



# NEWS RELEASE

From New York State Inspector General  
**Catherine Leahy Scott**

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## **NYS INSPECTOR GENERAL SCOTT FINDS NEW YORK RACING ASSOCIATION, FAILING TO HEED STATUTE, OVERCHARGED BETTORS BY MILLIONS**

*More Than \$7 Million Collected over 15-Month Period; Investigation  
Results in Change in NYRA Leadership; Tightening of Controls*

An [investigation](#) by New York State Inspector General Catherine Leahy Scott found that over a 15-month period, bettors who placed wagers at races run at New York Racing Association, Inc. (NYRA) tracks were overcharged by more than \$7 million in “takeout” fees, contrary to state law. Inspector General Scott found this overcharge was due to a misreading of and inattention to the law by NYRA officials, weak financial controls and oversight by NYRA management and the Board governing NYRA – as well as the New York State Racing and Wagering Board (RWB), which until recently oversaw NYRA. Her investigation has resulted in a comprehensive tightening of financial controls and significant management change at NYRA.

“New York’s horse racing industry is steeped in tradition and is very important to New York’s tourism economy,” said Inspector General Scott. “Patrons of New York’s gaming industry must feel secure and trust that those operating horse racing in our state are doing so competently and within the parameters of the law. Unfortunately what occurred undermined that trust because NYRA took earnings away from bettors that were rightfully theirs. I am pleased my investigation has resulted in significant improvements to NYRA’s management and financial controls. The new leadership at NYRA has undertaken and implemented significant changes to their processes that should restore the public’s confidence in New York’s gaming industry.”

By state law, NYRA is permitted to retain a certain percentage of the total amount of money bet on horse racing, commonly referred to as the “takeout.” Until September 2008, when the state enacted legislation that established a fixed takeout rate of 26 percent for exotic wagers, the most NYRA could retain was 25 percent. The 2008 legislation expired in September 2010, but NYRA continued to charge the 26 percent takeout rate for exotic wagers until December 2011 when the RWB became aware of the overcharge through an unrelated audit, and notified NYRA. The discovery ultimately compelled the New York State Franchise Oversight Board (FOB) to direct RWB to review the takeout charges. Upon receiving RWB’s investigatory report in April 2012, FOB Chair Robert Megna referred the matter to the Inspector General’s Office.

Inspector General Scott’s investigators found that, between when the law expired in September 2010 and when the erroneous takeout rate was identified in December 2011, bettors paid \$7,361,722 more in takeouts than the law allowed. NYRA incorrectly withheld \$1,140,622 for on-track wagers, and \$6,221,100 had been erroneously retained by racetracks and off-track betting sites. NYRA unfortunately was able to identify and repay only \$611,604 to bettors. To compensate for this significant error, NYRA set the takeout rate for exotic wagers to 24 percent, one point below the legal limit.

The Inspector General found that members of NYRA's legal team – notably General Counsel Patrick Kehoe and legislative counsel and lobbyist William Crowell – did not note or calendar that the takeout legislation would expire, or “sunset” in September 2010. NYRA's Assistant General Counsel, Pasquale Viscusi, who also held the title of Regulatory Compliance Officer, testified that it was not within his purview to calendar the sunset, and therefore did not do so. Moreover, Kehoe and then president and chief executive officer of NYRA Charles Hayward said they were under the mistaken belief that regardless of the expiration of the legislation, NYRA could keep the rate at 26 percent takeout rate if it chose to do so.

Around the time that the legislation sunset, and numerous instances after that, Kehoe and Hayward missed several opportunities to catch the takeout error: by inexcusable inattention to the legislation and dereliction of their duties as executives at NYRA. Specifically, emails in late September 2010 and October 2010 in which Kehoe discussed the sunset of the takeout law with Crowell and Hayward reveal that Kehoe had ample opportunity to uncover NYRA's exotic wager takeout overcharge but simply failed to do so.

