ASIC
Australian Securities & Investments Commission

REPORT 491

Response to submissions on CP 242 Remaking ASIC class orders on horse racing syndicates and horse breeding schemes

August 2016

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 242 *Remaking ASIC class orders on horse racing syndicates and horse breeding schemes* (CP 242) and details our responses to those issues.

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.

Disclaimer

This report 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.

This report does not contain ASIC policy. Please see Regulatory Guide 91 *Horse breeding schemes and horse racing syndicates* (RG 91).

Contents

A Overview/Consultation process

1 In Consultation Paper 242 *Remaking ASIC class orders on horse racing syndicates and horse breeding schemes* (CP 242), we consulted on proposals to remake our class orders on horse racing syndicates and horse breeding schemes.

2 In CP 242, we sought feedback on our proposals to remake, without significant changes, the following class orders:

(a) Class Order [CO 02/319] *Horse racing syndicates*, which is due to expire on 1 October 2016;

(b) Class Order [CO 02/172] *Horse breeding schemes: private broodmare syndication*, which is due to expire on 1 October 2017; and

(c) Class Order [CO 02/178] *Horse breeding schemes: private stallion syndication*, which is due to expire on 1 October 2017.

3 This report highlights the key issues that arose out of the submissions received on CP 242 and our responses to those issues.

4 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 242. We have limited this report to the key issues.

5 For a list of the non-confidential respondents to CP 242, see the appendix. Copies of these submissions are currently on the ASIC website at www.asic.gov.au/cp under CP 242.

Responses to consultation

6 We received seven responses to CP 242, which were all from entities in the horse racing or horse breeding industries. We are grateful to respondents for taking the time to send us their comments.

7 For horse racing syndicates, the main issues raised related to:

(a) the proposal to increase the investment limit under the relief from $250,000 to $500,000;

(b) the proposal to increase the maximum number of members of a horse racing syndicate from 20 to 50;

(c) aspects of the proposed co-regulatory arrangements between ASIC and lead regulators;

(d) some of the minimum content requirements for a Product Disclosure Statement (PDS) for a horse racing syndicate; and

(e) the transitional arrangements from the relief under [CO 02/319] to the relief under the new instrument.

8 For horse breeding schemes, the main issues raised related to:

(a) the limit on the number of interests that may be issued or sold over a 12-month period in any horse breeding scheme by the operator of a private stallion scheme (and its associates);

(b) the availability of a mechanism to permit a responsible entity of a registered horse breeding scheme to apply for deregistration of the scheme in certain circumstances; and

(c) the content requirements of a stallion scheme agreement.

B Horse racing syndicates

Key points

This section outlines the submissions on our proposal to remake [CO 02/319] and our response to those submissions. The submissions supported the continuation of the relief available under [CO 02/319] for horse racing syndicates, including our proposals to:

- increase the investment limit of the relief;
- increase the limit on the number of members;
- formalise and strengthen the co-regulatory arrangements between ASIC and lead regulators; and
- impose additional content requirements in a PDS for a horse racing syndicate.

Some respondents expressed concern about the proposal to increase the limit on the number of members of a horse racing syndicate from 20 to 50.

There was some support for transitional arrangements to ensure a smooth transition from the relief under [CO 02/319] to the relief under the new instrument.

Continuation of relief

9 ASIC has issued a new instrument—ASIC Corporations (Horse Schemes) Instrument 2016/790—to continue the relief for horse racing syndicates. The fundamental policy principles that underpin the relief are unchanged and no significant changes have been made to the parameters and requirements of the relief. Subject to some minor refinements, the substance of the proposals set out in CP 242 for horse racing syndicates has been implemented in the new instrument. [CO 02/319] has been repealed.

10 The relief applies to a horse racing syndicate, which may relate to thoroughbred racing or harness racing. In Australia, the bodies that administer thoroughbred racing are separate from the bodies that administer harness racing.

Transitional arrangements

11 The starting point of the transitional provisions is that, despite the repeal of [CO 02/319] by ASIC Corporations (Repeal) Instrument 2016/791, [CO 02/319] will continue to apply until 31 December 2016. This arrangement allows promoters and managers to continue to rely on the registration relief under [CO 02/319] for a reasonable period while ASIC considers applications from bodies to be approved as lead regulators under

the instrument. 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. 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.

12 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.

