

**National Thoroughbred Racing Association
Safety and Integrity Alliance**

Report of the Independent Monitor

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I. INTRODUCTION

There is perhaps no sport in America that has a stronger history and tradition than that of Thoroughbred racing. The lineage of the Thoroughbred horse can be traced back more than 300 years to three stallions imported to England.¹ To this day, every Thoroughbred is a descendant of these forefather horses.² In America, the first documented Thoroughbred race was in 1745 in Annapolis.³ There are records of horseracing in America going back to 1665 in Long Island.⁴

In addition to its history, there is a special element of excitement to Thoroughbred racing. It is awe-inspiring to see a group of one-thousand pound animals thundering around a track at speeds that can exceed forty miles per hour. Much of the excitement can be attributed to the majesty of the animals themselves. The Thoroughbred of today is the result of hundreds of years of breeding the best stallions with the best mares.⁵ The Jockey Club describes the unique features of the Thoroughbred resulting from this breeding in the following manner:

The Thoroughbred's rear legs act much like springs as they bend and straighten during running. This tremendous "spring power" helps thrust the Thoroughbred forward as its front legs provide "pull." The head and long neck also help to make running smooth and rhythmic. The neck moves in synchrony with the forelegs, aiding the Thoroughbred in its forward motion and extending the "arc of flight" – the time the Thoroughbred literally is airborne.⁶

¹ The three stallions are: the Darley Arabian, the Godolphin Arabian, and the Byerly Turk. See The Jockey Club, the National Thoroughbred Racing Association, and the Thoroughbred Owners and Breeders Association, *Thoroughly Thoroughbred, an Informational Guide to the Thoroughbred Industry* 3 (2006), www.ntra.com/images/TT2006.pdf.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ The Jockey Club, A Brief History of the Breed, <http://www.jockeyclub.com/thoroughbredhistory.asp> (last visited Dec. 7, 2009).

The pageantry of Thoroughbred racing is captured each year at the Kentucky Derby, which has been running continuously since 1875.⁷ It is one of the sporting world's most important and celebrated events. Each year, the potential pursuit of the Triple Crown captures the public imagination.⁸ The sport has been featured in many books and films, including recent films such as *Seabiscuit* (2003) and *Dreamer* (2005).

In addition to its history and pageantry, it is important to remember that Thoroughbred racing is not simply a sport – it is a business. Horseracing was estimated in 2005 to have a direct economic impact of \$10.6 billion and to have directly created 146,625 jobs.⁹ In 2008, Thoroughbred racing had over \$1.165 billion in gross purses.¹⁰ To those whose livelihoods are connected to Thoroughbred racing – the breeders, jockeys, trainers, grooms, and others – it is a profession, as well as a passion and a way of life.

Beyond the professionals whose livelihoods are attached to the sport, there are fans. The fans are for whom this sport is ultimately run and to whom the sport is ultimately accountable. Fans expect a sport with integrity that does its best to keep its human and equine athletes safe.

In recent years, there has been growing concern with the safety of the sport. A certain degree of risk will undoubtedly be inherent in a sport in which human athletes ride on one-thousand-pound animals that are racing together in a tight space at high speeds. Risks, however, can, and should, be controlled and minimized. In the 2008 racing season, considerable public attention focused on the tragic accident and subsequent euthanized death of the Thoroughbred,

⁷ See Churchill Downs, Incorporated Properties, www.churchilldownsincorporated.com/our_company/properties (last visited Dec. 7, 2009).

⁸ The Triple Crown refers to the potential of one horse winning the following three races in the same racing year: the Kentucky Derby, the Preakness Stakes, and the Belmont Stakes. See Cindy Pierson Dulay's Horse-Races.net, The Triple Crown, www.horse-races.net/library/tcrown-info.htm (last visited Dec. 7, 2009).

⁹ See Deloitte Consulting, SUMMARY OF THE ECONOMIC IMPACT OF THE HORSE INDUSTRY ON THE UNITED STATES NATIONAL & STATE BREAKOUT REPORT (2005), www.horsecouncil.org/nationaleconomics.php.

¹⁰ The Jockey Club, Online Fact Book, <http://www.jockeyclub.com/factbook.asp> (last visited Dec. 7, 2009).

Eight Belles. Eight Belles finished second in the 2008 Kentucky Derby, only to break both of her front ankles shortly after the race was complete.¹¹ The Eight Belles incident followed another highly publicized incident in 2006 regarding the Thoroughbred, Barbaro. In that incident, Barbaro won the 2006 Kentucky Derby, only to shatter his right hind leg in three places during the 2006 Preakness Stakes at Pimlico in May of 2006. After many surgeries and failed recovery attempts, Barbaro was euthanized in January of 2007.¹²

In October of 2008, the National Thoroughbred Racing Association (“NTRA”) brought together fifty-five racetracks and every major horsemen’s group to pledge support for the affirmation that the health and safety of racing’s human and equine athletes and the integrity of the sport are horseracing’s top priority. To implement the reforms needed to put these priorities into action, the NTRA created the Safety and Integrity Alliance (the “Alliance”). The purpose of the Alliance is to implement safety and integrity standards on a uniform, nationwide basis, and to function as a certification/accreditation body for the purpose of recognizing and incentivizing compliance with those standards by all affected stakeholders.¹³

The NTRA identified the need for an objective observer, someone who would be held accountable to the public at-large, to monitor the activities of the Alliance and assess industry progress in achieving the objectives of the Alliance. The Honorable Tommy G. Thompson, former Governor of the State of Wisconsin, former Secretary of the U.S. Department of Health and Human Services, and current partner in the law firm of Akin Gump Strauss Hauer and Feld LLP (“Akin Gump”), was selected to fulfill this role (“Independent Monitor”). This report,

¹¹ See, e.g., *Runner-up Eight Belles Breaks Front Ankles, Euthanized on Track*, ASSOCIATED PRESS, May 2008, <http://sports.espn.go.com/sports/horse/triplecrown08/news/story?id=3380100>.

¹² See, e.g., *Barbaro Euthanized Monday Morning*, ASSOCIATED PRESS, Jan. 30, 2007, <http://sports.espn.go.com/sports/horse/news/story?id=2747087>.

¹³ NTRA, *NTRA Forms Safety And Integrity Alliance And Announces Sweeping Reforms*, Oct. 15, 2008, <http://www.ntra.com/content.aspx?type=pr&id=35605&style=red>.

which he developed with support from a team of colleagues at Akin Gump, is the first assessment of industry progress in achieving the objectives of the Alliance.

II. INDUSTRY BACKGROUND

A. General Description of the Horseracing Industry

There are over 1.2 million Thoroughbreds in the United States.¹⁴ A complex and diffuse industry has evolved around these horses. To understand the challenges of implementing uniform and nationwide safety and integrity standards for horseracing, it is important to understand the multi-party stakeholder aspect of the industry.

Thoroughbreds are professionally bred by breeders who register the horses with The Jockey Club. The Jockey Club is responsible for the *American Stud Book*, in which all Thoroughbreds foaled in the United States, Canada, and Puerto Rico are registered. All Thoroughbreds imported into these regions are also similarly registered.¹⁵ The Jockey Club estimates that in 2008, 52,410 mares were bred to 3,114 stallions producing 33,550 foals.¹⁶ Thoroughbred horses can be purchased at auction, where in 2008, it was estimated that 18,307 Thoroughbreds were sold for a gross value of \$972 million.¹⁷ Several large auction houses across the country specialize in Thoroughbred auctions.¹⁸ Including the sixty-five racetracks that are members of the NTRA and other tracks at fairgrounds across the country, there are likely

¹⁴ See The Jockey Club, Online Factbook: National Economic Impact Summary, <http://www.thejockeyclub.com/factbook.asp?section=18> (last visited Dec. 7, 2009).

¹⁵ See The Jockey Club, About the Jockey Club, http://www.thejockeyclub.com/about_tjc.asp (last visited Dec. 7, 2009).

¹⁶ See The Jockey Club, Online Factbook: US Distribution of Active Stallions and Mares Bred, <http://www.thejockeyclub.com/factbook.asp?section=3> (last visited Dec. 7, 2009).

¹⁷ See The Jockey Club, Online Factbook: Auction Sales in North America, <http://www.thejockeyclub.com/factbook.asp?section=13> (last visited Dec. 7, 2009).

