



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 91

# Horse breeding schemes and horse racing syndicates

August 2016

### About this guide

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

It explains:

- our general approach to regulating certain small-scale horse breeding schemes and horse racing syndicates;
- the relief we give for certain types of horse breeding schemes and horse racing syndicates from the managed investment, Australian financial services (AFS) licensing and product disclosure provisions of the Corporations Act; and
- our approach to the co-regulatory arrangements between ASIC and lead regulators for certain types of horse racing syndicates.

### 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 August 2016 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 91, issued July 2007, reissued June 2012
- Superseded Policy Statement 20 *Horse racing schemes*, issued 26 February 1996 and Superseded Policy Statement 91 *Horse breeding schemes*, issued September 1997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.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## Overview

### Key points

ASIC may or may not have a direct regulatory role for any particular horse breeding scheme or horse racing syndicate. If a horse breeding scheme or a horse racing syndicate is a managed investment scheme, ASIC has a regulatory role.

This guide sets out our approach to the regulation of certain small-scale horse breeding schemes and horse racing syndicates. In particular, it sets out the relief that may be available from the managed investment, Australian financial services (AFS) licensing and product disclosure provisions of the *Corporations Act 2001* (Corporations Act).

## Corporations Act requirements

- 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 scheme or horse racing syndicate generally depends on whether the scheme or syndicate 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—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 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.

### Small-scale offerings

- RG 91.3 The Corporations Act provides some exclusions for small-scale offerings of managed investment schemes. The scheme registration, AFS licensing and PDS disclosure requirements generally do not apply if a managed investment scheme:
- (a) has no more than 20 members in total; and
  - (b) is not promoted by a person who is in the business of promoting managed investment schemes.

RG 91.4 In addition, if 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(c) do not apply, but the promoter generally needs to hold an AFS licence.

## Our approach to relief

RG 91.5 Given the nature of horse breeding schemes and horse racing syndicates, we have granted further exemptions from some of the requirements of the Corporations Act, depending on the activities of the promoter.

### Relief for horse breeding schemes

RG 91.6 We have provided conditional relief in [ASIC Corporations \(Horse Schemes\) Instrument 2016/790](#) to the operators of certain broodmare and stallion schemes from the requirements to:

- (a) register a managed investment scheme;
- (b) hold an AFS licence; and
- (c) give PDS disclosure.

RG 91.7 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). Section B sets out our approach to the regulation of horse breeding schemes.

### Relief for horse racing syndicates

RG 91.8 Certain types of horse racing syndicates are subject to co-regulatory arrangements between ASIC and lead regulators. Lead regulators must be approved by ASIC and we oversee their activities.

RG 91.9 We have provided conditional relief in ASIC Corporations (Horse Schemes) Instrument 2016/790 to promoters of horse racing syndicates from the requirement to register a managed investment scheme. Section C sets out our approach to the regulation of horse racing syndicates.

## A Relief for horse breeding schemes

### Key points

ASIC Corporations (Horse Schemes) Instrument 2016/790 provides conditional relief to the operators of certain broodmare and stallion breeding schemes from the Corporations Act requirements to register a managed investment scheme, hold an AFS licence and give PDS disclosure.

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

- RG 91.10 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 members in the scheme share the cost of buying or leasing breeding stock.
- RG 91.11 We provide a number of exemptions from the provisions of the Corporations Act that would otherwise apply. We give conditional relief so that the operator of certain broodmare and stallion schemes need not:
- (a) register the managed investment scheme with us;
  - (b) hold an AFS licence; or
  - (c) give point-of-sale disclosure in a PDS.
- Note: Certain obligations still need to be met for offers under this relief (e.g. the obligations in s1017E and 1017F).
- RG 91.12 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-scale private arrangements to breed horses will not generally warrant regulation as managed investment schemes under the Corporations Act. The relief is not intended to apply to horse breeding schemes operated by professional commercial promoters.
- RG 91.13 For the relief to apply, offers to join these schemes must be personal offers, as defined in s1012E(5) or otherwise permitted to be made without a PDS being given. An offer will be a personal offer where it can only be accepted by the person to whom it is made, and is made to a person likely to be interested in the offer having regard to previous contact, some professional or other connection to the person making the offer, or statements or actions that indicate that they are interested in offers of that kind.
- RG 91.14 The relief is limited to small-scale private horse breeding schemes and the requirement that offers generally be personal offers means that it would not

