



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 107

Fundraising: Facilitating electronic offers of securities

March 2014

About this guide

This is a guide to facilitate the use of email and the internet to make offers of securities under Ch 6D of the *Corporations Act 2001* (Corporations Act).

This guide:

- explains how we interpret the fundraising provisions in Ch 6D when using electronic disclosure documents and electronic application forms, including the distribution of these documents by email and the internet;
- describes the class order relief we have provided for personalised or Australian financial services (AFS) licensee created application forms; and
- sets out our 'good practice guidance' for using electronic disclosure documents and electronic application forms, including the distribution of these documents by email and the internet.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This regulatory guide was issued in March 2014 and is based on legislation and regulations as at the date of issue.

This guide replaces:

- Superseded Policy Statement 107, issued 18 September 1996, reissued 10 February 2000, rebadged as a regulatory guide 5 July 2007
- Superseded Policy Statement 150, issued 15 February 2000, reissued 5 July 2000, rebadged as a regulatory guide 5 July 2007

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

ASIC aims to facilitate and encourage the use of electronic disclosure documents and electronic application forms, including the use of email and the internet, for making offers of securities.

In this guide, we:

- explain our interpretation of the fundraising provisions in Ch 6D of the *Corporations Act 2001* (Corporations Act) when using electronic disclosure documents and electronic application forms, including the distribution of these documents by email and the internet;
- describe the class order relief we have provided for personalised or Australian financial services (AFS) licensee created application forms; and
- set out our good practice guidance for using electronic disclosure documents and electronic application forms, including the distribution of these documents by email and the internet.

Facilitating the use of email and the internet for offers of securities

RG 107.1 While disclosure documents used for offers of securities have historically been paper-based documents, persons offering securities under Ch 6D of the Corporations Act are increasingly using electronic means and electronic media—primarily email and the internet (e.g. web-based platforms)—to distribute and present disclosure documents to investors. Additionally, it is becoming increasingly common for investors to receive and access important information in their daily life—including news, internet banking and securities trading—using electronic devices such as computers, tablets and smartphones.

Note: In this document, references to sections (s), parts (Pts) and chapters (Chs) are to the Corporations Act, unless otherwise specified. References to ‘disclosure document’ include any supplementary or replacement disclosure document lodged with ASIC: see s719(4) and (5) of the Corporations Act.

RG 107.2 We want to facilitate and encourage the continued and future use of electronic disclosure documents and electronic application forms for offers of securities under Ch 6D, including the use of multimedia or web-based platforms, particularly as we anticipate that this is an area that will grow in popularity and that may experience significant advances in technology.

RG 107.3 We recognise that there are many advantages of using email and the internet to distribute disclosure documents and application forms, including the ease and convenience of use for investors. Additionally, web-based disclosure

documents with electronic content can be more interactive and promote understanding for investors.

- RG 107.4 The use of electronic disclosure documents also has advantages for persons offering securities and persons involved in the distribution of disclosure documents by reducing costs (e.g. printing and mailing) and increasing the speed and availability of information.
- RG 107.5 We are aware that some investors may not have access to the internet, or may still prefer to receive important and extensive information, such as disclosure documents, in paper format. Accordingly, we believe it is desirable for paper disclosure documents to remain accessible and be made available to investors on request to ensure that information is freely available to all sections of the community.
- RG 107.6 We have historically provided class order relief to permit the use of electronic disclosure documents in relation to the provisions of the old Corporations Law as it stood before the implementation of the *Corporate Law Economic Reform Program Act 1999* (CLERP Act). We continued the relief in Class Order [CO 00/44] *Electronic disclosure documents, electronic application forms and dealer personalised applications* following CLERP, for the avoidance of doubt, to help ensure the continued use of electronic disclosure documents, even though the CLERP amendments were intended to facilitate the use of electronic disclosure documents. We have now revoked [CO 00/44] because we take the view that relief is not required.
- RG 107.7 We consider that the use of electronic disclosure documents and electronic application forms is permitted under Ch 6D without relief. As explained in the Explanatory Memorandum to the Corporate Law Economic Reform Program Bill 1998 (CLERP Bill), changes to the fundraising provisions by the CLERP Act were made to:
- ... facilitate the issue of a disclosure document in electronic form as well as paper documents. The Bill will remove barriers to electronic commerce by providing a statutory framework for electronic disclosure documents which is designed to promote investor confidence in the integrity of the electronic financial services marketplace.
- RG 107.8 The market now routinely uses electronic disclosure documents and electronic application forms for offers of securities under Ch 6D, and is comfortable with the ability to distribute these documents by email and the internet. Consequently, we believe that the market no longer requires comfort relief under [CO 00/44].

Our guidance and relief

- RG 107.9 To facilitate the use and distribution of electronic disclosure documents and electronic application forms, including the use of email and the internet, to make offers of securities, we have:
- (a) explained our interpretation of the fundraising provisions in Ch 6D applying to electronic disclosure documents and electronic application forms, including the use of email and the internet to distribute these documents (see Section B);
 - (b) provided class order relief for personalised and AFS licensee created application forms in [CO 14/26] *Personalised and AFS licensee created application forms for offers of securities*—and explained when ASIC relief may still be needed (see Sections B and C); and
 - (c) given ‘good practice guidance’ (see Table 1 for an overview) on using electronic disclosure documents and electronic application forms, including the use of email and the internet to distribute these documents, to assist persons offering securities (offerors), distributors and publishers in complying with their legal obligations, and meeting the objectives underlying the provisions, in Ch 6D (see Section D).
- RG 107.10 This regulatory guide focuses primarily on the use of email and the internet to distribute and present electronic disclosure documents and electronic application forms, as we understand that these are currently the most common electronic means and electronic media used for offers of securities.
- RG 107.11 We recognise that there may be other types of multimedia or web-based platforms that emerge in the future to distribute and present electronic disclosure documents and electronic application forms. This guide is principles based and is intended to apply to current and emerging forms of electronic disclosure documents and electronic application forms.

Table 1: Overview of our good practice guidance

Principle 1	Electronic disclosure documents should be easy to access, retrieve and read.
Principle 2	Electronic disclosure documents should be distributed in a way that does not unreasonably expose investors to security risks.
Principle 3	Offerors and distributors that distribute electronic disclosure documents for an entitlement offer to existing investors of a company should take reasonable steps to ensure that investors receive the electronic disclosure document.
Principle 4	Offerors, distributors and publishers should take reasonable measures to ensure that electronic disclosure documents received by investors are complete and have not been altered or tampered with.

Principle 5	Offerors and distributors that distribute electronic disclosure documents and electronic application forms should make available free paper copies of disclosure documents and application forms on request by an investor.
Principle 6	Offerors and distributors of electronic disclosure documents should make updated disclosure documents available in both paper and electronic format.
Principle 7	Investors should be able to keep a copy of the electronic disclosure document so that they can access it in the future.
Principle 8	Offerors, distributors and publishers should retain copies and records of all electronic disclosure documents so that investors are able to prove which version of the disclosure document they relied on.
Principle 9	Electronic disclosure documents should have the same content, presentation and prominence of information as paper versions.
Principle 10	Hypertext links to, from or within the electronic disclosure document should not be used to take investors to material not forming part of the electronic disclosure document, other than jurisdictional confirmations or educational material.
Principle 11	Electronic application forms must be included in, or accompanied by, the electronic disclosure document.
Principle 12	Electronic application forms should contain appropriate warnings to ensure that investors are informed of the importance of reading the disclosure document before applying for securities.
Principle 13	Electronic application forms should contain verification processes and should be secure.
Principle 14	Reasonable measures should be taken to ensure that offers are only made in jurisdictions where the offer complies with the relevant securities laws.
Principle 15	Promotional material should not be published in a way that may cause it to be confused with all or any part of the electronic disclosure document.

