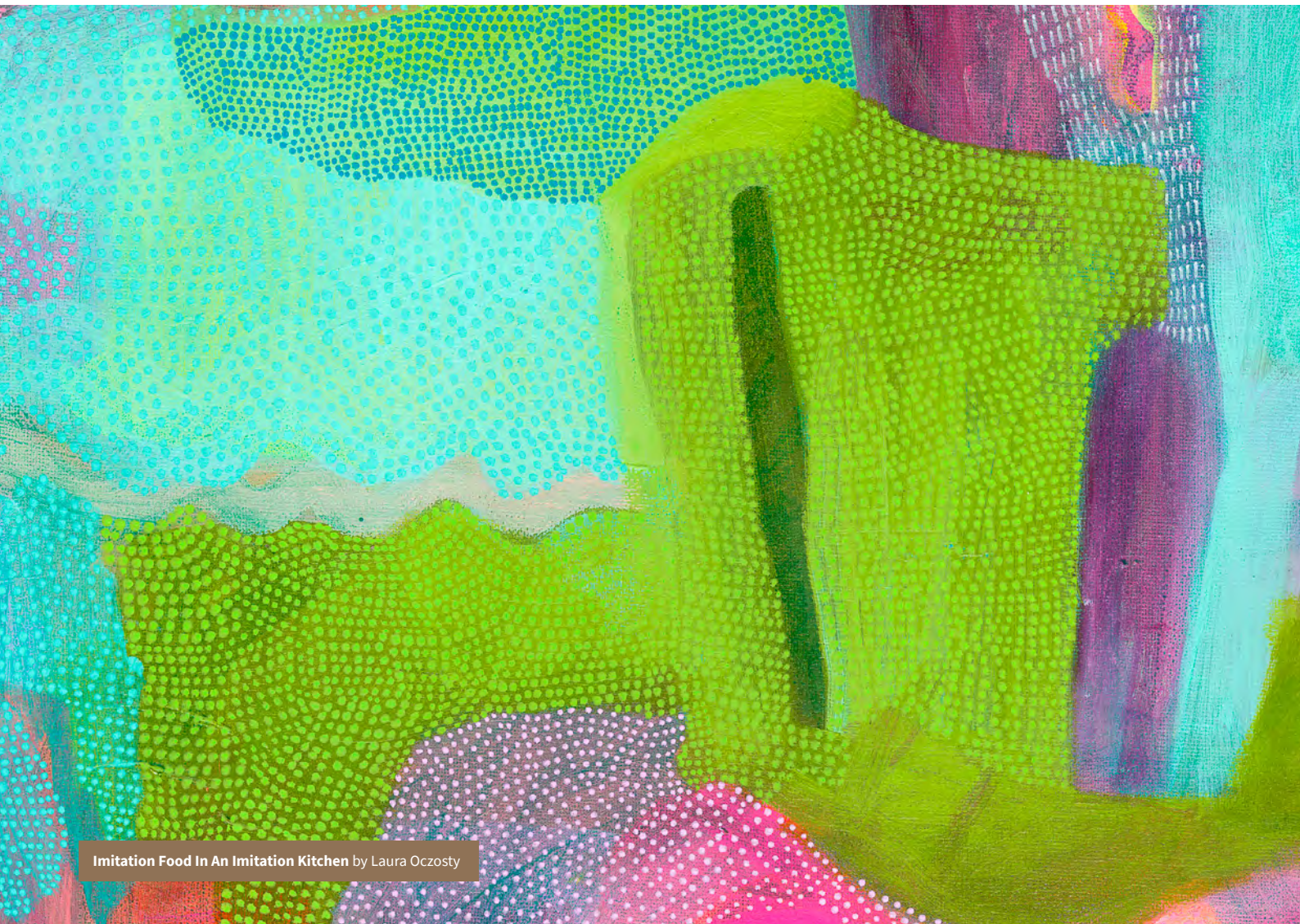


IN PRIVATE

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AUSTRALIA'S PRIVATE MARKETS IN FOCUS: ASIC'S TAKING A LOOK

As the gravitational balance between our public and private markets has shifted over time, ASIC has decided it is time to understand better the possible risks and vulnerabilities that our private markets might bring to Australia's overall financial system and also to investors participating in those private markets.

