

**STATE OF ILLINOIS
ILLINOIS RACING BOARD**

**IN THE MATTER OF THE ISSUANCE OF ORGANIZATION LICENSES
AND THE ALLOTMENT OF THOROUGHBRED AND HARNESS RACING
DATES FOR CALENDAR YEAR 2013**

ORDER

This matter came to be heard on the applications of Arlington International Racecourse, LLC, Hawthorne Race Course, Inc., and Fairmount Park, Inc. for organization licenses and 2013 thoroughbred racing dates; and the applications of Balmoral Racing Club, Inc. and Maywood Park Trotting Association, Inc. for organization licenses and 2013 harness racing dates.

Each applicant submitted a written waiver of the contested case provisions of the Illinois Administrative Procedures Act (5 ILCS 100/1, *et seq.*) and elected to present evidence to the Board at an open meeting conducted on September 25, 2012. The Board heard testimony from witnesses for each of the applicants and considered exhibits submitted by each of them. In addition, the Board received comment from representatives of the Illinois Harness Horsemen's Association ("IHHA"), the Illinois Thoroughbred Horsemen's Association ("ITHA"), and the Illinois Division of the Horsemen's Benevolent and Protective Association ("HBPA").

It is the public policy of this state to support and enhance the horse racing industry, ensure that Illinois' horse racing industry remains competitive with neighboring states, stimulate growth within Illinois' horse racing industry, promote tourism and encourage the breeding of thoroughbred and standardbred horses, and ensure public confidence and trust in the credibility and integrity of racing operations. 230 ILCS 5/1.2.

In granting organization licenses and allocating dates for horse race meetings, Section 20(e-5) of the Illinois Horse Racing Act of 1975 (the "Act"), 230 ILCS 5/20(e-5), vests the Illinois Racing Board (the "Board") with the discretion to determine an overall racing schedule

which is conducive to the best interest of the public and the sport of horse racing. In making this determination, the Board must consider the following factors enumerated in Section 20(e-5):

- The character, reputation, experience and financial integrity of the applicants and of any other person that controls such applicant, directly or indirectly;
- The facilities or proposed facilities for the conduct of horse racing;
- The total revenue to be derived by the State and horsemen from the conduct of race meetings; (without regard to Section 32.1)
- The good faith affirmative action plan of each applicant to recruit, train and upgrade minorities in all employment classifications;
- The applicant's financial ability to purchase and maintain adequate liability and casualty insurance;
- The applicant's proposed promotional budget and prior year's promotional and marketing activities and expenditures for those activities;
- Agreements among applicants for the issuance of racing dates; and
- The extent to which applicants meet or exceed other standards adopted by the Board.

The Board has carefully reviewed each of the applications, exhibits and supplemental information submitted by the applicants, all of the testimony and evidence, and the Board has officially noticed other materials in its possession including the Board's annual reports, past Dates Orders, the 2013 staff report, and Board statistics on racing through September 8, 2012. Being fully advised in the premises, the Board makes the following findings of fact and conclusions of law:

1) Each applicant has an extensive history of conducting race meets in Illinois over a period of many years, and each has demonstrated and possesses the character, reputation, experience and financial integrity required for an organization license. With respect to each application, the Board has considered all of the statutory criteria listed in Section 20(e-5) of the Act.

2) Each applicant has demonstrated the financial ability to purchase the necessary casualty and liability insurance. (See Exhibit 18 to the 2013 Applications).

3) The following applicants own or have a lease or contract for the possession of the following racetracks:

<u>ASSOCIATION</u>	<u>TRACK</u>
Arlington International Racecourse, LLC	Arlington Park
Balmoral Racing Club, Inc.	Balmoral Park
Hawthorne Race Course, Inc.	Hawthorne Race Course
Fairmount Park, Inc.	Fairmount Park
Maywood Park Trotting Association, Inc.	Maywood Park

4) None of the applicants is in default in the payment of any obligation or debt due the State.

5) The mileage between racetracks located in upstate Illinois is as follows:

Arlington Park and Balmoral Park	63.6 miles
Arlington Park and Hawthorne Race Course	30.4 miles
Arlington Park and Maywood Park	20.5 miles
Balmoral Park and Hawthorne Race Course	37.5 miles
Balmoral Park and Maywood Park	50.7 miles
Hawthorne Race Course and Maywood Park	10.5 miles

Fairmount Park is located more than 225 miles from the racetrack at which all other applicants seek to conduct race meetings.

6) Each applicant has submitted a summary of its workforce and its affirmative action plan to recruit, train and promote female and minority employees. (See Exhibit 27 to the 2013 Applications);(Staff Summary, Ex. H). All applicants need a reasonable plan for recruiting and hiring managers who are women, African Americans. (Tr. 97-100, 226-228).

7) The racing dates awarded by the Board for 2012 were as follows:

THOROUGHBRED

	<u>Host Days</u>	<u>Live</u>	<u>Dark</u>
Arlington Park January 1 through February 13 (no live racing) May 1 through September 30 (night racing on June 30, July 21 and August 25)	197	90	107
Hawthorne Race Course February 14 through April 30 October 1 through December 31	169	105	64
Fairmount Park April 3 through September 21	n/a	67	

HARNESS

	<u>Host Days</u>	<u>Live</u>	<u>Dark</u>
Balmoral Park January 1 through December 30	262	207	55
Maywood Park January 5 through December 28	104	103	1

8) The average daily handle (live and simulcast), state revenue generated, commingled handle (e.g., out-of-state handle on Illinois races) and on-track attendance at each 2012 race meet through September 8, 2012 are set forth below:

	<u>Average Daily Handle</u>	<u>Average Daily State Gov. Revenue***</u>	<u>Commingled Handle **</u>	<u>Attendance</u>
THOROUGHBRED				
Arlington Park	\$1,899,146	\$27,426	\$2,519,008	8,712
Hawthorne Racecourse Fall *	\$1,315,808	\$21,393	\$1,905,592	1,226
Hawthorne Racecourse Spring	\$1,501,106	\$21,570	\$1,899,344	1,282
Fairmount Park	\$161,257	\$1,459	\$189,952	2,566
HARNESS				
Balmoral Park	\$536,696	\$7,773	\$802,082	1,024
Maywood Park	\$617,781	\$8,916	\$564,373	659

* Hawthorne Racecourse Fall statistics reflect its 2011 race meet.

