



maintaining the integrity of the sport of horseracing

24 July 2021

Dear NHA Member

Further to my letter of 7 July 2021, and on behalf of the National Board (“**the Board**”), I intend to respond further to the written requisition of a Special General Meeting of the members of the NHA to consider and vote on the two proposed resolutions to reconstitute the Board and vitiate the position of the Racing Control Executive (“**RCE**”). In this regard I would like to share some further thoughts with members on the role and function of the NHA, how the NHA interacts with participants, the Board composition and the imperative of the Board’s independence.

1. THE FUNCTION OF THE NHA

I shall demonstrate that the Board, as it currently functions, has been exemplary in meeting its obligations under the NHA Constitution.

1.1. Objects and responsibilities

The Constitution lists the objects of the NHA as follows:

- 1.1.1. To promote and maintain honourable practice and to eliminate malpractice in horseracing;
- 1.1.2. To regulate the sport of horseracing;
- 1.1.3. To maintain and publish the General Stud Book;
- 1.1.4. To foster, through its regulatory function, the promotion of horseracing;
- 1.1.5. To encourage and improve, through its regulatory function, the breed of the racehorse;
- 1.1.6. To promote and foster co-operation and goodwill with recognised horseracing authorities, governments and provincial governments; and
- 1.1.7. To render services of whatever nature to racing or other sporting authorities.

The Constitution makes it absolutely clear that the NHA is the regulator of the racing industry, guarding the integrity of racing from malpractice by individuals to keep racing reputable for the benefit of everyone.

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NHA duties cover the full range of everything involved in racing and breeding. It deals with government and gambling boards. It is the member of international bodies related to horseracing authorities and laboratories. Its day-to-day duties include stud book administration, general administration, licensing of individuals, registrations, taking samples, running exhaustive checks in laboratory for prohibited substances, handicapping, horse welfare checks, stable visits, starting stalls, running race days, enforcement of rules, holding inquiries, prosecuting cases and various other important functions.

1.2. Performance assessment

Looking back over the past five years:

1.2.1. Stud Book

Facing possible loss of “approved” stud book status in 2017, has been brought back to alignment with the International Stud Book Committee (ISBC) and the International Federation of Horseracing Authorities (IFHA) guidelines.

1.2.2. Laboratory

1.2.2.1. Annually scored 100% in Association of Official Racing Chemists (AORC) proficiency test;

1.2.2.2. Scored 100% in the Asian Racing Federation AQAP negative specimen confirmation program;

1.2.2.3. Over the past 5 years analysed over 27,000 specimens with approximately 73 confirmed positive findings; and

1.2.2.4. Acts as IFHA confirmatory analysis reference laboratory for other IFHA racing laboratories (most prominently for France and England) – with over 150 confirmatory findings to date.

1.2.3. Racing Control

Integrity standards maintained to the highest level – as can be seen by:

1.2.3.1. Continued attraction for international sale of picture rights; and

1.2.3.2. Increased number of race days taken by Hong Kong Jockey Club.

1.2.4. International reputation

Enhanced as shown by:

1.2.4.1. Winning the bid and hosting ARC in Cape Town with 550 delegates;

1.2.4.2. Assistance given to HKJC to obtain 14 additional simulcast licences; and

1.2.4.3. HKJC partnering with NHA for assistance in its funding for export efforts.

1.2.5. Government relations

Selected as partner alongside various government departments for the development of the Traditional Equine Industry.

1.2.6. Developed COVID protocols for the industry, which achieved the expedited re-opening and continuing racing.

1.3. **Restructuring**

Over the past five years, the NHA has undertaken significant restructuring programs to achieve maximum efficiencies and lower cost structure, while maintaining integrity standards. The process has involved dual roles for many senior positions, shifting direct reports to different managers, reallocating resources, cost-cutting measures, process improvements and job cuts.

Permanent staff declined from 90 in 2015 to current 68. The current complement of Stipendiary Stewards is down to 14 from a peak of 24. There are six Senior Stipendiary Stewards with the balance being Junior/trainee stewards and the RCE operating as a “back up” Stipe. The Handicappers are down to two senior and one trainee, and all Handicappers have to now fulfil Stipendiary duties as well. The number of full-time veterinarians on the pay-roll is down to three, and outsourcing is used for the second vet on duty in major centres. The complement of Part-Time (rostered/race day) staff is about 130.

