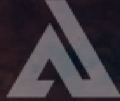


November 2023

The Alternative Investor

Performance

News

Trends

Regulatory updates

There are more strings to the property bow...

With property under pressure from interest rates and gated funds, in this edition, AREF looks at these funds, a way forward and the value of real assets in a portfolio; South Street Capital delves into Multi-Let Industrials; Marcus Langlands Pearse writes about repurposing office buildings; Savills London's prime market; Sharow Capital, the upbeat prospects for Poland; and Tritax Management LLP, the resilience of the European logistics sector.

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

#29

Gloomy October in the world of Hedge

October proved a heady cocktail of geopolitical and macroeconomic uncertainty. These were, and continue to be, exceptionally anxious times and nervy markets. In this environment, hedge funds were largely down for the month, with the **HFRI Fund Weighted Composite** -1.4%.

Much of the pain was felt in equities, with the **HFRI Equity Hedge (Total)** index -2.0%. The worst performing sub-strategy was **Energy/ Basic Materials** -2.7%, as commodity equities suffered from the drop in oil prices on supply and recovery concerns. This was followed by **Technology** -2.2%, which was largely dragged down by mixed earnings from tech and longer-term investor concerns. Also down -2.2% was **Fundamental Value**, followed by **Healthcare** -2.1%. **Equity Hedge** was the best performing and was still down -0.7%.

Event Driven, likewise, suffered in October and the **HFRI Event Driven (Total)** index fell by -2.4%. This was a tough environment for the **Activists**, with the index falling almost -5.5%. **Special Situations** was also -2.6% and **Multi-Strategy** -2.5%.

There were flashes of green in the HFRI Macro data, but it was not across the board. The **HFRI Macro (Total)** index was -0.7%, with the best performances coming from **Discretionary Thematic**, +0.9%, and **Discretionary Directional**, +0.8%. On the other side, **Systematic** was -1.0%, although the worst performing was, again unsurprisingly, the **Commodity Index**, -2.9%. However, on an asset weighted basis, the **HFRI Macro (Total) Index** was up 0.7%.

Relative Value was marginally down in October, with the index -0.1%. The best performing sub-strategy was **Fixed Income Sovereign**, +1.1%, followed by **Volatility** +0.8%. However, on the other side, **Fixed Income Convertible Arbitrage Index** was -1.5%.

Regionally, the only green percentage was India, with the **HFRI Emerging Markets: India** index +0.7. The remaining indices were red, with **Japan** the worst performing, -2.6%, closely followed by **Latin America**, -2.5%. Whilst **North America** was -1.8% and **Europe** -0.3%.

upcoming Events

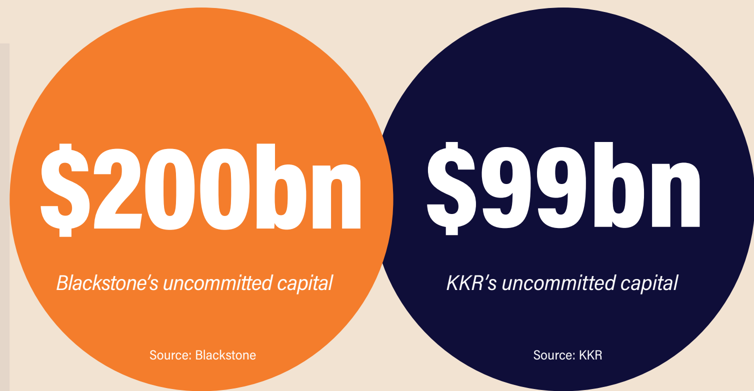
14 November
HFM European Legal Summit

14-16 November
SALT iConnections Asia (Singapore)

15-16 November
Campden Club | Family Office Forum (Palm Beach)

18-19 November
Women in Private Markets Summit 2023 (London)

Click here to see all the listings



Big brands dominate fund raises

Over the past year, we have seen an increasingly well worn path as investors head to the biggest brands. **EQT** has been a beneficiary of this trend, holding its final close for **EQT X**, which is expected to close in Q1 2024 at or around a €21.5 billion hard cap. This is above the original €20 billion target when the fund raising started in December 2021. Another example is **Warburg Pincus**, which has closed WPGG14 at $17.3 billion. This is the firm's largest ever fund and above its $16 billion target. Warburg Pincus started to market this global growth-focused fund back in 2021 and has already invested in **Simtra BioPharma Solutions, Ensemble Health, EverBank, Internet Brands, Norstella, Oona Insurance, ParetoHealth** and **Watertec India**.

Elliott sees opportunities in distressed

Bloomberg's Nishant Kumar has a great **Elliott Investment Management** splash on a $7 billion fund raise for distressed opportunistic investing. Elliott had been quiet lately, so we were waiting on a new position, or positions, rather than one of the largest fund-raises in this space, which will be the firm's 10th drawdown vehicle. Having pulled in $13 billion last year and with some of the world's most prominent investors on speed dial, alongside its incredible track record, Elliott should easily raise the $7 billion.

Ares' new fund is over-subscribed

Private credit assets is on track to hit the $2.25 trillion predicted by **Preqin** as alternative players gear up their efforts in this space and specialist credit-focused managers raise big funds. **Ares** is one such specialist and last month closed the oversubscribed **Ares Pathfinder Fund II** at $6.6 billion; 80% larger than the previous fund.

It is worth noting from a fund raising perspective that institutional investors, particularly family offices, appreciate an excellent social story to go with the investment, which further justifies the allocation. Ares does this very well, donating 5-10% of carried interest profits to global health and educational charities. Since being launched in 2021, Ares has accrued over $13 million in donations for charities based on performance.

Carlyle falls short

There were always questions whether **Carlyle** could hit its $22 billion target for the flagship fund, **Fund VIII**. Unfortunately, after two years of fund raising for this US-focused fund, the firm came up short and closed at around $14.8 billion. In today's challenging environment, this looks to be a success. However, when peers are hitting record closes, as we mentioned above, this may be a more difficult case to make internally, and while shareholders' expectations were low-balled in recent quarterly earnings, there is an air of disappointment.

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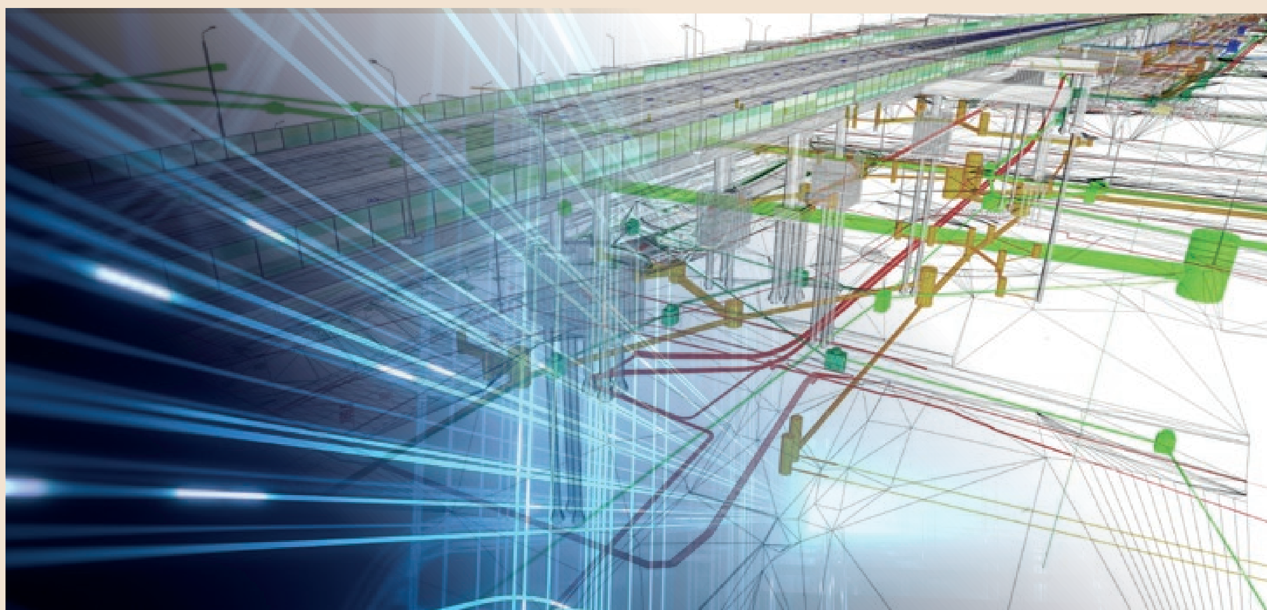
UPDATES (cont.)

