



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 91

# Horse racing and breeding schemes

**Related instruments:** [CO 02/172]; [CO 02/178]; [CO 02/319]

**Chapters 5C and 7**

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*Previous versions: Superseded Policy Statement 20 Horse racing schemes [SPS 20] and Superseded Policy Statement 91 Horse breeding schemes [SPS 91].*

*From 5 July 2007, this document may be referred to as Regulatory Guide 91 (RG 91) or Policy Statement 91 (PS 91). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 91.1) or their policy statement number (e.g. PS 91.1).*

## What this guide is about

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RG 91.1 ASIC is a Commonwealth regulator concerned (among other things) with the regulation of financial services and products. ASIC generally does not have a direct regulatory role for horse breeding and horse racing schemes (schemes). However, if the schemes are structured as managed investment schemes then ASIC has jurisdiction.

RG 91.2 A person who offers to sell, or invites people to buy, interests in a managed investment scheme (the promoter) is subject to the *Corporations Act 2001* (Act), in particular, various provisions of Chapters 5C and 7. Generally, these provisions require the promoter to:

- (a) be a public corporation;

- (b) register the managed investment scheme with ASIC;
- (c) hold an Australian financial services (AFS) licence; and
- (d) comply with disclosure obligations including issuing a product disclosure statement (PDS).

RG 91.3 The Act provides some exclusions for small-scale offerings of managed investment schemes. That is, AFS licensing, scheme registration and PDS disclosure requirements will generally not apply where a managed investment scheme has no more than 20 members in total and is not promoted by a person who is in the business of promoting managed investment schemes. In addition, where all offers of interests in the scheme are certain ‘small-scale personal offers’ as set out in s1012E, the requirements in paragraphs (a), (b) and (d) of RG 91.2 will not apply, but the promoter will generally need to hold an AFS licence.

RG 91.4 Given the nature of horse racing and horse breeding schemes, ASIC has granted further exemptions from some of the requirements of the Act, depending on the activities of the promoter.

RG 91.5 This guide sets out ASIC’s policy on the regulation of certain small-scale horse racing and breeding schemes. In particular, it sets out managed investments, AFS licensing and product disclosure relief that may be available for:

**A** certain horse breeding schemes

*see RG 91.6–RG 91.21*

**B** certain horse racing schemes

*see RG 91.22–RG 91.26*

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## A Horse breeding schemes

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### Our policy

RG 91.6 We give conditional relief so that the promoter of certain broodmare and stallion schemes need not:

- (a) register the managed investment scheme with us;
- (b) hold an AFS licence; or
- (c) give formal point of sale disclosure in a PDS.

Note: Certain obligations still need to be met for offers under this relief—for example the obligations in s1017E, 1017F and 1020D.

RG 91.7 For relief to apply, offers to join these schemes must generally be personal offers as defined in s1012E(5). The relief is limited to small-scale private schemes and would not usually be available for publicly advertised schemes.

Note: This position is consistent with existing provisions in the Act dealing with small-scale offers. For example, see s708(1) and 1012E(2), which apply to 20 personal offers made within a 12 month period.

RG 91.8 Where the promoter 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 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.

Note: The promoter of a stallion scheme needs to be licensed for the relief to apply in certain circumstances.

### **Broodmare schemes**

RG 91.9 Generally, the relief only applies to broodmare schemes when interests are issued or sold by a promoter or seller who, together with any associate, has not issued or sold more than 20 interests in any horse-breeding scheme in the previous 12 months.

### **Stallion schemes**

RG 91.10 Generally, the relief only applies to stallion schemes when interests are issued or sold by a promoter or seller who, together with their associates, has not issued or sold more than 40 interests in any horse-breeding scheme in the previous 12 months.

RG 91.11 For stallion schemes, relief from the requirement to hold an AFS licence is available in some (but not all) cases. The relief is also subject to disclosure requirements and conditions.

## Underlying principles

RG 91.12 Horse breeding is a specialised activity that involves different competencies from those that apply to providers of financial services in relation to other managed investment schemes. In giving relief we recognise that small private arrangements for horse breeding do not warrant regulation as managed investment schemes under the Act.

## Explanations

RG 91.13 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 participants in the scheme share the cost of buying or leasing breeding stock.

