

28 April 2025

Australian Securities and Investments Commission
(ASIC)

By email: markets.consultation@asic.gov.au

Dear ASIC,

Submission to Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets February 2025

Thankyou for the opportunity to comment on the above discussion paper which notes the rise of private market investing in Australia's capital markets, part of a global investment trend. Our submission focuses narrowly on the fees and costs of private market investing, which can be notoriously opaque and not well understood, raising potential issues of market integrity.

We confine our comments to institutional investment thinking and practice, which is our area of expertise, and draw extensively from relevant UK market experience.

About Jefferson and Shea Analytics

Jefferson and Shea Analytics Pty Ltd ('J&SA') is part of the Jefferson and Shea Group, a boutique consulting hub formed in 2022 and based in Sydney. The co-founders and directors of J&SA are former superannuation, investment management and custody executives who from time to time work with institutional investors (for example, APRA-regulated superannuation funds, insurance companies and not-for-profit entities) with sizable pools of investable capital.

In 2023, J&SA acquired the rights to offer a successful UK public and private markets investment fees and costs database and benchmarking tool in the Australian and New Zealand market. The tool, ClearGlass Analytics ('ClearGlass'), has to date been used by over 850 institutional investors (mostly UK institutions but including two in Australia) collectively representing over £1.3 trillion (AUD2.6 trillion) in assets under management¹. The origins of the benchmarking tool were found in the UK Regulator (FCA) conducting a series of important market studies across 2017-2018 which identified concerning issues relating to fees-and-costs outcomes for UK pension scheme investors across global public and private markets (the FCA's 'Cost Transparency Initiative', or 'CTI'). As relevant to ASIC's discussion paper, ClearGlass has begun to offer the UK (and more recently the broader European market) new and important insights about institutional investment fees and costs.

¹ All figures as at 31 March 2025.



Within its database, ClearGlass' growing private markets coverage now extends to over 50% of the entire UK market, and 71% of all private market assets held by UK pension schemes, totalling £56 billion (AUD115.9 billion) in assets.

Discussion paper - general comments

We agree with ASIC's comments about the function of private market assets in institutional investment portfolios and the benefits an asset allocation weighting to these asset classes can deliver. We agree with the overall assertion that "Australia needs both private and public markets [which are] strong and well-functioning". We view the growth of private markets in Australia and overseas, and the take-up of these private market investment opportunities, as welcome developments for institutional investors.

ASIC's paper also recognises that (among other things) information asymmetries and conflicts can impede efficient capital allocation and erode confidence in private markets. ASIC is right to acknowledge the importance of transparency to investors, regulators and other stakeholders. In an institutional investment context, transparency measures can be especially effective (conversely, a lack of transparency especially troubling) as it is the 'hidden' informational aspects of investing, rather than a lack of sophistication or skills deficiency, that can create sub-optimal outcomes for investors and raise issues of market integrity.

Turning to our focus – institutional investment fees and costs – we believe the following are crucial to the efficient functioning of private investment markets:

- *in due diligence phase*, full knowledge of what it will/could cost to invest in a particular private market opportunity (relative to competing opportunities for the investor's capital)
- *in negotiation phase*, the ability of an institutional investor to exploit its knowledge and strengths in fee negotiations, and
- *in portfolio/performance monitoring phase*, the ability of the investor to knowledgeably assess throughout the investment horizon what the investment risk/reward is really costing the portfolio on an ongoing basis and whether this represents value-for-money.

ClearGlass' UK (and somewhat broader European) experience is that the fees and costs of private market investing are opaque, complex to measure and compare, and not well understood. We emphasise that this is not just a retail investor issue: the UK *institutional investor* experience (ClearGlass' client base) is that private markets investing, while cheaper than some myths suggest, remains beset by structural and cultural issues and occasional hidden conflicts of interest which act against transparency about true fees and costs. It is *not* safe to assume that the sophistication and discipline of the institutional investment market brings about more transparency, disclosure of conflicts, better understanding and (therefore) better outcomes for private markets institutional investors. This has not been the case in the UK and we query why the Australian market would be any different.



Discussion paper – specific feedback on discussion questions

Your question:

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.

Our comments:

The ClearGlass experience in the UK is that many investors (institutional investors at that) struggle to understand the full costs of private markets investing and compare the costs, reward for risk and value for money of different private market investment options. ClearGlass has begun to expand into Europe and early experience is that this issue is not confined to UK investors.

The markets examined by ClearGlass often exhibit a lack of effective price discovery and lack of competitive tension around the pricing of institutional investment opportunities in private markets (and to some extent in public markets as well). Institutional investment ‘deals’ are struck in secrecy with little market data available to the investor and most of the informational advantages resting with the negotiating manager/product provider. Published ‘rack rates’ – where available – provide a false pricing benchmark or signal in that they rarely, if ever, apply to institutional investors. These challenges are exacerbated in the context of private markets where there are many incidences of (disaggregated) portfolio fees and costs within complex, multi-layered structures. Not all are subject to disclosure, to negotiation or to ‘arms length’ scrutiny.

In the UK, ClearGlass has also on occasions uncovered situations of conflict where a product provider or manager does not appear to be acting in the best interests of (institutional) investor clients. We stress that this is not a systemic finding. For example, there is a risk that some private markets operators choose to lever a portfolio (access debt funding) rather than call on (cheaper) committed capital from investors simply as a matter of convenience. Complex structures offer places for questionable behaviour and sub-optimal decision-making to be hidden from investors.

