

**SALES INTEGRITY  
TASK FORCE  
RECOMMENDATIONS**

November 9, 2007

Pursuant to an agreement between the Consignors and Commercial Breeders Association, Fasig-Tipton, Inc., Horse Owners' Protective Association, Keeneland Association, Inc., Kentucky Thoroughbred Association and Thoroughbred Owners and Breeders Association, and Representative Larry Clark, the Sales Integrity Task Force was reinstated to develop industry consensus on the following issues which were implicated by Kentucky House Bill 388:

- Licensing bloodstock agents and consignors;
- Transparency in ownership in the sales arena; and
- Transparency in medication in the sales arena.

Members of the Task Force were:

John Adger (Stonerside Stables)	Reiley McDonald (Eaton Sales)
Mike Akers (Dapple Bloodstock)	Martha Jane Mulholland (Mulholland Springs Farm)
Headley Bell (Nicoma Bloodstock)	Nick Nicholson (Keeneland Association)
Jimmy Bell (Darley USA)	Denny Nunnelley (Ky. Quarter Horse Racing Assn.)
Reynolds Bell, Jr. (Reynolds Bell Thoroughbred Services)	Frank Penn (Pennbrook Farm)
Wayne Boyd (Western Kentucky Horse Sales)	Walt Robertson (Fasig-Tipton)
Bill Casner (WinStar Farm)	Earl Rogers (Kentucky Walking Horse Association)
Robert Clay (Three Chimneys Farm)	Geoffrey Russell (Keeneland Association)
Joe Costa (Tattersalls)	Dermot Ryan (Ashford Stud)
Charles "Redd" Crabtree (Crabtree Farms)	Satish Sanan (Padua Stables)
Bruce Crowe (United Mountain Horse Association)	Fred Sarver (American Saddlebred Horse Assn.)
Bill Farish (Lane's End Farm)	Fred Seitz (Thoroughbred trainer/Brookdale Farm)
Bill Heiligbrodt (Heiligbrodt Racing Stable)	John Sikura (Hill 'n' Dale Farms)
Jess Jackson (Stonestreet Farm)	Mark Taylor (Taylor Made Farm)
Ken Jackson (Kentuckiana Farms)	D.G. Van Clief (Fasig-Tipton)
Bill Landes (Hermitage Farm)	John Ward (Thoroughbred trainer)
Norman Luba (Kentucky Quarter Horse Association)	Bayne Welker (Mill Ridge Farm)
Tom Ludt (Vinery)	Jack Wolf (Starlight Stables)

Alex Waldrop (NTRA, Task Force moderator)

The final recommendations presented below were overwhelmingly adopted by the Task Force with one dissenting opinion in the area of licensing of bloodstock agents and consignors and ownership disclosure in the sales arena.

The members of the Task Force represented a significant segment of Kentucky's public sales auction industry. The Task Force included representatives from multiple horse breeds and included individuals representing buyers, sellers, consignors, bloodstock agents and sales companies. Both Fasig-Tipton and Keeneland Association have endorsed the Task Force recommendations and will include them in their respective Conditions of Sale beginning in 2008. Finally, the Task Force believes that integrity is an ongoing process, thus the Thoroughbred Owners and Breeders Association (TOBA) will establish a committee to monitor participation levels, review the effectiveness of the new policies, and make future recommendations on sales integrity.

### **Licensing of Bloodstock Agents and Consignors:**

A bloodstock agent Code of Conduct will be added to the Conditions of Sale of Fasig-Tipton and Keeneland Association and to other Kentucky sales companies and sales companies in other states that choose to adopt the Code (e.g., Fasig-Tipton). The Conditions of Sales are legally binding upon all sales participants, including sellers, consignors, agents, owners, prospective bidders/buyers and all other interested parties.

The Code states that an Agent owes a duty of good faith and loyalty to his Principal, and requires an Agent to act at all times in an Equine Auction Sale in accordance with the Principal's best interests.

The Code sets out definitions (Addendum A) of Agent, Principal, Luck Money, Consignor, Secret Profit, Seller Purchaser and Equine Auction Sale.

