

**NEW ZEALAND
THOROUGHBRED RACING**



NZ Thoroughbred Racing

Bloodstock Syndication Code of Practice

Guidance Pack

Updated November 2016

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1 Introduction

A new Bloodstock Syndication Code of Practice comes into force on 1 January 2016.

From mid-2014, NZ Thoroughbred Racing (NZTR) undertook a detailed review and update of the Bloodstock Syndication Code of Practice (COP, or 'the Code'). The purposes of this activity were to ensure that the COP:

- aligns with new legislation, particularly the Financial Markets Conduct Act 2013,
- aligns with prevailing sound business practices,
- no longer includes requirements of the previous Code that were either unnecessary or impractical,
- sets reasonable and practical standards for syndicate financial reporting,
- protects the interests of potential or participating syndicate members, and importantly,
- supports the future growth in bloodstock syndication.

The review and update has been undertaken under the oversight of the Integrity Committee and has involved:

- Legal advice
- Liaison with the RIU
- Consultation meetings with forums of Authorised Syndicators and NZTA representatives
- Consultation with the Financial Markets Authority
- Liaison with Harness Racing NZ to ensure much closer alignment of respective COPs

The new COP has been approved by each of:

- NZTR Integrity Committee,
- Financial Markets Authority,
- Judicial Control Authority,
- Dates Committee of the NZ Racing Board, and the
- Board of NZTR.

The new Code of Practice is included as Appendix 1.

Important note to readers:

Information contained in this Guidance Pack is provided to assist the understanding of current or prospective Authorised Syndicators, and persons otherwise intending offers of shares in thoroughbreds.

This does not cover all the detail needed to understand Authorised Syndication and Disclosure Statement requirements, rather it intends to give a base understanding, and highlight changes from the previous Code of Practice that applied until 31 December 2015.

The term 'syndicate' is used broadly in this guide, but could refer also to bloodstock partnerships or companies.

This Guidance is not a substitute for your understanding of the Code of Practice. Please take the time to review the Code of Practice in full.

While intended to be consistent with the Code of Practice, if any inconsistency arises between this guidance and the Code of Practice, the wording and meaning contained in the Code of Practice has absolute priority over this guidance.

2 Coverage of the Bloodstock Syndication Code of Practice

Persons wishing to sell shares in thoroughbreds for racing or breeding can opt into the COP.

If you are intending to advertise the opportunity to purchase a share in a thoroughbred, NZTR strongly advises that you apply to NZTR to become an Authorised Syndicator, and prepare and seek NZTR approval of necessary Disclosure Statements before advertising the offer.

Though you must be mindful of lead times, the process once understood is straightforward and provides all parties (you, NZTR and prospective members of your syndicate) with the necessary information and undertakings that will provide a good experience for all.

If you advertise without being an Authorised Syndicator and without approved Disclosure Statements, then your offer would be regulated by the Financial Markets Authority, under the Financial Markets Conduct Act. This requires you to have Financial Markets Authority approval of a Product Disclosure Statement that supports the offer. If you don't have this approval and advertise regardless, then you would be liable for criminal conviction.

The diagram below outlines in more detail:

Selling or leasing shares in thoroughbreds for racing or breeding? What you need to know....

Getting started....

Are you intending to advertise the horse on TV, radio, interviews, newspaper or magazine, website, bulk email or social media, seminar or other public media?

NO

Restrictions do not apply if you do not advertise in any way and only communicate the offer directly to people you already know (existing stable clients, friends etc).
It is recommended that an Owners Agreement be signed by all parties.

YES

Have you applied to NZTR and have been approved by NZTR as an Authorised Syndicator, and provided NZTR your signed Authorised Syndicator compliance agreement?

NO

Financial Markets Conduct Act 2013
Any advertisement for selling or leasing of a share in a horse for racing or breeding is a Regulated Offer under this Act, and must be undertaken only if a Product Disclosure Statement (PDS) has been properly prepared and filed with the Companies Office. The PDS must also be provided to any person who is interested in investing in the horse.

YES

Financial Markets Conduct (Equine Bloodstock) Exemption Notice 2016 & NZTR Bloodstock Syndication Code of Practice

For any Authorised Syndicator intending to advertise an offer, a Disclosure Statement is required to be prepared by the Authorised Syndicator in accordance with the Bloodstock Syndication Code of Practice, and approved by NZTR.

Advertising offers in a syndicate can only be made after the relevant Disclosure Statement has been approved by NZTR, and must contain necessary disclosures.

Without NZTR approved Disc. Stmt.

The regulatory requirements that must be met to file a PDS are significantly more onerous than a Disclosure Statement prepared in accordance with the Bloodstock Syndication Code of Practice.

