

CS 60 Proposed remake of low-volume financial markets instrument

ASIC

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Introduction

I support the continuation of the low-volume financial markets exemption and, in principle, the proposed increase in the annual transaction-value threshold from \$1.5 million to \$2.5 million. The case for the exemption is stronger than a simple argument about reducing compliance costs: at this scale, proportionate regulation can improve productivity, preserve liquidity for otherwise illiquid investments, reduce regulatory barriers to small-scale market activity and, in some circumstances, reduce practical risk for retail or otherwise unsophisticated holders who would be worse served by having no organised secondary market at all. ASIC proposes to retain the existing limit of no more than 100 completed transactions while increasing the aggregate transaction-value ceiling to \$2.5 million, with the remade instrument operating until 1 October 2031.

That support should not, however, amount to automatic renewal of relief or acceptance that inflation alone proves \$2.5 million is the correct boundary. The exemption removes the operation of Part 7.2 of the Corporations Act from qualifying markets, and the draft itself requires users to be told that the operator is not subject to all obligations applying to licensed markets, including the obligation, so far as reasonably practicable, to ensure that the market is fair, orderly and transparent. The appropriate test is therefore whether the exemption remains necessary, proportionate, confined and safe, and whether the real resources saved by avoiding full market licensing exceed the protective value of the requirements being removed.

Regulation should begin with the risk being controlled

The first-principles question is not whether a financial market should normally be licensed, because Parliament has already established that general rule. The relevant question is whether imposing the complete market-licensing architecture on a market undertaking no more than 100 transactions and \$2.5 million of trading each year purchases enough additional investor protection and market integrity to justify the real resources it consumes. ASIC's own 2016 explanatory statement recognised precisely this point, concluding that these markets were sufficiently limited in size and complexity that there was little regulatory benefit in subjecting them to the Australian market licensing regime.

That principle remains sound. Regulation is productive when it controls material risks, establishes trust, improves information, prevents misconduct and makes markets work better; regulation becomes economically wasteful when fixed compliance machinery is imposed after its marginal protective benefit has become trivial relative to its cost. The correct objective is therefore neither maximum regulation nor minimum regulation, but minimum necessary regulation capable of controlling the material risk.

The scale of the exemption is exceptionally small

The scale of the sector matters because the regulatory architecture should be proportionate to the economic activity being regulated. ASIC's low-volume financial markets register was last amended on 14 July 2026 and runs to 240 numbered operator entries, while the proposed instrument continues to prevent an operator and its associates from operating more than two markets under the exemption.

Even an intentionally extreme calculation demonstrates the order of magnitude involved. If all 240 registered operators each operated two qualifying markets and every one of those 480 markets traded exactly at the proposed \$2.5 million annual ceiling, total annual turnover would be \$1.2 billion. ASX reports average daily traded value across Australian approved market operators of approximately \$10.54 billion in the June 2026 quarter; on a simple 250-trading-day annualisation, that is approximately \$2.635 trillion, making the deliberately exaggerated \$1.2 billion low-volume-market scenario only about **0.046 per cent** of annual cash-market turnover.

The transaction comparison is even more striking. The maximum theoretical 480 markets conducting 100 transactions each would produce 48,000 transactions annually, while Australian approved market operators averaged approximately 3.79 million trades each trading day in the June quarter; on the same 250-day annualisation, the theoretical low-volume maximum is approximately **0.005 per cent** of annual trade numbers. These figures are not estimates of actual low-volume-market activity, because ASIC has not published the annual transaction data necessary to calculate the

actual percentage, but they demonstrate that even an extreme upper-bound scenario remains economically minute compared with Australia's licensed cash markets.

ASIC should publish the actual scale rather than leave it to theoretical calculations

The absence of actual public data is difficult to justify because ASIC already receives the information required to calculate it. Every operator must report annually the number and value of transactions carried out each month and the number of market users, and operators must also notify ASIC of failures to comply with the instrument.

ASIC therefore possesses, or should possess, a decade of evidence showing how extensively the exemption has been used. Before asking the public to endorse another five years of relief and a 66.7 per cent increase in the nominal transaction-value ceiling, ASIC should publish aggregated data showing the number of operating markets, the number of users, annual transaction numbers and values, the distribution of markets across the existing threshold, reported breaches, removals from the register, complaints, surveillance activity and any identified participant losses or market-integrity problems. Commercially sensitive information can readily be aggregated, so confidentiality is not a sufficient reason for withholding the evidence necessary to evaluate whether the instrument has operated as ASIC says it has.

This is particularly important because ASIC states that it has assessed the instrument as operating effectively and efficiently and remaining necessary and useful, but CS 60 was issued without a consultation paper explaining the evidentiary basis for that conclusion. Sunsetting should operate as a genuine public-interest checkpoint rather than a process in which the conclusion is announced before the evidence is exposed.

