

**STATE OF ILLINOIS
ILLINOIS RACING BOARD**

**IN THE MATTER OF THE ISSUANCE OF ORGANIZATION LICENSES
AND THE ALLOTMENT OF THOROUGHBRED AND STANDARD BRED RACING
DATES FOR CALENDAR YEAR 2021**

ORDER

This matter came to be heard on the applications of Arlington Park Racecourse, LLC (“Arlington”), Fairmount Park, Inc. (“Fairmount”), and Hawthorne Race Course, Inc. (“Hawthorne”) for organization licenses and 2021 thoroughbred racing dates; and the application of Suburban Downs, Inc. (“SDI”) for an organization license and 2021 standardbred racing dates¹.

Each applicant submitted a written waiver of the contested case provisions of the Illinois Administrative Procedure Act (5 ILCS 100/1, *et seq.*) and elected to present evidence to the Illinois Racing Board (“Board”) at an open meeting conducted on September 16, 2020 (“2021 Dates Hearing”) at the James R. Thompson Center and via WebEx. The Board heard testimony from witnesses for each of the applicants and considered the applications and exhibits submitted by each of them. In addition, the Board heard testimony from representatives of the Illinois Thoroughbred Horsemen’s Association (“ITHA”) the Illinois Harness Horsemen Association (“IHHA”), and the Illinois Horsemen’s Benevolent and Protective Association (“IHBPA”). At the 2021 Dates Hearing, the Board voted on the applications for organization licenses and race dates for 2021.

It is the public policy of this State to: (a) support and enhance Illinois’ horse racing industry, which is a significant component within the agribusiness industry; (b) ensure Illinois’ horse racing industry remains competitive with neighboring states; (c) stimulate growth within Illinois’ horse racing industry, thereby encouraging new investment and development to produce additional tax

¹ Nick it Up, LLC submitted an application, but the applicant requested that their application be deferred to a later date for consideration by the Board. (9/16/20 Tr. 9).

revenues and to create additional jobs; (d) promote the further growth of tourism; (e) encourage the breeding of thoroughbred and standardbred horses in Illinois, and (f) ensure that public confidence and trust in the credibility and integrity of Illinois horse racing operations and the regulatory process is maintained. (230 ILCS 5/1.2).

In granting organization licenses and allocating dates for horse race meetings², Section 20(e-5) of the Illinois Horse Racing Act of 1975 (“Act”) vests the Board with the discretion to determine an overall racing schedule which is conducive to the best interest of the sport of Illinois horse racing and Illinois public. (230 ILCS 5/20(e-5)). 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 applicant 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 applicant conducting a race meeting (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 and marketing budget and prior year’s promotional and marketing activities and expenditures for those activities;
- Any agreement among applicants for the issuance of racing dates; and,
- The extent to which applicants meet or exceed other standards adopted by the Board. *Id.*

The Board has carefully reviewed each of the applications, exhibits, and supplemental information submitted by the applicants; all the testimony and evidence; and the Board has

² “Horse race meeting” or “race meeting” or “meeting” shall mean the whole period of time, whether consecutive dates or those instances where nonconsecutive dates are granted, for which an organization license to race has been granted to any one organization licensee by the Board. (230 ILCS 5/3.07).

- June 1 through July 12 - Racing 3 days per week on Fridays, Saturdays and Sundays.
- July 13 through September 6 - Racing 4 days per week on Thursdays, Fridays, Saturdays and Sundays. Dark September 3 and September 4.
- September 7 through September 30 - Racing 3 days per week on Thursdays, Fridays, Saturdays. Dark September 27 through September 30. Racing on September 23.

Hawthorne Race Course - 37 live thoroughbred programs and 151 host programs.

- January 1 through January 4 – Dark January 1 and 2.
- March 3 through April 26 (dark host time) – No live racing.
- October 1 through December 31 - Racing 3 days per week Thursdays, Fridays and Saturdays. Dark October 1, November 26, December 24, 25 and 31.

Fairmount Park - 60 live thoroughbred programs.

- March 3 through May 31- Racing 2 days per week on Tuesdays and Saturdays.
- June 1 through July 11-Racing 3 days per week on Tuesdays, Fridays and Saturdays.
- July 12 through September 7 - Racing 2 days per week on Tuesdays and Saturdays. Dark on September 5. Racing on September 7.

Suburban Downs - 92 live harness programs and 366 host programs.

