



Guidance Notes for Trainers

Publicly Promoting, Selling &/or Leasing Shareholdings in Racehorses

Produced by: **Australian Trainers' Association (ATA)**

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**If you publicly
promote the sale
or lease of shareholdings
in racehorses to third parties, then
you MUST establish if your 'promoter
activities' are captured under
Commonwealth Law, specifically
Section 9 of the "Corporations Act
2001", and the Australian
Rules of Racing**

INTRODUCTION

- The usual practice for racing stables is to periodically purchase new racing stock. Part of this process will generally include advertising the sale and/or leasehold of shareholding in the new racehorses to prospective owners.

Equally, owners in existing racehorses often desire to exit their shareholding, leaving the Trainer to search for replacement owners.

- There is nothing in the Australian Rules of Racing, nor in the current Federal legislation, that prevents a Trainer from engaging in this activity.

However, **the manner in which the Trainer actively engages with the prospective owners and the language the Trainer uses to promote these sale and/or leasehold opportunities** will dictate whether the activity constitutes a Managed Investment Scheme (MIS) and accordingly, is captured by the Corporations Act 2001 and Australian Rules of Racing.

- The attached *Guidelines* describe the test for determining if these activities constitute a MIS, the specific legislation and rules of racing that relate to and govern the MIS activity, and the key procedural obligations in particular that are associated with legislative compliance.

It also provides details of various PRA, Racing Australia and Government web sites to visit to gather greater insight on the subject, and finally, example advertising showing generic type and key MIS descriptor language.

- Lastly, it is vitally important for the Trainer to be aware that a failure to comply with the prescribed obligations may lead to one or both of the following:
 - An investigation by ASIC leading to fines &/or penalties being imposed for a breach of Corporations Law, and/or;
 - An investigation by the relevant PRA leading to fines, penalties and/or potential disqualification of any horse for a breach of AR. 69P per AR. 69K

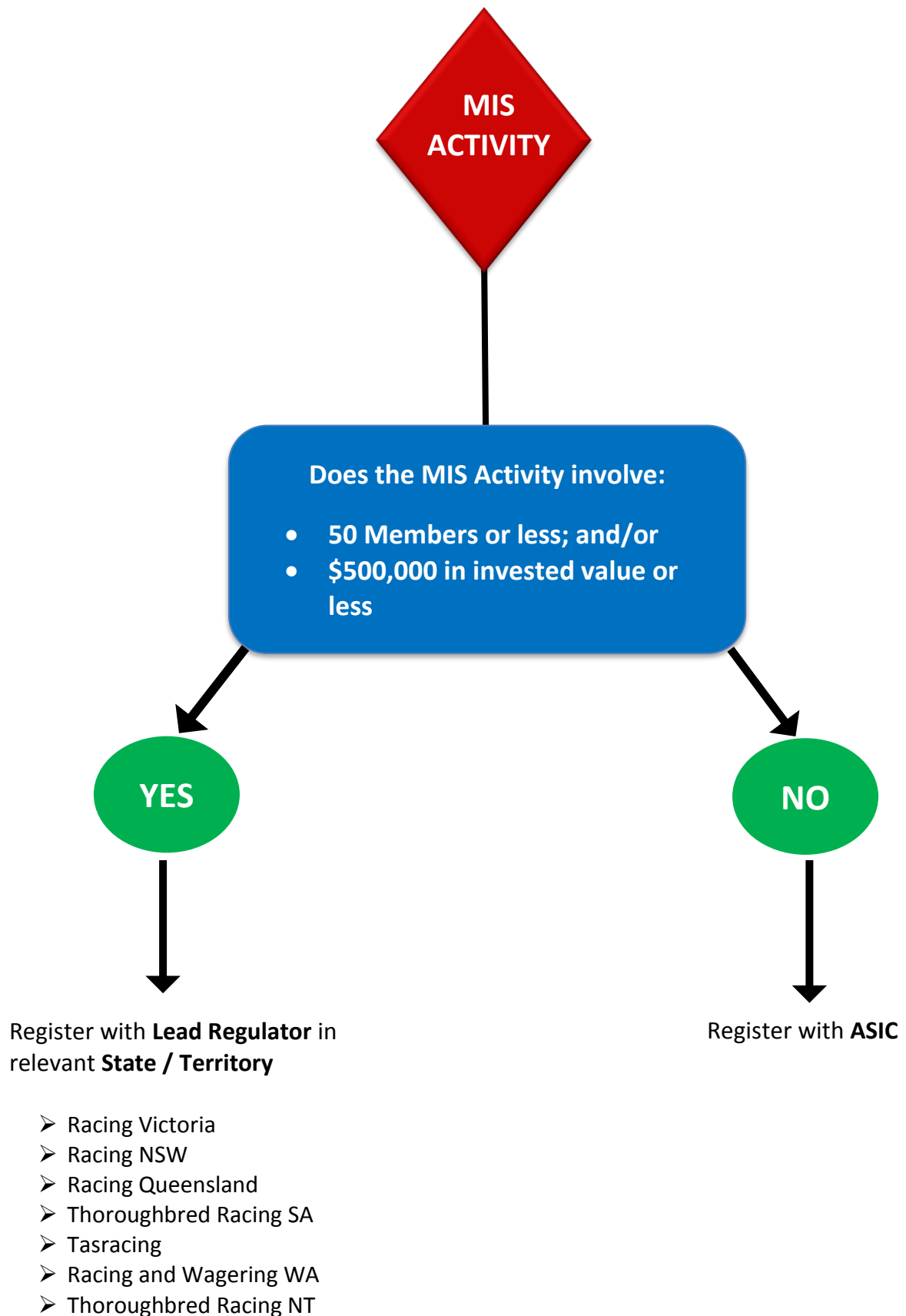
IF YOU ARE IN DOUBT ON ANY ASPECT OF THIS SUBJECT MATTER, DO NOT HESITATE TO CONTACT THE AUSTRALIAN TRAINERS' ASSOCIATION

