public comments. Because these are
7 agenda -- because this is an agendized item, because this is
8 an important and certainly controversial item, for those who
9 filled out a card, you know, I'm certainly going to, you
10 know, give you the time to make your case, etcetera, but
11 we've got to respect everybody's time here. And so if start
12 making the same point over and over again, or if I think
13 you're drifting off we really are going to curtail it,
14 because otherwise we wont get through this and do that. So
15 I think that's how we'll start.

16 I then know all of us have various comments to be
17 able to -- to add to that and ask questions before we even
18 decide what motions are going to be brought fourth.

19 EXECUTIVE DIRECTOR BREED: On the -- on the
20 comments, we -- we have to respond to each one of the public
21 statements.

22 CHAIR BRACKPOOL: No, I understand. We're going
23 to go through --

24 EXECUTIVE DIRECTOR BREED: I just wanted to make
25 sure.

1 CHAIR BRACKPOOL: I'm going to go through that
2 whole process --

3 EXECUTIVE DIRECTOR BREED: Yeah.

4 CHAIR BRACKPOOL: -- at the end of where we are.
5 But let's -- let's hear where we are at this stage.

6 The public comment period closed at five o'clock
7 on Monday, June 25th. And so I think Kirk's point is that,
8 you know, prior to any -- any move, staff has to respond to
9 each and all of those comments, and we have to respond to
10 what is said and debated here today, both by you and the
11 commissioners, as well.

12 So with that, I think we will -- we will start and
13 we will see how we go. And I'm going to ask the -- the
14 first speaker I have -- these are in -- this is not a for
15 and against order, because I don't want to do it that way.
16 I've got -- I'm going to start with the people from Betfair,
17 but then I've got others coming in. So I think we've got
18 for and against as we go through. So it's not intended to
19 be the first X speakers are for, the first Y speakers are --
20 are against. That's not the way.

21 So I'm going to ask John Hindman of Betfair/TVG.
22 And are you doing this in -- in concert with your counsel,
23 Dennis, is it Ehling?

24 MR. EHLING: Ehling.

25 CHAIR BRACKPOOL: Ehling, from Blank Rome. And

1 so -- so I'm going to have you two start, and we'll -- we'll
2 go. Names and affiliations for the record, please.

3 MR. HINDMAN: Good morning, my name is John
4 Hindman, H-i-n-d-m-a-n. I'm the general counsel for Betfair
5 US and TVG. I'm joined by Dennis Ehling, E-h-l-i-n-g, from
6 the Law Firm of Blank Rome, who is assisting us on -- on
7 various matters, including this one.

8 First of all, let me just say that we're delighted
9 to be here today, and very much appreciate the opportunity
10 to address you. And furthermore, very much appreciate all
11 the work that this Board and it's staff have put into this
12 process. We know, just by reading the agenda item, and you
13 can see how long it is, and we know that a lot of time and
14 energy have been put into this. And -- and that is
15 something that we as a stakeholder greatly appreciate.

16 If you don't mind, I have a binder of four
17 documents, that I'll speak to in one capacity or another
18 today, that I'd like to have received into the record, if
19 you would, and distribute a copy to each one of you for a
20 presentation if that's okay.

21 COMMISSIONER WINNER: Is that material we already
22 received?

23 MR. HINDMAN: Most of it is material that you
24 already have. There's -- there's one presentation just, you
25 know, may already have. I don't know what got distributed

1 to you, actually, since I wasn't the distributor. We'd like
2 to have it formally in the record, however. So we just
3 wanted to ensure that. And also --

4 CHAIR BRACKPOOL: I don't want you to read it all
5 into the record.

6 MR. HINDMAN: Oh, no, we're not. That's why
7 I'm -- that's why I'm handing it to you instead of reading
8 it. So I don't want to be filibustering and I don't want to
9 take up your time. So -- then there is a presentation that
10 I want to speak to in some length that -- whatever you'd
11 like to hear today, generally in support of these
12 regulations, that we would urge this Board to adopt as
13 written. And if you don't mind, I'll distribute that now.

14 CHAIR BRACKPOOL: Well, we probably mind the some
15 length comment. But let's see what you've got and see how
16 relevant it is to go through it all. And I don't think the
17 commissioners are going to sit here and start reading vast
18 volumes from everybody who has a presentation here. We'd
19 much rather listen to what you have to say.

20 MR. HINDMAN: Let me just -- there -- there are
21 four binder items there. The first binder item is a
22 presentation that goes through rule by rule why we think
23 that the Board has discharged its duties. I don't know need
24 to go through the whole thing. I'll probably go through
25 three or four slides. And if you have any questions, that

1 would be great. Items two and three are -- are letters from
2 Mr. Ehling in support of these rules as written and in
3 response to some -- some objections that have been raised.
4 And the last item, which is important, are letters of
5 support from people who agree with us that the Board has
6 discharged its duties and -- and it's time to go on and find
7 out whether exchange wagering can help this industry, which
8 is what the -- the -- the legislature said to do.

9 CHAIR BRACKPOOL: You can take that the
10 commissioners have read the information that's been
11 submitted to date. So obviously we've read your letter.
12 We've read the letter from your general counsel in Europe.
13 We've read the -- the numerous opposition, clarification,
14 whatever category wants to put in and -- and do that.

15 So -- so again, as much of a summary as you can
16 give is going to be helpful.

17 MR. HINDMAN: I absolutely will. So to
18 summarize -

19 CHAIR BRACKPOOL: Not the detail.

20 MR. HINDMAN: To summarize, in -- in summary, Los
21 Alamitos, the Pacific Coast Quarter Horse Association, Del
22 Mar, the Thoroughbred Owners of California, Hollywood Park,
23 Local 280, Fairplex, Cal Expo, and CARF are supportive of
24 moving forward with these rules as written, to implement
25 exchange wagering. And I think a lot of people have come

1 over the last several weeks to understand and -- and agree
2 that the way that it's been set up on this agenda today with
3 a confined beginning of exchange wagering with a single
4 track is actually a sensible way for all of the industry to
5 get data that it needs. We could sit here for months, and
6 have sat here for months, arguing and conjecturing back and
7 forth about this. At a certain point there's going to be
8 local market data that's going to inform the conversation,
9 and we have a partner with which we could move forward and
10 do that, pending the adoption of these rules.

11 And I think that if you look at, in the big
12 picture, obviously, I agree with you, this particular agenda
13 item is about the rules. And I think that if you look at
14 what the objections to the rules really are about from -- a
15 large part of it is a track operator who doesn't think that
16 betting on horses to lose is a good thing. And there's
17 another operator who probably isn't ready to launch an
18 exchange wagering product yet. And so they would like to
19 see this process delayed.

20 And to the first concern I would say that's not
21 really a concern for the rules. The legislature made a
22 policy decision to pass and exchange wagering statute for
23 which laying on horses is a defined term and a defined part
24 of the activity. If that person doesn't want to engage in
25 the activity there's -- the -- the way that they can do that

1 is to never sign an exchange wagering agreement. And as
2 we've seen in the instance of Del Mar, for example, the
3 track and the horsemen have the ultimate control here as to
4 whether this activity can happen or not.

5 And second of all, if that track operator thinks
6 nobody in California should engage in this activity then the
7 right thing for that track operator to do is go to
8 Sacramento and see if they can get the law appealed.

9 But we're here to talk about whether the Board has
10 followed the administrative procedures act, discharged its
11 duties under the statute, and is acting to protect the
12 public. And I think that if you look -- and I have a very
13 brief presentation, and this -- I mean, very brief, with
14 more behind for your reading if you'd like to go through it
15 behind tab one, to go through, I'm going to do it very
16 briefly.

17 So the -- the first page behind tab one of the
18 presentation, page one, is a rule-making timeline. And my
19 comment here -- you can see it laid out -- this law was
20 signed into law on September 23rd of 2010. I have been in
21 front of the CHRB for various matters for TVG and now
22 Betfair for -- for 12 years. This is the longest, most
23 deliberate rule-making process I have ever witnessed in my
24 memory in front of this Board. This Board has discharged
25 all of its pre-noticed duties under the Administrative

1 Procedures Act and the OAL guidelines in -- to a T. It has
2 allowed numerous opportunities for public comment. These
3 rules that you're looking at today have been available to
4 stakeholders since January and haven't changed significantly
5 during that time period.

6 The Board had on -- on February 9th an Ad Hoc
7 Exchange Wagering Committee meeting where Vice Chairman
8 Israel was extremely liberal with allowing anybody and
9 everybody to come up and make whatever comments they wanted
10 to make for the Board's consideration, provided it was kept
11 civil. That was his only guideline as, I recall, that day.

12 And since then we've moved forward with additional items,
13 including the 45-day comment period.

14 So from a procedural standpoint everything the
15 Board has done has been correct. And I think that what's
16 important to note is, you know, we're now at June 28th of --
17 of 2012. Obviously, the Board has a duty to discharge its
18 responsibilities under the statute to pass these rules which
19 contemplated that the activity could take place on May 1st
20 of 2012.

21 On page two, I just wanted to run through really
22 quickly the OAL review standards guidelines that -- that --
23 that they look at, necessity, authority, clarity,
24 consistency, reference, and non-duplication in the rule-
25 making process.

1 Very quickly, on necessity, it's obvious here
2 the -- the legislature passed a law that contains a
3 provision that says the Board shall promulgate
4 administrative rules and regulations to effectuate the
5 purposes of this section.

6 And then on authority, clarity, consistency,
7 reference, and non-duplication, I have about 20 slides in
8 here that you can go through at your leisure --I'm going to
9 go -- I'd just like to go through one as an example -- that
10 demonstrate each and every rule how the Board has
11 steadfastly and studiously complied with each one of these
12 requirements.

13 If you turn to the next page, I just want to give
14 an example of where I think this law and these rules really
15 come together. If you look at, for instance, starting with
16 the top, Rule 2086 which are the definitions, 14 out of 26
17 of the defined terms in these rules come word for word out
18 of the statute, word for word. You can't get any tighter
19 than that in terms of implementing the meaning of the
20 statute. And as a matter of fact, if the Board changed any
21 of that, that's at the point where the Board would be
22 subject to having somebody come in and challenge what it's
23 doing.

24 Another 8 out of those 26 deal with account
25 management and are identical to the ADW rules, which goes

1 directly to the matter of consistency. It's consistent in
2 that it follows Board precedence. It's also consistent in
3 that look at the two entities who are applying for
4 applications today; they're both ADW companies. So it is
5 necessary for an account management perspective to be able
6 to have ADW and exchange wagering under a common set of
7 rules. This achieves that.

8 Only 4 out of 26 of the definitions in these rules
9 weren't in either the ADW -- existing ADW rules or in the
10 statute itself, word for word. Two of those were defining
11 terms that weren't defined in those things that are very
12 common dictionary terms. And two were just defining who a
13 licensee and a license application are. So that -- that's
14 one example.

15 And then if you look at Rule 2086.1, to Authorize
16 Exchange Wagering -- and this is the last thing I'll go
17 through, unless you would like me to go through more or have
18 any questions -- you can see there that there are various
19 provisions of the statute that are pointed out there that
20 not only authorize the Board to -- to -- to provide
21 authorization for exchange wagering, they compel the Board
22 to put in place rules and procedures to authorize exchange
23 wagering. And again, that's not withstanding -- and this
24 will be important for other people's comments that come up
25 later that Dennis can address, if necessary -- that's a very

1 important, notwithstanding any of the law, rule or
2 regulation, very important thing to -- clause to realize
3 when looking at some of these comments that other people are
4 addressing, which is generally what is applying to exchange
5 wagering is fully encapsulated within 19604.5.

6 And I would just close in saying if you look at
7 this situation you have two sides of the coin here. You
8 have people who either aren't ready to do exchange wagering
9 or never want to see it happen. By mere passing of these
10 rules they don't have to engage in it. If they want to
11 engage in it later they can. On the other side of the coin
12 you have a large faction of the California racing industry
13 that wants to see this begin in a timely fashion, that
14 thinks that it's time to study the issue on a local market
15 basis and see whether it's good, bad or indifferent for the
16 industry, and to give innovation a chance. And very,
17 very -- you know, at the -- at the -- at the most common
18 level to all of us it's revenue. And in this case it's
19 revenue to horsemen that need it.

20 So that's -- in closing, we're happy to answer any
21 and all questions that you have. We're happy to respond to
22 anything raised by others. But I didn't want to make this
23 too long, and I hope -- I hope you appreciate our comments.

24 CHAIR BRACKPOOL: That's -- I think that's good.
25 I was going to hopefully try and save all of our comments

1 to -- to the end, if that -- if that works. But if anyone's
2 got a burning specific question, let me -- let -- let me
3 know.

