July 2023

The Alternative Investor

Performance
News
Trends
Regulatory updates

The lure of Dubai is more than sunshine as funds line-up

In this edition, **Arif Amiri**, CEO of the **DIFC**, writes about the merits of Dubai and the DIFC ecosystem, while **Simmons & Simmons** looks at how the DIFC has become the largest hedge fund hub in the region, **Walkers Global** continues on this theme and the pairing of offshore funds with DFSA regulated managers, and **AIMA** picks up the UAE's charm offensive and attractions to managers.

A Brodie Consulting publication in conjunction with Capricorn Fund Managers and RQC Group.

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EQUITY HEDGE HITS THE RIGHT NOTES

June was a strange month, with the macro in the doldrums and the hawks in charge, yet equities rallied (see June market review). This environment suited hedge funds, with the **HFRI Fund Weight Composite Index** +2.2%, taking the year-to-date number to +3.5%.

Equity-focused hedge funds had an excellent June - the **HFRI Equity Hedge (Total) Index** closed +3.0%. The best-performing sub-strategy was **Quantitative Directional**, +4.4%, with managers benefiting from the equities tailwind. **Growth** followed suit, +3.5%, as the heavy weighting to AI-related firms paid off. In fact, this was a rare month when no one equity sub-strategy was in negative territory.

Event-driven followed suit, with the **HFRI Event-Driven (Total) Index** +2.8%. Of all sub-strategies, it was the **Activist** index that stood out, +5.9%, with managers' positions rallying in this environment; likewise, **Special Situations** had a very good month, +3.2%. **Merger Arbitrage** was more subdued, in comparison, but was still +1.6%.

June was a solid month for **Macro**, +1.5%, although it underperformed the more equity-focused strategies. Performance numbers across sub-strategies were all positive, with **Multi-Strategy** the outperformer, +3.4%. **Systematic** also had a decent month, +1.5%, while **Discretionary** was at the bottom, relative to other sub-strategies, +0.3%.

Relative value was the laggard, with the **HFRI Relative Value (Total) Index** closing June +0.9%. The range was quite tight, with the outperformer, **Fixed Income Sovereign Debt**, +2.1%, and the worst, **Volatility**, +0.1%.

The outperforming regions were the emerging markets, led by LatAM, with the **HFRI Emerging Markets: Latin America Index** close to hitting double digits, +9.1%, followed by **India**, +7.1%. **Japan** also had an excellent month, +4.8%, as managers benefited from strong domestic equity markets.

INDUSTRY EVENTS

124-26 July
Pension Bridge | Private Equity Exclusive 2023

22-23 August
Campden Club | Family Alternative Investment Forum

7 September
AIMA | Putting ESG into practice

Click here to see all the listings

$35bn

Amount of dry powder ready for use at SoftBank.

Source: SoftBank

$25bn

Ardian's target for its latest secondaries fund.

Source: Ardian

CVC SET TO BREAK RECORDS

CVC Capital Partners is closing in on a $30 billion fund-raise. **Private Equity International** reports that this is set to *'be the largest ever private equity fund.'* This is for **CVC IX**, a leveraged buyout fund focusing on medium and large European and North American businesses, and will be larger than **Blackstone Capital Partners VIII**, the largest fund to date at $26.2 billion. Investors include **LA County Employees Retirement Association**, which has committed up to $269 million.

TA RAISES $16.5 BILLION

Another manager to successfully raise decent sized funds is **TA Associates** that has closed its latest at $16.5 billion. The Boston firm launched its 15th **Global Private Equity Fund** in November last year, which has been oversubscribed, exceeding its target size. This will invest across multiple sectors, including tech, healthcare, financial services, consumer and business services.

SECONDARIES PROVE A HIT

Ardian has also had a good fund raise, with $20 billion for a secondaries fund. This will take stakes in private equity vehicles, which is good timing with a number of stressed/ illiquid investors. The French firm today manages $150 billion and is looking to hit $25 billion for this fund, which would match the size of **Blackstone's Secondary Fund** (SP IX and SP GPS). Ardian has built a long track record in the secondary space and claims to be the world's largest, with more than $86 billion under management and advisement in these investments.

LITTLE INSIGHT

For every big fund raise, there are sadly dozens that disappoint. One of which is an **Insight Partners** fund that has been dramatically cut back. The New York-based VC firm was looking to raise $20 billion but has only got as far as $2 billion, having started the marketing in June last year. It is now looking to raise a more realistic $15 billion - although this still seems some way off - and has said it will slow the pace of investment across the firm. On a more positive note, the firm has $10 billion of dry powder burning a hole in its pocket, which perhaps removes the urgency.

The **Financial Times** describes Insight Partners as a *'bellwether for venture capital and technology investing,'* so their struggles are indicative of this part of the market. Various other big-name private equity houses have similarly reduced fund targets, including **Apollo**, which was looking to raise $25 billion for a new buyout vehicle.