ASIC's role

- RG 107.12 ASIC administers OFFERlist, a database providing information on current and past disclosure documents. We will continue to include details on OFFERlist of where disclosure documents may be accessed, including through a website.
- RG 107.13 We will consider applications for relief from offerors where there is some doubt about whether the proposed electronic disclosure document is a copy of the paper disclosure document lodged with ASIC.

B Offers of securities using email or the internet under Ch 6D

Key points

This section sets out our interpretation of the fundraising provisions under Ch 6D and how they apply to:

- making offers of securities using and distributing electronic disclosure documents, including by email and the internet; and
- using and distributing electronic application forms for offers of securities, including by email, and through online applications and electronic payment processes.

Our relief is not required for using electronic disclosure documents if the electronic version has the same content, presentation and prominence of information as the paper version lodged with ASIC. This section sets out some of the circumstances in which we may consider granting individual relief to facilitate the broader use of electronic disclosure documents.

This section also provides some guidance on issues that might arise from email or internet distribution of these documents.

Key requirements in Ch 6D

- RG 107.14 The fundamental policy of the fundraising provisions in the Corporations Act is to ensure that investors can make informed investment decisions on the basis of a current disclosure document containing or incorporating all material and relevant information about the securities being offered and about the person offering the securities for issue or sale.
- RG 107.15 The key components of the regulatory regime that are relevant in this context are summarised in Table 2.

Table 2: Key Ch 6D requirements

Requirement	Description	Section
Offers of securities require a disclosure document	The Corporations Act requires an offer for issue or sale of securities to be made using a disclosure document, unless the offer falls into a relevant exception. The disclosure document must be lodged with ASIC.	s706, 707, 708, 708AA, 708A, 718 and 727
Information required in a disclosure document	The Corporations Act requires that investors (and their advisers) are provided with sufficient information to make an informed investment decision.	s710, 711, 713 and 715

Requirement	Description	Section
Application form included in, or accompanied by, disclosure document	The Corporations Act requires that application forms for an offer of securities are only distributed if they are included in, or accompanied by, a disclosure document. This establishes a mechanism so that the investor receives a current disclosure document (which satisfies the information needs of investors and their advisers) before applying for securities.	s723 and 727
Advertising and securities hawking restrictions	The Corporations Act seeks to ensure that investors are encouraged to make investment decisions on the basis of a disclosure document rather than on the basis of promotional material or pressure selling.	s734 and 736
Updating requirements	The Corporations Act seeks to ensure that investors receive any necessary updates to information before their investment decision is finalised.	s719 and 724
Civil liability provisions	The Corporations Act seeks to ensure that investors have access to appropriate remedies if they invest on the basis of defective disclosure.	s729, 737 and 738

- RG 107.16 The requirements in Ch 6D apply to offers of securities made in any form, whether oral or written, and whether the offer is made on paper, by email or on the internet. Offering securities for issue includes inviting applications for the issue of securities, and offering securities for sale includes inviting offers to purchase the securities.
- RG 107.17 For a person to make an offer of securities, or distribute an application form for an offer of securities, they must first lodge a disclosure document for the offer with ASIC.
- RG 107.18 While ASIC is permitted under s352 to accept electronic lodgement of documents, we do not generally accept electronic lodgement of disclosure documents under Ch 6D. This is because disclosure documents lodged with ASIC must be made accessible on the public register and our systems are not currently able to do this if a document is lodged electronically. In addition, changes would be needed to ensure that documents could be authenticated electronically and readability issues addressed (for paper documents, the Corporations Regulations 2001 contain requirements to promote legibility).
- RG 107.19 However, we will consider whether we may accept electronic lodgement of disclosure documents in the future. In the interim, we will consider granting individual relief to enable electronic lodgement, where necessary or desirable, to facilitate the use of electronic disclosure documents.

When is ASIC relief required for offers of securities using email or the internet?

- RG 107.20 The underlying purpose of the relevant provisions in Ch 6D is to ensure that persons considering applying for securities under an offer are given the same information as is included in the disclosure document lodged with ASIC.
- RG 107.21 Our view is that electronic disclosure documents can be used and distributed without the need for ASIC relief, and constitute a ‘copy’ of the lodged disclosure document, provided that the electronic disclosure document:
- (a) is identical in format and content to the disclosure document lodged with ASIC—for example, where the electronic disclosure document is merely a scanned copy of the paper disclosure document lodged with ASIC, saved or stored in portable document format (PDF); or
 - (b) contains the same information in the same sequence and with the same prominence, as the lodged disclosure document, with the exception of modifications that are immaterial and reflect necessary adjustments or increased functionality when using different electronic media—for example, modifications to enable the electronic document to be accessed and displayed in html format or on a web-based platform.
- RG 107.22 Our view in RG 107.21 reflects the legal requirement that, if an offer of securities needs disclosure to investors under Pt 6D.2 of the Corporations Act, a person is prohibited from offering securities or distributing an application form for the offer unless:
- (a) a disclosure document for the offer is lodged with ASIC; and
 - (b) the offer or form is included in the disclosure document or accompanied by a copy of the disclosure document: see s727.
- RG 107.23 Currently, disclosure documents must be lodged with ASIC in paper format unless ASIC agrees in writing to electronic lodgement in relation to a specific disclosure document: see s352(1). This means it is important to determine whether the electronic disclosure document used to make an offer of securities is, for the purposes of Ch 6D, the disclosure document lodged with ASIC or a ‘copy’ of the paper disclosure document lodged with ASIC.
- RG 107.24 We had previously resolved this question by granting the relief in [CO 00/44], for the avoidance of doubt, and to the extent that the provisions in Ch 6D (specifically, s718 and 727) may have required a disclosure document distributed to investors to be a true copy, printed on paper, of a disclosure document lodged with ASIC. However, our view is that electronic disclosure documents can be used and distributed without the need for ASIC relief where the circumstances in RG 107.21 are met.

Use of electronic devices

- RG 107.25 To facilitate electronic disclosure documents being accessible and readable on different electronic devices (e.g. computers, smartphones and tablets), we recognise that modifications to the presentation and format of these documents may be required. In our view, relief is not required for necessary modifications to the display information in the electronic disclosure document on the investor's electronic viewing device or in a print-out. Additionally, relief is not required for the use of aids to assist investors in reading the disclosure document—for example, the ability to enlarge text. This is provided that these modifications do not change the information, its prominence or its sequence.

Use of hypertext links

- RG 107.26 Hypertext links and search facilities within an electronic disclosure document can assist readers to navigate through the document easily, and can make information more accessible (including allowing the reader to directly access sections of the document through the table of contents and to access documents incorporated by reference within the electronic disclosure document). We encourage the use of hypertext links and search tools within an electronic disclosure document to assist the reader.
- RG 107.27 In our view, the use of hypertext links or the inclusion of search facilities will not, in itself, require our relief, because this would not change the content, presentation or prominence of the information contained in the electronic disclosure document from the paper disclosure document lodged with ASIC.

Note: Principle 9 of our good practice guidance provides that electronic disclosure documents should contain the same information, in the same sequence and with the same prominence, as the paper disclosure document lodged with ASIC. The discussion in Principle 9 explains the modifications that can be made to the electronic disclosure document for it still to be considered a copy of the lodged paper version. The discussion in Principle 10 explains how we believe hypertext links should be used to, from or within an electronic disclosure document.

Use of video and audio presentations

- RG 107.28 We also aim to encourage and facilitate the use of non-print based communication (e.g. video or audio presentations) to assist investors in understanding information and making informed investment decisions. However, in our view, information communicated in non-print form may not constitute a copy of the paper disclosure document lodged with ASIC.
- RG 107.29 Therefore, we encourage offerors seeking to use non-print based communication or multimedia platforms to assist in presenting the information in their electronic disclosure documents to make an application to ASIC for individual relief for our consideration.