Infrastructure sees record fund raises

A further record fund raise to note comes from **Brookfield**, which has hit $6 billion for its third infrastructure fund, **Brookfield Infrastructure Debt Fund III**. This is now the world's biggest infrastructure fund, focusing on renewable energy and is more than double the size of the previous fund; it also includes over $400 million in discretionary co-investment capital.

Hot on Brookfield's heels, in the infrastructure space, is **Goldman Sachs' West Street Infrastructure Partners IV**, which has closed at $4 billion. This fund will invest in midsize defensive, long-term cash flows with 'solid market positions', including digitisation and decarbonisation, and is a third larger than the previous fund. It has already committed $2.3 billion to eight investments.



ADIA piles on the PE

The latest annual report from **Abu Dhabi Investment Authority (ADIA)** shows an increased appetite for private equity investment, a move that is similar to many US endowments, although as a percentage of its total portfolio, still remains comparatively small. ADIA, the fourth largest sovereign wealth fund with assets approaching $1 trillion, has upped its private equity allocation to 10-15% from 7-12%. Most recently, these have been split equally between direct investments and funds, as well as some secondary investments. In 2022, ADIA completed 24 direct investments, which is a similar figure to 2021.

KKR's next gen Tech fund closes at $3bn

We are always looking for interesting new funds and **KKR's Next Generation Technology Growth Fund III (NGT III)** fits the bill, having raised approximately $3 billion in capital commitments, with around $400 million coming from KKR employees. This is the firm's largest fund raise in this space that will, according to Dave Welsh, KKR Partner & Global Head of Tech Growth, "invest in leading companies that are advancing digital transformation." Investments are likely to be minority positions of around $50 million to $250 million, with previous investments including **Darktrace, ForgeRock** and **Lyft.**

Blackstone & Invest AD Team up for retail push

Many recent big private equity fund raisings have included healthy slugs of sovereign wealth investments, a move that adds to their 'big brand' credibility. Now we have seen a more left-field arrangement, with a specialised private credit 'retail' fund from **Blackstone** and **Abu Dhabi Investment Company AKA**, which is also known as Invest AD and is a subsidiary of **Mubadala**, Abu Dhabi's second-biggest state fund after ADIA. This new fund, **Invest AD Blackstone Private Debt Fund**, is a UAE feeder to Blackstone's US and European private credit strategies.

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UPDATES (cont.)

Combining firepower

Another tie-up between sovereign wealth funds and private capital is in the co-investment space. An old hand at this is once again **Mubadala**, which took a minority stake in **Silver Lake** back in 2020. This gives Silver Lake added firepower and Mubadala access to all important proprietary deal flow, which so far has included the likes of **Waymo** and **Jio Platform**. Their latest potential joint investment is a takeover of **Endeavor Group**. And while there are no figures yet given for this transaction, this promises to be a sizeable deal, with the talent agency's market cap standing at around $11 billion.

Glasses half empty...

At the **Future Investment Initiative** in Riyadh, there was a general air of pessimism from leading figures in our space.

JPMorgan's Jamie Dimon talked about his concerns on the size of the US fiscal deficit and risks of an expanding war. **Bridgewater** founder Ray Dalio discussed the widening social divisions between the rich and poor. While **Carlyle** CEO Harvey Schwartz said that he sees more "headwinds" than "tailwinds" as we adapt to the new rate environment, but then went on to add that these markets are likely to offer "incredible alpha opportunities". The Future Investment Initiative is an event to watch and has grown in prominence, attracting many of the biggest names in financial services.

There was further pessimism, this time from **Citadel's** Ken Griffin, who was speaking at the **Bloomberg New Economy Forum**, saying that higher baseline inflation is here for "decades," with further interest rate rises to come, to keep the house in order having "[spent] on the government level like a drunken sailor."

Pulling the IPO rug

The past few weeks must have been tense at **CVC Capital Partner's** Luxembourg headquarters as they decided on their potential Amsterdam listing. If this had happened, it would have been a massive shot in the arm for the globally depressed IPO market. There were plenty of rumours that this was set for mid-November; then came the news that it was on hold, with the possibility of revisiting next year. The market was hardly surprised, with IPO volumes depressed and of the handful of big-banner IPOs this year, there have been few successes, with most trading below initial offering prices. The IPO window now looks to be closed for the rest of the year. Unfortunately for CVC, while the internal stars had looked very much aligned, with the PE giant on a roll and good stories to tell, having just closed the largest-ever private equity fund at €26 billion, the external reality was just too risky.

China based HongShan looks to Europe and beyond

As managers split out their China arms, it is fascinating to see what direction these arms take. **Sequoia** earlier this year broke its business into three: **HongShan** to focus on China, **Peak XV** on India and Sequoia, the incumbent, the rest of the world. In this case, according to a **Financial Times** source, HongShan has $9 billion in dry powder ready to deploy far beyond just China and Asia, and has been looking at Europe. HongShan opened a Singapore office earlier this year as it spreads its tentacles. Interestingly, there are no non-compete clauses between the entities...

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"I have a principle which is pain+reflection=progress. And so I would write down those principles. I also knew in investment if I can have clear decision rules, then I could then specify and see how they would have worked in the past... what I learned from the 1930s allowed Bridgewater and I make a lot of money in the 2008 Financial Crisis.

Ray Dalio, Founder of Bridgewater Associates

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UPDATES (cont.)

Wilshire acquires Lyxor's US business

Wilshire's acquisition of Lyxor's US business from **Amundi** is a big development in the world of alternatives. It is a material move for the US investment management firm and comes just a few years after Amundi acquired **Lyxor Asset Management** for €825 million from **Société Générale**, which added over €100 billion in ETF and managed accounts assets to Amundi's business as it built out its passive and ETF platform. The entity Wilshire is buying is **Lyxor Asset Management Inc.**, a US-based investment advisor that comes with $20.8 billion of assets, which will, on completion, make Wilshire one of the largest managed accounts providers in the market.

Blackstone third quarter sees $25bn inflows

Blackstone's third-quarter results saw a further $25 billion head through the door. Having broken through the $1 trillion marker in the previous quarter, this could have easily tripped up the behemoth asset manager, which this quarter reported total assets of $1.007 billion. This included flows of $9.1 billion into real estate and $10.4 billion into credit and insurance. Blackstone also became the first alternative asset manager to join the S&P 500. Yet even the largest players are finding the search for performance tough, with fee-related performance revenues down 46% year-on-year for the quarter. Where the firm did see positive performance was from its infrastructure investments (+11%), private credit (+4.6%) and liquid credit (+3.3%), whilst opportunistic real estate was the worst performing (-2.0%).

It is the dry powder figure that continues to astound, with $200 billion sitting on the sidelines, waiting to be deployed - $65.8 billion real estate, $83.4 billion private equity, $44.3 billion credit and insurance, and $7.0 hedge fund solutions.

KKR sitting on $99bn dry powder

Like Blackstone, **KKR** continues to build its assets, which have grown to $528 billion at the end of the third quarter, from $519 billion at the end of the second. This growth has largely came from good performance, with positive returns in the traditional private equity portfolio, +5%, while credit and infrastructure were each up +3%, and real estate +1%.

As things stand, the business also has $99 billion of uncalled commitments ready to be deployed.

Man growth

London based **Man Group's** recent trading update shows the firm to be in excellent shape as it continues to build its assets. The quarter has been a good start for the new CEO, Robyn Grew, although most of the growth came from FX rather than net flows and performance.

Man's assets are now at a record $161.2 billion, up from $151.7 billion on 30 June 2023. Of this, investment performance accounted for only $0.1 billion, with alternative strategies outperforming long-only, +$0.3 billion vs -0.2 billion. Among the absolute return funds, the best-performing for the quarter was **AHL Evolution**, +4.3%, while the overall best fund was the long-only GLG Japan **Core Alpha Equity Fund**, +8.1%.

