

CONFIDENTIAL

#18-0001 and #18-0016

**Agriculture and New York State Horse Breeding Development Fund
NYSS Program – Excelsior/State Fair and County Fair Tier Races**

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Origin of Case

In January of 2018, this Office received multiple complaints from [REDACTED] and [REDACTED], current and former directors, respectively, of the Agriculture and New York State Horse Breeding and Development Fund (“Fund”) were involved in actual or perceived conflicts of interest.

Nature of Allegation

Specifically, it was alleged that [REDACTED] and [REDACTED] are licensed drivers, owners, and/or trainers in New York State and have participated in New York Sire Stakes Program (“NYSS Program”) races administered by the Fund, namely, the Excelsior/State Fair and County Fair tier races.¹ Further, it was claimed that it was the understanding of New York State breeders that Fund directors could not own or race horses while serving on the Fund board.

Investigative Action

In furtherance of this investigation, relevant New York State statutes and ethics opinions, Fund by-laws and policies, and United States Trotting Association (“USTA”) records were reviewed.

Background

Fund Composition

In 1961, in an effort to promote the standardbred breeding industry, the HHB and the state harness tracks established the NYSS Program. Chapter 567 of the Laws of 1965 created the Fund as a public benefit corporation to promote standardbred breeding and equine research by, among other things, administering the NYSS Program. Initially, the Fund was governed by the Commissioner of the Department of Agriculture and Markets (“Ag and Markets”), the chairman of the Harness Racing Commission (“HRC”), and three trustees appointed by the Governor, one of whom shall be a member in good standing of a county or town agricultural society affiliated as a member in the New York state association of agricultural fair societies, and one a member in good standing of HHB, and one an officer of a licensee harness track.

Chapter 346 of the Laws of 1973 created the New York State Racing and Wagering Board (“RWB”) to consolidate five separate commissions, including the HRC. However, the

¹ [REDACTED] initially reported these allegations to the Fund directly, including an assertion that [REDACTED] attendance at the annual race secretaries’ meeting violated the New York State Gaming Commission (“Commission”)’s rules and regulations. See Dec. 6, 2017 letter from [REDACTED] to [REDACTED], [REDACTED] and then-Assistant Counsel to the Commission, annexed hereto as Exhibit “1A.” As explained in the Fund Counsel’s response to [REDACTED] letter (see Dec. 19, 2017 letter from [REDACTED] to [REDACTED] annexed hereto as Exhibit “1B.” [REDACTED] is not employed by a licensed race track and is not appointed or employed by the Commission; thus, the provision cited is not applicable. See 9 NYCRR §§4105.17(b) and 4105.15, respectively. See also “Fund Composition,” *infra*. This allegation is not addressed further in this Report.

HRC was reconstituted rather than abolished,² and at this time, the Fund's governing body was changed to be comprised of the Commissioner of Ag and Markets, the Chairman of the RWB, and the Chairman and members of the HRC.³ Thus, the Fund's governing body was composed entirely of *ex officio* members, whose civil office would have prohibited their involvement in racing, independent from their position on the Fund's board.

Chapter 60 of the Laws of 2012 merged the RWB and the New York State Division of Lottery to form the New York State Gaming Commission ("Commission"), and the HRC was abolished.⁴ As such, the governing body of the Fund was changed to a board of directors⁵ comprised of the Chair of the Commission or his/her designee, the Commissioner of Ag and Markets, and three members appointed by the Governor, "all of whom are experienced or have been actively engaged in the breeding of standardbred horses in New York state, one upon the recommendation of the temporary president of the senate [*sic*] and one upon the recommendation of the speaker of the assembly."⁶ The Fund's statute does not specifically authorize members of its governing body to participate in the breeding and racing of standardbred horses.⁷

In addition, the Office of Racing Promotion and Development ("ORPD") was created within the Commission to "promote the breeding of horses and the conduct of equine research" and to administer the Fund, the New York State Thoroughbred Breeding and Development Fund ("Thoroughbred Fund") and the defunct New York State Quarter Horse Breeding and Development Fund Corporation.⁸ The Fund's board is authorized to delegate powers and duties to its members or officers, as it deems proper and shall utilize the services of Commission employees and the ORPD.⁹

Currently, the Fund's board is comprised of Barry Sample (Chair of the Commission), Richard A. Ball (Commissioner of Ag and Markets), and Peter Arrigenna.¹⁰ Michael Kimelman resigned effective June 27, 2018.¹¹ No Chair has been designated by the Governor.

