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ASIC Discussion Paper: Australia's Evolving Capital Markets – The Dynamics Between Public and Private Markets Submission by Super Consumers Australia

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Super Consumers Australia is the people's advocate in the superannuation sector.
Super Consumers Australia advances and protects the interests of people on low and middle incomes in Australia's superannuation system. It was founded in 2013 and received funding for the first time in 2018.

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Introduction

We welcome ASIC’s focus on the shifting dynamics between public and private markets. In this submission, we address one critical aspect of this transformation: the implications for **retail investor access to private markets**.

We urge ASIC to maintain and enforce the regulatory guardrails that protect retail investors from inappropriate exposure to private markets. Given the nature of these markets, strong consumer protections should not be watered down. Our position is guided by three key points:

1. Retail investors need strong consumer protections in unlisted asset markets.
2. Non-platform superannuation offers an effective, well-regulated pathway to private market exposure.
3. Current laws expose consumers to predatory conduct in the name of 'sophistication'.

Summary of Recommendations

Recommendation 1: Regulators need to do stronger enforcement of existing laws relating to trustees of superannuation platforms to ensure that retail investors are not exposed to inappropriate risk via investments in private markets on superannuation platforms.

Recommendation 2: Retail investors need strong protection from the risks in private markets. ASIC should work with the Government to identify areas for improvement in financial sector laws, including limits restricting illiquid investments in managed investment schemes offered to retail investors.

Retail investors need strong consumer protections in unlisted asset markets

As outlined in the discussion paper, private markets are complex, opaque, and often illiquid. They lack many of the governance, disclosure, and transparency requirements that apply to public markets. These features make them inappropriate for most retail investors to access directly.

Private market investments typically require:

- high levels of due diligence and risk assessment;
- patience for long-term illiquidity;
- ability to bear substantial risk, including total loss of capital.

These characteristics make private market products, including private capital funds, unsuitable for direct retail investment. Many retail investors lack the technical expertise or financial resources to properly understand or monitor the risks involved.

Strong consumer protection is not only necessary but already plays a critical role in safeguarding consumers from inappropriate or harmful investments. The design and distribution obligations (DDO), for example, require issuers and distributors of financial products to prepare and maintain a target market determination (TMD)—ensuring that products are directed toward consumers for whom they are actually suitable. Similarly, disclosure rules mandate clear and accurate product disclosure statements (PDSs) for retail consumers to help them understand the risks, features, and fees of financial products before investing.

In the superannuation system, the Australian Prudential Regulation Authority's (APRA's) *Investment Governance Prudential Standard SPS 530* (SPS530) establishes robust protections for consumers by requiring trustees to have a clearly articulated investment strategy for each option offered. This includes a valuation framework for unlisted assets, as well as liquidity management plans and stress testing—critical safeguards that retail investors outside the super system typically lack.

Together, these obligations work to align investment products with consumer needs, support informed decision-making, and reduce the risk of significant loss due to inappropriate exposures.

ASIC's regulatory framework must continue to draw a clear boundary between wholesale and retail access, and reinforce the standards for financial advisers and platform trustees who seek to push those boundaries.

To highlight the importance of strong consumer protections for retail investors in unlisted assets, AFCA has made at least 17 determinations since 2020 in favour of retail investors who were advised to invest in unlisted assets that they were not eligible to invest in (see Appendix). In each of these cases, AFCA determined the investment was inappropriate and not understood by the investor, and they were compensated for their losses. These cases underscore the critical importance of retaining high consumer protection guardrails around these products, so that when something does go wrong, the consumer can be compensated.

Non-platform superannuation offers an effective, well-regulated pathway to private market exposure

Retail investors already benefit from indirect access to private market investments through professionally managed, diversified superannuation funds. This is a safe, scalable model that reflects the characteristics of long-term retirement savings.

APRA's December 2024 statistics show that MySuper products hold $267 billion in unlisted assets, representing 24.1% of the MySuper portfolios. There are 14.9 million accounts in MySuper products. The average MySuper member has an account balance of $72,000, implying approximately $17,000 in exposure to unlisted assets per member.

Note: see APRA Quarterly Industry Superannuation Publication December 2024, published 11 March 2025. Calculation based on data in Tables 9 and 9a. We included Private Credit, Unlisted Equity, Unlisted Property, Unlisted Infrastructure and Alternatives in our estimate of unlisted assets.

This exposure is:

- professionally managed with rigorous due diligence;
- balanced within diversified portfolios;
- transparent, monitored, and performance-tested by APRA.

