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to the
OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE
HOUSE FINANCIAL SERVICES COMMITTEE**

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I appreciate this opportunity to present the views of the horse industry on the financial aspects of Internet gaming as it applies to the pari-mutuel horseracing industry.

I am testifying today in my capacity as Deputy Commissioner and Chief Operating Officer of the National Thoroughbred Racing Association (the "NTRA"). The NTRA is the national organizing body of the sport of Thoroughbred racing representing the interests of the majority of racetracks, owners and breeders in the United States.

THE PARI-MUTUEL RACING AND BREEDING INDUSTRY

Pari-mutuel horseracing, including off-track and inter-track wagering is legal in 43 states and involves the racing of Thoroughbreds, Standardbreds, Quarter Horses, Arabians, Appaloosas and Paints. There are over 175 racetracks in the U.S. Racing and racehorse breeding is a widespread and diverse industry that includes sports, legal wagering, recreation and entertainment and is built upon an agricultural base that involves the breeding and training of the horses.

Economic Impact

According to the "Economic Impact of the Horse Industry in the United States," a study done by Barents Group, LLC, the economic and fiscal consulting unit of KPMG Peat Marwick LLP, for the American Horse Council Foundation, racing and racehorse breeding have a total economic impact in the U.S. of \$34 billion and generate 472,800 total full-time-equivalent jobs. There are 941,000 people and 725,000 horses involved in the racing industry.

Wagering on horseracing is permitted in 43 states and there is an active horse breeding and training business in all 50 states. In many, the economic contribution of the racing and breeding industry to state and local economies is substantial and the industry ranks among the state's most significant economic entities. For example, in New York, it involves 45,000 horses, has a \$2.6 billion economic impact and generates 33,600 full-time job equivalents; in Florida, it involves 37,000 horses, has a \$2.1 billion economic impact and generates 27,300 full-time equivalent jobs; in California it involves 69,000 horses, has a \$4.1 billion economic impact and generates 52,000 FTE jobs; in Illinois, it involves 52,000 horses, has a \$2 billion economic impact and generates 30,700 FTE jobs; in Ohio, it involves 40,000 horses, has a \$1.3 billion economic impact and generates 17,000 FTE jobs; and in Texas, it involves 74,000 horses, has a \$1.8 billion economic impact and generates 27,900 jobs.

Pari-mutuel racing generates over \$500 million annually in direct state and local revenue from pari-mutuel taxes, track licenses, occupational licenses, admission taxes and miscellaneous fees.

Racing as a Sport

Racing is an activity that attracts millions of fans who appreciate it and follow it as a sport and who enjoy the excitement of the race and the athletic ability of the horses. The Triple Crown and Breeder's Cup World Thoroughbred Championship races are considered among the most important sporting events conducted in the United States each year and are widely reported in the sports media. Over 160 additional hours of top Thoroughbred races are broadcast on national television each year, on networks including NBC, CBS, the ESPN networks, and CNBC. The national championships of Standardbred and Quarter Horse racing are also televised nationally and widely covered by the media. In addition, most major U.S. newspapers cover racing and print the results of the races at their local tracks on a daily basis, much like they print the box scores of other sports.

The Pari-Mutuel System

While horseracing is a sport on which one can gamble, it would be erroneous to assume that pari-mutuel wagering is the same as other forms of gambling. Unlike most other forms of gambling, horseracing uses the pari-mutuel system in which bettors wager against one another instead of against the "house." Of the total amount wagered on a particular race, approximately 80% is returned to winning bettors. The other 20%, called the "takeout," is shared between the state government, the racetrack and the horsemen who race at the track. Takeout rates, which vary from state to state, are published in track programs, which are available at race tracks and at simulcast wagering sites away from the track, so that fans know the rates and how they might affect their wagering.