4 MR. EHLING: Mr. Chairman, if I may, I just want
5 to point out --

6 CHAIR BRACKPOOL: Name and affiliation for the
7 record.

8 MR. EHLING: I'm sorry. Dennis Ehling, E-h-l-i-n-
9 g, of Blank Rome, outside counsel for Betfair, TVG. I just
10 wanted to point out, tab two in the binder that we've handed
11 you actually is a new letter that was generated today to
12 address some of the questions that were raised in a January
13 25th letter -- excuse me, June 25th letter from counsel for
14 Churchill Downs/Twinspires addressing, and I think making
15 clear, that there is nothing radically new or, frankly,
16 unclear about what these regulations are doing in the
17 context of both the horse racing law, the exchange wagering
18 law, and particularly the ADW regulations in existence
19 already.

20 CHAIR BRACKPOOL: Okay. Well, obviously, we'll
21 take our time to take a read of that. We may call you back
22 at the end. I'll see how we -- how we -- how we --

23 COMMISSIONER WINNER: Yeah, Mr. Chairman, I was
24 just going to ask, at the end as we have questions can we
25 bring --

1 CHAIR BRACKPOOL: Exactly.

2 COMMISSIONER WINNER: -- these people back?

3 CHAIR BRACKPOOL: Exactly. But I think otherwise
4 it will just become unwieldy. So we'll do it that way.

5 The next person have on my list is Richard
6 Specter, counsel for Los Angeles Turf Club and Pacific
7 Racing Association, evidently not for Pacific Racing
8 Association II, and Scott Daruty, all at the same time.
9 Names and affiliations, please.

10 MR. SPECTER: Thank you, Mr. Chairman. I'm a man
11 without a Roman numeral today, so I'll be representing
12 Pacific Racing Association and the Los Angeles Turf Club.
13 I'm joined by Scott Daruty.

14 CHAIR BRACKPOOL: And -- and your name for the
15 record.

16 MR. SPECTER: And my name is Richard Specter.
17 Good morning.

18 CHAIR BRACKPOOL: Good morning.

19 MR. SPECTER: On Friday we submitted to you our
20 written opposition. I'm not going to give you any more
21 paperwork. I'm going to try to avoid repeating what's in
22 there, because I think the issues are well defined. The
23 question is: Is the Board discharging its duties under this
24 statute?

25 Now, yes, we believe there are negative economic

1 ramifications to the exchange wagering law. And, yes, we
2 believe that putting a system in place where you bet to lose
3 is a system that's going to create a perception of integrity
4 issues within horse racing. But reasonable minds can
5 disagree about these things. These are issues which you
6 have to weigh and determine as part of your charge what is
7 in the best interest of the industry and of the public. But
8 the law is the law, and that's what I want to address here
9 today. I want to address the legal issues which are
10 presented by the proposed regulations.

11 Now, the legislature has charged you with the duty
12 of implementing rules and regulations which are consistent
13 with the Exchange Wagering Act. And the basic precept is
14 that you must adopt such rules and regulations as are
15 lawful. And the act specifically provides that the rules
16 and regulations which you are to adopt much be in accordance
17 with the Interstate Horseracing Act of 1978. It doesn't
18 exempt that. It specifically directs you to pass rules and
19 regulations which comply with that act. That act
20 specifically limits the wagering on horse racing to be a
21 pari-mutuel form of wagering. And it's not coincidental
22 that both the Exchange Wagering Act in California and the
23 federal act use the exact same definition of pari-mutuel
24 wagering. It is the placement of bets in a wagering pool.

25 Now, the state attorney general's office has

1 defined pari-mutuel wagering going back to 1960, and it's
2 been uniform in how it described a system of pari-mutuel
3 wagering. It's one where the odds are created by a pool,
4 that is the odds are determined by the number and amounts of
5 the bets, as opposed to the total pool of bets. It's not a
6 system where the odds are arbitrarily selected by one
7 better. And in pari-mutuel betting the betters share the
8 net proceeds of the pool. They do not receive a
9 predetermined payment based upon odds which are arbitrarily
10 set.

11 And it goes without saying that the method of
12 wagering, which is contained in the regulations for exchange
13 wagering, is not a pari-mutuel system as it is defined.
14 It's simply a system where one better arbitrarily designates
15 the odds, and another better accepts those odds.

16 At the Ad Hoc Committee meeting of February of
17 this year the debate that ensued was between exchange
18 wagering and pari-mutuel wagering, two mutually exclusive
19 concepts. These are not the same. These are, in fact,
20 directly different.

21 COMMISSIONER CHOPER: Where did the word pari-
22 mutuel wagering come from?

23 MR. SPECTER: It is Latin.

24 COMMISSIONER CHOPER: Where does it come from?
25 Where does the word -- I don't mean the derivation legally.

1 I mean, this is for our context. Is it in the California
2 Constitution?

3 MR. SPECTER: Well, your -- your directive,
4 actually, as a Board is to implement pari-mutuel --

5 COMMISSIONER CHOPER: No, no, and I understand.
6 Yeah. Where does the -- where does the word pari-mutuel
7 wagering first occur in the laws of California? Is it in
8 the constitution?

9 MR. DARUTY: No.

10 COMMISSIONER CHOPER: No?

11 MR. DARUTY: It's not in the constitution.

12 COMMISSIONER CHOPER: Okay. So the legislature
13 has defined this in its most recent bill as pari-mutuel
14 wagering. So maybe they're wrong, all right, but that's
15 what they said. Now tell me why I'm mistaken there.

16 MR. SPECTER: Well, first of all, they have
17 defined pari-mutuel in the Exchange Wagering Act.

18 COMMISSIONER CHOPER: That's exactly right.

19 MR. SPECTER: And that definition says it has to
20 be a pool. They did not change the definition of pari-
21 mutuel.

22 COMMISSIONER CHOPER: Yeah.

23 MR. SPECTER: They, in fact, have a definition.

24 COMMISSIONER CHOPER: Do you really think that
25 they were authorizing something that they -- was useless?

1 MR. SPECTER: Well, (a)(7) of the act --

2 COMMISSIONER CHOPER: No, no, no. I just --

3 MR. SPECTER: -- specifically defines it.

4 COMMISSIONER CHOPER: Yeah. Go ahead.

5 MR. SPECTER: Well, there's an issue here, and I
6 understand it.

7 COMMISSIONER CHOPER: I'll tell you, let -- let me
8 say this, all of these rules have to go to the office --
9 administrative office --

10 MR. MILLER: Yes.

11 COMMISSIONER CHOPER: -- and they make the final
12 determinations on this sort of thing. And I think you
13 really ought to reserve those arguments for them, all right,
14 because it doesn't make any difference what we say. We can
15 say we think this. If there judgment is that it's
16 inconsistent with the law of California they're not going to
17 approve our rules. So I think -- I don't know if you need
18 to back off your argument, except I think it's being made in
19 the wrong form. I think you want to submit these and we
20 will forward them to the office.

21 Is that right; Kirk?

22 EXECUTIVE DIRECTOR BREED: Yeah.

23 CHAIR BRACKPOOL: Move it through the process, you
24 mean.

25 COMMISSIONER CHOPER: Yeah. But -- but they'll --

1 they'll end up with them and they'll make the decision.

2 MR. SPECTER: Except, here's the issue. The Board
3 is responsible for passing regulations which are in the best
4 interest of the industry --

5 COMMISSIONER CHOPER: That's another matter.

6 MR. SPECTER: -- and the -- and the best interest
7 of --

8 COMMISSIONER CHOPER: And I think that's fine.

9 MR. SPECTER: Okay.

10 COMMISSIONER CHOPER: If you want to say that we
11 shouldn't have rules that permit X, Y, and Z, that's fine.
12 But you're making a legal argument here.

13 MR. SPECTER: And -- and the legal --

14 CHAIR BRACKPOOL: I think -- I think if I -- if I
15 may -- because otherwise we will be here all day because
16 I've read lots of the comments -- I think you can put the
17 comments that we've received and the comments that we're
18 going to hear into four broad categories. I would describe
19 the first one as being, perhaps, the philosophical: Is
20 exchange wagering a good idea or a bad idea, the integrity
21 issue, cannibalization of pools, etcetera, etcetera; right?

22 You know, that's something that -- that -- that each Board
23 member is going to determine whether this is something, you
24 know, worth trying in the best interest of racing, which is
25 to promote horse racing, not -- that -- that -- that's a

1 decision.

2 I think you have a second category, which is the
3 category that you're talking about now, which is: Did
4 effectively -- I guess what you're saying is the legislature
5 screwed up? Because they, in your opinion, they passed an
6 Exchange Wagering Act that under your argument wouldn't be
7 valid because they didn't define this or didn't define that.

8 Right. So you've got a set of legal arguments that are
9 there.

10 The third set would be, I suppose, the specific
11 application, the standards that -- that we've derived, and
12 are they acceptable or not. I know we've got another set of
13 speakers coming up to argue that the application process
14 isn't the correct process.

15 And then the fourth one, which I think is the one
16 that is really visible once they get in is: Are the
17 rules -- are the rules consistent with our other rules? Do
18 the rules actually work? Are there conflicts between the
19 rules, etcetera?

20 So those are some of the broad four categories;
21 right.

22 I think what Commissioner Choper is accurately
23 reflecting is this Board's view that if the legislature made
24 a mistake then the Office of Administrative Law is going to
25 tell us that the legislature made -- made a mistake. We

1 have been advised by our counsel that the -- the act was
2 properly approved by the legislature and we can do what we
3 can do. If our counsel turns out to be wrong, it won't be
4 the first time and it won't be the last time, and it will be
5 one of those things; right? But -- but, you know, we just
6 had, you know, a momentous decision this morning with this
7 five-four on -- on -- most issues. So the great learned
8 minds can -- can disagree on whether these things are -- are
9 legal or -- or -- or not.

10 So I think at this stage what we'd like to see is
11 you summarize your arguments and say, look, we've got a
12 legal argument we're going to make that we don't think this
13 is valid. We've got, you know, the following, not
14 specifically, but we've got some rule challenges. We've got
15 this, we've got that. We understand you're against it.
16 So -- but you're going to have to summarize, otherwise we're
17 all going to be here until six o'clock this evening.

18 MR. SPECTER: And I won't speak --

19 CHAIR BRACKPOOL: Please, Commissioner Winner.

20 COMMISSIONER WINNER: I'm sorry, just because of
21 the issues, is that your position? Is your position that
22 the legislature erred in their definition, or are you making
23 some other point? Because if your position is that the
24 legislature erred then there's no question that that -- that
25 that really doesn't belong here.

1 MR. DARUTY: Well, I guess our -- our position is
2 that clearly the legislature authorized exchange wagering.
3 The exchange wagering the legislature authorized is not the
4 same as what the various applicants intended to do.

5 COMMISSIONER CHOPER: That's a matter of law.

6 CHAIR BRACKPOOL: But it's a matter of law.

7 COMMISSIONER CHOPER: Yeah.

8 CHAIR BRACKPOOL: So it's not a matter that this
9 Board is going -- it's certainly above the pay grade of some
10 of us.

11 MR. SPECTER: And I will -- I will summarize in 30
12 seconds because I want to address your point, and that is
13 the statute actually says that you are to pass rules and
14 regulations that comply with the Interstate Horseracing Act.
15 That's not screw up. The Interstate Horseracing Act limits
16 wagering to pari-mutuel wagering --

17 CHAIR BRACKPOOL: Okay.

18 MR. SPECTER: -- as defined in the federal
19 statute.

20 CHAIR BRACKPOOL: Okay. I find it hard to believe
21 that the legislature said please authorize something that
22 has nothing to do and doesn't allow this thing that we're
23 trying to allow. So that's just -- but let's move on.

24 MR. DARUTY: Okay. So -- so moving on, another
25 major problem we have with the rules as proposed is they are

1 limited to internet. In fact, the -- the way the accounts
2 are set up and the way the whole rules have been designed
3 they are to be operated only by advance deposit wagering
4 companies. And actually, I don't believe there was any
5 indication that that's what the legislature intended to
6 approve with strictly an internet activity. In fact, I
7 think if you, you know, you look at it historically, new
8 wagers have been introduced at race tracks and have been
9 designed to help race tracks.

10 We believe that exchange wagering can be used on,
11 I would call it a cash basis, in other words individuals at
12 the race tracks walking to the windows and placing wagers.
13 We have ideas on how that could be done without creating the
14 integrity issues and problems that arise when you conduct
15 exchange wagering by laying horses.

16 And we think that within the legislature, what
17 they approved, as I say, was a form of wagering that is
18 exchange wagering, not as it's intended to be conducted by
19 the current applicants, but we would like to potentially
20 utilize this legislation to offer exchange wagering at Santa
21 Anita to on-track customers in a way that preserves the
22 integrity of the industry and hopefully allows us to give
23 on-track customers an on-track bonus or an on-track cash
24 back a amount that would encourage people to come to the
25 track. And all that is precluded by these rules as drafted

1 which limit it to internet wagering.