Electronic disclosure documents

RG 107.30 An offeror or distributor that wishes to use electronic disclosure documents needs to ensure that these documents are easy to access and are capable of being easily saved and printed by the investor so that the investor can access an electronic version of the document at any time following the offer.

Note: The discussion in Principles 1, 7 and 8 of our good practice guidance explains what steps we believe offerors, distributors and publishers should take to ensure the accessibility and retention of electronic disclosure documents.

RG 107.31 While we want to encourage and facilitate the use of electronic disclosure documents, we also believe that investors should have the opportunity to obtain a free paper copy on request—and to be informed of this right—to ensure that disclosure is freely available to all sections of the community in whatever form they choose.

Note: Principle 5 of our good practice guidance states that, if an electronic disclosure document is available, free paper copies should also be made available on request.

RG 107.32 We also recognise that there are certain risks that could arise from the use and distribution of electronic disclosure documents, including that electronic disclosure documents are potentially vulnerable to hacking or unauthorised alteration and tampering of information contained within the document.

RG 107.33 Offerors, distributors and publishers need to ensure that adequate safeguards and precautions are in place to help reduce the risks of tampering. This will ensure that the electronic disclosure document received by the investor is the same as the paper disclosure document lodged with ASIC, and has not been tampered with or altered in any way (including the form, order, context and content).

Note: The discussion in Principle 4 of our good practice guidance refers to some of the safeguards that should be considered to make an electronic disclosure document safe from unauthorised tampering or amendment (e.g. using a locked PDF file or a tagged image file format (TIFF), and using adequate firewall protection).

Electronic application forms and electronic acceptances

RG 107.34 There is no requirement in the Corporations Act for an application form to be lodged with ASIC when lodging a disclosure document.

RG 107.35 Under the Corporations Act—specifically, s723—securities may only be issued or transferred in response to an application form if the person issuing or transferring the securities has reasonable grounds to believe that:

- (a) the application form was included in, or accompanied by, the disclosure document when the form was distributed by the person issuing or transferring the securities; or

- (b) the application form was copied, or directly derived, by the person making the application from a form referred to in RG 107.35(a).

RG 107.36 Distributing and accessing disclosure documents and application forms by electronic means may make complying with these legal requirements more difficult to satisfy than distributing these documents in a paper format.

RG 107.37 There is a risk arising from the distribution of electronic disclosure documents and electronic application forms that an investor may receive an application form without receiving the disclosure document. Offerors need to take steps to satisfy themselves that they have reasonable grounds to believe that the application form that the investor has received was accompanied by the electronic disclosure document.

Note: The discussion in Principles 10 and 11 of our good practice guidance contains some measures that we believe offerors, distributors and publishers should consider when distributing electronic application forms to assist offerors in satisfying this requirement.

RG 107.38 Offerors, and distributors on behalf of offerors, are able to accept electronic application forms for offers of securities. If online applications are to be received, adequate safeguards and precautions should be in place (including encryption software, protection of confidential information, and adequate firewall protection) to ensure that information transmitted through email or the internet remains secure and safe from hacking.

Note: The discussion in Principle 13 of our good practice guidance contains some precautions that we believe offerors and distributors should consider if they are to receive electronic applications for offers of securities.

Electronic payment processes

RG 107.39 We consider that the use of electronic payment processes (e.g. BPAY) to apply for securities, without investors being required to submit a completed application form to the issuer, may comply with the legal requirements and meet the underlying policy objectives of s723(1).

RG 107.40 The underlying purpose of s723(1) is to ensure that a person applying for securities has received, and is making an investment decision based on, a current disclosure document. In our view, an issue or transfer of securities that occurs as a result of an electronic payment (e.g. BPAY) without the investor submitting a completed application form may, in certain circumstances, meet the requirement that the securities are issued or transferred 'in response to an application form' and that the form has been directly derived from an application form that was included in, or accompanied by, the disclosure document.

RG 107.41 We believe that an electronic payment process that contains a means of verifying or linking an identifiable investor's electronic payment to an application form distributed with a specific version of the disclosure

document (including any supplementary or replacement disclosure document) is likely to satisfy s723(1).

RG 107.42 In our view, this verification can be achieved if an investor makes an electronic payment using information that is contained only in an application form that was received together with a disclosure document (where that information is unique to the investor, the offer and to the specific version of the disclosure document), and if the issuer or the issuer's share registry can only issue or transfer the securities on receipt of that information.

RG 107.43 An example of an electronic payment process that satisfies the above settings is one that has the following features (which we understand is similar to the current BPAY payment process):

- (a) the investor receives a disclosure document together with a personalised application form which contains information that must be used by the investor to make an electronic payment, including:
 - (i) information that identifies the issuer (issuer identifier) (e.g. a numerical code such as a biller code); and
 - (ii) information that is unique to the investor and to the disclosure document, which allows the investor and the disclosure document to be identified (investor identifier) (e.g. a customer reference number or barcode number);

Note: The information in paragraphs RG 107.43(a)(i) and RG 107.43(a)(ii) can only be derived from the personalised application form that accompanied, or was included in, the disclosure document and not from any other source.

- (b) when an investor makes an electronic payment, the issuer or the issuer's share registry receives notification (e.g. BPAY notification) from the issuer's financial institution of the payment amount, payment date, the issuer identifier and the investor identifier; and
- (c) the issuer or the issuer's share registry uses:
 - (i) the payment amount to calculate the number of securities applied for;
 - (ii) the issuer identifier to identify or confirm the offer and the issuer; and
 - (iii) the investor identifier to identify the investor to which the payment relates.

Note: The issuer should also be able to use the information received (or received by its share registry) to determine which version of the disclosure document the investor received with the application form (which contained the information required to make the payment).

RG 107.44 We recognise that new electronic payment processes with different features may develop over time. If these do not satisfy the legal requirements, but *may* satisfy the policy objectives of s723(1), we will consider applications for individual relief.

Electronic supplementary and replacement disclosure documents

RG 107.45 A paper disclosure document lodged with ASIC may be updated or replaced by a supplementary or replacement disclosure document. The supplementary or replacement disclosure document lodged with ASIC must be in paper format, unless we agree to electronic lodgement in relation to that specific document.

RG 107.46 Following lodgement of a supplementary or replacement disclosure document, any new offers to an investor must be made in, or be accompanied by:

- (a) the original disclosure document together with the supplementary disclosure document; or
- (b) the replacement disclosure document.

RG 107.47 In addition, offerors or persons involved in the distribution of an offer should consider providing the supplementary or replacement document to investors who have already received the original disclosure document if this will assist investors in making an investment decision.

RG 107.48 Sometimes a supplementary or replacement disclosure document is lodged because the original disclosure document makes a misleading statement, omits information or does not refer to a new circumstance. If any of these are 'materially adverse' from the point of view of an investor, and the issuer does not opt to repay the application money, the Corporations Act requires the supplementary or replacement disclosure document to be provided to all applicants: see s724(2).

RG 107.49 Consistent with the original disclosure document, electronic distribution of the supplementary or replacement disclosure documents is permissible under Ch 6D. If the original disclosure document was available in electronic format, any supplementary or replacement disclosure document should also be made available in electronic format.

Note: The discussion in Principle 6 of our good practice guidance explains what steps we think should be taken by offerors and distributors when distributing supplementary and replacement disclosure documents.

RG 107.50 The use of electronic disclosure documents and electronic application forms may create potential difficulties for offerors and distributors in knowing which version of the disclosure document was accessed in relation to an application (i.e. whether it was based on the original disclosure document or any updated disclosure document). In our view, such difficulties can be overcome if offerors and distributors retain copies and records of all electronic disclosure documents distributed to investors.