Race meetings are operated with minimum staff per race meeting – Clerks of Scales, Judges, Specimen Collectors, Horse Identifiers, Farriers and Veterinary Surgeons are at the minimum. Handlers are rostered per field sizes. The operators’ commitment to racing 364 days a year, places huge pressures on a fully-stretched regulatory staff. Laboratory restructuring has resulted in a reduction of staff and costs whilst maintaining standards.

1.4. **Racing Control Executive (RCE)**

The proposed second resolution removes the Constitutional references to the RCE with the intention of doing away with the position altogether. The only rationale given being is to save costs, which is seemingly advocated purely from motives of self-interest in lower regulatory capability and the hope that somehow the saving will increase stakes, with no consideration given to the consequent damage to the integrity of racing.

The functions of RCE have been carried out separate from the role of Managing Director for at least the past 35 years. The role of RCE, with both domestic and international duties, is critical as integrity is the bedrock on which the horseracing industry is built. The RCE oversees the whole integrity function, ensures consistency and coordination of rules and regulations across racing district, and makes sure that international standards are adhered to.

The Board, being responsible for the management of the NHA and fully informed on the functions of the two positions, is satisfied that there is a need to retain both offices and that the costs are fully justified in the interests of maintaining integrity and international standards.

1.5. Legal costs

By the very nature of the NHA being a regulatory body, it is reasonable and should be expected that the NHA would incur legal fees in the pursuance and defence of its objectives and its purpose of “eliminating malpractice”.

It is important to note that legal costs are “reactionary costs” in that they arise in pursuit of enforcing rules – mostly from prohibited substance findings by the laboratory. All inquiries, investigations and adjudications into breaches of the rules are conducted by an Inquiry Board (IB). The IB consists mostly of Stipendiary Stewards, but depending on the complexity or seriousness of the matter, a lawyer may also be appointed to the IB. If a person facing charges engages legal representation, then the NHA is also legally represented to ensure a parity of arms. The IB performs quasi-judicial functions and are empowered to make findings and impose penalties. A person has a right of appeal to an Appeal Board of 3 members of whom at least one is a lawyer as chairperson. As a further check that processes have been followed, inquiries or appeals, which were conducted without legal representation, are all reviewed by the Inquiry Review Board (IRB). These boards are entitled to take legal advice and rely on such legal advice.

Legal costs are also incurred in legal actions brought against the NHA. The action by a jockeys’ association to contest the NHA’s covid protocols is one example. Legal costs have risen from about R2 million in 2016, to just over R4 million in the current year. The average spend over those years is R2,856,000 and equates to 3.06% of the annual costs. Legal fees are a natural consequence and a concomitant cost of a regulator managing the enforcement of the rules. It is incumbent on the NHA to act to uphold the integrity of the sport of horseracing.

Losing a case is not an indication of improper conduct by the Board. This is true especially if the court bases its finding on an issue of procedural fairness, which emphasis the need for the involvement of lawyers to keep procedural irregularities to a minimum.

1.6. Overall costs

It is also interesting to note the operators’ opinion. The operators’ income depends on betting turnover and international revenues from sale of picture and commingling, so they know the importance of integrity to maintain income levels.

At a recent meeting with the operators as part of the NHA budget process, the operators could not suggest any further restructuring cost cutting efforts. The operators were agreed that the NHA, within its situation in the industry, is run efficiently and very close to the bone and that for the NHA to maintain the integrity of the industry, then it cannot cut costs further.

1.7. Levies and fees

The Board, through being vigilant with costs but without compromising standards, has been able to keep operator levies and fees increases at under 5% over the five-year period (2016-2021).

Operator levies have on average increased by 4% over the five-year period (2016-2021). During 2020, a total of R8.2m levy discount was granted to the operators due to Covid-19 lockdown on racing. Although racing commenced 1 June 2020, the levy discount applied from April to July 2020 inclusive.

Registration and stud book fees have on average increased by 4% over the 5-year period (2016-2021). 0% increases have been implemented since 2018 notwithstanding annual inflation.

