EVERSHEDS SUTHERLAND

Trends in focus

FundsTrack – private funds market insights

2024 report



Contents

Introduction	3
Highlights	4
Data in detail	5
Trends in private funds	8
Spotlight on private funds	12
Horizon scanning	23
Our 2023 deals	24
FundsTrack means we can offer our clients a full service	25
Our global presence	26
Key contacts	27





Introduction

We are delighted to present you with the 2024 edition of our 'FundsTrack' private funds report which outlines trends in the private funds market.

The past year was once again turbulent for private funds. Fundraising continued to be a challenge in some areas and the regulatory environment did not stand still either, posing significant challenges to both general partners ("GPs") and limited partners ("LPs").

> ***While costs, compliance and reporting are key drivers in investors' decision-making process, personal relationships between LPs and GPs continue to play a vital role in fundraising. The GPs managing to make a mark in a challenging environment are those who have built long-standing and meaningful relationships with their LPs allowing them to launch follow-on funds and offering investors alternative access points to certain investments through co-investments and side car vehicles.***
>
> **Stefanie Sahla-Jones**
> *Partner, UK*

In last year's report, our horizon scanning section suggested that co-investments and ESG in particular would be ongoing topics of interest.

As predicted, we are continuing to see co-investment vehicles and side cars emerging as creative tools to attract LPs while, in certain cases, giving LPs more control over their liquidity. In addition, we are finding that GPs are increasingly offering open-ended or quasi open-ended strategies. Among other things, this is as a result of GPs looking to a broader investor base. In this year's report, we have focused on the global trend of democratization of private assets.

On the ESG side, regulators across the globe have been making changes which impact how funds can be sold and labelled in order to eliminate greenwashing. At the same time, LPs increased the scrutiny they place on ESG strategies, including requiring bespoke reporting from their GPs. In combination, this meant that GPs often had to deploy significant resources into their ESG capabilities. Given the continued importance of ESG to private fund strategies, we have included in this year's report detailed sections covering current ESG trends and regulatory updates.

While the market is challenging for some start-up managers, we are continuing to see smaller managers access appointed representative regimes in various fund jurisdictions. Regulators are clamping down on this and we have included a section on this in our report.

Our FundsTrack data platform allows us to track key data points from the funds we have structured and reviewed throughout the year. This year, we have focused on data relating to:

- recall
- carry haircuts
- popular fund jurisdictions

As we have done previously, we have sought to do some crystal ball gazing and predict where trends might move in these uncertain times, including in respect of the increased emergence of carbon credit funds and the move by managers historically specializing in other asset classes into infrastructure.

We hope you find this year's report useful and insightful. Please do reach out to your usual Eversheds Sutherland contact if you would like further information.

Key themes:

1. ESG
2. Democratization of private assets
3. Appointed representatives

FundsTrack

- real-time access to market data
- continuously growing data set to identify trends
- data spans over nine years and hundreds of funds
- allows us to extract granular data instead of relying on anecdotal evidence
- covers all private funds asset classes, including real estate, private equity, infrastructure, renewables and debt

Highlights

1. While we have seen some firms move away from operating through the traditional appointed representative model in the past year, for new entrants to the private funds space, the appointed representative model provides a route to market in which the need for regulatory authorization is not a limiting factor on the launch of a new fund. Therefore, the appointed representative model continues to provide key infrastructure for emerging funds.

2. Labelling of funds for ESG reasons is high on the agenda for regulators across the globe. In the UK, in addition to its labelling regime, the FCA introduced a new anti-greenwashing rule. The new rule expressly requires that references to sustainability characteristics of a product or services be consistent with the sustainability profile as well as clear, fair and not misleading.

In the EU, ESMA will introduce new rules for fund names under a mandate in the draft AIFMD II rules. The rules are expected to come into force in Q2 2024.

3. Retail clients have found it difficult to access private markets due to regulatory barriers that are designed to protect them from exposure to investments deemed too risky for them. While investor protection remains a key concern, there is a new balance being struck between this and increased access. Examples of this are new fund structures such as the LTAF in the UK and the revision of the ELTIF regulation in the EU. Other jurisdictions are considering similar structures to make it possible for retail clients to invest in asset classes like private equity and infrastructure.

Data in detail

Recall of distributions

In the vast majority of closed-ended funds investing in private market assets, the GP has a right to recall distributions made to investors. Distributions may be recalled in order to cover a wide range of liabilities of the fund, but most typically in order to satisfy warranties and indemnities in connection with the sale of the fund's assets and to satisfy the fund's indemnification obligations to fund functionaries.

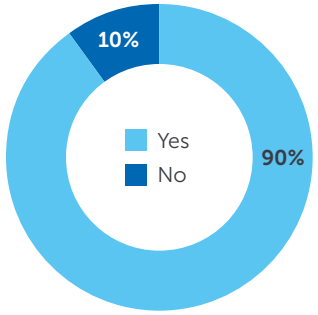
From a GP's perspective, the right to recall distributions is critical in order to ensure that the fund is able to meet its liabilities, particularly towards the end of the fund's life. From an LP's perspective, however, it is important to ensure that its liability to repay distributions is not unlimited in duration or in quantum.

We most typically see the GP's recall right limited to 25% of an LP's total commitments, with a time limit of 2 years from the date of the relevant distribution. Where the GP is in the process of litigation in connection with a liability, then provided that investors are notified of the litigation within the 2 year limitation period, the time limit typically does not apply to liabilities arising from such litigation.

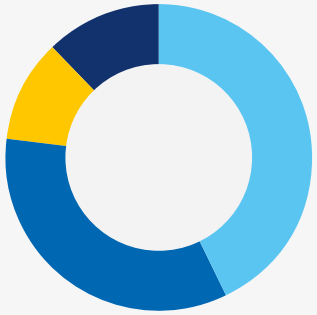
We occasionally see variations of this provision, either with a higher quantum limit or a longer time limit. We also occasionally see a quantum limit based on total distributions (rather than total commitments) or a time limit which runs from the end of the fund's life (rather than the date of the relevant distribution).

In recent years, some managers have been turning to insurers to provide end of fund life insurance. This is a relatively new product in the market which is used to cover any residual liabilities of the fund (or its portfolio companies) following the sale of fund assets. This offers investors an additional level of comfort that, at least in connection with warranties and indemnities on the sale of fund assets, the fund will not have to turn to investors to satisfy its liabilities.

Does the GP have the right to recall distributions?

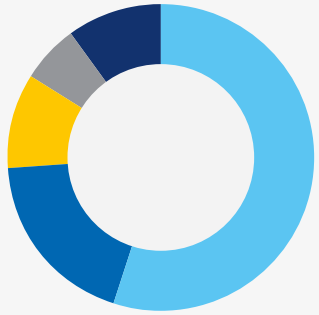


What is the right to recall distributions for?



