

CORRECTED VERSION

ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into the Viability of the Victorian Thoroughbred/Standardbred Breeding Industries

Melbourne — 22 August 2005

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Mr T. Fleiter, Principal, Managing Director, Sire Custodians Ltd.

The CHAIR — The Economic Development Committee welcomes Tony Fleiter, Managing Director of Sire Custodians Ltd, to its hearing today. You are very welcome, Tony; thank you very much for attending. We are going to listen with great interest to what you have to tell us. The Economic Development Committee is one of about 11 all-party committees of state Parliament. We have been asked to investigate and report back to the Parliament on the viability of Victoria's thoroughbred and standardbred breeding industries. We were due to do that by the end of September, but we have got so many people wanting to talk to us and we want to talk to so many people that it will be a bit later than that. This is a formal hearing and as such your comments are being recorded by Hansard who will produce a transcript for you in about two weeks. We will provide that to you, and you are welcome to correct any errors that have been made. The hearing today is a public hearing, so some people will wander in and out. Media may attend as well. What you say to us today is covered by parliamentary privilege, but that does not extend once you go outside. We hope you do not need that, but we do need to point that out to you. Your name has come up in a number of quarters during the course of this inquiry, so we are delighted to have you along. You are going to tell us something, I hope, about Sire Custodians and about syndication. Syndication to us is one of these mysterious things that goes on.

Mr FLEITER — You can syndicate anything now, really.

The CHAIR — Right. We are interested in horse syndication in particular, though, and stallion syndication even more specifically. Perhaps we will just let you say a few words to us, and then we will throw some questions at you if that suits.

Mr FLEITER — Yes, thank you, Tony. I thought rather than going to great lengths with a narrative of what I generally think about the industry I would explain where I come from and where I fit currently. I have prepared a narrative which I distributed, although since that was done a few people in my office have read it and pointed out all the mistakes in the English and where paragraphs were and where they should have been.

The CHAIR — They are good that way, aren't they?

Mr FLEITER — That is right. You regret you ever did it in the end. I have amended it and delivered some amended copies to Andrea just before I came in. There is nothing much that is significantly different except a few suggested strategies that are additional. In the financials, regarding the costs of syndication, page 36 is substantially amended in terms of the figures. I have split them up into fixed costs and optional or negotiable costs, so that when we get into discussing that we are really getting a true idea of what are the costs of actually complying with the regulations as such and what are the costs payable to the Registrar for registering a racehorse in a syndicate under the Rules of Racing, and in the case of managed investment schemes what are the additional costs associated with ASIC registration. With a lot of the costs being quoted for various racehorse and stallion syndicates I would love to be earning the difference between what it really does cost and what has been quoted. I would be a much wealthier man than I am presently.

I have added two pages following that and a second appendix to the lecture notes, which in the revised submission that I delivered today, in Appendix 2, I split the compliance regime between lead regulator and ASIC — in other words the Registrar — and state lead regulators and ASIC, because I think there is a lot of confusion in the industry as to what is Racing Victoria Ltd's role and what is ASIC's role. I could probably help both the lead regulator and ASIC in working out what their roles really are, because I do not think, particularly from ASIC's point of view, there is much going on there. I do not mean that as a criticism. I fully understand that over the last couple of years ASIC, since the introduction of the AFS licence legislation — I have two AFS licences: one for Sire Custodians and another for a company called Priority Plus Funds Management Limited — has obviously been grappling with the new legislation and with a whole lot of industries like the horseracing industry, and they simply do not have the available surveillance and compliance personnel to actively survey all the industries that they are responsible for under this new regime.

The CHAIR — Let us start there, because that is something that has been drawn to our attention constantly during this inquiry. The criticism is that ASIC is interpreting too literally the legislation governing shares. They are treating a share in a racehorse like a share as a financial investment. That is fine if you are at the Sydney Easter sale and you might be purchasing a horse for \$1 million, but if you are down at the pub looking at the sign on the window that says, 'Shares for sale in the young colt Three Legs out of Whatever' and you want \$100 for it, it seems to be a case of overkill. Is it a question of ASIC still finding its way? We are going to talk to ASIC in a few weeks, but what is your feeling on that?

Mr FLEITER — My feeling on that is the deals I have done down at the pub are probably the ones where I have actually needed the ASIC protection. It is the deals I have done in the sobriety of the sales complex out at William Inglis that are probably the ones that have been more to my economic benefit. Really what is being said at the moment by a whole lot of people in the industry is that ASIC has thrown this great big web over horseracing and horse breeding and it should not be there. I have been practising in this area now for 20 years. I did my first stallion syndicate back when I was a 29-year-old solicitor, and I am 52 now — my kids inform me I am soon to be 53 — so I have been doing them quite a few years. In fact over the last 10 or 15 years nothing has changed except that the horseracing industry now realises that if it does not comply, it potentially will either have somebody complain to ASIC or enforce their obligations under the law.

Ten and 15 years ago people were made to refund money that they got under syndications that were undertaken illegally. It is nothing new, be it racehorses or Stallion syndicates. It is really a situation that the lights have only just turned on for the thoroughbred industry, not that the lights have just turned on for ASIC. There is not much difference in the wording of the class orders now from what they were 10 years ago in stallions and racehorses, and it is just now that everybody has become much more compliance conscious.