The Code enumerates, without limitation, seven specific situations where an Agent must disclose and/or account to his principal in order to act in the Principal's best interest:

1. An Agent must not place himself in a position where personal interests conflict with duties to his Principal, except with full advance disclosure;
2. When an Agent acts as a Seller of any horse in which he has an interest, the Agent must disclose to the Principal the full extent of the Agent's ownership interest and benefit to be derived from the transaction;
3. If an Agent represents more than one Principal, the Agent must first disclose the dual agency and obtain the consent of all Principals to the Agent's dual agency;
4. An Agent must notify his Principal when a conflict of interest arises;
5. An Agent must disclose any Luck Money he receives to his Principal, and account to his Principal for the Luck Money if the Principal requires;
6. A Seller or Agent shall not offer any Secret Profit to any person the Seller or Agent believes is acting as an Agent for a prospective purchaser; and
7. An Agent shall not bid at public auction on any horse the Agent knows his Principal intends to bid or his Principal is selling, except with the Principal's full knowledge and consent.

Any complainant of an alleged breach of the Code must first provide a written statement to the sales company describing how the alleged breach occurred.

If the parties are unable to resolve the matter among themselves, the complainant may initiate arbitration pursuant to the rules of the American Arbitration Association. Arbitration will be held

in Lexington, Kentucky. The findings and decisions through arbitration are final and binding on the parties.

The Code or a finding of a violation thereof does not preclude the aggrieved party from pursuing all remedies at law that he may have.

If the arbitrators find that a violation of the Code has occurred, the arbitrator(s) may impose sanctions against the person(s) violating the Code. The Sanctions are limited to exclusion from participation in the sales, or from the sales grounds for various prescribed periods of time, depending on the number of offenses by the person(s) violating the Code.

Fasig-Tipton and Keeneland have agreed to observe the findings and sanctions of the arbitrator(s).

In the event of a finding of a violation of the Code, the sales companies will post the name of the party sanctioned and the sanction in a conspicuous manner during the period of exclusion. The prevailing party in arbitration is entitled to recover costs and expenses, including attorneys' fees.

### **Transparency in Ownership in the Sales Arena**

A Condition of Sale (Addendum B) addressing ownership transparency will be added by Fasig-Tipton and Keeneland and will incorporate the following points:

- An Ownership Registry will be established by the sales companies.
- Disclosure of ownership, while voluntary, will be encouraged.
- If ownership is disclosed either in the catalogue or in the Ownership Registry, a change in ownership is required to be disclosed in the Ownership Registry or by written notice to the sales company.
- If a change in ownership occurs after a horse is on the sales grounds, the change in ownership is required to be disclosed to the sales company by giving written notice of such change in ownership to the sales company. The change in ownership will be announced by the auctioneer prior to the sale of the horse.
- A change of ownership of 10% or less is deemed not to be a change in ownership for purposes of the Condition of Sale.
- If information is placed in the Ownership Registry, or if information regarding ownership is disclosed in the catalogue, the party supplying the information warrants that the information is materially accurate.
- If the purchaser of a horse learns, after the sale, that the information in the catalogue or Ownership Registry was not materially accurate, or that there was an undisclosed change

in ownership after the horse was on the sales grounds, the purchaser has the right to collect liquidated damages, provided that:

1. The purchaser accessed the Ownership Registry regarding the subject horse;
2. The purchaser has paid for the horse in full;
3. The purchaser notifies the sales company of its election to collect liquidated damages within six months from the date of sale of the horse;
4. The purchaser establishes, by clear and convincing evidence, that there was a material inaccuracy in the Ownership Registry or in the catalogue at the time of sale of the horse that was not corrected by subsequent notice as required by the Condition, or that the seller or consignor failed to disclose to the sales company, as required by the Condition, that there was a change in ownership prior to the sale of the horse; and
5. The purchaser establishes, by clear and convincing evidence, that the party from whom purchaser seeks liquidated damages had actual knowledge at the time of the sale of the material inaccuracy in the Ownership Registry or catalogue, or of the failure to disclose change in ownership as required by the Condition.

Liquidated damages are 50% of the hammer price of the horse, but the consignor's liability is limited to two times its commission on the horse. Accordingly, if a purchaser prevails against both the seller and consignor, the consignor would pay two times the commission the consignor received on the sale of the horse, and the seller would pay the balance of the 50% of the hammer price.

If any dispute arises regarding ownership disclosure, the parties to the dispute agree to submit the dispute to binding arbitration, which will be held in Lexington, Kentucky.

