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Australian Securities and Investments Commission (ASIC)
Submitted by email: markets.consultation@asic.gov.au

Dear Sir/Madam,

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

About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material sustainability issues. Our members include Australian and international asset owners and institutional investors with more than $1.9 trillion in funds under management.

Through our research, engagement, advocacy and voting recommendations, ACSI supports members in exercising active ownership, which enhances the long-term value of the retirement savings entrusted to them to manage. ACSI members can achieve value for their beneficiaries through genuine and permanent improvements to the practices of the companies in which they invest.

Summary of ACSI's position

Public and private markets each play an important role in superannuation investment. Approaches in each market can inform the other, while recognising that regulatory provisions should account for differences in each market. ACSI's primary focus is the Australian listed equity market and our comments in this submission should be understood within this context.

While there are a range of factors influencing the recent decline in listings on the Australian Securities Exchange (ASX), as set out in the Discussion Paper, recent trends should not be attributed to changes in regulation or shareholder expectations. Frameworks that protect shareholder rights and promote strong company governance have significant value and ultimately provide investors with confidence, supporting participation in public markets.

Drivers of companies' decisions to list on public markets

As noted in the Discussion Paper, there has been a recent decline in the number of listings through initial public offerings (IPOs) on the ASX. A range of factors influence companies' decisions on whether to pursue a public listing and upon which market to list, and there are examples of trends in declining public listings playing out in other jurisdictions.

Relevant considerations include macroeconomic conditions, the depth and diversity of the investor base, market liquidity, research coverage, governance standards and the relative availability of private capital. ASIC Report 807 highlights that the additional cost of being a public company is likely only a small contributor to the decline in listings in the United States and similarly notes that changes in regulatory settings do not appear to be driving the recent decline in ASX listings. Accordingly, while there are no specific regulatory changes currently proposed (and we would consider each and any proposal on its particular merits), it appears that regulatory settings are not the key issue. Therefore, even significant change is unlikely to address the decline, and may even be counterproductive if it affects investor confidence.

The importance of company governance

Good governance is a central focus of the regulatory system. Appropriate shareholder protections, and well-governed companies protect and promote shareholder involvement in the public markets.

ACSI prioritises strong governance practices by ASX-listed companies, on the basis that good governance supports long-term financial outcomes for our members' beneficiaries. Good governance, including appropriately qualified directors with the capacity and ability to challenge and support management, is central to a company's strategy, oversight structure and approach.

As noted in ASIC Report 807, "consideration should be given not just to the costs of a rigorous governance framework but also the benefits of additional monitoring for strategic decision making." There is a range of academic evidence showing the benefits of good governance to performance, for example a 2019 study found that a firm's governance rating "reliably forecasts measures of firm operating performance." In addition, a 2010 study found a significant positive relationship between corporate governance ratings and performance. In 2020, a research paper, using adherence to the UK Corporate Governance Code as its measure, found companies with stronger governance displayed greater value across financial indicators, and that companies with strong governance both created and retained more value.

The importance of upholding shareholder rights

Governance expectations for listed companies are upheld by both regulatory obligations (such as directors' duties) and by shareholders exercising their ownership rights (including via engagement meetings and by voting on company resolutions). ACSI notes that many regulatory obligations and shareholder expectations similarly apply to unlisted companies, although processes may be less publicly visible, and they may rightly operate differently given differing market attributes. This is consistent with the principle that good governance needs to be fit for purpose and one singular approach does not fit all organisations.

ACSI notes that one important element of an active public equity market is access to a deep and diverse investor base. In this regard, appropriate shareholder protections underpin investor confidence. Key regulatory frameworks supporting these rights include continuous disclosure obligations and rules which uphold the principle of 'one share, one vote'. These protections are especially important in the public markets, due to the potential volume and spread of shareholders which can limit their ability to engage with the company. In the private markets, for example, ownership structures, including potential nominee directors, can work to address the agency problem and information asymmetry.

While ACSI would assess any specific reform proposal on its merits, our view is that it would be counterproductive to weaken key governance standards or shareholder protections in an attempt to attract listings. Key shareholder protections support integrity and confidence in the market and therefore are essential to fair and efficient public markets.

More detailed responses to select consultation questions are set out in an appendix to this letter. I trust our comments are of assistance. Should you require any further information, please contact me or [redacted], Executive Manager – Policy and Research ([redacted]).