RG 91.14 ASIC provides a number of exemptions from the provisions of the Act that would otherwise apply. We give this relief both for certain broodmare schemes and certain stallion schemes described in more detail below.

### **Broodmare schemes**

RG 91.15 Broodmare schemes buy broodmares. The broodmares' foals 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 91.16 The life of these schemes are 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 91.17 Relief for broodmare schemes is set out in Class Order [CO 02/172] *Horse breeding schemes—private broodmare syndication*. Table 1 summarises the key conditions of relief.

**Table 1: Conditions of relief—Broodmare schemes**

<p>(a) Each interest in the broodmare scheme must be issued as the result of:</p> <ul style="list-style-type: none"> <li>(i) certain offers made before 12 February 2002 that did not require disclosure; or</li> <li>(ii) acceptance of a personal offer as defined in s1012E(5) of the Act; or</li> <li>(iii) an offer made which does not need a PDS.</li> </ul>	<p>(b) Interests in the broodmare scheme must be issued or sold by a promoter who (with their associates) in the past 12 months have not issued or sold more than 20 interests in aggregate in any managed investment schemes, the principal purpose of which is to breed horses.</p>
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## ***Stallion schemes***

RG 91.18 In a stallion scheme, the asset is a specific stallion whose identity is known. The promoter 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 promoter's stud or at another nominated stud. The promoter 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 91.19 Participants in 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 91.20 In light of this fact and the difficulty in syndicating stallion schemes with a maximum of 20 participants, relief applies when interests are issued or sold by a promoter or seller who has not issued or sold more than 40 interests in any horse breeding scheme in the previous 12 months.

RG 91.21 Relief for the promoter and other persons who offer or issue interests in private stallion schemes or provide financial services in relation to the scheme is set out in Class Order [CO 02/178] *Horse breeding schemes—private stallion syndication*. Table 2 summarises the key conditions of relief.

**Table 2: Conditions of relief—Stallion schemes**

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- |   |   |
|---|---|
| <p>(a) Each person making the offer for interests in the stallion scheme (together with any of its associates) must not have, at the same time or during the previous 12 months, issued or sold in excess of 40 interests in any managed investment schemes, the principal purpose of which is to breed horses.</p>   | <p>(b) Each promoter of the stallion scheme must at all times either:</p> <ul style="list-style-type: none"> <li>(i) hold an AFS licence; or</li> <li>(ii) hold at least 10% fully paid of all interests in the stallion scheme.</li> </ul> |
| <p>(c) Each interest in the stallion scheme must be issued as the result of:</p> <ul style="list-style-type: none"> <li>(i) certain offers made before 12 February 2002 that did not need disclosure; or</li> <li>(ii) acceptance of a personal offer as defined in s1012E(5) of the Act; or</li> <li>(iii) an offer made which does not need a PDS.</li> </ul> | <p>(d) The offer must be made through a stallion scheme agreement that meets certain requirements in [CO 02/178].</p>   |

The stallion scheme agreement must contain certain provisions. For example, it must:

- (a) require that the stallion scheme relates to one stallion and no other horse or investment;
- (b) require that the stallion stand at stud only in this jurisdiction for the first three full stud seasons from the date the stallion scheme acquires the stallion—this is to ensure that participants can maintain a degree of control;
- (c) provide that participants 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;
- (d) prohibit the financing of the purchase of the stallion other than from the proceeds of the issue of interests in the stallion scheme;
- (e) provide that prospective participants in the stallion scheme receive a full refund of application moneys on written request made to and received by the promoter within 3 clear days after payment of application moneys;
- (f) detail the reporting requirements to participants for the financial performance of the stallion scheme for each reporting period;
- (g) include a statement of risks associated with the stallion scheme and the speculative nature of investment in horse breeding schemes;
- (h) give details of fees and expenses payable to the manager of the scheme, the basis of their calculation and disclosures in the financial statements;
- (i) give details of insurance of, and the veterinary examinations schedule of, the stallion;
- (j) give details of the obligations of the stud; and
- (k) include a statement that the relevant Class Order is being relied on by the promoter.