² The HRC members were appointed by the Governor with the advice and consent of the Senate, with no more than two members being of the same political party, and the chairman was designated by the Governor from among these members. The HRC chairman received an annual salary, while the remaining members received *per diem* allowance fixed by the Governor. HRC members were allowed to "engage in private employment or in a profession or business, provided such private employment, profession or business does not interfere with the performance of their duties as commissioners." Further, the HRC "ha[d] the powers, functions and duties with respect to the [Fund]."

³ By Ag and Markets' statute, its Commissioner is empowered to designate someone to attend on his/her behalf. Chapter 197 of the Laws of 2007 authorized the Chair of the RWB to do the same.

⁴ Chapter 865 of the Laws of 1982 combined all the laws related to horse racing and consolidated them in the Racing, Pari-Mutuel and Breeding Law, but did not substantively change any of the statutes.

⁵ Although the Fund's members are still referred to as Trustees, this Report will refer to members as Directors, as they are referred to by statute.

⁶ See PML §330(1).

⁷ Conversely, the appointed members of the New York State Thoroughbred Breeding and Development Fund are expressly allowed to participate in the breeding and racing of thoroughbred horses. See PML §252(5). This provision was added by Chapter 282 of the Laws of 1994.

⁸ See PML §1201.

⁹ See PML §330(2). A shared services contract must be approved by the Director of the Division of the Budget.

¹⁰ Arrigenna was appointed to the Fund in January 2014.

¹¹

[REDACTED]

NYSS Program

The core program of the Fund is the NYSS Program, whose purpose is to promote the standardbred industry in New York State.¹² Currently, there are three levels to the program for New York-bred 2- and 3-year olds racing – Sire Stakes, Excelsior/State Fair Series (A and B Levels), and County Fair Series. At the Sire Stakes tier, the “most talented”¹³ horses compete for enhanced purses at races held at pari-mutuel tracks.¹⁴ The Excelsior/State Fair tier is an additional opportunity for horses to race, primarily at pari-mutuel tracks, except for races held at the Goshen Historic Track.¹⁵ The County Fair tier is referred to as “best “earn as you learn” program”¹⁶ of the NYSS Program, and races take place at agricultural fairs throughout New York State rather than pari-mutuel tracks.¹⁷

The bulk of the Fund’s monies are spent on enhanced purses for Sire Stakes and Excelsior/State Fair tier races and providing the entirety of the purses for County Fair tier races (and Excelsior/State Fair tier races at Goshen Historical Track).¹⁸ Owners receive the enhanced purse monies and provide a portion of the monies to the drivers and trainers, depending on their arrangement.

Horses (and jockeys/drivers) participating in racing at pari-mutuel tracks are subject to drug testing by the Commission.¹⁹ However, horses participating in racing at non-pari-mutuel tracks are subject to drug testing administered by the Fund. The NYSS Program conditions state that for race day and out-of-competition testing “[s]amples shall be taken in accordance with the procedures found in 9 NYCRR 4120.17(b), and for the purposes of this condition, all references to the “Commission” in that rule shall be considered references to the Fund.”²⁰ Further, “[a] person whose horse was disqualified due to a finding of non-cooperation or a positive test for a prohibited substance may appeal such a finding in a hearing conducted in accordance with the State Administrative Procedure Act and before a hearing officer designated by the Fund.”²¹ The hearing officer’s finding(s) and recommendation(s), as well as the transcript of the hearing, would then be reviewed by the Fund’s directors who would decide what action to take.

¹² Only those races conducted pursuant to conditions and rules promulgated or approved by the Fund and the Commission can be designated a NYSS Program race. *See* 9 NYCRR §4100.1(32).

¹³ *See* Fund website, at <http://www.nysirestakes.com/about-us/>, at “Financial Overview,” last accessed Aug. 8, 2018.

¹⁴ *See* PML §334 (directing the Fund to hold New York-bred standardbred races at pari-mutuel tracks).

¹⁵ *See* PML §§333-334 (directing the Fund to hold New York-bred standardbred races at the New York State exposition and at pari-mutuel races).

