



**ASIC**

Australian Securities & Investments Commission

**REPORT 494**

# **Marketing practices in initial public offerings of securities**

September 2016

## **About this report**

This report outlines the key findings from reviews we conducted to examine how initial public offerings (IPOs) are marketed to retail investors. We particularly considered the extent to which social media has become important for marketing.

This report identifies some risks and recommendations that may be useful for firms and issuers to consider when developing an IPO marketing strategy.

### 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.

### Disclaimer

This report 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 report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

# Contents

<b>Executive summary</b> .....	<b>4</b>
<b>A Commercial and legal context of the marketing of IPOs</b> .....	<b>9</b>
Current financial market.....	9
Legal framework .....	10
Appointments for marketing IPOs.....	13
<b>B Our review of marketing methods and materials</b> .....	<b>15</b>
ASIC's role in IPOs .....	15
Purpose of our marketing review .....	15
Methodology for our review .....	16
Key findings: General observations .....	17
Key findings: Traditional marketing .....	20
Key findings: Non-traditional marketing.....	25
Key findings: Indirect coverage of the IPO .....	31
<b>C Areas of concern and recommendations for consideration</b> .....	<b>34</b>
Oversight weaknesses.....	35
Misleading communication .....	37
Failure to monitor.....	40
Inadequate controls on access to information.....	40
<b>Appendix 1: International regulatory approach on use of social media</b> .....	<b>44</b>
<b>Appendix 2: Accessible versions of figures</b> .....	<b>48</b>
<b>Key terms</b> .....	<b>49</b>
<b>Related information</b> .....	<b>52</b>

## Executive summary

- 1 The success of an initial public offering (IPO) depends on investor interest. While issuers prepare a prospectus, this is not the only communication with investors about the IPO. Inevitably, there will be a number of steps taken to market the IPO with the aim of interesting investors in the offer.
- 2 An IPO plays an important role in a company accessing the public capital markets in Australia. Problems with the disclosure or the process involved in an IPO may risk the reputation of Australia's capital markets. Poor investor decision making in relation to IPOs may result in loss not simply for those investors acquiring IPO securities but also for investors that later acquire securities on market following the company's listing.
- 3 To help mitigate these risks, ASIC regularly reviews prospectuses lodged with us to check the disclosure against the requirements in Ch 6D of the *Corporations Act 2001* (Corporations Act). Other work we have undertaken includes more thematic examinations of aspects of the IPO process.
- Note: For example, [Report 484](#) *Due diligence practices in initial public offerings* (REP 484) outlines our key findings from reviews we conducted to examine the due diligence practices of issuers of securities under an IPO; and [Report 486](#) *Sell-side research and corporate advisory: Confidential information and conflicts* (REP 486) outlines our key observations from our review of the way that financial intermediaries handle material non-public information and manage conflicts of interest.
- 4 In addition, we consider relief applications and take investigative action if concerns are identified. We may also review marketing information in relation to prospectuses to ensure that potential investors are not misled.
- 5 To gain a more systemic insight into current marketing practices for IPOs, we undertook a review of the marketing practices and materials of some of the firms and issuers where a prospectus for an IPO was lodged during a six-week period. We particularly wanted to obtain an understanding of whether social media is changing the way in which IPOs are marketed.
- 6 The focus of our review was on marketing to retail investors, but we also undertook some limited work in relation to understanding the approach taken in marketing to certain high net worth investors.

### Commercial and legal context of marketing of IPOs

- 7 Section A of this report sets out the market context and legal framework relevant to our review. Of particular significance are the legislative provisions that are designed to ensure that the prospectus is the primary source of information for retail investors about an IPO.
- 8 There are strict advertising and publicity restrictions to prevent issuers, and those acting on their behalf, from using persuasive marketing techniques without reference to the prospectus.

## ASIC's review of marketing of IPOs

9 Section B sets out the purpose and methodology of ASIC's review of the marketing of IPOs and the key findings. It explains the different marketing processes that we encountered in our review, including our key observations on each marketing method. A summary of our observations on traditional marketing methods is set out in Table 1 and on non-traditional marketing methods in Table 2.

**Table 1: Key observations—Traditional marketing**

<b>Telephone calls</b>	Despite considerable marketing by telephone to retail investors, and sophisticated or professional investors, firms' employees did not generally use a script or keep notes of the call. As a result, oversight of this marketing method by firms was limited.
<b>Email distribution</b>	Template emails were usually comprehensive and drew investors' attention to the prospectus. While messages were mostly derived from or consistent with the prospectus, in a few cases, messages were not balanced and may have created a misleading impression about the investment opportunity.
<b>Roadshows</b>	Access arrangements for roadshows held before a prospectus was lodged with ASIC were not always limited to Australian financial services (AFS) licensees and their representatives.
<b>'Investor education' research</b>	'Investor education' research was distributed internally within the sample firm, within the firm's adviser network, or to sophisticated or professional investors. The research was not given to retail investors. However, we consider that 'investor education' research indirectly influenced marketing through educating the firms' employees.  'Investor education' research was sometimes used as a direct marketing tool for sophisticated or professional investors.
<b>Websites</b>	The material on the websites of issuers and sample firms included the prospectus, and any supplementary or replacement prospectus, lodged with ASIC.  Sometimes access to pathfinder prospectuses on websites was not carefully restricted to sophisticated or professional investors.
<b>Advertisements</b>	Formal advertising was more prevalent in IPOs for emerging market issuers, technology companies and high-profile privatisations.

**Table 2: Key observations—Non-traditional marketing and indirect coverage**

<b>Social media</b>	Social media was significantly less important than traditional marketing methods for IPOs in Australia.  Occasionally, we saw information about IPOs misstated in social media posts (including information about ASIC's role in the IPO).
<b>OnMarket BookBuilds</b>	OnMarket BookBuilds performed a similar marketing function to a firm for some issuers.
<b>Crowd-sourced funding sites</b>	When issuers rely on international crowd-sourced funding sites for part of their offer, this may result in Australian and non-Australian investors making an investment decision based on information contained on the sites rather than in the prospectus.

<b>Media coverage</b>	Some firms and issuers may be disseminating information to the media before the prospectus is lodged with ASIC in a way that undermines the advertising provisions in the Corporations Act.
<b>Investor forums</b>	Some of the posts on investor forums may not represent a balanced assessment of an IPO, may undermine the advertising provisions and may be misleading or deceptive.  Investors should be cautious about relying on this information.

- 10 We found that, while traditional marketing methods remained very important (Table 1), some small and medium-sized firms were also using more innovative methods of marketing IPOs (Table 2). In addition, some issuers are now using new platforms that linked the issuers directly to potential investors.

### Areas of concern and recommendations

- 11 Overall, we saw some good marketing practices used by firms. All of the firms had processes and procedures to try to ensure that a standardised form of communication was used by each employee of the firm.
- 12 However, we did identify some areas of concern that we observed during our review. Section C sets out those concerns and also contains some recommendations about how to address these problems. The key problems are set out in Table 3.

**Table 3: Areas of concern and recommendations for consideration**

<b>Oversight weakness:</b> Telephone communications	Firms should apply tighter controls over the marketing and selling of IPOs by telephone, such as: <ul style="list-style-type: none"> <li>• providing employees with standardised telephone scripts;</li> <li>• recording and routinely reviewing telephone calls with clients;</li> <li>• applying stricter requirements on documenting telephone calls with clients; and</li> <li>• compliance staff routinely sitting at the sales desk when telephone calls are made to clients.</li> </ul>
<b>Oversight weakness:</b> Social media posts	Firms should apply controls on social media posts similar to those in place for other marketing, such as: <ul style="list-style-type: none"> <li>• educating employees on using social media for marketing IPOs in compliance with the Corporations Act; and</li> <li>• ensuring that social media posts are reviewed before being posted.</li> </ul>
<b>Misleading communication:</b> Marketing an IPO other than on its merits	Firms should ensure that marketing: <ul style="list-style-type: none"> <li>• is based on the merits of the IPO itself; and</li> <li>• is not based primarily on asking investors to assist with meeting spread requirements, or on comparisons with other successful IPOs conducted by the firm.</li> </ul>

<p><b>Misleading communication:</b> Prominence of forecasts</p>	<p>Firms and issuers should:</p> <ul style="list-style-type: none"> <li>• take care when using forecasts to market IPOs, and not give undue weight to forecasts in the marketing messages; and</li> <li>• if forecasts are used, ensure the assumptions and risks of the forecasts are also included in the marketing material.</li> </ul>
<p><b>Misleading communication:</b> Marketing of emerging market issuers</p>	<p>Firms and issuers targeting investors from a non-English speaking background should:</p> <ul style="list-style-type: none"> <li>• ensure that communications are clear and accurate (including any statements about the regulatory framework in Australia and about ASIC's role); and</li> <li>• if marketing material is being produced in a language other than English, ensure these materials are fully understood by the firm or issuer, including getting translations before publication (if necessary).</li> </ul>
<p><b>Failure to monitor:</b> Failing to update multimedia marketing including videos</p>	<p>Firms and issuers should check that:</p> <ul style="list-style-type: none"> <li>• the content of videos used to market IPOs is accurate and consistent with disclosure in the prospectus; and</li> <li>• the content of any videos remains correct after any changes or updates are made to a prospectus.</li> </ul>
<p><b>Inadequate controls on access to information:</b> Access to institutional roadshows</p>	<p>Firms should apply tighter controls and educate their employees to limit access to institutional roadshows to AFS licensees and their representatives.</p>
<p><b>Inadequate controls on access to information:</b> Potential access to pathfinder prospectus</p>	<p>Firms should:</p> <ul style="list-style-type: none"> <li>• apply tighter controls and educate their employees to limit access to restricted material (including pathfinder prospectuses) to sophisticated or professional investors;</li> <li>• educate their employees about the need to limit circulation of restricted material (including pathfinder prospectuses) before the prospectus is lodged with ASIC; and</li> <li>• ensure that restricted material (including pathfinder prospectuses) or passwords to access restricted material are not distributed by email.</li> </ul>
<p><b>Inadequate controls on access to information:</b> Disseminating information before a prospectus is lodged</p>	<p>Firms and issuers should not provide materials about an upcoming offer to the media.</p> <p>If marketing is given to persons before a prospectus is lodged with ASIC, on the basis of those persons being a sophisticated or professional investor, firms and issuers should ensure that the recipient actually falls within this category.</p> <p>Before providing the information, firms and issuers should undertake additional verification (e.g. obtain an accountant's certificate) to ensure that the person is a sophisticated or professional investor. Self-certification by a person is not sufficient.</p>

## Further work

13

With the benefit of the work outlined in this report, we will continue to consider marketing of IPOs as part of our review of IPO disclosure in some instances. We are aware that more innovative marketing methods may be used by firms or issuers and that compliance processes may not necessarily have adapted to these methods.