Financial Markets Authority Enforcement

Advertising without a properly prepared and registered PDS is an offence under the Financial Markets Conduct Act. Conviction could lead to imprisonment or fines of up to \$500,000.

NZTR approved Disc. Stmt.

Whether or not an Authorised Syndicator, all advertised offers must comply with the "fair dealing" provisions in Part 2 of the Financial Markets Conduct Act 2013.

Once the syndicate is formed, Applicant Acknowledgement forms and owner details must be provided to NZTR. Any advertised syndicate established by an Authorised Syndicator must also have a Syndicate Agreement.

The message in short, if you intend advertising, then you should apply to be an Authorised Syndicator and then adhere to the COP for any advertised offer.

3 Authorised Syndicator

3.1 Application and Approval

Criteria is outlined in Section 2 of the COP, though the following is a helpful guide.

To become an Authorised Syndicator, you must submit an application with:

- A Police Vetting form (your authorisation for NZTR to check for any criminal convictions)
- 2 personal references (financial reference and a character reference)
- Payment of the application fee (currently \$575.00 including GST)
- Proof of identity (Birth Certificate, Passport or Drivers Licence)
- Passport sized photograph
- A completed Compliance Agreement (see Appendix 2)

You must also arrange an interview with a Racing Integrity Unit Investigator or Stipendiary Steward who will assess your knowledge, experience, likely competence and suitability, and provide a recommendation to NZTR.

It is unlikely that you would be approved by NZTR as an Authorised Syndicator if you:

- Are or have been Disqualified under the Rules of Racing of any racing Code
- Are not aged at least 20 years old
- Do not display sufficient knowledge and competence
- Have an unsatisfactory criminal record, particularly if convicted of fraud or dishonesty offences.
- Are deemed to be not of good character
- If it is evident from credit record checks or other evidence that you do not have sound financial history.

There is a right of appeal to NZTR if your application is declined.

3.2 Existing Authorised Syndicators

If you are already an Authorised Syndicator, the following applies:

- Before Disclosure Statements can be approved under the new COP, existing Authorised Syndicators will be asked to read, sign and return the Compliance Agreement to ensure understanding and acknowledgement of the new COP. A copy of the Compliance Agreement is included in Appendix 2.
- No fees apply for the continuation of Authorised Syndicator status.
- An 'Amateur Authorised Syndicator' is no longer provided for nor recognised under the COP. Anyone previously approved as an Amateur Authorised Syndicator, is now simply recognised by NZTR as an Authorised Syndicator.
- NZTR may suspend or cancel the Authorised Syndicator status of a person if no Disclosure Statements from that person have been approved by the Board within the previous 36 months. In that case suspension or cancellation takes effect 28 days after

written advice of this intention from the Board to the person, and if no valid objection is delivered to the Board by the Promoter within that period. The Promoter may request the reinstatement of their Authorised Syndicator status without fees or charges. In mid 2016 and from any time thereafter, NZTR will review whether any current Authorised Syndicators could be regarded as 'lapsed' and if any, will go through this process of suspension or cancellation.

3.3 Authorised Syndicator Logo

To assist the marketing and promotion of Authorised Syndicators who meet and acknowledge the Terms and Conditions of use, NZTR may grant the use of the Authorised Syndicators Logo.

The Terms and Conditions including Authorised Syndicators acknowledgement is included in Appendix 3.



4 Key aspects of the NZTR Bloodstock Syndication Code of Practice

Note these are principally a record of changes made to the Code of Practice with effect from 1 January 2016.

4.1 Two different legitimate business models recognised

This is the most significant change to the COP

- COP recognises both shared ownership models ('fixed monthly payments' and 'invoice on costs'), and includes disclosure, reporting and oversight provisions appropriate to each model.
- 'Invoice on costs' shared ownership models do not require preparation of financial statements.
[Refer to COP clause 6.4 and the definition of Financial Statements]

Clause 6.4 provides clear definition and should be fully assessed when considering your method of operation.

'Fixed Monthly Payments'

- This syndicate type is loosely labelled as 'fixed monthly payments' though payments could be on any regular basis.
- Broadly speaking the previous COP was only practical if a syndicate was of this type and could hold capital funds and would typically require regular payments for the care and training of the horse(s).
- Prize money earned could be either distributed to owners or (more likely) retained in the syndicate account as an offset to future costs.
- The syndicate members therefore would share an interest in both the horse(s) and the money held by the syndicator in the syndicate bank account.
- On dissolution of the syndicate the members would receive their proportionate share of residual funds in the syndicate's bank account and any net proceeds of the sale of the horse(s).
- Preparation of financial accounts is required.

