



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 242

Remaking ASIC class orders on horse racing syndicates and horse breeding schemes

November 2015

About this paper

This consultation paper sets out ASIC's proposals to remake our class orders on horse racing syndicates and horse breeding schemes. Under the *Legislative Instruments Act 2003*, these class orders will expire ('sunset') if not remade.

We are seeking feedback on our proposals to remake, without significant changes, the following class orders:

- Class Order [CO 02/319] *Horse racing syndicates*, which is due to expire on 1 October 2016;
- Class Order [CO 02/172] *Horse breeding schemes: private broodmare syndication*, which is due to expire on 1 October 2017; and
- Class Order [CO 02/178] *Horse breeding schemes: private stallion syndication*, which is due to expire on 1 October 2017.

We also intend to update Regulatory Guide 91 *Horse racing and breeding* (RG 91) to reflect any changes in the remade ASIC instruments.

Note: The draft ASIC instruments are available on our website at www.asic.gov.au/cp under CP 242.

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 paper was issued on 13 November 2015 and is based on the Corporations Act as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on horse racing syndicates and horse breeding schemes. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments on our proposed remaking of [CO 02/319] should be sent by 18 December 2015 to:

James Grapsas
Senior Lawyer
Investment Managers and Superannuation
Australian Securities and Investments Commission
email: james.grapsas@asic.gov.au

Comments on our proposed remaking of [CO 02/172] and [CO 02/178] should be sent by 18 December 2015 to:

Thomas Hough
Lawyer
Investment Managers and Superannuation
Australian Securities and Investments Commission
email: thomas.hough@asic.gov.au

What will happen next?

Stage 1	13 November 2015	ASIC consultation paper released
Stage 2	18 December 2015	Comments due on the consultation paper
Stage 3	March–April 2016	Commencement of remade instrument(s)

A Background

Key points

Legislative instruments, such as class orders, are repealed automatically, or 'sunset', after 10 years, unless action is taken to exempt or preserve them. We will consult on all sunseting legislative instruments that have more than a minor or machinery regulatory impact.

Purpose of 'sunseting' legislative instruments

- 1 Under the *Legislative Instruments Act 2003* (Legislative Instruments Act), legislative instruments cease automatically, or 'sunset', after 10 years, unless action is taken to exempt or preserve them. Section 50(1) repeals a legislative instrument on either 1 April or 1 October—whichever date occurs first on or after the 10th anniversary of its registration on the Federal Register of Legislative Instruments (FRLI). Repeal does not undo the past effect of the instrument.
- 2 To preserve its effect, a legislative instrument, such as a class order, must be remade before the sunset date. The purpose of sunseting is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.

Our approach to remaking legislative instruments

- 3 If it is necessary to remake a legislative instrument, our focus is on making it clear and user friendly. We will also, where possible, simplify and rationalise its content and conditions. For example, we will remove or reduce an obligation or burden in a legislative instrument if we are able to do so without undermining ASIC's priorities of promoting investor and financial consumer trust and confidence and ensuring markets are fair, orderly and transparent.
- 4 We will consult affected stakeholders on all ASIC legislative instruments that have more than a minor or machinery regulatory impact, and are subject to sunseting, to ensure:
 - (a) we carefully consider the continuing regulatory and financial impact of the instrument; and
 - (b) the instrument retains its effectiveness in addressing an identified issue or problem.

- 5 Generally, a Regulation Impact Statement (RIS) is required for new and amended policy that has a significant regulatory impact: see the [Australian Government Guide to Regulation](#). We will review, including public consultation, all class orders that have a significant regulatory impact before the scheduled sunset date. Where our review finds that a class order is not operating effectively and efficiently, we will prepare a RIS to assess our proposed changes to the class order. Where the class order is operating effectively and efficiently, we will remake the instrument without substantive changes.

B Remaking ASIC class orders

Key points

We are proposing to remake:

- Class Order [CO 02/319] *Horse racing syndicates*, which sunsets on 1 October 2016;
- Class Order [CO 02/172] *Horse breeding schemes: private broodmare syndication*, which sunsets on 1 October 2017; and
- Class Order [CO 02/178] *Horse breeding schemes: private stallion syndication*, which sunsets on 1 October 2017.