usually be available for publicly advertised schemes. A limit is applied on the aggregate number of interests that may be issued or sold in any horse breeding scheme by the operator of a private horse breeding scheme (together with any associates) over a 12-month period. This is consistent with relief not applying to persons who could be considered to be conducting a business of significant scale of promoting horse breeding schemes and also excludes those who regularly deal in horse breeding scheme interests: see RG 91.20(b) and RG 91.25(b).

Note: This position is consistent with existing provisions in the Corporations Act dealing with small-scale offers. For example, see 1012E(2), which applies to 20 issues based on personal offers made on the basis of the exemption in s1012E within a 12-month period.

- RG 91.15 If the operator 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 which generally applies 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.
- RG 91.16 The promoter of a stallion scheme needs to hold an AFS licence for the relief to apply in certain circumstances.

### Shorter PDS regime

- RG 91.17 Issuers of simple managed investment 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 are unlikely to 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.

## Private broodmare schemes

- RG 91.18 Broodmare schemes buy broodmares. The foals of the broodmares 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 91.19 The life of the broodmare 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 91.20 Relief for private broodmare schemes is set out in ASIC Corporations (Horse Schemes) Instrument 2016/790. The key features of a private broodmare scheme that is eligible for relief are:
- (a) each interest in the scheme must be issued as the result of:
    - (i) acceptance of a personal offer, as defined in s1012E(5); or
    - (ii) an offer made that does not need a PDS; and
  - (b) 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 a horse breeding scheme.
- RG 91.21 Below is an example of how the limit on the number of interests that may be issued or sold over a 12-month period in a private broodmare scheme applies.

#### Example: Private broodmare scheme limit

A person issues 12 interests in a new horse breeding scheme and, eight months later, issues eight interests in that scheme, or in a different horse breeding scheme. The person could not, in the remaining four months, issue any more interests in a private broodmare scheme in reliance on the relief in ASIC Corporations (Horse Schemes) Instrument 2016/790.

## Private stallion schemes

- RG 91.22 In a stallion scheme, the asset is a specific stallion whose identity is known. The operator 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 operator's stud or at another nominated stud. The operator 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 91.23 Members of 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 91.24 In light of this generally being so and also the difficulty in syndicating stallion schemes with a maximum of 20 members, relief applies when interests are issued or sold by an operator who, together with their associates, has not issued or sold more than 40 interests in any horse breeding scheme in the previous 12 months. This limit operates in the same way as the limit for private broodmare schemes: see RG 91.20–RG 91.21.



- RG 91.25 Relief for private stallion schemes is set out in ASIC Corporations (Horse Schemes) Instrument 2016/790. The key features of a private stallion scheme that is eligible for relief are:
- (a) each interest in the scheme must be issued as the result of:
    - (i) acceptance of a personal offer, as defined in s1012E(5); or
    - (ii) an offer made that does not need a PDS;
  - (b) 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 a horse breeding scheme;
  - (c) each promoter of the scheme must at all times hold either:
    - (i) an AFS licence; or
    - (ii) fully paid interests that are at least 10% of all interests in the scheme; and
  - (d) the offer must be made through a stallion scheme agreement that meets the requirements in ASIC Corporations (Horse Schemes) Instrument 2016/790 (see Table 1 for examples of the provisions that must be included in the agreement).