** The State of Illinois does not generate revenue on commingled handle.

***This reflects only the 1.5 percent pari-mutuel tax, and not local government revenue, sales or income or employment tax.

9) **Financial Integrity.** The Board carefully considered the financial integrity of each applicant. The decline in handle and revenues from wagering over the past several years has caused concern over the financial health of each of the applicants. However, the release of the impact fee revenues on August 13, 2011 vastly improved the financial positions of all of the applicants. These funds represented 3% impact fee from the four casino riverboats in the Chicago area (230 ILCS 5/54.5 and 54.75) and had been held up in litigation for five years. The impact fees totaled \$56.7 million for racetracks and \$85 million for purses. In 2011, Hawthorne Race Course had a financial “Z Score” (as determined by Illinois Department of Revenue Financial review) at a level below the danger threshold, but the score did improve over its 2010 score. (Staff Report, Ex. D, p. 2, 7). Hawthorne’s independent auditors provided a “clean opinion” as of 12/31/11 and did not disclose any “going concern.” (Staff Report, Ex. D, p. 1); (Tr. 91-92, 254, 257-258) (see Exhibit 5 of Hawthorne’s 2013 Application). Prior to the issuance of an organization license, Hawthorne shall provide the following to the satisfaction of Board staff (Tr. 276, 283-284, 286):

a) documentation that Hawthorne Race Course, Inc.'s \$10 million line of credit is collateralized; and

b) commitment by the ownership in writing, either collateralized or supported by financial statements, to cover race meet operations and satisfy statutory obligations under the Act.

Based on the financial analysis provided to the Board by the Illinois Department of Revenue and the above two conditions placed on Hawthorne, the Board finds that all of the applicants have the requisite financial integrity to conduct the race meets applied for.

HARNESS

10) **Maywood Park** located in Maywood, Illinois has conducted harness racing for more than half a century. Maywood is the host of the prestigious Windy City Pace. Since 1998, Maywood has operated a coordinated meet and purse distribution schedule with Balmoral Park. In 2012, Maywood raced 2 nights per week, January 5 through December 28, on Thursdays and Fridays. In its 2013 application, Maywood Park proposed a marketing and promotions budget of \$659,700. In 2011, actual marketing expenditures were \$643,867. For 2013, Maywood has requested live racing 2 nights per week on Thursdays and Fridays, from January 3 through December 27.

11) **Balmoral Park**, located in Crete, Illinois has conducted both harness and thoroughbred racing during its 86-year history. Balmoral has conducted harness racing only since 1991. In 2012, Balmoral raced 3 evenings per week, January 1 through December 30, on Wednesdays, Saturdays and Sundays. Balmoral hosts numerous stakes races during the summer and early fall, where horsemen compete for \$5.4 million in purses. This stakes schedule directs national attention to the Illinois harness racing program. Several of these stakes races are part of the "American National" series and many stakes are restricted to Illinois bred horses. Balmoral's "Super Night," where over \$1.3 million in purses are distributed, is one of the country's premier harness racing events. Balmoral has assembled a year-around, full time professional organization with expertise in all areas of harness racing and marketing. In its 2013 application, Balmoral proposed a marketing and promotions budget of \$863,500. In 2011, actual marketing expenditures were \$718,295. For 2013, Balmoral has requested live racing 3 nights per week on Wednesdays, Saturdays and Sundays, from January 2 through December 29.

12) Representatives from Maywood Park and Balmoral Park (William "Duke" Johnston) and

the Illinois Harness Horsemen's Association ("IHHA") (David McCaffrey) testified that there was an agreement between the IHHA and the organization licensees as to the 2013 dates schedules. (Tr. 18-19, 22, 27). Section 3.075(a) of the Act provides in part that the organization licensee conduct live racing no fewer than five days per week, unless a lesser schedule of live racing is the result of an agreement between the organization licensee and the association representing the largest number of owners, trainers and drivers. Mr. Johnston and Mr. McCaffrey also agreed to a slight modification to the original proposed schedules for time off from live racing during a 10-day period in February of 2013. (Tr. 18-19, 27, 55).

THOROUGHBRED

13) **Fairmount Park**, located in Collinsville, Illinois provides racing opportunities for downstate Illinois horsemen and racing fans. Fairmount Park seeks to race 69 thoroughbred days from March 26 through September 20 of 2013. Its application is supported by the downstate horsemen and is unopposed by any other applicant. Fairmount's request is similar to the schedule it raced in 2012. Fairmount has experienced financial difficulty in recent years that has caused it to voluntarily reduce race days. Under Section 26(g)(7.1) of the Act, Fairmount Park must apply for at least as many live racing days as it conducted in calendar year 2000 in order to qualify for thoroughbred purses from simulcast and intertrack wagering. Fairmount Park has met this requirement. The statute does not, however, require the Board to award any specific number of live racing days to Fairmount Park. In 2012, Fairmount was awarded 67 days. In its 2013 application, Fairmount proposed a marketing and promotions budget of \$312,000. In 2011, actual marketing expenditures were \$321,838.

