



Horseracing Integrity and Safety Authority  
Mr. Hank Zeitlin, Executive Director  
401 West Main Street, Suite 222

December 2, 2021

Dear Mr. Zeitlin,

The Thoroughbred Owners and Breeders Association (TOBA), the Kentucky Thoroughbred Association (KTA), the California Thoroughbred Owners (TOC) and the Thoroughbred Horsemen's Association (THA) represent thousands of owners and trainers across the country. For years, our members have been vocally urging for reasonable and uniform rule making and enforcement across the nation. No one is more invested in the success of the Horseracing Integrity and Safety Authority (HISA) than our members.

While we appreciate both the difficulty in assembling a rule book in a compressed timeline as well as the effort HISA/USADA personnel have taken to meet with us, our comments on the most recent drafts of the regulations will not be available until Monday, December 6. It is our expectation they will be included in the submission to the FTC as part of the industry wide comment.

It is our understanding that HISA plans to submit its proposed regulations on December 8. However, we are concerned that the random release of the documents has made it difficult to comment appropriately on the regulations. For example, there was a November 24 draft and a November 30 draft and no notice of the updates, nor a redlined copy to make the analysis more efficient. The Federal Trade Commission (FTC) has established a process for HISA to submit proposals to the agency, which assumes that HISA will provide for and document meaningful stakeholder comment before submission. More specifically:

- The FTC notes that HISA is attempting to model its role on the self-regulatory organization FINRA. However, as the FTC states, "If FINRA decides to issue a Regulatory Notice soliciting public comment on a proposal, the comment period typically is open for one to two months." (emphasis added). [86 Fed Reg 54819 at 54823.] As discussed below, that is a much longer period of time than HISA has provided for comments in this case.

- Additionally, the FTC has emphasized the importance of robust public comments for consideration by the Authority, noting: “Soliciting comments, as FINRA does, in advance of submitting any proposed rules or modifications to the Commission would benefit both the Authority, the regulated community, and the Commission. It would provide transparency and enable the Authority to resolve any issues with its rules prior to their submission to the Commission.” [86 Fed Reg. at 54823.] Additionally, “[t]o ensure the public has an adequate opportunity to review and understand the Authority’s rules, ask questions, and provide comments, the Commission is encouraging the Authority to make its proposed rules publicly available and solicit public comments in advance of providing any submissions to the Commission.” [86 Fed Reg. at 54822.]
- Lack of meaningful stakeholder input can result in unworkable proposals and risks rejection by the FTC. The rules that HISA is proposing to adopt are complicated and require careful consideration – much more than mere days to evaluate.
- The FTC process requires HISA’s submission to fully address comments and potential alternatives. In particular, the FTC requires a “summary of the substance of all comments received and the Authority’s written response to all significant issues raised in such comments.” [16 C.F.R. § 1.142(a)(6)]. It must also include a statement of basis and purpose that includes and addresses a “description of any reasonable alternatives to the proposed rule or modification that may accomplish the stated objective and an explanation of the reasons the Authority chose the proposed rule or modification over its alternatives.” [16 C.F.R. § 1.142(a)(3)].
- The shortened comment period does not provide HISA with the time to meaningfully consider input and alternatives before FTC submission. As a result, the submission may be rejected as a procedural matter, even putting aside any substantive concerns with the proposal.
- We have yet to see two pieces of required submissions [16 C.F.R. § 1.141 (b) & (k) – a list of controlled therapeutics and, most worrisome, “A formula or methodology for determining assessments described in 15 U.S.C. 3052(f).”
- HISA has not justified its rush to submit proposed rules.
  - The FTC process presumptively requires filing a draft Federal Register notice 90 days in advance of publication, followed by a 60-day window before publication. Even with a required effective date of July 1, 2022, HISA should have more time to formulate its submission.
  - In any event, the FTC can “waive the 90-day requirement [for advance submission before Federal Register publication] if the Authority demonstrates such waiver is necessary to meet statutory deadlines.” [16 C.F.R. § 1.142(d)]. HISA should consider that approach if it is necessary to meaningfully consider comments from stakeholders.

We believe we have all worked responsibly and credibly with HISA through this process and we will continue to do so. We encourage HISA to further engage collaboratively with industry stakeholders and experts such as ourselves enabling a successful and on-time HISA launch.

Sincerely,



Dan Metzger  
President of TOBA



Chauncey Morris  
Executive Director of KTA



Greg Avioli  
President and CEO of TOC



Alan Forman  
Chairman and CEO of THA



Joseph Applebaum  
President of NYTHA