Horseracing Integrity and Safety Authority
Mr. Hank Zeitlin, Executive Director
401 West Main Street, Suite 222
Lexington, KY 40507

December 6, 2021

Dear Mr. Zeitlin:

Please accept this document as feedback on the HISA Rules published November 30, 2021. They represent mutual opinions of the undersigned organizations; the Thoroughbred Owners and Breeders Association (TOBA), the Thoroughbred Owners of California (TOC), the Kentucky Thoroughbred Association (KTA) and the Thoroughbred Horsemens' Association (THA). Combined we represent tens of thousands of owners and trainers across the United States. We have done our best to give timely feedback but it has been incredibly difficult with the random updating of the HISA proposed regulations. This has been further complicated due to the lack of version control nor redline process. This is our best attempt to meet the December 8 target date, while we will provide further feedback as HISA continues to update its proposed regulations.

Support For Racetrack Letter
We are in receipt of the feedback letter that the Breeders' Cup, Churchill Downs Incorporated, Del Mar Racetrack, Keeneland Association, Inc., the New York Racing Association, and The Stronach Group submitted on November 24, 2021. We would like to broadly endorse their suggestions and particularly highlight a few critical comments.

ARCI Model – Pages 1 & 2
First it is our collective belief that the existing Association of Racing Commissioner's International (ARCI) regulations were to serve as a template for these regulations. The documents provided bear little resemblance to the rules that were painstakingly developed by the industry and account for the unique circumstances that arise in horse racing. There are several major regulatory considerations upon which the existing draft rules are largely silent. To be clear, we are not asking for blanket adoption of these rules. Rather, we would encourage you to use the existing ARCI rules as a guide and strengthen them where appropriate.

Second, there has been much effort expended in drafting an anti-doping protocol. While we have some concerns about individual sections within this protocol which will be addressed later, our greater concern is the absence of defined therapeutic medication control regulations. As you know, most medication issues in Thoroughbred racing surround the inappropriate use of or mistakes regarding administration of therapeutic medications. In every racing jurisdiction around the world, there are allowances for the use of therapeutic medication within training and in proximity to racing. Many of these therapeutic medications are crucial to ensure humane care for horses. For example, sedation can be preferrable over other forms of restraint for shoeing, wound treatment, and other procedures. Overly restricting use of certain therapeutic medications will result in a decline in horse welfare. Moreover, we found the analysis of the anti-doping section challenging when, in our opinion, much of the context of the protocol depends upon how therapeutic medications are addressed.

In fact, we believe a plain reading of the HISA statute, makes it clear that the ARCI regulations should be a starting point.

Plain Language - Page 2
The definition section should more closely reflect the definitions in the ARCI model rules or the enabling statute where present. Quite simply, we are dealing with thousands of licensees that are accustomed to specific terms of art that have been used for decades. Regardless of who is regulating horseracing, changing the language used by a handful of regulators is likely to be more successful than changing the language of thousands – many of whom do not have the educational background of the regulators. Additionally, many of these definitions are cumbersome and difficult to parse – even for the lawyers, physicians, and veterinarians who contributed to this letter.

Medication Control Protocol Pages 4 & 5
As noted above, one of our major concerns regarding this section is the failure to address the use of therapeutic medications. While alluding to the regulation of therapeutic medications the rules as written would appear to prohibit the use of any medication in racing and training. This is a welfare issue and would result in the United States becoming the only country where therapeutic medications are not allowed in training or in proximity to racing. Moreover, simply limiting therapeutic medication to the "minimum necessary to address the

diagnosed health concerns" will prove problematic.