¹⁸ Several of the larger auction houses include Keeneland (Kentucky), Fasig-Tipton (Kentucky, New York, Maryland and Texas) Ocala Breeders' Sales Company (Florida), and Barretts Equine Limited (Southern California).

over one hundred racetracks in the United States.¹⁹ In 2008, over 50,000 races occurred²⁰ in which there were over 72,000 starters.²¹ The average purse per race was \$23,246.²²

Supporting these races are a wide variety of stakeholders: racetrack management, the owners of the horses, the jockeys who ride the horses, the trainers who play a vital role in the horses' care, the grooms who work under the trainers, veterinarians, and racing officials, such as stewards. Key organizations involved in representing the interests of these stakeholder groups include:

- **The National Thoroughbred Racing Association.** The NTRA is unique among groups representing the racing industry in that its membership comes from a broad cross-section of racing interests, including racetracks, owners, breeders, and trainers. The NTRA counts over sixty-five racetracks and forty horsemen's groups as members. The NTRA's purpose is to advance the sport of racing, and due to its broad membership oftentimes has a convening role in developing solutions to challenges facing the industry.²³
- **The Thoroughbred Owners and Breeders Association ("TOBA").** TOBA is a "national trade organization for Thoroughbred owners and breeders" and its mission is to "improve the economics, integrity and pleasure of the sport on behalf of owners and breeders."²⁴

¹⁹ It does not appear that there is an exact list of racetracks. The NTRA in congressional testimony has indicated that it has sixty five racetracks among its members.
http://archives.energycommerce.house.gov/cmte_mtgs/110-ctcp-hrg.022708.Waldrop-testimony.pdf

²⁰ See The Jockey Club, Online Factbook: Number of Races,
<http://www.jockeyclub.com/factbook.asp?section=6> (last visited Dec. 7, 2009).

²¹ See The Jockey Club, Online Factbook: Size of Field and Starts per Horse,
<http://www.jockeyclub.com/factbook.asp?section=10> (last visited Dec. 7, 2009).

²² See The Jockey Club, Online Factbook: Trends in US Races, Purses, Foal Crops ,
<http://www.jockeyclub.com/factbook.asp?section=12> (last visited Dec. 7, 2009).

²³ See NTRA, Homepage, <http://www.ntra.com> (last visited Dec. 7, 2009).

²⁴ Thoroughbred Owners and Breeders Association, <http://www.toba.org> (last visited Dec. 7, 2009).

- **The Jockeys’ Guild.** The Jockeys’ Guild represents the interests of the jockeys in horseracing.²⁵
- **American Horse Council.** The American Horse Council is a “national association representing all segments of the horse industry in Washington,” and its membership draws from every facet of the horse world – from owners, breeders, trainers, veterinarians, farriers, breed registries and horsemen’s associations to horse shows, racetracks, rodeos, commercial suppliers and state horse councils.”²⁶
- **American Association of Equine Practitioners (“AAEP”).** The AAEP’s membership is comprised of “over 8,000 veterinarians and veterinary students in 57 countries.” “The AAEP’s mission is to improve the health and welfare of the horse, to further the professional development of its members, and to provide resources and leadership for the benefit of the equine industry.”²⁷
- **Horsemen’s Benevolent & Protective Association (“HBPA”).** The HBPA is dedicated to protecting the rights of, and providing assistance to, racehorse owners and trainers. The HBPA counts over 35,000 owners and trainers across the United States and Canada as members.²⁸

B. Role of Pari-Mutuel Wagering in Horseracing

There is no doubt that gambling is important to the business of horseracing. In 2008, the combined handle, or amount wagered, was \$13.6 billion.²⁹ Horseracing uses the pari-mutuel wagering system. In a December 2002 Government Accountability Office (“GAO”) Report,

²⁵ See The Jockeys’ Guild, <http://www.jockeyguild.com> (last visited Dec. 7, 2009).

²⁶ American Horse Council, <http://www.horsecouncil.org> (last visited Dec. 7, 2009).

²⁷ American Association for Equine Practitioners, <http://www.aaep.org> (last visited Dec. 7, 2009).

²⁸ Horsemen’s Benevolent & Protective Association, <http://www.hbpa.org> (last visited Dec. 7, 2009).

²⁹ See The Jockey Club, Online Factbook: Pari-Mutuel Handle, <http://www.jockeyclub.com/factbook.asp?section=8> (last visited Dec. 7, 2009).

Internet Gambling, An Overview of the Issues, the GAO provides the following description of the use of pari-mutuel wagering in horseracing:

Horseracing uses the pari-mutuel system of wagering, in which bettors bet against one another instead of betting against the House. For pari-mutuel wagering, the money bet on a race is pooled, and approximately eighty percent is returned to the winning bettors. The remaining twenty percent (the takeout) is distributed among the state government, the jockeys that race at the track, and the racetrack owners. The amount allotted for the takeout varies among states.³⁰

In August of 2003, the NTRA Wagering Technology Working Group (“Working Group”), in conjunction with Giuliani Partners, conducted a thorough review of pari-mutuel wagering as it is used in horseracing and published the report, *Improving Security in the United States Pari-Mutuel Wagering System: Status Report and Recommendations*. In its fact-finding, the report discussed at some length the changing nature of pari-mutuel wagering in horseracing. In particular, the report notes that on-track betting was the exclusive form of pari-mutuel wagering at racetracks in the United States through the 1960s.³¹ Beginning with changes made in New York in 1971; however, intrastate off-track wagering became available.³² Following the passage of the Interstate Horseracing Act of 1978, interstate pari-mutuel wagering was allowed at tracks in different states. In the 1970s and 1980s, tracks began using simulcasting, which allows for the simultaneous transmission of live races to multiple facilities (via-closed circuit television) for the purposes of conducting pari-mutuel wagering.³³

³⁰ See GAO, *Internet Gambling Overview*, GAO-03-89, 42 note56 available at www.gao.gov/cgi-bin/getrpt?GAO-03-89.

³¹ *Improving Security in the United States Pari-Mutuel Wagering System: Status Report and Recommendations*, NTRA Wagering Technology Working Group at page 1. The report can be found at: www.ntra.com/content/WTWG_final_report.pdf.

³² See *id.*

³³ See *id.* at 2.

Off-track betting has continued to grow in importance to gaming revenue, and now accounts for a commanding \$12.161 billion of all pari-mutuel handle. On-track betting makes up only a small fraction of total handle at \$1.487 billion.³⁴ While racetracks do receive revenue from exporting simulcast races, it is important to note that races not conducted at that track are an important source of revenue for many tracks. In addition, more and more states are allowing other forms of gaming at racetracks that are not directly related to the sport of horseracing.³⁵ As an example, slot machines are allowed at many racetracks.³⁶

III. BACKGROUND OF GOVERNMENT REGULATION OF HORSERACING

A. General Framework for Government Regulation

States, rather than the federal government, bear primary responsibility for regulating the horseracing industry in the United States. For the most part, the Federal government does not regulate horseracing. The Interstate Horseracing Act of 1978 provides for off-track betting, but otherwise leaves to the states much of the responsibility for regulation.

Generally, states regulate through racing commissions. There are thirty-eight state racing jurisdictions in the United States. The racing jurisdictions in the United States belong to the Association of Racing Commissioners International (“RCI”). The RCI is responsible for issuing model rules for racing. Individual jurisdictions make their own decisions as to whether to implement the model rules.

³⁴ See The Jockey Club, Online Factbook: Pari-Mutuel Handle, <http://www.jockeyclub.com/factbook.asp?section=8> (last visited Dec. 7, 2009).

³⁵ See Pamela M. Prah, *States Wager on Racetrack Slots*, STATELINE, MAY 27, 2008, <http://www.stateline.org/live/details/story?contentId=312565>.

³⁶ See American Gaming Association, Fact Sheet: States with Racetrack Casino’s, www.americangaming.org (last visited Dec. 7, 2009).

While there are nuances as to how each state organizes its horseracing regulatory authority, typically there is a commission made up of members who are appointed by the Governor. In many cases the commission, in turn, appoints an executive director. These regulatory authorities are responsible for regulating the racetracks, licensing professionals who participate in horseracing (such as jockeys), and regulating the pari-mutuel wagering that occurs at the racetracks.

Typically, the state racing commissioner will have a number of employees who are present at the racetracks during live racing. Often the employees include the steward who is responsible for each race. Further, a state-employed veterinarian is responsible for taking samples of urine and blood to be tested for evidence of illegal medication usage. State-employed veterinarians are also responsible for examining the equine athletes for fitness to race.

State legislatures pass basic laws related to racing and then the racing commissions are responsible for promulgating rulemakings to implement these laws. The ability of the horseracing industry to implement uniform and nationwide standards can be dependant on state legislatures and racing commissions. Indeed, racing jurisdictions can have widely varying rules. Even high-consensus industry initiatives, such as those undertaken by the Racing Medical and Testing Consortium (“RMTC”), can lack uniform adoption. For example, while the RMTC model rules have been adopted or are in the process of being adopted by states whose combined handle represents over ninety-nine percent of the total horseracing handle in the United States, there are still three states that have not yet begun the process of adopting the rules. Further, the

First Phase of the RMTTC Model Rules has not been adopted by four states and is an ongoing process in seven states.³⁷

B. Congressional Examination of Horseracing

After the Eight Belles incident, horseracing was the subject of Congressional fact-finding efforts. On May 22, 2008, Representatives Bobby Rusch (D-IL) and Ed Whitfield (R-KY), respectively the Chairman and Ranking Member of the Commerce, Trade and Consumer Protection Subcommittee of the House Committee on Energy and Commerce sent out letters seeking information from various members of the horseracing industry.³⁸ In its correspondence, the Subcommittee cited critics' complaints that horses were more vulnerable to injury because of breeding practices that "promote speed and precocity over soundness" and the use of performance-enhancing drugs and race-day medication.³⁹ The Committee subsequently released the responses to those letters on June 18, 2008.⁴⁰

On June 19, 2008, the Subcommittee on Commerce, Trade and Consumer Protection of the House Energy and Commerce Committee held a hearing entitled, "Breeding, Drugs and Breakdowns: the State of Thoroughbred Horseracing and the Safety of the Thoroughbred (June 19, 2008). Witnesses at this hearing included:

- Alan Marzelli, President and Chief Operating Officer, The Jockey Club;
- Richard Shapiro, Chairman, California Horse Racing Board;
- Jack Van Berg, Thoroughbred Trainer;

³⁷ See RACING MEDICATION & TESTING CONSORTIUM, MODEL RULES (2009), http://www.rmtcnet.com/content_modelrules.asp.

