Pre-lodgement advertising and publicity—Consultation feedback

Market Integrity, Corporate Finance

Australian Securities and Investments Commission

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Dear Sir/Madam

RE: Listcorp submission on CP 390 Proposed reform to the pre lodgement advertising and publicity regime

Listcorp strongly supports ASIC's proposal to modernise the pre-lodgement advertising and publicity regime for offers of securities requiring a disclosure document. The proposed instrument addresses a rule that no longer reflects how Investors discover, compare and assess investment opportunities. It would give all Issuers a practical way to communicate openly about their upcoming capital raising with the whole market, while preserving the primacy of the disclosure document and the existing prohibitions on misleading or deceptive conduct. This would immediately level the playing field for all Issuers redressing the imbalance in existence today between those Issuers whose raisings attract significant media coverage (e.g. the Virgin Australia Holdings Limited IPO that received frequent coverage in the national media ahead of the lodgement of its prospectus), and the vast majority of IPOs that do not.

We believe the reform should proceed substantially as proposed. ASIC should also use the accompanying amendments to Regulatory Guide 254 to make the relief work across websites, investor platforms, email, search, social media, podcasts, video, webinars and other digital formats. The guidance should expressly permit non-binding registrations for updates and preliminary indications of interest, subject to clear safeguards.

Recommendations

Listcorp recommends that ASIC:

1. Draft the final *ASIC Corporations (Pre-Prospectus Advertising and Publicity) Instrument 2026/XX* substantially in the form attached to CP 390;
2. Include confirmation that the relief is technology neutral, available for all digital formats, and via all distribution channels;
3. Permit an Issuer to invite Investors to register for offer updates and/or provide a non-binding preliminary indication of interest, provided no money is accepted and no obligation or commitment arises before the disclosure document is available;
4. Allow the prescribed information to be provided through a clear and proximate link to a stable offer information page where the format is genuinely space or time constrained, while requiring enough information in the initial communication to avoid creating a misleading overall impression;
5. Amend proposed paragraph 734(5)(d), or clarify in guidance, so that an Issuer may state where updates will be published when the expected date of the disclosure document is not yet known;
6. Provide guidance on prominence, Issuer identification, version control, recordkeeping, corrections, republication and platform responsibility;
7. Revoke ASIC Instrument 2020/722 as proposed, but preserve its useful principles concerning timely internal communications and keeping information up to date.

About Listcorp

Listcorp is a digital platform designed specifically to improve the ability of listed companies to communicate efficiently and effectively with the broadest possible investor audience. It brings together regulatory announcements and company-originated digital content, including text, video, audio and investor events. Investors can follow companies and receive updates through personalised digital feeds and notifications.

Listcorp's perspective is therefore focused on the practical way information moves between all companies and all Investors. Digital communications can make Issuer information more accessible and easier to discover. They also create durable records, allow prompt correction, and give all Issuers the ability to communicate the same information to existing shareholders, potential Investors, analysts, advisers and other market participants at the same time.

The case for reform

The present rule limits accountable information

Section 734(2) of the Corporations Act 2001 imposes a broad prohibition on advertising an offer or intended offer that requires a disclosure document, or publishing a statement that directly or indirectly refers to the offer or is reasonably likely to induce applications. Before lodgement, the current exception for unquoted securities permits only basic prescribed information. ASIC records that most offerors avoid pre-lodgement publicity because of regulatory risk and that there are limited mechanisms to counter unofficial or inaccurate information.[1]

The current situation creates at least two undesirable outcomes:

a) An intended IPO can be discussed by anonymous or poorly informed third parties while the Issuer, which has the best access to the relevant facts and can be held accountable for what it says, is constrained from responding. Silence does not remove information from the market. It can leave the field to rumours, selective leaks, speculation and promotional commentary from sources that Investors may struggle to evaluate.

b) Due to one or more factors mostly outside the control of Issuers, some IPOs benefit from significant, often national media coverage, while others attract no media attention at all.

