12 May 2025

[redacted]
Senior Executive Leader, Strategic Projects PPM
Markets Group
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

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

Dear [redacted],

RE: Discussion Paper: Australia's evolving capital markets

The Financial Services Council (**FSC**) welcomes the opportunity to provide feedback on the dynamics between Australia's public and private capital markets.

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, financial advice licensees and investment platforms. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses. The financial services industry is responsible for investing more than AU$3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is one of the largest pools of managed funds in the world.

The FSC represents a broad constituency of fund managers, superannuation funds and investment platforms which offer their investors and members an exposure to both public and private capital markets. Combined with the knowledge base of its financial advice licensee members, the FSC is well-equipped to comment on the dynamics between public and private markets, and address ASICs regulatory concerns.

Australia is in a global race to attract and retain capital. Access to capital is needed to drive Australia's productivity and growth, and maintaining Australia's competitive ability to attract and retain capital is underscored by our significant productivity and growth challenges. The Treasurer has indicated that in its second term, the Government will prioritise measures to enhance productivity and improve Australians' living standards. The FSC has approached this submission with the goal of ensuring that the regulation of public and private markets aligns with this objective.

To drive sustained improvements in productivity and prosperity, it is crucial to unlock capital from diverse sources. This requires ensuring regulations in both public and private markets facilitate appropriate capital allocation and provide funds and investors with flexibility to engage in deals that meet their needs.

Private markets are also woven into the fabric of Australia's AU$4.1 trillion superannuation system. This is because the high-income character of many private market investments is well-aligned with the needs of retirees and has a low correlation with other asset classes. This makes private market holdings an important component of a responsibly managed, diversified portfolio. The Government's retirement income policy is placing a growing emphasis on the need for retirees to have access to secure sources of income. The FSC has approached this submission with a view toward helping to ensure that the existing regulatory approach to private markets is aligned with the Government's retirement income priorities.

The FSC has tried to ensure its recommendations are aligned with ASIC's mandate, in particular to "*maintain, facilitate and improve the performance of the financial system and entities in it*" and "*promote confident and informed participation by investors and consumers in the financial system*". The FSC views this consultation as an opportunity to highlight how public markets can be made a more attractive source of and destination for capital, both internationally and relative to private markets. The FSC also welcomes the opportunity to demystify private markets and suggests constructive reforms or regulatory framework enhancements to improve investor confidence in this important sector, whether for institutional and wholesale investors or greater confidence and opportunity for retail investors to access private market assets.

The FSC values the opportunity to contribute to this consultation and continued productive engagement with ASIC. We would welcome the opportunity to meet with you or your team to discuss these issues in more detail.

To arrange a further meeting to discuss Australia's capital markets and the FSC's recommendations, please do not hesitate to contact [redacted], Policy Director – Investment and Funds Management at [redacted]@fsc.org.au; [redacted], Policy Manager – Funds Management and Taxation at [redacted]@fsc.org.au; [redacted], Policy Manager – Superannuation at [redacted]@fsc.org.au; [redacted], Policy Manager – Advice and Platforms – at [redacted]@fsc.org.au.

Yours sincerely

[redacted]

Executive Director – Policy

Executive Summary

This submission aims to highlight how public markets can be made more attractive for capital while also demystifying private markets and suggesting reforms to improve investor confidence in unlisted assets; whether for institutional, wholesale or retail investors.

The FSC emphasises the importance of evidence-driven policy changes and cautions against one-size-fits-all regulations for private markets. We argue that the high regulation of public markets has contributed to their underperformance compared to private markets, and any new regulations should be carefully targeted to avoid reducing the performance of private markets where regulations may seek to remove their legitimate distinctive features by making them more like public markets.

Public markets

The submission addresses the regulatory burden in public markets, advocating for simplification of the legislative framework to make compliance easier and reduce barriers to public listing. Key recommendations include to:

- Simplify existing regulatory requirements to reduce the compliance burdens associated with being publicly listed;
- Rationalise the civil penalties regime; and
- Reform the public corporate debt market to make investments more accessible to retail investors.

Private markets

The submission outlines the significant economic and social benefits provided by private markets, including their role in funding major infrastructure projects and supporting innovative businesses. It also highlights the diversity within private markets, which encompass a wide range of investment activities and structures, which means uniform regulations will not be appropriate in many circumstances.

In addressing ASIC's key concerns around opacity, conflicts, valuation uncertainty, illiquidity and leverage, particularly with regard to whether these issues raise concerns for the protection of retail investors, the FSC considers that current regulatory requirements such as the Design and Distribution Obligations (**DDO**), SIS Act obligations of superannuation trustees, Ch 5C obligations of REs, Part 7.10 market misconduct provisions, general AFS licensee obligations, misleading and deceptive conduct, fiduciary duty requirements, and the laws of negligence and contract, already provide a robust framework. The FSC suggests that if ASIC is concerned about risks in private markets, the regulator's immediate focus should be on ascertaining whether there are material shortcomings in existing regulatory obligations or whether any observed issues actually relate to non-compliance with (and enforcement of) existing law.

The FSC acknowledges that some sensible and targeted regulatory enhancements can be made and recommends that any regulatory changes or enhancements should focus on improving governance around asset valuations, combined with improving disclosure processes, to enhance transparency to the regulator, and improve investor confidence. ***The FSC suggests that these can mostly be accomplished through ASIC regulatory guides and an industry-led process to develop best practice principles for fund governance and disclosure in cooperation with ASIC.***

Key recommendations include:

- improvements be made to valuation processes around a private market funds' governance (such as ensuring investment team members are separated from valuation committees on an "if not, why not" basis, with independent valuation or valuation assurance to inform the valuation committee process), frequency of valuation (at least quarterly on an "if not, why not" basis for open ended retail funds) and setting of pre-determined re-valuation triggers;
- in the instance of an external fund manager being relied on, an overarching fund should be permitted to exercise a reasonable level of reliance on valuations provided to them by the external fund manager where robust due diligence into the expertise and governance arrangements of an external fund manager has occurred;
- streamlining existing product disclosure expectations around liquidity risks, while also creating a new disclosure requirement under which all funds (including public funds) must nominate flexible target allocations to liquid, semi-liquid and illiquid assets;
- improving governance arrangements around conflicts of interest, with higher standards applied to conflicted transactions occurring where a fund has retail or wholesale investors; and
- enhanced product disclosure expectations around fund performance metrics, upfront fees, fee structures, the preferential treatment of investors, and the use and definition of leverage.

Retail investors should be protected through targeted changes or enhancements to existing regulations around governance and product disclosure, rather than completely new regulations. For instance, through enhancements to product disclosure and governance requirements. This will enable greater retail investor participation in the market. Meanwhile funds which target wholesale and institutional investors should retain their current level of flexibility.

In terms of data collection, the FSC advises against duplicative efforts by ASIC, noting that APRA's existing data collection initiatives already cover a significant portion of private market activities. Instead, the FSC recommends focusing on improving product disclosure and leveraging third-party data providers to enhance transparency.

Conclusion

Overall, the FSC's submission seeks to balance the need for regulatory oversight with the importance of maintaining the dynamism, attractiveness and diversity of capital markets. The FSC believes it is essential to ensure that both public and private markets can effectively contribute to Australia's economic growth while maintaining confidence from investors and attracting overseas capital.

List of recommendations

Developments in global capital markets and their significance for Australia

Recommendation 1.1: The FSC recommends, except as otherwise provided for in this submission, that to the extent ASIC considers regulatory changes should be implemented to private markets, any changes should be carefully tailored to the relevant subsector(s) rather than applied on a one-size-fits-all basis.

Recommendation 1.2: The FSC recommends that if any regulatory enhancements are created for retail investors, they should be targeted towards protecting unadvised retail investors.

Recommendation 1.3: The FSC recommends that any regulatory enhancements for retail investors should not apply to APRA-regulated superannuation funds and other institutional investors.

Recommendation 1.4: The FSC recommends that any classification issues concerning retail/wholesale investor classifications should be dealt with directly and not through fundamentally changing the character of the benefits bestowed by being classified as a wholesale investor. The present delineation between the rights of retail, wholesale and institutional investors should be maintained.

Recommendation 1.5: The FSC recommends that transactions between institutional investors should not be subject to regulatory change.

Recommendation 1.6: The FSC recommends that the regulatory settings around unregistered MISs should not be altered. Other recommendations in this submission should not be construed as advocating changes in relation to unregistered MISs.

Recommendation 1.7: The FSC recommends that policy interventions should be evidence-based and proportionate.

Healthy public markets

Recommendation 2.1: The FSC recommends that the Government modernise regulation of public markets by simplifying the law to make it more accessible and understandable. This is expected to make compliance cheaper and easier for regulated entities while reducing barriers to entry that currently disincentivise public listing. Work could be commenced through the ASIC Regulatory Simplification Taskforce, and ASIC and other stakeholders should advocate for Government to streamline financial services legislation.

Recommendation 2.2: The FSC recommends that ASIC investigate options to allow small organisations to become publicly listed with a reduced compliance burden.

Recommendation 2.3: The FSC recommends that the Government reform the civil penalties regime to reduce the risks associated with listing while maintaining high standards of market conduct.

Recommendation 2.4: The FSC recommends RG 170 be amended to set an expectation that providing financial forecasts in a prospectus is optional, recognising the potential for unreliability in financial projections.

Recommendation 2.5: The FSC recommends that the public corporate debt market should be reformed to improve the accessibility of investments to retail investors.

Value added by private markets

Recommendation 3.1: The FSC recommends that ASIC acknowledge the significant economic and social role played by private markets as well as their significant positive impact on retail, wholesale and institutional investors.

Private market risks, market efficiency and confidence

Recommendation 4.1: The FSC recommends that product disclosure obligations be simplified in RG 168 to make compliance easier and understanding ASIC's expectations clearer, and to make disclosure documents more understandable for retail investors. In addition, we propose – subject to ASIC's input – to initiate an industry-led process to codify best practice disclosure and governance principles for private markets.

Recommendation 4.2: The FSC recommends that any changes to capital market regulation should be evidence-led and aligned with global standards such as in the US.

Opacity

Recommendation 4.3: The FSC recommends RG 168 be amended to set an expectation that individual product performance should be measured and disclosed to investors based on pre-determined and transparent metrics which are disclosed upfront to investors.

Recommendation 4.4: The FSC recommends industry-led best practice principles should prescribe that performance-based incentives for domestic investment teams in retail funds should be based on the fund's investment performance, not the fees collected. It is important to avoid regulations that might push investment teams offshore.

Recommendation 4.5: The FSC recommends that funds should retain flexibility to design their fee structures based on the nature of their investment products but should continue to be required to clearly disclose how fees are calculated.

Recommendation 4.6: The FSC recommends that industry-led best practice principles should expect a fund's product disclosure documents to identify the circumstances in which upfront payments might be received, how they may be calculated, and whether those payments would be passed through to investors.

Recommendation 4.7: The FSC recommends that an RE should not be able to accept funds from retail investors and then negotiate preferential deals with other parties unless it has first been disclosed to the retail investors that such a possibility existed. If any preferential deals exist before the acceptance of funds from retail investors, the existence of these arrangements should also be disclosed. The FSC suggests that this should be implemented as an expectation of the regulator in RG 168.

Valuation uncertainty

Recommendation 4.8: The FSC recommends that most risks concerning private markets can be addressed through improvements to valuation practices.

Recommendation 4.9: The FSC recommends that any changes to the regulation of asset valuations should focus on the process by which a fund manager reaches a valuation, rather than mandating any particular valuation inputs, approaches or methodologies.

Recommendation 4.10: The FSC recommends that, following due diligence into the expertise and governance arrangements of a specialist external fund manager, an overarching fund manager should be permitted to exercise a reasonable level of reliance on valuations provided to them by the specialist external fund manager.

Recommendation 4.11: The FSC recommends that valuations should occur in accordance with a pre-determined valuation policy. Industry-led guidance on best practice principles in this area would provide a flexible mechanism for setting clear standards and potentially uplifting them over time.

Recommendation 4.12: The FSC recommends ASIC should make it clear in regulatory guidance that it expects valuation committees should be subject to direct board or appropriately constituted board committee oversight.

Recommendation 4.13: The FSC recommends that in regulatory guidance, the regulator should set a clear expectation for valuation committees to be reasonably separate from investment teams.

Recommendation 4.14: The FSC recommends that in regulatory guidance, ASIC should set a clear expectation funds' governance arrangements should be structured so that investment team members cannot block unfavourable decisions made by the valuation committee.

Recommendation 4.15: The FSC recommends that external professional valuers and external professional valuation assurance providers appointed by a fund manager to inform valuation committee processes should be appointed by and answerable to the valuation committee rather than the investment team. Industry-led guidance on best practice principles in this area would provide a flexible mechanism for setting clear standards and potentially uplifting them over time.

Recommendation 4.16: The FSC recommends that as a general proposition, the membership of valuation committees should exclude investment team personnel. However, given the difficulties of finding experienced personnel, exceptions should be permitted on an "if not, why not?" basis, with further explanation to be provided in the disclosure material made available to retail and wholesale investors. Industry-led guidance on best practice principles in this area would provide a flexible mechanism for setting clear standards and potentially uplifting them over time.

Recommendation 4.17: The FSC recommends that the regulator should set a clear expectation through regulatory guidance that for open-ended funds involving retail investors, revaluations should occur on a quarterly basis, with sample or rotational independent valuations or external professional valuation assurance occurring across asset classes.

Recommendation 4.18: The FSC recommends that for funds involving wholesale investors but no retail investors, revaluations should occur in line with recommendation 4.17 above, but compliance with this expectation would be on an "if not, why not basis", with non-compliance identified and explained in product disclosure documents. Industry-led guidance on best practice principles in this area would provide a flexible mechanism for setting clear standards and potentially uplifting them over time.

Recommendation 4.19: The FSC recommends that revaluation arrangements concerning investments between institutional investors should not be altered by recommendations 4.17 and 4.18.

Recommendation 4.20: The FSC recommends that a threshold for the financial materiality of an investment in unlisted assets should be set, with less rigorous expectations for individual asset-level valuations where that threshold has not been met. The FSC suggests that such a threshold should be set in an ASIC regulatory guide, following consultation with industry.

Recommendation 4.21: The FSC recommends that funds should pre-emptively set robust revaluation triggers, while retaining flexibility to respond to unanticipated events. The FSC suggests that ASIC should make clear in an ASIC regulatory guide that it expects revaluation triggers to be set, but that further details should be left to industry-led guidance on best practice principles.

Recommendation 4.22: The FSC recommends that it is best practice for revaluations to genuinely reset asset values and that the regulator should make this expectation clear in an ASIC regulatory guide.

Conflicts

Recommendation 4.23: The FSC recommends that to raise awareness about less obvious conflicts which may exist in a fund environment, the regulator develop of a non-exhaustive checklist in RG 181 setting out the conflicts which the regulator expects funds to identify and manage.

Recommendation 4.24: The FSC recommends ASIC should set a clear expectation through regulatory guidance that in MISs open to retail or wholesale investors, prior to financially material and conflicted transactions occurring:

(1) independent valuations should be required on an "if not, why not" basis; and

(2) fund managers should ensure that they have disclosed the possibility of these types of transactions to their investors.

Recommendation 4.25: The FSC recommends that financially material related party transactions occurring in MISs should be disclosed to any retail or wholesale investors. Given practical limitations on ASIC's jurisdiction and the need to avoid creating regulatory barriers to entry to the Australian market, this disclosure requirement should be restricted direct dealings by domestic funds. It should not apply where, for example, an offshore fund is sold into Australia to wholesale clients via a feeder structure. The FSC suggests that ASIC should make clear in an ASIC regulatory guide that it expects such disclosure to occur, but that further details should be left to industry-led guidance on best practice principles.

Recommendation 4.26: The FSC recommends REs and RSELs should have internal mechanisms to manage conflicts of interest, supported by comprehensive compliance policies and procedures. All conflicts should be recorded and reported periodically, with thresholds set for certain types of conflicts to require the approval of senior management.

Illiquidity

Recommendation 4.27: The FSC recommends that ASIC explore and consult on ways to foster the development of more liquid secondary markets for unlisted assets.

Recommendation 4.28: The FSC recommends that the regulator acknowledge RSE's liquidity leaves them in a materially better position to withstand illiquidity risks and that RSELs should therefore remain overseen by APRA and not be subject to dual regulation

Recommendation 4.29: The FSC recommends that for both public and private market open-ended funds open to retail investors, product disclosure documents should clearly identify liquidity risks and policies, with explanations provided in plain English. The FSC suggests that ASIC should make clear in an ASIC regulatory guide that it expects liquidity risks to be identified, while further details around how to do so and the contents of liquidity policies should be left to industry-led guidance on best practice principles.

ASIC may also wish to consider updating RG 274 to provide guidance on the liquidity and redemption risks which should be disclosed in TMDs.

Recommendation 4.30: The FSC recommends that the current redemption provisions under the law are both certain and flexible, and this flexibility is important. Where a mismatch arises between investor/member understanding and the actual right to withdraw and this may be due to misleading disclosure or advertising, ASIC should continue to take appropriate action to ensure existing legal obligations are not breached.

Recommendation 4.31: The FSC recommends that public and private market open-ended MISs and RSEs open to retail investors should be expected to include in their product disclosure documents flexible, approximate target asset allocation ranges for liquid, less liquid and illiquid assets. ASIC should set a clear expectation for this through regulatory guidance.

Recommendation 4.32: The FSC recommends that MISs and RSEs should be afforded flexibility to tailor their liquidity risk management plans to their investment strategies and fund governance arrangements.

Recommendation 4.33: The FSC recommends no changes in relation to liquidity stress testing by funds.

Leverage

Recommendation 4.34: The FSC recommends ASIC should make clear in an ASIC regulatory guide that it expects for MISs open to retail investors, product disclosure documents should explicitly define leverage and detail its application within the fund. The FSC suggests that further details around how to do so should be left to industry-led guidance on best practice principles.

Recommendation 4.35: The FSC recommends that no new limitations are placed on the use of leverage by funds.

Retail investor participation in private markets and consumer protection

Recommendation 5.1: The FSC recommends that ASIC update RG234 to provide additional guidance and worked examples around the advertising of private market funds.

Recommendation 5.2: The FSC recommends that, aside from recommendations elsewhere in this submission, legal obligations owed by funds to retail investors should not be substantively altered. To the extent changes occur, they should be focused on setting clear expectations on how funds should behave.

Recommendation 5.3: The FSC recommends that if recommendation 5.2 is not accepted, the benefit of any new protections for retail investors should be restricted to unadvised retail investors.

Recommendation 5.4: The FSC recommends that ASIC update RG 274 to provide clearer guidance on the circumstances in which DDO obligations should be exercised to restrict fund distribution to advised retail investors.

Recommendation 5.5: The FSC recommends that DDO obligations be simplified to streamline compliance without fundamentally changing the obligations owed to retail investors. The FSC suggests that this could be achieved through an instrument made under section 994L of the Corporations Act, supplemented by updates to RG 274.

Recommendation 5.6: The FSC recommends that ASIC provide clearer guidance in RG 274on its expectations around the use of DDO powers to restrict product access only to advised retail investors, including greater flexibility to distribute products to advised retail investors. The FSC suggests that further details around how to do so should be left to industry-led guidance on best practice principles.

Recommendation 5.7: The FSC recommends that the DDO regime not be expanded to capture wholesale investors.

Recommendation 5.8: The FSC recommends that ASIC should review its AFSL and scheme registration processes, including the information it captures as part of an AFSL application and scheme registration forms/processes to capture enhanced data points that will lead to either a fast track or slow track registration processes depending on the particular MIS. These enhanced data points will inform risk-based surveillance processes at the outset, to be implemented following registration of a MIS.

Transparency and monitoring of the financial system

Recommendation 6.1: The FSC recommends that ASIC should consider whether its data collections aims would be best advanced through redoubling on its traditional focus on overseeing product disclosure data.

Recommendation 6.2: The FSC recommends ASIC should work with APRA to reduce duplication across regulatory frameworks, including seeking access to data from APRA where appropriate.

Recommendation 6.3: The FSC recommends that ASIC should collaborate with research houses, index providers and other data analytics firms to help them to improve the transparency of private markets.

Recommendation 6.4: The FSC recommends that ASIC not undertake activities which may have the effect of crowding out research houses, index providers and other data analytics firms from the analysis of private markets.

Recommendation 6.5: The FSC recommends that if, notwithstanding recommendations 6.1 to 6.3, ASIC proceeds with a data collection initiative involving private markets, the regulator should consult extensively with industry, APRA and third-party data providers. In particular, ASIC should:

(1) ensure there are close synergies with existing data collection activities by APRA, the ABS and third-party data providers to ensure that ASIC's activities are focused on filling gaps which may exist rather than duplicating existing functions;

(2) ensure superannuation funds are only required to answer to a single point of data collection;

(3) minimise the compliance burden by ensuring that data formats and definitions are aligned between different agencies which perform data collection in this area;

(4) consider whether a data collection role is better centralised under a single specialised agency, be it ASIC, APRA or the ABS, noting the latter two agencies have more specialised expertise and systems in this area;

(5) explore the extent to which data proxies might be relied upon as an alternative to more costly forms of data collection;

(6) design regulatory requirements around data collection differently for fundamentally different types

of assets (eg debt and equity-based interests); and

(7) encourage fund managers to disclose their Level 2 and Level 3 asset holdings, and make this data available to third-party data providers such as research houses;

(8) ensure data is appropriately cleansed to remove inaccuracies prior to publication; and

(9) publish data at a sufficiently aggregate level that individual RSEs/RSELs or MISs/REs are not identifiable.

Superannuation

Recommendation 7.1: The FSC recommends that ASIC ensure maximum flexibility continues to be provided to the superannuation sector to allow for diversified investments that maximise retirement outcomes for Australians while providing needed capital to the Australian financial system.

Recommendation 7.2: The FSC recommends that if ASIC oversees regulatory changes to private market valuations, it should endeavour to ensure that requirements impacting superannuation funds are aligned with APRA's SPS 530 framework.

Recommendation 7.3: The FSC recommends ASIC continue to support a regulatory framework that enables superannuation funds to allocate to private market assets—including private credit—as part of constructing diversified portfolios that provide stable retirement incomes.

Recommendation 7.4: The FSC recommends ASIC take into account the high degree of regulation applying to superannuation funds and adopt a proportional approach when considering any additional regulatory requirements or altered expectations of RSEs/MISs.

Recommendation 7.5: The FSC recommends that ASIC refrain from imposing additional valuation obligations on platform operators, but rather strengthen expectations around the obligations and transparency of entities closest to the asset, in line with recommendation 4.10.

Recommendation 7.6: The FSC recommends that, pursuant to recommendations 4.3 and 4.29, ASIC enhance its disclosure expectations for fund managers around liquidity risks, and performance reporting to assist platform trustees in discharging their investment governance obligations. The FSC considers that this expectation should be set out in an ASIC regulatory guide.

Recommendation 7.7: The FSC recommends that, pursuant to recommendations 4.17, 4.29, and 4.31 ASIC set clearer expectations for valuation processes and liquidity risk disclosure for open-ended funds available to retail investors to assist platform trustees in discharging their investment governance obligations.

Private credit

Recommendation 8.1: The FSC recommends against the imposition of prudential controls on private credit funds, given that they have a legitimate role to play in financing activities, including but not limited to circumstances where a bank is not able or willing to do so.

Recommendation 8.2: The FSC recommends improved disclosure to retail investors in circumstances where a private credit MIS has debt obligations above a certain threshold converted into equity as a result of a loan default or related negotiation. The FSC suggests ASIC should set a clear expectation through regulatory guidance that this should occur, and that the precise threshold should be determined in consultation with industry.

Recommendation 8.3: The FSC recommends that ASIC should evaluate current regulatory obstacles to facilitate the entry of additional credit ratings agencies into the Australian market, with a view towards increasing the options available for ratings to be given to individual loans.

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1. Developments in global capital markets and their significance for Australia

1.1. Introduction

In this submission, “public markets” is used to refer to markets for listed debt and equity securities, and “private markets” refers collectively to the private credit (non-bank lending), private equity, venture capital, and other real asset subsectors, such as direct infrastructure equity investment. As set out in section 1.4.A, “private markets” is an extremely broad descriptor for a very diverse range of investment activities.

From the outset, it is important to acknowledge that the public versus private markets divide is one of many potential ways to carve up capital markets. ASIC could just as easily have focused its Discussion Paper on debt versus equity assets, primary versus secondary markets, indexed versus active investments, open versus closed-ended investment vehicles, capital sourced from retail, wholesale or institutional investors, or capital sourced from domestic versus international investors. Each of these areas is subject to different levels of regulation depending on underlying policy considerations. The public versus private market divide is no different in this respect.

Private markets are in some respects not fundamentally different from public markets. There are, however, nuanced differences which have resulted in historical differences between how public and private markets are regulated. The FSC considers that the rationales for many of these regulatory differences have not changed and that these regulatory settings should not be changed without empirical evidence.

Nonetheless, in view of the growth in private markets and increased retail investor involvement in private markets (primarily through superannuation but with the potential for increased retail involvement outside of superannuation), there are some areas in which the FSC is supportive of regulatory uplift to improve market stability and investor confidence in private markets.

1.2. Key principles for this submission

In addition to being mindful of ASIC’s mandate, guiding principles in this submission are that:

1. The regulator should be supportive of growth, irrespective of whether it occurs in public or private markets;
2. Policy changes should be evidence-driven and any new regulations should be supported by empirical evidence; and
3. Private markets are ill-suited to one-size-fits-all regulation. Generally, given that they are mostly invested into directly by institutional and wholesale investors, they should not be automatically subject to more onerous regulation than public markets.

Regulation is not a panacea. As such, regulatory intervention in private markets should not automatically seek to align obligations with public markets. Separately, the regulator should consider whether the current public market regulations are serving the best interests of retail investors.

The chair of ASIC’s regulatory simplification group, Nicola Wakefield-Evans, has stated publicly: “*[t]he burden of compliance and regulation in the financial services sector has probably more than* *doubled, maybe quadrupled"* since the Global Financial Crisis.[1] Increased regulation has arguably decreased the attractiveness of public markets and risks becoming a structural deterrent to investment in private markets. The FSC is keen to work with ASIC to ensure regulations are targeted, proportionate and pragmatic.

Instructively, the 2014 Financial Services Inquiry found:

> *"The [financial] system's ultimate purpose is to facilitate sustainable growth in the economy by meeting the financial needs of its users. The Inquiry believes the financial system will achieve this goal if it operates in a manner that is:*
>
> > *• Efficient: An efficient system allocates Australia's scarce financial and other resources for the greatest possible benefit to our economy, supporting growth, productivity and prosperity.*
> >
> > *• Resilient: The financial system should adjust to changing circumstances while continuing to provide its core economic functions, even during severe shocks. Institutions in distress should be resolvable with minimal costs to depositors, policy holders, taxpayers and the real economy.*
> >
> > *• Fair: Fair treatment occurs where participants act with integrity, honesty, transparency and non-discrimination. A market economy operates more effectively where participants enter into transactions with confidence they will be treated fairly."*[2]

The FSC also notes that the International Organization of Securities Commissions (**IOSCO**), has identified:

> "*the three core objectives of securities regulation [are]:*
>
> > *1) The protection of investors;*
> >
> > *2) Ensuring that markets are fair, efficient and transparent; and*
> >
> > *3) The reduction of systemic risk*."[3]

The FSC endorses both lists and notes that with respect to systemic risk, both the Reserve Bank of Australia (**RBA**)[4] and ASIC[5] have acknowledged that private markets do not presently represent a systemic risk to Australian financial markets. In fact, even globally the International Monetary Fund (**IMF**) has indicated that immediate risks of private credit appear to be contained on a global level.[6]

Noting ASIC's ongoing market surveillance in private markets, the FSC believes the regulator should carefully weigh up the investor benefit of additional regulation in private markets against reducing its attractiveness as an asset class that delivers attractive returns for investors. The market surveillance work will inform whether ASIC's resources may be better prioritised on using its existing enforcement powers to punish and deter wrongdoing instead of undertaking significant additional regulation. Having said this, the FSC believes there is merit to modest, targeted policy changes which we propose in the course of this submission to ensure that investor confidence and consumer protection in private markets is appropriately enhanced, principally for retail investors. The FSC anticipates that these changes can mainly be achieved through ASIC regulatory guides and through

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[1] Patrick Durkin, ASIC kickstarts deregulation agenda to lighten director loads, Australian Financial Review, 12 March 2025.
[2] David Murray et al, Financial System Inquiry Final Report, November 2014, p. 17.
[3] IOSCO, IOSCO Standards Implementation Monitoring (ISIM) for Principles (6-7) Relating to the Regulator, April 2025, p. 4.
[4] RBA, Financial Stability Review, April 2025, p. 18.
[5] ASIC, Discussion Paper: Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets, February 2025, p. 5.
[6] IMF, Global Stability Report: The Last Mile: Financial Vulnerabilities and Risks, April 2024, p. 77.

the development of industry-led best practice principles.