14) Pursuant to Section 26(h)(1)(iii)(B) of the Act, in order for Fairmount to qualify for its intertrack wagering location licenses, the Illinois Horsemen's Benevolent and Protective

Association (“HBPA”) Executive Director Lanny Brooks agreed with Fairmount Park President Brian Zander to conduct fewer than 100 live days of racing at Fairmont Park. (Tr. 47-49). Mr. Brooks testified that the impact fee purse money was spread out over a three-year plan, and the horsemen will be able to race at Fairmount in 2013 going into 2014. (Tr. 49-50).

15) **Hawthorne Race Course** in Stickney, Illinois has been in the thoroughbred horse racing business for 103 years. Hawthorne has a one-mile dirt course and a 7/8 mile turf course, which are both excellent for thoroughbred racing. Hawthorne’s turf course can be used in the spring, as it can regenerate in the summer and be ready for turf racing in the fall. Hawthorne traditionally starts the thoroughbred racing season with a meet in the late winter/spring and closes the thoroughbred season with a late fall, early winter meet. The Board finds that strong race meets in February through April conducted at Hawthorne Racecourse are critical to maintaining a healthy horse population ready to run at Arlington Park in the summer. Hawthorne hosts the prestigious \$500,000 Gold Cup (Grade II) and the \$500,000 Illinois Derby. Hawthorne’s thoroughbred program emphasizes more Illinois bred races and provides racing opportunities and purses for more Illinois horsemen and those who are unable to race at Arlington. In its 2013 application, Hawthorne proposed a marketing and promotions budget of \$1,555,000. The total marketing budget year to date (July 31, 2012) was \$1,497,051. For 2013, Hawthorne has requested live racing 3 days per week on Fridays, Saturdays and Sundays from February 8 through February 28; live racing 4 days per week on Wednesdays, Fridays, Saturdays and Sundays from March 1 through May 4; and live racing 5 days per week on Wednesdays, Thursdays, Fridays, Saturdays and Sundays from October 1 through December 31.

16) **Arlington Park**, located in Arlington Heights, Illinois is viewed nationally and internationally as a premier racing facility and has been successful in attracting world-class

horses and horsemen. The Board has historically awarded Arlington a thoroughbred meet that spans the entire summer. In 2012, Arlington raced from May 1 through September 30, racing four days per week, on Wednesdays (in May and June), Thursdays (in July, August and September), Fridays, Saturdays and Sundays. Arlington's on-track attendance has traditionally been the strongest in the state with an average daily attendance in 2012 of 8,712 people. Arlington's stakes program constitutes 21% of open races, and its centerpiece, the Grade I Arlington Million, generates substantial fan interest in Illinois and nationwide. Out-of-state wagering on Arlington's live product averaged \$2.5 million daily in 2012. Arlington Park has a synthetic surface race track, installed in 2007 and a first class turf course. In its 2013 application, Arlington proposed a marketing and promotions budget of \$5,145,607. In 2011, actual marketing expenditures were \$5,055,612. For 2013, Arlington has requested live racing 4 days per week on Wednesdays, Fridays, Saturdays and Sundays from April 22 through June 30 (dark April 22 through May 2); and live racing 4 days per week on Thursdays, Fridays, Saturdays and Sundays from July 1 through September 30. Arlington also requested night racing on three evenings in June and July of 2013, conditioned upon receipt of requested dark time.

17) At the instant Dates Hearing, Arlington Park and Hawthorne were in dispute regarding the spring thoroughbred meet. For its live racing schedule in 2013, Arlington sought to begin its meet a week earlier than in 2012, but to go dark from April 22 through May 2, in lieu of the Board awarding live racing days to Hawthorne during that time period. Whereas, Hawthorne sought to begin its race meet a week earlier than in 2012 (on February 8, 2013), and to extend its live racing meet during the last two weeks of April through the Kentucky Derby on May 4, 2013. Arlington and Hawthorne also submitted overlapping requests for dark host time during the months of January and February of 2013.

18) Hawthorne presented the testimony of its President Tim Carey, its lobbyist Bob Molaro, and its Chief Financial Officer Jeff Kras. (Tr. 56). Mr. Carey testified that for over a hundred years, Hawthorne has not required the horsemen to pay for winter stabling, which keeps more horsemen in Illinois and more horses ready to run for the spring meet. (Tr. 62). He stated that Hawthorne also provides year-round housing for Illinois horsemen, which means families can go to the same local schools during the year. (Tr. 62). Hawthorne incurs a tremendous expense to keep its facility open during the winter, which he estimates to be in excess of \$4 million since 2006 when Arlington began to receive the majority of the dark host track commissions. (Tr. 62-63); (Hawthorne slide 4). Thus, Hawthorne requested dark host track commissions to offset these winter stabling expenses. (Tr. 63). Hawthorne requested dark host purse money to provide increased purses for Illinois horsemen and to raise the purse of the Illinois Derby in 2013. (Tr. 64). Mr. Carey testified that in the last seven years, Arlington has received \$22 million more than Hawthorne in winter dark host purse money during the January through February time frame. (Tr. 64);(Hawthorne slide 8). With the release of the impact fee money in 2011, Hawthorne received \$17 million for the purse account and has used the impact fee purse money to provide more live racing opportunities for horsemen by moving from a four-day to a five-day fall meet. (Tr. 65);(Hawthorne slide 9). By May of 2013, Hawthorne will have provided a hundred more racing days and nearly a thousand more races using the impact fee purse money. (Tr. 65);(Hawthorne slide 10). Mr. Carey also testified that for the last 50 years, the Illinois Derby has been the most significant dirt race in Illinois. (Tr. 66). The [\$500,000] Illinois Derby was excluded from the Road to the Kentucky Derby when Churchill Downs announced its new point system this year. (Tr. 67). Mr. Carey testified that quality horses will not come to Illinois and run in the Illinois Derby if it does not have at least a \$750,000 purse, especially when these

horses can no longer earn points to qualify for the Kentucky Derby. (Tr. 68). During the two weeks leading up to the Kentucky Derby on May 4, 2013, Hawthorne's proposal would add seven days of live racing, as opposed to just two days under Arlington's proposal, and generate more state revenue. (Tr. 69-70);(Hawthorne slides 16-17). As to Arlington's proposal that Hawthorne end its spring meet one week early in 2013, Mr. Carey testified that the week includes its Illinois-Bred Stakes Day and accounts for 14% of its spring purses and 12% of its spring handle. (Tr. 69-71);(Hawthorne slide 19).

