



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 91

Horse racing and breeding

June 2012

About this guide

This guide sets out our approach to regulating horse breeding and horse racing schemes under the *Corporations Act 2001* (Corporations Act).

It discusses:

- our general approach to regulating certain small-scale horse breeding and horse racing schemes;
- substantive relief we give for certain types of horse breeding and horse racing schemes from the managed investment and licensing provisions under the Corporations Act; and
- our approach to co-regulation for certain types of horse racing schemes and approving lead regulators.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This guide was issued in June 2012 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 91, issued 2 July 2007
- Superseded Policy Statement 20 *Horse racing schemes*, issued 26 February 1996 and Superseded Policy Statement 91 *Horse breeding schemes*, issued 3 September 1997

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

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A Overview

Key points

ASIC may or may not have a direct regulatory role for any particular horse breeding and horse racing scheme (scheme). If the schemes are managed investment schemes, ASIC has a regulatory role.

This guide sets out ASIC's policy on the regulation of certain small-scale horse racing and breeding schemes. In particular, it sets out managed investments, Australian financial services (AFS) licensing and product disclosure relief that may be available for horse breeding and horse racing schemes.

ASIC's regulatory role

- RG 91.1 ASIC is Australia's corporate, financial markets and financial services regulator. Whether we have a direct regulatory role for a horse breeding or horse racing scheme generally depends on whether the scheme is a managed investment scheme.
- RG 91.2 A person who offers to sell, or invites people to buy, interests in a managed investment scheme (promoter) is subject to the *Corporations Act 2001* (Corporations Act); in particular, to various provisions of Chs 5C and 7. Generally, these provisions require the promoter to:
- (a) be a public company;
 - (b) register the managed investment scheme with ASIC;
 - (c) hold an Australian financial services (AFS) licence; and
 - (d) comply with disclosure obligations, including issuing a product disclosure statement (PDS) or shorter PDS.
- Note: See RG 91.17 for information on how the shorter PDS regime applies to horse breeding schemes.
- RG 91.3 The Corporations Act provides some exclusions for small-scale offerings of managed investment schemes. That is, AFS licensing, scheme registration and PDS disclosure requirements will generally not apply where a managed investment scheme has no more than 20 members in total and is not promoted by a person who is in the business of promoting managed investment schemes. In addition, where all offers of interests in the scheme are 'small-scale personal offers' (as set out in s1012E), the requirements in RG 91.2(a), RG 91.2(b) and RG 91.2(c) will not apply, but the promoter will generally need to hold an AFS licence.
- RG 91.4 Given the nature of horse racing and horse breeding schemes, we have granted further exemptions from some of the requirements of the Corporations Act, depending on the activities of the promoter.

Horse breeding schemes

- RG 91.5 We have provided conditional relief (in Class Order [CO 02/172] *Horse breeding schemes—private broodmare syndication* and Class Order [CO 02/178] *Horse breeding schemes—private stallion syndication*) to the promoters of certain broodmare and stallion schemes from the Corporations Act requirements to:
- (a) register a managed investment scheme;
 - (b) hold an AFS licence; and
 - (c) give PDS disclosure.
- RG 91.6 The relief is limited to small-scale private schemes and offers to join these schemes generally must be personal offers (as defined in s1012E(5)).
- RG 91.7 Section B sets out our approach to the regulation of horse breeding schemes in more detail.

Horse racing schemes

- RG 91.8 Certain types of horse racing schemes are subject to co-regulation arrangements between ASIC and lead regulators. Lead regulators must be approved by ASIC and ASIC will oversee their activities.
- RG 91.9 We have provided relief, in Class Order [CO 02/319] *Horse racing syndicates*, to horse racing scheme promoters from the requirement to register a managed investment scheme, provided the scheme complies with certain conditions.
- RG 91.10 Section C sets out our approach to the regulation of horse racing schemes in more detail.

B Horse breeding schemes

Key points

Class Order [CO 02/172] *Horse breeding schemes—private broodmare syndication* and Class Order [CO 02/178] *Horse breeding schemes—private stallion syndication* provide conditional relief to the promoters of certain broodmare and stallion schemes from the Corporations Act requirements to register a managed investment scheme, hold an AFS licence and give PDS disclosure: see RG 91.18–RG 91.28.