The CHAIR — This is because ASIC has determined that it will start enforcing these laws across the board?

Mr FLEITER — I do not think it really started with ASIC, to tell you the truth. It started with Racing New South Wales. I think I have got the only unrestricted racehorse syndicators licence in Australia, and I do managed investment schemes and also stallions. I have got stallions that are worth from an estimate for Redoute's Choice of \$200 million today to Elvstroem — that has just been syndicated here — at \$12.5 million. Denon has been done at \$30 000 a share for 40 shares. I have got them at varying levels of the market. Probably in capital value that is \$400 million to \$500 million worth of stallion shares I have got under management. But the breeding sector, particularly in New South Wales, has been much more conscious of the need to be compliant, if you like, and has had me doing the compliance work for it for a range of leading stallions ever since the mid-1990s.

When the transition period to the new legislation commenced in February 2002, which is effectively when it commenced, I converted my licence from an old dealers licence to an AFS licence, which is the current regime. That was what everybody in the racing industry was also supposed to do. In fact all the racehorse syndications that were undertaken in 2002 and approved by lead regulators throughout Australia in the racing industry were undertaken in contravention of the Corporations Act and Class Order 319, because that Class Order clearly says that anybody who wants to form a racehorse syndicate and get it approved by a lead regulator must have an AFS licence. You could continue to manage syndicates that were registered prior to that date for the transitional period of the new legislation up until 2004, but if you wanted to register a new syndicate you had to have a new licence; you had to convert your licence. Converting your licence was not difficult. In my office it would take a secretary 2 hours online with ASIC, and then you lodge a few forms.

The CHAIR — This requirement is for the purpose of advertising shares publicly?

Mr FLEITER — That was for the purposes of syndicators becoming compliant under the new legislation.

The CHAIR — Yes, where syndicators wished to advertise shares in horseracing — —

Mr FLEITER — No, hold on. There are a number of areas. This is for licensees to be compliant, and this is where the furore happened with the new legislation. What happened was I got my licence, and I was the only one to have a licence. ASIC then did surveillance on me because I was the one who converted my licence, then went out to see Racing New South Wales and realised that all the racehorse syndicators in 2002 were still syndicating horses and getting product disclosure statements approved by all the lead regulators in contravention of the Class Order. You will see there is, subsequent to the 2002 Class Order, an amendment to the Class Order, because I was contacted by a number of lead regulators and ASIC, who said, 'How do you fix the problem?'. I said, 'Unless you want to invalidate every racehorse syndication that your lead regulators have approved in 2002 you have got to amend the Class Order and allow syndicators under old licences to continue to register new syndicates for the duration of the transitional period', which really just deferred the digestion and compliance issues with the new legislation from 2002 to 2004.

Consequently all my clients, particularly in the stallion industry, took advantage of the transitional period, and all my stallion syndicates, and subsequently all my new ones, I registered as managed investment schemes with ASIC. I have got 30 stallion syndicates registered with ASIC as managed investment schemes. I have got four Danehill colts registered with ASIC and a couple of bigger 2000-share and 1500-share managed investment scheme racehorse syndicates that I got for the Brisbane Lions. They are all registered with ASIC. When Racing New South Wales put out a circular to all their trainers and clients telling everybody they had to convert their licences and advised that there was a sense of urgency, it was really to come into compliance mode to do in 2003 what the industry should have done in 2002.

I do not believe there has really been any problem with the regulations as such. I believe there are two issues. Firstly, ASIC never sat down with its lead regulators to whom it delegates the authority to regulate racehorse syndicates — let us focus on that — to exempt them from the requirement to be registered as managed investment schemes. They never sat down with their lead regulators and told them what was expected of them or gave them any sort of formal training. It is not rocket science, but I do not hold the lead regulators responsible in any way at all. I hold ASIC responsible, because if you are going to delegate a responsibility to somebody under a Class Order to be exempt from compliance with the Corporations Law, as long as they do A, B, C and D, then you should at least sit down and train your lead regulators as to what they have to do in saying, ‘This is A, B, C and D. This is the job we are now doing on behalf of ASIC’.

The CHAIR — This has not been done at all?

Mr FLEITER — I do not believe it has been done at all.

The CHAIR — Because if it had been, then RVL would not be expressing any concern about the way in which this transition is happening.

Mr FLEITER — That is right. I believe ASIC has been snowed over this whole period by a lack of resources, and there has not been anybody to sit down with all the lead regulators and properly explain to them what they have got to do.

The CHAIR — I wonder if the issue is a bit more fundamental than that, though. I accept that we will ask questions of ASIC and you are not here to answer questions for ASIC, but as much as we are looking at the breeding industry and we understand that involves a number of people who are in it as a business, it is a livelihood, and regulation, probity, issues of integrity and that side of it are paramount, there is an awful lot who treat it as a hobby. The Tax Office has very formal rules about when it is a hobby, but by and large people who own horses own them for the purpose of a hobby, an interest. I wonder whether that distinction is lost, because it would seem to me, regardless of the impasse that exists between ASIC and lead regulators, the suggestion that offering a share in a horse for racing purposes — which I think in 95 per cent of cases, at the lower end of the market anyway, would be just for recreation — presuming that requires some sort of protective device because it could be considered to be an investment, is a case of overkill. It is a bit like saying if we are going to operate Tattslotto syndicates down at the newsagent, we will have to give you this prospectus before you hand over your \$100 to be in our little syndicate. At what point do we kill the fun on the recreation side of it and say it is all going to be regarded as business?