³⁸ See Energy and Commerce Committee, Letters to Horse Racing Clubs, http://energycommerce.house.gov/Press_110/110-ltr.052208.LetterstoHorseRacingClubs.ltr.pdf.

³⁹ *Id* at 1.

⁴⁰ See Energy and Commerce Committee, Horse Racing Association Responses, http://energycommerce.house.gov/Press_110/052208.HorseRacingAssocs.Responses.shtml.

- Richard E. Dutrow, Jr. (Mr. Dutrow submitted written comments only);
- Randy Moss, Analyst, ESPN;
- Arthur Hancock, President of Stone Farm, Thoroughbred Owner and Breeder;
- Jess Stonestreet Jackson, Stonestreet Farm, Thoroughbred Owner and Breeder;
- Lawrence. R. Soma, V.M.D., University of Pennsylvania School of Veterinary Medicine;
- Susan M. Stover, D.V.M, Ph.D., Dipl ACVS;
- Wayne McIlwraith, Ph.D, D.V.M, F.R.C.V.S, Colorado State University;
- Allie Conrad, Executive Director, CANTER Mid Atlantic;
- Alexander M. Waldrop, CEO, National Thoroughbred Racing Association

In this hearing, a wide-variety of perspectives were provided on the current regulatory system. Some of the panelists such as Allie Conrad of CANTER Mid Atlantic, Richard Shapiro of the California Horse Racing Board, and Randy Moss of ESPN argued for a stronger centralized authority in horseracing. Alexander Waldrop of the NTRA, representing a broad spectrum of stakeholders in the horseracing industry, raised concern regarding a centralized authority approach.

C. Background on Industry Initiatives

Unlike other sporting industries, no central league responsible for horseracing exists in America. As such, the industry frequently convenes working groups, cross-organization committees, and summits to address challenges facing the industry. The NTRA, The Jockey Club and American Horse Council frequently play an important role in convening these groups. Below are a list of recent industry initiatives related to the safety and integrity of the sport.

- **Thoroughbred Safety Committee.** The Jockey Club created the Thoroughbred Safety Committee in May of 2008. The Committee focuses on equine safety and makes

recommendations to the industry on Thoroughbred health and safety issues. In June of 2008 and August of 2008, the Thoroughbred Safety Committee made its first two sets of recommendations. The Committee was formed after two Welfare and Safety of the Racehorse Summits held in October of 2006 and March of 2008.

- **Equine Injury Database.** The Jockey Club created the Equine Injury Database (“EID”) in July of 2008 as a national database of racing industries. The EID was a product of the October 2006 Welfare and Safety of the Racehorse Summit. According to The Jockey Club, the purpose of the database is to:

- Identify the frequency, types, and outcomes of racing injuries using a standardized format that will generate valid statistics;
- Identify markers for horses at increased risk of injury; and
- Serve as a data source for research directed at improving safety and preventing injuries.⁴¹

- **Racing Medication and Testing Consortium.** The RMTC is an independent nonprofit organization with a board that is made up of twenty-five members of the racing industry. Among other responsibilities, the purpose of the RMTC is to “Develop and recommend uniform model policies, prohibited practices, disciplinary procedures and penalties regarding the use of medications and methods in connection with selling, training and racing horses, while respecting the autonomy and authority of individual state racing commissions and the work of national regulatory organizations.”⁴²

- **Welfare Code of Practice.** The American Horse Council created the Welfare Code of Practice. This Code “outlines in generic terms what it means for an organization to be

⁴¹ See The Jockey Club, Safety Initiatives, <http://www.equineonline.com/initiatives.asp> (last visited Dec. 7, 2009).

⁴² Racing Medication and Testing Consortium, Homepage, <http://www.rmtcnet.com/> (last visited Dec. 7, 2009).

committed to the responsible breeding, training, care, use, enjoyment, transport and retirement of horses.”⁴³

- **Unwanted Horse Coalition (“UHC”).** Convened by the American Horse Council, a number of organizations work through the Unwanted Horse Coalition to impact care of horses throughout their lives. According to the UHC, by “educating existing and potential owners, breeders, sellers and horse organizations about the long-term responsibilities of owning and caring for horses, and focusing on opportunities available for these horses, such as retirement, retraining, new careers or uses, donation and euthanasia, the coalition hopes to help horses before they become unwanted. The UHC hopes to utilize industry resources to put owners of these horses in touch with individuals and facilities that will welcome them.”⁴⁴

- **NTRA Wagering Technology Working Group.** On November 1, 2002, the NTRA created the Working Group to ensure security of the pari-mutuel racing system. In August of 2003, the Working Group, in conjunction with Giuliani Partners, issued a report on the pari-mutuel wagering system. The Working Group and subsequent report was formed after an attempted highly visible wagering fraud worth \$3 million on October 26, 2002, in connection with the Breeders’ Cup World Thoroughbred Championship.⁴⁵

In conclusion, because of the diverse stakeholders in the horseracing industry and the lack of a league structure or other centralized authority, the industry has traditionally developed working groups or coalitions to develop consensus and work through challenges in the industry.

⁴³ The American Horse Council, Homepage, http://www.horsecouncil.org/pressreleases/2009_WelfareCode.php (last visited Dec. 7, 2009).

⁴⁴ Unwanted Horse Coalition, Homepage, <http://www.unwantedhorsecoalition.org/> (last visited Dec. 7, 2009).

⁴⁵ NTRA, <http://www.nta.com/content.aspx?type=other&id=12265&style=red> <http://www.unwantedhorsecoalition.org/>.

Often times the results of these working groups must be implemented on a jurisdiction-by-jurisdiction basis in each of racing's regulatory jurisdictions.

IV. NTRA SAFETY AND INTEGRITY ALLIANCE (“ALLIANCE”) BACKGROUND

In the late Summer and Fall of 2008, based on broad concern from within the Thoroughbred industry, racing fans and Congress, the NTRA initiated an effort to understand what appropriate steps could be taken to improve the safety and integrity of Thoroughbred racing on a nationwide and uniform basis. As discussed above, the Thoroughbred industry has a diverse group of discrete stakeholders represented by numerous associations, does not have a centralized league structure, and is regulated by thirty-eight state regulatory entities rather than a single federal authority. Based on diffuse nature of the industry and lack of clear central authority, the Thoroughbred industry faced a challenge in how to conceptualize a system by which safety and integrity could be improved on a nationwide and uniform basis.

As part of this review, the NTRA engaged the law firm of Akin Gump to provide advice and counsel. Based on Akin Gump's review of self-regulatory structures in other industries, and given the lack of a centralized government or industry league structure, the NTRA determined that the best path forward for uniformity of safety and integrity standards on a nationwide basis was the creation of a new industry self-regulatory organization. Subsequently, the NTRA created the NTRA Safety and Integrity Alliance (“Alliance”), and created an industry Code of Standards (the “Code”) and accompanying accreditation process. Akin Gump, and its partner Tommy Thompson, who would serve as the Independent Monitor, were further engaged to provide independent review of industry progress in implementing the Alliance reforms.⁴⁶

⁴⁶ In fulfilling his role as the Independent Monitor to the Alliance, Governor Thompson had a core team of four Akin Gump personnel who assisted him. Jo-Ellyn Sakowitz Klein provided advice on the design of the self-

A. Alliance Formation, Structure, and Operation

The NTRA established the Alliance within its corporate structure to serve as a self-regulatory organization (“SRO”). An SRO is an organization developed by private entities, within a given industry, for the purpose of increasing legitimacy, setting standards, and enforcing adherence to industry norms. Many such organizations have their genesis as trade associations, developing from informal bodies that serve to provide and exchange information on matters of mutual concern, into effective self-governing bodies that may have officers, committees, policy councils, charters, by-laws, and rules for governing dealings between and among members of the organization, and also with the general public. During this process, the SRO transforms its rules into a comprehensive code of conduct that establishes uniformity within the industry.

From a corporate perspective, the Alliance was structured as an Advisory Committee of the NTRA board. Article 5 of the NTRA Fourth Amended and Restated By-Laws permits the NTRA board to set up committees of the board. The Advisory Committee was authorized by a board resolution on September 11, 2008. The Advisory Committee consists of eleven members, with six of them being NTRA board members and five of them being independent from NTRA.