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UPDATES (CONT)

CARLYLE FOCUSES ON CAPITAL MARKETS BUSINESS

Carlyle Group's new CEO, *Harvey Schwartz*, is looking to stamp his mark on the firm as he calls for greater capital markets expansion. This move is good news for the PE giant, which has lacked clear direction over the past year and has seen its stock price fall almost 50% from its peak in November 2021. At a recent investor conference, Schwartz said he wants to build this side of the business as banks increasingly step back and become more risk averse from this type of lending: *"That's an area we can grow because we have all the raw materials."* Schwartz knows this side of the business well, having previously co-led **Goldman Sachs'** push in this direction. **Bloomberg** writes that *'this unit can help the firm bypass banks by arranging financing and placing the debt with private lenders on its own.'*

SILVER LAKE GOES BIG GAME HUNTING

In a rare interview, **Silver Lake** co-CEO, *Egon Durban*, spoke to the **Financial Times** about the firm's strategy. Durban said they are looking to focus on *'fewer but larger investments,'* which is a different approach to many other firms in the sector, where a move for greater diversification appears to be the norm. He believes that the current climate is creating new opportunities not previously available - this is also where the firm's biggest successes have been, particularly *"when we are big in terms of capital and in firm resources committed".* Today, the US private equity firm is one of the largest tech investors in the world, managing $98 billion. In line with this thinking is Silver Lake's recent €2.4 billion acquisition of **Software AG** and the $12.5 billion acquistion, alongside **CPP Investments**, of **Qualtrics**.

TIGER'S SOMEWHAT SUBDUED ROAR

After a few painful years, **Tiger Global Management** is back in the market, looking to raise new funds. Unfortunately, they are finding the fund-raising environment not as easy as they once did when investors were hammering at the door to invest.

According to a regulatory filing, **Private Investment Partners Fund 16** now has commitments totalling $2.1 billion of a targeted $6 billion, having kicked off the marketing in October last year. Even the $6 billion is half of what the firm would have looked to raise a few years ago. Whether this is down to brand concerns, a more conservative approach, or a more nervy environment is not clear.

STRUGGLING TO FIND THE RIGHT DEALS

The trouble in these markets is finding the right kind of deals. Looking at the UK, there were only 59 deals in the first half of the year, totalling a paltry £4.4 billion, comparied with £22.1 billion in the same period a year ago, when there were 113 deals. It is a dramatic fall and perhaps surprising given all the analysis you read about depressed UK valuations. Maybe this will open the door to value opportunities or is just indicative of the dire state of the UK market. According to the **Centre for Private Equity and Management Buyout Research**, these are the lowest figures since 2009.

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UPDATES (CONT)

ODEY'S TAINT

One of the biggest stories in June, or at least the one that got the most column inches in the UK, was the downfall of London-based **Odey Asset Management**.

First came the **Financial Times** expose, which was not all new scoops but pretty damning in one article; then there were questions about FCA oversight, followed by political criticism and a public flogging.

From a brand perspective, when you are managing other people's money, this was a complete car crash, which became far more than just a focus on a single person and instead on the broader business and firms that had ties to the company, many of which quickly cut them.

You can only stay in these types of fights for so long before realising there is no way out. The pressure keeps building, with the latest a full blown **FCA** investigation. Ultimately, *Crispin Odey's* involvement was too closely intertwined with the structure, management - even with the rebrand of a few years ago - and his own assets within the funds.

The only sensible course of action was to break up the business and either close or gate funds, or move them to other firms - **Lancaster Investment Management** is one name that has been mentioned. Whether this is enough remains to be seen.

TOUGH MARKETS FOR ANDURAND

Andurand's year goes from very bad to very, very bad. Unfortunately for *Pierre Andurand*, **Bloomberg** is closely monitoring his performance and according to the wire, his discretionary leveraged fund is now down 50.8% to 23 June 2023. Andurand has had some staggeringly good returns in the past, but the trade-off is extreme volatility, with this vehicle up 59% in 2022 and 154% in 2020, set against some pretty big drawdowns. It is a volatile ride, but his investors know what they have bought, although Andurand has somewhat bullishly forecast oil prices of $150 a barrel when it is still around $70 and looking under increased pressure in this recessionary environment. However, never count Andurand out - he has been proved right before.

ABU DHABI LURES NATSIS

Brevan Howard's *Trifon Natsis* - the 'N' in Brevan - has become the latest big-name manager to jet off to the UAE. The 63-year-old is moving to Brevan's newly established Abu Dhabi office, first announced in February and is part of the firm's plan to grow the business in the region, where they are looking to add up to 100 staff.