As such, in this submission the FSC focuses on ensuring that capital markets are efficient, resilient, fair and transparent. In relation to public markets, this submission looks for ways to make them perform better for investors, while achieving these goals. In relation to private markets, this submission looks to strike an appropriate balance between protecting retail investors and ensuring that any new regulations do not break what has made private markets so dynamic and attractive to all investors in the first place.

1.3. Public markets

Public markets in Australia are hindered by overly complex and burdensome regulations, making compliance difficult and costly for entities seeking investment and funds aiming to invest capital. Overly technical ASX rules represent a further impediment, particularly for mid, small and micro-cap firms who are considering the merits of a public listing.

In addition, excessive pecuniary penalty ranges for civil penalty provisions in areas such as continuous disclosure create an unnecessary level of opacity around the consequences of failing to comply with obligations which are often difficult to interpret and apply. These factors are driving funds, investors and portfolio companies towards the comparatively safe refuge offered by entering and remaining in private markets.

To make public listings more attractive, the burden on public markets should be lowered to improve the attractiveness of public markets, rather than creating similar complexity in private markets and decreasing their attractiveness. Opportunities to achieve this involve simplifying and clarifying the legal framework for corporations and financial services, as well as exploring unrealised potential in public debt as well as equity markets.

Importantly, structural changes in capital markets, such as the increased importance of superannuation and the development of private markets as well as their accompanying ecosystem have meant that investors now have attractive alternatives to listed companies and funds specialising in them. Public markets need to be provided with the flexibility to adapt or they risk continued relative decline against private markets.

1.4. Demystifying private markets

Private markets are not new, and in some respects, they are not inherently riskier than public markets, although they are significantly smaller.[7]

It is important to acknowledge that – like all investments – private markets have risks. Key risks are identified at section 4 and are accompanied by suggestions for improvements to governance processes, internal controls and risk disclosure. The FSC's view is that its recommendations around governance and disclosure changes to asset valuations (see section 4.2) are reasonable enhancements to (or interpretations of) the regulatory regime, and directly address the other risks which ASIC has flagged as areas of concern.

Firstly, however, it is important to understand the inherent diversity of private assets, the reasons for the recent growth of private markets, the types of investors in private markets, and the need to avoid

[7] IOSCO, Thematic Analysis: Emerging Risks in Private Finance, September 2023, p. 14.

unintended damage to the sector. Section 3 also explains the significant value added by private markets to the economy, society and individual investors.

1.4.A. The diversity of private markets

A hallmark of private markets is their flexibility. As a result, the banner "private markets" captures a very diverse range of types of investment activities, investment structures and contractual arrangements. This lack of homogeneity between investments means a one-size-fits-all approach to regulation is difficult. To the extent that any new regulations are appropriate, consideration needs to be given as to the extent to which they should be specifically tailored to the relevant subset of the market or segments within these subsets. Key subsets of private markets are debt, equity, venture capital and real assets (encompassing infrastructure bonds or loans or equity, or real estate strategies involving core or value-add strategies).

Each of these categories can be further broken down into various subsectors. Appendix 9.1 contains an illustration of the diversity of private credit alone, breaking it down into 45 different segments ranging from direct unsecured corporate lending to lending secured against insurance premium income streams. Each segment has its own unique idiosyncrasies.

Investment interests in private equity and private credit are typically held on the following bases:

- **direct interests**: investing directly in private securities. Investors typically become limited partners (**LPs**) in a private equity fund managed by a general partner (**GP**);
- **primary interests**: investing in new funds at their inception. Investors commit capital to a fund that will be used to invest in a portfolio of companies;
- **secondary interests**: purchasing existing private investments from other investors. This can provide liquidity to the original investors and opportunities for new investors to enter; and
- **co-investment strategies**: investing as a minority partner alongside a private market fund manager.

Diversity exists on many levels:

- The fundamental nature of the asset(s) (ie debt, equity or real assets, their relevant segment, and the asset that is held);
- Whether the asset is owned directly or through another vehicle, and if the latter then its:
    - type of entity (registered managed investment schemes (**MISs**) and their Responsible Entity (**RE**), Registrable Superannuation Entities (**RSEs**) and their Registrable Superannuation Entities Licensee (**RSEL**), or platform RSEs); and
    - structure (hybrid or open/closed-ended);
- Investor base (retail, wholesale or institutional);
- Markets (primary or secondary);
- Risk profiles (based on asset selection, market conditions, etc);
- Investment strategy;
- Investment vintage or maturity;
- Different terms and lack of fungibility (no two deals are identical);
- Prudential supervision (some private market activity is syndicated or otherwise facilitated by banking institutions and is therefore already subject to a degree of prudential supervision).

By way of example, it is not appropriate to mandate that all private market investments be valued using the same valuation methodology because of the idiosyncrasies of different asset classes.

Instead, it is more sensible to make sure that appropriate valuation governance and/or disclosure processes are in place. After all, a mature portfolio of equity holdings might be best valued using a market or income-based valuation methodology, but a portfolio of early-stage venture capital equity holdings would be extremely difficult to value using these same methodologies, given the comparatively untested nature of the businesses and the fact that most early-stage venture capital companies do not earn an income for several years.

The key takeaway from this discussion should be that private markets' diversity makes it difficult to make accurate generalisations about private markets, let alone introduce new regulations to them effectively in a one-size-fits-all way.

As set out in section 4.2, we do consider that the best way to address the diversity of private markets is through valuation requirements by achieving more consistency across the industry in valuation frameworks. This is accomplished through focusing on best practice recommendations which improve the integrity and independence of the underlying valuation processes.

Recommendation 1.1: The FSC recommends, except as otherwise provided for in this submission, that to the extent ASIC considers regulatory changes should be implemented to private markets, any changes should be carefully tailored to the relevant subsector(s) rather than applied on a one-size-fits-all basis.

1.4.B. Reasons for recent growth in private markets

Private markets have grown considerably in recent years, both in absolute terms and relative to public markets. This has, however, been off a relatively low base. According to EY, between 2012 and 2023 global private market assets under management (**AUM**) grew from US$9.7 trillion to US$24.4 trillion, while in the Asia Pacific they grew from US$1.3 trillion to US$4.7 trillion.[8] The precise level of growth in Australia is discussed in section 6. For this discussion, it is only necessary to acknowledge that the growth has been considerable and has in relative terms exceeded the corresponding growth which has been seen in public markets.

Private markets' appeal to many investors for a range of compelling reasons which are set out in detail at section 3.3. In addition to these factors, at a high level of generality – noting that not all factors apply to all types of unlisted assets – private markets have grown because of their high returns, low observed volatility, broad scope for innovation, flexibility, lower compliance burden and income stability. In addition, a recent fall in public market exit opportunities for portfolio companies, such as through IPOs, has seen some capital remain in private markets which would otherwise have moved across to public markets.[9] According to IFM: "*[t]he burdens associated with public ownership have also caused large private corporations to delay or forgo public listings.*"[10] Lower expected returns in public markets over the next decade are also driving investors towards alternative investments with more consistently high long-term returns.

Private credit, in particular, has seen notable recent growth due to structural changes in financial intermediation. This traces its roots in a reduction of banks' presence in non-household lending attributable to both the GFC and Royal Commission into Misconduct in the Banking, Superannuation

[8] Ryan Burke, EY, Are you harnessing the growth and resilience of private capital?, 4 April 2024.
[9] Jacob Harris and Emma Chow, RBA, The Private Equity Market in Australia, 18 April 2024, p. 6.
[10] David Neal, Chief Executive of IFM Investors, Private Markets 700: The global investor barometer, p. 4.

and Financial Services Industry. The absence of a mature Australian corporate bond market also means there is a structural gap in the domestic business lending market which private credit is capable of filling. APRA's phaseout of Additional Tier 1 instruments has also freed up additional capital which is searching for high-yield opportunities.

Other important reasons for recent domestic growth in private credit include its high risk-adjusted returns, regulatory limits on banks' use of capital, the ability to negotiate covenants and secure debts, the flexibility of lending procedures, and the availability of innovative funding structures. In addition, the use of floating interest rates in private credit has provided a competitive advantage relative to bonds when cash rates have risen.

It is also important to note that structural growth in overseas private debt markets has prompted domestic and international investors to seek out opportunities in the comparatively small and underexplored Australian private credit market.

Asset classes such as infrastructure provide to portfolios inflation protection, stability and relatively secure returns. The market for direct infrastructure investment is deep and has been sophisticated for much longer. This is primarily a result of the privatisation of significant assets including airports, ports and toll roads in Australia over the last 30 to 40 years. Australia also offers an extremely active rotation of assets across different investors and the public and private markets.

Foreign investors in private markets

In relation to private markets more broadly in Australia, foreign investors play a significant role. According to the RBA, the share of capital committed to Australian private equity funds from foreign investors rose from under 10% in 2010 to 45% in 2019 and around 50% in 2023.[11] Indeed many recent, large deals have involved significant capital contributions from foreign funds, for example Sydney Airport, AusNet and Crown Resorts.[12] Attracting significant foreign investment is beneficial to the Australian economy: it frees up local capital to be reallocated to additional productive opportunities, and may create incentives for new asset owners to undertake capital expenditure to improve their return on investment.

A note of caution is required here: as set out in section 1.4.D, over-regulation risks putting Australia at a competitive disadvantage relative to other jurisdictions. In addition to depriving Australia the benefits of offshore capital, it also risks reducing Australian investors' access to offshore opportunities if operating in Australia becomes too difficult.

1.4.C. Retail, wholesale and institutional investors

The *Corporations Act 2001* (Cth) (**Corporations Act**) draws a distinction between retail, wholesale and professional (ie institutional) investors. Traditionally, private market investments have almost exclusively been restricted to wholesale and professional investors. It is important to note that institutional and wholesale investors often have longer investment horizons than retail investors and generally have a greater capacity to manage the challenges associated with holding assets with low liquidity, such as temporary redemption freezes.

[11] Jacob Harris and Emma Chow, RBA, The Private Equity Market in Australia, 18 April 2024, pp. 5-6.
[12] Jacob Harris and Emma Chow, RBA, The Private Equity Market in Australia, 18 April 2024, p. 6.

Direct investment options for retail investors

Due to the strong performance of private market assets and private markets' high appetite for more capital, there is a growing trend for private market funds to be made available to retail investors directly through MISs and platform RSEs. This demand exists both from issuers, who are hungry for capital, and organically from retail investors who want access to high-return opportunities.

Whether this gives rise to a need for regulatory changes to be made is addressed at sections 4 and 5. It is important, however, to further break this group down into advised and unadvised retail investors to reflect their likely understanding of their investments.

Advised retail investors benefit from the expertise of financial advisers, who in turn often leverage sophisticated research from research houses. In a worst-case scenario, advised retail investors may access the Australian Financial Complaints Authority and Compensation Scheme of Last Resort where there has been a breach of relevant legal duties by the adviser. In contrast, unadvised retail investors may be unsophisticated investors who do not fully understand their underlying investments. This applies both to public and private investments. The FSC therefore considers that any new regulations relating to retail investors should be specifically targeted towards conferring a benefit on unadvised retail investors.

Indirect investment options for retail investors

It is also important to note that many retail investors have an indirect exposure to private markets through superannuation, mainly in the form of default-based balanced and a number of choice-based balanced and specialised investment options.

Importantly, this does not mean that superannuation funds should be regulated and protected as if they were retail investors. Superannuation funds are highly sophisticated financial institutions. The FSC considers that retail investors in superannuation products with a private market exposure are in a materially different position to retail investors which invest directly into private market funds.

Superannuation members benefit from the institutional sophistication of their trustee, including its ability to conduct extensive research and due diligence into investment options, combined with its greater bargaining power, experience in undertaking similar deals, and ability to give members a diversified exposure to a broad spectrum of assets. Superannuation funds may also possess institutional capacity to actively control portfolio investments (or leverage helpful expertise to add value), and their institutional size and access to liquidity (eg through Superannuation Guarantee contributions) allows them to make long-term investments in illiquid assets.

In its Discussion Paper, ASIC has identified concerns around daily unit pricing of superannuation investment options combined with less frequent asset pricing creating potential opportunities for arbitrage by members, but this is a difficult issue to address given the liquidity/portability obligations on trustees requiring them to redeem these funds within 3 business days. The FSC considers this is best dealt with by ensuring best practice around asset valuations (see section 4.2), noting superannuation funds have robust existing liquidity risk management obligations and regular injections of liquidity from the Superannuation Guarantee. Mature funds should therefore be well-equipped to manage liquidity/portability risks.

There is also a material difference in how superannuation funds are regulated. APRA has recently shown a high level of interest in the governance of RSEs in relation to unlisted asset valuations and liquidity. It is also important to note that under the *Superannuation Industry Supervision Act 1993*

(Cth) (**SIS Act**), superannuation trustees have comprehensive obligations to act in the best financial interests of members, as well as a series of additional governance obligations supervised by APRA.

Recommendation 1.2: The FSC recommends that if any regulatory enhancements are created for retail investors, they should be targeted towards protecting unadvised retail investors.

Recommendation 1.3: The FSC recommends that any regulatory enhancements for retail investors should not apply to APRA-regulated superannuation funds and other institutional investors.

Wholesale investors

Wholesale investors are those investors who the Corporations Act anticipates are more sophisticated than retail investors (principally measured by reference to their assets, income and investable capital) but less sophisticated than professional (ie institutional) investors. In view of their level of sophistication, the Corporations Act permits wholesale investors to access certain financial products which are not available to retail investors, typically with lower disclosure requirements imposed on issuers.

The FSC acknowledges that ASIC considers the current thresholds to qualify as a wholesale investor are too low, which allows some unsophisticated investors to qualify, and has advocated increases to the thresholds.[13] The FSC has also made past representations in favour of increasing the thresholds to address this issue.[14] However, the FSC notes that since these thresholds are set in legislation, and whether these changes occur is in the hands of the Australian Parliament.

The FSC strongly recommends that there is a clear benefit in maintaining the present clear delineation between the rights associated with retail, wholesale and professional (ie institutional) investor status. As such, the FSC is strongly opposed to the extension of retail investor protections to wholesale investors, for example in the form of expanding the application of DDO (see recommendation 5.7) or aligning wholesale investment product disclosure requirements with those applicable to retail investors.

Recommendation 1.4: The FSC recommends that any classification issues concerning retail/wholesale investor classifications should be dealt with directly and not through fundamentally changing the character of the benefits bestowed by being classified as a wholesale investor. The present delineation between the rights of retail, wholesale and institutional investors should be maintained.

Institutional investors

[13] ASIC, Submission to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the wholesale investor and wholesale client tests, May 2024.
[14] FSC, Submission to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the wholesale investor and wholesale client tests, 20 May 2024.

Institutional investors like REs and RSELs are professional investors and can reasonably be expected to exercise sufficient expertise so that they can understand and put in place appropriate governance arrangements to manage any risks associated with investments they undertake, supplemented by various legal obligations and robust compliance teams.

Public and private markets presently benefit from the fact that there is limited compliance friction that institutional investors must address in investing funds with each other, beyond due diligence and other bespoke steps which are negotiated between the parties. Although it does not appear to be entertained in ASIC's Discussion Paper, it is important to note that the FSC is strongly opposed to measures which would restrict flexibility in this area.

The FSC also notes that unregistered MISs are used by fund managers to administer complex and administrative activities such as fund restructuring and interfunding transactions, including on a multi-jurisdictional basis. Where a scheme is not raising capital directly or is being used only for structuring purposes and it is therefore not available to retail or wholesale investors, the FSC sees no clear basis for altering their present level of regulation. Indeed, attempting to regulate unregistered MISs may create complications which could deter foreign investment in Australia.

Recommendation 1.5: The FSC recommends that transactions between institutional investors should not be subject to regulatory change.

Recommendation 1.6: The FSC recommends that the regulatory settings around unregistered MISs should not be altered. Other recommendations in this submission should not be construed as advocating changes in relation to unregistered MISs.

1.4.D. Risk of regulatory overreach

When evaluating the adequacy of private market regulation, it is crucial to recognise that regulation itself is not a cure-all for risk and can, in fact, introduce new risks. With a significant proportion of private capital being derived from overseas jurisdictions, unduly prescriptive or disruptive regulatory changes risk discouraging investment and causing economic damage. This is a real risk due to the high mobility of international capital. As noted by the Allens partners Charles Ashton, Emin Altiparmak and Tom Story:

> "we, *as a nation, are in competition for private capital flows with the rest of the world. There is already a perception among global investors that changes to Australia's regulatory settings have impacted our attractiveness as a destination for private capital. These global funds will look elsewhere if we don't get the balance of regulation right.*"[15]

Consequently, the FSC considers it is of paramount importance to ensure that policy interventions are evidence-based and proportionate.

The Financial System Inquiry stated that:

> *"Competition is the cornerstone of a well-functioning financial system and is generally*

[15] Gus Gilkeson, Charles Ashton, Emin Altiparmak and Tom Story, AFR, Should ASIC regulate private markets? Here are the cases for and against, 27 February 2025.

preferred to Government intervention as the mechanism for efficient, resilient and fair outcomes. Policy makers and regulators should minimise barriers to domestic and international competition and seek to encourage competition."[16]

The FSC holds a similar perspective and notes that any push to substantially increase the regulation in private markets would be out of step with comparable jurisdictions. For example, in the UK HM Treasury is consulting on measures to simplify the regulation of Alternative Investment Fund Managers[17] and in 2023 the UK Financial Conduct Authority broadened access to Long-Term Asset Funds to retail investors. Singapore is also consulting on measures to expand retail investor access to private market investments.[18] In addition, the United States' Securities Exchange Commission has recently approved funds which target retail investors and have a significant proportion of assets allocated to private markets.[19] These trends exacerbate the risk that Australia may become less competitive for global capital.

It is important to acknowledge that while private market funds are generally described as comparatively lightly regulated, since fund managers often involve themselves actively in underlying portfolio companies it is necessary for fund managers to actively engage with underlying regulatory regimes applicable to those companies in a way which is uncommon among public market fund managers. For instance, funds investing in unlisted infrastructure by necessity must engage with regulatory processes involving the applicable road, port, utility, etc.

Similarly, the cross-border nature of many private investment funds also means they need to navigate many jurisdictions' regulatory regimes, including regulations around foreign investment.

It is also important to acknowledge that regulatory overreach has the potential to work both ways: it may also reduce Australian investors' access to offshore opportunities if overseas funds decide to close access to Australian investors because of extra-territorial legal requirements.

Before any significant expansion of ASIC's remit, it is also important to acknowledge that the regulator's resources are finite and its existing jurisdiction is broad. As noted by the ASIC Chair, Joe Longo: already "*there are matters we would like to run now we don't run because they don't meet our priorities*".[20] Former ASIC Chair, James Shipton, has noted:

> "*ASIC's enforcement jurisdiction has become too large. It is being asked to do too much with too little. It has a larger breadth than most of its global peers, with more responsibilities added to it by successive governments. ASIC is one of the most complex regulatory agencies in the world. And even though many governments extended its jurisdiction, they failed to provide commensurate funding to support its (still) increasing jurisdiction.*"[21]

Throughout this submission, the FSC makes a series of recommendations for how existing product disclosure and governance requirements can be made more robust to reflect the unique challenges presented by private markets. These can mostly be accomplished through ASIC regulatory guides and the industry-led development of best practice principles for fund managers and superannuation trustees. The FSC does not support more drastic measures.

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[16] David Murray et al, Financial System Inquiry Final Report, November 2014, p. 268.
[17] HM Treasury, Consultation: Regulations for Alternative Investment Fund Managers, April 2025.
[18] Monetary Authority of Singapore, Consultation Paper on Providing Retail Access to Private Market Investment Funds, March 2025, p. 3.
[19] Sergio Padilla, Private Debt Investor, Capital Group, KKR receive SEC approval for retail credit funds, 25 April 2025.
[20] Joseph Longo, Chair, ASIC, Parliamentary Joint Committee on Corporations and Financial Services' inquiry into the Oversight of ASIC, the Takeovers Panel and the Corporations Legislation Committee Hansard, 30 April 2024, p. 9.
[21] James Shipton, submission to the Senate Economics References Committee, Australian Securities and Investments Commission investigation and enforcement, July 2024, p. 11.

Recommendation 1.7: The FSC recommends that policy interventions should be evidence-based and proportionate.

2. Healthy public markets

This section discusses the regulatory burden in Australia's public markets, emphasising the need for simplification of the legislative framework to make compliance easier and reduce barriers to public listing. It highlights the complexity and costliness of current regulations and ASX rules, which deter companies from listing publicly and drive them towards private markets. This section also calls for reforms to the public corporate debt market to improve accessibility for retail investors and suggests that reducing the regulatory burden on public markets would enhance their performance and attractiveness.

2.1.A. Regulatory burden in public markets

Australia's public markets are facing challenges due to strict regulations. In some instances, the FSC considers this unduly constrains economic growth and productivity by limiting access to capital, reduces the efficiency of capital allocation, and limits opportunities for retail investors to gain exposure to corporate profits through investment.

In some respects, ASIC's Discussion Paper appears to implicitly accept that private markets would benefit from having its regulations more closely aligned with regulations in public markets. The FSC does not believe this to be the case. There are significant areas of corporate law that require reform to achieve an effective balance between good market conduct, consumer protection and the benefits of access to capital.

ASIC has already recognised the need for reform in this area through its announcement of a regulatory simplification taskforce. The chair of this group, Nicola Wakefield-Evans, has stated publicly: "*[t]he burden of compliance and regulation in the financial services sector has probably more than doubled, maybe quadrupled*" since the Global Financial Crisis in 2008.[22] Similarly, ASIC Chair Joe Longo has said: "*[l]ooking at the current legislative and regulatory landscape, as I've said before – we don't do simplicity well in Australia*".[23]

Complexity in regulation has also been recognised as problematic by the Australian Law Reform Commission (**ALRC**). In its final report into the need for reform in corporations and financial services legislation, the ALRC viewed complexity as a pervasive problem under the current framework, noting that "*unnecessary complexity creates unnecessary costs, and the greater the complexity, the greater those costs*."[24] The report also noted that small changes in the regulatory impost can have substantial impacts on the financial services market, by extension including superannuation and household wealth.[25]

Three categories of measures can be identified to reduce regulatory burden relating to public markets: simplification of the formal legislative framework to ensure regulation is necessary, efficient, and fit for purpose; ensuring administration of the current law does not add to complexity, difficulty and costs of compliance; and the impact of structural changes in the broader investment environment. The FSC also suggests measures to enhance the development of an Australian public

[22] Patrick Durkin, ASIC kickstarts deregulation agenda to lighten director loads, Australian Financial Review, 12 March 2025.
[23] Joe Longo, Keynote opening address at the ASIC Annual Forum, Bridging generations – regulating for all Australians, 14 November 2024.
[24] Australian Law Reform Commission, Report 141: Final Report Confronting Complexity: Reforming Corporations and Financial Services Legislation, November 2023, p. 54.
[25] Australian Law Reform Commission, Report 141: Final Report Confronting Complexity: Reforming Corporations and Financial Services Legislation, November 2023, p. 56.

corporate bond market which is open to retail investors.

2.1.B. Legislation, regulations and rules

Existing regulatory requirements should be evaluated to ensure the current legislative framework is meeting its objectives in the most effective and efficient way. The solution to making listing more attractive is to lower the burden on public markets, rather than increasing the regulatory burden on private markets to compensate. A blanket approach that raises complexity and compliance costs for companies, regardless of the nature of their ownership, would divert capital away from productive use and constrain their potential for growth.

Complexity as a deterrent to public listing

The requirements placed on both public and private companies under the Corporations Act and related regulations, rules, determinations and instruments are already complex and difficult to navigate. The legislation is lengthy and subject to extensive modification by other laws and instruments that affect the obligations of companies and their directors. This invariably creates a significant compliance burden.

Public markets are made less attractive as a source of and destination for capital because of additional regulatory burdens. These take the form of specific additional legislative requirements, such as requirements to publicly report detailed financial information, and administrative and market governance frameworks like the ASX Listing Rules and Continuous Disclosure Rules. The FSC recognises that ASIC has acknowledged in its Discussion Paper the regulator is "*exploring opportunities with the ASX to refine the listing pathway and listing rules.*"[26] The FSC notes that this is one of several important means by the regulator may help make public markets a more attractive source of capital, and recommends further consultation in the course of any changes.

There are often layers of competing and interacting legislation that require substantial resources to comply with. An example is the use of secondary or delegated legislation to amend the operation of other legislation, making it more difficult to know and correctly interpret the law and its application in practice. Ensuring compliance in these conditions requires expensive legal advice or increases the risk of penalty for honest mistakes or misinterpreting which provisions apply and how they operate in the specific circumstances of each business.

The Corporations Act is extensively modified by primary and delegated legislation and interactions with the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), as well as being influenced by hundreds of regulatory guides on interpretation and other resources. The compliance task for funds and corporations is enormous, with primary legislation running to over 4,000 pages, over 950 provisions delegating specific powers, and more than 1,400 legislative instruments in force.[27] Appendix 9.2 illustrates the complexity of corporate regulations.

Widespread availability and use of delegated powers to make regulations, including other powers that exist through the *Corporations Regulations 2001* (Cth) and in the ASIC Act, increase the risks of unintended consequences resulting from the complex and often overlapping latticework of existing policy. Changes in individual instruments, or in interpretations of how they are to be applied, results

[26] ASIC, Discussion Paper: Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets, February 2025, p. 34.
[27] Senate Economics References Committee, Australian Securities and Investments Commission investigation and enforcement, July 2024, p. 44.

in a greater chance of loopholes and contradictions developing over time, potentially leading to further increases in compliance costs.

The ALRC has criticised the financial services framework as being a "*legislative maze*", with rules that are "*unpredictably located in primary legislation, delegated legislation, or administrative instruments*".[28] This makes finding and understanding the law very difficult, as it can be unclear on its face, and require reference and re-reference to these instruments and interpretations to develop a picture of the obligations they face. The ALRC report accurately summarised this problem in noting that "*anything could be anywhere, meaning users [of the legislation] need to look everywhere*".[29]

Expanding complexity also means that as the law develops, there is a greater likelihood of regulation preventing rather than encouraging participation in public markets. It creates barriers that prevent new entrants from operating and listing in Australia, by ensuring only entities that have achieved scale can afford to pay the associated costs of regulatory compliance. Complexity also holds back productivity, with more resources than otherwise necessary being dedicated to compliance and less to strategic planning, expansion, or investment in business operations.

In some jurisdictions such as the US, there are different levels of regulation depending on the size of a company or the exchange on which it is listed. Since some earlier stage companies lack the capacity to handle the cost and regulatory burden associated with being listed, having more tailored rules in this way may help to incentivise more public listings. The FSC sees similar potential for streamlined ASX rules for smaller entities.

Recommendation 2.1: The FSC recommends that the Government modernise regulation of public markets by simplifying the law to make it more accessible and understandable. This is expected to make compliance cheaper and easier for regulated entities while reducing barriers to entry that currently disincentivise public listing. Work could be commenced through the ASIC Regulatory Simplification Taskforce, and ASIC and other stakeholders should advocate for Government to streamline financial services legislation.

Recommendation 2.2: The FSC recommends that ASIC investigate options to allow small organisations to become publicly listed with a reduced compliance burden.

Potential for excessive civil penalties

There is an additional chilling effect on public listing from the potentially severe consequences of breaching financial services civil penalty provisions in the Corporations Act, such as continuous disclosure rules. The quantum of a penalty for breach is determined by a court rather than by the regulator, and at the extreme magnitude of their current maximum, these provisions have the potential to threaten the solvency of a company.

