



RACING AND WAGERING WESTERN AUSTRALIA

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# GUIDELINES FOR PRODUCT DISCLOSURE STATEMENTS Public Promotion of Horse Racing Partnerships & Syndicates

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## C O N T E N T S

Introduction.....	2
The Role of the Racing and Wagering Western Australia.....	2
Application for Approval of a Product Disclosure Statement.....	2
Contents of Product Disclosure Statement .....	2
1. AFS Licence and ASIC approval.....	2
2. RWAA approval of a PDS and disclaimer .....	3
3. Full name and address of promoter .....	3
4. Purpose of partnership or syndicate .....	3
5. Number of shares.....	3
6. Details of horses .....	3
7. Training and stabling.....	3
8. Acquisition and purchase price .....	3
9. Valuations .....	3
10. Veterinary Certificates .....	4
11. Valuation and veterinary statements inaccurate .....	4
12. Information for Investors to make informed assessment.....	4
13. Promoters ownership interest and encumbrances .....	4
14. Expenses incurred by promoter .....	5
15. Monies received held in trust.....	5
16. Syndication of part interests in horses .....	5
17. Number of members of syndicate and definition.....	5
18. RWAA costs in reviewing a PDS.....	5
19. Issue of a PDS to members .....	5
20. Review of Stud Book record.....	6
21. Location of horses .....	6
22. Advertising.....	6
Conclusion .....	6

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# GUIDELINES FOR “PRODUCT DISCLOSURE STATEMENTS”

## Public Promotion of Horse Racing Partnerships & Syndicates

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### Introduction

Racing and Wagering WA (RWWA) acts as **Lead Regulator** for the Australian Securities & Investment Commission (ASIC) in respect of horse racing partnerships and syndicates in Western Australia. RWWA's role is derived from a Class Order [CO 02/319] issued by the ASIC. As a Lead Regulator, RWWA is responsible for approving a **Product Disclosure Statement** (PDS).

Provided a promoter meets certain conditions, and for so long as they are met, the Class Order exempts Promoters from certain sections of the Corporations Act. An exemption requires in part that before issue of a PDS to the public, a promoter of a horse racing partnership or syndicate must submit to RWWA for approval, its proposed PDS and partnership and syndicate agreement for the partnerships or syndicates which are granted exemption by the Commission.

RWWA emphasises that it is the promoter's obligation to comply with the conditions imposed on an Australian Financial Services Licence (AFSL) issued to the promoter, and that promoters may be liable to investors and potential investors in racing partnerships and syndicates at common law and by statute for any inaccuracy or omission in a PDS.

### The Role of the Racing and Wagering Western Australia

In reviewing a PDS lodged for approval by a promoter, Racing & Wagering WA (RWWA) will seek to ensure that a PDS contains information specified by both the ASIC and RWWA, and that that a PDS which invites members of the public to invest in racing partnerships or syndicates contains sufficient information to enable potential investors to make investment decisions.

RWWA is not limited to confirming that a PDS on its face complies with the requirements of ASIC and RWWA. Although RWWA reviews a PDS in order to determine whether it should be approved, the commercial viability of partnerships or syndicates and their merits as investments are matters for the promoter and for potential investors in the partnership or syndicate and are not the subject of review by RWWA.

These Guidelines are not meant to be exhaustive and RWWA does not accept liability for the contents of a PDS, as this is the sole responsibility of the promoter. The substantive content requirements of a PDS are governed by the Corporations Act, in particular section 1013C to 1013F, and a PDS must comply with those requirements. Promoters should also refer to ASIC Policy Statement 168 for guidance on what should be listed in a PDS.

### Application for Approval of a Product Disclosure Statement

An Application for Approval of a Product Disclosure Statement must accompany any PDS lodged with RWWA for approval.

### Contents of Product Disclosure Statement

To comply with the requirements, a PDS is expected to contain the information specified below.

