October 2023

The Alternative Investor

Performance
News
Trends
Regulatory updates

A look at the explosive growth of today's private credit markets.

In this private credit edition, **M&G Investments** writes about the asset class being an all-weather portfolio solution; **Federated Hermes** looks for the sector's sweet spot; **Permira Credit** the rise of club deals; **Five Sigma,** new and alternative ways to participate in private credit; and **MUFG Investor Services,** the pivotal role of private credit in economic growth.

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

#28

MACRO PROVES THE WINNER IN SEPTEMBER

September was a month when the Hawks took charge, confidence fell, and equity markets took a hit. Click here to see our market review. In this environment, macro managers were the star performers, and by the close of the month, the HFRI Fund Weighted Composite Index was down -0.2%.

The HFRI Equity Hedge (Total) Index fell -1.7% in September, led by tech, and the HFRI Technology Index dropped -4.1%, with Healthcare not far behind. Almost all Equity Hedge sub-sectors were showing red for the month, except for Energy/ Basic Materials, up +0.5%.

Event Driven followed suit, with the HFRI Index -0.7%. The Activists had a particularly torrid month, falling -4.8% as positions quickly sold off. In this environment, Credit Arbitrage and Distressed were the positive performers, +0.7% and +0.3%.

In contrast, Macro was a sea of green, and the HFRI Macro (Total) Index was +2.3%. Commodity-focused and trend-following managers led the charge, with the indices +2.8% and +2.7%. Discretionary managers lagged behind these figures but were still up for the month, +0.9%.

Relative Value managers had a solid month, with the HFRI Relative Value (Total) Index +0.3%. The best-performing sub-sector was Volatility, with the Index +0.5%.

Manager performance proved mixed across regions, but there was no single outlier for once. The best performing was the HFRI Japan Index, +1.6%, followed by the HFRI Emerging Markets: India Index. The worst performing was HFRI Emerging Markets: Latin America Index, -2.0%.

INDUSTRY EVENTS

16-18 October
InvestOps Europe 2023

17-18 October
Operating Partners Forum (New York)

19 October
AIMA APAC Annual Forum

19 October
ALFI London conference

Click here to see all the listings

$16.1tn

Tokenised illiquid assets incl. real estate & private resources by 2030

Source: Boston Consulting Group

$2.3tn

Estimated size of private debt market in 2027

Source: Preqin

BANKS TURN TO PRIVATE CREDIT

This month, we look at the growth of the private credit market, which has developed to to become a $1.5 trillion asset class over the past few years. (source: Preqin)

On this front, a significant development in the space and, perhaps, a sign of things to come is **SocGen** and **Brookfield** teaming up to launch a $10.7bn private credit fund. This story got plenty of coverage, and the timing feels right - it was also the best press coverage SocGen has seen recently, with its shares suffering after the new CEO unveiled an underwhelming first strategic plan.

Hot on the heels of this deal came another bank-related private credit fund launch, this time from **Wells Fargo** and **Centerbridge**. This fund aims to raise $5 billion to make senior secured loans to mid-market North American firms. Anchor investors are big sovereign/ institutional players, including **Abu Dhabi Investment Authority** and **British Colombia Investment Management**, who have come in with an initial $2 billion.

These developments show that banks are fast looking to get into the space, which is ironic given one of the main catalysts behind the move was banks pulling back in the first place.

RETAIL FOLLOWS SUIT

Banks are not the only ones getting into private credit funds as we start to see retail products being launched in the space. **Blackstone's Private Credit Fund** was the first big player to make the move and has now been followed by **T Rowe Price** and **Oak Hill Advisors**, which has launched **T Rowe OHA Select Private Credit Fund**. This will invest primarily in directly originated and customised private financing solutions, including loans and other debt securities, and focus on senior secured lending to larger companies. T Rowe Price acquired Oak Hill Advisors in 2021 to broaden its range of alternative products.

BUSY BROOKFIELD

Brookfield Asset Management has been busy over the last few weeks, having not only paid £1 billion for a vast UK wind farm, at a time when the sector is under pressure, but has also raised $12 billion for a flagship private equity fund. This is **Brookfield Capital Partners VI**, which is its largest fund to date that, according to the *Wall Street Journal*, actually undershot its target. To bolster the fund, Brookfield committed $3.5 billion, but there are also big institutional investors on board, including **South Carolina Retirement System Investment Commission**. This fund is just one part of its goal to raise $150 billion across all aspects of its business this year, including private equity, real estate and infrastructure.

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UPDATES (cont.)

REPUTATION IS 100% CRUCIAL

Proof that reputation really does matter comes from the news that **GIC Management** has sold its investment - at a loss - in **Vista Equity Partners**. The redemption is a direct result of Vista founder *Robert Smith's* tax evasion issues. According to *Bloomberg*, this has not helped Vista fund raising for its $20 billion flagship fund that has seen some other past clients reluctant to join.

MARKEL LAUNCHES NEW FUND

Leo Markel is launching a new London-based activist fund, **Finch Bay Capital**. He is targeting $500 million and a first-quarter 2024 launch. Co-founding the fund alongside Markel, who will be CIO, is former **ValueAct's** *Daniel Urdaneta*. The fund will take active positions in mid-market European and US businesses but also look to be market-neutral.

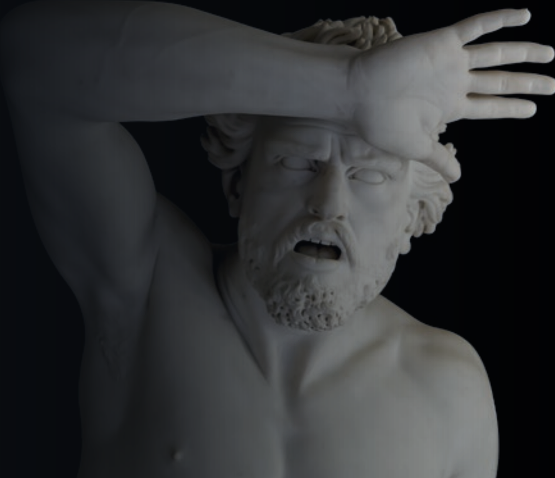
SURGOCAP OPENS ITS DOOR

After much publicity, **SurgoCap Partners** has officially launched with $1.8 billion in assets under management. This becomes the largest-ever female-led hedge fund launch and is run by former **Lone Pine Capital** portfolio manager *Maia Gaonkar.* Gaonkar follows in the footsteps of *Divya Nettimi*, who launched **Avala Global** last year with more than $1 billion of assets.

ONE LONG SAGA

The sale of **Sculptor Capital Management** has yet to draw to a close. Sculptor, the largest US publicly traded hedge fund, has been in an uncomfortable situation for years, with accusations and counter-accusations and yet it still manages around $30 billion.

Last month, it looked as if real estate firm **Rithm Capital** had this in the bag. Now *Boaz Weinstein* and his consortium, which includes several big hitters including *Bill Ackman* and *Marc Lasry*, have upped their offer. The ball is now in Rithm's court, which has so far said they are sticking to their original offer.



PELTZ ON OFFENCE

We have not written about an activist campaign for a while now, but it is worth flagging *Nelson Peltz's* revitalised **Disney** campaign. He feels he has given the returning CEO, *Bob Iger*, a fair crack of the whip, and it is now time to crank up the pressure.

Peltz, who has built a $2.5 billion stake in the business, is looking for board seats. He wanted these earlier in the year, but a reorganisation and cost-cutting appeared to placate him.

