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## Part 1—Preliminary

### 1 Name of legislative instrument

This instrument is *ASIC Corporations (Private Horse Breeding Schemes) 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 subsections 601QA(1), 926A(2), 992B(1) and 1020F(1) of the *Corporations Act 2001* (the *Act*).

### 4 Definitions

In this instrument:

*associate* has the meaning given in Division 2 of Part 1.2 of the Act.

*manager*, in relation to a private stallion scheme, means the person named as manager in the stallion scheme agreement.

*personal offer*:

- (a) in relation to a private broodmare scheme, means a personal offer within the meaning of subsection 1012E(5) of the Act; and
- (b) in relation to a private stallion scheme, means a personal offer within the meaning of subsection 1012E(5) of the Act that is accompanied by a copy of the proposed stallion scheme agreement.

*private broodmare scheme* means a managed investment scheme to which all of the following apply:

- (a) the principal purpose of the scheme is to breed horses out of broodmares to which the scheme relates; and
- (b) each interest in the scheme is issued as the result of either:
  - (i) acceptance of a personal offer; or
  - (ii) an offer which does not need a Product Disclosure Statement (otherwise than because of the exemption in paragraph 8); and

- (c) none of the offers of interests in the scheme results in the operator of the scheme, together with any associates of the operator, having issued or sold in a 12 month period more than 20 interests in aggregate in managed investment schemes, the principal purpose of which is to breed horses.

**private horse breeding scheme** means a private broodmare scheme or a private stallion scheme.

**private stallion scheme** means a managed investment scheme to which all of the following apply:

- (a) the principal purpose of the scheme is to acquire a stallion and provide stud services of the stallion for the benefit of each of the participants of the scheme;
- (b) each interest in the scheme is only able to be acquired under a stallion scheme agreement and is issued as the result of either:
  - (i) acceptance of a personal offer; or
  - (ii) an offer which does not need a Product Disclosure Statement (otherwise than because of the exemption in paragraph 8);
- (c) none of the offers of interests in the scheme results in the operator of the scheme, together with any associates of the operator, having issued or sold in a 12 month period more than 40 interests in aggregate in managed investment schemes, the principal purpose of which is to breed horses; and
- (d) each promoter of the scheme holds at all times either:
  - (i) an Australian financial services licence; or
  - (ii) at least 10% fully paid of all interests in the scheme.

**stallion**, in relation to a stallion scheme agreement, means the stallion identified in the stallion scheme agreement.

**stallion return**, in relation to a private stallion scheme, means the stallion return and associated documents required to be lodged with the Australian Stud Book by 30 June each year.

**stallion scheme agreement**, in relation to a private stallion scheme, means a written agreement which includes provisions to the following continuing effect:

- (a) requiring that the scheme relates to one stallion and no other horse or investment; and

- (b) requiring that the stallion stand at stud only in this jurisdiction for the first three full stud seasons from the date the scheme acquires the stallion; and
- (c) providing that participants will, as tenants in common, own the whole of the legal and equitable title to the stallion free of encumbrances; and
- (d) prohibiting the financing of the purchase of the stallion other than from the proceeds of the issue of interests; and
- (e) providing that prospective participants in the scheme receive a full refund of application moneys on written request made to and received by the promoter within 3 clear days after payment of application moneys;

and that contains each of the following:

- (f) details of reporting requirements to participants of the financial performance of the scheme and stallion return for each reporting period; and
- (g) a statement of risks associated with the scheme and the speculative nature of investment in horse breeding schemes; and
- (h) details of fees and expenses payable to the manager, the basis of their calculation and disclosure in the financial statements; and
- (i) details of insurance of, and the veterinary examinations schedule of, the stallion; and
- (j) details of the obligations of the stud; and
- (k) a statement that this instrument is being relied on by the operator.

## Part 2—Exemptions

### 5 Registration relief

An operator of a private horse breeding scheme does not have to comply with subsection 601ED(5) of the Act in relation to the operation of the private horse breeding scheme.

### 6 Licensing relief

- (1) An operator of a private horse breeding scheme does not have to comply with the requirement in subsection 911A(1) of the Act to hold an Australian financial services licence covering the provision of financial services in relation to interests in the private horse breeding scheme.
- (2) A person (other than a person to whom subsection (1) applies) does not have to comply with the requirement in subsection 911A(1) of the Act to hold an Australian financial services licence covering the provision of financial services in relation to a managed investment scheme which appears to meet the definition of private horse breeding scheme except where the person is aware, or ought reasonably to be aware, that the managed investment scheme does not meet the definition of a private horse breeding scheme.

Note: For a managed investment scheme to be a private stallion scheme to which this instrument applies, each promoter must at all times hold either an Australian financial services licence or 10% fully paid of all interests in the scheme: definition of *private stallion scheme*.

- (3) A person does not have to comply with subsection 911B(1) of the Act where:
  - (a) the person provides a financial service on behalf of a person (the *principal*); and
  - (b) if the principal (rather than the person) provided the service, the principal would not need an Australian financial services licence because the service would be covered by subsection (1) or (2).

### 7 Hawking relief

An operator of a private horse breeding scheme does not have to comply with section 992AA of the Act in relation to an interest in the private horse breeding scheme.

### 8 Financial product disclosure relief

- (1) An operator of a private horse breeding scheme does not have to comply with Part 7.9 of the Act (other than sections 1017E, 1017F, 1020D and 1021O) in relation to any of the following:

- (a) a recommendation that a person acquire an interest in the private horse breeding scheme;
  - (b) an offer to issue or sell an interest in the private horse breeding scheme to a person;
  - (c) the issue or sale of interests in the private horse breeding scheme to a person.
- (2) A person (other than a person to whom subsection (1) applies) does not have to comply with Part 7.9 of the Act in relation to any of the following:
- (a) a recommendation that a person acquire an interest in a managed investment scheme;
  - (b) an offer to arrange the issue of an interest in a managed investment scheme,

which appears to meet the definition of private horse breeding scheme except where the person is aware, or ought reasonably to be aware, that the managed investment scheme does not meet the definition of private horse breeding scheme.