This model works well. MySuper products are typically offered via non-platform superannuation funds that also have a modest number (i.e. a dozen) of multi asset class well-diversified choice investment options that are typically constructed and managed by the trustee. These MySuper products and choice products have scale, governance expertise, and long-term investment horizons that are appropriate for navigating private markets. Several non-platform superannuation funds have expanded their offering to allow members to select individual investments, which creates additional risks for retail investors as outlined in the next section.

Superannuation platforms expose retail investors to additional risks that need more oversight

In platform superannuation funds the trustee offers a myriad (hundreds, if not thousands) of managed investment schemes (MIS) with a wide array of investment strategies. These are in addition to offering similar diversified investment options that may be suitable for standalone investment.

Many of the managed investment schemes are niche (e.g. an Australian low duration bond fund, a global managed volatility equity fund, or an infrastructure AUD unhedged feeder fund). The purpose is to allow individuals to tailor their own diversified portfolio from these “building blocks” rather than rely on the trustee to do the overall portfolio construction.

Platform superannuation funds recognise that this degree of decision making about superannuation investments is complex and thus most require an individual to receive advice from a financial adviser in order to access the platform. This may suit some people who wish to engage a financial adviser to provide ongoing monitoring and manage the combination of investments over time. Unfortunately many people who open a superannuation account on a platform lose contact with their adviser and are then not receiving ongoing advice to manage their more complex investments. Money Magazine reported in March 2025 that there has been a concerning increase of 5.1 million orphaned clients since 2013. See: Money Magazine 14 March 2025 article: *‘Too big to ignore’: How platforms are helping unadvised clients.*

We are concerned that superannuation platforms create poorly managed risks for retail investors. Firstly, the ongoing complexity of managing a selection of investments to create a suitable investment portfolio. Secondly, some of the individual investment options may be entirely, or heavily, invested in private markets investments, and thus be illiquid or may become illiquid.

The Financial Advice Association of Australia described these risks well in its submission to the 2023 Treasury Review of the regulatory framework for managed investment schemes consultation:

The complex nature of the product

> *Even the most basic 'vanilla' style MIS can be difficult to understand for the average consumer, and yet many of these products are far from 'vanilla'. Often involving features such as underlying feeder funds, liquidity constraints, leverage, foreign currencies and financial derivatives, it is very difficult to explain the complex structure of an MIS in a simple consumer-friendly manner to true retail clients. Despite advisers' best efforts (and lengthy advice documents) in many cases retail clients are effectively relying on the expertise and advice of a specialist to ensure that the product will suit them.*

Liquidity issues

> *One of the most challenging issues for consumers can be liquidity, as many consumers do not truly understand what liquidity means. It is common to find that consumers have an expectation that their funds can be accessed whenever required, irrespective of disclosures in a PDS. The subsequent revelation that underlying investments in the fund (such as infrastructure) may be illiquid and their investment may be unable to be realised for many months or even years, comes as an unpleasant shock and can be devastating for family finances.*

To demonstrate the complexity facing consumers investing via superannuation platforms, APRA reports that there is a dizzying 35,927 single sector choice options and 13,762 multi sector choice options available in superannuation funds: see APRA Quarterly Superannuation Industry Publication December 2024, published 11 March 2025.

There is also significant exposure of consumers to liquidity issues on superannuation platforms.

As at December 2024, APRA's superannuation data shows that there are 725 offerings of single manager, single sector or multi sector investment options on platforms that are closed to redemptions, meaning that the options are frozen and investors cannot withdraw their money. The typical reason for investment options to be closed to redemptions is the illiquid nature of the underlying private market investments. It is not necessarily a sign that the investment is not performing, as it may simply be the nature of the investment portfolio, however, it can also happen when the investments are speculative and the expected returns have not materialised, resulting in the need to freeze redemptions while the option is liquidated.

There are at least 27,000 accounts in these frozen investment options with at least $695 million tied up. Although investors in accumulation phase may be able to accept a lack of liquidity and do not need access to their money, retirees cannot. A significant portion of the frozen investments are in the retirement phase: 395 of the 725 offerings (54%), with 11,190 accounts (41%) and $217 million (31%). The purpose of superannuation is to provide income in retirement and people inherently have shorter investment horizons in retirement. Given hundreds of millions of retirees assets are held up in frozen illiquid assets there needs to be serious questions asked about the adequacy of the consumer protection framework and enforcement priorities of the regulators.

Note: see APRA [Quarterly Product Level Superannuation Statistics - Product Structure Publication December 2024], published 11 March 2025. Calculation based on data in Table 1b. We filtered to include Investment Menu Type = Platform, Investment Option Type - Single Manager - Unlisted, Investment Option Category Type = Single Sector or Multi Sector, Able to Freeze for Redemptions Investment Option Indicator = Yes, Frozen for Redemptions Investment Option Indicator = Yes or No, Superannuation Product Phase Type = Retirement or All.

