# Summary of feedback to CP 390 and ASIC's response

In Consultation Paper 390 *Proposed reform to the pre-lodgement advertising and publicity regime* (CP 390), we sought feedback on ASIC's proposed reform to the pre-lodgement advertising and publicity regime for offers of securities that require a disclosure document. We sought feedback on our proposals to:

- modernise the pre-lodgement advertising and publicity regime for offers of securities that require a disclosure document, by providing the relief set out in draft *ASIC Corporations (Pre-Prospectus Advertising and Publicity) Instrument 2026/XX* (see the attachment to CP 390); and
- revoke *ASIC Corporations (IPO Communications) Instrument 2020/722*, as the relief will be provided by the draft instrument when it is made.

We received seven submissions from a range of stakeholders in response to our proposals. This document summarises the feedback we received and ASIC's response to that feedback. It is not intended to be a comprehensive summary of all feedback or all changes to our regulatory approach to the proposals outlined in CP 390.

Note: Non-confidential submissions are published on the landing page for CP 390.

## Making *ASIC Corporations (Pre-Prospectus Advertising and Publicity) Instrument 2026/807*

### Summary of feedback to B1Q1 – Do you agree with our proposal?

| Feedback | ASIC's response |
|---|---|
| Six of the seven respondents expressed support for the proposed reform and the draft instrument. Feedback consistently reflected the view that the proposed reform will improve information quality, competition among issuers, retail investor awareness and engagement compared to institutional investors, and reduce regulatory burden due to reducing the need for individual relief. | We acknowledge the strong support from the submissions on the proposed reform, and we have made the draft instrument: see *ASIC Corporations (Pre-Prospectus Advertising and Publicity) Instrument 2026/807*. That endorsement reinforces the view that the proposed reform is appropriate to modernise the pre-lodgement advertising and publicity regime for offers of securities under a disclosure document and is consistent with our commitment to regulatory simplification.<br><br>We have also updated Regulatory Guide 254 *Offering securities under a disclosure document* (RG 254) to provide additional guidance on the new regulatory framework and our expectations of issuers. |

| Feedback | ASIC's response |
|---|---|
| One respondent opposed the proposed reform and raised concerns that it does not address the risk of investors relying on advertising materials rather than the disclosure document when making an investment decision. The respondent preferred targeted relief, to allow issuers to only correct misinformation, over a broad reform. | We acknowledge this feedback. We consider that the structural benefits of the change to our relief balance this risk, which is adequately managed by the investor protections in the relief. A prescribed statement in paragraph 734(5)(e) of ASIC Instrument 2026/807 expressly encourages potential investors to consider the disclosure document when deciding whether to acquire the securities. Investors must also apply for securities by filling out the form that is contained in or accompanying the disclosure document, which is another mechanism that encourages investors to review the disclosure document before making an investment decision. |

## Summary of feedback to B1Q2 – Would you suggest any changes to our proposed approach? If so, please provide details.

| Feedback | ASIC's response |
|---|---|
| Respondents submitted that updates to RG 254 should include guidance on:<br>• the application of the draft instrument in the context of various formats, including written, verbal, or digital platforms;<br>• the presentation of the prescribed statements for communications made verbally and through digital platforms;<br>• the required prominence of the prescribed statements; and<br>• practical examples covering various types of communications. | We have updated RG 254 to acknowledge that communications may take place through a variety of media and presentation formats.<br>We have not included practical examples or detailed guidance on the required presentation or prominence of the prescribed statements. We do not believe that these requirements are unduly burdensome or unreasonable. |
| Three respondents submitted that the draft instrument should include a condition that issuers have arrangements in place to ensure that issuers promptly correct inaccuracies or outdated information – similar to the condition included in revoked ASIC Instrument 2020/722. | We have adopted this suggestion. We have imposed an obligation on issuers to have adequate arrangements in place to ensure that any advertisement or statement published in reliance on the relief under ASIC Instrument 2026/807 is kept up to date. |
| Two respondents suggested that the draft instrument should expressly permit issuers to collect non-binding expressions of interests and registrations for updates or alerts before lodgement of the disclosure document. | We have not amended ASIC Instrument 2026/807 to expressly permit issuers to collect non-binding expressions of interest and registrations for updates or alerts. We consider that the suggestion extends beyond the scope of the proposed reform, and we do not propose to broaden the relief as suggested. |

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### Summary of feedback to B1Q3 – Do you have any comments on the prescribed statements required to be included in any pre-lodgement advertising and/or publicity?

| Feedback | ASIC's response |
|---|---|
| One respondent submitted that paragraph 734(5)(d) in the draft instrument should be amended to provide flexibility where the timing of the disclosure document is uncertain. This is because timetables can change during the earlier stages of an initial public offering (IPO) process. | We acknowledge this suggestion, but we have not adopted it. We consider that the inclusion of the obligation on issuers to ensure any advertisement or statement published is kept up to date adequately addresses the issue of timing. |
| Two respondents suggested that the prescribed statements should expressly state that no applications can be made, no money is being sought, and securities cannot currently be acquired. | We acknowledge this feedback, but we have not adopted it. We consider that paragraph 734(5)(f) of ASIC Instrument 2026/807 ensures that no applications can be made before lodgement of the disclosure document. |
| Two respondents suggested that ASIC allow the prescribed statements to be expressed in substantially equivalent language rather than being produced verbatim. | We acknowledge this feedback, but we have not adopted it. We consider that the prescribed text is important in ensuring retail investor protection and consistency of approach. We have retained the requirement that the advertisement or publication should include the prescribed statements in full. |

## Revoking *ASIC Corporations (IPO Communications) Instrument 2020/722*

### Summary of feedback to B2Q1 – Do you agree with our proposal?

| Feedback | ASIC's response |
|---|---|
| Six of the seven respondents were supportive of the proposal to revoke ASIC Instrument 2020/722 and noted that a single, broader relief framework would be easier to navigate. | We note the strong support for this proposal, and we have revoked ASIC Instrument 2020/722. |

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## Summary of feedback to B2Q2 – Would you suggest any changes to our proposed approach? If so, please provide details.

| Feedback | ASIC's response |
|---|---|
| Three respondents suggested that ASIC confirm that the draft instrument sufficiently captures the relief provided in ASIC Instrument 2020/722. | We have updated RG 254 to include guidance noting that ASIC Instrument 2026/807 facilitates communications with employees and existing security holders of a company proposing to undertake an IPO, which are communications previously captured under ASIC Instrument 2020/722. |
| Two respondents called for a short transition period and clarification of treatment of existing communications approved under ASIC Instrument 2020/722. | We consider that, as ASIC Instrument 2026/807 is in force on the same day that we revoke ASIC Instrument 2020/722, there is no need for a transition period. All existing communications captured under ASIC Instrument 2020/722 before we revoked the instrument remain effective. |
| One respondent suggested that updates to RG 254 should include guidance on how the prescribed statements can be included in routine internal communications without unnecessary repetition. | We acknowledge this suggestion. However, we have not provided further specific guidance as we consider high-level guidance to be more appropriate. We consider that it is incumbent on issuers to determine the best way to communicate such information while complying with the requirements of ASIC Instrument 2026/807. |

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