Mr FLEITER — I have a number of points on that. Firstly, there are two types of private racehorse syndication. I set them out on syndication notes on page 25. One is private syndication of a racehorse and the other is public syndication of a racehorse. Under private syndication of racehorses there are two categories. There are the friends and relatives. Personally my relatives are probably the people who always run from me at 100 miles an hour now because they have had a gutful of the horses that I have been syndicating to them over the last 30 years. My family would argue that that should be the most heavily regulated group. However, friends, relatives et cetera are clearly non-commercial and they do not have to be registered — it is nothing to do with regulation. They are not advertised and they are simply the recreational family groups, as you say. The only costs associated with those sorts of syndicates are registering a racehorse for \$100 with the registrar, and registration of a syndicate for \$250. So the friends and relatives type are not in any way regulated by ASIC and the regulations simply do not apply.

Then you get to the private offer which is a more commercial offer than simply a friends and relatives group. I believe this even covers racehorse trainers and breeders and the smaller non-commercial breeders. If I am a trainer I believe I can still offer one horse into 20 shares, four horses into five shares. I cannot put an ad in the paper or on radio, but otherwise I am free to do anything I like to syndicate up to four horses into five shares to people with

whom I already know or have had dealings as long as I do not breach the total number of issued shares of 20 shares or a total cumulative share value of \$2 million. Section 1012E(5) of the Corporations Act further clarifies what is a private offer and therefore is also exempt from the syndication regulations.

The CHAIR — But is that not in itself artificial? My experience of the industry has been that if a trainer is offering a horse, he has not worked out how many shares. In fact the horse will eventually race in an ownership of a shareholding that is determined by how many shareholders he has got interested and how much money they are prepared to put in at the time he or she wants to sign the papers. It is not like they are saying, ‘This year I can only offer 20 so I must have five in this horse — —

Mr FLEITER — I do not believe that really. I have been a solicitor now for a long time and I would average a call a week from a disgruntled person who has bought a cheap share in a horse and claims to have been duded by a trainer or a breeder. I simply say the cost of your remedy — you cannot afford to involve me in it. I hear what you are saying. Now what happens is — —

The CHAIR — But is it not a question of applying — the lead regulator in this case is perfectly entitled under the Rules of Racing at the moment I would imagine to prescribe exactly how these things will be transacted. It does not require ASIC to be coming in and saying — —

Mr FLEITER — No, but this private offer provision in the Act does not specifically relate to racehorses, it relates to anything. I am saying the racehorse industry suggesting that a trainer or a small breeder or an owner saying, ‘I am prevented from syndicating one or two shares I have got left in a horse because I do it mostly privately with friends, but I just want to be able to advertise one or two shares’, is rubbish. If he wants to advertise, he can he do that under the Corporations Act as it is now, so long as he engages a licensed Syndicator to issue a PDS which complies with the ICO and gets approval from the Lead Regulator.

The CHAIR — He cannot do it repeatedly though is what you are saying?

Mr FLEITER — There would be very few people who were not doing it very much commercially who would do more than three or four horses a year. Most syndicators in the country do not do more than three or four; most trainers, unless they were the major city-based trainers, would be hard-pressed to do it. I mean I spent a couple of million dollars of horses in the last couple of years and over \$200 000 on advertising and I am hard-pressed doing 15, and I have got them trained by the best trainers in New South Wales and Victoria.

The CHAIR — So your view is that can be done quite simply — —

Mr FLEITER — My view is that it is a storm in a teacup and the criticism is promoted out of ignorance and is unfounded.

The CHAIR — We probably do not need to go into all the definitions there.

Mr FLEITER — To just finish off, if you then go to the expensive one, public syndication, which is the Class Order 319 syndicates, the one that does involve the lead regulator, I have heard that it costs thousands upon thousands — \$25 000 — to syndicate a racehorse under Class Order 319. If you go to example B on the costs page, page 36, you will see your fixed costs under the Class Order. I always get a valuation. You have got to have a vet certificate. You have to lodge the PDS for registration with the registrar. You lodge a syndicate for registration. Your costs total, assuming that you do get a valuation and you do pay \$550 for your vet certificate, the maximum you are up for is \$1303 to be fully compliant and fully registered. That is if you do not use the services of Sire Custodians. If you do use the services of Sire Custodians — and I have got 20 authorised representatives who do rather than go and get their own AFS licence — the charge is \$3750 per syndicate. If you use the full services of Sire Custodians, in other words, your total costs are \$5000 to get a horse up. But any syndicator can effectively comply with the regulations for around \$1300. All the inflated figures that are being quoted are really to do with the costs of advertising and promotion.