#### 1. AFS Licence and ASIC approval

RWWA will require evidence that the promoter holds an Australian Financial Services Licence (AFSL) issued by the ASIC and is currently placed on the Register of Approved Promoters held by the RWWA. If the promoter intends using the services of an Approved Authorised Representative for the promotion, RWWA require evidence that the Authorised Representative holds a certificate issued by the ASIC and is currently placed on the Register of Approved Authorised Representatives held by RWWA. RWWA will require the Authorised Representative to be named in the PDS as the Offeror, and the Promoter referred to as the Promoter.

RWWA will require evidence that an exemption has been granted for the Australian Securities & Investments Commission Division 20 Part 7.12 (other than s1022 and Regulation 7.12.12) and Divisions 3, 5, 6 and Part 7.12 of the Class Order issued by the Australian Securities & Investments Commission 2nd December 1992 in relation to offers or invitations to the public for subscription or purchase of interests in horse racing partnerships or syndicates by or on behalf of the promoter.

**2. RWWA approval of a PDS and disclaimer**

The PDS must indicate that a copy of the PDS has been approved by RWWA and include a statement that RWWA or any of its officers, employees or agents accepts responsibility as to the contents of the PDS.

RWWA requires that promoters adopt a disclaimer in the following form:

*A copy of this Product Disclosure Statement has been approved by Racing and Wagering W.A. No liability as to the contents of this Product Disclosure Statement is taken by Racing and Wagering W.A., its officers, employees or agents. In particular (but without prejudice to the generality of this disclaimer) Racing and Wagering WA does not warrant, and has no responsibility for the commercial merits of the scheme referred to in the Product Disclosure Statement, the manner in which the syndicates are operated, or the taxation advantages (if any) to which the scheme may give rise.*

**3. Full name and address of promoter**

A PDS must state the full name and address of the promoter.

**4. Purpose of partnership or syndicate**

A PDS must contain the purpose of the partnership or syndicate, which may include a statement of its business strategy, and or its management policies.

**5. Number of shares**

A PDS must contain a statement of the number of shares to be issued in the partnership or syndicate and a statement of the purchase price for those shares.

**6. Details of horses**

A PDS must indicate the horse/s to be acquired under the partnership or syndicate, including the name, sire, dam, sex and age; and must include a statement of the past racing performance of the horse/s (if any), and of the performance of the sire and dam of the horses (if any) and a statement whether registration has been applied for.

**7. Training and stabling**

A PDS should contain information as to the trainer and stabling of horses acquired by the partnership or syndicate, together with a letter stating that the trainer has agreed to train the horses and a statement of the obligations and expenses which will be incurred by participants in the partnership or syndicate.

**8. Acquisition and purchase price**

A PDS should specify the circumstances in which the horses were acquired by the promoter and the purchase price in relation to that acquisition.

If the most recent sale of the horse to the promoter or the most recent sales of the horse have occurred other than at arm's length, RWWA will require that the promoter disclose in the PDS the price at which the horse was last sold between persons who were not associated persons.

**9. Valuations**

A PDS must contain a valuation report. The Valuer must be known by and acceptable to RWWA. The valuation report must be prepared not more than 30-days prior to interests in the partnership or syndicate being offered to the public. The valuation report must value each horse separately and must disclose the figure that was calculated.

It would generally be sufficient disclosure of the method adopted by the valuer to assess the market value of a horse if, for example the valuation report indicates whether the valuer has taken into account the pedigree of this horse, its conformation, market conditions, recent sale prices or other relevant factors and specifies any other relevant factors which were taken into account.

The valuation report must contain a statement of any financial or other interest of the valuer in the partnership or syndicate or the moneys to be raised from the offer. RWWA requires that the valuation report contain an express statement that it has been prepared for inclusion in a PDS in relation to the offer to the public of an interest in the particular partnership or syndicate, and an acknowledgment that it may be relied upon by prospective investors in the partnership or syndicate.

Note: The need for a valuation will be waived if the horse was purchased at public auction.