The relief is limited to small-scale private schemes and offers to join these schemes generally must be personal offers, as defined in s1012E(5).

Our approach to horse breeding schemes

- RG 91.11 In the horse breeding industry it is common practice to syndicate horses for breeding in a way that involves a managed investment scheme in which participants in the scheme share the cost of buying or leasing breeding stock.
- RG 91.12 We provide a number of exemptions from the provisions of the Corporations Act that would otherwise apply. We give this relief both for certain broodmare schemes and certain stallion schemes. The relief is described in more detail at RG 91.18–RG 91.28.
- RG 91.13 We give conditional relief so that the promoter of certain broodmare and stallion schemes need not:
- (a) register the managed investment scheme with us;
 - (b) hold an AFS licence; or
 - (c) give formal point-of-sale disclosure in a PDS.
- Note: Certain obligations still need to be met for offers under this relief—for example, the obligations in s1017E, 1017F and 1020D.
- RG 91.14 Horse breeding is a specialised activity that involves different competencies from those that apply to providers of financial services for other managed investment schemes. In giving this relief, we recognise that small private arrangements for horse breeding do not warrant regulation as managed investment schemes under the Corporations Act.
- RG 91.15 For the relief to apply, offers to join these schemes must generally be personal offers as defined in s1012E(5). The relief is limited to small-scale private schemes and would not usually be available for publicly advertised schemes.
- Note: This position is consistent with existing provisions in the Corporations Act dealing with small-scale offers. For example, see s708(1) and 1012E(2), which apply to 20 personal offers made within a 12-month period.

RG 91.16 If the promoter of a managed investment scheme is not required to register the scheme because of an exemption under this policy, we have given conditional relief from the requirement to hold an AFS licence to any person whose only financial services business is dealing in or advising about interests in that scheme, or who only provides other financial services that do not require an AFS licence.

Note: The promoter of a stallion scheme needs to be licensed for the relief to apply in certain circumstances.

Shorter PDS regime

RG 91.17 Issuers of simple managed investments schemes must comply with shorter, simpler PDS disclosure (shorter PDS regime) from 22 June 2012: see Schs 10A and 10E of the Corporations Regulations 2001 (Corporations Regulations). However, broodmare and stallion schemes do not fall within the definition of a 'simple managed investment scheme' in reg 1.0.02(1) of the Corporations Regulations. Accordingly, the shorter PDS regime does not apply to broodmare or stallion schemes.

Broodmare schemes

- RG 91.18 Generally, the relief in [CO 02/172] only applies to broodmare schemes when interests are issued or sold by a promoter or seller who, together with any associate, has not issued or sold more than 20 interests in any horse breeding scheme in the previous 12 months.
- RG 91.19 Broodmare schemes buy broodmares. The broodmares' foals are owned by the scheme and generally sold through commercial yearling sale markets. Scheme funds are normally used to buy a number of broodmares, which may be sold later and others purchased.
- RG 91.20 The life of the scheme is not restricted to the breeding life of a specific mare, unlike stallion schemes where the life of the scheme is restricted to the functional life of a particular stallion. However, some broodmare schemes do provide for the scheme to be wound up at a particular time.
- RG 91.21 Relief for broodmare schemes is set out in [CO 02/172]. The key conditions of relief are summarised as follows:
- (a) each interest in the broodmare scheme must be issued as the result of:
 - (i) certain offers made before 12 March 2004 that did not require disclosure;
 - (ii) acceptance of a personal offer as defined in s1012E(5); or
 - (iii) an offer made which does not need a PDS; and
 - (b) interests in the broodmare scheme must be issued or sold by a promoter who (with their associates) in the past 12 months have not issued or sold more than 20 interests in aggregate in any managed investment schemes, the principal purpose of which is to breed horses.