The CHAIR — If we accept as a committee that one of the things that needs to happen if we are going to get more owners into the industry — and that itself is great because it helps build demand for horses at yearling sales — is encourage more syndication, but there is this current level of misunderstanding, what does RVL need to do at this point in time in conjunction with ASIC to work through this?

Mr FLEITER — I could sound very egotistical, but I do not mean to. I believe ASIC and the lead regulators should come to the lectures I will be running in Sydney and Melbourne. Seriously, I believe I know the regulations as well as anybody and I know ASIC's benchmark for surveillance begins in my office. I have two full-time staff, an accountant and an accounts clerk. ASIC has not only auditors who have done two surveillances audits on Sire Custodians, focusing much more on stallion syndicates and racehorse syndicates, but they have also audited my compliance auditor's template. In stallions we deal in a lot of money; I can understand that. With racehorses we are syndicating horses worth from \$500 000 each, down to cheaper horses worth \$10 000 each. Basically I believe it is not rocket science and it would be a simple matter for ASIC and the lead regulators to attend a workshop to get it clear with the syndicators. I do not mean to exclude any syndicators and there was a very productive workshop at Racing Victoria a couple months ago. But that could be the start of a number — one a year in each state or centralised in Racing Victoria — for ASIC and whoever was going to be the surveillance officer from ASIC on the horseracing industry and the lead regulators, because I believe a lot of it can be done by the lead regulator. However, if the lead regulator is going to properly regulate the industry the lead regulators in each state have to be given the resources. I do not believe they have got the resources with even a simplistic knowledge of the Corporations Act to be able to do it entirely on their own. Some people are at Racing Victoria. I am aware that John Goldstraw is here, but I am sure his bosses do not want him putting on an ASIC hat, nor does he want to have to go around wearing a bulletproof vest doing ASIC compliance work, informing people of breaches and imposing penalties under the Corporations Law on behalf of ASIC.

The CHAIR — We believe something has got to be done. We accept there is a need to ease the entry point for new owners into the industry and syndication is an important way of doing that, but at the moment the relationship seems to be ASIC goes out on Thursdays and buys a copy of the *Winning Post* and just rings people up and says, 'Did you know that — —

Mr FLEITER — With respect, ASIC sent me a fax in 2004 instructing me to withdraw an advertisement from the *Australian* newspaper because it did not comply with whatever section of the Act. I had left off the bottom the words 'Product disclosure statement and application form available'. I lost my cool with them and asked the very polite ASIC person on the other end of the phone why they did not pick up a *Sportsman* and a *Winning Post* and look at all the other non-compliant ads? They said, 'What are they?'. The only reason they were even aware of my advertisement was because they do read papers like the *Australian Financial Review* and the *Australian*.

The CHAIR — We will just have to take note of this ahead of our meeting with ASIC. We understand, for example, the ATO does not have a large number of people inside the organisation who are familiar with the racing industry. I think they have two or three that work in the Newcastle office. Would ASIC be the same? The legislation is framed to cover all sorts of industries, but they do not actually understand — —

Mr FLEITER — Yes. It gets difficult. At the moment if I lodged an application to register a managed investment scheme I do not know what office of ASIC is going to examine and approve that scheme.

The CHAIR — It could be sent off anywhere.

Mr FLEITER — Three of the last five have been in Melbourne, but I have had them done in Sydney. My office is across the road from ASIC in Sydney. I lodge them across the road, but they are assessed in Melbourne, Perth, Brisbane — I have even had them in Tasmania. My accountant and financial auditor and compliance auditor are also across the road. It was the ASIC office from Perth that surveilled my compliance auditor. So they have this random allocation of documentation. I have got no problem with — I forget the name of the chap (Bill McNicoll) who came to do the surveillance on me. I have had the one officer, but he has had two or three assistants each time he has come. There is the one guy doing it, but he is responsible as far as I know for nearly all the small industries that are being surveilled.

The CHAIR — Tell us a little bit about stallions. The Inquiry has probably heard more about stallions and the role they play in the industry. It is very much a figurehead issue in the industry. We get the sense that certainly in Victoria compared to New South Wales the industry has a lack of capital so the typical problem facing a stallion owner in Victoria is that someone in the Hunter Valley will always be able to write out a bigger cheque. We tend to lose the stallions, but on the basis of trying to attract or secure the stallions in the first place, now that you have been involved with Elvstroem in his recent acquisition, if you would not mind just take us through the sorts of issues you have to deal with in undertaking the syndication work.

Mr FLEITER — I am very careful regarding my involvement in stallion syndicates when it starts because I have had the situation over my desk where I have prepared draft contracts and I know it is for the same stallion but I have told the studmaster not to tell me what it is, because most of them come across my desk. It is getting more and more difficult. The way it is going throughout the world now acquiring a top-class stallion is they are bought as racehorses as two-year-olds predominantly. I will be involved in Stratum when he retires to stud. He has already been sold, 40 per cent share of him, valuing him at \$16 million. He has had six races. I did the syndication of Snitzel last week and he was \$200 000 a share. They ran and finished first and second on Saturday in their second starts back as three-year-olds. They are already committed to go to stud: Stratum at Widden Stud next year and Snitzel at Arrowfield Stud next year. So if you want to get a stallion prospect you have got to be pretty quick with your cheque book when they are two and three-year-olds, and have the ability to put the money on the table. It can be an unlimited amount of money.