- 14 Over the past year, we have intervened on a number of occasions to address misleading statements in more innovative marketing. For example, we raised concerns with an issuer that published articles on its website and social media that contained statements we considered might be misleading or deceptive. Some of the articles were published in a language other than English, appearing to target foreign investors. We obtained corrective disclosure from the issuer about these statements.
- 15 We anticipate doing further work over the 2016–17 financial year in reviewing the IPO process to identify and assess potential areas of risk and to ensure effective regulatory intervention mechanisms are in place for the future.
- 16 In particular, we note our report focuses largely on the marketing practices of firms but does not explore in any detail the impact of these practices on investor decision making. There is scope for more work in looking at the area of investor behaviour, what influences investor decision making, and applying the insights of behavioural economics.



## A Commercial and legal context of the marketing of IPOs

### Key points

Australia has a healthy capital market that allows businesses to efficiently raise capital from investors to fund business growth. Part of the strength of the Australian capital market comes from having a clear legal framework for raising capital.

The Australian disclosure regime assists investors to assess the risks and returns associated with an IPO and make informed investment decisions. There are limits on advertising and publicity that can take place during an IPO—particularly before a prospectus is lodged with ASIC—to ensure that investment decisions are based on disclosure within the prospectus.

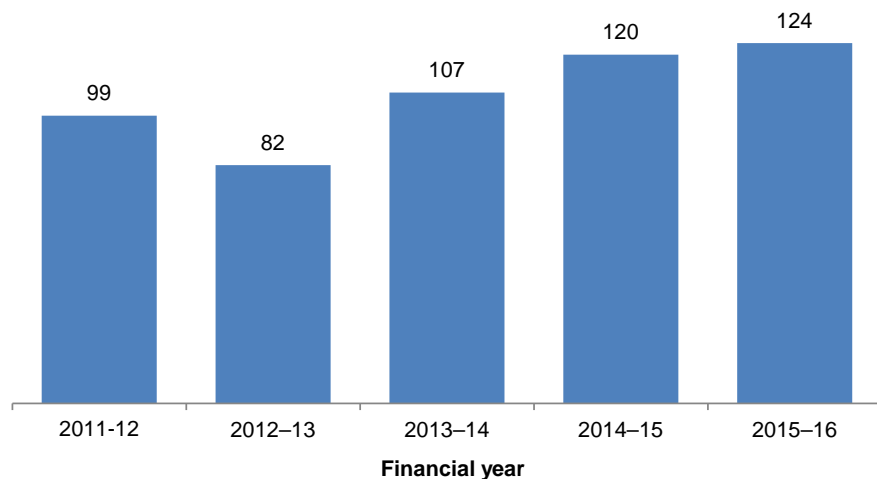
Australian issuers generally appoint advisers to assist with offers, including a lead manager who markets the IPO and oversees the sale of securities.

### Current financial market

- 17 Financial markets play a pivotal role in the Australian economy, and in facilitating economic growth, by enabling businesses to efficiently raise capital from investors to fund business growth and expansion. For Australian financial markets to operate effectively, it is important that markets are fair and efficient, and that investors and financial consumers have trust and confidence in their operation.
- 18 Our financial services and markets are being transformed by innovation. ASIC embraces the innovation that is currently taking place, and we encourage digital innovation that fosters investor and financial consumer trust and confidence.
- 19 The IPO market has been particularly active in recent years. Between 1 July 2015 and 30 June 2016, 499 prospectuses were lodged with ASIC, 126 of which were IPOs.

Note: We regularly publish reports that outline the level of activity in the public fundraising market: see [Report 489 ASIC regulation of corporate finance: January to June 2016](#) (REP 489).

- 20 The number of new listings on the ASX has also increased since 2012–13: see Figure 1.

**Figure 1: Number of new ASX listings**

Note: This graph represents the number of new listings on ASX only. It does not include new listings on other securities exchanges. See Table 6 in Appendix 2 for the data shown in this figure (accessible version).

Source: [ASX Limited annual report 2016](#).

## Legal framework

- 21 The Australian legal provisions applicable to the marketing of IPOs are designed to ensure that the prospectus is the primary source of information about the offer. These provisions focus on disclosure and advertising. There are also important provisions that apply to the firms that undertake the marketing of the offers.

### Disclosure requirements

- 22 An IPO that involves an offer of securities to retail investors in Australia requires a prospectus to be prepared and lodged with ASIC under the disclosure requirements contained in Ch 6D of the Corporations Act—primarily s710.
- 23 Under s710, a prospectus must contain all the information that investors and their professional advisers would reasonably require to make an informed decision in relation to the IPO. This includes an assessment of:
- (a) the rights and liabilities attaching to the securities offered; and
  - (b) the assets and liabilities, financial position and performance, profits and losses, and prospects of the body that is to issue the securities.

Note: The prospectus must contain this information only to the extent that it is reasonable for investors or their professional advisers to expect to find the information in the prospectus: s710(1)(a). The Corporations Act also requires other specific information to be included in the prospectus: s711 and 716.

24 This disclosure regime is to assist retail investors to assess the risks and returns associated with an offer and make informed investment decisions based on the disclosure contained in the prospectus: see [Regulatory Guide 228 Prospectuses: Effective disclosure for retail investors](#) (RG 228).

25 By contrast, offers to sophisticated or professional investors do not require a prospectus. This is on the basis that sophisticated and professional investors do not require the same level of regulatory protection as retail investors because they are financially astute and able to safeguard their own interests, including by gaining access to required information directly from the issuer.

### **Advertising and publicity restrictions**

26 To facilitate an informed investment decision by investors, the Corporations Act also imposes strict limits on the advertising and publicity that can take place during an IPO. These rules are in place to try and ensure that investment decisions by investors are based on disclosure that is contained in the prospectus and not on any other information.

27 Specifically, s734 of the Corporations Act imposes a prohibition on advertising or publicising offers of securities that require a prospectus, unless it falls within an exception.

### **Before lodging the prospectus**

28 The Corporations Act permits the following statements about an IPO before a prospectus is lodged with ASIC:

- (a) a statement that identifies the offeror and the securities;
- (b) a statement that a prospectus will be made available when the securities are offered;
- (c) a statement that anyone who wants to acquire the securities must complete the application form that will be in, or will accompany, the prospectus; and
- (d) a statement of how to receive a copy of the prospectus: s734(5)(b).

29 In addition, a pathfinder prospectus may be sent to persons who do not require a prospectus because they are a sophisticated investor (s708(8) or s708(10)) or a professional investor (s708(11)).

### **After lodging the prospectus**

30 The Corporations Act permits advertisements or publicity about an IPO following the lodgement of a prospectus with ASIC if it includes the following information:

- (a) a statement that identifies the issuer (and, if applicable, the seller) of the securities;

- (b) a statement that the prospectus for the IPO is available, and where it can be obtained;
- (c) a statement that offers will be made in, or accompanied by, a copy of the prospectus;
- (d) a statement that a person should consider the prospectus in deciding whether to acquire securities; and
- (e) a statement that anyone who wants to acquire the securities must complete the application form that will be in, or will accompany, the prospectus: s734(6).

### General exceptions

31 The Corporations Act also permits:

- (a) news reports or genuine commentary in newspapers and periodicals and on radio and television (s734(7)(d)); and
- (b) a report that is published by a genuinely independent person and that is not reasonably likely to induce investors to apply for securities under an offer (s734(7)(e)).

32 Given the limited advertising and publicity of an IPO that can take place before the prospectus is lodged—and recognising that this may impose unreasonable and uncommercial restraints on issuers (including the ability to price an IPO)—we have provided relief to permit certain additional advertising and marketing activities to take place: see [ASIC Corporations \(Market Research and Roadshows\) Instrument 2016/79](#) and [Regulatory Guide 254 Offering securities under a disclosure document \(RG 254\)](#).

33 The relief in this instrument:

- (a) permits market research to be conducted before a prospectus is lodged;
- (b) permits roadshow presentations to AFS licensees and their representatives before a prospectus is lodged; and
- (c) extends the ‘news report or genuine commentary’ exception to statements in electronic media services.

34 We also consider individual relief applications from the advertising restrictions to permit pre-registration arrangements for IPOs and communications being sent to employees and other stakeholders about the IPO before a prospectus is lodged. Such individual relief is considered on a case-by-case basis: see RG 254.

### Obligations of firms

35 Firms that carry on a financial services business in Australia must hold an Australian financial services (AFS) licence. An AFS licensee has a number of specific obligations in Ch 7 of the Corporations Act including:

- (a) doing all things necessary to ensure that the financial services covered by the AFS licence are provided efficiently, honestly and fairly; and
- (b) to comply with the conditions of the AFS licence and financial services law and ensure that its representatives comply with the financial services law.

36 Firms are also subject to the general prohibitions in Ch 7 of the Corporations Act including:

- (a) the making of false or misleading statements; and
- (b) engaging in dishonest, or misleading and deceptive conduct.

### **Social media**

37 In this report, when we refer to ‘social media’ we include microblogs (e.g. Twitter), social and professional networks (e.g. Facebook, LinkedIn, Google + and WeChat) and image and video sharing platforms (e.g. YouTube, Instagram and Pinterest).

38 The Corporations Act does not have any specific provisions on social media in the context of IPO marketing. Nor is there specific guidance, although ASIC has endeavoured to promote the use of technology to communicate better with investors through our guidance on prospectuses: see [Regulatory Guide 107](#) *Fundraising: Facilitating electronic offers of securities* (RG 107).

39 Some international approaches to social media are outlined in Appendix 1. These stress the importance of appropriate supervision of the use of social media and consideration of how regulatory requirements should apply in that context. In other words, they emphasise that disciplines about communication should not be disregarded simply because the method of communication is social media.

## **Appointments for marketing IPOs**

40 To prepare for an IPO, an issuer will typically appoint a team of advisers including a lead manager who is generally involved in the marketing strategy of the IPO and the sale of securities.

41 From our observations, in IPOs where sufficient institutional demand for securities is expected, the issuer will tend to appoint a small number of larger firms. Where a broader distribution to retail investors is desired, issuers will tend to appoint some smaller to medium-sized firms with access to this market.