The non-prevailing party in arbitration will be required to pay the costs of arbitration and reasonable attorneys' fees of the prevailing party, including the costs of the sales company.

### **Transparency of Medical Procedures and Medication in the Sales Arena**

Owners selling horses at public auction should disclose known and material medical information regarding the offered horse through the veterinary repositories maintained by the sales companies. In addition, the Task Force reaffirms the 2004 Sales Integrity Task Force recommendation to require disclosure of conformation-altering procedures with the goal of working toward disclosing all material medical procedures.

A committee will be formed by TOBA to work with the relevant industry organizations to address all of the technological, legal, financial and political issues regarding the implementation of this recommendation.

The following language regarding anabolic steroids and other prohibited practices will be included in the Conditions of Sale of Fasig-Tipton and Keeneland:

#### Anabolic Steroids

“It is the sales companies’ desire that horses not be sold under the influence of anabolic steroids. Our position is that no anabolic steroids be given within 45 days of sale. To that end, we have the ability to test for the presence of exogenous anabolic steroids. Beginning in January 2008, at the Purchaser’s request, testing will be performed immediately after the horse is sold and any presence of these anabolic steroids in the sale horse may result, at the Purchaser’s discretion, in its return.

“Starting in 2008, research will be done to establish naturally occurring levels of other anabolic steroids in different ages and sexes of horses. As the ability to determine what an abnormal level is achieved, the presence of other steroids in sale horses may result in the rescission of a sale.”

#### Prohibited Practices

Pursuant to recommendations of the Sales Integrity Task Force from meetings in 2004, the current Conditions of Sale of Fasig-Tipton and Keeneland contain a list of “Prohibited Practices.” Horses which have been subject to Prohibited Practices are subject to Rejection, which is defined as rejection or revocation of acceptance by the purchaser.

The Prohibited Practices included in the Conditions of Sale of Fasig-Tipton and Keeneland will be expanded to include the following:

A horse should not be injected behind its knee prior to sale to conceal the true condition and conformation of the horse, and recommends that injections behind the knee be placed on the list of Prohibited Practices.

An industry committee will meet annually to review and recommend additions and deletions to the list of Prohibited Practices included in the Conditions of Sale to the sales companies. The committee will be comprised of one representative from each of the following: (1) the sales companies, (2) the American Association of Equine Practitioners (AAEP), (3) the Thoroughbred Owners and Breeders Association (TOBA), and (4) Consignors and Commercial Breeders Association (CBA).

In addition, the Task Force recommends other sales companies include a list of Prohibited Practices in their Conditions of Sale.

## **Conclusion**

The recommendations outlined above represent the culmination of more than six months of thoughtful work involving the Task Force and its sub-committees and included participation by multiple breed groups and valuable input from industry stakeholders both large and small. The Sales Integrity Task Force is committed to creating a more vibrant market for both buyer and seller. To that extent, the Task Force believes that integrity is the key to growth in the breeding industry. The Task Force takes seriously its responsibility not only to preserve one of Kentucky's signature industries, but also to promote positive change that will lead to an even healthier auction market in the years to come.

## **Addendum A**

### **Public Auction Sales** **Code of Conduct**

#### **PREAMBLE**

This Sales Code of Conduct (“Code”) has been adopted pursuant to a horse industry task force involving multiple segments of the horse industry. It sets out the principles which apply to Equine Auction Sales. The Code is designed to set and maintain a high standard of integrity and transparency, which will safeguard the interest of Sellers, Consignors, bloodstock agents, owners, trainers, Purchasers and sales companies in Equine Auction Sales.

#### **DEFINITIONS**

**Agent** means any trainer, consignor, bloodstock agent, racing or stud manager or other person or entity who represents a Principal in an Equine Auction Sale, directly or indirectly, whether the Agent is paid by way of retainer, commission or other forms of remuneration, or has ongoing financial arrangements such as training, management or similar fees.

**Principal** means a person or entity who appoints an Agent to act as agent on his behalf in an Equine Auction Sale.

**Luck Money** means any financial payment or payment in kind or delivery of anything of value (in excess of \$500) made by or on behalf of a Seller to a Purchaser or his Agent in connection with an Equine Auction Sale either before or after the Equine Auction Sale has been concluded.

**Consignor** means a person or entity acting as agent for a Seller at public auction.

**Secret Profit** means anything of value (in excess of \$500) received by an Agent in connection with an Equine Auction Sale that is not disclosed to the Agent’s Principal.