The CHAIR — So typically, in the case of Victoria, what we would expect to happen is that a good colt emerges in Victorian ownership and it is identified relatively early as a good stud prospect. The owners may then seek to source investment from other interests in Victoria to keep the emerging stallion in Victoria for two or three years down the track when it will go to stud. How difficult is that, if that is the starting proposition, given the relative size of the industry in Victoria as opposed to elsewhere?

Mr FLEITER — As I said in my paper, I do not sit in my office. I have been very much involved over the years in the Victorian industry as sales manager for Dalgetys, running the auctions and that, and I certainly have a soft spot for the Victorian industry. I believe there is too much focus on stallions and the results of the sales and everything, and I think you have got to harp on your positives. Racing in Victoria is outstanding, but the breeders are not as entrepreneurial as the breeders in New South Wales. When everybody was going broke with the tax schemes in the 1990s, that was probably a good thing. Having said that, what has happened over the last 10 to 15 years is that Coolmore Stud and Darley have decided to make the Hunter Valley their home and have developed two of the showplace studs in the world. Even the back roads at Coolmore are bituminised, and if you have never been and you are in any way interested in the horse industry, Coolmore is a must-see.

The CHAIR — Next week!

Mr FLEITER — I have seen most of the major studs throughout the world and I never thought I would see in Australia in my lifetime a stud of the magnitude of Coolmore. I have seen it all built. When I first went to the Hunter Valley in 1985 I saw one white post-and-rail fence at a stud called Segenhoe. There was no Darley Stud, there was no Arrowfield Stud, there was no Woodland Stud, and there was no Coolmore Stud. They have all been built from the ground up in the last 15 to 20 years. Coolmore has unlimited money; income from stallion service fees in Ireland is tax free. The best two and three-year-olds throughout Europe and America are bought by Coolmore. If they are not bought by Coolmore they are bought by Darley. We are seeing two sons of Giant's Causeway, the hot stallion in the northern hemisphere, now. As soon as his first two-year-olds showed out, Coolmore went and bought one of them and Darley went and bought the other one. Because the transit insurance was going to be \$5.5 million alone to get Giant's Causeway back to the Hunter Valley this season they scrapped him and brought his son. So they have already bought, and they regard him as the next great stallion in the northern hemisphere. Coolmore and Darley have already got a battery — a stableful — of his sons.

Mr JENKINS — I suppose the issue of the kids coming up is the difference between New South Wales and Victoria, and this is why we have got the Committee going, but we still have not worked out exactly what effect on the racing industry our second place, if you like, in the breeding industry is. Is it having a big effect on the racing industry?

Mr FLEITER — I believe probably too much focus is on the breeding industry from the point of determining whether it is essential for the interest of racing to have a strong breeding industry; surely a strong breeding industry can only help a racing industry. However, even in the Hunter Valley most people in New South Wales who breed horses lose money. That is why the small breeders, most of them, normally cry with joy when they sell a yearling for \$500 000 plus because it is a long time between drinks. Most people lose money breeding. In the racing industry, probably most people lose money as well; but in the racing industry people who want to race horses will go and buy them. They will either buy them at the sales in Melbourne or at the sales in Sydney, the Gold Coast or New Zealand. They will go anywhere and buy them. We have got horses racing in Melbourne now that have come from South Africa, America, Europe — they are coming in for the carnival from everywhere. I believe the people who race horses are not necessarily the people who breed them, and to a large extent with the

horses that race on our city tracks the breeding industry is to some extent not as relevant as one might initially think.

However, you have a situation when because we have got wall-to-wall racing at the moment and there is racing nearly every day and there are more race meetings and races than there have ever been before, you need more and more horses to be coming in each year to make up those fields. What you have not got coming through is this: when I was growing up, I would be put in the car every weekend and go to places like Berrigan and all that, and you would have one group of trainers drinking in one pub and the other group of trainers would drink in the other pub and they would all have their clients up there. A lot more horses were trained in rural communities for rural people and city people. Local farmers would have half a dozen horses out in the back paddock, but those horses in farming and country communities just do not exist today; they are not maintained any more. I say you have not got those horses feeding into country, provincial and city race meetings. When you are looking at field sizes, it is not so much the breeding industry or any magic wand you can run over the breeding industry; it is what has happened in the local farming communities and who used to own the horses and who currently owns the horses. The people in the rural communities who used to own the horses are not there any more.

At the same time as we have a lot of those farming communities not having the horses, you have more race meetings and races than you have ever had before. It is like John Schreck said in the paper in Sydney — I do not know whether it was reported down here last weekend — have the racing bodies in Australia got to take a deep breath and say we are no longer going to have the horses to service wall-to-wall racing? No, we are not going to have the owners providing the money to service wall-to-wall racing, If you went and asked trainers throughout Melbourne and Sydney who owes them money and who has not paid their training fees, I do not believe it would be a very happy picture.

The CHAIR — That is something we did read about in the paper on the weekend.