Increase in the investment limit

13 There was general support for the proposal to increase the investment limit of the relief from $250,000 to $500,000.

ASIC's response

ASIC Corporations (Horse Schemes) Instrument 2016/790 sets an investment limit of $500,000, up from the limit of $250,000 under [CO 02/319].

As explained in CP 242, increasing the investment limit to $500,000 reflects the significant increase in the costs of purchasing, training and maintaining a racehorse. An investment limit of $500,000 reasonably allows for this increase in costs and achieves a balance between:

- allowing promoters to offer members of the public an opportunity to participate in horse racing syndicates free from the Ch 5C requirements of the *Corporations Act 2001* (Corporations Act); and
- not exposing syndicate members to an unreasonable risk of financial loss.

Increase in the limit on the number of members

14 CP 242 proposed an increase in the limit on the number of members of a horse racing syndicate from 20 to 50.

15 The rationale for this proposal was 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.

16 There was some support for the proposed increase in the limit on the number of members. One view expressed was that the increase will result in promoters being in a better position to sell syndicate interests to potential members at a much more affordable price. More racehorses may be syndicated and, more importantly, the quality of the horse will be better.

17 Some submissions were opposed to raising the member limit. Concerns were expressed that such an increase would drive up administrative costs and result in uncertainty as to whether race day booklets and form guides could list up to 50 syndicate members. There was a reservation about the capacity of racing clubs to provide tickets and to maintain a satisfactory level of enjoyment to racegoers if the maximum number of syndicate members were increased to 50.

ASIC's response

We consider that the member limit should be increased to 50. ASIC Corporations (Horse Schemes) Instrument 2016/790 sets a limit of 50 members, up from the limit of 20 members under [CO 02/319].

In combination with the increase in the investment limit, this change should result in horse racing syndicate membership being reasonably affordable for the general public. The increase in the member limit is also beneficial because opening up syndicate membership to more potential members will help promoters to meet the increasing costs of purchasing, training and maintaining a racehorse.

The increase in the member limit does not necessarily mean that the promoter of a horse racing syndicate will offer membership to more than 20 parties (but not more than 50). A promoter may choose to limit syndicate membership to a level below 50. For example, a promoter may consider that increased membership would strain the resources of a racing club or would otherwise adversely affect the level of enjoyment experienced by a member of the syndicate.

We consider that the benefits that should flow from increasing the member limit exceed any increase in administrative costs that would result from raising the limit.

It is open to parties who prepare racing information, such as race day booklets and form guides, to consider whether the names of syndicate members could be summarised in a suitable manner or omitted.

Co-regulatory arrangements

18 Respondents supported the formalisation and strengthening of co-regulatory arrangements between ASIC and lead regulators. There were no fundamental concerns with these proposals, which were detailed in paragraphs 31–38 of CP 242. Respondents raised five key issues relating to co-regulatory arrangements.

Timeframe for feedback from lead regulator

19 Respondents queried whether a lead regulator should be required to provide feedback to a promoter about a proposed PDS within a particular timeframe. There were concerns that promoters may incur additional costs if a lead regulator does not provide feedback within a reasonable timeframe.

20 The submissions stated that the additional costs may be significant because many racehorses are purchased on credit terms with interest charged on expiration of the term. A significant delay by a lead regulator might ultimately reduce subscription revenue for a horse racing syndicate because the promoter would need to wait for the lead regulator to approve the PDS before advertising to the general public about the syndicate.

Proof of payment of nomination fees

21 Respondents pointed out that lead regulators customarily ask for proof of payment of nomination fees before approving a PDS for a horse racing syndicate and, ultimately, registering a syndicate. There may be a significant gap between the purchase and nomination of an intended racehorse at a yearling sale and the eventual due date for payment of the nomination fee.

22 This might cause difficulty for the promoter if the PDS is submitted to the lead regulator for approval in this intervening period because the lead regulator's rules may require the promoter to provide proof of payment of the nomination fee as a prerequisite to the approval of the PDS and/or the registration of the syndicate.

23 Respondents explained that, regardless of the timing of the payment of a nomination fee, costs related to nomination fees should be disclosed in the PDS under the category of formation expenses.

Lodgement of financial statements

24 Under [CO 02/319], the manager of a horse racing syndicate must lodge financial statements with a lead regulator and, when requested, with ASIC. Some respondents questioned whether this requirement resulted in significant costs and administrative burdens for lead regulators. An alternative approach put forward was that the lodgement requirement should

arise only where a lead regulator makes a written request to the manager of a horse racing syndicate to lodge the financial statements.