Stallion schemes

- RG 91.22 Generally, the relief in [CO 02/178] only applies to stallion schemes when interests are issued or sold by a promoter or seller who, together with their associates, has not issued or sold more than 40 interests in any horse-breeding scheme in the previous 12 months.
- RG 91.23 For stallion schemes, relief from the requirement to hold an AFS licence is available in some (but not all) cases. The relief is also subject to disclosure requirements and conditions.
- RG 91.24 In a stallion scheme, the asset is a specific stallion whose identity is known. The promoter usually buys or leases the stallion before the scheme's fundraising, with the intention of managing the scheme and having the stallion stand either at the promoter's stud or at another nominated stud. The promoter is usually the standing stud or owner of the stallion being syndicated. The life of a stallion scheme is limited to the functional life of the stallion, although the scheme may be wound up sooner.
- RG 91.25 Participants in stallion schemes are normally experienced in horse breeding practices. They may own broodmares and want to use the stallion's stud services for their broodmares.
- RG 91.26 In light of this fact and the difficulty in syndicating stallion schemes with a maximum of 20 participants, relief applies when interests are issued or sold by a promoter or seller who has not issued or sold more than 40 interests in any horse breeding scheme in the previous 12 months.
- RG 91.27 Relief for the promoter and other persons who offer or issue interests in private stallion schemes or provide financial services for the scheme is set out in [CO 02/178]. The key conditions of relief are summarised as follows:
- (a) each person making the offer for interests in the stallion scheme (together with any of its associates) must not have, at the same time or during the previous 12 months, issued or sold in excess of 40 interests in any managed investment schemes, the principal purpose of which is to breed horses;
 - (b) each promoter of the stallion scheme must at all times either:
 - (i) hold an AFS licence; or
 - (ii) hold at least 10% fully paid of all interests in the stallion scheme;
 - (c) each interest in the stallion scheme must be issued as the result of:
 - (i) certain offers made before 12 March 2004 that did not need disclosure;
 - (ii) acceptance of a personal offer as defined in s1012E(5); or
 - (iii) an offer made which does not need a PDS; and
 - (d) the offer must be made through a stallion scheme agreement that meets certain requirements in [CO 02/178].

- RG 91.28 The stallion scheme agreement must contain certain provisions. For example, it must:
- (a) require that the stallion scheme is for one stallion and no other horse or investment;
 - (b) require that the stallion stand at stud only in this jurisdiction for the first three full stud seasons from the date the stallion scheme acquires the stallion (this is to ensure that participants can maintain a degree of control);
 - (c) provide that participants will, as tenants in common, own the whole of the legal and equitable title to the stallion free of encumbrances (this does not preclude giving contractual rights to stud services);
 - (d) prohibit the financing of the purchase of the stallion other than from the proceeds of the issue of interests in the stallion scheme;
 - (e) provide that prospective participants in the stallion scheme receive a full refund of their application money on written request made to and received by the promoter within three calendar days after the day of the payment of the application money;
 - (f) detail the reporting requirements to participants for the financial performance of the stallion scheme for each reporting period;
 - (g) include a statement of risks associated with the stallion scheme and the speculative nature of investment in horse breeding schemes;
 - (h) give details of fees and expenses payable to the manager of the scheme, the basis of their calculation and disclosures in the financial statements;
 - (i) give details of insurance of, and the veterinary examination schedule of, the stallion;
 - (j) give details of the obligations of the stud; and
 - (k) include a statement that the relevant class order is being relied on by the promoter.

C Horse racing schemes

Key points

Certain types of horse racing schemes are subject to co-regulation arrangements between ASIC and lead regulators. Lead regulators must be approved by ASIC and ASIC will oversee their activities: see RG 91.31–RG 91.33.

Class Order [CO 02/319] *Horse racing syndicates* provides relief to horse racing scheme promoters from the requirement to register a managed investment scheme, provided the scheme complies with certain conditions: see RG 91.34–RG 91.35.

Our approach to horse racing schemes

- RG 91.29 Co-regulation arrangements for horse racing schemes are a more appropriate form of regulation for small scale horse breeding schemes than regulation under the Corporations Act. The co-regulation arrangements ensure that the interests of investors in these schemes continue to be protected while due recognition is given to the regulatory role played by the lead regulators (generally principal racing clubs) and to their particular expertise.
- RG 91.30 We have provided relief from the managed investment provisions in relation to certain horse racing syndicates. This is because regulation under the co-regulatory arrangements, subject to appropriate conditions about the content of the agreements, should promote informed and confident investment in the relevant syndicates, which are small in scale. We have also taken into account that participation in horse racing syndicates often occurs for the pleasure of participating in ownership, rather than primarily to produce financial benefits.

