

# Attachment 1 to CP 242: Draft instrument



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Horse Racing Syndicates) Instrument 2015/XX**

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I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2015

<signature>

<insert name>

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## Part 1—Preliminary

### 1 Name of legislative instrument

This instrument is *ASIC Corporations (Horse Racing Syndicates) Instrument 2015/XX*.

### 2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at [www.comlaw.gov.au](http://www.comlaw.gov.au).

### 3 Authority

This instrument is made under subsection 601QA(1) of the *Corporations Act 2001* (the *Act*).

### 4 Definitions

In this instrument:

***disclosure document***, in relation to a horse racing syndicate, means a Product Disclosure Statement and any Supplementary Product Disclosure Statement or Replacement Product Disclosure Statement in relation to the horse racing syndicate.

***financial statements***, in relation to a horse racing syndicate, means a true and fair profit and loss account and statement of assets and liabilities for the horse racing syndicate.

***financial year***, in relation to a horse racing syndicate, means a period of 12 months that ends on 30 June or any other day that is specified in any agreement between the manager and the lead regulator as the day on which the financial year for the horse racing syndicate will end.

***horse racing*** means thoroughbred racing or harness racing.

***horse racing syndicate*** means a managed investment scheme that has a principal purpose of racing one or more horses and distributing prizemoney won by the horse or horses to the participants in the scheme.

***lead regulator*** means a body that:

- (a) is responsible for the administration of horse racing in an Australian State or Territory; and
- (b) has entered into a memorandum of understanding with ASIC that ASIC is satisfied meets the requirements of subsection 5(3); and

- (c) has been notified by ASIC in writing is approved as a lead regulator for the purposes of this instrument and ASIC has not revoked that approval.

**manager**, in relation to a horse racing syndicate, means the person:

- (a) appointed as manager from to time in accordance with the syndicate agreement; or
- (b) otherwise appointed as manager of the horse racing syndicate from time to time with the approval of the lead regulator.

**offer** includes an invitation to make an offer or an application.

**offeree** means a person who is offered an interest in a horse racing syndicate.

**participant** means any person who holds a beneficial interest in a horse racing syndicate whether jointly or otherwise.

**standard form**, in relation to a finance lease agreement, means a form of finance lease agreement approved by the lead regulator with whom the promoter is registered in relation to the horse racing syndicate for which the finance lease agreement is to be used.

**syndicate agreement** means an agreement governing the horse racing syndicate that is approved by the lead regulator and that is legally enforceable as between the manager of the horse racing syndicate and the participants in the horse racing syndicate.

## Part 2—Exemption

### 5 Registration relief

- (1) A promoter and a manager of a horse racing syndicate do not have to comply with subsection 601ED(5) of the Act in relation to the operation of the horse racing syndicate.

*Where exemption applies*

- (2) The exemption in subsection (1) applies in relation to a horse racing syndicate where all of the following are satisfied in relation to the horse racing syndicate:
- (a) the promoter of the horse racing syndicate:
    - (i) holds an Australian financial services licence authorising it to provide financial services in relation to the horse racing syndicate; and
    - (ii) is registered by a lead regulator as the promoter of the horse racing syndicate; and
  - (b) there are no more than 50 participants in the horse racing syndicate; and
  - (c) the total amount raised from the issue of interests in the horse racing syndicate does not exceed \$500,000; and
  - (d) the disclosure document for the horse racing syndicate:
    - (i) contains the information and statements required by subsection (4); and
    - (ii) has been approved by the lead regulator; and
  - (e) the horse racing syndicate is registered with lead regulator within 45 days of being fully subscribed; and
  - (f) the syndicate agreement includes the terms referred to in subsection (5), unless these terms are excluded, modified or varied with the written agreement of all participants in the horse racing syndicate.

