Law Council
OF AUSTRALIA

Business Law Section

**11 September 2026**

Australian Securities and Investments Commission
GPO Box 9827
MELBOURNE VIC 3001

By email: markets.consultation@asic.gov.au

Dear Sir/Madam,

**Consultation Paper 390 (CP 390): Proposed reform to the pre-lodgement advertising and publicity regime**

1. The Corporations Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity to respond to the Australian Securities and Investments Commission's (**ASIC**) consultation on the proposed introduction of *ASIC Corporations (Pre-Prospectus Advertising and Publicity) Instrument 2026/XX* (the **Draft Instrument**) as outlined in CP 390.

2. This submission is structured in three parts. Part A sets out the key benefits of the proposed updates, which the Committee firmly supports. Part B identifies areas where further clarity in ASIC's guidance would be welcomed, drawing on practical market experience with initial public offering (**IPO**) processes and having regard to observed practices. Part C of the submission then responds directly to each of the specific matters on which ASIC has invited feedback.

## *Part A: Key benefits of the proposed updates*

3. As a general statement, the Committee firmly supports ASIC's initiatives set out in the Draft Instrument and considers the proposal to be a positive development. The Committee is of the view that the proposed reform strikes an appropriate balance between easing restrictions that are no longer aligned with modern information-sharing practices and maintaining appropriate investor protection safeguards.

4. The Committee supports the extension of relief from pre-lodgement advertising restrictions because it will reduce the administrative burden involved in IPOs and allow for greater flexibility in the marketing of IPO transactions. Under the current regime, the restrictions on pre-IPO communications impose cost and time burdens since companies going through an IPO process often require advice on whether their advertising and other promotional activities contravene the restrictions. The new conditions of relief that ASIC has proposed broaden the class of exempt communications, which will reduce the time and cost that was previously involved in

obtaining this legal assessment. It is questionable whether those costs are justified given the very low risk presented to investor protection by that conduct, and the Committee believes that reducing cost in this way is a proportionate and necessary change.

5. The Committee notes that the new criteria for exemption does not retain the previous ban on discussing an IPO's advantages, benefits or merits. This will allow companies (and their advisers) to communicate with retail investors and test their interest before lodging a prospectus and will also facilitate brokers' engagement with their client bases. The Committee welcomes the adoption of a more liberal approach in this area. It is encouraging to see ASIC introducing changes to better align with the regulatory approaches taken in comparable overseas jurisdictions, PDS offers, and CSF offers, and to create greater harmony between the IPO framework and the framework used in other offer structures. In particular, the Committee considers that the alignment of the pre-lodgement advertising and publicity regime more closely with the PDS and CSF advertising regimes, as well as the post-disclosure document regime under subsection 734(6) of the Corporations Act, is a prudent step towards creating more uniform regulation. It is the Committee's view that this proposal achieves ASIC's goal of maintaining efficient and attractive public markets, particularly in the context of increasing global competition for listings and the rise of private capital, by reducing regulatory burden.

6. The Committee also notes that the proposed relief will further contribute to a simpler regulatory landscape for offerors by reducing the need for individual relief applications to ASIC, and by enabling the revocation of ASIC Instrument 2020/722. The Committee considers that the consolidation of relief into a single, broader instrument is a sensible approach to regulatory simplification.

### *Part B: Areas for further clarity*

7. The Committee focuses its feedback on one principal area in which further clarity from any future ASIC guidance would be welcomed, namely, the application of the proposed conditions to verbal communications.

#### *Verbal communications*

8. The Committee notes that the proposed framework does not distinguish between written and verbal pre-lodgement communications. Under the proposed framework, where a company refers to a potential IPO in a speech or in an interview (with the expectation that this may be publicised), it would still need to disclose details of where the disclosure document will be found and make a statement that an application needs to be made on the form accompanying the prospectus to avoid breaching the proposed conditions of the relief. In the Committee's experience, this will be inelegant to do in a verbal setting and may have the practical effect of discouraging verbal communications about forthcoming IPOs.