Small markets can reduce rather than increase some risks for unsophisticated holders

The investor-protection analysis should also distinguish between different kinds of risk. A small unlicensed market may remove some protections associated with a licensed market, but eliminating the market does not necessarily make an investor safer if the practical result is that the investor is left holding an illiquid security with no organised method of finding a buyer.

ASIC's register demonstrates that many low-volume markets are extremely simple facilities, including numerous community bank company markets consisting essentially of electronic buyer and seller registers through which potential counterparties obtain one another's details and negotiate directly, without the operator providing matching or settlement services. For a shareholder wanting to exit an otherwise illiquid investment, such a facility may be considerably preferable to relying on private contacts, informal advertising or simply being unable to sell.

The exemption can therefore reduce one form of risk while increasing another. It can reduce the risk of illiquidity, opaque bilateral searching and an investor becoming trapped in an asset, while the absence of full Part 7.2 licensing removes some institutional market protections. The task for ASIC is to preserve the former benefit while controlling the latter risk rather than assuming that the only safe market is one carrying the regulatory architecture appropriate to a vastly larger exchange.

This distinction matters particularly for unsophisticated participants because the draft instrument contains no test restricting participation to sophisticated or wholesale investors. Small aggregate market size therefore cannot be treated as synonymous with small individual consequences, because a loss that is immaterial to the Australian financial system may still represent a substantial proportion of one household's savings.

The \$2.5 million threshold is defensible, but ASIC should show its work

There is a legitimate economic reason to adjust the threshold over time. If a nominal \$1.5 million ceiling is left unchanged indefinitely, inflation progressively reduces the real amount of economic activity permitted under the exemption, meaning that an unchanged market can eventually be pushed towards full licensing without any deliberate policy decision that its underlying risk has increased. The same issue arose in 2016, when the previous threshold was increased because it had remained unchanged since 2003 and entities regarded as falling within the original purpose of the relief had been forced to seek individual exemptions.

In that sense, indexation can prevent regulatory creep rather than constitute deregulation. ASIC should nevertheless distinguish between the proposition that \$1.5 million in 2016 is worth more in today's dollars and the separate proposition that \$2.5 million is the correct present regulatory-risk boundary, because purchasing-power equivalence does not itself demonstrate equivalence of investor risk, market complexity or potential loss.

ASIC describes the increase as taking account of factors “such as inflation”, but it has not set out the calculation that produces \$2.5 million. Given that the proposed increase is 66.7 per cent in nominal terms, ASIC should publish that calculation and explain any factors other than inflation that have been incorporated. That would strengthen rather than undermine the case for the increase by replacing assertion with a transparent methodology that can be applied consistently at the next review.

The 100-transaction cap is an important part of the risk boundary

The monetary threshold should not be considered in isolation because the exemption contains a second hard limit of no more than 100 completed transactions during the relevant 12-month period. Retaining that limit means that increasing the dollar ceiling

does not permit an exempt market to develop into a high-frequency trading venue merely because nominal transaction values have increased.

ASIC has nevertheless not explained in CS 60 why 100 remains the correct boundary after another decade of experience. That does not provide a reason to change the number arbitrarily, but it does provide a reason to test it against ASIC's own data, including whether markets cluster close to 100 transactions, whether particular transaction concentrations have produced problems and whether regulatory incidents bear any relationship to transaction number, transaction value or the number and characteristics of users.

Full licensing can itself create economic rents

The rent-seeking question should be approached symmetrically rather than assuming that all regulation protects the public or that all relief benefits the public. Full market licensing necessarily carries fixed legal, governance, systems, compliance and supervisory costs, and those costs can readily be absorbed across millions of transactions in a large market while becoming prohibitive when spread over several dozen transactions in a tiny market.

If the additional protective benefit at that scale is small, imposing the full fixed-cost architecture can create a regulatory barrier to entry that protects larger incumbent financial infrastructure from small-scale alternatives. That does not establish that any particular licensed market operator has sought such protection, and no allegation of improper lobbying is necessary; it is simply the predictable economic effect of a high fixed regulatory cost applied equally to actors of radically different scale.

There is, however, an equal risk on the other side. Exemption from Part 7.2 could itself become a regulatory rent if an operator captures the commercial benefits of organising a market while transferring the costs of weaker protections to investors or ASIC. The present conditions are therefore critical: the exemption is constrained by transaction number and value, issuer restrictions, the prohibition on automatic execution and contract formation, restrictions on handling settlement money, mandatory disclosure of unlicensed status, notification obligations and ASIC supervision and reporting rights.