2 CHAIR BRACKPOOL: Okay. So thank you. We're --
3 we're going to carry on, going through everybody. And
4 again, I think what's critical here -- and the last point
5 was an important point, Scott -- because, as I say, we have
6 these four broad categories; right? And it will be very
7 helpful for any speaker to say which of these now self-
8 defined categories they're in. You have the philosophical,
9 I don't like the whole concept. You have the -- the
10 legislature, it's not what it was; that's legal. You know
11 what we're going to do with that. We're going to pass that
12 one on to whomever makes that determination. We have
13 specific issues that I know some of the commentators have on
14 the application process and the validity of -- of that. And
15 then to us, I think, you know, most critically it's which of
16 the rules work, don't work, which are in conflict with
17 others, or whatever.

18 So when people stand up and sit here, that's what
19 I want. Is it in those categories? Because then it's much
20 easier for us to respond. People sit here and tell us that
21 they're in favor of this, they're not in favor of it, and
22 that's not helpful. So let's try and keep it to where we're
23 in those four categories. But thank you for that.

24 MR. SPECTER: Thank you.

25 CHAIR BRACKPOOL: Next speaker, we have Carlo

1 Fisco from CTT.

2 MR. FISCO: Thank you, Mr. Chairman. Carlo Fisco,
3 CTT. I want to commend you on elucidating the four
4 categories. And whether you choose to believe me or not, I
5 was a category four person when I was going to come up here
6 before you made those statements. CTT has provided the
7 Board, and I hope each one of you have received and had a
8 chance to look at our comments concerning the law. The CTT
9 comments are technical in --

10 COMMISSIONER CHOPER: This one; right?

11 MR. FISCO: Yes.

12 CHAIR BRACKPOOL: Yeah.

13 MR. FISCO: Yes. CTT, we are now at the stage, as
14 Mr. Chairman has correctly pointed out, where we have to --
15 or the Board, along with the industry, has to involve itself
16 in the propriety of the technical language being used in the
17 rules. You've heard philosophical arguments here before
18 from TVG and The Stronach Group representatives. And at
19 this stage, as you pointed out, we're beyond that. It -- it
20 deals strictly with the language of the rules as written.

21 It is the CTT position, as reflected in our
22 correspondence to the Board, that there are many, many
23 problems with the language as written. And it is our
24 opinion that as written these rules will not pass muster
25 with the OAL. They are specified in our letter. No need

1 for me to regurgitate that. But that is the sum of our
2 arguments.

3 So let me make one philosophical statement. I was
4 able to pick up from the TVG comments that one of the
5 answers to our specific objections is that the word
6 "notwithstanding" will serve to erase any of the conflict
7 which appears on the face of the language as written. In
8 other words, there are certain rules that seem to be in
9 direct, unequivocal conflict with pari-mutuel wagering rules
10 and regulations.

11 Just I'm saying, it is my opinion -- and you must
12 understand that the final referee in this is the OAL, and
13 you're being held to the six standards in Government Code
14 11346 and 11346.1. Those six standards will determine
15 whether or not this language meets it. And you have
16 clarity, consistency, as Mr. Hindman has -- has set forth,
17 I'm sure, in his brief. But just because you try to rescue
18 language at the outset by saying notwithstanding racing rule
19 such and such, or notwithstanding pari-mutuel wagering rule,
20 it does not in fact rescue that rule. And the history of
21 OAL decisions is that they want specific consistency and
22 clarity with existing laws and statutes. So I would ask
23 that you keep that in mind. And any further questions you
24 have on our specific letter I'd be glad to answer.

25 CHAIR BRACKPOOL: Thank you very much.

1 MR. FISCO: Thank you.

2 CHAIR BRACKPOOL: Next speaker, Barry Broad,
3 Jockeys' Guild.

4 MR. BROAD: Actually, Barry, I have two from --

5 MR. BROAD: Yes.

6 CHAIR BRACKPOOL: -- you. So you're going to do
7 this at the same time; right?

8 MR. BROAD: Yes. Mr. Chairman, Barry Broad on
9 behalf of the Jockeys' Guild. We're actually here to
10 address one specific regulation.

11 CHAIR BRACKPOOL: Okay. Names and affiliations.

12 MR. BROAD: Oh. Barry Broad on behalf of the
13 Jockey's Guild. Tom Kennedy, the general counsel of the
14 Jockeys' Guild. We've got two lawyers because this is like
15 so exciting for us, we brought the whole team. And Darrell
16 Steinberg -- I mean, Darrell -- I'm sorry -- Darrell Haire.
17 That would have been impressive for this one regulation.

18 MR. BROAD: Had I known you wanted him -- okay.
19 Anyway, we're actually here on one specific regulation.
20 And -- and it deals -- it's -- it's a proposed regulation
21 2092.6 that deals with suspensions of occupational licenses
22 here based on a probable cause of a violation. And the
23 issue that we bring to you, this is not what the legislature
24 did, this is whether this regulation exceeds the statutory
25 and constitutional authority o the CHRB. This is a purely

1 constitutional question, whether the regulation as drafted
2 is facially unconstitutional. We believe it is. We also
3 think it far exceeds what's authorized in the administrative
4 procedure act. And you guys can't -- you're not supposed --
5 although you can kind of punt to the -- to the Office of
6 Administrative Law and they will review it, the fact is
7 you're not supposed to do things that are unconstitutional.

8 I don't think this regulation was -- was
9 intended -- I think it was kind of poorly drafted and
10 mistakenly conceived. What you -- I think what it basically
11 says is that a person's license can be suspended upon a
12 determination by the stewards, in other words, a final
13 determination. And the level of proof is that there was
14 probable cause that they engaged in the conduct. And the
15 constitution requires that you prove that the person
16 violated the law, not that there's probable cause. Now
17 there -- you can have probable --

18 CHAIR BRACKPOOL: How does that relate to my tax
19 delinquency?

20 MR. BROAD: Well, it probably does because those
21 agencies have made a determination after a hearing that
22 somebody owes the -- owes the tax.

23 CHAIR BRACKPOOL: Well, the stewards would have
24 made a determination after the hearing.

25 MR. BROAD: That's correct. But they have proven

1 that the -- that -- that the violation occurred. They can't
2 prove that the violation has occurred without -- with just
3 probable suspicion. And everything the stewards do is
4 actually proven. They look at the film and they -- they
5 conclude that you have violated the law.

6 CHAIR BRACKPOOL: Anyway, carry on.

7 MR. BROAD: Okay. So with that, I'm going to stop
8 and let Mr. Kennedy discuss this in terms of the
9 constitutionality of it, because it is a constitutional
10 question and you do have to deal with that.

11 MR. MILLER: Robert Miller, counsel to the
12 California Horse Racing Board. It is probable cause, not
13 probable suspicion. You -- you used, Mr. Broad, you used
14 the word "suspicion."

15 MR. BROAD: Okay. Probable cause.

16 MR. MILLER: That is not what is here. Probable
17 cause implies that there has been a hearing, there has been
18 evidence produced, and there has been a finding.

19 MR. BROAD: I -- that's not what the rule says.

20 MR. MILLER: Well, but the rules --

21 MR. BROAD: The rule doesn't --

22 MR. MILLER: -- there a lot --

23 MR. BROAD: The rule doesn't say that there's been
24 a hearing. The rule -- rule merely says that someone can be
25 suspended based on probable cause.

1 CHAIR BRACKPOOL: But we --

2 MR. BROAD: So --

3 CHAIR BRACKPOOL: I understand the point you're
4 making. I understand the point you're making. So --

5 MR. BROAD: So allows us to discuss the cases and
6 so forth.

7 CHAIR BRACKPOOL: Well, no, no, no, no.

8 MR. BROAD: No. I mean --

9 CHAIR BRACKPOOL: No, no, no, no, no. we're not
10 listening to briefs. This is not a judicial hearing where
11 we're listening to -- to case citings.

12 MR. BROAD: I'm not sure you --

13 MR. KENNEDY: Nor is anyone going to provide that
14 to you, Mr. Chairman.

15 CHAIR BRACKPOOL: I'm sorry?

16 MR. KENNEDY: Nor is anyone going to try to
17 provide that to you.

18 COMMISSIONER CHOPER: Let me --

19 CHAIR BRACKPOOL: Oh, I thought that's what Barry
20 was saying.

21 COMMISSIONER CHOPER: Let me just say this.

22 CHAIR BRACKPOOL: Commissioner Choper.

23 COMMISSIONER CHOPER: I read you just a moment ago
24 as backing off. If there's -- if -- if the stewards give
25 the alleged violator an opportunity, a quote "hearing"

1 unquote, before they suspend the license, does that satisfy
2 the due process clause in your judgment?

3 MR. BROAD: Provided that they -- that there is
4 evidence that proves --

5 COMMISSIONER CHOPER: Yeah.

6 MR. BROAD: -- the violation.

7 COMMISSIONER CHOPER: I mean, of course there's a
8 standard of probable cause.

9 MR. BROAD: No. The standard would be
10 preponderance of the evidence.

11 COMMISSIONER CHOPER: The stewards only determine
12 probable cause under the regulation.

13 MR. BROAD: Correct.

14 COMMISSIONER CHOPER: But they do so after --
15 suppose they do so after a hearing, counsel says -- that's
16 your understanding of the thing --

17 MR. MILLER: Yes.

18 COMMISSIONER CHOPER: -- is that right?

19 MR. MILLER: Yes.

20 COMMISSIONER CHOPER: Okay. So -- then my
21 question to you is: Does that satisfy, in your judgment --
22 maybe you're going to answer this.

23 MR. KENNEDY: I think I am.

24 COMMISSIONER CHOPER: Okay. Go ahead.

25 MR. KENNEDY: I would like to, Professor Choper.

1 COMMISSIONER CHOPER: Okay. Go ahead.

2 MR. KENNEDY: First, the language of the
3 particular rule that we're talking about I think is really
4 key. And what it says is the Board of Stewards may suspend
5 quote "if it determines there is probable cause to believe
6 that such person may have committed acts of fraud or
7 otherwise violated the rules of exchange wagering."

8 I would suggest to you that we are clearly in the
9 fourth category that you talked about. A hearing would not
10 solve that, although it would certainly make it a better
11 rule. The problem with a hearing is that if the hearing is
12 still convened for the purpose of determining not whether
13 there was a violation but whether there was probable cause
14 that someone may have engaged in a violation, that is too
15 low and evidentiary standard for the purpose of suspending a
16 license.

17 We listened carefully to the chairman's comments
18 about the California Tax Board and how unfair it would be
19 to -- for a licensee to have his ability to practice his
20 profession suspended on less than evidence that there had
21 been an actual violation. And what I wanted to bring to
22 you -- and we have a supplemental memo that Darrell is about
23 to hand out -- is not a constitutional discourse but a
24 reflection of the fact that the current laws for horse
25 racing do require not probable cause but an actual

1 violation. 1405, for instance, says, "The violation of any
2 provision of this division is punishable," a violation, not
3 suspicion of a violation. Rule 1484 is similar. The Rule
4 1902, the only statute that the -- rather, the rule has --
5 that's been adopted by this Board that permits suspension on
6 probable cause requires indictment or arrest for a crime and
7 where there's probable cause to believe the licensee
8 committed the violation.

9 CHAIR BRACKPOOL: Okay.

10 MR. KENNEDY: So that --

11 CHAIR BRACKPOOL: We understand your point.

12 MR. KENNEDY: Okay.

13 CHAIR BRACKPOOL: We understand your point.

14 MR. KENNEDY: And we would -- we would suggest
15 that this is not because it is not covered in the statute,
16 although we could deal with it by punting it down the road
17 to the office of administrative appeal -- of administrative
18 law rather. That would be inappropriate for the Board to
19 adopt this standard which is not compelled by the statute.
20 And also, from the point of view of the difficulties, the
21 controversy over exchange wagering, we're all aware of the
22 kind of penalties that have been handed down in -- in
23 Britain for various violations. If there is any violation
24 of these rules the Guild would fully support whatever
25 punishment is appropriate.

1 But to have -- and I'll use an example from racing
2 that we all know about, the Life At Ten race in the
3 Breeders' Cup in 2010. Johnny Velazquez, our president, was
4 on that horse. That horse didn't warm up well. And as you
5 know, there was some public comments about that. If there
6 had been exchange wagering in place and there had been an
7 unusual pattern of betting, completely unknown of Mr.
8 Velazquez, that could have been regarded as a basis for
9 suspension, then that would have been an outrage. And we
10 would suggest to you that the entire process of bringing
11 exchange wagering into California and into the United States
12 can't be accompanied with the notion that licensees lose
13 their ability to practice their profession at a lower level
14 of conduct than is currently the case.

15 COMMISSIONER CHOPER: It shouldn't come out of the
16 race -- now that's an interesting -- could they put them out
17 of the race? He's warming up badly. They see mysterious,
18 whatever you want to call it, suspicious -- suspicious
19 wagering, could they disqualify the horse for the --
20 whatever the -- what was it, Belmont?

21 MR. KENNEDY: It was Breeders' Cup.

22 COMMISSIONER CHOPER: Breeders' Cup. Breeders'
23 Cup Race.

24 MR. KENNEDY: I think the stewards --

25 COMMISSIONER CHOPER: What do you think about

1 that?