The IFHA, ARF, and EHSLC each have screening levels for permitted therapeutic medications in racing. These are based upon governmentally approved medications in each region as well as decisions made by the local regulators. To be clear, even in IFHA signatory countries, there are often additional medications allowed in proximity to racing and in training that are not covered by IFHA screening limits. The choice of whether a medication is included on the IFHA screening limit list is based upon the consensus of the need for a medication across the globe – and many of the current IFHA substances are not approved for use in the horse by the US Food and Drug Administration. Accordingly, we would urge the Authority to review the existing ARCI therapeutic medication thresholds which were primarily established through research performed by the Racing Medication and Testing Consortium and cover approved medications in the United States

From the THA's letter on October 27, we think this section sums it up well:

Our Industry has operated under a regulatory scheme for well over six (6) decades that Is surprisingly uniform, simple and easy for racing's participants to understand. Racing Is an agricultural Industry. Its participants are mostly Individuals who have grown up on farms, in the industry, and who have Immigrated from other countries. They are [more humbly] educated and are devoted to the horse and Its safety and welfare. Racing's participants are very different from those in human sport who mostly come from colleges and universities and are well-educated, and what Is tolerated In human sport would never be tolerated In racing.

We have also identified three significant areas that we feel need to be addressed in a substantial way.

Missing Information
As we noted in our letter dated December 2, two critical areas of evaluation have yet to be distributed – The **Medication Control Prohibited List and the Assessment Structure.** Not only are both required submissions under [16 C.F.R. § 1.141 (b) & (k) but they are central to anyone's ability to evaluate the efficacy of the complete regulatory scheme.

Medication Control should be at the heart of the efforts to a) protect our equine athletes and b) insure a level playing field. Medication is necessary for any professional athlete and our horses benefit when they are used appropriately. The delay in releasing the document is difficult to understand as it should have been the first document released and the one in which anti-doping controls were built around.

Having a chance to review the assessment structure is obviously important to all stakeholders. Estimated costs, who they will be borne by as well as where the funds will be deployed need to be justified and revealed in a transparent manner. Further, since neither HISA nor USADA have a great deal of experience in operating these sorts of programs at scale, the feedback they receive from regulators and other industry participants will be invaluable. Once again, we are confused by the delay of such an important document.

Owner Responsibility
17.1 As a condition of participating in or preparing for a Race or working with a Covered Horse which is participating in or preparing for a Race, Covered Persons agree to release and hold harmless the Agency, the Authority, and all other Equine Constituencies and their designees from any claim, demand or cause of action, known or unknown, now or hereafter arising, including attorney's fees, resulting from acts or omissions which occurred in good faith.

1. As with most waivers, releases, indemnifications, etc., the devil is in the details. Is this the actual language that owners (and any other Covered Persons) will be asked to sign? We can't provide meaningful feedback until we see the exact language.
2. That said, there are many potential land mines in the language above (e.g. "good faith" on whose part, as determined by whom? What exactly does "hold harmless" mean in this context? Is "all other Equine Constituencies" really meant to include every single person and entity in the sport? Does "acts or omissions" really include anything that might be involved in getting a horse ready for a race, not just regulatory actions? etc.).
3. The breadth of this single sentence is enormous. It involves a fundamental reworking of the entire legal structure of the sport, going well beyond the issues of medication and safety.
4. We have owners throughout the country with billions of dollars invested in Thoroughbred racing and breeding bloodstock. Many of them have business or legal experience that will make them very reluctant to sign something this broad and one-sided.
5. We understand HISA's desire to streamline the adjudication of alleged violations. But if this is to be successful it has to be balanced with fairness and due process, and cannot include attempts to limit the ability of any Covered Persons to exercise their constitutional rights as citizens.

Track Safety Program – Insufficient
We believe a robust plan for Racetrack maintenance and racing standards is critical (also called for in HISA's enabling legislation) if HISA is going to meet its mission. A well-conceived standards and accreditation program will not only hold all of our Racetracks to a higher standard, but if implemented correctly with education and shared resources, will make our smaller Racetracks more efficient and aspirational in safety matters. This view is even supported by the racetracks themselves - *Generally, the Racetrack Safety section of the document reads like a guide – not a regulation. Much of the information contained in the document is best limited to a training or policy guidance manual.* See page 10 of the Racetrack letter.