Disney's poor performance now sees Peltz back on the offensive, with the *Wall Street Journal* writing that he wants 'a board that is more focused, aligned with shareholders and accountable.'

ONE TO WATCH

An intriguing new alternative investment manager launching with $50 billion in assets under management and big ambitions is **Lunate**. This Abu Dhabi based business is part of **Chimera Investment**, owned by *Sheikh Tahnoun bin Zayed Al Nahyan*, the UAE national security adviser and chair of the **Abu Dhabi Investment Authority**. The investment manager is led by *Khalifa Al Suwaidi, Murtaza Hussain* and *Seif Fikry*. Lunate is looking to invest globally, which includes LP commitments, co-investments and direct investments across the alternative space.

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UPDATES (cont.)

MILLENNIUM LOOKS TO DIVERSIFY BUSINESS

There has been a significant development in the multimanager sphere as **Millennium Management** and **Schonfeld Strategic Advisors** look at partnership options.

According to the *Financial Times*, these two parties are at an 'advanced stage' of discussion.

The partnership will allow systematic trading manager Schonfeld to manage a portion of Millennium's assets.

This move is not a first for Millennium, which has a similar arrangement in place with **WorldQuant**, dating back to 2015.

JJJ SPINS OUT OF MOORE

JJJ Capital has recently announced one of the biggest launches of the year. This is a $3 billion inflation-focused hedge fund, set up by *Joeri Jacobs* and other ex **Moore Capital** traders. It is clearly not a bitter parting with *Bloomberg* reporting $1 billion of seed capital coming from Moore Capital.

BUILDING AN ASIAN CITADEL

Bloomberg reports on *Kurt Baker* prepping a large new multimanager fund, **30th Century Partners**. If he achieves his target raise of $3 billion, this will become one of the biggest fund launches of the past few years.

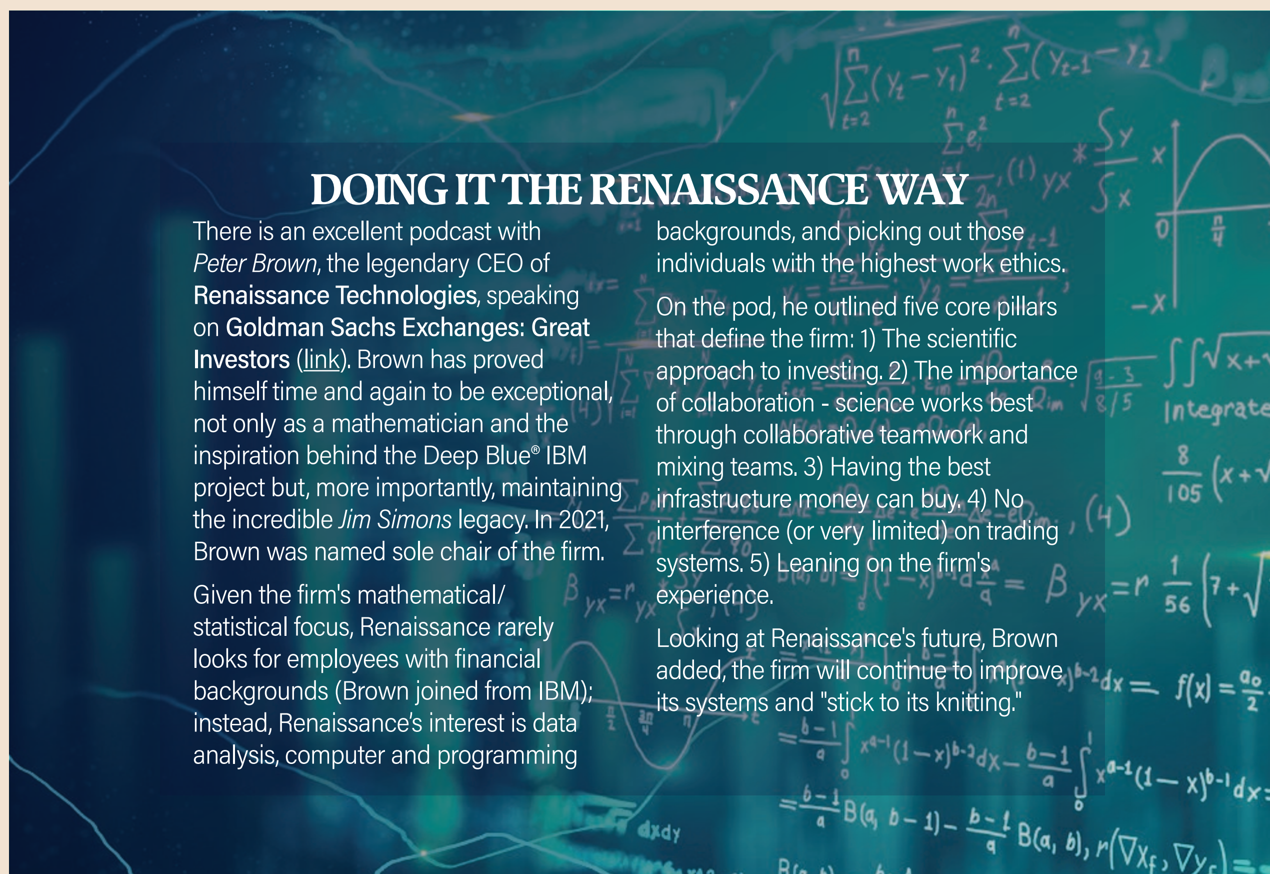
Baker, the former head of **Morgan Stanley's** Asia Prime Brokerage business and ex-Millennium Management, is aiming for a launch date of June 2024. His goal is to emulate **Citadel**, with almost a dozen investment teams trading in Southeast Asia and Australia.

Given the high costs and extensive structures involved in setting up a multimanager fund, these launches are rare, so we will watch this one with great interest to see how he gets on.

SECONDARY GROWTH

As well as seeing plenty of new private credit funds, secondaries funds continue to trend. Most recently, **Goldman Sachs** has successfully raised $14.2 billion for its flagship secondaries fund, **Vintage IX**, which is above their target. Beyond Vintage IX, Goldman also successfully added a further $1 billion to their **Vintage Infrastructure Partners** fund, which takes their total secondaries business assets to over $45 billion.

Another way to gain exposure to the space is to buy into a secondaries fund manager, which is exactly what **Carmignac** and **General Atlantic** have done, having both taken 'strategic' stakes in **Clipway** as well as backing its first $4 billion fund.



DOING IT THE RENAISSANCE WAY

There is an excellent podcast with *Peter Brown*, the legendary CEO of **Renaissance Technologies**, speaking on **Goldman Sachs Exchanges: Great Investors** (link). Brown has proved himself time and again to be exceptional, not only as a mathematician and the inspiration behind the Deep Blue® IBM project but, more importantly, maintaining the incredible *Jim Simons* legacy. In 2021, Brown was named sole chair of the firm.

Given the firm's mathematical/statistical focus, Renaissance rarely looks for employees with financial backgrounds (Brown joined from IBM); instead, Renaissance's interest is data analysis, computer and programming backgrounds, and picking out those individuals with the highest work ethics.

On the pod, he outlined five core pillars that define the firm: 1) The scientific approach to investing. 2) The importance of collaboration - science works best through collaborative teamwork and mixing teams. 3) Having the best infrastructure money can buy. 4) No interference (or very limited) on trading systems. 5) Leaning on the firm's experience.

Looking at Renaissance's future, Brown added, the firm will continue to improve its systems and "stick to its knitting."