2 MR. KENNEDY: I think the stewards have an
3 inherent ability to, for any reason, preclude a particular
4 animal from running in a particular race.

5 COMMISSIONER CHOPER: Okay.

6 MR. KENNEDY: That is just a different standard
7 than a licensee suspension which would apply to all races
8 and all jurisdictions.

9 COMMISSIONER CHOPER: Uh-huh.

10 MR. BROAD: Can I just say --

11 COMMISSIONER CHOPER: Okay. I --

12 MR. BROAD: Oh. Okay. I just want to say that I
13 think you can fix this very simply by just --

14 COMMISSIONER CHOPER: That's what we'd like. Go
15 ahead.

16 MR. BROAD: -- by -- by just changing the
17 regulation to say the Board of Stewards may suspend the
18 license of any person if it determines that such person has
19 committed acts of fraud in connection with exchange wagering
20 which threatens the integrity or fairness --

21 CHAIR BRACKPOOL: Determined, has committed,
22 that's really the point.

23 MR. BROAD: Yes.

24 CHAIR BRACKPOOL: Determined, has committed.

25 MR. BROAD: Yes. No. I understand.

1 MR. KENNEDY: And that language in the memo --

2 CHAIR BRACKPOOL: I understand. I understand.

3 Thank you.

4 MR. KENNEDY: That language is in the memo --

5 MR. BROAD: All right.

6 MR. KENNEDY: -- we provided.

7 MR. BROAD: Thank you.

8 CHAIR BRACKPOOL: Commissioner Rosenberg has a

9 question.

10 COMMISSIONER ROSENBERG: You reviewed these -- all
11 the regulations on behalf of the Jockeys' Guild?

12 MR. BROAD: Yes.

13 COMMISSIONER ROSENBERG: Do you have any other
14 objections?

15 MR. BROAD: No.

16 COMMISSIONER ROSENBERG: Did you find any other
17 conflict or objections to the rules?

18 MR. KENNEDY: Well, let just point out that we are
19 very much in support of the concept that a consensus can be
20 developed to bring exchange wagering into California, into
21 other states in the United States. It's unfortunate that
22 there's a controversy about who the particular platforms are
23 going to be and so on. That's really none of our business.
24 We don't take a commercial position. We would urge everyone
25 in racing to find a way to bring what could be a very

1 exciting opportunity in.

2 COMMISSIONER CHOPER: I think -- can I say one
3 thing?

4 COMMISSIONER ROSENBERG: Excuse me.

5 COMMISSIONER CHOPER: No, no, no. Go ahead.

6 COMMISSIONER ROSENBERG: Certainly in terms of the
7 rules. I'm talking about regulations that we're --

8 MR. BROAD: Yes.

9 COMMISSIONER ROSENBERG: -- we're --

10 MR. BROAD: We -- we don't have any other
11 comments.

12 MR. KENNEDY: That was our only comment, sir.

13 COMMISSIONER CHOPER: Well, I think what you've
14 submitted is, I think -- I'm putting words in your mouth --
15 is a matter of policy, not a matter of constitutional law.
16 You're saying the rules of California reflect this policy.
17 They require more than probable cause before you can do
18 something to somebody. You know, probable cause, we can put
19 a man or woman in jail for quite a period of time. You
20 can't ride horses while you're in jail. So --

21 MR. KENNEDY: We would -- we would agree with
22 that.

23 COMMISSIONER CHOPER: -- I just think you've got
24 an uphill fight on saying that probable cause doesn't do it.
25 That's one thing. It's another thing to say, and you've

1 said it, that the rules reflect that we give more than that
2 under -- under -- under most circumstances, and that we
3 should do something like that here, as well.

4 CHAIR BRACKPOOL: Which then this falls directly
5 into, category number four --

6 MR. KENNEDY: It does indeed.

7 CHAIR BRACKPOOL: -- which is we think there's an
8 improvement that could be made in the language to the rules;
9 right?

10 MR. KENNEDY: Yes.

11 CHAIR BRACKPOOL: Which is a constructive comment,
12 I think.

13 COMMISSIONER CHOPER: Yeah.

14 CHAIR BRACKPOOL: Commissioner Winner.

15 COMMISSIONER WINNER: Yes. I just want to follow
16 up on Commissioner Choper's question with respect to they
17 could be disqualified, the horse, if they saw an unusual
18 betting pattern. Under this -- under exchange wagering, at
19 least as I understand it, the stewards -- you're not dealing
20 with pari-mutuel wagering, so the unusual betting pattern
21 would be on the internet; right? So they would be --
22 have -- they would have to be -- the stewards would have to
23 be following the exchange wagering on the internet to see if
24 there's an unusual pattern, which is very different from
25 seeing what's going on, on the tote board, so to speak. I

1 mean, I'm --

2 COMMISSIONER CHOPER: Yeah.

3 COMMISSIONER WINNER: -- this is a question.

4 COMMISSIONER CHOPER: I guess that's --

5 COMMISSIONER WINNER: I'm asking whether or not --

6 COMMISSIONER CHOPER: I guess that's true.

7 MR. BROAD: Well, yes. I mean, our biggest fear
8 about exchange wagering is that based on some conversation
9 that somebody witnesses not having to do with the jockey
10 and -- and some unusual betting that the jockey will
11 immediately be the first person suspected, and that they
12 will be under constant fear of suspension based on conduct
13 that they have nothing to do with. We just want the -- we
14 don't want them to be living in fear all the time --

15 CHAIR BRACKPOOL: Therefore --

16 MR. BROAD: -- of something.

17 CHAIR BRACKPOOL: -- you want the standard to be
18 drafted in a way that offers you the best protection you
19 can?

20 MR. KENNEDY: Yes, sir.

21 MR. BROAD: Yeah.

22 CHAIR BRACKPOOL: Thank you. Thank you for your
23 time.

24 My next person on the list is Rick Baedeker from
25 Los Alamitos. Bearing in mind, Rick, there are four

1 categories.

2 MR. BAEDEKER: Is that an invitation to touch on
3 all four?

4 CHAIR BRACKPOOL: It's completely the opposite.

5 MR. BAEDEKER: With your leave, Mr. Chairman, I
6 have Dan Schiffer from the horsemen here which --

7 CHAIR BRACKPOOL: Thank you. That takes care of
8 another speaker card.

9 MR. BAEDEKER: -- kills two birds here.

10 CHAIR BRACKPOOL: Name and affiliation.

11 MR. BAEDEKER: Rick Baedeker from SCOTWINC. I --
12 I just want to try to -- I'm going to stay mostly within
13 your -- your guidelines here. And the first point I'd like
14 to make is relative to the rules and regulations. And that
15 is just to point out that should we get to our agenda item
16 later, a key point there is that we're only applying to
17 conduct exchange wagering on the races run at Los Alamitos,
18 not on any imports. So obviously those races are completely
19 within your purview. And I just think it's an important
20 distinction.

21 Another thing I'd like to say is that later, given
22 the chance, I'll argue that -- that this is a great
23 opportunity to answer so many questions that have been
24 raised over these several months in all of those categories
25 that you mentioned, Mr. Chairman, and because we'll have the

1 ability to collect the data, and then we'll know. And I
2 think to a certain extent that argument applies to the rules
3 and regs too. Nobody expects that at the end of the process
4 they will be perfect. This one-year approval for exchange
5 wagering at Los Alamitos may uncover, as a matter of fact,
6 some repair work that needs to be done to the rules and
7 regs.

8 The final thing I'll say goes slightly outside
9 your boundary, and that is that this is really important for
10 Los Alamitos. The deal with Betfair guarantees us ten
11 percent of our overnight purses. And Dr. Allred, he would
12 be entitled to 50 percent of that for -- for Los Al because
13 he --

14 CHAIR BRACKPOOL: This is really an item number
15 11 --

16 MR. BAEDEKER: It is, yeah.

17 CHAIR BRACKPOOL: -- issue.

18 MR. BAEDEKER: I just thought I'd try to sneak it
19 in.

20 CHAIR BRACKPOOL: Yeah. Right. Exactly what
21 you -- exactly what you're going to do.

22 Let me ask you one -- one -- one -- one question
23 which would actually fall under 11, but while you're sitting
24 here, and I just want to ask you. I'm a little confused
25 when you say it's only for quarter horses, because you do

1 run thoroughbred races at Los Al as well.

2 MR. BAEDEKER: No. It would be for all races
3 run --

4 CHAIR BRACKPOOL: All races at Los Al?

5 MR. BAEDEKER: -- at Los Al.

6 CHAIR BRACKPOOL: Yeah.

7 MR. BAEDEKER: Right.

8 CHAIR BRACKPOOL: So that's all I would ask on
9 that. Okay.

10 MR. BAEDEKER: Oh, I need to correct the record.
11 I am appearing here on behalf of Los Alamitos, not SCOTWINC.

12 CHAIR BRACKPOOL: Oh. Okay.

13 MR. BAEDEKER: Thank you.

14 CHAIR BRACKPOOL: Thank you. Thank you. Dan, did
15 you have something --

16 MR. BAEDEKER: I get confused.

17 CHAIR BRACKPOOL: -- that you wish to add? Name
18 and affiliation for the record.

19 MR. SCHIFFER: Dan Schiffer, S-c-h-i-f-f-e-r,
20 representing the Pacific Coast Quarter Horse Racing
21 Association. We really are in the fifth category of -- of
22 item 11. We are in very dire straights, our horsemen. We
23 are willing, not only because of those dire straights, but
24 also because we believe this is an exciting and challenging
25 bet for our constituency, to be the testing ground for these

1 rules. And we believe they will work and work to all our
2 benefit. Thank you.

3 CHAIR BRACKPOOL: Thank you very much. Thank you.

4 Next speaker I have is Gene Livingston from --
5 representing Twinspires.

6 MR. LIVINGSTON: I'm Gene Livingston. I'm an
7 attorney with the law firm of Greenberg Traurig in
8 Sacramento.

9 CHAIR BRACKPOOL: Actually, on this one, for the
10 way we do the webcast --

11 MR. LIVINGSTON: All right.

12 CHAIR BRACKPOOL: -- and everything I have to ask
13 you to come up to here. I'm sorry.

14 MR. LIVINGSTON: Gene Livingston, attorney with
15 the law firm of Greenberg Traurig in Sacramento, here on
16 behalf of Twinspires.

17 At the outset I'd like to just point out that it's
18 inappropriate, I think, for any other witness to be
19 attributing motives to -- to people who have submitted
20 comments on this. Twinspires has submitted extensive
21 comments. And our goal is to make sure that this regulation
22 is as good a regulation as we can possibly get. And we're
23 concerned about the regulation for a number of reasons.
24 Obviously, it has an impact on the horse racing industry in
25 California. And we want it to be a positive impact on that

1 industry.

2 Secondly, California, again, is out front in terms
3 of what is going on in exchange wagering in -- in the United
4 States. And what you do here is very likely to become the
5 motto for other states. And so it is imperative, imperative
6 on you to get this regulation in as good a form as -- as
7 humanly possible.

8 When -- when I prepared to talk to you orally this
9 morning I had not thought that I would need to talk about
10 the Administrative Procedure Act. But I heard comments this
11 morning that compel me to do that. I am -- I was named as
12 the first director of the Office of Administrative Law by
13 Governor Jerry Brown the first time he served as governor.
14 And it's been the nature of my practice for the last 30
15 years. And so when I hear about what the administrative
16 procedure act provides and what it doesn't provide, I feel
17 like I need to -- to address some of those comments.

18 It is imperative, again, on this Board to consider
19 all of the comments that you got in making your decision
20 about what regulation to adopt. It's imperative, also, that
21 the regulation not only be authorized -- and the legislature
22 has given you the authority to adopt this regulation. I
23 mean, I think everyone needs to acknowledge that because
24 that's -- that is a fact. But your authority extends only
25 to the extent that the regulation is consistent with the

1 underlying statute. And it's also consistent with provision
2 in the statute that you're -- you're charged with
3 implementing, interpreting, and making specific.

4 The -- the other aspect of that is that the
5 Administrative Procedure Act calls for you to prepare an
6 initial statement of reasons that sets out with substantial
7 evidence the necessity for each provision in your
8 regulation. And the purpose of that being set out in the
9 initial statement of reasons is to give all of us an
10 opportunity to understand the rationale for that regulation,
11 the factual basis for the regulation, and to give us an
12 opportunity to comment on that.

13 And so what we have done in our comments is we
14 have -- we have pointed out places where we think you have
15 exceeded your authority or where your authority has been
16 implemented inconsistently with the underlying statute,
17 places where we think that the regulation lacks clarity,
18 where it's not clear to us -- and I will give you a couple
19 of examples this morning to talk about to illustrate that --
20 and places where we believe that in order to strengthen this
21 regulation, to -- to make it a model for the rest of the
22 country, that there are some additional provisions that you
23 could add to that -- to that regulation. So it's in the
24 spirit of coming up with the very best regulation that we
25 can that we submitted our comments.