Note: The discussion in Principle 8 of our good practice guidance explains what steps we think offerors, distributors and publishers should take to ensure that adequate copies and records of electronic disclosure documents are retained.

RG 107.51 To comply with s723(1) of the Corporations Act, offerors need to take steps to help determine which version of the disclosure document a particular application form accompanied if new offers are made after the lodgement of a supplementary or replacement disclosure document.

Advertising and social media

RG 107.52 The Corporations Act provides advertising restrictions in relation to an offer of securities. These restrictions are to ensure that investors make a decision about the offer of securities on the basis of the disclosure document and not promotional material.

RG 107.53 Where a disclosure document has been lodged with ASIC, any advertisement or publication in relation to an offer must include statements explaining:

- (a) who the issuer is and what the securities are;
- (b) that a disclosure document for the offer is available and how this may be obtained;
- (c) that offers will be made in, or will be accompanied by, a copy of the disclosure document;
- (d) that persons should consider the disclosure document in deciding whether to acquire the securities; and
- (e) that persons wanting to acquire the securities will have to complete an application form that will be contained in, or will accompany, the disclosure document.

Note: Restrictions in relation to pre-offer advertising and advertising after the lodgement of a disclosure document with ASIC are contained in s734(5) and (6), respectively. Regulatory Guide 158 *Advertising and publicity for offers of securities* (RG 158) contains further guidance on pre-offer advertising.

RG 107.54 In the paper environment, the disclosure document is usually a single bound document, which is readily distinguishable from any accompanying advertising material. The electronic environment potentially creates more ambiguity for investors to determine whether the information they are reading is promotional material or part of the electronic disclosure document.

RG 107.55 We think that the advertising provisions should be considered by offerors, distributors and publishers during an offer period in relation to information contained on their own websites, social media platforms and blogs, and that care should be taken to ensure that the provisions of the Corporations Act have not been contravened in relation to such information contained on these platforms.

RG 107.56 Advertising restrictions apply to all persons and, as such, third parties discussing an offer of securities on a website, social media page or blog

should ensure that they do not inadvertently contravene advertising restrictions for offers requiring a disclosure document.

Note: The discussion in Principle 15 of our good practice guidance refers to safeguards that should be taken in relation to promotional material about an offer that is published in electronic format, including promotional material distributed by email or published on the internet. Regulatory Guide 234 *Advertising financial products and services (including credit): Good practice guidance* (RG 234) provides further guidance for promoters of financial products and publishers of advertising for these products.

Securities hawking provisions

- RG 107.57 The securities hawking provisions in the Corporations Act stipulate that a person must not offer securities for issue or sale in the course of, or because of, an unsolicited meeting with another person or telephone call to another person.
- RG 107.58 The hawking prohibitions do not apply to unsolicited communications such as emails, letters, facsimiles, brochures, and media advertisements (press, radio or television), or making a disclosure document generally available on a website. However, when using these communication methods, the offeror or distributor still needs to ensure that they comply with any other relevant laws, including the consumer protection provisions.
- RG 107.59 Regardless of whether an offeror or distributor is subject to the hawking prohibitions for a particular transaction, the offeror or distributor needs to ensure that it complies with the prohibitions on:
- (a) unconscionable conduct (s12CA–12CC of the *Australian Securities and Investments Commission Act 2001* (ASIC Act)) and s991A of the Corporations Act);
 - (b) misleading or deceptive conduct (s12DA–12DB of the ASIC Act and s1041E–1041H of the Corporations Act); and
 - (c) harassment or coercion (s12DJ of the ASIC Act).

Jurisdictional issues

Offers of foreign securities

- RG 107.60 Offers received in Australia, irrespective of where the securities are transferred or issued, are subject to the fundraising provisions of the Corporations Act. Therefore, offers transmitted electronically, including by email, into Australia from outside Australia must comply with Ch 6D. Similarly, an offer placed on an internet site generated by a server situated outside Australia will be subject to the fundraising provisions if it is capable of being received in Australia.

- RG 107.61 We have given guidance in Regulatory Guide 141 *Offers of securities on the internet* (RG 141), which explains our policy of not intending to regulate offers, invitations and advertisements of securities that are accessible in Australia on the internet if:
- (a) the offer, invitation or advertisement is not targeted at persons in Australia;
 - (b) the offer or invitation contains a meaningful jurisdictional disclaimer;
 - (c) the offer, invitation or advertisement has little or no impact on Australian investors; and
 - (d) there is no misconduct.

Offers accessible overseas

RG 107.62 An electronic disclosure document on an internet site may be accessible throughout the world. As a result, the person issuing the disclosure document may be subject to foreign laws, as well as Australian law.

RG 107.63 One way of reducing the risk of contravening foreign securities laws may be to insert into an electronic disclosure document a jurisdictional clause stating to whom it is intended that the offer will be available.

Note: The discussion in Principle 14 of our good practice guidance explains what steps we think offerors and distributors should take to ensure that offers are only made in certain jurisdictions.

C Personalised or AFS licensee created application forms

Key points

This section discusses our class order relief for the use and distribution of personalised or AFS licensee created application forms.

We have given this relief in [CO 14/26].

- RG 107.64 Under s723(1), securities may only be issued or transferred in response to an application form and if the person issuing or transferring them has reasonable grounds to believe that:
- (a) the application form was included in, or accompanied by, the disclosure document when the form was distributed by the person; or
 - (b) the application form was copied, or directly derived, by the person making the application from a form referred to in RG 107.64(a).
- RG 107.65 We have continued to grant class order relief to facilitate the distribution of personalised and AFS licensee created application forms, and to remove any doubt about whether the requirements of s723 are met when such application forms are used. Our relief applies to application forms in both paper and electronic formats.
- RG 107.66 We have granted class order relief because using personalised or AFS licensee created application forms can:
- (a) promote efficiency and may therefore lead to costs savings which could flow through to investors and industry;
 - (b) assist in reducing the number of errors made in completing and processing multiple handwritten forms;
 - (c) assist in reducing the time currently taken to complete and process handwritten forms; and
 - (d) facilitate electronic acceptances.

Personalised and AFS licensee created application forms

- RG 107.67 Offerors and AFS licensees occasionally personalise application forms they distribute to investors to assist investors with completing these forms. AFS licensees may also create and distribute their own application forms for offers of securities. A form created by an AFS licensee may differ from the application form distributed by the offeror to issue or transfer the securities.

- RG 107.68 Relief is not needed to personalise an application form if the personalised application form has been distributed by the offeror and is included in, or accompanied by, the disclosure document. We consider that this is the case whether or not a blank application form was included in the paper disclosure document lodged with ASIC (as there is no requirement in the Corporations Act for an application form to be lodged with ASIC).
- RG 107.69 If an AFS licensee creates an application form, or personalises an application form that has been distributed by the offeror, the offeror may not have reasonable grounds to believe that the conditions in s723(1) are satisfied, because:
- (a) the personalised application form or AFS licensee-created application form is not the form that was distributed by the offeror;
 - (b) the personalised application form is not a form that has been copied, or directly derived, by the person making the application from a form distributed by the offeror, unless the person making the application has authorised the AFS licensee to copy or derive the application form from the application form distributed by the offeror; and
 - (c) the application form created by the AFS licensee has not been copied, or directly derived, by the investor from an application form included in or accompanied by the disclosure document distributed by the offeror.
- RG 107.70 [CO 14/26] provides relief so that an offeror may issue or transfer securities in response to an application form that has been:
- (a) personalised by an AFS licensee for an investor—our relief overcomes any concerns about the personalised application form not being one that has been distributed by the offeror, or not being copied or directly derived from such a form by the investor; or
 - (b) created by an AFS licensee—our relief overcomes any concerns about an application form created by an AFS licensee not being one that has been distributed by the offeror, or not being copied or directly derived from such a form by the investor.
- RG 107.71 AFS licensees creating or personalising application forms should ensure that they comply with the licensee obligations under the Corporations Act and any authorisation or conditions on their AFS licence.