We have formed the preliminary view that these class orders are operating effectively and efficiently, and continue to form a necessary and useful part of the legislative framework. Although the fundamental policy principles that underpin the three class orders have not changed, we are proposing some amendments to our relief, including, for [CO 02/319], substantive changes to the parameters and requirements of each head of relief. We seek your feedback on these proposals.

Each class order has been redrafted using ASIC's current style and format, while preserving the current effect of the instrument. The draft ASIC instruments, which reflect the amendments proposed in this paper, are available on our website at www.asic.gov.au/cp under CP 242.

Class Order [CO 02/319] *Horse racing syndicates*

Background

6 A horse racing syndicate is an arrangement under which a group of people agree to contribute money in return for a share of prize money won by a racehorse. The syndicate members may contribute money to obtain a percentage ownership stake in the racehorse, or the owner of the racehorse may lease the racehorse to the operator of the syndicate. Sometimes, other benefits are available to members of a syndicate, such as an entitlement to attend social events.

7 Generally, a horse racing syndicate will be a managed investment scheme under s9 of the *Corporations Act 2001* (Corporations Act). [CO 02/319] provides relief to the promoter of a small-scale horse racing syndicate from the requirement to register the syndicate under the managed investment scheme provisions in Ch 5C of the Corporations Act.

8 [CO 02/319] does not provide relief from the requirement to hold an Australian financial services (AFS) licence under Ch 7 of the Corporations

Act, nor does it provide relief from the requirement under Pt 7.9 to give a Product Disclosure Statement (PDS) to a prospective syndicate member.

Eligibility for relief

9 To be eligible for our relief, the promoter must be registered by a lead regulator in an Australian state or territory as the promoter of a horse racing syndicate. In [CO 02/319], the term ‘lead regulator’ refers to a horse racing governing body in an Australian state or territory. The horse racing governing bodies are principally racing clubs. A promoter of a horse racing syndicate is the person registered by a lead regulator as a promoter. The person registered with the lead regulator offers or invites people to subscribe for interests in the syndicate or to participate in any manner in the syndicate.

10 For the relief under [CO 02/319] to be available, a horse racing syndicate must fall within the following two limits:

- (a) a maximum of 20 members; and
- (b) a limit of \$250,000 raised from the issue of interests to members.

11 [CO 02/319] also sets out a range of conditions, including the requirement that the promoter hold an AFS licence or a dealer’s licence.

Role of the lead regulator

12 A lead regulator is a horse racing governing body in an Australian state or territory, with particular expertise in horse racing matters. Under co-regulatory arrangements, the lead regulators have responsibility for supervising the activities of small-scale horse racing syndicates on a day-to-day basis, while ASIC’s regulatory functions include:

- (a) ensuring that the promoter of a horse racing syndicate continues to satisfy the conditions of its AFS licence; and
- (b) supervising the performance of the lead regulators.

Purpose of relief

13 An important policy reason for the relief under [CO 02/319] is that regulation under the co-regulatory arrangements should promote informed and confident investment in small-scale horse racing syndicates, subject to appropriate conditions and limits on syndicates and the underlying agreements: see RG 91.30 in Regulatory Guide 91 *Horse racing and breeding* (RG 91).

14 [CO 02/319] was intended to reduce the compliance burdens imposed on the operators of small-scale horse racing syndicates. RG 91 sets out the key policy principles that underpin the relief.