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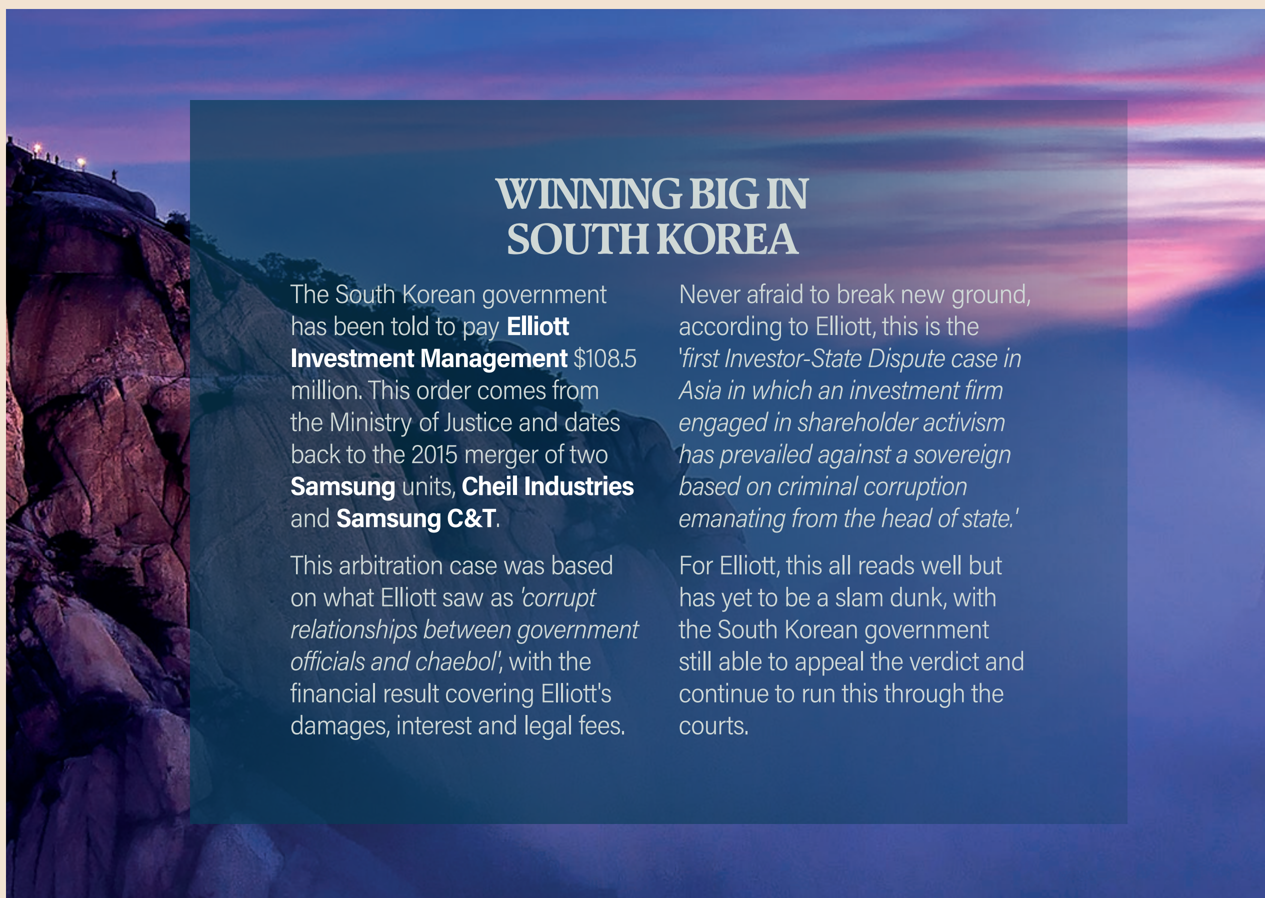
UPDATES (CONT)

MAN GROUP EXPANDS INTO PRIVATE CREDIT

News that **Man Group** has agreed to take a controlling interest in **Varagon Capital Partners**, a US middle market private credit manager, shows that the private credit market is in rude health.

Man is paying $183 million in cash from internal resources for a 73% stake in the business. With $11.8bn AUM and $15.4bn total client commitments, the Varagon acquisition is certainly a boon to Man's already large AUM and will help build the firm's presence in the US as well as grow its direct lending business. Varagon will be rebranded Man Varagon.



WINNING BIG IN SOUTH KOREA

The South Korean government has been told to pay **Elliott Investment Management** $108.5 million. This order comes from the Ministry of Justice and dates back to the 2015 merger of two **Samsung** units, **Cheil Industries** and **Samsung C&T**.

This arbitration case was based on what Elliott saw as *'corrupt relationships between government officials and chaebol'*, with the financial result covering Elliott's damages, interest and legal fees.

Never afraid to break new ground, according to Elliott, this is the *'first Investor-State Dispute case in Asia in which an investment firm engaged in shareholder activism has prevailed against a sovereign based on criminal corruption emanating from the head of state.'*

For Elliott, this all reads well but has yet to be a slam dunk, with the South Korean government still able to appeal the verdict and continue to run this through the courts.

ELLIOTT LOOKING FOR NRG SCALPS

Elliott Investment Management was relatively quiet for a few months, but is back with plenty of noise.

Another very live action is its position in Houston-based **NRG Energy**, where they want to see big changes and has rolled out the usual playbook, with the website - Repower NRG - presentation and press releases.