19) Mr. Molaro provided testimony on the historical background of dark host status. (Tr. 72). He testified that over the years, sometimes the Cicero tracks [Hawthorne and Sportsman's Park] had the dark host track commissions and sometimes Arlington did, and the Board just split up the dark host purse money. (Tr. 74). During the six weeks between the end of Hawthorne's fall meet on December 31 and the beginning of its spring meet in February, there are 800 to 2,000 horses stabled at Hawthorne, which costs \$700,000 to \$750,000 each year. (Tr. 75, 77). Mr. Molaro stated that dark host track commissions should be used to offset those stabling expenses, rather than someday having to charge the horsemen. (Tr. 76). By the end of 2013, Hawthorne will have run four full meets using the three percent [impact fee] money for purses. (Tr. 78). He stated that to keep the integrity of purses, the dark host purse money should stay at Hawthorne. (Tr. 78).

20) Regarding the financial statements that Hawthorne submitted with its application, Mr. Kras testified that its independent auditors Crowe Horwath did not issue a "going concern" opinion. (Tr. 91-92);(Staff Report, Ex. D, p. 1). He explained that a "going concern" opinion would have been issued if its independent auditors were concerned about Hawthorne's ability to sustain operations within the next 12-month period. (Tr. 92). He stated that Hawthorne was able

to get a “clean” opinion from the auditors. (Tr. 92);(Staff Report, Ex. D, p. 1). He referred to the commitment and the wherewithal on behalf of the owners of the company to sustain its operations. (Tr. 92). Mr. Carey indicated that there are verbal commitments. (Tr. 95). Mr. Kras explained that Hawthorne’s “Z score” for 2010 is lower because its auditors had to write off a deferred tax credit in 2011 since the racetracks did not receive the 10th [casino] license money. (Tr. 93, 95-96, 253-254, 259);(Staff Report, Ex. D. p. 2); (see Hawthorne’s 2013 Application, Ex. 5, Hawthorne Race Course, Inc. Financial Statements December 31, 2011, p. 16, Note 13—Income Taxes). Mr. Kras testified that Hawthorne has a \$10 million line of credit that is fully collateralized (120 percent collateralization) with liquid or cash assets of a limited trust, Hawthorne and a related company. (Tr. 253, 256); (see Hawthorne’s 2013 Application, Ex. 5, Hawthorne Race Course, Inc. Financial Statements December 31, 2011, p. 12, Note 5—Long Term Debt). Mr. Carey agreed to provide documentation to the Board to confirm that those assets are there to support the line of credit. (Tr. 256-257). He indicated that there is financial backing outside of the corporate assets. (Tr. 258).

21) The Board had requested that a representative of Arlington’s parent company, Churchill Downs, Inc. (“CDI”), be available in person or by telephone at the Dates Hearing. 230 ILCS 5/20(e-5)(1); (see September 18, 2012 email). Kevin Flannery, President of Churchill Downs racetrack, appeared instead. (Tr. 139). He testified that he was ultimately responsible for making the decision not to include the Illinois Derby in the 36 races on the Road to the Kentucky Derby, based in part on horse performance over the last 10 years. (Tr. 118, 133, 140-142). He informally presented the new point system concept to the board of parent company CDI and did not believe that the CDI board voted on it. (Tr. 143-44).

22) Arlington presented the testimony of its General Manager Tony Petrillo and its outside

counsel Shawn Wood. (Tr. 148). Mr. Petrillo testified that Arlington has reinvested in racing by hosting the American St. Leger this year as part of its International Festival of Racing, recruiting horses from an international base. (Tr. 151);(Arlington slide 33). Arlington has extended its marketing efforts by integrating professional sports teams and co-branding processes. (Tr. 152). Mr. Petrillo testified that as host of the Kentucky Derby since 2006, Arlington has been able to maintain steady handle, increase attendance five-fold, and increase pari-mutuel taxes to the state. (Tr. 153). Arlington's average over those years is higher than any other racetrack that has hosted the Kentucky Derby, in handle, pari-mutuel taxes to the state and in attendance. (Tr. 153).

23) Mr. Wood presented data from the McKinsey report that Arlington had presented to the prior Board at the contested Dates Hearing in August of 2011 in support of Arlington's request to eliminate Hawthorne's spring meet in 2012. (Tr. 161-166);(Arlington slides 15-18). Mr. Wood reiterated the report's conclusion that the horse racing industry is in a state of decline, identifying dilution of the best racing product as one of the components of this decline and the need to reconcile the supply to the demand. (Tr. 164). Since 2007, Arlington has invested over \$50 million to maintain and improve its facilities and the live racing product. (Tr. 167);(Arlington slides 11, 19). He testified that Arlington has cut down its number of races per week because less racing with larger fields and better horses leads to a better racing product. (Tr. 167).