Dispute resolution

25 In paragraph 36(g) of CP 242, we proposed that the memorandum of understanding include a term that a lead regulator must have in place adequate arrangements for resolving complaints and disputes it receives about the conduct of the promoter, the manager or the operation of horse racing syndicates.

26 Concern was expressed about the term 'resolve' because in some cases it will only be a court that has the capacity to resolve a particular complaint or dispute. It was suggested that 'resolving' complaints or disputes should be replaced with 'dealing' with complaints or disputes.

Refund when not fully subscribed

27 The final issue raised that related to the co-regulatory arrangements was the proposed requirement that subscription funds must be refunded unless a horse racing syndicate is fully subscribed within six months or the lead regulator refuses to register the syndicate. Some respondents asserted that the six-month period is too short in light of increased competiveness in the horse racing syndicate industry in recent years. An alternative period of nine months was put forward.

ASIC's response

Subject to some refinements, we have included the co-regulatory arrangement proposals in CP 242 in ASIC Corporations (Horse Schemes) Instrument 2016/790.

In light of the feedback received, the new instrument requires the memorandum of understanding between ASIC and a lead regulator to include a provision to the effect that a lead regulator, when considering a PDS for approval, will act with due diligence and in a manner that minimises any delay in respect of the processing of any application for registration of a horse racing syndicate.

Nomination fees in relation to an intended racehorse will generally be required to be disclosed in a PDS under the requirements for costs that are solely relevant to the horse racing syndicate (see paragraph 44(h) of CP 242) or costs that are related to the operation of the promoter's business (see paragraph 44(i) of CP 242). The conduct of lead regulators in relation to proof of payment of nomination fees is an aspect of a lead regulator's responsibility under the memorandum of understanding to act with due diligence and to minimise delay when reviewing PDSs for horse racing syndicates. ASIC encourages, where possible,

lead regulators to apply consistent processes in relation to proof of payment of nomination fees.

We consider that the manager of a horse racing syndicate should continue to be subject to an annual obligation to lodge financial statements with a lead regulator and, when requested, with ASIC. The review of financial statements is an important aspect of a lead regulator's supervision of a horse racing syndicate that relies on the relief and, where applicable, ASIC's role under the co-regulatory arrangements. No compelling reasons for dispensing with the lodgement requirements under [CO 02/319] were put forward. The financial reporting obligations in the new instrument are ongoing requirements to be satisfied by a promoter or manager, as distinct from elements that must be met for a promoter or manager to be able to rely on the relief under the new instrument in the first instance.

For the term in a memorandum of understanding on dispute resolution, the new instrument refers to 'dealing' with complaints or disputes, rather than 'resolving' complaints or disputes.

We consider that the period of six months in which a horse racing syndicate needs to be fully subscribed is still suitable.

PDS content requirements

28 The submissions provided general support for the proposal to increase the content requirements for a PDS for a horse racing syndicate. Five key issues regarding the PDS content proposals emerged from the submissions.

Name and contact details of owner

29 In paragraph 44(c) of CP 242, we proposed that the PDS disclose, for each racehorse to which the horse racing syndicate relates, the name and contact details of each owner of the horse's sire and dam. Concerns were expressed that these contact details would be difficult to obtain in some circumstances. The relevance of this information was also queried.

Free service

30 In paragraph 44(d) of CP 242, we proposed that a PDS contain a statement as to whether the promoter is entitled to a free service of the stallion (sire). Some respondents noted that it was unclear whether the free service is for the resulting racehorse if it is a stallion, or for the sire of the racehorse in question.

Unencumbered title

31 In paragraphs 44(f) and 44(g) of CP 242, we proposed that the PDS contain substantiation of the syndicate members having unencumbered title to the racehorse or, as the case may be, leasing the racehorse under a standard finance agreement.

32 Respondents observed that these requirements appear to be predicated on the entire ownership interest in a racehorse being held by the syndicate members or being leased to the syndicate members. It was contended that this should not be the case because a promoter of a horse racing syndicate should be at liberty to establish a syndicate that relates to a percentage ownership stake in a racehorse that is less than 100%.