**Seller** means a person or entity who sells all or any interest in a horse in an Equine Auction Sale.

**Purchaser** means a person or entity who buys all or any interest in a horse in an Equine Auction Sale.

**Equine Auction Sales(s)** means sales and purchases of horses and/or interest(s) therein at public auction sales.

**Gender** - Words importing the masculine gender herein shall include the feminine.

## **CODE**

1. An Agent owes a duty of good faith and a duty of loyalty to his Principal, which includes a duty to act at all times in an Equine Auction Sale in accordance with his Principal's best interests.
2. An Agent shall not place himself in a position where personal interests conflict with the duties to his Principal, except with full advance disclosure from Agent to Principal. In particular, an Agent shall not use his position to obtain a Secret Profit.
3. When an Agent acts as a Seller or intends to sell any horse in which he has an interest to a Principal, or intended principal, the Agent must disclose to his Principal, before completion of the Equine Auction Sale, the full extent of that ownership or interest and the benefit derived or to be derived by the Agent from that Equine Auction Sale.
4. If an Agent acts for more than one Principal in a transaction, which might for example be as Agent both for the Seller and Purchaser, the Agent can only do so if he has first disclosed the conflict, before completion, to all his Principals, and obtained their consent to Agent's dual agency.
5. An Agent shall notify his Principal, wherever possible in advance, when a conflict of interest may arise, such as transactions involving third parties with whom he has a retainer, transactions where he is aware he will benefit from a third party, or transaction concerning a horse which he has previously purchased or with which he has previously been involved.
6. An Agent shall disclose to his Principal and, if required by the Principal, account to his Principal for any Luck Money paid to him by or on behalf of a Seller, Consignor or Purchaser.
7. A Seller or Agent shall not offer any Secret Profit to any person whom he believes to be an Agent acting for a prospective purchaser.
8. An Agent shall not bid at public auction on any horse for which Agent knows his Principal intends to bid, or on any horse for which his Principal is a Seller, except upon full knowledge and consent of his Principal.
9. This Code shall not be deemed to enlarge or restrict application of laws that govern matters relating to parties involved in Equine Auctions Sales.

## **ENFORCEMENT**

Any alleged breach of the Code shall be settled by arbitration in accordance with the rules of the American Arbitration Association ("AAA"). A complainant of an alleged breach shall provide evidence in the form of a written statement to the sales company where the alleged breach occurred. If, after discussions among the interested parties, they are unable to resolve the alleged

breach in a manner suitable to them, the complainant may initiate arbitration. Arbitration shall be held in Lexington, Kentucky. The findings and decisions of the arbitrator(s) shall be final and binding upon the parties, but shall not preclude the parties from pursuing any action for monetary damages through the legal court system. Fasig-Tipton and Keeneland have agreed to observe the findings and sanctions of the arbitrator(s) and to ban from participation in their respective public auctions, for the period of time determined by arbitrator(s), any person found to have violated the Code. Judgment upon the decision of the arbitrator(s) may be entered by any court of competent jurisdiction. The prevailing party in the arbitration proceeding shall be entitled to recover his costs and expenses, including reasonable attorneys fees, from the non-prevailing party. In the event of a finding of an offense by the arbitrator, the sales' companies shall post, in a conspicuous manner during the period of exclusion, the name of the party sanctioned and the sanction determined by the arbitrator.

### **SANCTIONS**

In the event a violation of the Code is found to have occurred, the following sanctions may be imposed by the arbitrator(s): (a) First offense – Exclusion from participation in sales or from sales grounds (“Exclusion”) for a period of up to two (2) years from the date of the finding; (b) Second offense – Exclusion for up to five (5) years; and (c) Third or more offense – Up to a permanent Exclusion. Exclusion periods shall be served during such times as the arbitrator(s) imposes.