¹⁶ *See* Fund website, at <http://www.nysirestakes.com/about-us/>, at “Financial Overview,” last accessed Aug. 8, 2018.

¹⁷ *See* PML §335 (directing the Fund to hold New York-bred standardbred races with town and county agriculture societies).

¹⁸ *See* PML §§333, 334(2), and 335.

¹⁹ It should be noted that the Commission’s equine drug testing program is governed by its rules and regulations. *See* 9 NYCRR §4012 and 4120.

²⁰ *See* Conditions for NYSS Nos. 56, 57, 58, 59, annexed hereto as Exhibits “2A”-“2D,” respectively, at §§10 “Race Day Testing” and 11 “Out-of-Competition Testing.” It should be noted that although the Fund’s statute authorizes the Fund to establish rules and regulations to carry out its functions, it has not done so. *See* PML §§ 332(2)(a), 332(2)(f), 332(4), and 335. It is unclear whether it is sufficient to assert in the NYSS Program conditions that Commission regulations apply to NYSS Program participants since the Commission is not administering the Fund’s drug testing program.

²¹ *See* Exhibits “2A”-“2D”, at §§11 (“Out-of-Competition Testing”) and 12 (no heading).

*Fund By-Laws and Code of Ethics*²²

The Fund's By-Laws and Code of Ethics codify prohibitions contained in the Public Officers Law ("POL"), discussed in further detail *infra*. The Fund defines officer or employee to include both paid and unpaid officers and employees, as well as members of the board of directors and their appointees.²³ The Fund's By-Laws and Code of Ethics dictate that any Fund director, officer, or employee (paid or unpaid) "who participates in a discussion or gives official opinion to the Fund on any matter before the Fund, shall publicly disclose the nature and extent of any direct or indirect financial or other private interest he/she has in such matters."²⁴ In addition, none of these individuals "shall invest or hold any investment directly in any financial, business, commercial or other private transaction"²⁵ or "engage in, solicit, negotiate for or promise to accept private interests when that employment or service"²⁶ that "creates a conflict with or impairs the proper discharge of his/her official duties."²⁷

A quorum, which the Fund's By-Laws define identically as the Public Authorities Law ("PAL"),²⁸ is needed to conduct business at a meeting of the board of directors. In order to pass a resolution or act, an "affirmative vote of a majority of those [directors] present at any such meeting at which a quorum is present"²⁹ is required.

Public Officers Law and Ethics Advisory Opinion

Public Officers Law

The POL's Code of Ethics define the Fund as a state agency because at least one of its members is appointed by the Governor.³⁰ As such, no officer or employee of the Fund "should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest."³¹ In addition, no Fund

²² Section 11 of the Fund's By-Laws and the Fund's Code of Ethics use identical language to define officer and employee, as well as to explain the Fund's code of ethics. As such, they are discussed together.

²³ See Fund By-Laws, annexed hereto as Exhibit "3A," at Definitions (1). See also Fund Code of Ethics, annexed hereto as Exhibit "3B," at Preamble (1).

²⁴ See Exhibit "3A," at Art. XI, "By-Laws, Amendments, Rules and Regulations," "Standards of Conduct," §5, "Disclosure of Interest in Matters before the Fund" and Exhibit "3B," at "Standards of Conduct," §5, "Disclosure of Interest in Matters before the Fund."

²⁵ See Exhibit "3A," at Art. XI, "By-Laws, Amendments, Rules and Regulations," "Standards of Conduct," §6, "Investments in Conflict with Official Duties."

²⁶ See Exhibit "3A," at Art. XI, "By-Laws, Amendments, Rules and Regulations," "Standards of Conduct," §7, "Private Employment."

²⁷ See Exhibit "3A," at Art. XI, "By-Laws, Amendments, Rules and Regulations," "Standards of Conduct," §§6 and 7, "Investments in Conflict with Official Duties" and "Private Employment."

²⁸ PAL considers the Fund as a state authority because one or more of its members is appointed by the Governor. See Public Authorities L. §2(1). PAL defines a quorum, which is necessary for a state authority to conduct business, as a majority of the whole number of a state authority's board. Whole number refers to the total number of board members if there are no vacancies or no members disqualified from acting. See Public Authorities L. §2826.

