Australian
Finance
Industry
Association

28 April 2025

Mr [redacted]
Chair
Australian Securities and Investments Commission
Level 5, 100 Market Street
SYDNEY NSW 2000
By email: markets.consultation@asic.gov.au

Dear [redacted]

AUSTRALIA'S EVOLVING CAPITAL MARKETS: ASIC DISCUSSION PAPER

The Australian Finance Industry Association (AFIA) is the only peak body representing the entire finance industry in Australia.[1] We appreciate the opportunity to respond to the Australian Securities and Investment Commission's (ASIC) discussion paper on the dynamics between public and private markets.[2]

We represent over 150 members, including bank and non-bank lenders, finance companies, fintechs, providers of vehicle and equipment finance, car rental and fleet providers, and service providers in the finance industry. We are the voice for advancing a world-class finance industry and our members are at the forefront of innovation in consumer and business finance in Australia. Our members finance Australia's future.

We collaborate with our members, governments, regulators and customer representatives to promote competition and innovation, deliver better customer outcomes and create a resilient, inclusive and sustainable future. We provide new policy, data and insights to support our advocacy in building a more prosperous Australia.

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[1] Australian Finance Industry Association (afia.asn.au).
[2] ASIC, *DP Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets*, February 2025.

INTRODUCTORY COMMENTS

Since the reforms undertaken by government in the 1980s and 90s, Australia has enjoyed an open market-based economy, with a floating exchange rate, and independent monetary policy. Our financial system contributed up to 8 per cent to Australia's GDP in FY24, and our financial services industry makes up to 3.7 per cent of the workforce.[3]

Underpinning Australia's financial system is the principle of efficient markets, which allocates Australia's scarce financial and other resources to their greatest benefit, supporting growth, productivity and prosperity. Robust competition from new entrants and incumbents encourages financial firms to innovate and increase their operational efficiency. Furthermore, efficient markets are the primary channel for price discovery and risk allocation ensuring that resources are allocated to those best placed to utilise them efficiently.

However, it is important to note that efficient markets are not without competing considerations. As the Productivity Commission noted in 2018, there is no single market in Australia's financial system, and it can be difficult to identify the relevant interactions and substitutes in the system when considering the necessity of regulatory intervention in the context of competition:

> *'With substitutability as the starting point for defining the relevant markets in the Australian financial system, a challenge we faced was to ensure that the markets are not defined either so narrowly as to miss key provider interactions or substitutes, or so broadly such that substitutes that would never be made are nevertheless assumed to be available.'*[4]

The financial system is highly diverse and complex, and any change in one area may affect interactions in another in unforeseeable ways.

Discussion questions 1 & 2: What key impacts have global market developments had on Australian capital markets? What key impacts do you anticipate in the future? Do you have any additional insights into the attraction of private markets as an issuer or an investor?

Australia's financial system is fundamentally integrated with the global economy, with Australia being a net exporter of capital largely due to our $4.2 trillion superannuation system.[5] Australia's growing superannuation pool is now an important source of capital for Australia's private markets. Given the compulsory superannuation guarantee is set to increase to 12 per cent in July 2025, the rate of this growth will only increase. Nevertheless, despite a fewer number of listed equity issuers on the ASX, and

[3] Australian Bureau of Statistics (ABS), *Australian National Accounts: National Income, Expenditure and Product*, September 2024 (Industry Gross Value Added, Chain volume measures) & ABS, *Labour Force, Australia, Detailed*, February 2025, (Trend Detailed monthly and quarterly Labour Force Survey data, including hours, regions, families, job search, job duration, casual, industry and occupation).
[4] Productivity Commission, *Competition in the Australian Financial System, Inquiry Report*, June 2018, p. 79.
[5] ASIC Discussion Paper, p. 11.

fewer initial public offerings (IPOs), the value of ASX listed companies and Australia's debt markets have both roughly doubled in a decade.[6]

As ASIC's Discussion Paper notes, the value of global private capital has grown to US$14.6 trillion as of June 2024, three times what it was a decade ago.[7] In an independent research paper prepared for ASIC, several reasons have been proposed for the decrease in the number of IPOs, including:

- increased regulatory burdens and costs of being listed.
- the changing nature of companies, whereby technology companies have less capital needs and more intangible assets, which reduces the need and benefits of listing for capital raising purposes.
- growing private markets that have become easier to access.[8]

In addition to the growth in the superannuation pool, these trends appear to be irreversible and structural in nature, as the supply of domestically sourced capital is expected to exceed the supply of publicly listed domestic investment opportunities.

Australia's private capital market (including private equity and private credit) has grown from A$57.1 billion in 2014 to $148.6 billion as of March 2024, which ASIC recognises as small compared to the market capitalisation of our public markets.[9]

Although Australia's private capital markets are relatively small compared to the United States and other comparable overseas markets, their trend is one of growth. This growth is reflective of shifts and reallocations of risks and assets across market participants, a consequence of efficient capital markets.

Therefore, AFIA believes that we need to be mindful of the role of private markets, the participants in those markets and the relationship between markets when considering the appropriate regulatory framework for the private market, to ensure that they do not circumscribe their efficiency.