Lead regulators

- RG 91.31 ASIC has adopted a policy of co-regulation for certain types of horse racing schemes. Under the co-regulation arrangements, certain principal racing clubs and other racing authorities have agreed to act as ‘lead regulators’ for schemes that meet specified criteria. We continue to be involved in the regulation of those schemes primarily through our licensing role and by overseeing the lead regulators’ activities.
- RG 91.32 Lead regulators are approved by ASIC if they can establish that they are prepared, and have the necessary expertise, to perform a monitoring function for horse racing schemes. The lead regulators currently approved by ASIC are:
- (a) Alice Springs Turf Club;
 - (b) Darwin Turf Club;

- (c) Harness Racing New South Wales; and
- (d) Harness Racing Victoria.
- (e) Racing and Wagering Western Australia;
- (f) Racing NSW;
- (g) Racing Queensland Limited;
- (h) Racing Victoria Limited;
- (i) Tasracing; and
- (j) Thoroughbred Racing SA Limited.

RG 91.33 Table 1 sets out the role of lead regulators as agreed between ASIC and the lead regulators.

Table 1: The lead regulator's role

Maintain a register	<ul style="list-style-type: none"> • Keep a register of all promoters of horse racing schemes to which the co-regulation arrangements apply. • Register schemes that it has agreed to regulate. • Remove from the register any promoter who fails to comply with its rules on the promotion and operation of horse racing schemes, or any person if so requested by ASIC. • Advise ASIC of the name of any promoter who has been removed from the register.
Monitor new schemes	<ul style="list-style-type: none"> • Ensure that a promoter's PDS contains sufficient information to allow investors to make an informed decision and to check the accuracy of this information. • Approve the agreements that establish the scheme. • Approve advertising for the scheme.
Oversee ongoing schemes	<ul style="list-style-type: none"> • Ensure that promoters and managers of schemes lodge the reports and accounts as required. • Deal with any complaints. • Implement adequate surveillance, enforcement and disciplinary procedures including in relation to unlawful offering by promoters who are not regulated by the lead regulator. • Discipline promoters for failure to comply with its rules. • Refer cases that may involve breaches of the Corporations Act or of licence conditions to ASIC in addition to directly taking any action that is appropriate.

Registration relief

RG 91.34 We give conditional relief in [CO 02/319] so that horse racing schemes promoted by AFS licensees that are registered promoters with an ASIC-approved lead regulator need not be registered as managed investment schemes if the horse racing schemes meet the following description:

- (a) its PDS is approved by an ASIC-approved lead regulator;

- (b) the PDS contains certain undertakings including that within 45 days of when fully subscribed, it will be registered with an ASIC-approved lead regulator;
- (c) the subject of the promotion is a horse (or horses) specified in the PDS;
- (d) the scheme does not comprise more than 20 participants being people who hold a beneficial interest whether jointly or otherwise; and
- (e) the total amount sought by way of subscription does not exceed \$250,000.

RG 91.35 Table 2 and Table 3 summarise the key conditions of relief for managers and promoters. Schemes that do not comply with these conditions must comply with relevant provisions of the Corporations Act.

Note: The promoter must register with the lead regulator: see condition 55 of Pro Forma 209 *Australian financial services licence conditions* (PF 209).

Table 2: Conditions of relief—Managers

Maintaining records	<ul style="list-style-type: none"> • Keep certain accounting records • Lodge the accounts with the lead regulator within 90 days after the end of each financial year • Lodge a copy of the accounts with ASIC within 14 days after receiving a written request from ASIC • Have a separate account for depositing and paying all moneys relating to the scheme's operation
Managing established schemes	<ul style="list-style-type: none"> • Manage the scheme in accordance with any agreement governing the scheme approved by the lead regulator