1.8. Conclusion

The primary objective of the NHA as regulator is to promote and maintain the integrity of racing in South Africa to international standards. In this way, the public and participants can be confident South African racing is run fairly and in accordance with the rules, that crime and corruption is deterred, prevented or penalised, and that there is a level playing field for all competitors. Integrity is essential for the sustainability of the industry. Regulation and integrity cost money – administration, regulatory personnel to monitor and maintain compliance in the industry, laboratory to detect prohibited substances, and (where necessary) legal fees for hearings and to prosecute (if necessary). The arguments that the RCE position should be eliminated and legal fees slashed, would seriously damage the integrity of racing and therefore its future viability.

The dedicated and skilled position of RCE has been and continues to be key to maintaining integrity standards in the NHA's streamlined structure. Weakening the regulatory team would mean lower compliance standards.

Legal costs are a necessary integral expense of a regulator. Limiting legal fees would mean that there may be cases not pursued, that there may be cases the NHA loses, notwithstanding the overwhelming evidence in its favour, because it has to forego legal representation due to costs while the other side is legally represented, or that there may be pressure to accept a plea bargain in cases where a harsher penalty is warranted to maintain integrity of the industry.

These proposed changes would constrain the NHA in its duty to promote and maintain honourable practice and to eliminate malpractice in racing. These proposed changes would be contrary to the best interests of racing. Those licensees who are arguing for the proposed change, are putting their own vested interests ahead of the integrity of racing – a classic example of the conflict of interest and duty. This is a short-sighted view to take which can have disastrous consequences.

It is disgraceful and unfortunate that certain people have embarked on an intimidatory campaign of character assassination and insults targeted at management and Board members, who are honourably discharging unenviable duties diligently and consistently - without fear or favour.

By the very nature of its job, a regulator will not be popular with those it regulates. No trainer would be happy with prohibited substance findings, no jockey would be happy when fined or suspended for an unsatisfactory ride, no owner would be happy when his horse is disqualified. A popular regulator is most likely one that overlooks positives for prohibited substances or accepts plea bargains rather than prosecute. In such an event, the industry will ultimately be doomed to fail. An unpopular regulator is more likely doing its job thoroughly properly!

2. HOW THE NHA INTERACTS WITH PARTICIPANTS AND BOARD COMPOSITION

2.1. Current situation

Throughout the year and on all subjects, there are frequent consultations by NHA with industry stakeholders, including licensees. Representatives of stakeholders are involved in the Rules Committee, the Stud Book Committee, liaison meetings in each racing centre, and frequent informal consultations.

As with any regulatory body, the rule book is of paramount importance where the making and changing of rules is a thorough and careful process. The Rules Committee meets to consider and deliberate, and this committee includes input from trainers and jockeys. NHA lawyers will carefully draft any new rules or changes so as to ensure that everything is clear, workable, without conflicting other rules and not in conflict with any laws of the country. The recommendation then goes to the Board for approval.

Representatives of jockeys and trainers are already part of the consultative process of Rule-making, so these stakeholders definitely have input in to the Rules – including prohibited substances, riding rules, whip use, handicapping guidelines etc.

The views of all stakeholders are currently considered through extensive liaison and consultation, and these views are brought through to the Board. The Board, being made up of “neutral” members and independents, can make the final decisions independently for the best interests of racing overall.

2.2. Is it a good idea for participants to have representatives on the Board?

The first proposed resolution creates entrenched positions for representative directors and also allows licensees and employees of operators to serve on the Board.

Directors have a fiduciary duty to act in the best interests of the organisation on whose board they serve. Principles of good governance dictate that directors should be appointed based on their level of knowledge, skill and expertise that they bring to the board, and their ability to make the most appropriate decision with due care, skill and diligence that are in the best interest of the organisation. Directors have a fiduciary duty to the entity or company and not to its shareholders or members.

The difficulty faced by ‘representative’ directors is that they are expected to act in the interests of the appointing party. This means that they have a conflict between these interests and their duty as a director. The representatives of licensees could feel pressurized by their short-term vested interests to effect changes lowering the regulatory standards and thereby harm the integrity of South African racing – counter to their fiduciary duty to the NHA. There are very real dangers that representatives would prioritise protecting or advancing their own positions – and in any event the mere perception that they would do so is just as damaging.