As ASIC Chair, Joe Longo, has noted: "Australia's capital markets are a fundamental part of the economy, playing a crucial role in supporting commercial activity, growth, investment and innovation".[10]

Accordingly, AFIA believes that in the event of policy intervention any proposals should be based on clear and sound principles. Importantly, regulation should not create additional burdens or new inefficiencies in capital markets, which would reduce investment opportunities for investors, reduce the flow of capital to innovative enterprises, and diminish competition in Australia's financial system. Ex ante of intervention, any costs of policy must be given comparable assessment as part of the case for any change.

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[6] Ibid.
[7] ASIC Discussion Paper, p. 24.
[8] ASIC, Discussion Paper p. 17 & Dr Carole Comerton-Forde, REP 807 Evaluating the state of the Australian public equity market: Evidence from data and academic literature, February 2025.
[9] Ibid.
[10] ASIC, Discussion Paper, p. 4.

To assist ASIC in settling principles, AFIA's position regarding regulatory intervention into capital markets is that it should be guided by the following principles:

1. Evidence-based – the cost of intervention should be assessed at the same time as any assumed benefits of intervention.
2. Balanced – in the event of intervention, policy must be targeted and right sized – proportionate, scalable, functions-based, and tech-neutral.
3. Recognise the role of markets – prima facie, policy should support competition and innovation in the first instance, noting the role of both public and private markets in supporting efficient capital mobilisation and allocation.
4. Co-regulatory – statutory regulation should not displace self-regulation, which should play the primary role in setting high standards, getting ahead of change and customer expectations, and adapting existing frameworks to drive better customer and industry outcomes.
5. Promote Australia as a financial services centre – regulation should maintain national competitiveness and innovation, including ensuring Australia retains its attractiveness for global capital and its global position as a financial centre.

NON-ADI LENDING INSTITUTIONS

On numerous occasions, ASIC's Discussion Paper refers to non-bank lending or non-bank financial intermediation under the category of private credit.[11] For instance, ASIC refers to private credit as 'non-bank direct lending' and includes 'non-bank financial lending' under the umbrella of private markets.[12]

Furthermore, the Council of Financial Regulators and the Reserve Bank tend to refer to non-bank financial intermediation and 'non-bank financial institutions' (NBFIs), with this language also often used by international financial regulators and international standards setting bodies.[13]

There are a diverse range of financial institution-types participating in Australia's capital markets, including banks or authorised deposit-taking institutions (ADIs), non-bank lenders or non-ADI finance companies, institutional investors, superannuation funds, managed investment schemes, insurers, clearing and settlement services, securitisers, public exchanges, private equity and credit funds.

In a broad sense, private credit could technically be 'non-bank lending' in the strict sense that it is debt financing not provided by ADIs. However, the framing of an umbrella term in such a broad manner risks adding to confusion for consumers and others, and is not useful for categorising financial institutions in terms of like-for-like business models and regulatory requirements, especially where these financial institutions participate in markets in very different ways.

[11] ASIC Discussion Paper, p. 10, 32 & 57.
[12] ASIC, Discussion Paper, p. 10 & 24.
[13] For example, RBA, *Financial Stability Risks from Non-bank Financial Intermediation in Australia*, (18 April 2024) and RBA, *Financial Stability Review*, (April 2025).

AFIA prefers to categorise non-bank or non-ADI lending as finance companies that do not take deposits and source their funding from diverse sources, including public markets via securitisation issuance, debt or equity raisings. These non-bank lenders then provide debt-financing direct to consumers and small businesses via standardised product offerings, as registered financial corporations (RFC) under the Australian Prudential Regulation Authority (APRA). Consumer non-bank lenders are regulated under the *National Consumer Credit Protection Act 2010*, including responsible lending obligations (RLOs). Non-bank business lenders are regulated under the *ASIC Act 2001*, including Unfair Contract Terms (UCTs), general financial services regulation under the *Corporations Act*, as well as the *AML/CTF Act* overseen by AUSTRAC.

The Reserve Bank of Australia (RBA) recently provided a useful distinction between private credit and non-bank lenders as understood by AFIA:

> *'The RBA estimate focuses on business lenders with a managed fund structure to distinguish from other types of non-bank lenders in Australia. Private credit is typically funded with equity, whereas many Australian non-banks operate similarly to banks, raising funds from debt and securitisation markets but without access to deposit funding. These non-banks tend to provide standardised loans for specialised purposes like finance for vehicles or other equipment.'*[14]

AFIA believes that any future proposals from ASIC should be mindful of the RBA's definition and distinctions.

In summary, private credit should be understood as distinct from non-bank lending under the narrow definition, in that it does not source funding from public markets, lends only to businesses, are not registered with regulators, and generally provide finance negotiated bilaterally, rather than through standardised product offerings.[15]

There are important differences, identified by ASIC, in terms of the pros and cons of sourcing funding from either public or private markets. These differences play an important function in supporting dynamism and competition in Australia's financial system, as well as allocating equity and debt capital towards those areas of the economy that most demand it, with the intent of providing the best possible benefits to Australians in terms of growth and prosperity.

