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RACING AUSTRALIA LIMITED
ACN 105 994 330

Level 11, 51 Druitt Street
Sydney NSW 2000 Australia

Email: [REDACTED]
Telephone: +61 2 8072 1900

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[REDACTED]
Lawyer, Regulatory Reform and Implementation
Regulation and Supervision
Australian Securities and Investments Commission
Level 20, 240 Queen Street, Brisbane, 4000

By email: rri.consultation@asic.gov.au

**Racing Australia Submission on Consultation Paper – Proposed Remake of ASIC
Corporations (Horse Schemes) Instrument 2016/790**

Dear [REDACTED]

Thank you for the opportunity to provide both high level and detail feedback on ASIC's proposed remake of ASIC Corporations (Horse Schemes) Instrument 2016/790 (the **Instrument**).

Racing Australia welcomes the opportunity to engage with ASIC on this matter which is of great benefit to the industry. This submission is made on behalf of the Principal Racing Authorities (**PRAs**) across Australia.

Racing Australia supports the continuation of the Instrument, which provides targeted relief from managed investment scheme and financial services licensing requirements for horse racing syndicates, while preserving appropriate investor protections.

The Instrument has operated effectively for many years and has facilitated broad participation in racehorse ownership through regulated syndication structures. However, it is increasingly out of step with contemporary syndication practices, particularly the growth of fractional ownership models, increasing acquisition and operating costs, and more complex ownership arrangements.

Targeted reform is therefore necessary to ensure that the regulatory framework remains proportionate to the risks presented, maintains appropriate consumer protections, and continues to facilitate participation in the Australian Racing Industry.

1. Participant and Fundraising Thresholds

1.1 Increase in participant cap (s 5(2)(b))

Proposal

Increase the participant cap from 50 to 100 participants.

Justification

The current participant cap was developed at a time when syndicates typically involved fewer participants acquiring larger ownership interests. Contemporary syndication models increasingly facilitate micro-ownership arrangements that broaden participation through smaller investment amounts.

Racing Australia data demonstrates significant growth in ownership participation since the Instrument was introduced. The number of individuals who owned horses that raced increased from 79,631 in 2016/17 to 137,186 in 2024/25, representing growth of approximately 72% over a nine-year period. Similarly the number of syndicates also grew from 5,341 in 2016/17 to 12,039 in 2024/25 an increase of 125%. These figures do not include participants in micro-syndication structures, suggesting that actual participation in modern ownership models is likely higher still.

This growth reflects a shift toward broader participation models and supports reassessment of participant limits designed for a materially smaller ownership base.

Increasing participant numbers does not inherently increase investor risk where:

- appropriate disclosure requirements remain in place;
- participant rights remain protected;
- syndicators operate under existing PRA and ASIC frameworks; and
- governance, registry and communication systems are capable of accurately managing larger participant bases without reducing transparency or compliance standards.

Modern syndicators routinely operate sophisticated systems capable of managing participant bases significantly larger than those contemplated when the Instrument was originally developed.

The existing cap operates as a structural constraint on syndication size rather than a risk-based safeguard. In practice, once a syndicate approaches 50 participants, additional demand is often accommodated through the creation of multiple syndicates for the same horse. This increases administrative complexity, duplication of disclosure documents, and operational burden without delivering corresponding improvements in investor protection outcomes.

Increasing the cap to 100 participants would better align regulatory settings with contemporary ownership structures while maintaining existing consumer protections.

1.2 Increase in fundraising cap (s 5(2)(c))

Proposal

Increase the fundraising cap from \$500,000 to \$750,000 (including GST), with annual indexation by reference to the Australian Consumer Price Index (All Groups CPI published by the Australian Bureau of Statistics (ABS)).

Justification

The current fundraising cap no longer reflects contemporary acquisition and racing costs for Thoroughbred racehorses.

Racing Australia data demonstrates that average yearling sale prices at major Australian sales increased from approximately \$84,555 in 2015/16 to \$120,692 in 2024/25, representing an increase of approximately 43%. Over the same period, CPI increased by approximately 35%.

Applying the observed increase in yearling prices to the existing \$500,000 threshold produces an inflation-adjusted equivalent of approximately \$714,000, indicating that the current cap has materially reduced in real terms relative to market conditions.

Aggregate yearling sales value has also increased significantly, reflecting a broader expansion in market scale and acquisition costs.

In addition to acquisition costs, syndicators must account for substantial increases in:

- veterinary and pre-purchase examination costs;
- insurance premiums;
- transport and agistment costs;
- training and establishment expenses;
- compliance and administrative costs; and
- ongoing disclosure and governance obligations.

The current cap may therefore operate as an artificial constraint on legitimate syndication structures, particularly where acquisition and establishment costs for a single horse approach or exceed the threshold.