Wagering computations are accomplished by a totalisator machine, a computer, that adds bets over and over again during the course of betting. Every 30 to 60 seconds the "tote" flashes new betting totals and odds for each horse. The machines contain a number of features designed to minimize the potential for pari-mutuel fraud or machine malfunction. These features include coded ticket paper and duplication of all critical functions by two computers working independently of one another.

I point this out because the pari-mutuel system and the published information available ensure that the public has easy access to data regarding the wagering odds. The use of the tote machine allows bettors to determine the betting odds every 30 to 60 seconds. In addition, the race upon which the wager is made, and paid, is a public event, watched by fans at the track or off-track facility, often viewed by others on television or cable, and always overseen by the stewards at the track itself and the state racing commission to ensure the integrity of the race.

In 2000, over 30 million people attended the races and wagered over \$14 billion, approximately 80% of which was returned to the winning players.

CURRENT ACTIVITIES OF RACING

The dissemination of information about racing, simulcasting, account wagering and commingling of pari-mutuel pools have been ongoing activities conducted by state-licensed entities for many decades. These activities, which in today's modern world are now heavily dependent on the use of computer networks and, in many cases the Internet, are the primary revenue-generators of the racing and breeding industry.

Information

Like other businesses, we live in a highly complex and ever-changing technological world. In this environment new industries have sprung up virtually overnight forcing existing industries to adapt and change practices in order to compete for the public's support. This is particularly true in the areas of wagering and entertainment.

Like others, the horseracing industry has had to adapt and change dramatically in the face of exploding competition and new technology. An example of that is that many racetracks, horsemen's associations and private businesses are now advertising and offering information on the sport through various media, both traditional and more technological state-of-the-art, including the Internet.

The process of betting on horse racing and selecting the winner is called "handicapping." It is a cerebral process for serious bettors that spend a great deal of time at the track, and elsewhere, pouring over information that will help them select the winners of races. For students of the sport this is not a random selection. The "handicapping" information used in this process has been available in written form since racing began and is similar to the statistical information available for other sports.

The racing industry is presently offering a great deal of this type of "handicapping" information in publications, on-the-wire, over toll-free numbers and over the Internet in the form of advertisements for state-licensed and regulated race tracks, information and "how-to" sites, "tout" sheets, past performance information, betting lines and similar information, that will market the racing product to new fans and allows existing patrons to participate more successfully.

This continued flow of this information is critical to the racing business and we submit should not be affected by any changes to current law.

Simulcasting and Account Wagering

Prior to 1970, legal pari-mutuel wagering on racing was limited to those at the track where the race was run. In 1970, the New York legislature approved off-track wagering. As an aside, at that time the computerized system operated by New York OTB (Off-Track-Betting) was one of the first real-time, on-line computer systems in the U.S. Since then, many states, and the federal government under the Interstate Horseracing Act of 1978, have authorized racetracks to simulcast or transmit signals of their races off-track into other states and jurisdictions ("interstate simulcasting") under applicable law.

With the continued development of technology, by the early 1980s racing was able to further improve its product by electronically linking pari-mutuel wagering pools among tracks in separate jurisdictions through a sophisticated computer network (a process known as “commingled pools” or “common pooling”) so that payouts could better reflect the size and wagering behavior of the entire betting public.

The racing industry’s continuing utilization of state-of-the-art technology has resulted in the ability of the industry to survive and offer its patrons a better product. In fact, today over eighty percent of the money wagered on racing is bet at facilities or locations other than where the race itself is run. Again, all with the approval and regulation of the states involved.

Another process for pari-mutuel wagering on racing that has expanded over the two last decades is account wagering, whereby an account holder establishes an account with a licensed account wagering facility and is able to send instructions to place wagers from that account via telephone or other electronic means without being physically present at the facility. Currently, eleven states, including Connecticut, Kentucky, Louisiana, Maryland, Nevada, New Hampshire, New York, Ohio, Oregon, Pennsylvania and South Dakota, have enacted legislation specifically authorizing the acceptance of account wagers by licensed facilities within those States and a number of others are considering similar legislation.

