



# ***12 Questions To Ask When Using Digital Advertising to Attract Investors***

*Adhering to ASIC Guidelines*



Using **online advertising** to promote your company is rapidly gaining popularity.

If used correctly, large numbers of investors can be reached **increasing your stock's liquidity and share price movement.**



However did you know that companies who provide this service should be licensed under an Australian Financial Services License (AFSL).

An ASIC crack-down has already begun on unlicensed operators.

Before you engage in any vendor offering digital advertising, ask yourself these 12 important questions (particularly if “share price rise” is included in the offer).



# 1. Is this article and online advertising material you plan to produce about my company designed to influence readers?

- According to ASIC regulatory guides, any company advertising content that is designed to influence an investor must be licensed and compliant to ensure that it does not engage in misleading or deceptive conduct when promoting a financial product
- You may have seen unlicensed providers promoting very bullish or emotional articles promising “huge share price gains”, while failing to alert readers to risks or providing a balanced argument
- This is “unlicensed financial advice” and is being cracked down on by ASIC



## 2. Are you authorised under an AFSL License? Or will you be using digital advertising to distribute unlicensed advice recommending readers to invest in my company?

- Promoting your company using digital advertising is providing financial advice to readers – advice provided by an unlicensed entity may not be complying with the law
- Section 9.11(a) of the Corporations Act requires a financial services business in Australia to hold an AFSL or be an authorised representative of an AFSL holder, covering the provision of financial services
- A person who is convicted of carrying out an unlicensed financial services business may be subject **to a fine of up to \$34,000 or imprisonment of two years, or both**. If a company is convicted, it can also be liable to penalties, including **a fine of up to \$170,000**
- ASIC is increasing monitoring of unlicensed advice. ASIC Commissioner Greg Tanzer said: *“It is important when making decisions... to consider obtaining appropriate advice from an authorised financial adviser... Dealing with an authorised adviser affords specific protections under the law.”*



### 3. Are you using an “overly emotive” article and advertising material to “trick” people into buying stock?

- Have you seen some headlines like these promoting stocks online:
  - “leading analyst says share price set to triple”
  - “don’t miss out, stock to soar”
  - “your chance to buy this stock before it goes ballistic”
- These are clearly designed to influence people to invest, specifically targeting novice and unsophisticated investors and not presenting a balanced argument
- Not only is this unethical, but it makes your company look unprofessional to sophisticated investors
- Content like this would never be approved for publishing by an AFSL compliant organisation



## 4. “My share price might rise” – Do you have an enforceable company policy preventing staff and advisors from profiting from trading on your digital promotion campaign? Is it publicly available?

- Digital promotion of a company can have strong effects on liquidity and share price – licensed operators and authorised representatives must adhere to strict rules preventing any trading or profiting from online promotional campaigns
- All internal trading policies need to be publicly displayed and available to readers at all times
- As exposed in a recent article in BusinessDay, many unlicensed operators and shady “backyard” promoters may abuse digital advertising of stocks for personal gains
- If you are considering using digital advertising to promote your company, make sure you protect yourself from this and the stigma that comes with it by only engaging an experienced AFSL licensed provider or authorised representative



## 5. Will broker price targets be taken out of context and presented in a deceptive and misleading way?

- A popular technique used by unlicensed and unauthorised operators is to take a third party analyst report created by a stock broker, then heavily promote the “blue sky” best case scenario price target, without mentioning the risks to investors
- Clearly designed to influence novice and unsophisticated investors, this fails to present a balanced argument and inform the reader of the risks of investing in the company
- Heavy online promotion of a broker’s “best case” price target makes your company look foolish to sophisticated investors





## 6. Are you fully compliant with ASIC Regulatory Guide RG234?

- ASIC Regulatory Guide RG234 (RG234) is a 60 page document that provides guidance around advertising and marketing materials, ensuring entities that advertise financial products do not engage in misleading or deceptive conduct that may influence or mislead a consumer
- Operating under RG234 requires a dedicated compliance expert to review and enforce every single piece of promotional material created
- Make sure you confirm that anyone offering to promote your company online fully adheres to RG234



### REGULATORY GUIDE 234

#### **Advertising financial products and services (including credit): Good practice guidance**

November 2012

#### **About this guide**

This guide is for promoters of financial products, financial advice services, credit products and credit services, and publishers of advertising for these products and services.

