

### “It” Begins with Horsemen

Since 2002, when advance deposit wagering (“ADW”) was first authorized in California, TOC has been open and consistent about what it saw as the two main shortcomings of the ADW business model: exclusive contracts and an inequitable distribution of related revenues. But horsemen were essentially stuck with that model until existing ADW contracts signed by our track partners expired, unless of course we opted to force our partners into lengthy and costly litigation with certain ADW providers, which everyone agreed was imprudent.

The first of the exclusive ADW contracts to expire occurred last October before the start of the 2007 Hollywood Park Fall meet. Well in advance of its expiration, TOC stated that it would not agree to the extension of wagering exclusivities, and that our ADW partners – tracks and ADW providers – would have to participate in an “exchange of signals” that TOC fully expected to increase overall ADW handle and related revenues, at rates somewhat above the ridiculously low rates previously paid. What evolved from that articulated position was the so-called “experiment.”

The *experiment* was predicated on a *fictional* exchange of “exclusive content” between TVG and Xpressbet. I describe it as “fictional” because the exclusive contract between TVG and Hollywood Park had expired, and thus TVG had no “exclusive” California Thoroughbred content to trade Xpressbet – Santa Anita and Golden Gate Fields – for a period of nine months. Instead of focusing on the fallacy of an “exchange,” what TOC and our track partners opted to initiate was a period of non-exclusivity coinciding with the period in which no California Thoroughbred racetrack was bound to a TVG exclusive contract. It was thought then that if this open business model performed as well as expected, chances were that it would be extended by the parties – ADW providers included – through to the last of the 2008 California TVG exclusive contract meets: Del Mar, Fairplex, and Oak Tree. Boy, were we wrong!

Oh the *experiment* worked alright; better than anyone expected! Yet, despite this tremendous good will effort in fostering the fictitious “exchange of content,” the primary beneficiary of the fallacy – TVG – demanded of its three remaining partner tracks that they abide by the terms of their original exclusive contracts and prohibit the other three licensed ADW providers – Xpressbet, Youbet, and Twin Spires – from taking wagers in California. Adding insult to injury, TVG prohibited its three remaining contract “partners” from authorizing TVG’s competitors to facilitate out-of-state ADW wagers on California Thoroughbred races, other than by phone, including in states in which TVG did not do business. Those limitations proved punitive to each of the three meets in terms of purses and track commission revenues, not to mention it cost TVG a pretty penny in that it would have benefitted significantly from TV Broadcast Fees paid under the *experiment*.

Wary of “partnering” with ADW providers that put their own interests so far ahead of the industry they were meant to serve, TOC – and the vast majority of our track partners – have accepted the fact that these deals going forward must be satisfactory and fair to all, or there will be no deals whatsoever!

We are not alone in accepting this reality, as is evidenced by the formation of the Thoroughbred Horsemen’s Group (“THG”) – now representing 21 horsemen’s organizations – and garnering support among independent racetracks nationally as well. Future ADW contracts must not only ensure broad, non-exclusive distribution of our race signals, but must compensate stakeholders – tracks and horsemen – with a far more equitable share of related revenues beyond the untenably low rates paid under the distribution experiment earlier this year! It is this latter objective that has once again pushed ADW to the forefront in terms of industry challenges.

While ADW providers condemn horsemen for their uninvited effort to obtain a more equitable share of revenue, what is lost on those very same providers is the fact that federal law ensures horsemen a primary role in this process as it is *horsemen* whose duty and responsibility it is to protect live racing, not simply profit from it! In recent years, this duty has been recognized and cited by two federal judges sitting in the 6th Circuit in deciding in favor of horsemen acting to protect rights granted under the Interstate Horseracing Act (“IHA”). It is that Act that requires – as a “*condition precedent*” to any simulcast arrangement, including with an ADW provider – a California



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# 2009 TOC Board Election Process Begins

Although TOC members won't receive ballots and candidate statements for the 2009 Board election until May, the Director nomination process annually begins the preceding fall. Four owner category and one owner/trainer category seats will be up for election in 2009, each with a three-year term. TOC members can qualify for the ballot by either of two methods – nomination by TOC's Executive Committee or nomination by petition.

## To Qualify by Executive Committee Nomination

Each year, TOC's Executive Committee considers and nominates candidates for Board positions prior to January 1st of the coming year. Those named could include current board members or others who have expressed an interest in serving.

Owners interested and willing to serve on the Board should notify the Executive Committee by submitting a biographical statement, confirmation of eligibility, and an account of the reasons you wish to serve as a TOC Board member to the Committee by no later than December 1, 2008. If sent by mail, these materials should be addressed to the TOC Executive/Nominating Committee, care of TOC, 285 W. Huntington Dr., Arcadia, CA 91007. Submitted materials must be postmarked by December 1, 2008.

Those expressing interest will be informed of the Committee's decision by January 9, 2009, with announcement of the nominees made soon thereafter.

## To Qualify by Petition

Those seeking to run for the Board through the Petition Process must qualify by obtaining 50 signatures from current TOC owner or owner/trainer category members – depending on the representative seat sought – supporting the candidacy, on a Petition issued by TOC. To obtain the petition, the candidate must contact TOC's Santa Anita office at (626) 574-6620 after January 1, 2009. The deadline for filing a completed petition is March 1, 2009.

## Candidate Requirements / Board Responsibilities

TOC bylaws require board candidates to hold a current California Horse Racing Board owner's license, own at least 25% of a Thoroughbred racehorse, have started a horse or horses a minimum of six times in California during the prior

calendar year, and be a member in good standing.

TOC Board member duties include, but are not limited to, attendance at monthly board and committee meetings, as well as periodic attendance at CHRB and/or other industry events. Board members receive no compensation for their service, though reimbursements for necessary travel and lodging expenses are made.

## The Election Process

April 1, 2009 is the deadline for receipt of a qualifying candidate's statement if one is to be included on the ballot submitted to members. Details regarding these statements will be provided to those who qualify to run.

Ballots and candidate statements will be mailed to all TOC members on or before May 15th. **To be counted, the returned ballots must be postmarked no later than June 15th.** An independent auditor will tally the votes by the end of June, with the newly elected board members taking office on July 1, 2009.

TOC's board members serve three-year staggered terms, such that five seats are up for election each year. Seats subject to election in 2009 will be those currently occupied by owner representatives Madeline Auerbach, Marty Bach, Harry Pellman, and Mace Siegel, as well as owner/trainer representative Bob Baffert. The four owner representative and one owner/trainer representative nominees receiving the highest number of votes will be elected.

TOC bylaws require that at least three owner and one owner/trainer representative board members be from Northern California. Thus, if in an election it is necessary for one or more of those elected to be from Northern California, then the Northern California candidate(s) receiving the highest number of votes shall be elected, regardless of whether the candidate(s) was in the top four vote-getters in the owner representative category or the top vote-getter in the owner-trainer representative category.

## "It" Begins with Horsemen *Continued*

Thoroughbred track and TOC to first have a written agreement as to the terms and conditions under which the track may consent to the simulcast of our race signals. The notion that a track, or group of tracks, may first negotiate a deal with a simulcast recipient, then present it to horsemen to accept or reject is entirely inconsistent with the plain wording of the Act, and the two most recent federal cases interpreting that wording.

TOC, and its colleague horsemen around the country, have simply had enough! Future ADW arrangements will fairly serve everyone's legitimate interests – tracks, ADW providers, fans, regulators, and horsemen – or they will serve none. That is not an unreasonable or meritless objective!