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UPDATES (cont.)

PETERSHILL CUTS GUIDANCE

Goldman run **Petershill Partners**, the London-listed firm that takes minority stakes in private capital businesses, has cut performance guidance targets for this year.

Today the firm has stakes in funds with assets of $300 billion across private equity, private credit, private real assets and absolute return strategies. Its business model is proving a challenge, having reported total income for H1 of $138 million, down 19% year-on-year, due to lower performance fees and earnings. One investment, Pelham Capital, has seen its AUM fall from $4.5 billion to $1 billion since 2020 on poor performance, according to the *Financial Times*. There were no new investments during the half and expectations were lowered of further investments for the rest of the year.

The news saw Petershill shares fall by as much as 16% and are now less than half the September 2021 IPO price.

LEGAL BACKING

Pogust Goodhead, the UK-based law firm, and **Gramercy Funds Management** have announced an intriguing $552.5 million investment partnership. This is a secured loan from Gramercy to Pogust Goodhead, which will fund the largest action of its kind against **BHP Group** and **Vale** for their role in the Mariana dam disaster in Brazil. It will also be used to fund Pogust Goodhead's litigation against 14 global car manufacturers.

PARTNERS UNLEASHED

Having released record results, **Partners Group's** senior management showed that they were happy to talk their book.

CEO, *David Layton*, speaking to the *Financial Times*, said he believes that we are entering a "new period of consolidation in the private equity world." He thinks that the number of private equity firms will shrink to 100 in the next decade or so. Layton's view is based on current asset flows, which continue to head to the big firms and broadening the gap between the big and small funds.

Not wanting to be outdone, the Chairman was also having his say on the market when he talked about a return to record deal-making in a Bloomberg interview.

A NEW DAWN

European software investor **Dawn Capital** has successfully raised $700 million for two new funds investing in B2B software. The fundraising includes $620 million for **Dawn V**, their flagship early-stage investment fund, and a further $80 million for **Dawn Opportunities III**, which is already investing in later-stage investments from Series C onwards.

GGV SEPARATES ASIA BUSINESS

Venture capital firm **GGV Capital**, which manages over $9 billion, is separating its Asian business to create two independent entities.

GGV has two China offices in Beijing and Shanghai and has been operating in the region since the early 2000s. The Asian business will now focus on China, South East Asia and South Asia, and the Silicon Valley business getting the rest of the world.

Such a move is not new in the space, given the regulatory difficulties of operating in the US and China - **Sequoia** similarly split up its China and India arms from its US business earlier this year.

This also ties in with a recent **Preqin** report, China's Private Capital Landscape, that lays out the difficulties of running private equity and venture capital businesses in China, with many managers focused on existing 'investment and exiting.'

CHANGE IN PB

There is a change in the world of prime brokerage, with **Marex** announcing that it is buying **Cowan's** prime broking and trading business. This development comes as the fast-growing business looks to expand its offerings in the trading and execution space, and leverage off its large clearing business. There has been plenty going on at Marex, which, this time last year, bought **ED&F Man's Capital Markets** business.

MARSHALLING THE TELEGRAPH

A colourful story that has caught our attention is *Sir Paul Marshall* partnering with **Citadel's** *Ken Griffin* to buy the **Daily Telegraph**. Given Marshall's liberal ties and Griffin's historical links to *Trump*, we are unsure how this will play out, especially with the Telegraph's right-of-centre leanings. Citadel has made it abundantly clear that this is Griffin's investment and has nothing to do with the firm.

The pair are up against stiff competition to buy the paper, with **DMGT, Axel Springer and National World** in the mix, and the **Barclay** family also keen to buy back their lost asset.

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LETTER FROM AMERICA

The Eagle Has Landed in the Falcon Economy

It's no secret that the Americans have come hat in hand to the Middle East to raise money for their private-market funds for some time. In fact, asset managers of all stripes from the US have been making the 12-plus-hour flight from JFK to the Arabian Peninsula for many years, but something has changed since the pandemic to make this part of the world even more attractive for fundraising.

For starters, the energy boom has made the Gulf nations more cash flush than ever. In addition, a rise in interest rates and economic uncertainty, not to mention wobbly geopolitics, has lessened enthusiasm for big bets by allocators. That means Saudi Arabia, the UAE and other Middle Eastern countries are now among the most popular hosts and why Abu Dhabi has been aptly named the Capital of Capital.

...investors, business leaders and innovators are descending on [Abu Dhabi] with schedules and agendas for a month-long run of conferences that promise to bring a brighter global spotlight to the Falcon Economy.

This is, however, no longer a stop-over trip. Instead, US asset managers are establishing their own offices in the Middle East and no longer staffing them with "representatives." Investment professionals are setting up operations and hiring for business-development roles. A more efficient regulatory environment and a prime location that links the East and the West make it a strategic location for global managers.

In fact, officials from Abu Dhabi Global Markets, Abu Dhabi's international finance center and home to some of the largest asset managers and sovereign wealth funds, estimate that there are anywhere between 30 to 40 global assets managers setting up offices on the Al Maryah and Al Reem islands, which make up the ever-expanding ADGM. In a breakdown for the alternative-investor market, a total of 102 asset managers – including investment firms and hedge funds that oversee 128 funds – have set up shop in Abu Dhabi alone during the last six-month period ending August 2023, according to the ADGM.

The difference now within this growing population are not just about the numbers. The asset managers coming to the region have the ambition to become a real part of the investment ecosystem, and that is one of the keys to their success. In person meetings are critical in building real long-term relationships throughout the investment community and will pay rewards, local officials say.

Fast forward to today and investors, business leaders and innovators are descending on the region with more than hat in hand but with schedules and agendas for a month-long run of conferences that promise to bring a brighter global spotlight to the Falcon Economy. These start with FII or "Davos in the Desert" later this month, followed by SuperReturn Middle East, Abu Dhabi Finance Week, Fortune Global Forum, COP 28 and then Milken Middle East, all before year end. That's quite a line up and one that will allow the region to show their financial acumen and commitment to the energy transition.

It's not uncommon today to see driverless taxis on the streets of Abu Dhabi but following the next few months of visitors from America, the taxi may become electric soon, making frequent stops to US franchise drive ins or maybe even an eagle's nest or two.

Mark Kollar
Partner, Prosek Partners

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> I want people to come in every morning and remember that it's nurses' money, it's teachers' money, it's construction workers' money, its hospitality workers', but it's not our money. I think the finance industry has been very good at considering itself masters of the universe, a little bit entitled, and feeling like it's their own money, and it really isn't.