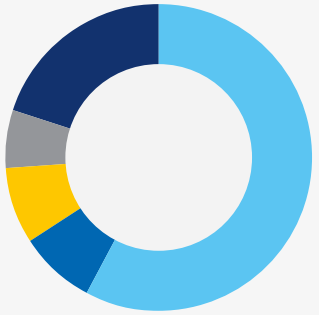
- Indemnities **(43%)**
- Liabilities **(34%)**
- Warranties **(11%)**
- Other **(12%)**

Time limit on recalled distributions



- 2 years from distribution **(55%)**
- 3 years from distribution **(19%)**
- 2 years from termination **(10%)**
- 3 years from termination **(6%)**
- Other **(10%)**

Cap on recalled distributions



- 25% of total commitment **(58%)**
- 20% of total commitment **(8%)**
- 50% of total commitment **(8%)**
- 100% of distribution **(6%)**
- Other **(20%)**

Carry haircuts

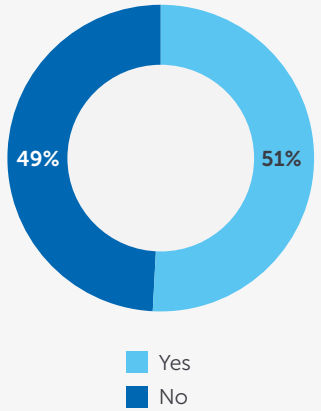
If the LPs elect to remove the GP for cause, the question arises as to whether the GP's entitlement to receive carried interest should continue. On the one hand, if a cause event has occurred, from an investor's perspective it is arguable that the GP's (or carried interest partner's) entitlement should cease entirely or should be reduced (particularly as otherwise, it may be more difficult for investors to find a replacement GP). From the GP's perspective, it is arguable that – at least for any investments made before the date of the removal – it was responsible for making the investments, so it should share in any subsequent profits.

Based on the funds we have reviewed and established, in half of all funds, the GP's entitlement to carried interest ceases altogether on a removal for cause. In the other half, the GP continues to be entitled to receive a carried interest (in respect of investments made before the date of removal). If the GP's entitlement continues, it is most often subject to a haircut. The level of haircut varies, but is most often 50%. This continues to reward the GP for having made the investment, while reflecting that a cause event has occurred and that its entitlement should be reduced.

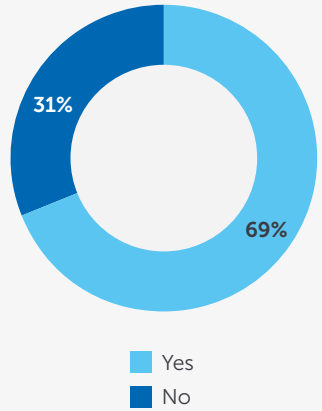
If the GP's entitlement continues following its replacement, its interest may be converted into an LP interest in the fund in order for it to continue to receive carried interest payments. Alternatively, its carried interest may crystallize, in which case its interest would be bought out by the replacement GP.

Following removal of a GP/Manager for cause

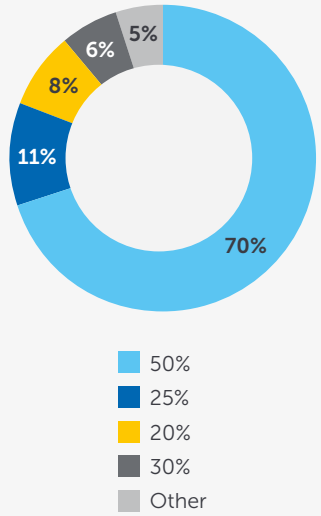
Is the GP/Manager entitled to the continued payment of carried interest?

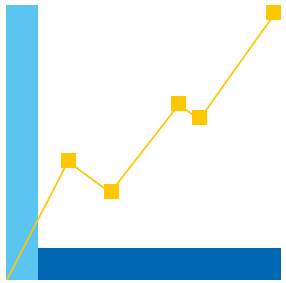


Is there a reduction of the carried interest?



What is the reduction of the carried interest?



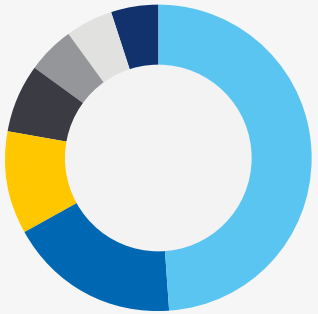


Jurisdictions

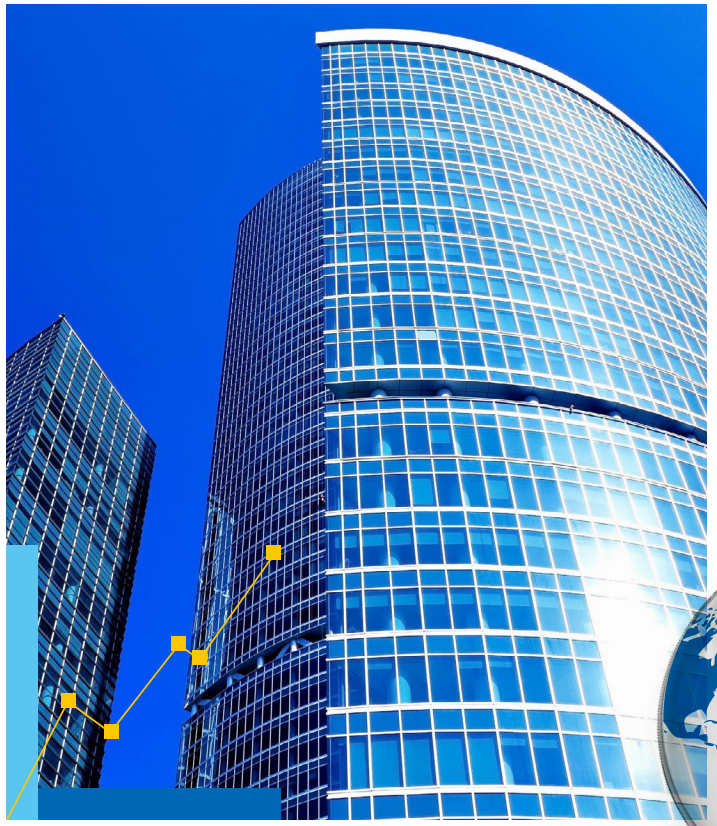
As in previous years, Luxembourg continues to be the most common jurisdiction of choice in our data set dominated by UK and European investors. Jurisdiction varies by asset type: Luxembourg accounts for the majority of debt funds, whereas we continue to see real estate funds established in England (depending on the jurisdiction of the underlying asset).

Since the UK's regulatory departure from the European Union on 31 December 2020 we have seen a steady rise in the number of Luxembourg investment vehicles. Over the past three years, they have accounted for almost half of the funds that we have reviewed, making Luxembourg the most common fund jurisdiction.