The NTRA hired an Executive Director to run the Alliance. At the October 23, 2008, NTRA Board of Directors meeting, the Board approved the hiring of an Executive Director of the Alliance, appointed a Search Committee of the Board to assist management in the selection process and directed management to seek full Board approval for the candidate recommended by the Search Committee. The Executive Director position was tasked with managing multiple projects and securing broad-based stakeholder support for Alliance initiatives. Proficiencies in

regulatory organization; Gary W. Thompson provided advice on compliance programs, operation of the self-regulatory organization, and the accreditation process; Ladd Wiley assisted in coordinating both within the Akin Gump team and with the NTRA; and Anthony Curry assisted in data collection and development.

the areas of racing's regulatory framework, legislative advocacy, fundraising, and equine health and welfare issues would be central to the job; additionally, it was important that the Executive Director be skilled in the areas of leadership and consensus building.

The management team reviewed over thirty resumes and interviewed several candidates for the position and then submitted two persons for further review by the Search Committee. The NTRA held two meetings of the Search Committee as well as numerous discussions with Search Committee members, other Board members and industry leaders concerning the primary candidates. Based upon these interviews and meetings, the Search Committee unanimously recommended Mr. Mike Ziegler to fill the Executive Director position. The NTRA selected Mr. Ziegler in large part because of his background as a consensus builder who, as a racetrack executive, had developed the ability to work constructively with both horsemen and regulators on a wide-variety of topics. Mr. Ziegler also had significant exposure to the breeding side of the business.

The Alliance is designed not as a temporary fix, but rather a mechanism for self-regulating the industry over a sustained period of time. At its inception, the NTRA intended the Alliance to have a continuing role, even if all racetracks implemented the desired house rules and all thirty-eight racing jurisdictions adopted the RCI model rules. It is the intent of the NTRA for the Thoroughbred industry to have a consistent and structured entity that can serve as a resource for the industry to address future challenges. The NTRA envisioned a code of conduct or standards with a process for continual updating to adapt to emerging challenges. A standing SRO would be able to respond and implement needed reforms without undue delay.

B. Alliance Code of Standards

To achieve its purpose, the Alliance established the Code of Standards. The Code sets a common minimum set of standards to be followed by members of the Alliance in their respective

roles in the horseracing industry. The Code sets standards in the areas of (1) injury reporting and prevention; (2) creating a safer racing environment; (3) medication and testing; (4) jockey safety and health; and (5) aftercare for retired horses. The Code was approved by the NTRA board and was based upon the work of various task forces, working groups, and other industry initiatives over a number of years. In other words, the Alliance did not unilaterally decide upon the appropriate content for the Code nor did it dictate the specific standards that would govern each area. Rather, it brought together standards that had been developed within the industry through these various other reform efforts and helped to articulate them in one uniformly applicable document. The Code is publicly available for inspection at www.NTRA.com.⁴⁷

C. Racetrack Accreditation

In addition to the Code, the Alliance created an accreditation process through which individual racetracks can be certified as being in compliance with the Code.⁴⁸ Prior to accreditation, a detailed application must be completed and filed with the Alliance along with supporting documentation. The accreditation application is publicly available for inspection at www.NTRA.com. Further, an Alliance Accreditation Assessment Team (“Assessment Team”) conducts a site inspection. The Assessment Team visits each applicant’s facilities for the purpose of confirming that the applicant’s facilities, operations and written protocols are consistent with information included in the applicant’s application and otherwise consistent with the standards

⁴⁷ It should be noted that in its advisory role, Akin Gump provided assistance in drafting the Code although it did not influence in any way the content of the Code standards. As such, we will not opine in this report upon the efficacy of the content of the Code but limit our findings to aspects of the Code process that did not include Akin Gump.

⁴⁸ Similarly, it should be noted that in its advisory role, Akin Gump provided assistance in formulating the accreditation process and drafting the application criteria primarily with respect to issues of process rather than substance. As such, we will not opine in this report upon the efficacy of the content of the Code but limit our findings to aspects of the Code process that did not include Akin Gump.

set forth in the Code. All Assessment Teams include a regulatory veterinarian, an expert on racetrack operations and management and a representative of the Alliance.

V. ANALYSIS AND OBSERVATIONS OF THE INDEPENDENT MONITOR

A. Methodology

As set forth in a publicly available letter of September 24, 2009, the purpose of the Independent Monitor is to examine what the Alliance is doing and assess industry progress against the benchmarks the industry set for itself by addressing the basic question, “Is the Alliance doing what it said it would do?” In order to answer that question, we⁴⁹ conducted our analysis by reviewing and analyzing pertinent documents, conducting extensive key stakeholder group representative interviews, interviewing NTRA and Alliance personnel, eliciting and reviewing public comment, and incorporating observations made from ongoing Independent Monitor activities such as participating in town hall meetings, interacting with key stakeholder groups and serving as an observer on multiple accreditation site inspections. The bulk of the findings and recommendations emanate from two key activities: reviewing the accreditation process and results and conducting stakeholder group representative interviews regarding the Alliance’s activities during 2009.

Regarding the accreditation process, we interviewed the Alliance Executive Director and members of the accreditation inspections teams, examined the credentials of the inspection team members, reviewed all accreditation reports issued by the Alliance to date, reviewed the applications and supporting material for a sample of accredited racetracks, evaluated the results

⁴⁹ All references in this Report to “we,” “us,” “our,” and similar such terms are meant to refer to the Independent Monitor and/or his team.

of a questionnaire and survey submitted to accredited racetracks and posed general questions about the accreditation process in our Independent Monitor interviews of key stakeholders.

Regarding our overall assessment of the Alliance, we interviewed approximately thirty-five stakeholder group representatives reflecting representation from the following stakeholder group categories: Horseman, Owners/Breeders, Jockeys, Racetracks, Veterinarians, Players/Fans, State Regulators, Aftercare/Retirement and Media. These representatives included individuals who have been recognized leaders in the Thoroughbred industry for countless years and included the leaders of the preeminent Thoroughbred industry stakeholder groups such as The Jockey Club, Racing Medication and Testing Consortium, Jockeys' Guild, Thoroughbred Owners and Breeders Association, American Association of Equine Practitioners, Horsemen's Benevolent and Protective Association, Thoroughbred Horseman's Association, Breeders' Cup Limited and Association of Racing Commissions International to name some.

B. Alliance Racetrack Accreditation

1. Accreditation Process

One of the primary strengths of the Alliance accreditation process is its leadership under Alliance Executive Director Mike Ziegler. Based on our observations, both during racetrack inspections and in our data gathering activities, and based on the comments of interested stakeholders, we believe Mr. Ziegler to operate with integrity, independence, fair-mindedness, and appropriate expertise and toughness.

The Assessment Team consists of well-qualified and credentialed personnel. Significantly, the accredited racetracks uniformly agreed that the Assessment Teams were well-qualified. Mr. Ziegler chose a small coterie of five to six industry professionals to serve on the

Assessment Teams,⁵⁰ ensuring that he could have the right mix of personnel depending upon the geographic location of the racetrack and the professional experience of the Assessment Team member, e.g., he ensured that no Assessment Team member participated in an inspection at a racetrack for which a current or prior professional connection existed. The teams are selected to include at least one veterinary expert and one operational expert. This selection approach is consistent with the issues addressed in the Code and related accreditation criteria. The veterinarian primarily reviews racetrack policies and practices relating to injury and fatality reporting and prevention, and medication and testing, while the operational expert primarily reviews policies and practices relating to safety equipment and safer racing environment and safety of health and jockeys. Certain Code issues overlap these broad categories and are addressed by the appropriate team member for the specific issue. Mr. Ziegler, who serves as the leader of the Assessment Team on virtually all track inspections,⁵¹ provides overall management of the process, participates in substantive review and formulation of the findings through consultation with team members, acts as the primary liaison to the racetrack during the inspection, and directly conducts the review and analysis of certain miscellaneous Code issues.

The accreditation process includes the issuance of the Alliance Application for Accreditation (“Application”) to the applying racetrack. The racetrack then submits a completed Application to the Alliance with supporting documentation. The Assessment Team reviews the Application and materials and then conducts a two or three day on-site inspection in order to

⁵⁰ The current Assessment Team members include Dr. Ron Jensen, a retired regulatory veterinarian with over forty years of experience; Dr. Jennifer Durenburger, a former racing association veterinarian with over seven years experience; Dr. Celeste Kunz, a private and racing association veterinarian with approximately twenty years of experience; Mr. Richard Lewis, a former Director of Racing and Trainer with over thirty years of experience; Mr. Dan Fick, the Executive Vice President and Executive Director of The Jockey Club with over twenty years of experience; and Mr. Stan Bowker, a current state racing commission Steward and chairman of the Racing Officials Accreditation Program with over thirty years of experience.