David Neal, CEO, IFM Investors

www.moneymazepodcast.com

GUEST ARTICLES

Private Debt: A nascent all-weather portfolio solution

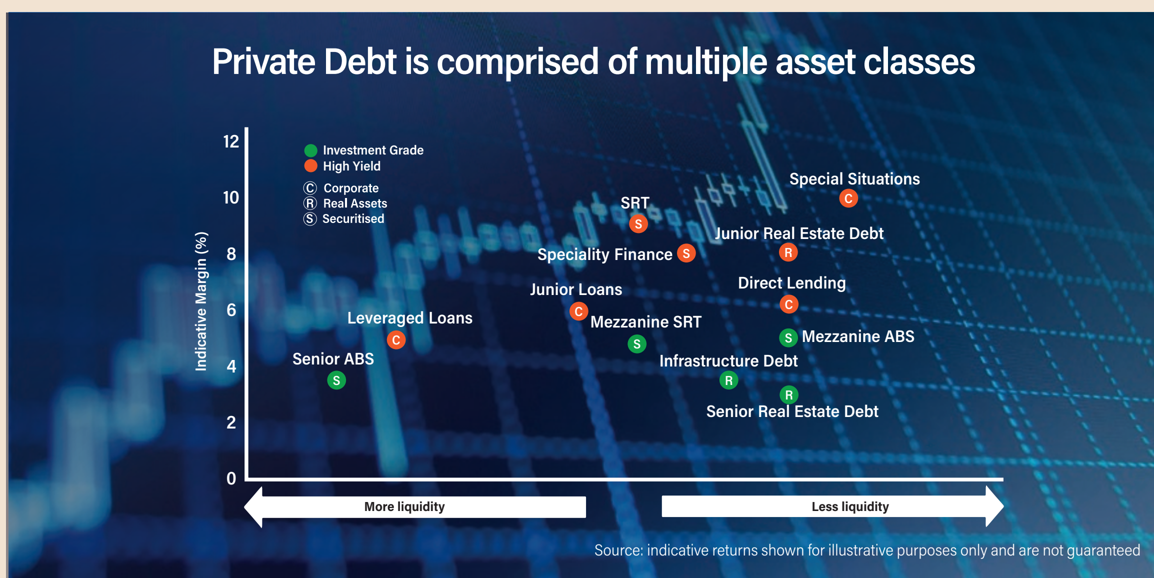
Aramide Ogunlana, CFA, Senior Investment Specialist Private Credit, M&G Investments

Private debt is often seen as the new kid on the block, in reality its history goes back decades not least with private corporate lending. This lesser-known segment of fixed income is permeating the zeitgeist as investors come to grips with the sheer depth of the market at $1.5tn[1], but not many comprehend the breadth of the market. Private debt is not a single marketplace but rather a series of different asset classes with varied risks and access points. The spectrum of private debt, ranges from private corporate lending to consumer finance, real assets lending, and securitised credit. Likewise, the credit risks can range from investment grade offerings such as infrastructure and private placements to high yield such as leveraged loans and specialty finance. The asset class also offers a range of liquidity profiles from daily tradeable instruments such as Senior ABS and leveraged loans, to illiquid direct lending and real estate debt.

> ... asset allocators and individuals alike are looking for credible solutions such as private debt that offer stable real returns and portfolio diversification benefits.
>
> Aramide Ogunlana, M&G Investments

Private debt has proven its resilience and adaptability through the various crises of the past three years. Realised long term return premiums to public credit markets can range anywhere from 1-10%[2] depending on your seniority in the capital structure and liquidity profile. Despite this many asset allocators are still under allocated to the asset class, but the tide is turning. For years, a combination of low-interest rates and a low cost of capital have been a boon for both corporate and consumer borrowers. But as global economies adjust to the higher for longer rhetoric and an uncertain geopolitical backdrop, asset allocators and individuals alike are looking for credible solutions such as private debt that offer stable real returns and portfolio diversification benefits.

[1] Preqin 2023
[2] Annualised 10-year excess return to global high yield



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GUEST ARTICLES (cont.)

Private debt assets typically carry limited duration risk, and during a period of higher inflation, their floating rate coupon structure enables income to adjust in real terms as rates climb. On the flipside even in a low or negative rate environment (a fading memory but very real occurrence in the preceding decade) many of these assets have base rate floors of 0-1% ensuring returns are not eroded. This duration neutrality without the need for complex hedging is a unique characteristic of the asset class, providing the opportunity to build resilient long-term portfolios driven by fundamentals. This is helping cement the asset class as a core building block in strategic asset allocations, and investor surveys consistently show private debt as the leading segment investors aim to increase allocations to, bucking the denominator effect rebalancing trend. Following a strong 2022, where private debt outperformed most asset classes including private equity, we have seen fund raising for private debt overtake venture capital strategies[3].

The prevalence of cashflow-generative assets within private debt that deliver income-driven returns rather than MTM price driven returns lends itself to a low volatility profile. In fact, private debt volatility can be 1/5th the level of public equity markets. Return generation from private debt is therefore not contingent on short-term macroeconomic dynamics. But that is not to say there are no tactical opportunities available, dislocations do occur as private markets are better sheltered but not immune to economic shocks. The highly cash generative nature and healthy pull to par from asset prepayments offer ample opportunities to redeploy.

Asset allocation can be specifically tailored for a changing macroeconomic backdrop. In the current stagflationary environment, we see value in maintaining a defensive positioning, senior secured private debt currently offers potential all in yields of 9-10%[4] without the need for taking undue credit risk, but pockets of opportunity proliferate through the universe.

In a world of increasing correlations across traditional asset classes, from our perspective private debt may just be the all-weather portfolio solution to unlocking a portfolio's full potential, through a combination of attractive return premiums, yield stability, ample deployment opportunities and diversification. This is not the time to simply buy the market when there are increasing instances of defaults and private equity sponsors handing over the keys to lenders. Manager selection is key. We believe it is crucial to have a manager who has long-term experience through multiple default cycles, conservative underwriting standards and rigorous credit analysis. Ultimately, careful credit selection is crucial to sustainable value creation when lending to companies in the private space.

Aramide Ogunlana, CFA, Senior Investment Specialist Private Credit

Aramide Ogunlana joined M&G in 2022 as a Private Credit Investment Specialist, with a focus on driving strategic growth of the platform. With over a decade of experience, Aramide has a track record ranging from structuring hedging products to assisting asset allocators in deploying over €3 billion in diverse public and private credit strategies.

[3] Pitchbook Global Private Debt Report H1 2023
[4] As of September 2023

> **... private debt may just be the all-weather portfolio solution to unlocking a portfolio's full potential...**
>
> Aramide Ogunlana, M&G Investments

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GUEST ARTICLES (cont.)

Finding the sweet spot in direct lending

Patrick Marshall, Head of Private Credit, Federated Hermes

Direct lending, once deemed an alternative investment, has unmistakably carved its niche in the mainstream financial realm. Since 2013, direct lenders have amassed an astonishing US$250 billion, a testament to its allure in an era defined by low-interest rates[1]. Investors have been captivated not just by the prospect of lucrative returns, but by the stability it promises – low volatility, minimal correlation to other asset classes, and the tangible cash income stemming from underlying loans.

Yet, as with any financial instrument, the terrain of direct lending is not devoid of challenges. The current macroeconomic stage is rife with unpredictabilities, marked by looming concerns over rising interest rates and high inflation. This prompts a pressing question: Does direct lending, in such turbulent times, still hold its ground as a sound investment?

We believe the answer resoundingly tilts towards the affirmative, albeit with a caveat – the key lies in pinpointing the right segment.

One region that stands out is the northern European[2] senior secured lower mid-market segment[3]. This segment is not just a beacon of compelling returns; it distinguishes itself by offering reduced downside risk. Moreover, the legal milieu here is particularly conducive for restructuring arrangements, providing a safety net for investors. This is a region where creditor-friendly jurisdictions reign supreme, offering a tested and proven legal framework, especially when it comes to insolvencies.

Diving deeper into the world of debt, a triad emerges – mezzanine, unitranche, and senior secured. Historically, when interest rates were negative, the expected yield across these types of direct lending strategies was approximately 5% for senior secured, 13% for mezzanine and 7% for unitranche[4,5]. The broad variance was primarily driven by the level of risk investors were exposed to due to the seniority of the debt, and how far down the capital structure it went. While unitranche lending typically provides investors with greater yield opportunity, at a time of rising interest rates, it is less attractive to borrowers. As such, the current economic climate favours the senior secured category, offering investors an optimal balance of risk and reward.

