

EXPLANATORY STATEMENT for

ASIC Corporations (Repeal) Instrument 2016/791

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Corporations (Repeal) Instrument 2016/791 (the **Repeal Instrument**).

The Repeal Instrument will have the effect of repealing the following ASIC Class Orders:

- [CO 02/172] – *Horse breeding schemes — private broodmare syndication ([CO 02/172])*;
- [CO 02/178] – *Horse breeding schemes — private stallion syndication ([CO 02/178])*; and
- [CO 02/319] – *Horse racing syndicates ([CO 02/319])*.

The Repeal Instrument is made under paragraphs 601QA(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001* (the **Act**).

Subsection 601QA(1) of the Act provides that ASIC may:

- (a) exempt a person from a provision of Chapter 5C of the Act; or
- (b) declare that Chapter 5C of the Act applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

Paragraph 911A(2)(l) of the Act provides that a person is exempt from the requirement to hold an Australian financial services licence for a service that the person provides where the provision of the service is covered by an exemption specified by ASIC in writing and published in the *Gazette*.

Subsection 992B(1) of the Act provides that ASIC may:

- (a) exempt a person or class of persons from all or specified provisions of Part 7.8 of the Act;
- (b) exempt a financial product or a class of financial products from all or specified provisions of Part 7.8 of the Act; or

- (c) declare that Part 7.8 of the Act applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions of Part 7.8 were omitted, modified or varied as specified in the declaration.

Subsection 1020F(1) of the Act provides that ASIC may:

- (a) exempt a person or class of persons from all or specified provisions of Part 7.9 of the Act;
- (b) exempt a financial product or a class of financial products from all or specified provisions of Part 7.9 of the Act; or
- (c) declare that Part 7.9 of the Act applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions of Part 7.9 were omitted, modified or varied as specified in the declaration.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Act), where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

1. Background

[CO 02/172] and [CO 02/178] provide relief in relation to small scale private broodmare schemes and stallion schemes, respectively, from the requirements under the Act to register the scheme as a managed investment scheme, to hold an AFS licence under Chapter 7 of the Act (the promoter of small scale private stallion schemes is however required to hold an AFS licence in certain circumstances) and to provide a Product Disclosure Statement under Part 7.9 of the Act. Under the *Legislation Act 2003* (the LA), [CO 02/172] and [CO 02/178] will expire, or sunset, on 1 October 2017.

[CO 02/319] provides relief to the promoter and manager of a small scale horse racing syndicate from the requirement to register the syndicate as a managed investment scheme under section 601ED of the Act. If a promoter or manager is able to rely on the relief under [CO 02/319] in relation to a small scale horse racing syndicate, the managed investment scheme provisions in Chapter 5C of the Act will not apply in relation to the horse racing syndicate. Under the LA, [CO 02/319] will expire, or sunset, on 1 October 2016.

After considering feedback received in response to ASIC Consultation Paper 242 - *Remaking ASIC class orders on horse racing syndicates and horse breeding schemes (CP 242)*, ASIC will continue the substantive effect of the relief under [CO 02/172], [CO 02/178] and [CO 02/319], subject to some non-fundamental changes, in a single legislative instrument: ASIC Corporations (Horse Schemes) Instrument 2016/790. Accordingly, the three Class Orders serve no purpose and ought to be repealed. Despite the repeal of [CO 02/319] by the Repeal Instrument, ASIC Corporations (Horse Schemes) Instrument 2016/790 contains a saving

provision that will continue the registration relief under [CO 02/319] until 31 December 2016. This arrangement allows promoters and managers to continue to rely on the registration relief under [CO 02/319] for a reasonable period while ASIC considers applications from bodies to be approved as lead regulators under ASIC Corporations (Horse Schemes) Instrument 2016/790. ASIC Corporations (Horse Schemes) Instrument 2016/790 also provides in relation to small scale private stallion schemes that the requirement for a stallion scheme agreement to include a statement that ASIC Corporations (Horse Schemes) Instrument 2016/790 is being relied on by the operator is satisfied in relation to a stallion scheme agreement entered into prior to the commencement of that instrument where it includes a provision to the effect that [CO 02/178] was being relied on by the operator and the operator was entitled to rely on [CO 02/178] immediately prior to the commencement of ASIC Corporations (Horse Schemes) Instrument 2016/790. This ensures that existing stallion schemes eligible for relief under [CO 02/178] are likewise able to rely on the relief provided by ASIC Corporations (Horse Schemes) Instrument 2016/790.

2. Purpose of the instrument

The purpose of the Repeal Instrument is to repeal [CO 02/172], [CO 02/178] and [CO 02/319].

3. Operation of the instrument

Paragraph 1 of Schedule 1 of the instrument repeals [CO 02/172].

Paragraph 2 of Schedule 1 of the instrument repeals [CO 02/178].

Paragraph 3 of Schedule 1 of the instrument repeals [CO 02/319].

4. Consultation

In November 2015, ASIC issued CP 242 in relation to [CO 02/172], [CO 02/178] and [CO 02/319]. After considering the feedback received in response to CP 242, ASIC issued ASIC Corporations (Horse Schemes) Instrument 2016/790, which will continue the substantive effect of [CO 02/172], [CO 02/178] and [CO 02/319] in a single legislative instrument. As a result, [CO 02/172], [CO 02/178] and [CO 02/319] no longer serve any on-going purpose. The Repeal Instrument has been issued to cease the effect of the three Class Orders, subject to the saving provision in [CO 02/319] that will operate until 31 December 2016.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Corporations (Repeal) Instrument 2016/791

ASIC Corporations (Repeal) Instrument 2016/791 (the **Repeal Instrument**) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The Repeal Instrument will repeal:

- [CO 02/172] – *Horse breeding schemes — private broodmare syndication* ([CO 02/172]);
- [CO 02/178] – *Horse breeding schemes — private stallion syndication* ([CO 02/178]); and
- [CO 02/319] – *Horse racing syndicates* ([CO 02/319]).

[CO 02/172] and [CO 02/178] provide relief in relation to small scale private broodmare schemes and stallion schemes, respectively, from the requirements under the Act to register the scheme as a managed investment scheme, to hold an AFS licence under Chapter 7 of the Act (the promoter of small scale private stallion schemes is however required to hold an AFS licence in certain circumstances) and to provide a Product Disclosure Statement under Part 7.9 of the Act. Under the *Legislation Act 2003* (the LA), [CO 02/172] and [CO 02/178] will expire, or sunset, on 1 October 2017.

[CO 02/319] provides relief to the promoter and manager of a small scale horse racing syndicate from the requirement to register the syndicate as a managed investment scheme under section 601ED of the Act. If a promoter or manager is able to rely on the relief under [CO 02/319] in relation to a small scale horse racing syndicate, the managed investment scheme provisions in Chapter 5C of the Act will not apply in relation to the horse racing syndicate. Under the LA, [CO 02/319] will expire, or sunset, on 1 October 2016. The Repeal Instrument should repeal [CO 02/319], subject to a saving provision in [CO 02/319], because ASIC has issued ASIC Corporations (Horse Schemes) Instrument 2016/790, which will continue the substantive effect of the relief under [CO 02/319].

[CO 02/319] contains a saving provision that will continue the registration relief under [CO 02/319] until 31 December 2016. This arrangement allows promoters and managers to continue to rely on the registration relief under [CO 02/319] for a reasonable period while ASIC considers applications from bodies to be approved as lead regulators under ASIC Corporations (Horse Schemes) Instrument 2016/790.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.