The result has been impressive, with NRG increasing buybacks and publicly announcing that it is considering board changes. On paper, these actions look good but are not enough, with the **Wall Street Journal** reporting that Elliott now wants the scalp of the CEO.

SOFTBANK VOLTE FACE - NOW IT IS ALL ABOUT THE OFFENSE

Speaking at **SoftBank's** AGM, *Masayoshi Son* said that the Japanese investment firm is set to go on the "offence."

It was the first time Son has been in public for several months, having stepped back to focus on **ARM Holdings**, but comes as **Vision Fund** lost $32 billion.

Son admitted to having made big mistakes but this an about turn from their *"defensive"* move when the firm halted new investments and reduced its stake in **Alibaba**.

SoftBank has $35 billion of dry powder to deploy, with AI particularly piquing his interest and rallying the faithful, saying: *"AI is about to grow explosively... [with Softbank in] the leading position."*

The market clearly liked this, with the shares rallying by as much as 20%. It is, however, worth noting that SoftBank sold its holding in **Nvidia**, the current darling of the AI world, back in 2019.

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UPDATES (CONT)

RETURN OF THE STAR MANAGERS

The war for talented asset managers is hotting up, with remuneration going through the roof. **Bloomberg** has reported on **Marshall Wace** adding a new client fee - not that Marshall Wace has ever been backwards in coming forwards - to pay for ever more expensive talent. This is called a *'compensation surcharge'* and sits in its Eureka fund, which is as much as 0.75% of the fund value. While this is an extreme example, there are signs of big signing-on bonuses and high costs - **DE Shaw, Citadel,** and **Millennium** are all firms paying top dollar. Whether this is a return to the star managers remains to be seen, but we have already been through that cycle once before, and it didn't necessarily end well.

LANSDOWNE GETS THE HAIR DRYER

The **Financial Times'** *Harriet Agnew* has written an unflattering article on **Lansdowne Partners**, in which she compares the firm to the success and growth of **Marshall Wace**.

The piece, titled *'A Tale of Two Hedge Funds,'* looks at the two businesses that were launched at the same time but in recent years have gone down different paths. Lansdowne's assets are down two-thirds from their peak, while Marshall Wace has gone from strength to strength and has positioned itself as Europe's answer to **Citadel** or **Millennium**, writes the Financial Times.

Having known both for 20 years, these are both amazing businesses - although AUMs may differ - with Marshall Wace's proprietary TOPS system and internal thinking the real industry differentiators.

There are definite lessons for all large managers in this piece, particularly the importance of clarity in corporate strategy, changing with the times, diversifying assets and product sets, and having depth of ownership.

A BIG DIFFERENCE OF OPINION

There is a severe rift at **Two Sigma** between the co-founders. This particular story should never have seen the light of day, for it is a humiliating own goal for the quant manager, with the **Wall Street Journal** sourcing it from a March 2023 filing (link). As is often the case when you have co-founders, the issue comes down to succession planning, organisational structure, and diametrically opposing views.

John Overdeck and *David Siegel* launched Two Sigma in 2001, which has been hugely successful. But the firm is now facing various management and governance challenges affecting how it is run and its 'ability to retain or attract employees.' This detail is all set out in this extraordinary filing, which was positioned as a 'material risk for clients.' Material risks tend to be what could happen, but in this case, it is what is happening.

Bloomberg followed up the Journal story and added a comment from *Jamie Nash* at **Kleinberg Kaplan**, who said that this was a first for him and he had *"never heard of disclosure like this."*

STORY OF OUTFLOWS

Hedge funds have been struggling to stem the outflows and May was more of the same. **Nasdaq eVestment** data reveals this was the 12th consecutive month of outflows and the worst May since 2009, with $10 billion leaving the space. May historically is a positive month for flows, so this is a disappointing result. Equities saw the bulk of the outflows and while there were a few funds raising capital, these were very much the exception; it was the same in Event Driven and Macro. Even the Multi-strategy sector, which has seen healthy inflows during the year, saw little net movement during the month.

33RD TIME LUCKY

Crypto appears to have the wind behind it again, with Bitcoin sitting comfortably above $30k. There also seems to be increased institutional support. And now a spot bitcoin ETF may finally get approved, with **BlackRock** seemingly quietly confident that they will break the industry duck, albeit with a few last minute tweaks to their application - to be fair, they have a pretty good track record of getting ETFs approved by the SEC. All the commentary and articles point to approval, although the SEC has, so far, proved a stumbling block for all 32 applications to date. Along with the BlackRock ETF, there are also outstanding applications from **WisdomTree, Invesco, Fidelity** and a re-filed **Valkyrie**. **SEC** Chair *Gary Gensler* has made no secret that he is no fan of spot crypto ETFs, but perhaps BlackRock knows the right buttons to press.