Title to the racehorse

33 In paragraph 44(f) of CP 242, we proposed that the PDS must provide information regarding the title to the horse, where applicable. Feedback was provided that this information item in a PDS would result in additional costs being incurred by a promoter, such as the costs of personal property securities register searches, searches for any encumbrances on a racehorse and, where applicable, obtaining proof from the vendor or auction house that a racehorse has been released from an encumbrance.

34 Further, in exercising its function as a lead regulator of having adequate arrangements in place to review and approve PDSs, a lead regulator might be expected to carry out searches and other checks in relation to the ownership interests in a racehorse, including any encumbrances relating to that horse. From the point of view of a lead regulator, performing these tasks would increase the time needed to review a PDS and would increase the lead regulator's costs.

Performance enhancing substances

35 In paragraph 44(j) of CP 242, we proposed a disclosure requirement about testing for an anabolic androgenic steroid or other performance enhancing substance. Concerns were expressed that the costs of testing would be excessively high if syndicate racehorses had to be tested for all performance enhancing substances, which would far exceed the scope of the relevant Rule of Racing. The Australian Rules of Racing set out a range of substances, including anabolic androgenic steroids, as prohibited substances for a racehorse: see the Australian Rules of Racing, 1 March 2016, rules AR177 to AR178H.

ASIC's response

Subject to some non-fundamental changes, we have proceeded with our proposals on mandatory content requirements in a PDS for a horse racing syndicate in ASIC Corporations (Horse Schemes) Instrument 2016/790. This approach will enhance the information value, enabling investors to more effectively understand and compare PDSs across different horse racing syndicates.

We consider that, where possible, the PDS for a horse racing syndicate should set out the name and contact details of the owners of the sire and dam of each racehorse to which the syndicate relates. This information is likely to be relevant to a person's consideration of a syndicate racehorse and, ultimately, their decision whether to join the syndicate.

In relation to the disclosure requirement on whether a promoter will be entitled to receive a free service, the requirement relates to a free service to the sire of the racehorse in question. The new instrument reflects this position.

There are merits in the argument that a horse racing syndicate should have flexibility to establish a syndicate that is based on the syndicate members collectively holding an ownership or leasehold interest that is less than 100%. However, there would be a significant risk that the limit on the number of members and/or the investment limit would be undermined because it would leave open the prospect of multiple syndicates being established for a particular racehorse where, in respect of that racehorse, the aggregate number of members exceeds 50 and/or the aggregate amount to be subscribed is more than $500,000.

This situation would run contrary to the underlying policy principles that the relief should be available only for syndicates of a small commercial scale. Further, the level of investor protection contemplated under the new instrument would be significantly undermined. As a result, we consider that the appropriate approach is to continue the relief on the basis that a syndicate must be in respect of 100% of the ownership interest in a racehorse, whether the members collectively hold the 100% ownership interest or the 100% ownership interest is held by one or more parties, which is in turn collectively leased to syndicate members.

We consider that information about the ownership interests in a racehorse, including any encumbrances, is material information about a racehorse and a horse racing syndicate. As a result, this information must be included in a PDS for a horse racing syndicate, despite any costs or delays that may result from a promoter or lead regulator performing searches or making other inquiries about the ownership interests in a racehorse.

In relation to testing of racehorses, we consider that the scope of the required disclosure should reflect the scope of the Australian Rules of Racing. The Australian Rules of Racing refer to prohibited substances, as distinct from the wider category of

'performance enhancing substances'. Consequently, the new instrument refers only to testing of prohibited substances under the Australian Rules of Racing.

Transitional arrangements

36 There was some support for transitional arrangements to ensure a smooth transition from the relief under [CO 02/319] to the relief under the new instrument.

ASIC's response

ASIC recognises that, in relation to a horse racing syndicate for which a promoter or manager was entitled to rely on the relief under [CO 02/319], the relief should be continued on a temporary basis to allow ASIC a reasonable opportunity to consider an application by the body that was a lead regulator under [CO 02/319] in relation to that syndicate for fresh approval as a lead regulator under ASIC Corporations (Horse Schemes) Instrument 2016/790. For this purpose, despite the repeal of [CO 02/319], the relief under [CO 02/319] will continue to operate until 31 December 2016.

For the co-regulatory arrangements between ASIC and lead regulators to operate effectively, it is essential that all lead regulators, including bodies that were lead regulators under [CO 02/319], be approved by ASIC under the terms of ASIC Corporations (Horse Schemes) Instrument 2016/790.

