



RACING AND WAGERING WESTERN AUSTRALIA
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Information Sheet

PUBLIC PROMOTION OF RACEHORSE OWNERSHIP - PARTNERSHIPS & SYNDICATION

A person who wishes to offer ownership shares in a racehorse to the public, either through a partnership or syndicate format should be aware of the following RWAA Rule of Thoroughbred Racing:

SR 9 Promoter Syndicates

- (1) *Any person who wants to make an offer to promote shares in a horse/s must:*
 - (a) *hold an Australian Financial Services Licence ("AFSL") issued by ASIC;*
 - (b) *comply with any provision of the Corporations Act in relation to the promotion, offering, or issue of shares in horses; and*
 - (c) *comply with the provisions and requirements of any applicable ASIC Class Order or instrument (including ASIC Corporations (Horse Schemes) Instrument 2016/790, or any successor to it) in relation to the promotion, offering, or issue of shares in horses.*
- (2) *Before an offer of shares in a horse/s is made, an AFSL holder must be recorded as a registered Promoter in the Register of Promoters held by a PRA.*
- (3) *Promoters must obtain approval from a PRA for each Product Disclosure Statement prior to an offer of shares in a horse being made.*

Furthermore, the Australian Securities and Investments Commission (ASIC) has deemed that the activities of a Horse Racing Syndicate Promoter in:

- (i) providing financial product advice to clients on interests in horse racing syndicates;
- (ii) and assisting clients by issuing, applying for, acquiring, varying or disposing of interests in horse racing syndicates,

generally fall under the definitions in the *Corporations Act 2001* of providing financial services in relation to a financial product. As such anyone proposing to engage in this activity must be the holder of a current Australian Financial Services Licence as issued by ASIC.

Under the *Corporations Act 2001* a horse racing syndicate may be considered to be a managed investment scheme

(MIS) if:

- (i) people contribute money or money's worth as consideration to acquire rights to benefits produced by the scheme; **and**

- (ii) any contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the scheme's members who hold interests in the scheme (whether as contributors to the scheme or as people who have acquired interests from holders); **and**
- (iii) the members do **not** have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions).

Most horse syndicates would satisfy the first two features which means the question over day-to-day control is critical in determining whether in practice, a syndicate constitutes an MIS.

- When there is a person appointed to manage the syndicate's day-to-day control then it would usually follow that the MIS definition is met.

A Horse racing syndicate or scheme resulting from a person engaging in the activity of establishing a one-off "private" arrangement, with no more than 50 members, will likely fall outside of the requirement for registration under Section 601ED(1)(b), and would not require a license.

A Horse racing syndicate or scheme resulting from a person engaging in the activity of acquiring a number of yearlings or racehorses each year, either at auction sales or elsewhere, and then selling shares would likely fall within the requirement for registration under Section 601ED(1)(b), so the person/promoter would require a license, or to be an authorised representative of a licensee, before engaging in such activity.

A person offering/advertising the sale of shares in racehorses to the public may be held to be a 'promoter'.

The promoter of a horse share or a racing syndicate must hold an AFS licence (AFSL) if – (a) the syndicate constitutes a managed investment scheme (MIS); **and**

- (b) the syndicate has more than 50 members or is being promoted by a person or an associate who is in the business of promoting MIS's.

(If a number of horse racing syndicates have been promoted by the person, it will be usually be the inference that there was a degree of system and repetition in the promotions which means that the person can be regarded as being in the business of promoting horse racing syndicates.)

If a horse share or syndicate offer does constitute an MIS and it requires registration under the Act, then the promoter must hold an AFS licence. The promoter may also need to register the MIS with ASIC **unless** the offer meets the criteria for an exemption provided by the ASIC Corporations (Horse Schemes) Instrument 2016/790 for Horse Racing and Breeding Schemes. Providing that the promoter of a horse share or syndicate offer holds an AFS licence, then the ASIC Corporations (Horse Schemes) Instrument 2016/790 allows an MIS registration exemption subject to the promoter being registered by a Lead Regulator (such as RWWA) and the offer is being issued with a Product Disclosure Statement approved by that Lead Regulator. Persons interested in registration as an 'Approved Promoter' should access the ASIC Regulatory Guide 91 or can contact RWWA for further information.

Persons offering shares in horses should carefully review the relevant definition and if need be, seek legal advice to determine whether they must obtain any approval. Similarly, it is in the interest of

people considering joining a horse syndicate that they are satisfied that the person advertising the shares are compliant with the Commonwealth Law and the Rules of Racing.

Therefore anyone advertising that they are selling shares in racehorses to the public (other than a part-share that they already own) through either a Website, Newspaper or other needs to ensure their activities do not contravene the above. Every case of such sales is determined on its own factual circumstances in accordance with the relevant rules and Act's that apply.

RWWA is recognised by ASIC as the Lead Regulator for public syndication of racehorses. RWWA has an onus to report to ASIC any cases that may involve breaches of the Act or of licence conditions. In this respect RWWA does monitor the placement of advertisements and the registration of horses and will act upon and/or refer any cases that come to its attention to ASIC.

Any person unsure of the requirements or seeking further information about becoming an Approved Promoter may contact the RWWA Manager Integrity Operations (9445 5227) or should seek their own legal advice **before** making any public offers to sell shares.