CONSULTATION PAPER 390

Proposed reform to the pre-lodgement advertising and publicity regime

4 August 2026

About this paper

Following industry engagement on the future of Australia’s public and private markets, and as signalled in the release of Report 823 *Advancing Australia’s evolving capital markets: Discussion paper response report*, ASIC has been reviewing the pre-lodgement advertising and publicity regime for offers of securities requiring a disclosure document.

This consultation paper seeks your feedback on our proposed extension to existing ASIC relief relating to pre-lodgement advertising and publicity for offers of securities that require a disclosure document.

The proposal aims to better accommodate modern market practices, improve the quality of information provided to investors and achieve greater consistency with comparable domestic and international regimes.

About ASIC regulatory documents

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

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

Regulatory guides: give guidance to regulated entities by:

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

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

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

Document history

This paper was issued on 3 August 2026 and is based on the legislation as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

Contents

The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are interested to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us review ASIC's relief settings on pre-lodgement advertising and publicity for offers of securities under disclosure documents. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous, we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information on how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 11 September 2026 to:

Pre-lodgement advertising and publicity—Consultation feedback
Market Integrity, Corporate Finance
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001
email: markets.consultation@asic.gov.au

What will happen next?

Stage 1	3 August 2026	ASIC consultation paper and draft instrument released
Stage 2	11 September 2026	Feedback due on the consultation paper
Stage 3	30 October 2026	Release legislative instrument and updated Regulatory Guide 254 *Offering securities under a disclosure document*

A Background to the proposals

Key points

We reported in Report 823 Advancing Australia's evolving capital markets: Discussion paper response report (REP 823) that stakeholder submissions advocated for modernisation of pre-prospectus publicity rules. We identified that the pre-lodgement advertising and publicity rules for initial public offerings (IPOs), although originally sensible, are no longer aligned with other Australian and international fundraising regimes or modern information-sharing practices. The report signalled that in response to feedback we would conduct a review of our guidance and relief.

Under the existing pre-lodgement advertising and publicity regime for offers of securities that require a disclosure document (pre-lodgement advertising and publicity regime), offers of unquoted securities, which include IPOs, rely on a narrow exception to the general prohibition on advertising or publicity. In practice, this exception permits the advertisement or publication of only basic, factual statements.

ASIC has provided class relief permitting certain pre-lodgement IPO communications for specific purposes. However, this relief does not extend to all pre-lodgement offers or sufficiently broaden permitted disclosure.

This paper sets out our proposal to address these issues by adding to ASIC's existing class relief a new instrument to ease pre-lodgement advertising and publicity restrictions for IPOs, broadening allowable disclosure while maintaining appropriate investor protection safeguards.

Policy context

1 ASIC has been reviewing the pre-lodgement advertising and publicity regime in relation to IPOs as part of our broader work on modernising Australia's capital markets. We have released:

(a) Discussion Paper 1 *Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets* (DP 1); and

(b) Report 823 *Advancing Australia's evolving capital markets: Discussion paper response report* (REP 823) in response to feedback to DP 1.

2 In REP 823, we acknowledged the need for Australia's public markets to innovate to remain efficient and competitive amid global listing competition and the rise of private capital as an alternative funding source. We also noted that existing pre-prospectus advertising and publicity rules for IPOs appear outdated and misaligned with modern information-sharing practices, and inconsistent with the advertising and publicity frameworks that apply to PDS offers. The report flagged that we would review our guidance and consider class relief to address these issues.

The pre-lodgement advertising and publicity regime

General prohibition

3 Subsection 734(2) of the Corporations Act imposes a general prohibition on advertising or publicity for offers of securities that require a disclosure document (general prohibition). Where an offer (or intended offer) requires a disclosure document, a person must not:

(a) advertise the offer or intended offer; or

(b) publish a statement that:

  (i) directly or indirectly refers to the offer or intended offer; or

  (ii) is reasonably likely to induce people to apply for the securities.

4 As described in Regulatory Guide 254 *Offering securities under a disclosure document* (RG 254), the general prohibition is in place to:

(a) prevent the drip-feeding of selective information to the market;

(b) discourage inadequate analysis of disclosure documents by individual investors and the market generally; and

(c) discourage investment decisions being made on the basis of an advertising campaign or other publicity rather than on the basis of the disclosure document.