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GUEST ARTICLES

Dubai: a world class hedge fund hub

ARIF AMIRI, CEO, DIFC AUTHORITY

Hedge funds looking to expand their horizons are turning to Dubai with a sense of optimism at a time when they see more challenging operating environments in more established markets. Dubai and Dubai International Financial Centre (DIFC) have set themselves apart with a powerful confluence of ecosystem benefits. For hedge funds and private equity, in particular, Dubai's unique proposition includes additional regulatory, infrastructure and environmental advantages.

The Dubai Financial Services Authority (DFSA), which is globally recognised for its transparency and governance, has always been an accessible and collaborative regulator. While overseeing the DIFC jurisdiction for almost 20 years now, the DFSA frequently consults with the industry, unlike markets where funds have continued to become frustrated by slow and rigid approaches.

Alongside an environment of ambitious innovation, the DIFC ecosystem provides the perfect set of partners for funds and their portfolio managers looking to establish in Dubai. Hedge funds can hit the ground running with unparalleled access to high-calibre professional advisors, including law firms, consultancies and tax specialists within the Centre.

Over the years, DIFC has grown extensively to become a source of capital on its own, adding to some very large pools of capital that currently exist in the region. We have more than 100 family offices based in the Centre – a sector responsible for employing 80 per cent of the Middle East's workforce and contributing 60 per cent of the region's GDP.

Another benefit for hedge funds looking to set up in the emirate is the operational convenience of Dubai's central location, which bridges time zones and markets between the East and the West.

2022 saw a record number of hedge funds registering and as has been well documented there are more in the pipeline. As this number grows, the ecosystem will develop around them, attracting new and smaller hedge funds to the centre, as well as prime brokers and trading technology start-ups.

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GUEST ARTICLES (cont.)

According to the World Bank's Doing Business 2020 report, the UAE – located at the crossroads of emerging markets – holds the top spot for ease of doing business in the Middle East and North Africa. Many also appreciate the lower corporate and income tax rates. Dubai's globally competitive and enticing tax regime, including tax free income for employees, as well as the option to set up and domicile funds, make it an ideal destination for top funds amid the changing global climate.

Dubai government's focus on happiness and reputation for creating a high quality of life are also major factors in attracting hedge funds and the people who work for them. Dubai enjoys being one of the best cities in which to both live and work, ranking in the top three best cities for expats to live in globally along with Miami and Lisbon.

It's clear to see the attraction that Dubai has for hedge fund managers and at the DIFC we will continue to create an environment where they and their employees can thrive.

Arif Amiri, CEO, DIFC Authority

In his capacity as Chief Executive Officer of DIFC Authority, Arif Amiri is responsible for setting the strategy and growth direction of the Authority. Under his leadership, DIFC has emerged as a powerful catalyst for the financial services sector, as well as the leading global financial centre in the Middle East, Africa and South Asia (MEASA) region.

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> Arif Amiri, CEO, DIFC Authority

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GUEST ARTICLES (cont.)

How the DIFC became the largest hedge fund management hub in the MEASA region

MUNEER KHAN, PARTNER, MIDDLE EAST REGIONAL HEAD, SIMMONS & SIMMONS

The Dubai International Financial Centre (the DIFC), a financial free zone within the Emirate of Dubai, is the largest financial services centre in the Middle East, Africa and South Asia (MEASA) region. In recent years, a growing number of hedge fund managers have been attracted to the DIFC as a result of various pull and push factors. As a result, the DIFC has rapidly emerged as the largest hedge fund management hub in the MEASA region and continues to experience exponential growth.

A significant accelerant for this influx of asset managers was the COVID-19 pandemic. Whilst some financial hubs like London, Hong Kong, Singapore and New York were subject to significant COVID restrictions and stringent lockdowns, Dubai took a more balanced approach (combining a strategy of rapid vaccine rollouts, social distancing measures, open borders and remaining open for business). This resulted in many people relocating, including hedge fund portfolio managers.

The UAE's favourable tax regime (in particular, there is no personal income tax) has also been a key driver, especially when this is contrasted with the global rise in living costs and tax rises. In the global war for talent, having the ability to offer the option of a Dubai office is often becoming a decisive factor. This is particularly the case for the multi-strategy, multi-manager platforms, more and more of whom have been setting up a significant presence in the UAE.

The UAE "golden visa" scheme, which is a five or ten-year self-sponsored renewable residence visa scheme for "specialised talents" and investors has also been a draw for founders, senior managers and certain specialised finance professionals, such as quants.

The UAE has a multi-faceted regulatory landscape. Financial services such as financial promotion, advice, arranging deals or asset management, are usually undertaken from one of the jurisdictions of (i) "onshore" UAE, (ii) the DIFC or (iii) the Abu Dhabi

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>
> Muneer Khan, Simmons & Simmons

GUEST ARTICLES (cont.)

Global Market (the ADGM), each of which has its own financial laws and regulations. The DIFC and the ADGM are financial free zones that were formed to encourage foreign investment by offering concessions such as zero tax guarantees and complete foreign ownership of entities.

This diverse landscape ultimately provides a number of options for alternative asset managers wanting to relocate. The DIFC in particular has gained international recognition and critical mass as a world-class financial centre and is seen as an example of how governments in emerging markets around the world can potentially fast track legal and regulatory reform.