Jurisdiction of the investment vehicle
(from 31 December 2020 onwards)



- Luxembourg **(49%)**
- England **(18%)**
- Cayman Islands **(11%)**
- Channel Islands **(7%)**
- Scotland **(5%)**
- The United States **(5%)**
- Other **(5%)**



> ***Luxembourg AIFs are a well-known label for investors worldwide and the amendments to the Luxembourg funds law mid-last year were a very welcome modernization of the Luxembourg legal toolbox and bring more flexibility to the market.***
>
> **José Pascual**
> *Partner, Luxembourg*



Trends in private funds

Appointed representatives

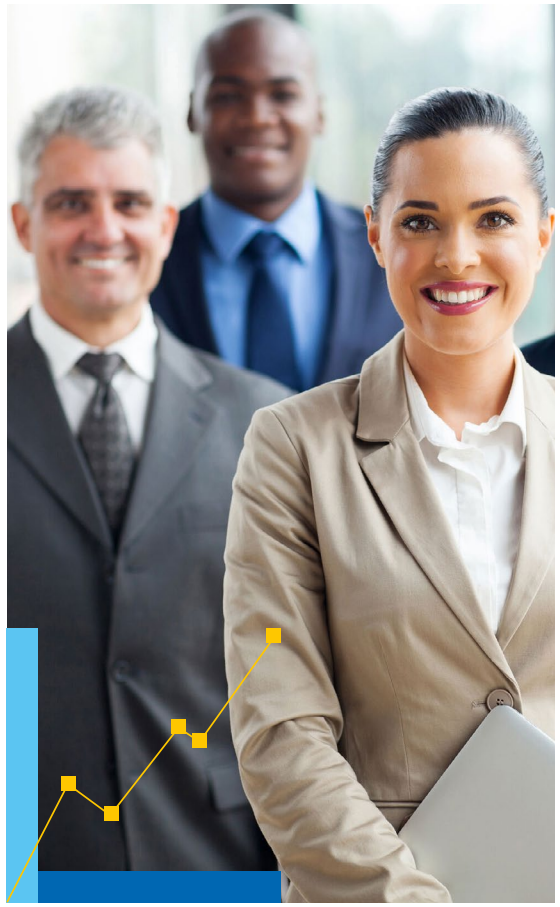
The appointed representative model (the "**AR Model**") has been a crucial incubation tool in the fund management industry – it provides regulatory and compliance solutions for entrants to asset management. Under the AR Model, an FCA authorized firm (the "**Principal**") takes on responsibility for certain regulated activities that an appointed representative ("**AR**") carries on.

Under UK regulations, the only activities which ARs can carry on without the need for direct FCA authorization are advising on investments, arranging deals in investments and arranging for a custodian or depositary to safeguard and administer assets. Crucially, an AR cannot manage investments or act as an alternative investment fund manager ("**AIFM**") so the Principal will be responsible for investment management and risk management, typically relying on advice from the AR and often with one or more members of the AR's team being seconded to the Principal's investment committee for the relevant fund. The Principal has direct regulatory responsibility for the activities of the AR and its contract with the AR will impose those regulatory requirements on the AR.

The AR Model has been one of the key areas of focus for intervention by the FCA in recent years. The FCA's regulatory effort is particularly focused on hosting under the AR Model. "Regulatory hosting" is a common form of AR Model adopted in the private funds market, in which a Principal carries out little or no regulated activity in its own principal capacity. Instead, the Principal oversees the use of its permissions by its ARs. One of the FCA's main regulatory concerns is the lack of appropriate control and risk management frameworks if firms adopt the AR Model. Significant areas of concern for the FCA include ARs marketing themselves as investment managers, wealth managers or stockbrokers, none of which is permitted under the regulations and the AR, rather than the AIFM, claiming to be the fund manager while marketing AIFs, when legally this role is taken by the Principal as the AIFM. In December 2022, the FCA introduced enhanced rules and guidance on Principals' oversight of their ARs. First by collecting additional information on ARs and strengthening reporting requirements for Principals, and secondly clarifying and strengthening the responsibilities and expectations of Principals.

Since the introduction of the enhanced rules in December 2022, Principals have been required to provide additional data to the FCA, enabling the FCA to identify Principals operating as hosts and allowing the FCA to focus their supervisory attention on these firms. The FCA has noted that since the introduction of such information provision requirements, one regulatory host ceased business, and another is agreeing to stop recruiting ARs.

In the past year, we have seen firms moving away from operating through the AR Model, especially with more sophisticated investment managers seeking authorization to manage alternative investment funds in their own rights. However, for new entrants to the private funds space, the AR Model provides a route to market in which the need for FCA authorization is not a time constraint on the launch of a new fund and the sponsors can defer, typically for at least two years and often longer, the time and financial cost of applying for FCA authorization. The AR Model continues to provide key infrastructure for emerging funds.



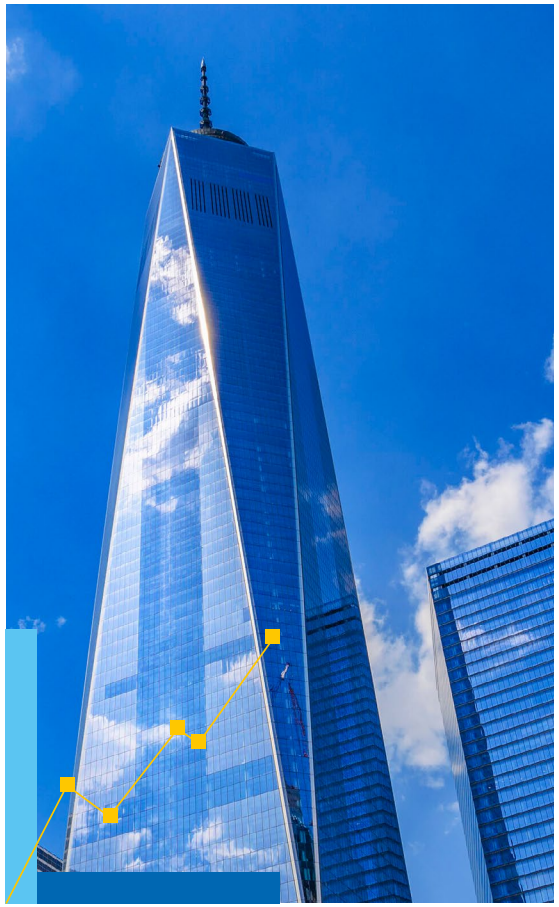
Democratization of assets

Public markets are shrinking and private markets are continuing to grow. Many financial regulators and governments are keen to allow private and retail clients greater access to private markets so that they can access potentially greater returns on their investments than are traditionally available from retail investments.

Retail clients have often found it difficult to access private markets due to regulatory barriers designed to protect retail investors from exposure to investments deemed as too risky. The permitted links rules in the UK for defined contribution ("**DC**") pension schemes are an example of this. While investor protection remains a key concern, there is a new balance being struck between this and increased access. Examples of this balance are new fund structures such as the long-term asset fund ("**LTAF**") in the UK and the long-term investment fund ("**ELTIF**") in the EU. Other jurisdictions are considering similar structures to make it possible for clients to invest in asset classes like private equity and infrastructure.

Enabling UK DC pension schemes to take advantage of long-term illiquid investments is one of the UK government's key priorities. More members than ever are enrolling in DC schemes thanks to the success of automatic enrolment, with the scale of assets invested in DC schemes expected to double by 2030. While some of the largest master trusts have invested in private funds for a number of years, trustees and managers of other DC pension schemes now consider investing in a broader range of assets. A diversified portfolio can offer potentially greater returns for pension savers building towards retirement and can have the added benefits of improving the UK economy and society.