**Table 1: Examples of provisions that must be included in the stallion scheme agreement**

Provision	Description
<b>One stallion</b>	The agreement must require that the scheme relates to one stallion and no other horse or investment.
<b>Jurisdiction</b>	The agreement must require that the stallion stand at stud only in Australia for the first three full stud seasons from the date the scheme acquires the stallion (this is to ensure that members can maintain a degree of control).
<b>Title</b>	The agreement must provide that members 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).
<b>Financing</b>	The agreement must prohibit the financing of the purchase of the stallion other than from the proceeds of the issue of interests in the scheme.
<b>Refunds</b>	The agreement must provide that persons offered an interest in the scheme receive a full refund of their application money on written request received by the person responsible for accepting payment of the money within three days after the day of the payment of the money.
<b>Reporting</b>	The agreement must detail the reporting requirements to members for the financial performance of the scheme for each reporting period.
<b>Statement of risks</b>	The agreement must include a statement of risks associated with the scheme and the speculative nature of investment in horse breeding schemes.

Provision	Description
<b>Fees and expenses disclosure</b>	The agreement must give details of fees and expenses payable to the manager of the scheme, the basis of their calculation and disclosures in the financial statements.
<b>Insurance and veterinary examination schedule</b>	The agreement must give details of insurance, and the veterinary examination schedule, of the stallion.
<b>Stud obligations</b>	The agreement must give details of the obligations of the stud.
<b>Relief being relied on</b>	<p>The agreement must include a statement that ASIC Corporations (Horse Schemes) Instrument 2016/790 is being relied on by the operator or, if relief under <a href="#">Class Order [CO 02/178]</a> <i>Horse breeding schemes: private stallion syndication</i> was being relied on before the commencement of ASIC Corporations (Horse Schemes) Instrument 2016/790, a statement to the effect that [CO 02/178] was being relied on.</p> <p>This statement should not be provided in a manner that is likely to mislead. For example, it should not be implied that ASIC has reviewed the agreement or approved the scheme and we encourage operators to explain that the relief is based on the participants' assumed knowledge of or familiarity with horse breeding arrangements.</p>

## B Relief for horse racing syndicates

### Key points

ASIC Corporations (Horse Schemes) Instrument 2016/790 provides conditional relief to small-scale horse racing syndicates from the requirement to register a syndicate as a managed investment scheme under Ch 5C of the Corporations Act.

The relief is based on co-regulatory arrangements between ASIC and lead regulators, who must enter into a memorandum of understanding with ASIC and be approved by ASIC.

A lead regulator must approve a PDS for a horse racing syndicate. The PDS must satisfy specific content requirements.

The relief is subject to limits on the total amount raised and the number of members in the horse racing syndicate.

ASIC Corporations (Horse Schemes) Instrument 2016/790 includes transitional arrangements for horse racing syndicates for which the relief under [Class Order \[CO 02/319\] Horse racing syndicates](#) was relied on.

### Our approach

- RG 91.26 A horse racing syndicate is an arrangement under which a group of people agree to contribute money in return for a share of prizemoney 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.
- RG 91.27 Generally, a horse racing syndicate will be a managed investment scheme under s9 of the Corporations Act. ASIC Corporations (Horse Schemes) Instrument 2016/790 provides conditional relief to the promoter and manager of a small-scale horse racing syndicate from the requirement to register the syndicate under the managed investment provisions in Ch 5C of the Corporations Act.
- RG 91.28 The relief is based on:
- (a) co-regulatory arrangements between ASIC and ‘lead regulators’, who must enter into a memorandum of understanding with ASIC and be approved by ASIC (see RG 91.31–RG 91.37);
  - (b) a PDS, which satisfies specific content requirements, being approved by a lead regulator (see RG 91.38–RG 91.42);

- (c) the promoter of a horse racing syndicate being registered by a lead regulator in an Australian state or territory as the promoter of a horse racing syndicate (see RG 91.43);
  - (d) the total amount raised from the issue of interests in the horse racing syndicate not exceeding \$500,000 (see RG 91.44–RG 91.45); and
  - (e) a limit of 50 members in the horse racing syndicate (see RG 91.46).
- RG 91.29 There are various other requirements that must also be satisfied for the relief to be available: see RG 91.47–RG 91.49. For example, a syndicate agreement for the horse racing syndicate must include particular terms.
- RG 91.30 Transitional arrangements apply, including arrangements for a horse racing syndicate that was registered by a body that was a lead regulator under [CO 02/319] and is approved by ASIC under ASIC Corporations (Horse Schemes) Instrument 2016/790: see RG 91.50–RG 91.55.