It is clear that the UAE and especially Dubai is now at the top of the list for some of the world's largest alternative asset managers and their talent, who increasingly see it as a longer-term home for them and their families. Though one can never predict the future of global markets, especially in current times, based on our own pipeline of applications, we expect the speed at which hedge fund managers have entered and set up in the DIFC and wider UAE to continue for the rest of 2023 to 2024.

Muneer Khan, Partner, Middle East Regional Head, Simmons & Simmons

In his capacity as the Middle East managing partner and head of financial markets at Simmons & Simmons, Muneer Khan has been closely involved in advising a large number of leading international hedge fund managers on their strategies for Middle East establishment and expansion. In this context, he has also worked closely with regulators and financial centre authorities, such as the DIFC Authority, on key policy and strategy issues to facilitate growth in the asset management sector.

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We have two things happening at once. You have a world that's getting older and you have a world that's getting wealthier. And as a result, we have chronic disease reaching levels that we've never seen before on this planet.

Bob Bradway, CEO, Amgen

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GUEST ARTICLES (cont.)

The Emergence of a Global Financial Center

TATZIANA PARAGUACUTO, TOM HAGGER & TOM COCHRANE , WALKERS GLOBAL

For almost two decades, the Dubai International Financial Centre (DIFC) has been positioning itself as a leading financial hub in the Middle East and North Africa (MENA) region. While it has a strong presence in various sectors, including banking, finance, and insurance, the DIFC has also been actively promoting itself as a hub for asset management.

In recent times, a variety of factors have galvanised the DIFC's position as the dominant financial centre in the MENA region. Such factors include:

- geopolitical tensions in Eastern Europe as a result of the Russia-Ukraine conflict (which has resulted in an influx of talented asset management professionals into Dubai);
- the adept handling of the COVID-19 pandemic in the United Arab Emirates (where the response to the pandemic was generally regarding as being measured, pragmatic and proactive); and
- the continued buoyancy of financial markets in the United Arab Emirates and the MENA region more broadly (with high oil prices, among other things, allowing for continued investment opportunities at a time when much of the global economy has either stalled or experienced a downturn).

These factors, paired with the concentrated and strategic efforts of the DIFC to lure asset and wealth managers to Dubai, have been incredibly successful, and provide a strong foundation for the DIFC's continued future growth in the medium to long term. High profile names in the asset management industry to set up in the DIFC in the last twelve months include Edmund de Rothschild Group (which opened an advisory office in the DIFC in February of this year), Nomura (Japan's largest investment bank and brokerage group) and Bahrain's The Family Office (which is seeking to expand its regional client base). In total, the DIFC now has more than 300 wealth

...the concentrated and strategic efforts of the DIFC to lure asset and wealth managers to Dubai, have been incredibly successful, and provide a strong foundation for the DIFC's continued future growth.

Tatziana Paraguacuto, Tom Hagger & Tom Cochrane, Walkers Global

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GUEST ARTICLES (cont.)

> **Pairing a Cayman Islands fund with the credibility associated with a DFSA-regulated manager is often considered the "best of both worlds" approach...**
>
> Tatziana Paraguacuto, Tom Hagger & Tom Cochrane, Walkers Global

and asset management companies registered in the centre, representing an industry size of approximately US$450 billion.

As a top tier offshore law firm with a full service offering in Dubai (which includes the provision of certain corporate services to DIFC-domiciled entities), Walkers works regularly with a wide range of asset managers, family offices, investment banks and wealth management companies (along with their onshore counsel). Such clients typically require a mix of onshore legal services and complementary offshore legal services. For example, we have often seen asset managers establish a presence in the DIFC (and become appropriately regulated by the Dubai Financial Services Authority (DFSA), the DIFC's financial services regulator) when launching an investment fund with a Middle Eastern nexus (such as an anchor investor based in the Middle East, or a target asset located in the Middle East). For such asset managers, when considering the domicile of their fund, the Cayman Islands is a clear market leader (both regionally and globally) and the "default" choice in many cases. Pairing a Cayman Islands fund (which has the benefits of tax neutrality, cost-effectiveness, confidentiality, investor familiarity and broad flexibility) with the credibility associated with a DFSA-regulated manager is often considered the "best of both worlds" approach, leveraging the respective benefits of the relevant offshore and onshore jurisdictions.

Both the Cayman Islands and the DIFC are taking a pragmatic and sensible approach to regulation in the asset management and broader financial services space, which is helping to attract asset managers and other types of clients to both jurisdictions. In many cases, clients will need to utilise the services of both onshore and offshore legal counsel to suit their particular needs. The opportunities in this space are vast and we look forward to working with our clients (and their onshore counsel) to help them seize such opportunities.

Tom Cochrane is a partner in the Investment Funds group in Dubai; Tom Hagger is a senior Counsel in the Investment Funds group in Dubai; and Tatziana Paraguacuto is a partner and co-head of the Investment Funds group in Walkers' London office.