**10. Veterinary Certificates**

A PDS must contain veterinary certificates in relation to each of the horses proposed for purchase by the partnership or syndicate.

The veterinary certificates must be prepared not more than 30-days prior to interests being offered to the public. The certificates must expressly refer to the purpose of the partnership or syndicate and evaluate the fitness of the horses for that purpose.

The veterinary certificates must contain a statement of any financial or other interest of the veterinarian in the partnership or syndicate or the monies raised from the offer.

**11. Valuation and veterinary statements inaccurate**

A PDS must contain a statement that as at the date of issue of the PDS, the promoter knows of no fact or occurrence which renders any statement contained in the valuation and veterinary certificates materially inaccurate.

**12. Information for Investors to make informed assessment**

A PDS must include a statement that it contains all information which investors and their advisers would require and reasonably expect to find in a PDS for the purpose of making an informed assessment of the merits of an investment in the partnership or syndicate.

**13. Promoters ownership interest and encumbrances**

A PDS must contain a statement indicating whether the promoter owns the horse and whether the horse is in any way encumbered. The PDS must indicate that investors in the syndicate or partnership will obtain unencumbered title to the horse on registration of the partnership or syndicate. If the title to the horse is subject to any encumbrance, the PDS must specify the arrangements made by the promoter to discharge those encumbrances before or on registration of the partnership or syndicate.

If a manager is to be appointed, the PDS must specify the arrangements which have been made to vest possession of the horse in the manager of a partnership or syndicate.

The PDS must contain a statement giving full particulars of the terms of any lease agreement that will affect the partnership or syndicate.

RWWA will require a promoter to provide a statutory declaration in the form approved by RWWA, confirming that the promoter has a legally enforceable right to possession of the horse and that investors in the syndicate will receive unencumbered title to the horse on registration of the partnership or syndicate.

RWWA reserves the right to seek further evidence from the promoter showing that it is in a position to vest legal or beneficial ownership in each horse to be owned or leased by a partnership or syndicate in investors in the partnership or syndicate on registration of the partnership or syndicate.

**14. Expenses incurred by promoter**

A PDS must set out the expenses incurred by the promoter in respect of the particular horse or horses to be owned or leased, qualified under specified headings.

**15. Monies received held in trust**

A PDS must contain a statement that application moneys received by the partnership or syndicate will be held in trust by the promoters until RWWA has registered (or refused to register) the partnership or syndicate and a statement that if the partnership or syndicate is not fully subscribed within six months from the date of the approval of the PDS or if RWWA refuses to register the partnership or syndicate, all application monies held in trust, together with interest will be returned to applicants within ten business days.

**This statement must be inserted in the PDS**

*"If the partnership or syndicate is not fully subscribed within six months from the date of approval by Racing and Wagering Western Australia, or where Racing and Wagering Western Australia refuses to register the partnership or syndicate, all application moneys held in trust, together with interest, will be returned to applicants within ten business days"*

RWWA will monitor registration of the partnership or syndicate to ensure that moneys are returned to investors if the full subscription condition is not satisfied or the partnership or syndicate is not registered within the time period allowed.

**16. Syndication of part interests in horses**

Where a partnership or syndicate acquires a part interest in a horse a PDS must contain the agreements or other arrangements which determine the rights of the partnership or syndicate and of other part-owners of the horse in respect of the management of the horse and in respect of the circumstances under which the horse may be sold or otherwise disposed of.

**17. Number of members of syndicate and definition**

Syndicates may be structured between one and twenty persons to avoid contravening Section 33 of the Companies Code, which prohibits an association having as its object the acquisition of gain of more than 20 persons.

RWWA also draws attention of promoters to Rule 69 of the RWWA Rules of Thoroughbred Racing which provides that, a horse shall not be entered or raced except by a natural person or a combination of not more than ten natural persons; by a Syndicate (as defined); or by a combination of not more than ten registered syndicates and/or natural persons. Rule 69A of the RWWA Rules of Thoroughbred Racing defines the word "Syndicate" as meaning inter alia, a combination of not more than 20 natural persons.