Note: Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36) contains guidance on the meaning of ‘provide financial product advice’, and the meaning of ‘deal in a financial product’ and ‘arranging’ in the context of activities involving the distribution of application forms: see, in particular, Table 4 in RG 36.

In addition, Regulatory Guide 244 *Giving information, general advice and scaled advice* (RG 244) contains guidance about how AFS licensees can distribute and present information about a financial product without giving financial product advice, and Regulatory Guide 221 *Facilitating online financial services disclosure* (RG 221) contains ‘good practice guidance’ on how to deliver online financial services disclosure (e.g. Product Disclosure Statements and Financial Services Guides) to clients under Pts 7.6–7.9 of the Corporations Act.

Requirements of the class order

RG 107.72 An offeror may rely on the relief in [CO 14/26] if all of the requirements of the class order are fully complied with: see Table 3.

Table 3: Requirements in [CO 14/26]

Requirement	Description
Access	<p>The investor is given access to the disclosure document at the same time and by the same means as access to the application form.</p> <p>Note: The reference to 'disclosure document' includes any supplementary or replacement disclosure document lodged with ASIC: see s719(4) and (5) of the Corporations Act.</p>
Application form	<p>The application form contains:</p> <ul style="list-style-type: none"> • the following particulars of the offer and the disclosure document: <ul style="list-style-type: none"> – the identity of the issuer; – the nature of the securities being offered (e.g. ordinary shares or options); – the price of the securities; – the date of the disclosure document; and – the expiry date of the disclosure document; and • a prominent statement to the effect that: <ul style="list-style-type: none"> – there is a disclosure document with information about investing in the securities; and – it is advisable to read the disclosure document before applying for the securities.

D Good practice guidance

Key points

In this section, we have set out our good practice guidance for the use and distribution of electronic disclosure documents and electronic application forms. This guidance focuses primarily on the distribution of documents by email and the internet. However, the principles of good practice should be applied to any electronic method of distributing disclosure documents and application forms.

We encourage offerors, distributors and publishers to apply our good practice guidance when distributing electronic disclosure documents and electronic application forms.

Principles for good practice guidance

- RG 107.73 Our 15 principles for good practice guidance seek to ensure that investors receive clear, concise and effective disclosure when disclosure documents and application forms are distributed in electronic format. Our principles aim to address some of the specific risks that may arise or increase when using and distributing electronic disclosure documents and electronic application forms.
- RG 107.74 Some of this guidance includes our views on the legal requirements in Ch 6D. Our principles aim to assist offerors, distributors and publishers in complying with their legal obligations, and meeting the objectives underlying the provisions, in Ch 6D. We encourage offerors, distributors and publishers of electronic disclosure documents to apply our good practice guidance when using email and the internet for making offers of securities.
- RG 107.75 While our guidance is directed to prospectuses and other Ch 6D disclosure documents, we encourage offerors to apply the principles (where applicable) to other ‘prospectus-like’ documents (e.g. offer documents used for entitlement offers).

Principle 1: Ensuring ease of access to electronic disclosure documents

Principle 1

Electronic disclosure documents should be easy to access, retrieve and read.

- RG 107.76 We recognise that electronic disclosure documents may be distributed to investors in a number of different ways. We understand that the main way in which electronic disclosure documents and electronic application forms are

currently distributed in the market is by sending an email to an investor containing:

- (a) a downloadable electronic copy of the disclosure document (i.e. a locked PDF or TIFF file); or
- (b) a hypertext link to the disclosure document (on a webpage) or to a website containing the disclosure document.

RG 107.77 When a disclosure document is made available on a website, we think it should be easy to find and access, particularly as investors may wish to view the document more than once. Investors should also be provided with clear instructions on how to view and download the disclosure document.

RG 107.78 When an investor is provided with a hypertext link to the electronic disclosure document or to a website, the link should take the investor:

- (a) directly to the disclosure document itself. Hypertext links should take an investor to the first page of the disclosure document and not to a subsidiary page within the disclosure document (e.g. the hypertext link should not take an investor straight to an application form);
- (b) to a webpage containing the disclosure document (rather than a generic website address); or
- (c) to a webpage confirming the person's eligibility to participate in the offering (including but not limited to a jurisdictional disclaimer or confirmation).

RG 107.79 This is not intended to be an exhaustive description of the ways in which electronic disclosure documents may be distributed to investors. We acknowledge that there may be other methods of electronic distribution that are currently used in the market, and that technological developments may emerge in the future that create new ways for electronic distribution. We believe that it is up to the offeror to assess and determine the most appropriate method of distribution, taking into account the needs of investors.

Principle 2: Managing security risks

Principle 2

Electronic disclosure documents should be distributed in a way that does not unreasonably expose investors to security risks.

RG 107.80 When an offeror or distributor distributes an electronic disclosure document by email with a hypertext link to a website containing the electronic disclosure document, the email should state whether the website is secure and that any personal details provided by the investor (e.g. to access the disclosure) will be kept confidential.

- RG 107.81 An offeror should take reasonable steps to ensure that a website that contains the electronic disclosure document or electronic application form is secure.
- RG 107.82 We believe such reasonable steps would include the offeror ensuring that the publisher has a legal or contractual obligation (e.g. under the terms of any agreement between the offeror and publisher) to ensure that:
- (a) the website containing the electronic disclosure document or electronic application form is, and will remain, secure; and
 - (b) the publisher has adequate software and safeguards to mitigate security risks.
- RG 107.83 Offerors and distributors should continue efforts to educate investors about internet scams and other security risks (e.g. phishing, fraud and data corruption or tampering), and may wish to direct investors to www.staysmartonline.gov.au.

Principle 3: Ensuring receipt of electronic disclosure documents

Principle 3

Offerors and distributors that distribute electronic disclosure documents for an entitlement offer to existing investors of a company should take reasonable steps to ensure that investors receive the electronic disclosure document.

- RG 107.84 In the case of entitlement offers to existing investors of a company, it is important that offers are made to all eligible investors. It is becoming more common for investors to nominate an email address to receive communications from companies. Offerors and distributors should use that email address when sending electronic disclosure documents to investors.
- RG 107.85 If an offeror or distributor becomes aware that an existing investor of a company has not received the electronic disclosure document (e.g. the offeror or distributor receives an undeliverable email notice), it should make reasonable attempts to contact the investor by other means to give them the disclosure document (e.g. by sending it to an alternative electronic address, if one has been provided, or by sending a paper copy by mail to the investor).
- RG 107.86 We do not expect offerors and distributors to use special software to monitor whether emails containing electronic disclosure documents have been received, read or accessed. In our view, using a standard email ‘bounce-back’ or undeliverable notification function is a reasonable step that offerors and distributors can take to monitor the receipt of electronic disclosure documents.
- RG 107.87 We recommend that offerors (and their share registries, as relevant) should endeavour to ensure that investors’ contact details are kept up to date, particularly their email addresses if the offeror proposes to distribute entitlement offers to investors by email.

Principle 4: Ensuring electronic disclosure documents received are complete and protected from tampering

Principle 4

Offerors, distributors and publishers should take reasonable measures to ensure that electronic disclosure documents received by investors are complete and have not been altered or tampered with.