Section 1317G(4) of the Corporations Act deals with pecuniary penalties applicable in instances of breach. That amount is the higher of 50,000 penalty units (currently AU$16.5 million), three times

[28] Australian Law Reform Commission, Report 141: Final Report Confronting Complexity: Reforming Corporations and Financial Services Legislation, November 2023, p. 54.
[29] Australian Law Reform Commission, Report 141: Final Report Confronting Complexity: Reforming Corporations and Financial Services Legislation, November 2023, p. 54.

the benefit, or 10 per cent of annual turnover up to a limit of 2.5 million penalty units (currently AU$825 million). These penalties were substantially increased from 13 March 2019 as a result of legislative amendment that raised the maximums tenfold.[30] Combined with the potential for continuing contraventions to result in separate penalties,[31] and for unintended or innocent breaches to also result in penalties,[32] the risks are substantial.

In order for a penalty for breach to apply, it must be upheld by a court following an application by ASIC. If the finding of fact is made out, the court will make a separate determination on the penalty. While submissions by the parties may be considered, in the case a regulator and company in breach agree on the penalty, the court makes the final determination.

In arriving at a penalty value, courts may consider "*all relevant matters*" in setting the quantum of the penalty,[33] but it has also been recognised that "*there is no place for a 'notion of proportionality' in a civil penalty regime*" and the maximum penalty does not need to be reserved for the worst offenders.[34] Tempering this discretion is the notion of proportionality, to "*strike a reasonable balance between deterrence and oppressive severity*",[35] and the totality principle is applied to ensure the penalty imposed is just and appropriate in the circumstances of the case.[36] Despite these checks on penalties, there is wide scope for judicial discretion, especially in novel circumstances.

While the potential for harsh penalties may deter breaches, they also create significant uncertainty as to how minor, technical breaches may be punished by the courts. Moreover, the substantial maximum penalties make the prospect of being subject to compliance with obligations that apply only to listed companies, such as the continuous disclosure regime, high risk and unattractive for companies considering a public listing.

Until there is reform to streamline and simplify legislation governing public markets, this unwieldy and highly complex framework will continue to deter listing on public markets, holding back market capitalisation and constraining opportunities to invest in listed equities.

Recommendation 2.3: The FSC recommends that the Government reform the civil penalties regime to reduce the risks associated with listing while maintaining high standards of market conduct.

2.1.C. Structural change

Additionally, it is important to note that the regulatory burden can shift and increase through structural changes in the investment environment, even in the absence of changing rules.

The FSC notes the research report which accompanied ASIC's Discussion Paper concluded that the declining number of public market listings appears to be a cyclical phenomenon. The research report sees the trend as part of fluctuations in the free flow of capital into varying markets influenced by long-term trends in aggregation, access to liquidity and performance. Noting the research report also

[30] *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Cth).
[31] *Corporations Act 2001* (Cth) s 1317QA.
[32] *Corporations Act 2001* (Cth) s 131QB.
[33] *Corporations Act 2001* (Cth) s 1317G(6).
[34] *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450 ('*Pattinson*'), cited in *Australian Securities and Investments Commission v Firstmac Limited* [2025] FCA 12, [8] ('*Firstmac*').
[35] *Pattinson*, cited in *Firstmac*, [8].
[36] *Firstmac*, [14].

recognises this could be part of a structural trend if persistent over a prolonged period,[37] it is important to understand the value proposition from public listing in the context of these broader phenomena. The FSC considers there may have been several shifts in capital markets which may form the basis of a structural change in this area but concurs that it would be premature to reach a conclusive view.

Current investment trends indicate it is increasingly common for Australians to hold equities in Australian listed companies through their superannuation or through broad-based index funds rather than making personal decisions to invest in individual stocks. These two significant developments have altered the dynamics of investment in public equities, shifting the landscape towards large aggregate pools – a dramatic change from the small individual holdings more common at the turn of the century.

Superannuation has become progressively more important as a source of investment capital, having experienced substantial growth in scale over time as more Australians have contributed across their entire working lives. This is more than a cyclical shift – it is the result of four decades of successive governments growing and shaping superannuation as a means to finance Australians' retirement. Whether investing in public or private markets, the role of superannuation is to allocate capital in the best interests of fund members.

The result is large institutional investors managing significant pools of capital, which are subject to multiple layers and frameworks of regulation to ensure they invest in the best interests of their members. The contribution of superannuation to invested capital in the domestic equities market has been so substantial that trustees have reported exposure to Australian shares as coming close to reaching a saturation point.[38]

It was also noted in the research report that there is potential benefit from further analysis of liquidity in listed markets for small- and micro-cap equities.[39] Challenges from high spreads and low liquidity are of particular concern for these stocks. Where there are high spreads and shares trading at a fraction of the value, listing may substantially dilute ownership without providing a significant inflow of capital.[40] This may create an incentive for some of these companies to delist or never list in the first place, since one of the main reasons to publicly list in the first place is to achieve improved price discovery and liquidity.

In addition to this, there are fewer incentives for some institutional investors to commit to smaller equities. Companies with smaller market capitalisation are not drawing as much equity from superannuation investors as in the past due to institutional investors avoiding potential short-term performance impacts and risks from future changes in benchmarks such as the Your Future Your Super performance test.[41]

Variability in both regulation and returns can drive investors to equities with greater certainty, such as S&P/ASX300 companies. This highlights the potential for regulatory change in superannuation to flow on to the availability of capital and liquidity, emphasising that policy settings should remain constant to minimise sovereign risk from commitments of member capital made by trustees.

Similarly, the rise in index investing, through low-cost exchange-traded funds (**ETFs**), has also

[37] Dr Carole Comerton-Forde, Report 807 Evaluating the state of the Australian public equity market: Evidence from data and academic literature, February 2025, p. 33.
[38] Lucas Baird, AFR, The country's big super funds are reaching their ASX investing limit, 9 March 2025.
[39] Dr Carole Comerton-Forde, Report 807 Evaluating the state of the Australian public equity market: Evidence from data and academic literature, February 2025, p. 15-17.
[40] PrimaryMarkets, ASIC raises red flags over private markets amid IPO decline, Media Release, 11 March 2025.
[41] Tony Boyd, AFR, Small caps bulldozed by ETFs, 16 March 2025.

aggregated capital into institutionally managed capital pools. ETFs are advantageous to retail investors, as they can gain broad and diversified exposure to public markets with low management fees. Barriers to entry are also lower than minimum investments required to invest through traditional actively managed funds. This similarly results in large pools of passively invested funds, providing liquidity to listed companies through exchange of shares in the underlying fund.

The FSC also supports the ASX's view that IPO processes should be made more attractive by avoiding complexity.[42] ASIC should look to update Regulatory Guide 170 *Prospective financial information* (**RG 170**) to clarify expectations in relation to providing financial forecasts in a prospectus. To make listing more attractive, guidance should clarify that issuers meet the standard for a prospectus to contain all information reasonably required by investors to make informed choices by explaining the factors that would lead to financial forecasts being potentially unreliable or misleading.

Recommendation 2.4: The FSC recommends RG 170 be amended to set an expectation that providing financial forecasts in a prospectus is optional, recognising the potential for unreliability in financial projections.

2.1.D. Markets for public corporate debt

While the ASIC Discussion Paper touches on private markets for both equity and debt, its discussion of public markets does not address public debt in detail. The corporate bond market is also an important structural element to public markets which should not be overlooked. Indeed, when ASIC considers the future of the private credit sector (see section 8), the FSC suggests the regulator have regard to the present state of the public corporate bond market as a cautionary tale.

Compared with the market for listed equities, corporate bonds available to retail investors represent less than 1 per cent of the value of public markets, with very few investment options available.[43] Appendix 9.3 illustrates the comparative smallness of this market relative to ASX-listed equities.

The vast majority (over 95%) of corporate bonds are only issued to wholesale or institutional investors, partly due to disclosure documents being easier to prepare than those required for retail investors.[44] Barriers to access identified included minimum investment size and limited transparency around credit ratings and market pricing.[45] There are also claims that an unlevel playing field distorts economic activity by incentivising certain asset and market types, such as through differential tax treatment driving investment away from corporate bonds and towards equities or real estate.

Treasury analysis from over a decade ago noted that the corporate bond market in Australia was already underdeveloped at that time compared to other international markets.[46] The market was last reviewed in 2021,[47] with the government response in 2024 declining to substantively respond to the

[42] Australian Securities Exchange, Australia's evolving capital markets: Opportunities to support Australian listed markets, April 2025, pp. 11-12.
[43] Corporate Bond Reform Working Group, Pre-Budget Submission: Retail Corporate Bond Market Development, 2024.
[44] OECD, Regulatory frameworks and trends in the corporate bond market, 2025, p. 18-19.
[45] House Committee on Tax and Revenue, *The Development of the Australian Corporate Bond Market: A Way Forward*, October 2021, p. 13-19.
[46] Treasury, *Financial System Inquiry Final Report*, 2014, p. 14.
[47] House Committee on Tax and Revenue, *The Development of the Australian Corporate Bond Market: A Way Forward*, October 2021.

report's recommendations due to passage of time.[48] The Corporate Bond Reform Working Group has made a series of recommendations to help foster the development of a more robust corporate bond market in Australia.[49] Key recommendations to improve the growth, accessibility and competitiveness of the corporate bond market include:

- Streamlining disclosure requirements by removing duplication and using the existing 'cleansing notice' regime for rights issues as a template to simplify bond offers to retail investors;
- Removing the Corporations Act requirement to specify financial ratios in the base prospectus for simple corporate bonds;
- Allow issuers greater flexibility to restructure simple corporate bonds by permitting early redemption to refinance prior to their maturity date;
- Review the regulatory requirements on trustees in the retail bond market; and
- Minimise barriers to retail clients accessing credit ratings that are already available to wholesale investors.

The need remains for opportunities in public debt markets to be further explored by government. Effective reform should aim to remove tax and regulatory barriers that discourage investment into corporate bonds as well as to break down barriers to the participation of retail investors.

Recommendation 2.5: The FSC recommends that the public corporate debt market should be reformed to improve the accessibility of investments to retail investors.

[48] Treasury, *Australian Government response to the House Committee on Tax and Revenue Report: The Development of the Australian Corporate Bond Market: A Way Forward*, May 2024.
[49] Corporate Bond Reform Working Group, Pre-Budget Submission: Retail Corporate Bond Market Development, 2024.

3. Value added by private market funds

This section highlights the significant economic, social, and investor benefits provided by private market funds. Economically, private capital has been instrumental in developing major Australian companies and infrastructure projects, contributing AU$77 billion to the economy and supporting around 600,000 jobs.[50] Socially, private markets fund key public interest projects, including infrastructure and ESG initiatives. For investors, private markets offer high returns, lower observed volatility, and innovative investment opportunities, making them an attractive component of diversified portfolios. They also play an important role in Australia's superannuation system by providing greater diversification and investment opportunities, and providing an income stream for Australians in retirement. The section underscores the importance of maintaining the dynamism and attractiveness of private markets to support Australia's economic growth and investor confidence.

3.1. Economic benefits

Investments in private markets contribute substantial value to the Australian economy. Private capital has played a significant role in the development of prominent companies in Australia including Airtasker, Culture Amp, Deputy, Judobank, Lendi, Team Global Express, Webjet, Healthscope, Novotech, Quadrant Energy, Probe CX, Airwallex, Afterpay and Ventia, as well as managing companies like Darrell Lea, RM Williams and Virgin Australia,[51] and investing in major infrastructure such as Sydney Airport and the Port of Melbourne.

According to a report by EY and the AIC, in 2024 private capital contributed AU$77 billion to the economy, directly backing over 1,100 jobs and indirectly employing approximately 600,000 people full-time.[52] This represents a greater total economic contribution than Australia's agriculture and defence sectors.[53] As Australia's population ages, it will be essential for Australians' productivity to grow and this will require significant capital investment.[54] The Australian Government is also expected to rely on private capital to meet the population's full needs, and private capital has a clear track record of playing this role.[55]

As noted in a recent RBA publication:

> "*The private equity market plays an important role in supporting the efficient allocation of capital to companies. New, innovative businesses and products often seek external capital investments at a time when their growth prospects and earnings potential are highly uncertain. Venture capital firms are among the private equity firms specialised in assessing early-stage funding. Underperforming companies may also be targeted by private equity investment, which can bring expertise and experience to help maximise growth. The threat of takeover, including through buyout by private equity firms, can also discipline existing management to improve company performance*."[56]

While in the UK private capital investment is responsible for 6% of GDP, and in the US, it is

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[50] EY & AIC, ABC of private capital in Australia, 2024, p. 1.
[51] EY & AIC, ABC of private capital in Australia, 2024, p. 2; AIC, 2025 Pre-Budget Submission, 2025, p. 6.
[52] EY & AIC, ABC of private capital in Australia, 2024, p. 1.
[53] EY & AIC, ABC of private capital in Australia, 2024, p. 1.
[54] EY & AIC, ABC of private capital in Australia, 2024, p. 2.
[55] EY & AIC, ABC of private capital in Australia, 2024, p. 2.
[56] Jacob Harris and Emma Chow, RBA, The Private Equity Market in Australia, 18 April 2024, p. 6.

responsible for 6.5% of GDP, in Australia it is only 3%.[57] This suggests there is significant untapped potential in Australia's private markets. Indeed, modelling by EY suggests that a 1% increase in private capital's contribution to GDP has the potential to create 600,000 jobs by 2030.[58]

Clearly, there are significant opportunities associated with private markets, and changes to private market regulation should be calibrated not just to avoid damaging the economy by reducing the current contribution of the sector, but also to avoid incurring an unseen but significant opportunity cost as a result of foregone opportunities.

Private markets also have an inbuilt economic stabiliser: there is significant dry powder which is ready to chase value. In an economic downturn this could be deployed to chase bargains in either public or private markets and may therefore represent a stabilising economic force. Indeed, the renowned former US Federal Reserve Chairman, Alan Greenspan, referred to non-bank financial intermediation as a "*spare tire*" which may make potential financial crises more "*benign*". Mr Greenspan further explained "*diversity within the financial sector provides insurance against a financial problem turning into economy-wide distress*".[59]

Private markets also form an important component of superannuation for millions of Australians, with roughly AU$500 billion invested in unlisted assets like property, infrastructure, credit and equity.[60] The typically high, consistent returns offered by private markets as a component of superannuation asset allocations is a cornerstone of many Australians' retirement security.

There is also a significant quantity of global capital seeking worldwide private market opportunities. If Australia makes it unduly difficult for investors, it risks missing out on the associated economic opportunities, such as infrastructure construction (eg planned expansions to Melbourne Airport), company revival (eg Virgin Australia) and venture capital investments (eg Canva).

3.2. Social benefits and social licence

Private markets fund key many projects of significant public interest. Private capital underpins significant major infrastructure projects, like ports and airports, as well as data centres and critical minerals projects.

The sheer diversity of the sector means that it plays a broad economic role and supports businesses and households in many areas. For instance, private credit drives a significant amount of business origination, beyond the real estate sector as is commonly understood. For example, private credit helps households to access solar panels through flexible financing options. Similarly, a significant amount of motor vehicle financing occurs through the auspices of private credit lending. It is also difficult to see how the Australian Government can meet its target of 1.2 million new homes by 30 June 2029 without private investment underpinning property development activity.

Private markets have an important role to play in driving private financing of the net zero economic transition. According to Alvarez & Marsal, in a survey of SE Asian and Indian private market funds:

- 93% "*almost always integrate ESG into their pre-acquisition due diligence process*";[61]
- 96% "*believe that post-acquisition ESG can generate tangible and intangible value within*

[57] AIC, 2025 Pre-Budget Submission, 2025, p. 6.
[58] AIC, 2025 Pre-Budget Submission, 2025, p. 2.
[59] Alan Greenspan, remarks by Chairman Alan Greenspan at the 1999 Financial Markets Conference of the Federal Reserve Bank of Atlanta, Sea Island, Georgia, Do efficient financial markets mitigate financial crises?, 19 October 1999.
[60] APRA, Governance of Unlisted Asset Valuation and Liquidity Risk Management in Superannuation, December 2024.
[61] Alvarez & Marsal, ESG Value Creation Opportunities for Private Capital in Southeast Asia and India Survey 2024, 27 November 2024, p. 2.

portfolio companies";[62] and

- 96% agree that "*ESG creates value*".[63]

Globally, a similar survey suggests that only 4.5% of private equity firms do not incorporate ESG into long-term planning,[64] and in Australia this is likely to fall as Australia's sustainability reporting framework matures.

In addition, there is a substantial amount of infrastructure which could be delivered privately. Infrastructure Australia's infrastructure priority list identifies 162 major projects, and many of these important initiatives may be partly or fully funded with private capital under the right regulatory settings.[65] Such investments have the potential to generate significant economic and social benefits, in circumstances where, as noted globally by the chairman of BlackRock, Larry Fink: "*[g]overnments can't fund infrastructure through deficits. The deficits can't get much higher. Instead, they'll turn to private investors*."[66]

3.3. Investor benefits

In view of the risks associated with private markets set out in section 4, it stands to reason that private markets must contain a significant value proposition for investors to continue to invest in them.

First and foremost, liquidity risks (see section 4.4) have historically been compensated through an expected illiquidity premium, by which investors receive a higher return that would be expected from equivalent public market investments. This limited liquidity also places limitations on investors' ability to panic sell assets during an economic downturn.

In addition, the less frequent valuation of private market assets and absence of immediate price discovery mechanisms (see section 4.2) usually reduces the asset class's observed volatility. It is important to note that this general feature is to be distinguished from when a fund does not appropriately adjust the valuation of the asset due to important event triggers and fundamental changes in the market, which our recommendations address. Provided there is appropriate valuation governance, we submit that the less frequent valuation of unlisted assets serves as an important distinguishing factor for the asset, as simply marking an unlisted asset to the moves in the listed space is not prudent. Public markets can be emotive, momentum driven and over-react to news, which can drive volatility not related to underlying economic fundamentals.

This lower observed volatility may be a source of attraction to both investors and fund managers, as the reduced market noise and compliance burden allows management to focus on creating long-term value. Funds and investors also typically bring a longer-term mindset than investors in public markets, which reinforces this focus on medium to long-term value creation.[67]

Combined, the lower observed volatility and illiquidity premium offer portfolio managers important

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[62] Alvarez & Marsal, ESG Value Creation Opportunities for Private Capital in Southeast Asia and India Survey 2024, 27 November 2024, p. 2.
[63] Alvarez & Marsal, ESG Value Creation Opportunities for Private Capital in Southeast Asia and India Survey 2024, 27 November 2024, p. 4.
[64] Alvarez & Marsal, Value Creation in Private Equity: Tying Transformation to Exit Strategies in the Current Economic Environment Across North America, 18 October 2024, p. 11.
[65] Infrastructure Australia, Infrastructure Priority List, accessed 19 April 2025.
[66] Larry Fink, BlackRock, 2025 Annual Chairman's Letter to Investors: The Democratization of Investing: Expanding prosperity in more places, for more people, March 2025, p. 4.
[67] William Anglingdarma and Thomas Dutka, Morningstar Manager Research Australia, Privacy, Please! How Private Assets Are Transforming Capital Markets and Superannuation Funds, 3 March 2015, p. 3.

characteristics for portfolio diversification. These attributes are the very reason private market allocations adds value to portfolios.

Investors may also use holdings in private markets to diversify their public market holdings with assets that are not closely correlated with public markets. One feature of recent economic shocks has been a growing correlation between public equities and bonds. Growing availability of private market investment options can help investors to find asset allocations with less correlated performance.

Lower correlation has value. Any attempt to reduce or devalue these attributes will put Australian portfolio managers at a significant disadvantage to their global peers.

Private markets also offer more innovative investment options and structures, for instance venture capital funds. It also offers high risk-adjusted return and dedicated impact investing opportunities with targets agreed between financier and borrower/sponsor.

The stable and high-income opportunities provided by private markets make them ideal for a larger role in superannuation portfolios. With Australia's ageing population, more Australians will begin drawing down on their superannuation balances. A diversified and responsible allocation to private markets can help ensure retirees do not exhaust their superannuation funds, giving them greater confidence in their financial security.

The active management of private market funds may create opportunities for fund managers to add value through their in-house expertise and, in some instances, control over underlying assets. There may also be opportunities for negotiation to occur between investors, funds and management, which can lead to a closer alignment of interests between management, funds and investors, or the customisation of investments to the needs of funds and investors.

In addition, enhanced due diligence opportunities, including chances for bilateral negotiations and in the case of private credit, the negotiation of covenants, may permit funds to better understand underlying investments and set controls to ensure their risk remains on track.

Investors may also use holdings in private markets to diversify their public market holdings with assets that are not directly correlated with public markets. One feature of recent economic shocks has been a growing correlation between public equities and bonds. Growing availability of private market investment options can help investors to find asset allocations with less correlated performance.

Any attempt to reduce or devalue these attributes will put Australian portfolio managers at a significant disadvantage to their global peers.

Recommendation 3.1: The FSC recommends that ASIC acknowledge the significant economic and social role played by private markets as well as their significant positive impact on retail, wholesale and institutional investors.

4. Private market risks, market efficiency and confidence

The FSC and its members consider that private markets are currently supporting efficient capital raisings but acknowledge that it is important to maintain the confidence of investors, regulators and broader society in their efficiency, resilience and integrity. While transparency is also addressed in section 6 (with an emphasis on data collection), this section also pays significant attention to the central role played by product disclosure.

ASIC's chair has identified "*[o]pacity, conflicts, valuation uncertainty, illiquidity and leverage*" as the key risks in private markets, and expressed interest in "*understanding whether there is a need for intervention, whether it is for ASIC or another regulator to consider, or whether we leave the market and wholesale investors to their own devices*".[68] In this section, the FSC focuses on addressing these key topics and the topic of potential intervention. At recommendation 1.2, the FSC has already indicated its view that new regulations should primarily be targeted towards retail investors.

Firstly, however, it is important to acknowledge that all types of investments have risks. This applies to financial products on both public and private markets. Risks like illiquidity are rewarded in the form of higher returns over the longer term.

The FSC considers that robust product disclosure by issuers and distributors combined with robust governance process and existing legal obligations on the fund is the best means of proactively addressing risks associated with private markets. Unfortunately, however, as noted by the ALRC: "*[t]he provisions relating to disclosure for financial products and services are among the most complex and least coherent in the Corporations Act.*"[69] This can result in unnecessarily difficult to understand disclosure documents, which can cause problems for retail investors.

The FSC's starting point is that existing legal obligations on MISs and RSEs are robust. The FSC suggests that if ASIC is concerned about risks in private markets, the regulator's immediate focus should be on ascertaining whether there are material shortcomings in existing regulatory obligations or whether any observed issues actually relate to non-compliance with (and enforcement of) existing law. Key existing legal obligations include mandatory reporting and disclosure obligations, DDO/TMD provisions, SIS Act obligations of superannuation trustees, Ch 5C obligations of REs, Part 7.10 market misconduct provisions, general AFS licensee obligations, misleading and deceptive conduct, fiduciary duty requirements, and the laws of negligence and contract.

The FSC has a long-standing position (see section 5.3) that ASIC should explore being more proactive in capturing information and assessing risk around MISs when they are first registered with ASIC. This would also be an opportunity for ASIC to enhance its risk-based surveillance activities. In performing this responsibility, ASIC would be playing more of a gatekeeper role – which is recommended by the Senate Economics References Committee[70] – and could proactively address many of the risks identified in ASIC's Discussion Paper. In the case of new market entrants – which appear to be the main subject of ASIC's concerns in private markets – similar opportunities exist at the AFS licensing stage.

Before discussing private markets' risks, it is also important to reiterate that as explained in section

[68] ASIC, Discussion Paper: Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets, February 2025, p. 5.
[69] Justice Mordecai Bromberg, ALRC, Report 141: Final Report Confronting Complexity: Reforming Corporations and Financial Services Legislation, November 2023, p. 131.
[70] Senate Economics References Committee, Australian Securities and Investments Commission investigation and enforcement, July 2024, pp. 21-22.

1.4.B, a significant proportion of Australia's private capital is derived from global investors. To maintain Australia's attractiveness for global capital, it is imperative that new regulations are in step with international standards. Harmonising any new requirements with those of major financial jurisdictions, such as the United States, will mitigate the compliance burden on global funds and investors. This alignment will streamline administrative processes, reduce regulatory complexities, and foster a predictable investment environment. Consequently, ensuring regulatory consistency with international norms will avoid compromising Australia's competitive position in attracting and retaining global private capital, thereby supporting the growth and stability of its financial markets.

Existing product disclosure obligations

The Corporations Act provides that issuers are required to disclose information in relation to matters including:

- "*any significant risks associated with holding the product*";[71]
- "*the cost of the product*";[72]
- "*information about any other significant characteristics or features of the product or of the rights, terms, conditions and obligations attaching to the product*";[73] and
- "*any other information that might reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to acquire the product*",[74]

but excluding information "*if it would not be reasonable for a person considering, as a retail client, whether to acquire the product to expect to find the information*".[75]

In Regulatory Guide 168: *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (**RG 168**), ASIC has provided additional guidance on compliance, including "*Good Disclosure Principles*" suggesting that disclosure should:

- *"be timely";*
- *"be relevant and complete";*
- *"promote product understanding";*
- *"promote product comparison";*
- *"highlight important information"; and*
- *"have regard to consumers' needs".*

The FSC notes RG 168 provides useful insight into the regulator's approach to product disclosure. In the course of this submission, the FSC proposes a range of changes to existing product disclosure requirements. The FSC sees opportunities for them to, on a case-by-case basis, either be codified in updates to RG 168 (or another ASIC regulatory guide) or an industry-led body of best practice principles. The FSC sees an opportunity to involve industry in a collaborative process to draft these best practice principles and – in doing so – also raise awareness of what best practice product disclosure looks like.

By way of example, in developing FSC Standard No. 23 *Principles of Internal Governance and Asset Stewardship,*[76] the FSC collaborated with industry to improve asset managers' governance and

[71] *Corporations Act 2001* (Cth) s 1013D.
[72] *Corporations Act 2001* (Cth) s 1013D.
[73] *Corporations Act 2001* (Cth) s 1013D.
[74] *Corporations Act 2001* (Cth) s 1013E.
[75] *Corporations Act 2001* (Cth) s 1013F.
[76] FSC, Standard No. 23 Principles of Internal Governance and Asset Stewardship, July 2017.

disclosure arrangements – enhancing, for instance, disclosure around managers' use of proxies and their voting decisions. The FSC sees similar opportunities to improve governance and enhance disclosure in private markets, and is keen to explore such an idea with ASIC.

Recommendation 4.1: The FSC recommends that product disclosure obligations be simplified in RG 168 to make compliance easier and understanding ASIC's expectations clearer, and to make disclosure documents more understandable for retail investors. In addition, we propose – subject to ASIC's input – to initiate an industry-led process to codify best practice disclosure and governance principles for private markets.

Recommendation 4.2: The FSC recommends that any changes to capital market regulation should be evidence-led and aligned with global standards such as in the US

4.1. Opacity

4.1.A. Public availability of information

The topic of data collection concerning private markets is dealt with in section 6. It is important to acknowledge in this section that "private markets" and "unlisted" products are less transparent than their "public" or "listed" counterparts. This is not simply because there are fewer regulatory reporting requirements. It is also a result of the fact that in illiquid markets it is sometimes less relevant to value assets frequently and there is less transparency with price discovery, the benefits of which we have touched on above.

Regulators primarily focused on public markets may understandably find the relative opacity of private markets concerning, but as discussed above, there are legitimate reasons for this that are a fundamental feature of the attractiveness of private assets. The FSC agrees with ASIC that an appropriate level of transparency is, in principle, desirable. It is important, however, to ensure that it is achieved efficiently, fairly and accurately, otherwise greater regulation risks causing harm to investors – especially retail investors – because inaccuracies around what is disclosed to the market may lead to suboptimal investment decision-making by unsophisticated investors.

Sections 4.1.B to 4.1.E explain how some aspects of product disclosure may be improved to reduce key areas of opacity, while also providing some additional context on key difficulties associated with this process.

An important takeaway should be that demand for private market investments is also driving research houses, index providers and analytics firms to focus on the sector and develop more sophisticated ratings methodologies, indices, and analytical models to demystify private market funds and assets. As noted by BlackRock – which has recently acquired the leading private markets data analytics firm Preqin:

> *"Fog will give way to transparency. Compared to the radical transparency in public markets, we face the fog of private markets. But as clients allocate more to private markets, they're demanding better data to drive investment decisions, capital formation, risk management,*

and portfolio construction."[77]

The FSC endorses the observation by IOSCO that as retail investors play a greater role in private markets, this will come at with the need to consider an appropriate level of governance standards and oversight.[78] However, it is also important to temper this by giving weight to IOSCO's warning that:

> "*Though not straightforward, it is clear that any attempts to increase transparency (either for regulators or market participants) in a market built with opacity as a key functional feature would need to carefully balance the increased costs to market participants, with the benefits to the financial system more broadly*."[79]

4.1.B. Performance & complexity

The easiest way to form a quick, independent view of an asset's performance is to look at the price it is being sold at on an open and free market. While this may be the traded value, it does not follow that it is the "right" value. The illiquid nature of private markets means that the performance of an individual unlisted asset is typically assessed on the basis of a valuation conducted or commissioned by the fund manager. The risks associated with individual asset valuations and the FSC's recommendations for addressing them are covered in section 4.2.