The proposed reform would improve the source and quality of information rather than weaken disclosure. It would permit communications for all Issuers, subject to prescribed statements, while section 1041H and related provisions would continue to prohibit misleading or deceptive conduct. ASIC's current guidance also makes clear that the regulator may act against Issuers or third parties where advertising or marketing is misleading.[2]

Retail Investors should receive earlier and more equal access

The existing settings favour communications with professional intermediaries. ASIC Instrument 2026/93 permits roadshow presentations to financial services licensees and their representatives and allows limited market research before lodgement.[3] Those mechanisms serve legitimate functions, but they do not provide the wider investor population with comparable early awareness.

Retail Investors need more time than institutions to discover an offer, understand the Issuer's business, and to compare the opportunity with other uses of their capital. Earlier public communication can give

[1] ASIC, CP 390, paras 3-11.

[2] ASIC, RG 254, RG 254.284-288; Corporations Act 2001, s 1041H.

[3] ASIC Corporations Market Research and Roadshows Instrument 2026 93, ss 7-9.

them that time while preventing them from completing and application or committing funds before the disclosure document becomes available. It can also allow Investors to follow the Issuer using a service like Listcorp, and consequently receive the prospectus promptly after lodgement.

Domestic inconsistency should be removed

The PDS regime permits advertising before a PDS is available if prescribed information is included. The crowd-sourced funding regime also permits pre-publication advertising with a warning directing Investors to the offer document and general risk warning. The post-lodgement prospectus regime takes a similar disclosure-led approach. ASIC proposes to align the pre-lodgement prospectus regime more closely with those settings.[4]

The functional inconsistency is difficult to defend. A company undertaking an IPO under a prospectus should not face a materially more restrictive communications rule than a managed investment scheme offering an exchange-traded product under a PDS to substantially the same retail audience. The current distinction can influence the choice of vehicle and capital-raising channel without a corresponding investor protection benefit.

Response to proposal B1

B1Q1 Support for the proposal

Listcorp agrees with proposal B1. It replaces a content prohibition with a disclosure-based safeguard. Investors would be told who the Issuer and any relevant seller are, that a disclosure document will be made available, when it is expected and where it will be made available, that the document should be considered the primary source of information upon which an investor should rely for decision-making purposes, and that an application must be made using the form in or accompanying that document.[5]

The safeguard preserves the sequence that matters. Communication and investor education may occur before lodgement, but an application cannot be made through the pre-lodgement communication. For a prospectus subject to an exposure period, the existing restriction on accepting applications during that period also remains.[6]

The reform should apply at any stage before lodgement, as proposed (mirroring the ability of the media to discuss upcoming IPOs as and when they see fit). An arbitrary pre-lodgement window would be difficult to administer and would encourage disputes about when an Issuer formed a sufficiently definite intention to offer securities. ASIC should instead state that the relief is available where the offer is genuinely contemplated and the communication has a reasonable factual basis when made.

B1Q2 Changes to the proposed approach

Digital presentation of prescribed information

The instrument is drafted in a technology-neutral way, but its practical operation will depend heavily on RG 254. ASIC should state that the relief applies to company websites, Issuer pages on investor platforms, email, push notifications, search advertisements, social media posts, podcasts, video, livestreams, webinars and media interviews. Where possible, it should also future proof against the introduction of new technologies that may be used to facilitate the advertising and publicity of upcoming capital raises.

ASIC's updated RG 234 recognises both the variety of internet advertising and its benefits, including accessibility, interactivity and rapid access to further information. It also cautions that a link cannot correct

[4] ASIC, CP 390, paras 12-18 and 26-27.

[5] Attachment to CP 390, proposed s 7 substituting s 734(5).

[6] Corporations Act 2001, s 727(3); ASIC, RG 254, RG 254.136-170.

a misleading headline or overall impression and recommends that records of advertising be retained.[7] Those principles provide a sound foundation for the updated RG 254.

There is nevertheless a difference between a qualification needed to correct a headline claim and a statutory notice that directs an investor to a future disclosure document. ASIC should allow the latter to be provided through a clear and proximate link where a communication is genuinely constrained by space or time. For example, a short search advertisement, social post or push notification could identify the Issuer, state that an offer may be made, state that Investors cannot yet apply, and link directly to a stable page containing the balance of the prescribed information.

The guidance should require the linked page to be available without registration, make the prescribed information prominent, identify the Issuer as the source, display the date of the latest update and retain previous material where reasonably practicable. A generic link to a corporate home page would not be sufficient.