⁵¹ Mr. Ziegler appropriately recused himself from the Assessment Team for the Hollywood Park inspection as he previously was employed at the racetrack.

validate the information provided in the Application. The validation process consists of interviews of key racetrack personnel related to the accreditation criteria at issue, first-hand observation of racetrack practices and environment and review of any additional relevant documentation located at the racetrack not previously provided. It was uniformly agreed that the Assessment Team had unfettered access to racetrack grounds, personnel, equipment and documents in order to effectively carry out the inspection. The Alliance also formed an Aftercare Committee made up of representatives from leading horse aftercare/retirement organizations and the Alliance consults with the committee to validate that racetracks meet the aftercare criteria in the Code and Application. At the end of the inspection process the Team meets to confer on observations and findings and assigns a “grade” for each and every application criteria as follows: Each criterion is determined to be either a Best Practice, More than Satisfactory, Satisfactory, Less than Satisfactory or Deficient. This approach, which is consistent generally with other industry processes of this nature, entails an inherently qualitative and case-by-case analysis but the Alliance is continually working to develop as consistent an approach as possible. Significantly, many of the criteria are evaluated against the model rules, thus the specific requirements are clear and uniform to all concerned.

In order to be accredited the track must achieve at least a Satisfactory result on all the critical Application criteria. A racetrack can still be accredited if it earns a Less than Satisfactory or Deficient score to the extent such score is on a non-critical criteria and/or it is able to immediately correct the deficiency. For example, a racetrack might have a very strict and well-communicated policy that all outriders must wear a safety helmet but an Assessment Team member might observe one or two particular outriders without a helmet. This does not lead to a failure to accredit (nor should it); rather, the racetrack must demonstrate that it is taking

immediate steps to better enforce its policy. Before issuing the final report the Alliance notifies the racetrack through written correspondence of the criteria it found to be Deficient or Less than Satisfactory and explains the steps the racetrack must take to bring the item up to a Satisfactory level and a timetable for doing so.

The Independent Monitor and/or his team participated as observer on approximately one third of the inspections to date in order to observe the process and evaluate whether it is designed and implemented in a well-considered and reasonable manner. We also reviewed and evaluated all Alliance inspection reports to date and the supporting materials for approximately five of the accreditations. Additionally, we evaluated the results of a questionnaire and survey sent to accredited racetracks. Based upon our review and observations we find that the Alliance accreditation process is effective. The application is clear and understandable. The Assessment Team appropriately validates criteria through interviews and first-hand observations. The team is allowed unfettered access to the racetrack. Finally, the team engages in appropriate follow-up to the extent that open issues exist upon the end of the on-site inspection.

2. Accreditation Results

According to the responses to the survey sent by the Independent Monitor to the accredited racetracks, the racetracks overwhelmingly believe that the process led to improved safety and integrity at their facilities. Each of the accredited racetracks reported three to five tangible changes that occurred at the track as a result of the accreditation process. These results included improved working relationships with the state racing commission, enhanced support of aftercare/retirement efforts, physical improvements to starting gate padding, better formalization of practices that were already being followed, enhanced employee awareness and education regarding safety and integrity issues, improvement to pre-race examinations, implementation of house rules to bring particular criteria in alignment with the Code, greater attention to safety vest

and helmet use, increased advocacy with state regulators to adopt particular model rules and sharing of best practices with other racetracks.

It is important to note that the response of the racetracks is in marked contrast to the stakeholder interviewees and comments from the public. There was a general consensus among the stakeholders we interviewed and public comment that there have not been any significant observable differences at accredited racetracks comparing pre-accreditation experience to post-accreditation experience. There was a general consensus among the stakeholders that the accredited racetracks represented the best-run operations in the country and these tracks were already largely operating in compliance with the Code prior to their accreditation. There was a general view of public commenter's, many of whom were focused on after-care issues, that the Code was not strong enough to force the kind of changes that would be observable to them.

It appears that both perspectives are accurate. Wholesale changes that are clearly visible to the public may not have occurred at any of the accredited racetracks because they did not need to occur. Further, because many of the changes that occurred would require specific knowledge of the inside of the racetrack before and after accreditation, the interviewees and the public may not have had the knowledge to make a true assessment of a racetrack's tangible changes. The Alliance needs to take note of the concept that if the public is not aware of changes that are made, then it appears no changes are made. As we indicate further in our findings and recommendations, the Alliance must do a better job of communicating tangible changes to its stakeholders, the racing public and the media.

Despite the views to the contrary, and based on the response from the racetracks and our own fact-finding questions, in our opinion, it is clear that the accreditation process did affect change. While this change may be at an incremental level, and may not be as significant as

many observers of the industry desire, it is important to note that this is the first year of a multi-year effort, in which continuous changes to the Code and improvements in processes are envisioned to occur.

First, at a broad level, significant change occurred in that it caused the leading tracks in the industry to focus upon their safety and integrity efforts with renewed vigor and in many instances formalize protocols that were previously ad hoc and unwritten and/or enhance education of track personnel regarding safety and integrity issues. It was the first time that tracks in distinct regulatory jurisdictions had been evaluated according to a national standard – and this forced the strengthening of their internal processes.

A good illustration of the subtle way in which the accreditation process affected change is in the area of medication and testing. Given the lack of uniformity in medication and testing rules in racing jurisdictions, many of the inspected tracks were not subject to medication and testing rules consistent with the RMTC model rules as required by the Code and accompanying Application. Because the racetracks are not in a position on their own to adopt such rules; however, the only effective remedy was to require the racetracks to demonstrate tangible advocacy with the state regulators to adopt the relevant Model Rule(s). According to several stakeholder interviewees, racetrack advocacy is vital in spurring racing commissions into action. Thus, there have been several instances where commissions are now actively considering adoption of medication and testing model rules when such efforts had previously lay moribund.

In addition, listed below are a few specific instances of tangible results:

Example 1: During the inspection of the starting gate at a racetrack the Assessment Team indicated to track management that even though the clearance distance between the jockey/horse and the overhead structure was considerably more than most gates, it was unpadding

and thus inconsistent with Model Rule ACRCI-007-020(F)(1). By the next morning the padding was being added to meet the model rule.

Example 2: During an inspection it was observed that several outriders were not adhering to the safety helmet rule and a negative finding was reported to the racetrack. Two weeks later the Assessment Team member observed on a televised racing event at that track that all outriders appropriately wore fastened safety helmets.

Example 3: During a racing commission board meeting an agenda item regarding safety helmet and vests was being discussed. The then existing rule was not as strong as the Model Rule, ARCI-008-010(Y)(1-2). A track that had just undergone the accreditation notified the commission that it was adopting the model rule as a house rule and would keep it in effect until the commission adopted the model rule.

Example 4: A state racing commission was considering a rule change relating to a medication but despite the advocacy efforts of RMTC the commission would not make the change. An accredited racetrack wrote a letter to the commission advocating the change and the commission adopted the rule.

Example 5: During the inspection of a racetrack it was discovered that the regulatory veterinarians had stopped inputting data into the Incompass Equine Injury Database; however, the relevant data had been manually maintained. The racetrack devoted the resources necessary to assist the veterinarians in getting the EID current and it has since been kept current. Moreover, the veterinarians are now inputting such data at non-Alliance non-accredited tracks within the state because they agree with the efficacy of the standard.

Perhaps the most significant achievement to derive from the process is the sharing of best practices. As the Alliance moves from track to track it is able to compare practices across tracks

and develop a database of best practices, which can now be shared among all accredited tracks. This improves the safety and integrity among them all, even for tracks that were already doing a satisfactory job. It is our understanding that the Alliance is currently in the process of developing a centralized repository of best practices that will be maintained and/or disseminated in a manner that all Alliance racetracks can have access to them.

3. Number of Accredited Tracks

There is a general consensus that having thirteen tracks accredited to date with two pending is good progress but that significantly more racetracks need to be accredited to fulfill a primary purpose of the Alliance.⁵² At the time of our stakeholder interviews we identified that either twelve or thirteen tracks were accredited (depending upon the date of the interview) so commentary and feedback was based on that number. As of the date of this Report, thirteen tracks are publicly accredited (one provisionally), two tracks are pending issuance of their reports, and one track has been inspected but the report is still in the process of being formulated. Moreover, two racetracks are slated for January inspections, and approximately nine others appear to be in the process of completing applications. Thus by the end of January it is anticipated that approximately eighteen racetracks will have applied to be accredited. Although the Alliance set an internal goal of approximately twenty accredited racetracks for 2009 it did not actually begin the process until the spring of 2009, thus its current results are relatively in-line with its initial goal. It should be noted that the Alliance only conducts inspections during live racing, thus, it must structure its assessments around the racing calendar.⁵³ Because it did not

⁵² It was beyond our role and scope to qualitatively assess whether the Alliance appropriately accredited applying racetracks. Nevertheless based upon our review of the relevant materials the Alliance's accreditation decisions appear to be inherently reasonable and supported.

⁵³ Due to unique circumstances and because it was the kick-off accreditation inspection only Churchill Downs was conducted during non-live racing.

initiate the accreditation process until spring 2009, there were a handful of tracks with January – March racing seasons that did not have an opportunity to be inspected this calendar year but are now likely to be inspected in 2010. The process from start to finish can take several weeks and has become increasingly sophisticated as the Alliance has become more adept at performing the review and inspection. Thus, unless more resources are committed to the Alliance no more than a couple of racetracks a month can probably be realistically accredited.