- 15 Small-scale horse racing syndicates do not warrant regulation by ASIC under Ch 5C of the Corporations Act. The co-regulatory arrangements ensure that the interests of investors continue to be protected, while due recognition is given to the regulatory role played by the lead regulators and to their particular expertise: see RG 91.29. It is a more appropriate method of regulation than regulation under the managed investment scheme provisions in Ch 5C: see RG 91.29. Further, people tend to join these syndicates for the enjoyment of having a stake in a racehorse, rather than for a financial investment purpose: see RG 91.30.
- 16 If the relief were not available, the promoter of a horse racing syndicate with up to 20 members would have to comply with the managed investment scheme provisions in Ch 5C if the promoter was in the business of promoting managed investment schemes: s601ED(1)(b). The compliance costs and consequences are usually significant and would include:
- (a) a proposed responsible entity, which may be the promoter, must be nominated to be the responsible entity for the horse racing syndicate, and it must be an Australian public company (s601FA);
 - (b) the proposed responsible entity must hold an AFS licence;
 - (c) the proposed responsible entity must apply to ASIC for an authorisation to operate a specific horse racing syndicate or to operate horse racing schemes as a type of managed investment scheme (s601FA);
 - (d) the proposed responsible entity must apply to ASIC for the registration of the horse racing syndicate, which involves the preparation of a constitution and compliance plan, with an application fee to be paid for each horse racing syndicate (as at November 2015, the application fee is \$2,290 per syndicate);
 - (e) if less than half of the directors of the proposed responsible entity are external directors, a compliance committee must be formed (s601JA);
 - (f) an auditor must be appointed, and engaged at all times, to audit compliance with the compliance plan (s601HG);
 - (g) the auditor of the compliance plan must prepare an auditor's report, which the proposed responsible entity must lodge with ASIC (s601HG(7));
 - (h) the proposed responsible entity must prepare and lodge audited annual financial statements for the horse racing syndicate (s285, 292, 301 and 319) and must prepare and lodge half-yearly financial statements if the syndicate satisfies the definition of a 'disclosing entity' in Div 2 of Pt 1.2A of the Corporations Act; and
 - (i) if the proposed responsible entity is not already authorised under its AFS licence to operate managed investment schemes, it must satisfy the financial resource requirements that apply to the responsible entity of a registered scheme (see Class Order [CO 13/760] *Financial*

requirements for responsible entities and operators of investor directed portfolio services).

Proposal

B1 To preserve its effect beyond the sunset date of 1 October 2016, we propose to continue the relief currently given by [CO 02/319] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Horse Racing Syndicates) Instrument 2015/XX at Attachment 1 to this consultation paper. You can access the current instrument on www.comlaw.gov.au by clicking on the following direct link: [\[CO 02/319\]](#).

The only changes proposed are to:

- (a) raise the investment limit for a horse racing syndicate from \$250,000 to \$500,000;
- (b) increase the maximum number of members for a horse racing syndicate from 20 to 50;
- (c) formalise the co-regulatory arrangements between ASIC and the lead regulators, including an express requirement that each lead regulator be approved by ASIC, with approval subject to the lead regulator having entered into a memorandum of understanding with ASIC;
- (d) impose additional content requirements for a PDS for a horse racing syndicate;
- (e) modernise the language; and
- (f) update legislative references.

Your feedback

B1Q1 Do you agree with this proposal? If not, please give reasons.

B1Q2 Are there any practical problems associated with our proposal? If so, please give details.

B1Q3 What benefits do you consider will result from the proposal? If possible, please quantify these benefits.

B1Q4 Are there any additional costs associated with the implementation of this proposal? If possible, please quantify these costs.

B1Q5 Are there situations that would not fall within our proposed changes to the terms of the relief in [CO 02/319] that should be covered? If so, please give details.

B1Q6 Is any transition period required? If so, please give details of the length required and reasons.

Rationale

17 We are proposing to continue the substance of the relief under [CO 02/319] beyond 1 October 2016, subject to some changes being made to the terms of

the relief to increase protection of members of horse racing syndicates and to improve the information value of PDSs for these syndicates.

- 18 Our preliminary view is that our relief should continue to be available for horse racing syndicates that are small scale in commercial terms and are operated mainly for the enjoyment of horse racing and having an ownership stake in a racehorse. We continue to consider that the most appropriate method of regulating these syndicates is through co-regulatory arrangements, rather than by requiring syndicates to be registered managed investment schemes and to satisfy the compliance obligations that flow from registration under Ch 5C.
- 19 The proposed changes to the terms of [CO 02/319] should be compliance cost neutral for the promoters and members of small-scale horse racing syndicates. The proposed increases in the investment limit and the limit on the number of participants are expected to have a deregulatory effect because more horse racing syndicates will come within the scope of the relief and will not be required to be registered under the managed investment scheme provisions of the Corporations Act. The ultimate impact will be a significant saving in compliance costs.