For audio and video, ASIC should permit equivalent presentation rather than require every statement to be both spoken and continuously displayed. The full notice could appear at the beginning or end and in the description or accompanying offer page, provided an average listener or viewer can understand on first viewing that the offer is not yet open, and a disclosure document will be required.

Timing where the lodgement date is uncertain

Proposed paragraph 734(5)(d) requires the communication to indicate when and where the disclosure document is expected to be made available. The location requirement is sensible. The timing requirement may be difficult at the earlier stages of a genuine IPO process because market conditions, regulatory review, due diligence and Issuer decisions can change the timetable.

An Issuer should not be forced to publish an artificial date or avoid the relief because it cannot yet give a reliable estimate. Paragraph (d) should be amended to require the expected timing to the extent known. If it is not known, the Issuer should be able to provide information as to the location/s the timing of the disclosure document publication, will be made known to Investors.

Registrations and preliminary indications of interest

The reform will be more useful if Issuers may invite an investor to register for updates or give a non-binding preliminary indication of interest. This would help Issuers understand likely retail demand and help Investors receive the disclosure document when available. It would not permit an application, allocation, commitment or payment.

New Zealand may provide a useful model. Section 91 of the Financial Markets Conduct Act 2013 permits advertising before a PDS is lodged if it states that no money is being sought, the products cannot yet be applied for or acquired and any offer will be made under the Act. It also permits the offeror to seek preliminary indications of interest if the communication explains how to respond and makes clear that no obligation or commitment arises.[8]

ASIC should expressly confirm a similar outcome in RG 254 or add it to the instrument. The required notice should state:

- no money is currently being sought or accepted;
- securities cannot currently be applied for or acquired;
- registration or an indication of interest is not an application and creates no obligation, priority, allocation or commitment; and
- the investor must consider the disclosure document and use the application form if the offer proceeds.

[7] ASIC, RG 234, RG 234.170-178 and 202.

[8] Financial Markets Conduct Act 2013 (NZ), s 91.

The ability to collect an email address for an alert would remain subject to applicable privacy and electronic marketing laws. The reform should not alter those obligations.

Consistency corrections and records

Pre-lodgement information cannot always be tested against a final prospectus because that document is still being prepared i.e. a strict requirement that every communication be "consistent with" a document that does not yet simply wouldn't work.

ASIC should instead expect material factual statements to have a reasonable basis when made, to be included in the Issuer's verification and due diligence record where appropriate, and to be reviewed before lodgement. If a material statement later becomes inaccurate or the proposed offer changes materially, the Issuer should correct the information promptly through the same channel and on its central offer page. The lodged disclosure document should remain the authoritative basis for the investment decision.

ASIC Instrument 2020/722 already requires adequate arrangements to keep specified employee and security-holder communications up to date.[9] That principle should be carried into RG 254 as practical guidance for public communications under the new instrument. Digital platforms can assist by timestamping content, preserving a record, distributing corrections to followers and maintaining a single source page.

Platforms publishers and republication

The instrument should work predictably when an Issuer uses an intermediary or digital platform. A platform may host an Issuer's original content, distribute a notification, create an automated preview or permit a user to share a link. Each step can technically involve publication.

ASIC Instrument 2026/93 modernised the media publisher provisions in section 734 by recognising qualifying electronic services and preserving a protection for publication in the ordinary course of a media business where the publisher did not know and had no reason to suspect a contravention.[10] RG 234 also distinguishes a publisher that merely carries material from one that contributes to the content or actively promotes the product.[11]

Updated RG 254 should apply that distinction clearly. Where a platform carries Issuer-authorised content without materially altering it and provides a clear link to the full compliant notice, the Issuer should bear responsibility for the content. A neutral platform should not be required to repeat the complete notice in every automatically generated preview or user-shared link if the preview clearly identifies the Issuer and offer status and leads directly to the compliant source page. A platform that writes or materially changes promotional content should remain responsible for that contribution.

Clear guidance would improve compliance and reduce the risk that platforms avoid carrying useful Issuer information because the status of snippets, notifications and user sharing is uncertain.

Ordinary course communications

ASIC should confirm that ordinary business communications remain outside the intended reach of section 734 where they are not used to promote the offer. A company preparing for an IPO must continue to communicate with customers, suppliers, employees, industry participants and the public. Guidance should include examples involving product launches, operating updates, recruitment, trade conferences, sustainability reports and responses to misinformation.