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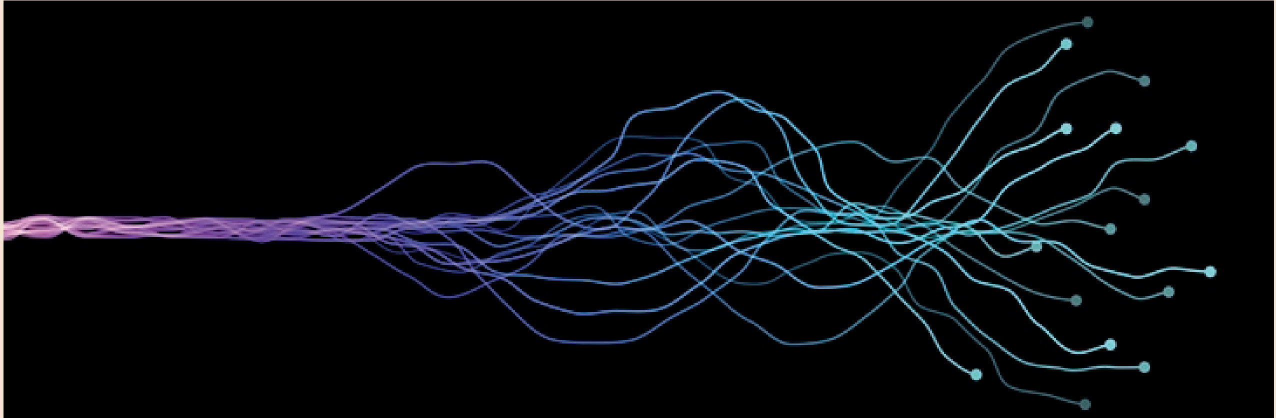


PE Firms turn to AI

There were some interesting comments from **Blackstone** CTO John Stecher, speaking to **PE Hub** on how GenAI is assisting their research and analysis, as well as providing a differentiator for portfolio companies. On the investment side, Blackstone has been investing in GenAI companies, as well as using the technology to save time on the research side by pooling data to generate investment theses. On the proprietary side, Blackstone is building an in-house tool to generate even more "deep company and sector analysis" and is also looking to use this technology to save significant costs internally. In addition, Blackstone is looking to develop more "bespoke GenAI," which will have plug and play potential for portfolio companies to integrate with their "products and processes."

According to **Preqin** data, in 2023 there have, so far, been 1,573 AI deals in Asia alone, totalling $15.2 billion.

Finally a Sculptor sale...?

Sculptor is the sale that never ends, or so it seemed. Now, with an increased offer from **Rithm Capital** of $719.8 million and the support of Dan Och, it may finally go through. We have written before that this could be a story straight out of the TV series Billions, given the twists, turns and personalities involved. There are are now claims of an "abrupt double cross" from shareholder Gilles Beauchemin, according to **Bloomberg**, given that Rithm's offer is below that of **Boaz Weinstein** and his group of investors. Given investors have also been pulling funds, reports **Bloomberg**, this story looks to have further to run.

Ark sets sights on growing business beyond North America

For a few years, we have been keeping a close watch on Cathie Wood's highs and lows in North America. According to an interview with the **Financial Times** and another with **Bloomberg**, she is now looking to break Europe, and we are certainly seeing more of her over here. This ties in with **Ark** buying a 70% stake in London-based **Rize ETF** in September from **AssetCo**, with its 11 ETFs already rebranded as **Ark Investment Europe**. But Europe is a very different ETF market to North America, with a more institutional focus, and even the 'glass half full' Wood describes it as a "tough nut to crack." Also, Ark has a few problems in its home market, with ratings and long-term performance issues, although recent performance has been exceptional. Ark is currently waiting on regulatory approval for European versions of its ETFs before year end.

LETTER FROM AMERICA

prosek

Wall Street Goes for an Oscar, a Grammy and a Pennant

I was one of the millions who saw the Taylor Swift “Eras Tour” film last month, going in knowing just a few of her hits and coming out a Swiftie, like probably so many of us who did not grow up with her.

I also came out with a better understanding on why Wall Street has been falling in love with celebrities on the stage, screen and the playing surface. Big fan bases. Big revenue numbers. And lots of ways to amplify that content for profit.

Let’s take a look: Last year, Ares Management raised $3.7 billion of capital to invest across the capital structure in sports leagues and teams and their related franchises, as well as media and entertainment companies.

In addition, Carlyle recently provided an asset-backed credit facility to New Regency, the entertainment company with hits like the movie “Bohemian Rhapsody.” Carlyle Global Credit has deployed more than $3 billion into the sports, media and entertainment industry as demand for content creates more and more opportunities for investors.

Why the mad dash to own a piece of star power? Outside of the obvious reason of ego for some, it comes down to a few basic elements after talking with investors and analysts.

First, these deals produce steady returns, even when interest rates are rising, or when the economic or political outlook is uncertain. Fans are good consumers and are beyond loyal to their limelight heroes. This makes these investments almost recession proof. A popular though unproven adage is that fans would remortgage their house before selling good tickets. Moving to the capital raising side, celebrities can bring in more investors and help supercharge pitch meetings and conferences.

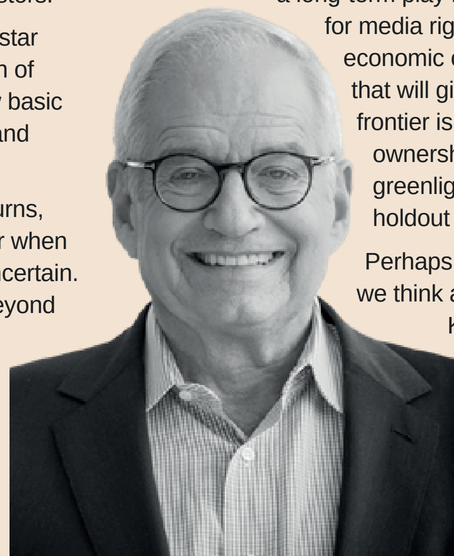
There’s a current arms race for media rights, which can be monetized across economic cycles. And most important and one that will give the biggest wallop -- the next frontier is private equity involvement in team ownership.

What’s more, celebrities and especially athletes extend their brand beyond their talents with product endorsements, new product lines, licensing agreements, sports betting, fashion and even music (think Damian Lillard of the NBA and his rap alias Dame D.O.L.L.A.) – with some even putting money where their mouth is by taking on part ownership of major U.S. sports properties (think Tom Brady and his minority stake in the Las Vegas Raiders).

And finally, we are in an era where experiences are getting a share of wallet. In fact, Millennials and Gen Zs would rather spend more on experiences over goods by some 72 percent, according to survey data by Harris Poll referenced on a Goldman Sachs Instagram post recently. That trend is expected to continue, and Wall Street is not holding back.

But will this last? Amid some concerns of a pullback in recent months, analysts see a long-term play here. There’s a current arms race for media rights, which can be monetized across economic cycles. And most important and one that will give the biggest wallop -- the next frontier is private equity involvement in team ownership. With most major leagues already greenlighting the idea and the NFL – the last holdout – appearing imminent.

Perhaps, Taylor Swift is more prescient than we think as she has taken front row in the Kansas City Chiefs box most Sundays.



Mark Kollar
Partner, Prosek Partners

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GUEST ARTICLES

The way forward for property funds

Paul Richards, CEO, Association of Real Estate Funds

Canada Life. M&G. St James's Place.

What do these well-known financial institutions have in common? Well, one thing is they've all recently taken action to close or suspend their open-ended property funds.

Misconceptions

Daily-traded, open-ended property funds provide direct exposure to the UK property market. The funds were established to offer intermediary and defined-contribution investors exposure to stable income and capital growth opportunities, attractive diversification within a model portfolio, and often lower volatility than the listed alternative.

As in any funds sector, closure or merging of funds is a normal part of the cycle – often relating to the performance and positioning of individual fund strategies. However, another element is at play here. In 2020 the Financial Conduct Authority, concerned about the mismatch between the liquidity of the units in these funds and that of the underlying properties, launched a consultation to consider imposing notice periods on the daily-traded funds. Three years later a decision has still not been made and the uncertainty has led investors to pre-emptively redeem from these funds, resulting in several closures, the latest of which have just taken place.

A number of daily-traded open-ended funds still remain, serving both wealth management and DC investors, and continue to deliver the differentiated returns and benefits of diversification to the investor base. The funds are usually ungeared, have low correlation to the equity market and lack the added risk exposure of leverage.

The daily-traded funds, however, make up a small proportion of the open-ended fund real estate universe, most of which operates on a monthly or quarterly trading basis and manages capital from defined-benefit pension funds and charities. These funds continue to operate and perform well.

The great British saver

It is worth recognising that the retail investor doesn't really need daily dealing for these funds. Generally speaking, consumers have little interest in the issue. Rather, it is advisers, wealth managers and (especially) investment platforms, whose processes favour daily dealt investments but struggle to cope with anything less than daily liquidity. Managers of property funds who wish to offer their products to retail investors are essentially compelled to put the square peg of buildings into the daily dealing round hole.

This obsession with daily dealing is profoundly unhelpful and narrows the opportunities for investment portfolios of retail investors – and pension savers – and it reduces the capital available for essential national initiatives such as levelling up, net zero, and building suitable housing.