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[1] Deloitte Private Debt Deal Tracker Autumn 2022; pg. 24; notes Preqin as source

[2] Northern Europe equates to Denmark, Sweden, Finland, Norway, UK, Ireland, Belgium, Netherlands, Germany

[3] The lower mid-market segment typically involves loans less than €35m EBITDA

[4] Private Debt Deal Tracker | Deloitte UK

[5] Indicative or anticipated performance is not a reliable indicator of future performance

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GUEST ARTICLES (cont.)

But the evolution in direct lending isn't confined solely to regions or debt types. There is an increasing demand for ESG (Environmental, Social, and Governance) considerations. Lenders in the lower mid-market generally have greater negotiating power with regards to loan documentation. This has resulted in bolstered lender protections and a noticeable shift towards incorporating ESG-linked clauses, mirroring the global tilt towards sustainability.

While the broader economic backdrop might be fraught with uncertainty, the world of direct lending offers a promising canvas for those who know where to look. Northern Europe, with its blend of returns, security and a robust legal framework, emerges as the sweet spot. And as the industry continues to evolve, the integration of ESG considerations signifies not just a nod to global trends, but a step towards a more sustainable and responsible financial future.

Patrick Marshall, Head of Fixed Income - Private Markets, Federated Hermes Limited

Patrick joined in June 2015 to launch and manage the Direct Lending strategy, which invests in senior loans to UK and European mid-market businesses. He became Head of Fixed Income for Private Markets in January 2022 with oversight of all fixed income strategies within private markets, including Direct Lending and Asset-Based Lending.

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GUEST ARTICLES (cont.)

The Rise of the Club Deals

Andrew Lawson, Head of Capital Markets &
Jens Bauer, Managing Director at Permira Credit

The story of the rise in direct lending as traditional banks retrench is a familiar one for many investors. In another example of the market adapting to new trends, it is now beginning to take market share from the syndicated loan market.

In recent years, geopolitical and macroeconomic turbulence, fuelled by the war in Ukraine, inflation, rising interest rates and oil shocks, has deterred traditional investment banks from underwriting loans in the syndicated loan market. Given the longer lead time from underwrite to market sale, there can be significant market movements during that period. During the first half of 2022, banks were selling down underwritten loans at levels lower than their initial underwrite.

For private equity sponsors, getting an underwrite from a bank has therefore become more difficult, but the demand to do deals remains. And, just like it has since the 2008 global financial crash, the direct lending market has looked to plug the gap, this time with multiple lenders working together on "club deals".

Andrew Lawson, Permira Credit

WHAT IS A CLUB DEAL?

A club deal involves multiple lenders collectively funding a transaction, a departure from the traditional model where a single lender assumes the entire credit risk. This collaborative approach has gained traction as businesses seek larger financing packages, which a single lender is unlikely to provide entirely by themselves. Club deals provide a strategic solution, allowing lenders to pool resources and offer larger transactions at a time when the syndicated market is disrupted.

While direct lenders once focused on individual deals of around €50m to €200m, they are now "clubbing" together to tackle the scale of loans traditionally associated with the syndicated market. Notably, in Q1 2023, direct lenders financed 89% of European leveraged buyouts, compared to 63% just two years ago.[1]

[1] PitchBook | LCD, Data referencing share of European LBOs financed via the broadly syndicated loan market vs. Direct Lending by deal count; Q1 2023 and Q1 2021 figures.

> Club deals provide a strategic solution, allowing lenders to pool resources and offer larger transactions at a time when the syndicated market is disrupted.
>
> Andrew Lawson & Jens Bauer, Permira Credit

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GUEST ARTICLES (cont.)

WHY THE SURGE IN CLUB DEALS?

The same factors that fuelled the growth of the direct lending market are driving the popularity of club deals. Sponsors need deal certainty and agility, advantages the direct lending space has historically held over traditional banks. Club deals offer these benefits, but at a scale traditionally associated with the syndicated market.

IMPLICATIONS FOR INVESTORS

In a climate where credit markets are already attractive, club deals offer an additional funnel of transactions for credit managers. The collaborative nature of these deals allows lenders to tailor financing solutions to meet the unique needs of borrowers. This broadens the spectrum of investment opportunities for investors, contributing to a more resilient and adaptive investment portfolio.

Jens Bauer, Permira Credit

IS CLUBBING THE FUTURE?

The evolving nature of club deals in private credit indicates a credit ecosystem that is not only responsive to market demands but also committed to finding innovative solutions for the benefit of both lenders and borrowers alike.

Direct lending has carved a niche in the middle between the traditional single lender offer and the syndicated loan market and we expect that even as the syndicated loans market begins to normalise – club deals are here to stay.

Andrew Lawson, Head of Capital Markets and Jens Bauer, Managing Director at Permira Credit

The evolving nature of club deals in private credit indicates a credit ecosystem that is not only responsive to market demands but also committed to finding innovative solutions...

Andrew Lawson & Jens Bauer, Permira Credit

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GUEST ARTICLES (cont.)

Hiding in plain sight – the "other" Direct Lending market

Steve White, Co-Founder, Five Sigma

Direct Lending is all the rage in the alternative investing space. Everybody is talking about it. Perhaps more importantly, investors are pouring money into the space. Why is Direct Lending the new, new thing?

While there are different strategies – senior, mezzanine, distressed - at its heart, Direct Lending or Private Credit as it is sometimes also labelled, is lending by funds to corporates, who for various reasons, banks can't or won't lend to. By now, we all know that changes in banking regulation post GFC has caused banks to withdraw from all sorts of lending. Into that void, private funds have stepped into a global market that has grown to become a $1.5 trillion business (source: Preqin, 2022).

> "... increasing sophistication amongst Private Credit lenders results in more quantitative measurements of risk while offering borrowers more flexible terms and structures.
>
> Steve White, Five Sigma

Why have investors flocked to this new space? There are four primary reasons: (1) Direct Lending offered a yield pick-up over public market debt in a zero interest rate environment; (2) the floating rate nature of the loans offers very attractive risk adjusted returns, even rivalling those of private equity in today's higher interest rate environment; (3) increasing sophistication amongst Private Credit lenders results in more quantitative measurements of risk while offering borrowers more flexible terms and structures; and (4) bank retrenching dynamics seem permanent creating large gaps in the market.

There is one "...Yes, but..." to these benefits. While Private Credit is seen as diversification away from public credit and away from private equity for alternative investors, it is still corporate credit exposure with highly correlated returns. According to KKR, Private Credit has a 90% correlation of returns with Global Private Equity, 87% with US Loans, and 82% with US High Yield.

But what if there was another Direct Lending market that was even bigger and no one was talking about it? What if it provided even more diversification at both the macro sector and the portfolio level, and did so in a way where the correlation to corporate event and credit risk was significantly lower?

Welcome to the world of Asset Based Finance, also known as Specialty Finance. Driven by the same bank regulatory and credit concerns, this is a market that spans from Residential Mortgages of all sorts (Owner Occupied, Buy-to-Let, Retirement, Buy-to-Rent) to Auto Loans, Credit Cards and other Consumer Loans to SME lending and Trade Receivables or Inventory Finance.