## **Addendum B**

### **Public Auction Sales** **Ownership Disclosure**

The accurate ownership of horses in this sale is encouraged, but not required, to be disclosed by consignors and/or sellers. Keeneland will maintain an Ownership Registry where such accurate ownership may be disclosed at the option of consignor and/or seller. Any individual accessing the Ownership Registry (1) must present personal identification; (2) must be a registered buyer, or such Buyer's duly authorized agent, with Keeneland; (3) shall be required to sign a sworn statement that such individual has a bona fide interest in purchasing, as principal or, if not principal, then a representative of the principal as approved by Keeneland, the horse whose ownership said individual examines, and (4) agrees to keep such ownership information confidential. In the event said individual violates this confidentiality obligation, said individual shall be subject to sanctions to be determined by Keeneland, in its sole discretion, which sanctions may include, without limitation, exclusion from use of the Ownership Registry. Further, if Keeneland determines that an individual is or may be accessing the Ownership Registry for purposes other than interest in buying a specific horse(s) at this sale, Keeneland may refuse access to the Ownership Registry to that individual.

If there was a disclosure of ownership of a horse in this sale made in the catalogue and/or in the Ownership Registry, ***a change in ownership, as defined below and including a fractional interest therein greater than 10%, from the time of being catalogued until the time the horse is sold at auction is required to be disclosed*** in the Ownership Registry, or by written disclosure to Keeneland of such change in ownership. The party to whom ownership is transferred is not required to be disclosed.

In the event that a change in ownership occurs after the horse is on Keeneland sales grounds, regardless of whether there was a prior disclosure of ownership made in the catalogue or in the Ownership Registry, the seller and/or consignor shall disclose to Keeneland in writing that a change in ownership has occurred, and an announcement disclosing that a change of ownership has occurred shall be made by the auctioneer prior to the sale of the horse.

**It shall be the sole responsibility of the purchaser to determine the sufficiency of the information available in the Ownership Registry.**

**The presence or use of the Ownership Registry shall not change any of these Conditions of Sale, which shall continue to be binding upon all parties.**

**In the event seller or consignor places information in the Ownership Registry, or discloses information regarding ownership of a horse in the sales catalogue, the party placing such information warrants that the information is materially accurate. The consignor shall not be responsible for materially inaccurate information supplied to consignor by seller, including, without limitation, information regarding change in ownership of a horse required to be placed in the Ownership Registry or disclosed to Keeneland as provided herein, as long as consignor does not have actual knowledge that the information is**

**materially inaccurate or of the change in ownership. Information regarding ownership interest of 10% or less shall not be deemed material, and change in ownership of 10% or less shall therefore not be deemed a change in ownership for purposes of this Condition.**

If determined by the purchaser of a horse, subsequent to the sale of the horse, that (a) the information in the Ownership Registry or in the catalogue was materially inaccurate at the time of sale of the horse, or that (b) the seller or consignor failed to disclose to Keeneland, as required by this Condition, that there was a change in ownership prior to the sale of the horse, the purchaser shall have the right to collect liquidated damages as set forth herein from the consignor and/or seller, provided that (1) the purchaser accessed the Ownership Registry regarding the subject horse; (2) the purchaser has paid for the horse in full; (3) the purchaser notifies Keeneland of its election to collect liquidated damages within six months from the date of sale of the horse; (4) the purchaser establishes, by clear and convincing evidence, that there was a material inaccuracy in the Ownership Registry or in the catalogue at the time of sale of the horse that was not corrected by subsequent notice as required by this Condition, or that the seller or consignor failed to disclose to Keeneland, as required by this Condition, that there was a change in ownership prior to the sale of the horse; and (5) the purchaser establishes, by clear and convincing evidence, that the party from whom purchaser seeks liquidated damages had actual knowledge at the time of the sale of such material inaccuracy in the Ownership Registry or catalogue, or of the failure to disclose change in ownership as required by this Condition. Liquidated damages shall be 50% of the hammer price of the horse; provided, however, that consignor's liability hereunder shall be limited to two times the consignor's commission received for the sale of the horse. In the event purchaser prevails against both seller and consignor, consignor shall pay purchaser two times the consignor's commission received for the sale of the horse, and the balance of the 50% hammer price shall be payable by the seller. Any indemnity as between the seller and consignor for liability hereunder shall be as agreed between seller and consignor. Keeneland shall have no obligations regarding collection of liquidated damages hereunder, which shall be handled through arbitration.

If any dispute arises under this Condition, the parties involved in such dispute agree to submit the matter to binding arbitration, in accordance with the rules of the American Arbitration Association. Arbitration shall be held in Lexington, Kentucky. The non-prevailing party in the Arbitration shall pay the cost of the Arbitration proceeding and reasonable attorneys' fees of the prevailing party or parties, including, without limitation, the sales company's.