'Invoice on Costs'

- In addition to the 'fixed monthly payments' model, the new COP also recognises that a syndicator or a trainer (not necessarily but likely to be a Class A trainer) may establish a syndicate whereby the only capital payment is made initially for a share of the total purchase price for the horse, associated purchase costs (possibly bloodstock insurance), and syndicate establishment costs.
- Ongoing costs would be individually invoiced in the relevant ownership percentage to each syndicate member, and stakes winnings would be provided to syndicate members unless netted off against recent costs.
- Syndicate members are not partners, rather they are simply co-owners of the horse and only share an interest in the horse (no money is held by the syndicator).
- On dissolution the only capital that would be distributed would be the net proceeds on sale of the horse.
- With no money held on behalf of syndicate members, there is no requirement for financial accounts, however syndicate members or NZTR can request supporting invoices or other evidence for costs invoiced.

4.2 Syndicate Agreement

Consistent with the previous COP, a Syndicate Agreement or other governing document must accompany syndicate Disclosure Statements. In addition to any standing requirements, the new COP stipulates that:

- The syndicate agreement must contain a disputes resolution process.
[Refer to COP clause 22.4]
- If the syndicate has a leased horse with a right of purchase, the Syndicate Agreement must contain a provision to the effect that two valuation reports must accompany any recommendation to syndicate members, to exercise any such right of purchase.
[Refer to COP clause 22.5]

4.3 Disclosure Requirements

- Requirement for disclosure of any commissions, fees, rebates or benefits that the syndicator may receive, and any interest that the syndicator has or had in the bloodstock.
[Refer COP clause 4.2f]

4.4 Requirement for Valuations

- Two independent valuations are required regardless of how the horse has been purchased.
- The valuers must be listed on NZTR's list of registered Bloodstock Valuers.
- The only exception to the requirement for two valuations is when the syndicate has simply leased the horse.
- If a horse is leased with a right of purchase, then the COP requires that the Syndicate Agreement must state that 2 valuations and a vet certificate would be obtained prior to a decision to exercise the right of purchase.
[Refer to COP clauses 10, 22.5]

4.5 Fair Dealing Provisions

- New COP explicitly highlights necessary compliance with fair dealing provisions of the FMCA
[Refer to COP clause 14]

4.6 Advertising

- Prior approval of advertising by NZTR is not seen as necessary, particularly for syndicators who are well established and knowledgeable of requirements.
- Advertising must comply with fair dealing provisions of the FMCA
(Note: while not explicit in the COP, it is relevant to note that Syndicators when advertising offers, are also subject to the Fair Trading Act and the Consumer Guarantees Act.)
- All advertising must be clear, factual, not misleading, comply with existing laws, and contain disclaimers about:
 - the advertiser being an Authorised Syndicator and how the Disclosure Statement can be obtained, and that
 - issue of shares can only be made after investors have received and signed the Disclosure Statement.

[Refer to COP clauses 3.1, 5 & 14]

4.7 Syndicator Trustee Responsibilities

- COP has been amended to exclude any requirement for NZTR to have specific controls over a bank account containing participant funds held by a promoter before a minimum subscription is met.
- Rather, the approach has been taken that the COP clearly outlines that the promoter is holding such money in trust.
[Refer COP clauses 4.1, 6.3 & 7.2]

4.8 Issuance of Shares

- Requires that the Disclosure Statement has been approved by NZTR, and that the investor(s) has provided the syndicator with signed acknowledgement of the Disclosure Statement before any issuance of shares.
- If a horse is leased with a right of purchase, then the COP requires that syndicate agreement to state that 2 valuations and a vet certificate would be obtained prior to a decision to exercise the right or purchase.
[Refer COP clause 4]

4.9 Underwritten Syndicate / Period for Subscription

- A minimum level of subscription is not required if the ownership of the horse is underwritten by the syndicator. [Refer COP clause 4.1d]
- If not underwritten, the COP allows for a period of up to 8 months (rather than 4 currently stipulated) for the syndicator to attract sufficient members and funds to the syndicate. [Refer COP clause 7.1]

4.10 Audit and Accounting Statements requirement

- Provision of Financial Statements, and regular written reports to syndicate members are required.
- Requirements for Audit are no longer mandatory unless aggregate capital of \$2m and more than 50 members.
- Audit of a syndicate is required if persons holding more than 50% of syndicate shares vote for an audit to be undertaken.
- NZTR can require an audit to be undertaken for a syndicate(s).
[Refer to COP clause 12]

Minimum standards requirements for Financial Statements are included in section 6.1 of this Guidance document.

