1. Call the Meeting to Order and Introductions: William Varney, Chair

2. Review and Approval of Minutes
Commissioner Reed made a motion to approve the minutes of June 23, 2017. Commissioner Graham seconded. Vote 4-0.

Review and Approval of Decision and Orders
None

3. Adjudicatory Hearings:

a. RE: Hearing on the Horse Supply. Pursuant to 8 M.R.S. § 271 (7), the Commission will take testimony to determine whether the horse supply in the State has been adequate for the number of dashes conducted on assigned race dates and may limit the number of dashes that a licensee may race after August 1. AAG, Guay explained the procedure for the horse supply hearing. Mr. Jennings presented the following exhibits. Exhibit 1, Horse Supply Tracking Sheet for 2015; Exhibit 2, Horse Supply Tracking Sheet for 2016; and Exhibit 3, Horse Supply Tracking Sheet for 2017. AAG, Guay admitted the exhibits with no objection.

Mr. Jennings called Miles Greenleaf. AAG, Guay gave Mr. Greenleaf his oath. Mr. Jennings asked questions to Mr. Greenleaf. Mr. Greenleaf explained the three exhibit sheets. AAG, Guay stated that the only remedy that the Commissioners have is limited. They can reduce the number of dashes when there is essentially more than one track racing. The race date calendar has only a couple of opportunities that meet that status. Does the department have any recommendations for any action the Commission can take? Mr. Jennings stated that there is an issue with horse supply. It would be better served in November when we look at the next year’s schedule. The licensees have already invested significant resources for their program. AAG, Guay asked Mr. Jennings if his recommendation is for the Commission to take no action on the horse supply hearing. Mr. Jennings stated that it would be difficult for the licenses to adjust at this point and it would be better served by taking this in a long-term consideration. AAG, Guay asked if anyone would like to be heard on that recommendation. Ronald Cushing stated that he does agree with the department. There is a horse shortage and Scarborough’s dashes are down. He stated that they are not getting their purse money the way they are supposed to. AAG, Guay asked Mr. Jennings if the department rest. Mr. Jennings stated yes. AAG, Guay closed the hearing for deliberation on the question of adjusting dashes. Commissioner Graham made a motion that they take no action on adjusting dashes this year. Commissioner Reed seconded. Vote 4-0.
b. **RE: Reopening the 2017 Race Date Hearing.** Pursuant to 8 M.R.S. § 271, § 275-N and Commission Rule Chapter 19, Section 10, the Commission may reopen the race dates and licensing hearing upon a motion of a licensee. At the June 23, 2017 meeting, Davric Maine, Inc. moved to reopen the hearing. The Commission will take testimony relative to whether the current horse supply warrants an adjustment of the number of race dates awarded for 2017. AAG, Guay asked the Commissioners questions. The Commissioners had no bias and Commissioner McFarland will recuse himself from any participation with Windsor Fair. Mr. Jennings presented exhibit 1, Notice of Hearing and email. AAG, Guay admitted exhibit 1 with no objection. Commissioner Graham made a motion to reopen the race date hearing to discuss whether current horse supply warrants an adjustment to the number of race dates. Commissioner McFarland seconded. Vote 4-0. AAG, Guay asked if anyone in the audiences, intervenors, and parties have any objection to any of the proceedings up to this point. There were none. Mr. Jennings presented Exhibit 2, Letter from Scarborough Downs 7/28/18 and Exhibit 3, Letter from Scarborough Downs 7/20/17. AAG, Guay admitted the exhibits without objection. He stated that exhibit 2 was pre-circulated to the parties. Mr. Jennings stated that he would like Scarborough Downs to proceed. AAG, Guay gave William Manning his oath. Mr. Manning stated that they have adequate horse supply to race three days a week. Looking at the fall schedule they think the similar horse supply will be available. They are asking to reduce the days they are racing in the fall. They would like to relinquish the three Thursdays in October (12, 19, & 26) and four days in November (2, 9, 16, & 30); and additionally, they would like to request to add three days in December (8, 9 & 10) as snow days in case they lose out December 1, 2, and 3. AAG, Guay asked Mr. Manning that on exhibit 3 these are dates that if he looked at the decision and order were awarded to Scarborough. Is that correct? Mr. Manning stated that’s correct. AAG, Guay also asked if these are the days that you did not race. Is that correct? Mr. Manning stated that’s correct. AAG, Guay asked Mr. Manning if he is now seeking from the Commission that you did not race on those days and you’re relieved from those obligations. Mr. Manning stated that when they were licensed last year the race date requirement for relicensing was 101 race dates at a commercial track at a certain population level. His understanding of LD 1532 which was just recently passed, the number of races required had been reduced to 70. Some of the days that they were running, were required in order to be relicensed every year, did not make sense from a financial standpoint. Now that LD 1532 has passed, it seems to make sense that those days be taken off their schedule. AAG, Guay asked if there are any questions from other people. Mr. Cushing asked Scarborough if the Commission grants them their wish, the days that they haven’t raced yet and you want reduced more. Are you going to give the horsemen the money that is owed to them in purses according to your budget or are we just going to keep helping you out and our purse money is still not going to come to us? We wouldn’t have a horse shortage and we wouldn’t have a lack of races. What is your plan with their money. Mr. Manning stated that the first three months of the year they had no guarantee that LD 1532 was going to pass, so they would have to make up the days that they were missing and would require them to spend that purse money. If they didn’t have that they would have to slash purses to try and make up that number of days. AAG, Guay stated that he does recognize that this is a relevant issue. Commissioner Graham stated that he would like to see the 3 days in December as race days and not storm days. AAG, Guay gave Stephen Cobbett his oath. Mr. Cobbett stated that the days that you just mentioned were not awarded and if they had to cancel, they would make for example if it was a Sunday date they would make it up on a Monday because they have 24 hours in which to use that card. If they did not have the other make up dates, and they canceled due to snow they would not be able to make up those dates and they would be lost dates. On the purse question, he would like to recognize with the reduction of race dates that purse money
is there, and they recognize that. It is not their intent to use that money during the fair season to be unfair to the fairs. In past years, there has been a slight bump and that would probably happen as it has in the past. They would come out with a schedule after the fair season to disburse that money. AAG, Guay asked if there were any other questions for Scarborough. Commissioner McFarland stated with respect to the schedule there were several make-up dates; does Scarborough intend on making up any of these dates that are make up dates currently in the schedule during the fair as well as beyond the fair? Mr. Cobbett stated no sir. Their request for reconsideration today is to reduce the minimum number of race days down to 80. The days that have already had to cancel due to weather or horse supply, they are looking for those days to be dismissed along with the Thursdays which Mr. Manning has already mentioned. Commissioner McFarland stated that the 101 days that the Commission authorized Scarborough has requested in this letter from July 20th eleven dates due to horse supply and weather that you haven’t raced and you have no plans to make them up; and an additional 7 Thursdays in October and November be eliminated. Is that correct? Mr. Cobbett stated yes if the math is correct. Commissioner McFarland asked Mr. Manning if the average expenditure per day is $25,000.00? Mr. Manning stated that he agrees with Commissioner McFarland. Commissioner Graham stated that he was concerned about this close to a half million dollars that you held back how you are going to get it to the horsemen without putting some days somewhere. He can’t see why they can’t race a few more days in December. Mr. Cobbett stated that they are at the mercy of the weather and that if he had a crystal ball and knew what the weather was going to be he would agree with him. Basically, they have a three-man crew that takes care of the entire facility during snow removal, as well as track and maintenance. It is no secret that Scarborough Downs is struggling and they have for years. Commissioner McFarland stated that the bill suggested that there was