



**ASIC**

Australian Securities & Investments Commission

**[CO 02/178]**

## **Horse breeding schemes — private stallion syndication**

*Issued 14/2/2002*

*Class Order [CO 02/178] gives relief from Chapter 5C and Part 7.9 for private stallion syndications, subject to some conditions and disclosure requirements. These schemes are considered to be private arrangements and so are not required to be registered 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. This class order revokes [CO 00/206].*

***This class order comes into effect on 11 March 2002 upon commencement of Schedule 1 to the Financial Services Reform Act 2001: see paragraph 4(2A)(c) of the Acts Interpretation Act 1901.***

Australian Securities and Investments Commission  
Corporations Act 2001 — Paragraphs 601QA(1)(a), 741(1)(a),  
911A(2)(l), 992B(1)(a) and 1020F(1)(a) — Revocation and Exemption

- 1 Under paragraphs 601QA(1)(a) and 741(1)(a) of the *Corporations Act 2001* (the “Act”) the Australian Securities and Investments Commission (“ASIC”) hereby revokes Class Order [00/206].
- 2 Under paragraphs 601QA(1)(a), 992B(1)(a) and 1020F(1)(a) of the Act, ASIC hereby exempts each person who operates, or offers for issue, or issues interests in, a Stallion Scheme (“Offeror”) from Chapter 5C and Part 7.9 (other than sections 1017E, 1017F, 1020D and 1021O) and sections 992A and 992AA of the Act in the cases specified in Schedule A on the conditions specified in Schedule B.
- 3 Under paragraph 911A(2)(l) of the Act, ASIC hereby exempts a person (other than a promoter mentioned in Schedule B who does

not hold at least 10% fully paid of all Interests in the Stallion Scheme) from the requirement to hold an Australian financial services licence for the provision of financial services by the person in relation to interests in a Stallion Scheme operated on a basis which:

- (a) in the case of a person who is an Offeror - meets the requirements and conditions in Schedules A and B; and
- (b) otherwise - appears to meet those requirements and conditions except where the person is aware, or ought reasonably to be aware, that those requirements and conditions have not been met.

- 4 Under paragraph 1020F(1)(a) of the Act, ASIC hereby exempts each person (other than the Offeror) from Part 7.9 of the Act in relation to a recommendation that a client acquires, and an offer to arrange the issue of, an interest in a Stallion Scheme offered on a basis which appears to meet the requirements and conditions in Schedules A and B except where the person is aware, or ought reasonably to be aware, that those requirements and conditions have not been met.

#### SCHEDULE A

Offers to issue, recommendations to acquire and the issue of interests in, and the operation of, a Stallion Scheme under which each interest has been issued as a result of:

- (a) an issue to which section 1477 of the Corporations Law (as continued in force by section 1408 of the Act) applies; or
- (b) an offer made before the Effective Date which assuming the interest in the Stallion Scheme was a security to which Part 6D.2 of the Act applied at the time the offer was made, would not have required disclosure to investors because of a provision of section 708 of the Act; or
- (c) acceptance by a person of an offer made personally to them; or
- (d) an offer made on or after the Effective Date which does not need a Product Disclosure Statement,

and where the Offeror together with any associate of the Offeror (as defined in Division 2 of Part 1.2 of the Act) has not issued or sold in excess of 40 interests in any Horse Breeding Scheme at the same time or during the previous 12 months.