The appropriate question is therefore not whether regulation or deregulation benefits business. It is who receives the economic benefit, who bears the residual risk, and whether that allocation produces a public benefit rather than a private regulatory rent.

Compliance savings are not automatically productivity gains

ASIC expressly asks respondents to quantify compliance costs and savings compared with holding an Australian market licence. Those figures are relevant, but the consultation should not allow easily quantified private compliance costs to dominate less easily monetised investor-protection and market-integrity benefits.

A compliance saving is a productivity gain only to the extent that the expenditure being removed was not purchasing an equivalent or greater public benefit. Lawyers, compliance specialists, auditors, management time, IT systems and regulatory staff all represent real resources that could be used elsewhere, so requiring those resources to reproduce large-market licensing machinery for a market conducting perhaps a few dozen negotiated transfers can reduce productivity where the same material risks can be controlled more cheaply by targeted conditions.

The reverse proposition is equally important because misconduct, disputes, opaque pricing and loss of confidence also consume real resources. The objective should therefore be the regulatory architecture that achieves the necessary level of investor protection and market integrity at the lowest real-resource cost, not the architecture with the smallest compliance invoice.

Follow the money and the incentives

The exemption changes incentives in several directions. The operator receives the direct benefit of lower licensing and compliance costs, investors may receive the indirect benefit of a viable secondary market and lower transaction costs, and ASIC avoids devoting full licensed-market supervisory resources to facilities that are exceptionally small in aggregate.

At the same time, some residual risk can be shifted away from the operator because users do not receive the complete bundle of licensed-market protections. If the exemption were abolished, larger licensed venues or specialist intermediaries could potentially benefit from the disappearance of small alternatives, while some small issuers and shareholders could lose liquidity entirely rather than migrate to a fully licensed venue. Those are economic incentives rather than allegations of wrongdoing, but they reinforce why ASIC should assess the distribution of costs and benefits rather than treating an operator's private compliance saving as the whole public-interest calculation.

The 2016 rationale was that the conditions limited regulatory risk sufficiently that little additional benefit would be obtained from full market licensing. Ten years of actual experience should now allow ASIC to test that proposition against evidence rather than simply repeat it.

Individual investor risk deserves more attention than systemic risk

The strongest argument against complacency is that the exemption can be insignificant to the financial system while still being very significant to a particular investor. A \$100,000 or \$200,000 holding may be economically immaterial in a \$2.5 million annual market yet represent a major household asset, and the instrument's aggregate limits do not themselves restrict the amount one individual may have exposed.

That does not justify imposing an arbitrary individual investment cap without evidence, because doing so could interfere with legitimate transfers and recreate the proportionality problem the exemption is intended to solve. It does justify ASIC examining its complaints, user and transaction data to determine whether concentrated retail exposure has produced identifiable harm and, if it has, whether a targeted protection would address that problem more efficiently than imposing full Part 7.2 licensing on the entire market.

The existing disclosure requirement is useful but should not be treated as a complete substitute for substantive protection. Telling an unsophisticated participant that a market is not subject to the full obligation to be fair, orderly and transparent may inform the participant, but disclosure does not necessarily equip that person to assess what practical risks follow from the missing obligations. ASIC should therefore test whether the remaining structural conditions, rather than disclosure alone, are doing the protective work required.

Non-compliance should be examined against actual enforcement experience

The draft continues the unusual provision that failure to comply with a condition does not automatically terminate the exemption. Instead, ASIC may remove the operator and market from the register, at which point the exemption ceases.

There may be good reasons for that structure because an inadvertent or technical breach should not necessarily transform every subsequent transaction immediately into unlawful operation of an unlicensed market. The arrangement nevertheless places significant weight on ASIC detecting or being notified of non-compliance and acting promptly where the breach is material, so ASIC should disclose how often breaches have been notified, how they were resolved, how often removal has occurred and whether any operator continued trading after a serious failure before ASIC intervened.

Without that evidence, it is impossible for the public to determine whether the discretion is proportionate flexibility or a regulatory gap. The answer should come from the experience ASIC has accumulated under the existing instrument rather than speculation.

Common financial infrastructure should remain part of the longer-term productivity discussion

CS 60 is not a consultation about establishing a public bank, and I do not suggest ASIC should use this instrument to determine that much broader question. It is nevertheless relevant to distinguish the cost of regulating a market from the cost of providing the transactional infrastructure through which small markets operate, because a significant part of the productivity problem arises from duplicating fixed financial infrastructure across entities too small to achieve economies of scale.

Over time, common regulated transaction or settlement infrastructure could reduce those fixed costs while retaining strong protection around the handling of investors' money. The draft already reflects this functional distinction by allowing a simplified market structure while prohibiting the operator from handling purchase money unless it holds the appropriate AFS licence. A publicly owned banking institution is one possible institutional model for shared infrastructure, but establishment of such an institution lies outside CS 60 and should not delay or determine the present remake.