Increase in the investment limit

- 20 Our proposal to increase the investment limit from \$250,000 to \$500,000 reflects the significant increase in the costs of purchasing, training and maintaining a racehorse.
- 21 Racing Australia Limited (Racing Australia), as a representative of all the lead regulators, recently provided ASIC with information on the substantial increase in costs since 2002. For example, between 2002–03 and 2012–13, the average purchase price of a yearling (a horse that is between one and two years old) increased from \$41,000 to \$70,000 (an increase of more than 70%). Racing Australia submitted that the \$250,000 investment limit severely restricts purchasing choices and opportunities for approved syndicators at the main yearling sales.
- 22 Further, Racing Australia referred to ASIC’s recent proposals for relief for greyhound schemes (see Consultation Paper 213 *Greyhound racing and breeding syndicate schemes* (CP 213)) and concluded that the limits of relief for horse racing syndicates were disproportionately low compared to the corresponding proposed limits for greyhound schemes.
- 23 Racing Australia noted that the average cost of a greyhound pup is \$1,500 to \$3,000, with our proposals in CP 213 proposing an investment limit of \$150,000 and a limit of 20 syndicate members. The average cost of \$70,000 for a yearling (as at 2012–13) is more than 20 times the upper limit of the range for the average cost of a greyhound pup. However, the limit on

syndicate members is the same (20 members) and the investment limit of \$250,000 is less than double the proposed investment limit for greyhounds.

- 24 Our initial view is that an investment limit of \$500,000 would reasonably allow for the substantial increase in costs. This approach would achieve a balance between:
- (a) allowing promoters to offer members of the public an opportunity to participate in horse racing syndicates free from the Ch 5C requirements; and
 - (b) not exposing syndicate members to an unreasonable risk of financial loss.
- 25 Our view is that, once an investment limit of \$500,000 is exceeded, the importance of protecting investors from loss would outweigh the benefits of allowing horse racing syndicates to operate free from the Ch 5C requirements.

Increase in the limit on the number of members

- 26 The rationale for the proposed increase in the maximum number of members from 20 to 50 is to make membership of a horse racing syndicate more affordable to the general public, given an increase in the investment limit from \$250,000 to \$500,000. People will have more of an opportunity to join a group to follow the fortunes of a racehorse and to enjoy any financial benefits that flow from that horse's racing performances.
- 27 If a horse racing syndicate raises the maximum amount of \$500,000, a limit of 20 members would result in a minimum investment of 5%, or \$25,000, per member. In contrast, if the maximum number of members is raised to 50, the minimum stake in a syndicate would be 2%, which would equate to a minimum of \$10,000 for a syndicate that raised \$500,000. This minimum level of investment of \$10,000 is lower than the minimum investment of \$12,500 (\$250,000 divided by 20 members) that applies under [CO 02/319] for a syndicate that raises the maximum of \$250,000.
- 28 A corollary of membership being made more affordable to the public is that promoters of horse racing syndicates should have more capacity to increase membership numbers and overall funds raised from members. A concern Racing Australia has raised with the current limit of 20 members (or a minimum syndicate stake of 5%) is that prospective members often sign with a promoter with an intention to purchase a 5% or a 10% share, but when completing the paperwork later advise that one or more friends or family members wish to share the experience and the cost of horse ownership with them.
- 29 The promoter, having not calculated this increased number of people, finds that the proposed syndicate now exceeds the limit of 20 people, requiring

cancellation of that member's purchase or not being able to fulfil that member's wishes to include others.

- 30 Lowering the minimum syndicate stake from 5% (20 members) to 2% (50 members) would also help a promoter meet the increasing costs of purchasing, training and maintaining a racehorse.

Formalising arrangements between ASIC and the lead regulators

- 31 Draft ASIC Corporations (Horse Racing Syndicates) Instrument 2015/XX should increase protection of horse racing syndicate members by improving ASIC's capacity to supervise lead regulators.

- 32 The relief under [CO 02/319] is founded on the co-regulatory arrangements between ASIC and the lead regulators. The co-regulatory arrangements ensure that the interests of investors continue to be protected while due recognition is given to the regulatory role played by the lead regulators and to their particular expertise: see RG 91.29. ASIC may approve a lead regulator if it establishes it is prepared, and has the necessary expertise, to perform a monitoring function for horse racing syndicates: see RG 91.32. We oversee the activities of lead regulators: see RG 91.31.