Exception to the general prohibition for pre-lodgement offers for unquoted securities

5 Subsection 734(5)(b) of the Corporations Act provides a limited exception to the general prohibition prior to the lodgement of a disclosure document where the offer is of securities other than a class already quoted. This exception can only be relied on if the advertisement or publication contains the following statements and nothing more:

(a) the identity of the offeror and the proposed securities to be issued;

(b) that a disclosure document for the offer will be made available when the securities are offered;

(c) that anyone who wants to acquire the securities will need to complete the application form that will be in, or will accompany, the disclosure document; and

(d) optionally, details on how to arrange to receive a copy of the disclosure document.

6 In practice, when relied on for the purposes of an IPO, the above exception permits only basic, factual information, and most pre-lodgement public commentary risks contravening the current regime.

7 We have also granted relief from the general prohibition by class order:

(a) for roadshow presentations and market research, as set out in *ASIC Corporations (Market Research and Roadshows) Instrument 2026/93*; and

(b) to allow unlisted bodies to make communications with employees and security holders about a planned IPO, as set out in *ASIC Corporations (IPO Communications) Instrument 2020/722*.

8 The operation of these instruments provides practical relief to allow relevant IPO communications and demonstrates that the absolute prohibition of pre-lodgement advertising and publicity for offers would be unreasonable and uncommercial.

9 Existing class order relief does not extend to all pre-lodgement offers and is narrow in application, permitting only certain IPO communications for specific purposes.

Concerns with the current pre-lodgement advertising and publicity regime

10 We have observed that under the current pre-lodgement advertising and publicity regime:

(a) most offerors avoid pre-lodgement advertising or publicity due to regulatory risk; and

(b) there are limited mechanisms to mitigate the spread of unofficial or inaccurate information through disclosure.

11 More broadly, we consider that the current regime may place uncommercial constraints on IPOs when compared with other domestic capital-raising regimes and international capital markets.

Comparison with other fundraising regimes

Product disclosure statement (PDS) and crowd-sourced funding (CSF) regimes

12 The PDS regime permits advertising and publicity of PDS offers, provided they:

(a) identify the offeror (and seller where relevant);

(b) describe or link to the target market determination (where required);

(c) indicate that a PDS is available and where to obtain it; and

(d) state that the PDS should be considered before acquiring or continuing to hold the product.

13 Similarly, CSF offerors can advertise a CSF offer before publication, provided they include a statement that investors should consider the offer document and the general risk warning when deciding to apply under the offer.

14 The PDS and CSF advertising regimes allow offerors to control information provided to potential investors. We consider that adopting a similar approach for pre-disclosure document advertising and publicity may improve the accuracy and reliability of investor information by increasing offeror control and accountability.

Consistency with the post-disclosure document regime

15 Subsection 734(6) of the Corporations Act provides a statutory exception to the general prohibition following lodgement of a disclosure document with ASIC, subject to a prescribed statement that:

(a) identifies the issuer (and seller where relevant) of the securities;

(b) indicates that the disclosure document for the offer is available and where it can be obtained;

(c) the offer of securities will be made in, or accompanied by, a copy of the disclosure document;

(d) a person should consider the disclosure document in deciding whether to acquire the securities; and

(e) anyone wishing to acquire the securities must complete the application form contained in, or accompanying, the disclosure document.

16 In effect, we are proposing to more closely align the pre-lodgement and post-lodgement advertising and publicity regimes.

Approaches in overseas jurisdictions

17 We have considered approaches in comparable overseas jurisdictions and observed that:

(a) advertising and publicity are generally permitted where it is not misleading or deceptive;

(b) communications are generally required to direct investors to the disclosure document; and

(c) statements must be consistent with the contents of the disclosure document.

18 We consider that closer alignment of Australia's framework with international practice would enhance global participation and strengthen the competitiveness of its capital markets.

Purpose of this paper

19 This paper sets out our proposal to address issues identified in the current pre-lodgement advertising and publicity regime by introducing a new legislative instrument, *ASIC Corporations (Pre-Prospectus Advertising and Publicity) Instrument 2026/XX* (draft instrument).