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[9] ASIC Corporations IPO Communications Instrument 2020 722, s 6.

[10] ASIC Corporations Market Research and Roadshows Instrument 2026 93, s 11.

[11] ASIC, RG 234, RG 234.183-189.

The test should remain based on substance, context and overall impression. The existence of a contemplated IPO should not convert every ordinary communication into offer publicity. Equally, an Issuer should not be able to label a coordinated offer promotion, as ordinary business communication.

B1Q3 Prescribed statements

Listcorp supports the substance of the prescribed statements. They identify the source and any seller, tell Investors that the disclosure document is still to come, preserve the document's importance and prevent the pre-lodgement communication from becoming an application mechanism.

We believe ASIC should consider four refinements:

First, the instrument or guidance should state that the requirements are outcomes rather than mandatory verbatim wording. Issuers should be able to combine the information into a clear notice suited to the medium.

Second, the notice should say expressly that no application or payment can presently be made. Proposed paragraph (f) implies this, but direct language would be easier for retail Investors to understand and would align more closely with the New Zealand safeguard.

Third, paragraph (d) should accommodate a genuinely uncertain timetable as described above.

Fourth, RG 254 should explain reasonable prominence by channel. The prescribed notice should be readily noticeable and understandable, but it need not compete visually with every headline in the way required for a qualification that corrects a potentially misleading claim. This distinction is consistent with RG 234, which recognises that a notice required by legislation may warrant different prominence from a disclaimer needed to qualify the substance of an advertisement.[12]

The consultation process impacts

Likely compliance costs

The proposal should reduce total compliance costs, although it will create modest implementation costs for Issuers that choose to use the relief.

The main initial costs will be legal and compliance review of communication policies, staff training, preparation of approved notices and templates, governance over expressions of interest, recordkeeping and coordination between the IPO due diligence process and public communications. Issuers using many channels may also need systems to update or withdraw content if the timetable or offer changes.

Those costs are discretionary and scalable. An Issuer can continue to make no pre-lodgement offer communications. An Issuer that uses the relief can begin with a single offer page and a limited set of approved communications. The prescribed statements can be standardised and reused. Digital records and central content management can further reduce marginal costs.

The savings are likely to exceed these costs across the market. The reform should:

- reduce legal analysis directed to avoiding any indirect reference to a proposed offer;
- reduce the need for individual relief applications;
- simplify separate rules for communications with employees, security holders and the public;
- reduce the operational cost of maintaining an artificial publicity blackout;
- allow rumours or inaccurate third-party claims to be corrected earlier; and
- permit one compliant item of digital content to reach Investors broadly rather than relying on repeated closed presentations.

[12] ASIC, RG 234, RG 234.41.

ASIC should avoid imposing mandatory pre-clearance, prospectus-level verification of every communication, bespoke platform certification or compulsory reporting of routine posts. Those requirements would materially increase costs and discourage smaller Issuers from using the relief. Existing legal responsibility, reasonable approval controls, retention of records and prompt correction provide a more proportionate framework.

Most importantly, all cost analysis must be considered in light of the benefits, not only to Investors as discussed, but on the cost of capital to Issuers, which should theoretically benefit from the wider knowledge of their forthcoming listing (if not in the sense of the primary issuance, than through the benefit of potentially stronger share price performance post-listing).

Likely effect on competition

The proposal should improve competition in several related markets.

For capital raising, it reduces a regulatory disadvantage faced by companies using a prospectus compared with Issuers using a PDS and businesses raising capital privately. This should make the public market a more credible option at the margin, particularly for growth companies that need broad investor awareness.

Among prospective Issuers, the change should benefit smaller and less widely known companies disproportionately. Large Issuers can attract media coverage and institutional attention without public offer advertising. A smaller Issuer may have no comparable means of explaining its business to a dispersed audience before the offer opens. Digital distribution lowers the cost of reaching that audience and can reduce dependence on a limited group of underwriters, brokers, media outlets and existing investor networks.

For Investors, earlier public access reduces the informational advantage of those invited to institutional roadshows or private briefings. It gives retail Investors more time to compare offers and complete administrative steps. A broader base of informed potential Investors can also improve competition for allocations, although the reform itself does not determine allocation policy.