> Managers of property funds who wish to offer their products to retail investors are essentially compelled to put the square peg of buildings into the daily dealing round hole.
>
> Paul Richards, Association of Real Estate Funds

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GUEST ARTICLES (cont.)

Square pegs in square holes

There are plenty of solutions.

At the Association of Real Estate Funds, we can see five, largely linked to facilitating more defined contribution pension scheme money into the asset class.

This is because the defined benefit schemes are increasingly closed to new investment. As they go into insurance buy out or favour liability driven investment approaches, they have less need for commercial real estate funds.

DC funds are now a substantial, and growing, portion of the retirement landscape. They are replacing DB funds in many ways – but they are not replacing the latter's real estate holdings.

This can be unlocked as follows.

1. Maintain the current universe of daily-traded commercial real estate funds. These funds provide daily liquidity for most of the time through holding relatively high levels of cash, with rare suspensions under extreme market conditions.

   Daily traded commercial property funds should not have longer notice periods imposed until other avenues have been opened for DC funds.

2. Encourage or mandate DC platforms to hold non-daily-traded assets.

   This is the fundamental obstacle to most DC funds investing in UK commercial and residential real estate, or any other illiquid 'alternative' asset - it is structural and operational, not regulatory. In the absence of a solution to this problem, new regulatory structures such as the Long Term Asset Fund (LTAF) will not really help. So, there are two ways forward:

   a. Mandate platforms to take illiquid assets, through regulation or legislation.

   b. Encourage the development of alternative DC scheme structures, such as Master Trusts, which do not need to invest through platforms or who can use custody-only platforms.

   These measures would allow DC funds to invest in less-liquid vehicles such as LTAFs and the currently-existing monthly- and quarterly-traded property funds.

3. Encourage or mandate smaller DC funds to merge to create DC pension funds with scale and the ability to invest in large real assets. Real assets such as infrastructure and commercial real estate are large, indivisible and illiquid. To construct a properly diversified real assets portfolio, which must be at least around £100 million, a pension fund must therefore itself be of significant size, probably at least £1 billion.

   We therefore support DWP initiatives to encourage smaller DC funds to merge, which should increase the capital available for illiquid assets, and the quality of the resources available to the teams managing such capital.

   The Australian model, with a few very large superannuation funds holding large portfolios of illiquid assets, is one to aim at.

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GUEST ARTICLES (cont.)

> .... pension funds that allocate to illiquid assets can lower portfolio risk through diversification against equities and bonds and, depending on the type of commercial real estate activity, seek a high level of capital growth or a high level of income.
>
> Paul Richards, Association of Real Estate Funds

4. Move DC funds from an individual account model to a collective DC model. Now most UK DC pension funds operate on the Individual Account model, whereby each saver owns a piece of every asset in the portfolio. Thus, if a saver decides to transfer to another scheme, their share of every asset must be sold, meaning that all assets must be liquid.

   Under a collective DC structure, a saver owns a share of the value of the fund. If they decide to leave, their share of the value is paid to them out of the liquid assets (cash, equities, listed fixed interest) and the proportion of illiquid assets in the portfolio rises a little. Again, this apes the successful Australian model.

5. Address the correct gatekeepers and incentivise them to take managed risk. Focus must be placed on the investment consultants and the in-house teams of the very large DC schemes – and not the underlying pension savers, most of whom invest through default funds.

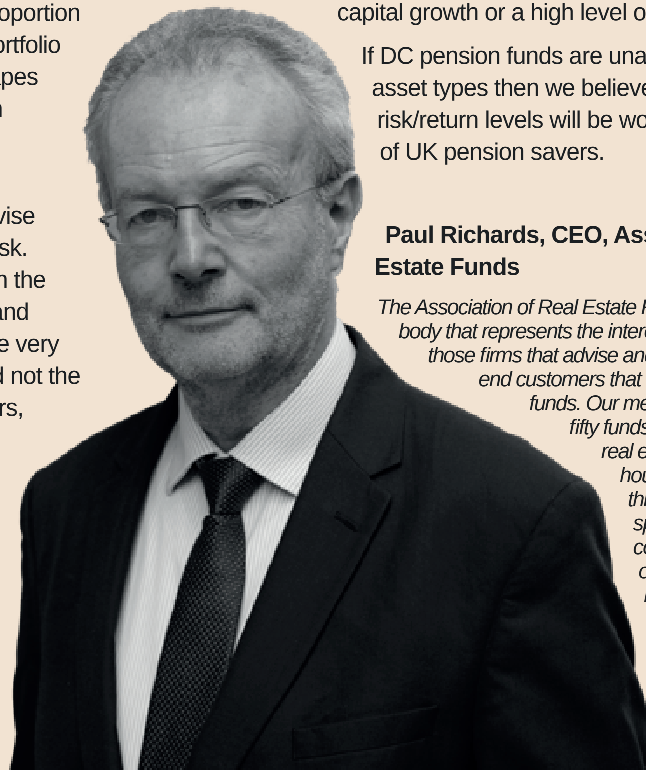
Consequences of inaction

If DC investment in illiquid assets does not grow to fill the gap left by the decline of DB investment, there will almost certainly be profound consequences.

Levelling up will be more difficult to finance, as will addressing the housing shortage and financing the net-zero agenda through retrofitting. UK pension funds are the traditional large investors in the UK regions. The other large source of investment, overseas capital from individuals, pension and sovereign wealth funds, tends to focus on the larger conurbations and their cost of capital is higher.

Moreover, pension funds that allocate to illiquid assets can lower portfolio risk through diversification against equities and bonds and, depending on the type of commercial real estate activity, seek a high level of capital growth or a high level of income.

If DC pension funds are unable to access these asset types then we believe that their long-term risk/return levels will be worse, to the detriment of UK pension savers.



Paul Richards, CEO, Association of Real Estate Funds

The Association of Real Estate Funds (AREF) is the body that represents the interests of its fund managers, those firms that advise and support them and the end customers that invest in our member funds. Our membership includes over fifty funds spanning the leading real estate fund management houses in the industry, through to smaller, specialist boutiques, with a collective net asset value of over £50bn. We have more than fifty Affiliate members, a number of Associate members and hundreds of Investor members.

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GUEST ARTICLES (cont.)

Astute sector and stock selection coupled with dynamic asset management is key to delivering superior income returns

Antony Thesiger MRICS, Director, South Street Capital

Headwinds continue to blow across the UK real estate markets, directed by economic forces and fuelled by ongoing geopolitical tensions in Europe and the Middle East.

Having seen property yields rise over the last 12 months driven by an increase in gilt yields, it is likely that any property yield compression this year will be minimal. The spread between property yields and the risk-free rates remain close to historic highs, and with debt significantly more costly, attractive levered returns are more difficult to achieve.

Most research houses agree that in the short-term, total returns will be driven by income rather than capital growth.

Investors are therefore acutely aware that sector and stock selection along with choosing an experienced and astute asset manager partner, is key to maximising returns.

One asset class that has performed exceptionally well over the last decade and continues to show resilience through tough trading conditions is the Multi-Let Industrial sector (MLI's).

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>
> Antony Thesiger, South Street Capital

What is Multi-Let Industrial (MLI)?

Forming an integral part of the wider industrial sector, the best performing real estate sector over a 30-year period, the MLI sector has particularly over the last decade, provided investors with strong returns and a diversified and granular income base.

Unlike the Logistics market, MLI's provide multi-purpose industrial space, which appeals to a wide range of end users from manufacturing to storage and logistics.

A structural shift in demand has taken place, primarily driven by ecommerce and the significant growing number of SME businesses in the UK. According to the Office for National Statistics the number of SME's in the UK has increased by

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GUEST ARTICLES (cont.)

2m (c.60% increase) from 2000 to 2022. Turnover for SME's was £2.1 trillion in 2022, 51% of the total turnover of private businesses in the UK.

It has also been a direct beneficiary of the widespread increase in parcel delivery. With a significant reduction in these parcel delivery times, demand from parcel operators for units close to urban areas and transport systems has significantly increased.

The demand/supply imbalance has led to a sustained period of rental growth. Despite this growth, rents are still very affordable with most occupiers only spending 2% - 3% of their annual turnover on rent.

Unit sizes typically range from 500 -10,000 sqft arranged in terraces, let to multiple tenants and ring fenced on secure estates, managed by the owners/ operating asset managers.

Estates usually comprise between 5 - 50 units, with leases being taken on a 3 - 5 year term, with rents ranging typically between £5 - £10 per sq ft, depending on the quality of space and location.

Build costs and tenants' amenity expectations are also significantly lower in MLI's to other asset classes, although there is still a sharp focus on sustainability, with ESG credentials now a permanent item on corporate agendas.