1 With that in mind, let me just highlight a couple
2 of points. One of the -- in the section dealing with
3 establishing exchange wagering accounts, obviously,
4 residents of California can establish an account. And then
5 the regulation says "residents of other jurisdictions."
6 Well, other jurisdictions is an ambiguous phrase. Logically
7 you're saying residents of other states in the United
8 States. It could be construed to mean you're talking about
9 residents of foreign countries. And that raises some --
10 some concerns that we need to highlight for you.

11 We know, for example, that with exchange wagering
12 in England that bookies, which is -- of course, they're --
13 they operate legally in -- in England, not in this country
14 but they do in England, have used exchange wagering as a way
15 of managing some of their risk. Well, what is your position
16 if, for example, you decide to open this up internationally,
17 which we -- we think, you know, precluded by law and we
18 don't think the legislature intended that, you would have to
19 address that issue.

20 The other thing is I want to -- I want to touch on
21 the Interstate Horseracing Act but in a different context,
22 if I might. That act deals with allowing residents in other
23 states to bet on horse racing in states run -- or on tracks
24 in the United States. It doesn't contemplate any residents
25 of foreign countries participating. And the statute is very

1 explicit that your regulation has to be consistent with the
2 Interstate Horseracing Act. So that seems to be a
3 limitation. But again, you've got a clarity issue. And
4 depending on how you choose to resolve that, you may have --
5 have a legal issue.

6 We've heard references this morning to betting on
7 horses to lose. And that's obviously an issue affecting
8 the -- the industry as a whole, the integrity of the product
9 that -- that the horsemen and the tracks bring.

10 One -- one of the suggestions that I'd like to
11 make to you is that -- is that right now the regulation
12 appears to be that if a track or a horsemen organization
13 wanted to sign an agreement they would have to permit people
14 to be able to wager on horses to lose. What if you broke
15 that out? What if the agreement provided the tracks and the
16 horsemen's organizations to say we'll permit exchange
17 wagering, we'll agree to that, but we don't what wagering on
18 horses to lose because that -- that has a significant impact
19 on -- on the integrity of the product. There have been
20 problems again in England with respect to that. Obviously,
21 the jockeys have concerns about that, as well.

22 COMMISSIONER CHOPER: That's not a matter of law.
23 That's a matter of policy.

24 MR. LIVINGSTON: And -- and -- yes.

25 COMMISSIONER CHOPER: Okay.

1 MR. LIVINGSTON: And that is something -- yes, it
2 is. Right. It is. We think it would strengthen --

3 COMMISSIONER CHOPER: I got it --

4 MR. LIVINGSTON: -- the regulations. Right.

5 Then I just want to illustrate another point, and
6 that's on the fee. The -- the regulation says that any
7 application should be accompanied with a check for \$1.4
8 million or some amount set by the Board. There are a number
9 of concerns with respect to that regulation, that -- that
10 regulation alone. The statute says that the Board may
11 recover its cost. Well, what you're doing is imposing an
12 up-front fee. Is that consistent or is that inconsistent?
13 I mean, you know, there's a legal issue there that -- that
14 Mr. Miller probably needs to advise you on. But even if you
15 decide to go ahead and charge the up-front fee, what is the
16 amount of the fee? It's \$1.4 million or something that the
17 Board sets. The regulation lacks clarity.

18 Furthermore, the initial statement of reasons
19 needs to set out what you're going to be spending the money
20 on and how you have come up with this fee amount. There is
21 nothing -- there is nothing in the initial statement of
22 reasons at all that sets out what the cost of implementing
23 this program is likely to be. So there is no way we can
24 look at it and say, well, we think that fee is appropriate
25 or we think that contrary to the statute you're charging

1 more than is -- what is reasonably necessary to recoup your
2 expenses.

3 CHAIR BRACKPOOL: Well, we read the points. We
4 read the points. Is there --

5 MR. LIVINGSTON: Okay. All right. So --

6 CHAIR BRACKPOOL: These are a summary of some of
7 the points that you have made, you know --

8 MR. LIVINGSTON: That's correct, Mr. Chairman.

9 CHAIR BRACKPOOL: -- well drafted, articulate
10 letter. But before you go, Commissioner Winner?

11 COMMISSIONER WINNER: I just wanted to ask one
12 question just for clarification, and help me with this. If
13 one party is betting that a horse will win and another party
14 accepts that bet, aren't they then betting that the horse
15 will lose, ipso facto?

16 MR. LIVINGSTON: Well, they're betting that that
17 horse will not win, will not come in first. Is that the --
18 the point you're making?

19 COMMISSIONER WINNER: Yes.

20 MR. LIVINGSTON: It's a match bet in that
21 situation.

22 COMMISSIONER WINNER: It's a match bet. And
23 therefore if one party is betting that the horse will win
24 and another party accepts or takes that bet, they are then
25 betting that the horse will lose, are they not?

1 MR. LIVINGSTON: Well, I think that the point is
2 that some people can make -- can -- can just place bets that
3 a horse will lose. And that's -- that's why as costs --

4 COMMISSIONER WINNER: But either way it is a match
5 bet?

6 MR. LIVINGSTON: It's a match bet, right.

7 COMMISSIONER WINNER: Yeah. It's a match bet. It
8 doesn't matter who initiates it. Somebody is betting the
9 horse will lose.

10 MR. LIVINGSTON: All right. Okay.

11 CHAIR BRACKPOOL: Anyway, thank you. Commissioner
12 Rosenberg?

13 COMMISSIONER ROSENBERG: This may be slightly off
14 the agenda, but you're speaking on behalf of Twinpires.

15 MR. LIVINGSTON: Yes.

16 COMMISSIONER ROSENBERG: If the rules were
17 approved today would Twinpires be -- are they ready to go
18 and operate an exchange wagering platform? I know you're
19 applying for one.

20 MR. LIVINGSTON: Yeah. Well, Commissioner
21 Rosenberg, that's a question that you'll have to put to Mr.
22 Blackwell. I'm here to -- to speak on the regulations.

23 MR. BLACKWELL: Brad Blackwell on behalf of
24 Twinpires. I was under the impression that we were going
25 to take these items separately, but I'm more than happy to

1 come up here, and actually glad you raised that question.
2 Because there seemed to be a lot of concern from Betfair
3 about trying to downplay our participation in this process
4 because we were supposedly not ready. I think that's
5 irrelevant to why we're here today. And to our points
6 today, we've really focused on being constructive in this
7 process.

8 CHAIR BRACKPOOL: Can you answer his question
9 though?

10 MR. BLACKWELL: Yes. Yes. I just wanted to set
11 it up, if I may -- if I may --

12 COMMISSIONER ROSENBERG: It's a simple question.

13 MR. BLACKWELL: -- just to give it -- but the
14 position is we were certainly surprised to see the
15 application process come out at the time it did. And we
16 have done our best --

17 CHAIR BRACKPOOL: One last chance. Let's answer
18 the question.

19 COMMISSIONER ROSENBERG: Yeah. The question
20 was --

21 MR. BLACKWELL: Are we -- are we prepared to go
22 live today? No.

23 COMMISSIONER ROSENBERG: No.

24 MR. BLACKWELL: And I don't think that there's any
25 expectation that the regulations are prepared to go live

1 today, as well. So certainly it's incumbent upon us to
2 decide what timeframe we're going to meet, but certainly
3 we're not sitting on our hands and not doing anything. We
4 are preparing, as we have done. We apply for a license. We
5 have submitted materials. And our plan is to go forward
6 when California is ready to go forward.

7 COMMISSIONER ROSENBERG: That's all I needed to
8 know. Thank you.

9 CHAIR BRACKPOOL: Thank you very much indeed.
10 Thank you for your comments.

11 MR. LIVINGSTON: Thank you.

12 CHAIR BRACKPOOL: The next speaker I have is Drew
13 Couto.

14 MR. COUTO: Good morning, Mr. Chairman. Drew
15 Couto on behalf of Global Betting Exchange. I believe the
16 Board has --

17 CHAIR BRACKPOOL: It's --

18 COMMISSIONER WINNER: Who are you with? I
19 didn't --

20 CHAIR BRACKPOOL: Exactly.

21 MR. COUTO: On behalf of Global Betting Exchange.
22 I serve as a consultant to -- to them with regard to
23 regulatory compliance, California in particular, the U.S.

24 COMMISSIONER WINNER: Can you speak up just a
25 little?

1 MR. COUTO: Sure. I apologize. I'm rarely -- I
2 know I'm a Type A personality. I'm not sure my category,
3 however, my comments fit in. But I have -- I have a series
4 of comments directed to procedural issues, and I have a
5 series of comments directed to the rules, substantively.

6 Before I address the -- the substantive rules I'd
7 like to talk about the fact that I have been appearing in
8 front of this Board for 20 years, 20-plus years, and
9 monitoring it for 30 years professionally. Unlike Mr.
10 Hindman, I've never seen an example where a rush to approve
11 these regulations occurred in this way, and it's
12 unprecedented.

13 I've represented a company since October of last
14 year that has submitted alternative regulations. The
15 company has never been invited to work with staff on
16 exploring those alternative regulations, determining whether
17 they're feasible or not. We weren't invited to participate
18 in meetings in Europe, in which my client is located, that
19 occurred with Betfair. We learned of those for the first
20 time at the February 9th meeting of the Horse Racing Board
21 in which the
22 Board had an agenda item to discuss the particular rules
23 themselves. That agenda item was taken off at the meeting,
24 so we weren't given an opportunity to do that. We had an
25 opportunity to discuss exchange wagering under the first

1 agenda item, general principal. And obviously my company,
2 Global Betting Exchange, supports those rules. But we did
3 not have an opportunity to discuss the rules in particular.

4 At the March 22nd Board meeting the same thing
5 occurred. The Board did not entertain discussion of the
6 rules themselves, but put forward the packet out with
7 assurances from at least three Board members at the meeting
8 to -- to interested parties, to parties other than
9 stakeholders, but interested parties, that these rules and
10 these -- and these interested parties would have a chance to
11 comment on them before they were passed, and that this Board
12 fully expected -- fully expected changes to be made to these
13 rules, and those rules reissued for -- for public comment.
14 Again, that's in the record. And -- and it's in my -- it's
15 in my letter. Those are the representations made by at
16 least three Board members here.

17 So from the interested party perspective, whether
18 it's Churchill or Global Betting Exchange or -- we have been
19 monitoring this and estimating and asking staff for a
20 timeline, when are these rules going to go through, when is
21 the -- when are the applications due, etcetera. And we
22 understood until mid-May that this would not occur, if you
23 follow the timeline, this would not occur before December,
24 early December. Going through OAL, going through the
25 secretary of state, the 90-day requirement of Rule 2086.5,

1 these were not to be considered authorized or implemented
2 until early December. And here we are, three days after
3 getting confirmation of that fact from staff, being told
4 that -- that the Board is -- is allowing potential
5 applicants to submit tentative applications in a manner
6 that's not consistent with the APA. So we've pointed that
7 out.

8 The process is perceived by my client and others
9 as a process that is going to provide a strategic and
10 competitive advantage to one company based on the way in
11 which this rule process is proceeding. And I don't think
12 that's the intent of the Board, but that's the realistic
13 perception and the -- and the actual outcome if these rules
14 are approved today, as evidenced by items 9, 10, and 11.
15 And my comments, please, are limited to item eight. I don't
16 want to imply any anything with regard to the other items.

17 There are -- if I can address the regulations
18 substantively, there are practical problems as drafted.
19 There are legal problems as drafted. And there are
20 perception problems as drafted. Everybody on this Board
21 recognizes that there has been a concern among stakeholders
22 and fans about these perceived integrity issues related to
23 lay wagers.

24 We submitted in October an alternative regulation
25 which called for higher scrutiny of individuals who are

1 placing lay wagers, more disclosure, higher scrutiny, as a
2 means to protect not only players, not only licensees as --
3 as jockeys and trainers, not only the providers, but the
4 integrity of the sport itself. And -- and that regulation
5 has never seen the light of day, never been discussed at a
6 public meeting. Never have we been invited to talk about
7 what we proposed with CHRB staff. And as part of a thorough
8 rule-making process we find that hard to believe.

9 CHAIR BRACKPOOL: Can I ask you one question,
10 please? So when the Exchange Wagering Committee meeting
11 took place did you go through that regulation at that time?

12 MR. COUTO: Item number either two or three which
13 dealt with the specific regulations was pulled off the
14 agenda at that meeting.

15 CHAIR BRACKPOOL: Well, as -- as -- as one of the
16 speakers said earlier, that Vice Chair Israel allowed and
17 Commissioner Rosenberg allowed a fairly free flowing. I
18 listened to the hearing. I don't think there was many
19 boundaries as to what could be said or couldn't be said.
20 You just stated in your litany of complaints that one of the
21 biggest was that you had a regulation that would have -- you
22 know, considerable improvement over the other one. And I
23 just wondered whether you bothered to mention it at that
24 meeting or not?