The presence of licensees on the Board creates the problem of regulation and the perception that these licensees would get different rules applied or different treatment in enforcement of the rules. Imagine the difficulties faced by NHA stewards holding a riding inquiry when questioning a jockey who is a Board director. Imagine the complications of an inquiry into a trainer for a prohibited substance finding when that

trainer is a Board director. Imagine the scrutiny and comments on the fines and penalties given to licensees who are directors.

2.3. Examples of conflicted boards

Prior to the changes made at the SGM in 2016, the NHA constitution afforded various stakeholders the right to a seat on the Board – the racing operators, the TBA, and owners' bodies. Subsequent events showed that the conflict of interests was extremely difficult to manage whilst actually and in perception maintaining integrity of the organisation. These conflicts created tensions which severely compromised the ability of the Board to conduct the affairs of the NHA and the Board itself became dysfunctional.

There were numerous occasions on which government, unhappy with the state of affairs, sought to intercede in the regulation of racing. Government was insisting that, for racing to remain as self-regulating, the NHA had to implement changes in order that it conformed with the principles of good governance. It was required that the National Board of the regulator be independent of those that it licenses, as is the case with other regulators. The entire Board and the previously represented entities (the three operators: RA, Gold Circle owners, TBA) all supported the change in 2016. The members, by voting unanimously in favour of the change, clearly agreed with the view of the entire Board that a director should not be compromised by having to speak on behalf of any other organization.

Another pertinent example to consider is Cricket South Africa. Individuals, by attempting to protect their own selfish interests, brought cricket to its knees inviting understandable interference from government with the purpose of enforcing a credible level of independence. Any such interference may have disastrous consequences for the horseracing industry.

2.4. Conclusion

The wearing of two hats by some Board members created serious problems in the past, and those problems would be exacerbated even further under the proposals which would create a Board with a majority of conflicted directors. The proposal creates a Board with a coterie of vested interests who, in effect, will police, prosecute and judge themselves. It defies logic and fairness and will give rise to conflicts of interest and duty.

It must be remembered that, as per the Constitution and gambling legislation, the NHA is a regulator - it is not some sort of industry representative body. In its position as regulator, the independence and autonomy of the NHA Board has to be sacrosanct. There is a place for participants to have their views heard, but this is best done with committees and consultation - and not at Board level.

3. BOARD APPOINTMENTS

3.1. Current situation

Alongside the changes made in 2016 to do away with representative directors, the members also create a Nominations Committee to handle appointments to the Board. The reasons for this change were that:

- (a) The election process of members was functioning unsatisfactorily. The general apathy of members and an unwillingness to undergo an election process, made it extremely difficult to secure the nomination and election of members to the board; and
- (b) The need to align with the principles of good governance regarding the inclusion of independent directors and also executive directors.

Currently the Board comprises two executives (in line with King guidelines), three independents, and seven members. These members on the Board are drawn from the “neutral” members i.e., they are members who are not conflicted by being licensed persons or employees of licensed operators. Owners’ interests are absolutely aligned with the best interests of the industry as a whole – they want fair, well-regulated racing with high integrity and thus the sport appeals to the betting industry (local and international) thereby earning income for operators and securing race stakes benefiting trainers, jockeys, owners etc.

Under the current system, the Nominations Committee, comprising past Chairmen of the Board under the age of eighty, has ensured that the Board has the necessary blend of skills and knowledge. As per the Constitution, the Nominations Committee can seek suggestions from anywhere, and any person or entity is at liberty to make suggestions to the Nominations Committee.

3.2. Assessment of proposed resolution for Board appointments

- 3.2.1. There are areas of concern related to the proposed procedures for Board composition, which can be summarised as follows:
 - 3.2.1.1. Majority are representative directors with vested interests giving rise to problems of conflict of interests;
 - 3.2.1.2. Licensees and employees of operators on board compromises the independence of board;
 - 3.2.1.3. Election process can cause difficulties;
 - 3.2.1.4. Proposed Nominations Committee applies only to appointment of the three member/independent seats. It is a sub-committee of the board, and its role seems to be more to conduct a screening process; and
 - 3.2.1.5. Owner and independents only have a minority of the seats - 3 out of the 12.
- 3.2.2. The proposed resolution would result in a board more captured, more conflicted, and with fewer neutral and independent directors.