Mr FLEITER — Yes, and I am sure you are going to be reading more of it. That is why with the syndications that Sire Custodians runs we insist on shareholders in our horses putting funds into the trust account in advance, so that we always have the money in trust to pay for the horses that are being trained. Previously, 20 years ago, a trainer would have 50 horses in work and they would all be owned by 5 or 10 owners who would go down to the stable on a Sunday morning and have a few beers. Now those 50 horses might be owned by 200 people through syndication and the trainer has never met them; he does not know who they are. We are finding now that a lot of syndicators and some racing states have said the trainers can bill the owners directly if it is a syndicated horse. I know agistment farms and float companies and vets who will not service a horse where they have to send out divided accounts. I believe the industry, by breaking itself up and allowing those sorts of things to happen, is proliferating problems. Instead of trying to fix it they are actually compounding the problems. That is why I am so strong on the regulations. I believe everything is within the current regulations to solve most of racing's current bad payment problem and ownership problem if the industry became aware of it and put a template in place to promote ownership, and not only then to promote it but to manage ownership. Not only have you got to teach ASIC and the lead regulators, you have to teach trainers how to market; you have to put a marketing platform and resources in under trainers.

Some trainers are not very good at any form of communication at all. I know we send out reports on all our horses every week. I make up half of them — I do not make them up, I have someone in my office who rings them every week to actually get the information to give out to clients because we believe in client service. So all these trainers are running businesses like a small cottage industry; they are like a one-man band, like solicitors and sole practitioners, accountants and lawyers. It is a tough business to be a sole practitioner accountant or lawyer, and we are supposed to be computer literate and have email and things like that. I know some trainers who cannot even operate a computer, so how can they communicate with their accountant or with owners? All these aids are there to make it easy, but someone has to make sure that what is available to trainers in their business is actually utilised.

Mr JENKINS — I still do not see a real problem. It is not too hard to manage syndication provided there are simple rules in place?

Mr FLEITER — It is not too hard to manage syndication at all. I believe that. I would not be doing racehorse syndication at all unless I had critical mass in the stallions. I have clients who know and rely on me for the stallions. Denon is coming to stand in Victoria at \$30 000 a share. When it was given to me to do the documentation for the Denon syndicate, the syndicate agreement in Australia was only one aspect of that

syndication. The other aspect was the document to say that the Australian breeders only own half of it. The Italian syndicate owns the other half. How do they interact? What happens if the horse gets sick? I have got precedents for cross-hemisphere agreements and all that because I have done a number of them now. That syndicate has been done as a private syndicate under the Class Order for stallions, but it still has to have a syndicate deed and it has got to have a cross-hemisphere agreement. It is quite complex, and what is also quite complex is do you have infertility insurance first season at stud? You could not, because the stallion served his first season at stud in Italy, so we had to get loss-of-use insurance, like income protection insurance, here. People think you do not need lawyers for this, but the fact is that if you were putting up \$30 000 I am sure there is not one aspect of that product disclosure, or information memorandum in that case, that you would not want covered to protect your \$30 000. If you actually look at what is involved in it, the costs that are being charged to prepare that information memorandum and the documents in it are very cheap.

Mr JENKINS — Could I just ask a question to follow on a bit more about the syndication and the ownership issue? A few times in your submission you have talked about failure of race clubs to adequately cater for the needs of owners and breeders and RVL for promoting the ownership of race horses, promoting major race days and carnivals throughout the year and provincial country tracks to diversify the ownership experience. How difficult is that when you get large numbers of shareholders in a syndicate?

Mr FLEITER — My view on that is that you have to manage it. I have a race day manager in Melbourne and a race day manager in Sydney. We come and get all the tickets and we divvy them out. But we all send a fax to the race club on the Friday saying who is entitled to all the tickets. The only problem I have had this year is we had one of the favourites in the Queensland Derby and we got all our tickets, but the race club would only provide us with one race book, so we auctioned it! We had a horse worth a couple of million dollars, we had 15 tickets and the race club would give us only one race book, so when we got all our tickets we auctioned the race book and then went out and bought others. That is the biggest problem we have had all year.

The point is that the biggest thing that we find offends owners is tickets. No matter how small a share they might have in a horse, usually, if the syndicate manager is worth his salt, by the time they get to the race day ticketing office there should be arrangements in place to get them a ticket. I have found all the Victorian clubs very supportive in that arrangement. We have had no trouble with any of the metropolitan clubs or any of the provincial or country clubs. We send a fax before the race day. In fact even on Blue Diamond day a year ago when we won the last race we ended up with 50 owners in the bar downstairs after the last race because the committee went and let them in. That was a fun afternoon.