The primary shortcoming and dilemma appears to be that many racetracks have yet to come forward to be accredited and that many of these tracks may not be doing so because they are concerned that they will not pass. Certainly, as a member of the Alliance and a signatory to the Alliance pledge one would expect that all Alliance racetracks not yet accredited would seek accreditation in the next year at the latest. There appears, however, to be ample anecdotal evidence that many tracks are holding back. To the extent that they fear an inability to pass, it may be driven more by the cost factors involved rather than a lack of commitment or support for Alliance goals. The racetracks must pay an accreditation fee of \$15,000. More significantly, certain of the Code standards could require the expenditure of significant resources to bring the operation up to a passing grade, e.g., a padded starting gate or equine ambulance in compliance with the relevant Code and model rules, adding a veterinarian in order to conduct sufficient pre-race examinations in accordance with the Code and model rules.

An important theme that arose from the stakeholder interviews is that the track industry operates in a “class” system with several tiers reflecting various levels of prestige, resources, organization, economic clout, etc. Everyone agreed that the dozen or so racetracks initially accredited were industry leaders with high standards prior to seeking accreditation. A further realistic comment was that, there may be a group of tracks at the bottom tier of the industry that

may never be in a position to be accredited. All the stakeholders recognized that if some critical mass of top or near-top tier racetracks could be accredited, this could lead to pressure on the middle tier to follow suit. Some suggested that to the extent that the bottom tier was unable ever to come up to standards and as a result were pushed out of the industry that that would not necessarily be an unwelcome result. This in large part will depend on whether the racing public will demand to only participate in accredited facilities.

Generally speaking, the Alliance will likely have to move from a passive role of accepting applications and conducting reviews to a more active role of encouraging application, providing pre-application advice on what would be required to become accredited, and providing general education. This proactive activity must be done without compromising the integrity of the Alliance.

4. Participation and Adherence Mechanisms

Our review included an analysis of (1) to what extent does the Alliance have adequate mechanisms to ensure that all Alliance members undergo accreditation; and (2) to what extent does the Alliance have adequate mechanisms to ensure that accredited racetracks continue to adhere to Code standards after accreditation.

a. Participation

Regarding the first issue, there is a wide variety of opinion regarding what needs to be done to get more tracks willing to undergo the accreditation process. Some interviewees recommended the use of positive peer pressure by demonstrating the concrete benefits of having accreditation while others advocated negative peer pressure by demonstrating the concrete detriments of not having accreditation. Many suggested a combination of the two types of peer pressure. Significantly, others think that peer pressure alone is an insufficient participation mechanism and that the Alliance needs to be able to sanction those who fail to get accredited.

Another group of stakeholders think that in order to make the process credible some tracks need to actually fail the accreditation inspection. Conversely, others think that this notion flies in the face of the purpose of the Alliance, which is to raise the safety and integrity of the industry as a whole. Thus, a “gotcha” approach should not be emphasized but rather the accreditation process should strive to raise everyone to an acceptable level but perhaps recognizing gradations and levels of compliance such that the racetracks with the best safety and integrity are rewarded by players and fans. Perhaps, the most compelling idea offered was that the Graded Stakes Committee should not allow graded stakes at non-accredited tracks. Another suggestion was that state racing commissions should not grant racing licenses to non-accredited tracks. Finally, it was also suggested that accreditation requirements be included in existing Interstate Racing Compact solutions being currently discussed within the industry.

One interviewee noted that all the accredited tracks are associated with NTRA board members reflecting that the leaders in the industry have taken action but the rest of the industry has not followed. It should be noted that based upon anecdotal information there are two racetracks that might be considered industry leaders that have not yet been accredited nor have they yet expressed an interest in being so but that accredited tracks and other interested stakeholders are putting considerable peer pressure on the tracks to undergo the process. Another interviewee noted that the bottom tier tracks may not care that much about live racing and the concomitant safety and integrity concerns as they exist primarily for simulcasting and slot gaming. Thus, he/she suggested restricting simulcasting rights in some manner at such tracks. Interviewees appeared to agree that Players were going to primarily follow their rational economic self-interests in deciding where to participate and would not necessarily be strongly influenced by what tracks had an Alliance “seal of approval.” To address this issue, certain

interviewees agreed that it was incumbent upon the owners to refuse to race horses at accredited tracks once a critical mass of tracks became accredited to make that a viable option.

Clearly, this is a critical issue and there are a lot of different ideas on how to achieve wide-spread industry adherence. Based upon our analysis it appears that a more in-depth and careful study of this issue by a committee of experts is warranted with such committee being tasked to produce tangible and specific recommendations for an appropriate “participation” mechanism to be adopted by the Alliance.

b. Adherence

Regarding the second issue – that accredited tracks continue to follow the Code standards after accreditation – it was uniformly agreed that at present time the Alliance does not have a system in place to ensure continued adherence. Due to a lack of resources the Alliance cannot conduct unannounced spot check visits or otherwise conduct inspections or audits outside the formal accreditation inspection. The system is currently designed such that accredited tracks will undergo inspection every two years. Most troubling, one interviewee suggested that one of the current accredited tracks quickly fell out of compliance with the Code standards soon after the accreditation. Due to time constraints we have not yet been able to follow-up on this report and ascertain its accuracy but believe that such follow-up is now warranted.

Notwithstanding that the Alliance does not currently have a surprise inspection mechanism in place, in part, to account for this limitation it built into the accreditation requirements a racetrack self-regulating mechanism that once fully developed will help achieve

constant compliance – i.e., the requirement that racetracks develop and implement compliance programs consistent with the Federal Sentencing Guidelines.⁵⁴

As set forth in the Code, Alliance racetrack members are required to implement an effective compliance program as a condition of Alliance accreditation. The Alliance also promulgated a Guidance for Racetrack Member Compliance Program (“Racetrack Compliance Guidance” or “RCG”) to (1) provide background on compliance programs in general; (2) describe the basic purposes and benefits of compliance programs; (3) explain how the RCG should be utilized; and (4) describe the core elements of a racetrack compliance program. Based on the requirements of the Code, racetracks were expected to implement compliance programs consistent with the RCG.

As stated in the RCG, the eight essential elements of an effective compliance program can be summarized as follows:

1. Establish standards and procedures to prevent and detect non-compliance;⁵⁵
2. Ensure high level organizational responsibility and oversight;
3. Ensure that untrustworthy individuals are not placed in positions of authority;
4. Provide training and education programs and other forms of communication on compliance;
5. Perform compliance monitoring and auditing and maintain an internal reporting mechanism;
6. Promote and enforce the program through appropriate incentives and discipline applied consistently throughout organization;

⁵⁴ It should be noted that Akin Gump advised and counseled the Alliance on the inclusion of this requirement.

⁵⁵ The FSG actually refers to “criminal conduct” here and throughout the document; however, the FSG drafters acknowledge that compliance programs should be designed to not only address criminal law violations but rather to ensure compliance with organizational standards as well non-criminal laws. Moreover, the Alliance reforms address issues that are not necessarily governed by criminal law.

7. Take reasonable steps to respond to non-compliance and prevent future recurrences; and
8. Perform periodic compliance risk assessments.

As stated in the RCG, an effective compliance program is a system of organizational structures and processes managed by a dedicated compliance officer to help ensure compliance with Alliance safety and integrity reform standards as well as applicable laws and regulations. Instituting an effective compliance program can help racetracks: (1) ensure that they are adhering to the Alliance Code; (2) demonstrate to the public and regulators their commitment to the safety and integrity of horseracing; (3) prevent injury to Thoroughbred horses and horseracing personnel; (4) prevent violation of laws and regulations governing the proper use of drugs and medications in thoroughbreds; (5) detect potential unsafe or improper practices, mitigate the consequences of such practices and implement corrective action to prevent reoccurrence of such practices; and (6) maintain the public's trust and confidence in the safety and integrity of horseracing. Thus, the intention was that compliance programs would enable racetracks to police themselves and somewhat mollify the need for constant watchdog activity by the Alliance.

Unlike other industries such as defense contracting and healthcare where FSG-based compliance programs are common and well understood, compliance programs were by in large foreign to the Thoroughbred industry. Thus, notwithstanding its inclusion in the initial accreditation requirements, it became clear that racetracks would need much more time and education to understand how to fully actualize an effective compliance program. As such, the Alliance somewhat relaxed its review of this aspect of the inspection with the expectation that by the second round of accreditation racetracks would be expected to have developed more sophisticated and comprehensive programs and would be inspected more closely on this criteria.

This approach is reasonable and prudent under the circumstances but we recommend that considerable effort should now be made by racetracks to educate themselves on compliance programs and develop state of the art programs in order to self-police their ongoing adherence to the Code. We also support a more careful review of racetrack compliance programs as part of the second round of accreditation.