42 The lead manager, along with the issuer and potentially a public relations manager, generally determine the marketing strategy for an IPO. The lead

manager is responsible for the overall marketing strategy for selling the IPO securities.

- 43 The lead manager usually commences the marketing of the IPO to sophisticated and professional investors before a prospectus lodged with ASIC. This may assist in assessing potential investor demand, and creating a more accurate book build and pricing determination for the IPO. The marketing of the IPO will continue to take place after a prospectus is lodged with ASIC, including to retail investors.
- 44 Firms that manage an IPO typically receive a management fee (which may be fixed or based on funds raised) and a selling fee (which is based on funds raised). Other firms involved in marketing an IPO commonly receive commissions, known as 'stamping fees', based on the amount of securities that the firm sells in an IPO. We understand that firms generally receive higher fees and higher stamping fees for higher-risk IPOs, including for emerging market issuers. This is because these types of IPOs are more difficult to sell to investors.

## B Our review of marketing methods and materials

### Key points

We have conducted a review of marketing of IPO offers. This section sets out the purpose and methodology of the review and the key findings.

We found that:

- marketing strategies differed, based on whether the investors being targeted were retail investors, or sophisticated or professional investors, the type of IPO and the size of the firm marketing the offer;
- all sample firms used some form of traditional methods to market IPOs, including telephone calls, email distribution, roadshows, websites and investor education. Controls over these methods varied;
- some smaller and medium-sized sample firms have started using more innovative methods to market IPOs, including social media; and
- there were a number of new online platforms which linked potential investors directly with issuers, including OnMarket BookBuilds.

### ASIC's role in IPOs

- 45 We are responsible for the regulation and oversight of public corporate finance activity in Australia, including IPOs. Our work overseeing the marketing of offers complements other regulatory work we undertake regarding offers of securities.
- 46 We have a broad role in relation to IPOs. We assess applications for relief from provisions of the Corporations Act, may review prospectuses that are lodged with ASIC, and may monitor the advertising or publicity that takes place during an IPO.
- 47 We may also review the conduct of issuers after an IPO to ensure they comply with their continuous disclosure obligations and corporate governance responsibilities.

### Purpose of our marketing review

- 48 We believe that the way an IPO is marketed to an investor may have an impact on their investment decision.
- 49 We recently examined the role of firms' research teams in marketing transactions, including IPOs, to potential investors. This examination included the use of 'investor education' research prepared before the prospectus was lodged and made available to potential institutional investors. Our findings are outlined in REP 486.

- 50 In addition, we decided to review the way that firms and issuers market IPOs to certain investors, including the use of social media and other innovative technology.
- 51 We were particularly interested in the marketing directed to retail investors, and certain higher net worth individuals who may qualify as sophisticated or professional investors. We excluded from this latter group—referred to in this report as ‘high net worth investors’—traditional institutional investors such as investment banks, hedge funds, insurance companies, sovereign wealth funds, AFS licensees and equivalent overseas licence holders.
- 52 We wanted to assess:
- (a) how firms market to these investor groups (including the type of information provided to these investors);
  - (b) whether the current marketing to these investor groups potentially breaches the advertising restrictions in s734 of the Corporations Act;
  - (c) whether firms have different styles and methods of marketing IPOs, including:
    - (i) targeting certain investor groups (e.g. more vulnerable investor groups) for specific types of IPOs (e.g. higher-risk IPOs including emerging market issuers); and
    - (ii) using different marketing techniques for higher-risk IPOs, including for emerging market issuers; and
  - (d) whether firms are using innovative means when marketing IPOs, including:
    - (i) using social media or other innovative technology and, if used, whether its use complies with the advertising and publicity restrictions in s734 of the Corporations Act; and
    - (ii) if social media is not used, the nature of the perceived barriers to its use.

## Methodology for our review

- 53 We looked at the current marketing practices used by firms and issuers to market IPOs through a two-stage process.
- 54 In stage one, we looked at the online and social media marketing of all of the IPO prospectuses that were lodged with ASIC over a pre-selected six-week period. This comprised 23 successful IPOs—referred to as the ‘original group’.
- 55 We conducted daily searches from the date that the prospectus was lodged with ASIC until a few weeks after the issuer’s securities were listed on the relevant securities exchange. The daily online searches we conducted involved:



- (a) social media searches using social media monitoring software;
- (b) issuers' and firms' websites;
- (c) key word searches, including on online search engines;
- (d) investment blogs and investor forums; and
- (e) traditional media outlets.

- 56 In stage two, we selected seven IPOs from the original group (representing just under a third of this group)—these formed our 'sample group'. We contacted 17 firms, from within the sample group, that acted in an official role as lead managers, joint lead managers or co-managers—these were our 'sample firms'.
- 57 We reviewed the marketing documents that the sample firms used to market or publicise the IPO. We asked each firm general and specific questions about their marketing practices for the IPO within the sample group—and for IPOs generally—including questions about their use of social media and other innovative platforms.
- 58 All of the IPOs in the sample group had a broker firm marketing and selling the IPO to their clients. Different broker firms sold to different investor types.
- 59 When we selected the sample group and sample firms, we ensured that they reflected a range of issuer types, and a range of IPOs and firms of different sizes.
- 60 During stages one and two, we continued to monitor the marketing of IPOs as part of our prospectus reviews. Some of the observations in this report are based on our usual work in relation to IPOs, rather than our formal review.
- 61 We did not examine any advice that might be given by persons unconnected to the offer, such as a financial adviser or firm that did not have an official role in the offer. To this extent, our review did not cover all communications to potential investors about participating in the offer.
- 62 As discussed in paragraphs 123–146, other platforms may have a role in selling an IPO and may be entitled to a stamping fee.

## Key findings: General observations

- 63 The sample firms had systems and controls in place for marketing IPOs. This included some form of approval process for the marketing material to be circulated to investors. The aim of these systems and controls appeared to be to ensure that a standardised form of marketing was used by each employee of the firm. We also presume that this was to ensure that the marketing material was derived from the information in the prospectus.

64 All sample firms used traditional methods to market IPOs, and only some used innovative methods. The marketing strategy was often tailored to the type of investor targeted (i.e. retail investor or sophisticated or professional investor).

65 We observed that communications to investors about the IPO extended beyond direct communications by the firm or issuer. This involved some discussion of the IPO appearing in the media, investor forums or investment blogs, resulting in some form of indirect coverage, which raised the profile of the IPO.

### **Influences on marketing strategies**

66 Based on our review, there were differences between the marketing strategies adopted, based on the following interrelated factors:

- (a) whether the investor being targeted was a retail investor or sophisticated or professional investor;
- (b) the type of the IPO being conducted; and
- (c) the size of the firm undertaking the marketing.

### **Difference between retail investors and sophisticated or professional investors**

67 A key difference between the approach adopted in relation to retail investors, compared with sophisticated or professional investors, was the timing of the marketing efforts. Generally, we did not observe any marketing to retail investors before the prospectus was lodged with ASIC. In contrast, marketing to sophisticated or professional investors before the prospectus lodgement was common.

68 This is consistent with the legal framework that restricts offering securities to retail investors until after the prospectus is lodged. As outlined in paragraphs 28–29, there are strict restrictions on advertising before the prospectus is lodged.

69 Larger firms tended to market to sophisticated or professional investors. Some of these larger firms that did not directly sell to retail investors used a retail broker firm to assist them to market the IPO to retail investors.

70 There were some forms of communication made available to sophisticated or professional investors that were not made available to retail investors. These were pathfinder prospectuses, offer summaries derived from the prospectus, access to institutional roadshows including management presentation slides and, on some occasions, ‘investor education’ research. Some sophisticated or professional investors were given access to the NetRoadshow website, where pathfinder prospectuses and roadshow presentations may have been available.

71 The information in the marketing materials provided to retail investors and sophisticated or professional investors was substantially the same, but the form of the information may have differed as some documents were only circulated to sophisticated or professional investors.

### **Type of offer**

72 In the IPOs we reviewed, the type of investors to whom the offer was marketed was influenced by the type of offer. The IPOs of technology businesses and emerging market issuers were largely directed at retail investors. Larger IPOs of established businesses (i.e. those over \$100 million) tended to focus on sophisticated or professional investors. Other types of IPOs tended to mix their marketing between both retail investors and sophisticated or professional investors, and engaged different firms to sell to different investor groups.

73 In addition, we saw evidence that the marketing for higher-risk IPOs, including emerging market issuers, targeted retail and high net worth investors with a connection to the particular emerging market.

74 Firms usually received higher sales commissions, in the form of stamping fees (an exception to the ban on conflicted remuneration), for IPOs that were higher risk, including technology businesses and emerging market issuers. The firms acting on these offers tended to be small to medium sized.

75 As outlined below, there were differences between the methods used by small to medium-sized firms compared with larger firms. It is difficult to know, simply based on our review, whether these differences were a result of the type of offer (including the greater stamping fee incentive), the type of firm, or simply the fact that small to medium-sized firms often market different types of IPOs to those marketed by larger firms.

### **Size of firm**

76 Small to medium-sized firms were more prepared to use innovative marketing methods compared with larger firms. For example, they were more likely to use social media and multimedia (including videos) to market an IPO.

77 The selling messages from small to medium-sized firms were sometimes less balanced. For example, we observed communications where discussion points were mostly limited to asking investors to assist with meeting the spread requirements, or to comparisons with past IPOs that were not directly comparable with the current IPO.

78 Our review suggested that the oversight of marketing by larger firms was more robust.

## Key findings: Traditional marketing

- 79 The traditional marketing of IPOs to retail investors included the following:
- (a) telephone calls to firm clients;
  - (b) email distribution to firm clients;
  - (c) retail roadshow/management presentation (for some IPOs only)
  - (d) publicly accessible websites (issuers' own website and the firms' website); and
  - (e) advertisements online and in print (for some IPOs only).
- 80 Variations of these traditional methods are used for sophisticated or professional investors including institutional investors. For instance, institutional roadshows are used including those delivered through the NetRoadshow website. However, marketing to institutional investors was not the focus of our review.