On a fund level, where there may be thousands of unlisted assets (or fractional interests in them), it is understandable that ASIC is concerned investors may find it difficult to challenge performance claims made by fund managers. As addressed in section 4.1.C, there are circumstances in which fund managers may have a vested interest in maximising the apparent size of returns to maximise their fees and attractiveness to investors.

However, it should be noted that in all trustee and custodial type arrangements, public and private, bad incentives may exist, but they are managed through setting robust governance processes and internal controls as well as disclosing risks and complying with other legal obligations. As part of this, a key protection for investors in private markets is ensuring that valuations are conducted and disclosed in accordance with a rigorous and, where possible, independent process.

At a portfolio level, there is also no settled methodology for measuring performance over time. Potential options include tracking:

- internal rate of return (**IRR**), which can be distorted by the timing of cash flows and assumptions around reinvestment rates;[80]
- time weighted return (**TWR**), which has comparability issues with returns calculated using IRR;
- net multiples on invested capital (**MOIC**), which overcomes some of the issues associated with IRR and TWR but relies on investments being made over similar time horizons and is not risk-adjusted;
- different types of public market equivalents (**PME**), whose most common methods and

[77] BlackRock, 2025 Private Markets Outlook, 2025, p. 4.
[78] IOSCO, Thematic Analysis: Emerging Risks in Private Finance, September 2023, p. 48.
[79] IOSCO, Thematic Analysis: Emerging Risks in Private Finance, September 2023, p. 47.
[80] James Smallwood, Global Head of Solutions Engineering for Private Markets at BlackRock, Preqin, Public to private: how benchmarks can drive better investment outcomes, 20 March 2025.

accompanying issues are set out in the table at Appendix 9.4;

- total value to paid-in capital, which fails to factor in the time-period of an investment or the impact of inflation;
- price or return relative to tailored benchmark indices, which can be extremely complicated and require a significant investment of time and effort to keep up to date;[81] and
- price or return relative to benchmarks based on the share price performance of one or more publicly listed private market fund, which is problematic because public trading opportunities may lead to significant volatility in the benchmark and the idiosyncrasies of individual funds (and market sentiment in relation to them) may also create distortions.[82]

These difficulties reflect the fact that:

> "*Unlike public markets, where risk-adjusted returns help control for systematic risks across stocks, private markets require a more tailored benchmarking approach based on vintage year, region, industry sector, and other fund or deal characteristics to ensure meaningful comparisons.*"[83]

As acknowledged by ASIC, all approaches to assessing private market performance have flaws and it may be legitimately questioned whether like-for-like comparisons can be made between public and private market equivalents.[84] While ASIC uses the latter point to query the accuracy of private markets' claimed out-performance, it is also an important reason why caution is required in undertaking any data collection or comparative exercise. Indeed, the complexity and diversity of PME metrics demonstrates the difficulty of achieving data comparability, particularly in ways which are accessible to retail investors. The FSC also considers that this underscores the importance of ensuring integrity in performance tracking.

It is also important to note that there are limited secondary market exit opportunities for most private market investments, and where such secondary transactions occur, they are often at a discount.[85] This can represent a practical barrier to accruing market evidence to help investors cross-check a fund manager's reported performance.

As has already been noted, research houses, index providers and analytics firms are already committing significant resources to reduce the opacity of private markets. The FSC therefore considers that the most appropriate action for ASIC regarding fund performance is to ensure that individual product performance is measured based on pre-determined and transparent metrics which are disclosed upfront to investors.

Recommendation 4.3: The FSC recommends RG 168 be amended to set an expectation that individual product performance should be measured and disclosed to investors based on pre-determined and transparent metrics which are disclosed upfront to investors.

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[81] SBAI, Private Market Valuations - Governance, Transparency and Disclosure Guidelines, 30 January 2025, p. 17.
[82] SBAI, Private Market Valuations - Governance, Transparency and Disclosure Guidelines, 30 January 2025, p. 17.
[83] James Smallwood, Global Head of Solutions Engineering for Private Markets at BlackRock, Preqin, Public to private: how benchmarks can drive better investment outcomes, 20 March 2025.
[84] ASIC, Discussion Paper: Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets, February 2025, pp. 24 and 39.
[85] IOSCO, Thematic Analysis: Emerging Risks in Private Finance, September 2023, p. 39.

4.1.C. Fees

Firstly, it should be reiterated that in all trustee and custodial type arrangements, public and private, bad incentives may exist, but they need to be managed through setting robust governance processes and internal controls as well as disclosing risks and complying with other legal obligations.

All products with fees may have incentives to do the wrong thing. This is not unique to private markets. While wholesale and institutional investors are very alert to risks associated with fees, some retail investors lack this level of awareness. The FSC considers that related risks can be managed through appropriate product disclosure and fund governance processes for products targeted at retail investors.

The vast diversity within private markets complicates the ability to make accurate generalisations about fee structures across the sector. This makes it correspondingly more difficult to make one-size-fits-all regulations about how fees ought to be charged. After all, since private markets often involve active management, it is understandable for fees to be higher and/or calculated differently to public markets. Similarly, funds which employ leverage may have significantly higher fees than those which do not, but this may be offset by correspondingly higher returns.

Potentially higher fees, however, should be viewed in the context of private markets' historically higher returns net of fees. Indeed, the lowest fee product is not always the best product for retail investors. As noted by the Financial System Inquiry:

> "*In some cases, higher costs and fees may be in the interests of members. For example, alternative asset classes, such as infrastructure and other unlisted investments, tend to be more expensive to manage, but they may also diversify risks and offer higher after-fee returns for members.*"[86]

The retail fees in private markets also reflect the fact that most retail investors are not equipped to make private asset investments directly (eg due to the size of transactions, the required expertise or due diligence) and require intermediation through registered MISs, RSEs, platforms and advisers. This invariably results in greater complexity, and fees are an essential cost of entry for non-professional investors (as well as some institutions).

Some funds impose performance-based fees. Many investors require this to show alignment with performance. This can be problematic if the opacity of fund performance makes it difficult for investors to independently track fund performance, but the FSC considers the most practical way of addressing this is through setting clear governance processes (see section 4.1.B) and robust valuation processes (see section 4.2). The FSC also considers that to ensure staff are appropriately incentivised, employment incentive payments should be calculated based on fund performance, rather than fee collection. This is one way of helping to ensure that the interests of fund managers are aligned with the interests of investors.

There is also diversity in the methodologies applied to calculate fees. For example, fees may be calculated based on the net or gross asset value, the size of committed or deployed capital, etc. The appropriateness of a given methodology typically depends significantly on the chosen benchmark and associated waterfall structures. Investors in different parts of private markets also have different preferences and expectations for how fees are calculated and disclosed.

Differences in valuation methodology are appropriate because different assets are susceptible to

[86] David Murray et al, Financial System Inquiry Final Report, November 2014, pp. 102-103.

having their value measured in different ways in different circumstances. A software program may cost AU$50 million to build and be, theoretically, infinitely scalable at a low cost. A cost-based valuation methodology might ascribe the business a value of AU$50 million plus other sunk costs. This may be appropriate in the first few years of the company, as it builds its customer base and starts to earn revenue. However, if after several years the software company is earning net revenues of AU$250 million per annum, the real value of the business may be better measured through an income-focused approach which looks at the company's income generation (including potential for further revenue growth), or perhaps a market-based approach which looks to the price at which comparable software companies have recently been traded. At its early stages, it would not be in the interests of investors to apply an income-based approach, because it may materially undervalue the business, and equally at later stages of the business a cost-based approach is likely to do so. This example illustrates that judgment needs to be exercised by a valuer – a fact which also applies to other aspects of the valuation, such as which inputs to accept, assumptions to make, and models to rely on.

The FSC therefore considers it is not appropriate to mandate a calculation mechanism and there is limited value in imposing change on the wholesale and institutional side.

Some funds also collect upfront fees when entering into deals, for instance origination fees in real estate lending. The FSC understands there is some inconsistency between market participants regarding whether such fees are collected, whether the income is passed through to investors, and the extent to which these payments are disclosed to investors. The FSC considers that product disclosure documents should acknowledge the circumstances in which upfront payments will be received, how those payments are calculated, and whether those payments are passed through to investors. The FSC does not consider it appropriate to mandate where those funds are allocated, as in some instances upfront payments can represent reimbursement for activities such as resource-intensive fund due diligence, but considers new obligations should focus on the disclosure of any such payments.

The FSC also observes that given the heterogeneity of private markets, it would be very difficult to take a uniform approach to fee disclosure modelled off RG 97 *Disclosing fees and costs in PDSs and periodic statements* (**RG 97**).

Given private markets are in the process of undertaking a significant and resource-intensive data transformation, led by research houses, index providers and analytics firms, the FSC is concerned that duplication in this area by regulators may crowd out third-party providers who are already incentivised to undertake this activity.

Recommendation 4.4: The FSC recommends industry-led best practice principles should prescribe that performance-based incentives for domestic investment teams in retail funds should be based on the fund's investment performance, not the fees collected. It is important to avoid regulations that might push investment teams offshore.

Recommendation 4.5: The FSC recommends that funds should retain flexibility to design their fee structures based on the nature of their investment products but should continue to be required to clearly disclose how fees are calculated.

Recommendation 4.6: The FSC recommends that industry-led best practice principles should expect a fund's product disclosure documents to identify the circumstances in which upfront payments might be received, how they may be calculated, and whether those payments would be passed through to investors.

4.1.D. Preferential treatment of investors

In its Discussion Paper, ASIC has expressed concern that the opacity of private market funds means that some investors may be given preferential investment terms.[87] The FSC considers that in principle, preferential treatment over investors should not occur unless it is transparently disclosed to all investors. In addition, where terms have been agreed which bestow preferential rights on related parties, there should be appropriate governance arrangements in place to manage the conflict of interest (see section 4.3 on conflicts).

It is important to note, however, that transactions in private markets are often sequentially negotiated on a bilateral basis. In these circumstances, it is unsurprising that different parties may choose to negotiate different terms which reflect their individual needs. Investors who offer greater capital may also possess greater bargaining power. Similarly, investors who offer expertise which is relevant to planned active investment strategies add value to the planned investment – such as through a joint venture, may be able to negotiate different terms. Early or late-stage investors may also be able to negotiate more favourable terms because a fund manager's need for their capital commitment may be more acute.

The FSC does not consider that it is appropriate for regulators to place strict limitations on the types of preferential arrangements which may be negotiated by funds. However, the FSC does think that a fund should not accept funds from retail investors and then negotiate preferential deals with other parties unless it has first been disclosed to the retail investors that such a possibility existed. The FSC anticipates that generalised forward-looking terms in disclosure documents should be capable of fulfilling this requirement.

Recommendation 4.7: The FSC recommends that an RE should not be able to accept funds from retail investors and then negotiate preferential deals with other parties unless it has first been disclosed to the retail investors that such a possibility existed. If any preferential deals exist before the acceptance of funds from retail investors, the existence of these arrangements should also be disclosed. The FSC suggests that this should be implemented as an expectation of the regulator in RG 168.

4.1.E. Market cleanliness

In its Discussion Paper, ASIC has identified the concern that informational asymmetries between funds and investors may lead to market misconduct and the exploitation of investors. Importantly, however, most market integrity issues ASIC is concerned about are already covered by Part 7.10 of

[87] ASIC, Discussion Paper: Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets, February 2025, p. 36.

the Corporations Act. Other obligations like mandatory reporting and disclosure obligations, DDO/TMD, SIS Act obligations of superannuation trustees, Ch 5C obligations of REs, general AFS licensee obligations, misleading and deceptive conduct, the law of negligence, breach of contract and breach of fiduciary duties also afford various protections.

The FSC and its members strongly support measures to protect the integrity of public and private markets. To this end, the FSC makes a series of practical governance and disclosure-related recommendations in the course of this submission. However, the FSC is not aware of a direct, material, relevant gap in ASIC's market integrity enforcement powers which would support a recommendation for reforms in this area. The FSC does, however, wish to underline the importance of ASIC's enforcement powers, both for general and specific deterrence purposes. In addition, the FSC considers that the best safeguard of market cleanliness is through preventative measures such as governance structures and product disclosure, particularly in relation to valuations (see section 4.2).

4.2. Valuation uncertainty

The FSC considers that ensuring processes are in place to provide for robust valuations to occur is the most important way through which private markets may be made more transparent and less opaque, while helping to manage conflicts, increase resiliency, enhance fairness, protect retail consumers and increase investor confidence. By making valuation processes more robust, investors and regulators can also be made more confident in the reliability of valuations and unit prices.

Valuations are comparatively easier in public markets because by its nature, price discovery is instant.

In contrast, private markets assets are more opaque, making reliance on valuation frameworks higher. The illiquidity of markets makes price discovery either rare or, sometimes, non-existent due to the absence of sophisticated secondary markets. The uniqueness of each asset also makes using different transactions as performance indicators potentially unreliable. As addressed in section 4.1.B – there are practical issues with measuring how a fund is tracking at a whole of portfolio level, which means there is a higher need for accurate valuations of individual assets.[88]

Key issues around private market valuations include:

- Methodology, since different approaches to the same asset may result in radically different valuations;
- Accuracy, noting that valuers exercise significant discretion around assumptions and inputs which may alter the end valuation;
- Timeliness, since stale valuations may be unreliable; and
- Process and independence, to protect the integrity of the end valuation.

It is understandable, given the opacity of private markets, that ASIC is concerned valuation uncertainty may create opportunities for investors to be exploited. After all, valuations impact investment entry and exit prices, performance measurement and fees. Currently, there is very limited evidence of deliberate exploitation in this area and, to the extent that it might exist, such conduct would fall afoul of existing legal obligations owed by fund managers. Nonetheless, in this section the FSC proposes several measures that we consider can provide reassurance to the regulator and investors about the level of integrity being exercised by fund managers, while also

[88] SBAI, Consultation Paper 5.1 - Private Market Valuations, 30 January 2025, p. 2.

helping to ensure markets operate efficiently.

Open-ended funds can raise valuation and liquidity difficulties because they can accept and redeem investors during their investment term, which may create an unfair playing field for investors. For example, for funds offered by RSEs there is a risk that if unit prices are not adjusted frequently then more sophisticated members may be able to buy in/out of specific private market investment options to arbitrage opportunities, at the expense of less sophisticated members. Similarly, if falls in valuations are anticipated, an undue delay in private asset mark-downs may result in a first mover advantage for investors who adjust their asset allocations quickly, with remaining investors incurring a disproportionate share of losses. The incentive to achieve these benefits and avoid these losses can be a driver of liquidity issues (see section 4.4). This risk can be mitigated through changes to valuation and liquidity practices.

It is also important to acknowledge that the live re-pricing of assets on public markets does not necessarily provide a superior indicator of real value relative to private markets. Public markets often veer between excessive optimism and pessimism, and are prone to shocks where pricing is driven by major shifts in sentiment. This said, *price discovery* is easier on public markets. This is not to say, however, that very frequent valuations of illiquid, long-term assets are necessarily always desirable or in the best interests of investors. In private markets, a balance needs to be struck on the frequency of valuations. As Howard Marks stated in 2022:

> "*Mightn't it be fair for [fund managers] to decline to mark down private investments in companies that have experienced short-term weakness but whose long-term prospects remain bright? And while private investments might not have been marked down enough this year, isn't it true that the prices of public securities are more volatile than they should be, overstating the changes in long-term value? I certainly think public security prices reflect psychological swings that are often excessive. Should the prices of private investments emulate this?'*[89]

Whether the reduction of observed volatility seen in private markets is desirable or not remains a controversial topic.[90] However, it is less controversial to observe that private markets are presently unable to match the level of price discovery seen on public markets. Moreover, as acknowledged by the UK's Financial Conduct Authority, valuations themselves rely on professionals exercising their best judgment and they are not infallible.[91]

Significantly, APRA's review of RSE licensees[92] has identified shortcomings in valuation processes which are already in the process of being remediated, with these issues being resolved through tailored action plans put in place by APRA supervisors. Regulatory uplift in RSEs is already cross-pollinating external fund managers who compete for superannuation fund mandates. Specifically, there were also issues flagged in APRA's review directly relating to RSE's oversight of the valuations of external fund managers. APRA considered that there was a need for RSEs to scrutinise these valuations. APRA's regulatory expectations are thus driving a general increase in standards, but the FSC nonetheless makes several recommendations informed by APRA's findings.

It should also be acknowledged that valuers have, and need, significant discretion to be able to value an asset appropriately. Structure is given to these decisions by a variety of different valuation

[89] Howard Marks, Oaktree Capital Management, What Really Matters?, 22 November 2022.
[90] Cliff Asness, AQR, X post, 1 November 2022.
[91] Financial Conduct Authority, Multi-firm Review: Private market valuation practices, 5 March 2025.
[92] Australian Prudential Regulation Authority, Governance of Unlisted Asset Valuation and Liquidity Risk Management in Superannuation, December 2024.

standards, including the:

- International Valuation Standards set by the International Valuation Standards Committee (**IVSC**);[93]
- Alternative Investment Standards set by the Standards Board for Alternative Investments (**SBAI**);[94]
- International Private Equity and Venture Capital Valuation Guidelines agreed by a diverse range of investment fund peak bodies (**IPEV**);[95]
- Guide to Sound Practices for Valuation of Investments set by the Alternative Investment Management Association (**AIMA**);[96] and
- INREV Guidelines by the European Association for Investors in Non-Listed Real Estate Vehicles (**INREV**) (recommended for use by the Asian Association for Investors in Non-Listed Real Estate Vehicles (**ANREV**)).[97]

These valuation standards are also supplemented by guidance from accounting standards.

The flexibility given to valuers – conferred by the accounting standard AASB 13 *Fair Value Measurement* – is important. Appendix 9.5 sets out at a high-level the benefits and issues associated with different categories of valuation methodologies. For example, in a private credit fund if a borrower defaults on a loan this may necessitate a transition of valuation method to a fair value valuation methodology, which may cause a significant but unforeseeable departure from the fund's previous valuation. Similarly, a venture capital investment may initially be valued on a cost-based approach because of difficulties in estimating whether the investment will ever be profitable, but once the investment generates a reliable income it may be appropriate to transition to an income-based valuation methodology. The valuation inputs also vary significantly depending on the precise asset. For example, property vacancy rates, debt, level of development, etc, are very relevant to valuing a real estate project, but potentially irrelevant to valuing a start-up business. In short, valuation is often an art rather than a science and valuers need sufficient flexibility to exercise their professional judgment, especially "*in the areas of data and inputs, valuation models, and quality controls*".[98]

As noted by the SBAI:

> "*While valuation is generally expressed as a single number it is important to recognise that the single number is merely the expression of a range of potential outcomes that derive from the valuation process. It follows that investors need to be informed about the valuation process and have confidence in its breadth and robustness.*"[99]

It is also important to note that research houses are increasing their presence in private markets and are applying an increasing amount of scrutiny to the valuations reached by fund managers. This is a positive trend which regulators should be careful to avoid inhibiting.

In the following sections, the FSC does not propose any restrictions on the methodologies which should be available to valuers. Instead, the FSC proposes a range of measures focused on the process which should be followed by fund managers in reaching valuations. The objective of this is to ensure that portfolio-level valuations can be regularly disclosed to the market following a robust

[93] International Valuation Standards Committee, International Valuation Standards, January 2025.
[94] SBAI, Alternative Investment Standards, 30 November 2015.
[95] IPEV, International Private Equity and Venture Capital Valuation Guidelines, December 2022.
[96] AIMA, Guide to Sound Practices for Valuation of Investments, July 2023.
[97] INREV, INREV Guidelines, undated.
[98] International Valuation Standards Committee, International Valuation Standards, January 2025, p. 147.
[99] SBAI, Alternative Investment Standards, 30 November 2015, p. 9.

procedure in which investors and regulators can be confident. As recently acknowledged by the SBAI:

> *"From an investor perspective, it will be difficult to assess the specific assumptions used in the valuation of individual assets in a fund, and the consistency of the approach over time.*
>
> *"This means that investors need to focus on the governance arrangements and procedures that managers and their valuation service providers put in place to oversee and manage the valuation process to gain a better understanding of how the conflicts of interest associated with the subjectivity and flexibility in relation to valuation methodologies is addressed and managed."*[100]

The FSC's focus is consistent with recommendations from the UK Financial Conduct Authority's multi-firm review of private valuation practices. This review found that while practice was broadly positive, there was room for improvement around the identification of less obvious conflicts, the level of independence within valuation processes, and asset revaluation triggers (conflicts are addressed in section 4.3).[101] The solution to this is through uplift in valuation processes and governance arrangements.

Recommendation 4.8: The FSC recommends that most risks concerning private markets can be addressed through improvements to valuation practices.

Recommendation 4.9: The FSC recommends that any changes to the regulation of asset valuations should focus on the process by which a fund manager reaches a valuation, rather than mandating any particular valuation inputs, approaches or methodologies.

4.2.A. Look through and avoiding duplication

Before considering what best practice looks like in private market asset valuation, it is important to consider how different fund structures give REs and RSELs varying levels of look through to underlying assets. This is particularly relevant to platforms, funds of funds, and superannuation master trusts (referred here to as **overarching fund managers**), and has very significant implications for how they should – and can – undertake valuations and re-valuations.

The FSC strongly supports imposing more robust valuation requirements on private market funds (see subsequent sections). However, the FSC also considers that regulations in this area should be targeted towards ensuring that responsibilities exist as close as possible to the underlying asset and its manager. This should be accompanied by greater clarity on the due diligence and oversight expected of overarching fund managers who are further removed from the underlying fund.

Nonetheless, any overarching fund manager (eg a superannuation fund) which also invests directly in unlisted assets should be required to undertake the more rigorous valuation procedures set out in sections 4.2.B to 4.2.C in relation to the unlisted assets it directly manages.

The rationale for this position is that if the overarching fund manager outsources an investment

[100] SBAI, Consultation Paper 5.1 - Private Market Valuations, 30 January 2025, p. 6.
[101] Financial Conduct Authority, Multi-firm Review: Private market valuation practices, 5 March 2025.

function to a specialised external manager, it is not reasonable for the regulator to expect the overarching fund manager to be fully equipped to accurately second-guess the specialist's decision-making or monitor its day-to-day activities. Doing so would be duplicative and inefficient. Instead, the FSC considers that overarching managers should be expected to undertake appropriate due diligence to verify the claimed expertise of specialist managers and ensure the specialist has appropriate and robust governance arrangements in place. It is not necessary for regulations to mandate that overarching fund managers carefully track the performance of their external managers, as the market already imposes strict discipline around this. The key point is that the FSC strongly believes it should not be incumbent on an overarching fund manager to take a quasi-regulatory approach and second-guess each valuation provided to them by a specialist external fund manager, provided the external fund manager has appropriate procedures in place which have been verified by the overarching fund manager.

By giving overarching fund managers permission (but not an obligation) to defer to their external fund managers on valuations in this way, the regulator can also reduce the frequency of situations arising where different fund managers value the same asset differently.

The FSC recognises that this proposal will also require buy-in from APRA and suggests that it can be progressively implemented once both ASIC and APRA are satisfied that other measures recommended in this submission have improved best practice conduct across the private markets industry.

Recommendation 4.10: The FSC recommends that, following due diligence into the expertise and governance arrangements of a specialist external fund manager, an overarching fund manager should be permitted to exercise a reasonable level of reliance on valuations provided to them by the specialist external fund manager.

4.2.B. Best practice

Across industry there is a diversity of views on valuation best practice. This is partly a reflection of the diversity of private markets and the specialisation of funds to limited sectors of the market. But as recently acknowledged by the SBAI:

> "*large variations in quality of industry practices can allow bad actors to go undetected, undermining confidence in the asset class and harming investors. Hence, the industry should have an interest in addressing these concerns*"[102]

The FSC agrees and suggests there is benefit in setting common disclosure and process-focused standards for:

- governance of valuations;
- the frequency of revaluations; and
- setting of pre-determined re-valuation triggers.

The governance of valuations

[102] SBAI, Private Market Valuations - Governance, Transparency and Disclosure Guidelines, 30 January 2025, p. 2.

The FSC considers that valuations should occur in accordance with a pre-determined valuation policy and be overseen by a valuation committee which is subject to direct board or board committee oversight. In line with section 4.2.A, overarching fund managers should not be required to comply with recommendations 4.11 to 4.22 in relation to functions which they have outsourced, provided that they are reasonably satisfied with the valuations which they are provided with.

Guidance on the potential contents of a valuation policy can be found in valuation standards, such as the SBAI's Alternative Investment Standards,[103] although the FSC is not supportive of measures to prescribe the precise contents of these policies without further consultation. The FSC considers the contents of valuation policies is something which could be set through the development of industry-led best practice principles for funds. This would provide a flexible mechanism which could be increased over time to enhance the resilience of the industry and increase the confidence of investors and regulators in valuations and other matters regarding fund governance and disclosure.

A valuation committee should have sufficient independence from the investment side of the business that investment team members cannot block adverse decisions by the valuation committee (including by means of a board committee to which the valuation committee reports). APRA's review of unlisted assets flagged a need for improvement in this area for RSELs where their review found several examples of conflicts of interest in valuation committees. Where external valuation professionals (ie professional valuers and/or professional valuation assurance providers) are appointed by a fund manager to inform valuation committee processes, they should also be appointed by and answerable to the valuation committee rather than the investment team to reduce potential for a conflict of interest to develop.

Since the remuneration of investment team members may be determined by decisions by the valuations committee, it is desirable in principle for them to be excluded from the committee's membership. However, the FSC acknowledges that this may be highly problematic in the case of some REs and registered MISs, where there may not be enough in-house personnel to perform both roles and the cost of outsourcing one function may be prohibitive due to the limited pool of qualified, experienced and independent/unconflicted individuals. The FSC is aware, for example, of instances where small funds have a representative on their valuation committee who is involved in investment decisions but also owes obligations to the company as a company director and a responsible person.

The FSC therefore supports a regulatory *expectation* that valuation committees will consist of fully independent members, with flexibility to comply on an "if not, why not" basis, with the explanation to be provided in the relevant product disclosure documents.

Recommendation 4.11: The FSC recommends that valuations should occur in accordance with a pre-determined valuation policy. Industry-led guidance on best practice principles in this area would provide a flexible mechanism for setting clear standards and potentially uplifting them over time.

Recommendation 4.12: The FSC recommends ASIC should make it clear in regulatory guidance that it expects valuation committees should be subject to direct board or appropriately constituted

[103] SBAI, Alternative Investment Standards, 30 November 2015, p. 11.

board committee oversight.

Recommendation 4.13: The FSC recommends that in regulatory guidance, the regulator should set a clear expectation for valuation committees to be reasonably separate from investment teams.

Recommendation 4.14: The FSC recommends that in regulatory guidance, ASIC should set a clear expectation funds' governance arrangements should be structured so that investment team members cannot block unfavourable decisions made by the valuation committee.

Recommendation 4.15: The FSC recommends that external professional valuers and external professional valuation assurance providers appointed by a fund manager to inform valuation committee processes should be appointed by and answerable to the valuation committee rather than the investment team. Industry-led guidance on best practice principles in this area would provide a flexible mechanism for setting clear standards and potentially uplifting them over time.

Recommendation 4.16: The FSC recommends that as a general proposition, the membership of valuation committees should exclude investment team personnel. However, given the difficulties of finding experienced personnel, exceptions should be permitted on an "if not, why not?" basis, with further explanation to be provided in the disclosure material made available to retail and wholesale investors. Industry-led guidance on best practice principles in this area would provide a flexible mechanism for setting clear standards and potentially uplifting them over time.