- RG 107.88 There are a variety of measures that an offeror, distributor or publisher can take to protect the integrity of an electronic disclosure document from unauthorised alteration or tampering, such as:
- (a) using firewall software to control the security settings of a webpage containing the electronic disclosure document; or
 - (b) using protection tools—such as permission password encryptions, and locked and read-only functions—to control the security settings of the document.
- RG 107.89 The use of protection features should not prevent the electronic disclosure document from being downloaded, saved or copied by the investor into a personal electronic file for the investor's own records.
- RG 107.90 We recommend that offerors and distributors clearly inform investors that they should contact the issuer if they are concerned that they have received an incomplete or altered version of the disclosure document, and advise them how to do so.
- RG 107.91 An offeror, or a distributor on behalf of an offeror, must not accept an application for securities if it has reason to believe that an investor has, or may have, received an electronic disclosure document that is incomplete, or may have been altered or tampered with.

Principle 5: Providing free paper disclosure documents on request

Principle 5

Offerors and distributors that distribute electronic disclosure documents and electronic application forms should make available free paper copies of disclosure documents and application forms on request by an investor.

- RG 107.92 An offeror or distributor should make available, during the life of the electronic disclosure document, paper versions of the disclosure document (including any supplementary or replacement document) and the application form, on request by an investor and free of charge. Such paper versions should be sent to the investor within a reasonable time period, being no more than two to three business days from the request being received.

- RG 107.93 Any person receiving the electronic disclosure document should be clearly informed that they may obtain a paper version of the disclosure document and advised how they may do so.

Principle 6: Ensuring access to updated disclosure documents

Principle 6

Offerors and distributors of electronic disclosure documents should make updated disclosure documents available in both paper and electronic format.

- RG 107.94 Offerors and distributors that have distributed the original disclosure document in both a paper and electronic format should ensure that any supplementary or replacement disclosure documents are also made available in both a paper and electronic format.
- RG 107.95 Care should be taken so that investors do not continue to consider an outdated document in making their investment decision. If a disclosure document is generally accessible from a website, steps to avoid this might include:
- (a) removing outdated documents from the website; and/or
 - (b) ensuring that the updated disclosure documents are accessible at least as easily as the original disclosure document, and that there are clear directions about which are the current disclosure documents that investors should consider in making an investment decision.
- RG 107.96 As a matter of good practice, offerors, or distributors on behalf of offerors, should not accept applications if they have reason to believe an investor is making an investment decision based on an outdated disclosure document without the benefit of any supplementary or replacement disclosure document. To do so in circumstances where the offer is made after the supplementary or replacement document has been lodged with ASIC, or where the updated disclosure document contains information that is ‘materially adverse’ from the point of view of the investor, may contravene the Corporations Act.
- Note: See s719(4) and (5), 723 and 724.
- RG 107.97 If a supplementary or replacement disclosure document is lodged with ASIC, offerors should take steps to help determine which version of the disclosure document an application is based on. This is particularly the case if new offers may be made after a supplementary or replacement document has been lodged with ASIC without any active steps being taken by the offeror—for instance, if the original disclosure document has continued to be accessible from a website. Examples of steps an offeror could take include:
- (a) assigning a number to each version of an electronic application form that links it to a particular version of the disclosure document that has been made available; or

- (b) where an electronic payment process is available that allows investors to apply for securities without submitting a completed application form, providing a personalised application form that contains information that is unique to a specific version of the electronic disclosure document (e.g. an ‘investor identifier’ or ‘issuer identifier’), which must be used by an investor to make an electronic payment.

Note: See RG 107.39–RG 107.44 for further discussion about electronic payment processes.

Principle 7: Ensuring access to electronic disclosure documents in the future

Principle 7

Investors should be able to keep a copy of the electronic disclosure document so that they can access it in the future.

- RG 107.98 The electronic disclosure document should be capable of being easily downloaded, printed and saved so that an investor is able to access at any later time a copy of the disclosure document that they viewed.
- RG 107.99 If the disclosure document is provided through a hypertext link to a webpage, offerors and distributors should encourage investors to make an electronic copy or, where practical, a printed copy of the disclosure document.
- RG 107.100 Offerors, distributors and publishers should also ensure that the electronic disclosure document continues to be accessible from the link to the webpage for a period that they consider is reasonable (and at least until the expiry of the disclosure document).
- RG 107.101 We think that a period of two years would be reasonable for most disclosure documents to continue to be accessible, unless the disclosure document has been superseded or updated sooner. If it is not possible to continue to make the electronic disclosure document available from the specified link or webpage throughout that period, the offeror or distributor should make it easy for clients to request an electronic or paper copy of the disclosure document free of charge (e.g. by providing a toll-free telephone number, an electronic address or a request button).

Principle 8: Retaining copies and records of electronic disclosure documents

Principle 8

Offerors, distributors and publishers should retain copies and records of all electronic disclosure documents so that investors are able to prove which version of the disclosure document they relied on.

- RG 107.102 Offerors, distributors and publishers should retain a copy of all versions of the electronic disclosure document that they distribute or publish.
- RG 107.103 As a matter of good practice, these records should be kept for a period of at least seven years (or as required by law).
- RG 107.104 An offeror or distributor that provides the ability for an investor to apply for securities by using software should also retain a copy of each screen that would be displayed to the investor using the software to apply for securities, in any durable and legible medium.
- RG 107.105 Offerors, distributors and publishers should also maintain records that are adequate to demonstrate that a particular electronic application form was included in, or accompanied by, the electronic disclosure document.

Principle 9: Ensuring that electronic disclosure documents have the same information as paper versions

Principle 9

Electronic disclosure documents should have the same content, presentation and prominence of information as paper versions.

- RG 107.106 The electronic disclosure document distributed to an investor should contain the same information, in the same sequence and with the same prominence, as the paper disclosure document lodged with ASIC.
- RG 107.107 Modifications to electronic versions of the disclosure document should only be included where those modifications are immaterial and reflect necessary adjustments or increased functionality when using different electronic media—for example:
- (a) the inclusion of hypertext links (see further guidance in Principle 10 below);
 - (b) formatting changes required as a result of compatibility issues (i.e. font sizes, page margins and general formatting);
 - (c) the use of additional electronic functions that do not affect the content of the document, such as:
 - (i) a facility for searching defined expressions;
 - (ii) prompts to help investors use and find information in the electronic disclosure document;
 - (iii) ‘pop-ups’ that explain definitions, in place of standard glossaries; and
 - (iv) a zoom facility so that investors may enlarge or reduce the information displayed; and

- (d) prompts that encourage investors to read the disclosure document before they complete the application form. Such prompts should not contain substantive information that does not appear in the paper disclosure document lodged with ASIC.

RG 107.108 We think that the electronic version of a disclosure document should not cause an investor to confuse all or part of the disclosure document with any other document.

Principle 10: Ensuring appropriate use of hypertext links to, from and within electronic disclosure documents

Principle 10

Hypertext links to, from or within the electronic disclosure document should not be used to take investors to material not forming part of the electronic disclosure document, other than jurisdictional confirmations or educational material.

Hypertext links to the electronic disclosure document

RG 107.109 We think that hypertext links can assist in the efficient distribution and accessing of electronic disclosure documents, either on a webpage or by email. We think that a hypertext link should take an investor directly to the electronic disclosure document itself, to a webpage containing the disclosure document or to a webpage confirming the investor's eligibility to participate in the offering (including but not limited to a jurisdictional disclaimer or confirmation), and not to a page that contains information about the offeror and/or the offer.

RG 107.110 Additionally, the page or email containing the hypertext link should not contain any information about the offeror and/or offer that may contravene the advertising provisions in s734. Hypertext links to the electronic application form should only be accessible through the electronic disclosure document itself.