- 33 Table 1 of RG 91.33 sets out the elements of the lead regulator's role. In broad terms, the lead regulator's role is to maintain a register of horse racing syndicates, monitor new syndicates, and supervise the conduct and compliance performance of existing syndicates.

- 34 However, these expectations are not built into the terms of [CO 02/319]. As the expertise of the lead regulators in horse racing matters is a key policy principle that underpins our relief, it is vital to ensure that the lead regulators are performing their roles adequately and that ASIC has suitable arrangements in place to monitor and ensure that the lead regulators are doing so.

- 35 In order to improve our capacity to monitor lead regulators and to ensure that the co-regulatory arrangements function to an optimum standard, we are proposing to amend the terms of the relief to include an express requirement that each lead regulator be approved by ASIC, with approval subject to the lead regulator having entered into a memorandum of understanding with ASIC. Under our proposal, we would have a general discretion about whether to approve a body as a lead regulator.

- 36 Draft ASIC Corporations (Horse Racing Syndicates) Instrument 2015/XX sets out the minimum content requirements for a memorandum of understanding between ASIC and a lead regulator, including that a lead regulator must perform the following functions:

- (a) maintain a register of all promoters of horse racing syndicates for which there is reliance on our relief;

- (b) register horse racing syndicates it has agreed to regulate;
- (c) remove from the register any promoter who fails to comply with its rules on the promotion and operation of horse racing syndicates;
- (d) advise ASIC of the name of any promoter who has been removed from the register;
- (e) have in place adequate arrangements for approving disclosure documents for a syndicate where the lead regulator is satisfied that the disclosure document is accurate and contains:
 - (i) the information items required by draft ASIC Corporations (Horse Racing Syndicates) Instrument 2015/XX; and
 - (ii) any other information to allow prospective syndicate participants to make an informed decision as to whether to acquire an interest in the syndicate.

This approval function extends to supplementary PDSs and replacement PDSs;

- (f) have in place adequate arrangements for ensuring that the promoter of a syndicate provides to the lead regulator all documents that are required by draft ASIC Corporations (Horse Racing Syndicates) Instrument 2015/XX;
- (g) have in place adequate arrangements for resolving complaints and disputes received by the lead regulator about the conduct of the promoter, the manager or the operation of horse racing syndicates;
- (h) have in place adequate arrangements for regularly monitoring advertising of horse racing syndicates for inappropriate, misleading or deceptive content;
- (i) have in place adequate arrangements for regularly monitoring compliance by promoters and managers with the applicable conditions of the proposed instrument, the promoter's AFS licence and the manager's AFS licence (if any), including ensuring that managers of horse racing syndicates lodge the financial statements as required;
- (j) notify ASIC if the lead regulator identifies conduct by a promoter or manager of a horse racing syndicate that may involve breaches of the Corporations Act, the conditions of the proposed instrument, the conditions of the promoter's AFS licence or the conditions of the manager's AFS licence (if any), in addition to taking any action against the promoter or manager in relation to that conduct that it is appropriate for the lead regulator to take;
- (k) ensure that all employees and associates of a promoter registered with the lead regulator have agreed to be bound by the rules and requirements of the lead regulator relating to horse racing syndicates; and

- (l) lodge with ASIC an annual report of the lead regulator's performance of the functions described in this paragraph.

37 For the requirement that the lead regulator lodge an annual report with ASIC regarding compliance with the lead regulator responsibilities, the timeframe for the lodgement of the annual report would be set out in each memorandum of understanding.

38 To ensure that each memorandum of understanding operates effectively, the memorandum would require the lead regulator to make arrangements under which the employees and associates of a promoter of a horse racing syndicate that is registered with the lead regulator agree to be bound by the rules and requirements of the lead regulator.

Standard PDS requirements

39 We are proposing to retain the current condition in [CO 02/319] that the PDS in relation to a horse racing syndicate must be approved by a lead regulator.

40 [CO 02/319] also requires some items to be included in a PDS that are specific to a horse racing syndicate. Otherwise, the content requirements of the PDS are governed by Pt 7.9 of the Corporations Act.