20 The draft instrument amends s734(5) of the Corporations Act to exempt offerors from the general prohibition. This allows an advertisement or publication prior to lodgement of a disclosure document in relation to an offer of unquoted securities, provided the advertisement includes the following prescribed statements that:

(a) if the securities are likely to be available by way of issue—identifies the issuer of the securities;

(b) if the securities are likely to be available pursuant to sale offers to which s707 will apply—identifies the issuer of the securities and the seller of the securities;

(c) in any case—indicate that a disclosure document for the offer will be made available when the securities are offered;

(d) indicates when and where the disclosure document is expected to be made available;

(e) a person should consider the disclosure document in deciding whether to acquire the securities; and

(f) anyone who wants to acquire the securities will need to complete the application form that will be in or will accompany the disclosure document.

21 Following the introduction of the draft instrument, we intend to repeal ASIC Instrument 2020/722, as the instrument's relief is addressed by the draft instrument.

22 We consider that the relief provided by *ASIC Corporations (Market Research and Roadshows) Instrument 2026/93* is required and will remain in force following the introduction of the draft instrument.

23 We will also consider and update other ASIC class instruments that may require minor consequential amendments as a result of the draft instrument.

24 We also plan to update Section J of RG 254 when we release the final instrument.

25 We welcome any feedback you may have on our proposals. We will take your comments into account when finalising the draft instrument.

B Proposals

Key points

We are proposing to issue the draft instrument to amend s734(5) of the Corporations Act to provide an exception for pre-lodgement offers of unquoted securities from the advertising and publicity prohibition in s734(2), where prescribed disclosures are included. At the same time, we will revoke ASIC Instrument 2020/722 as it will no longer be required.

The proposed relief adds to ASIC's existing class relief. It is expected to modernise and simplify the pre-disclosure document advertising framework, improve the quality of information available to investors, strengthen alignment with other regulatory regimes and international markets, and maintain appropriate investor protections.

Amendment of subsection 734(5) of the Corporations Act

Proposal

B1 We propose to amend s734(5) of the Corporations Act by issuing the draft instrument to prescribe that an offeror may make an advertisement or statement in relation to an offer, or intended offer, of unquoted securities at any stage prior to the lodgement of a disclosure document, providing the advertisement includes a statement that:

(a) if the securities are likely to be available by way of issue—identifies the issuer of the securities;

(b) if the securities are likely to be available pursuant to sale offers to which s707 will apply—identifies the issuer of the securities and the seller of the securities;

(c) in any case—a disclosure document for the offer will be made available when the securities are offered;

(d) indicates when and where the disclosure document is expected to be made available;

(e) a person should consider the disclosure document in deciding whether to acquire the securities; and

(f) anyone who wants to acquire the securities will need to complete the application form that will be in or will accompany the disclosure document.

Your feedback

B1Q1 Do you agree with our proposal?

B1Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

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

Proposal

B2 We propose to revoke ASIC Instrument 2020/722 at the same time as the release of the proposed legislative instrument.

Your feedback

B2Q1 Do you agree with our proposal?

B2Q2 Would you suggest any changes to our proposed approach? If so, please provide details.

Rationale

26 Adding to existing class relief, we propose to issue the draft instrument to amend s734(5) of the Corporations Act to exempt relevant offerors from the general prohibition on pre-lodgement advertising and publicity for offers of unquoted securities under disclosure documents in s734(2), provided the advertisement or publication includes certain prescribed statements as outlined in B1.

27 We consider that the proposed reforms to the pre-lodgement advertising and publicity regime would support ASIC's policy objective of maintaining efficient and attractive public markets, particularly in the context of increasing global competition for listings and the growing availability of private capital. These reforms are expected to result in:

(a) Modernisation of the regime—updates to the pre-disclosure document advertising restrictions to reflect modern information-sharing practices and adopt a 'whole of market' approach to the underlying policy objectives of providing similar class and individual relief.