Following are suggestions for a well-designed program of standards and accreditation:

1. **Racetracks as Institutions**- Institutions, along with licensed persons need to be emphasized. The point of HISA is accountability, so if we are going to raise the standards on individual actors, how can we not hold the Racetracks themselves to a higher standard? Racetracks should be the legal equivalent of a "covered party" and be required to meet the same levels of compliance.
2. **Mimic The Medication System** - Create a system that has both Major and Minor safety and operational standards. The Major standards would be necessary for a Racetrack to operate, if the track can't meet that level, then it really should not be in business. Minor standards are more akin to best practices and need not be met in full, but in some high percentage. This lets Racetracks focus on the standards that are truly important, while preserving some independence and a nod to local norms. It gives them the ability to apply their efforts most efficiently.
3. **Comprehensive and Specific** - The list of standards (both Major and Minor) needs to be more comprehensive and specific. Comprehensive, in that more of the NTRA's Safety and Integrity Code of Standards should be incorporated. Specific in that Racetracks need to know exactly what is expected of them.
4. **Time Frame** - Tracks should be accredited every two years. The standards and accreditation process should be built into their operational and risk mitigation business systems.
5. **Scoring System** - Create a straight-forward, objective measurement system for scoring Racetracks' compliance. For instance, simple questions that can be answered and scored: Do you perform necropsies? Do you send injury data into HISA's database? Do you routinely measure moisture content of your surfaces? Yes, great, can I see the log?
6. **Educational Approach** - A standards and accreditation program built in this manner really relies upon an educational approach. The standards, and the explanations for why they are important, become the curriculum for which Racetracks need to prepare. The accreditation process is, in essence, the exam where Racetracks prove competency in the curriculum. It's akin to receiving an operational or professional license not unlike the process that many professionals already go through, be it a Series 7 exam or a Bar Association exam or a Veterinarian's Board.
7. **Remediation Plan** - If this is an educational process, we would hope that every teacher would have a remediation plan for his/her students. This process should be no different. Racetracks that do not meet standards, either substantially or partially should have a detailed report prepared for them outlining their specific areas that need to be corrected.
8. **Probationary and Provisional** - In the original HISA draft, there was a lot of "squishy" language that gave HISA a substantial amount of leeway to judge whether tracks were attempting to comply. We believe this approach to be a mistake and not consistent with how "covered individuals" are being judged. How the accreditation process will be administered needs to be clear to both HISA and the covered tracks. As with the medication rules, the simpler the judgement system the better.
9. **Emergency Intervention** - If there is a situation where animals and humans are at risk and a track is unable or unwilling to intervene, HISA needs to ability to act quickly, ensuring the safety of both equine and human athletes.
10. **Transparency** - The standards, how each Racetrack responds to them and the thresholds for passing, should be available for public review. Transparency allows the public to have confidence in how Racetracks are operating, it allows the Racetracks to judge themselves versus their peers and it is the proof of HISA's efficacy.

This program should really be the cornerstone of HISA's focus. HISA's primary remit is to lower the breakdown rate of our horses. There is nothing more important in its mandate than getting a standards and accreditation system right.

Specific Rule Specific Recommendations

Following please find more specific recommendations. We did our best to organize them, but the ever-changing nature of the document made that difficult. They are organized in three categories: General Thoughts, Safety and Welfare, and Medication Control and Anti-Doping.

<u>General Thoughts</u>

1. These regulations and the others we have reviewed refer back to the Authority entering into agreements with State Racing Commissions. This leads to two questions:
    a. How will HISA operate if a State Commission chooses not to participate?
    b. How will HISA operate in a state like Florida that does not have a Racing Commission?
2. Aftercare/Transition provisions should be included in the Safety/Welfare section.
3. Security Assessment & Training should be included in the Anti-Doping & Therapeutic Medication section
4. What happens to Equine Injury Database that has been compiled to date??
5. Are recommendations of fatality reporting shared with all the stakeholders at a track/region/national level? If so, how will this be communicated?
6. Will Equine Medical Directors still exist, or will the new title be Safety Director?
7. What happens to the Jockey Injury database?
8. 46.2 (b) Stewards discretion re: disciplinary action for reckless riding – should there be an established penalty system to manage multiple violations?
9. Consider replacing "drug" throughout document with different medical term. "Medication" would be a better choice.