For intermediaries, the change should promote competition among investor platforms, media providers and communications services. To preserve that effect, the guidance must be platform neutral and should not require an Issuer to use a particular exchange, broker, registry or advertising channel.

There is a risk that Issuers with the largest advertising budgets will dominate attention. That is a feature of advertising markets rather than a reason to preserve the current prohibition. Investor protection should focus on accuracy, clear source attribution, balanced overall impressions and access to the disclosure document. ASIC should monitor whether high-frequency campaigns create investor harm, but it should not set spending or frequency limits without evidence.

Other impacts costs and benefits

Investor comprehension and the role of the prospectus

Earlier communication can help Investors decide whether a new Issue warrants further investigation.

The need for earlier orientation is reinforced by the scale of modern disclosure. ASIC reported that prospectuses averaged 266 pages in 2024, up from 109 pages in 2005, and that mining-related prospectuses averaged 353 pages.[13] An investor may be better placed to use such a document if the investor already understands the Issuer's business model, sector and intended timetable. Short-form communication can direct attention to the prospectus; it should not summarise away material risks or conditions.

[13] ASIC, REP 823, p 46.

Digital inclusion and accessibility

Digital publication can broaden geographic access and support text, audio, video, captions and translated explanatory content. ASIC should encourage accessible formats and plain language. Where an Issuer communicates in a language other than English, the prescribed notice and relevant qualifications should be presented in the same language, consistent with RG 234.[14]

Digital access is not universal. The disclosure document must remain available through the channels required by law, including reasonable non-digital access where applicable. Reform should expand access rather than make a smartphone, social media account or marketing consent a condition of receiving the prospectus.

Privacy data and investor expectations

Registrations for alerts and expressions of interest may generate useful evidence of retail demand. They also involve personal information and can create expectations about allocations. ASIC should make clear that an indication of interest is non-binding, confers no priority and may not result in an offer or allocation. Issuers and platforms must comply with privacy, consent, security and electronic marketing requirements that apply independently of section 734.

Fraud impersonation and unofficial content

More pre-lodgement publicity may attract scams or Issuer impersonation. The answer is reliable source identification rather than Issuer silence. ASIC should encourage each Issuer to use verified company or platform accounts where available, state that no money is being accepted, and publish warnings about unofficial application links. Digital platforms should provide clear labels distinguishing Issuer-originated, sponsored, editorial and user-generated content.

Response to proposal B2

B2Q1 Support for revocation

Listcorp agrees in principle with revoking ASIC Corporations IPO Communications Instrument 2020/722 when the new instrument commences. A single, broader class relief framework will be easier to understand and administer than overlapping instruments. It will also remove the current distinction that permits specified communications to employees and security holders while limiting equivalent communication to the wider market.

B2Q2 Transitional and guidance matters

The new relief is broader, but the conditions are different. Instrument 2020/722 permits specified internal communications without the new prescribed notice and requires arrangements to keep information up to date. Immediate repeal could therefore require Issuers already relying on that instrument to change approved employee and security-holder communications.

ASIC should provide a short transition period or state that communications approved and issued in reliance on Instrument 2020/722 before commencement may continue for a reasonable period. Updated RG 254 should confirm how the new prescribed statements can be included in routine internal communications without unnecessary repetition. The existing obligation to maintain current information should become general good-practice guidance for communications under the new instrument.

[14] ASIC, RG 234, RG 234.38.

Conclusion

The current regime restricts the parties best placed to provide accurate and accountable information while leaving Investors exposed to unofficial commentary. It also gives professional market participants earlier access than the wider investor population and places prospectus fundraising at a disadvantage to PDS and private-market alternatives.

ASIC's proposed instrument is a measured correction. It preserves the disclosure document as the basis for an application, retains the misleading conduct framework, while giving Issuers the ability to communicate openly with potential Investors. With practical guidance, express permission for non-binding investor registrations and/or indications of interest, flexible treatment of uncertain timetables and clear rules for platforms and corrections, the reform can improve both capital-market competitiveness and investor protection.

Listcorp strongly supports proposals B1 and B2, subject to the refinements set out in this submission.

We are happy to provide further information and/or discuss the above in more detail if useful.

Yours Faithfully

[redacted]

CEO

Listcorp

11 September 2026