C. General Assessment of the Alliance

In making an assessment of the Alliance generally,⁵⁶ but including, in part, its accreditation efforts discussed in detail above, we analyzed the following themes or topics: (1) the extent to which stakeholders believed that safety and integrity issues remained and the identity of such issues; (2) the extent to which the Alliance has achieved and/or is achieving its goals, including the strengths and weaknesses of its performance; the extent to which the Alliance has effectively communicated its purpose, achievements, and activity; the extent to which the Alliance remains necessary and the extent of resources needed by the Alliance; and (3) the extent to which non-racetrack stakeholders have supported the Code and Alliance efforts.

1. Safety and Integrity Concerns

Based upon our review, there is a consensus that while many improvements have been made over the past year, safety and integrity issues in the industry remain. A wide variety of issues were identified as being of most concern, often reflecting, not surprisingly, the primary interests of the respective stakeholder. Among the issues cited were jockey injury and insurance

⁵⁶ In thinking appropriately about who/what is the Alliance, it is important to consider the following: It was clear from our interviews that many stakeholders seem to think that the Alliance is the NTRA or that it is solely the component of the NTRA that is conducting the accreditation process. While that perspective is partially correct, fundamentally the Alliance is the members of the industry who joined to form the Alliance and agreed to the Alliance pledge, with the operational function and executive arm of the Alliance being housed within the NTRA. Thus to the extent that we identify weaknesses or areas of improvement within the Alliance such constructive criticisms are being directed at the Alliance as a whole (and by implication the members of the industry that constitute the Alliance) and not exclusively at the executive arm of the Alliance within the NTRA.

and aftercare/retirement. The issues, however, that were most often cited were (1) track surface and maintenance; (2) over-medication of the horses; and (3) horse soundness generally. It is significant that track surface and maintenance was so frequently cited as that is not an issue that is addressed in the initial Code. The perspectives on medication and testing varied but most stakeholders agreed that while performance enhancing drugs are probably abused to some extent the bigger problem is the over-use of therapeutic medications, which do not necessarily affect racing performance but might be affecting horse health generally. Moreover, these stakeholders agreed that the jurisdictional inconsistency in medication and testing rules is a significant problem. The public comments provided strong concerns regarding the use of therapeutics, especially the use of corticosteroids in joints to mask pain and keep horses running longer than appropriate. Regarding horse soundness the consensus was that it is a multi-variable issue but that it is fundamental because not only does it have consequences for the horse but it put jockeys at risk as well when horses are being run inappropriately. The public comments raised significant concern regarding the racing of two year-old horses. The public comments also raised significant concern regarding the slaughter of horses after completion of their racing careers.

2. Goals, Performance, Communication, Standing, and Resources

Regarding the extent to which the Alliance is achieving its goals, has performed well, is communicating effectively, remains a necessary component of industry reform efforts, and has the resources to achieve its goals, the consensus was largely positive but qualified. Most agreed that the Alliance was an excellent start and has accomplished a lot but that much more needed to be done. A common refrain was that the mere fact that the Alliance successfully formed itself, issued a Code, and implemented an accreditation process was significant progress in itself given

the prior poor track record with industry initiatives. Stakeholders agreed that the Alliance was a necessary and appropriate response to the public stir that had been caused by the tragedies of Barbaro and Eight Belles and media attention on performance enhancing drugs. For many stakeholders the primary achievement of the Alliance, thus far, has been its ability to raise awareness within the industry that it needed to address its safety and integrity issues head-on in a meaningful and significant manner.

Many stakeholders cited to the accreditation process as the most significant achievement of the Alliance. Conversely, some stakeholders believed that not enough tracks have been accredited quickly enough and not enough negative publicity or pressure has been brought to bear on non-accredited tracks; or not enough positive acclaim has been showered on the accredited tracks. Similarly, some stakeholders believe that no demonstrable benefit has yet been shown for becoming accredited.

Most stakeholders thought that the Alliance had done a good job communicating with the industry about its initiatives but not as good with the general public. These stakeholders believed that the Alliance needed to be in the media more, especially with respect to racetrack accreditations. It was also suggested that the Alliance should appear before racing commissions more often. Notwithstanding the impression that the public lacks awareness; however, a survey commissioned by the NTRA indicated that awareness of the Alliance is at 90 percent among core fans, that two-thirds of such fans believed Alliance actions were sincere, and close to a majority believed that such initiatives were likely to bring about real change within three years.⁵⁷

Notwithstanding the generally positive reviews certain stakeholders thought that the Alliance is relevant only within a small subsection of the industry and that much of the industry

⁵⁷ Data from “The Impact of a United Effort to Enact National Safety Reforms,” Social Sphere, August 2009; can be found at www.ntra.com

operates without much notice or care about its efforts. These stakeholders believed that the Alliance lacked a substantive rallying point. In short, according to this perspective, the Alliance needed to more clearly emphasize what is at stake in the industry with safety and integrity and show how the Alliance efforts are the solution to the crisis.

According to stakeholders, measuring the success of the Alliance reform effort is an uncertain and complicated endeavor. Some were focused on process measures while others on outcome measures. For example, some wondered whether the best measure of success is to be found in a reduction in horse and jockey injuries or because of the inherent danger in horse racing could the Alliance movement still be considered a success if the industry had overwhelmingly adopted the reform measures and was doing its best to avoid injuries. Similarly, it was pondered whether a better measure of success would be the fact that all racetracks in the country get accredited or is it a better measure that some percentage of tracks fail to get accredited, which would demonstrate that the standards are strictly enforced. It was also noted that without more concrete and specific benchmarking of where racetracks currently stand with respect to Code standards it is difficult to assess their improvements, if any.

There was also a consensus that the Alliance needs to sustain its efforts and that reform is a long term project. Many agreed that given the central role of state racing commissions, regulators needed to be more incorporated into the process and a partnership developed. A vast majority of interviewees stated that the Alliance should continue to raise the bar each year for the Code and accreditation process.

Another aspect of sustaining or enhancing the Alliance that we analyzed is the question of resources. Many of the stakeholder interviewees acknowledged that the Alliance needed more resources to sustain its efforts. The NTRA made a substantial initial investment in the Alliance.

The NTRA has invested about \$1 million in Alliance efforts to date spending primarily reserves, which is not sustainable. It hired an Executive Director for the Alliance whose costs is borne by the NTRA. It utilizes independent contractors to form the Assessment Teams and they also are paid from NTRA funds. The racetracks pay a \$15,000 fee to be accredited but our understanding is that while this fee covers the direct costs of the Assessment Team, including, a pro rata share of Mr. Ziegler's salary and benefits, it does not cover the entire costs of the Alliance operations, including having an Independent Monitor and other NTRA activities that support the Alliance such as legislative advocacy, fundraising, communications and research.

Based upon our review it appears that the accredited tracks are the only organizations that put significant dollars directly into the Alliance. The Alliance's direct fundraising efforts with horsemen and breeders were largely unsuccessful. These groups do, however, contribute 50 percent of the dues revenue used by the NTRA to operate so they do indirectly help defray the costs of the Alliance to the extent that Alliance costs are borne through NTRA's operating budget. Veterinarians contributed some monies to the Alliance and jockeys contributed a small amount as well.

3. Non-Racetrack Alliance Members

As has been referenced previously in this report the racing industry is very diversified constituting a wide range of stakeholders. While the Alliance primarily consists of major racetracks most if not all of the major stakeholder organizations within racing are also members of the Alliance. Moreover, these Alliance members have pledged support for the Alliance and have agreed to follow the Code. It is only racetracks, however, that are accredited. Thus, the question was posed regarding to what extent are the non-racetrack members of the Alliance being held to adherence to the Code; or better stated to what extent are the non-racetrack members

holding their individual constituents or members accountable for adherence and/or at least promoting adherence within their membership?

The answer to this question appears to be mixed. Undoubtedly, several of the major Alliance member groups were instrumental in formulating many of the of reform measures that are found in the Code. And, several of them continue to engage in ongoing reform efforts. Additionally, virtually all the key member groups had significant input into the formulation of the Code. The only significant stakeholder that did not is the aftercare/retirement community; but since the issuance of the Code the Alliance has formed an Aftercare Committee which it consults with regularly on these issues and that Committee will have input into any 2010 Code revisions.

Notwithstanding this foundational input and support, it does not appear that the stakeholder member groups are proactively requiring some concrete evidence of support within their membership and/or at least promoting the Alliance and its efforts within their membership. For example, a review of the websites of the major Alliance membership groups reveals that virtually none of them indicate that they belong to the Alliance, have a link to the Code and/or mention it, or otherwise discuss and/or promote the Alliance generally.⁵⁸ Our ability to comprehensively review this issue; however, was limited, and there may be internal initiatives being undertaken by such groups to which we were not made privy.

Despite this criticism it was pointed out by certain interviewees that the non-racetrack Alliance members (or more accurately the constituency of such member groups) are affected by the accreditation process as the racetrack is where all the constituencies come together. For example, jockeys and outriders must abide by the Code helmet rules, so even though it is the

⁵⁸ It should be noted, however, that the AAEP issued a white paper in January 2009, in which it endorsed the Alliance.

racetrack that is being evaluated on such adherence, jockeys and riders are being educated and monitored regarding such adherence. We agree with this perspective but also believe that it is incumbent upon the relevant membership organizations to promote individual compliance and adherence among its respective membership. Questions have also been raised regarding whether the non-racetrack members have contributed significantly financially to the Alliance and this issue warrants further consideration.