41 The rationale for requiring a PDS for a horse racing syndicate to detail specific items of information is to improve the usefulness of the information and to improve consistency and comparability between PDSs of different syndicates.

42 We are proposing to enhance the information value of PDSs for small-scale horse racing syndicates by prescribing a list of information items that must be set out in PDSs for all horse racing syndicates that rely on the relief. This should enable investors to more effectively understand and compare PDSs across different horse racing syndicates.

Existing content requirements

43 [CO 02/319] currently requires that:

- (a) the racehorses are named and described in the PDS;
- (b) the PDS contains an undertaking by the promoter that the promoter will register the horse racing syndicate with the lead regulator within 45 days of the syndicate being fully subscribed;
- (c) the PDS contains an undertaking by the promoter that the promoter will, before registration of the horse racing syndicate with the lead regulator, ensure that the members either have unencumbered title to the whole of the syndicate horses or lease the whole of the syndicate horses under a finance agreement in a standard form; and

- (d) if the promoter is not the manager of the horse racing syndicate, there is a statement in the PDS that the manager will be required to manage the syndicate in accordance with the terms of any agreement governing the syndicate approved by the lead regulator and any rules, regulations or guidelines made by the lead regulator in relation to such manager or management.

Proposed additional requirements

44 Our preliminary position is that the existing content requirements should be preserved, and that the following disclosure items must also be included in the PDS:

- (a) the fees paid by trainers or suppliers to the syndicator;
- (b) disclosure of any actual or perceived conflict of interest;
- (c) for each horse to which the horse racing syndicate relates, the name and contact details of each owner of the horse's sire and dam;
- (d) a statement as to whether the promoter was entitled to a free service of the stallion (sire);
- (e) the passed-in price of the horse (in addition to the purchase price, which is currently required);
- (f) if the participants in the syndicate will have unencumbered title to the horse:
 - (i) a copy of the letter (vendor release statement) from the vendor or auction house confirming that the horse has been devolved to the syndicate or participants in the syndicate with unencumbered title, or confirmation by the promoter that the vendor release statement will be provided to the lead regulator before or on registration of the syndicate with the lead regulator;
 - (ii) a statutory declaration made by the promoter that:
 - (A) the promoter has a legally enforceable right to possession of the horse or that the promoter will, before or on registration of the horse racing syndicate with the lead regulator, have a legally enforceable right to possession of the horse; and
 - (B) the promoter will, before or on registration of the horse racing syndicate with the lead regulator, ensure that the participants in the syndicate will have unencumbered title to the horse;
 - (iii) confirmation that any personal property security interest registered against the title to the horse has been released or will be released and that the promoter will, before or on registration of the horse racing syndicate with the lead regulator, confirm to the lead regulator that the personal property security interest has been released;

- (g) if the participants in the horse racing syndicate lease the horse under a finance lease agreement in a standard form:
 - (i) a copy of the standard form of finance lease agreement; and
 - (ii) a statutory declaration made by the promoter that the promoter will, before or on registration of the horse racing syndicate with the lead regulator, ensure that participants in the horse racing syndicate lease the horse under a finance lease agreement in that standard form;
- (h) costs that are solely relevant to the horse racing syndicate;
- (i) costs that are related to the operation of the promoter's business, such as administration and legal costs; and
- (j) a notice that a potential purchaser may elect to have a horse tested for anabolic steroids or other performance enhancing substances, with the cost of testing to be borne by all potential purchasers, including the prospective purchasers who did not agree to the testing.

Class Order [CO 02/172] Horse breeding schemes: private broodmare syndication and Class Order [CO 02/178] Horse breeding schemes: private stallion syndication

Background

- 45 In the horse breeding industry it is common to syndicate horses for breeding in a way that involves a managed investment scheme in which participants in the scheme share the costs of buying or leasing breeding stock.
- 46 [CO 02/172] and [CO 02/178] provide conditional relief to the promoters of certain horse breeding schemes from the requirements under the Corporations Act to register a managed investment scheme, hold an AFS licence and give PDS disclosure.
- 47 The relief is limited to small-scale private schemes and would not usually be available for publicly advertised schemes. Offers to join these schemes generally must be personal offers (as defined in s1012E(5)).
- 48 Further background information and an explanation of the rationale for relief provided under [CO 02/172] and [CO 02/178] is set out in RG 91.

