

PROPOSED CHANGES TO THE PRE-LODGE MENT ADVERTISING AND PUBLICITY REGIME: WHAT DOES IT MEAN?

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The Australian Securities and Investments Commission (ASIC) released *Consultation Paper 390* (CP 390) on 4 August 2026, proposing reforms to the pre-lodgement advertising and publicity regime under the *Corporations Act 2001* (Cth). ASIC proposes to simplify the regulatory framework, better reflect modern information-sharing practices and bring Australia's regime more closely into line with comparable international approaches.

WHAT IS CHANGING?

If implemented, the proposed reforms would provide offerors with greater scope to advertise or otherwise issue communications in relation to a proposed offer before lodging the relevant disclosure document.

This would potentially allow offerors to do the following:

- a) Engage with the market and create awareness before formally launching an offer.
- b) Address market commentary or reporting (if any).
- c) Better gauge interest in a proposed offer.

THE INVESTOR PROTECTION CHALLENGE

The existing pre-lodgement advertising regime, albeit limiting, serves important investor protection objectives. ASIC identifies these to include preventing the selective release or “drip-feeding” of information to the market, discouraging inadequate analysis of the disclosure document, and discouraging investment decisions being made on the basis of advertising or publicity rather than the disclosure document.

The proposed regime would bring the treatment of unquoted securities more closely into line with the existing pre-lodgement regime for quoted securities by allowing broader communications, provided prescribed statements are included.

The proposed reforms do not, however, displace other requirements that apply to communications, including the existing prohibitions on misleading or deceptive conduct, and pre-lodgement communications should therefore be carefully considered before being issued.

WHAT SHOULD OFFERORS AND ADVISERS TAKE FROM THIS?

The reform proposed by CP 390 represents a significant change to the practical operation of Australia's initial public offering (IPO) regime. If adopted, offerors contemplating an IPO would have greater flexibility to engage with the market before lodging their disclosure document.

If offerors are able to communicate more freely beforehand, there is a risk that particular statements or themes become the focus of investor attention, influencing investment decisions before investors have access to the disclosure document. There is also a risk of inconsistency between pre-lodgement communications and the subsequent disclosure document. A statement that appears reasonable when made may later need to be qualified, updated or omitted from the final prospectus, and this may create regulatory and reputational risks for the offeror and its advisers.

Accordingly, the greater flexibility would also require greater discipline around the preparation and approval of communications. Offerors and their advisers would need to carefully consider how statements made during the pre-lodgement period are supported, monitored and ultimately reflected in, or remain consistent with, the disclosure document.

The consultation period closes on 11 September 2026, with release of the legislative instrument and updated regulatory guidance expected on 30 October 2026.

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