- February 15 through February 29 - Racing 2 nights per week on Saturdays and Sundays;
- March 1 through September 20 - Racing 3 nights per week on Fridays, Saturdays and Sundays. Dark April 12.

(2020 Dates Order, Par. 24-27);

7) 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 2020 race meeting through August 31, 2020 are set forth below:

THOROUGHBRED	Average Daily Handle	Average Daily State Gov. Revenue*	Average Commingled Handle**
Arlington Park	\$708,932	\$10,634	\$1,158,100
Fairmount Park	\$51,994	\$390	\$528,769
Hawthorne Race Course (Spring)***	\$0	\$0	\$0

STANDARD BRED

Suburban Downs	\$301,319	\$4,520	\$759,203
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*This reflects only the 1.5 percent pari-mutuel tax and not local government revenue.

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

***Hawthorne Race Course did not run a spring meet in 2020 due to expected casino construction.

(Staff Report, Ex. 3)

- 8) The Board considered the total revenue to be derived by the State and horsemen from the conduct of race meetings, without regard to Section 32.1 of the Act (pari-mutuel tax credit due to paid real estate taxes). Purses earned are a statutory percentage of, and proportionate to, handle generated. (230 ILCS 5/26, 26.2, 29).
- 9) **Consideration of Financial Integrity.** The Board carefully considered the financial integrity of each applicant. In doing so, the Board took into consideration the economic climate in which the applicants, equine and agricultural participants, and the Board all must operate. The decline in handle and revenues from wagering since 1997 has caused concern over the financial health of each applicant. (2000-19 Annual Reports).

In assessing the financial integrity of the applicants, the Board has reviewed each applicant's independently audited financial statements (2020 Apps., Ex. 2); (Staff Report, Ex. 5). The Board also considered a Financial Analysis of each applicant by IRB's Chief Fiscal Officer, Vitto Ezeji-Okoye, as well as the General Financial Statement Review Checklist ("Checklist"), which is a summary of the information contained in each applicant's financial statements (Staff Report, Ex. 5). The Checklist includes a Z-score calculation for each applicant, of which the Board took official notice. A Z-score is a tool used to determine the potential risk of a business filing bankruptcy. *Id.* The Z-score factors in components of debt, equity, assets, and liabilities to determine

a final Z-score. *Id.* The Z-score is then compared to historical information to evaluate the potential of bankruptcy. *Id.* A safe Z-score is greater than 2.60 with the potential for bankruptcy reflected by a score less than 1.10. *Id.* The Z-score does not account for collateral or pledged assets that are not reflected on an entity's balance sheet. *Id.* Arlington's current year (2019) Z-score is 3.68 compared to its prior year (2018) Z-score of 3.76; Hawthorne, -11.93 compared to -11.11; Fairmount, 7.68 compared to 10.72; and SDI, 4.73 compared to 4.79. *Id.*

With respect to Hawthorne's negative 11.93 (-11.93) Z-score for calendar year 2019, the Board notes Hawthorne and SDI each received a "clean opinion" from their respective independent auditors. The independent auditor for Hawthorne did include an "emphasis of matter" disclosure. (Staff Report, Ex. 5). The independent audit Note 17 described Hawthorne's plan regrading continuing operations. (Staff Report, Ex. 5). A lease agreement between Hawthorne and SDI for use of Hawthorne Race Course requires SDI to pay substantially all of SDI's profits, as defined, to Hawthorne as additional rents for use of the facility. (SDI App., Ex. 2, Consolidated Financial Statements for 2019, Note 8).

- 10) 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' three racetracks:

Arlington Park

- a) Arlington Park 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 conducive for warm weather racing.
- e) Arlington 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, which is preferred by thoroughbred jockeys.
- 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 adequate for all weather conditions.
- b) Hawthorne Race Course has a one-mile dirt course, equipped with lights, 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 and the "hubless hubrail" for standardbred racing. Thoroughbred jockeys prefer the Fontana safety rail and standardbred drivers prefer the hubless hubrail.
- 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.