an incentive put into the bill that would allow you to receive two for one. Mr. Jennings stated that the formula for distributing the fund to encourage racing at commercial tracks is no longer strictly based on the number of dashes. It also takes into consideration days raced in which no other venue is racing and days raced in March and December. Commissioner McFarland stated that is in place with the idea that it would help any venue that races in those conditions in March and December. Commissioner Varney asked what the number of racing days they have been through. Mr. Manning stated that it was their 43rd day. Commissioner Varney asked how many days does Scarborough race against the fairs. Commissioner McFarland stated 13 dates. Commissioner Varney asked how they would get around a half a million dollars to the horsemen without putting some days somewhere. They would keep some money at the end of the year to roll over for 2018. Commissioner Varney asked how much they would roll over. Mr. Manning stated that typically it’s about $150,000. Commissioner Varney stated that the money that was owed to the horsemen from prior years there was an agreement made between the MHHA. Is that being paid back? Mr. Manning stated that the agreement is that they will pay each year this year, next year and the following year $75,000. Commissioner Varney asked if that would be included in the purses this year along with the cascade. Mr. Manning stated that it is his understanding that it will be paid this year but he doesn’t know when. Commissioner Varney stated that they will have close to $400,000 dollars to make up before the end of the year. Mr. Cushing stated that if there is no money to race for, that’s part of the reason there is a horse shortage. People are going elsewhere because they are not receiving the money that they deserve. Commissioner Varney agreed with Mr. Cushing. That’s kind of a separate issue and the Commission should look at and set up something at our next meeting to find out from the MHHA if they are satisfied with the arrangement. This is a reasonable request. Mr. Manning stated that even if the race dates are not reduced he doesn’t think that the horse
supply will change especially after the eight or nine weeks of the fairs running. If anything, he thinks the horse supply might even be tighter as horses get sick and injured. Commissioner Varney stated to Mr. Manning that the horse supply would be better if your purses were bigger. Mr. Cobbett stated it’s a possibility. Mr. Manning stated that if the purses went up then Bangor would be more short of horses than they already are. Commissioner Varney stated that he would like to move on. AAG, Guay stated that what he is hearing the Commissioners say is they would like the executive director to notice a proceeding at the next meeting to discuss purse payments at Scarborough. Is that what he is hearing the Commissioners say? Commissioners agreed. AAG, Guay asked Mr. Jennings if he had a statement that he would like to make or are you taking a position on this. Mr. Jennings stated that when they get into the issue of purses he is going to have to look at the statute about that. He stated that Scarborough has already been awarded those dates. They are making a request to relinquish some of those dates. They are not making a request to add any or change them. The only question is if you are going to grant their request or not. AAG, Guay stated that he is not sure if that is accurate because by history we have and Scarborough would have specific race dates, and there were no make up dates. Several years ago, the Commissioners decided the best way to do it was to award make up dates ahead of time, so that they wouldn’t have to reopen the race date hearing every couple of months. The precedence here is contrary to the position that you’re stating by also looking at the rules he doesn’t see the prohibition from awarding additional dates or different dates. As a matter of fact, the rule talks about if a date is forfeited, so theoretically they are forfeiting certain dates and they could be reassigned. Somebody here today could come forward and say that Scarborough Downs is forfeiting this date we would like it. He thinks they could have it. If your question is can the Commission prevent them from forfeiting dates? Mr. Jennings stated that is not the question. As the department, he would be reluctant to take a position which you would force Scarborough to race at a time of year that they are not requesting because, and the reason he says that is, if you look at the statute part of the criteria that you are supposed to apply in awarding dates is the maintenance of the diversity of tracks for the horses to race on. Their request is based on financial consideration. When can they actually make a profit? Commissioner Varney asked Mr. Jennings what his recommendation is. Should we approve what they asked for? Mr. Jennings stated that he is remaining neutral on that. Scarborough is making this request based on the ability to stay in operation. Commissioner Graham stated that he agreed with Mr. Jennings that they should lose those Thursdays that they are asking for, but he sees no reason why they can’t add those 3 dates in December. He thinks it would be profitable they would have horses at that point because they wouldn’t be racing against anybody else. Commissioner Varney asked Commissioner Graham if he is saying is he would request canceling the dates they asked to cancel with the stipulation that they race 3 more days in December. Commissioner Graham stated yes. Commissioner Varney asked Scarborough for their response to that. AAG, Guay stated that previously Scarborough didn’t have any head room. They had 100 days and the makeup days were important as makeup days so that you won’t fall below your statutory minimum. He thinks they are in a different position now with considering this request because even if you missed those 3 days you would still have enough days to meet the statute. After a brief recess, Mr. Cobbett stated that Scarborough would like to race December 1, 2, and 3 which is their original proposal and add on December 9 and 10 as race dates. Mr. Manning stated that they are currently authorized for 10 dashes in October and November for each race date. If horse supply is available, and if the Commission would grant them more dashes on each day that would certainly allow them to spend more purse money; and provide more racing depending on the horse supply and the fairs will not be running at that time. The only issue would be daylight. Mr. Cobbett stated that depending on the horse supply they would do
eight, ten or twelve. Commissioner Graham stated that he has a problem with that. He would prefer less races and more horses in a race than more races with less horses. Mr. Cobbett stated that he agrees with him. AAG, Guay stated that you could place the condition on the motion that the additional dashes shall be granted if the remaining fields are full. He asked if there were any other comments before the vote. Ms. Patterson stated that she was concerned about the double draws that happen against the fairs. She doesn’t mind but the horsemen would like to see a condition sheet for each day so that it would not affect the fairs. AAG, Guay asked the Commissioners if they had any question for MHHA on that. Commissioner Varney asked if it is possible to do the double draws like she is asking. David Sawyer, Race Secretary for Scarborough Downs stated that they have double draws on Saturday and Sunday. They draw Wednesday for Saturday and Sunday, so by Wednesday afternoon you know whether you’re in Saturday or Sunday. Most fairs draw Wednesday for Saturday and Thursday for Sunday. He goes through a rigorous process of people putting horses in to go. As they know what day they would like to race, so that he could make it work or he calls them up if there could be an issue. Commissioner McFarland asked Mr. Cobbett these dates that didn’t get raced and got canceled for horse supply. Were they all Fridays? He understands what the circumstances are with Plainridge. Is it due to the condition sheet that every Friday didn’t fill due to horse supply in June and July but in October and November you’re asking for taking away Thursday and keeping Friday? He is just trying to understand. Can you clarify that for him? Mr. Cobbett stated that the reason why they asked to give up Thursdays in October with the early post time is because they would have no one in attendance. Fridays, they do have a chance to have people in attendance which will have a direct outcome on the handle. AAG, Guay asked for any other comments. He closed the hearing. Commissioner Graham made a motion to grant Scarborough’s request for the elimination of Thursdays in October and November; and they increase their race dates in December for the 9th and 10th and they allow them to have 12 dashes in October, November, and December if the horse supply warrants it. Commissioner McFarland seconded. Vote 4-0.

