I would like to begin by thanking ASIC for this opportunity to comment upon the discussions surrounding Australia's capital markets and the dynamics between public and private markets and to thank them for the work they have done with and behind their namesake discussion paper.

My name is Anthony Issa, and I have written this paper as my own individual comments, observations and perspectives. They are not aligned to any institution, though I have worked in financial services companies and personally invested in both public and private financial products for more than 25 years.

The comments outlined in this paper present both practical as well as more philosophical suggestions to aiding and improving Australia's capital markets. There is a risk as outlined in ASICs discussion paper that our marketplaces and global standing will continue to shrink as opportunities are experiences are afforded to companies and individuals abroad rather than domestically.

<u>Background</u>

In reading the discussion paper and listening to speakers from ASIC in public forums over many years, I feel some of the current debate is a truism/tautology that must be accepted and cannot, nor should not be changed; that is public markets are public and private markets are private. Embedded within the discussion paper there was an element that private markets should be 'made' to look, behave, operate etc as public markets. There was an embedded element I feel that underpinned this that public markets are 'safer'. Public markets offer greater liquidity, and therefore greater liquidity makes such markets 'better'. Prices are more transparent in public markets and so therefore again, they are 'better'. Further, there was an embedded element I feel that ASICs (and other regulators) has a duty to protect participants' funds and the performance of those funds. [The use of inverted commas is my own and not references to the discussion paper by ASIC].

I personally, don't see the above paragraph as correct nor the scope of ASIC or other regulators. The marketplace, whether public or private, should have a governance framework created and enforced by the Council of Financial Regulators (COFR), for e.g. to ensure there is honest disclosure, but they should not cross the line to seek to ensure or protect funds. In my mind, the approach of any regulation should be 'governance not performance'. This is a conflict of spirit to try to over protect the participation within the marketplace rather than govern the rules of the marketplace. Participation within the marketplace must always carry its own commercial spirit independent of the regulators, it is akin to the commercial law of the jungle between buyer and seller. Another analogy perhaps is that regulators create and enforce the swim lanes, they don't provide, check and inflate floaties. The more controls that are added onto swimmers, ironically the better swimmers find it unfair, and the poorer swimmers want to be given more, ultimately leading to both quitting and so less people overall getting into the water.

Public bourses show prices in good times, but prices do not reflect depth of volume. Further, the observation of prices is in good times. In slow/stale or stressed times, many products on exchanges do not trade. Actually, even in good and strong times, not everything trades on public exchanges.

It is not ASICs role to limit or eliminate corporate insolvency or personal bankruptcy, and the existence of either does not mean there has necessarily bad governance or a failing of regulators. Insolvency/bankruptcy is more often the result of poor profitability or risk management and can be due to multiple reasons. In many of the cases, there was equal opportunity to generate positive results and so there should not be an onus to protect the downside. Again, I see this as crossing the boundary of governance to trying to control performance risk.

The discussion about public and private markets is not new and has happened for a long time. Over the counter (OTC) vs exchange traded/cleared products and their differences why they exist/how they operate is not new. There has even been a shift of OTC to exchange e.g. Interest Rate Swaps, but even those still co-exist in different marketplaces…the parties and transactions will find their natural homes, both within the governance frameworks. It is unfair to ask a loan for example, whether originated from an ADI or private credit provider to be listed, it just can't be. Again, ASIC and others create the governance frameworks, the swim lanes, but should not dictate to the micro level, else this will suffocate capital.

What I feel we have at the moment is a growth in private credit and an increased public awareness of private equity. The growth in private credit is an evolution from regulation upon banks following things such as Basel 2-3+, the global financial crises, the Royal Commission etc. which has been responded to by the banks by limiting lending, narrowing their risk appetite statements resultingly offboarding customers, reducing SME and construction loans to focus on Risk Weighted Asset optimisation for capital preservation. The growth in private equity has been brought about by headline transactions as large tech firms listed. Funds have opened aiming to seed fund ventures as well as non-listed trading of private company shares but overall, I feel these are extremely small relative to the funds in other assets.

Other factors must also be further be considered where and why we are up to in the current landscape and debate. Over many years, for example, fixed income offerings were restricted and closed. Previously and still currently in other jurisdictions, individuals could buy e.g. utility entity debt paper OTC. Even though these entities had publicly traded shares that can be bought by individuals, their bonds which in same cases rank higher in the capital stack/insolvency proceedings was restricted. APRA has just recently banned future AT1 capital instrument issuance by banks. The approach has been to deem products as bad even though the entities have not failed and continue to offer the same debt paper to larger/non-retail investors.

Regulation creep

Over many years, though accelerating in recent times, regulation covering financial products and participants has increased. Australia has an ever-increasing regulatory landscape to navigate, things such as TMD, DDO, PDS, AFSL, ACL etc, often co-existing or overlapping, many often attached to traditional and simple products such as Term Deposits. Added on top of these requirements, Australia has divided its investor base and source of funds/capital into such things as retail, wholesale, sophisticated etc.

It is not surprising therefore that companies, individuals, pension institutions et.al. and their underlying funds are seeking to do business in other jurisdictions.