Account wagering is not a new activity in the United States. Telephone account betting has been offered in New York for over 25 years by New York City Off Track Betting and upstate New York Off Track Betting entities-- all state agencies. These entities have accepted wagers from residents of New York and other states who had established accounts in New York.

In order to keep pace with modern technological advances, the horseracing industry needs to be able to continue these activities, provided that such activities are conducted in accordance the Interstate Horseracing Act of 1978 and applicable state laws or regulations.

FEDERAL AND STATE POLICIES ON PARI-MUTUEL WAGERING ON HORSERACING

Gambling, including that conducted on horseracing, has always been of concern to the federal and state governments. Throughout American history, the prohibition or legalization and regulation of gambling has primarily been a function of the states. The only time that the federal government has become involved has been when one or more states could not solve a problem without federal intervention. But even in these instances, for the reasons discussed above and others, pari-mutuel racing has often been either treated differently or specifically considered under federal gambling laws. The racing industry has developed to its current status under a regulatory framework of state law and regulation and the Interstate Horseracing Act of 1978. In order for the racing and breeding industry to continue to compete in today’s economy, it must be able to continue to do so under these same statutes.

State Regulation - A Long History

Pari-mutuel racing has been conducted in the United States under state authority and regulation for over 75 years. In every state that has allowed legalized wagering on horseracing, strict state oversight and regulation has accompanied its introduction and growth. In each state the pari-mutuel industry is regulated by an agency most commonly known as the state racing commission. Among commission prerogatives are the licensing of track and horse owners, trainers, jockeys, drivers and all others involved in the pari-mutuel sport, and the promulgation and enforcement of the specific regulations under which the industry must operate. All matters pertaining to the operation of pari-mutuel racing, including wagering, are regulated by these agencies on behalf of the governors and state legislatures.

Over the years the states have consistently acted on the perceived need to closely regulate legal wagering and protect the public's interest in pari-mutuel sports. The actions of state legislatures and the racing commissions that carry out their policies have been predicated on the desire to: (1) determine whether to allow pari-mutuel wagering on horseracing within their borders; (2) maintain the integrity of the events on which the public is allowed to wager; (3) oversee the state's tax-related and economic interest in that wagering; (4) ensure that licensees meet specific standards of qualification; and (5) control any unsavory elements which may attempt to associate with the wagering aspects of the sport.

The Interstate Horseracing Act of 1978

In 1978, Congress enacted a federal statute that specifically deals with interstate gambling on horseracing. The Interstate Horseracing Act of 1978 (“IHA”) made clear that a racetrack controlled wagering on its races in interstate commerce and provided for industry and regulatory approvals before betting was permitted between jurisdictions where the wagering was legal.

In the findings to the IHA, Congress said that states have the primary responsibility for determining what forms of gambling may take place within their borders, but that the Federal government should prevent interference by one state with the gambling policies of another. In the IHA Congress provided that with respect to the limited area of interstate off-track wagering on horse racing:

There is a need for Federal action to ensure that States will continue to cooperate with one another in the acceptance of legal interstate wagers.

Importantly, in passing the IHA, Congress specifically recognized that “pari-mutuel horseracing is a significant industry which provides substantial revenue to the States” and that “properly regulated and properly conducted interstate off-track betting may contribute substantial benefits to the States and the horseracing industry.”

Consistent with these findings, Congress stated as a matter of congressional findings and policy that:

It is the policy of Congress in this chapter to regulate interstate commerce with respect to wagering on horseracing, in order to

further the horse racing and legal off-track betting industries in the United States.

For more than twenty years the combination of state statutes and regulations and the IHA provided the racing industry with a workable regulatory framework that has allowed the industry to develop its current activities within clear parameters and guidelines.