## Co-regulatory arrangements between ASIC and lead regulators

- RG 91.31 Co-regulatory arrangements between ASIC and lead regulators are fundamental to the relief for horse racing syndicates. Co-regulatory arrangements are a more appropriate form of regulation for small-scale horse racing syndicates than regulation under the Corporations Act. The co-regulatory arrangements ensure that the interests of investors in these syndicates 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 91.32 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 horse racing syndicates, which are small in scale. We have also taken into account that participation in horse racing syndicates often occurs for the pleasure of following horse racing and having a stake in the performance of a racehorse, rather than primarily to produce financial benefits.
- RG 91.33 In ASIC Corporations (Horse Schemes) Instrument 2016/790, a lead regulator is a body that:
- (a) is responsible for the administration of horse racing in an Australian state or territory;
  - (b) has entered into a memorandum of understanding with ASIC that satisfies minimum content requirements; and
  - (c) has been notified by ASIC in writing that it is approved as a lead regulator.

- RG 91.34 A lead regulator is a horse racing governing body in an Australian state or territory, with particular expertise in horse racing matters. Under the 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.
- RG 91.35 It is vital to ensure that 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.

### ASIC approval

- RG 91.36 ASIC supervises the activities of lead regulators. We have a general discretion about whether to approve a body as a lead regulator. In broad terms, we 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.

### Memorandum of understanding

- RG 91.37 ASIC Corporations (Horse Schemes) Instrument 2016/790 sets out the minimum content requirements for a memorandum of understanding between ASIC and a lead regulator. The minimum terms include that a lead regulator must perform the functions set out in Table 2.

**Table 2: Minimum terms of memorandum of understanding**

Term	Description of requirement
<b>Maintaining a register</b>	The lead regulator must maintain a register of all promoters of horse racing syndicates for which there is reliance on our relief.
<b>Registration</b>	The lead regulator must register the horse racing syndicates it has agreed to regulate.
<b>Removal for non-compliance</b>	The lead regulator must remove any promoter who fails to comply with its rules on the promotion and operation of horse racing syndicates.
<b>Notifying ASIC</b>	The lead regulator must advise ASIC of the name of any promoter who has been removed from the register.
<b>Adequate arrangements for approving disclosure</b>	The lead regulator must 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 the information items required by ASIC Corporations (Horse Schemes) Instrument 2016/790 and any other information to allow prospective syndicate members 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.

Term	Description of requirement
<b>Adequate arrangements for reasonable timeframe for approval</b>	The lead regulator must have in place adequate arrangements for reviewing disclosure documents within a reasonable timeframe after they are submitted to the lead regulator for approval.
<b>Adequate arrangements for receipt of documents</b>	The lead regulator must have in place adequate arrangements for ensuring that the promoter of a syndicate provides to the lead regulator all documents that are required by ASIC Corporations (Horse Schemes) Instrument 2016/790.
<b>Adequate arrangements for dealing with disputes</b>	The lead regulator must have in place adequate arrangements for dealing with complaints and disputes received by the lead regulator about the conduct of promoters, managers or the operation of horse racing syndicates.
<b>Adequate arrangements for monitoring compliance</b>	The lead regulator must have in place adequate arrangements for regularly monitoring compliance by promoters and managers with the applicable conditions of the instrument, the promoter's AFS licence and the manager's AFS licence (if any).
<b>Breach notification</b>	The lead regulator must notify ASIC if the lead regulator identifies conduct by a promoter or manager of a horse racing syndicate that may involve breaches of Ch 7 of the Corporations Act, the conditions of the 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 appropriate action against the promoter or manager in relation to that conduct.
<b>Employees and associates to be bound by the requirements</b>	To ensure that the memorandum of understanding operates effectively, the memorandum must 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.
<b>Lodgement of annual report</b>	The lead regulator must lodge with ASIC an annual report of the lead regulator's performance of the functions described in this table.  Note: The timeframe for the lodgement of the annual report is set out in each memorandum of understanding.