My first suggestion is to take some time to try to harmonise many of these acronyms that attach to various products/markets/participants. It should be an exercise to understand what risk the regulations were initially trying to reduce and whether they are still relevant in an ever-evolving digital world. The flow of funds electronically across the globe is a phenomenon that must be accepted and so the pace of regulatory 'housekeeping' must also keep pace. It is a healthy and strong economy that can look at current rules and say they are no-longer adding the incremental benefit to make the governance framework stronger, compared to the costs and hurdles of for participants in keeping them.

Many jurisdictions don't make the distinction between retail, wholesale, sophisticated investors etc. Ironically in Australia in attempt to make the system 'safer' by segregating investors and funds into categories it also acts to erect fences between the investors and their funds therefore limiting depth/liquidity but also giving Australia a global reputation of being too hard and limiting for business. Often things such as listing rules are blamed for why companies don't go public, but there are other reasons. Unfortunately, the forecasted trend of regulation and compliance is a consideration for companies looking to go public. It is important if a company can only see more regulation coming to limit their business if listed here/add more to their costs. This forecast is a simple measure of what they have experienced in the past, looking back over the last 10-20 years (which is relatively short in investment timeframes) the requirements for various financial services licences, DDO, TMD, PDS etc have all been added and added.

Cross regulatory cooperation

Australia can better work across various government departments and agencies. Some thinking outside of the box from the usual financial regulators can yield significant multipliers to the economy and better stand it for the future.

I suggest including the Australian Tax Office (ATO) into the CFR or create another similar body that incorporates them. I know the ATO is not a 'regulator' but they are a valuable to be at the table. I'll add here that for a long time the RBA resisted the label of regulator noting they were a central bank, not creator of regulation/frameworks. The ATO is important as the financial industry and capital markets in Australia is competing against global capital and marketplaces and where and why buyers and sellers comes together also considers taxation. For example, akin to the suggestion to constantly review regulatory frameworks and requirements, the ATO can continue to simplify GST to allow more companies to open and operate in Australia. The ATO can continue to simplify withholding tax requirements and rules so that funds can flow into Australia easily. Australia has lost a lot of talent/ideas as product/innovation is taken overseas; taxation is a part of this.

Australia can also adopt features from other successful jurisdictions such as:

Making patents easier/faster/cheaper

Creating harmony between the top personal tax rate equivalent to the corporate tax rate

Better functioning bankruptcy laws/protections/go-again rules

Create a register of wills/estates/guardians and powers of attorney. Enhance the efficient transfer of assets at probate.

Work to attach land and asset identifiers to wills and registers. The number of vacant and derelict assets in Australia with authorities unable to easily track their owners is large.

Create a register/identification of fit and proper persons/other office holders etc as often their credentials are having to be re-done when staff change companies adding again unnecessary compliance.

Work with the Judicial system to enforce the marketplace rather than the litigation on escaping obligations/losses. There needs to be a responsibility brought back to things rather than a blame culture, especially when class actions are launched because prices went down. Much of the public spotlight of the royal commission focussed on bank behaviour rather than borrower obligation. Again, governance not performance.

The global economy will respect Australia’s rule of law and enforceability akin to other jurisdictions. Rather than lament the trend of declining public companies in Australia, there is an opportunity to turn the tide and start attracting other individuals and companies into Australian capital markets. Additional capital will flow inwards, and the increased AUD money supply is already a tailwind to this.

Working together across various departments will help generate efficiencies so that resources can be directed to investigation and enforcement versus drafting new regulations. For example, I am often puzzled that private funds offer regular payments of interest, yet their investments are related to property developments/closing realisations. How then does the fund have the profits to pay regular interest payments/coupons or is it pooling new funds to pay out returns on older invested funds? Such investigation can only be undertaken with resources.

Depth of the ASX

Attracting companies to a particular exchange is partly about the ease and requirements of listing, ongoing requirements to staying listed, but also about the depth and useability of those public markets.

Companies are attracted to larger exchanges because they have depth. They have depth/liquidity because those exchanges promote many products and many participants, including welcoming all investors across many products, not limiting participation by classification such as retail/wholesale.

As such, another suggestion is to lower the minimum transfer amount for secondary trading of a corporate bond through Austraclear to A$1,000. In most cases, this is often already in alignment the bond's minimum denominations on the term sheet/clearing set up.

In my mind, this is a single, great and arguably one of the easiest and quickest things to do which will have meaningful long-term benefits with limited to no additional risks is to enable secondary trading of corporate bonds by retail investors. Changing the minimum size from the current $500k will also help institutional participants clients trade smaller lots they have to smaller fund managers that are still growing. This simple exercise will instantly deepen and strengthen the bond/capital markets in Australia and still fit within the governance framework of ASIC and others without increasing risk at all. It will have silent multiplier benefits of encouraging more listings, helping private companies source capital and transition to being a public company one day.

Further, the COFR should work with the ASX and other global security registers to create better connectivity between Austraclear or other future Australian security registrars and those operating abroad. As mentioned earlier, money is global, digital and instant, domestically we should ensure our 'plumbing' connects and accepts multiple currencies and holdings so that Australia doesn't miss out on those funds that could come into the economy here.