### Telephone calls

- 81 All of the sample firms had a number of employees marketing the IPO to their clients by telephone. It appeared that a significant amount of marketing of IPOs occurred by telephone. This practice was common for both retail investors and sophisticated or professional investors.
- 82 Whether an investor is given appropriate telephone messages depends on the firm's sales employees' understanding of their role, the offer and what information provides a good basis for an investor making an investment decision about the offer.
- 83 We were unable to form any conclusions about the quality of telephone communications to investors. This was because most firms did not prepare and give their employees a script for their telephone calls to market IPOs. Nor did most firms keep written file notes or other records of telephone discussions with their clients, other than records of buy orders.
- 84 We looked at some of the background material prepared for the employees making telephone calls to help educate them about the offer. This included the prospectus (or pathfinder prospectus) and sometimes also included internal briefing notes, 'investor education' research and management presentations.
- 85 The training provided to employees in firms responsible for making telephone calls to market IPOs to retail investors, or sophisticated or professional investors, was beyond the scope of our review.

**Key observation**

Despite considerable marketing by telephone to retail investors, and sophisticated or professional investors, firms' employees did not generally use a script or keep notes of the call. As a result, oversight of this marketing method by firms was limited.

**Email distribution**

- 86 All sample firms used email to market the IPO to their clients.
- 87 Typically, firms prepared an approved template email for distribution. This usually contained:
- (a) a summary of the IPO;
  - (b) key summary financial information of the issuer including forecasts (if applicable);
  - (c) a copy of the prospectus lodged with ASIC (or the pathfinder prospectus for emails sent to sophisticated or professional investors before lodgement of the prospectus);
  - (d) a brief investment recommendation, commentary or concerns about the IPO; and
  - (e) links to videos or media articles discussing the IPO (where available).
- 88 These kinds of emails provided a significant amount of information to clients. In some, but not all cases, the emails stated that investors should consider the information contained within the prospectus. There appeared to be a reasonable basis for the recommendation and commentary within the email, and they were clear and easy to read. There did not appear to be any oversight of the tailoring of the message by employees.
- 89 While the summary of the IPO contained in the emails was generally consistent with the information in the prospectus, we did observe some instances where taking the information out of context could lead to an unbalanced presentation of the investment opportunity.
- 90 We observed that financial forecasts were included in emails without any discussion of the underlying assumptions or risks. Where forecasts were available in the prospectus, these were seen by the firm to be an important factor to draw to the attention of investors: see paragraphs 185–190.
- 91 We also saw discussion in emails about the past performance of other IPOs that were not necessarily comparable to the IPO in question. Care should be taken with these discussions: see paragraphs 178–184.
- 92 In relation to some offers, we saw firms explicitly consider whether to promote an offer to a particular client by taking into account the interests of that client. For example, some firms' employees did not recommend a

particular IPO to a client, even if their firm was acting as lead manager for the IPO. The reasons for not recommending the IPO included that the employees:

- (a) did not believe that the IPO was a good offer; or
- (b) did not believe that the IPO was a good investment for their client, based on the risk or diversification strategy that the client had in place.

93 In some instances, passwords for accessing restricted material (e.g. pathfinder prospectuses or institutional roadshows) were circulated by email, creating the risk that retail investors may access this information: see paragraphs 206–209.

94 In some cases, the emails contained an offer to discuss the IPO in more detail. This again emphasises the importance of telephone communication in marketing an IPO.

#### Key observation

Template emails were usually comprehensive and drew investors' attention to the prospectus. While messages were mostly derived from or consistent with the prospectus, in a few cases, messages were not balanced and may have created a misleading impression about the investment opportunity.

### Roadshows (investor presentations)

95 A 'roadshow' is a series of presentations about an upcoming offer of securities generally to potential investors, financial advisers and analysts. A roadshow will typically involve a presentation from the senior management team and key personnel of the issuer, followed by a question and answer session.

96 They are used in IPOs to give investors a deeper understanding of the issuer's business and provide them with an opportunity to ask specific questions to senior management.

97 There are two types of roadshow presentations that can occur in an IPO:

- (a) *institutional roadshows*—these are commonly used before a prospectus is lodged with ASIC and are permitted to be provided to AFS licensees and their representatives by our relief in ASIC Corporations (Market Research and Roadshows) Instrument 2016/79; and
- (b) *retail roadshows*—these are less commonly used and occur after a prospectus is lodged with ASIC.

98 Institutional roadshows enable analysts and institutional investors to meet with the senior management of an issuer to gain a better understanding of the business. This can assist in creating a more accurate book build and pricing determination for an IPO. In some instances, these institutional roadshows

are also made accessible to high net worth investors despite this contravening the terms of ASIC relief: see paragraphs 201–205. More detail about the processes involved in roadshows is outlined in REP 486.

99 We understand that retail roadshows are used to create publicity and provide a deeper understanding of an IPO for retail investors. These roadshows are generally used for:

- (a) larger-scale IPOs;
- (b) IPOs where it is anticipated that there will be strong demand from retail investors (e.g. privatisations); and
- (c) emerging market issuers where particular segments of the investment community may be targeted.

100 We have seen some evidence of retail roadshows being made more widely available through the use of technology. We observed that videos of retail roadshows are sometimes uploaded on the issuer’s social media page (Facebook) or their website.

#### Key observation

Access arrangements for roadshows held before a prospectus was lodged with ASIC were not always limited to AFS licensees and their representatives.

### ‘Investor education’ research

101 Most of the sample firms prepared internal briefing notes, and distributed these internally as part of the IPO process to educate their sales team in selling the IPO to their clients.

102 We observed that ‘investor education’ research was prepared by sample firms for approximately half of the IPOs in the sample group. Some firms told us that they emailed ‘investor education’ research on the IPO to their employees, others distributed the research within their adviser network, and a few firms told us they emailed the research to their sophisticated or professional clients. We did not see any ‘investor education’ research released to retail investors. We saw one sample firm email a video of a research analyst’s presentation to some of their clients, contrary to their firm’s policy.

103 In REP 486, we comment on the use of ‘investor education’ research to assist with the marketing of IPOs.

**Key observation**

'Investor education' research was distributed internally within the sample firm, within the firm's adviser network, or to sophisticated or professional investors. The research was not given to retail investors. However, we consider that 'investor education' research indirectly influenced marketing through educating the firms' employees.

'Investor education' research is sometimes used as a direct marketing tool for sophisticated or professional investors.

**Websites**

- 104 It was common for issuers to place information about the upcoming IPO (including a copy of, or link to, the prospectus and any supplementary or replacement prospectus) on their website after the prospectus had been lodged with ASIC.
- 105 Some smaller firms marketed the IPO on their own publicly accessible websites. They also included a copy of, or link to, the prospectus and any supplementary or replacement prospectus.
- 106 In addition, ASX has an 'Upcoming float' page on its website, which contains limited information about IPOs—including the issuer, offer size and issue price (where known). The ASX website does not generally include a copy of the prospectus until after the issuer's listing.
- 107 Some larger firms used the NetRoadshow website ([www.netroadshow.com](http://www.netroadshow.com)) to market IPOs to sophisticated or professional investors. This website is well established and used internationally as a secure platform to upload and access documents for securities offerings, including pathfinder prospectuses and roadshow presentations. To gain access to the documents, a user needs to be registered with NetRoadshow and use a password that is distributed by the firm selling the IPO to its clients. We understand that users can view, but not download or print, the documents.
- 108 Sample firms told their employees to distribute the password by telephone and not by email. This would help to ensure that the information on the NetRoadshow website would not be disseminated to persons other than sophisticated or professional investors. However, some sample firms' employees emailed passwords to access pathfinder prospectuses contained on the NetRoadshow website, which increased the risk of this website being inappropriately accessed.

**Key observation**

The material on the websites of issuers and sample firms included the prospectus, and any supplementary or replacement prospectus, lodged with ASIC.

Sometimes, access to pathfinder prospectuses on websites was not carefully restricted to sophisticated or professional investors.



## Advertisements

- 109 During the course of our review, we saw some firms and issuers advertise IPOs in:
- (a) newspaper advertisements, print and online;
  - (b) television advertisements;
  - (c) online advertisements featured on websites; and
  - (d) Google AdWords.
- 110 We observed that advertisements about the IPO were used for emerging market issuers and technology companies. In our experience, advertisements also tend to be used in high-profile IPOs, such as privatisation IPOs.
- 111 We saw that a smaller firm placed advertisements about an IPO in an Australian foreign language newspaper, being a language of the relevant emerging market of the issuer. The advertisement included a summary of the IPO and details of the retail roadshow. We also observed website and newspaper advertising for the IPO of an emerging market issuer which misstated ASIC's role in the IPO.
- 112 We saw some smaller firms using advertising on websites and Google AdWords to market an IPO and lead the reader to the issuer's website for details of the IPO, including the prospectus.

### Key observation

Formal advertising was more prevalent in IPOs for emerging market issuers, technology companies and high-profile privatisations.

## Key findings: Non-traditional marketing

- 113 In addition to the traditional marketing methods, we observed some limited use of more innovative marketing methods. Part of the rationale for our review was to see how important these kinds of methods have become in the context of conducting IPOs.
- 114 Overall, we found that traditional marketing methods remained the most common and significant. However, it was interesting to see that some of the smaller and medium-sized firms had started to use some more creative and innovative strategies to market their IPOs, including social media. In addition, we observed that some issuers used platforms to engage with investors.

## Social media

- 115 We saw Twitter accounts connected with two small to medium-sized firms in the sample group used to market IPOs after the prospectus was lodged with ASIC. These posts stated the firm's role in the IPO and contained links to the issuer's or firm's website for the prospectus and offer details, or instructed the reader to contact the firm for a prospectus and application. Twitter feeds were used to provide updates about the IPO—for example, the fact that the IPO had closed early and was oversubscribed, or comments about the IPO's performance after listing.
- 116 Two small to medium-sized firms within the sample group used WeChat or LinkedIn to market an IPO after the prospectus had been lodged with ASIC. The LinkedIn page:
- (a) contained summary information about the IPO;
  - (b) included a YouTube video of the issuer's senior management;
  - (c) directed readers to the issuer's website or to the firm for the application form; and
  - (d) described the issuer as 'profitable', 'fast growing' and included longer-term market forecasts, but did not refer to any risk factors.
- 117 On two occasions, we saw information about IPOs misstated on WeChat. In one instance, the misstatement concerned an issuer's financial position, and in the other, the misstatement was about ASIC's role in the IPO. In both cases, we took regulatory action to have the issuer (or the firm) remove or retract the post.
- 118 Social media appeared to be used both for publicity and to generate sufficient investor acceptances to meet spread requirements for listing.
- 119 However, the majority of medium-sized and large firms did not use or permit the use of social media to market IPOs. The main reasons for not using or allowing the use of social media outlined to us included:
- (a) a lack of need;
  - (b) a preference to approach clients directly, taking into account the expectations of the client base;
  - (c) the importance of ensuring that clients have received, read and understood, an offer document before an application is submitted;
  - (d) the length of disclaimers that would be necessary;
  - (e) the reduced ability to control who receives the offer document, and in what jurisdiction;
  - (f) the risks associated with message distortion on social media about what constitutes financial advice; and
  - (g) the inability to control content created by users of social media.