Of course, the democratization of private assets is relevant in this context, as smaller schemes require an access point to assets which they may have previously been excluded from. Ultimately the driver is to ensure that members in smaller schemes are not frozen out of private market assets, unable to reap the potential benefits, and for it not to remain the domain of only large investors. Please click here to read our client briefing. UK's FCA publishes final policy statement on broadening access to Long-Term Asset Funds (LTAFs).



> ***Although the last year has been quite tough for the private asset management industry, there is a clear increasing interest in open-ended AIFs, and for AIFs to be marketed to retail investors. The new rules in relation to ESG and the AIFMD revision will bring additional new challenges, but both harbor great opportunities.***
>
> **Claudia Hoffmann**
> *Partner, Luxembourg*

> ***The democratization of private assets will allow increased investment in national infrastructure projects from large and growing DC pension schemes which it is hoped will ease the pressure solely on such projects being funded from public sector finances.***
>
> **Jamie Dunlop**
> *Legal Director, UK*

ESG

Environmental, social and governance ("**ESG**") focused responsible investment has been a dynamic and diverse area of new product development in recent years. It is hoped that the ongoing and ever-increasing barrage of legal and regulatory requirements does not deter product developers from continuing to design and offer innovative funds that enable investors to meet their non-financial investment goals and objectives.

ESG considerations continue to be a key feature on global policymakers' legislative agendas. GPs are grappling with the challenges of:

- keeping up with new and varied laws, regulations and voluntary standards, which diverge across geographies
- complying with the reporting requirements of individual investors negotiated via their side letters
- obtaining data in order to meet these disclosure and reporting requirements

GPs are having to deploy significant resources to track, analyze and implement operational solutions to meet these challenges. In particular, with regard to investor reporting, GPs need to carefully manage how they source, process and present relevant data to LPs, so that reporting is provided efficiently, accurately and consistently, noting that it is often impossible to obtain sufficient data in respect of underlying investments.

Turning to greenwashing, market surveys have demonstrated that investors have limited confidence in sustainability claims made by GPs. Investors want to be confident that the products that they allocate their capital to do what they expect them to do. There is a market expectation that litigation and complaints may be used as a means of scrutinizing whether or not firms are living up to their green credentials.

While unhappy LPs may bring greenwashing, or misselling claims against GPs, to do so LPs would need to demonstrate that they had suffered loss as a result of the greenwashing. This could prove difficult in practice. Causation and loss do not, however, need to be proven by regulators when taking action against the firms that they regulate for breaching their requirements, which is perhaps why interventions by regulatory bodies are now becoming a more pressing concern for GPs. The most prevalent enforcer in the UK to date has been the Advertising Standards Authority.

Documentation will need to be monitored and reviewed on an ongoing basis to ensure it remains accurate and not misleading. Statements must properly satisfy the regulatory disclosure and transparency requirements that they purport to report against, which can be difficult as the meaning of such requirements can be uncertain.

Practically, GPs will need to ensure that they do what they say they are going to do in such documentation on an ongoing basis. This will involve applying consistent criteria when assessing whether or not investments comply with investment policies, and then monitoring investments for compliance on an ongoing basis.

Even with these measures in place, ongoing compliance may be challenging, given:

- rapidly changing regulatory frameworks, which often require new rules to be implemented in short order
- potential need to comply with multiple disclosure regimes
- varying market practices in complying with reporting requirements
- limited data upon which to draw to back up statements made, noting, in particular, that a number of sustainable investment strategies relate to nascent technologies and/or areas with little historic data to draw upon

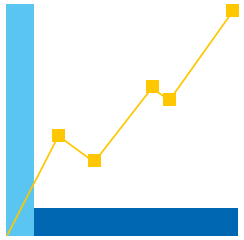
It is worth noting that the EU Sustainable Finance Disclosure Regulation ("**SFDR**"), the flagship regime which sets rules for disclosures related to environmental and social objectives of financial products, is already under wholesale review. This is notable as the review was announced in 2023, the first full year of its application, and following a number of amendments made since its first publication in 2018. While the industry has advocated for changes to be made to SFDR, with some industry participants advocating for a lighter touch application for funds marketed to non-retail investors, the fact that "SFDR v.2" may follow so quickly, will be frustrating for businesses that have already made significant investments in order to comply with version 1.



It may be the case that SFDR v.2, aligns more to the proposed UK legislative disclosure and labelling regime, the UK's Sustainability Disclosure Requirements ("**SDR**"). However, it is unlikely that it will be identical to SDR, which enters into force in 2024. As such, asset managers making their products available both in the EU and the UK will need to comply with two different sustainability-related disclosure regimes, adding to an already complex regulatory framework, increasing the risk of non-compliance and additional fund operational costs.

In the US, 2023 saw an uptick in anti-ESG bills in state legislatures. Despite the pushback by politicians against mission-driven investment, there has been positive momentum for ESG factors being incorporated into portfolios by American investors. This includes state pension fiduciaries that are finding ways to navigate anti-ESG laws.

This momentum can be partly attributed to the impetus provided by the Inflation Reduction Act ("**IRA**"), which is to fund $369 billion in climate change and energy security incentive programs over the next ten years. Within a year of its enactment, the IRA is already encouraging substantial private sector investment in industries such as renewable energy and low-emission transportation. According to the White House, US companies have announced more than $110 billion in new clean-energy manufacturing investments since the IRA was passed. This amount includes over $70 billion in the electric vehicle supply chain and about $10 billion in solar manufacturing. Additionally, since IRA investment tax credits are transferable, even traditional energy producers (i.e., oil and gas companies) are to explore how they can benefit from the legislation to transition towards renewables.



However, such a promise is not without its challenges. For example, the US Department of Energy has cited inflation, supply chain constraints and geopolitical uncertainty as potentially negatively impacting the profitability of "western wind turbine manufacturers across land-based and offshore portfolios". Furthermore, a report by Lawrence Berkley National Laboratory points to an increasing backlog of renewable energy projects seeking to connect to existing power distribution networks as a hurdle to the expansion of clean energy. Lastly, SEC scrutiny (alongside regulators in other countries) in the US of funds that have greenwashed their credentials has led to some hesitancy on the part of managers to launch new products that incorporate ESG factors. However, investment industry commentators are expecting a new wave of ESG funds to be launched.

Please click here to read our briefings:

UK's FCA releases its Policy Statement on Sustainability Disclosure Requirements (SDR) and investment labels

Access to the UK market for EEA funds: the proposed Overseas Funds Regime and the coming Sustainable Disclosures Requirements regime

A Q&A discussion podcast: UK FCA's Policy Statement on Sustainability Disclosure Requirements (SDR) and investment labels



> ***It is clear that GPs need to take measures to mitigate the risk of legal and regulatory challenge to statements made in their marketing documentation and the associated reputational damage. We expect GPs will design and implement measures to ensure disclosures in marketing documents are carefully crafted and can be verified against good quality data and reasonable assumptions.***
>
> **Sarah Burnside**
> *Partner, UK*

> ***The ability for GPs to develop a global perspective when implementing their ESG policies will be complicated by global regulatory divergence. Disconnected regimes will also make it harder for LPs to compare and contrast products from an ESG perspective.***
>
> **Ed Winters**
> *Partner, US*

Spotlight on private funds

US

SEC expands the Names Rule

On 20 September 2023, the US Securities and Exchange Commission ("**SEC**") voted by a 4-1 margin to adopt amendments to the fund 'Names Rule' (Rule 35d-1) under the Investment Company Act of 1940. The amendments greatly expand the scope of the rule but relax some of the compliance requirements that were originally proposed.