9. The Committee submits that it would be helpful for the guidance ASIC publishes to give specific direction on the manner in which the conditions can be complied with where the statement is verbal, rather than written (for example in a speech, interview or presentation). In particular, the Committee considers that the guidance should acknowledge that the context in which statements are made might influence the

manner in which the maker complies with the conditions of the relief (for example, by taking a more informal approach to disclosing the prescribed information such as by making a general verbal reference to the availability of a prospectus and the need to consider it before investing, rather than reciting the full prescribed statements verbatim). The Committee believes that the purpose of the prescribed statements — to direct investors to the disclosure document — can be achieved without rigid adherence to the written form of the prescribed statements.

### *Part C: Responses to ASIC's specific requests for feedback*

10. A summary of the Committee's responses to ASIC's requests for feedback is as follows:

11. In relation to the regulatory and financial impact of the proposals, the Committee considers that the proposed reform is likely to result in a reduction in compliance costs for offerors. The current regime requires companies to seek individual relief from ASIC or obtain detailed legal advice to assess whether pre-IPO communications contravene the advertising restrictions and, outside of that, requires issuers to obtain legal advice before they undertake marketing and publicity to ensure that they are acting in compliance with the pre-prospectus advertising regime. The proposed reform, by broadening the class of exempt communications and aligning the pre-lodgement regime more closely with the PDS and CSF frameworks, should reduce the need for this legal assessment and the associated cost (which for larger issuers can run into the tens of thousands of dollars or even more in an IPO process). The Committee does not consider that the proposals are likely to have an adverse effect on competition. On the contrary, by reducing the regulatory burden on IPO offerors and bringing Australia's framework more closely into line with international practice, the proposals should enhance the competitiveness of Australian public markets.

12. The Committee's responses to ASIC's specific questions are set out below:

| ASIC request for feedback | Committee response |
|---|---|
| Proposal B1 (amendment of s 734(5) of the *Corporations Act 2001* (Cth) by issuing the draft instrument) | |
| Do you agree with our proposal? | The Committee is firmly supportive of ASIC's proposal and considers it to be a positive development.<br><br>The Committee's view is that the risk presented to investor protection by pre-offer communications is very low, and that the cost and time involved in obtaining legal assessment of whether pre-IPO communications contravene the existing restrictions is out of proportion to the protections that this restriction offers to retail investors. |

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| | The Committee believes that the changes will help bolster the attractiveness of public markets in the context of global listing competition and the rise of private capital by reducing administrative burden, creating greater consistency across fundraising regimes and aligning more closely with international practice. |
| Would you suggest any changes to our proposed approach? If so, please provide details. | The Committee believes that it would be helpful to a specific acknowledgement in the updated RG 254 that the application of the s 734(5) criteria to verbal statements can take into account the different context in which such statements are made. Please see paragraph 9 above. |
| Do you have any comments on the prescribed statements required to be included in any pre-lodgement advertising and/or publicity? | The Committee is supportive of the prescribed statements generally. However, the Committee notes that the prescribed statements are not readily incorporated into a verbal communication. The Committee submits that the updated RG 254 should expressly acknowledge that compliance with the conditions when conveying messages verbally may take a more informal approach, and that it should provide practical guidance as to how this can be achieved so that issuers and their advisers are able to have greater certainty in managing these obligations. |
| Proposal B2 (revocation of ASIC Instrument 2020/722 at the same time as the release of the proposed legislative instrument) | |
| Do you agree with our proposal? | The Committee agrees with this proposal and believes that the amendments to s 734(5) will subsume the statements that would otherwise be captured by ASIC Instrument 2020/722. |
| Would you suggest any changes to our proposed approach? If so, please provide details. | The Committee has no suggestions in this respect. The revocation of ASIC Instrument 2020/722 is consistent with the Committee's support for regulatory simplification and the consolidation of relief into a single, broader instrument. |

### *Further engagement*

13. The Committee would be pleased to discuss any aspect of this submission before ASIC finalises the Draft Instrument and the updated RG 254.

14. Please contact [redacted] Chair of the Committee [redacted] if you would like to discuss this submission with representatives of the Committee.

Yours faithfully,



[redacted]
**Chair, Business Law Section**