Frequency of revaluations

Under section 601FC of the Corporations Act, REs are required to "*ensure that the scheme property is valued at regular intervals appropriate to the nature of the property*". We acknowledge that there are risks that funds are not valuing assets at appropriate intervals, which leads to "*stale*" valuations. As IOSCO stated:

> *"Private valuations are inevitably stale. For example, where listed equities can be valued by investors many times a minute, private funds may value their assets as infrequently as quarterly, or even annually, and do not have active secondary markets. This may lead to a gap where there is a large change in valuations in public markets in the period between valuations."*[104]

As the IMF notes: "*stale valuations could also distort capital allocation, exacerbate conflicts of interest, and undermine confidence in private credit markets*".[105] Another value of more timely valuations is that they may assist with the future indexing of private markets by third-party data

[104] IOSCO, Thematic Analysis: Emerging Risks in Private Finance, September 2023, p. 23.
[105] IMF, Global Stability Report: The Last Mile: Financial Vulnerabilities and Risks, April 2024, p. 87.

providers. If valuations are conducted on a more frequent basis, this could help ensure asset values more closely reflect market conditions at the time of redemption as well as potentially reducing the size of large fluctuations in value.

The FSC notes that APRA's Superannuation Prudential Practice Guide *SPG 530 Investment Governance* (**SPG 530**) presently provides guidance that RSE Licensees "*undertake valuations on at least a quarterly basis*", with expectations of an RSE licensee considering "*independent valuations across asset classes, either on a sample or rotational basis.*"[106] The FSC also sees a potential role for external professional valuation assurance providers to provide independent valuation scrutiny as a substitute for reliance on independent valuers.

For open-ended funds that are accessible to retail investors, the FSC endorses setting a requirement that funds will undertake quarterly revaluations paired with a sample or rotational independent valuation/valuation assurance requirement modelled off SPG 530.

Outside of open-ended funds accessible to retail investors, the FSC endorses the application of this expectation in-principle but notes there are circumstances in which these revaluation frequencies are not appropriate or desirable.

For example, a closed-ended fund which is not due to return capital to investors for another 5 years and only contains institutional funds should not be required to undertake the unnecessary expense and inconvenience of more frequent valuations at set time intervals. In such circumstances the parties should have the flexibility to negotiate revaluations at the frequency which best suits their needs and those of their underlying investors – for example, revaluations when investment rounds close. This may also apply to some closed-ended vehicles involving wholesale investors.[107]

As such, where a fund is open to wholesale but not retail investors, the FSC recommends that quarterly revaluations and associated independent valuations/valuation assurances occur on an "if not, why not" basis. Where a fund is not open to retail or wholesale investors, the FSC suggests that the parties should be left to negotiate appropriate terms and conditions which reflect their needs and investment strategies.

Noting recommendation 4.10, the FSC considers that once the specialist external has discharged its obligation to update its valuations (quarterly, through a revaluation trigger, or otherwise) this information is then promptly communicated to the overarching fund manager which transmits it to investors in the form of revised unit prices.

The materiality of investments is another important consideration. The main underlying reason for more frequent and rigorous valuations is the benefit this offers to investors. However, this needs to be kept in context. A fund may have an exposure to private markets but in a highly diversified way, for example through fragmented ownership arrangements or funds of funds. If a series of small, diluted exposures exist to different unlisted assets, any revaluation requirements need to be cognisant of the financial materiality of each exposure and the relative benefits of frequent revaluation versus the costs of achieving this.

The FSC also endorses APRA's expectation for robust revaluation triggers to be set. This reflects the fact that quarterly revaluations may be insufficient if an important event results in material changes to the market or the asset in question. By way of example, if a private credit loan of financially material size to the fund is swapped for equity as a result of borrower default, this should probably be a revaluation trigger, and whether the valuation should remain at par should be subject

[106] APRA, SPG 530 Investment Governance, July 2023, p. 35.
[107] SBAI, Consultation Paper 5.1 - Private Market Valuations, 30 January 2025, p. 16.

to genuine consideration by the valuer (see recommendation 4.22). In line with recommendation 4.10, these triggers would only apply to underlying fund managers not overarching fund managers, provided the latter managers are reasonably satisfied that robust valuation governance processes are in place.

Examples of potential revaluation triggers identified by IPEV include:

> "▪ *significant changes in the results of the Investee Company compared to budget plan or milestone;*
>
> "▪ *changes in expectation that technical milestones will be achieved;*
>
> "▪ *significant changes in the market for the Investee Company or its products or potential products;*
>
> "▪ *significant changes in the global economy or the economic environment in which the Investee Company operates;*
>
> "▪ *significant changes in the observable performance of comparable companies, or in the valuations implied by the overall market; and any internal matters such as fraud, commercial disputes, litigation, changes in management or strategy."*[108]

The FSC considers that funds should pre-emptively set revaluation triggers while also retaining discretion to conduct revaluations in response to black swan events.

The FSC also considers that individual revaluations need to genuinely reset asset values, rather than endorse par values.

Recommendation 4.17: The FSC recommends that the regulator should set a clear expectation through regulatory guidance that for open-ended funds involving retail investors, revaluations should occur on a quarterly basis, with sample or rotational independent valuations or external professional valuation assurance occurring across asset classes.

Recommendation 4.18: The FSC recommends that for funds involving wholesale investors but no retail investors, revaluations should occur in line with recommendation 4.17 above, but compliance with this expectation would be on an "if not, why not basis", with non-compliance identified and explained in product disclosure documents. Industry-led guidance on best practice principles in this area would provide a flexible mechanism for setting clear standards and potentially uplifting them over time.

Recommendation 4.19: The FSC recommends that revaluation arrangements concerning investments between institutional investors should not be altered by recommendations 4.17 and 4.18.

[108] IPEV, International Private Equity and Venture Capital Valuation Guidelines, December 2022, p.39.

Recommendation 4.20: The FSC recommends that a threshold for the financial materiality of an investment in unlisted assets should be set, with less rigorous expectations for individual asset-level valuations where that threshold has not been met. The FSC suggests that such a threshold should be set in an ASIC regulatory guide, following consultation with industry.

Recommendation 4.21: The FSC recommends that funds should pre-emptively set robust revaluation triggers, while retaining flexibility to respond to unanticipated events. The FSC suggests that ASIC should make clear in an ASIC regulatory guide that it expects revaluation triggers to be set, but that further details should be left to industry-led guidance on best practice principles.

Recommendation 4.22: The FSC recommends that it is best practice for revaluations to genuinely reset asset values and that the regulator should make this expectation clear in an ASIC regulatory guide.

4.2.C. Other

Offshore valuations

In relation to the approach suggested at section 4.2.A, it is important to acknowledge that sometimes an underlying fund manager will be offshore and may therefore comply either with its own domestic or international valuation or accounting standards which govern this area. In such circumstances, it is still unrealistic to expect an Australian overarching fund manager to have the capacity to trace and second-guess its external specialist manager's offshore asset valuations. The FSC therefore suggests the approach in section 4.2.A should also apply in these circumstances. To the extent that this creates reporting issues, the overarching fund manager should retain flexibility as to how to address them but should disclose its approach. For example, if an external specialist fund manager only values its assets annually, it should be disclosed by the overarching fund manager that it outsources some management functions to external managers who conduct infrequent asset valuations.

The FSC expects that as research houses, index providers and data analytics firms continue to make strides in systematising private markets, this issue will become less and less significant.

Auditors

Registered MISs and RSEs are already required to generate financial reports which are required to be audited. As noted by the SBAI:

> *"Crucially, in relation to valuation of private market assets, the auditor will not typically underwrite the accuracy of the valuation. Their role is simply to assess whether the valuation policy has been followed, and that the assumptions and inputs used are reasonable. Differences of opinion regarding assumptions and inputs will not typically be raised unless the auditor believes them to be materially false or misleading. In such a scenario where an*

auditor fundamentally disagrees with the actions of the manager, they will have the opportunity to raise concerns to the fund's board of directors, or they can resign from their position if they feel that their concerns are not being adequately addressed.

"The approach taken by auditors can be described as risk based. Dependent on criteria such as the manager's capabilities, experience, and resources, or the fund's complexity, liquidity, and leverage, an auditor may decide how to approach year-end review of valuations. Funds deemed to be low risk may have ~30-40% of their valuations reviewed, while extremely complex or high-risk funds may have all their valuations reviewed. However, investors should be aware that the auditor is not endorsing the accuracy of the valuation, but only that the process to reach the valuation is deemed reasonable based on the evidence presented."[109]

In short, the role of auditors vis-à-vis valuations is to validate that proper valuation processes have been followed. In view of this, the FSC does not propose additional oversight over compliance with the valuation process recommendations in section 4.2.B.

In addition to ordinary audit arrangements, the FSC also notes the possibility of using external professional valuation assurance providers to provide independent valuation scrutiny as an alternative to reliance on independent valuers. The FSC is in principle supportive of such arrangements, provided that such assurance providers are held to the same standards as traditional auditors.

4.3. Conflicts

The FSC acknowledges the importance of ensuring that funds do not act on any conflicts of interest which are not appropriately managed through robust governance policies and disclosed to investors. Recommendations in this submission would, among other things, help to address conflicts and reduce the potential for funds and their employees to misuse their positions. In particular, if rigorous processes are put in place to protect the integrity of valuations, this significantly reduces the potential for conflicts to be acted upon in ways which damage investors.

It is important to note that funds already owe fiduciary and other obligations which require them to prioritise their investors' best interests. Funds are also obliged to manage conflicts appropriately under the AFS licenses. As such, the FSC does not propose changes to these core obligations but instead recommends changes to governance and disclosure policies to ensure that conflicts of interest are identified and managed appropriately. The FSC suggests that these changes should be explored through a hybrid approach of amending ASIC's regulatory guides and through the separate industry-led codification of best practice principles.

The FSC also notes that it is important for funds to retain flexibility to have the most appropriate governance arrangements in place. Unduly strict rules around conflict governance and information barriers risk making fund manager businesses very complicated (and expensive for investors) to operate, when lighter touch regulations may be more effective.

Following the UK Financial Conduct Authority's multi-firm review into private market valuation practices, the regulator noted:

"While all firms identified conflicts in their valuation process around fees and remuneration, and in many cases had limited these through fee structures and remuneration policies, other

[109] SBAI, Private Market Valuations - Governance, Transparency and Disclosure Guidelines, 30 January 2025, pp. 10-11.

potential conflicts were only partly identified and documented. These included potential valuation-related conflicts related to investor marketing, secured borrowing, asset transfers, redemptions and subscriptions and uplifts and volatility. We expect firms to identify, document and assess all potential and relevant valuation-related conflicts, their materiality and actions they may need to take to mitigate or manage them."[110]

The FSC suspects that in the Australian market there is similar room for improvement in the identification of less obvious conflicts of interest. To this end, the FSC suggests there may be benefit in the development of a non-exhaustive ASIC checklist setting out the conflicts which the regulator expects REs and RSELs to identify and manage. The key objective here is to raise awareness about less obvious conflicts of interest which ASIC expects funds to detect and manage.

On a fund level, the SBAI notes

> "*Manager-led secondaries, crossed-investments, or related party transactions, i.e., assets bought and sold between two vehicles managed by the same manager or transacted between related party entities, should be executed in accordance with managers' fiduciary obligations, disclosures to regulators and investors, and compliance policies and procedures governing the transactions.*"[111]

In MISs open to retail or wholesale investors, the FSC suggests prior to financially material and conflicted transactions occurring:

- independent valuations should be required on an "if not, why not" basis; and
- fund managers should also ensure that they have disclosed the possibility of these types of transactions to their investors.

With respect to the employees of a fund, the SBAI suggests:

> "*A manager should ensure that it has internal arrangements to manage and mitigate conflicts of interest, and this should include documented compliance policies and procedures (e.g., conflicts of interest policy). Conflicts of interest should be recorded and reported to senior management on a periodic basis (e.g., monthly or quarterly) or, in the case of conflicts requiring the approval of senior management, escalated as soon as reasonably practical. Where applicable, conflicts of interest should be reported to the fund governing body.*
>
> *"Examples may include, but are not limited to:*
>
> *a) Cross trades*
>
> *b) Fair allocation of trades / opportunities across different funds or accounts*
>
> *c) Employee/partners funds*
>
> *d) Funds that in turn invest in other internal/external funds with incremental fees*
>
> *e) Internal resource allocation across different funds/client accounts*
>
> *f) Personal Account dealing policies*
>
> *g) Allocation of expenses*
>
> *h) Use of affiliated service providers*
>
> *i) Lack of independent valuation*

[110] Financial Conduct Authority, Multi-firm Review: Private market valuation practices, 5 March 2025.
[111] SBAI, Consultation Paper 5.1 - Private Market Valuations, 30 January 2025, p. 7.

j) Differential terms or fees

k) Use of soft dollars/dealing commissions

l) Other business interests of investment manager employees

m) Gifts and entertainment

n) Suspension and/or gating of redemptions."[112]

The FSC endorses this passage and notes REs and RSEs are already, broadly speaking, aware of their obligations around conflicts of interest. However, what is most important is for them to be more proactive in identifying their conflicts and those of their employees, so as to ensure they are captured by their existing governance processes. The FSC would also like to see greater proactive disclosure of related-party transactions and relationships in product disclosure documents and – in the case of financially material transactions – communications to investors.

ASIC is also concerned that opaque private market fund structures may permit undisclosed conflicts of interest to exist as well as the misuse of confidential information. The FSC contends that while such concerns are legitimate, they apply equally to public markets and are dealt with by the existing law that makes responsible entities fiduciaries and requires AFS licensees to "*have in place adequate arrangements for the management of conflicts of interest*".[113] To the extent that conflicts are undisclosed or confidential information is abused, this is an enforcement issue. The recommendations in this submission will help to reduce the scope for such conduct to occur and make it easier to detect.

Recommendation 4.23: The FSC recommends that to raise awareness about less obvious conflicts which may exist in a fund environment, the regulator develop of a non-exhaustive checklist in RG 181 setting out the conflicts which the regulator expects funds to identify and manage.

Recommendation 4.24: The FSC recommends ASIC should set a clear expectation through regulatory guidance that in MISs open to retail or wholesale investors, prior to financially material and conflicted transactions occurring:

(1) independent valuations should be required on an "if not, why not" basis; and

(2) fund managers should ensure that they have disclosed the possibility of these types of transactions to their investors.

Recommendation 4.25: The FSC recommends that financially material related party transactions occurring in MISs should be disclosed to any retail or wholesale investors. Given practical limitations on ASIC's jurisdiction and the need to avoid creating regulatory barriers to entry to the Australian market, this disclosure requirement should be restricted direct dealings by domestic funds. It should not apply where, for example, an offshore fund is sold into Australia to wholesale

[112] SBAI, Alternative Investment Standards, 30 November 2015, p. 25.
[113] *Corporations Act 2001* (Cth) s 912A.

clients via a feeder structure. The FSC suggests that ASIC should make clear in an ASIC regulatory guide that it expects such disclosure to occur, but that further details should be left to industry-led guidance on best practice principles.

Recommendation 4.26: The FSC recommends REs and RSELs should have internal mechanisms to manage conflicts of interest, supported by comprehensive compliance policies and procedures. All conflicts should be recorded and reported periodically, with thresholds set for certain types of conflicts to require the approval of senior management. Industry-led guidance on best practice principles in this area would provide a flexible mechanism for setting clear standards and potentially uplifting them over time.

4.4. Illiquidity

Illiquidity characterises most private market assets, largely due to the lack of mature secondary markets in Australia and the unique nature of individual private market investments. According to the Future Fund, illiquidity risks may challenge a portfolio by creating an "*inability to meet near-term cashflow obligations*" and creating a loss of control over asset allocations.[114] Illiquidity may therefore reduce a fund's capacity to meet redemption requests or force asset sales which crystallise losses. In the latter case, if only liquid assets are sold this may change the profile of the remaining fund assets.

The absence of mature secondary markets is not easily solved because all products are bespoke. The lack of product standardisation is, broadly speaking, a benefit because it allows unlisted assets to be innovative and tailor-made, however it also necessitates due diligence for every transaction. It is important to acknowledge that not even Australia's residential mortgage-backed securities market has a secondary market, despite being significantly larger than private markets. This is why liquidity issues are conventionally addressed through other means.

Arguably there are only two ways to make private markets available to retail investors in truly liquid form: (1) a hybrid public/private portfolio, eg in an ETF or a balanced superannuation fund. However, the cash and public market allocations may dilute the benefits of the private market allocation; and (2) a portfolio of publicly traded listed private market fund operators, however this portfolio would be a derivative of private markets and may instead be correlated to public markets. Additionally, there is scope for digital tokenisation of assets to be used in future to provide retail investors with a share of ownership in a private market portfolio.

It is important to note that the risks associated with illiquidity have also historically been paired with an illiquidity premium paid to investors in the form of higher returns. But given the illiquidity of private market assets, they are often best suited to long-term investors who are well-positioned to withstand redemption freezes.

Liquidity can be managed through:

- clear disclosure to investors;
- setting responsible liquidity management plans; and
- running regular stress testing scenarios.

[114] Future Fund Board of Guardians, Statement of Investment Policies, December 2023, pp. 9-10.

APRA's review of unlisted assets and the liquidity management practices of RSELs noted the importance of having appropriate frameworks in place to manage the specific risks associated with the illiquidity of unlisted assets. APRA encourages RSELs to strengthen their resilience to liquidity stress scenarios, including by considering potential contagion risks. APRA further expects that these frameworks should support informed decision-making by ensuring that key decision-makers have access to relevant information on asset allocation impacts and valuations during periods of stress.

It is important to acknowledge that all REs and RSELs should be prepared for liquidity risks. This extends to public market funds and very well-run funds of all stripes. This is because in highly stressed market conditions, a significant deterioration in market sentiment can lead to demand for cash redemptions. In these circumstances, REs and RSELs need to have tools for managing or freezing redemptions. This is not just for their own self-preservation and the need to ensure systemic market stability, but also to manage the harms associated with a first-mover advantage which can leave slower-moving investors bearing a disproportionate share of fund losses.

An important takeaway from this should be that in extreme situations, even funds doing the right thing may have liquidity scares or even be forced to freeze redemptions. Moreover, if public funds were required to divest all their listed assets during a relatively short period of time, this may lead to significant falls in the values of listed assets. It is not realistic to expect public or private funds to be able to liquidate their assets very quickly without having to discount their valuations.

In recent years, liquidity risk has been relatively well-contained. During the COVID-19 market disruption ASIC conducted a review of retail MISs (covering a mixture of private and public market funds) and concluded "*they did not face serious investor liquidity challenges during the height of COVID-19 market disruption, and that their liquidity frameworks were generally adequate*" and "*overall, liquidity risks and redemption rights were appropriately disclosed to investors*".[115]

The RBA has noted that "*[t]he financial stability risk posed by the non-bank financial (NBFI) sector in Australia is contained by its composition*", noting that such assets outside the "*regulatory perimeter*" are mostly held by superannuation funds which enjoy predictable and stable liquidity as a result of cash inflows from superannuation guarantee contributions, while being restricted from taking on leverage.[116] The FSC suggests that this point is applicable more broadly to all unlisted assets held in superannuation funds. However, in the event of regulatory changes which make it easier for superannuation members to access their superannuation balances pre-retirement, the liquidity of superannuation funds would have to be given specific attention to accommodate this.

Nonetheless, the FSC considers superannuation fund liquidity should be solely overseen by APRA, to avoid duplicative and potentially inconsistent regulations.

The FSC acknowledges that it is important for retail investors to be aware of liquidity risks and redemption policies. Importantly, illiquid funds are already required to disclose their illiquidity and product disclosure documents are already required to set out redemption policies. As well as this, in the course of complying with their DDO obligations some fund managers may – depending on the precise character of their assets – choose to limit their distribution to exclude retail investors who they consider may be inadequately positioned to withstand the associated liquidity risks.

Recommendation 4.27: The FSC recommends that ASIC explore and consult on ways to foster

[115] ASIC, Media release, ASIC review finds retail managed funds responded well to COVID-19 challenges in 2020, 30 April 2021.
[116] RBA, Financial Stability Review, April 2025, pp. 4 and 18.

the development of more liquid secondary markets for unlisted assets.

Recommendation 4.28: The FSC recommends that the regulator acknowledge RSE's liquidity leaves them in a materially better position to withstand illiquidity risks and that RSELs should therefore remain overseen by APRA and not be subject to dual regulation

4.4.A. Open versus closed-ended fund liquidity and disclosure

In closed-ended funds, there is less of an expectation among investors of short to medium-term liquidity, although being fiduciaries, fund managers will often still endeavour to facilitate liquidity. Nonetheless, liquidity risks are more pronounced in open-ended funds. Open-ended funds are also typically more accessible and attractive to retail investors than closed-ended funds, which are more commonly restricted to institutional and wholesale investors. As a result, open-ended funds must calibrate their disclosure and policy settings with care.

For example, an open-ended fund which chooses to permit investors relatively easy and unrestricted access to funds may wish to approach asset allocation decisions with caution and allocated a lower proportion of gross assets under management to illiquid assets than may otherwise be appropriate.[117]

Importantly liquidity demands may occur outside of investor redemptions. For instance, "*margin or collateral calls from derivative counterparties and other liabilities, including for closed-ended CIS that are leveraged.*"[118]

Open-ended funds

The key risk for open-ended funds in this area is known as the structural liquidity mismatch. According to the Financial Stability Board, this is:

> "*the difference between the redemption terms that an [open-ended fund] offers to investors and the amount of time it may take the [open-ended fund's] manager to liquidate fund holdings in an orderly manner (e.g. without substantially increasing transaction costs and without substantially impacting prevailing market prices) to satisfy redemption requests. Unmitigated structural liquidity mismatch may amplify shocks by driving 'excess' redemptions that require managers to engage in asset sales larger than in the absence of liquidity mismatch, especially in times of stress.*"[119]

This is why IOSCO notes that "*ensuring appropriate consistency between a fund's investment strategy and its redemption terms has long been, and remains, a key objective for regulators and asset managers alike.*"[120] Given this is a shared interest between regulators and fund managers, the FSC is not supportive of overly prescriptive measures on how liquidity risks must be managed in this

[117] Katrina King (QIC), AFR, ASX IPOs: ASIC's private versus public markets debate is just heating up as Australian sharemarket listings slow, 23 March 2025.
[118] IOSCO, Consultation Report: Revised Recommendations for Liquidity Risk Management for Collective Investment Schemes, November 2024, p. 10.
[119] FSB, Revised Policy Recommendations to Address Structural Vulnerabilities from Liquidity Mismatch in Open-Ended Funds, 20 December 2023, p. 9-10.
[120] IOSCO, Final Report: Open-ended Fund Liquidity and Risk Management – Good Practices and Issues for Consideration, February 2018, p. 9.

area.

In the context of open-ended private credit funds, the IMF also suggests that funds should "*create and redeem shares at lower frequency than daily or require long notice or settlement periods*", and specifically identifies Australia's 3-day redemption period for superannuation transfers as a source of risk.[121] However, it is important to bear in mind that superannuation funds still enjoy significant liquidity advantages stemming from the Superannuation Guarantee. Moreover, despite the portability and liquidity challenges of private market investments, superannuation funds have existing liquidity risk management obligations. Mature funds should be well-equipped to manage these risks.

The FSC strongly endorses IOSCO's view that liquidity risk should be addressed through product disclosure combined with enforcing the obligations of the DDO:

> "*Investors should be given sufficiently detailed material to be able to assess whether the fund is compatible with their risk appetite and make an informed investment decision. The key issue here is to seek to ensure investors understand the type of liquidity risk they are exposed to, how that risk might affect the value of the fund and their ability to redeem their units. Ensuring investors are aware of the potential risks associated with an investment fund should reduce the likelihood that in the event of stress they will redeem their shares in significant quantities. Investment managers also should be aware of how their distribution channels disseminate this disclosure. Good practice suggests that it generally should not be left to investors to read the terms and conditions, but that it should be highlighted by the distribution channels.*"[122]

The FSC also strongly endorses IOSCO's position that "*appropriate valuation policies and procedures are of paramount importance to guarantee fair treatment to investors in the ongoing liquidity risk management of the fund.*"[123]

The FSC also notes that fund managers can limit product distribution to exclude retail investors where its liquidity profile is not suited to the retail investors' anticipated needs or may not be able to withstand the associated liquidity risks. ASIC should take a risk-based approach in enforcing DDO with funds that it identifies as novel and illiquid that are being made available to retail investors, while setting clearer expectations in this area in its guidance material.

On the basis of IOSCO's position, the FSC suggests that for open-ended funds open to retail investors, there is scope for improvements to be made to how prominently liquidity risks are disclosed to investors, across both public and private funds' product disclosure documents. However, the FSC reiterates its view that making valuation processes more robust is the best way to strengthen private markets.

Recommendation 4.29: The FSC recommends that for both public and private market open-ended funds open to retail investors, product disclosure documents should clearly identify liquidity risks and policies, with explanations provided in plain English. The FSC suggests that ASIC should make clear in an ASIC regulatory guide that it expects liquidity risks to be identified, while further details around how to do so and the contents of liquidity policies should be left to industry-

[121] IMF, Global Stability Report: The Last Mile: Financial Vulnerabilities and Risks, April 2024, pp. 91 to 93.
[122] IOSCO, Final Report: Open-ended Fund Liquidity and Risk Management – Good Practices and Issues for Consideration, February 2018, p. 15.
[123] IOSCO, Final Report: Open-ended Fund Liquidity and Risk Management – Good Practices and Issues for Consideration, February 2018, p. 22.

led guidance on best practice principles.

ASIC may also wish to consider updating RG 274 to provide guidance on the liquidity and redemption risks which should be disclosed in TMDs.

Closed-ended funds

In contrast to open-ended funds, closed end funds better insulate fund managers from short-term liquidity pressures, facilitating a longer-term focus on value. This is best suited to highly sophisticated and professional investors, as such investors can add to the resilience of the funding.[124] Broadly speaking, closed-ended funds theoretically do not permit redemptions from the fund, but investors may still seek liquidity on the secondary market.

According to RBA researchers, a closed-ended structure may allow a fund manager to improve liquidity risk management through "*matching long-term liabilities with long-term assets*".[125] However, liquidity risks may still arise. For example:

> *"in the event of a large economic shock, intermediaries may request large amounts of capital from existing investors' committed but uninvested capital via capital calls. End investors have little control over the timing of these calls and may be required to provide capital within days (IMF 2024). There is a significant and growing amount of committed but uninvested capital, suggesting potentially large cash flow pressures if capital calls were widespread and synchronised. In such an event, end investors – such as pension funds or insurance companies – may struggle to meet the required payments and may therefore need to quickly sell other assets, potentially causing tension in financial markets."*[126]

Another example might involve a closed-end fund finding itself unable to successfully obtain fresh capital to fund urgent capital expenditure. Such risks are idiosyncratic and difficult to pre-emptively address through regulation.

4.4.B. Disclosure

Given the difference between open and closed-ended funds can have significant implications for investors, the FSC recommends improved disclosure expectations around liquidity for open-ended public and private funds that are open to retail investors, with respect to the character of the fund and the key fund terms around liquidity management and redemptions.

There is a risk that disclosure may be inadequate not because there is too little, but because there is too much detail in documents provided to investors, without a simple, clear message. In this regard, reforms to take the product disclosure statement (**PDS**) back to its original intent of being a much simpler document than a prospectus, and to remove the 'boiler plate' language that takes up most of the 8 page shorter PDS for a simple MIS, would be a worthy step in allowing the 'story' of a product to be told more simply and clearly to investors.

Specifically in relation to redemptions, a product disclosure document should explain up-front to investors both the standard time for processing redemptions, and also the maximum period of time that the RE is permitted to take to satisfy withdrawal requests under the MIS's constitution. ASIC has

[124] Sirio Aramonte and Fernando Avalos, BIS Review, The rise of private markets, December 2021, p. 12.
[125] RBA, Financial Stability Review, September 2024, p. 17.
[126] Andre Chinnery et al, RBA, Growth in Global Private Credit, 17 October 2024, p. 2.

taken action against product issuers for misleading conduct where the redemption terms which were advertised did not align with the redemption terms set out in the constitution. Such action was based on problems with disclosure, not the fund's redemption terms.

Further, the DDO and product intervention powers (**PIP**) regime also supports appropriate distribution of less liquid funds and provides ASIC with powers regarding the improper distribution of less liquid funds. Instead of mandating further disclosure, the DDO stipulates that both issuers and distributors undertake "reasonable steps" that are reasonably likely to result in financial products reaching consumers within the defined target market of the issuer. ASIC has effectively exercised its powers under both the DDOs and PIPs frameworks to ensure that less liquid funds are distributed appropriately and has provided targeted feedback to the industry.

