

Guidelines: Social Media & Small Scale Offers of Securities

Section 708 of the *Corporations Act 2001 (Cth)* (the **Act**) provides an exemption to companies from having to use a Disclosure Document when issuing or selling securities to certain types of investors (Disclosure Document meaning an ASIC registered disclosure document such as a prospectus, product disclosure statement or offer information statement).

Put simply, when you read *s708* you will see that:

1. Personal offers of securities to those investors known to the company do not need disclosure if ... certain conditions are met;
2. An offer of securities to sophisticated investors do not need disclosure if... certain conditions are met;
3. An offer to professional investors do not need disclosure if ... certain conditions are met;
4. And so forth, with the remaining prescribed exempted offers of securities to specific types of investors if ... certain conditions are met.

* Sophisticated & Professional Investors are different and are not the topic of this Guideline, however, it is to be remembered that Sophisticated & Professional Investors are required to be qualified as such an investor type before promoting an offer of securities to that investor.

You will notice, however, that *s708* **does not** entitle a company to freely advertise its offer to issue or sell securities.

The Corporations Act

Section 734(1) of the Act states that *no advertising or publicity is allowed for small scale offers made under the s708(1) exemption* and simply put, the Act prohibits the promotion and advertising in relation to small scale offerings.

Section 727 states that a person must not make an offer of securities, or distribute an application form for an offer of securities, that needs disclosure to investors under Part 6D.2 unless a disclosure document for the offer has been lodged with ASIC.

And finally, *s736* states that a person must not offer securities for issue or sale in the course of, or because of, an unsolicited meeting or telephone call to another person.

In essence, the only offers that may be openly advertised (subject to certain conditions prescribed by the Corporations Act) are Disclosure Documents lodged with the Australian Securities & Investment Commission (**ASIC**) (and even so, advertising and publicity must accord with the relevant provisions of the Act).

The Class Order 02/273

Whilst the Act prohibits the advertising and publicity of small scale offers, ASIC recognises the need to allow some types of offers or invitations for securities to be circulated by an introduction service,

subject to limits on the material that may be circulated about the offer and warnings about the use of information. Thus, ASIC (through its powers as prescribed in the Act) issued the *Class Order 02/273 "Business Introduction or Matching Services"* (**Class Order**).

The purpose of the Class Order is to provide certain exemptions from the fund raising provisions of the Act for persons involved in the making or calling attention to offers of securities through a business introduction service.

For the purposes of this paper, the Class Order provides an exemption to the *s734(I)* restriction in relation to circulating (publishing) material about a small scale offer for a business introduction service, provided such promotion is done within the restrictive and prescribed manner set forth in the Class Order (i.e. prominent statements and warnings, communication by subscription permits the inclusion of the logo and other conditions).

Social Media - FACEBOOK

Facebook is a social networking site that helps people and businesses communicate more efficiently with friends, family and co-workers, etc.

For companies generally, Facebook provides access to marketing through profiles with photos, contact information, and other product information and companies can also start generating interest through groups and 'like pages' suitable for advertising the business, product or niche.

Public Page vs Private Page

For companies raising equity capital through a small scale offering, it must be remembered that the company cannot, either directly or indirectly, promote or advertise its offer of securities through its public Facebook network by virtue of *s727* and *s734* of the Act without a current disclosure document.

However, if a company raising equity capital has ensured that its Facebook Page is set to "Private Profile" (e.g. Recommended, Friends Only or Friends of Friends) then only approved private and selected "Friends" will be able to see its profile info, posts and pictures.

Pursuant to *s708(I)*, if the "Friends" are firstly qualified as persons who are interested in offers of that kind (through previous contact or professional connection or statements / actions demonstrating interest) before being given access to the Facebook Page and that the Facebook Page is set to private, these "Friends" can access information about the small scale offering.

Notwithstanding this, not every promotion about the company has to refer to capital raising and often, it is a good idea to assist readers in undertaking due diligence about a company. The public Facebook Page can contain biographies and pictures of the company's directors, recent business updates, acquisitions, success stories, postings for employees and just general communication pieces that are continually updated to encourage interest in the company generally.

The Public Page can also contain an Investor post similar to a website Investor Relations tab.

ABC Limited is a brand new company founded by a couple of shoe lovers, who are embarking on a mission to deliver the best in online shopping to Australia and stake a claim in the footwear market.

Our primary goal is to deliver the most joyful shopping experience for our customers – it’s that simple. We believe that superior customer service creates word-of-mouth discussion and repeat customers, keys to any successful online business.

Our guiding mantra is to offer legendary customer service, the most comprehensive range of footwear in Australia, super-fast delivery and a website that takes a fresh approach to footwear retail.