It is not really a problem provided the syndicator manages it, but if the syndicator does not manage it you have 100 people descending on the office and the poor people behind the desk do not know what they are doing. They are in a no-win situation. What offends owners when they go to the gate is to have to pay their \$10 to get into the course. That is why I think the owners ticket that Racing Victoria is talking about is a significant initiative that will help syndication and joint ownership, because something has got to happen to increase ownership. Quality horses are going to get more and more expensive so that is going to limit the number of people who can buy them as individuals and race them or join up with their friends and colleagues to race them. The only reason my business is flourishing in stallions is out of economic necessity. If the industry is going to embark on any form of initiative, just like with stallions, the only way the Australian studs can afford shares in stallions is to join syndicates, so if there is any meaningful ownership strategy going to be embarked upon by the industry, I believe it has to be able to chop up horses into bite-sized bits so that somebody who wants —

That is why we started a race club called the Platinum Club Syndicate. There are 2000 shares at \$665. We own four horses and five shares in each of three Danehill colts. We have people from central Australia and northern Queensland, from pensioners to hardened racing people — mates of mine who have all bought them just to see if I do send out the reports every Wednesday! They think I am a bit of a legend at the moment. Because their horses were all two-year-olds and not racing, I mentioned a couple of other horses in the reports. I said, 'To relieve your boredom, back this at 20 to 1', and it came in. So the next week all the emails said, 'Tony, have you got any tips for us today?' If you give service there are people out there who will have a share in a horse. With the Internet, it is no different to my office, once we have programmed a computer, whether we send out an email to 10 people or 2000. We have had the Brisbane Lions pick up on it and they launched at Sanctuary Cove the Brisbane Lions Race Club syndicate with four horses in it two weeks ago. That is going to involve 1500 shares and Voss and a couple of the other players are going to promote it, because they are just racing addicts as well.

Mr PULLEN — I suppose they would be better off in the horseracing industry at the moment, the way they are going.

Mr FLEITER — Probably would be, too! I barrack for Hawthorn so I am not doing much better.

Mr PULLEN — No, I am an Essendon supporter, too. Just on VOBIS, is there any way it can be improved to help the breeding industry particularly, because short of us getting Coolmore and Darley to relocate to Victoria it is going to be difficult. Have you any suggestions on that?

Mr FLEITER — I have seen VOBIS develop from the early days right through to where it is now. There is no doubt it has been a great scheme particularly with regard to country and provincial racing in terms of putting a lot more money out there and it has been the envy of the other states. I think it is damned if you do, damned if you don't. How much money can the breeding industry really afford to be recirculating itself into prize money? I do not know the answer to that.

I do not know what effect the BOB scheme will have on VOBIS. I was highly critical of the BOB scheme when it came in; in fact I called it the two bob scheme. I was saying that it is no match for VOBIS, but I also supported the argument of some of the commercial breeders in New South Wales, which asked whether New South Wales's breeding industry really needed it. There is no doubt in my mind that the commercial breeding industry in New South Wales does not need anything like the BOB scheme, VOBIS or anything else. However, in Australia we are getting to a stage where what goes on in the commercial industry does not really affect all that many players. We have the elite of Darley and Coolmore and a couple of other studs, and we have the breeders who do not stand stallions who elect to make an investment to send their mare to Redoute's Choice at \$220 000 a service, Encosta De Lago at \$110 000 a service or to a horse not in that league for whatever reason. My view is that VOBIS probably does affect the breeder who races and the person who races in the lower to middle part of the market. But VOBIS probably does not affect the hard-nosed professional racehorse owner like Lloyd Williams, Inghams or the hard-nosed commercial breeder. It is more relevant to the person who is not right up there in terms of the commercial and sense and wealth that the Darleys and Coolmores have.

The CHAIR — Typically with stallion syndicates 40 shares are offered. You said before that the price of horses is going up and the price of good stallions is now phenomenal, and one would imagine it is only going to increase, and the number of mares that a stallion will cover is rising quite dramatically. I think we doubled in the last 10 years, but it is still about 40 shares typically. Why is that? Is that just tradition?

Mr FLEITER — I do not know how that got into the Class Order, but I have always thought it was a bit strange. It is really a leftover from an historical situation. Twenty years ago a stallion typically would serve probably between 40 and 60 mares. The leading commercial stud in Victoria probably stood three or four stallions, and that was probably the same in New South Wales. Now stallions have to serve 100 mares plus to be commercial, and you have stallion syndicates more and more between 50 and 100 shares. I think I manage four stallion syndicates that are now 100 shares. Three of those are in New South Wales and are middle-market stallions, and Elvstroem at a total value of \$12.5 million at 100 shares. The whole deal is changing and the scene is changing. Some stallions are still done at that level. We have more stallions than ever before done at 40 shares, this year as it has turned out, but that just depends on the deal that is done at the time. It is a commercial thing. As I say in this paper, we will be making three recommendations — two of them were mentioned in the first draft of the paper, but one of them has since been added. We are making two recommendations to ASIC regarding the Class Orders, one with regard to racing — Class Order 319, that the cumulative value of the share restriction of \$250 000 be lifted to \$500 000 — and with regard to stallion syndicates that the 40 share restriction be lifted to 50 shares, and that the requirement to have compulsory managed investments professional indemnity insurance on managed investment schemes — in other words, the racehorse and stallion syndicates that are registered, which is the most significant cost for a stallion — to have relief from that requirement where the trust account is held within a solicitor's office or an accountant's office and operate it as a statutory trust account. It is because we have a situation where I think our PI insurance on Redoute's Choice this year is something like \$50 000, yet the money comes into my trust account, which is in my law firm trust account basically, and we do not think we are getting any value. In a lot of most syndicates' cases we are paying \$5000 PI to insure what does not exceed \$20 000 being in a syndicate trust account. It does not seem to make much sense. We have spoken to ASIC about that previously, and they have said, 'We have had that many complaints over the years that we want you to show us three years' worth of records and we will revisit it'. So we now have three years' worth of records and three years' worth of PI.