STANDARDTBRED

- 11) **Suburban Downs, Inc. at Hawthorne Race Course** in Stickney, Illinois has been in the standardbred horse racing business on and off since 1956. Hawthorne Race Course has a one-mile limestone course, which is excellent for standardbred racing.
- 12) Tim Carey, President and General Manager of Hawthorne Race Course advised, regarding race dates at Hawthorne and SDI for 2021,

“Our request for dates for next year continues to put the interest of the entire industry first. Hawthorne is the only track in Illinois capable of hosting both thoroughbred and standardbred racing and we are committed that both breeds have as much racing as possible. As important as the opportunity to race is, so are the purse amounts available to horsemen when they race. Hawthorne has consistently proven ourselves to be a trusted steward of the purse accounts, and our request for dark host dates insures that horsemen will have the opportunity to earn that money under a mutually agreed to racing schedule. Indeed both the ITHA and IHHA are in favor of our proposed racing calendar”

(Hawthorne App, Intro Ltr); John Walsh, Assistant General Manager of Hawthorne and SDI testified in support of the 2021 joint agreement between Arlington, Hawthorne and SDI (“Joint Agreement”) and proposed racing schedule with Hawthorne, SDI and Arlington. (9/16/20 Tr., 20-30); The Joint Agreement stated that the schedule of dates proposed and agreed upon by the three applicants would serve the best interests of racing. (Staff Report, Ex. 1) Mr. Walsh provided testimony that they are requesting a summer meeting, racing Friday/Saturday/Sunday as they did in 2020. (9/16/20 Tr. 32). Mr. Walsh reported that SDI was up 31 percent per day from last year and up 41 percent per day with all of the ADW, despite the COVID restrictions. (9/16/20 Tr. 21). Mr. Walsh testified that he does not foresee experiencing any issues with signing a contract with the IHHA. (9/16/20 Tr. 24). The Joint Agreement would provide for standardbred racing three (3) nights per week for five (5) months. (Staff Report, Ex. 1). In its 2021 application, SDI proposed a marketing and promotions budget of \$564,500. (SDI App., Ex. 13); (Staff Report, Ex. 7). In 2019, actual marketing expenditures were \$408,682. *Id.* For 2021, SDI has requested 63 nights of standardbred racing to be conducted at Hawthorne Race Course from May 7th through September 26th, racing three nights per week on Fridays, Saturdays and Sundays. (Staff Report, Ex. 1).

THOROUGHBRED

- 13) **Fairmount Park**, located in Collinsville, Illinois provides racing opportunities for downstate Illinois horsemen and racing fans. 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 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. (230 ILCS 5/26(g)(7.1)). Fairmount has met this requirement by requesting 150 race dates for 2020. (Fairmount App. Pg. 1). The statute does not, however, require the Board to award any specific number of live racing days to Fairmount. (230 ILCS 5/26(g)(7.1)). As they have done for the last thirteen years, Fairmount and the HBPA submitted a joint request for 2021 thoroughbred race dates from April 27 through September 6 with a minimum of seven (7) races per day. (Fairmount App., Intro Ltr.). Melissa Helton, President of Fairmount Park and Jim Watkins, President of Illinois HBPA provided testimony in support of Fairmont's dates proposal. Ms. Helton testified about Fairmount's successful year despite COVID restrictions, the development of a sportsbook at Fairmount, and their application for 53 live race days for 2021. (9/16/20 Tr., 10-11). In its 2021 application, Fairmount proposed a marketing and promotions budget of \$379,311. (Fairmount App., Ex. 13); (Staff Report, Ex. 7). Fairmount cited uncertainty as to when they will be permitted to proceed with their racino plans and the ongoing difficulties surrounding COVID-19 for proposing the same advertising budget as they did for 2020. *Id.* In 2019, actual marketing expenditures were \$379,311. *Id.*
- 14) Sections 20(e-3) and 20(e-4.5) requires an organization licensee in Madison County to run at least 700 thoroughbred races each year unless, among other reasons, there is an

agreement in place between the licensee and the breed association representing the largest number of thoroughbred owners and trainers who race horses at the licensee's racing meeting so long as the agreement does not compromise the integrity of the sport of horse racing. The HBPA agreed with Fairmount to conduct fewer than 100 live days of racing at Fairmount in 2020, thus, allowing Fairmount to qualify for an intertrack wagering license and inter-track wagering location licenses pursuant to Section 26(h)(1)(iii)(B) of the Act. (9/16/20 Tr., 15); (Fairmount & HBPA Ltr dated 8/25/20); (Staff Report, Ex. 1). The Board determines that the agreement between HBPA and Fairmount does not compromise the integrity of the sport of horse racing and satisfies the statutory requirements of the Act. (9/16/20 Tr., 53)

The agreement between Fairmount Park and the HBPA, provides in relevant part:

At the close of business on, August 23, 2020 the Horseman's Purse balance was overpaid, \$775,678.