c. RE: Ronald Cushing, Complaint Number 2017 MSHRC 6. Mr. Cushing is appealing the June 2, 2017 decision of Presiding Judge Frank Hall, Jr. in which Judge Hall assessed a $125.00 fine for foot out of stirrup during the Seventh Race at Bangor Raceway. Ronald Cushing was present and represented himself. AAG, Guay qualified the Commissioners. He stated that the department has to prove that the violation occurred. He asked if there were any objections to the proceeding. Both parties stated no. He also explained the process to the proceeding. Mr. Jennings presented the following exhibits: Exhibit 1, Notice of Hearing; Exhibit 2, Owner/Driver’s Application; Exhibit 3, Race Program; Exhibit 4, USTA Fines & Suspensions; Exhibit 5, MHRC Judges Notification of Hearing; Exhibit 6, MHRC Judge’s Decision; Exhibit 7, MSHRC Appeal Form; Exhibit 8, Chapter 7, Section 54.D and Exhibit 9, DVD of Race. AAG, Guay admitted the exhibits without objection. Mr. Jennings stated that the DVD of the race demonstrates that Mr. Cushing did take his foot out of the stirrup. Judge Hall asked that the video be started at the ¾ pole. They watched the video. Mr. Cushing stated that the judge is not impartial. Mr. Jennings objected to Mr. Cushing. AAG, Guay stated that the objection is on relevance. An issue being raised is impartiality of the judge. He stated that the Commissioners would vote on whether or not there was a violation. Commissioner Graham made a motion that Mr. Cushing did violate the kicking rule. Commissioner Reed seconded. Vote 4-0. AAG, Guay asked Mr. Jennings if he has a position on the amount of the fine. Mr. Jennings stated that the department’s position is the fine is reasonable and appropriate based on the schedule that’s laid out in Chapter 17 for a
first violation and treated it as a minimum fine. AAG, Guay closed the hearing. The appeal is denied.