25 CHAIR BRACKPOOL: Sure. Mr. Brackpool, you are a

1 very good stickler for staying on point with agenda items.
2 You -- you remind speakers consistently, stay on point.
3 That agenda item, if you look back at the agenda and you
4 look at the hearing --

5 CHAIR BRACKPOOL: I just want an answer to the
6 question.

7 MR. COUTO: Well --

8 CHAIR BRACKPOOL: Did you raise it at that meeting
9 or not?

10 MR. COUTO: I was not given an opportunity to
11 raise it at the meeting under the agenda item.

12 CHAIR BRACKPOOL: Thank you.

13 MR. COUTO: It was inappropriate in our
14 perspective. That's Mr. Hindman's opinion as to whether or
15 not it was appropriate to bring it up there. In my opinion
16 I didn't --

17 CHAIR BRACKPOOL: Please, carry on. Carry on.

18 MR. COUTO: Okay. With regard to practical
19 enforcement issues, well, let's go through. There -- there
20 are several rules which we pointed out to be problematic.
21 Number one was -

22 CHAIR BRACKPOOL: In summary, because I've made
23 everybody do this in summary. You don't get to --

24 MR. COUTO: Sure.

25 CHAIR BRACKPOOL: -- go through every rule change

1 that you list. So in summary, what are your -- your -- your
2 main points of the rules that you're concerned about?

3 MR. COUTO: All right. I'll quickly go through
4 them as quickly as I can. Net winnings -

5 CHAIR BRACKPOOL: But in summary.

6 MR. COUTO: I'm going to.

7 CHAIR BRACKPOOL: Yeah. Not each and every one.

8 MR. COUTO: I'm not going to go through -

9 CHAIR BRACKPOOL: Right.

10 MR. COUTO: -- each and every one.

11 CHAIR BRACKPOOL: Right.

12 MR. COUTO: There are definition -- definition
13 issues related to net winnings. There are -- we -- we'd
14 like to ask the Board to consider under 2086.6 inclusion of
15 language that would require the providers to hold funds I
16 trust in a manner consistent with Business and Profession
17 Code 19597.5.

18 With regard to authorizing out-of-state residents,
19 we pointed out to the Horse Racing Board -- we'd like you to
20 look at it -- that there's potential criminal liability
21 related to obtaining the permission of an out-of-state
22 commission in order to accept a wager from a non-resident of
23 the State of California. That's a requirement under the IHA
24 section 3004.

25 We -- we were concerned about the posting of

1 credits for winning wagers. It's not tied to a rule -- to a
2 race being declared official.

3 CHAIR BRACKPOOL: Would you categorize these as
4 being changes that you think need to be made to improve or
5 inconsistencies with the existing regulations?

6 MR. COUTO: Both.

7 CHAIR BRACKPOOL: Both?

8 MR. COUTO: Both. And -- and the last comment --
9 there's two more comments.

10 With regard to the Life At Ten, there's an ante-
11 post provision in these rules. And I think in chatting with
12 most people I'm not certain they understand what ante-post
13 is. But had Life At Ten been scratched by the -- by the vet
14 there would be an ante-post issue. That -- that would be a
15 winning wager to those who -- who bet against her to start.
16 And I don't think that's really understood by most folks.
17 It's not defined, which it should be a defined term.

18 And lastly, again, I would implore the Board to
19 take a look at the alternative regulation because of the
20 issue of perceived integrity. This is something that has
21 haunted most other -- most other jurisdictions. You have a
22 chance -- my closing comment is you have a chance to promote
23 regulations that are uniquely American exchange related
24 regulations, not -- not adopt foreign regulations.

25 CHAIR BRACKPOOL: Why don't you summarize in a

1 couple of sentences what your ultimate regulation does to
2 protect?

3 MR. COUTO: Sure. It requires at the time an
4 account is ordered that with regard to those individuals who
5 choose to make lay wagers, that there's an additional level
6 of scrutiny and disclosure so as to provide a means for the
7 Horse Racing Board to investigate suspicious betting.
8 There's a greater means, there's greater disclosure
9 requirements, and also there is a requirement that the
10 document be executed under penalty of perjury. So there's
11 actually, in addition to a regulatory resolution, there is a
12 criminal penalty to doing that, as well.

13 CHAIR BRACKPOOL: Okay.

14 MR. COUTO: Thank you.

15 CHAIR BRACKPOOL: Thank you very much. That
16 concludes the speaker cards on this particular item.

17 I'm going to ask the commissioners to speak.
18 Commissioner Rosenberg, you were one of the two
19 commissioners who so kindly devoted so much of your time to
20 the ad hoc hearing and all of the work in between, so I'd
21 like you to go first if that's okay.

22 COMMISSIONER ROSENBERG: You want me to comment on
23 the rules or the regular --

24 CHAIR BRACKPOOL: I just --

25 COMMISSIONER ROSENBERG: -- or you want me to

1 comment in general --

2 CHAIR BRACKPOOL: Just --

3 COMMISSIONER ROSENBERG: -- about the subject?

4 CHAIR BRACKPOOL: -- in general on the rules or --

5 COMMISSIONER ROSENBERG: Well, if it's in
6 general --

7 CHAIR BRACKPOOL: -- on the agenda item.

8 COMMISSIONER ROSENBERG: -- I would say that where
9 we are today -- and I find it very interesting that we had
10 not speakers from a group that's never defined as a
11 stakeholder, but it probably should be, and that is the
12 gamblers, the players, the people who bet the money. It's
13 very interesting. So either they're in favor of the rules
14 as they are -- I know that we've received some -- at -- at
15 the committee meeting on exchange wagering we did hear from
16 the president of HANA who -- who spoke in favor of exchange
17 wagering. So in terms of where we are today, we have
18 stakeholders who are willing to try this. We have
19 stakeholders who are not willing to try it. And we have, in
20 certain cases, we have an owners' organization who's okay
21 with it.

22 So I think this is going to move -- in my opinion,
23 it's something we have to move forward with. We have to try
24 a test somewhere. That doesn't mean I'm prepared to
25 disregard the comments that have been made today, and I've

1 read many, many comments that we've received. There are
2 probably some changes that will have to be made in the
3 rules. And staff's -- and let me clarify one thing as I'm
4 talking.

5 The next step here, Kirk, is if the rules would
6 have been -- would be approved today as they are, what would
7 happen next in terms of what the staff would do to prepare
8 for the administrative review?

9 EXECUTIVE DIRECTOR BREED: We prepare all the
10 comments and the responses to those comments for the
11 administrative file. And then we -- we file that with
12 the -- with the OAL. We have one year to do that from the
13 initial -- initial time of filing.

14 COMMISSIONER ROSENBERG: And that's -- that would
15 only be done if the rules were to be approved today;
16 correct?

17 EXECUTIVE DIRECTOR BREED: Yes.

18 COMMISSIONER ROSENBERG: Okay.

19 EXECUTIVE DIRECTOR BREED: But if the rules are
20 not approved today --

21 COMMISSIONER ROSENBERG: Yes.

22 EXECUTIVE DIRECTOR BREED: -- if -- if you put the
23 rules over we continue to work on the comments and the
24 responses.

25 CHAIR BRACKPOOL: Right. But you would not submit

1 them to OAL --

2 EXECUTIVE DIRECTOR BREED: That's correct.

3 CHAIR BRACKPOOL: -- until the Board said --

4 COMMISSIONER ROSENBERG: Okay.

5 CHAIR BRACKPOOL: -- we vote for them --

6 EXECUTIVE DIRECTOR BREED: Yes.

7 CHAIR BRACKPOOL: -- as adopted?

8 COMMISSIONER ROSENBERG: So I --

9 EXECUTIVE DIRECTOR BREED: Yes.

10 COMMISSIONER ROSENBERG: I believe that these --
11 that there -- we have to have another system of somehow
12 expediting the redrafting of the rules, or at least to
13 have -- I don't feel satisfied that the rules are in a
14 position to be approved, consequently. I don't feel that
15 the rules are in a position to be approved as they are
16 presently drafted.

17 COMMISSIONER BENETO: Why is that?

18 COMMISSIONER ROSENBERG: Because of all -- because
19 of all the conflict that we've heard about.

20 COMMISSIONER BENETO: Well --

21 CHAIR BRACKPOOL: Commissioner Beneto?

22 COMMISSIONER BENETO: -- the comments we heard
23 today, you're going to hear comments down the road. I mean,
24 you got to have a starting point. And I think what we got
25 in place right now, the rules and regulations, I think we

1 ought to pass them and get on with exchange wagering. I'm
2 for it. And we're going to be making changes down the road.
3 That's why the process works is you're -- you're -- you're
4 going to be -- these rules will gradually change down the
5 road and add and subtract. But what I've heard here today,
6 this thing could go on for five, ten years. I mean,
7 everybody's got a different opinion.

8 CHAIR BRACKPOOL: Commissioner Winner.

9 COMMISSIONER BENETO: I think the Board -

10 CHAIR BRACKPOOL: Sorry. Sorry, Steve, I thought
11 you were finished.

12 COMMISSIONER WINNER: Please go ahead.

13 CHAIR BRACKPOOL: Carry on.

14 COMMISSIONER BENETO: Sorry. Please.

15 CHAIR BRACKPOOL: No, carry on. Sorry, I thought
16 you had leaned back.

17 COMMISSIONER BENETO: Pardon?

18 CHAIR BRACKPOOL: I thought you had finished when
19 you leaned back. Carry on.

20 COMMISSIONER BENETO: Oh, I'm sorry. I'm for --
21 to get this ball rolling today.

22 CHAIR BRACKPOOL: Okay.

23 COMMISSIONER BENETO: Either that or we forget it,
24 and I don't think we want to do that.

25 CHAIR BRACKPOOL: Okay.

1 COMMISSIONER BENETO: And Los Alamitos is --
2 they -- they're -- they're trying it. That's a good testing
3 ground for it. And everybody will jump on the bandwagon
4 after that if they like it.

5 CHAIR BRACKPOOL: Commissioner Winner.

6 COMMISSIONER WINNER: Well, I have a question, but
7 I also have a view -- a view to express with respect to the
8 comments that were just made.

9 The first -- the -- the question that I have is
10 part of the exchange -- part of exchange wagering is to in-
11 race bet; is that -- can somebody from -- from Betfair or
12 one of the betting exchange companies respond to the
13 question?

14 Is it -- is it true that a part of the process
15 that currently has been used and is -- is in place is to
16 within-race bet?

17 MR. HINDMAN: Yes. And that is permissible under
18 the statute only with the Board's approval, which is not
19 being requested today with -- with regard to Los Alamitos.

20 COMMISSIONER WINNER: Okay. So with regard to Los
21 Al --

22 MR. MILLER: I'm sorry. State your name for the
23 record.

24 MR. HINDMAN: I'm sorry. John Hindman, general
25 counsel, Betfair US/TVG.

1 COMMISSIONER WINNER: Okay. So just again to
2 clarify, so it's not being requested, and one of the reasons
3 is because quarter horse racing, because of the length of
4 the race, it makes it much more difficult; isn't that
5 correct?

6 MR. HINDMAN: That's correct.

7 COMMISSIONER WINNER: But there is thoroughbred
8 racing at Los Alamitos, as well, if you don't intend to do
9 in-race wagering, to allow in-race -- well, you're not
10 requesting that?

11 MR. HINDMAN: We haven't requested. It's not --
12 well, it has to be in our Los Alamitos agreement, and then
13 we have -- that permit has to get approved by the Board, and
14 it's not approved at this time, or it's not an agreement at
15 this time -

16 COMMISSIONER WINNER: Okay. So -

17 MR. HINDMAN: -- as noted by staff.

18 COMMISSIONER WINNER: Okay. So just to follow up
19 then on that question, what percentage or what part of the
20 wagering on exchange wagering in your experience or
21 historically has in-race betting -- what part of it has that
22 been?

23 MR. HINDMAN: At Betfair --

24 COMMISSIONER WINNER: Yes.

25 MR. HINDMAN: -- it's about 20 percent

1 internationally.

2 COMMISSIONER WINNER: Okay. So that's 20 percent
3 that's in-race wagering. So my question then becomes" If,
4 in fact, this is being used as a test, it's not a real test,
5 is it? Because a part of what you're testing is not being
6 done at Los Alamitos because of the nature of the races at
7 Los Alamitos. It's a test of 80 percent. It's not a test
8 of the other 20 percent.

9 MR. HINDMAN: Well, that's -- that's quite --
10 well, 80 percent is -- is quite a lot.

11 COMMISSIONER WINNER: Okay. I understand.

12 MR. HINDMAN: And -- and let me just say -- excuse
13 me -- we're not foreclosing on that opportunity. We realize
14 we have to work with our regulator --

15 COMMISSIONER WINNER: Right.

16 MR. HINDMAN: -- to implement that. And so we're
17 trying to take things step by step and do things in a way
18 that makes everybody comfortable.