- consistent with the proposal, the final amendments expand the scope of the rule to require funds with names that suggest a focus in investments that have, or issuers that have, "particular characteristics" to adopt an 80% investment policy
- the final amendments retain the rule's original language requiring funds to comply with their 80% policies "under normal circumstances" and "at the time of investment," but add a requirement that funds must review compliance with their 80% policies at least quarterly

In a departure from the proposal, the final amendments do not require unlisted closed-end funds and business development companies ("**BDCs**") to adopt their 80% policies as fundamental policies. Instead the amended rule states that such funds may not change their policies without a majority shareholder vote, unless the fund conducts a tender offer prior to the change, provides notice of the change prior to the tender offer, shares are repurchased at net asset value, and the tender offer is not oversubscribed.

Please click here to read our full report –
SEC expands the Names Rule

SEC adopts sweeping new private fund adviser rules and an amendment to the compliance rule

On 23 August 2023, a divided SEC adopted far-reaching new rules and rule amendments under the Investment Advisers Act of 1940 ("**Advisers Act**") for private fund advisers, including rules related to restricted activities, preferential treatment, quarterly statements, audits, and adviser-led secondary transactions ("**Private Fund Adviser Rules**"). Although the final Private Fund Adviser Rules are not as burdensome as those originally proposed, they still represent a seismic shift for the private fund industry.

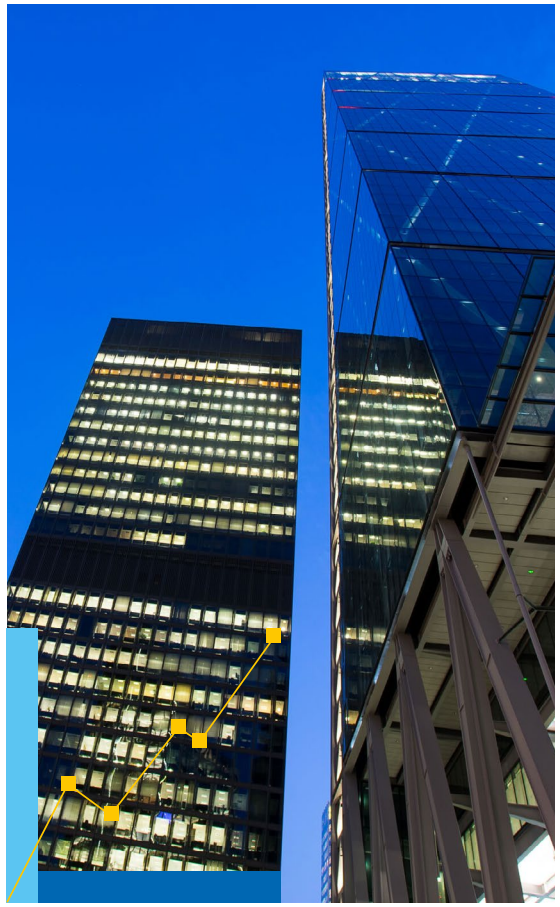
The Private Fund Adviser Rules will require advisers to private funds (including unregistered advisers) to provide notices to, and/or obtain consent from, investors in order to engage in certain restricted activities or provide certain preferential treatment.

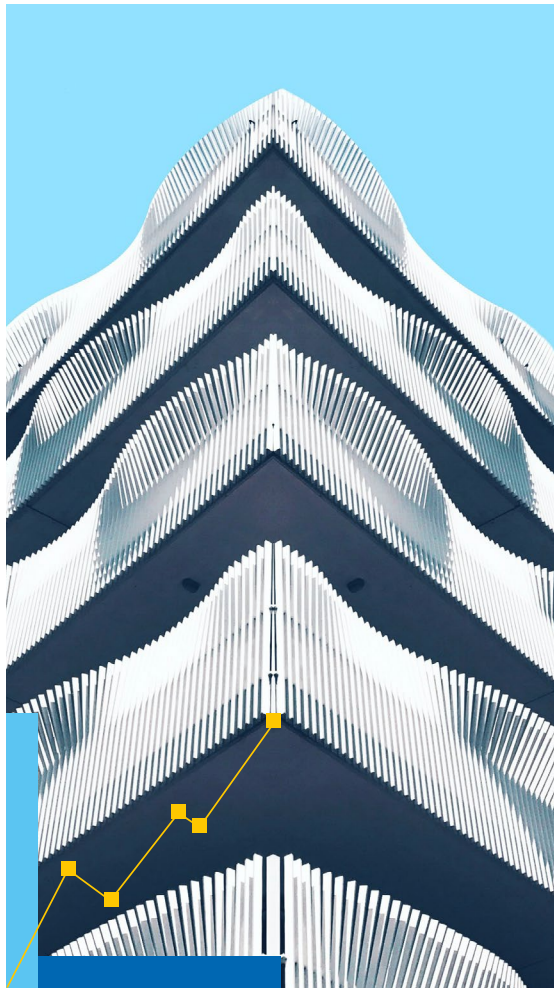
The Private Fund Adviser Rules will require SEC-registered private fund advisers to:

- (i) deliver quarterly statements to investors that include certain fee and expense disclosures and performance metrics
- (ii) obtain audits of each private fund they advise
- (iii) provide investors with a fairness opinion or valuation opinion in connection with any adviser-led secondary transactions

As part of the rulemaking, the SEC also adopted an amendment to Rule 206(4)-7 under the Advisers Act, requiring all SEC-registered advisers to maintain written documentation of their annual compliance reviews.

Please click here to read our full report –
SEC adopts sweeping new private fund adviser rules and amendment to compliance rule





SEC finalizes highly controversial private fund adviser rule set – a quick review of where things landed

On 23 August 2023, the SEC voted by a 3-2 margin to adopt new and amended rules under the Advisers Act that will impose a host of new regulatory requirements on private fund advisers. While the SEC did scale back some aspects of the proposal after receiving feedback, overall, the rule set will impose substantial new prescriptive rules on private fund advisers. Among other things, the new rules:

- restrict charging certain fees and expenses to private funds
- limit providing preferential terms to certain investors regarding redemption and information rights
- require preparing and delivering to investors a quarterly statement containing certain standardized information regarding fees, expenses and performance

Please click here to read our full report – SEC finalizes highly controversial private fund adviser rule set – a quick review of where things landed

SEC takes on AI use by broker-dealers and investment advisers – expansive coverage of types of technology and investor interaction in play

Investment advisers and broker-dealers would be subject to far-reaching requirements that would capture many interactions with investors and advisory clients under rulemaking proposed by the SEC.