With one of the world's largest specialist International Financial Centre funds teams, Walkers delivers investment funds advice in Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Irish and Jersey law on a global basis. Clients from well-established financial institutions to start-up managers rely on our advice to launch new products, keep abreast with regulatory change, and ensure that good governance is in place.

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GUEST ARTICLES (cont.)

Lifting the Lid on the UAE Hedge Fund and Digital Assets newest hotspot

TOM KEHOE, GLOBAL HEAD OF RESEARCH AND COMMS, AIMA

The past year has seen plenty of noise regarding alternative investment funds, including some of the largest names in the hedge fund industry migrating to the United Arab Emirates (UAE).

The region is mounting a real charm offensive, with regulators and authorities taking advantage of the recessionary environment in the UK and US, as well as the slowness of China to exit the COVID-19 pandemic.

In comparison, there is a clear intent to have the very best businesses globally move to the UAE region with the leadership offering all types of enticements to make this happen, including tax-free compensation, long-term resident visas, and a can-do attitude by the government to attract businesses to develop and prosper. Subsequently, the region is witnessing a migration of fintech, crypto and hedge funds, among others.

With its robust financial infrastructure, strategic location, favourable regulatory framework, and attractive tax regime, the UAE has emerged as a premier destination for hedge funds looking to diversify and expand their operations.

The sentiment of hedge funds in the region is captured in AIMA's quarterly Hedge Fund Confidence Index, which asks fund managers to score their confidence in their economic prospects over the coming 12 months on a scale of -50 to +50. The HFCI has run since Q4 2020 and expanded to include the Middle East in Q4 2022. Since then, the Middle East has always ranked among the most confident regions and scored the highest ever average confidence score for a region in Q1 (+22.6). The Q2 HFCI showed the Middle East to have notably resiliency in its confidence at a time when most other regions recorded more bearish sentiments, the Middle East

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GUEST ARTICLES (cont.)

remained at +16.5, second only to North America at +16.7.

Central to this migration has been the influence of two key industry players in the region, the Dubai International Finance Centre (DIFC) and the Abu Dhabi Global Market (ADGM), each of which has its own financial laws and regulations. The former suggests that as many as 20 foreign hedge funds firms have set up in the DIFC over the past year with another 20 in the pipeline over the remainder of this year. The latter is also witnessing a lot of interest from foreign firms seeking a fund license.

The UAE leadership continues to forge ahead to establish the region as a global hub for digital assets. In 2018, the Financial Services Regulatory Authority of the ADGM became the first jurisdiction globally to introduce an implement a comprehensive and bespoke regulatory framework for the regulation of exchanges, custodians, brokers, and other intermediaries engaged in virtual asset activities. The rest of the UAE was quick to follow suit. Fast forward to February of last year where the Dubai government established the world's first dedicated virtual assets regulator (the Virtual Asset Regulatory Authority or VARA) tasked with the regulation, governance, and assurance of licences for virtual asset regulated activities, including brokerage and asset management. Not to be outdone, the DFSA is also developing a framework to maintain oversight of the cryptocurrency and digital asset space.

AIMA is no stranger to the UAE, boasting members from across the region for several years. Recognising the buzz of activity with foreign firms migrating to the region, we have established a manager-only AIMA members' network. This group will be a forum for peer-to-peer discussion, supporting members actively monitoring and advocating on a variety of proposed rules and guidelines as well as offering practical guidance that will enhance the operations of its alternative asset manager members in the region.

If you are an AIMA member operating in the UAE or are interested in what others are doing in the region, we would love to hear from you by contacting us on the following email address (info@aima.org).

Tom Kehoe

Global Head of Research and Comms, AIMA

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REGULATION

Presented by

CRIMINAL INSIDER DEALING OFFENCE UPDATED

For the first time, exchanges based in the USA and Switzerland fall under the auspices of the UK's criminal insider dealing regime.

New York Stock Exchange, NASDAQ and SIX Swiss Exchange were added to the framework due to the detection of a persistent trend of organised crime groups recruiting UK insiders to disclose inside information relating to securities traded on those exchanges.

The criminal regime, based largely on legislation that took effect in 1993, has lagged behind its civil regime equivalent, which was last substantively updated in 2016. Certain elements of the updates to the criminal regime, which took effect on 15 June 2023, seek to bring the criminal regime up-to-date, such as bringing multilateral trading facilities ("MTFs") and organised trading facilities ("OTFs") into scope and aligning the instrument types in scope. However, the inclusion of the aforementioned overseas exchanges means that the scope of the criminal regime goes beyond that of the civil regime.

FCA PROPOSES AMENDMENTS TO MIFIDPRU

As part of its Quarterly Consultation, No 40, the FCA has proposed some clarifying amendments to the MIFIDPRU prudential regime. These relate to the ICARA and the own funds and liquid assets threshold requirements:

- Where a MIFIDPRU firm is also subject to another prudential regime, such as the AIFMD prudential regime, the own funds threshold requirement cannot be lower than the own funds requirement as prescribed by the other regime.
- When determining the liquid assets threshold requirement for wind-down, the basic liquid asset requirement should not be double-counted.
- Additional guidance is provided for firms in investment firm groups when determining which aspects of the ICARA should be applied on an individual firm basis as opposed to applying to the group as a whole.