The relevant principle for this consultation is narrower: simplifying the market should not require weakening the security of the money moving through it. That distinction permits productivity gains from proportionate market regulation while maintaining a higher regulatory standard around custody and settlement where the consequences of failure are more direct.

Question 1 — Should the transaction-value threshold increase to \$2.5 million?

I support the increase in principle, subject to ASIC publishing the basis on which \$2.5 million was selected and the evidence showing that this remains a suitably confined low-risk boundary. Maintaining the nominal \$1.5 million threshold indefinitely would progressively contract the exemption in real terms and could push otherwise unchanged small markets towards full licensing merely because prices have risen, while retaining the separate 100-transaction ceiling substantially constrains the scale and complexity of activity permitted under the relief.

The scale comparison also strongly supports proportionality. Even the extreme hypothetical case in which all 240 registered operators operated two markets at the full \$2.5 million ceiling would produce only about 0.046 per cent of annualised Australian cash-market traded value, using June-quarter average daily turnover as the comparator. That does not prove that no individual can be harmed, but it strongly undermines any proposition that full market licensing is automatically proportionate simply because the activity falls within the legal definition of a financial market.

Question 2 — What compliance costs or savings arise from the remake?

As an individual respondent rather than an operator relying on the exemption, I cannot responsibly provide operator-specific dollar estimates, and I do not propose to manufacture figures simply because the consultation asks for them. ASIC should obtain those figures from existing and prospective operators and test them against actual licensing costs, but it should distinguish private compliance savings from net social benefits and examine the real regulatory function being forgone for each major cost avoided.

The broader productivity benefit is potentially significant even where the aggregate dollar saving is modest because fixed compliance costs can determine whether a tiny

market exists at all. If proportionate conditions can control the material risks at substantially lower resource cost than full licensing, the saving represents a genuine efficiency gain; if the saving merely transfers loss risk, monitoring costs or dispute costs from the operator to investors and ASIC, it does not.

Question 3 — What would happen if the relief expired?

I do not operate a low-volume market and therefore cannot provide a direct business-impact estimate. The policy concern is nevertheless clear: removing the exemption would not necessarily result in every existing low-volume market becoming a licensed market, because the economics of full licensing may make some small facilities unviable, and the relevant comparison should therefore include the possibility of reduced liquidity or market closure rather than assuming seamless migration into the licensed regime.

That possibility is particularly important for holders of otherwise illiquid securities. The public-interest counterfactual is not simply “unlicensed market versus licensed market”; for some participants it may instead be “proportionately regulated small market versus no practical secondary market”, and ASIC should use its operator data to establish how many existing markets would realistically obtain a licence, seek individual relief, restructure or cease if the class exemption disappeared.

Transparency and review should accompany the five-year remake

I support a five-year remake only if it is accompanied by greater public visibility than has been provided in CS 60. ASIC should publish aggregated annual data on market numbers, users, transaction volumes and values, breaches, interventions and complaints, and it should conduct a public review within approximately two years to determine whether the \$2.5 million and 100-transaction boundaries remain appropriate in light of actual experience.

That would not add substantial compliance burden to operators because the relevant transaction and user information is already required to be supplied to ASIC. It would instead convert information already collected for regulatory purposes into evidence by which Parliament, market users and the public can judge whether the exemption continues to achieve the balance ASIC claims for it.

Conclusion

The low-volume financial market regime is a good example of why regulatory quality should not be measured by the amount of regulation imposed. A market conducting no more than 100 transactions and \$2.5 million of annual turnover presents fundamentally different regulatory economics from a national exchange processing millions of trades every day, and forcing both through substantially the same licensing architecture can waste productive resources, create barriers to entry, entrench incumbency and

eliminate useful liquidity without producing commensurate protection. The available scale data strongly support continued proportionate relief, while the structure of many markets on ASIC's own register demonstrates that these facilities can be little more than organised mechanisms through which holders of otherwise illiquid interests find willing counterparties.

The case for proportionality is not a case for regulatory complacency. Small aggregate markets can still produce large individual losses, operators receiving relief should not be permitted to privatise compliance savings while socialising risk, and disclosure of unlicensed status cannot substitute for every substantive safeguard. ASIC should therefore remake the instrument and may reasonably increase the monetary ceiling to \$2.5 million, but it should publish the evidence it already possesses, explain how the new threshold was derived, test concentrated retail risk, report publicly on compliance outcomes and subject the regime to an earlier evidence-based review rather than waiting until 2031. That combination would preserve the productivity, competition and liquidity benefits of genuinely low-volume markets while keeping the exemption confined to circumstances in which full market licensing would purchase too little additional public protection for the resources it consumes.