Hypertext links within the electronic disclosure document or to documents incorporated by reference

RG 107.111 We encourage the use of hypertext links in electronic disclosure documents in the following ways:

- (a) within the electronic disclosure document itself (i.e. between a contents page and each section of the document, between sections of the document, or between defined expressions and the places where the expressions are used);
- (b) from the electronic disclosure document to documents incorporated by reference—where that information is available electronically (e.g. on

the ASX Market Announcements Platform or on the offeror's website)—and only if a reasonable person would be unlikely to confuse the linked documents with the electronic disclosure document; and

Note: Under s712, a disclosure document may refer to a document that has been lodged with ASIC instead of setting out information that is contained in that document, provided that the reference (among other things) identifies the document that contains the information and informs a person of their right to obtain a copy of the document. This is commonly referred to as 'incorporated by reference'. It is not sufficient to link to other documents for them to be incorporated by reference, as these documents must be lodged with ASIC.

- (c) from the electronic disclosure document to educational material (e.g. webpages on ASIC's MoneySmart website) providing information about the risks associated with investing in certain types of securities (e.g. hybrid securities), which may assist an investor in deciding whether or a not particular investment suits their needs.

RG 107.112 Hypertext links to documents incorporated by reference should allow the investor to return to the point in the electronic disclosure document at which they entered the link to assist the investor to continue to read the remainder of the disclosure document.

RG 107.113 If an investor requests that the incorporated documents are sent to them, the documents should be provided by the same means as the electronic disclosure document, unless the investor has requested paper copies of the incorporated documents. It is not sufficient that the incorporated documents are accessible on the internet unless the offeror gives the investor notice of this and the address of the relevant website.

RG 107.114 A hypertext link to an electronic disclosure document should not be provided in a manner that selectively presents only parts of the disclosure document or that reduces the likelihood of an investor reading any part of the disclosure document.

RG 107.115 We think that hypertext links should not be used:

- (a) from the electronic disclosure document directly to promotional material;
- (b) from the electronic disclosure document to the electronic application form or electronic payment process (unless the link can only be accessed after the investor has positively confirmed that they have accessed or read the disclosure document); or
- (c) from a webpage containing the electronic disclosure document to an electronic application form or electronic payment process (unless the link can only be accessed after the disclosure document has been accessed or after the investor has positively confirmed that they have accessed or read the disclosure document).

Principle 11: Ensuring electronic application forms are issued in or with an electronic disclosure document

Principle 11

Electronic application forms must be included in, or accompanied by, the electronic disclosure document.

RG 107.116 Offerors, distributors and publishers should take reasonable measures to ensure that an investor who is issued with an electronic application form is given access, at the same time and by the same means, to the disclosure document.

Note: This guidance reflects the legal requirements in s721 and 727(1), under which an offer of securities must be made in, or accompanied by, a disclosure document; and s723(1), under which it is an offence to issue securities unless they are issued in response to an application form and the issuer has reasonable grounds to believe that the form was included in, or accompanied by, the disclosure document (or was copied or directly derived from such a form).

RG 107.117 We consider the following to be examples of reasonable measures that can be taken to satisfy this requirement in the electronic environment:

- (a) the electronic application form and the electronic disclosure document should be contained in the same electronic document file (e.g. a PDF or TIFF file), with the electronic application form at the end of that file after the electronic disclosure document; or
- (b) if providing an electronic application form or electronic payment process to allow investors to apply for securities online, an electronic mechanism or software should be used, through which:
 - (i) investors can gain access to the electronic application form or make an electronic payment only if they have received and accessed the electronic disclosure document; or
 - (ii) offerors, or distributors on behalf of offerors, can verify that the investor received and accessed the electronic disclosure document before accessing and completing the application form, or making an electronic payment.

RG 107.118 For example, an offeror or distributor may provide for a ‘certify’ message requiring the investor to confirm that the electronic disclosure document has actually been received and accessed before the application for securities is made. A further example is where investors are provided with a unique personal identification number, which can only be derived from the electronic disclosure document—or from the electronic application form that accompanied, or was included in, the electronic disclosure document—and which is required for an investor to complete the electronic application form or to make an electronic payment for securities.

Note: See RG 107.39–RG 107.44 for further discussion about electronic payment processes.

- RG 107.119 Offerors might want to take additional steps in their compliance programs. For example, if applications are made through an AFS licensee, an offeror might want to obtain confirmation from the AFS licensee that all investors have received the disclosure document, and to require the AFS licensee to obtain an acknowledgement from the investor that they have received the disclosure document. However, we do not expect offerors to implement mechanisms or software to monitor whether an investor has viewed each page of the electronic disclosure document.
- RG 107.120 An offeror, or a distributor on behalf of an offeror, must only accept applications for securities if it has reasonable grounds to believe that the electronic application form was included in, or accompanied by, an electronic disclosure document when the application form was received by the investor.

Principle 12: Ensuring appropriate warnings are included in electronic application forms

Principle 12

Electronic application forms should contain appropriate warnings to ensure that investors are informed of the importance of reading the disclosure document before applying for securities.

- RG 107.121 Offerors and distributors should display a prominent statement, which the investor will see no later than the electronic application form, to the effect that securities will only be issued or transferred on receipt of an electronic application form that was issued together with the electronic disclosure document, or on receipt of an electronic payment that is made with information derived from such a form.
- RG 107.122 Whether an electronic application form is contained in the same file as the electronic disclosure document (i.e. a PDF or TIFF file), or is an online generated application form, all electronic application forms should display prominent statements to the effect that:
- (a) there is a disclosure document with information about investing in the securities—including details about the offer and the disclosure document, such as the identity of the issuer, the nature of the securities being offered (e.g. ordinary shares or options), the price of the securities, the date of the disclosure document and the expiry date of the disclosure document; and
 - (b) investors should read the disclosure document before applying for the securities.

Note: Application forms should also contain a statement to the effect that, by applying for securities, an investor is agreeing to become a member of the company. This reflects the requirement in s231(b), which provides that a person is a member of a company if they agree to become a member of the company after its registration and their name is entered on the register of members.

Principle 13: Ensuring electronic application forms are secure

Principle 13

Electronic application forms should contain verification processes and should be secure.

- RG 107.123 Offerors, and distributors on behalf of offerors, may accept applications for securities that are completed and submitted online, and may accept electronic payment for securities, provided that they have the appropriate systems in place to ensure that such information is securely transmitted and free from possible hacking or fraud.
- RG 107.124 We consider that electronic application forms should not be able to be transmitted and received electronically unless the offeror or distributor has reasonable systems and controls in place to ensure the security and safety of the information being transmitted. Such systems and controls would include encryption-type software effectively encrypting the confidential information being transmitted, and appropriate firewalls to prevent the hacking of such information once it has been received by the offeror or distributor.
- RG 107.125 We recommend that offerors and distributors should ensure that electronic application forms are secure to protect them from any unauthorised alteration or tampering and to protect the privacy of the investor's personal information. Additionally, encryption-type software should be used to transmit payments and confidential information about the investor.
- RG 107.126 While we think that it is primarily a matter for the offeror to decide whether an investor must sign an application form—and how to resolve the technical issues for an investor (whether an individual or a corporate entity) signing electronically—we do recommend that offerors, and distributors on behalf of offerors, should take reasonable measures to verify the identity of the investor.
- RG 107.127 For example, the offeror or distributor may require the investor to:
- (a) use personalised log-in details to access the electronic disclosure document, electronic application form and/or details that must be known by the investor in order to make an electronic payment for securities, including:
 - (i) details about how to make an electronic payment;
 - (ii) a unique personal identification number for the investor (e.g. customer reference number); and
 - (iii) an identification code for the issuer (e.g. biller code);
 - (b) provide a verification code, which may be sent by the offeror to the investor's personal email address, to allow the investor to submit the application form and/or make an electronic payment; or

- (c) answer a security question (to which they have previously provided the answer) to allow the investor to submit an application form and/or make an electronic payment.