CORPORATIONS ACT 2001

- The **Australian Securities & Investments Commission (ASIC)**, a Federal Government Authority, regulates Financial Services activities in Australia.
- Financial Services activities (described under Section 9 of the Corporations Act 2001) extend to include 'Managed Investment Schemes', or abbreviated, a MIS.
- The public promotion and sale / lease of shareholding in racehorses are activities that are *generally* accepted by ASIC to fall under the definition of a MIS.
- A simple three question test designed by ASIC follows to determine if the activity will reasonably be considered a MIS:
 - *Will people, or members, contribute money as consideration to acquire rights to benefits produced by the horse racing scheme?*
 - *Are contributions pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the horse racing scheme's members?*
 - *The horse racing scheme members have no effective day-to-day control over the operation of the horse-racing scheme?*
- Where the above are answered in the affirmative, your sale and/or lease holding activities will constitute a MIS, and you the promoter of such, and accordingly, obligations laid down in the Corporations Act 2001 will need to be met.

This includes registering with ASIC or, where *Eligibility for Relief* exists (*SEE OVERLEAF*), registering with the lead regulator in each state, e.g. Racing Victoria, Racing NSW, etc. You as the promoter must also as a minimum, hold (or include your activity as a sub-agent under) an Australian Financial Services License (AFSL), maintain Professional Indemnity insurance, and produce a Product Disclosure Statement (PDS) for issue with each promotion describing the activities and the obligations of the various parties to the transaction.

REGULATORY REGISTRATION FLOW CHART



AUSTRALIAN RULES OF RACING

- The Australian Rules of Racing – specifically AR. 69P – specifies the obligations of a sales promoter of thoroughbred racehorses.
- This Rule compliments the obligations stated under the Corporations Act 2001, as they relate to the activities of a “sales promoter and his/her Managed Investment Scheme (MIS)”.
- AR. 69P states:
 - the sales promoter must hold (which can include the capacity of sub-agent) an Australian Financial Services License (AFSL), and
 - must seek approval from the applicable lead regulator for the design and content of the sales promoter’s Product Disclosure Statement (PDS).
- In addition, AR. 69K provides that the PRA may penalise any person who fails to comply with AR. 69P. This rule states:
 - every person or company committing a breach of any of the Rules relating to syndicates or of the Regulations made in relation thereto or who fails to comply with any of the requirements thereof may be penalised by the Principal Racing Authority or the stewards who may also disqualify any horse owned or leased by the syndicate.