On Wednesday, 26 July 2023, the SEC voted by a 3-2 margin to propose new and amended rules under the Securities Exchange Act of 1934 ("**Exchange Act**") and the Advisers Act that capture adviser and broker-dealer use of "covered technologies" in investor interactions.

Covered technologies include algorithms, models and a lot more. To the extent a covered technology is used in connection with a firm's engagement with an investor or advisory client, a firm would be required to eliminate or neutralize all conflicts of interest in connection with use of the technology to the extent the conflict places the firm's or its associated person's interest ahead of investor and advisory client interests.

Please click here to read our full report – SEC takes on AI use by broker-dealers and investment advisers – Expansive coverage of types of technology and investor interaction in play

SEC adopts amendments to Form PF reporting for hedge fund and private equity fund advisers

On 3 May 2023, the SEC adopted amendments to Form PF requiring certain current event reporting for large hedge fund advisers, certain quarterly event reporting for all private equity fund advisers and enhanced reporting requirements for large private equity fund advisers.

Large hedge fund advisers must report certain "key events" as soon as practicable but no later than 72 hours after the occurrence of the event.

Private equity fund advisers must report certain "key events" within 60 days of each fiscal quarter end or annually depending on the type of triggering event.

The reporting threshold for large private equity advisers remains at $2 billion regulatory assets under management ("**RAUM**").

Please click here to read our full report – SEC adopts amendments to Form PF reporting for hedge fund and private equity fund advisers

Spotlight on private funds

UK

SDR

On 28 November 2023, the FCA published policy statement PS23/16 (the "**Policy Statement**") on Sustainability Disclosure Requirements and Investment Labels ("**SDR**"). The Policy Statement responds to, and builds on, extensive responses received on the FCA's proposals on the SDR which were published in the consultation paper CP22/20 in October 2022 (the "**Consultation**"). The SDR and labelling rules are key components of the government's 2023 Green Finance Strategy, alongside other initiatives including the International Financial Reporting Standards (IFRS) Sustainability Disclosure Standards, transition plan disclosures, development of a UK Green Taxonomy and consideration of nature-related disclosures.

The SDR covers a package of rules which are largely targeted at products marketed to retail clients, however, a number of rules are pertinent to the private fund sphere, these include:
(i) the anti-greenwashing rule
(ii) the "sustainability" labels (if voluntarily opted-in)
(iii) product-level disclosure requirements
(iv) entity-level disclosure requirements.

The SDR also introduces new requirements in relation to consumer-facing information, naming and marketing rules in relation to consumer-facing products and requirements for distributors of consumer products, but these are applicable to retail products only.

UK fund managers (including full-scope UK AIFMs and small authorized UK AIFMs (each an "**Asset Manager**") are generally in scope of the SDR, but the anti-green washing rule is more widely applicable and is applicable to all FCA-authorized firms. Private funds which are UK AIFs will fall within the scope of the SDR, but non-UK AIFs managed by UK AIFMs will not be in scope of the SDR.

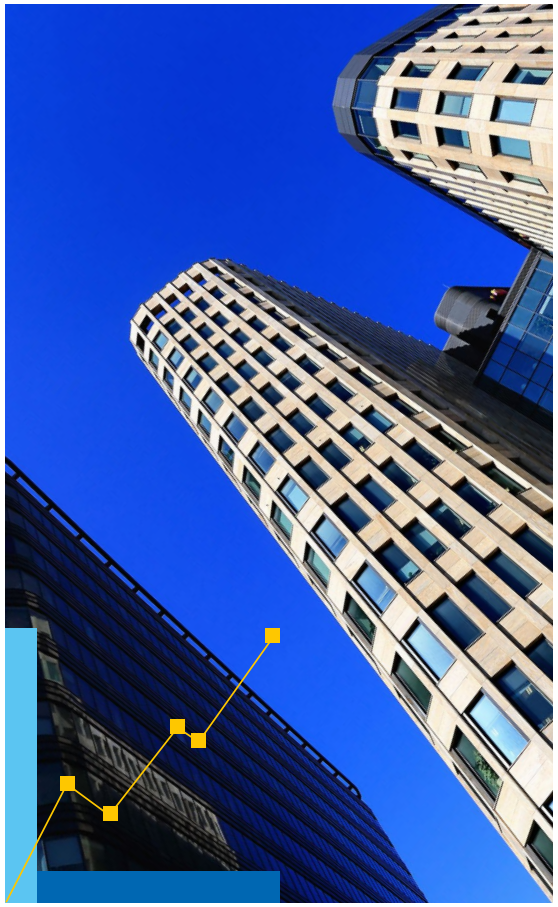
Anti-greenwashing rule

A new anti-greenwashing rule (ESG 4.3.1R) will apply to all FCA-authorized firms (subject to further consultation) from 31 May 2024. The new rule is designed to deter deceptive or misleading marketing practices related to green or sustainable financial products. All FCA-authorized firms that make claims about the sustainability characteristics of their products or services must be fair, clear, and not misleading, as well as consistent with the sustainability profile of the product or service.

Although firms should already ensure that their fund information and communications are clear, fair and not misleading under PRIN 2.1, Principle 7 and COBS 4.2.1R, the introduction of the anti-greenwashing rule will give the FCA an explicit rule on which the FCA can take enforcement action.

In response to consultation feedback, the FCA will publish accompanying guidance on the anti-green washing rule. Consultation paper GC 23/3 was published in respect of such guidance, and the final guidance will supplement the anti-greenwashing rule when it becomes effective in May 2024.

The anti-greenwashing rule will be applicable to all authorized firms irrespective of whether they adopt any sustainability labels for their products. Therefore, firms should take immediate action in assessing that their sustainability claims are fair, clear and not misleading.



Sustainability labels

The sustainability label regime operates on an opt-in basis. In addition to the three sustainability labels proposed in the Consultation, namely: (i) sustainability focus, (ii) sustainability improvers and (iii) sustainability impact (previously proposed in CP22/20 as "sustainable focus, sustainable improvers and sustainable impact"), the FCA has, in the Policy Statement, introduced a fourth label, "sustainability mixed goals," to cater for products that pursue a combination of sustainability objectives encapsulated by the other labels.

Asset Managers will need to decide whether to adopt sustainability labels for their products and assess whether such products meet the relevant label's criteria. While the labelling regime is aimed at enabling retail consumers to navigate the market, Asset Managers selling products to institutional investors may also choose to adopt sustainability labels. The criteria for using a sustainability label looks at both general and specific qualifying criteria for each label.

To use a label, the product must meet the general criteria of having a sustainability objective as part of its investment objectives, which aligns with one of the specific sustainability labels, and is clear, specific and measurable. The product must have at least 70% of its assets invested in accordance with the sustainability objective, and those assets must be selected with reference to a robust, evidence-based standard (which is an absolute measure of sustainability). The product's other assets must not conflict with the sustainability objective. Certain limited exceptions apply in relation to the 70% threshold.

The Policy Statement also introduces the requirement that firms must identify and disclose whether pursuing the positive sustainability outcomes may result in material negative outcomes.