Arlington requested additional dark time money to allow it to continue to reinvest in its facilities, to boost purses and to offer the best racing. (Tr. 167). Mr. Wood referred to former Board Chairman Sinopoli's statement at last year's Dates Hearing that his concern over the continued viability of the spring meet "completely changed when the impact fee monies were released in August [of 2011]" (Tr. 170);(Arlington slide 21). "These funds allowed Hawthorne to pay off much of its debt and avoid what our consultants felt was almost certain bankruptcy. More

importantly, it provides a significant source of new funding for purses in the spring which hopefully can attract more and better horses to Hawthorne.” (Tr. 170); (2012 Dates Order, p. 8). Chairman Sinopoli went on to say that “the overriding legislative purpose for the statute that brought us these impact fees was a desire to stabilize purses in order to keep tracks from shutting down. It would therefore be especially inappropriate for the Board to choose this year to close a race meet after waiting five years to finally receive these funds.” (2012 Dates Order, p. 8-9).

24) Arlington also presented testimony of its retained consultant Andrew Richmond of Cornerstone Research. (Tr. 175). Arlington requested the “Z scores” for each applicant from the Board the day before the Dates Hearing, and the Board provided the “Z score” analysis to all applicants. (Tr. 173). Mr. Richmond testified that the Department of Revenue’s “Z score” of negative 2.133 for Hawthorne for the prior year (2010) was incorrect because it did not reflect Hawthorne’s restated 12/31/10 audited financial statements, in which its auditors wrote off a deferred tax asset. (Tr. 177-180, 189);(Staff Report, Ex. D, p. 2). Mr. Richmond concluded that the “Z score” of negative 0.028 for Hawthorne for the current year (2011) was accurate. (Tr. 184-185);(Staff Report, Ex. D, p. 2). Looking at 2012, he testified that Hawthorne reported a net income loss for the first six months of 2012 of approximately \$2.1 million. (Tr. 189);(Staff Report, Ex. D, p. 3).

25) Mr. Petrillo testified that Arlington is not advocating that the Board take everything away from Hawthorne or close down its spring meet in 2013, but rather award Arlington all 45 days of dark host time and shorten Hawthorne’s spring meet by shifting 23 days in February and April to Arlington as additional dark time. (Tr. 194, 197-199, 233);(Arlington slide 35). Mr. Petrillo and Mr. Wood acknowledged that Hawthorne has impact fee purse money through the end of 2013. (Tr. 199, 234).

26) Michael Campbell and Glen Berman testified on behalf of the Illinois Thoroughbred Horsemen's Association ("ITHA"). Glen Berman agreed, pursuant to Section 3.075(a) of the Act, to the schedules of less than 5 days of live racing per week proposed by Arlington and Hawthorne. (Tr. 249). Mr. Campbell and Mr. Berman testified that the ITHA supports maximizing live racing opportunities, with the least amount of dark time as possible. (Tr. 240-242). Mr. Berman also testified to the importance of the Illinois Derby as a race to the horsemen, Hawthorne and the State of Illinois. (Tr. 243). Finally, Mr. Berman indicated that out of the \$26 million impact fee money, there is about \$13 million left in the purse account at Arlington. (Tr. 248).

27) Considering all of the evidence, the Board finds that it is in the best interest of the public and the sport of horse racing to maintain a similar live racing schedule for the 2013 spring meet as in 2012. The Board must consider the total revenue to be derived by the State and horsemen from the conduct of race meetings. Allowing Hawthorne to open its meet on Friday, February 15, 2013, instead of March 1, would provide 6 more live race days for horsemen during the last two weeks in February. Allowing Hawthorne's meet to end on April 30, 2013, instead of April 22, would provide 4 more live race days for horsemen. This live racing schedule for the 2013 spring meet would maximize live racing opportunities for the horsemen, which generates additional state revenue over dark day simulcasting alone. (Staff Report, Ex. C, IRB Statistics, p. 5). Moreover, all tracks still have impact fee purse money to use to pay purses to horsemen for live racing in 2013.

Arlington opening its meet on May 1, 2013, with live racing to begin on May 3, would continue to allow Arlington to host the Kentucky Derby on May 4. Arlington has been able to maintain steady handle, increase attendance five-fold, and increase pari-mutuel taxes to the state

on Kentucky Derby day. (Tr. 153); (Hawthorne slide 18).

28) **Thoroughbred Dark Host Status.** Arlington and Hawthorne submitted overlapping requests for dark host time, both seeking the months of January and February of 2013. Pursuant to Section 3.075(e) of the Act, “During any calendar period in which no organization licensee has been awarded a thoroughbred race meeting, the host track, between the hours of 6:30 a.m. and 6:30 p.m. of such period, shall be an organization licensee determined by the Board, provided the organization licensee has been awarded a thoroughbred race meeting in the current year and is eligible to be a host track.” As Fairmount Park is not eligible to be a host track (per 230 ILCS 5/3.075(a)), Arlington and Hawthorne are the only two thoroughbred organization licensees that may be considered for dark host status. The Board finds that each dark host day can only be awarded to one organization licensee. As a result, the award of each dark host day to one organization licensee necessarily comes at the expense of the other organization licensee, in terms of dark host purse money and dark host track commissions. During the dark thoroughbred period of January and February 2012, the average daily state revenue was roughly \$12,000, the average daily purses earned was roughly \$52,000, and the average daily host track commissions was roughly \$26,000. (Staff Report, Ex. C, IRB Statistics, p. 6). Considering all of the evidence, the Board finds that modification of both Arlington’s and Hawthorne’s requests for dark host time is warranted. The Board finds that awarding the first 26 dark host days to Arlington (January 1 through January 26, 2013) and the last 19 dark host days to Hawthorne before its live racing meet begins on February 15 (January 27 through February 14, 2013) will ensure that Illinois’ horse racing industry remains competitive with neighboring states by providing dark host purse money to attract horses for stakes races at Hawthorne, including the Illinois Derby. (Tr. 290). It will stimulate growth within Illinois’ horse racing industry by

providing dark host track commissions to cover Hawthorne's winter stabling expenses so that the horses do not migrate elsewhere but remain in Illinois throughout the winter and race in Hawthorne's spring meet, followed by Arlington's summer meet. (Tr. 290).