## SCHEDULE B

- 1 In the case of a Stallion Scheme in which Interests were first issued before the Commencement Date:
  - (a) before the date which is two years after the Commencement Date each promoter of the Stallion Scheme must at all times meet at least one of the following three requirements:
    - (i) the promoter holds a dealers licence granted by ASIC under Part 7.3 of the old Corporations Act (as defined in section 1410 of the Act) and complies with Divisions 1 and 3 of Part 7.3, Parts 7.5, 7.6 and 7.7 and section 842 of that old Corporations Act in relation to dealings in Interests in the Stallion Scheme as if, at the time of each issue of an Interest in the Stallion Scheme, and each offer in relation to an Interest in the Stallion Scheme, the Stallion Scheme was registered and the promoter ensures that any representative of the promoter complies with the provisions of Division 1 and 3 of Part 7.3 Parts 7.5, 7.6 and section 842 of that old Corporations Act applicable to representatives in relation to dealings in Interests in the Stallion Scheme as if, at the time of issue or offer the Stallion Scheme was required to be registered; or
    - (ii) the promoter holds an Australian financial services licence; or
    - (iii) the promoter holds at least 10% fully paid of all Interests in the Stallion Scheme; and
  - (b) after the end of the 2 year period starting on the Commencement Date each promoter of the Stallion Scheme must at all times either :
    - (i) hold an Australian financial services licence; or
    - (ii) hold at least 10% fully paid of all Interests in the Stallion Scheme.
- 2 In the case of a Stallion Scheme in which Interests were first issued on or after the Commencement Date each promoter of the Stallion Scheme must at all times either:

- (a) hold an Australian financial services licence; or
- (b) hold at least 10% fully paid of all Interests in the Stallion Scheme.

### **Interpretation**

For the purpose of this instrument:

“Effective Date” means:

- (a) for a Stallion Scheme in which no interests of the same class were issued before the Commencement Date — the Commencement Date; and
- (b) for any other Stallion Schemes — the date on which the new product disclosure provisions (as defined in section 1438 of the Act) first apply to an offer or issue of interests in the scheme.

“Horse Breeding Scheme” means any managed investment scheme where the principal purpose is to breed horses.

“Interest” in relation to a Stallion Scheme means any interest in that Stallion Scheme acquired under a Stallion Scheme Agreement.

“offer made personally” means an offer which includes a copy of the proposed Stallion Scheme Agreement and which otherwise complies with subsection 1012E(5) of the Act.

“Stallion” in relation to a Stallion Scheme Agreement means the Stallion identified in the Stallion Scheme Agreement.

“Stallion Return” means the annual Stallion Return Form, Season Service Date Declaration and any other documents required to be lodged with the Keeper of the Australian Stud Book, a body jointly owned by the Australian Jockey Club and Victorian Racing Club.

“Stallion Scheme” means any managed investment scheme to:

- (a) acquire a Stallion; and
- (b) provide stud services of the Stallion for the benefit of each of the participants of the scheme.

“Stallion Scheme Agreement” means an agreement which includes provisions to the following continuing effect:

- (a) requiring that the Stallion Scheme relates to one Stallion and no

other horse or investment;

- (b) requiring 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;
- (c) provides that participants will, as tenants in common, own the whole of the legal and equitable title to the Stallion free of encumbrances;
- (d) prohibits the financing of the purchase of the Stallion other than from the proceeds of the issue of Interests;
- (e) provides 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;

and that contains:

- (f) details of reporting requirements to participants of the financial performance of the Stallion Scheme and Stallion Returns for each reporting period;
- (g) a statement of risks associated with the Stallion Scheme and the speculative nature of investment in horse breeding schemes;
- (h) details of fees and expenses payable to the manager, the basis of their calculation and disclosure in the financial statements;
- (i) details of insurance of, and the veterinary examinations schedule of, the Stallion;
- (j) details of the obligations of the stud; and
- (k) a statement that this Class Order is being relied on by the Offeror.

Note: In relation to the financial products to which this instrument relates, “this jurisdiction” means Australia: Act, ss 5 and 9 (definition of “this jurisdiction”) and regulation 1.0.22 of the *Corporations Regulations 2001*.

## **Commencement**

This instrument takes effect on the commencement of Schedule 1 to the *Financial Services Reform Act 2001* (the “Commencement Date”).

Dated the 14th day of February 2002

Signed by Brendan Byrne  
as a delegate of the Australian Securities and Investments Commission