It is probably no coincidence that these sectors are the lifeblood of our economies. Consumer spending represents 60% – 70% of GDP, according to the World Bank. SMEs are responsible for 50% - 60% of private sector GDP. Western European trade receivable finance is estimated by Euler Hermes to be greater than $9 trillion per annum. Developed world mortgage markets are trillions in annual origination volume. All of this needs to be financed and the banks are less and less willing to do so, creating a massive funding gap. Private capital is poised to fill the void.

Want to buy a used car in Germany,

GUEST ARTICLES (cont.)

France or the UK? The combined market is over €100bn of which between 25% - 30% is financed by non-banks. Buy a home in the UK or Netherlands? Almost 30% of mortgages are originated by non-banks. Run a small business? According to the British Business Bank, 50% are financed by non-banks!

You might say, "I know how to look at a balance sheet. How in the world would I look at one thousand or ten thousand individual borrowers and critically, how do I manage them?"

Fortunately, technology and math provide us with the tools to analyse and manage large portfolios. With historical data, we can calibrate the probability of default and loss at both the individual loan and portfolio levels. We can run various scenarios for who and when delinquencies and defaults might take place. We can model structures that align investors and originators' interests. It is a different skill set to corporate balance sheet analysis but one that we and a growing number of investors are perfecting. Our team has over 20 years of experience helping investors access this sector and manage their portfolios, having worked on more than $200bn worth of transactions.

So, hiding in plain sight are new and alternative ways to participate in Direct Lending away from the banks, providing additional diversification at the asset class, portfolio and geographic levels. In addition, a lower correlation of returns (averaging ca 64%) between these asset classes and Global PE, Leveraged Loans, US High Yield brings additional benefits to investors. The key drivers behind Direct Lending's growth over the last decade are opening a much larger opportunity in Specialty Finance that we believe is too big to miss.

Steve White, Co-Founder, Five Sigma

Five Sigma is a specialist structured credit investment firm bringing innovative solutions to the fixed income marketplace. The firm provides strategic buy-side, sell-side and on-going portfolio advisory services across a wide variety of specialty finance, private credit products with over $800 million of AUM. Steve White and Michele Bisceglia are co-founders of Five Sigma having spun their team out of AgFe earlier in the year.

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GUEST ARTICLES (cont.)

The Pivotal Role of Private Credit in Economic Growth

Treabhor Mac Eochaidh, Executive Director and Head of Debt Services at MUFG Investor Services

Private credit continues to take center stage in the financial landscape, especially as traditional bank-arranged loan issuance has become more measured. Private credit has filled the void, providing more flexibility and becoming indispensable for economic growth. We recently spoke with Treabhor Mac Eochaidh, Executive Director and Head of Debt Services at MUFG Investor Services, who shared his insights into the versatility private credit offers as a financing source and how his team is helping clients.

STABILITY IN PRIVATE CREDIT

The stability of private credit has become increasingly important as traditional banks and lenders have pulled back. With a growing amount of dry powder available for lending, private credit offers more than conventional financing sources and continues to help drive economic growth. Data from Preqin shows a 6% increase in private credit dry powder, from $412.2bn in December 2022 to $438.1bn as of June 2023 highlighting investor interest in the asset class[1]. This growth is propelled by the flexibility that private credit offers to lenders and borrowers, appealing to various stakeholders across different economic sectors. With a growing amount of dry powder available for lending, private credit offers more opportunities than conventional financing sources.

Stability in private credit is achieved through stringent assessment processes. This stability is critical as it offers reassurance to investors and fosters a sustainable financial ecosystem. With unparalleled flexibility compared to conventional financing sources, Private credit allows businesses and investors to explore innovative financing models,

[1] Preqin 2023 (link)

GUEST ARTICLES (cont.)

> The trajectory of private credit is indicative of its potential to reshape the financial landscape and propel economic growth, emphasizing the need for balanced and informed approaches to harness its full potential.
>
> Treabhor Mac Eochaidhm MUFG Investor Service

offering diversification and attractive returns. Various enterprises and economic sectors leverage the benefits of private credit to foster growth and innovation.

SIMPLIFY THE COMPLEXITIES OF THE LOAN MARKET

Mac Eochaidh emphasized the importance of meticulously managing debt portfolios to tackle the inefficiencies of the loan market with a trusted partner with a deep understanding of the complexities of various types of loans. Clients also need the proper guidance and counsel to help them comply with evolving regulatory demands and maintain operational excellence. With MUFG Investor Service clients optimize their operational efficiency and mitigate potential risks with flexible solutions that meet the unique needs of their portfolio, ranging from fund administration, loan administration, loan closing, loan servicing and collateralized loan obligations (CLOs) administration, to drive growth and empower them to navigate the unique intricacies of the lending asset class with confidence.

THE EVOLUTION

Private credit has established itself as a mature market in its own right over the last decade, solidifying its status as a linchpin in economic growth. Its increasing stability and flexibility have made it an attractive alternative to conventional financing sources, driving innovation and expanding opportunities across various sectors. However, the road ahead demands constant vigilance to mitigate risks and address concerns related to its stability. The trajectory of private credit is indicative of its potential to reshape the financial landscape and propel economic growth, emphasizing the need for balanced and informed approaches to harness its full potential.

Treabhor Mac Eochaidh, Executive Director and Head of Debt Services at MUFG Investor Service

MUFG Investor Services is a leading solutions provider for the global alternative investment management industry. With over $788 billion in assets under administration, it's one of the top fund administrators globally, providing a broad range of solutions including administration, asset servicing, banking and liquidity, corporate and regulatory services, financing, and more. Their 500+ clients represent funds across the public and private markets ecosystem. MUFG Investor Services is a division of Mitsubishi UFJ Financial Group, Inc (MUFG) one of the largest banks in the world with $3.2 trillion in assets.

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REGULATION

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FCA SETS OUT PROPOSED DIVERSITY AND INCLUSION REQUIREMENTS

The FCA's Consultation Paper CP23/20, published on 25 September 2023, pushes forward the regulator's initiative to set minimum standards for diversity and inclusion within the financial services industry.

The FCA considers that greater levels of diversity and inclusion ("D&I") can improve outcomes, for example, by helping reduce groupthink, supporting healthy work cultures, unlocking diverse talent and supporting the competitiveness of the UK's financial services sector.

The more prescriptive proposals focus on the largest financial firms. These are organisations with 251 employees or more. These cover: D&I Strategies; data disclosure; setting targets; and risk and governance.

In addition, there are proposals to clarify and strengthen the FCA's expectations around non-financial misconduct, which will apply to all regulated firms.

The Senior Managers and Certification Regime establishes standards of conduct for staff at FCA regulated firms. All staff (except ancillary staff) are subject to the Conduct Rules. In addition, staff who are classified as a Senior Manager or a 'Directory Person' (which includes individuals subject to the Certification Regime) are subject to fitness and propriety requirements.

Mis-conduct can be financial (i.e., specifically related to roles and responsibilities) or non-financial, which among other things may include bullying, sexual harassment and discrimination.

Currently, non-financial misconduct is a feature of the fitness and propriety regime, and there have been various examples of sanctions against individuals in this regard. It is not a feature of the Conduct Rules, except for banks. The FCA proposes explicitly to include non-financial misconduct within both the Conduct Rules and the fitness and propriety regime.

Regarding the Conduct Rules, the FCA proposes to extend the regime to include serious instances of bullying, harassment and similar behaviour towards fellow employees.

Regarding the fitness and propriety regime, the FCA proposes to explain that bullying and similar misconduct in the workplace is relevant to the assessment, and similarly, serious behaviour in a person's personal or private life is also relevant. This includes sexual or racially motivated offences.