During consideration of the Internet gambling bills in the last Congress, however, the Department of Justice took a new and unexpected position regarding the legality of the long-standing activities of the horseracing industry we have described above. In opposing a provision in the Internet Gambling Prohibition Act of 1999, H.R. 3125, which grandfathered certain forms of licensed pari-mutuel wagering from the prohibitions of the Act, a Deputy Assistant Attorney General in the Department of Justice questioned, for the first time, the legality of interstate simulcast wagering, commingling of pools and account wagering under the Federal Wire Act (18 USC 1084).

Because these long-standing, state-sanctioned activities account for a substantial majority of the revenues for the horseracing and breeding industry, this unprecedented position by the Department of Justice put at risk the ongoing viability of the \$34 billion horseracing and breeding agribusiness. The activities questioned had been openly offered for decades in many states in compliance with state law, the regulation of the state racing commission and the IHA. For example, New York has offered interstate account wagering through its state-owned off-track wagering facilities for decades under the regulation of the New York Racing and Wagering Board and the New York Attorney General since the early 1970s.

Our industry made significant efforts to communicate to the Justice Department and Congress that the new position was an extreme and incorrect interpretation of the Wire Act and was contrary to the language and spirit of the IHA -- enacted seventeen years after passage of the Wire Act-- for the express purposes of ensuring proper regulation of "interstate off-track betting" and "furthering the horseracing and legal off-track betting industries in the United States."

Fortunately, Congress agreed with our position and concern and amended the IHA last year to clarify that simulcasting, account wagering and commingling of pools may be conducted on an interstate basis where lawful in the States involved. This amendment to federal law did not expand any wagering activities, which as noted have been ongoing for decades, and did not override any state laws regulating, permitting or prohibiting such wagering.

THE INTERNET GAMBLING ISSUE

The regulation of all forms of gambling is essential to protect the public and ensure compliance with applicable federal and State laws. Our industry is opposed to any unregulated or unauthorized gambling, particularly on racing. Accordingly, over the past few years, we have supported various measures in Congress designed to prevent illegal, unregulated Internet gambling, including The Internet Gambling Prohibition Act of 1999, where such legislation included appropriate provisions that would allow horseracing to continue to conduct its existing activities using modern technology.

As a result of participating in this legislative process, we are aware that any legislation dealing with Internet wagering will involve very complicated legal and technical issues and are concerned that imprecisely or improperly drafted legislation may adversely impact activities the racing industry is currently conducting under state regulation and the IHA with respect to the dissemination of information, interstate simulcasting, commingling of wagers and account wagering.

The worst possible result for all concerned would be to enact legislation that would restrict licensed and regulated entities from conducting their current business using modern technology with the result being that many of those who wish to wager on horseracing will be forced to deal with unlicensed and unregulated vendors, either off-shore or operating illegally within the United States. This would open the door to consumer fraud and result in significant decreases in revenues for the licensed operators, purses (which are directly derived from licensed wagering revenues) and tax revenues for the Federal and State governments.

It is critical to the future of the racing industry, the agri-business it supports, the state revenue and employment it generates, the sporting and the entertainment benefits it provides to countless fans, that modern distribution mechanisms of racing information and its product be available, so long as they continue to meet regulatory criteria established by state governments and comply with the IHA. It is also critical that the racing industry have the opportunity to take advantage of any and all technological advancements in the future distribution of its information and products in order to successfully compete against other forms of gambling, sport and entertainment.

Because of the unique status of racing and breeding industry as a major United States agribusiness supporting hundreds of thousands of full time jobs in over 40 states and the longstanding regulatory structure applicable to it, we believe that any legislation in the area of illegal Internet gambling must give appropriate consideration to our industry. Any such legislation should maintain the effective framework of state and federal regulation of pari-mutuel horseracing and the current protections offered to the public through this well regulated system and respect the longstanding federal policy to allow individual states primary authority over wagering issues within their respective states. We look forward to working with the members of Congress to accomplish this result.