Creating more retail access leads to a stronger, deeper and more resilient marketplace. The mindset needs to change away from protection and wrapping retail investors in cotton balls…build the guardrails, not make things loss proof. I don't see a strong argument why retail investors can buy shares but not bonds of a company.

The wholesale versus retail regime needs to be considered within Australia and whether or not it applies to different products/markets. I believe it is healthy to have a lessons-learned review and realise that there is actually not much added benefit in such a regime for things such as bonds as compared to equities, and that creating a universal overarching governance framework will work better and allow retail and wholesale funds to combine into a deeper capital market which will function better.

Wealthy and successful jurisdictions give all citizens equal access to products. This is not a case of all citizens rushing to put their money on 'black'. Citizens are their own gate keepers; for example, having a self-managed super fund means to begin with the individuals are of a level to set up the fund and operate it. Similarly opening and funding a share trading account is again their first step, what is then the difference if they choose to buy a corporate share or not allow them to purchase the same corporate's bond? Ultimately the question will evolve to be if the disclosures were there and the individuals chose to put their money on shares, bonds or on 'black', has the regulator done wrong in its governance framework or has the investor merely to accept their own outcome.

Naturally this will open up the next debate on things like prospectus vs debt programmes and whether is a difference for fair disclosure to enable primary participation in bonds.

There is a founding rule of contract law that 'you are bound by what you have signed whether you read it or not'. As long as there was no deceptive conduct, duress etc, a deal stands and it should not be differentiated whether it was a 'public-retail' prospectus or 'wholesale-institutional' debt programme, or even a PDS. The key was the whatever document that outlined the terms, conditions and features was openly disclosed and the investor relative to their own risk appetite invested the amount they wished to. This is neutral and universal irrelevant to whether the investor were 'classed' as retail or wholesale. For Australian capital markets to compete internationally we need to have a removal of the boundaries and definitions an let the product deepen its own liquidity and marketplace.

Following on, it will naturally invite discussion and technology assisted solution to having more product prices quoted through platforms and onto exchanges, all the while deepening the market.

Much of what I have written here has been influenced by the teachings of Nassim Taleb and his book Antifragile. Often it is a product or market that has less requirements that performs the best and stands the test of time. Markets should be allowed to fracture and heal themselves stronger than before, as it is this organic ability to adapt to the conditions of the rapidly changing marketplace that self-breeds resilience and strength. Where and when where buyer and seller meet and negotiate their own details, (again within a governance framework to ensure there is no cheating or deception), things will work best.

As such, adding DDO and TMD onto a term deposit that already has its details outlined in a PDS doesn't add any incremental safety or risk mitigation to the product or the users, so why have it?

Data:

The discussion paper noted there were some obstacles related to private markets due to the lack of data. Again, this is natural because they are private in nature. Again, being private is not a material problem, because they are still within the COFR framework. The funds, documents, behaviour for example are all captured within the governance framework in some way to ensure the transaction stays within its 'swim lane'.

I concur though, that any additional information would be helpful and so I suggest that COFR work together (and with other agencies/departments) to publish information such as:

- Land titles information on first, second registered mortgages and caveats lodged between ADI and non-ADIs.
- Cross reference valuer general data for property land values/last sales between entity types
- Cross references databases of the number of trusts/funds registered/de-registered numbers
- Ask ADIs in the monthly banking statistics the number and limit of warehouses they have provided to customers/non-bank lenders
- Have APRA act upon its previously expanded powers and scope to source monthly statistics from non-bank lenders

Other considerations:

Within the ASIC discussion document, there were a number of robust thought-provoking questions asked. I'd echo these by posing further questions and comments to consider also.

Why do astute individuals need to go through a broker to purchase fixed income products?

Why do companies need to add costs to use brokers when individuals are happy to deal direct. Is DDO really beneficial for primary sales when anyone can obtain the security the day after without the DDO?

Large public companies start as small private companies. There is a journey relative to their size, needs and place in their own growth journey.

To what extent has Australia limited its own fixed income capital market by restricting retail participation and therefore made Australia equity-dividend focussed. Thereby forcing companies to seek capital/bonds abroad rather than listed notes on the ASX? Is this a contributor to why governments have had to step in to ban short selling during market crises in the past?

If losses cannot be protected, why is there a continued notion to blame the product, should the notion not be to protect the behaviour and function of it, not the performance of it?

Creating liquidity means to provide liquidity which means to providing more buyers. To provide more buyers, there needs to be the allowance to allow more buyers access. More access means less controls/limitations, which again makes the whole system safer because there are more participants, the downside is lessened as there are more buyers.

Concepts such as minimum super returns are not healthy. Let the performance be, let capital make its own returns and movements, whether to the upside or downside.

Are requirements for sustainability reporting keeping companies private? Australia should heed the warning that interfering and enforcing things that are not natural for a company to know, control or report upon is not adding any benefit, rather adding risks and costs and ultimately losing out to other jurisdictions.

Once again I thank you for this opportunity and look forward the continued evolution of Australia's capital markets.

Regards,

Anthony Issa.