In addition, there are some minor amendments to the MIF007 – ICARA Questionnaire.

The consultation period is short (five weeks – until 10 July 2023) indicating that the handbook changes will be implemented in the near future.

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REGULATION (cont.) Presented by RQC GROUP

ATTENTION 13F FILERS: A REMINDER THAT IT IS TIME TO KEEP TRACK OF PROXY VOTES ON EXECUTIVE PAY

Institutional investment managers who file a Form 13f with the SEC will need to collate its proxy voting record to disclose how they voted on executive compensation, or so-called "say-on-pay" matters. The SEC will not require 13f filers to begin filing the new Form N-PX to disclose such data until August 31, 2024, but the filing will cover **votes cast after June 30, 2023.**

The Form 13f is a quarterly report filed by institutional investment managers who have discretion over $100 million or more of U.S. listed securities. The SEC publishes a quarterly list of Section 13f securities.

While registered investment advisers will already have to keep records of their proxy voting pursuant to Rule 206(4)-6 of the Investment Advisers Act of 1940, as amended, the Form N-PX will be a new filing obligation via EDGAR.

SEC RELEASES RISK ALERT ON MARKETING RULE

The SEC's Division of Examinations (the "Division") published a Risk Alert informing registered investment advisers of additional areas of focus for exams based on the new Marketing Rule.

The Division continues to focus on a firm's policies and procedures, the substantiation requirement, performance advertising requirements and books and records.

Additional areas of emphasis include:

- Testimonials and endorsements
- Third-party ratings
- Form ADV

These Risk Alerts are published to encourage advisers "to reflect upon their own practices, policies, and procedures and to implement any appropriate modifications to their training, supervisory, oversight and compliance programs". The Division encourages advisers to review their websites and other marketing materials for compliance with the Marketing Rule.

SEC CHARGES PRIVATE EQUITY FUND ADVISER FOR OVERCHARGING FEES AND FAILING TO DISCLOSE CONFLICT OF INTEREST

The SEC charged a New York-based private equity fund adviser with charging excess management fees and failing to disclose to investors a conflict of interest relating to its fee calculations.

The SEC's order found that the firm's offering documents for certain funds it advised allowed for management fees to be charged based on invested capital in individual portfolio investments and required a reduction in the basis for these fees if said portfolio investments suffered permanent impairment.

From August 2017 through April 2021, the firm charged excess management fees by calculating fees based on aggregated invested capital at the portfolio company level rather than at the individual portfolio investment level.

In addition, the firm did not disclose its criteria for determining any permanent investment impairments. Investors were unaware that the criteria used by the firm were "narrow and subjective, making them difficult to satisfy". This undisclosed conflict of interest allowed the firm significant latitude in determining whether or not an asset would be deemed permanently impaired.

The adviser consented to the entry of the SEC's order finding that it violated Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder. Without admitting or denying the SEC's findings, the firm agreed to a cease-and-desist order and censure and to pay a $1.5 million penalty and approximately $865,000 in disgorgement and prejudgment interest.

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REGULATION (cont.) Presented by

U.S. FEDERAL COURT ORDERS FLORIDA MAN TO PAY OVER $1 MILLION FOR FRAUDULENT SOLICITATION AND MISAPPROPRIATION IN COMMODITY POOL SCHEME

The U.S. District Court for the Southern District of Florida on June 21 2023 entered an order of final judgment against Rico Cox, resolving the CFTC's May 31, 2022 lawsuit against Cox and finding him liable for fraudulently soliciting investments in commodity futures and misappropriating at least 14 pool participants' funds.

Cox falsely claimed he was a successful trader with years of experience trading futures contracts and failed to tell participants that in 2016 he was found liable for fraudulently soliciting funds to trade in a managed futures account. Those charges resulted in permanent trading and registration bans and a $941,000 judgment.

The court found that to perpetuate his fraud scheme, Cox issued false statements to participants showing false profits and grossly exaggerated account balances. As an example, Cox sent a participant a purported account statement from a futures trading commission merchant showing a balance of approximately $1.4 million when on that date the account had already been closed with a zero balance.

The court's order of default judgment and permanent injunction permanently enjoins Cox from engaging in conduct that violates the Commodity Exchange Act, orders him to pay $710,667 in restitution, $339,300 in disgorgement, as well as a $1,017,900 civil monetary penalty. The order also permanently bans Cox from registering with the CFTC and from trading on any registered entity.

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Capricorn Fund Managers Limited is an investment management and regulatory hosting business that provides regulatory infrastructure and institutional quality operational, compliance and risk oversight. CFM is part of the Capricorn Group, an international family office, which has been involved in alternative assets since 1995.

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