- 120 The different types of offers typically dealt with by small to medium-sized firms compared with other firms may suggest that market forces contribute to the use of social media by these firms. The risk of not achieving spread or the minimum subscription amount is often a much more real risk for IPOs to which small to medium-sized firms are appointed. It may be that social media represents an additional way to mitigate the risk of an IPO failing that is attractive for smaller firms, in a way that is not necessary for offers that larger firms are appointed to manage.
- 121 It appears, at least in the near term, that it is unlikely that social media will become more important than traditional marketing methods. One of the barriers to the use of social media is potentially the advertising restrictions in s734 of the Corporations Act. Further discussion about the future of social media and IPO marketing is set out in paragraphs 171–177.
- 122 Although not part of the direct communications from the firms or issuers, we saw IPOs publicised on social media platforms, such as Twitter and YouTube, without any direct involvement by the firm or issuer. This is because many online forums and media outlets have a social media presence and will regularly post either articles or commentary about IPOs sourced from the forum or media. In these circumstances, the online forums and media outlets are, in effect, using the IPO to market their own forum or outlet. These communications, however, can influence investors and are therefore discussed further below.

#### Key observation

Social media was significantly less important than traditional marketing methods for IPOs in Australia.

Occasionally, we saw information about IPOs misstated in social media posts (including information about ASIC's role in the IPO).

### Platforms directly linking investors to issuers

- 123 We saw issuers use new online platforms—some of which had been developed in Australia—that linked potential retail investors directly with issuers.
- 124 These platforms typically fell into one of the following two categories:
- (a) those that connected potential investors with issuers without the ability to apply directly for securities on that platform (i.e. connecting platforms); or
  - (b) those that allowed investors to apply directly for securities and facilitated allocation (e.g. OnMarket BookBuilds and crowd-sourced funding sites).

### Connecting platforms

- 125 These platforms connect high net worth investors with issuers. The sites usually describe themselves as a publishing and distribution service, acting as an information platform to facilitate a connection between issuers and potential investors. The connecting platforms usually receive a fee for this service.
- 126 These platforms include information about IPOs after a prospectus is lodged with ASIC. They typically provide the following information to investors:
- (a) a summary of the issuer (which may extend to competitive advantages and information about the board and management);
  - (b) a summary of the IPO (which may extend to investment highlights); and
  - (c) investor presentation videos or videos of interviews with the board.
- 127 The platforms usually have a strong presence on social media.
- 128 Some platforms have a mechanism for investors to send questions or comments direct to the issuer, or invite investors to attend live investor evenings. Most platforms will either allow investors to register their interest in the IPO, or direct the investor to the issuer's website for the prospectus and application form.
- 129 One of the IPOs within the sample group used a connecting platform to market itself. We also recently observed an IPO outside the sample group use a connecting platform which provided its readers with a unique code for priority allocation in an IPO.

### OnMarket BookBuilds

- 130 In October 2015, the developers of the ASX BookBuild technology launched a new platform called OnMarket BookBuilds. OnMarket BookBuilds is a platform used by issuers to obtain publicity and spread, and by retail investors to obtain information about IPOs and bid for securities in an IPO without a broker firm. OnMarket BookBuilds effectively pools applications by retail investors and submits these to the issuer. OnMarket BookBuilds is only used by issuers after the prospectus is lodged.
- 131 OnMarket BookBuilds was used in three of the 23 IPOs in the original group. These were IPOs for a fund, an emerging market issuer and a technology company.
- 132 The issuer directly engages the services of OnMarket BookBuilds and pays OnMarket BookBuilds a fee for successful allocations. Investors do not pay fees for bidding into IPOs through OnMarket BookBuilds. OnMarket BookBuilds may reduce the costs of an IPO for issuers (i.e. possibly reducing stamping fees payable to firms).

- 133 Before placing a bid, investors must confirm that they have received a copy of, and read, the prospectus.
- 134 The OnMarket BookBuilds platform includes an overview of the issuer and the IPO and generally includes:
- (a) a summary of information contained within the prospectus about the issuer, the IPO and key financial information;
  - (b) the prospectus;
  - (c) a research report (if available);
  - (d) videos—generally of management or an interview with management by a financial commentator;
  - (e) an investor presentation; and
  - (f) links to media articles (if available).
- 135 During our review, we identified one instance where an issuer lodged a replacement prospectus to address ASIC’s disclosure concerns in the original prospectus, but the corresponding information was not also corrected in a video that was available to retail investors on OnMarket BookBuilds: see paragraphs 196–200.
- 136 OnMarket BookBuilds uses social media to market IPOs that are on their platform. It posts on Twitter, Facebook and LinkedIn the fact that the IPO is on its platform. This means that issuers using the OnMarket BookBuilds platform gain publicity on social media even if they do not actively use social media themselves.
- 137 OnMarket BookBuilds also sends to investors who have signed up as members of the platform text messages, push notifications and email notifications about new IPOs on their platform and about when an IPO is about to close.

#### Key observation

OnMarket BookBuilds performed a similar marketing function to a firm for some issuers.

#### Crowd-sourced funding sites

- 138 Crowd-sourced funding, in the context of an IPO, refers to the raising of small amounts of money from a large number of investors in exchange for securities in an issuer.
- 139 Although these were not used by any of the IPOs in the original group, we recently observed arrangements between issuers and international crowd-sourced funding sites during the IPO process when issuers were seeking a listing on an Australian regulated market. Unlike submitting an application

for an IPO, which involves allocation discretion by the issuer, an international crowd-sourced funding site gives retail investors a guaranteed investment in an IPO.

- 140 From our observation, the international crowd-sourced funding sites were being used by issuers to obtain more publicity from retail investors about the issuer and the IPO, and to help the issuer meet the relevant spread requirements. It is possible that international crowd-sourced funding sites may reduce costs for issuers.
- 141 International crowd-sourced funding sites are usually allocated a portion of the IPO securities that investors are able to directly apply for and be allocated using this platform.
- 142 In most cases, investors subscribe directly with the issuer. However, in some cases, investors subscribe through a special purpose vehicle.
- 143 International crowd-sourced funding sites contain information about the issuer and the IPO, similar to the information contained on OnMarket BookBuilds, including a copy of the prospectus. However, the crowd-sourced funding sites usually contain a more detailed summary of the issuer and the IPO. This may not necessarily be approved by the issuer.
- 144 Multimedia (including videos) is commonly uploaded by the issuer onto international crowd-sourced funding sites to explain details about the issuer and the IPO in an interactive way.
- 145 Crowd-sourced funding sites that target Australian retail investors to market an IPO must comply with the Corporations Act. Depending on the circumstances, this requires holding either an Australian market licence or an AFS licence. If international crowd-sourced funding sites are currently targeting Australian retail investors in connection with IPOs, without the required licence, they are likely to be contravening the Corporations Act.
- 146 Domestically, the Australian Government has indicated that it supports the introduction of a bespoke crowd-sourced funding framework in Australia, and has completed consultation on the Exposure Draft of the Corporations Amendment (Crowd-Sourced Funding) Bill 2015, the Corporations Amendment (Crowd-Sourced Funding) Regulation 2015 and explanatory material. This regime is expected to address various regulatory issues mentioned above.

#### Key observation

When issuers rely on international crowd-sourced funding sites for part of their offer, this may result in Australian and non-Australian investors making an investment decision based on information contained on the sites rather than in the prospectus.

## Key findings: Indirect coverage of the IPO

- 147 In addition to traditional and innovative marketing methods conducted at the instigation and direction of the firm and/or issuer, we observed a number of other forums that had the effect of publicising or advertising IPOs, whether intentionally or not.
- 148 In some cases, the source of the information on these forums was unknown, but the specific nature of the information often suggested that the information may have originated from a person close to the issuer or IPO process.

### Media coverage

- 149 We noticed that it had become quite common for IPOs to have some form of media coverage in traditional newspaper publications—in both online and print form—before a prospectus was lodged with ASIC. The media coverage usually included a discussion by journalists about:
- (a) the fact that a company was proposing to conduct an IPO;
  - (b) the proposed timing of the IPO;
  - (c) the proposed offer size; and
  - (d) the lead managers.
- 150 Common examples included the *Australian Financial Review*'s 'Street-Talk', the *Sydney Morning Herald*'s 'Business Day', and *The Australian*'s 'Business Review'. Coverage was sometimes also included on the media publication's website and, at times, on their social media platforms (e.g. a post on the IPO appearing in the media publication's Twitter feed).
- 151 From our review, the media coverage of an IPO before lodgement of the prospectus was not necessarily limited to the fact that an IPO for the issuer was imminent, but may also discuss some key elements of the IPO, including potential offer size and, at times, some headline financial figures (e.g. earnings, revenue and forecasts). The inclusion of these details suggests that the media had been briefed by someone connected to the offer.
- 152 We saw firms include a copy of the article, or a link to the online article, in their email to their clients. The articles (or their content) also often made their way onto discussion threads on investor forums.
- 153 After the prospectus was lodged, it was also common for the IPO to have some media coverage in traditional newspaper publications, in both online and print form.

#### Key observation

Some firms and issuers may be disseminating information to the media before the prospectus is lodged with ASIC in a way that undermines the advertising provisions in the Corporations Act.

## Investor forums

- 154 Online investor forums—including Hot Copper, Aussie Stock Forums and Topstocks—enable investors to connect with other investors and to discuss investments in companies, including IPOs.
- 155 Usually, investor forums are free to use, are closed (users need to join the forum to make posts) and involve pseudo-anonymity (users assume a fictitious name).
- 156 It is common for a thread to be created about an upcoming IPO before a prospectus is lodged. Users frequently upload links to online media coverage on the thread, along with links to other information about the upcoming IPO (e.g. links to videos of the issuer’s senior management team). Users need to be wary of overly positive assessments of offers, including IPOs, which appear on these forums.
- 157 During our review, we saw that some investor forums included information about IPOs before a prospectus was lodged with ASIC. In some instances, the information was derived from existing public sources (e.g. media coverage). However, in other cases, the information was not publicly available—for example:
- (a) price to forecast pro forma earnings ratio for an upcoming IPO posted before the prospectus was lodged with ASIC and one day before media coverage; and
  - (b) pro forma revenue, earnings before interest, taxes, depreciation and amortisation (EBITDA) and net profit after tax (NPAT) for an upcoming IPO posted weeks before the prospectus was lodged with ASIC.
- 158 This suggests that some of the posts may have originated from persons associated with the offer.
- 159 ASIC’s regulatory interventions (e.g. revised disclosure or stop orders) are often frequently discussed on investor forums.
- 160 Some investor forums send emails to users about upcoming IPOs, and may post information about an IPO after the prospectus is lodged, including a link to an external website where investors can obtain more information as well as the prospectus.