Asset managers who want to adopt a label for a product will need to ensure that the product meets the specific criteria of the relevant label:

- a "sustainability focus" product must have a sustainability objective consistent with an aim to invest at least 70% in assets that are environmentally and/or socially sustainable in accordance with a robust evidence-based standard
- a "sustainability improver" product must have a sustainability objective consistent with an aim to invest at least 70% in assets that have the potential to eventually become environmentally and/or socially sustainable in line with the robust evidence-based standard
- a "sustainability impact" product must have a sustainability objective consistent with an aim to achieve a pre-defined positive, measurable impact in relation to an environmental and/or social outcome and invest 70% of their assets in accordance with that aim
- a "sustainability mixed goals" product must have a sustainability objective to invest at least 70% in accordance with a combination of the sustainability objectives for the other labels

From 31 July 2024, firms can begin to use the sustainability labels with the accompanying disclosures (see "*Product-level disclosures*" below). Asset Managers should consider whether they intend to adopt sustainability labels for their private funds, although such consideration is likely to depend on the uptake of the labels in the private market.

Product-level disclosures

In-scope private funds which adopt sustainability labels will be required to disclose sustainability information in their pre-contractual disclosures.

Pre-contractual disclosures of an in-scope private fund must be made available when the fund first adopts a sustainability label (ie from 31 July 2024).

However, Asset Managers should note that whether or not they adopt sustainability labels for their private funds, from 2 December 2025, they can be required to make on-demand product-level disclosures. Such disclosures are mandatory if requested by a person who needs such information to satisfy sustainability-related disclosure obligations, whether under the SDR or as a result of other legal or regulatory requirements. The Policy Statement confirms that closed-ended AIFs that have made no additional investments after 22 July 2013 are out of scope from the labelling and disclosure regime.



Entity-level disclosure requirements

All asset managers with over £5 billion AUM (on a 3-year rolling basis) must produce an annual "sustainability entity report" which should include disclosures in relation to their governance, strategy, risk management and metrics and targets in relation to managing sustainability-related risks and opportunities. Firms can cross-refer to disclosures made in other reports, or those made at a group-level.

Entity-level disclosures will be applicable to in-scope firms, based on their AUM, in two phases. Firms with over £50 billion AUM will be required to produce their first entity-level disclosure by 2 December 2025 (and on an annual basis thereafter) while for firms with an AUM of over £5 billion, the first entity-level disclosure must be published by 3 December 2026 (and on an annual basis thereafter).

Naming and marketing rules not applicable to private funds

The SDR includes naming and marketing rules which restrict the use of certain sustainability related terms in the names of products sold to retail consumers. Aligned with the Consultation, the Policy Statement confirms that products sold to institutional investors are not in scope of the naming and marketing rules.

On the horizon

The FCA intends to extend the scope of the SDR to cover portfolio management (particularly in respect of portfolio management undertaken for UK retail clients), overseas funds, pensions and other investment products as well as financial advisory services. In particular, the FCA will consult on the extension of SDR to portfolio management services in early 2024.

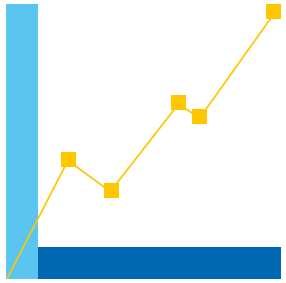
The FCA also intends to build the disclosure requirements, including updating its guidance on transition plan disclosures, drawing from outputs of the Transition Plan Taskforce ("**TPT**"), and updating product level disclosure requirements once the UK Green Taxonomy is in use. Going forward, the FCA also intends to align product-level and entity-level disclosure requirements in line with future ISSB standards.



The Economic Crime and Corporate Transparency Act

The Economic Crime and Corporate Transparency Act ("**ECCTA**") came into force on 26 October 2023. It is a continuation from the reforms introduced by the Economic Crime (Transparency and Enforcement) 2022 Act which introduced new rules on sanctions, created a register of overseas entities and amended the UK's unexplained wealth order regime. At this time, the government committed to bring forward a further bill to deliver reforms tailored to corporate entities, which it has now done in the form of ECCTA.

This will be implemented by secondary legislation and additional Companies House guidance. No official guidance has been given, but it is expected that there will be at least a year until the majority of these provisions are in force, as once the reforms begin, there will be a 6-month transitional period for certain requirements.



The legislation is broad and comprehensive. For investment funds and investment managers some key changes are:

- **Reforms to prevent the abuse of limited partnerships:**
  - limited partnerships will be required to maintain a connection to the UK. The GP should have a monitored email address and ensure that the limited partnership has a UK registered office where post is monitored
  - tightened registration requirements. Applications must contain additional information on each proposed GP and LP (whether entities or individuals). Photographic ID must be provided by a GP who is an individual, or by a named individual for a corporate GP
  - increased transparency requirements. The GP will need to submit an annual confirmation statement within 14 days of each review period, to confirm the information on the register is correct. They must also submit a notice within 14 days if there is a change in the information relating to the GP, LPs or the limited partnership itself. A transitional period of 6 months will apply to limited partnerships existing at the time these provisions came into force
  - limited partnerships will be dissolved if they cease to have a GP or LP
  - the registrar will be able to deregister limited partnerships which are dissolved, no longer carrying on business, or if a court orders that it is in the public interest to do so
- **Changes to the register of overseas entities which own UK land to ascertain the "true" beneficial owner:**
  - scope of registrable beneficial owners has been widened to include overseas nominees used to hold UK land and if trusts are involved in ownership structures
  - further information must be provided to Companies House, including information showing the history of beneficial ownership, rather than just an annual snapshot
- **Reforms to Companies House:**
  - identity verification for new and existing registered company directors, Persons with Significant Control and those delivering documents to the Companies House Registrar
  - broader powers for the Companies House Registrar, including new powers to check, remove or decline information submitted to, or already on, the companies register
  - improved financial information on the register to make it more reliable, complete and accurate
  - more effective investigation and enforcement powers for Companies House and the introduction of better cross-checking of data with other public and private sector bodies
  - enhanced protection of personal information provided to Companies House
  - broader reforms to clamp down on misuse of corporate entities
- **New corporate offence of failing to prevent fraud:**
  - an in-scope organization will be criminally liable if an associated person (including employees, agents and subsidiaries) commits fraud and the organization did not have reasonable fraud prevention measures in place

Please click here to read our briefings:

The impact of the Economic Crime and Corporate Transparency Act 2023 ("ECCTA") on UK limited partnerships in fund structure

Putting a stop to fraud: UK failure to prevent fraud offence passed into law

LTAFs

The FCA has continued to expand the long-term asset funds ("**LTAF**") regime, particularly broadening distribution and access to retail investors. On 29 June 2023, the FCA published its Policy Statement PS 23/7 "Broadening retail and pensions access to the long-term asset fund", following its previous consultation paper CP22/14 which closed on 10 October 2022.

Crucially, the changes re-categorize a unit in an LTAF as a restricted mass market investment rather than a non-mainstream pooled investment. This consequently broadens the ability to obtain investment from mass market retail investors, self-select DC pension schemes and self-invested personal pensions.