## **B Horse racing schemes**

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### **Our policy**

#### ***Lead regulators***

RG 91.22 ASIC has adopted a policy of co-regulation for certain types of horse racing schemes. Under the co-regulation arrangements, certain principal racing clubs have agreed to act as 'lead regulators' in relation to schemes that meet specified criteria. ASIC continues to be involved in the regulation of those schemes primarily through its licensing role and by overseeing the lead regulators' activities.

#### ***Registration relief***

RG 91.23 We give conditional relief so that horse racing schemes need not be registered as managed investment schemes in certain cases where the horse racing schemes meet the following description:

- (a) its PDS is approved by an ASIC approved lead regulator;
- (b) the PDS contains certain undertakings including that within 45 days of when fully subscribed, it will be registered with an ASIC approved lead regulator;
- (c) the subject of the promotion is a horse (or horses) specified in the PDS;
- (d) the scheme does not comprise more than 20 members; and
- (e) the total amount sought by way of subscription does not exceed \$250,000.

### **Underlying principles**

RG 91.24 The co-regulation arrangements are a more appropriate form of regulation for small scale horse breeding schemes than regulation under the Act. The co-regulation arrangements ensure that the interests of investors in these schemes continue to be protected while due recognition is given to the regulatory role played by the principal racing clubs and to their particular expertise.

### **Explanations**

#### ***Lead regulators***

RG 91.25 Lead regulators are approved by ASIC if they can establish that they are prepared, and have the necessary expertise,

to perform a monitoring function in regard to horse racing schemes. Tables 3 and 4 set out the lead regulators currently approved by ASIC and their role as agreed between ASIC and the lead regulators.

**Table 3: Lead regulators approved by ASIC**

• The NSW Thoroughbred Racing Board (now known as Racing NSW)	• Tasmanian Thoroughbred Racing Council
• Racing Victoria Limited	• Alice Springs Turf Club
• Thoroughbred Racing S.A. Limited	• Darwin Turf Club
• Queensland Thoroughbred Racing Board	• Greyhound and Harness Racing Authority
• Racing and Wagering Western Australia	• The Queensland Harness Racing Board
	• Harness Racing Victoria Board

**Table 4: The lead regulator's role**

<b>Maintain a register</b>	<ul style="list-style-type: none"> <li>• Keep a register of all promoters of horse racing schemes to which the co-regulation arrangements apply.</li> <li>• Register schemes that it has agreed to regulate.</li> <li>• Remove from the register any promoter who fails to comply with its rules on the promotion and operation of horse racing schemes, or any person if so requested by ASIC.</li> <li>• Advise ASIC of the name of any promoter who has been removed from the register.</li> </ul>
<b>Monitor new schemes</b>	<ul style="list-style-type: none"> <li>• Ensure that a promoter's PDS contains sufficient information to allow investors to make an informed decision and to check the accuracy of this information.</li> <li>• Approve the agreements that establish the scheme.</li> <li>• Approve advertising for the scheme.</li> </ul>
<b>Oversee ongoing schemes</b>	<ul style="list-style-type: none"> <li>• Ensure that promoters and managers of schemes lodge the reports and accounts as required.</li> <li>• Deal with any complaints.</li> <li>• Implement adequate surveillance, enforcement and disciplinary procedures.</li> <li>• Discipline promoters for failure to comply with its rules.</li> <li>• Refer cases that may involve breaches of the Act or of licence conditions to ASIC.</li> </ul>

### **Registration relief**

RG 91.26 ASIC grants managed investment scheme registration relief to horse racing scheme promoters: see Class Order [CO 02/319] *Horse racing syndicates*. Tables 5 and 6 summarise the key conditions of relief for managers and promoters. Schemes that do not comply with these conditions must comply with relevant provisions of the Act.

Note: The promoter must register with the lead regulator: condition 55 of Pro Forma 209 *Australian Financial Services Licence conditions* [PF 209].

