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To: [RRI Consultation](#)
Subject: Feedback: ASIC Corporations (Horse Schemes) Instrument 2016/790
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I submit this feedback regarding [ASIC Corporations \(Horse Schemes\) Instrument 2016/790](#) ("The Instrument").

I am founder and director of Kinematic Thoroughbred Services Pty Ltd ("Kinematic") and Wrkplace Digital Pty Ltd ("Wrkplace"). I have 13 years experience in the thoroughbred industry as an AFSL holder and Approved Promoter, a software vendor, and a business consultant.

Drawing on my practical experience in this field and knowledge of The Instrument (and the Class Order it replaced), I provide feedback and recommendations relating to **horse racing syndicates** (excluding horse breeding schemes or stallion schemes).

1. Principal Racing Authority (PRA) misinterpretation of what constitutes a "Personal Offer" or "Small Scale Offer" under subsection 1012E of the Corporations Act

PRAs acting as ASIC appointed Lead Regulators of horse racing schemes are too liberally considering the sale of shares in horses by racehorse trainers, bloodstock agents and other organisations, as "Personal Offers" or "Small-Scale Offers". These syndication offers are therefore not considered (by the PRAs) as a Managed Investment Scheme (MIS) under section 601ED(5) of the Act, and therefore not subject to disclosure and other obligations.

PRA's disregard the fact that section 1012E of the Act states that a Personal Offer does not need a Product Disclosure Statement (PDS) if:

- 2(b) none of the offers result in a breach of the 20 purchasers ceiling
- 2(c) none of the offers result in a breach of the \$2 million ceiling

...and a Personal Offer is one that:

5(b) is made to a person who is likely to be interested in the offer, having regard to:

- (i) previous contact between the person making the offer and that person; or
- (ii) some professional or other connection between the person making the offer and that person; or
- (iii) statements or actions by that person that indicate that they are

interested in offers of that kind.

I believe the majority of share offers (syndications) made by racehorse trainers and bloodstock agents do not meet these definitions of a Personal Offer.

- Offers regularly attract more than 20 investors, and
- Offers are regularly promoted to persons who do not have substantial previous contact or connection with the Seller.
- Being on an email list should not count as previous contact, nor should it indicate that a person is interested in offers of horse racing schemes.

Principal Racing Authorities (PRAs) disagree and seemingly consider almost all syndication of racehorses by trainers and agents to be a Personal Offer.

2. Syndication Offers deemed "Personal Offers" by PRAs fail to protect consumers

Unless a Seller of shares is an Approved Promoter and AFSL holder (or an Authorised Representative of an AFSL holder), there exists minimal requirement - and less enforcement - for a Seller of horses or shares in horses to:

- disclose any prior interest in the horse being offered for sale, or its sire or its dam;
- disclose any benefit, rebate, commission or reimbursement from any person in relation to or in connection with the purchase or sale of a horse or shares a horse
- disclose whether the Seller holds unencumbered title to the horse offered for sale, or specify the arrangements to discharge any encumbrances;
- discharge any encumbrances to release security interests held on the Personal Properties Security Register (PPSR) within an agreed timeframe;
- use funds received from buyers for their intended purpose - being to transfer clear title to new shareholders (owners); or
- comply with Anti-Money Laundering (AML) obligations and notify AUSTRAC of any suspected forging of identity or suspicious source of funding.

These present an unacceptable risk to buyers of horses and shares in horses over a period of time that often lasts several months or more.

Here are a few industry practices that create risk for consumers (buyers of racehorse shares):

- Horse bred by the Seller and then syndicated to individuals at privately set prices without any disclosure or ratification of that price;
- Horse bred by the Seller and then purchased at public auction by the Seller to establish an inflated public price of the horse - with share prices then set at that inflated price without any disclosure;
- Seller receives benefit, rebate, commission or reimbursement from vendors after purchase of a horse at public auction, and then sells shares in that horse without disclosure;
- Seller sells shares in a horse purchased on credit terms, but uses those

funds to pay other costs (e.g. wages of staff etc) or pay for other horses - no clear transfer of beneficial title to each new owner / syndicate member occurs until some time after the buyer has paid for their share interest;

- Transactions, agreements or records of ownership are often undocumented (apart from an invoice) until the horse ownership records are submitted to Racing Australia - often several months after buyers have paid for their share interest;
- Accepting funds from buyers previously unknown to the Seller without performing due diligence - poses a risk of money laundering

Note that these risks are largely mitigated when a horse is syndicated by an Approved Promoter - accompanied by a Product Disclosure Statement and Syndicate Agreement, and secure appropriation of funds received from investors.

