Actuaries Institute.

28 April 2025

Australian Securities & Investments Commission

Email: markets.consultation@asic.gov.au

Dear Sir/Madam,

Discussion Paper: Australia's evolving capital markets: Dynamics between public and private markets

The Actuaries Institute (**Institute**) welcomes the opportunity to contribute to ASIC's initiative to consult on Australia's evolving capital markets. The Institute is the peak professional body for actuaries in Australia. Our members work in a wide range of fields including insurance, superannuation, investments and retirement incomes, banking, enterprise risk management, data science and AI, climate change impacts and government services.

The Institute has a longstanding commitment to contribute to public policy discussions where our members have relevant expertise. The comments made in this submission are guided by the Institute's 'Public Policy Principles' that any policy measures or changes should promote public wellbeing, consider potential impacts on equity, be evidence-based and support effectively regulated systems.

The Institute supports effectively regulated capital markets, both public and private, in Australia and globally. In relation to private markets, our main concern is that some retail investors may not fully understand what they are purchasing. More broadly, our key observations are:

- **Capital markets are key to unlocking more economic prosperity for Australians**: Australia enjoys the dual privilege of being both a developed and young nation still with significant potential. Developing Australia further therefore requires strong and dynamic capital markets for new and existing businesses to grow, innovate and mature. Policy and regulatory settings should therefore lean towards fostering healthy growth and innovation, having regard to the fierce competition globally to attract capital and the approach taken across other comparable jurisdictions. It must also be recognised that Australia's $3.2 trillion capital market is relatively small as a share of global market capitalisation. While there is some overlap in ownership, it is also smaller than Australia's $4.1 trillion superannuation system and $11.0 trillion residential housing market. There remains significant opportunity for policymakers to support continued growth of Australia's capital markets, whether public or private, where investments are allocated towards their most productive use.
- **We agree with ASIC that compulsory superannuation is driving the rise and need for strong capital markets especially within Australia**: The defined contribution structure of compulsory superannuation (super) has given Australia one of the world's largest pools of retirement savings (including as a percentage of GDP). Given how large super now is, microeconomic regulations that influence how super funds invest in capital markets will have

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noticeable macroeconomic implications and should therefore be considered carefully. In particular, the super product performance test (known technically as the 'annual performance assessments' under s60C of the SIS Act) introduced from 2021 has, by virtue of its inherent design, pushed APRA-regulated super funds to invest according to specific asset class indices in ways that are not necessarily consistent with a super trustee's fiduciary obligation to accept investment risk that maximises the long-term financial interests of their members. We recently provided feedback to Treasury so that the performance test becomes a targeted two-metric test, adding a metric that recognises a product's performance on a risk-adjusted basis. This adjustment would meaningfully align the test with a super trustee's overarching duty to act in the best financial interests of their members while also promoting the broader policy objective of improving dynamism in capital markets.

- **We share ASIC's interest in the outlook of Australia's public equity markets**: While ASIC's research has concluded that recent trends in Australia's public markets are likely cyclical, we have some concern that the appeal for entities of being publicly listed both in absolute and relative terms is lower, perhaps much so, for companies and investors than even just one decade ago. The operating and reputational risk environment for listed companies has increased significantly in recent decades. There are many factors, and they are likely interrelated – some include higher community standards of acceptable corporate behaviour, advances in communication technologies and the rapid media cycle. We do not see easy answers. We support continued policy and regulatory attention to safeguard the ongoing and future health of public markets given the important public benefits they provide, including price discovery and liquidity which support valuation and capital allocation.
- **The historic and continuing growth of private markets is largely positive for Australian investors**: As explored in the Discussion Paper, private assets as part of a well-diversified portfolio have desirable characteristics for longer-term investors. Super funds that have had meaningful allocations to private assets have, by and large, outperformed their counterparts. As the super system and capital markets continue to grow, private markets will continue to attract capital and likely grow faster than the overall system. From a regulatory perspective, we support ASIC's initiative to explore and understand the size and nature of the sector. We caution however that any additional data reporting initiatives should be carefully scoped and designed to avoid undermining the genuine appeal for investor participation in, and integrity of, private markets. The heterogeneous nature of private markets will make comparisons across private market products difficult.
- **Retail investors are increasingly participating in private markets and there is room for improvement in the disclosure framework**: With retail investors participating and allocating capital to private markets in larger numbers, existing issues relating to appropriate disclosure of fees, liquidity and risk profile should be addressed. While we do not see a need for further regulations on professional investors who are well equipped to navigate these markets, we have some concern with retail investors who by their nature have less knowledge and experience. To support informed retail investor participation, more transparency of fees, risks and performance will help consumers compare the different investments across private and public market options.

We set out in the Attachment specific responses to some of the questions raised in the Discussion paper.

The Institute may be contacted to discuss this submission. If you would like to do so, please contact executive@actuaries.asn.au.