USEFUL LINKS

For more information on this subject, including **ASIC, Approved Promoter Policies** and a listing of **Authorised Promoters** who can support your activities and offer compliance with the Federal legislation, click on the links below:

ASIC Corporations (Horse Schemes) Instrument 2016/790

<https://www.legislation.gov.au/Details/F2017C00166>

TTSC Racehorse Syndication (A Division of Racing Australia)

http://www.ttsc.com.au/syndication_product_overview.html

Racing NSW

<http://www.racingnsw.com.au/default.aspx?s=forms-syndicators>

<http://www.racingnsw.com.au/default.aspx?s=registered-syndicate-promoters>

Racing Victoria

<https://rv.racing.com/racing-and-integrity/licensing>

<https://owner.racing.com/promoters>

Racing QLD

<https://www.qric.qld.gov.au/licensing-and-ownership/thoroughbred/syndication/>

Racing and Wagering WA

<http://www.rwwa.com.au/home/industry/public-promoters-of-syndication-1316.html>

Thoroughbred Racing SA

<https://www.theracessa.com.au/industry/fees-forms-and-prizemoney-payment-schedule>

Tasracing

<http://dpiwwe.tas.gov.au/racing/thoroughbred-racing/registration-and-licensing-thoroughbred>

Thoroughbred Racing NT

<http://www.trnt.org.au/forms/syndicates/>

PUBLIC ADVERTISING

- Trainers *without an AFSL* MUST ensure their public advertising e.g.; including print and electronic forms, contains generic language and messaging only.

In particular, it should avoid use of terms and words that promote ***“partnership opportunities”, “syndication”, “shares” or “shareholding”, or “lease arrangements”***.

It is acceptable to identify the purchase cost. It is also acceptable to include reference to where and when the horse was purchased.

- Overleaf are four example advertisements that reference acceptable & unacceptable language, including that which will ensure Trainers without the AFSL do not breach the Corporations Act 2001 or the Australian Rules of Racing.

ADVERTISEMENT (A)



1YO Bay Colt

Sire: AMERICAIN

Dam: INSULATE

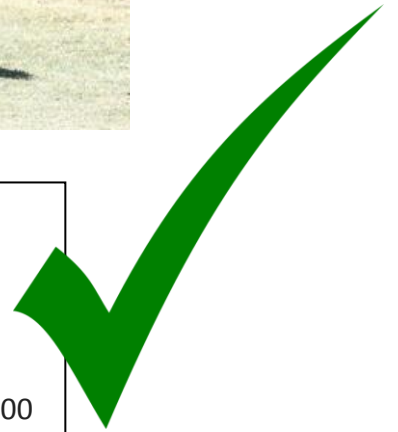
This great looking colt was purchased for \$140,000 from the recent Melbourne Premier Sale.

He is from the second crop from the stayer *AMERICAIN*, out of a *TIGERESS* Group Winning mare.

If you want to experience the thrill of racing, then please call 03 9999 9999

[View Pedigree](#)

[Enquire](#)



ADVERTISEMENT (B)



1YO Bay Colt

Sire: AMERICAIN

Dam: INSULATE

This great looking colt was purchased for \$140,000 from the recent Melbourne Premier Sale.

He is from the second crop from the stayer *AMERICAIN*, out of a *TIGERESS* Group Winning mare.

For more information, please call 03 9999 9999

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ADVERTISEMENT (C) 



1YO Bay Colt

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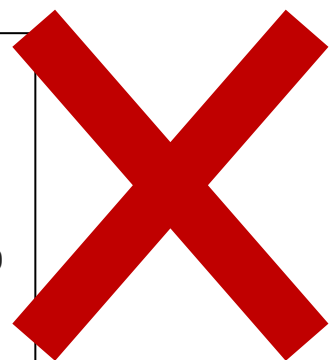
This great looking colt was purchased for \$140,000 from the recent Melbourne Premier Sale.

He is from the second crop from the stayer *AMERICAIN*, out of a *TIGRESS* Group Winning mare.

For those seeking **partnership or syndication opportunities** in this exciting colt, please call 03 9999 9999

[View Pedigree](#)

[Enquire](#)



ADVERTISEMENT (D) 



1YO Bay Colt

Sire: AMERICAIN

Dam: INSULATE

This great looking colt was purchased for \$140,000 from the recent Melbourne Premier Sale.

He is from the second crop from the stayer *AMERICAIN*, out of a *TIGRESS* Group Winning mare.

A 10% Share in this exciting colt is just \$14,000.
For more information, please call 03 9999 9999

[View Pedigree](#)

[Enquire](#)