ASIC Report 762: *Design and distribution obligations: Investment products* released in May 2023 noted that:

> "*inappropriate intended investment timeframe and/or withdrawal needs in the target market was a factor in 18 stop orders. For example, an issuer stated that consumers requiring 'annual or longer' withdrawal rights were in the target market despite the product not having any withdrawal rights before the end of the fixed term. ASIC's intervention resulted in the issuer amending the target market so that those consumers who needed the right to withdraw money before the end of the fixed term of the product were outside the target market*."[127]

ASIC expects that any limitations on redemptions are clearly reflected in the target market for the product, noting in Report 762:

> "*Where there are limitations on the redemptions for an investment product, these should be clearly reflected in the target market for the product. For example, an issuer should not include in the target market investors who have a need to withdraw money from a product every three months, when the issuer only offers redemptions to investors twice a year. Similarly, if meeting redemptions is at the issuer's discretion, the TMD should not indicate that the product is suitable for investors who need unconditional withdrawal rights.*"[128]

These powers and legal obligations support appropriate distribution of products and require any limitations on redemptions to be clearly incorporated in the product's target market.

In addition, for greater transparency the FSC recommends that for both public and private markets, open-ended MISs and RSEs that are open to retail investors should be required to include in their product disclosure documents approximate target asset allocation ranges for liquid, less liquid and illiquid assets, as defined by IOSCO:

- "*"Liquid" assets are likely to be assets that are readily convertible into cash without significant market impact in both normal and stressed market conditions."*[129]
- *""Less liquid" assets are those assets whose liquidity is contingent on market conditions, but they would generally be readily convertible into cash without significant market impact in normal market conditions. In stressed market conditions, they might not be readily convertible into cash without significant discounts and their valuations might become more*

[127] ASIC, Report 762 Design and distribution obligations: Investment products, May 2023, p. 3.
[128] ASIC, Report 762 Design and distribution obligations: Investment products, May 2023, p. 11.
[129] IOSCO, Consultation Report: Revised Recommendations for Liquidity Risk Management for Collective Investment Schemes, November 2024, p. 21.

difficult to assess with certainty."[130]

- *""Illiquid" assets include those for which there is little or no secondary market trading and buying and selling assets is difficult and time consuming (i.e. weeks or months, not days) even in normal market conditions. Individual transactions of "illiquid" assets may, therefore, be more likely to affect market values."*[131]

The principal purpose of these target ranges would be to assist regulators in monitoring liquidity. It is important to note that any such arrangement should not preclude an MIS or RSE from exceeding their target asset allocation ranges. This can be anticipated to occur, for example, if a portfolio of private assets is nearing maturity and has therefore grown as a proportion of the portfolio, but a short-term IPO market downturn means that it is not in the best interests of investors for them to be listed publicly at prices which reflect the fund manager's assessment of fair value. Similarly, in the event of liquidity pressure it may be appropriate for a fund manager to sell a disproportionate share of liquid assets quickly to fund redemptions, bearing in mind that the illiquid asset's valuations may also be falling but it is not measured as quickly as for the liquid assets.

As set out near the start of section 4, existing disclosure obligations are broad but can be vague to apply in practice. The FSC sees value in providing some greater specificity in the form of an industry-led guidance note in this area and is keen to work with the regulator to help codify standards which reflect both the regulator's expectations and industry best practice. The objective of such a guidance note would be to help retail investors make informed investment decisions.

Recommendation 4.30: The FSC recommends that the redemption provisions under the law are both certain and flexible, and this flexibility is important. Where a mismatch arises between investor/member understanding and the actual right to withdraw and this may be due to misleading disclosure or advertising, ASIC should continue to take appropriate action to ensure existing legal obligations are not breached.

Recommendation 4.31: The FSC recommends that public and private market open-ended MISs and RSEs open to retail investors should be expected to include in their product disclosure documents flexible, approximate target asset allocation ranges for liquid, less liquid and illiquid assets. ASIC should set a clear expectation for this through regulatory guidance.

4.4.C. Liquidity management plans

Private markets funds use various methods to preserve liquidity. This can take the form of ensuring ready access to cash or cash equivalents, such as through asset allocations to cash, allocations to listed securities, maintaining debt facilities for bridging finance, or keeping dry powder in the form of untapped investment capital.[132] Liquidity can also be managed by funds through setting policies on a range of matters including:

[130] IOSCO, Consultation Report: Revised Recommendations for Liquidity Risk Management for Collective Investment Schemes, November 2024, p. 21.
[131] IOSCO, Consultation Report: Revised Recommendations for Liquidity Risk Management for Collective Investment Schemes, November 2024, p. 21.
[132] Rodney Sebire, Zenith Investment Partners, Liquidity in Private Markets – Is All Rainfall Good? - Zenith Investment Partners, 3 April 2023.

- notice periods which need to be given to redeem investments;
- lock-up periods where investors cannot redeem their investments;
- redemption frequency limits;
- redemption caps which are limitations on the maximum amount of assets able to be redeemed at a particular point in time; and
- redemption suspensions or "freezes".

Appendix 9.6 sets out a more comprehensive list of liquidity management tools.

As noted by IOSCO:

> *"suspension of redemptions has many advantages as an extraordinary liquidity management tool. Amongst others, it allows time for the manager to determine fair valuation, to determine how best to meet redemptions in a period of uncertainty, or to see whether the uncertainty is lifted from the underlying markets."*[133]

A suspension – or "freeze" – of redemptions also ensures fair treatment of investors and limits the potential for a spillover of contagion between funds.

The FSC notes that it is very important for it to be made clear to retail investors how liquidity risk management tools may be used by funds, however the FSC also endorses AIMA's view that:

> "*Homogeneous rules on what aspects of [liquidity risk management] should be disclosed fits poorly with the diversity of investors and strategies of professional investor funds. Therefore, authorities should avoid adopting one-size-fits-all disclosure requirements.*"[134]

Indeed, "*[t]he flexibility to choose how to address investor liquidity risks allows strategy considerations to drive product design.*"[135]

It is also important to acknowledge that:

> "*Managers should carry on with robust [liquidity risk management] throughout the life of the fund (design, post-launch and potential fund liquidation) and develop effective documentation on their [liquidity risk management] processes and performance throughout the life of the fund.*"[136]

Recommendation 4.32: The FSC recommends that MISs and RSEs should be afforded flexibility to tailor their liquidity risk management plans to their investment strategies and fund governance arrangements.

4.4.D. Stress testing

A key aspect of liquidity risk management involves undertaking regular stress testing a portfolio to help a fund understand its liquidity risks, take corrective actions and plan for contingencies.[137]

[133] IOSCO, Final Report: Open-ended Fund Liquidity and Risk Management – Good Practices and Issues for Consideration, February 2018, pp. 40-41.
[134] AIMA, Liquidity Risk Management in Alternative Funds, 23 March 2021, p. 6.
[135] AIMA, Liquidity Risk Management in Alternative Funds, 23 March 2021, p. 4.
[136] AIMA, Liquidity Risk Management in Alternative Funds, 23 March 2021, p. 5.
[137] AIMA, Liquidity Risk Management in Alternative Funds, 23 March 2021, p. 5.

According to AIMA, while:

> "*[m]anagers should maintain close relationships with counterparties in order to negotiate appropriate margin requirements, collateral, haircuts, repo, etc. The use of technologies such as treasury management analytic tools should assist managers in minimising funding liquidity risks.*"[138]

The FSC notes ASIC's findings that among retail MISs no "*serious investor liquidity challenges [were experienced] during the height of COVID-19 market disruption, and that their liquidity frameworks were generally adequate*".[139] Similarly APRA did not make any adverse findings regarding liquidity stress testing by RSEs in its recent review of unlisted asset governance, other than reiterating the importance of considering contagion risk across assets.[140] The FSC therefore suggests that there is insufficient evidence to justify regulatory changes in relation to stress testing arrangements.

Recommendation 4.33: The FSC recommends no changes in relation to liquidity stress testing by funds.

4.5. Leverage

At the outset, it is important to note that leverage is not bad in all circumstances. Leverage imposes discipline and accountability on management and can lead to covenants being set which require a fund to meet key governance or performance standards. However, leverage can also be a source of liquidity issues and amplify other risks.

Leverage is used by many public and private market funds, investors for investment and personal purposes, and underlying portfolio companies. To the extent that ASIC is interested in the use of leverage by funds, the FSC considers that ASIC's focus should be on minimising systemic risk and ensuring that leverage does not transmit contagion. This is best achieved by ensuring that funds retain sufficient liquidity to manage their borrowing commitments.

This section focuses on leverage taken on by funds. Lending by private credit funds is covered separately in section 8. The FSC is best equipped to focus on leverage taken on by funds, rather than leverage held by individual investors or underlying portfolio companies, so this type of leverage is focused on in this submission.

Leverage can be difficult to compare between funds. According to the SBAI:

> "• *There is no single agreed definition of leverage. Definitions cover a spectrum ranging from traditional balance sheet type leverage measures to risk based measures (the latter incorporating underlying risk factors such as Value-at-Risk) and dynamic leverage measures (see table below)*
>
> "• *Classic "financial statement based" leverage is not an independent source of risk, so additional information on the underlying risk factors is required.*
>
> "• *Leverage "numbers" have to be considered carefully and may not always contain meaningful information. In some instances, a risk reducing transaction can increase some*

[138] AIMA, Liquidity Risk Management in Alternative Funds, 23 March 2021, p. 5.
[139] ASIC, Media release, ASIC review finds retail managed funds responded well to COVID-19 challenges in 2020, 30 April 2021.
[140] APRA, Governance of Unlisted Asset Valuation and Liquidity Risk Management in Superannuation, December 2024

leverage measures while decreasing others.”[141]

For this reason, it is important for product disclosure documents to provide clear definitions of leverage and disclose its use.

Different levels of leverage have a different risk profile depending on the asset type. Eg x% leverage for on a diversified portfolio of infrastructure loans may be low risk, but the same amount of leverage for a less diversified portfolio of loans to financially distressed property developers may be high risk. The FSC considers that it is better to improve transparency around leverage rather than impose limits on it and then allow investors to make their own judgments. DDO obligations are also a mechanism which may be employed to filter out retail investors whose risk profile makes them unsuited to assuming leverage-related risks.

According to the IMF, private credit funds also rely on leverage less than other lenders such as banks, although there can be opacity around multiple layers of leverage in private markets.[142] This is best dealt with through liquidity risk management planning.

Importantly, the RBA has concluded that only a “*small share*” of non-bank financial assets are held by highly leveraged entities.[143] Moreover, most of the assets of this nature are held by superannuation funds which “*are restricted from taking on leverage directly*” and enjoy steady liquidity from members’ contributions.[144] Limitations on superannuation funds’ use of leverage mean that any regulatory focus should be restricted to registered MISs.

Recommendation 4.34: The FSC recommends ASIC should make clear in an ASIC regulatory guide that it expects for MISs open to retail investors, product disclosure documents should explicitly define leverage and detail its application within the fund. The FSC suggests that further details around how to do so should be left to industry-led guidance on best practice principles.

Recommendation 4.35: The FSC recommends that no new limitations are placed on the use of leverage by funds.

141 SBAI, Alternative Investment Standards, 30 November 2015, p. 35.
142 IMF, Global Stability Report: The Last Mile: Financial Vulnerabilities and Risks, April 2024, p. 83.
143 RBA, Financial Stability Review, April 2025, p. 18.
144 RBA, Financial Stability Review, April 2025, p. 18.

5. Retail investor participation in private markets and consumer protection

This section discusses the participation of retail investors in private markets and the associated consumer protection measures. It emphasises the importance of providing retail investors access to private market opportunities while ensuring robust protections are in place. The section highlights the need for improved product disclosure, governance, and valuation processes to safeguard retail investors. It also suggests that any new regulations should specifically target unadvised retail investors, as advised retail investors already benefit from professional guidance. Additionally, the section recommends clearer guidance on the application of DDO obligations and suggests that ASIC should take a more proactive role in licensing and monitoring high-risk MISs.

At this stage, it is important to again reiterate that as outlined in section 1.4.B, a substantial portion of Australia's private capital comes from global investors. To keep Australia appealing to international capital, it is crucial that new regulations align with global standards. By harmonising these requirements with those of key financial jurisdictions like the United States, the compliance burden on global funds and investors can be minimised. This alignment will simplify administrative processes, reduce regulatory complexities, and create a predictable investment environment. Maintaining regulatory consistency with international norms is essential to preserving Australia's competitive edge in attracting and retaining global private capital, which in turn supports the growth and stability of its financial markets.

5.1. Retail investor protection

It is important to acknowledge that retail investors are more vulnerable than wholesale and institutional investors, and this can place them at a disadvantage in private markets. An important exception to this is where the intermediation of retail investors' funds by a superannuation fund allows retail investors to leverage the expertise and capabilities of institutional investors on their behalf. It is also important to acknowledge that shutting retail investors out of private markets would deny them access to attractive investment opportunities and potentially encourage them to invest in equivalent offshore funds or use SMSF vehicles to explore unlisted asset opportunities.

According to IOSCO:

> "*For fund managers, retail investors represent a large, untapped pool of capital. While individual investors hold about half of the estimated $275-295 trillion USD in global assets under management, that same group only holds about 16% of alternative investment funds.*"[145]

Expanding the group of people who have the ability to invest is central to realising the full power of both public and private markets: it means more capital is available to those who need it, and also means more people share in the potential economic upside of the return generated by that capital being put to use.

While access to capital from retail investors represents an opportunity for private market funds, this opportunity should be accompanied by improved expectations of funds, determined by ASIC and elaborated upon in industry-led guidance on best practice.[146] This rationale has underpinned many

[145] IOSCO, Thematic Analysis: Emerging Risks in Private Finance, September 2023, p. 39.
[146] IOSCO, Thematic Analysis: Emerging Risks in Private Finance, September 2023, p. 48.

of the recommendations made in this submission and is based on the fact that retail investors' relative inability to undertake thorough due diligence makes them reliant on fund managers.

The FSC is strongly of the view that the best way to protect retail investors in private markets is through current obligations such as DDO working together with making valuation processes more robust, reducing opacity by improving product disclosure, improving disclosure around liquidity risks, and making disclosure and governance arrangements around conflicts of interest more rigorous. Aside from these recommendations, the FSC does not support additional reforms to protect retail investors.

The FSC considers that the regulator's immediate focus should be on ascertaining whether there are shortcomings in existing regulatory obligations (which we submit there are not) or whether any observed issues instead relate to non-compliance with (and enforcement of) existing law.

As noted, retail investors are already provided a variety of additional protections, such as DDO obligations and ASIC's accompanying PIP powers, mandatory reporting and disclosure obligations, Ch 5C obligations of REs, Part 7.10 market misconduct provisions, general AFS licensee obligations, misleading and deceptive conduct, fiduciary duty requirements, and the laws of negligence and contract, there is already a comprehensive suite of protections for retail investors who invest in private (and public) markets.

If ASIC increases its expectations for how retail investors should be protected, the FSC suggests that the benefit of these expectations should be confined to unadvised retail investors and not extended to wholesale, institutional or advised retail investors. The rationale for the latter is that advised retail investors are able to leverage off the expertise of professionals, so are generally less vulnerable than other retail investors.

In addition, advised retail investors benefit from the expertise of financial advisers, who in turn often leverage sophisticated research from research houses. In a worst-case scenario, advised retail investors may access the Australian Financial Complaints Authority and the Compensation Scheme of Last Resort where there has been a breach of adviser duties. In contrast, unadvised retail investors may be unsophisticated investors who do not fully understand their underlying investments. This applies both to public and private investments. The FSC therefore considers that any new regulations relating to retail investors should be specifically targeted towards conferring a benefit on unadvised retail investors.

The FSC also sees potential for clearer guidance from the regulator on the application of DDO obligations to private market MISs. In addition, there is also potential for ASIC to place a more active role in AFS and MIS licencing to proactively target high-risk activities before they have the opportunity to potentially cause retail investors harm.

The FSC also suggests there is scope for improvements to be made to RG 234 *Advertising financial products and services (including credit): Good practice guidance* (**RG 234**) to provide clearer guidance around statements in advertising related to private markets as well as additional worked examples.

It is also important to acknowledge that platforms have the technological capacity to put in place sophisticated risk management frameworks for retail investors, and where they are RSEs, they have obligations under APRA prudential standards to implement investment governance and risk management practices. For instance, they can restrict or segment product access to cohorts of investors or their advisers based on risk profile. They can also restrict menu visibility in the event that a retail investor becomes unadvised but remains on the platform.

Recommendation 5.1: The FSC recommends that ASIC update RG 234 to provide additional guidance and worked examples around the advertising of private market funds.

5.2. Design and distribution obligations

DDO obligations and ASIC's PIP powers are key protections that already offer substantial safeguards for retail investors. DDO obligations were originally conceived by the Financial Services Inquiry as a means to both protect retail investors and "*limit or avoid the future need for more prescriptive regulation.*"[147] The Inquiry's report found that *"[c]onsumers should bear responsibility for their financial decisions"*, but they *"should receive fair treatment from financial firms"* and *"[p]roduct issuers and distributors should take responsibility for the design, targeting and distribution of financial products."*[148]

The FSC considers that the regulatory pendulum in this area is already configured in favour of retail investors and endorses the view of the Financial Services Inquiry that:

> "*A fair, well-functioning financial system allows consumers to take on risk to make a return. Inevitably, this means consumers will incur gains and losses from market movements.*"[149]

The FSC instead supports measures set out elsewhere in this submission to improve product disclosure and thereby ensure that retail investors can access the information they need to make informed investment decisions.

However, the FSC does note the ALRC's finding that:

> "*The provisions comprising the DDO regime are unnecessarily complex, principally owing to the bespoke definition of 'financial product', a lack of logical structure, and a high level of prescriptive detail.*"[150]

The FSC therefore recommends a simplification of the regime, but not substantive changes to afford retail investors with further protections.

DDO obligations apply to private market products which are open to retail investors, and it is open to issuers and distributors to limit distribution to advised retail investors. The FSC considers that fund managers would benefit from clearer guidance from the regulator on the circumstances in which it considers this would be appropriate.

The FSC also notes that private market funds which target retail investors have the flexibility in their TMDs to target segments of the market who are better suited to making long-term investments in private markets.

The FSC also strongly opposes the expansion of DDO obligations to protect wholesale investors. If ASIC considers that too many unsophisticated investors are being captured by the wholesale investor test, the solution to this is to convince the Australian Parliament to change the test rather than changing funds' obligations towards wholesale investors. There is a clear policy rationale for affording greater flexibility to a class of investors who are more sophisticated than retail investors but

[147] David Murray et al, Financial System Inquiry Final Report, November 2014, p. 229.
[148] David Murray et al, Financial System Inquiry Final Report, November 2014, p. 227.
[149] David Murray et al, Financial System Inquiry Final Report, November 2014, p. 227.
[150] Justice Mordecai Bromberg, ALRC, Report 141: Final Report Confronting Complexity: Reforming Corporations and Financial Services Legislation, November 2023, p. 231.

less sophisticated than institutional investors.

Recommendation 5.2: The FSC recommends that, aside from recommendations elsewhere in this submission, legal obligations owed by funds to retail investors should not be substantively altered. To the extent changes occur, they should be focused on setting clear expectations on how funds should behave.

Recommendation 5.3: The FSC recommends that if recommendation 5.2 is not accepted, the benefit of any new protections for retail investors should be restricted to unadvised retail investors.

Recommendation 5.4: The FSC recommends that ASIC update RG 274 to provide clearer guidance on the circumstances in which DDO obligations should be exercised to restrict fund distribution to advised retail investors.

Recommendation 5.5: The FSC recommends that DDO obligations be simplified to streamline compliance without fundamentally changing the obligations owed to retail investors. The FSC suggests that this could be achieved through an instrument made under section 994L of the Corporations Act, supplemented by updates to RG 274.

Recommendation 5.6: The FSC recommends that ASIC provide clearer guidance in RG 274 on its expectations around the use of DDO powers to restrict product access only to advised retail investors, including greater flexibility to distribute products to advised retail investors. The FSC suggests that further details around how to do so should be left to industry-led guidance on best practice principles

Recommendation 5.7: The FSC recommends that the DDO regime not be expanded to capture wholesale investors.

5.3. The potential for improved licencing requirements

The FSC has previously made recommendations to the Treasury review into MISs in relation to the potential for ASIC to reduce risks posed to consumers by taking a more proactive approach to regulating licencing applications. ASIC receives information about the scheme and its RE via the AFSL application and the scheme registration process. ASIC can use this information to adopt a risk-based approach for AFSL application/scheme registration processes and use that information to inform forward looking surveillance processes.

As noted by the Financial Regulator Assessment Authority (**FRAA**): "*ASIC's licensing function acts* *as a gatekeeper governing entry into Australia's financial system.*"[151] The FSC suggests that ASIC should be empowered to play a more robust gatekeeper role. The FRAA has also noted that ASIC's licencing activities receive a relatively low share of ASIC's budget and staff,[152] with feedback received from senior ASIC personnel that this function has "*not been prioritised relative to other organisational and regulatory priorities.*"[153]

The FSC suggests that ASIC should have additional rights to request sufficient information at the outset to allow it to identify schemes which require more detailed consideration and adopt a fast track and slow track registration process depending on the particular MIS. This would provide a streamlined registration process for REs who meet certain criteria and standards and a slower track for high risk and novel products like the Sterling Income Trust (**SIT**).

The data collected from the registration process would inform ASIC's future surveillance processes with more oversight conducted on new licensees and/or schemes or those that have a prior history of poor regulatory compliance. This means appropriate ASIC resourcing (in terms of the level of skill, experience and staffing numbers) could be devoted to the more 'high risk' or 'novel' REs and MISs at the AFSL application and scheme registration processes.

This need not be cumbersome. ASIC could review its AFSL and scheme registration forms to capture relevant data such as:

- Have the individuals on the AFSL, RE board and those proposing to operate the MIS (both issuers and promoters) had any previous involvement with failed or collapsed MISs or businesses;
- Do the individuals on the AFSL or RE board have prior experience operating a scheme such as the one proposed to be offered; and
- Is the MIS novel or complex or one that involves a standard investment strategy?

ASIC could also monitor data obtained when there is a change of control of a licensee related to the controlling entity and changes in the boards and responsible managers which may occur during the life of the RE/licensee. This data would be used to inform ASIC's risk management oversight processes. For example, funds flagged as novel or complex like SIT – could be subject to periodic desktop or even shadow shop style reviews.

Recommendation 5.8: The FSC recommends that ASIC should review its AFSL and scheme registration processes, including the information it captures as part of an AFSL application and scheme registration forms/processes to capture enhanced data points that will lead to either a fast track or slow track registration processes depending on the particular MIS. These enhanced data points will inform risk-based surveillance processes at the outset, to be implemented following registration of a MIS.

[151] FRAA, Effectiveness and Capability Review of the Australian Securities and Investments Commission, July 2022, p. 67.
[152] FRAA, Effectiveness and Capability Review of the Australian Securities and Investments Commission, July 2022, p. 67.
[153] FRAA, Effectiveness and Capability Review of the Australian Securities and Investments Commission, July 2022, p. 79.

6. Transparency and monitoring of the financial system

This section discusses the importance of transparency and monitoring in the financial system, particularly in private markets. It highlights the challenges of data collection due to the diversity and complexity of private market assets, and the existing efforts by APRA and third-party data providers to gather relevant information. The FSC recommends that ASIC focus on enhancing product disclosure and governance standards rather than expanding its data collection responsibilities. The section also emphasises the need for collaboration between ASIC, APRA, and third-party data providers to improve transparency without crowding out private sector initiatives.

6.1. Key considerations around data collection

The FSC considers that in its Discussion Paper, ASIC has materially underestimated the size of private markets in Australia. According to Alvarez & Marsal, by the end of 2024 Australia's private debt market had AUM of approximately AU$205 billion,[154] while between 2020 and 2022 a cumulative AU$146 billion was invested into Australian private equity.[155]

While this appears to underscore ASIC's concern that there is inconsistent data collection occurring in the market about private markets, the FSC suggests that it principally reflects definitional and collection differences between data sources.

For example, the RBA estimates the private credit sector has AUM of around AU$40 billion, but this is based on surveys which only collect data for loans sized AU$50 million and above and therefore exclude a significant amount of consumer and mid-sized business lending.[156] Meanwhile, APRA reports that superannuation funds have roughly AU$500 billion invested in unlisted assets like property, infrastructure, private credit and private equity.[157]

The FSC supports evidence-led policy development. We therefore believe that if ASIC wants expanded data collection powers in relation to private markets, it should bear the onus of demonstrating why this is warranted and should provide clearer particulars on what data it is seeking. The FSC has not yet been persuaded that there is a need for enhanced regulation in this area, noting there is a wide range of third-party data providers and ASIC already has powers to request data and other information, such as under section 912C of the Corporations Act. If ASIC nonetheless seeks expanded data collection powers, the FSC suggests that ASIC leverage learnings from other comparable jurisdictions who are attempting to grapple with issues associated with collecting private market data.

Important considerations, set out in the ensuing subsections, include the:

- scope of planned overlapping APRA data collection initiatives;
- collection of data by third parties; and
- lack of standardised data in private markets.

Firstly, however, it is important to draw a distinction between data made available through product *disclosure* – which provides data, but with the benefit of additional information communicated in the

[154] Alvarez & Marsal, Australian Private Debt Market Review 2024: A New Record Market Size of AU$205bn and Impacts of Recent Regulatory Change, 16 December 2024, p. 3.
[155] Alvarez & Marsal, Operational Value Creation: The Most Important Source of Return for PE Assets, February 2025, p. 2.
[156] Andre Chinnery et al, RBA, Growth in Global Private Credit, 17 October 2024, p. 1.
[157] APRA, Governance of Unlisted Asset Valuation and Liquidity Risk Management in Superannuation, December 2024.

course of disclosure – and data *collection* which occurs without this contextual information. The FSC has proposed a range of measures in this submission which would enhance product disclosure with respect to fees, performance, different treatment of investors, illiquidity, leverage and valuations.

The FSC notes that unlike in public markets where ASIC can leverage existing data collection conducted by exchanges, there is no centralised repository of this information in private markets. This creates practical difficulties for data collection and monitoring. Moreover, it is unrealistic for ASIC to suppose that purely domestic data would equip the regulator to monitor systemic risks. As noted in section 1.4.C, a large proportion of private capital is derived from offshore. Local information – such as that collected through existing powers – can help with compliance and enforcement functions (which is also the case for data included in product disclosures), but the international nature of capital markets that without global data, systemic risks cannot be monitored effectively. Third-party data providers offer – and are committed to enhancing – data of this nature, which ASIC lacks the jurisdiction to collect itself.

Importantly, even domestically there are areas which do not have a common vector to get data from. For instance, a regulator would have difficulty determining the precise extent to which economy-wide infrastructure projects are leveraged. The FSC suggests that focusing on a more discrete area of focus, such as product disclosure is more clearly definable and achievable, as well as falling squarely within ASIC's existing expertise. The FSC suggests that it is an inefficient use of ASIC's time to perform data collection, when this function is already performed by other agencies like APRA, the ABS and third-party providers.

It is also important to acknowledge that research house providers and index providers are also playing a growing role in private markets, with a view toward performing many of the functions and much of the scrutiny that ASIC appears to be contemplating assuming for itself. The FSC is concerned that ASIC may crowd out these market participants, who are well-positioned to perform these roles.

IOSCO notes:

> "*Transparency is not costless. The costs associated with public market reporting and disclosures, along with other compliance issues, are cited as one of the drivers of growth in private finance activities. In contrast, while compliance costs in private markets are considerably lower, investors are more reliant on specialist intermediaries such as private equity and private credit firms to conduct more bespoke and costly due diligence on their behalf. On one hand, while this opacity provides investors with some insulation from the transparency costs faced in public markets, it also jeopardizes availability of information for investors and regulators to use in effectively assessing risks. This includes risks that could arise due to the way in which private finance firms conduct their activities (for example valuations, conflicts of interest), from their interconnections with the wider financial system, and from how macro-financial developments could impact the sector, portfolio companies, and the real economy*".[158]

The FSC recommends adopting the product disclosure and governance improvements suggested throughout this submission to address the opacity of private markets, but does not support comprehensive data collection activities by ASIC, including for additional reasons set out in sections 6.2 to 6.4. This would not make ASIC an outlier relative to its global peers. IOSCO acknowledged in 2013 that globally "*[m]ost Market Authorities do not monitor non-listed products.*"[159] It did not take

[158] IOSCO, Thematic Analysis: Emerging Risks in Private Finance, September 2023, p. 22.
[159] IOSCO, Final Report: Technological Challenges to Effective Market Surveillance Issues and Regulatory Tools, April 2013, p. 27.

issue with this in a subsequent 2025 Thematic Review on Technological Challenges to Effective Market Surveillance Issues and Regulatory Tools.[160] The FSC suggests that, by virtue of APRA's Superannuation Data Transformation, Australia is already doing more than many of its international peers in this area.