Proposal

- B2** To preserve their effect beyond the sunset date of 1 October 2017, we propose to continue the relief currently given by [CO 02/172] and [CO 02/178] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations

(Private Horse Breeding Schemes) Instrument 2015/XX at Attachment 2 to this consultation paper. You can access the current instruments on www.comlaw.gov.au by clicking on the following direct links: [\[CO 02/172\]](#) and [\[CO 02/178\]](#).

The only changes proposed are to:

- (a) combine [CO 02/172] and [CO 02/178] into one instrument and consolidate the relief provided;
- (b) update legislative references;
- (c) update cross-references; and
- (d) correct any minor drafting errors.

Your feedback

B2Q1 Do you agree that the relief provided in [CO 02/172] and [CO 02/178] should be continued? If not, please give reasons.

B2Q2 Do you agree with the proposal in respect of [CO 02/172]? If not, please give reasons.

B2Q3 Do you agree with the proposal in respect of [CO 02/178]? If not, please give reasons.

B2Q4 One of the key conditions of relief under [CO 02/178] is that each person who operates, or offers for issue, or issues interests in, the stallion scheme (together with any associates) must not have, at the same time or during the previous 12 months, issued or sold in excess of 40 interests in a horse breeding scheme. Does this limit remain appropriate in light of current industry practice for small-scale private stallion schemes? If not, please give reasons and comment on what might be a more appropriate limit.

B2Q5 Should there be a change to the content requirements for a stallion scheme agreement under [CO 02/178]? If so, please give reasons.

Rationale

49 We are proposing to continue our relief beyond 1 October 2017 because our preliminary engagement with industry participants indicates that there is support for continuing the relief. Our preliminary view is that relief from various provisions in the Corporations Act should continue to be available to small, private arrangements for horse breeding in recognition that these arrangements do not warrant regulation as managed investment schemes.

Consolidation of the two class orders

50 [CO 02/172] and [CO 02/178] modify the Corporations Act in similar ways in relation to two different types of managed investment schemes with a similar subject matter (i.e. private horse breeding syndicates). As a result, we

consider that these class orders should be consolidated into a single instrument.

Private broodmare schemes

51 We are not aware of any concerns to the effect that the relief given by [CO 02/172] has not operated efficiently or effectively. We are not proposing any substantive changes to the terms of the relief.

Private stallion schemes

52 We are not proposing any substantive changes to the terms of the relief given by [CO 02/178]. However, we are seeking feedback on the following two conditions of the relief that were raised during our preliminary engagement with industry participants:

- (a) the limit on the number of interests that may be issued or sold over a 12-month period; and
- (b) the content requirements of a stallion scheme agreement.

Limit on the number of interests issued or sold over a 12-month period

53 Our relief is not based on the cumulative value of interests issued in the stallion scheme or the total number of interests issued in the scheme. The relief is intended to be available to small-scale private schemes but not for publicly advertised schemes, such as schemes promoted by a professional promoter.

54 This limit of 40 interests over 12 months was set on the basis that this was well-established practice for small-scale private stallion schemes. We have sought feedback (see question B2Q4) on whether this limit remains appropriate in light of current industry practice for schemes of this type and, if not, what an appropriate limit might be.

55 In continuing our relief, we are not proposing to introduce a monetary investment limit.

Content requirements of a stallion scheme agreement

56 One of the conditions of relief under [CO 02/178] is that offers be made through a stallion scheme agreement that meets the requirements in the class order. The stallion scheme agreement must contain certain provisions: see RG 91.28.

57 In continuing our relief, we are not proposing to change the content requirements for a stallion scheme agreement. However, we are seeking feedback on whether the content requirements should be modified: see question B2Q5.

C Regulatory and financial impact

- 58 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:
- (a) allowing some horse racing syndicates and horse breeding schemes to be operated without satisfying various compliance obligations under the Corporations Act; and
 - (b) providing members of these schemes with adequate safeguards, including, for horse racing syndicates, suitable co-regulatory arrangements and PDS information.
- 59 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
 - (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
 - (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).
- 60 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 61 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
 - (b) the likely effect on competition; and
 - (c) other impacts, costs and benefits.
- See 'The consultation process', p. 4.