In determining whether the requirements of ASIC Corporations (Horse Schemes) Instrument 2016/790 have been satisfied 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 as a lead regulator under the new instrument, we consider that there should be suitable recognition of requirements that the promoter or manager, as the case may be, satisfied under [CO 02/319].

Where a horse racing syndicate was registered by a body that was a lead regulator under [CO 02/319] and this body is approved by ASIC as a lead regulator under the new instrument, we have adapted the standard requirements of the instrument to ensure:

- the transition from [CO 02/319] to the new instrument is as smooth as possible; and
- unnecessary burdens are not imposed on promoters and managers.

The transitional arrangements are set out in section 7 of ASIC Corporations (Horse Schemes) Instrument 2016/790 and are summarised in RG 91.50–RG 91.55 of updated Regulatory Guide 91 *Horse breeding schemes and horse racing syndicates* (RG 91).

The transitional arrangements also cover the situation where [CO 02/319] was relied on for a horse racing syndicate registered by a body that:

- was a lead regulator under [CO 02/319]; and
- 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.

C Horse breeding schemes

Key points

This section outlines the submissions on our proposal to remake [CO 02/172] and [CO 02/178] and our response to those submissions.

There was general support for the continuation of relief available under [CO 02/172] and [CO 02/178] for small-scale private horse breeding schemes. There was also support for consolidating the relief into a single instrument.

Issues raised in response to our initial consultation with industry participants and in response to CP 242 related to:

- the limit (40) on the number of interests that may be issued or sold over a 12-month period in any horse breeding scheme by the operator of a private stallion scheme (and its associates);
- the availability of a mechanism to permit a responsible entity of a registered horse breeding scheme to apply for deregistration of the scheme in certain circumstances; and
- the content requirements of a stallion scheme agreement.

Continuation of relief

37 ASIC has issued a new instrument—ASIC Corporations (Horse Schemes) Instrument 2016/790—to continue the relief for small-scale private horse breeding schemes. The fundamental policy principles that underpin the relief are unchanged. The substance of the proposals in CP 242 has been implemented in the new instrument. [CO 02/172] and [CO 02/178] have been repealed.

Limit on the number of interests issued or sold over a 12-month period in a private stallion scheme

38 Relief provided to private stallion schemes under [CO 02/178] only 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. One key issue that arose during our consultation was our proposal to maintain this requirement under the new relief.

39 The following alternatives to this proposal were put forward:

(a) defining a small-scale stallion scheme by the total cumulative value of all issued interests, and the number of issued interests—it was

suggested that the value should be capped at $2 million, and the number of interests capped at 100 or at the very least 60, to reflect the trend towards larger commercial syndicates over the last 10–16 years;

(b) providing relief from the requirement that a managed investment scheme be registered, and the requirement on the promoter to hold an Australian financial services (AFS) licence, in relation to a scheme that satisfies either of the following:

(i) a small-scale scheme by number of participants, being a scheme with no more than 20 members owning no more than 20 proportionate ownership interests, provided the promoter holds and maintains at least a 10% ownership interest in the stallion, with no limit on the cumulative value of all scheme interests; or

(ii) a small-scale scheme by cumulative capital value of all scheme interests, being a scheme that has a total cumulative value of all scheme interests of not more than $2 million, provided the promoter holds and maintains at least a 10% ownership interest in the stallion, with no limit on either the number of members or scheme interests.

40 One submission raised the need for relief in the 'secondary' tier of the stallion market where the total value of scheme property would be approximately $2 million and where offers made were personal offers.

41 CP 242 sought feedback in particular on whether the current limit (40) on the number of interests that may be sold or issued over a 12-month period remained appropriate in light of current industry practice. This limit was initially set on the basis of submissions from industry to the effect that the issue of this number of interests was well-established practice for schemes of this type, having regard to the number of stud services that stallions in private horse breeding arrangements are able to provide per season.

42 In subsequent consultation with industry participants on whether the current limit remained well-established practice for schemes of this type, it was suggested by one respondent that if the current formulation of the limit remained, the limit of 40 interests be retained, with the introduction of a cap on cumulative capital value of no more than $2 million. It was noted that this would be consistent with the small-scale offer provisions in s1012E of the Corporations Act.

43 It was also submitted that the terms of the relief should be modified to clarify our objectives in providing relief to private horse breeding schemes to address the potential for misinterpretation of the terms of the relief.