Yours faithfully

[redacted]

[redacted]
Chief Executive Officer
Australian Council of Superannuation Investors

APPENDIX: RESPONSES TO SELECT CONSULTATION QUESTIONS

Consultation question	ACSI response
Question 5: What would make public markets in Australia more attractive to entities seeking to raise capital or access liquidity for investors while maintaining appropriate investor protections?	ACSI notes that a range of factors influence companies' decisions on whether to list on a public market. Relevant considerations include macroeconomic conditions, the depth and diversity of the investor base, market liquidity, research coverage, company governance standards and the relative availability of private capital. ASIC Report 807 presents academic research which suggests that regulatory costs are only a small contributor to the decline in the number of listed companies in the United States. Supporting a similar conclusion for Australia, the report notes that "no substantial [regulatory] changes coincide with the decline in IPOs and increase in de-listings in 2022-2024". Recent research from the UK also finds that deregulation is not the key reason for declining listings, as some more 'attractive' markets are potentially more regulated. It finds that valuations tied to deeper liquidity and expertise are more important measures. Institutional frameworks in public equity markets which support shareholder rights and strong company governance are appealing for investors. Therefore, while ACSI would assess any specific reform proposal on its merits, we believe it would be counterproductive to weaken key shareholder protections.
Question 7: To what extent is any greater expectations of public companies, compared to private companies, the result of Australian regulatory settings or the product of public scrutiny and community expectations of these companies?	As set out above, many regulatory obligations and shareholder expectations similarly apply to unlisted companies, although processes may be less publicly visible, and they may rightly operate differently given differing market attributes. While there are regulatory requirements associated with listing (such as those set out in the listing rules) it is challenging to isolate whether, in fact, there are greater expectations for listed entities, or whether the additional scrutiny reflects the more visible interaction those entities have with their stakeholders (for example their customers or employees). In any event, ACSI believes that strong corporate governance, upheld by both regulatory obligations and investor stewardship, are ultimately in the long-term financial interests of companies. As noted in ASIC Report 807, "consideration should be given not just to the costs of a rigorous governance framework but also the benefits of additional monitoring for strategic decision making." *Regulation* Appropriately targeted laws and regulations can promote company (both listed and unlisted) behaviour which is aligned with the long-term interests of shareholders and the broader economy. Many key company obligations, including directors' duties, are not specific to listing status. Similarly, some new obligations such as mandatory climate reporting obligations, apply based on organisation size rather than listing status. Additional obligations in listed markets are appropriate to protect shareholder rights and maintain market integrity (e.g. the ASX Listing

	Rules). The ASX Corporate Governance Principles and Recommendations also promote sound governance in the long-term interests of companies. Importantly, these Recommendations are not rigid. The 'if not why not' expectation allows for flexibility to reflect companies' unique circumstances. This is a balanced approach which promotes the provision of valuable information to investors, while maintaining appropriate flexibility for listed entities to adopt practices that are suitable for their particular needs. It is also important to recognise that concepts of good governance are not exclusive to listed markets. A central concept is that good governance should be fit for its purpose. Our members implement governance frameworks in their private markets assets that reflect appropriate governance protections. These provisions can be similar to that found in listed markets, though adapted so as to be fit for purpose for each entity. Accordingly, while there are some additional governance-related provisions that operate in listed markets, our view is that they offer an appropriate balance, given the broader shareholder base that is usually present in listed markets, the access to capital that the listed markets provide and that the basis upon which the provisions operate (i.e. 'if not why not' disclosure) allows flexibility for listed entities to adopt the practices that are appropriate to them.
Question 14: What additional transparency measures relating to any aspect of public or private markets would be desirable to support market integrity and better inform investors and/or regulators?	ACSI's observation of the Australian listed equity market over many years has highlighted opportunities to enhance transparency. Clear and timely company disclosures are an essential feature of efficient public markets. Potential reforms include: 1. *Clarifying expectations on disclosure of workplace fatalities of employees, contractors and members of the public by listed companies.* Currently, workplace fatalities are not disclosed in a consistent way by listed companies. Historically, some companies have provided notification of fatalities as an ASX announcement whereas others have provided a public statement or disclosed in a later periodic report. Investors would benefit from consistent and timely reporting on these incidents, as, in addition to the obvious human toll, safety outcomes are linked to management of a company, its operational performance and its culture, which all contribute to financial sustainability. 2. *Enhanced requirements for listed companies to disclose related-party transactions.* Currently, many Australian listed companies have a relatively narrow interpretation of accounting standards which require disclosure of related-party transactions. This leaves many related-party transactions unreported, such as the employment of directors' or executives' close relatives. Investors see this information as an indicator of management and governance quality.

	Reforms could align the Australian market more closely to requirements in the United States, which explicitly require disclosure in a broader range of circumstances.