*Memorandum of understanding between ASIC and the lead regulator*

- (3) For the purpose of paragraph (b) of the definition of lead regulator in section 4, the requirements are that the memorandum of understanding between ASIC and the lead regulator contains provisions to the effect that the lead regulator will:

- (a) maintain a register of all promoters of horse racing syndicates registered by the lead regulator for the purposes of this instrument; and
- (b) remove from the register any promoter who does not comply with the lead regulator's rules relating to the promotion and operation of horse racing syndicates; and
- (c) advise ASIC of the name of any promoter who has been removed from the register; and
- (d) have in place adequate arrangements for:
  - (i) approving disclosure documents for a horse racing syndicate where the lead regulator is satisfied that the disclosure document is accurate and contains:
    - (A) the information required by subsection (4); and
    - (B) sufficient other information to allow prospective participants in the horse racing syndicate to make an informed decision as to whether to acquire an interest in the horse racing syndicate; and
  - (ii) ensuring that the promoter of a horse racing syndicate provides to the lead regulator all relevant documents in relation to the horse racing syndicate in accordance with subsection 6(2); and
  - (iii) resolving complaints and disputes received by the lead regulator about the conduct of the promoter, the manager or the operation of horse racing syndicates; and
  - (iv) regularly monitoring advertising of horse racing syndicates for inappropriate, misleading or deceptive content; and
  - (v) regularly monitoring compliance by promoters and managers of horse racing syndicates with the applicable conditions of this instrument, the promoter's Australian financial services licence and the manager's Australian financial services licence (if any), including ensuring that managers of horse racing syndicates lodge the financial statements as required; and
- (e) notify ASIC if the lead regulator identifies conduct by a promoter or manager of a horse racing syndicate that may involve breaches of the Act or the applicable conditions of this instrument, the promoter's Australian financial services licence or the manager's Australian financial services 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; and

- (f) ensure that all employees and associates of a promoter that is 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
- (g) lodge with ASIC an annual report of the lead regulator's performance of the functions set out in paragraphs (a) to (f).

*Disclosure document requirements*

- (4) For the purposes of subparagraph (2)(d)(i), the information and statements required in the disclosure document are:
  - (a) the information required by Subdivision C of Division 2 of Part 7.9 of the Act;
  - (b) the name of the horse or horses to which the horse racing syndicate relates;
  - (c) the name of the promoter of the horse racing syndicate;
  - (d) the name of the manager of the horse racing syndicate;
  - (e) an undertaking by the promoter that the promoter will, within 45 days of the horse racing syndicate being fully subscribed, register the horse racing syndicate with the lead regulator;
  - (f) a statement that the manager will be required to manage the horse racing syndicate in accordance with the terms of the syndicate agreement and any rules, regulations or guidelines made by the lead regulator in relation to such manager or management;
  - (g) details of fees paid by trainers or suppliers to the promoter or manager in relation to the horse racing syndicate;
  - (h) disclosure of any actual or perceived conflict of interest of the promoter or manager in relation to the horse racing syndicate;
  - (i) 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;
  - (j) a statement as to whether the promoter was entitled to a free service of the sire of each horse to which the horse racing syndicate relates;
  - (k) for each horse to which the horse racing syndicate relates, the purchase price and, where applicable, the passed-in price of the horse;
  - (l) for each horse to which the horse racing syndicate relates:
    - (i) if the participants in the horse racing syndicate are to have unencumbered title to the horse:

- (A) 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;
- (B) a statutory declaration made by the promoter that:
  - (1) 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;
  - (2) 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; and
- (C) 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; or
- (ii) if the participants in the horse racing syndicate lease the horse under a finance lease agreement in a standard form:
  - (A) a copy of the standard form of finance lease agreement; and
  - (B) 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;
- (m) details of costs that are solely relevant to the horse racing syndicate;
- (n) details of costs that are related to the operation of the promoter's business, such as administration and legal costs; and
- (o) a notice that a potential purchaser may elect to have a horse tested for an anabolic steroid or other performance enhancing substance, with the cost of testing to be borne by all potential purchasers, including the prospective purchasers that did not agree to the testing.