## PDS content requirements and approval by lead regulator

- RG 91.38 A PDS for a horse racing syndicate must satisfy the general content requirements for a PDS under Pt 7.9 of the Corporations Act. In addition, the PDS for a horse racing syndicate must include specific items of information.
- RG 91.39 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.

- RG 91.40 The specific items of information are listed in section 5(4) of ASIC Corporations (Horse Schemes) Instrument 2016/790. The following are examples of the required disclosure items:
- (a) the name of each horse to which the horse racing syndicate relates;
  - (b) the name of the promoter of the horse racing syndicate;
  - (c) the name of the manager of the horse racing syndicate;
  - (d) for each horse, the name and contact details of each owner of the horse's sire and dam;
  - (e) for each horse, the purchase price and, where applicable, the passed-in price;
  - (f) disclosure of any actual or perceived conflict of interest; and
  - (g) details of any fees in relation to the syndicate.
- RG 91.41 A PDS for a horse racing syndicate includes any supplementary PDS or replacement PDS for the horse racing syndicate.

### **Approval by lead regulator**

- RG 91.42 The PDS for a horse racing syndicate must be approved by the lead regulator. The promoter cannot provide a PDS to a prospective member unless the promoter has received the prior approval of the disclosure document from the lead regulator.

## **Registration of promoter by lead regulator**

- RG 91.43 The promoter of a horse racing syndicate must be registered by a lead regulator in an Australian state or territory as the promoter of a horse racing syndicate. For the relief to be available, the promoter must register the syndicate with the lead regulator within 45 days of being fully subscribed.

## **Limit on the total amount raised**

- RG 91.44 The relief is subject to a limit of \$500,000 on the total amount raised by the issue of interests in a horse racing syndicate to members.
- RG 91.45 We consider that an investment limit of \$500,000 achieves a suitable 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.

## Limit on the number of members

RG 91.46 A horse racing syndicate must have no more than 50 members to be eligible to rely on the relief.

## Other requirements of relief

RG 91.47 There are other requirements that must be satisfied for the relief to be available for a horse racing syndicate: see section 5(2) of ASIC Corporations (Horse Schemes) Instrument 2016/790. In addition to the limits on the amount raised by a horse racing syndicate and the number of members of a syndicate, the following matters must be satisfied for the relief to be available:

- (a) the promoter must hold an AFS licence that authorises the promoter to provide financial services in relation to the horse racing syndicate;
- (b) the promoter must be registered by a lead regulator as the promoter of the horse racing syndicate;
- (c) the PDS for the horse racing syndicate must contain the required information (see RG 91.38–RG 91.41) and be approved by the lead regulator;
- (d) the horse racing syndicate must be registered with the lead regulator;
- (e) the registration of the horse racing syndicate must occur within 45 days of being fully subscribed and must remain registered with the lead regulator;
- (f) where applications for the minimum number of interests in the syndicate are not received and the minimum amount for the syndicate has not been raised within six months after the date the PDS for the syndicate is approved by the lead regulator—all subscription money received, plus any accrued interest, must be repaid within 10 business days after the expiry of that six-month period; and
- (g) within six months after the date on which the PDS in respect of the syndicate is approved by the lead regulator, all money received from any person who applied to participate in the syndicate, together with interest (if any) which accrued in respect of that money, is repaid within 10 business days after the end of that six-month period; and
- (h) a syndicate agreement for the horse racing syndicate must:
  - (i) include particular terms, unless those terms are excluded or changed with the written agreement of all members of the horse racing syndicate; and
  - (ii) set out the obligations of the manager of the horse racing syndicate.



