



Australian Private Equity &
Venture Capital Association Limited

11 February 2014

Dear Sir/Madam,

Publication of superannuation statistics and confidentiality of superannuation data

The Australian Private Equity and Venture Capital Association Limited (AVCAL) welcomes the opportunity to comment on APRA's discussion paper on 'Publication of superannuation statistics and confidentiality of superannuation data'.

AVCAL represents the venture capital (VC) and private equity (PE) industry in Australia, with \$24 billion in funds under management. VC and PE are key sources of capital investment for Australian companies of all sizes, to enable their growth and realise their potential. Over the last ten years, the PE and VC industry has invested \$31 billion in private businesses, on behalf of investors such as superannuation funds, financial institutions and public sector funds.

AVCAL strongly supports APRA's work as a national statistical agency for the Australian financial sector, and its role in promoting transparency, accountability and understanding of the superannuation industry.

AVCAL also supports the proposal to determine certain data submitted by RSE licensees to be non-confidential. Enhanced transparency will encourage the analysis of whether the superannuation industry is achieving retirement income policy objectives over the medium to long term.

However, it is important that the publication of any information collected by APRA does not compromise the interests of superannuation fund members. We have specific concerns over the public disclosure of information contained in *SRS 532.0 Investment Exposure Concentrations*, which reports investment exposure information up to materiality threshold of 1% of the total assets of the RSE.

The materiality threshold is helpful in limiting the costs of publishing large volumes of information on very small portfolio exposures. However, we have significant reservations with determining SRS 532.0 information as non-confidential data. These are outlined below:

1. **While there is no issue with providing this information to APRA for prudential purposes, there should be a specific exemption for unlisted investments from the public disclosure of commercially sensitive information.** The disclosure of such information – particularly information on ownership percentage, cost, valuation and distributions – would constitute a breach of the contractual confidentiality arrangements usually found in the legal documents that govern the relationship between the superannuation fund and its PE and VC fund managers. Even if the likelihood of triggering the materiality threshold is small, the absence of explicit provisions to protect confidential data means that RSEs will need to renegotiate investment management agreements with each of their PE and VC fund managers to recognise that confidential information may be disclosed under the new reporting standards.

In the US, most states' Freedom of Information Act (FOIA) laws already protect confidential commercial information but for the avoidance of doubt, many impose specific protections for the information PE funds share on a confidential basis with their state investors. For example, California law specifies a list of exemptions for alternative investments from commercially sensitive disclosures, including exemptions from disclosing records containing information regarding a fund's individual portfolio investments (California Public Records Act, § 6254.26). Minnesota law specifically considers data on the state's and public pensions' limited partnership investments to be non-public if "the release of which could cause competitive harm" to the state board (Minnesota Statutes 2013, § 11A.24). Similar protections or carve-outs for commercially sensitive PE investment information exist in other states including Illinois, South Carolina and Texas.

2. **The disclosure of information on an RSE's unlisted investments which is regarded as commercial-in-confidence can be detrimental to members' financial interests for the following reasons:**

- Public disclosure of the book value of unlisted assets (whether intermediated through funds or through co-investments with PE and VC funds) can have a negative impact on the performance of those investments. For example, if an RSE trustee holds a direct interest in an unlisted business and is seeking to dispose of that interest, disclosure of the value that the RSE trustee attributes to that interest could adversely affect the RSE trustee's ability to negotiate a sale price which is superior to the book value.
- Similar issues arise when, for example, an RSE trustee is in a position to acquire an additional interest in an existing asset, through the exercise of a pre-emptive right, at a discount to the fund's book value.
- Public disclosure of the investment vehicle's valuation can also pose of risk of individual asset valuations being identified, as PE and VC funds typically have only a small number of investments per fund (the investment vehicle).

AVCAL proposes that there should be a specific exemption from public disclosure of any commercially sensitive information in relation to PE and VC funds, and their unlisted investments. Such information as required by SRS 532.0 should be determined to be confidential in order to mitigate the costs and risks to superannuation investors resulting from such public disclosure, as outlined above.

If you would like to discuss any aspect of this submission further, please do not hesitate to contact me or Dr Kar Mei Tang on 02 8243 7000.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Yasser El-Ansary', with a long horizontal stroke extending to the right.

Yasser El-Ansary
Chief Executive
AVCAL