(Fairmount & HBPA Ltr dtd 8/25/20); (Staff Report, Ex. 1); (9/16/20 Tr., 53-54).

Ms. Helton and Mr. Watkins presented that the factors that contribute to Fairmount running fewer than 100 days of racing include: the loss of race days due to the COVID-19 pandemic causing a decrease in revenues and an impact on the purse balance. *Id.* Fairmount and the HBPA agreed that racing 100 days at Fairmount is just not possible for 2021 and therefore, the parties agreed to a schedule with 53 days of racing. *Id.* The "HBPA" did testify at the 2020 Dates Hearing and submitted a joint letter and schedule for 2021 race dates with Fairmount Park. (9/16/20 Tr., 16); (Fairmount & HBPA Ltr dtd 8/25/20); (Staff Report, Ex. 1). The joint letter included the HBPA's consent to Fairmount, so Fairmount could run less than 100 race days in 2020. *Id.*

Pursuant to Section 26(h)(1)(iii)(C) of the Act, the Board finds because of the insufficient level of purses available, that extraordinary circumstances exist, and that it

is in the best interests of the sport of Illinois horse racing and Illinois public to conduct fewer than 100 live days of racing at Fairmount. (9/16/20 Tr., 53-54); (Fairmount & HBPA Ltr dtd 8/25/20); (Staff Report, Ex. 1).

- 15) **Hawthorne Race Course** in Stickney, Illinois has been in the thoroughbred horse racing business for 111 years. Hawthorne Race Course has a one-mile dirt course and a 7/8-mile turf course, which are both excellent for thoroughbred racing.
- 16) A representative from Hawthorne and SDI (John Walsh, Assistant General Manager) presented their Joint Agreement to the Board. (9/16/20 Tr., 20-21); (Staff Report, Ex. 1). Mr. Walsh advised the Board regarding the construction schedule for Hawthorne and the challenges that may arise but stated that the proposed schedule is good for the industry and the horsemen will have somewhere to be in 2021 and something to look forward to in 2022. *Id.* The Joint Agreement proposes 50 live and 145 total host programs for Hawthorne. (Staff Report, Ex. 1). The Joint Agreement also designates dark host track status (no live racing) from January 1 through January 2. *Id.* In its 2021 application, Hawthorne proposed a marketing and promotions budget of \$564,500. (Hawthorne App., Ex. 13); (Staff Report, Ex. 7). The total marketing expenditures for 2019 were \$408,682. *Id.*

For 2021, Hawthorne has requested 50 thoroughbred race dates, March 6 through April 25, racing two days a week on Saturdays and Sundays, from October 1 through November 30, racing three days per week on Fridays, Saturdays and Sundays, and December 1 through December 31, racing two days per week on Saturdays and Sundays and dark on December 25. (Staff Report, Ex. 1); (Hawthorne App.).

- 17) **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 race meeting that spans the entire summer. Arlington's on-track attendance has traditionally been the strongest in the state. Arlington's stakes program includes its centerpiece, the Grade I Arlington Million, which generates substantial fan interest in Illinois, nationwide, and internationally. Arlington has a synthetic surface race track, installed in 2007 and a first-class turf course. Arlington requested 68 live race dates in 2021. (Arlington App.); (Staff Report, Ex. 1). Arlington's 2021 application proposed a marketing and promotions budget exceeding 2.5 million and 2019 actual expenditures exceeded 2.4 million. (Arlington App., Ex. 13); (Staff Report, Ex. 7).

- 18) Tony Petrillo from Arlington presented the Joint Agreement to the Board. (9/16/20 Tr., 18-20). The Joint Agreement proposes 68 live and 220 dark host days for Arlington in 2020. (Staff Report, Ex. 1). The Joint Agreement designates dark host track status (no live racing) from January 3 through March 5. *Id.* Mr. Petrillo testified during his presentation that they signed the Joint Agreement "so that we could offer horsemen the certainty of being able to race 10 months out of the year with stabling and training for 12 months out of the year." (9/16/20 Tr., 20). Mr. Petrillo explained that the agreement "provides equity amongst the racetracks and allows [them] both to fund [their] race meets through commissions, other revenues, and through purse structures that will allow [them] both to race for [their] requested dates in 2021. (9/16/20 Tr., 19).