- RG 91.48 A promoter or manager must also satisfy various conditions on an ongoing basis under the terms of the relief. These requirements are in addition to the essential elements, or prerequisites, of the relief. The conditions are set out in sections 5(6)–(14), inclusive, of ASIC Corporations (Horse Schemes) Instrument 2016/790.
- RG 91.49 Table 3 and Table 4 summarise the conditions of the relief that are relevant to managers and promoters.

**Table 3: Conditions of relief—Managers of a horse racing syndicate**

Condition	Description of condition
<b>Maintaining records</b>	<p>The manager must:</p> <ul style="list-style-type: none"> <li>• keep certain accounting records;</li> <li>• lodge the accounts for the syndicate with the lead regulator within 90 days after the end of each financial year;</li> <li>• lodge a copy of the accounts for the syndicate with ASIC within 14 days after receiving a written request from ASIC; and</li> <li>• have a separate account for depositing and paying all money relating to the operation of the syndicate.</li> </ul>
<b>Managing established schemes</b>	The manager must manage the scheme in accordance with the syndicate agreement.

**Table 4: Conditions of relief—Promoters of a horse racing syndicate**

Condition	Description of condition
<b>Licensing and registration</b>	The promoter must comply with the conditions on its AFS licence.
<b>Setting up new schemes</b>	<p>Before or on registration of the syndicate with the lead regulator, the promoter must ensure that either:</p> <ul style="list-style-type: none"> <li>• the members of the syndicate have unencumbered title to the whole of the syndicate horses; or</li> <li>• the members of the syndicate lease the whole of the syndicate horses under a finance lease agreement in standard form approved by the lead regulator.</li> </ul> <p>The promoter must not advertise horse racing syndicate interests or publish any statement that is reasonably likely to induce people to acquire syndicate interests without the prior approval of the lead regulator.</p> <p>The promoter must:</p> <ul style="list-style-type: none"> <li>• give a PDS only if it has been approved by the lead regulator; and</li> <li>• if it is not the manager of the syndicate, state in any 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 respect of such manager or management.</li> </ul>

Condition	Description of condition
<b>Maintaining records</b>	<p>The promoter must promptly provide the lead regulator with a copy of each of the following:</p> <ul style="list-style-type: none"> <li>• the syndicate agreement and any changes to the syndicate agreement;</li> <li>• any finance lease agreement and any changes to the finance lease agreement;</li> <li>• any other agreement, and any changes to such an agreement, establishing or affecting the syndicate;</li> <li>• any other agreement, and any changes to such an agreement, that relates to the syndicate and to which a member of the syndicate is a party;</li> <li>• each PDS for a syndicate;</li> <li>• any other information to be provided by the promoter to an offeree in relation to the syndicate, before providing the information to the offeree;</li> <li>• any advertisement for interests in the syndicate; and</li> <li>• any finance lease agreement and any changes to the finance lease agreement.</li> </ul> <p>Within 45 days of the syndicate being fully subscribed, the promoter must register the syndicate with the lead regulator.</p>
<b>Managing established schemes</b>	<p>The promoter must:</p> <ul style="list-style-type: none"> <li>• provide any assistance or information reasonably required by the lead regulator;</li> <li>• not engage in acts or omissions in relation to the horse racing syndicate unless the promoter reasonably believes those acts or omissions are in compliance with any rules, regulations or guidelines made by the lead regulator that apply to the promoter in relation to the horse racing syndicate;</li> <li>• comply with any rules, regulations or guidelines made by the lead regulator to ensure the syndicate is honestly, efficiently and fairly operated;</li> <li>• provide any assistance or information reasonably required by ASIC; and</li> <li>• comply with the requirement to give periodic reports to members of a syndicate under s1017D as if interests in the syndicate were a managed investment product.</li> </ul>