### Key observation

Some of the posts on investor forums may not represent a balanced assessment of an IPO, may undermine the advertising provisions and may be misleading or deceptive.

Investors should be cautious about relying on this information.



## **Investor blogs**

- 161 We have a large number of investor blogs being established in Australia that discuss securities, including IPOs. Investor blogs typically provide a summary of the key aspects of an IPO, including the personal views and commentary by the financial commentator associated with the relevant online publication. The blogs may also include articles about specific IPOs, or IPOs generally.
- 162 During our review, we did not see any investor blogs that discussed the IPOs in the original group before a prospectus was lodged. We also did not see any information being discussed after the prospectus was lodged that was not contained in the prospectus. At times, investor blogs uploaded videos of senior management of the issuer.

## C Areas of concern and recommendations for consideration

### Key points

Our review identified some good practices by firms engaged in marketing IPOs by traditional methods. However, we also observed some particular weaknesses.

This section outlines our recommendations to:

- minimise the risk of investors receiving misleading information about an offer;
- improve a firm's oversight of communications to retail investors, and sophisticated or professional investors—particularly in relation to telephone communications;
- improve controls on access to information designed for sophisticated or professional investors; and
- monitor more innovative means of marketing to ensure that messages remain up to date and appropriate.

- 163 Our review of the current market practices by sample firms revealed that, overall, they engaged in some good practices when marketing IPOs. For example, we saw that:
- (a) they had processes in place to approve the marketing strategy for IPOs;
  - (b) they had systems in place aimed at standardising the marketing distributed by their employees; and
  - (c) employees would not necessarily recommend an IPO even if the firm was acting as the lead manager.
- 164 However, we had concerns about some of the market practices that we observed during our review, which could potentially result in:
- (a) investors receiving misleading or incomplete information about an IPO;
  - (b) breaches of the advertising restrictions in s734 of the Corporations Act; or
  - (c) firms acting in a manner that is inconsistent with their obligations as an AFS licensee.
- 165 These concerns are outlined below, together with recommendations for firms and issuers to prevent these issues from recurring in the future.

## Oversight weaknesses

### Telephone communications

- 166 It appeared that a significant amount of the marketing of IPOs occurred by telephone. We found that standardised scripts for telephone conversations were not commonly used.
- 167 The fact that information about the offer, in terms of a standard email, was also supplied to sales employees mitigated to some extent the risk of telephone conversations being based on erroneous material.
- 168 We also saw evidence of research reports and other material being provided to help educate the employees marketing the IPOs. However, this did not guarantee that what was said by a firm's employees during a conversation would present an accurate and balanced picture of the investment opportunity, or that the selling of the offer would be based on the merits of the offer.
- 169 Consideration of the training given to a firm's employees was beyond the scope of our review. However, appropriate guidance on how to approach these telephone calls would also help to mitigate the risk of potential investors being misled by telephone conversations or of employees using techniques based on pressure or emotions rather than the merits of the offer.
- 170 Based on the material available to us as part of our review, we were unable to draw any conclusions about the quality of the conversations between the firms and investors. It is apparent to ASIC that there was a general lack of record keeping by firms of the marketing and selling of IPOs by telephone. It was therefore very difficult for the firm's compliance teams, and ASIC, to know:
- (a) what information was being given to investors by telephone that would lead investors to make an investment decision about the IPO; and
  - (b) whether this marketing complied with s734 of the Corporations Act.

#### Recommendation

Firms should apply tighter controls over the marketing and selling of IPOs by telephone, such as:

- providing employees with standardised telephone scripts;
- recording and routinely reviewing telephone calls with clients;
- applying stricter requirements on documenting telephone calls with clients; and
- compliance staff routinely sitting at the sales desk when telephone calls are made to clients.

## Social media posts

- 171 We saw some firms, issuers and investor platforms (i.e. OnMarket BookBuilds and crowd-sourced funding sites) use social media to market and promote an IPO.
- 172 Social media was generally used to inform the audience about an IPO, and to inform people about where they can access more information (including a prospectus) if they are interested. We saw some instances where social media platforms (in particular Facebook and LinkedIn) have included videos of senior management discussing key facts about the IPO.
- 173 Most of the social media posts that we observed did not contain any information that we considered might mislead investors. However, we saw isolated instances where social media posts on WeChat misstated the issuer's financial position and ASIC's role in the IPO, as discussed at paragraph 117. See also our comments at paragraphs 196–200 about the potential to mislead investors by using out-of-date videos.
- 174 We observed one instance where we were concerned that a firm's compliance team may not have been fully aware of all social media posts made by their employees on an IPO.
- 175 We understand that the use of social media by firms or issuers to market an IPO may be difficult, given the advertising restrictions in s734 of the Corporations Act. We acknowledge that the strict wording that is required to be included in any advertising about a prospectus before and after lodgement may be incompatible with the use of social media.
- 176 This potential incompatibility may be one factor that limits the use of social media by most medium-to-large firms. We have not been asked to consider any individual relief that might modify the operation of s734 to allow the use of social media under the Corporations Act.
- 177 If firms and issuers wish to use particular forms of social media in the future that are not well adapted to complying with the obligations of s734, we would be open to exploring whether there might be ways to meet the policy aims of s734 without requiring strict compliance with its terms.

### Recommendation

Firms should apply controls on social media posts similar to those in place for other marketing, such as:

- educating employees on using social media for marketing IPOs in compliance with the Corporations Act; and
- ensuring that social media posts are reviewed before being posted.

## Misleading communication

### Marketing an IPO other than on its merits

- 178 We saw some instances where firms marketed IPOs to investors based on factors that were not connected to the merits of the individual IPO.
- 179 For an issuer's securities to be admitted to quotation, most market operators require the issuer to have a minimum number of security holders holding a minimum number of securities (commonly called 'spread').
- 180 We understand that a key factor in the marketing strategy of an IPO, particularly smaller IPOs, is so that the issuer can meet the spread required for listing. We understand that issuers can approach a number of firms with a retail distribution network, use OnMarket BookBuilds or overseas crowd-sourced funding sites to assist them meeting the spread requirements.
- 181 We also saw some communications between firms' employees and clients in relation to the IPO of an emerging market issuer where spread was the only or key discussion point for the investment. For example, we observed statements in emails where the firm was asking investors to assist with spread, and either proposed to put the investor in and take them out at a later stage, or stated that there would be sufficient demand after listing to release the investor from their position.
- 182 We also observed emails by firms' employees to clients marketing an IPO discussing the positive performance of previous IPOs that the firm was involved in selling which was not directly relevant to the current IPO.
- 183 Additionally, we saw promotional material for firms which:
- (a) contained statistics about the performance of IPOs in which the firm had acted; or
  - (b) positively asserted that the firm's IPOs outperformed other IPOs.
- 184 Marketing an IPO primarily on the basis of asking investors to assist with meeting spread requirements, or by using comparisons with other successful IPOs the firm was involved in, are risky practices. Statements that an investor can invest and be taken out at a later stage (the inference being that there is no risk of loss to the investor), comparisons between IPOs, and statements that purport to link IPO performance with a particular firm, may mislead investors in making the decision to invest.

### Recommendation

Firms should ensure that marketing:

- is based on the merits of the IPO itself; and
- is not based primarily on asking investors to assist with meeting spread requirements, or on comparisons with other successful IPOs conducted by the firm.

### Prominence of forecasts

- 185 Prospective financial information, including the use of short-term financial forecasts, is able to be included in a prospectus if the issuers have a reasonable basis for its inclusion.
- 186 We have issued [Regulatory Guide 170](#) *Prospective financial information* (RG 170) to help issuers understand whether, and how, to include prospective financial information, such as forecasts, in a prospectus—including what factors may constitute reasonable grounds: see RG 170.24–170.41.
- 187 These principles also apply to the advertising of IPOs because of the operation of s769C and 1041H. Section 1041H states that:
- A person must not, in this jurisdiction, engage in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive.
- 188 We saw that several IPOs within the original group included a short-term financial forecast in the prospectus, and that the relevant marketing documentation for those IPOs generally gave a high level of prominence to these financial forecasts in the communications and documents that were distributed.
- 189 We observed that, for several of the IPOs that included a short-term financial forecast in the prospectus, there was a material downgrade to this information within a couple of months of listing (three of the IPOs in the original group). Such a downgrade resulted in the issuer materially reducing the short-term financial forecast after listing. This resulted in significant security price falls for the issuer within the first couple of months of listing—ranging from 50% to 80% of the issue price.
- 190 Investors rely on the information, including prospective financial information, provided by the firms and issuers, when making an investment decision. We are concerned by the heavy prominence of short-term financial forecasts in the marketing of IPOs, without including the risks or the assumptions surrounding those forecasts. This is of particular concern to us given the recent frequency of issuers needing to downgrade these forecasts within a short period of time after listing. We also discuss the use of forecasts by firms in research reports released shortly after an issuer’s listing in REP 486.

**Recommendation**

Firms and issuers should:

- take care when using forecasts to market IPOs, and not give undue weight to forecasts in the marketing messages; and
- if forecasts are used, ensure the assumptions and risks of the forecasts are also included in the marketing material.

**Marketing of emerging market issuers**

191 We observed that marketing of IPOs of emerging market issuers was generally targeted to investors originating from the country of the emerging market issuer. A lot of the marketing material was prepared in a language of the relevant emerging market of the issuer.

192 We understand that this may present challenges for firms endeavouring to ensure consistency between the contents of the prospectus and the marketing material that may be prepared for investors whose first language is not English.

193 We observed some instances where the marketing material for an IPO for an emerging market issuer had misstated ASIC's role in the IPO. Within the sample group, we saw statements that ASIC granted listing approval on the relevant securities exchange. Outside the sample group, we saw statements that ASIC approved prospectuses.

194 These misstatements were included in banner advertisements on a firm's website, in newspapers and website advertisements for the IPO, and on a social media platform called WeChat.