For more information about ABC Limited please visit the Company’s Profile Page on ASSOB at: www.assob.com.au/abc.

Further direct enquires may be made to:

The information provided on this Post does not constitute an offer or invitation to subscribe for shares. Any implied offer herein is an excluded offer pursuant to sections 708 (8), (10) & (11) of the Corporations Act 2001 (Cth).

Class Order Operators

The Class Order allows for the Class Order Operator to circulate material and call attention to a company’s offer of securities. Thus, the Class Order Operator can create a Facebook Profile Page in relation to its activities in promoting the capital raising of various companies.

Prior to releasing any details about the company, the Class Order Operator would still have to ensure that the conditions of the Class Order were satisfied - i.e. subscription service and reading of warnings must have occurred, prior to the release of the company details / logo – and in this regard, each detailed Facebook Profile Page should be set to “Private Profile” to accomplish this task.

However, an introduction teaser such as this example could be included on the Class Order Operator’s Facebook Profile Page:

ABC Limited are a world leading Melbourne based food technology company that use a proprietary High Pressure Processing (HPP) technology ...

DEF Limited is an Australian software-as-a-service company that is developing a next generation transaction processing platform ...

OR

A fast growing, consumer brand, health & beauty company is interested in engaging with sophisticated, professional or overseas investors. Now available in Preview on the Australian Small Scale Offerings Board. For more information, visit www.assob.com.au/ghi.

It must be noted that the nature of Facebook limits the Class Order Operator in terms of knowing who has accepted the Class Order Warnings and who has not, so the Class Order Operator would need to ensure that ALL the Facebook “Friends” have acknowledged the Class Order Warnings when they joined the Facebook Profile Page. This could be done by personally ‘messaging’ the “Friend” in the ‘chat’ function and will assist in opening the dialogue between the parties.

It would also be prudent to include the following text on the main page of the Facebook Profile Page:

Please note, the information contained on this webpage does not constitute an offer or invitation to subscribe for shares, however any implied offer herein is an excluded offer pursuant to sections 708 (8) (10) & (11) of the Corporations Act 2001 (Cth).

Social Media - TWITTER

Twitter is an online social networking and microblogging service that enables its users to send and read text-based posts of up to 140 characters, known as ‘tweets’. Users agree to subscribe to other users’ Twitter Feed – this is known as ‘following’ – and subscribers are known as ‘followers’.

Pursuant to ~~s734~~ (no advertising or publication of small scale offers), a company cannot promote or advertise its offer of securities through its general Twitter network and tweets are publicly visible by default.

However, senders can restrict message delivery to just their ‘followers’. In this regard, a company still has to ensure that its ‘followers’ are firstly qualified as persons who are interested in offers of that kind before it could release information about the small scale offering or that the ‘followers’ are some other type of excluded investor. Companies should ensure that their ‘followers’ have committed to receive ‘tweets’ through written means as evidence to ASIC if requested to ensure compliance with s708(1).

Types of tweets, for persons interested in offers of this kind, could include:

- Round 1 closed.
- Getting close to minimum subscription.
- 3 parcels filled.
- New issue of shares today.
- Company announcement about new officeholder.

However, this does not discount a company from ‘tweeting’ about its business activities, new relationships forged, upcoming meetings and interesting events.

For example:

- Interesting article on xxx (this article could be about the industry generally)
- Great meeting today w xxx ... our third official meeting. Hopefully contract soon.
- Big decision made today. More info to share soon.

Check out our article in xxx (this article could be directly about the company)

Check out our new website on xxx

Exciting day for xxx. Meeting great people who are interested in your business is a terrific mental boost.

Our stock of xxx has finally arrived. Busy day unpacking.

Xxx, has just joined the Board as director and has great experience in xxx.

Conversely, the Class Order Operator could twitter to its network of subscribed ‘followers’, advertising and calling attention to an offer of a company’s securities. As the word limit of Twitter is small and the Class Order Operator has to ensure that the conditions of the Class Order are satisfied - i.e. namely, that every publication must contain the Class Order Warnings and Prominent Statements – the use of Twitter is restrictive.

It would be beneficial for any information in relation to a company conducting a capital raising campaign by its Class Order Operator to tweet to its subscribed ‘followers’ only general information about the company or historical capital raising updates.

For example:

NewCo Ltd announces joint venture with OldCo Limited www.assob.com.au/abc

Minimum subscription achieved for NewCo Ltd.

In addition, the Class Order Operator should ensure that their “followers” have committed to receive ‘tweets’ through written means as evidence to ASIC if requested to ensure compliance with the Class Order 02/273.