## Transitional arrangements

- RG 91.50 As a transitional arrangement, the relief under [CO 02/319] will continue to operate, despite the repeal of [CO 02/319], until 31 December 2016. This recognises that, in relation to a horse racing syndicate for which the promoter or manager was entitled to rely on the relief under [CO 02/319], the relief should be continued on a temporary basis. The continuation of the relief will allow ASIC a reasonable opportunity to consider an application by the body, which was the lead regulator under [CO 02/319] in respect of the syndicate, for approval as a lead regulator under ASIC Corporations (Horse Schemes) Instrument 2016/790.
- RG 91.51 A body that was a lead regulator under [CO 02/319] will not automatically be a lead regulator under ASIC Corporations (Horse Schemes) Instrument 2016/790. For a body to continue its status as a lead regulator, it must be approved by ASIC as a lead regulator for the purposes of the new

instrument. For the co-regulatory arrangements between ASIC and horse racing governing bodies to operate effectively, it is vital that all lead regulators, including bodies that were lead regulators under [CO 02/319], be approved by ASIC. In the situation where a body that was a lead regulator under [CO 02/319] is approved as a lead regulator under the new instrument, the transitional provisions of the new instrument will be relevant.

- RG 91.52 Transitional arrangements apply to a horse racing syndicate that was registered by a body that was a lead regulator under [CO 02/319] and is approved by ASIC under ASIC Corporations (Horse Schemes) Instrument 2016/790. Certain requirements that the promoter or manager, as the case may be, satisfied under [CO 02/319] will be recognised to ensure:
- (a) the transition from [CO 02/319] to the new instrument is as smooth as possible; and
  - (b) unnecessary burdens are not imposed on promoters and managers.
- RG 91.53 Table 5 sets out the adaptations to the requirements that are available to a horse racing syndicate that was registered by a body that was a lead regulator under [CO 02/319] and is approved by ASIC under ASIC Corporations (Horse Schemes) Instrument 2016/790.

**Table 5: Transitional arrangements**

Condition	Transitional arrangement
<b>PDS</b>	<p>The PDS for the syndicate does not have to be updated to include the items specified in ASIC Corporations (Horse Schemes) Instrument 2016/790. This is based on the PDS for the syndicate satisfying the content requirements that applied under [CO 02/319] at the time the PDS was issued.</p> <p>Where a lead regulator has already approved a PDS for the purposes of [CO 02/319], the promoter does not have to have the PDS reapproved.</p> <p>The usual prohibition on a promoter giving a PDS to a prospective member without the lead regulator having first approved the PDS does not apply.</p>
<b>Refunds</b>	<p>The requirement to return all application money for a syndicate that is not fully subscribed within six months of the date the PDS was approved by the lead regulator does not apply.</p> <p>Note: In this situation, [CO 02/319] imposed a requirement that the promoter return application money and any interest accrued within 10 business days of the end of that six-month period. This exclusion is based on the promoter having complied with the refund requirements of [CO 02/319] for any syndicate that failed under [CO 02/319].</p>
<b>Registration with lead regulator</b>	<p>The requirement that the syndicate is registered with the lead regulator within 45 days of being fully subscribed does not apply.</p> <p>The promoter will need to have originally registered the horse racing syndicate with the existing lead regulator within 45 business days of the scheme being fully subscribed.</p>