19 COMMISSIONER WINNER: I understand and I
20 appreciate it. I just want to clarify that it's not a whole
21 test, it's partial test. It's an 80 percent. Test.

22 MR. HINDMAN: It's -- in-race wagering is 20
23 percent of our business. So --

24 COMMISSIONER WINNER: Okay.

25 MR. HINDMAN: -- whatever you want to --

1 COMMISSIONER WINNER: Okay. So having -- having,
2 at least in my mind, resolve that question, my view is that
3 without passing judgment on exchange wagering -- and I have
4 my own views about it, but anyway, I hope some day we have
5 it -- I have a problem personally with this time and this
6 place, Mr. Chairman, for -- for a few reasons.

7 First of all, I'm concerned about the perception
8 of integrity, which I think is one of our primary
9 responsibilities. And through no fault of Los Alamitos or
10 the quarter horsemen there's a magnifying glass on quarter
11 horse racing now because of the media, because of some
12 recent events which are rather significant and rather tragic
13 that involve Los Alamitos and involve quarter horses. It
14 seems to me that with that magnifying glass, to add this
15 possibility of exchange wagering at Los Alamitos at this
16 time under these circumstances is -- would not -- in my view
17 would not be the best approach going forward for the purpose
18 of experimenting with exchange wagering.

19 I also wonder, among other things, and I have
20 several concerns about it, I wonder how you put the genie
21 back in the bottle. How do you unscramble the egg one we go
22 to Los Alamitos as a quote "experimental or trial period?"
23 If it doesn't work or if it's a big problem, how do you undo
24 all this stuff and all the investments that have been made,
25 and all the activity that's been taken -- that -- that takes

1 place.

2 CHAIR BRACKPOOL: No disrespect, Chuck, we're on
3 item number eight --

4 COMMISSIONER WINNER: I apologize.

5 CHAIR BRACKPOOL: -- which is the rules and
6 regulations. So -

7 COMMISSIONER WINNER: I apologize.

8 CHAIR BRACKPOOL: -- yeah, the way we do it, I
9 think, we've got to be fair to everyone. And let's state
10 for the moment -

11 COMMISSIONER WINNER: I apologize.

12 CHAIR BRACKPOOL: -- we're on item number -

13 COMMISSIONER WINNER: And I appreciate that.

14 CHAIR BRACKPOOL: -- eight and do that. Well, is
15 that it on the rules and regs at this stage?

16 COMMISSIONER ROSENBERG: Are you okay with that
17 position?

18 COMMISSIONER WINNER: I'm okay with your position,
19 which is to move ahead and continue to evaluate -

20 COMMISSIONER ROSENBERG: Okay.

21 COMMISSIONER WINNER: -- the rules and take into
22 consideration the comments that have been made and the
23 comments, both in writing in here.

24 CHAIR BRACKPOOL: Okay. Commissioner Derek?

25 COMMISSIONER DEREK: No.

1 CHAIR BRACKPOOL: Commissioner Choper?

2 COMMISSIONER CHOPER: Well, I pretty much agree
3 with -- with what the chairman said about the way we ought
4 to proceed. I think this, I must say I never thought of the
5 point that -- that Commissioner Winner brought up. That's
6 not -- I mean, that's an interesting point. I want to -- I
7 want to be -- think about that some more.

8 But in any event, you know, someone said that the
9 gamblers -- who -- who said the gamblers aren't represented
10 here? Yeah. Well, I mean, I think they are represented.
11 They're represented on the Board. Not that I'm a great big
12 gambler, but I think about that.

13 And I -- let me put it this way, I think exchange
14 wagering is the most promising idea of bringing -- enlarging
15 our -- our fan base that I've heard. So, I mean, on that
16 ground I'm in favor of it.

17 That's not to say that there are additional
18 potential problems of -- I think of reality and perception
19 as to what's going to happen when we -- when we put it in.
20 And if you ask about the gambler, the gamblers will love it.
21 They'll absolutely love it. If they don't like it they
22 won't gamble. But if they do they will. And I want to add
23 this, they're going to look for weaknesses in the system.
24 That's their business is to look for the underlay and the
25 overlay. And I certainly agree -- I mean, my little note

1 said, you know, one screw up and we're going to set this
2 thing back a long way.

3 And therefore I think that we ought to be careful
4 with it. I'm not saying we ought to way, I don't know,
5 someone said five years. That's not the point. I think we
6 ought to do it as quickly as possible, but "as possible" has
7 to include the notion that we've got to have thought it
8 through pretty carefully. So -- so that's where I stand.

9 Having said that, I think we have gotten a
10 blizzard of paper on this thing. And I must say, you know,
11 when stuff comes in three days before the meeting, five days
12 before the meeting, and two substantial memos of this kind
13 did, and if it's -- if it's right that -- that the rules
14 have not been significantly changed, and I think you said
15 this, Mr. Hindman, in the last six months, then I don't --
16 anyway, we tend to do that all the time. It's always the
17 last minute, stuff comes in.

18 I think we ought to have another meeting of the
19 committee. And we appreciate the effort that that's going
20 to take. But I think we ought to do some thinking about
21 facilitating what -- what -- what is before it and -- and
22 how it works.

23 And I think -- and I guess I -- I'm making more
24 work for you, Mr. Hindman, but I think you ought to take
25 these criticisms that have been made, suggestions,

1 criticisms and so forth, and there are plenty of them, and
2 this is work, and in writing briefly address them one by
3 one, keeping in mind, I should say, the chairman's four
4 categories, all right, which ones ought to go OAL. Some of
5 them, it seems to me, are perfectly clear that way. That --
6 they don't want our opinion on whether something is lawful
7 or not. I mean, we can get advice. But in the end they've
8 got to make the judgment. But if you want to have a memo
9 for them doing the same thing in respect to the charges
10 being made that the rules are contrary to law, I think that
11 would be very helpful.

12 And I -- Kirk, you said we can submit that with
13 it?

14 EXECUTIVE DIRECTOR BREED: That's correct.

15 COMMISSIONER CHOPER: So they will have the
16 benefit, the spectra of what you have to say to people
17 who -- who do that.

18 And in some way we ought to organize that so that
19 when the -- when -- when the -- when a Rosenberg committee
20 meets on this they have it in front of them, and all of the
21 parties will have it in front of them, and it can be done in
22 some systematic way, and they can at least begin to make
23 some intelligent judgments about.

24 I'll shut up. I see you.

25 CHAIR BRACKPOOL: No, no, no, no.

1 COMMISSIONER CHOPER: My -- my time --

2 CHAIR BRACKPOOL: No, no, no, no.

3 COMMISSIONER CHOPER: My time has expired.

4 CHAIR BRACKPOOL: No.

5 COMMISSIONER CHOPER: I'm sorry.

6 CHAIR BRACKPOOL: No, no, no, no.

7 COMMISSIONER CHOPER: That's --

8 CHAIR BRACKPOOL: Finish up.

9 COMMISSIONER CHOPER: That's all right.

10 CHAIR BRACKPOOL: Finish up.

11 COMMISSIONER CHOPER: I'll give just two examples

12 of the sorts of things, however, I think that, you know, we

13 ought to talk about. Someone said -- Santa Anita, I guess,

14 said this applies only to internet. Why should it apply

15 only to internet? I don't know the answer to that, but it's

16 not a bad question. And I think they ought -- and -- and

17 the -- the question that we had from the jockeys, that their

18 rules are not -- are -- are not fair enough. Maybe they're

19 fair enough. I think the probably are fair enough, myself,

20 to satisfy the constitution. But -- but that doesn't mean

21 that that's -- that's just a minimum. I think our statutes

22 make it -- make it more. And I'd be in favor of -- of

23 trying to do more in an intelligent fashion.

24 So they're -- they're -- they're all -- all

25 sorts -- that's enough. I haven't organized it as well as I

1 would have liked, but that's what we've got.

2 CHAIR BRACKPOOL: Well, let me see if I can say my
3 own two minutes, and then summarize where I think we might
4 be able to go with what I'm hearing from everybody up here.

5 I, too, am in favor of a test. I don't know
6 whether this is going to work, but I don't think this is a
7 sport that any longer can not try some different things and
8 try and be brave and -- and do that. So, you know, I
9 certainly am in favor of a test. But given the
10 controversial nature of this, given, you know, a lot of the
11 various pitfalls that have been pointed out by people, I do
12 think it is incumbent upon us as a Board to try and get this
13 as right as we possibly can to avoid any immediate failure
14 of any immediate, you know, disaster that was before because
15 we hadn't really thought through.

16 And I think that people here have to understand
17 the timing. You know, yes, this rule process has been going
18 on for a long time. And for the various applicants that are
19 there, you know, it's the continual bureaucratic process.
20 But the comment period finished on Monday, June 25th at 5:00
21 p.m. That's why we've been receiving a daily barrage of
22 emails and comment letters, etcetera, etcetera, etcetera.

23 You know, what I would like to see, and whether we
24 do it -- you know, if we could do it by committee and then
25 back to the Board, that would be perfect because we could

1 get rid a lot of it, but what I would really like to see and
2 what I'm hearing from the Board are comments only directed
3 to items number, you know, three and four, but really number
4 four, which are the rule changes; right? You know, I don't
5 think we need any more comments as to who's for it or who's
6 against it. Everybody has made their positions perfectly
7 clear and we know who's for it and who's against it.

8 As far as the arguments about is this valid under
9 law, did the legislature approve something that they heard
10 and what they approved and they didn't really approve,
11 again, that is -- that's -- that's above the pay grade of
12 most people here, and it's for somebody else to make that
13 determination. I'm not going to make that determination.
14 So for those who want to continue to challenge it, that
15 should be the challenge. It should be -

16 COMMISSIONER CHOPER: It's the forum.

17 CHAIR BRACKPOOL: Exactly. That's the forum to be
18 able to -- to do that.

19 I also think it's very important to understand
20 that the legislature approved exchange wagering, we believe.

21 Maybe they didn't. Maybe the opponents of this will be
22 right and the legislature, you know, didn't approve what
23 they thought they did. But assuming they did, the
24 legislature then turned to us and said it is our
25 responsibility to implement the rules for such. So,

1 actually, whether anybody here is for it or against it is --
2 on this Board is not necessarily germane to the argument of
3 are we approving the correct set of rules and regulations to
4 be able to allow this to go forth.

5 I think when it comes to individual applications,
6 such as, you know, your comments, Commissioner Winner, about
7 Los Al and some of your concerns, I think those are
8 absolutely appropriate forums to how we implement it and go.

9 But in terms of just the promulgation of the rules and
10 regulations, that is a responsibility given to us, you know,
11 by the -- by the legislature. So I don't think this has to
12 be a multi-year process. I don't think this has to be a
13 multi-month process.

14 What I would like to see now, and I started to do
15 it just by hand with a few of the letters -- I actually
16 don't think there are that many. It looks like a lot. But
17 when you actually go down -- and if we were to do, and
18 Commissioner Choper had this idea, if we were to prepare a
19 chart that really said under this rule here are the two
20 comments and here's staff's recommendation, right, under
21 this rule here are the two comments and here are staff's
22 recommendation, you know, I think counsel for -- for -- for
23 Betfair had laid out, right, that there are very few that
24 are actually really new regulations here. So really the
25 argument is are they in conflict with existing ones such as

1 some of those that CTT, amongst others, have pointed out
2 that there's a conflict here, let's check it and let's see
3 whether that's it. I certainly don't want to sit here today
4 and vote for something without advice from staff, let alone,
5 you know, counsel, as to whether they're in conflict or not
6 when one of our, you know, family members here has said
7 they're in conflict.

8 So -- so I want to be careful that -- that we do
9 this -- we do this right. But this does not mean, in my
10 view, that this gets, you know, pondered for a long period
11 of time. I think it's worth hearing the Jockeys' Guild
12 issue. Although, again, I think it doesn't mean,
13 necessarily, to say we'll change that real. Because as
14 Commissioner Choper pointed out, there are various other
15 standards in -- in today's society where we can, you know,
16 if a probably cause, you know, take away people's livelihood
17 for -- for a period of time. So that's just something that
18 has to be looked at and -- and has to be done.

19 So to me, if we could have -- and, you know, I'll
20 talk to Richard afterwards because I don't want to put
21 him -- and Vice Chair Israel is not here today, so I don't
22 want to put them on the spot without being here. But if we
23 can come up with a system whereby staff prepares this chart
24 of -- of -- of where they are so we narrow it down, that is
25 the set of agenda items, right, and we can look at where we

1 are, we can have that, you know, hopefully dedicated hearing
2 to that if you would be prepared to do that. And then we
3 can come back, you know, hopefully at the July meeting,
4 right, and say, okay, here's where we are with -- with where
5 we are on that, and if it's not it's the August meeting.
6 But, you know, it's -- it's -- it's very, very soon, and
7 we're coming back.