HOST TRACK

- 19) "Host track" is defined in Section 3.075(a) of the Act. (230 ILCS 5/3.075(a)). Section 3.075(a) states that an Organization Licensee⁴ can be eligible for simulcast host track

⁴ "Organization Licensee" means any person receiving an organization license from the Board to conduct a race meeting or meetings. (230 ILCS 5/3.09).

status if racing fewer than five (5) days per week and fewer than nine (9) races per day in 2020 if it is the results of

- (1) weather, unsafe track conditions, or other acts of God; (2) an agreement between the organization licensee and the associations representing the largest number of owners, trainers, and standardbred drivers who race at that organization licensee's race meeting, with the Board's consent; or (3) a decision by the Board after public hearing (in which the associations representing the owners, trainers, jockeys, or standardbred drivers who race horses at that organization licensee's race meeting shall participate) either at the time racing dates are awarded or after those dates are awarded or after those dates are awarded due to changed financial circumstances, upon a written petition from the organization licensee, accompanied by supporting financial data as requested by the Board, stating that the organization licensee has and will continue to incur significant financial losses. *Id.*

Arlington, Hawthorne and SDI have requested host track status in 2021. Arlington and the ITHA have a signed agreement to allow for racing fewer than five days a week and nine races per day. (9/16/20 Tr., 39-40). Hawthorne and ITHA do not yet have a contract that expressly allows for racing fewer than five days a week and nine races per day but David McCaffrey, Executive Director of the ITHA testified that coming to an agreement with Hawthorne "shouldn't be a problem." (9/16/20 Tr., 37). SDI has not yet signed a contract with the IHHA but Tony Somone, Executive Director of the IHHA testified that he agrees with the dates requested by SDI, and they "don't anticipate any issues as [they] move forward." (9/16/20 Tr., 47).

- 20) The Board has considered each of the applications consistent with the factors enumerated in Section 20(e-5) of the Act. (230 ILCS 5/20(e-5)). Considering all the evidence, the Board finds that adopting the Joint Agreement is necessary to sustain and promote Illinois' horse racing industry; ensure Illinois' horse racing industry remains competitive with neighboring and other states; to ensure the integrity of Illinois' horse racing; and, to serve the best interests of the Illinois public. (230 ILCS 5/21(b)).

Consistent with its obligation to act in the best interest of the sport of Illinois horse racing and Illinois public; the Board determines the overall schedule which enhances and supports Illinois' horse racing industry, ensures that Illinois' horse racing industry remains competitive with neighboring and other states, promotes tourism, stimulates growth within Illinois' horse racing industry, encourages the breeding of horses in Illinois, and ensures that public confidence and trust in the credibility and integrity of Illinois' horse racing operations; and, the regulatory process is maintained, based on the applications, exhibits, and testimony,

- 21) The Board commends Arlington, Hawthorne and SDI in coming together for a seventh straight year and presenting the Joint Agreement for 2021 race dates with the goal of sustaining themselves and willingness to work with the horseman associations to ensure the best interests of Illinois horse racing. (9/16/20 Tr. 19-21). Section 21(b) of the Act provides in pertinent part:

[t]he Board may exercise discretion in granting racing dates to qualified applicants different from those requested by the applicants in their applications. However, if all eligible applicants for organization licenses whose tracks are located within 100 miles of each other execute and submit to the Board a written agreement among such applicants as to the award of racing dates, including where applicable racing programs, . . . the Board may grant such dates and programs to such applicants as so agreed by them if the Board determines that the grant of these racing dates is in the best interests of racing. The Board shall treat any such agreement as the agreement signatories' joint and several applications for racing dates during the term of the agreement. (230 ILCS 5/21(b)).

The Board finds the granting of racing dates requested pursuant to the Joint Agreement is in the best interests of Illinois horse racing.

- 22) 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 2020. (230 ILCS 5/20(f)).