The MLI sector offers attractive returns, a diversified income base and the ability to drive value through dynamic asset management. Its granularity of income is also an attractive proposition for lenders.

The MLI sector has for some time now carved its own niche in the UK real estate markets and one which continues to be resilient in tough market conditions. Current pricing levels coupled with favourable market dynamics indicate that this sector is one to seriously consider.

Antony Thesiger MRICS, Director, South Street Capital

South Street Capital (SSC) is an independent, specialist investor and asset manager of UK commercial real estate, with offices in Central London and the North East of England.

SSC works on behalf of institutions and family offices from all over the world, delivering an agile role from the beginning to the end of the real estate life cycle, including advisory, acquisition, development, asset management and disposal.

Our team is made up of senior executives with substantial experience built over many decades across, and including, different sectors, geographies and market cycles.

www.southstreetcapital.co.uk

GUEST ARTICLES (cont.)

The value of repurposing commercial offices

Marcus Langlands Pearse

It has been described as a perfect storm for the office sector in the atmosphere of Brexit, Covid 19 and then the Ukrainian and Israeli wars; hitting both occupational and investment sentiment. Brexit marked a slow down in the economy which is biting today with high interest rates, inflation and rising unemployment. Covid led to a well publicised working from home culture which has proved stubbornly difficult to un-trend. Although recent stats suggest that it is increasingly prevalent amongst certain sectors including finance and the tech industries to return to the office; this is not the case when it comes to the public sector. Either way public and private bodies are significantly re evaluating how much space they need, what type of space they need and where they need that space.

The Minimum Energy Performance Standards, which set out a pathway for the office sector to clean its act up through minimum EPC ratings, always had the potential to significantly shake up the office sector as older less performing buildings slowly became redundant. Whilst recent row backs on targets by the Government have lessened the imminent danger; there is a possibility that this would be overturned by a Labour government next year. Occupational agents will suggest it is not regulation but tenants who are now insisting on ESG compliant and performing buildings which support wellness with amenities and infrastructure. Whilst there hasn't been a huge jump is vacancy rates across the UK, lease events are leading to tenants off loading surplus space. Occupiers looking for more adaptive space for remote or flexible working whilst providing an alluring working environment.

Meanwhile on planet investment, the perfect storm has led to significant outflows from many of the traditional real estate funds. This has been compounded by a shake up in the pension industry which is leading to portfolio sales. Combine this with a down weighting in the office sector driven by occupational and environmental costs concerns. This has led to a significant repricing of offices supercharged by the cost of debt rising exponentially; thinning the number

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GUEST ARTICLES (cont.)

of potential buyers. Prime offices with the best BREAM credentials have fallen up to 20% and the gap between them and the rest has significantly widened.

The fall in capital values combined with a huge rise in build cost inflation has led to inevitable conversations around repurposing. Combine this with the benefits of the retention of embedded carbon in repurposing a frame rather than a total rebuild. The options available outside of a significant spruce to the office would naturally focus on housing. The mounting need for the provision of homes in the UK (50,000 p.a) makes this an alluring concept. Other requirements would span healthcare including care homes, senior living and GP surgeries; education, particularly given the recent discovery of RAAC concrete in so many schools; as well as more alternative uses including self storage.

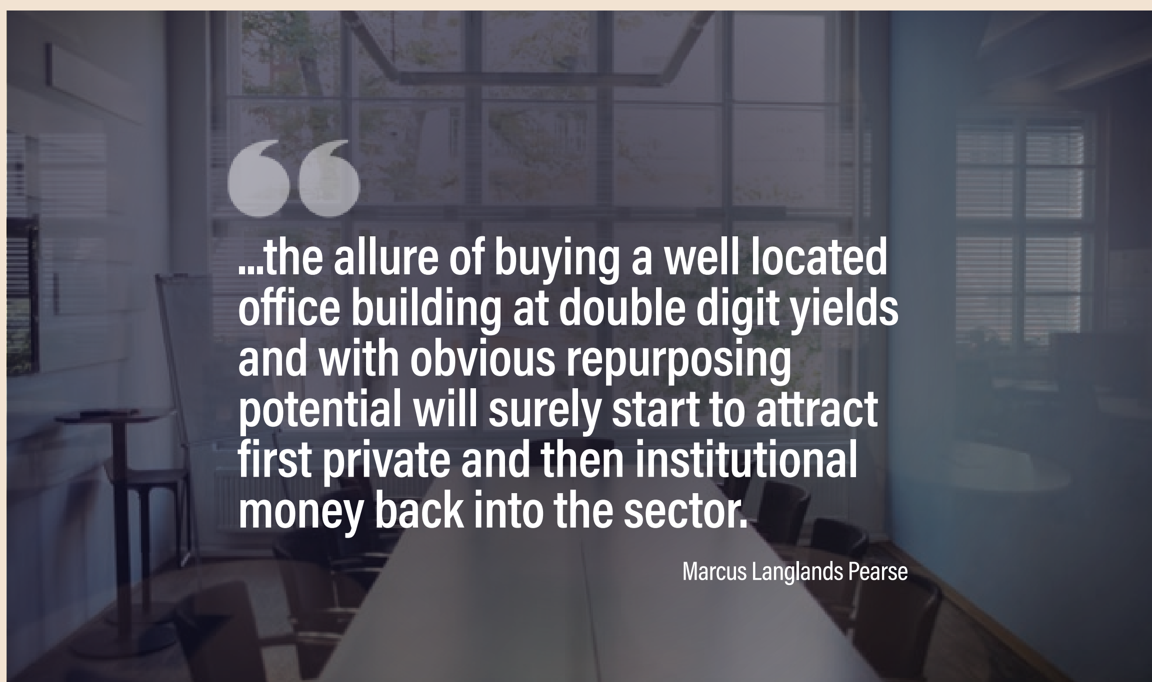
The challenges of conversion start with location as many are in out of town office parks and are largely unsuitable with a lack of local amenities. The physical structure of these buildings whilst seeming natural fits for conversion, are often incompatible due to fire regulations or floor loadings. But perhaps the biggest challenge facing investors looking to convert is the planning system. Covid saw the scrapping of the 90 day planning response. A lack of resource within the Councils planning teams has led to a near countrywide blockage. The uncertainty around timing and consistency of decisions which has led to a dramatic fall in the provision of housing is also a major concern for any developer or investor considering an office repurposing project.

There has been significantly more communication between the real estate industry and both Labour and Conservative parties recognising that this problem needs addressing immediately. Commitments to increase the number of qualified planners amongst other things is not going to make an immediate impact. This may lead to a reintroduction of a "permitted development" right for landlords where the planning system can be bypassed for certain conversion projects. Whilst this is not the ideal solution, it would increase the attractiveness of redundant office stock and potentially go someway to solving the housing crisis. The post Grenfell world of a laser focus on building materials and fire regulations wont make this an open goal.

However the allure of buying a well located office building at double digit yields and with obvious repurposing potential will surely start to attract first private and then institutional money back into the sector.

Marcus Langlands Pearse

Marcus has over thirty years of experience in the UK commercial real estate market. He started his career at Hypovereinsbank in real estate finance. Having worked for a short time in private equity, he moved to New Star Asset Management for six years as an open-ended real estate fund manager, growing the fund from £400m to £2.25bn. Moving to Henderson Global Investors/ Nuveen in 2009 and growing the fund from £500m to £4.4bn, he consistently outperformed its peer group of funds. He then sold the entire portfolio in 2022, consolidating the fund's 15-year outperformance at the peak of the market. He is setting up a new business focussing on the acquisition of offices with a multi-use underwrite.



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GUEST ARTICLES (cont.)

Prime London markets: A divide between debt and equity

Frances McDonald, Director of Research, Savills

Despite growing concerns over rising interest rates, prices of prime property in the capital remained steady in the second quarter of 2023. On average, prices fell by just 0.2 per cent in the quarter, meaning that in the past year, values have slipped by a relatively modest 1 per cent.

That compares to a 3.5 per cent annual price fall for prime properties outside of London, reflecting a continued refocus of demand back to the capital.

Cash buyers who are not exposed to concerns around rising interest rates dominated demand in the second quarter. Year-to-date, cash buyers accounted for 71 per cent of prime central London deals and 35 per cent in outer prime London.

As a result, the established prime markets most synonymous with equity rich buyers, including Mayfair, Westminster and Marylebone, are holding up the strongest amid mortgage market turbulence. On the flip side, prices have been under the greatest pressure where younger homebuyers and investors typically make up the biggest proportion of demand.