29) In its application for 2012 race dates, Arlington had requested night racing conditioned upon the award of the dark time requested. For 2012, Arlington was awarded the option of night racing on June 30, July 21 and August 25. However, during its 2012 meet Arlington declined to conduct night racing due to the fact that it did not receive all of the dark time it requested. (Tr. 218-220). In its instant 2013 application, Arlington requested to race at "5:00 p.m. on three selected evenings in JUNE and JULY and/or 6:00 p.m. if the requested dark time is awarded to support night racing." Arlington requested "dark host time for the entire months of January and February, 2013." (See Anthony Petrillo's cover letter of July 31, 2012, p. 2). Mr. Petrillo testified that "Arlington Park again will commit to night racing with the awarded dark time of 23 [additional] days." (Tr. 202). As Arlington did not receive all of the dark host time that it requested, its self-imposed condition on its request for night racing was not met. Therefore, night racing for 2013 was not awarded to Arlington.

30) Members of the Board have visited each Illinois racetrack and are familiar with the facilities and accommodations of each applicant. The Board notes the following about Illinois' five racetracks:

Arlington Park

- a) Arlington has a 1 1/8 mile main course with a synthetic racing surface (Polytrack) and a one-mile turf course. Both are ideal for thoroughbred racing.
- b) For its main course, Arlington utilizes the Fontana safety rail, which is preferred by thoroughbred jockeys.
- c) Arlington's public facilities and accommodations are superior for warm

weather racing.

- d) Arlington's backside facilities are excellent for warm weather racing. Three new family dormitories have been built since 2005.
- e) Arlington has sufficient stall space to accommodate all race dates requested.

Balmoral Park

- a) Balmoral has a one-mile clay and limestone track, equipped with lights, which is excellent for harness racing.
- b) Balmoral utilizes the "hubless hubrail," which is considered by harness drivers to be the most important safety feature available.
- c) Balmoral's facilities and accommodations for the public are excellent and appropriate for all weather conditions.
- d) Balmoral's backside facilities and accommodations are adequate for all weather conditions.
- e) Balmoral has sufficient stall space to accommodate all race dates requested.

Fairmount Park

- a) Fairmount Park has a one-mile dirt course and utilizes the Fontana Safety rail.
- b) Fairmount's public facilities and accommodations are adequate.
- c) Fairmount's backside facilities are adequate.
- d) Fairmount has sufficient stall space to accommodate all race dates requested.

Hawthorne Race Course

- a) Hawthorne's accommodations for the public are excellent for all weather conditions.
- b) Hawthorne has a one-mile dirt course, and a 7/8 mile turf course, which is ideal for thoroughbred racing.
- c) Hawthorne uses a removable, modified Fontana Safety rail system, for

thoroughbred racing. Thoroughbred jockeys prefer the Fontana rail.

- d) Hawthorne's backside facilities and accommodations are adequate for all weather conditions. Hawthorne provides and maintains off-site housing for backstretch workers.
- e) Hawthorne has sufficient stall space to accommodate all race days requested.

Maywood Park

- a) Maywood has a half-mile limestone track, equipped with lights, which is acceptable for harness racing.
- b) Maywood utilizes the "hubless hubrail," which is considered by harness drivers to be the most important safety feature available.
- c) Maywood's public and backside facilities and accommodations are excellent for all weather conditions.
- d) Maywood has sufficient stall space to accommodate all race dates requested.

31) The Board finds that Illinois thoroughbred and harness racing, wagering and revenues are still in a slight decline. Handle at brick and mortar locations dropped an additional 4% in 2012, but with Advance Deposit Account Wagering included, total handle is down 2%. Out-of-state handle on Illinois races was up 17%. The State receives no revenue from out-of-state handle on Illinois races. Arlington's Illinois handle was up 1% in 2012, and attendance remained even. Arlington's out-of-state handle on its races increased by 10%. Hawthorne's Illinois handle was up by 17% over its 2011 Spring Meet. Out-of state handle on Hawthorne's races was up 30%. On the harness side, Balmoral/Maywood were up 16% in out-of-state handle on their races and their Illinois handle was up 8%. Fairmount Park's Illinois handle was up 5% and out-of-state handle on its races increased by 51%.

32) The Board has considered each of the applicants consistent with the factors enumerated in Section 20 of the Horse Racing Act (230 ILCS 5/20(e-5)). Consistent with its obligation to act

in the best interest of the public and the sport of horse racing and to determine an overall schedule which enhances the horse racing industry, ensures that Illinois' horse racing industry remains competitive with other states, promotes tourism, stimulates growth within the horse racing industry, and satisfies the market in a variety of geographic areas, and based on the applications, exhibits, and testimony,

IT IS HEREBY ORDERED THAT:

33) Sixty-nine (69) days of thoroughbred racing are allotted to Fairmount Park, Inc., to be conducted at Fairmount Park from March 26, 2013 through September 20, 2013, two and three days per week, Tuesday afternoons, Friday and Saturday evenings.