IT IS HEREBY ORDERED FOR CALENDAR YEAR 2021:

- 23) Fifty-three (53) days of thoroughbred racing are allotted to Fairmount Park Inc. to be conducted at Fairmount Park from April 27 through May 31, racing two days per week on Tuesdays and Saturdays; and June 1 through September 6, racing three days per week on Tuesdays, Fridays and Saturdays and on Monday September 6. (9/16/20 Tr., 53); (Fairmount Agreement letter); (Staff Report, Ex. 1). Fairmount shall card no less than seven races per race program. (Fairmount Agreement letter); (Staff Report, Ex. 1). Post-time shall be 1:00 p.m. on Mondays and Tuesdays, on Saturdays 1:00 p.m. or 7:30 p.m., and on Fridays 7:30 p.m. *Id.*
- 24) Sixty-eight (68) days of thoroughbred racing are allotted to Arlington Park Racecourse, LLC to be conducted at Arlington Park and 220 total host programs. (9/16/20 Tr. 54); (Arlington App., Pg. 1); (Staff Report, Ex. 1). Arlington is awarded dark host track status from January 3 through March 5, no live racing. *Id.* April 26 through May 31, racing two days per week on Fridays and Saturdays. *Id.* Live Racing begins on April 30th. *Id.* Dark April 26 through April 29 and May 7, racing on May 9. *Id.* June 1 through June 30, racing 3 days per week Thursdays, Fridays and Saturdays. *Id.* at 54-55. Racing on June 20th. *Id.* at 55. July 1 through August 14 racing four days per week Thursdays, Fridays, Saturdays, and Sundays. *Id.* at 55. Dark August 4 and 11, racing on August 1 and 8. *Id.* August 15 through August 31, racing 4 days per week on Wednesdays, Thursdays, Fridays and Saturdays. *Id.* September 1 through September 30, racing three days per week on Thursdays, Fridays, and Saturdays. *Id.* Dark September 2, 3, and 26 through 30. *Id.* Racing September 5. *Id.* Post-times on weekends and weekdays shall be 2:00 p.m.; 3:15 p.m. on Fridays May 1 through August 27, except

Kentucky Derby Day which shall be 12:00 p.m. to 1:20 p.m. and Million Day which shall be 12:00 p.m. to 12:45 p.m. *Id.* Arlington shall conclude its Friday afternoon program (last race declared official) by 7:30 p.m. so as not to conflict with SDI's evening program. Arlington shall operate as the Illinois host track for the entirety of its race meeting, even on days and during weeks when no live racing occurs. *Id.* By agreement, Arlington Park shall transfer to Hawthorne Race Course fifty (50) percent of the dark host commission monies from January 3, 2021, through January 22, 2021. *Id.*

- 25) Fifty (50) days of thoroughbred racing are allotted to Hawthorne Race Course Inc., to be conducted at Hawthorne Race Course and 145 total host programs. (9/16/20 Tr. 55); (Hawthorne App., Pg. 1); (Staff Report, Ex. 1). Hawthorne is awarded dark host track status on January 1 and 2, no live racing. *Id.* March 6 through April 25, racing 2 days per week on Saturdays and Sundays. *Id.* October 1 through November 30, racing three days per week, Fridays, Saturdays, and Sundays. *Id.* at 56. December 1 through December 31, racing 2 days per week racing Saturdays and Sundays, dark December 25. *Id.* During live racing, post-times shall be 3:15 p.m. (Hawthorne App., Pg. 1). By agreement, Arlington Park shall transfer to Hawthorne Race Course fifty (50) percent of the dark host commission monies from January 3, 2021, through January 22, 2021. *Id.* at 55.
- 26) Sixty-three (63) nights of standardbred racing are allotted to Suburban Downs Inc. to be conducted at Hawthorne Race Course and 365 total host programs. (9/16/20 Tr. 56); (SDI App., Pg. 1); (Staff Report, Ex. 1). May 7 through September 26, racing three nights per week on Fridays, Saturdays, and Sundays. *Id.* Post-time shall be 7:20 p.m. (SDI App., Pg. 1).
- 27) The race dates application submitted by Nick it Up, LLC. has been deferred by the

- applicant. (9/16/20 Tr. 9);
- 28) Each Organization Licensee shall adhere to their published post times for each race, except when minor adjustments are necessary; provided, however, Board staff is sent reasonable written notice of such change. (9/16/20 Tr. 57).
 - 29) Each Organization Licensee shall maintain an open backstretch for the entirety of their race meet and sufficient temporary living units for backstretch workers and stall space to accommodate horses for all race dates awarded. *Id.* Temporary living units shall be consistent with the applicable state and local occupancy statutes and ordinances. *Id.* In the event that an organization licensee is unable to complete its race meeting, any organization licensee with a subsequent race meeting shall maintain an open backstretch at least three weeks prior to the commencement of its respective race meeting.
 - 30) Each Organization Licensee shall have a written contract with their respective horsemen's association no later than ninety (90) days before the commencement of their respective race meeting. If no agreement is reached by the 90-day deadline, the Organization Licensee shall immediately 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. *Id.*
 - 31) After reviewing the applications for organization licensees and after hearing testimony today from the organization licensee applicants and their respective horsemen's organizations as it relates to host track status pursuant to Section 3.075 of the Illinois Horse Racing Act, the Board finds that the conditions are present to allow a lesser schedule of live racing than 5 days per week and 9 races per day. *Id.* at 56.
 - 32) Board staff may provide separately a list of general maintenance items that must be completed; property, plant or equipment obtained and/or installed; or services provided,