The CHAIR — Is there any difference from your point of view in trying to syndicate horses in Victoria as opposed to anywhere else in the country? Is it harder? Does it take longer?

Mr FLEITER — It is harder.

The CHAIR — You said before that the breeders were not as entrepreneurial as the Hunter Valley breeders.

Mr FLEITER — I am not criticising the breeders in Victoria. In fact some of the very successful breeders pound for pound are in Victoria. You have studs like Blue Gum Farm, which would be a leading stud wherever it was. I consider Philip Campbell to be one of the elite studmasters. He could hold his own right in the centre of the Hunter Valley, and there are a number of studmasters in Victoria who would be successful if they were in the Hunter Valley as a benchmark. Victoria — and is not even a criticism — is just conservative.

The CHAIR — What is a good example of a Hunter Valley breeder being more innovative or entrepreneurial? Is it the foal-share arrangements?

Mr FLEITER — John Messara can make six phone calls and syndicate a \$10 million stallion.

The CHAIR — Is that entrepreneurial or just connections?

Mr FLEITER — Put it this way: he knows who to ring. Widden can and has made those sorts of phone calls and syndicated horses.

The CHAIR — Just on that point, is that them ringing people who have big investments in the industry and who are better capitalised, or are they able to call people who have capital but are not necessarily —

Mr FLEITER — The likes of John Messara are ringing people who have shares in their horses already, in their other stallions. If you were fortunate enough to have a share in Redoute's Choice — and bear in mind when shares in Redoute's Choice were sold at \$300 000 a share, everybody said he was overpriced to blazes — with the dividends that I have paid out on behalf of the syndicate over the last couple of years I wish I had the good sense and money to be able to buy a share in him when he went to stud.

The CHAIR — So he could on the phone to someone like Alan Jones and say, 'I have some horses with me. This has come up. Why do you not sign up for this? This would be a terrific investment?'

Mr FLEITER — Yes. He is only spending money he has earned them in other syndicates. He is only asking Alan, which he has done, to put back in the money that he sent him last week.

The CHAIR — So in Victoria the phone calls would go out from a studmaster to people who typically own broodmares and who are more likely to be involved in horse management than people outside the industry as such who just racehorses. Is that a fair description?

Mr FLEITER — It is just not as entrepreneurial an industry. It is quite a tight industry. People in New South Wales bought shares in Elvstroem. I went with Philip Campbell to meet with Gerry Harvey when Gerry Harvey agreed to buy a share in Elvstroem. Gerry in his usual back way threw a curly one to Philip and said — and I manage stallions for Gerry at Gerry's place and two of the racehorse syndicates I manage as managed investment schemes for Gerry Harvey — 'I will buy a share in that stallion if you answer this question for me. If I go out my drive and turn right, half an hour up the road I have my choice of all the best stallions in Australia. If I go out my drive and turn left, 15 hours down the road I have your place'. Philip drew breath and gave a pretty good response. It was, 'I have always got your mares in foal when you have sent them to my place', and he sent a number of mares down to Encosta De Lago. He said, 'Yes, you did do a good job getting my mares in foal. I suppose I will buy a share then', so he did. But you can bet your bottom dollar that if Philip had not done so well in how he had managed Gerry Harvey's mares at Blue Gum and Philip Campbell did not have the reputation he has got that that investment would not have been made by a New South Wales studmaster in a stallion standing in Victoria, no matter how good that horse was, because the parochialism attached to New South Wales is that they do not need to send their mares to Victoria necessarily. Although horses like Elvstroem and Encosta De Lago have bucked the trend, very few other horses standing in Victoria over the years would buck the trend. It is simply a matter of if you have them on your doorstep, why drive past them to go somewhere else at more expense and more risk in terms of travel and everything else? Philip Campbell does his own thing at Blue Gum Farm. He does not try and compete

with Coolmore. He exploits his niche in Victoria. You cannot compete with Coolmore and Darley. One has oilwells coming up out of the ground, and the other one is operating primarily in an international environment where stallion service fees are tax free, so how can you compete with that? That is not only in standing stallions; it is in buying the next generation of stallions. So you cannot beat them, and if you try and compete with them you can only go broke.

The CHAIR — We have to wrap up. Thank you very much for your time. You have given us a lot to think about, and you have given us a bit to read as well. We might have to come back to you informally.

Mr FLEITER — In closing, I have tried to put down all the different types of syndication, because I think the industry is not aware of how it is broken up. The breeding industry standing stallions is, but the racing industry is not.

The CHAIR — That is a point well made. Thank you very much for your time. We will send out a transcript from Hansard in about two weeks. You are welcome to come back to us with corrections, and we will make sure you get lots of copies of the report later in the year.

Mr FLEITER — Thanks.

Witness withdrew.