Accordingly, we believe ASIC should address as key risks to market integrity:

- the complexity and opacity of private markets fees and costs (leading to a lack of effective price discovery and lack of scrutiny and competitive tension), and
- the scope for some private markets operators to breach ‘best interest’/fiduciary duties in their decision-making.

We stress that these should be seen not just as risks to retail investors but to more sophisticated institutional investors as well.



Your question:

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?

Our comments:

As noted in our general comments earlier, ClearGlass' rich database and analytics on public and private market fees and costs had its origins in the FCA's CTI (Cost Transparency Initiative). The FCA's rationale and early steps resemble the joint ASIC/APRA 'RG 97' regime but the FCA's initiative went much further and in our view has been much more effective in catalysing an industry response to the problem of opaque investment fees and costs and ineffective price discovery mechanisms.

The key differences between the (UK) CTI regime and (Australian) RG 97 regime are:

- the development of specific disclosure templates which standardised the disclosure, collection and reporting (not just calculation) of holistic investment fees and costs in the UK (and, increasingly, through Europe)
- the stewardship and ongoing maintenance of the templates by the UK industry body, the Pension and Lifetime Savings Association (PLSA), akin to say ASFA in Australia, and
- explicit encouragement by the regulator (FCA) of the UK institutional investment industry to embed use of the templates, and develop solutions to use the data collected, to foster a broader culture of transparency and continuous improvement within the industry.

Accordingly, we would encourage engagement by ASIC with its UK regulator peer with a view to expanding RG 97 into a more CTI-like regime. The recent announcement of the establishment of an Australian presence for the FCA could help in this regard. The FCA, PLSA and ClearGlass have research and experience which can all help ASIC to understand the market benefits of a more expansive RG 97 regime, taking its cue from the FCA's original CTI work and the ongoing work of the PLSA and ClearGlass (including measured fees and cost outcomes for clients using ClearGlass investment fees and costs benchmarking).

Note that this could be explored as a specific private markets market integrity solution or (consistent with the breadth of CTI/ClearGlass in the UK and Eurozone) a solution which covers both public and private markets.

In the UK, ClearGlass also offers an industry-recognised 'ClearPass' credential to investment managers who adhere to good standards of fees-and-costs transparency and disclosure. This initiative provides a simple, useful signal to institutional investors about which managers are open and forthcoming to their clients about the costs of their products and services, and which are not.



Your question:

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?

Our comments:

We encourage investor education and better industry dialogue about the nature of investment fees and costs relating to private market investing. The key message is that knowledge of and experience in public market investing does not easily translate into equivalent knowledge and skills in private markets. ClearGlass research shows, in particular, that the following unique aspects of many private market strategies remain misunderstood or under-appreciated:

- *The need for holistic measurement of fees and costs* – something addressed by RG 97 but remaining far from embedded in Australian investment practices and culture. For example, ClearGlass data shows Infrastructure to be, on average, more expensive than Private Debt on a headline FUM²-based fee basis, but less expensive than Private Debt once total costs (eg carry, administration) are factored in.
- *Difficulty comparing fees and costs over different vintages*, impeding efforts to compare competing opportunities for private market capital.
- *The ‘shape’ of private market fees and costs over the investor’s time horizon*. For example, the lumpiness of carried interest distributions means performance and fee measurement is very sensitive to the performance year/period selected.
- *Hidden (inside product or portfolio) costs*, something recognised in the discussion paper (ASIC cites the SEC’s experience with private equity fund managers charging service fees to portfolio companies). We confirm similar issues exist in the UK.

We also encourage cross-border research-sharing and education between regulators about interesting private markets phenomena that may evidence market dysfunction or other risks. For example, ClearGlass’ data shows evidence of some investor clientele fee negotiation advantages not explained by scale, pre-existing relationships or other obvious factors.

Solutions like ClearGlass, which offers independent, data-based benchmarking of private (and public) market investment fees and costs and a ‘value for money’ assessment which considers these costs in the context of performance generated, deserve support in the Australian market. By way of example, ClearGlass has shown its value to the market in the UK (and, increasingly, into Europe more broadly) in promoting better understanding and disclosure of the true fees and costs of private

² Funds Under Management.



market investing. ClearGlass publishes thoughtpieces for the industry in the UK (for example, the size at which economies of scale are realised in Private Equity fee negotiations), educates, identifies industry trends and ‘busts myths’ such as the view that ‘2+20’ (a 2% FUM-based fee plus 20% performance fee) is the standard or benchmark cost of Private Equity investing.

ClearGlass has measured fee reductions for institutional investor clients off the back of this better understanding and disclosure, and continues to expand. We suggest this UK experience shows how the institutional investment market can itself take forward, evolve and ‘own’ regulatory research and initiatives without relying on regulation itself to drive and embed industry improvements.

We note, however, that ClearGlass’ take-up in the UK was catalysed by strong initial sponsorship by the FCA and we encourage ASIC to consider a similar role it could play in Australia.

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We appreciate the opportunity to comment on ASIC’s discussion paper and trust our insight into the UK market experience assists. For further information, please contact any of the founder-directors as follows:

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Yours faithfully,

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