That has left the housing market in areas such as Clerkenwell, Shoreditch and Victoria Park particularly price sensitive.

Upturn in £5 million-plus London home sales

Momentum within London's £5 million-plus residential market also continues to ramp up, driven by demand for world-class apartments in prime London postcodes.

Savills whole market analysis reveals that in total 390 properties worth in excess of £5 million have so far changed hands in 2023, lower than the 459 in first nine months of 2022 – a record year – but still 7% above Q1-Q3 2021, and well above (+67%) the pre-pandemic Q1-Q3 average of 233 for the pre-pandemic years 2017-19.

In particular, we are seeing a particular focus on turnkey flats and a slight shift away from larger houses with outside space which topped buyers' wish lists during the pandemic.

GUEST ARTICLES (cont.)

But, despite London's resilience, price sensitivity is likely to continue into 2024, particularly as we approach the next general election. There are clear headwinds but we continue to expect prime central London to outperform all other UK residential markets, not least because of its standing in an international context and that global wealth generation is expected to continue growing.

Prime markets to continue to outperform in the short term

Prime Central London values are expected to remain flat in 2024 (outperforming other markets), with growth expected to pick up to +6.0% in 2026 once the global economy picks up more significantly and any domestic political instability that the next general election causes subsides.

Higher debt costs have had a more significant impact across outer prime London and prime regional locations, with values falling more in line with mainstream markets. Falls of -2.0% in outer prime London and -1.5% across prime regional markets by the end of 2024. However prime regional markets are still expected to marginally outperform over the five-year period (+18.6%).

Frances McDonald, Director of Research, Savills

Frances joined the residential research team in November 2014 and specialises in the prime markets of London and the country

Frances works within the internal agency side of the research team, providing market insight to residential agents. As part of this, she is responsible for the coordination of both the prime London and prime regional indices.

Her work also includes analysis and development of stories for the national press which has led to frequent quotes. Frances also helps to write reports for both the public and the wider business.

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GUEST ARTICLES (cont.)

Poland presents one of the best buying opportunities since the fall of communism

Angus Wade, co-Founder and Director, Sharow Capital

Despite global and local challenges Poland has demonstrated remarkable market resilience and this is starting to be seen in the real estate sector. The country's GDP growth has outpaced most of western Europe and its post-pandemic turnaround has not only been fast but impressive, leading British Financier Guy Hands to recently report that by 2030 Poland will be wealthier than the UK.

Poland's economic strength lies in its strategic geographical location, its diversified industrial base as well as its well-educated and skilled workforce. Poland is leading the reshoring locations for Europe as companies start de-coupling from China. As well as this the country is at the forefront of battery manufacturing, technology and AI.

Poland is rapidly becoming the new Central European superpower. Poland is using this economic strength to be a formidable fighting force against Russia in its war with Ukraine. Poland's defence spending is more than twice that of other major European Nato members such as UK, France and Germany.

The war brought a huge influx of refugees. In one year 11.5 million Ukrainians crossed the border, of whom about 1.4 million remain in Poland. Poland has absorbed nearly 10 times as many refugees as Britain. However with one of the lowest birth rates and fastest ageing populations in Europe, Poland is set to benefit from this immigration.

Last month's election provided one of the most exciting opportunities of the last eight years as it is widely predicted that former prime minister and European Council President Donald Tusk's Civic Coalition will be able to form a government. This means that Law & Justice will finally rescind power after 8 years in office. This change in government is likely to strengthen Poland's position in Europe. Having a pro-democratic and pro-European government in Warsaw would be enormously beneficial for the polish real estate market. We may also finally see a REIT market emerge in Poland, similar to that of the Czech Republic, which

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GUEST ARTICLES (cont.)

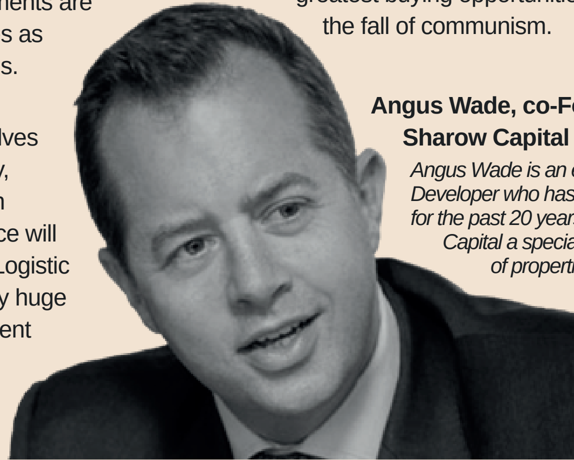
has been a great success.

Over the last two years inflation has surged in Poland at around 15%, it is nearly twice the European average, while real asset values have fallen by between 10-30%. Values are much lower in real terms and much lower than they will be in the future. The market now presents good value for investors who can see beyond the current trials.

Financing remains a challenge and interest rates while still high are likely to be cheaper over the medium term. Equity requirements are still higher than other countries as well as against historical levels.

Immediate and medium-term opportunities present themselves in almost all sectors. Certainly, nearshoring and the growth in manufacturing and ecommerce will certainly boost the Industrial/Logistic sector, which has benefited by huge infrastructure upgrades in recent years. While post pandemic "work from home" inertia is certainly dampening demand in the office sector, pricing looks to be very interesting especially for good quality well located city centre assets, where yields have moved out up to 400 bps. PRS is still in its infancy in Poland as the vast majority of Poles own their homes, however demand for rental apartments now outstrip supply in major centres where the majority of younger generations prefer to rent their homes.

The new political back drop as well as the growth in the Polish economy, should give investors the conviction and confidence to take advantage of one of the greatest buying opportunities Poland has seen since the fall of communism.



Angus Wade, co-Founder and Director, Sharow Capital

Angus Wade is an experienced Investor and Developer who has been investing in Central Europe for the past 20 years. Angus is a Director of Sharow Capital a specialist investor and asset manager of properties in Poland.

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GUEST ARTICLES (cont.)

European logistics market: resilience in a challenging environment

Phil Redding, Partner, Tritax Management LLP

2023 has been a challenging year for nearly all real estate sectors. High levels of inflation and rising interest rates have proved strong headwinds - yet the European logistics market has shown remarkable resilience.

Long-term, positive structural drivers have underpinned the sector and include ambitions by occupiers to improve further their e-commerce capabilities, build resilience across their supply chains, incorporate technological advancements such as automation and fleet electrification, and also achieve their goals to strengthen their ESG credentials and lower the environmental impact of operations right across their networks. Modern and high-quality real estate plays a significant role in helping organisations deliver on these objectives – through strategic location choices (close to infrastructure and markets) and the provision of site features such as solar PV, EV charging and more.

While European logistics real estate take-up decreased compared to the record high in the first half of 2022, this marks a return to more normal demand levels following the surge in activity through the Covid pandemic. The 13.2 million square meters of logistics space signed in H1 2023, for example, compares to 11.7 million square meters recorded in the same period in 2018 and 2019 (source: Savills).

Encouragingly, our recent survey, conducted with Savills, which canvassed the views of more than 250 occupiers, investors, developers and other real estate professional across the pan-European market, suggests that occupier sentiment is improving. 42% view the environment as more favourable than six months ago, and 37% the same; while 39% expect their take-up to increase this year despite the challenges of rising costs and economic uncertainty – reflecting the mission-

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GUEST ARTICLES (cont.)

critical role of logistics real estate in their supply chain.

The dramatic increase in e-commerce has elevated the importance of logistics and its role in shaping the consumer experience. The desire to place inventory closer to the consumer, supported by technology investments that optimise inventory and delivery, is driving a push closer to population centres, where quality logistics space can be harder to find.

Meanwhile, supply chain resilience is a recurring theme in conversations with our customers. Our survey found that 22% of occupiers have shortened their supply chains post-pandemic, and 25% plan to do so over the next three years.

At the same time, the almost conflicting need to both reduce carbon footprint and incorporate high-power-demand technologies places new requirements on logistics real estate, including for renewable, resilient power supply and capacity to accommodate the latest fit-out requirements.

The availability of high-quality buildings and land in the best locations remains limited. Unlocking opportunities requires greater partnership between owners and occupiers to meet strategic objectives and create long-term relationships that work from an operational and financial perspective for both parties. Looking past the current, weak macro-economic environment we continue to believe the fundamental drivers of our sector will remain in place and support a positive investment outlook.