195 In both instances, we took regulatory action to have the issuer correct these misstatements on the relevant websites and publications. We found these misstatements were made both in English and in a language other than English. We were concerned that the implication that ASIC had considered the merits of the offer and approved it might have influenced retail investors to invest.

**Recommendation**

Firms and issuers targeting investors from a non-English speaking background should:

- ensure that communications are clear and accurate (including any statements about the regulatory framework in Australia and about ASIC's role; and
- if marketing material is being produced in a language other than English, ensure these materials are fully understood by the firm or issuer, including getting translations before publication (if necessary).

## Failure to monitor

### Failing to update multimedia marketing including videos

- 196 It has become common for the marketing of IPOs to include videos. We have seen videos of senior management discussing the IPO, senior management being interviewed by financial commentators and videos outlining the issuer's business.
- 197 We observed that issuers usually prepare videos for IPOs when they used a platform directly linking issuers to investors (including OnMarket BookBuilds, crowd-sourced funding sites and other new platforms). Issuers usually include this video on their website and firms may also send a link to the video by email. Sometimes a link to the video also appeared on investor forums and on LinkedIn pages.
- 198 We noticed that these videos were usually filmed before lodgement of the prospectus, and distributed after lodgement.
- 199 In one IPO outside of the sample group, we raised concerns with the issuer about certain disclosure contained within the prospectus. The issuer lodged a replacement prospectus to resolve our concern but did not correct the same information in a video which appeared on various websites. We took regulatory action to have the issuer amend the video so that its content was consistent with the content with the replacement prospectus.
- 200 In another IPO, we sought correction of information contained in a video and transcript on a media website which contained erroneous financial forecasts that were not included in the prospectus. We raised concerns about the inaccuracies contained on the media website and the issuer took steps to correct the information.

#### Recommendation

Firms and issuers should check that:

- the content of videos used to market IPOs is accurate and consistent with disclosure in the prospectus; and
- the content of any videos remains correct after any changes or updates are made to a prospectus.

## Inadequate controls on access to information

### Access to institutional roadshows not limited to AFS licensees

- 201 A pathfinder prospectus—which is a draft prospectus that does not include the final offer price—may be given to sophisticated or professional investors before a prospectus is lodged under the Corporations Act. This is to assist an issuer in setting a realistic price for the IPO.



- 202 We also allow issuers to conduct institutional roadshow presentations to AFS licensees and their representatives (i.e. employees, directors and any other person acting on behalf of the licensee) before a prospectus is lodged: see ASIC Corporations (Market Research and Roadshows) Instrument 2016/79.
- 203 An institutional roadshow is used to provide analysts and institutional investors with access to senior management and the ability to gain information about an upcoming IPO before a prospectus is lodged with ASIC. We understand that institutional roadshows can assist to create a more accurate book build and pricing determination for the IPO.
- 204 From our observations, we believe that some firms may be confusing the pathfinder prospectus exception with the roadshow exception by allowing sophisticated or professional investors to attend institutional roadshows, or to access institutional roadshow information.
- 205 We saw some sample firms distribute dial-in details for an institutional roadshow presentation by email. Such distribution of dial-in details by firms could result in a firm being unable to know who is in attendance at these presentations and would not know if it was limited to AFS licensees and their representatives. Such conduct may result in an issuer not complying with ASIC Corporations (Market Research and Roadshows) Instrument 2016/79, and thereby contravening the advertising restrictions in s734 of the Corporations Act.

#### Recommendation

Firms should apply tighter controls and educate their employees to limit access to institutional roadshows to AFS licensees and their representatives.

#### **Potential access to pathfinder prospectuses not limited to sophisticated and professional investors**

- 206 The Corporations Act allows pathfinder prospectuses to be distributed to sophisticated or professional investors. We observed that most firms had strict policies and procedures in place to try and ensure that only sophisticated or professional investors gained access to pathfinder prospectuses.
- 207 Most of the larger firms in the sample group used the NetRoadshow website to upload and house the pathfinder prospectus. To gain access to pathfinder prospectuses on NetRoadshow, users need to be registered on the website and have a unique password which is distributed by the firm to their clients. Employees were told by their compliance departments not to distribute the password by email and to only distribute the password by telephone so that access would be limited to that individual client.

208 We saw numerous instances where the sample firms' employees included the NetRoadshow password in their email to clients, or emailed clients a copy of the pathfinder prospectus.

209 These practices concern ASIC because of the ease with which the passwords or the pathfinder prospectus could be forwarded by those clients to other persons by email, and that access to such pathfinder prospectuses may not be restricted to sophisticated or professional investors.

#### Recommendation

Firms should:

- apply tighter controls and educate their employees to limit access to restricted material (including pathfinder prospectuses) to sophisticated or professional investors;
- educate their employees about the need to limit circulation of restricted material (including pathfinder prospectuses) before the prospectus is lodged with ASIC; and
- ensure that restricted material (including pathfinder prospectuses) or passwords to access restricted material are not distributed by email.

#### Disseminating information before a prospectus is lodged

210 We observed that key information relating to the IPO, including financial information and forecasts, was commonly disseminated to the public before a prospectus was lodged with ASIC. We saw this occur in the media, on investor forum websites and by email distribution.

211 We are concerned about the origin of the information being disseminated before a prospectus is lodged. The type of information being distributed on a routine basis appears to have originated from a person close to the issuer or the IPO process, and may breach the advertising restrictions in s734 of the Corporations Act.

212 We saw a firm within our sample group send emails to users of an investor forum website about IPOs before lodgement of the prospectus. The users specifically requested the firm to send them information about upcoming IPOs. It appeared that no checks were made as to whether those persons fell within the category of a sophisticated or professional investor, as defined in s708(8), 708(10) and (11) of the Corporations Act. The information that was provided to investors included management presentations and a summary of the IPO including summary headline financial information.

**Recommendation**

Firms and issuers should not provide materials about an upcoming offer to the media.

If marketing is given to persons before a prospectus is lodged with ASIC, on the basis of those persons being a sophisticated or professional investor, firms and issuers should ensure that the recipient actually falls within this category.

Before providing the information, firms and issuers should undertake additional verification (e.g. obtain an accountant's certificate) to ensure that the person is a sophisticated or professional investor. Self-certification by a person is not sufficient.

## Appendix 1: International regulatory approach on use of social media

- 213 International financial regulators have recognised the prevalence of social media usage in the financial services sector, and some have published guidelines to assist regulated entities in complying with their relevant regulatory responsibilities.
- 214 Although some of this guidance is directed at disclosing entities, most is directed at the financial services sector.
- 215 A comparison of guidance released by regulators in the United States and the United Kingdom shows common focus points being product suitability, record keeping, supervision and third-party content. This appendix provides a summary of that guidance.

### United States

- 216 The Securities and Exchange Commission (SEC) is the primary securities regulator in the United States. It oversees key participants in the securities world, including securities exchanges, securities brokers and dealers, investment advisers, and mutual funds.
- 217 The Financial Industry Regulatory Authority (FINRA) is a US non-government organisation that regulates the securities industry through mandatory licensing and registration of all firms dealing in securities.
- 218 Both the SEC and FINRA have released guidance to assist companies and financial services firms to remain compliant with their legal and regulatory obligations when using social media. This includes guidance for issuers on using social media to comply with their continuous disclosure requirements.
- 219 [FINRA Regulatory Notice 10-06](#) *Social media websites: Guidance on blogs and social networking websites* (issued in 2010) and [FINRA Regulatory Notice 11-39](#) *Social media websites and the use of personal devices for business communications* (issued in 2011) aim to guide firms on applying FINRA's communications rules to social media sites, such as blogs and social networking sites.
- 220 The FINRA communication rules (as summarised in the [FINRA Retrospective rule review report](#) *Communications with the public* (issued in December 2014) are:
- [I]ntended to protect investors by ensuring that the communications used by broker-dealers are fair, balanced and not misleading. FINRA first adopted the rules in December 1980. The rules impose core, principles-based content standards that are consistent with investor protection

objectives and also set forth minimum supervision requirements designed to ensure the content standards are applied. For example, the rules require that an appropriately qualified registered principal approve some communications distributed to large groups of retail investors prior to use. In addition, the rules provide for reviews by FINRA to ensure rule compliance. Specifically, the rules require broker-dealers to file certain retail communications with FINRA for review either prior to use or shortly after use and also permit FINRA staff to conduct spot checks of communications that are not normally subject to a filing requirement.

- 221 The intention of the guidance was to ensure that investors were protected from false or misleading claims and representations on social media communications, and that firms were able to effectively and appropriately supervise their personnel participation on these sites.
- 222 Key aspects of the FINRA guidance are set out in Table 4.

**Table 4: Key aspects of FINRA guidance**

<p><b>Record-keeping responsibilities</b></p>	<p>Every firm that intends to communicate, or permits its associated persons to communicate, through social media sites must first ensure that it can retain records of those communications. This obligation will depend on whether the content of the communication constitutes a business communication.</p> <p>Firms may not sponsor social media sites or use devices that automatically erase or delete the content of an electronic communication.</p>
<p><b>Suitability responsibilities</b></p>	<p>Firms or their personnel recommending securities through a social media site may trigger the requirements on suitability. Whether a communication is a recommendation will depend on the facts and circumstances surrounding the communication.</p> <p>Firms must adopt policies and procedures reasonably designed to address communications that recommend specific investment products. Firms should, as a matter of best practice, consider prohibiting all interactive electronic communications that recommend a specific investment product, and any link to such recommendations, unless a registered principal has previously approved the content.</p>
<p><b>Types of interactive electronic forums</b></p>	<p>Firms are not required to have prior principal approval for the extemporaneous remarks of personnel who participate in 'public appearances', which include unscripted participation in an interactive electronic forum such as a chat room or online seminar. However, these interactive electronic forums are subject to other supervisory and content requirements.</p> <p>A blog used to engage in real-time interactive communications would be considered an interactive electronic forum and would not require prior principal approval. However, firms must supervise these communications. A blog that consists of static content posts must obtain prior principal approval.</p> <p>Social networking sites typically include both static content and interactive real-time content. The portion of the site that provides for interactive communications constitutes an interactive electronic forum for which firms are not required to have prior principal approval. However, firms must supervise these communications. Static content will require prior principal approval.</p>

<b>Supervision of social media sites</b>	<p>Interactive electronic communications can occur without prior principal approval, although firms must supervise these communications to ensure they comply with the content requirements of FINRA's communication rules.</p> <p>Firms must adopt policies and procedures reasonably designed to ensure that their associated persons who participate in social media sites for business purposes are appropriately supervised, have the necessary training and background to engage in such activities, and do not present undue risks to investors.</p> <p>Firms must have a general policy prohibiting any associated person from engaging in business communications on a social media site that is not supervised by the firm. Firms must also require that only associated persons who have received appropriate training on the firm's policies and procedures on interactive electronic communications may engage in such communications.</p>
<b>Third-party posts, links and websites</b>	<p>Generally, posts by customers or other third parties on a social media site established by the firm or its personnel are not treated as the firm's own communications.</p> <p>In some circumstances, third-party posts may become attributable to the firm, depending on whether the firm has:</p> <ul style="list-style-type: none"> <li>• involved itself in the preparation of the content; or</li> <li>• explicitly or implicitly endorsed or approved the content.</li> </ul>
<b>Accessing social media sites from personal devices</b>	<p>Firms may permit associated persons to use any personal communication device, whether owned by the person or the firm, for business communications.</p> <p>The firm must be able to retain, retrieve and supervise business communications made on such devices regardless of who owns the device.</p> <p>To ensure that business communications are readily retrievable without necessitating capture of personal communications on the same device, firms should have the ability to separate business and personal communications. This could occur by requiring associated persons to use a separately identifiable application on the device.</p>

Source: FINRA Regulatory Notice 10-06 and FINRA Regulatory Notice 11-39.