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
[CO 02/172] (for example)	An ASIC class order (in this example numbered 02/172) Note: Legislative instruments made from 2015 are referred to as ASIC instruments.
broodmare	A female horse used for breeding
broodmare scheme	A managed investment scheme where a broodmare or broodmares are bought and maintained and their offspring sold for the benefit of participants
Ch 7 (for example)	A chapter of the Corporations Act (in this example numbered 7), unless otherwise specified
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
horse breeding scheme	A broodmare scheme or a stallion scheme
horse racing syndicate	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, and 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
Legislative Instruments Act	<i>Legislative Instruments Act 2003</i>

Term	Meaning in this document
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.
Racing Australia	Racing Australia Limited ACN 105 994 330, the national industry body of thoroughbred racing in Australia
RIS	Regulation Impact Statement
s25 (for example)	A section of the Corporations Act (in this example numbered 25), unless otherwise specified
stallion	A male horse used for breeding
stallion scheme	A managed investment scheme where a stallion is bought and stud services by the stallion provided for the benefit of each of the participants of the scheme
sunsetting	The practice of specifying a date at which a given regulation or legislative instrument will cease to have effect

List of proposals and questions

Proposal	Your feedback
<p>B1 To preserve its effect beyond the sunset date of 1 October 2016, we propose to continue the relief currently given by [CO 02/319] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Horse Racing Syndicates) Instrument 2015/XX at Attachment 1 to this consultation paper. You can access the current instrument on www.comlaw.gov.au by clicking on the following direct link: [CO 02/319].</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> (a) raise the investment limit for a horse racing syndicate from \$250,000 to \$500,000; (b) increase the maximum number of members for a horse racing syndicate from 20 to 50; (c) formalise the co-regulatory arrangements between ASIC and the lead regulators, including an express requirement that each lead regulator be approved by ASIC, with approval subject to the lead regulator having entered into a memorandum of understanding with ASIC; (d) impose additional content requirements for a PDS for a horse racing syndicate; (e) modernise the language; and (f) update legislative references. 	<p>B1Q1 Do you agree with this proposal? If not, please give reasons.</p> <p>B1Q2 Are there any practical problems associated with our proposal? If so, please give details.</p> <p>B1Q3 What benefits do you consider will result from the proposal? If possible, please quantify these benefits.</p> <p>B1Q4 Are there any additional costs associated with the implementation of this proposal? If possible, please quantify these costs.</p> <p>B1Q5 Are there situations that would not fall within our proposed changes to the terms of the relief in [CO 02/319] that should be covered? If so, please give details.</p> <p>B1Q6 Is any transition period required? If so, please give details of the length required and reasons.</p>

Proposal	Your feedback
<p>B2 To preserve their effect beyond the sunset date of 1 October 2017, we propose to continue the relief currently given by [CO 02/172] and [CO 02/178] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Private Horse Breeding Schemes) Instrument 2015/XX at Attachment 2 to this consultation paper. You can access the current instruments on www.comlaw.gov.au by clicking on the following direct links: [CO 02/172] and [CO 02/178]</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> (a) combine [CO 02/172] and [CO 02/178] into one instrument and consolidate the relief provided; (b) update legislative references; (c) update cross-references; and (d) correct any minor drafting errors. 	<p>B2Q1 Do you agree that the relief provided in [CO 02/172] and [CO 02/178] should be continued? If not, please give reasons.</p> <p>B2Q2 Do you agree with the proposal in respect of [CO 02/172]? If not, please give reasons.</p> <p>B2Q3 Do you agree with the proposal in respect of [CO 02/178]? If not, please give reasons.</p> <p>B2Q4 One of the key conditions of relief under [CO 02/178] is that each person who operates, or offers for issue, or issues interests in, the stallion scheme (together with any associates) must not have, at the same time or during the previous 12 months, issued or sold in excess of 40 interests in a horse breeding scheme. Does this limit remain appropriate in light of current industry practice for small-scale private stallion schemes? If not, please give reasons and comment on what might be a more appropriate limit.</p> <p>B2Q5 Should there be a change to the content requirements for a stallion scheme agreement under [CO 02/178]? If so, please give reasons.</p>