Phil Redding, Partner, Tritax Management LLP

Phil is an equity partner at Tritax Management LLP and responsible for the European portfolio. He joined Tritax in November 2020. Phil began his career in 1990 in the Industrial Agency team of King Sturge (now JLL). In 1995, he joined SEGRO plc where he held a number of senior positions before being appointed Chief Investment Officer in November 2011, subsequently joining the SEGRO plc Board as an Executive Director in 2013. Phil was responsible for SEGRO's investment strategy, capital allocation and managing all investment acquisitions and disposals, playing an integral role in the company's repositioning and growth.

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Market Watch #75

The FCA has issued important new guidance on receiving market soundings in the latest edition of Market Watch, the FCA's newsletter on market conduct issues.

Market Watch 75 reminds buy-side firms (Market Sounding Recipients or "MSRs") that they must independently assess whether they possess inside information from a market sounding that would prohibit them from trading.

A market sounding is a communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors. The UK MAR market soundings regime formalises arrangements for issuers and others acting as Disclosing Market Participants ("DMPs"), to legitimately disclose inside information, with particular safeguards designed to prevent any unnecessary disclosure of potentially sensitive information.

One area that concerns the FCA, is what happens ***after*** a DMP contacts an MSR to seek their consent to receive a market sounding, but ***before*** a formal disclosure is made, where an MSR places a trade in relevant securities.

Although DMPs did not disclose the identity of the instrument or particulars of the proposed deal, MSRs were nevertheless able to establish these from information available to them. This sometimes occurred when there was a delay between the DMP requesting consent, and the MSR giving it.

If MSRs have other information allowing them to identify, with reasonable certainty, the relevant financial instruments, before they consent to receiving and protecting the inside information, MSRs have an unfair trading advantage similar to that of actual recipients of inside information.

In these circumstances, MSRs should remain subject to UK MAR's prohibition, from acting on that information. The market sounding regime is intended to protect the DMP from charges of unlawful disclosure, not the MSR from charges of insider dealing.

Market Watch 75 also sets out what firms can do to minimise the risks of insider dealing and unlawful disclosure, with respect to market soundings.

The Financial Action Task Force removed the Cayman Islands from the "grey list" – those jurisdictions subject to increased monitoring

On 27 Oct 2023, the Financial Action Task Force ("FATF") removed the Cayman Islands from its "grey list" of jurisdictions under increased monitoring, as it welcomed the jurisdiction's significant progress in improving its Anti-Money Laundering/ Counter-Terrorist Financing ("AML/ CTF") regime.

The FATF is an intergovernmental organisation founded in 1989 to develop policies to combat money laundering and, since 2001, terrorist financing.

The FATF identifies jurisdictions with weak measures against money laundering and terrorist financing. When the FATF places a jurisdiction on the "grey list", it means the country has committed to swiftly resolve the strategic deficiencies identified, within agreed timeframes, and is subject to increased monitoring.

The Cayman Islands made these changes in order to meet the commitments in its action plan regarding strategic deficiencies highlighted by FATF in February 2021. These concerned:

1. applying sanctions that are effective, proportionate and dissuasive, and taking administrative penalties and enforcement actions against obliged entities to ensure that breaches are remediated effectively and in a timely manner
2. imposing adequate and effective sanctions where relevant parties (including legal persons) fail to file accurate, adequate and current beneficial ownership information; and
3. demonstrating that they are prosecuting all types of money laundering in line with the jurisdiction's risk profile and that these prosecutions are resulting in the application of dissuasive, effective, and proportionate sanctions.

The Cayman Islands is therefore no longer subject to the FATF's increased monitoring process but, FATF confirms, should continue to work with the organisation to sustain the improvements to its AML/CTF regime.

However, it should be noted that the European Commission has its own independent process for assessing risks, and its own list of "high-risk third countries," and its periodic reviews are not linked to the FATF black or grey list updates. On 18 August 2023, it adopted a new Delegated Regulation in relation to third countries which have strategic deficiencies in their AML/CFT regimes, that pose significant threats to the EU's financial system. The Commission added the Cayman Islands to this list on 13 March 2022, and unlike FATF, has not yet seen fit to remove it.

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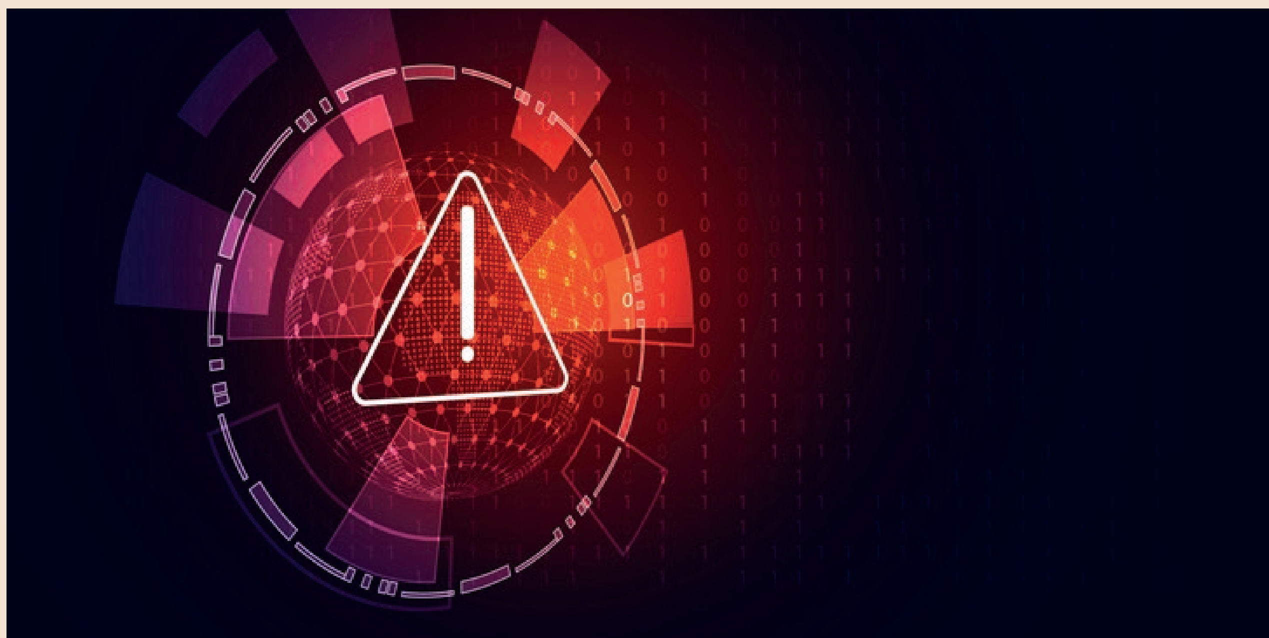

Equifax Ltd fined £11 million by the FCA for its role in one of the largest cyber security breaches in history

The FCA fined Equifax Ltd ("Equifax") £11,164,400 for failing to manage and monitor the security of UK consumer data outsourced to its U.S. parent company. The breach permitted hackers to access the personal data of millions of clients, exposing UK consumers to the risk of financial crime.

In 2017, Equifax's parent company, Equifax Inc, suffered one of the largest cybersecurity breaches in history. Cyber-hackers could access the personal data of c 13.8 million consumers because data was outsourced to Equifax Inc's U.S. servers for processing.

UK consumer data accessed included names, residential addresses, dates of birth, phone numbers, Equifax login details and partially exposed credit card details.

The FCA found that the cyberattack, and unauthorised access to consumer data, was "entirely preventable." Equifax did not regard the relationship with its parent company as "outsourcing" and therefore, provided insufficient oversight over the data despatched, to ensure it was properly managed and protected. Despite known weaknesses in Equifax Inc's data security systems, Equifax took no action to protect UK customer data. In fact, Equifax only discovered UK consumer data had been accessed, 6 weeks after Equifax Inc had learned of the hack. Equifax was informed approximately five minutes before it was announced by the U.S. parent, leaving Equifax unable promptly to handle the volume of complaints, and delays in contacting UK customers.

To make matters worse, the "Security Executive" appointed under Equifax's procedures reported directly to Equifax Inc, which informed him of the incident on 1 September, but both refused to confirm or deny whether any UK customers were affected, and threatened him with dismissal if he asked further questions or told anyone about the incident. An added complication with intra-group outsourcings are the possible conflicts and compliance risks where a key individual has reporting lines outside the regulated UK entity.

Worse again, because Equifax discovered the breach so late, because Equifax Inc had delayed taking legal advice on whether the breach was reportable to the UK authorities and because it did not have arrangements with its parent that allowed it swiftly to obtain the information needed on affected UK customers, there were delays in handling complaints which led to its breaching the UK's dispute resolution rules and failing to treat customers fairly.