Condition	Transitional arrangement
<p><b>Provision of documents</b></p>	<p>To the extent that [CO 02/319] required a promoter to provide specific documents to the lead regulator, these documents do not have to be provided to the lead regulator again. These documents are:</p> <ul style="list-style-type: none"> <li>• the syndicate agreement;</li> <li>• any changes to the syndicate agreement;</li> <li>• any finance lease agreement;</li> <li>• any changes to the finance lease agreement; and</li> <li>• any other agreement that establishes or affects the syndicate and any changes to such an agreement.</li> </ul> <p>This exemption is based on the documents or information, which the promoter provided to the lead regulator, having satisfied the requirements that applied under [CO 02/319].</p> <p>However, the promoter must give the lead regulator any updates to these documents.</p>
<p><b>Advertising approval</b></p>	<p>Where a lead regulator has already given a promoter approval to advertise interests in a syndicate or to publish any statement that is reasonably likely to induce people to acquire interests in the syndicate, the promoter does not have to obtain approval again.</p> <p>The promoter must have obtained approval from the existing lead regulator for any advertisements or publications previously issued.</p>
<p><b>Title</b></p>	<p>Where the promoter ensured for the purposes of [CO 02/319] that the members of the syndicate have unencumbered title to the whole of the syndicate horses, or that the members of the syndicate lease the whole of the syndicate horses under a compliant finance lease agreement, the promoter does not have to ensure themselves of these matters again.</p>
<p>RG 91.54</p>	<p>The transitional arrangements also cover the situation where [CO 02/319] was relied on for a horse racing syndicate registered by a body that:</p> <ol style="list-style-type: none"> <li>(a) was a lead regulator under [CO 02/319]; and</li> <li>(b) when the new instrument takes effect, was not approved by ASIC as a lead regulator for the purposes of ASIC Corporations (Horse Schemes) Instrument 2016/790.</li> </ol>
<p>RG 91.55</p>	<p>In this situation, the promoter of the syndicate must ensure that both the promoter and the syndicate are registered with a lead regulator approved under ASIC Corporations (Horse Schemes) Instrument 2016/790 within six months of the instrument taking effect. A lead regulator may, in registering a syndicate for which the promoter and manager were entitled to rely on the relief under [CO 02/319], take into account the operation of the transitional arrangements for the syndicate. This allows the new lead regulator to rely on things done by the previous lead regulator under [CO 02/319], if appropriate.</p>

## 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
broodmare scheme	A managed investment scheme where a broodmare or broodmares are bought and maintained and their offspring sold for the benefit of members
[CO 02/178] (for example)	An ASIC class order (in this example numbered 02/178)  Note: Legislative instruments made from 2015 are referred to as ASIC instruments.
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 managed investment scheme that has a principal purpose of breeding horses
horse racing syndicate	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 members of the scheme
lead regulator	A body that: <ul style="list-style-type: none"> <li>• is responsible for the administration of horse racing in an Australian state or territory;</li> <li>• has entered into a memorandum of understanding with ASIC that satisfies the mandatory content requirements for a memorandum of understanding under ASIC Corporations (Horse Schemes) Instrument 2016/790; and</li> <li>• has been notified by ASIC in writing is approved as a lead regulator for the purposes of ASIC Corporations (Horse Schemes) Instrument 2016/790</li> </ul>
managed investment scheme	A scheme that is a managed investment scheme as defined in s9 of the Corporations Act

Term	Meaning in this document
manager	<p>For a horse racing syndicate, means the person:</p> <ul style="list-style-type: none"> <li>• appointed as manager from time to time in accordance with the syndicate agreement; or</li> <li>• otherwise appointed as manager of the syndicate from time to time with the approval of the lead regulator.</li> </ul> <p>For a private stallion scheme, means the person named as manager in the stallion scheme agreement</p>
member	A person who contributes money to a managed investment scheme or who acquires an interest in the scheme from a member
Product Disclosure Statement (PDS)	<p>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</p> <p>Note: See s761A for the exact definition.</p>
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
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 members of the scheme
syndicate agreement	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 syndicate and the members of the syndicate

## Related information

### Headnotes

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

### Legislative instruments

[\[CO 02/178\]](#) *Horse breeding schemes: private stallion syndication*

[\[CO 02/319\]](#) *Horse racing syndicates*

[ASIC Corporations \(Horse Schemes\) Instrument 2016/790](#)

### Legislation

Corporations Act, Pt 7.9, Chs 5C and 7, s9, 708(1), 1012E, 1012E(2), 1012E(5), 1017D, 1017E, 1017F and 1020D

Corporations Regulations, Schs 10A and 10E, reg 1.0.02(1)

### Consultation paper

[CP 242](#) *Remaking ASIC class orders on horse racing syndicates and horse breeding schemes*

### Report

[REP 491](#) *Response to submissions on CP 242 Remaking ASIC class orders on horse racing syndicates and horse breeding schemes*