In addition, in August 2011, an avid bettor noticed that NYRA was charging an illegal takeout rate and emailed a member of the media, who forwarded the inquiry to Hayward. Despite the explicit statement about NYRA's incorrect takeout rate, Hayward did not ask Kehoe to review the law; rather, Hayward quickly responded that the bettor was “correct” and then proceeded to explain why, in his opinion, NYRA could not request a reduction in the takeout rate at that time. When asked about this email exchange, Hayward questionably testified that he only had focused on the portion of the email stating that NYRA could request a takeout rate reduction from the Racing and Wagering Board and had failed to read the email in its entirety. Regardless of the veracity of this representation, Hayward was, at best, careless in his reading of this email.

Hayward and Kehoe were terminated in May 2012. Viscusi was stripped of the responsibilities of ethics officer and regulatory compliance officer.

Other executive staff and operational divisions within NYRA and entities associated with NYRA failed to appreciate the importance of the sunset including:

- New York State's Racing and Wagering Board (NYRA's oversight body until the board was subsumed by the newly-created New York State Gaming Commission) which did not calendar the sunset date of the takeout legislation.
- NYRA CFO Ellen McClain, who claimed she lacked knowledge of the sunset provision in the legislation even though a revenue analyst in the finance department who regularly provided data to McClain indicated he had informed McClain of the sunset provision.
- NYRA's simulcasting department, which routinely cited NYRA's takeout rates in its simulcasting contracts with various simulcasting facilities and noted the sunset date in those contracts.
- NYRA's previous Board, which largely deflected responsibility for takeout oversight to NYRA management.
- NYRA's internal audit department, which never even reviewed takeout rates until the issue was exposed in December 2011, and failed to review the legal department's internal controls whose specific duties included statutory compliance.
- NYRA's external auditor, which failed to identify the sunset provision as a problem, relying solely on NYRA for its information and not independent parties.
- The auditor for NYRA's totalisator company– a contractor used to electronically combine NYRA's bets into pools and calculate odds and projected payoffs – did not ensure the takeout rate conformed with statute.

Following her investigation, Inspector General Scott recommended a series of corrective measures:

- NYRA's law department should establish a system to track the expiration dates of pertinent legislation and other significant dates, regularly performing checks on takeout rates and other statutorily mandated rates. The Regulatory Compliance Officer should develop and implement a plan to ensure statutory compliance.
- NYRA's finance department should maintain a list of takeout rates, the corresponding statutes and any sunset dates, and confer with the law department on a regular basis to ensure that no changes in the law have occurred.
- NYRA's simulcasting department must ensure that the correct takeout rates are being utilized in its contracts and maintain a list of takeout rates, the corresponding statutes and any sunset dates, and confer with the law department on a regular basis to ensure that no changes in the law have occurred.
- NYRA's internal audit department should establish audit plans that include scheduled audits of every department at NYRA. Annual or bi-annual audits of the law and finance departments should be conducted. The internal audit department must operate and exercise judgments independent of NYRA executive staff and functions solely at the direction of the Audit Committee.
- The NYRA Reorganization Board must engage in a robust review of NYRA's internal and external auditors and ensure they are regularly reviewing NYRA's compliance with statutes and regulation.
- NYRA's Audit Committee should require the external auditor to identify deviations from generally accepted accounting principles and identify those internal controls which are ineffective. Specifically, the Audit Committee should ensure that the external auditor inquires of independent third parties in its verification process rather than relying on NYRA for information as to the correct statutory takeout rates and other rates and taxes.
- NYRA should by contract ensure its totalisator contractor provides a yearly audit of its tote services. An independent auditor hired by the totalisator should test whether takeout rates conform to New York statutory requirements.

NYRA has agreed to and has implemented these recommendations.

In addition, as noted above, New York State enacted legislation in 2012 that created the New York State Gaming Commission to, among other objectives, promote integrity and transparency in gaming. The Gaming Commission, which supervises all areas of gaming in New York State, was designed to consolidate the state's gaming regulatory functions into a single oversight body so as to achieve strict state regulation of all corporations, associations and persons engaged in gaming activity. The merger was also intended to increase efficiency, reduce costs and eliminate unnecessary redundancies in regulation. Accordingly, Inspector General Scott has recommended that the Gaming Commission determine if further measures are necessary within its new governing structure.

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