²⁹ See Exhibit "3A," at Art. III, §4(F), "Quorum and Manner of Acting." The board may also act by mail or "other reasonable method," in lieu of a meeting and ratify the action at the next regularly scheduled meeting.

³⁰ See Public Officers L. §74(1).

³¹ See Public Officers L. §74(2), "Rule with respect to Conflicts of Interest."

officer or employee “should accept other employment which will impair his independence of judgment in the exercise of his official duties”³² nor should s/he “disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.”³³ Further, no Fund officer or employee “should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others,”³⁴ “engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonable tend to conflict with the proper discharge of his official duties,”³⁵ or “mak[e] personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.”³⁶ Generally, a Fund officer or employee “should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.”³⁷

This prohibition includes not only actual conflicts, but also perceived conflicts as well. Specifically, one’s conduct should not “give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person”³⁸ nor “raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.”³⁹

Ethics Advisory Opinion No. 95-13

The Joint Commission on Public Ethics (“JCOPE”) does not have any advisory opinions directly related to the Fund. However, there is an advisory opinion issued by JCOPE’s predecessor, the New York State Ethics Commission (“NYSEC”), regarding the applicability of POL Section 74 to the appointed members of the Thoroughbred Fund. As noted *supra*, the HHB wrote a letter to the Fund expressing its concern about [REDACTED] and [REDACTED] participation in the Excelsior/State Fair and County Fair tiers of the NYSS Program. Fund Counsel relied on this opinion to support the Fund’s contention that Fund members could participate in the program.⁴⁰

The Thoroughbred Fund enabling statute was amended in 1994 to add additional appointed members to the Fund’s board,⁴¹ who should be “experienced or have been actively

³² See Public Officers L. §74(3), “Standards,” at (a).

³³ See Public Officers L. §74(3), “Standards,” at (c).

³⁴ See Public Officers L. §74(3), “Standards,” at (d).

³⁵ See Public Officers L. §74(3)(e).

³⁶ See Public Officers L. §74(g).

³⁷ See Public Officers L. §74(3), “Standards,” at (h).

³⁸ See Public Officers L. §74(3)(f).

³⁹ See Public Officers L. §74(3)(h).

⁴⁰ See Exhibits “1A” and “1B.” Fund Counsel stated that neither director “participates” in the County Fair tier of the program. However, [REDACTED] previously participated in the County Fair tier, discussed in greater detail *supra* at page 7 *et seq.*, at “Participation of Fund Directors in the NYSS Program.”

⁴¹ See N.Y.S. Ethics Comm. Adv. Op. No. 95-13, annexed hereto as Exhibit “4,” at “Introduction” and “Questions Presented.”

engaged in the breeding of thoroughbred horses in New York State.”⁴² As a result, an opinion was sought from NYSEC regarding in which activities and decisions these members could participate. NYSEC Advisory Opinion No. 95-13 considered whether members who are eligible to receive payments (awards or purses) from the Thoroughbred Fund as breeders, stallion owners, or owners of New York-breds may participate in deliberations of the Fund board and vote on resolutions (1) allocating of Fund resources (percentages for awards and purses); (2) fixing the amount of awards, purses, and conditions of New York-bred races; and (3) setting qualifications of horses earning payments.⁴³

At the outset, NYSEC noted that Fund

members, except as otherwise provided by law, may engage in private employment, or in a profession or business including the breeding and racing of thoroughbred horses. The fund, its members, officers and employees shall be subject to the provisions of sections seventy-three and seventy-four of the public officers law.⁴⁴

The advisory opinion explained that when confronted with inconsistent statutes, an effort should be made to look at the history and purpose to determine legislative intent and “harmonize” inconsistencies, so as not to make legislation a nullity.⁴⁵ It noted that the Governor’s memorandum approving the 1994 legislation that this was a “significant step toward “returning the responsibility for decisions affecting the future of horse racing in New York to the people who have invested their time and money into the industry”” and that “for too long, we in government have dictated to the breeders . . . rather than listened to them.”⁴⁶ As such, the legislation specifically created a situation where interested individuals would have a say over setting standards and allocating resources. Nevertheless, “in order to meet their obligation to the public trust, [directors] must recuse themselves from deliberating and voting on any matter from which they may directly and personally benefit due to their activities as owners or breeders, but they may fully participate in other matters.”⁴⁷

NYSEC determined that directors could engage in (1) and (2) since the allocation of resources is proscribed by statute and that “any individual director’s potential to benefit from the allocation of the awards is *speculative*, as an award would be received only if the director’s horse places first through fourth in an eligible race *to be held in the future*.”⁴⁸ (italics added) Similarly, a director could engage in (3), except if the matter involved “his or her own qualifications; nor could a director participate in a matter involving the approval of a qualification that would allow his or her horse to participate where, absent approval, the horse could not.”⁴⁹

⁴² *Id.*, at “Background.”