As the RBA noted in their recent evaluation of Australia's private equity market:

> *'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.'*[16]

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[14] RBA, *Growth in Global Private Credit*, (17 October 2024).
[15] ASIC Discussion Paper, p. 57.
[16] RBA, *The Private Equity Market in Australia*, (18 April 2024).

DEEPENING OUR DEBT CAPITAL MARKETS

Discussion 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?

Australia's debt capital markets are smaller and shallower compared to peer jurisdictions, which makes it more susceptible to larger economic shocks and less supportive of growth. This fact was recognised by the Financial System Inquiry in 2014:

> *'…some funding markets, including the corporate bond and venture capital markets, appear underdeveloped compared with those of some international peers.'*[17]

AFIA believes that reforms should be implemented to make sure debt markets, especially the corporate bond market, are deepened in Australia, through a streamlining of regulatory requirements and obligations with respect to the issuance of debt securities. This should include amendments to the prospectus rules for bond issuance to retail investors. To facilitate the development of the retail corporate bond market, documentation required to issue bonds should not be more onerous than what is currently required to issue equity securities.

Prospectus rules should be simplified, and Australian corporate issuers should be allowed to leverage existing disclosure practices and the equity listing regime, and in doing so avoid imposing unnecessary administrative and legal complexities. This will be particularly important for those corporate issuers that continuously offer bonds. AFIA considers that simplified prospectus rules should generally allow corporate issuers the flexibility to select whether a two-part prospectus or single disclosure document is more suitable for their needs based on various factors, including regularity of capital raising activities, access to overseas markets, etc. Importantly, the disclosure obligations should not result in unnecessary duplication and repetition of information.

Such a disclosure approach would provide corporate issuers with flexibility to choose between equity and debt capital raisings depending on the prevailing market conditions (including balance sheet needs of the issuer and portfolio and investment interests of investors). Furthermore, this will not only reduce the regulatory burden and associated compliance costs for bond issuances in Australia, but also allow corporate issuers to more easily access overseas markets using the same regulatory documents.

Debt securities (fixed income securities) are an important part of an investment portfolio, not just for members in superannuation funds or unit holders in managed investment schemes, but also for retail investors to hold as direct investments as part of a diversified savings and investment portfolio.

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[17] Financial System Inquiry, *Final Report*, 7 December 2014, p. 14.

Therefore, we consider that initiatives aimed at promoting a retail corporate bond market in Australia will provide benefits for corporate issuers, non-bank lenders, and investors.

In October 2021, the House of Representatives Standing Committee on Tax and Revenue found that corporate bonds offer investors the ability to diversify their investment profiles, ensuring Australians are not exposed to any single class of investment product.[18] The report recommended that the government raise awareness about the benefits of corporate bonds, increase bond trading transparency, streamline disclosure requirements, review the regulatory regime for issuance, and investigates the impact of tax incentives to support the development of an Australian corporate bond market.[19]

AFIA encourages policymakers to consider the recommendations of this inquiry and to determine what measures should be taken to deepen the Australian corporate bond and debt capital markets. Reducing the regulatory burden and associated compliance costs without compromising appropriate safeguards and consumer protections will promote debt capital raisings and encourage corporate issuers and banks to undertake debt capital raisings as well as provide retail investors with opportunities to participate in a meaningful way in capital raising activities in Australia.

CLOSING COMMENTS

Although ASIC has identified various valuation transparency, liquidity and quality risks in relation to retail investor exposure to private markets via institutional investors, AFIA submits that such risks are best managed by APRA by strengthening the governance supervision of such funds, including ensuring that trustee governance is robust enough to replace price discovery via public markets with stronger due diligence and valuations applied to unlisted assets.[20]

As ASIC has noted, there are key statutory protections in the *Corporations Act* already for retail investors who invest in private markets indirectly via managed investment schemes.[21]

As ASIC recognises, there are many issues covered in the discussion paper beyond ASIC's control or remit.[22] It is incumbent upon all policymakers, particularly government and the Parliament, to ensure the regulatory settings are appropriately set and administered to ensure Australia's capital markets are working well, with a goal to lifting living standards and prosperity for Australians. Any regulatory intervention into private markets should be considered only with this overriding purpose in mind, and not in a manner which would restrict investment and efficient capital mobilisation and allocation.

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[18] House of Representatives Standing Committee on Tax and Revenue, Parliament of Australia, *The Development of the Australian Corporate Bond Market: A Way Forward*, (October 2021), p. 22.
[19] Ibid., pp. 22, 43 & 58.
[20] ASIC Discussion Paper, pp. 39-40.
[21] ASIC Discussion Paper, p. 42.
[22] ASIC Discussion Paper, p. 45.

Thank you for the opportunity to respond to this discussion paper and contribute to this important debate about Australia's capital markets. I would appreciate the opportunity to discuss our submission and provide ASIC with further information about the specialised products, services and technologies offered by smaller lenders.

Should you wish to discuss our submission or require additional information, please contact me at [redacted]@afia.asn.au or [redacted] or [redacted] Senior Policy Advisor, at [redacted]afia.asn.au.

Yours sincerely

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Chief Executive Officer