There needs to be strong consumer protections and enforcement by regulators to ensure that the individual investments on a superannuation platform are not used in an inappropriate way.

- **Investment thresholds**: Many platforms set investment thresholds for each investment option on the platform, which prevent people from investing a large portion of their account in unsuitable options. However, these thresholds are not required under SPS530, and thus there is no consistent consumer protection across platforms.
- **Trustee oversight of investments:** superannuation trustees should do more to scrutinise investment options before they are added to a platform, and regularly review each investment option on the platform to determine and confirm its suitability over time. Of the 27,750 single manager, single sector or multi sector investment options that are offered in the retirement phase of superannuation platforms, a surprisingly high number, 25,475 (92%) of these are able to be closed for redemptions. Although these options may currently be open for redemptions, this can change rapidly and retirees may be stranded without access to their retirement income.
- **Trustee oversight of advisers:** superannuation trustees should do more to scrutinise the outcomes that advisers are generating for their members, and take action when they find advisers who are not delivering satisfactory outcomes.
- **Orphaned clients:** superannuation trustees should do more to ensure that orphaned clients are not facing heightened risk due to a complex investment strategy. The trustee should restrict orphaned clients to simpler pre-mixed portfolios, or ideally require them to leave the platform.

Recommendation 1: Regulators need to do stronger enforcement of existing laws relating to trustees of superannuation platforms to ensure that retail investors are not exposed to inappropriate risk via investments in private markets on superannuation platforms.

People are currently being exposed to predatory conduct

Consumers typically assume that if an investment option is available on a superannuation platform, then it is a quality investment, because the trustee has decided to allow it on its platform. Unfortunately, this is not always the case.

Example comments in response to ifa articles on Shield Master Fund (and superannuation trustee Macquarie Investment Management):

When we were recommended to move into shield we thought we were completely safe as it was an approved product with Macquarie Bank. 1 October 2024 comment to ifa article "Should advisers be worried about the Shield Master Fund?"

I checked APRA registrations and thought Macquarie would be trustworthy. 4 October 2024 comment to ifa article "Should advisers be worried about the Shield Master Fund?"

I was assured that my money was invested in Australian and International shares via the Macquarie wrap platform not some pie in the sky luxury resort development. 6 March 2025 comment to ifa article "Shield Master Fund investigations among ASIC's 'most complex'"

Likewise, consumers understandably put faith in financial advisers to correctly advise them on risk and recommend investment options accordingly. If this is not occuring ASIC as the regulator needs to be playing an active role in via its enforcement and supervision powers to protect people's retirement savings.

A stark example is the **Shield Master Fund**. At least 5,800 people invested over $480 million in Shield Master Fund, mostly through superannuation platforms: see Shield Master Fund on ASIC's website. These retail investors were exposed to this illiquid, high-risk product. Some invested their entire retirement savings in Shield, which has now been terminated by the receivers with uncertainty of recouping any value: see Notice of termination of Shield Master Fund (10 April 2025) on Alvarez & Marshall website (Keystone Asset Management). There is a real risk of similar failures in the future unless ASIC continues to take strong enforcement action.

We are particularly concerned by the use of unlisted investments in retirement contexts, where consumers have inherently shorter investment timeframes and are most vulnerable to irrecoverable losses. ASIC should continue to take strong enforcement action and advocate to the Government for law reform to close the loopholes that allow these practices to flourish.

In the US and UK, there are limits restricting how much illiquid investments can be in managed investment schemes that are offered to retail investors: see 2023 Treasury Review of the regulatory framework for managed investment schemes - consultation paper, Box 4, page 21. Introducing similar quantitative limits in Australia would be an effective additional protection for retail investors and be in keeping with the objective of super.

The AFCA determinations in the Appendix provide examples of situations where financial advisers have treated retail investors as wholesale investors, without adequately assessing the people against the sophisticated investor definition. Although AFCA is robustly identifying poor behaviour by financial advisers when a person complains to them, there should be stronger protections for retail investors to prevent this predatory behaviour by some unscrupulous advisers rather than relying on compensation after the event.

Recommendation 2: Retail investors need strong protection from the risks in private markets. ASIC should work with the Government to identify areas for improvement in financial sector laws, including limits restricting illiquid investments in managed investment schemes offered to retail investors.