Yours sincerely

(Signed) Elayne Grace
Chief Executive Officer

Attachment: Detailed responses to Discussion paper questions

Developments in global capital markets and their significance for Australia

2. Do you have any additional insights into the attraction of private markets as an issuer or an investor?

Page 23 of ASIC's Discussion Paper notes that super funds find private markets attractive from diversification strategy, investment time horizon, returns and enhanced control perspectives. We agree.

Additionally, we note that the real-time price discovery in public markets – a public benefit – is not necessarily a desirable feature for longer-term investors. Compared to their public market counterparts, private market investments exhibit lower volatility primarily because they are valued less frequently. As the recent (and perhaps ongoing) heightened volatility of global equity markets in early 2025 highlights, the lower volatility of private market investments is attractive from the perspective of managing super as a long-term investment. Less volatile returns over regular reporting periods for super funds members, most commonly annually, promotes sustained confidence for members that their super investments will be there for their retirement. As we detail further in our response to Question 8 below, we welcome and support APRA's ongoing initiatives to improve investment governance standards of all super funds, particularly in the areas of unlisted asset valuation and liquidity management.

Another potential reason is that the higher observed price volatility in public markets is amplified by investor sentiment that could result in price dislocations away from intrinsic value. Sentiment driven price volatility might also be an undesirable feature of public markets that many super funds prefer to avoid for their members.

3. In what ways are public and private markets likely to converge?

Beneficial ownership through index funds has seen significant popularity in publicly listed markets and has steadily increased as a share of the total value of public markets. As private markets continue to grow, we observe that large financial institutions are starting to explore innovations to allow investor access into private markets through similar index-linked investment vehicles. Should these trends continue, traditional differences for investors between public and private markets – such as minimum investment thresholds, frequency of valuations, and liquidity restrictions – will continue to converge.

4. What developments in public or private markets require regulatory focus in Australia in the future?

We refer to the key observations that we outlined above; in summary these are:

- the rise and influence of Australia's super system and ensuring connection and coherence between superannuation policy and the Australian capital markets;
- the heightened and increasing expectations on publicly listed entities; and
- increasing retail investor access and participation in private markets where a good standard of fee, risk and performance disclosure across all products and issuers does not currently exist.

Healthy public equity markets

6. Do you agree that a sustained decline in the number, size or sectoral spread of listed entities would negatively impact the Australian economy? If so, can you suggest ways to mitigate any adverse effects that may arise from such changes?

We agree that this would be a concern for the Australian economy. Mitigating initiatives to consider include:

- Changing existing listing rules, noting we believe Australia has a relatively favourable regulatory environment for small and micro-cap entities as compared to other developed nations' public markets with the cost of listing in Australia significantly lower than in many other countries.
- Reforming the super product performance test. As outlined above, the current test encourages super funds to "hug" the test benchmarks or otherwise expose super funds to the risk of the severe consequences of the product failing the test. For example, the prescribed test benchmark for Australian equities is the S&P/ASX 300 Total Return Index. This discourages allocations to listed entities that do not closely match their relative index weighting and penalises investments in smaller and micro-cap entities that do not form part of the index.

7. To what extent is any greater expectations of public companies, compared to private companies, the result of Australian regulatory settings or the product of public scrutiny and community expectations of these companies?

We believe the greater expectations of public companies are predominantly a function of public scrutiny and community expectations. Indeed, the operating and reputational risk environment for listed companies has heightened significantly since even one decade ago. This plays out through the increasingly higher standards that directors and management are required to follow for dealings with customers and other stakeholders. This heightened environment may be attributed to many factors, some of which are likely interrelated – some include higher community standards of acceptable corporate behaviour, advances in communication technologies and the rapid media cycle.

While more insulated from public scrutiny, private companies are not necessarily immune to increasing community expectations. For example, the trend of increasing super fund ownership of private entities might lead to increased pressure on these entities to operate in line with community expectations (although this is difficult to directly evidence and will depend on the investment philosophy of the super fund). Notwithstanding, our broad observation remains that public companies face much higher expectations than their unlisted counterparts.

We also acknowledge the outcomes of recent inquiries, including the Hayne Royal Commission, which revealed systemic failures of companies to meet community expectations. In response, Australian regulatory settings have been strengthened, particularly in the financial services sector.

Private market risks and market efficiency and confidence

8. Are Australian regulatory settings and oversight fit for purpose to support efficient capital raising and confidence in private markets? If not, what could be improved?

At an overall level, we do not see strong evidence to justify the imposition of more restrictive regulatory settings and significantly greater regulatory oversight to support a more effectively regulated system.

We highlight the relevance of superannuation policy and regulations, which ensure strong protections and controls for a large majority of Australians indirectly invested often by default in private markets via their superannuation. As noted in the Discussion Paper, APRA has had considerable focus on strengthening investment governance practices of superannuation funds in recent years. We welcome and support APRA's ongoing work to improve unlisted asset valuation and liquidity management in the superannuation sector under the enhanced investment governance superannuation prudential framework.