VI. FINDINGS AND RECOMMENDATIONS OF THE INDEPENDENT MONITOR

Given our assessment, and consistent with our analysis above, the Independent Monitor makes the following formal findings and recommendations:

1. Did the Alliance formulate the Code with sufficient outside input?

Yes, essentially every stakeholder group had significant input into the formulation of the Code with the exception of the aftercare/retirement community; however, as discussed above since the Code promulgation an Aftercare Committee has been formed, is being consulted with, and will have input into any 2010 Code revisions. Based on the vast majority of the public comments being focused on aftercare, it is clear that continued involvement of this stakeholder community in Code formulation will be important.

Recommendations:

The Alliance should conduct a review of its Code annually and enhance its standards, as appropriate. This means strengthening the requirements surrounding existing standards and adding new standards. As it did previously, the Alliance should seek input from all the major stakeholder groups; however, it should also create a process to allow the public to provide input into the Code. Giving the public a chance to provide comment will increase fan trust in the process of the Alliance. Among the issues it should consider for treatment in the Code

are strengthening the standards for starting gates and creating standards for vests and helmets, track surface and maintenance, and safety rails as well as more robust requirements relating to medication of horses and aftercare/retirement.

2. Is racetrack accreditation an effective vehicle for industry reform?

Yes, based upon our review we find that the Alliance racetrack accreditation process has been largely successful with the potential to achieve considerable results as the process gathers momentum and expands and develops more robust participation and adherence mechanisms. There is a consensus that the process has helped focus the industry on improving safety and integrity at racetracks, and has lead to racetracks adopting shared best practices. The two primary weaknesses that we have identified are that (1) there is an insufficient adherence mechanism to ensure that accredited tracks stay in compliance with the Code; and (2) there are insufficient incentives and/or disincentives to persuade and/or compel all Alliance racetrack members or non-Alliance racetracks to undergo accreditation.

Recommendations:

The Alliance should develop a separate “adherence” inspection team that conducts random unannounced audits and inspections of accredited racetracks to ensure that they are continuing to adhere to Code standards. Relatedly, the Alliance should create a “hotline” to enable any individual to raise issues at racetracks that he/she believes are in violation of the Code; and, the Alliance should create a “hotline” review team, including an independent reviewer from outside the NTRA/Alliance, to conduct appropriate reviews of any credible allegations. Alliance accredited tracks should be required to allow an Alliance review/investigation, as appropriate, and/or conduct their own internal investigation and submit the results to the Alliance for review, as appropriate.

3. Did the Alliance create an effective accreditation process?

Yes, unquestionably, the accreditation process itself is well designed and implemented. The Application is very comprehensive requiring extensive time and effort by the racetracks to complete. Despite its length, the Application is clear and understandable regarding criteria and requirements. Additionally, the Assessment Teams are well-qualified and credentialed and conducted their inspections with the appropriate professionalism, autonomy and independence. Racetracks were supportive and cooperative and allowed the Assessment Teams unfettered access to their operations and personnel. Finally, the inspections were performed in a transparent manner. The Independent Monitor and/or his team, however, did not participate as observers at a sufficient number of accreditations.

Recommendations:

The Independent Monitor and/or his team should participate as observers in all accreditations or at least increase the percentage of accreditations observed. The evaluation of racetrack compliance programs should be given more consideration in the second round of accreditations. The Alliance should continue to formalize and significantly build its practice of providing advice and education to racetracks in how to improve their operations in a manner to achieve accreditation. We believe this education process will be the catalyst towards getting remaining tracks to apply.

4. Did the Alliance accreditations make a difference at the racetracks?

Yes, as discussed above notwithstanding some impression to the contrary, the accreditations affected racetracks in ways both concrete and subtle. First, as discussed above, almost all the racetracks were required to change at least a few policies and/or practices to bring them into line with the Code and/or advocate for regulatory changes at their respective commissions.

Second, the accreditation process caused racetracks to focus their attention on issues, formalize their processes, and enhance their education of employees around safety and integrity issues. Finally, and perhaps most significantly, the accreditations have led to the development of best practices, which are being gathered and codified by the Alliance for sharing among all Alliance members.

Recommendations:

As mentioned, many of the racing public and key stakeholders we interviewed were unaware of improvements made at specific tracks. As discussed, a better communication plan of these improvements is important. Further, many members of the public and some stakeholders felt the Code was not strong enough to make the kind of changes needed. As the Independent Monitor, it is not our job to make value judgments on which changes to the Code are necessary; it is important for the Code to be continually improved and for the racing public to have an opportunity for some level of input.

5. Did the Alliance make sufficient progress in accrediting racetracks?

Yes, as discussed above given that accreditations did not begin until spring 2009 and given the time required to complete an accreditation the current number of completed and/or pending accreditations represents good progress. As discussed above, however, questions remain regarding what mechanisms should be undertaken to ensure racetrack accreditations reach a critical mass by the end of 2010.

Recommendations:

The Alliance should form and coordinate a working group to analyze the accreditation participation issue and make recommendations, which the Alliance should adopt, to create a process to ensure widespread participation in accreditation. Allotting graded stakes

contingent upon accreditation is among the alternatives that should be specifically considered.

6. Did the Alliance communicate effectively regarding its safety and integrity efforts?

Yes, in some respects, but it could have done better in other respects. It appears that the Alliance has communicated effectively within the Alliance membership community and among most of the industry leaders. The Alliance created, and has maintained, a solid website presence for communicating to the fans and general public. There appears to be significant awareness among fans of the Alliance, communication of specific improvements should be improved to the public at large. One of the most significant reasons the Alliance exists is that fans are concerned regarding the safety of the horses and the jockeys. As such, communication of the improvements is almost as important as the improvements themselves. If fans do not understand the steps that are being taken to improve the industry, they may think no improvements are occurring at all. While the Alliance website communicates information effectively concerning some issues (providing answers to questions such as, What is the Alliance?, What is the Code? What is the accreditation process?, and Who has been accredited?), and the Alliance communicates promptly and clearly at the point that an accreditation occurs (both a press release and a press conference typically occur); nevertheless, we are concerned that fans may not generally understand overall progress toward stated goals.

Recommendations:

The Alliance should provide consistent and periodic progress reports to the fans that provide an accounting for overall activities. The Alliance should explain its Code revision process, and the timeframe that is happening. The annual report of the Independent Monitor can play some role in reporting this, but more consistent and periodic reports from the Alliance itself

to its fans, would instill more understanding in what activities the Alliance is taking and should instill more confidence in the Alliance. Further for each track that is accredited, the Alliance should explain at its press conference and at its website where improvements have been made.

7. Does the Alliance have sufficient resources to succeed?

Perhaps for the first year, but we have serious concerns that more resources are needed in the coming years. We realize that the Thoroughbred racing industry, like much of America, is going through a fiscally challenging time period. Nonetheless, an upfront investment needs to be made by all stakeholders in Thoroughbred racing to the Alliance. We believe additional resources will be required in the area of : communications, compliance of accredited tracks, and education and promotion of the Alliance to non-accredited tracks.

Much of the industry contributes to the Alliance through its annual dues to the NTRA, but we believe special investments must be made specifically to the Alliance to give it the ability to do its job.

Recommendations:

While we defer to the industry to work out a financing mechanism that makes sense for the Alliance, immediate attention should be paid by all stakeholders to devise a solution. Ideas worthy of consideration may include annual dues or upfront investments by wealthier aspects of the industry to a special endowment of the Alliance. Given the need for a sustained effort by the Alliance in the coming years and the other recommendations being made here, the Alliance is going to need more resources. Going forward, a broad coalition of interests will need to participate in and fund the Alliance if it is going to continue to be effective

8. Is the Alliance achieving its goals generally?

Yes, the Alliance represents an excellent start and solid foundation for lasting industry reform. Nonetheless, much more needs to be done. As stated in our analysis the horseracing industry is very fragmented, and it has been very difficult through the years to implement uniform and nationwide industry initiatives. Thus, in many respects the fact that the Alliance formed at all and has taken concrete steps in implementing reforms is a significant success itself. The Alliance has done a good job striking a balance between implementing substantive safety and integrity reforms that are ascertainable but not overwhelming, particularly at a time in which all agree that the industry is facing significant economic challenges in the current overall economy.

Recommendations:

The aforementioned recommendations will all help improve the Alliance efforts generally. One additional recommendation is that the Alliance should help have a discussion regarding the merits of an Interstate Compact, which would enable states to more readily adopt Model Rules. While we do not take the full step of endorsing the Interstate Compact concept, we do believe it is important enough to merit serious consideration. Additionally, measures should be considered to enable the Alliance to exercise more authority over racetracks. In that regard the Alliance should evaluate the extent to which Alliance enforcement measures can be undertaken without raising anti-trust concerns. Finally, the Alliance will need to expand its mission beyond safety and begin work on the integrity of the wagering system. While it was understood that initially the Alliance would focus on safety, it should begin plans to expand to the integrity of the wagering system.