**Table 5: Conditions of relief—Managers**

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|--|--|
| (a) Keep certain accounting records  | (d) Have a separate account for depositing and paying all moneys relating to the scheme's operation.       |
| (b) Lodge the accounts with the lead regulator within 90 days after the end of each financial year.    | (e) Manage the scheme in accordance with any agreement governing the scheme approved by the lead regulator |
| (c) Lodge a copy of the accounts with ASIC within 14 days after receiving a written request from ASIC. |  |

**Table 6: Conditions of relief—Promoters**

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|-------------------------------|--|
| <b>Licensing</b>              | <ul style="list-style-type: none"> <li>• Hold an AFS licence.</li> <li>• Not breach any conditions that are included in the promoter's AFS licence.</li> </ul>   |
| <b>Setting up new schemes</b> | <ul style="list-style-type: none"> <li>• Before registering the scheme with the lead regulator, ensure that the participants in the scheme either have unencumbered title to the whole of the scheme horses or lease the whole of the scheme horses under a finance lease agreement in standard form approved by the lead regulator.</li> <li>• Not advertise scheme interests or publish any statement that is reasonably likely to induce people to acquire scheme interests without the prior approval of the lead regulator.</li> <li>• Give a PDS only if it has been approved by the lead regulator.</li> <li>• If the promoter is not the manager of the scheme, state in any PDS that the manager will be required to manage the scheme in accordance with the terms of any agreement governing the scheme 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>   |
| <b>Maintaining records</b>    | <ul style="list-style-type: none"> <li>• Promptly provide the lead regulator with a copy of each of the following: <ul style="list-style-type: none"> <li>– any agreement establishing or affecting the promoter's scheme;</li> <li>– any agreement in relation to the promoter's scheme to which any scheme participant is a party;</li> <li>– any information, including any PDS in relation to the promoter's scheme, provided by the promoter to an offeree;</li> <li>– any advertisement in respect of the promoter's scheme; and</li> <li>– any finance lease proposed to be used by participants in the promoter's scheme</li> </ul> </li> <li>• Within 45 days of the scheme being fully subscribed, register the scheme with the lead regulator.</li> <li>• If the scheme is not fully subscribed within 6 months after the date the PDS is approved by the lead regulator, repay all money received from any person who applied to participate in the scheme, together with interest (if any) accrued on that money, within 10 business days after the expiry of that 6-month period.</li> </ul> |

**Managing  
established  
schemes**

- Comply with any rules, regulations or guidelines made by the lead regulator to ensure the scheme is honestly, efficiently and fairly operated.
- Provide any assistance or information reasonably required by the lead regulator.
- Comply with the requirement to give periodic reports to participants under s1017D of the Act as if interests in the scheme were a managed investment product.

## Key terms

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RG 91.27 In this guide, these terms have the following meanings:

**Act** The *Corporations Act 2001* (Cth) including regulations made for the purposes of the Act

**AFS licence** A licence under s913B that authorises a person who carries on a financial services business to provide financial services

**ASIC** The 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 participants

**horse racing scheme** A managed investment scheme where a racehorse is owned or leased by a group of people who contribute to its purchase price or lease costs, to its training and other continuing costs and who share in its winnings (if any)

**lead regulator** A principal racing club approved by ASIC to perform a monitoring function in regard to certain horse racing schemes

**managed investment scheme** A scheme that is a managed investment scheme as defined in s9

**manager** The person so named in any disclosure document for the scheme or the person so appointed in accordance with the terms of any agreement governing the scheme approved by the lead regulator or otherwise appointed with the approval of the lead regulator

**PDS** A product disclosure statement as defined in s761A

**participant** a person who contributes money or moneys worth to a managed investment scheme or who acquires an interest in the scheme from a participant

**promoter** The person who agrees to operate the managed investment scheme

**s1012E** (for example) a reference to a section of the Act (in this example section 1012E)

**stallion scheme** A managed investment scheme where a stallion or stallions are bought and maintained and their offspring sold for the benefit of participants.

## Related information

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RG 91.28

### Headnotes

Horse breeding schemes; private broodmare, stallion, horse racing schemes; lead regulator; small scale offerings; managed investment schemes; promoters, Australia financial services (AFS) licence.

### Class orders and pro formas

[CO 02/172] *Horse breeding schemes—private broodmare syndication*

[CO 02/178] *Horse breeding schemes—private stallion syndication*

[CO 02/319] *Horseracing syndicates*

[PF 209] *Australian Financial Services Licence conditions*

### Legislation

*Corporations Act 2001* Chapters 5C and 7, s601ED