As the enhanced investment governance requirements set out in *SPS 530 Investment Governance* (and supported by accompanying guidance) are bedded down, consideration should be given to further enhancements such as:

- defining the responsibilities that should remain with the super trustee, for example devising valuation processes;
- stronger requirements for super funds to consider the range of reasonable alternative valuation assumptions and how they may lead to different valuation outcomes; and
- how super trustees should consider whether prevailing market conditions have led to a spike in investment switching activity, and the specification of triggers for when an interim valuation is necessary to protect member equity.

9. Have we identified the key risks for investors from private markets? Which issues and risks should ASIC focus on as a priority? Please explain your views.

We broadly agree with the risks that ASIC has identified. We recommend that ASIC focus on how these risks are disclosed and understood by retail investors.

Retail investor participation in private markets

11. What is the size of current and likely future exposures of retail investors to private markets?

The size of retail investor direct participation in private markets is likely to be limited. We believe it will continue to grow as opportunities via managed investment schemes become more widely available and familiar to both retail investors and financial advisers.

However as identified by ASIC, total exposure of retail investors to private markets through indirect participation via APRA-regulated super funds is already widespread and will continue to grow in exposure over time.

12. What additional benefits and risks arise from retail investor participation in private markets?

While the benefits from retail investor participation in private markets are well understood, wider investor participation brings risks to the individual and the system. We have some concerns that greater retail investor participation, even with the support of a financial adviser, may not necessarily be well informed. Private market investments that offer different investment pathways to a wide spectrum of clients may not necessarily be designed and distributed by the product issuer with retail investors front of mind.

Our main concern is that some retail investors may not fully understand what they are purchasing.

- Liquidity risks (or the investor's ability to access their capital) is a key consideration for private market investments. By their nature, these investments tend to be highly illiquid, creating potential mismatches between retail investors' expectations and reality regarding capital access. We are concerned about vehicles marketed as open-ended, which may well function normally under standard conditions but can suspend trading during market stress conditions.
- Retail investors in private markets also have a structural mismatch created by the absence of capital call mechanisms. Unlike institutional investors who deploy capital incrementally when opportunities arise, retail products typically require full upfront investment, resulting in cash drag as funds sit uninvested. This fundamental difference not only potentially reduces returns but also creates a risk profile substantially different from the institutional experience, further widening the gap between retail investors' expectations and the actual performance of their private market investments.
- Additionally, retail investors often maintain higher portfolio concentrations in these investments compared to wholesale investors, amplifying potential risks.

While not a cause for current concern, at a systemic level we are alert to the risk of large growth of private investments (including credit) tied to domestic and commercial property assets – a situation similar to what has developed in China's property market over the past decade.

13. Do current financial services laws provide sufficient protections for retail investors investing in private assets (for example, general licensee obligations, design and distribution obligations, disclosure obligations, prohibitions against misleading or deceptive conduct, and superannuation trustee obligations)?

Taken as a whole, we consider that current financial services laws provide a framework for sufficient and comprehensive protections for retail investors, including when they invest in private assets. However, we do consider there to be room for improvement in the disclosure to investors of opaque or hidden fees, greater standardisation of investment performance disclosure, capital access and the risk profile of some private market investments. Via existing laws, improvements could be made by issuers and enforced by ASIC through communication of higher regulatory expectations and targeted engagement with entities of concern.

We would also support additional disclosure initiatives such as greater standardisation of product labels, liquidity risk labels or a common risk warning of private assets for retail investors. These initiatives would help consumers compare the fees, risk and performance across different investments and across private and public options. These initiatives might be done in partnership between industry and regulators.

Another key consideration is the definition of a retail investor and whether the current definition could inappropriately exclude large cohorts of investors from the protections built in for retail investors. We note this is a matter that has recently been considered by the Parliamentary Joint Committee on Corporations and Financial Services in its Inquiry into the wholesale investor and wholesale client tests.

Transparency and monitoring of the financial system

14. What additional transparency measures relating to any aspect of public or private markets would be desirable to support market integrity and better inform investors and/or regulators?

From a regulatory perspective, we support ASIC's initiative to explore and understand the size and nature of the sector. We caution however that any additional data reporting initiatives should be carefully scoped and designed to avoid undermining the genuine appeal for investor participation in, and integrity of, private markets.

We also strongly support the data collection principle of 'Do it once and do it well'. As the Discussion Paper notes, there has already been a strong focus on improving the transparency of superannuation funds, which has included APRA undertaking a multi-year project to upgrade the breadth, depth and quality of super data collection (Superannuation Data Transformation Project) and the implementation of portfolio holding disclosure obligations.

15. In the absence of greater transparency, what other tools are available to support market integrity and the fair treatment of investors in private markets?

Market integrity and fair treatment of investors in capital markets is underpinned by the rule of law, effective regulation and a well-understood, accessible dispute resolution process. In the case of retail investors, we support the external dispute resolution framework enabled by Australian Financial Complaints Authority (AFCA), which is free for consumers. We also support the principle of the Compensation Scheme of Last Resort (CSLR) to provide restitution to consumers where the financial institution has become insolvent, noting that the future design of the CLSR is currently undergoing Government review.