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**Attention: Australian Securities and Investments Commission  
(ASIC)**

**Re: Australia's Evolving Capital Markets: Regulation of private markets**

We are pleased to have an opportunity to make a submission on ASIC's February 2025 Discussion Paper, 'Australia's evolving capital markets' (**Discussion Paper**).

**About Mills Oakley**

Mills Oakley is a leading national law firm with offices in Melbourne, Sydney, Brisbane, Canberra, Perth, Adelaide and Darwin. With 170 partners and more than 700 staff, we offer strong expertise across all key commercial practice areas.

**Submission**

It is our view that proposals to increase regulation of private markets in a manner akin to public markets would potentially have far reaching unintended consequences. We submit as follows:

1. Private markets consist of broader participants than superannuation funds and private equity funds. The backbone of Australia's economy is small and medium sized enterprises.
2. Increased regulation of private markets and private companies has the potential to stymie efficient capital flows into Australia, as capital will flow to where it is made welcome. Regulation of private companies should not be more burdensome than Australia's primary competitors for capital, in particular Singapore.
3. With respect to valuations and transparency in sales, the private market and wholesale investors should be left largely to their own devices. Parties allocate risk through a number of mechanisms in private treaties including warranties and indemnities and protections afforded under the Australian Consumer Law and price accordingly.
4. Where there is a disagreement regarding forecasts and diligence or where there are breaches of warranties, parties are willing and able to seek recourse through the courts and commercial damages.
5. We do not support greater harmonisation in the regulation of public and private companies and increasing the regulatory and disclosure burden on private companies.

6. Increased regulation and potential disclosure requirements for private companies is also likely to reduce the appetite of Boards of private companies to take longer term business risks or execute strategies that are longer term in nature.
7. To the extent that ASIC is concerned about retail investor access to private markets and reduced access to investment opportunities, we submit that retail investor access should be conducted through intermediaries such as AFSL holders, managed investment schemes or superannuation funds, which are subject to statutory and fiduciary duties. ASIC could consider amendments to the criteria under which a person qualifies as a sophisticated or wholesale investor, including by not including a persons primary place of residence, under the respective financial tests.
8. If ASIC were minded to increase regulation for private market companies and transactions, we submit that this would only be appropriate above a substantial financial threshold, say where the enterprise value is above \$500 million.

I welcome the opportunity to discuss this submission further.

Yours sincerely



Mills Oakley.