Conclusion

Retail investors deserve strong protections from unsuitable, high-risk products—particularly in retirement. We urge ASIC to:

- prioritise regulatory action on current consumer protections that protect retail investors from inappropriate exposure to private markets;
- increase regulatory scrutiny of platform superannuation products to make them safer for consumers;
- work with the Government to close loopholes that allow the misuse of "sophisticated investor" definitions and the inappropriate promotion of unlisted products via SMSFs.

Thank you for the opportunity to contribute to this consultation. We are happy to provide further information or participate in follow-up discussions.

Appendix

AFCA determinations since 2020 involving investment in unlisted assets where a retail investor was not appropriately advised about the investment.

Case Number	Determination Date	Financial Firm	Brief summary
508838	7 February 2020	Not stated	SMSF received personal advice that was not in the best interests of the SMSF as it failed to review the financial position of the SMSF due to its deteriorating financial position, and did not advise on the illiquidity of the investments.
765578	30 June 2022	Interprac Financial Planning Pty Ltd	SMSF was provided advice by the financial firm, the adviser deviated from the asset allocation and caused a loss. The financial firm asserted that the complainants were wholesale investors, which AFCA rejected.
792566	16 June 2022	First Samuel Ltd	SMSF had an investment program with the financial firm. The financial firm failed to explain the risks in investing in unlisted and illiquid assets, even though there was no loss.
801871	3 December 2021	First Samuel Ltd	The financial firm's advice to the SMSF to invest in illiquid assets in small non-tradeable companies and credit instruments was a breach of the agreed investment strategy.
833427	22 February 2023	Interprac Financial Planning Pty Ltd	The financial firm failed to provide advice in the best interests of the SMSF and operated without proper authority, including investment in unlisted property and unlisted unit trusts. The financial firm claimed the SMSF was a wholesale investor, AFCA rejected this claim.
964976	17 August 2023	Amalgamated Australian Investment Services Pty Ltd	The financial adviser gave misleading advice to an SMSF in relation to an initial public offering which he represented as a safe investment with a certain future listing timeframe, which caused a loss to the SMSF. The financial firm claims the client was a sophisticated investor, AFCA rejected this claim.
857525	26 July 2023	Financial Wisdom Ltd	The financial firm failed to act in the best interests of the client. As a result of financial advice from the financial firm, the SMSF was holding a poorly diversified portfolio of assets with the majority tied up in an illiquid property trust.
862744	20 December 2022	McFaddens Securities Pty Ltd	An SMSF incurred losses because it invested in unlisted investments that were recommended by the financial firm. The complainants were not eligible to invest in the investments as they were not sophisticated investors.
865024	15 September 2023	APC Securities Pty Ltd	A trust incurred losses because it invested in unlisted securities that were recommended by the financial firm. The complainants were not eligible to invest in the securities as they were not sophisticated investors.
870874	14 March 2024	APC Securities Pty Ltd (in Liquidation)	The complainants incurred losses because they invested in unlisted securities that were facilitated by the financial firm. The complainants were not eligible to invest in the securities as they were not sophisticated investors.

871451	22 April 2024	APC Securities Pty Ltd (in Liquidation)	A trust incurred losses because they invested in unlisted securities that were facilitated by the financial firm. The complainants were not eligible to invest in the securities as they were not sophisticated investors.
871805	2 April 2024	APC Securities Pty Ltd (in Liquidation)	The complainants incurred losses because they invested in unlisted securities that were facilitated by the financial firm. The complainants were not eligible to invest in the securities as they were not sophisticated investors.
872007	28 July 2023	Professional Wealth Management Services Pty Ltd	The complainant received inappropriate personal advice from the financial firm to set up an SMSF and invest in unlisted assets which resulted in losses. AFCA found the advice was not in the best interests of the client because the client lacked the investment experience and knowledge to become an SMSF trustee.
874413	23 April 2024	APC Securities Pty Ltd (in Liquidation)	The complainants incurred losses because they invested in unlisted securities that were facilitated by the financial firm. The complainants were not eligible to invest in the securities as they were not sophisticated investors.
907346	21 April 2023	Amalgamated Australian Investment Solutions Pty Ltd	An SMSF was inappropriately advised by the financial firm to invest in an unlisted company prior to its initial public offering. The SMSF was not eligible to invest in the investment because it was not a sophisticated investor.
916801	3 April 2024	APC Securities Pty Ltd (in Liquidation)	The complainants incurred losses because they invested in unlisted securities that were facilitated by the financial firm. The complainants were not eligible to invest in the securities as they were not sophisticated investors.
955121	19 March 2024	APC Securities Pty Ltd (in Liquidation)	The complainants incurred losses because they invested in unlisted securities that were facilitated by the financial firm. The complainants were not eligible to invest in the securities as they were not sophisticated investors.