The FSC is concerned about the likely quality of the data output and scope for misinterpretation, and that it may wrongly cause – or be used to cause – reputational damage to funds, even though for reasons set out in section 6.4 it is not expected to provide meaningful market insights. As such, the FSC would oppose any effort to publish data at a granular RSE/RSEL or MIS/RE level.

Recommendation 6.1: The FSC recommends that ASIC should consider whether its data collections aims would be best advanced through redoubling on its traditional focus on overseeing product disclosure data.

6.2. APRA's data collection initiatives

The FSC also considers that the regulator should also give careful consideration to where data gaps presently exist. The FSC supports ASIC's focus on transparency and risk oversight in private markets but cautions against potential regulatory duplication. APRA's *Superannuation Prudential Standard SPS 530 on Investment Governance* (**SPS 530**) already sets out comprehensive requirements for investment oversight by superannuation trustees, with specific focus on unlisted asset valuation and liquidity management.

The fact that APRA already has visibility over AU$500 billion in superannuation through APRA-regulated superannuation entities is a strong indicator,[161] based on the size of other estimates of the sector's size, that a significant proportion of its data is already in the process of being captured through APRA's data collection initiative, the Superannuation Data Transformation. The RBA has also opined that a "*relatively large share*" of private credit assets under management are held by APRA-regulated superannuation entities.[162]

APRA's Superannuation Data Transformation project will soon deliver granular, asset-level reporting across the system, including more detailed insights into unlisted asset valuations and liquidity practices—often exceeding equivalent ASIC requirements, such as RG 97. The FSC encourages ASIC to work in partnership with APRA to ensure any relevant data collected through APRA's supervision can be accessed by ASIC where appropriate, to avoid duplicative reporting obligations and unnecessary compliance costs.

The FSC suggests that given a large proportion of private market activity already falls within the auspices of APRA-regulated superannuation entities, there may be limited utility in expanding ASIC's data collection activities in this area. The rationale for this conclusion is that the primary value of this data is to track market trends and detect sources of systemic risk. The FSC considers these aims can be substantially achieved by monitoring a large cross-section of the market – which is precisely what APRA's Superannuation Data Transformation project aims to deliver. In addition, the FSC has made recommendations elsewhere in this submission to improve product disclosure

[160] IOSCO, Final Report: Thematic Review on Technological Challenges to Effective Market Surveillance Issues and Regulatory Tools, February 2025.
[161] APRA, Governance of Unlisted Asset Valuation and Liquidity Risk Management in Superannuation, December 2024.
[162] RBA, Financial Stability Review, April 2025, p. 18.

and governance arrangements to address ASIC's market integrity and investor confidence concerns.

Given the significant superannuation ownership of private market assets, APRA's framework already captures much of the risk ASIC seeks to monitor. Where broader transparency is needed, extending or adapting APRA's existing data collection may be a more proportionate and efficient solution than establishing new, parallel regimes.

Recommendation 6.2: The FSC recommends ASIC should work with APRA to reduce duplication across regulatory frameworks, including seeking access to data from APRA where appropriate.

6.3. Third-party data collection

While ASIC has expressed reservations in the Discussion Paper about the accuracy of third-party data sources it has access to, it is important to acknowledge that given the dominance of superannuation in Australia's financial system, much of this data can be cross-checked against data that is already collected by APRA. In addition, when it comes to managing systemic risk, the principal relevance of data relates to macro trends, rather than precise figures, and the identification and analysis of market trends is something already performed to a high standard by data analytics firms.

Research houses, index providers and other data analytics firms are in a race to analyse and systematise private markets to overcome the issues set out in section 6.4. As IFM notes:

> "*There is a whole market developing with data vendors and systems to try and close some of the gaps that may exist between public and private markets data*"[163]

There is a risk that if the regulator steps in and starts to play this role, it may crowd out the private sector. Indeed, BlackRock has predicted that:

> "*Fog will give way to transparency … [A]s clients allocate more to private markets, they're demanding better data to drive investment decisions, capital formation, risk management, and portfolio construction.*"[164]

Third-party data providers have strong market incentives to provide leading data insights into private markets, including incentives to make appropriate capital expenditure and investment to develop their insights. The FSC respectfully notes that ASIC's governance structure reduces its control over its capital expenditure budget, which has resulted in the FRAA identifying a long-term underinvestment in ASIC's data and technology capabilities.[165] Given this fact and the substantial investment being undertaken across the market, the FSC therefore believes ASIC's finite resources may be more effectively utilitised by prioritising the enhancement of its existing platforms and converting remaining paper-based processes to these platforms.[166]

In contrast, the FSC notes that there are data providers that track data across tens of thousands of private market funds, with many trillions of collective assets under management.[167] The sheer

[163] IFM Investors, Private Markets 700: The global investor barometer, p. 20.
[164] BlackRock, 2025 Private Markets Outlook, 2025, p. 4.
[165] FRAA, Effectiveness and capability review of ASIC, July 2022, p. 29.
[166] FRAA, Effectiveness and capability review of ASIC, July 2022, p. 29.
[167] Hamilton Lane, 2025 Market Overview: What me worry?, 2025, p. 49; Preqin, Preqin Benchmarks: Private Markets Performance Data Q4 2024, 19 February 2025, p. 4.

breadth and depth of data collected by these providers means that it is possible for them to generate tailored data for similar types of asset subclasses, which offers much more meaningful insights into private markets than otherwise would be the case. This is in addition to the substantial insight provided by APRA's separate data collection activities. The FSC considers that ASIC should investigate how it can help these third-party providers improve their existing service offerings but should abstain from measures which may deter third parties from increasing the transparency of private markets.

The FSC also reiterates its view that ASIC should focus on work which only ASIC is in a position to do. An example of this is recommendation 5.8: only ASIC is in a position to collect data from applicants for AFS licences and MIS registration and then employ it for supervisory purposes. This is a key unfilled gap in the market which ASIC is uniquely positioned to address and then use for risk-based supervisory purposes.

Recommendation 6.3: The FSC recommends that ASIC should collaborate with research houses, index providers and other data analytics firms to help them to improve the transparency of private markets.

Recommendation 6.4: The FSC recommends that ASIC not undertake activities which may have the effect of crowding out research houses, index providers and other data analytics firms from the analysis of private markets.

6.4. The lack of standardised data in private markets

Assets in private markets are inherently idiosyncratic. Their diversity on multiple levels (set out at section 1.4.A) makes data standardisation extremely challenging. This enormous product heterogeneity reduces the comparability of data to the point where basing comparisons off single or even multiple data points may not be meaningful or may even become misleading.

By way of example, two private credit funds may notionally lend the same amount of capital to different pools of borrowers and receive the same blended interest rate return. There may be material differences in terms of the covenants the funds set to limit risky behaviour by borrowers, the segment (and risk profile) of the market they lend to, the quality of due diligence they conduct, the liquidity they offer their investors, the internal leverage they employ, and the amount of capital which is committed but not deployed. Such factors all have a significant impact on the comparability of the figures, which may be lost in the event of a top-down data collection regime being imposed.

Similarly, many private market assets are one-of-a-kind and not comparable with each other. For example, it is immensely difficult to know whether a venture capital investment may be the next Canva or will fold after a few months or years, while many infrastructure assets like ports and airports are so rare that they are difficult to meaningfully compare.

Ultimately, private market investments are not fungible in the same way that most public market investments are. It is unrealistic to expect data to be able to be conveyed or compared in the same ways, and publishing data in this way may be misleading to unsophisticated investors.

The lack of standardised data in private markets is a global phenomenon.[168] It cannot be resolved by unilateral regulatory action and if data is collected and published from Australian-domiciled private market funds in a manner which is out of step with other jurisdictions. In fact, doing so risks making Australia a less attractive destination for global capital. This is because it may deter funds who fear data collection may lead to the publication of confidential insights into their investment strategies or other business terms, reducing their competitiveness in other jurisdictions.

Research houses, index providers and other data analytics firms are making significant investments into devising new mechanisms for reducing the opacity of data in private markets. Currently, however, there is a conspicuous absence of data standardisation and as such the FSC has serious concerns that efforts to impose a top-down data collection regime may not generating meaningful data, or worse, may generate materially misleading insights into private markets. However, the FSC considers that third-party providers are both well-equipped and well-incentivised to address these challenges in the medium term, at which point this recommendation should be revisited.

In the interim, the FSC suggests that the regulator should leverage off the existing data sources available to it, namely APRA's data collection, data from third-party providers, and data collected using ASIC's own existing data collection powers.

The FSC endorses IOSCO's view that:

> "*Though not straightforward, it is clear that any attempts to increase transparency (either for regulators or market participants) in a market built with opacity as a key functional feature would need to carefully balance the increased costs to market participants, with the benefits to the financial system more broadly*."[169]

Section 4.1.B also sets out a series of challenges associated with achieving comparable performance data in private markets.

On this basis, the FSC considers ASIC's immediate focus should be on product disclosure and fund governance. To this end, the FSC has proposed a series of potential improvements in these areas.

6.5. International data collection initiatives in private markets

The US SEC already collects and publishes aggregated high-level data for private funds which is collected from funds with at least US$150 million in private fund assets under management.[170] An attempt to obtain more detailed data have been overturned by the courts,[171] but included proposal to enhance disclosure in private market funds around measures including:[172]

- Fees paid to managers (from both the fund and portfolio investments);
- Other expenses;
- Offsets or rebates carried forward between reporting periods;
- Criteria explaining how figures are calculated;
- Greater standardisation of performance disclosure;
- Elevated disclosure for illiquid funds, including since the inception of the fund its:

[168] James Smallwood, Global Head of Solutions Engineering for Private Markets at BlackRock, Preqin, Public to private: how benchmarks can drive better investment outcomes, 20 March 2025.
[169] IOSCO, Thematic Analysis: Emerging Risks in Private Finance, September 2023, p. 47.
[170] US SEC, Private Funds - Qualifying Hedge Fund Strategies, viewed on 9 May 2025.
[171] National Association of Private Fund Managers and Others v Securities and Exchange Commission, United States Court of Appeals for the Fifth Circuit, filed 5 June 2024.
[172] US SEC, Private Fund Advisors; Documentation of Registered Investment Adviser Compliance Reviews, 88 Fed. Reg. 63206 (Aug. 23, 2023) (to be codified at 17 C.F.R. pt. 275).

- Both gross and net IRRs and MOICs for the fund;
- The separate gross IRR and MOIC for the realised and unrealised portions of the fund's portfolio;
- Performance information both on a levered and unlevered basis;
- A statement of contributions to and distributions from the fund.

The UK is considering measures to enhance the disclosure of private market data,[173] and already requires that entities involved in managing an alternative investment fund file reports including the following documents:[174]

- Solvency statement;
- Balance sheet;
- Income statement;
- Capital adequacy;
- Internal Capital Adequacy and Risk Assessment questionnaire;
- (in some instances) Supplementary capital data;
- Threshold conditions;
- Volumes and types of business;
- Client money and client assets;
- Liquidity;
- Metrics monitoring;
- Concentration risk;
- Group capital test; and
- Information on certain credit agreements.

The FSC cautions that the standardisation problems highlighted in section 6.4 persist in these (and all) jurisdictions. Instructively, neither of these jurisdictions' regulators appears to publicly disclose granular data on individual funds.

6.6. Alternative recommendations for if ASIC assumes a data collection role

Notwithstanding the FSC's recommendations to the contrary, if ASIC chooses to pursue a greater data collection role, the FSC strongly recommends that ASIC should consult extensively with industry and APRA to craft an effective data collection approach. In particular, ASIC should:

- ensure there are close synergies with existing data collection activities by APRA, the ABS and third-party data providers to ensure that ASIC's activities are focused on filling gaps which may exist rather than duplicating existing functions;
- ensure superannuation funds and platforms are only required to answer to a single point of data collection;
- minimise the compliance burden by ensuring that data formats and definitions are aligned between different agencies which perform data collection in this area;
- consider whether a data collection role is better centralised under a single specialised agency, be it ASIC, APRA or the ABS, noting the latter two agencies have more specialised expertise and systems in this area;

[173] Ashley Alder, FCA, The drive for data in Non-Bank Financial Intermediation (NBFI), 16 May 2023; Sarah Pritchard, FCA, Helping markets thrive and managing systemic risk: the FCA's approach to non-bank leverage, 26 February 2025.
[174] FCA Handbook, Integrated Regulatory Reporting at SUP.16.12.15.

- explore the extent to which data proxies might be relied upon as an alternative to more costly forms of data collection; and
- design regulatory requirements around data collection differently for fundamentally different types of assets (eg debt and equity-based interests).

If ASIC proceeds with a data collection initiative, there is also utility in encouraging fund managers to disclose the fair value hierarchy of the underlying assets of the fund not only to the regulator, but also to product distributors and third-party data providers such as research houses. Under the Australian Accounting Standards Board's standard *Fair Value Measurement*, the fair value hierarchy is a system that tells us how reliable the information is when conducting valuations. It has three levels based on how observable (easy to verify from the market) the input information is that was used to value the asset, with:

- Level 1 inputs which are the most reliable and refer to directly observable inputs (e.g. shares on ASX)
- Level 2 inputs which are moderately reliable and are indirectly observable based on market information (e.g. property valuations based on recent sales)
- Level 3 inputs which are the least reliable and based on unobservable inputs (e.g. valuing a private company with no recent sales or public market information)[175]

The disclosure of this information to distributors such as platforms would support them to better assess liquidity and valuation risk when onboarding options to the menu offered to investors and advisers.

The FSC also notes that unregistered MISs are used by fund managers to administer complex and administrative activities such as fund restructuring and interfunding transactions, including on a multi-jurisdictional basis. Where a scheme is not raising capital directly or is being used only for structuring purposes, the FSC recommends that there is no utility in attempting to capture these schemes since any capital raising functions will is most material circumstances be performed by a different, registered MIS.

It is also important to note that major banks are not required to disclose data points across aggregated categories of their loan portfolios. Risk is instead assessed and regulated through their credit rating models and risk weighted assets. The FSC does not support subjecting private credit funds to a higher level of data collection than is applied to banking institutions.

The FSC considers that any future ASIC data collection initiative in private markets, if it is to proceed, should be designed pragmatically. Part of this is recognising that such data will have flaws and should be treated cautiously given it may have a significant and unjustified reputational impact on industry participants if it is published without being cleansed by the regulator to remove inaccuracies.

Recommendation 6.5: The FSC recommends that if, notwithstanding recommendations 6.1 to 6.3, ASIC proceeds with a data collection initiative involving private markets, the regulator should consult extensively with industry, APRA and third-party data providers. In particular, ASIC should:

(1) ensure there are close synergies with existing data collection activities by APRA, the ABS and third-party data providers to ensure that ASIC's activities are focused on filling gaps which may

[175] Australian Accounting Standards Board, AASB Standard: Fair Value Measurement, August 2015, pp.14-16.

exist rather than duplicating existing functions;

(2) ensure superannuation funds are only required to answer to a single point of data collection;

(3) minimise the compliance burden by ensuring that data formats and definitions are aligned between different agencies which perform data collection in this area;

(4) consider whether a data collection role is better centralised under a single specialised agency, be it ASIC, APRA or the ABS, noting the latter two agencies have more specialised expertise and systems in this area;

(5) explore the extent to which data proxies might be relied upon as an alternative to more costly forms of data collection;

(6) design regulatory requirements around data collection differently for fundamentally different types of assets (eg debt and equity-based interests);

(7) encourage fund managers to disclose their Level 2 and Level 3 asset holdings, and make this data available to third-party data providers such as research houses;

(8) ensure data is appropriately cleansed to remove inaccuracies prior to publication; and

(9) publish data at a sufficiently aggregate level that individual RSEs/RSELs or MISs/REs are not identifiable.

7. Superannuation

Australia's superannuation system is a dominant force in domestic capital markets, with assets exceeding AU$4.1 trillion and set to grow further as the Superannuation Guarantee increases to 12% in July 2025. As the system expands, regulatory settings must support long-term investment efficiency to ensure sustainable retirement outcomes and preserve the strength of the broader financial system.

As noted by ASIC, over the past decade, superannuation funds have increased their allocation to international public equities from 21% to 30% while keeping domestic equities steady at around 24%.[176] This has been accompanied by significant growth in their private asset holdings. There are growing indications from a variety of sources that Australian public equity markets are too shallow to accept a greater proportion of investment from superannuation funds.

Superannuation funds are uniquely positioned to invest across both public and private markets, underpinned by strong and predictable inflows and long investment horizons. These structural advantages allow funds to manage liquidity risk effectively, while investing in less liquid asset classes that support long-term returns, particularly within private markets.

7.1. Investment Flexibility Across Public and Private Markets

Maintaining the ability to invest flexibly across all asset classes is essential for superannuation funds to deliver on their obligations to members. Regulatory frameworks must avoid tilting the playing field in a way that restricts access to private markets, disincentivises diversification, or unintentionally encourages capital outflows from Australia. As the size of the superannuation system continues to grow, any additional regulatory burden on domestic private markets risks pushing capital into overseas markets with less regulatory friction.

Private market investments are now a well-established component of superannuation portfolio construction. As Morningstar notes, "*[s]uper funds are Australia's mega-investors, and investment in private assets is a well-established diversification strategy for superannuation funds*."[177] Morningstar also notes that private assets are a salient example of how funds leverage their scale and stability to invest in less liquid but high-return opportunities. Mercer similarly observes that "*private markets have become a mainstay of portfolio construction,*"[178] with funds increasingly pursuing cross-cutting opportunities in emerging areas such as the energy transition.

Superannuation also plays a critical role in economic growth and market stability by providing long-term, stable capital. Sustained access to private markets ensures funds can continue to support innovation, infrastructure development and portfolio resilience for members.

Recommendation 7.1: The FSC recommends that ASIC ensure maximum flexibility continues to be provided to the superannuation sector to allow for diversified investments that maximise retirement outcomes for Australians while providing needed capital to the Australian financial

[176] ASIC, Discussion Paper: Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets, February 2025, p. 22.
[177] William Anglingdarma and Thomas Dutka, Morningstar Manager Research Australia, Privacy, Please! How Private Assets Are Transforming Capital Markets and Superannuation Funds, 3 March 2015, p. 2.
[178] Mercer, Shaping Super 2025 Report, March 2025, p. 22.

system.

7.2. Valuation Practices in Private Markets

The FSC acknowledges regulatory concerns around valuation transparency in private markets, including the reliability and frequency of private asset valuations. However, there are well-documented challenges associated with valuing private assets—particularly in asset classes such as venture capital and private equity, which require deep domain expertise and context-specific inputs.

FSC members note that a one-size-fits-all approach to valuation is impractical given the heterogeneity of assets and fund structures. Compounding this challenge is the limited availability of independent valuation experts, which increases costs and places disproportionate pressure on smaller funds that may need to externalise valuations more frequently. One potential way of alleviating this is instead permitting the annual use of external professional valuation assurance providers to check in-house valuations.

The FSC supports a range of measures to enhance valuation governance and processes which are set out in section 4.2.

Recommendation 7.2: The FSC recommends that if ASIC oversees regulatory changes to private market valuations, it should endeavour to ensure that requirements impacting superannuation funds are aligned with APRA's SPS 530 framework.

7.3. Supporting Retirement Income Through Private Credit

As more Australians enter retirement, the need for stable, income-generating investments will continue to grow. Private credit has a key role to play in helping superannuation funds meet this demand, offering low-observed-volatility, long-duration returns as part of a diversified income strategy.

Superannuation funds are particularly well-suited to investing in private credit, due to their long-term horizons and stable net inflows. Increasing allocations to private credit supports retirement adequacy and broader economic activity, particularly in areas underserved by traditional bank lending.

Recommendation 7.3: The FSC recommends ASIC continue to support a regulatory framework that enables superannuation funds to allocate to private market assets—including private credit—as part of constructing diversified portfolios that provide stable retirement incomes.

7.4. Superannuation already highly regulated by APRA and ASIC

Australia's superannuation sector is already subject to a high degree of regulatory oversight, reflecting its compulsory nature and the public policy objective of ensuring dignified retirements for all Australians. Superannuation funds must comply with a broad suite of APRA Prudential Standards and Reporting Standards, in addition to regulatory obligations imposed through ASIC's regulatory guides. These requirements apply across the full spectrum of fund operations, including exposures to private markets.

While it is critical to maintain robust safeguards to protect members' retirement savings, ASIC should remain cognisant of the existing regulatory burden placed on superannuation trustees. Compliance and reporting obligations involve significant costs—costs that are ultimately borne by fund members. These pressures are particularly acute for smaller funds, which have more limited resourcing and capacity to manage overlapping regulatory requirements.

Recommendation 7.4: The FSC recommends ASIC take into account the high degree of regulation applying to superannuation funds and adopt a proportional approach when considering any additional regulatory requirements or altered expectations of RSEs/MISs.

7.5. Investment platforms

7.5.A. The Role of Investment Platforms in the Governance of Private Market Assets

Investment platforms play a critical role in Australia's financial system, acting as intermediaries that provide investors and their advisers access to a broad range of investment opportunities. Increasingly, this includes exposure (primarily indirect) to private market assets. As at June 2024, platform products held over AU$1.1 trillion in funds under administration (**FUA**), with approximately AU$372.1 billion in superannuation products.[179]

Wrap platforms typically offer two broad categories of investment options:

- Listed investments on public exchanges.
- MISs which may invest in property, infrastructure, private equity, or private debt, meaning platform RSEs typically have indirect exposure to these asset classes.

While direct access to dedicated private market funds on platforms remains rare (particularly for retail investors), exposure to private markets through managed funds is growing, largely driven by investor demand for diversification and yield in a persistently low-return environment.

Importantly, platform trustees do not manage the underlying investments themselves. Their role is to curate the investment menu and monitor the integrity of the products listed on that menu. This is a fundamentally different structure to default superannuation funds, where the trustee directly appoints investment managers, and oversees asset allocation.

Non-superannuation platforms in Australia are typically structured as either Investor Directed Portfolio Services (**IDPS**) or IDPS-like schemes, depending on their legal and operational design. These structures are regulated by ASIC rather than APRA. In an IDPS, the platform operator provides administrative and custodial services but exercises no direct investment governance. Investment selection and risk sit entirely with the investor in an IDPS. In contrast, IDPS-like schemes are structured as registered managed investment schemes, where the platform operator (as the RE) bears fiduciary and legal responsibility for investment governance, including oversight of underlying private market exposures.

[179] Plan for Life Actuaries and Researchers and ISSMI Market Intelligence, Media Release: Analysis of Wraps, Platforms and Master Trusts as at June 2024, 11 October 2024; APRA, Quarterly Superannuation Industry publication, 11 March 2025.

This distinction is important in the context of private markets, as indirect retail access to these asset classes via platforms often relies on managed fund structures governed by ASIC. The level of investment oversight, therefore, depends not only on the asset class, but also on whether the platform is acting as a neutral administrator (IDPS) or as a responsible entity (IDPS-like scheme) with obligations around investment due diligence, risk management, and disclosure.

7.5.B. Governance Distinctions between Default and Platform Superannuation Products

Default superannuation funds, typically accessed by employees who do not make an active investment choice, are managed under a pooled structure in which the trustee exercises centralised control over investment decision-making. These trustees are directly responsible for due diligence, asset selection, performance oversight, and valuation governance. As such, they are able to exert meaningful influence over the managers of unlisted assets and benefit from economies of scale and deep access to investment-level data.

In contrast, platform superannuation products offer a menu of investment options from which members or their advisers make selections. These selections are generally made from a menu of third-party MISs, and platform trustees are therefore unit-holders in these schemes rather than direct investors in the underlying assets. Platform trustees do not appoint fund managers, hold investment mandates, or have access to granular investment-level data. Their governance role is necessarily focused on assessing the quality of the MIS itself, rather than intervening in the management of its underlying assets.

7.5.C. Valuation and Liquidity Oversight in the Platform Context

The distinction in product structure has material implications for how valuation and liquidity governance is approached. Platform trustees must rely on the RE of each MIS to meet its obligations under the *Corporations Act*, including the statutory duty in section 601FC(1)(j) to ensure proper valuation of scheme assets. Unlike master trust superannuation trustees, platform trustees cannot independently verify valuations at the asset level, nor can they meaningfully challenge those valuations in the absence of transparent and standardised reporting by the MIS.

Recent commentary from APRA observed that some platform trustees may be placing excessive reliance on the valuation practices of external managers.[180] However, this reliance reflects the structural and legal limits of the platform model. As acknowledged by recommendation 4.10, the FSC believes platform trustees are not equipped, legally or practically, to act as quasi-regulators of valuations performed by third-party fund managers.

While platform trustees do not manage investments directly or engage in asset-level valuation, they nonetheless play a critical role in investment governance through robust due diligence and ongoing oversight of the investment options available on their menus. Before onboarding a MIS onto their investment menu, platform trustees are expected to assess the fund manager's track record, operational integrity, compliance history, and the adequacy of its valuation and liquidity frameworks. This includes reviewing the fund's product disclosure documents, governance arrangements, and the policies the RE has in place for the valuation of unlisted assets. Importantly, this oversight does not end at onboarding. Platform trustees are also responsible for ongoing monitoring, including the periodic re-evaluation of investment options against the platform trustee's Investment Governance

[180] Australian Prudential Regulation Authority, Governance of Unlisted Asset Valuation and Liquidity Risk Management in Superannuation, December 2024.

Framework. APRA is currently assessing these practices and identifying areas for improvement in their thematic review of Trustees' investment governance practices for platform products, scheduled to report in 2026.

Given this context, ASIC's regulatory focus should be calibrated accordingly. As expressed in section 4.2, enhancing the transparency and obligations of REs and fund managers (those closest to the asset) is likely to yield a greater governance benefit than attempting to impose investment-level responsibilities on platform trustees or IDPS operators, who do not control those assets.

Recommendation 7.5: The FSC recommends that ASIC refrain from imposing additional valuation obligations on platform operators, but rather strengthen expectations around the obligations and transparency of entities closest to the asset, in line with recommendation 4.10.

7.5.D. Addressing Disclosure Gaps in Private Market Funds

One of the key challenges for platform trustees arises from the relative opacity of private market investments, compounded by their position as unit-holders in these funds. In comparison to public market assets, many MISs with private asset exposure lack the transparency necessary for platform trustees to fully assess risk and performance.

Disclosure practices among private market funds vary widely, particularly in areas such as asset valuation methodologies, liquidity profiles, and stress-testing outcomes. For example, fund managers may not disclose whether third-party valuers are used, or the rationale behind valuation adjustments. Similarly, product disclosure statements often omit information such as expected timeframes for asset liquidation, liquidity management plans under stress, or redemption gating procedures and associated risks.

In addition, the investment objectives of private market funds are often not measurable against a widely accepted benchmark (e.g. several private market funds' PDSs state that the objective is to 'provide an exposure to private markets'). This makes it harder for platform trustees to monitor a fund's performance.

Consistent with recommendations 4.3 and 4.29, these limitations could be addressed through enhanced disclosure to investors of the liquidity risks, policies, and individual product performance of these private market funds.

Recommendation 7.6: The FSC recommends that, pursuant to recommendations 4.3 and 4.29, ASIC enhance its disclosure expectations for fund managers around liquidity risks, and performance reporting to assist platform trustees in discharging their investment governance obligations. The FSC considers that this expectation should be set out in an ASIC regulatory guide.

7.5.E. Open-ended funds on platform investment menus

A significant development in the platform landscape has been the increased presence of open-ended funds on investment menus. While these funds aim to improve retail accessibility to private markets and reduce administrative frictions, they also present a distinct set of valuation and liquidity risks (as described in section 4.2) which can be mitigated through improvements to valuation and liquidity practices (see sections 4.2 and 4.4).

From a platform perspective, certain features of these funds such as infrequent or manager-led valuations, discretionary redemption gates, and redemption frequency, create challenges in assessing the appropriateness of such products for their investment menus. Platforms must manage the risk that a fund may become illiquid or impose sudden withdrawal restrictions, leading to investor dissatisfaction, reputational damage, and increased administrative burden. In situations where a private market fund faces liquidity stress, platforms may need to field significant investor inquiries, adjust automated investment strategies, or even manually suspend trading functionality. These scenarios are not only operationally complex but can also impose direct and indirect costs on both the platform and its users.