8 At that stage the Board is looking at it and we
9 have an agenda item in front of us where we are absolutely
10 ruling on perhaps one or two. You know, are we changing it,
11 are we not changing it, boom. And at that stage we could
12 have an analysis, to go to -- to Steve's point, at that
13 point we can have an analysis of, you know, if we were to
14 send that particular rule back out does that delay the whole
15 process, in which case we'd have to make a determination,
16 was it really that important to do that, or should be
17 implement it and then send the rule out to -- I mean, I just
18 think we can be creative about how we move it on in parallel
19 so that we don't get stuck in a bureaucratic mess here,
20 and -- and look at that.

21 One other point that I think is very, very
22 critical here, and one point that I will perhaps defer with
23 you, Commissioner Choper, on, I think this is for staff to
24 prepare this. I don't think this is for one possible
25 applicant to prepare this. We've heard here today, there

1 are three applicants, possibly four because Santa Anita has
2 an idea of how to modify it and do that, so there are going
3 to be various applications to do this. This process is not
4 intended to favor one applicant over another. This process
5 is intended, and I hope, you know, that we level that
6 playing field out, you know, as best as possible, which is
7 why we have to look at the application process.

8 So we have to balance here with getting it right,
9 making it fair, and yet not slowing down something that has
10 a real possibility to make a difference in -- in our sport.

11 And to me this is not rushing through a process. This is a
12 deliberative process, but it's not a delay process. You now
13 have all of the comments, you have all of the information,
14 the time has stopped for people to make those comments, and
15 we could have that little chart. And I don't think it's a
16 very exhaustive chart at all. When you strip away people's
17 philosophical disagreements with the concept and you strip
18 away their constitutional arguments with it, I think you're
19 going to be down to a fairly narrow set of -- of comments.

20 COMMISSIONER ROSENBERG: Just one suggestion. I
21 think it would be a very difficult task for staff to get
22 this done rather quickly, because the letters that the --
23 the -- the flood of material that they received and we all
24 received covers a lot of different grounds, not just this
25 item on -- on the suggested changes to rules or the wisdom

1 of the rule. It would probably be better for each of the
2 people, the entities that submitted objections to the rules
3 or comments about the rules to narrow -- send a narrow
4 letter, item by item by -- by section by section with
5 specific comments on those sections. Now some of you have
6 done that already, but -- so just -- but there's other stuff
7 in a letter you can just eliminate. Maybe my --

8 CHAIR BRACKPOOL: Well, let -- let me -- let me --
9 let me clarify that. You don't get to add comments that
10 weren't in your letters that were filed previous to June.
11 If not, I have 97 comments on rules here.

12 So what I -- what I hope you're suggesting -

13 COMMISSIONER ROSENBERG: Yes. Is --

14 CHAIR BRACKPOOL: -- and maybe you will at the end
15 of this -- but what I'm hoping you're suggesting is that
16 they're sending in letters specifically on the rule change.

17 COMMISSIONER ROSENBERG: Exactly. Only on the
18 rule changes --

19 CHAIR BRACKPOOL: Only on the rule changes --

20 COMMISSIONER ROSENBERG: -- item by item.

21 CHAIR BRACKPOOL: -- item by item, and perhaps
22 with suggested revised, you know, modifications, but what
23 the --

24 COMMISSIONER ROSENBERG: Yeah.

25 CHAIR BRACKPOOL: -- what the issue is, right,

1 that's there, and it can't be an expansion of the comment
2 letter that's come in to date.

3 COMMISSIONER ROSENBERG: Correct. And if they
4 get --

5 CHAIR BRACKPOOL: It has to be --

6 COMMISSIONER ROSENBERG: If they get that into to
7 staff within ten days, then staff can focus on it, come up
8 with that summary for us, and then we can have a meeting.

9 CHAIR BRACKPOOL: Exactly.

10 COMMISSIONER CHOPER: I agree with both of your
11 points. I would have said what you said a little
12 differently, but that's fine. I think staff ought to invite
13 whatever it wants, you know, to communicate with -- and I
14 certainly agree with your point, with Keith's, that we're
15 not giving this to one company, because there's -- there's
16 room for multiple companies.

17 MS. WAGNER: Absolutely.

18 COMMISSIONER CHOPER: But you should feel free to
19 communicate with people and to get their input.

20 CHAIR BRACKPOOL: Well, but setting a deadline
21 from interested parties is not unreasonable. So I think -

22 MS. WAGNER: Yeah.

23 CHAIR BRACKPOOL: -- if you set a deadline of ten
24 days from today, the comments by those who have written
25 comment letters, where they --

1 MS. WAGNER: Summarize.

2 CHAIR BRACKPOOL: -- narrow down their specific
3 rule change --

4 COMMISSIONER ROSENBERG: Suggested changes.

5 CHAIR BRACKPOOL: -- suggested changes. It's not
6 to say we'll adopt them.

7 MS. WAGNER: Right.

8 CHAIR BRACKPOOL: We may go with the rule as is;
9 right?

10 MS. WAGNER: Right.

11 CHAIR BRACKPOOL: But it should be in a very
12 simple format that says this is the rule, here's the problem
13 with it -- not five pages of constitutional argument --
14 here's the -- here's the problem with it, and here's the
15 fix.

16 MS. WAGNER: Absolutely. And once we receive
17 that, staff will take those comments, prepare drafts for the
18 Board to look at with the -- any proposed changes that we
19 may come up with. And in that, the subsequent, we can go
20 through that --

21 CHAIR BRACKPOOL: Well, I think what we would --

22 MS. WAGNER: -- and determine what we're going to
23 do.

24 CHAIR BRACKPOOL: I think what we will do is we
25 will have a committee meeting to go through those. I am

1 going to volunteer the committee just to -- to -- to -- to
2 meet again. Right. We will set the date of that meeting
3 once --

4 MS. WAGNER: We get all the --

5 CHAIR BRACKPOOL: -- Richard and myself have been
6 able to review with you the volume --

7 MS. WAGNER: You got it.

8 CHAIR BRACKPOOL: -- of those comments, right, as
9 to whether that can be held prior to our July -- we've
10 actually got a concentrated period.

11 MS. WAGNER: Yes, we do.

12 CHAIR BRACKPOOL: -- to occur --

13 MS. WAGNER: Yeah.

14 CHAIR BRACKPOOL: -- but -- or whether we hear it
15 in between the time. But this will be back, at the very
16 latest, on the August --

17 MS. WAGNER: Absolutely.

18 CHAIR BRACKPOOL: -- agenda with hopefully an
19 approval process that we can --

20 MS. WAGNER: Right.

21 CHAIR BRACKPOOL: -- work with.

22 MS. WAGNER: We will definitely be pointing it
23 towards August, no later than August. If we're able to get
24 it done ahead of time, great.

25 CHAIR BRACKPOOL: Yeah.

1 MS. WAGNER: But I think August is reasonable.

2 CHAIR BRACKPOOL: We'll have the committee
3 meeting, and then we'll have it.

4 Steve, does that alleviate some of your concerns?

5 COMMISSIONER BENETO: Well, it seems like we're
6 going backwards. It's a problem. I mean, we can revise
7 these rules; is that what you're saying?

8 CHAIR BRACKPOOL: No, I'm not. I have to see what
9 the comments are. We've got so many comments, we have to
10 see.

11 MS. WAGNER: Ten days.

12 CHAIR BRACKPOOL: I think a great deal of the
13 rules don't have comments.

14 MS. WAGNER: Correct.

15 CHAIR BRACKPOOL: But there may be one or two that
16 do.

17 COMMISSIONER BENETO: What's wrong with passing
18 these rules and modifying them, and then --

19 CHAIR BRACKPOOL: I understand what you're posing.
20 I understand what you're posing.

21 COMMISSIONER BENETO: -- and then we go along?
22 Because this is -- changing these rules, it's never going to
23 change. I mean, you're -- there's going to be additions
24 down the road a year or two or how many --

25 CHAIR BRACKPOOL: I want to make sure that we

1 don't --

2 COMMISSIONER BENETO: -- this is a starting point
3 right now. And I'm for -- for getting on with it, and --
4 and these rules will correct themselves down the road.

5 CHAIR BRACKPOOL: I don't think that works. But I
6 don't know how the other Commissioners -- but I want to do
7 this properly over the next 30, 60 days --

8 COMMISSIONER BENETO: It -- it seems to me --

9 CHAIR BRACKPOOL: -- and be done.

10 COMMISSIONER BENETO: -- that the motion could be
11 made if -- if that's the feeling, and we'll see how the --
12 how -- how -- how the vote goes or, other than that, I don't
13 know how else to proceed. If the Commissioner believes that
14 those should proceed, then -- then there probably ought to
15 be a motion to that affect. I mean, what's your feeling?

16 CHAIR BRACKPOOL: I'd like -- well, maybe I'll do
17 it another way. But I'd make the motion here that --
18 that -- that we are -- I would make a motion that everybody
19 submits their comments within ten days. We have a fairly
20 immediate committee hearing. It's back before the Board, at
21 the latest the August meeting, for a vote on whatever rule
22 is approved at that stage.

23 COMMISSIONER ROSENBERG: I have a question.

24 CHAIR BRACKPOOL: Yeah.

25 COMMISSIONER ROSENBERG: If the rules are

1 redrafted or changed somehow -

2 CHAIR BRACKPOOL: Yeah.

3 COMMISSIONER ROSENBERG: -- I'm assuming there are
4 going to be some changes, what will happen?

5 CHAIR BRACKPOOL: It depends on the nature of the
6 changes. Because there's -- there's a --

7 COMMISSIONER WINNER: A comment period.

8 CHAIR BRACKPOOL: -- there's a reduced period of
9 comments. If it's a minor change --

10 COMMISSIONER ROSENBERG: Right.

11 CHAIR BRACKPOOL: -- a 15-day comment period -

12 COMMISSIONER WINNER: Absolutely.

13 CHAIR BRACKPOOL: -- but we have to deal with
14 that, and we'll see. And it may be that we bifurcate this
15 and some of the rules are approved and some of them are not.

16 COMMISSIONER ROSENBERG: Right.

17 CHAIR BRACKPOOL: But we have to see when we get
18 to that.

19 COMMISSIONER ROSENBERG: Okay.

20 CHAIR BRACKPOOL: So I would make that -- that
21 motion, of which you will clarify, that motion, having read
22 the transcript after this.

23 COMMISSIONER ROSENBERG: I'll second that.

24 CHAIR BRACKPOOL: Seconded by Commissioner
25 Rosenberg, in favor of that motion. Seconded by him.

1 COMMISSIONER DEREK: Yes.

2 COMMISSIONER CHOPER: Yes.

3 CHAIR BRACKPOOL: Yes. Yes.

4 COMMISSIONER ROSENBERG: In favor.

5 COMMISSIONER WINNER: Yes.

6 CHAIR BRACKPOOL: Yes.

7 COMMISSIONER BENETO: No.

8 CHAIR BRACKPOOL: No. So that motion carries, and
9 that's what we will -- that's what we will -- that's what we
10 will do. Thank you.

11 MR. KENNEDY: Mr. Chairman, I note the ten days
12 expires on a Sunday. Can we have until Monday?

13 CHAIR BRACKPOOL: You know what, they'll give you
14 the -- they'll give you the -- they'll give you the date.
15 Jackie will send out a notice to everyone that has commented
16 with the -- with the deadline dates. Okay. That concludes
17 that -- that item.

18 Therefore, items 9, 10, and 11 will also be moved
19 to whichever meeting we have to approve the -- approve the
20 rules.

21 Item number 12, discussion and action by the Board
22 on the approval of the 2012/13 agreement providing funding
23 support for the Board.

24 This formula was developed with the industry.
25 It's there.

1 Kirk, are there any main changes that -- or
2 questions on that?

3 EXECUTIVE DIRECTOR BREED: No, Mr. Chairman. We
4 developed this formula for the last -- this will be the
5 fourth year that we have been in this process. This is how
6 we receive our funding. In the -- even though our budget
7 has been reduced over the last four years we're asking
8 approval of the formula, which is 52.65 percent --

9 CHAIR BRACKPOOL: Right.

10 EXECUTIVE DIRECTOR BREED: -- of savings.

11 CHAIR BRACKPOOL: So really the same?

12 EXECUTIVE DIRECTOR BREED: I'd ask for your
13 approval.

14 CHAIR BRACKPOOL: Do we have any questions on
15 that? I make a motion to approve.

16 COMMISSIONER CHOPER: Second.

17 CHAIR BRACKPOOL: Seconded by Commissioner Choper.
18 All in favor?

19 ALL COMMISSIONERS: Aye.

20 CHAIR BRACKPOOL: Motion carries.

21 That concludes the open portion of our meeting.

22 We'll now revert to closed session.

23 (The Board Meeting adjourned at 11:59 a.m.)

24 --oOo--

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CERTIFICATE OF REPORTER

I, MARTHA L. NELSON, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Regular Meeting of the California Horse Racing Board; that I thereafter transcribed it.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, or in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of July, 2012.

/s/ Martha L. Nelson

MARTHA L. NELSON, CERT**367