This can result in fragmented syndication structures involving multiple syndicates or entities relating to a single horse.

An increase to \$750,000 would better reflect contemporary market conditions and allow acquisition and establishment of higher-value horses through a single regulated offering, improving transparency and reducing duplication of disclosure materials.

Indexation

Racing Australia further recommends that the fundraising cap be indexed annually in accordance with movements in the Australian Consumer Price Index (All Groups CPI) published by the ABS.

Indexation would:

- preserve the real value of the threshold over time;
- reduce regulatory obsolescence caused by inflation; and
- minimise the need for repeated legislative or instrument amendment.

2. Replacement of “Whole of Horse” Requirement (s 5(13))

Proposal

Amend section 5(13) to permit syndication arrangements involving fractional legal and beneficial ownership interests in a horse, subject to enhanced disclosure requirements.

Justification

The current requirement that syndicate participants acquire or lease the “*whole of the horse*” reflects ownership models that are increasingly inconsistent with contemporary industry practice.

Modern ownership structures commonly involve:

- breeders retaining ownership interests;
- trainers or associated entities holding equity stakes;
- strategic co-investors participating outside syndicates; and
- syndicators offering fractional interests in a horse.

Racing Australia acknowledges that fractional ownership structures introduce additional governance complexity and potential information asymmetry regarding control and decision-making. However, these risks arise from the structure of rights and governance arrangements, not from the level of financial exposure undertaken by investors.

In all cases, the investor’s financial commitment is defined by the subscription amount disclosed in the Product Disclosure Statement. The proportion of ownership acquired does not alter the investor’s capital at risk. Rather, it reflects a legal allocation of rights within the ownership structure.

Accordingly, the existence of fractional ownership does not in itself increase or reduce investor financial risk. The appropriate regulatory focus is therefore on ensuring that investors clearly understand:

- the rights attached to their ownership interest;
- the identity of all parties with ownership or control rights;
- the distribution of decision-making authority; and
- the mechanisms by which those rights are exercised.

Current syndication arrangements already frequently involve layered ownership and control structures, including retained interests by breeders, trainers, and co-investors. Permitting fractional ownership within the Instrument would therefore improve alignment between legal form and commercial reality, while ensuring investors receive more accurate and comprehensive disclosure.

Enhanced disclosure obligations are the most proportionate and effective mechanism for addressing these risks.

3. Ownership Structure and Control Disclosure (s 5(3))

Proposal

Require Product Disclosure Statements to disclose the intended ownership structure and governance arrangements relating to the horse.

Justification

Where fractional ownership arrangements exist, investors require clear disclosure of ownership and control arrangements.

Without adequate disclosure:

- syndicates may hold only minority interests;
- external parties may retain voting control;
- investor voting rights may be limited or non-binding; and
- decision-making authority may be distributed across multiple stakeholders.

PDS disclosure should therefore clearly set out:

- total ownership composition of the horse;
- all external ownership interests;
- percentage interest held by the syndicate;
- voting and governance rights attaching to each ownership class; and
- any circumstances in which external parties may exercise control.

This would materially reduce information asymmetry and improve investor understanding of their rights and interests.

4. Governance Disclosure Requirements (Fractional Ownership)

Proposal

Require disclosure of governance and decision-making frameworks for all fractional syndicates.

Justification

Fractional ownership structures introduce governance arrangements that may not be readily understood by retail investors.

Without adequate disclosure, investors may misunderstand:

- who controls racing, training, breeding or sale decisions;
- when syndicate members can vote;
- whether decisions are binding on all owners; and
- the role of external stakeholders.

PDS documentation should clearly explain decision-making processes, voting thresholds, dispute resolution mechanisms, and the rights of all ownership classes.

Enhanced disclosure is the most proportionate regulatory response to these risks.

5. Threshold for ASIC Oversight

Racing Australia acknowledges the importance of maintaining ASIC oversight for larger and more complex syndication structures.

The proposed thresholds of:

- 100 participants; and/or
- \$750,000 fundraising cap (indexed annually),

continue to distinguish between lower-risk retail syndication arrangements and larger-scale investment structures that may warrant additional regulatory oversight.

6. Alternative Thresholds

While Racing Australia's preferred position is:

- 100 participants; and/or
- \$750,000 fundraising cap (indexed annually),

if ASIC is not minded to adopt these thresholds in full, there remains a strong policy basis for incremental reform.

At a minimum, ASIC should consider:

- increasing the participant cap to 75 participants; and
- increasing the fundraising cap to \$650,000, with CPI indexation applied.

Even these more modest adjustments would materially improve the alignment of the Instrument with contemporary market conditions and reduce erosion of its practical utility over time.

7. Future Review of Thresholds

While CPI indexation will assist in maintaining the real value of the fundraising threshold, periodic regulatory review remains important to ensure the Instrument continues to reflect broader structural developments in syndication models, ownership patterns and industry practice.