ASIC's response

We consider that the current formulation of the limit remains appropriate for the types of schemes to which our private stallion scheme relief is intended to apply.

The relief is intended to apply only to small-scale private arrangements where offers are made personally and not to schemes promoted by a person in the business of promoting horse breeding schemes that are managed investment schemes except in a limited manner. The current formulation of the limit is consistent with the existing provision in the Corporations Act dealing with small-scale offers (s1012E(2)), but takes into account the difficulty in syndicating stallions with a maximum of 20 participants.

Limiting the number of interests issued over a 12-month period to a number consistent with the normal range of the number of stud services a stallion in a small-scale private stallion scheme may provide per season is consistent with inferring the members of the scheme are likely to be interested as potential recipients of stud services, rather than investors seeking direct monetary returns. We apply the limit across the aggregate of members of any horse breeding schemes of the operator and its associates because this is consistent with the schemes not being operated at scale by professional commercial promoters. We have not been satisfied that the burdens of compliance would generally be unreasonable for such promoters. In the absence of submissions in support of a change to the current limit (40), that limit has been retained.

We have not introduced a cap on either the value of all interests issued in a particular scheme or on the amount of funds that may be raised over a 12-month period under our relief (a cap to the effect of the latter is included in the small-scale offer provisions in the Corporations Act). This is because it is the nature of the members likely to be participating in private horse breeding schemes and not the value of interests in a particular scheme or the amount of funds raised over a 12-month period by an operator which provides a basis for eligibility for the relief.

We have consolidated the relief previously provided by [CO 02/172] and [CO 02/178] in a new legislative instrument that reflects current drafting practice with a focus on making the terms of the relief clear and user friendly. We have also updated RG 91 to clarify the types of schemes to which our relief is intended to apply, as well as to explain in more detail the requirements of our relief.

Deregistration of a registered horse breeding scheme in certain circumstances

44 The relief provided to small-scale private horse breeding schemes includes relief from the requirement to register the scheme under Ch 5C of the Corporations Act.

45 One matter raised was that the terms of the relief should permit the responsible entity of a horse breeding scheme registered under Ch 5C to apply for deregistration of the scheme where the scheme has failed to produce scheme income during consecutive years. It was submitted that there is little, if any, regulatory benefit to investors of maintaining the scheme as a registered scheme and incurring the additional costs of doing so if there is no reasonable expectation of scheme income and the cumulative value of all scheme interests is no more than $2 million.

ASIC's response

We consider that investors entering into a registered scheme are entitled to rely on the regulatory protections that are afforded to the participants of such a scheme under the Corporations Act.

In our view, there are generally appropriate alternative mechanisms available where for commercial reasons the responsible entity considers that the scheme no longer warrants operation as a registered scheme, such as the winding up of the scheme in accordance with its governing documents and the establishment of a new scheme that complies with the terms of the relief.

Content requirements of a stallion scheme agreement

46 CP 242 sought feedback on whether there should be a change to the content requirements for a stallion scheme agreement under which an interest in a private stallion scheme must be issued.

47 One respondent suggested that the stallion scheme agreements follow a template that contained provisions consistent with many of the provisions set out in the Corporations Act relating to managed investment schemes. It was submitted that the relief appeared to still focus more on disclosure and less on prescribing meaningful content for scheme agreements and that the relief should do both.

ASIC's response

We consider that the minimum content requirements for a stallion scheme agreement remain appropriate and we are not satisfied

that the current requirements are not operating effectively and efficiently.

Relief has been provided in ASIC Corporations (Horse Schemes) Instrument 2016/790 from the PDS requirements in Ch 7 and the registered managed investment scheme provisions in Ch 5C of the Corporations Act in recognition of the fact that participants in small-scale private stallion schemes are generally experienced in horse breeding practices and may enter into the arrangement for the use of the stallion's stud services for their own broodmare.

In these circumstances, we consider that the existing minimum content requirements provide important information to prospective members while, at the same time, minimising the cost of establishing small-scale private stallion schemes.

While there are a number of provisions that would often be appropriate in a scheme agreement, we consider that there is no basis to mandate additional contractual terms.

Appendix: List of non-confidential respondents

- BlueBlood Thoroughbreds
- Harness Racing Australia
- Harness Racing Victoria
- Macquarie Legal Practice
- Racing Australia Limited
- SLADE Bloodstock Pty Ltd
- Thoroughbred Breeders Australia