**18. RWWA costs in reviewing a PDS**

Where syndication structures have become more complex and the value of the horses syndicated has increased significantly, or where a partnership or syndicate involves complex questions, RWWA may incur costs in reviewing the PDS which are not covered by its standard application fee. In those circumstances, RWWA will require that the promoter to reimburse it for legal costs and other reasonable expenses incurred in reviewing the PDS. RWWA will require these costs to be paid whether or not the PDS is approved. RWWA emphasises that this requirement will not apply to the majority of the applications lodged for approval.

**19. Issue of a PDS to members**

Promoters must provide members of a partnership or syndicate with the PDS prior to executing a syndicate agreement. RWWA is of the view that completion of a syndicate agreement before an investor is provided with the PDS is not in the best interests of racing.

Promoters should note that the Application for Approval of a Product Disclosure Statement lodged with RWWA contains an undertaking to RWWA that the promoter will not circulate any information to prospective syndicate members other than the PDS and any accompanying documents which have been approved by RWWA, and

that the promoter will provide RWWA with a copy of the PDS and any accompanying documentation in the form in which it was sent to investors.

**20. Review of Stud Book record**

RWWA will examine the Stud Book record of a horse which is to be owned by the partnership or syndicate. If the horse is ineligible to be registered, it will require the promoter either rectify the defect or disclose the relevant facts in the PDS. RWWA will require that such disclosure indicates that unless the problem is rectified, the horse which is to be owned or leased by the partnership or syndicate cannot be registered as a racehorse and, therefore the promotion may not be approved.

**21. Location of horses**

RWWA is of the view that it cannot register a partnership or syndicate if horses are not registered as racehorses in Australia. It is implicit in RWWA Rule of Thoroughbred Racing AR.69 and in the Syndicate Rules and Regulations that registration of a partnership or syndicate by RWWA is directed to horses which are to be raced in accordance with the RWWA Rules of Thoroughbred Racing. Where a horse is located outside Australia and would not be raced in races conducted by any other Racing Authority, RWWA would be unlikely to approve a PDS in relation to a partnership or syndicate relating to the horse. This position is consistent with one of RWWA's primary purposes, which is to promote the interests of the racing industry and or persons interested in the racing of horses in Western Australia.

**22. Advertising**

RWWA exercises an independent discretion in considering whether to approve an advertisement for the purposes of an exemption granted to the promoter by the Australian Securities & Investment Commission. RWWA will seek to ensure that advertisements contain no material information not contained in the PDS and that they do not contain information that is misleading, or deceptive, or likely to mislead. However, an advertisement which satisfies those minimum requirements will not necessarily be approved by RWWA. In determining whether to approve an advertisement, it will take into account its purpose of promoting horse racing within its jurisdiction. RWWA would generally withhold approval of an advertisement which would prejudice the reputation of the racing industry or would adversely affect the confidence of investors in racing partnerships or syndicates.

**Conclusion**

In considering whether to approve a PDS, RWWA will use its best efforts to ensure that the PDS complies with its requirements and those of ASIC. RWWA does not, however, have a responsibility to inquire into the financial success or viability of the partnership or syndicate and cannot accept liability for the contents of the PDS.

RWWA has discretion whether to approve a PDS in a particular case, and will be prepared to consider any submission as to the manner in which it should exercise that discretion on its merits, subject to the requirements of ASIC and RWWA. Promoters should recognise, however, that in granting its approval to an offer of interests in a partnership or syndicate RWWA may look to matters beyond those required by ASIC and RWWA. This is consistent with its particular expertise in the racing industry, with the purposes for which the Lead Regulator function was conferred on RWWA and with the need for it to satisfy itself that a particular offer or invitation to the public is appropriate for its approval.

It is RWWA's view that the interests of the racing community and the interests of investors will be best served by full disclosure by promoters of information which would be material to potential investors in racing partnerships or syndicates.