Safety and Welfare

1. Page 5 G. How does the Authority enforce a non-accredited track from simulcasting?
2. Page 11 b. should read "unconditional authority to Recommend to the stewards"
3. Page 12 c. same comment to recommend a scratch
4. Stewards would not overrule a scratch recommendation, but we think having them involved will provide consistency.
5. There is still no provision that a scratch is irrevocable.
6. Page 18 (B) 1. How would going to the Symposium qualify for 8 hours of CE for a Veterinarian?
7. Page 20 21 (F) Should be a provision that does not mandate the ambulance shall follow the field. (weather, size of track)
8. Page 30 (B) d. Is it necessary to void a claim for a horse that displays ataxis?
9. Page 30 e. Voiding a claim for a positive test is not practical.
10. Page 31 (7) shock wave on a list for 30 days is way beyond the current 10-day standard
11. Page 33 (C) Disqualifying a horse for a whipping infraction is arbitrary weather it is 5 strikes or 10
12. Racing Surface Monitoring and Maintenance
    a. This section is a mere 3 pages when it is one of these most critical factors in **SAFETY AND WELFARE** for both racehorses and jockeys! This where the rubber hits the road and where it will be imperative that the racetrack facility be on board with the goal of safety and improvement; and, willing to be transparent and accountable for their maintenance and investment in racing surfaces.
    b. Specifics regarding the gaps, starting gate and emergency racetrack warning system are inadequate.
    c. Dirt and Synthetic should be addressed separately as they are very different maintenance protocols
    d. Consider language that mandates immediate track condition review/testing w/ unbiased outside (no conflict of interest) consultation with increase in injury prevalence (set acceptable variance%)
    e. 43.5(b)(6) Where is the Racetrack Surface Standard Practices document located? In annex?
    f. 43.5(d) protocols for measurement of moisture content and cushion depth? Range of acceptable limits for both dirt and synthetic surfaces should be contingent upon regional geographic difference.
    g. 43.6(a) surface maintenance logs and material addition/renovation logs submitted how and when to Authority? Adequate notice of change given to horsemen & veterinarians of changes incurred?
13. 30.4(f)1 scope of lameness diagnostics? Physical exam or imaging only?
14. 30.4(f)5 – deleted brief stethoscope exam -- why? Should be “minimum” standard
15. 30.5(b) – notification of being put on Veterinarian’s List would be delivered how? Currently a hodge podge of delivery systems and tracking that varies between states – often not known by trainer until entry day!
16. 30.5(b) Entry of horses can occur when after removal from the Veterinarian’s List? Current horse may be entered but may not run until it comes off the list – variable entry dates makes this a critical point.
17. Racehorse Monitoring - 31.1(b) who is submitting this information to the Authority? What format?
18. Racehorse Treatment History - 32.1 & 2(a) . . . transfer of 60-day medical records . . . was previously stated to be 30 days – seems pretty arbitrary.
19. Racehorse Treatment History - 32.2(d)7 – Responsible Person to report arthroscopies, colic surgeries etc.? – should list the surgeon of record in order to facilitate follow-up.
20. Claiming Races - 33.2(c)(5) positive test – still challenged by the interim period prior to return but after claim regarding care and treatment of the claimed horse – no regulations to address this concern?
21. Prohibited Practices - 37.2 Use of ESWT to desensitize during racing – this is redundant as the horse is already on Veterinarian’s List for 30 days. How will desensitization be defined/identified for training purposes?
22. Prohibited Practices - 37.6 Use of electrical medical therapeutic devices . . . within 48 hours of a training activity . . . was previously 24 hours of racing – these modalities are considered physiotherapy and often used on a daily in conjunction with their training schedules – hard to reconcile the way this regulation is written.