In February, ASIC released its discussion paper on the evolving dynamics within Australia's public and private markets (see paper [here](#)). At a high level, the paper canvasses:

- key and emerging issues relating to public and private markets;
- an overview of international market developments and regulatory initiatives; and
- ASIC's preliminary views on some of these matters.

Australia's public equity markets are estimated to be worth around A\$3 trillion. In ASIC's view, they are broadly accessible markets with high standards of governance, transparency, and market integrity. However, the number of Australian IPOs is the lowest it has been in over a decade. Our public markets are also skewed towards the financial and mining sectors, and less represented in sectors that are expected to drive growth in an increasingly digital world.

This public market position can be contrasted with the relative growth of private markets globally and in Australia. Capital under management within the private markets globally is estimated to be around US\$15 trillion. While Australia's share of that is relatively small, it has seen strong growth over the last 15-20 years, in part driven by the growth of Australia's superannuation system (that is estimated to have around A\$4 trillion under management) and its attractiveness to foreign sponsors as a reliable source of quality investment flow in a stable market. Because of its scale and reach, the superannuation sector has increasingly become a conduit between public and private markets – operating in both.

WHAT ARE THE KEY TAKEAWAYS?

A focus on retail

Although the paper recognises that there are multiple different categories of investors participating in our private markets, you don't need to dig too deep to sense that ASIC is primarily focused on the retail cohort of that investor base, particularly in the private credit space. In ASIC's view, heightened risks are faced by retail investors in private markets (when compared with public markets), citing examples such as limited access, liquidity challenges, complexity, information asymmetries and adverse selection risks. Drawing from parallels in other offshore markets, ASIC specifically canvasses certain risks to the fair treatment of those investors including:

- conflicts of interest - examples such as misaligned incentives, related-party transactions and treatment of confidential information to name a few;
- governance; and
- valuation practices - ASIC believes that a lack of transparency in private market transactions poses valuation challenges for investors when making investment decisions and challenges for regulators when making judgments about systemic risks.

Increased surveillance and tackling leaks

ASIC is doubling down on its surveillance of private markets, especially when it comes to major auctions and transactions. We expect that this isn't just about keeping an eye out; it's also about bettering ASIC's understanding of private markets more generally.

ASIC also appears to be stepping up its efforts in targeting and prosecuting leaks to uphold the integrity of Australia's broader capital markets. This focus is likely exacerbated by recent deal leak data, which places Australia 5th globally in the leak rankings.¹

Information harvesting

A recurring theme throughout the discussion paper is the relative dearth of information and transparency that ASIC considers it has on Australia's private markets relative to their regulatory counterparts in other major markets offshore (and relative to information they can currently gather on Australia's public markets). They stress the need for complete, high-quality, and timely data on private markets to better develop policies and supervise the sector. More on this later as we suspect this is likely to be one of the areas that gains some traction in any suggested reforms that may be advanced by ASIC.

Cues from abroad

There is little doubt that ASIC is keenly aware of the position some of its peer regulators (principally in the US and UK) hold when it comes to data provision and enhanced regulatory controls over participants in those private markets. The issues that have been identified and tackled in those markets are many of the same issues that ASIC has highlighted for discussion in its paper. Whether this also means that ASIC will feel inclined to adopt the same position as those other US and UK regulators will be interesting to observe. For financial sponsors already operating and complying with the enhanced positions in those markets, the prospect of ASIC seeking some level of regulatory alignment on key areas may not be that daunting. Conversely, for those financial sponsors who do not have to comply with the US or UK positions, the prospects of better alignment are likely to be viewed negatively.