3.3. Conclusion

The Board is of the opinion that the current provision for a Nominations Committee, being truly independent of the Board, is the best way to appoint the Board. It is concerning that there is the perception of a closed shop, so perhaps members should give consideration to a change to the Constitution to expand the composition of the Nominations Committee rather than seeking to do away with it.

4. WHY A NEUTRAL/INDEPENDENT NHA BOARD IS IMPORTANT TO EXTERNAL RELATIONS OF RACING INDUSTRY

4.1. Governance

Governance is the manner in which an organization is controlled and directed, such that the outcomes of ethical culture, good performance, effective control and legitimacy are achieved. Governance starts and ends in the board room. The board composition sets the tone for the overall regulator. A neutral/independent board ensures that the NHA is seen as an independent regulator of racing. A board composition that complies with the principles of good governance means that the NHA is respected and trusted.

4.2. Government bodies

In the last five years, the independent NHA has forged good relations with government bodies. Previously the government had a poor opinion of a regulator with a board dominated by representative directors and viewed it as captured by operators, so good relations had been noticeably lacking. It is a sign of the respect with which the NHA is regarded by government currently that this year the NHA signed Memorandums as a trusted partner of government programs to develop the Traditional Equine Industry.

Gambling Boards license the operators and it is a condition of that licence that the operator is licensed by the NHA. It is believed that the independence of the NHA from any influence by the operators is an important consideration by the Provincial Licensing Authorities.

There could be serious consequences following on from the proposed installation of representative directors and licensees. This would result in a board even more captured by representatives and less independent than prior to 2016 – in effect the police being the police. Members will recall that government previously sought to intercede in the regulation of racing because of their dissatisfaction with a non-independent regulator. This proposed change would be likely to attract attention from Gambling Boards, Minister of Trade and Industry, and Minister of Sport seeking to exercise direct control over the regulation of horseracing with a view to ensure that the regulator is appropriately independent.

4.3. International standing

The NHA is a full member of the International Federation of Horseracing Authorities (IFHA) and is a signatory to the International Agreement on Breeding, Racing and Wagering of the IFHA (“**the agreement**”). The main objectives of the IFHA include harmonization of rules and fairness of racing. The agreement obligates all members to commit themselves to furthering the objectives of the IFHA. The Asian Racing Federation (ARF) is formally linked to the IFHA and membership of ARF is generally contingent upon the legitimacy of the horseracing industry in that country. South Africa is part of the respected higher tier of the global racing industry. In order to remain there, it needs to retain the standards commensurate with those jurisdictions. It is clear that various authorities internationally view the independence and expertise on a board as being of paramount importance. It is also evident, that the view taken by the majority of international jurisdictions is that jockey / trainer representation on the Board would be an unacceptable conflict of interest.

With the operators earning significant income from the sale of picture and commingling, there would be serious financial implications to jeopardizing international opinion of the integrity of the South African horseracing industry.

4.4. Conclusion

Given the NHA's objective to "promote and foster co-operation and goodwill with recognized thoroughbred horseracing authorities, Governments and Provincial Governments" it is incumbent on the NHA to conform with the principles that are valued by these bodies.

5. FINAL REMARKS

Integrity must remain the bedrock that the horseracing industry is built on. The proposed changes to the Constitution go against the very essence of the NHA's standing as an independent regulatory body and its integrity standards. Those who are policed cannot be the police, as this would have severe consequences relating to the confidence that existing and potential investors may have in the product. There would also be negative implications for the safety of riders in races and the welfare of horses, both crucial to the sustenance of the industry.

The independence of the NHA is sacrosanct for the health of the industry. The Board urges members to consider the proposed changes very thoroughly, from both domestic and international perspectives, because of the impact on the racing industry as a whole.

The Board will be sending out full documentation to members shortly. With the benefit of "hearing both sides", members will thus be able to make an informed decision and to vote against both resolutions and in so doing ensure that the actual and perceived integrity of the regulator remains in place for the best interests of the whole racing industry.

Best regards,

A handwritten signature in black ink, appearing to read "Susan Rowett", is placed over a light grey rectangular background.

Susan Rowett
Chairperson