(b) Regulatory simplification:

  (i) By driving consistency across regimes and aligning the pre-disclosure document advertising framework more closely with the PDS, CSF and post-disclosure document regimes, reducing incoherence within domestic disclosure settings;

  (ii) class order revocation and updated guidance in RG 254;

  (iii) reduces the need for individual relief applications to ASIC; and

  (iv) removes unreasonable and disproportionate restrictions on IPO offerors compared with other domestic capital-raising regimes and international markets.

(c) Improved information quality—allow offerors to communicate in a controlled and accountable way, reducing the risk of misinformation and enabling timely correction or clarification.

(d) Greater international alignment—bring ASIC's approach broadly in line with comparable overseas jurisdictions, improving consistency across global capital markets.

(e) Clear investor safeguards—retain core protections by requiring prescribed statements directing investors to the disclosure document and reinforcing its primacy in investment decisions.

(f) Enhanced retail investor engagement—facilitate more meaningful engagement with retail investors, enabling offerors to better gauge IPO interest.

(g) Earlier regulatory visibility—potentially improve early awareness of offers and related reporting to ASIC by market participants and whistleblowers.

28 ASIC Instrument 2020/722 provides targeted relief from the general prohibition on pre-lodgement advertising and publicity for offers of securities under disclosure documents to facilitate limited and factual communications about an IPO to current and former employees and existing security holders.

29 We propose to revoke this instrument because the relief it provides is captured in the draft instrument and it will be rendered unnecessary. This would further contribute to simpler regulatory landscape for offerors.

30 We consider that *ASIC Corporations (Market Research and Roadshows) Instrument 2026/93* remains relevant, and we do not propose to revoke this instrument.

31 We will update RG 254 to include revised guidance on advertising and publicity for offers of securities under disclosure documents and remove references to ASIC Instrument 2020/722 when the new legislative instrument is released.

C Regulatory and financial impact

32 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we are of the view that our proposed extension to existing ASIC relief relating to pre-lodgement advertising and publicity for offers of securities under disclosure documents will strike an appropriate balance between:

(a) protecting against misleading or deceptive information;

(b) introducing greater flexibility to allow greater engagement between offerors of securities and retail investors; and

(c) removing a key competitive disadvantage for offerors compared with alternative fundraising regimes.

33 Before finalising the legislative instrument, we will comply with the Australian Government's Policy Impact Analysis (PIA) requirements by:

(a) considering all feasible options, including examining the likely impacts of the range of alternative options that could meet our policy objectives;

(b) if regulatory options are under consideration, notifying the Office of Impact Analysis (OIA); and

(c) if our proposed option has more than a minor or machinery impact on business or on the not-for-profit sector, preparing an Impact Analysis (IA) or an IA equivalent (Independent Review).

34 All IAs are submitted to the OIA for approval before we make any final decision, or if an IA equivalent—to the OIA for agreement. Without an approved IA or agreed IA equivalent, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

35 To ensure that we are in a position to properly complete any required IA or IA equivalent, please give us as much information as you can about our proposals or any alternative approaches, including:

(a) the likely compliance costs;

(b) the likely effect on competition; and

(c) other impacts, costs and benefits.

See 'The consultation process', p.4.

Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
CSF	Crowd-sourced funding, in accordance with Pt 6D.3A of the Corporations Act
CSF offer document	A document that complies with the requirements of s738J of the Corporations Act
disclosure document	For an offer of securities, this includes a prospectus, a transaction-specific prospectus, a short-form prospectus, a two-part simple corporate bonds prospectus, a profile statement and an offer information statement
draft instrument	The instrument proposed under this paper to amend s734(5) of the Corporations Act to exempt offerors from the general prohibition
general prohibition	The general prohibition is imposed on advertising or publicity for offers of securities that require a disclosure document under s734(2) of the Corporations Act
IPO	An initial public offering
PDS	A Product Disclosure Statement—a document that must be given to a retail client for the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s9 for the exact definition.
prospectus	A prospectus that complies with the disclosure requirements in s710 of the Corporations Act

List of proposals and questions

Proposal	Your feedback
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B2 We propose to revoke ASIC Instrument 2020/722 at the same time as the release of the proposed legislative instrument.	B2Q1 Do you agree with our proposal? B2Q2 Would you suggest any changes to our proposed approach? If so, please provide details.