After the breach, Equifax made several public statements giving an inaccurate impression of the number of customers affected. The FCA also found that Equifax treated customers unfairly by not maintaining quality assurance checks for complaints, and that complaints were mishandled.

The FCA reiterated that regulated firms must have effective cybersecurity to protect personal data and must keep systems and software up to date and fully patched to prevent unauthorised access. Firms retain responsibility for any data they outsource. Once aware of a data breach, firms must establish fair complaints handling procedures, and notify those affected in a way that is fair, clear and not misleading.

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FCA fines and bans James Staley, former Barclays CEO

The FCA has fined James Staley, erstwhile Barclays CEO, £1.8 million and banned him from holding senior management or significant influence functions in the financial services industry. Its findings are provisional, as Mr Staley has referred his Decision Notice to the Upper Tribunal, where he will present his case.

The FCA found Mr Staley recklessly approved a letter from Barclays to the FCA which contained two misleading statements, about the nature of his relationship with Jeffrey Epstein, and the point of their last contact.

In August 2019, the FCA asked Barclays to explain how it had established that there was nothing improper in the relationship between Mr Staley and Mr Epstein. Barclays' response relied on information supplied by Mr Staley, who confirmed the letter was fair and accurate. It claimed that they did not have a close relationship, when in emails, Staley described Epstein as one of his "deepest" and "most cherished" friends.

Barclays' letter to the FCA also claimed Staley ceased contact with Epstein long before joining Barclays, when they were in contact in the days leading up to his appointment as CEO, announced October 2015. Staley did not draft the letter, but the FCA considered there was no excuse for failing to correct the misleading statements when he alone at Barclays could have known the extent of the personal relationship with Epstein, or the specific timings of their contact. The FCA found Staley was aware of the risk to his career posed by association with Epstein.

The FCA concluded that, by not correcting the misleading statements in Barclays' letter, Staley recklessly misled the FCA and acted with a lack of integrity. As such, he breached the SMCR Conduct Rules.

Therese Chambers, the FCA's joint Executive Director of Enforcement and Market Oversight, said: *"We consider that he misled both the FCA and the Barclays Board about the nature of his relationship with Mr Epstein.*

"Mr Staley is an experienced industry professional and held a prominent position within financial services. It is right to prevent him from holding a senior position in the financial services industry if we cannot rely on him to act with integrity by disclosing uncomfortable truths about his close personal relationship with Mr Epstein."

The FCA and the PRA had previously taken action against Staley in 2018. They jointly fined him £642,430 for failing to act with due skill, care and diligence in his response to an anonymous letter received by Barclays in June 2015. Instead of maintaining an appropriate distance, Staley attempted to identify the author of this anonymous letter, in which he was the subject of some of the allegations.

Securities & Exchange Commission's ("SEC's") Division of Examinations announces 2024 priorities

The SEC's Division of Examinations (the "Division") announced its 2024 examination priorities.

The following areas, among others, were highlighted:

Investment Advisers

The Division will continue to focus on investment advisers' duty of care and loyalty. Investment advice, conflicts of interest and adequate disclosures, and complex, high cost and illiquid, or unusual products will face increased scrutiny.

Likewise, Compliance programs' policies and procedures, Marketing Rule practices and accurate disclosures on Form ADV.

Also, compensation arrangements, client payments, advisers' attempts to maximize value and breakpoint calculation procedures; valuation assessments, safeguarding non-public information, and the adequacy or accuracy of disclosure assessments.

Advisers to private funds

- Portfolio management risks, exposure to market volatility and high interest rates;
- Adherence to the contractual obligations of limited partnership advisory boards and similar structures;
- Accurate allocation & disclosure of private fund fees and expenses
- Investment due diligence, consistent with funds' policies, procedures and disclosures;
- Form PF Reporting, Form ADV, timely audits, service provider conflicts and controls.

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Investment Companies

Priority given to examining registered investment companies, including mutual funds and ETFs, given their importance to retail investors.

Examinations focussing on fees and expenses, especially:

- Charging different advisory fees to different share classes of same fund;
- Identical strategies charging different fee structures, offered by same adviser through different distribution channels; and
- High advisory fees relative to peers, especially where performance is weaker.

Close attention will be paid to derivatives risk management assessments and policies to prevent violations of SEC's funds derivative rule.

Risk Areas Impacting Various Market Participants

Operational disruption risks are elevated due to cybersecurity, weather related and geopolitical concerns. Firms require policies and procedures to address these.

The 2024 guidelines are not exhaustive. The scope of any specific examination considers the entity's history, operations, services, products and any other risk factors.

CFTC proposes amendments to CFTC Regulation 4.7

The Commodity Futures Trading Commission ("CFTC") recently proposed significant updates to Regulation 4.7 which provides certain exemptions to the Part 4 compliance requirements for registered Commodity Pool Operators ("CPOs") and Commodity Trading Advisers ("CTAs").

Primarily, these amendments would:

1. increase the financial thresholds in the Portfolio Requirement of the "Qualified Eligible Person" ("QEP") definition to reflect inflation;
2. require certain minimum disclosures for 4.7 pools and trading programs;
3. formalize routinely provided CFTC relief in relation to monthly account statements for 4.7 pools that are funds of funds; and
4. allow for technical amendments to CFTC Regulation 4.7 that make its use more efficient for industry and the general public.

Based on data provided by the NFA Form PQR filings for Q4 2022, it was estimated that at the end of FY 2022 there were 4,304 commodity pools claiming the 4.7 exemption. Approximately 865 CTAs used the same for their trading programs. The CFTC expects these numbers to rise in the coming years and believes it is time to recognize the added complexity and diversity in today's commodity interest products offered to QEPs by, among other things, formalizing disclosure obligations. It is hoped this will also enhance member oversight by the CFTC and NFA, as the review of QEP disclosures will be incorporated into current examination processes.

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REGULATION (cont.) Presented by

SEC broadens reporting requirements for short positions and short activities reporting

The SEC adopted Rule 13f-2, requiring institutional investment managers that meet threshold requirements to file monthly statements on a newly created Form SHO. The rule intends to provide greater transparency to market participants and investors by aggregating and anonymously publishing the data via EDGAR.

The threshold for reporting will be met when an investment manager's short position in a particular equity security of a reporting issuer is at least $10 million or the equivalent of 2.5% or more of the total shares outstanding on average during a month. The threshold for reporting short positions of equity securities of nonreporting issuers would be $500,000 on any given settlement day of the month.

Institutional investment managers will be required to report each qualifying security on Form SHO. Form SHO will contain information on the manager's end of month gross short position in each equity security at the close of trading on the last settlement day of the month, and the net activity in each reported security for each settlement day of that month.

The SEC will then aggregate and anonymize the data and publish the information about gross, end of month short positions, and net aggregated daily activity data for each settlement day within 4 weeks of the end of each month.

Rule 13f-2 and Form SHO will become effective 60 days following the date of publication of the adopting release in the Federal Register. The compliance date for Rule 13f-2 and Form SHO will be 12 months after the effective date, with public aggregated reporting to follow 3 months later.

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REGULATION (cont.) — Presented by

SEC adopts amendments to rules governing beneficial ownership reporting

The SEC adopted rule amendments governing beneficial ownership reporting, including shortening Schedule 13D and 13G filing deadlines for investors acquiring more than 5% of a covered class of equity securities ("Beneficial Owner"). The rules intend to reduce information asymmetries in the market while improving transparency and liquidity, resulting in a more informed investor.

The Securities Exchange Act of 1934 previously required Beneficial Owners with control intent to file a Schedule 13D within 10 days of surpassing the 5% ownership threshold. Exempt Beneficial Owners, such as passive investors and qualified institutional investors, were required to file a Schedule 13G within 45 days after calendar year end.

Under the adopted rules, initial Schedule 13D filings must be made within 5 business days and amendments thereto within 2 business days.

Schedule 13G filings have varied accelerated reporting timelines:

- For qualified institutional investors and exempt investors, the initial filing deadline is 45 days after the end of the calendar quarter in which 5% threshold is crossed;
- For other Schedule 13G filers (i.e., passive investors), the amendments shorten the initial filing deadline from 10 days to five business days.

The amendments also accelerate the Schedule 13G amendment obligations when beneficial ownership exceeds 10 percent or increases or decreases by 5 percent.

In response to public feedback, the SEC did not adopt two of the changes included in its original proposal. Instead, the SEC provided guidance on when two persons may be considered a group for filing purposes, and set forth the circumstances under which certain cash settled derivatives count towards the 5% ownership threshold.

Compliance with the revised Schedule 13G deadlines will be required effective September 30, 2024, and all other requirements are effective December 18, 2024.

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