Medication Control and Anti-Doping

1. 2.1 and 2.2 to "Responsible persons'" & "Covered persons" which in lieu of trainer is applied to the Horse's owner. We suspect this circumstance is during a lay-up or "spell," however the document does not make specific reference to when this responsibility shifts.
2. Article 2.7 lists prohibited method, and subsequently your appendix points to a prohibited list – May we view this list? The previous "Racetrack Safety Committee Rules" referenced ice usage, something widespread on every backside as being reportable.
3. Prohibited Substances 4.1 - "most up-to-date version" will be published where/how will notification be given to horsemen/veterinarians?
4. Article 4.4 Monitoring Program – We understand the Agency/Authority wants to gather data on new, unknown substances which may be performance enhancing. Regarding monitoring, could a penalty or "positive" be applied retroactively on a monitored substance known to be used on a horse? Also, would this monitoring be made public as described in section 12.3
5. Retired Covered Horses Returning - 5.6 (a) It is unclear how this would play out? Appears horse cannot return to racing for 6 months post notification but can train (including works?) but is not subject to OOCT due to interim retired status? Thoroughbred racing supports a commercial breeding market worldwide. There are historical circumstances when owners have every intention to retiring both stallion and/or broodmare prospect to the breeding shed only to be found to be subfertile. We understand there is a 6-month stand-down period before returning to work likely to prevent use of Anabolic Steroids, however would it be possible to allow for a monitored period of say a calendar year from retirement, as a hedge to return quickly if the owners choose to return racing?
6. Results Management - 7.1 Adverse Analytical Findings Reports – Anti-doping/Medication Control is inconsistent throughout this section -- often only stating Anti-doping whereas we know historically that 98% of these adverse findings will be Medication Control violations.
7. Identification of Prior AD MC Violations - 7.3 " . . . any prior anti-doping or medication control rule violation under this protocol exists." Does this refer to this specific Covered Person or for the asserted violation in general?
8. Provisional Suspensions - 7.4 (c) What about the lost opportunity during the provisional suspension? Liability to Authority?
9. 7.4.1.2 Provisional Suspensions - We believe allowing three failures to produce a horse for examination is too lax.
10. Article 9 Automatic Disqualification of Covered Horse's results - Does this DQ occur after the first test, or does it wait on the "B" sample as described in Article 7.1.1.4?
11. Article 10.12.1.3 Status of Ineligibility or Provisional Suspension - The requirement to provide whereabouts continues even if a sale or retirement occurs?
12. Article 16 Additional Roles and Responsibilities of Covered Persons - This section is vital to compliance and must be drafted in a more straightforward prose to laypeople, i.e., trainers in the United States. The preceding Article 15 provides a framework for this.
13. Veterinarians Responsibilities - 16.3 (a) Typically these will be breeding farm vets – are they covered persons? Or is this merely delegation of responsible person to transmit the information provided by the farm vets?
14. Veterinarians Responsibilities - 16.3 (c) Does this section give any consideration for State Medical requirements/rules?
15. Anabolic Androgenic Steroids - Multiple testosterone derivations – can they be identified as exogenous vs endogenous?
16. Beta-2 Agonists – Is Salbutamol a therapeutic exception (exemption?)?
17. Thyroid Hormone (Thyroxine) – no therapeutic exception identified with medical diagnosis (see current NY requirement).
18. Diuretics and Masking Agents - How would the exceptions be regulated for furosemide/trichlormethiazide? Medical records or other form of notification?
19. Prohibited on Race Day – given the 21.2 "Race Period" prohibition (48 hours) it seems this section is mislabeled and should read "Prohibited during the Race Period"
    a. In practice the orally administered chondroitin/glucosamine & vitamins will perpetuate the use of products with no scientific efficacy OR proof of safety to the horse – supplements and over the counter products are currently very poorly policed as they fall outside of the FDA jurisdiction for the most part and does not require validation of the claims made
    b. It is inappropriate to administer vaccines against infectious agents within the Race Period – this should be excluded.
20. 23.2 (a) M5 I/A injection – what is M5??

As always, our organizations look forward to working with HISA, for an on-time implementation, to advance the best outcome for our athletes, both equine and human as well as the sport in general.

Sincerely,

Dan Metzger

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Chauncey Morris

Executive Director of KTA

Greg Avioli

President and CEO of TOC

Alan Forman

Chairman and CEO of THA

Joseph Applebaum

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