The FCA invites responses to the consultation by 18 December 2023, with a view to publishing final rules in 2024. There would then be a 12 month window for firms to implement the changes.

POST-BREXIT HANDBOOK: A COLLECTIVE OPPORTUNITY

The FCA is working on a UK financial services handbook for a future outside the EU.

The implementation of the Financial Services and Markets Act 2023 provides a framework for the making of UK rules and allows for the repeal of the "retained EU legislation" ("REUL") in financial services which the UK has inherited.

Many aspects of the inherited regime continue to work well and there is no appetite to change everything, all at once.

However, the FCA is aware of the challenges involved in meeting its endgame: a set of Handbook rules that support the UK in being a respected and pre-eminent global financial centre.

To achieve this, the FCA will be applying the following principles:

Bringing together regulatory provisions so that the Handbook becomes a 'one-stop shop';

Using the existing structures in the Handbook where possible, and only creating new sourcebooks where necessary;

Relying on existing requirements as much as possible;

Considering outcomes-based regulation, where appropriate; and

Seeking to reduce complexity by drafting in its Handbook format and style where possible.

The FCA will aim to engage with its stakeholders to ensure that there is a smooth transfer to the new regime.

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SEC PUBLISHES RISK ALERT PROVIDING TRANSPARENCY ON ITS RISK-BASED APPROACH FOR SELECTING REGISTERED INVESTMENT ADVISERS TO EXAMINE

The SEC has published a Risk Alert providing additional information regarding its risk-based approach both for selecting registered investment advisers to examine and for determining the scope of risk areas to examine.

The SEC notes that the registered investment adviser population is large and diverse, ranging from global asset managers to small firms, engaging in a variety of business activities, servicing a diverse client base, and managing a wide spectrum of assets under management. As a result, the SEC utilizes a risk-based approach both for selecting advisers and for determining the scope of risk areas.

The SEC leverages technology to collect and analyze large sets of data to help identify risks and better understand a firm's business during examinations. The Division also reviews disclosure documents and various regulatory filings (e.g., Form ADV and Form PF).

SELECTING ADVISERS TO EXAMINE

An adviser may be selected for an examination because of its risk characteristics, a tip or complaint, or as part of a sweep of examinations in a particular compliance risk area. Every year the SEC publishes its annual priorities which provide advisers with insight regarding its focus areas. When selecting advisers to examine, the SEC will consider factors such as which advisers provide services, recommend products, or otherwise meet criteria relevant to the focus areas described in those published priorities.

There may also be firm-specific risk factors that the staff consider when selecting advisers for examination, such as those related to a particular adviser's business activities, conflicts of interest, and regulatory history.

SELECTING EXAMINATION FOCUS AREAS

The scope of an examination, and the documents requested, will vary from examination to examination depending on the adviser's business model, associated risks, and the reason for conducting the examination. However, examinations will generally include reviewing an adviser's "operations, disclosures, conflicts of interest, and compliance practices with respect to certain core areas, including, but not limited to, custody and safekeeping of client assets, valuation, portfolio management, fees and expenses, and brokerage and best execution."

Examination staff will request documents and information to gain an understanding of the adviser's conflicts of interest and its risks and corresponding controls, and to test the effectiveness of the adviser's compliance program for monitoring, mitigating, and managing such risks and conflicts of interest.

SELECTING DOCUMENTS TO REQUEST

At the commencement of an examination, the SEC staff typically send an initial request list identifying certain

Continued over page...

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REGULATION (cont.)

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information, including documents that the staff will review as part of the examination. The initial request generally includes:

1. General information on the adviser, providing the staff with an understanding of the adviser's business and investment activities;
2. Information about the compliance risks that the adviser has identified and the written policies and procedures the firm has adopted and implemented to address each of those risks;
3. Information to facilitate testing with respect to advisory trading activities; and
4. Information for the staff to perform their own testing for compliance in various areas.

The Risk Alert further describes the types of initial information, including documents, that SEC staff may request and review during a typical examination. These information requests are generally transmitted through secure email, and responses also are typically provided electronically. For any records that are not maintained electronically, the staff may request for such records to be available for in-person examination.

US ENFORCEMENT ROUNDUP

SEC and CFTC enforcement action continued apace in September 2023.

SEC CHARGES D. E. SHAW WITH VIOLATING WHISTLEBLOWER PROTECTION RULE

The SEC announced settled charges against D. E. Shaw for creating obstructions to whistleblowing by requiring employees to sign agreements prohibiting the disclosure of confidential corporate information to third parties, without an exception for potential SEC whistleblowers.

The firm also required approximately 400 departing employees to sign releases affirming that they had not filed any complaints with any governmental agency in order to receive deferred compensation and other benefits.

SEC CONTINUES ITS CRACKDOWN ON OFF-CHANNEL COMMUNICATIONS, CHARGING 10 FIRMS WITH RECORD KEEPING FAILURES

The SEC charged five broker-dealers, three dually registered broker-dealers and investment advisers, and two affiliated investment advisers for "widespread and longstanding failures to maintain and preserve electronic communications".

The SEC's investigations uncovered pervasive and longstanding off-channel communications, including WhatsApp and GroupMe, at all 10 firms. The firms failed to maintain the majority of these communications, thereby violating recordkeeping provisions of federal securities laws.

The firms agreed to pay combined penalties of $79 million.

CFTC ORDERS CPO AND ITS OWNER TO PAY MORE THAN $475,000 FOR FRAUD VIOLATION

The CFTC charged Highland Quantitative Driven Investments LLC ("Highland"), a formerly registered commodity pool operator, and its owner, Michael T. Zatorski, a formerly registered associated person of Highland, finding that the respondents violated anti-fraud provisions of the Commodity Exchange Act (CEA).

The respondents operated a pool with approximately 60 participants. In pool operating documents, Highland represented that it would trade pool assets using algorithmic trading strategies developed by an affiliated firm for which Highland would pay monthly licencing fees to the affiliate.

However, the respondents transferred funds directly from the pool, in amounts significantly more than allowed by the pool operating documents.

The order requires the respondents to pay $176,207 in restitution and a $300,000 civil monetary penalty. The CFTC further orders them to cease and desist from further violating the CEA and imposes permanent registration bans on the respondents, a permanent trading ban on Highland, and permanent trading restrictions on Zatorski.

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SEC CHARGES FORMER FINANCIAL ANALYST AND OTHERS WITH INSIDER TRADING

The SEC charged former analyst Anthony Viggiano, as well as Christopher Salamone, Stephen Forlano and Nathan Bleckley, for insider trading in advance of numerous merger and acquisition transactions.

The SEC's order alleges that Viggiano learned of material nonpublic information regarding eight impending merger and acquisition transactions and strategic partnerships through his work at two separate financial institutions. Using an encrypted messaging application and even the audio chat function of Xbox gaming consoles, Viggiano tipped off his friends Salamone and Forlano regarding some of the transactions, with an agreement to share the proceeds. In addition to his own trading, Forlano then tipped off at least five friends and family members, including friend Bleckley.

The SEC investigated the matter after its Market Abuse Unit's Analysis and Detection Center identified suspicious trading patterns.

SEC CHARGES ADVISORY FIRM WITH FAILING TO DISCLOSE MULTIPLE FINANCIAL CONFLICTS

The SEC announced settled charges against registered investment adviser AssetMark Inc. ("AssetMark") related to undisclosed conflicts of interest involving a cash sweep program operated by its affiliated custodian and its receipt of millions of dollars in revenue sharing payments from third-party custodians.