which in the sole discretion of Board staff, is required to conduct, regulate, or promote horse racing at its facilities.⁵ *Id.* at 57. Each Organization Licensee must have the work completed, items obtained and/or installed, or services implemented by the deadline set by Board staff and to its sole satisfaction, including any written extensions. *Id.* at 57.

- 33) Each Organization Licensee shall establish and maintain security staffing at a level that is satisfactory to the Board and ensure compliance with the Act and the Board's Rules, including, but not limited to, section 15(a) of the Act and sections 502.30, 1408.60 and 1424.270 of the Board's Rules. *Id.* (230 ILCS 5/15(a)); (11 Ill. Admin. Code 502.30, 1408.60, and 1424.270).
- 34) Each Organization Licensee shall furnish to the Board annually 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.

⁵ "Facilities" means the offices, racetracks and all related grounds and structures, and other building improvements or fixtures associated with the activities of a licensee under this Act. (230 ILCS 5/3.21).

- 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 meetings of the same breed at the same track, only the first Organization Licensee need submit the inspection reports required in this paragraph, unless any applicable rules require additional inspections.

(9/16/20 Tr. 57).

- 35) Prior to the issuance of an organization license, each Organization Licensee (including inter-track wagering licensees, when applicable) shall file an admission tax bond in the amount of \$25,000, except Arlington, which shall be \$50,000, and a pari-mutuel tax bond in the amount of \$200,000. *Id.* (230 ILCS 5/21(e), 25(b)). However, if an organization licensee secures an organization gaming license, the amount of the bond required under section 230 ILCS 5/21(e) shall be \$500,000. (230 ILCS 5/21(e)). Said bonds shall be filed with the Board not less than 20 calendar days prior to each applicant's race meeting. (230 ILCS 5/20(h)).
- 36) Each Organization Licensee, within 10 (ten) days of receipt of this final executed Dates Order, shall file with the Board an acceptance of the award, and pay to the Board one hundred ten dollars (\$110) for each racing date awarded. (9/16/20 Tr. 57).
- 37) Each thoroughbred Organization Licensee shall submit its proposed stakes schedule to the Board, including proposed purses, at least sixty (60) days prior to the first (1st) live race day of its race meeting. *Id.*
- 38) Each Organization Licensee accepting thoroughbred race dates under this order shall publish condition books covering at least the first seven (7) days of the race meeting and make them available to horsemen at least three (3) weeks prior to the first (1st) live race day of its race meeting; except Hawthorne and Fairmount, which shall provide such books no later than six (6) weeks prior to the first (1st) live race day of its race meeting. 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.
Id.

- 39) Each Licensee⁶ shall make pari-mutuel settlements for a fifteen (15) day cycle, mutually agreed upon by the 2021 Organization Licensees. *Id.* at 57-58. Pari-mutuel settlements include, but are not limited to, track commissions, purse commissions, breakage, surcharges, and interstate host fees. *Id.* Custodial outs shall be settled on a monthly cycle unless an alternative schedule is mutually agreed upon by the licensees. *Id.*
- 40) Fairmount Park shall provide Board staff a satisfactory plan to address internal control issues identified in their recently certified audit report. *Id.* at 58.
- 41) The Board's executive director shall have the authority to approve the vacating of awarded live racing dates at the request of the organizational licensee when exigent circumstances are present. The executive director also has the authority to reassign such vacated dates within the organizational licensee's meet but only on a day before the next scheduled Board meeting. Any request to reassign a vacated date after the next scheduled Board meeting must be approved by the Board. *Id.*
- 42) A completed audit of the financial transactions and condition of the Licensee's total operations, including presentation of a two (2) year comparative analysis, shall be received by the Board within one hundred twenty (120) days after the end of its fiscal year (e.g. April 30, 2020). *Id.* (230 ILCS 5/9(g)).
- 43) Each Organization Licensee shall submit its emergency medical services plan required pursuant to Board's Rules section 1305.140 or 1424.170 to the Board, for its approval, thirty (30) calendar days prior to the start of its race meeting. (9/16/20 Tr. 57). Each plan

⁶ "Licensee" means an individual organization licensee, an inter-track wagering licensee, an inter-track wagering location licensee, or an advance deposit wagering licensee, as the context of this Act requires. (230 ILCS 5/3.20).

shall also be certified by the Illinois Department of Public Health, Division of Emergency Medical Services. *Id.* (11 Ill. Admin. 1305.140, 1424.170).