*The role of the manager*

- (5) For the purposes of paragraph (2)(f), the terms of the syndicate agreement are:
- (a) the manager of the horse racing syndicate must manage the horse racing syndicate in accordance with the terms of the syndicate agreement throughout its duration unless that person:
    - (i) retires with the prior written consent of the majority of the participants of the horse racing syndicate not associated with the retiring manager;
    - (ii) is removed in accordance with the terms of the agreement; or
    - (iii) otherwise retires or is removed with the consent of the lead regulator;
  - (b) if the manager of the horse racing syndicate retires or is removed in accordance with paragraph (a), a new manager will be appointed and that manager will become subject to the terms of the syndicate agreement;
  - (c) the manager of the horse racing syndicate must:
    - (i) keep accounting records that correctly record and explain the transactions and financial position of the horse racing syndicate and that would enable financial statements to be prepared in respect of the horse racing syndicate from time to time;
    - (ii) in respect of each financial year, prepare financial statements in respect of the horse racing syndicate;
    - (iii) lodge the financial statements in respect of the horse racing syndicate with the lead regulator within 90 days after the end of each financial year;
    - (iv) if ASIC makes a written request to the manager to lodge a copy of the financial statements in respect of the horse racing syndicate, lodge the copy of the financial statements with ASIC within 14 days; and
    - (v) open and maintain a separate account with an Australian bank in respect of the horse racing syndicate that must be used for the deposit and payment of all moneys relating to the operation of the horse racing syndicate.

## 6 Conditions

- (1) A promoter that relies on the exemption in subsection 5(1) in relation to a horse racing syndicate must comply with the conditions in this section in relation to the horse racing syndicate.
- (2) The promoter must provide the lead regulator with a copy of each of the following in relation to the horse racing syndicate:
  - (a) the syndicate agreement and any changes to the syndicate agreement – promptly after the syndicate agreement is entered into or the changes are made;
  - (b) any finance lease agreement and any changes to the finance lease agreement – promptly after the finance lease agreement is entered into or the changes are made;
  - (b) any other agreement (*relevant agreement*):
    - (i) establishing or affecting the horse racing syndicate; or
    - (ii) that relates to the horse racing syndicate and to which a participant in the horse racing syndicate is a party,and any changes to a relevant agreement – promptly after the relevant agreement is entered into or the changes have been made;
  - (c) each disclosure document, in accordance with subsection (3); and
  - (e) any other information to be provided by the promoter to an offeree in relation to the horse racing syndicate – before providing the information to the offeree;
  - (f) any advertisement for interests in the horse racing syndicate or statement that is reasonably likely to induce people to acquire interests in the horse racing syndicate, in accordance with subsection (4).
- (3) The promoter must not provide an offeree with a disclosure document unless the promoter has received the prior approval of the disclosure document from the lead regulator.
- (4) The promoter must not, without the prior approval of the lead regulator, advertise interests in the horse racing syndicate or publish any statement that is reasonably likely to induce people to acquire interests in the horse racing syndicate.
- (5) The promoter must provide to the lead regulator any assistance or information reasonably required by the lead regulator in relation to the promoter or the horse racing syndicate.

- (6) The promoter must comply with any rules, regulations or guidelines made by the lead regulator that apply to the promoter in relation to the horse racing syndicate.
- (7) The promoter must provide to ASIC any assistance or information reasonably required by ASIC in relation to the promoter or the horse racing syndicate.
- (8) The promoter must, before or on registration of the horse racing syndicate with the lead regulator, ensure that either:
  - (a) the participants in the horse racing syndicate have unencumbered title to the whole of the horse racing syndicate horses; or
  - (b) the participants in the horse racing syndicate lease the whole of the horse racing syndicate horses under a finance lease agreement in standard form.
- (9) The promoter must, within 45 days of the horse racing syndicate being fully subscribed, register the horse racing syndicate with the lead regulator.
- (10) The promoter must, if the horse racing syndicate is not fully subscribed within six months after the date on which the disclosure document in respect of that horse racing syndicate is approved by the lead regulator, repay all money received from any person who applied to participate in the horse racing syndicate, together with interest (if any) which accrued in respect of that money, within 10 business days after the expiry of that six month period.
- (11) The promoter must comply with paragraph 912A(1)(b) of the Act in relation to the financial services provided in relation to the horse racing syndicate.
- (12) The promoter must comply with section 1017D of the Act as if interests in the horse racing syndicate were a managed investment product.