RG 107.128 We understand that some offerors might want an investor to sign an application form as evidence that the investor agrees to the terms on which the offeror will issue securities to them. In such instances, an investor should be able to print or download an application form from an electronic disclosure document or website.

RG 107.129 Electronic application forms or electronic payment processes should also allow the investor to easily download, print and save a copy of the electronically submitted application form or receipt of payment. While the electronic application form may contain links and information relevant to applying for the securities, these should not distract the investor from reading and understanding the electronic disclosure document or application form.

Principle 14: Ensuring offers are only made in specific jurisdictions

Principle 14

Reasonable measures should be taken to ensure that offers are only made in jurisdictions where the offer complies with the relevant securities laws.

RG 107.130 Offerors and distributors that distribute electronic disclosure documents should take reasonable measures to ensure that the offer is only received in Australia or other specific jurisdictions where it is intended that the offer will be available, and where they are satisfied that the offer complies with all the relevant securities laws of those jurisdictions.

RG 107.131 We think that an electronic disclosure document should contain a prominent statement that the offer or invitation is only available to persons receiving the document in certain specified jurisdictions.

RG 107.132 If an electronic disclosure document is made available on the websites of financial intermediaries or regulated markets, these persons should also take measures to avoid targeting residents in countries where the offer of securities to the public is not taking place.

RG 107.133 Some additional measures offerors or distributors may wish to take to reduce the risk of contravening foreign securities laws include:

- (a) the inclusion of a 'certify' message on the webpage containing the electronic disclosure document and/or electronic application form, requiring the investor to confirm, before accessing the documents, that they are located in Australia or another specific jurisdiction where the offer is being made; or

- (b) the use of firewall software to control the security settings of an electronic application form to prevent applications being made by investors located outside Australia or other specific jurisdictions where the offer is being made.

Principle 15: Ensuring investors do not confuse promotional material with the electronic disclosure document

Principle 15

Promotional material should not be published in a way that may cause it to be confused with all or any part of the electronic disclosure document.

- RG 107.134 Electronic disclosure documents should be presented to investors in a way that encourages investors to make decisions on the basis of the contents of the document and not on the basis of promotional or marketing material.
- RG 107.135 Offerors, distributors and publishers should not publish promotional material in such a way that a reasonable person would be likely to confuse it with all or any part of the electronic disclosure document.
- RG 107.136 As a matter of good practice, offerors, distributors and publishers of electronic disclosure documents should take the following reasonable measures:
 - (a) use separate electronic document files for the disclosure document and any promotional and advertising material;
 - (b) in the email containing the electronic disclosure document or a link to the electronic disclosure document, only include a basic description of the offer—for example, the identity of the issuer, the nature of the securities being offered (e.g. ordinary shares or options), the price of the securities and the closing date of the offer;
 - (c) include a clear and prominent statement in any promotional and advertising material to the effect that:
 - (i) the information does not constitute part of the disclosure document;
 - (ii) a disclosure document for the offer is available—and advise on how this may be obtained—and that investors should obtain a copy and read the disclosure document before making an investment decision; and
 - (iii) securities will only be issued in response to an application form that was either included in, or accompanied by, a disclosure document; and
 - (d) do not provide hypertext links from the electronic disclosure document directly to promotional material.

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASX	The exchange market operated by ASX Limited
Ch 6D (for example)	A chapter of the Corporations Act (in this example numbered 6D)
CLERP Act	<i>Corporate Law Economic Reform Program Act 1999</i>
[CO 00/44] (for example)	An ASIC class order (in this example numbered CO 00/44)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CP 155 (for example)	An ASIC consultation paper (in this example numbered 155)
disclosure document	A prospectus, a profile statement or an offer information statement for an offer of securities under Ch 6D of the Corporations Act
distributor	Any person sending or disseminating an electronic disclosure document or electronic application form, or a hypertext link to an electronic disclosure document or electronic application form, including but not limited to AFS licensees and excluding offerors and publishers
electronic application form	Any application form for an offer of securities that is distributed and accessed in electronic format, including: <ul style="list-style-type: none"> • an online or web-based application form, such as one that can be completed and submitted online; and • an application form that is a digital copy of a paper form that is able to be distributed, downloaded or viewed electronically (e.g. by email or on an electronic device)

Term	Meaning in this document
electronic disclosure document	Any disclosure document under Ch 6D of the Corporations Act that is distributed and accessed in electronic format, including: <ul style="list-style-type: none"> • an online or web-based disclosure document (which may contain electronic content); and • a disclosure document that is a digital copy of a paper document that is able to be distributed, downloaded or viewed electronically (e.g. by email or on an electronic device)
good practice guidance	Good practice guidance, contained in Section D of this guide, for the electronic distribution of disclosure documents and application forms under Ch 6D of the Corporations Act
OFFERlist	A database of all disclosure documents for fundraising offers lodged with ASIC under Ch 6D of the Corporations Act and for some disclosure documents required to be lodged under Pt 7.9
offeror	Any person making an offer of securities under Ch 6D of the Corporations Act, including any person issuing or transferring securities under Ch 6D. Offering securities includes inviting applications for the issue of securities and inviting offers to purchase the securities: s700(2)
old Corporations Law	The law, set out in s82 of the <i>Corporations Act 1989</i> , which preceded the Corporations Act. A reference to the old Corporations Law is a reference to the law as it stood before the implementation of the CLERP Act
PDF	Portable document format
phishing	Emails or text messages that attempt to deceive a person into disclosing their personal information, such as usernames, passwords or banking details
Pt 6D.2	A part of the Corporations Act (in this example numbered 6D.2)
publisher	Any person who publishes through electronic means an electronic disclosure document or electronic application form in the course of business. This includes a website host provider, through which an electronic disclosure document or electronic application form can be accessed
RG 107 (for example)	An ASIC regulatory guide (in this example numbered 107)
s723 (for example)	A section of the Corporations Act (in this example numbered 723), unless otherwise specified
TIFF	Tagged image file format

Related information

Headnotes

advertising, AFS licensee, AFS licensee created application form, Australian financial services licensee, disclosure document, electronic application form, electronic disclosure document, electronic distribution, electronic payment process, hypertext link, offer of securities, personalised application form, social media

Class orders

[CO 00/44] *Electronic disclosure documents, electronic application forms and dealer personalised applications* (now superseded [SCO 00/44])

[CO 14/26] *Personalised and AFS licensee created application forms for offers of securities*

Regulatory guides

RG 36 *Licensing: Financial product advice and dealing*

RG 141 *Offers of securities on the internet*

RG 150 *Electronic applications and dealer personalised applications* (now superseded SRG 150)

RG 158 *Advertising and publicity for offers of securities*

RG 221 *Facilitating online financial services disclosure*

RG 234 *Advertising financial products and services (including credit): Good practice guidance*

RG 244 *Giving information, general advice and scaled advice*

Legislation

ASIC Act, s12CA–12CC, 12DA–12DB and 12DJ

Corporate Law Economic Reform Program Act 1999 (CLERP Act)

Corporate Law Economic Reform Program Bill 1998 (CLERP Bill)

Corporations Act, Ch 6D, s52, 706, 707, 708, 708AA, 708A, 710, 711, 713, 715, 718, 719, 723, 724, 727, 729, 734, 736, 737, 738, 991A, 1041E–1041H

Consultation papers and reports

CP 155 Prospectus disclosure: Improving disclosure for retail investors

CP 211 Facilitating electronic offers of securities: Update to RG 107

*REP 261 Response to submissions on CP 155 Prospectus disclosure:
Improving disclosure for retail investors*