⁴³ *Id.*, at 3. Questions addressed by the opinion, but not relevant to this inquiry, are not discussed in this Report.

⁴⁴ See PML §245(5).

⁴⁵ See Exhibit “4,” at “Discussion,” paras 4-5.

⁴⁶ *Id.*, at “Discussion,” para 2.

⁴⁷ *Id.*, at “Discussion,” para 8.

⁴⁸ *Id.*, at “Discussion,” “Question 1.” See also *Id.*, at “Discussion,” “Question 2.”

⁴⁹ *Id.*, at “Discussion,” “Question 3.”

Although appointed members of both funds are expected to be experienced or have been actively engaged in breeding, their enabling statutes differ in a significant way. As noted *supra*, the Fund's members are not explicitly authorized to participate in private employment, profession, or business including the breeding and racing of standardbred horses.⁵⁰ As such, NYSEC Advisory Opinion No. 95-13 cannot be assumed to apply to the Fund's members.

More importantly, the Fund's County Fair tier races and Excelsior/State Fair tier races at Goshen Historic Track are held at non-pari-mutuel tracks. As such, the Fund's board wholly administers those races – setting the schedule and hiring the judges, as well as the drug testing program for those races,⁵¹ further compounding potential conflicts of interest issues. If there are disputes regarding the administration of or positive drug test results from those races, it is the Fund's directors who would be responsible for deciding those disputes. If the Fund directors (or their family members) are participating in those tiers of the NYSS program, other participants would likely believe that those directors are interested parties in the outcome of the decisions because it could affect their own horses' chances at competing in the finals or consolation races at the end of the NYSS Program season. In addition, unless the directors drive, own, and train the horses participating in the program themselves, they have financial relationships with drivers, owners, and trainers who likely have other horses participating in the program, and arguably, the directors would have an actual or a perceived conflict if there was an issue involving one of those individuals.

This Office reviewed the minutes of the Fund's public meetings, from 2012 to the present, to determine whether any decisions related to the Excelsior/State Fair or County Fair tiers of the NYSS Program were made during the program season while [REDACTED] and [REDACTED] have served as Fund directors. The minutes do not indicate that any discussions were held or any decisions were made during the program's season or which related to appeals from the Fund's drug testing program.⁵² It is this Office's understanding that the Fund's first hearing appealing a positive drug test result from a County Fair race was conducted June 12, 2018, but to date, the Fund is still awaiting the hearing officer's findings and report. Thus, the Fund's board has not deliberated on the matter.

Participation of Fund Directors in the NYSS Program

This Office's review of Fund and United States Trotting Association ("USTA") records reveals that both [REDACTED] and [REDACTED] participated in designated Excelsior/State Fair and/or County Fair tier races of the NYSS Program as drivers, owners, and/or trainers while they were Fund directors. [REDACTED] also participated in designated Excelsior/State Fair and

⁵⁰ The Thoroughbred Fund's statute was amended in 1994, and the Fund's statute was not amended until 2012. As such, it is likely that the drafters were aware of this authorizing provision. Notably, identical language regarding the qualifications of appointed members was used, but the authorizing provision was omitted. This Office reviewed the bill jacket and bill for Chapter 60 of the Laws of 2012, and there are no memoranda related to this bill so it is unknown whether the omission was purposeful.

⁵¹ Since all thoroughbred horses participating in the Thoroughbred Fund's program race at pari-mutuel tracks, its board is not involved in the administration or the drug testing program at any races.

⁵² According to the Fund's By-Laws, decisions may be made outside a public meeting, but should be ratified during the next regularly scheduled public meeting. See Exhibit "3A," at Art. III, §4(F), "Quorum and Manner of Acting."