- 44) The failure of any Organization Licensee to satisfy any of the requirements of this order to the Board staff's satisfaction may result in civil penalties being assessed against them, rescission of their racing dates, and revocation of their organization license by the Board. (230 ILCS 5/9(1)).
- 45) All notices required to be given pursuant to this Dates Order to the Board or its designee, shall be in writing and addressed to the Parties or their successors by sending via electronic mail ("e-mail") transmission. Notices sent via e-mail, shall be effective as of the date and time of the e-mail transmission when sent as follows:

Executive Director
e-mail: domenic.dicera@illinois.gov

with a copy to:

General Counsel
e-mail: john.gay@illinois.gov

- 46) Attached as Appendix A and made a part hereof is a chart of the 2021 race dates awarded.
- 47) The Board's Commissioners unanimously approved the 2021 racing schedule by a vote of 6 to 0. (9/16/20 Tr. 58-59)
- 48) 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 thirty-five (35) days of deposit in the U.S. mail. (735 ILCS 5/3-103).

- 49) 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 by e-mail, facsimile, or hard copy.
- 50) Per 5 ILCS 100/10-50(b) and Board Rule 205.60, the Board and below parties of record to the 2020 Dates Hearing may be served with pleadings, notices or service of process for any review or further proceedings, as follows:

Tony Petrillo, President
Arlington Park Racecourse, LLC
2200 West Euclid Avenue
Arlington Heights, Illinois 60006


Domenic DiCera, Executive Director
Illinois Racing Board
100 West Randolph Street, Suite 5-700
Chicago, Illinois 60601


Melissa Helton, President
Fairmount Park, Inc.
9301 Collinsville Road
Collinsville, Illinois 62234


Tim Carey, President
Hawthorne Race Course, Inc.
Suburban Downs, Inc.
3501 South Laramie Avenue
Cicero, Illinois 60804


[Signature Pages to Follow]

**BOARD ORDER SIGNATURES
RACING DATES FOR 2021**

DocuSigned by:

110705533AE0487
Daniel Beiser, Chairman

Leslie Breuer
DocuSigned by:

36EB9B62BDAA47F...
Marcus Davis

Charles MacKelvie
DocuSigned by:

22BE4A5ABF754DD
Benjamin Reyes

DocuSigned by:

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Leslye Sandberg

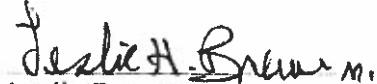
Action taken by the Board at its
September 16, 2020 meeting


Domenic DiCera, Executive Director

October 15, 2020
Date Executed

**BOARD ORDER SIGNATURES
RACING DATES FOR 2021**

Daniel Beiser, Chairman



Leslie Breuer

Marcus Davis

Charles MacKelvie

Benjamin Reyes

Action taken by the Board at its
September 16, 2020 meeting

Leslye Sandberg

Domenic DiCera, Executive Director

Date Executed

**BOARD ORDER SIGNATURES
RACING DATES FOR 2021**

Daniel Beiser, Chairman

Leslie Breuer

Marcus Davis



Charles MacKelvie

Benjamin Reyes

Action taken by the Board at its
September 16, 2020 meeting

Leslye Sandberg

Domenic DiCera, Executive Director

Date Executed

APPENDIX A

2021 LIVE RACING DATES SCHEDULE

THOROUGHBRED

	<u>Host Days</u>	<u>Live</u>	<u>Dark</u>
Arlington Park April 26 through September 30	220	68	152
Fairmount Park April 27 through September 6	n/a	53	n/a
Hawthorne Race Course January 1 and January 2 March 6 through April 25 October 1 through December 31	145	50	95

STANDARD BRED

	<u>Host Days</u>	<u>Live</u>	<u>Dark</u>
Suburban Downs May 7 through September 26	365	63	302