34) Eighty-nine (89) days of thoroughbred racing are allotted to Arlington International Racecourse, LLC, to be conducted at Arlington Park from May 1, 2013 through September 30, 2013. In addition, Arlington Park is awarded host track status from January 1, 2013 through January 26, 2013. Arlington Park will race four days per week, Wednesdays (in May and June), Thursdays (in July, August and September), Fridays, Saturdays and Sundays with live racing on May 27 and September 2, dark on May 1. Post-times shall be 1:00 p.m., except that Arlington Park may have a 12:00 noon post time on Kentucky Derby Day and an 11:45 a.m. Post-time on Arlington Million Day and a 3:00 p.m. post on Fridays. Arlington shall conclude its Friday afternoon program (last race declared official) by 7:10 p.m. so as not to conflict with the Maywood evening program. Arlington may conduct 12 races on Arlington Million Day. Arlington Park shall operate as the Illinois host track for the entirety of its meet, even on days and during weeks when no live racing occurs.

35) One hundred and one (101) days of thoroughbred racing are allotted to Hawthorne Race Course, Inc., to be conducted at Hawthorne Race Course from February 15, 2013 through

February 28, 2013, three days per week on Fridays, Saturdays and Sundays. March 1, 2013 through April 30, 2013, four days per week on Wednesdays, Fridays, Saturdays and Sundays, dark on March 31. October 1, 2013 through December 31, 2013, five days per week, dark Mondays and Tuesdays and November 28 and December 25. In addition, Hawthorne Race Course is awarded host track status from January 27, 2013 through February 14, 2013. During live racing, post-times shall be 1:00 p.m., except that Hawthorne may have a 3:00 p.m. post on Fridays, as daylight may permit. Hawthorne Race Course shall operate as the Illinois host track for the entirety of its meet, even on days when no live racing occurs. Finally, Hawthorne shall provide the following to the satisfaction of Board staff (Tr. 276, 283-284, 286):

a) documentation that Hawthorne Race Course, Inc.'s \$10 million line of credit is collateralized; and

b) commitment by the ownership in writing, either collateralized or supported by financial statements, to cover race meet operations and satisfy statutory obligations under the Act.

36) One hundred and fifty (150) nights of harness racing are allotted to Balmoral Racing Club, Inc. to be conducted at Balmoral Park from January 2, 2013 through December 29, 2013, racing three nights per week, Wednesdays, Saturdays and Sundays. Dark on February 3, 6, 9 and 10, March 31 and December 25. Post-times shall be between 7:00 p.m. and 7:45 p.m., except that Sunday and New Year's Eve post-times may be at 6:30 p.m. Balmoral shall operate as the Illinois host track for the entirety of its meet, even on days when no live racing occurs. Balmoral may wager on up to 14 races on Saturdays and 12 races on Sundays.

37) One hundred and one (101) nights of harness racing are allotted to Maywood Park Trotting Association, Inc. to be conducted at Maywood Park from January 3, 2013 through

December 27, 2013, racing two nights per week on Thursdays and Fridays. Dark on February 7 and 8, and November 28. Post-times shall be between 7:00 p.m. and 7:45 p.m. Maywood Park Trotting Association shall operate as the Illinois host track for the entirety of its meet. Maywood may wager on up to 12 races on Thursdays and 14 races on Fridays.

38) No organization licensee receiving racing dates pursuant to this order shall be deemed to have a vested interest, property right or future expectation to receive an organization license in any subsequent year as a result of the granting of an organization license for the calendar year 2013. 230 ILCS 5/20(f).

39) Each organization licensee shall adhere to their published post times for each race, allowing for reasonable deviation. (Tr. 264, 279, 286).

40) Each organization shall maintain an open backstretch with sufficient stall space to accommodate horses for all dates awarded. (Tr. 264-265, 279, 286).

41) Each organization shall have a written agreement with their respective horsemen's association no later than 30 days before the commencement of their respective race meet. If no agreement is reached by the 30-day deadline, the organization shall notify the Board's Executive Director who shall notify the Board's Chairman, who will either serve as a mediator or designate a mediator for the resolution of the dispute. (Tr. 279).

42) As a condition of its license, each organization licensee agrees to the following before the commencement of their respective 2013 race meets, to the satisfaction of the Board:

Arlington Park – properly install and maintain the inner turf rail per the manufacturer's instructions or replace it. (Tr. 275).

Balmoral Park – purchase new saddle pads; submit a plan to the Board by March 1, 2013 for improving backstretch lighting and installing security cameras in the paddock and parking lots. (Tr. 277).

Fairmount Park– purchase or lease a new starting gate; repair or replace the backstretch

paging system; and clean and/or restore the outside fence of the racetrack. (Tr. 273-274).

Hawthorne Race Course – repair backstretch road between Laramie Ave. and maintenance garage; and level roads between the barns. (Tr. 276).

Maywood Park - purchase new saddle pads; repair asphalt behind barns A3 through A6; make necessary repairs to barn C1 to resolve the moisture problem; level off sewer caps where necessary; and submit a plan to the Board by March 1, 2013 for installing security cameras in the paddock and parking lots. (Tr. 278).

In addition, Board staff will provide under separate cover, a list of general maintenance items that must be completed to the satisfaction of the Board.