## United Kingdom

- 223 The Financial Conduct Authority (FCA) is a regulator of the financial services sector in the United Kingdom. The FCA focuses on consumer protection, market integrity and the promotion of effective competition in the regulated financial services industry.
- 224 In March 2015, the FCA published its [Finalised Guidance FG15/4 Social media and customer communications: The FCA's supervisory approach to financial promotions in social media](#). This finalised guidance followed industry engagement and consultation on the topic in 2014.
- 225 The finalised guidance sets out in detail (and provides examples of) specific areas that firms need to consider when communicating through social media.

Firms must meet FCA's requirements for communications to be fair, clear and not misleading.

226

Table 5 sets out some specific areas for firms to consider.

**Table 5: Key aspects of FCA guidance**

<b>Stand-alone compliance</b>	Each communication needs to be considered individually and must comply with the relevant rules.
<b>Risk warnings and other required statements</b>	<p>The requirement to include risk warnings or other statements in promotions for certain products or services applies to social media as it would to other forms of communication.</p> <p>This requirement poses challenges for social media because of character limits. A possible solution to this issue is to insert images (including infographics) into communications such as tweets to allow relatively unrestricted information to be communicated.</p>
<b>Image advertising</b>	<p>It is possible for firms to advertise their presence through 'image advertising' in a way that is less likely to create difficulties with character limits.</p> <p>Image advertising must comply with the relevant Conduct of Business rules for different sectors.</p>
<b>Recipients sharing or forwarding communications</b>	<p>Where a recipient shares or forwards a firm's communications (e.g. by re-tweeting), responsibility lies with the communicator, not the firm.</p> <p>However, any breaches of the rules in the original communication remain the responsibility of the originating firm. Sharing or forwarding by a third party does not rectify the original non-compliance.</p> <p>To mitigate the risk of the sharing or forwarding creating non-compliance (e.g. a tweet intended for an authorised person is re-tweeted to a retail customer), firms should take steps to ensure such communications are correctly labelled and targeted.</p>
<b>Approval and record keeping</b>	<p>Firms should be aware of their obligations to have an adequate system in place to sign off digital media communications. This sign-off should be by a person with appropriate competence and seniority within the organisation.</p> <p>Firms should also keep adequate records of any significant communications, and not rely on digital media channels to maintain records because they will not have control over these. Social media, in particular, may refresh content from time to time, with the consequence of older material being deleted.</p> <p>In summary, the sign-off and record-keeping rules apply to digital and social media in the same way that they apply to print, broadcast and outdoor media.</p>

Source: FCA Finalised Guidance FG15/4.

## Appendix 2: Accessible versions of figures

227 This appendix is for people with visual or other impairments. It provides the underlying data for any figures included in this report.

**Table 6: Number of new ASX listings**

<b>Financial year</b>	<b>Number of listings</b>
2011–12	99
2012–13	82
2013–14	107
2014–15	120
2015–16	124

Note: This is the data contained in Figure 1.



## 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
ASX	ASX Limited or the exchange market operated by ASX Limited
Ch 6D	A chapter of the Corporations Act (in this example numbered 6D), unless otherwise specified
connecting platforms	Online platforms that connect potential investors with issuers without enabling investors to apply directly for securities
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
crowd-sourced funding	In the context of an IPO, the process of raising small amounts of money from a large number of investors in exchange for securities in an issuer—typically, through an online platform
emerging market	A jurisdiction in Eastern Europe, Asia and the Pacific (excluding Singapore, Hong Kong, Japan and New Zealand), Africa, South America or the Middle East
emerging market issuer	A listed entity, or entity seeking to list, that has: <ul style="list-style-type: none"> <li>• material assets located in, or a revenue stream derived from operations in, an emerging market; or</li> <li>• subsidiaries incorporated in and/or listed in an emerging market.</li> </ul> <p>In addition, emerging market issuers may have directors or senior management based offshore in an emerging market, or engage an auditor from an emerging market</p> <p>Note: This definition was current at the time the data was obtained for this report. See REP 489 for the new definition.</p>
FCA	Financial Conduct Authority (UK)
FINRA	Financial Industry Regulatory Authority (US)
high net worth investor	A sophisticated or professional investor who is not an institutional investor

Term	Meaning in this document
institutional investor	An investor that is a traditional institution such as an investment bank, hedge fund, insurance company, sovereign wealth fund, AFS licensee or equivalent overseas licence holder
internal briefing notes	Internal documents prepared by a firm including a summary of the IPO and key selling points to assist the firm's sales team to market and sell the IPO to its clients
'investor education' research	Research by a firm mandated to advise on an IPO that is prepared and released before a prospectus is lodged with ASIC
investor presentation	See 'roadshow'
investor forum	An online discussion group that enables investors to connect with other investors and to discuss investments in companies, including IPOs
IPO	Initial public offering
marketing	Any advertising and publicity relating to an IPO, including information that may affect an investment decision
OnMarket BookBuilds	A platform used by issuers to obtain publicity and spread, and by retail investors to obtain information about IPOs and apply directly for securities in an IPO
original group	The 23 IPOs selected for stage one of ASIC's review
pathfinder prospectus	Final draft of the prospectus to be lodged with ASIC, excluding the offer price
professional investor	Has the meaning given in s708(11) of the Corporations Act. In general terms, this is an investor who has, or controls, gross assets of at least \$10 million
prospectus	A prospectus that is lodged with ASIC under s718 of the Corporations Act
prospective financial information	Financial information of a predictive character based on assumptions about events that may occur in the future and on possible actions by an entity
REP 484 (for example)	An ASIC report (in this example numbered 484)
restricted material	Documents prepared and released before a prospectus is lodged with ASIC, including but not limited to a pathfinder prospectus, 'investor education' research, management presentations and institutional roadshow material
RG 107 (for example)	An ASIC regulatory guide (in this example numbered 107)

Term	Meaning in this document
roadshow	A series of presentations by the senior management of an issuer about an upcoming offer of securities—generally to potential investors, financial advisers and analysts
s708 (for example)	A section of the Corporations Act (in this example numbered 708)
sample firms	The 17 firms contacted by ASIC during stage two of ASIC's review
sample group	The seven IPOs selected for stage two of ASIC's review
SEC	The US Securities and Exchange Commission
social media	Websites, applications and other online means of communication that enable users to share information and to interact with each other. These include microblogs (e.g. Twitter), social and professional networks (e.g. Facebook, LinkedIn, Google + and WeChat), and image and video sharing platforms (e.g. YouTube, Instagram and Pinterest)
sophisticated investor	<p>Has the meaning given in s708(8) and 708(10) of the Corporations Act. In general terms, this includes an investor:</p> <ul style="list-style-type: none"> <li>• who has net assets of at least \$2.5 million, or gross income of at least \$250,000 for each of the past two financial years; or</li> <li>• about whom an AFS licensee is satisfied that the person has sufficient previous experience in investing in securities</li> </ul>
spread	The requirement that an issuer has a minimum number of security holders holding a minimum number of securities to be listed on a securities exchange
stamping fees	Commissions based on the amount of securities that the firm sells in an IPO

## Related information

### Headnotes

advertising, crowd-sourced funding, firms, initial public offering, investor blogs, investor forums, IPO, issuers, marketing, pathfinder prospectus, prospectus, publicity, roadshows, social media

### Instruments

[ASIC Corporations \(Market Research and Roadshows\) Instrument 2016/79](#)

### Regulatory guides

[Regulatory Guide 107](#) *Fundraising: Facilitating electronic offers of securities*

[Regulatory Guide 170](#) *Prospective financial information*

[Regulatory Guide 228](#) *Prospectuses: Effective disclosure for retail investors*

[Regulatory Guide 254](#) *Offering securities under a disclosure document*

### Legislation

Corporations Act, s708, 710, 711, 716, 734, 769C and 1041H; Chs 6D and 7

Exposure Draft of the Corporations Amendment (Crowd-Sourced Funding) Bill 2015, Corporations Amendment (Crowd-Sourced Funding) Regulation 2015, and explanatory material

### Reports

[Report 484](#) *Due diligence practices in initial public offerings*

[Report 486](#) *Sell-side research and corporate advisory: Confidential information and conflicts*

[Report 489](#) *ASIC regulation of corporate finance: January to June 2016*

### Non-ASIC publications

[ASX Limited annual report 2016](#)

[FCA Finalised Guidance FG15/4](#) *Social media and customer communications: The FCA's supervisory approach to financial promotions in social media* (March 2015)

[FCA Handbook](#)

[FINRA Regulatory Notice 10-06](#) *Social media websites: Guidance on blogs and social networking websites* (2010)

[FINRA Regulatory Notice 11-39](#) *Social media websites and the use of personal devices for business communications* (2011)

[FINRA Retrospective rule review report](#) *Communications with the public* (December 2014)

[FINRA Rules](#)

[FINRA website \(What we do\)](#), [www.finra.org/about/what-we-do](http://www.finra.org/about/what-we-do)

[SEC website \(What we do\)](#), [www.sec.gov/about/whatwedo.shtml](http://www.sec.gov/about/whatwedo.shtml)