AssetMark failed to provide disclosure of conflicts of interest arising from its affiliate's cash sweep program, which transferred clients' uninvested cash into interest-earning bank accounts. AssetMark failed to advise clients that it was involved in setting the fee that its affiliate received for operating the cash sweep program, with said fee reducing the amounts of interest paid to those clients.

Further, AssetMark received custodial support payments from certain third-party custodians based on assets held in no-transaction fee mutual funds, but it failed to disclose the availability of lower-fee share classes with lower expense ratios which, if used by clients, would not have resulted in payments to AssetMark.

Without admitting or denying the findings, AssetMark consented to pay a civil penalty of $9.5 million and disgorgement and prejudgment interest of more than $8.5 million, all of which is to be distributed to harmed investors.

SEC FINES DEUTSCHE BANK SUBSIDIARY $25 MILLION FOR MISREPRESENTING ESG POLICIES AND AML VIOLATIONS

The SEC charged DWS Investment Management Americas Inc. ("DIMA"), a subsidiary of Deutsche Bank AG, with failing to develop a mutual fund Anti-Money Laundering ("AML") program, and separately for misstatements regarding its Environmental, Social, and Governance ("ESG") investment process.

In the first enforcement action, the SEC's order found that DIMA failed to develop and implement a reasonably designed AML program for the mutual funds it advised that complied with applicable regulations. Such policies and procedures should be reasonably designed to detect activities indicative of money laundering. DIMA further failed to conduct AML training specific to the mutual funds' business.

In its second enforcement action, the SEC found that DIMA made materially misleading statements about its controls for incorporating ESG factors into research and investment recommendations. DIMA marketed itself heavily as a leader in ESG, claiming that its research analysts had to consider specific ESG factors in its evaluation models. Despite such claims, DIMA failed to have controls in place to ensure its personnel implemented its ESG policies accurately, with some senior portfolio managers even unaware of the ESG policies in place.

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SEC CHARGES INVESTMENT ADVISER WITH MATERIAL MISSTATEMENTS IN MARKETING MATERIALS

The SEC charged Wellesley Asset Management, Inc. ("WAM") with material misstatements and omissions in its marketing materials.

WAM in January 2013 created an index to depict the performance of its convertible bond investment strategy from January 2000 forward, using said index performance graphs in advertisements during a period when WAM's investment strategy focused exclusively on convertible bonds. The firm's advertisements, however, failed fully and fairly to disclose the methodologies it used to construct the index.

The SEC's order found specifically that WAM failed adequately to disclose the hypothetical nature of the convertible bond strategy performance despite three revisions, all of which failed to state that WAM didn't use a model to make investment decisions and omitted that the hypothetical portfolio excluded non-convertible bonds for a period from 2002 to 2012.

WAM also held webinars with existing clients, including graphs of the WAM Index. WAM claimed the charts were hypothetical and excluded various expenses, but also misstated that the index reflected a composite of all client SMAs, which had not been true since 2002.

Earlier in September, the FCA announced charges against nine registered investment advisers for advertising hypothetical performance on their websites without adopting and implementing policies and procedures required by the Marketing Rule.

REGISTERED INVESTMENT ADVISER SETTLES WITH SEC FOR $1.6 MILLION FOR BREACH OF FIDUCIARY DUTY

The SEC has charged American Infrastructure Funds LLC ("AIM"), a registered investment adviser to private funds, with failing to disclose certain conflicts of interest and with breaching its fiduciary duty.

The SEC argued AIM breached its fiduciary duty by:

- Inadequately disclosing its conflict of interest in receiving accelerated monitoring fees paid by a portfolio company when that company was sold, and violated its duty of care by not considering whether the acceleration was in the clients' best interest;
- Transferring certain expiring funds' assets to a new private fund that it also advised, locking up investor money for over a decade without clients' consent, the option to exit, and without disclosing conflicts of interest; and
- Inadequately disclosing its conflict of interest in loaning money from one of its private funds to a private fund managed by an affiliated adviser and failing to determine whether the loan was in the clients' best interest.

AIM agreed to pay a $1.2 million penalty and $445,460 in disgorgement and prejudgment interest to investors. The Firm neither admitted nor denied any wrongdoing.

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SEC CHARGES INVESTMENT ADVISER WITH FAILING TO FILE FORM 13F

The SEC announced charges against registered investment adviser Artemis Wealth Advisors, LLC ("Artemis") for failing to file quarterly Forms 13F for a period spanning over five years.

Section 13(f)(1) of the Exchange Act and Rule 13f-1 thereunder require that institutional investment managers file Forms 13F on a quarterly basis if they exercise investment discretion over at least $100 million in securities that are traded on a national securities exchange.

The SEC's order finds that from December 2016 through March 2022, Artemis exercised investment discretion over more than $100 million of reportable securities and was therefore obligated to file quarterly Forms 13F beginning in February 2017. However, Artemis failed to file Forms 13F until April 2022.

In February 2023, Artemis filed 21 Forms 13F, which covered the period from the quarter ending December 31, 2016, to the quarter ending December 31, 2021, inclusive.

CFTC ORDERS NON-REGISTERED CPO TO PAY MORE THAN $2.5 MILLION FOR LEVERAGED BITCOIN FRAUD

The CFTC issued an order simultaneously filing and settling charges against Jacob Orvidas, finding that Orvidas fraudulently solicited at least four pool participants to trade leveraged bitcoin in a commodity pool, lost almost all funds, and then lied about the losses and the availability of the participants' money. To cover up those losses, Orvidas provided pool participants with fictitious spreadsheets reflecting false trading profits and high account balances, and lied about why he could not pay those profits out and return principal.

Orvidas further failed to register as a commodity pool operator ("CPO").

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REGULATION (cont.)

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SEC CHARGES FIVE FIRMS FOR CUSTODY RULE VIOLATIONS

The SEC announced charges against five registered investment advisers for failing to comply with requirements of the Custody Rule related to the safekeeping of client assets. Three of the firms were also charged with failing timely to update SEC disclosures regarding audits of their private fund clients' financial statements.

The SEC's orders allege that the five firms failed to do one or more of the following:

- have audits performed; deliver audited financials to investors in a timely manner; and/or
- ensure a qualified custodian maintained the client assets.

Two of the firms further failed promptly to file amended Forms ADV to reflect they had received audited financial statements, and one of the firms did not properly describe the status of its financial statement audits for multiple years when filing its Form ADV.

SEC CHARGES PRIVATE EQUITY FIRM WITH INADEQUATE FEE DISCLOSURES

The SEC charged private equity firm Prime Group Holdings LLC ("Prime Group") with failing adequately to disclose millions of dollars of real estate brokerage fees that were paid to a real estate brokerage firm owned by its CEO.

The SEC's order alleges that Prime Group launched an investment fund in 2017 to purchase self-storage real estate properties. The fund relied on deal teams made up of Prime Group's employees and independent contractors to find and acquire properties.

The deal teams' expenses and compensation, as well as other costs of Prime Group's operations, were paid, in part, from a three percent brokerage fee paid by the fund. The fund paid such brokerage fees, nearly $18 million in total, to a real estate brokerage firm that was wholly owned by Prime Group's CEO.

Prime Group failed adequately to disclose that an affiliate would be receiving these brokerage fees, and as a result the order found that Prime Group made misleading statements concerning fees and conflicts of interest in the fund's offering documents and due diligence questionnaires.

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