4.11 Record Keeping

- Syndicate records must be retained for a period of at least seven years.
[Refer to COP clause 16]

4.12 Greenfields Syndication

- Provisions within the COP that would enable a syndicate to be formed and capital raised, with the intention to subsequently purchase bloodstock for racing or breeding purposes.
[Refer to COP clauses 4.2(c) & 10.4]

5 Submission of required forms and documents

5.1 Application for Authorised Syndicator status

As outlined in Section 3.1 of this guidance

5.2 Approval of Disclosure Statements

A Disclosure Statement must be submitted to and approved by NZTR along with the syndicate governing document conforming to COP clause 22. The governing document will usually be a Syndicate Agreement, but could be a Partnership Agreement or if a Bloodstock Company, a Constitution.

The Disclosure Statement (as provided as part of the COP in Appendix 1, and in accordance with COP clauses 4 and 10) must be fully completed and accompanied by (for each horse if more than one):

- A vet certificate
- A Valuation Report from each of two Registered Bloodstock Valuers (not required if the horse is a leased horse).

5.3 Advertising

Though NZTR must be advised of advertising intentions, the advertisement itself does not need to be approved in advance, though an Authorised Syndicator if he/she wishes may submit the advertisement for NZTR review (COP clause 5.4)

Advertising must however meet each of the requirements of the COP (clauses 3.1 and 5).

5.4 Formation of the Syndicate

Once the syndicate is formed, the Syndicator should promptly provide NZTR with:

- Change of Ownership forms with each syndicate member's Owner details (this can be in the form of a spreadsheet provided that the Syndicate Agreement states that the Authorised Syndicator has Authority to Sign),
- The Signed Promoter Declaration (section 13 of the Disclosure Statement), and
- For each syndicate member, the signed Applicant Acknowledgement form (section 14 of the Disclosure Statement).

The horse(s) will not be registered for racing or breeding if these details and forms are not correctly provided to NZTR.

6 Ongoing Requirements

6.1 Financial Reporting requirements

Other than for a syndicate that meets the criteria set out in COP clause 6.4, Financial Reports must be produced. Each syndicate must operate a bank account(s) solely for that syndicate.

At a minimum the Financial Reports must include:

1 - Balance Sheet (Statement of Financial Position), including:

- Balance of funds in the bank account(s)
- Accounts Receivable
- Accounts Payable
- Value of Bloodstock
- Members Funds

2 - Profit and Loss (Statement of Financial Performance), detailing:

- Members contributions recognised as revenue *
- Prizemoney
- Interest income
- Detailed breakdown of expenses incurred

** Note: Members contributions could alternatively be shown in the Financial Reports as a Balance Sheet item.*

3 - Movement of member's funds.

A schedule or chart detailing for each syndicate member a record of:

- contributions made by member to the syndicate
- distributions from the syndicate to the members

4 - Confirmation of funds

If the Financial Reports are not audited, the Financial Reports must also be accompanied by a bank confirmation of closing bank account balance, or a copy of the Bank Statement at the end of the financial period.

5 - Comparative periods

Subsequent to the first year of operation, the Balance Sheet and Profit and Loss must show a prior year comparison.

6 – Insured value of bloodstock

A note detailing the insured value of each horse in the syndicate as at the end of the reporting period.

Not a requirement, but suggested as a useful inclusion to accompany the Financial Reports would be a report showing the performance of the horse in trials and races, showing all the relevant facts (Venue, Class, Distance, Track Rating, Weight, Barrier, Tote Odds, Result, Time, Prizemoney, Winner).

6.2 NZTR requests

NZTR may request a copy of the syndicate Financial Reports, or for an 'invoice on costs' syndicate, a copy of invoices sent to members and supporting evidence.

NZTR may request that the Authorised Syndicator conduct an audit of the syndicate Financial Reports.

7 Regulatory Framework

The following is noted for information.

7.1 Financial Markets Conduct Act 2013

This legislation is in force and ultimately replaces the Securities Act 1978, established the Financial Markets Authority and disestablished the Securities Commission.

All offers of financial products, including advertised offers of bloodstock are governed and enforced by the Financial Markets Authority, unless exempted under the terms of an exemption notice or if designated by the Financial Markets Authority as being outside the requirements of the Financial Markets Conduct Act.

7.2 The Financial Markets Conduct (Equine Bloodstock) Exemption Notice 2016

Offers of bloodstock syndication which are made in full compliance with either the NZTR or the HRNZ Bloodstock Syndication Code of Practice are exempted from the Financial Markets Conduct Act by the Financial Markets Conduct (Equine Bloodstock) Exemption Notice 2016.

Where a person has been approved as an Authorised Syndicator, and his/her Disclosure Statements are approved by NZTR, then the Bloodstock Exemption notice means that the syndication offers are principally regulated by NZTR rather than the Financial Markets Authority.

8 Help and assistance

NZTR is keen to assist current and prospective Authorised Syndicators and syndicate members understanding of the new Code of Practice.

For assistance please contact:

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or

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