- 43) Each organization shall establish and maintain security staffing at a level that is satisfactory to the Board.
- 44) The issuance of organization licenses shall be subject to the condition that prior to its race meeting, each organization licensee shall furnish to the Board the following inspection reports:
 - a) A report from the Health Department of the municipality in which the track is located, or the Health Department of the County or State if the municipality lacks jurisdiction. This inspection report shall include, but not be limited to, an inspection of kitchen and concession equipment, water supply, sewage, drainage, housing and sanitation facilities of both the backside and the public areas. This report shall state that the facilities inspected at the particular track are in satisfactory compliance with the applicable health code provisions.
 - b) A report from the Building Department of the municipality in which the track is located, or the Health Department of the County or State if the municipality lacks jurisdiction, stating that all the buildings located on the physical plant of the particular track are in satisfactory compliance with the applicable building code provisions.
 - c) A satisfactory report from the State Fire Marshal's Office. This report shall detail any corrective action required in the areas of fire prevention, detection, suppression, construction, or health and safety addressed by the State Fire Marshal, the Board's Fire Safety rules (11 Ill. Adm. Code 403), or any state statutes which may be applicable. If the track appeals the findings of the Office of the State Fire Marshal, a copy of said appeal shall be filed with the Board in lieu of the Statement of Satisfactory Compliance. All tracks shall keep Board staff apprised of the status of any appeals. Upon acceptance of the 2013 racing dates, each organization licensee shall remit \$2,000 payable to the Illinois State Fire Marshall's

Office and submitted to the Board, for fire safety inspection reports, which are required by regulation.

- d) Copies of all interim inspection reports, citing code and fire rule violations, if any, shall be submitted to the Board by the organization licensee within three (3) working days of receipt by the organization licensee. In the event of successive race meets of the same breed at the same track, only the first organization need submit the inspection reports required in this paragraph, unless any applicable rules require additional inspections.

45) Prior to the issuance of an organization license, each applicant shall file an admission tax bond in the amount of \$25,000 and a pari-mutuel tax bond in the amount of \$200,000. Said bonds shall be filed with the Board not less than 20 days prior to the opening of each applicant's meet.

46) Each organization licensee, within 10 days of receipt of the final executed Dates Order, shall file with the Board an acceptance of the award, and pay to the Board \$110 for each racing date awarded.

47) Each thoroughbred organization licensee shall submit its proposed stakes schedule, including proposed purses, to the Board for its approval at least 60 days prior to the opening of a new race meeting. Accompanying the proposed stakes schedule shall be a letter of approval or disapproval from the horsemen's groups.

48) Each organization licensee accepting thoroughbred dates under this order shall publish condition books covering at least the first seven (7) days of the meet and make them available to horsemen at least three (3) weeks prior to opening day; except Hawthorne Racecourse and Fairmount Park, Inc., which shall provide such books no later than six (6) weeks prior to opening day. Thereafter, condition books shall be provided no later than three (3) weeks prior to the effective date of the first day of racing provided in such subsequent condition books.

49) Each licensee shall make pari-mutuel settlements within a 15-day cycle. Pari-mutuel settlements include, but are not limited to, live and host track commissions, purse allocations, outstanding pari-mutuel winnings, surcharges and interstate host fees.

50) The failure of any organization licensee to satisfy any of the aforementioned conditions or mandates to the Board's satisfaction may result in civil penalties being assessed against them, rescission of their racing dates, and revocation of their organization licenses.

51) Attached hereto as Appendix A and made a part hereof is a chart of the 2013 dates awarded.

52) The commissioners approved the 2013 racing schedule by a vote of 6 to 2. The following commissioners voted in favor of the schedule: Beauvais, Byrne, LaPidus, Monat, Scates and Whalen. The following commissioners voted against the schedule: Berry and Reyes.

53) This is a final administrative decision subject to the Administrative Review Law. 230 ILCS 5/46. This decision may be challenged by the filing of an action for administrative review within 35 days of deposit in the U.S. mail. 735 ILCS 5/3-103.

54) This document may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one document. Signatures may be transmitted initially by facsimile, with hard copy to follow.

[Signature Page to Follow]

APPENDIX A

2013 RACING DATES SCHEDULE

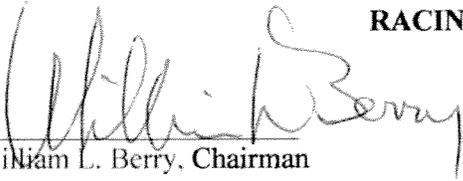
THOROUGHBRED

	<u>Host Days</u>	<u>Live</u>	<u>Dark</u>
Arlington Park January 1 through January 26 (no live racing) May 1 through September 30	179	89	90
Hawthorne Race Course January 27 through February 14 (no live racing) February 15 through April 30 October 1 through December 31	186	101	85
Fairmount Park March 26 through September 20	n/a	69	

HARNESS

	<u>Host Days</u>	<u>Live</u>	<u>Dark</u>
Balmoral Park January 2 through December 29	263	150	113
Maywood Park January 3 through December 27	102	101	1

**BOARD ORDER SIGNATURES
RACING DATES FOR 2013**


William L. Berry, Chairman

Patricia Beauvais

Kathy Byrne

Michael LaPibus

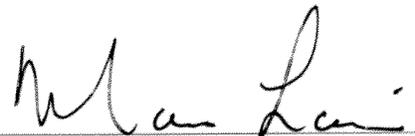
Allan M. Monat

Benjamin Reyes

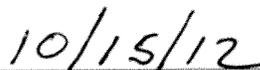
Hugh Scates

Roger F. Whalen

Action taken by the Board at its
September 25, 2012 meeting.



Marc Laino, Executive Director



Date Executed

**BOARD ORDER SIGNATURES
RACING DATES FOR 2013**

William L. Berry, Chairman

Patricia Beauvais

Patricia Beauvais

Kathy Byrne

Michael LaPidus

Allan M. Monat

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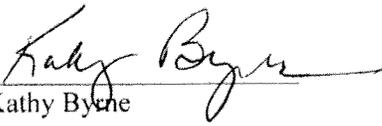
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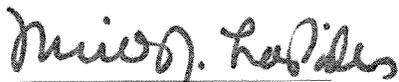
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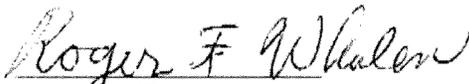
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