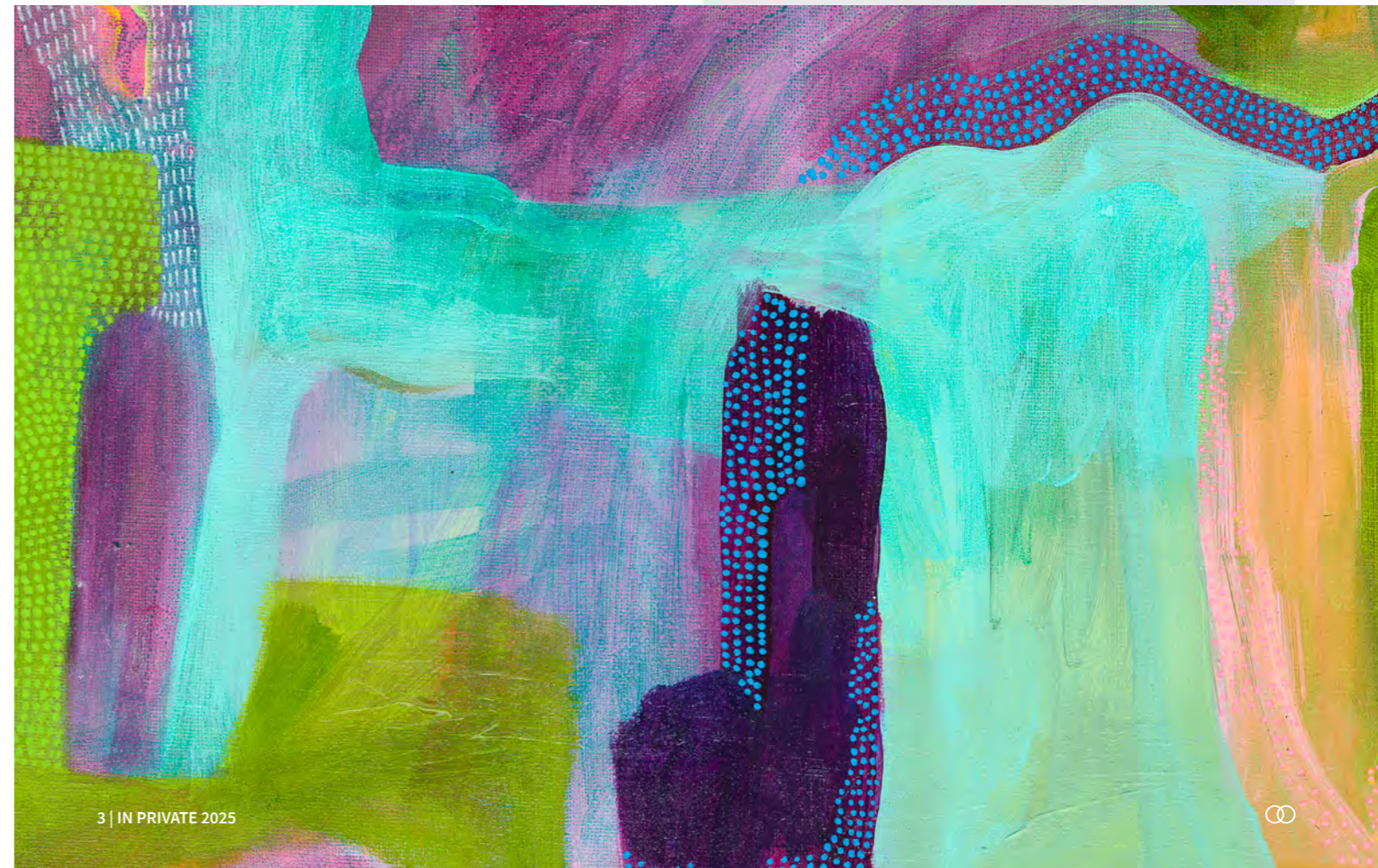
WHAT'S NEXT?

ASIC is posing 15 questions to market participants in the hope of gaining insights on whether and, if so, how best to enhance the operation of Australia's capital markets. The questions fall under five key themes: (1) global capital market trends and their impact on Australia, (2) characteristics of public equity markets, (3) risks, efficiencies and confidence in private markets, (4) retail investor roles in private markets, and (5) transparency and monitoring of the financial system.

Notably, six of ASIC's 15 questions are distinctly focused on private markets. A further two questions are directed at monitoring and transparency of our capital markets including the private markets.

As an adviser to clients active in our public and/or private markets, KWM will be preparing its own detailed submission to ASIC, outlining our views on the questions raised and what we consider would be the right policy path for Australia in the future. If you have thoughts on any of the questions posed by ASIC, please do not hesitate to reach out to any of the *In Private* team – we'd be delighted to hear your views. Feedback to ASIC closes on 28 April 2025.

¹ 2024 M&A Deal Leaks Report by SS&C Intralinks and the M&A Research Centre (MARC), Bayes Business School, City, University of London - 2024.





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