Racing Australia recommends that ASIC and Racing Australia establish a streamlined administrative process for the application of annual CPI indexation. Under this process, Racing Australia would notify ASIC in writing of the adjusted threshold calculated in accordance with CPI indexation. The updated threshold would take effect unless ASIC indicates, within 14 days, that it requires further review or does not support the adjustment.

Conclusion

Racing Australia supports the continued operation of ASIC Corporations (Horse Schemes) Instrument 2016/790.

However, targeted reform is necessary to ensure that the regulatory framework remains aligned with contemporary syndication practices, market conditions and evolving ownership structures.

The proposed amendments would modernise the Instrument while maintaining strong investor protections through enhanced disclosure, transparency and governance requirements.

Summary of Proposed Amendments

Racing Australia recommends that ASIC:

1. increase the participant cap from 50 to 100 participants;
2. increase the fundraising cap from \$500,000 to \$750,000 (including GST), and apply annual CPI indexation;
3. amend section 5(13) to permit fractional legal and beneficial ownership structures;
4. require disclosure of full ownership composition and governance rights in PDS documents;
5. require explicit disclosure of governance and decision-making arrangements for fractional syndicates;
6. retain ASIC oversight thresholds based on updated limits; and
7. support ongoing maintenance of thresholds through CPI indexation and a streamlined administrative notification process between Racing Australia and ASIC.

It is the view of Racing Australia that consideration of the above 7 proposed amendments will lead to positive improvements in the operation of ASIC Corporations (Horse Schemes) Instrument 2016/790. We would be happy to discuss and expand on any of the above points further with you.

Yours Sincerely



Racing Australia
Chief Executive Officer

Encl: Proposed Amendments marked up on ASIC Corporations (Horse Schemes) Instrument 2016/790

MARKED-UP VERSION (PROPOSED AMENDMENTS)

ASIC Corporations (Horse Schemes) Instrument 2016/790 (Proposed Amendments – Racing Australia Submission)

PART 2—EXEMPTIONS

5 Horse racing syndicates

Subsection (2) – Conditions of exemption

Paragraph (b)

~~(b) there are no more than 50 participants in the syndicate;~~

(b) there are no more than 100 participants in the syndicate;

Paragraph (c)

~~(c) the total amount raised from the issue of interests in the syndicate does not exceed \$500,000;~~

(c) the total amount raised from the issue of interests in the syndicate does not exceed \$750,000 (including GST), indexed annually in accordance with movements in the Australian Consumer Price Index (All Groups CPI published by the Australian Bureau of Statistics);

Subsection (2)(d) Note (no change required, but operationally relevant)

(No amendment proposed, but PDS obligations will apply to updated thresholds and fractional structures below.)

Subsection (3) – Product Disclosure Statement requirements

Paragraph (b)

~~(b) the name of the horse or horses to which the syndicate relates;~~

(b) the name of the horse or horses to which the syndicate relates, including disclosure of any fractional or partial ownership interests to be held by the syndicate;

Insert new paragraph after (b)

(ba) the full ownership composition of the horse, including all legal and beneficial interests held by persons other than the syndicate participants;

Paragraph (d)

~~(d) the name of the manager of the syndicate;~~

(d) the name of the manager of the syndicate and a description of governance and decision-making arrangements applicable to the syndicate;

Insert new paragraph after (h)

(ha) details of voting rights, control rights and decision-making authority attaching to each class of ownership interest in the horse;

Insert new paragraph

(hb) disclosure of any circumstances in which persons other than syndicate participants may exercise control or influence over racing, training, breeding or sale decisions relating to the horse;

Subsection (13) – Ownership requirement (“whole of horse” rule)

~~(13) The promoter must, before or on registration of the horse racing syndicate with the lead regulator, ensure that either:~~

REPLACED ENTIRELY

(13) 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;~~

(a) the participants in the horse racing syndicate, together with any other disclosed persons, hold the legal and beneficial interests in the horse on a fractional or whole-of-horse basis, provided that all ownership interests and associated rights are fully disclosed in the Product Disclosure Statement;

~~or~~

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.~~

(b) the participants in the horse racing syndicate lease the horse under a finance lease agreement in standard form.

6 Horse Breeding Schemes

(no amendments proposed under current submission package)

PART 3—SAVINGS AND TRANSITIONAL

7 Horse racing syndicates

Subsection heading – no change

Subsection (2) – transitional conditions

Paragraph (f)

~~(f) subsection 5(13) does not apply in relation to the existing exempt scheme;~~

(f) subsection 5(13) applies subject to transitional arrangements, and continues to apply only to the extent that existing ownership structures were established prior to commencement of the ASIC Corporations (Horse Schemes) Amendment Instrument [2026/XX];