3. Regulatory requirements that should be placed on ALL sellers of horses and shares in horses

I submit that the definition of a "private offer" of shares in racehorses be clarified, as it relates to horse racing schemes.

There are some circumstances where a Personal Offer is made legitimately, such as a breeder selling shares privately to family and friends when they are not undertaking that as a business venture. However a racehorse trainer or bloodstock agent is "in the the business of promoting such schemes", and:

- often has share interests in the horse that need to be offered to the public, and
- often sells share interests in a horse to more than 20 individual investors; and
- often includes profit / commission / revenue on the sale of those share interests, and
- rarely holds unencumbered title to the horse [rior to the offering of share interests.

They should not be deemed "Personal Offers".

All licensed racehorse trainers and bloodstock agents operating a business that deals in a financial product (a horse), should be considered a Promoter of horse syndication schemes, and therefore subject to Subsection 601ED(5) of the Corporations Act 2001 (Cth) unless an exemption applies in ASIC Corporations (Horse Schemes) Instrument 2016/790.

4. Simplify the exemptions and conditions granted to promoters of small-scale horse schemes in ASIC Corporations (Horse Schemes) Instrument 2016/790, Part 2 Section 5

I recommend practical changes to [ASIC Corporations \(Horse Schemes\) Instrument 2016/790 Part 2 Section 5](#) - exemptions granted to Promoters of horse racing syndicates - allowing Promoters to avoid having to comply with

subsection 601ED(5) of the Act and instead be regulated by ASIC's appointed lead regulators - the PRAs.

1. Remove the following requirements as they would place too great a burden on Promoters and Lead Regulators, given that all trainers and bloodstock agents dealing in horse racing schemes would be deemed a Promoter of such schemes.

- Remove 2(a)(i) requiring the Promoter to be an AFSL holder or Authorised Representative of an AFSL Holder (but retain the requirement for the lead regulator (PRAs) to approve and register the Promoter if they meet all relevant conditions to protect consumers, including adequate qualifications, Product Disclosure Statement templates, surplus liquid funds and processes.
- Remove 2(d)(ii) requiring the lead regulator to approve each Product Disclosure Statement.
- Remove 5(b) and 5(c) requiring the promoter to prepare financial statements in respect of each syndicate and lodge those with the lead regulator
- Remove 7(a) to 7(f) requiring the promoter to submit the Product Disclosure Statement and any other relevant document and advertising to the lead regulator.

2. Replace 5(e) with a simpler requirement for the Promoter to "keep a separate account with an Australian bank in respect of **all syndicates being offered** and use that account for the deposit and payment of all money relating **to each horse offer until horse ownership is registered and clear title can be passed to each owner.**"

3. Replace section 7 with a simpler requirement for the Promoter to submit a Product Disclosure Statement template and a Syndicate Agreement template when applying to be approved as a Promoter and prior to the offering of shares in any scheme - or when a template materially changes.

4. Replace section 8 with the requirement: "The promoter must not give an offeree a Product Disclosure Statement unless the promoter has received the approval of the Statement **template** from the lead regulator."

5. Consider the syndication of racehorses (and stallion schemes) to be a designated financial service, requiring all Sellers to implement AML/CTF processes that perform:

- Customer Due Diligence (CDD) on buyers of horse;
- risk profiling and PEP / Sanctions screening;
- enhanced Customer Due Diligence (ECDD) when higher risks are identified (e.g. customers who are foreign PEPs, transactions involving high-risk foreign jurisdictions, circumstances where a SMR is submitted); and
- submit Suspicious Matter Reports (SMR) to Austrac when necessary.

These practical changes would mitigate all the risks identified in section 2 of this submission - for all horse racing schemes promoted by any Seller. And it would simplify the obligations of each Seller.

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