Table 3: Conditions of relief—Promoters

Licensing	<ul style="list-style-type: none"> • Hold an AFS licence • Not breach any conditions that are included in the promoter's AFS licence
Setting up new schemes	<ul style="list-style-type: none"> • Before registering the scheme with the lead regulator, ensure that the participants in the scheme either have unencumbered title to the whole of the scheme horses or lease the whole of the scheme horses under a finance lease agreement in standard form approved by the lead regulator • Not advertise scheme interests or publish any statement that is reasonably likely to induce people to acquire scheme interests without the prior approval of the lead regulator • Give a PDS only if it has been approved by the lead regulator • If the promoter is not the manager of the scheme, state in any PDS that the manager will be required to manage the scheme in accordance with the terms of any agreement governing the scheme approved by the lead regulator and any rules, regulations or guidelines made by the lead regulator in respect of such manager or management

Maintaining records	<ul style="list-style-type: none">• Promptly provide the lead regulator with a copy of each of the following:<ul style="list-style-type: none">– any agreement establishing or affecting the promoter’s scheme;– any agreement in relation to the promoter’s scheme to which any scheme participant is a party;– any information, including any PDS in relation to the promoter’s scheme, provided by the promoter to an offeree;– any advertisement in respect of the promoter’s scheme; and– any finance lease proposed to be used by participants in the promoter’s scheme• Within 45 days of the scheme being fully subscribed, register the scheme with the lead regulator• If the scheme is not fully subscribed within six months of the date the PDS is approved by the lead regulator, repay all money received from any person who applied to participate in the scheme, together with interest (if any) accrued on that money, within 10 business days of the expiry of that six-month period
Managing established schemes	<ul style="list-style-type: none">• Comply with any rules, regulations or guidelines made by the lead regulator to ensure the scheme is honestly, efficiently and fairly operated• Provide any assistance or information reasonably required by the lead regulator• Comply with the requirement to give periodic reports to participants under s1017D as if interests in the scheme were a managed investment product

Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
broodmare scheme	A managed investment scheme where a broodmare or broodmares are bought and maintained and their offspring sold for the benefit of participants
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of the Act
Corporations Regulations	Corporations Regulations 2001
horse racing scheme	A managed investment scheme where a racehorse is owned or leased by a group of people who contribute to its purchase price or lease costs, to its training and other continuing costs and who share in its winnings (if any)
lead regulator	A principal racing club or other body approved by ASIC to perform a monitoring function in regard to certain horse racing schemes
managed investment scheme	A scheme that is a managed investment scheme as defined in s9
manager	The person so named in any disclosure document for the scheme or the person so appointed in accordance with the terms of any agreement governing the scheme approved by the lead regulator or otherwise appointed with the approval of the lead regulator
PDS	Product Disclosure Statement
participant	A person who contributes money to a managed investment scheme or who acquires an interest in the scheme from a participant
Product Disclosure Statement (PDS)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.
promoter	A person who offers to sell, or invites people to buy, interests in a managed investment scheme
s1012E (for example)	A section of the Corporations Act (in this example numbered 1012E), unless otherwise specified
shorter PDS	A PDS that is required to comply with the shorter PDS regime

Term	Meaning in this document
shorter PDS regime	The requirements set out in Div 3A of Pt 7.9 of the Corporations Act as modified by Subdivs 4.2 to 4.2C and Schs 10B, 10C, 10D and 10E of the Corporations Regulations, which prescribe the content and length of the PDS for first home saver accounts, margin loans, superannuation products and simple managed investment schemes
stallion scheme	A managed investment scheme where a stallion or stallions are bought and stud services by the stallion(s) provided for the benefit of each of the participants of the scheme

Related information

Headnotes

Australian financial services (AFS) licence, horse breeding schemes, horse racing schemes, lead regulator, managed investment schemes, promoters, small scale offerings

Class orders and pro formas

[CO 02/172] *Horse breeding schemes—private broodmare syndication*

[CO 02/178] *Horse breeding schemes—private stallion syndication*

[CO 02/319] *Horseracing syndicates*

PF 209 *Australian financial services licence conditions*

Legislation

Corporations Act, Chs 5C and 7, s708(1), 1012E, 1012E(2), 1012E(5), 1017E, 1017F, 1017D, 1020D; Corporations Regulations, Schs 10A and 10E, reg 1.0.02(1)