Better valuation practices, such as more frequent and independently verified pricing, would allow platforms to more accurately reflect asset values, helping to improve informed investor decision-making. Similarly, enhanced liquidity disclosures, including clear articulation of gating mechanisms, notice periods, and underlying asset liquidity profiles, would support platforms in evaluating the ongoing suitability of these funds for their investment menus. Such improvements would also facilitate better alignment with platform investment governance obligations, particularly under DDO.

Recommendation 7.7: The FSC recommends that, pursuant to recommendations 4.17, 4.29, and 4.31 ASIC set clearer expectations for valuation processes and liquidity risk disclosure for open-ended funds available to retail investors to assist platform trustees in discharging their investment governance obligations.

8. Private credit

This section discusses the role and regulation of private credit in Australia. It highlights the significant growth of the private credit market, driven by its ability to fill gaps left by traditional bank lending, particularly for mid-sized corporations. The section emphasises the economic and social benefits of private credit, including its role in funding innovative projects and providing stable returns for investors. It argues against imposing prudential controls on private credit funds, suggesting that existing regulations and market practices are sufficient to manage risks. The section also recommends improving disclosure to retail investors, particularly when debt obligations are converted into equity, and suggests facilitating the entry of additional credit rating agencies to enhance transparency and competition in the market.

8.1. Key considerations regarding private credit

Private credit is a subset of private markets which has received a high level of recent regulatory and media attention. This is principally due to recent high growth in the sector, whose reasons are addressed in section 1.4.B. While often associated with real estate, private credit also powers a significant volume of business origination outside of this sector. It is very important to acknowledge the value already provided by private credit at an economic, social and individual investor level, which is acknowledged in section 3. The IMF has also acknowledged that private credit adds significant economic value globally.

Like other areas of private markets, international evidence suggests that private credit delivers consistently strong results, in this case relative to alternative fixed income investments.[181]

According to the Bank for International Settlements, global private credit's AUM has grown from "*about $0.2 billion in the early 2000s to over $2,500 billion today.*"[182] According to Alvarez & Marsal's analysis of Blackrock and Preqin data in 2024, in Australia:

> "*private debt could reach close to $350 billion in Australia and account for about 18 percent of total corporate lending in the next five years. This should propel private debt to surpass our corporate bond market in size, with banks retaining their key role in Australian corporate lending and holding the largest share.*"[183]

The FSC concurs with Alvarez & Marsal that "*this increased borrower choice is a positive development*",[184] but acknowledges the need to ensure product disclosure and fund governance procedures are in place for products open to retail investors. In section 8.2 of this submission, the FSC addresses key risk management considerations associated with private credit.

According to the Alternative Credit Council, in Australia most private credit borrowers are mid-sized corporations.[185] Loans are typically between AU$20 million to AU$50 million, but a growing number of private credit funds have the capability to significantly exceed these amounts.[186] A consequence of this is that there is presently limited scope for a centralised secondary market, because it would be hard to scale given there is significant diversity around loan conditions and due diligence would

[181] Hamilton Lane, 2025 Market Overview: What me worry?, 2025, p. 12.
[182] Fernando Avalos, Sebastian Doerr and Gabor Pinter, BIS Quarterly Review, The global drivers of private credit, March 2025, p. 1.
[183] Alvarez & Marsal, The Rise of Private Debt in Australia: a Boost for the Future of Corporate Lending, 26 August 2024, p. 2.
[184] Alvarez & Marsal, The Rise of Private Debt in Australia: a Boost for the Future of Corporate Lending, 26 August 2024, p. 2.
[185] Alternative Credit Council, Australia Private Credit Introductory Guide 2.0, 18 February 2025, p. 31.
[186] Alternative Credit Council, Australia Private Credit Introductory Guide 2.0, 18 February 2025, p. 7.

still be necessary for each transaction.

Private credit lenders are not subject to prudential regulation by APRA or the Basel Accord standards, which means they are not required to retain certain minimum amount of cash on-hand as a liquidity safeguard for depositors. This is a reflection of the fact that much of the capital invested by private credit firms is derived from closed-ended funds where there is reduced potential for a structural liquidity mismatch to arise, and even in open-ended funds liquidity risk management tools can be employed to manage liquidity risks (see section 4.4). In contrast, banks are generally funded through short-term deposits which can be prone to runs.[187]

Importantly, the Financial Services Inquiry considered whether non-bank lenders companies should be prudentially regulated by ASIC and chose to instead recommend clear differentiation between products offers by private credit firms and accounts offered by ADIs.[188] The FSC concurs with this approach and recommends against the imposition of prudential controls. It is also important to note that the income streams associated with private credit lending are a further source of liquidity.

Private credit fills an important gap in Australia's financial market. The demographics of Australia's ageing population are driving greater demand for low observed volatility, high income, long-term fixed income products during retirement. A responsibly managed, diversified portfolio of private debts can offer high risk-adjusted returns which help to meet this demand. At the same time, as set out in section 2.1.D, Australia's market for public corporate debt is so tightly regulated that the parts accessible to retail investors are statistically insignificant relative to public equity markets.

In its Discussion Paper, ASIC concedes that private credit is not systemically important risk wise to the Australian economy, but acknowledges individual failures are on the horizon.[189] The RBA and Council of Financial Regulators have also concluded that the risks associated with private credit are contained.[190] The RBA has also stated that while there are vulnerabilities: "*[d]ue to its small size, direct risks to financial stability from the private credit market in Australia appear low.*"[191]

There are several examples in the media of private credit-funded developments which may be in financial distress. There is nothing new about property developers struggling to build high risk projects, but this is primarily a reflection on the property development market, not the viability of underlying capital markets. Provided that investors are ranked highly in the capital stack, they are well-positioned to perform well in the long-term, while appropriate liquidity risk management policies should provide them with protection in the short-term.

Real estate lending is also backed by real assets: only some construction and development lending can be accurately characterised as risky, but even then, this is matched by higher returns, carefully calibrated covenants, specialised lending teams, liquidity risk management policies, and appropriate security.

Furthermore, in the midst of an affordable housing crisis, there are compelling public policy reasons against measures which might make it more difficult for homes to be built. More capital being invested into property development – especially housing – is not necessarily a bad thing, even if some of those projects do not succeed or need to be completed by a different developer or fund.

A characteristic of high-risk ventures is that some failures will occasionally occur. In terms of

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[187] Fernando Avalos, Sebastian Doerr and Gabor Pinter, BIS Quarterly Review, The global drivers of private credit, March 2025, p. 13.
[188] David Murray et al, Financial System Inquiry Final Report, November 2014, p. 295.
[189] ASIC, Discussion Paper: Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets, February 2025, p. 5.
[190] Council of Financial Regulators, Quarterly Statement by the Council of Financial Regulators, December 2024; Marcus Robinson and Stefano Tornielli di Crestvolant, RBA, Financial Stability Risks from Non-bank Financial Intermediation in Australia, 18 April 2024, p. 9.
[191] Andre Chinnery et al, RBA, Growth in Global Private Credit, 17 October 2024, p. 5.

assessing private credit funds, what is important is how well funds have prepared for that eventuality, whether risks have been properly disclosed to investors and whether other legal obligations have been obeyed.

In the context of the EU's venture capital market, the IMF has previously noted that its venture capital market is held back by the "*bank-based structure of the EU's financial system*". This is because:

> "*Banks are not well suited to financing high-tech startups given the limited tangible collateral on offer, the poor fit of bank risk models and debt-service and loan-maturity requirements to fast growing but initially unprofitable firms, and regulatory and supervisory factors that do not favor risky exposures.*"[192]

In the IMF's view, non-bank financial intermediaries are a more innovative source of capital. The IMF further notes that:

> "*Banks are ill-suited to financing startups for at least four reasons. First, the important role of collateral in bank risk management works against new firms with predominantly intangible assets—R&D, patents, and intellectual property more broadly—because such assets are not easily attached, seized, or sold. Second, many bank risk models are not well attuned to the knowledge intensive and subjective task of gauging the future prospects of high-tech fast-growing but initially unprofitable firms. Third, the time it takes startups to develop products, scale up, and generate sufficient revenue is generally not consistent with banks' maturity and debt-servicing requirements. Fourth, regulation and supervision require high-risk exposures to be amply buffered by capital and provisions, which can significantly reduce banks' rates of return on loans to startups.*"[193]

As a result of this:

> "*the EU loses out on many of the growth benefits and positive externalities of seeing startups achieve scale and exit at home. Instead, many of its most promising startups migrate away, often to the United States (Testa et al. 2022). When this occurs, even if some operations stay in the EU, many of the growth and employment benefits accrue abroad. This also deprives Europe of the positive spillovers from innovation and R&D that such firms generate. Finally, if startup founders and VC funds exit prematurely, they realize less of the ultimate value of the firm, reducing proceeds reinvested into the domestic startup ecosystem …*"[194]

Private credit markets play a legitimate role in a competitive financial ecosystem. It is important to note that it is not just a failure (ie risk appetite) of the banks that give rise to private credit markets, but in some instances stringent bank lending criteria <u>may</u> drive borrowers towards considering alternative sources of funding. This is the case beyond just financing start-ups – real estate development debt is a prime example.

With banking institutions primarily focused on mortgage lending, the FSC believes it is crucial for the private credit sector to fill the business lending gap and provide its more flexible and innovative services. The FSC sees the experience of the EU as a cautionary tale for what may occur as a result of unnecessarily onerous regulation of private credit – and private markets more broadly.

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[192] Nathaniel Arnold, Guillaume Claveres and Jan Fri, IMF, Working Paper: Stepping Up Venture Capital to Finance Innovation in Europe, July 2024, p. 5.
[193] Nathaniel Arnold, Guillaume Claveres and Jan Fri, IMF, Working Paper: Stepping Up Venture Capital to Finance Innovation in Europe, July 2024, p. 5.
[194] Nathaniel Arnold, Guillaume Claveres and Jan Fri, IMF, Working Paper: Stepping Up Venture Capital to Finance Innovation in Europe, July 2024, p. 14.

Recommendation 8.1: The FSC recommends against the imposition of prudential controls on private credit funds given that they have a legitimate role to play in financing activities, including but not limited to circumstances where a bank is not able or willing to do so.

8.2. Risk management

There is a misconception that private credit is inherently high risk. It is important to acknowledge that there are high-risk and non-investment-quality areas within segments of all investment markets and private credit is no different in this respect. Nonetheless, there are also areas of private credit which are low risk and investment quality.

Private credit is far more diverse than simply distressed debt, covering corporate, asset-backed and infrastructure financing (a full list is set out in Appendix 9.1). Some areas of private credit, like distressed debt, can be risky – especially if undiversified, but other areas such as senior secured loans and infrastructure lending have much lower risk. There are opportunities for significant diversification even within the asset class itself.[195]

The relative newness of private credit means that some commentators have remarked that its resilience is untested. However, private debt performed well during the COVID-19 crisis, the bond market downturn in 2022, energy instability around the Russia-Ukraine conflict, and high recent interest rates.[196] As noted by Zenith Investment Partners:

> *"As private debt managers continue to deliver attractive returns with low volatility, there is a growing perception that the asset class is a 'one way' bet, delivering high income with minimal downside risk."*[197]

It is important, therefore, for fund managers to endeavour to manage the expectations of retail investors. In more sustained downturns, the sector's resilience is likely to be determined by the quality of the lending standards at the origination stage combined with the expertise exercised by fund managers if or when some borrowers become distressed. In the event of a major downturn and major pessimism in market sentiment, all funds can face liquidity risks and should therefore have liquidity risk management tools in place to address them.

Other commentators have speculated that private credit resembles collateralised debt obligations prior to the GFC and that poor-performing products might be being passed on to unwitting investors. However, if such conduct occurs it is already addressed by existing laws around misleading and deceptive conduct, negligence, breach of contract and breach of fiduciary duty. Private credit also lacks the level of securitisation seen in the GFC or the mature secondary markets, although in future the use of open-ended vehicles may require occasional regulatory surveillance.[198]

Key risk management practices for lenders include upfront due diligence, regular monitoring of credit worthiness, frequent valuations and re-ratings, stress-testing, maintaining equity cushions, diversifying holdings, undertaking regular disclosure and being prepared to undertake workouts for distressed borrowers. Floating rates typically protect returns but may make borrowers more

[195] Preqin, Private debt in 2025: the outlook for fundraising, deals, and performance, 6 January 2025.
[196] Preqin, Private debt in 2025: the outlook for fundraising, deals, and performance, 6 January 2025.
[197] Rodney Sebire, Zenith Investment Partners, Private debt – a cul de sac or a two-way street?, 24 June 2024.
[198] IMF, Global Stability Report: The Last Mile: Financial Vulnerabilities and Risks, April 2024, p. 16.

susceptible to interest rate fluctuations which can have implications for defaults.

In addition, covenants allow lenders to set binding rules for borrowers to restrict the riskiness of their behaviour while also giving fund managers visibility and a degree of control over borrowers' activities. The RBA notes that covenants typically take the form of:

> *"1. Interest coverage covenants (ICC): set a minimum on the interest coverage ratio (ICR), which is the ratio of firm earnings (usually EBITDA (earnings before interest, taxes, depreciation and amortisation)) to interest payments on total debt (not just on the debt from the loan facility that imposed the covenants). Alternative names that often appear in the reports include fixed charge coverage and debt service coverage with slightly different calculations.*
>
> *"2. Other earnings-based covenants (OEC): limit the stock of debt to be no more than some multiple of earnings. Examples include debt-to-earnings, debt-to-EBITDA and debt-to-cash flow ratios.*
>
> *"3. Asset-based covenants (ABC): restrict the firm's maximum amount of debt or minimum amount of equity by requiring that the firm maintains leverage below or net worth above certain thresholds. They are usually called gearing (debt-to-equity) or leverage (debt-to-assets) ratios."*[199]

It is important to note that "*[t]he smallest detail around a security package or a covenant can ultimately save an investor from losses in a default scenario*",[200] so the quality of a fund's management team and due diligence process is extremely important. As the sector continues to grow and competition remains high, it will be necessary for funds to ensure they do not participate in a race to the bottom on lending standards.[201]

Many private credit loans also frequently have relatively short durations, which gives lenders flexibility to change terms in response to evolving market conditions.[202] In addition, some lenders – especially real estate lenders – structure products by quarantining different development projects to individual special purpose vehicles. This helps silo risks to individual projects and funds.[203]

The RBA has also acknowledged that, while it sometimes finances risky investments, private credit

> *"has greater capacity than other forms of lending to postpone losses and defaults due to the bilateral nature of lending agreements. This has made it more resilient thus far in the cycle, but could increase the sector's vulnerability to large shocks."*[204]

Importantly, AASB 7 *Financial Instruments: Disclosures* requires that unremedied breaches of covenants must be disclosed in financial statements,[205] which guarantees a minimum level of transparency in this area. The FSC also supports more robust disclosure obligations where debt obligations are converted into equity as a result of a loan default.

The FSC concurs with the IMF's view that:

> "*Securities market regulators should also ensure that, in funds that permit retail participation, regulatory requirements include comprehensive and clear disclosures on potential risks and*

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[199] Kim Nguyen, RBA, The Real Effects of Debt Covenants: Evidence from Australia, October 2022, p. 9.
[200] Rodney Sebire, Zenith Investment Partners, Private debt – a cul de sac or a two-way street?, 24 June 2024.
[201] IMF, Global Stability Report: The Last Mile: Financial Vulnerabilities and Risks, April 2024, p. 73.
[202] Scarcity Partners, Discussion paper: Not all private credit is created equal, March 2025, p. 15.
[203] Scarcity Partners, Discussion paper: Not all private credit is created equal, March 2025, p. 15.
[204] Andre Chinnery et al, RBA, Growth in Global Private Credit, 17 October 2024, p. 5.
[205] Kim Nguyen, RBA, The Real Effects of Debt Covenants: Evidence from Australia, October 2022, p. 9.

redemption limitations."[206]

Recommendation 8.2: The FSC recommends improved disclosure to retail investors in circumstances where a private credit MIS has debt obligations above a certain threshold converted into equity as a result of a loan default or related negotiation. The FSC suggests ASIC should set a clear expectation through regulatory guidance that this should occur, and that the precise threshold should be determined in consultation with industry.

8.3. Enhanced role for credit ratings agencies

There is a limited presence in the Australian market of second-tier credit ratings agencies. A consequence of this is that in the private credit market, lenders usually undertake their own credit underwriting assessment processes for individual loans.[207] These assessments can leverage off the thorough due diligence conducted by the fund manager; however, it means that in some instances ratings may lack the level of transparency, rigour or independence seen in some offshore markets. This is a function of the relatively small size of loans in the Australian market, combined with significant regulatory barriers to the participation of smaller ratings agencies in the Australian market.

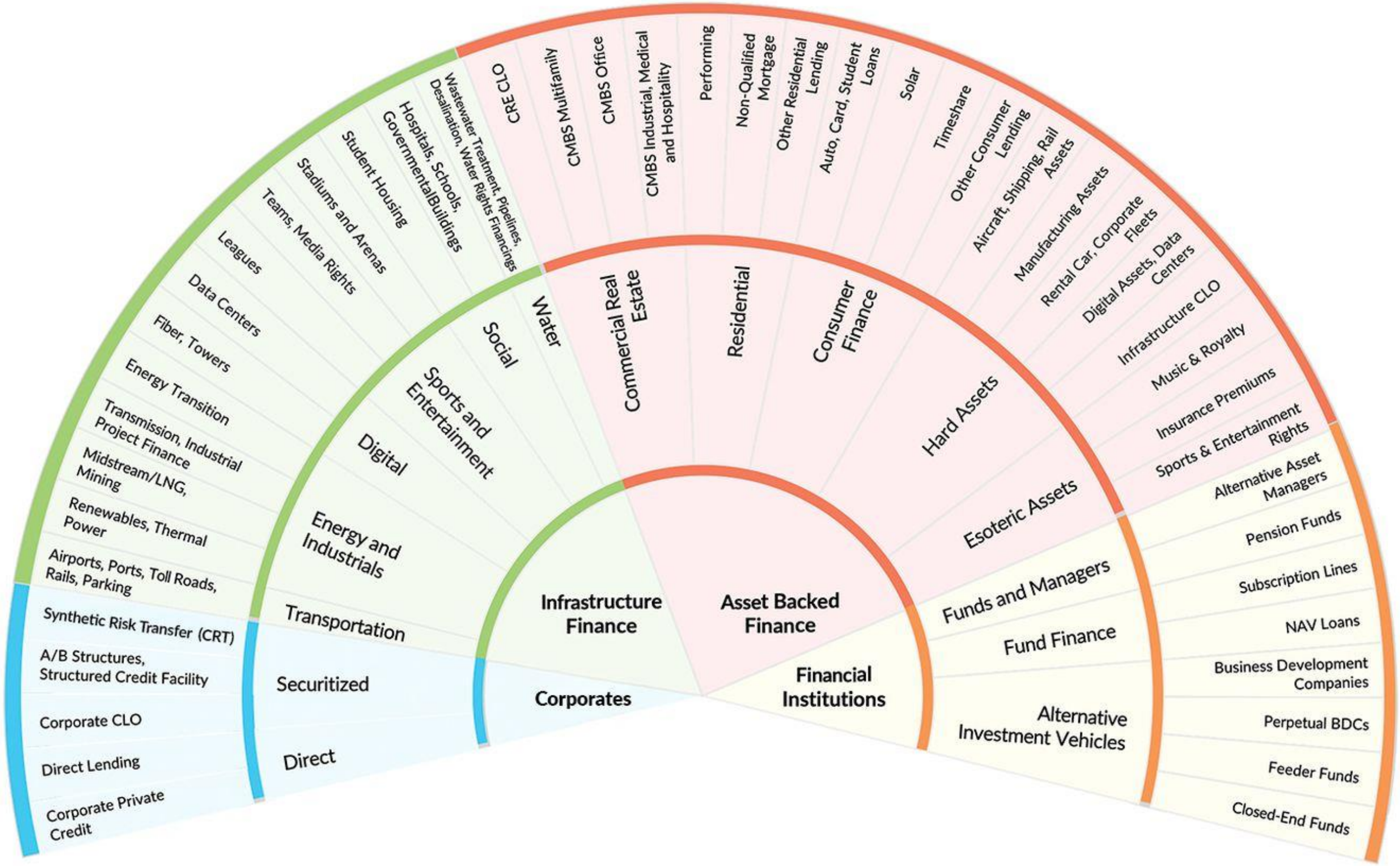
The FSC suggests it may be beneficial for regulators to moderate existing rules around ratings agencies to move it easier for mid-sized operators to enter the Australian market to rate products at a lower point in the value chain than is presently targeted by ratings agencies operating in Australia

Recommendation 8.3: The FSC recommends that ASIC should evaluate current regulatory obstacles to facilitate the entry of additional credit ratings agencies into the Australian market, with a view towards increasing the options available for ratings to be given to individual loans.

[206] IMF, Global Stability Report: The Last Mile: Financial Vulnerabilities and Risks, April 2024, p. 93.
[207] Alternative Credit Council, Australia Private Credit Introductory Guide 2.0, 18 February 2025, p. 13.

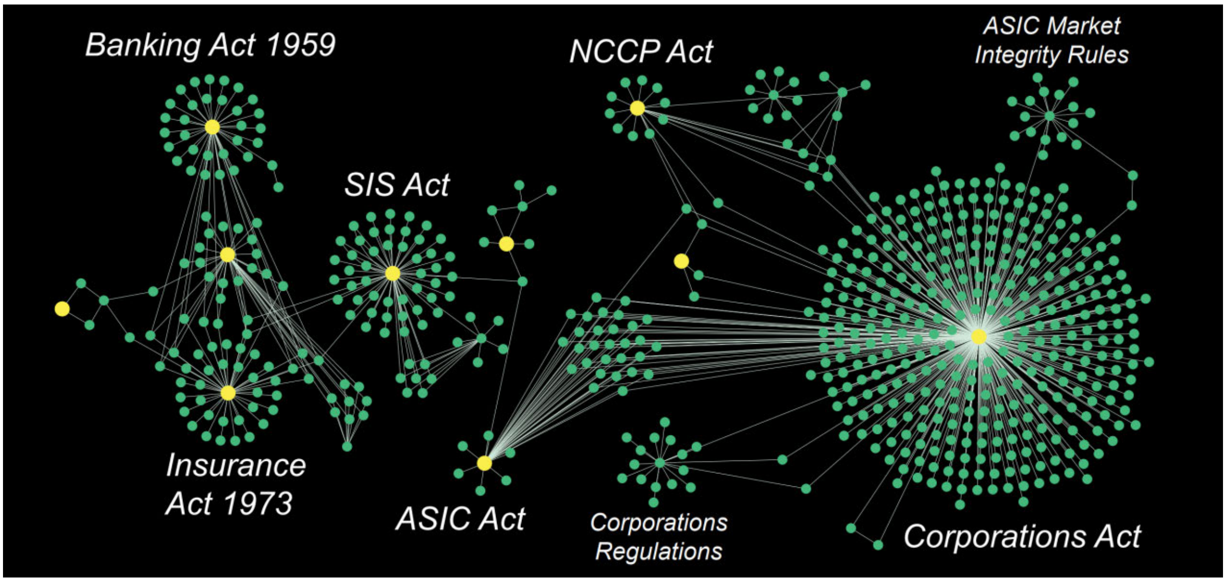
9. Appendix

9.1. The spectrum of private credit products



Source: Fitch Ratings 2025.

9.2. The complex web of proliferating legislative instruments in Australia



Source: ALRC 2023.

9.3. Corporate bonds: comparison of public equities and debt

1. Source: ASX internal

Source: [Corporate Bond Reform Working Group]() 2024.

9.4. Examples of Public Market Equivalent performances measures

Methodology	LN PME (Long-Nickels)	KS PME (Kaplan-Schoar)	Capital Dynamics PME+
Metric	Annualised Rate	Ratio	Annualised Rate
Private Equity Outperformance if:	Estimated PME IRR < PE Fund IRR	Value > 1	Estimated PME IRR < PE Fund IRR
Description of Calculation	Contributions to PE fund are converted to an equal purchase of shares in the public index. Distributions represent liquidation of share in public index. IRR calculation uses same contributions and distributions as PE fund, but with a different final period remaining value.	Calculated by discounting the private equity fund cash flows by the public market index value. The discounted distributions plus the current remaining value are divided by the discounted contributions to obtain the ratio.	Uses a fixed scaling factor (lambda) to modify each distribution to ensure the PME final period remaining value is the same as the PE fund remaining value. IRR calculation uses modified distributions but same contributions and final period remaining value.
Strengths	LN PME IRR is directly comparable to the PE Fund IRR, allowing an apples-to apples comparison.	The calculation looks at the ratio of outflows versus inflows as opposed to generating an IRR, which is time dependent and is easily manipulated. Easy to interpret.	As for LN PME, with the added benefit of avoiding a final period negative remaining value, making PME IRR calculation possible in more cases.
Weaknesses	IRR sensitive to early distributions. Large distributions could cause a negative PME final period remaining value, making PME IRR calculation computationally impossible.	The multiple is neither a return nor return spread which makes it difficult to compare against other models which produce annualised rates.	PME+ does not match the cash flows perfectly.

Source: SBAI 2025 using Preqin information prepared by the British Private Equity & Venture capital Association.

9.5. Assessment of valuation techniques for illiquid assets

Approach	Market	Cost / Replacement	Income
Definition *(As per IFRS 13)*[14]	The market approach uses prices and other relevant information generated by market transactions involving identical or comparable (i.e. similar) assets or liabilities, or a group of assets and liabilities such as a business.	The cost approach reflects the amount that would be required currently to replace the service capacity of an asset (often referred to as current replacement cost).	The income approach converts future amounts (e.g. cash flows or income and expenses) to a single current (i.e. discounted) amount. When the income approach is used, the fair value measurement reflects current market expectations about those future amounts.
Method	Uses comparable sales data to estimate value.	Estimates value based on replacement or reproduction cost.	Estimates value based on discounted future cash flows.
Use Cases	Commonly used in real estate and for assets with active markets.	Often used for specialised assets with no active market.	Commonly used for income-generating assets and businesses.
Advantages	Reflects current market conditions and buyer-seller interactions.	Provides a tangible, cost-based approach.	Accounts for the earning potential of the asset.
Disadvantages	May not be accurate in inactive or volatile markets.	Does not consider market demand or future income potential.	Relies heavily on accurate income projections and discount rates.
Data Required	Comparable sales data, market trends	Construction/production costs, depreciation factors	Income statements, cash flow projections, discount rates
Subjectivity	Less subjective if good comparables are available. Although, finding examples of truly representative peer companies or assets can be very difficult.	Can be subjective due to estimating depreciation and functional obsolescence.	High subjectivity in estimating future income and selecting discount rates.

Source: SBAI 2025.

9.6. Liquidity tools used by managers of professional investor funds

Feature	Description
Usual liquidity tools	
Lock up period	An initial period during which the investor is not allowed to redeem shares
Redemption frequency	Once the lockup period expiration passes, investors can redeem at certain points in time
Redemption notice period	Investors are required to give advance notice before any redemption
Additional liquidity tools	
Protecting fund capital	
Redemption gates	Partial restrictions to investors' ability to redeem their capital, generally on a pro-rata basis (restrictions on the amount that can be withdrawn as a proportion of the investor's capital in the fund, on the fund's total NAV or on the funds held under a particular class of shares)
Side pockets	Arrangements that segregate illiquid or hard-to-value positions from the main pool of assets in a fund until such time as they are realised or are no longer difficult to price
Suspension of redemption	Temporary measure that aims at preventing investors in the fund from withdrawing their capital

[continued next page]

Protecting remaining investors by passing transaction costs on to redeeming investors	
Swing pricing	Process for adjusting a fund's NAV to effectively pass on transaction costs stemming from net capital activity (i.e., flows into or out of the fund) to the investors associated with that activity during the life of a fund, excluding ramp-up period or termination
Anti-dilution levy	Charge paid by investors on the fund's NAV price to protect the value interest of remaining fund investors from any dilution through large transactions
Preventing short-term trading	
Redemption fees	Fee charged to an investor when shares are sold within a pre-defined period after the launch of the fund
Other lines of action	
In-kind redemptions	Tool that allows the fund to offer redeeming investors a payment other than cash, often securities on a pro-rata basis

* Note that swing pricing and anti-dilution levies are not permitted in Australia.[208]

Source: AIMA 2021.

[208] AIMA, Liquidity Risk Management in Alternative Funds, 23 March 2021, p. 44.