It contains good practice guidance to help promoters comply with their legal obligations not to make false or misleading statements or engage in misleading or deceptive conduct.



## 7. Are you fully compliant with ASIC Regulatory Guides RG53, 79, 234 and 244?

- ASIC Regulatory Guides 53, 79, 234 and 244 provide guidance on what is considered 'providing financial product advice' and the obligations that apply to providers of these financial service
- Using digital advertising to promote your company is ABSOLUTELY considered to be providing financial advice under these regulatory guides
- Operating under these regulatory guides requires a dedicated compliance expert to enforce obligations that apply to you as a provider of financial services if you are using digital advertising to promote your company



### REGULATORY GUIDE 79 Research report providers: Improving the quality of investment research

December 2012

#### About this guide

This guide is for Australian financial services (AFS) licensees who are research report providers. It is directed towards providers of research on investment products—known variously as research analysts, securities analysts or research houses—and the research reports they provide. It provides guidance on certain licensing and conduct obligations in Pt 7.7 of the Corporations Act 2001 (Corporations Act) as they apply to general advice prepared by research report providers for retail and wholesale clients.



### REGULATORY GUIDE 53 The use of past performance in promotional material

July 2003



### REGULATORY GUIDE 234 Advertising financial products and services (including credit): Good practice guidance

November 2012

#### About this guide

This guide is for providers of financial products, financial advice services, credit products and credit services, and publishers of advertising for these products and services. It contains good practice guidance to help providers comply with their legal obligations not to make false or misleading statements or engage in misleading or deceptive conduct.



### REGULATORY GUIDE 244 Giving information, general advice and scaled advice

December 2012

#### About this guide

This guide is for Australian financial services (AFS) licensees, authorised representatives and advice providers who give information and advice to retail clients, and requires:

- the differences between giving factual information, general advice and personal advice; and
- how to meet the advice obligations in Ch 7 of the Corporations Act 2001, including the best interests duty and scaled obligations, when giving 'scaled' advice (i.e. personal advice that is limited in scope).

Our guidance aims to facilitate access for retail clients to good quality information and advice about all financial products.





## 8. When a person is reading your promotion about your company on the internet, what will be the legal entity responsible for that content? Will this be clear to the reader?

**SCENARIO:** If a person is reading an article in the Australian Financial Review, they know that the AFR is responsible for the content that they are reading, and any questions, complaints or clarifications they have can be directed accordingly to the AFR

- If a reader has a complaint, it is a requirement that the contact details are clearly accessible – this is extremely important for financial advice
- Many unlicensed and unauthorised operators will aggressively promote your story using an unidentifiable and untraceable source with no contact details available – worse, their unauthorised content will appear to have originated from ***your company***



## 9. Are you going to make the promotional content appear to have come from your company?

**EXAMPLE:** you engage an unauthorised operator to promote your latest company announcement – they produce a highly aggressive, positive promotional article.

In the article they write that the “share price will rocket” – using overly emotive language to target novice investors.

Worse still, they have no trading blackout policy to stop them from trading any resultant share price activity.

- If this article is promoted on the internet, it will most likely appear to be a company sanctioned communication, particularly if your company logo is used on the article
- In which case, your company will be firmly in the sight of ASIC, especially if there is irregular trading activity in the lead up to the promotion



## 10. Will there be general advice warnings on your content?

- ASIC requires that readers of any promotional content are CLEARLY and CONSISTENTLY warned that any investment advice or recommendations they are reading have not taken their personal circumstances into account



## 11. Will there be conflict of interest notices on the content?

- ASIC requires that readers of any promotional content are CLEARLY and CONSISTENTLY warned that any investment advice or recommendations they are reading have not taken their personal circumstances into account



## 12. Have you fully informed readers of the risks in investing in your company?

- Although it is tempting to present an aggressively positive spin on your company, you must make sure that a balanced argument is presented and the risks are made clear to the reader, especially novice investors
- Not doing so is irresponsible and against ASIC regulations



## So now you have answered all of the questions...

- Are you still comfortable using the operator to publicise your company?
- StocksDigital prides itself on being the pioneer in this space, operating with the highest levels of integrity and compliance and is authorised under an Australian Financial Services License.
- For more information please visit [www.stocksdigital.com](http://www.stocksdigital.com)