County Fair tier races.⁵³ In some instances, [REDACTED] drove and/or trained horses owned by [REDACTED] and [REDACTED] also co-own the horse [REDACTED]. Records also reveal [REDACTED] has not participated in the program since 2015. Further, records for 2018, do not show any participation by [REDACTED].⁵⁴

It should be noted that the Fund’s records were of limited utility because although the Fund keeps track of “People Statistics” for breeders, drivers, owners, and trainers during the NYSS Program season, historical information is not retained. [REDACTED] explained that the Fund’s database, which is web-based, overwrites information, and only the leaders in each category are published in its yearly report. [REDACTED] stated that the Fund is working towards maintaining all its historical records.

Nevertheless, the Fund’s Race Replays lists show that both [REDACTED] and [REDACTED] owned horses that won Excelsior/State Fair tier races, in 2015 and 2017, respectively, and [REDACTED] owned a horse that won an Excelsior/State Fair tier race in 2014.⁵⁵ There are no replays for County Fair tier races.

USTA records⁵⁶ revealed the following:

[REDACTED]

Date	Location	Race No.	Coded Class ⁵⁷	Name of Horse	Final Position	Purse Money (\$)	Driver/ Owner/ Trainer
6/15/14	Buffalo Raceway	6	NY EXCEL B	[REDACTED]	4	528	Trainer
6/23/14	Tioga Downs	5	NY EXCEL B	[REDACTED]	X7	0	Trainer
8/17/14	Batavia Downs	11	EXCEL B	[REDACTED]	7	0	Trainer
5/17/15	Tioga Downs	1	NY EXCEL B	[REDACTED]	6	0	Owner/ Trainer
5/27/15	Buffalo Raceway	6	NY EXCEL B	[REDACTED]	1	3,400	Owner/ Trainer
6/8/15	Monticello Raceway	2	EXCEL B	[REDACTED]	3	804	Owner/ Trainer

⁵³ [REDACTED] also participated in one Sire Stakes tier race in 2013.

⁵⁴ [REDACTED] also has not participated in any NYSS Program races.

⁵⁵ See Fund Race Replays: NYSS Excelsior Series lists for 2014, 2015, and 2017, annexed hereto as Exhibits “5A”-“5C,” respectively; specifically, Exhibits “5A,” at p. 7; “5B,” at p. 2; and “5C,” at p. 4.

⁵⁶ See relevant USTA printouts for [REDACTED] and [REDACTED], annexed hereto as Exhibit “6A”-“6C,” respectively. The printouts are arranged with the lists for the year (which is arranged by the USTA in reverse chronological order) and/or horse first and then race charts (in chronological order) with more detailed information regarding the races detailed.

⁵⁷ Coded Class and Final Position are listed as shown in USTA database.

6/21/15	Vernon Downs	14	NY EXCEL B	[REDACTED]	7	0	Owner/ Trainer
8/30/15	Batavia Downs	5	EXCEL B	[REDACTED]	6	0	Owner/ Trainer

[REDACTED]

Date	Location	Race No.	Coded Class	Name of Horse	Final Position	Purse Money (\$)	Driver/ Owner/ Trainer
7/3/14	Goshen Historic Track	5	3YR C NYFS	[REDACTED]	2	887	Driver
7/4/17	Goshen Historic Track	3	3YR C NYFS	[REDACTED]	4	152	Driver/ Trainer
7/7/17	Vernon Downs	1	NY EXCEL B	[REDACTED]	6	0	Trainer
7/22/17	Saratoga Harness	1	NY EXCEL B	[REDACTED]	1	3,400	Owner
7/25/17	Saratoga Harness	8	NY EXCEL B	[REDACTED]	4	536	Trainer
8/4/17	Tioga Downs	12	NY EXCEL B	[REDACTED]	2	1,675	Trainer
9/19/17	Monticello Raceway	3	NY EXCEL B	[REDACTED]	4	520	Trainer

[REDACTED]

Date	Location	Race No.	Race Class	Name of Horse	Horse Placement	Purse Money (\$)	Driver/ Owner/ Trainer
6/27/13	Vernon Downs	12	NYB EXCEL	[REDACTED]	Scratched	0	Owner
7/6/13	Goshen Historic Track	7	NYB EXCEL	[REDACTED]	6	0	Owner
7/3/14	Goshen Historic Track	5	3YR C NYFS	[REDACTED]	2	887	Owner/ Trainer
7/22/14	Yonkers Raceway	4	NY EXCEL B	[REDACTED]	3	792	Owner
7/30/14	Saratoga Harness	1	NY EXCEL B	[REDACTED]	1	3,350	Owner