4. **Other business:**

   a. **Request by Kevin Gee to Address the Commission.** Mr. Gee has requested an opportunity to address the Commission about its policy requiring the return of the entire purse when the owner only receives 90% of it. Mr. Gee would also like to address the Commission about variability of prohibited substance sanctions. Commissioner Varney stated that Mr. Gee has withdrawn his request.

   b. **Public Input Session on Rulemaking Priorities.** The Commission will take testimony on and discuss potential rulemaking priorities and language suggested changes. Mr. Jennings stated that he has some recommendations from a committee that looked at the rules a few years ago. He knows that Chapter 7 needs to be updated to Chapter 17, and he sees some issues with Chapter 19 and 21. Ms. Perkins stated that in 2014 this Commission appointed an ADHOC Committee to go through the rules. Mr. Sweeney stated that Chapter 7 is crucial. He would also like to see a rule change in Chapter 13 that deals with pari-mutuel wagering. Aaron Hall stated that he would like to see in Chapter 7 doing away with the head numbers.

5. **Public Comment**

Commissioner Varney asked for public comment. Ms. Perkins stated that the Sire Stakes Program is flowing nicely. She also stated that the MSBOA is going to have a scholarship golf tournament on August 21st in Saco, and the Sire Stakes 2-year-old finals will be held on September 8th in Bangor.

Mr. Jennings stated that some constituents wanted to hold the race date hearings early in November. After a brief discussion, it was decided to hold the November meeting on November 8th and if needed continue the meeting on November 9th.

6. **Schedule of Future Meetings:**

   August 18, 2017
   September 22, 2017
   October 13, 2017

10. **Adjourn**

    11:45 a.m.