7/4/17	Goshen Historic Track	3	3YR C NYFS	[REDACTED]	4	152	Owner
7/7/17	Vernon Downs	1	NY EXCEL B	[REDACTED]	5	300	Owner
7/22/17	Saratoga Harness	1	NY EXCEL B	[REDACTED]	1	3,400	Owner
7/25/17	Saratoga Harness	8	NY EXCEL B	[REDACTED]	4	536	Owner
8/4/17	Tioga Downs	12	NY EXCEL B	[REDACTED]	2	1,675	Owner
8/17/17	Yonkers Raceway	4	NY EXCEL B	[REDACTED]	4	544	Owner/ Trainer
8/29/17	Yonkers Raceway	3	NY EXCEL B	[REDACTED]	3	792	Owner/ Trainer
9/19/17	Monticello Raceway	3	NY EXCEL B	[REDACTED]	4	520	Owner

Although there were no documented instances of deliberations or decision-making related to the NYSS Program or the Fund’s drug testing program, [REDACTED] and [REDACTED] participation in the State Fair/Excelsior and County Fair tiers of the program while they were directors created a perceived conflict of interest. The program’s integrity was called into question because of their vested interests and financial relationships with others participating in the program.

Findings

This investigation determined the following:

- 1) The NYSS Program Excelsior/State Fair tier races held at Goshen Historic Track and all the County Fair tier races are solely administered by the Fund, including the drug testing programs for those races.
- 2) Both [REDACTED] and [REDACTED], as well as [REDACTED], participated in Excelsior/State Fair and County Fair tier races of the NYSS Program while they were Fund directors.
- 3) To date, decisions regarding the NYSS Program were made prior to the beginning of the racing season, and the Fund has not yet ruled on an appeal of drug testing program results.
- 4) Participation by [REDACTED] and [REDACTED] in Excelsior/State Fair and County Fair tier races of the NYSS Program while Fund directors created a perceived conflict of interest. Their participation in the program and/or their financial relationship with others also participating in the program give rise to the belief that they could not remain impartial. Thus, negatively impacting the integrity of the program.

- 5) It is unclear whether the Fund Directors are allowed to participate in the Fund's NYSS Program. The Fund's enabling statute creates an inherent conflict with Public Officers Law Section 74, as it specifically requires that the appointed members be "experienced or have been actively engaged in the breeding of standardbred horses." However, the Fund's statute does not specifically permit its members to participate in the NYSS Program, as the Thoroughbred Fund's enabling statute does.

Conclusions & Recommendations

As a result of the above findings, it is recommended that this case be closed as partially substantiated. This Office's review determined that [REDACTED] and [REDACTED], current and former Fund directors, respectively, participated in the NYSS Program, but no contemporaneous deliberation or decision-making related to the program or appeals from the Fund's drug testing program occurred. However, when [REDACTED] and [REDACTED] were Fund directors and participated in the Excelsior/State Fair and County Fair tiers of the NYSS Program, a perceived conflict of interest existed because the Fund solely administers the County Fair races, Excelsior/State Fair races at Goshen Historic Track, and the drug testing program for those races.

Accordingly, the following is recommended:

- 1) Appointed Fund directors should not participate in the Excelsior/State Fair or County Fair tiers of the NYSS Program.
- 2) Alternatively, if the Fund allows its appointed directors to continue to participate in the Excelsior/State Fair or County Fair tiers of the NYSS Program, those directors should recuse themselves from voting on matters related to those tiers. It is important to note that recusal of such directors may prevent the Fund from conducting business. According to the Fund's By-Laws, decisions must be decided by a majority of those members present at a public meeting comprising the quorum (e.g. there are four directors present, but two need to recuse themselves, so no decisions regarding those races could be made as there could be no majority vote).
- 3) The Fund should seek an opinion from the Joint Commission on Public Ethics ("JCOPE") regarding the limits, if any, to participation by Fund Directors in Excelsior/State Fair and/or County Fair tier races of the NYSS Program.