The following changes were also implemented as part of the policy statement:

- amendments to the risk warnings and risk summary required for retail investors, to focus on liquidity rather than investment risk
- non-UCITS retail schemes ("**NURS**") fund of alternative investment funds will be permitted to invest more than 50% of scheme property in LTAFs provided they operate limited redemption arrangements to manage the liquidity mismatch
- changes to the third-party valuation rules in line with the valuation requirements for NURS
- amendments to the new additional investor protection rules to exclude their application to LTAFs that have only professional, high net worth individuals, certified sophisticated or self-certified sophisticated unitholders. Such investors are now called "limited protection LTAF investors" and managers wishing to sell to these investors only are required to include a new statement in the fund's instrument or trust deed

The FCA's new handbook rules and guidance came into force on 3 July 2023. Authorized fund managers of previously authorized LTAFs have a transitional period to make any necessary changes to fund documents by 3 July 2024.

Further, the FCA released Feedback Statement FS23/7 on "Long-Term Asset Funds (LTAFs) – Financial Services Compensation Scheme Coverage Feedback Statement" on 30 October 2023. The statement outlined the FCA's decision not to exclude Financial Services Compensation Scheme ("**FSCS**") cover for regulated activities relating to LTAFs. The FCA has indicated that it instead intends to cover changes to the scope of FSCS protection for retail investments broadly, rather than based on specific investment products. As such, regulated activities relating to LTAFs, such as advice to invest in an LTAF, arranging the sale of units in an LTAF (for example, by a platform), managing an LTAF, or acting as the depositary of an LTAF remain within the scope of FSCS.

Please click here to read our LTAF briefing – UK's FCA publishes final policy statement on broadening access to Long-Term Asset Funds (LTAFs)



Financial promotions

From 7 February 2024, FCA authorization ("**approver permission**") will be required by all authorized persons approving financial promotions for unauthorized persons. Approver permission will be limited to specified types of financial promotion and will not be a blanket permission to approve any kind of financial promotion.

The FCA released Policy Statement PS23/13 "Introducing a gateway for firms who approve financial promotions" on 12 September 2023. Firms seeking authorization to approve particular kinds of financial promotions must demonstrate the necessary skills and expertise to do so. Firms authorized to approve financial promotions will be expected to assess whether a promotion of a financial product fairly represents the product being promoted in a way that is not misleading, which will require the authorized person to establish whether the promoted product is commercially feasible and reasonably capable of achieving what is being promoted. The authorized firm must also consider its Consumer Duty obligations when approving financial promotions.

The FCA is particularly concerned that, under the current regime, financial promotions offering unrealistic rates of return have been approved, causing significant harm to consumers. The gateway is intended to improve the quality of financial promotions that are approved but, at the same time, the number of firms providing approval for financial promotions will fall and there will be less competition in the market.

Firms have a three-month window between 6 November 2023 and 6 February 2024 to apply for approver permission. Firms which have submitted an application can continue to approve promotions after 7 February 2024 until they receive a decision on their application.

The following activities are excepted from the new gateway:

- an authorized person approving their own financial promotions for communication by an unauthorized person
- an authorized person approving their appointed representatives' ("**ARs**") financial promotions
- an authorized person approving the financial promotions of unauthorized persons within their corporate group

Please click here to read our briefings:

Financial promotions gateway in force

The Financial Conduct Authority's new regulatory gateway for approval of financial promotions

UK's FCA writes to cryptoasset firms marketing to UK consumers about new financial promotion rules



Private REITs

2023 marked a turning point for the funds industry with the myriad of changes to the Real Estate Investment Trust ("**REIT**") regime.

The changes follow on from the government's call for input on its review of the UK funds regime in which it asked for views on the impact of removing the interest cover test, amending the development rule and reducing the number of properties that a REIT must hold. In its response to the call for input, the government stated that there was strong support for changes to the REITs regime and the government has now considered which reforms to implement.

One of the key reforms in 2022 was the introduction of a 'private' REIT. Prior to April 2022, a company could only qualify for UK REIT status if its ordinary share capital was listed on or traded on a recognized stock exchange. As part of the changes introduced by the Finance Act 2022, if at least 70% of the ordinary shares of a company are owned by one or more institutional investors, this condition no longer applies, ie, a 'private' REIT.

The Spring Budget in April 2023 introduced some further changes to the REIT regime:

- a change to the number of properties requirement – previously, a property rental business (on a group basis) had to comprise of at least three properties. A commercial or residential unit rented out separately counted as a single property. This requirement was amended, so that a REIT may hold a single commercial property worth at least £20 million
- a change to the rule that applied to disposal of properties within three years of significant development – this rule stated that if a REIT disposed of a developed property within three years of completing a development costing more than 30% of the fair value of the property (tested at entry to the REIT regime or acquisition of the property, whichever was later), the property was deemed to be sold in the course of a trade (ie outside the property rental business) and any gain arising on the disposal was subject to tax. For disposals of assets made on or after 1 April 2023, the value of a property for the purposes of calculating the 30% threshold is now the highest of the fair value of the property on entry into the REIT regime, at the time of the acquisition of the property, or at the beginning of the accounting period in which the development commenced. This amendment may go some way towards mitigating the effect of the current high levels of inflation
- a change to the rules of tax from property income distributions ("**PIDs**") paid by REITs to limited partnerships – if certain conditions are met, a PID may be made with tax deducted only from the proportion of the payment which relates to the limited partners in the recipient partnership which are not entitled to gross payment. This allows PIDs to be made to a partnership partly gross and partly subject to withholding tax (the proportion depending upon the nature of the partners), overall making it administratively easier for partnerships to hold an interest in REITs
- certain changes to the genuine diversity of ownership ("**GDO**") condition – the GDO condition will be treated as satisfied by an entity in a fund structure if the entity forms part of multi-vehicle arrangements that, as a whole, satisfy the condition. The definition of "multi-vehicle arrangements" includes a group of entities that form part of a wider fund structure if an investor would reasonably regard their investment to be in the structure as a whole. The amendment will, therefore, enable certain parallel and aggregator (feeder) funds to meet the GDO condition

The changes to the UK REIT regime in 2023 bring a host of opportunities and considerations for fund managers and sophisticated investors. These changes align with the 2022 changes allowing non-listed institutional REITs, should make REITs very attractive UK property holding structures.



Spotlight on private funds

EU

Sustainable Finance Disclosure Regulation (SFDR)

ESMA Consultation on Fund Names

On 18 November 2022, the European Securities and Markets Authority ("**ESMA**") published its Consultation Paper on Guidelines on the Use of ESG or Sustainability-related Terms in Funds' Names ("**Consultation**").

Broadly, the Consultation proposed the following rules to apply to the use of fund names (UCITS and AIFs):

- if a fund has any ESG-related words in its name, a minimum proportion of at least 80% of its investments should be used to meet the environmental or social characteristics or sustainable investment objectives under SFDR
- if the word "sustainable" is used, the fund should allocate 80% to "ESG" investments and at least 50% should qualify as sustainable investments as defined under SFDR

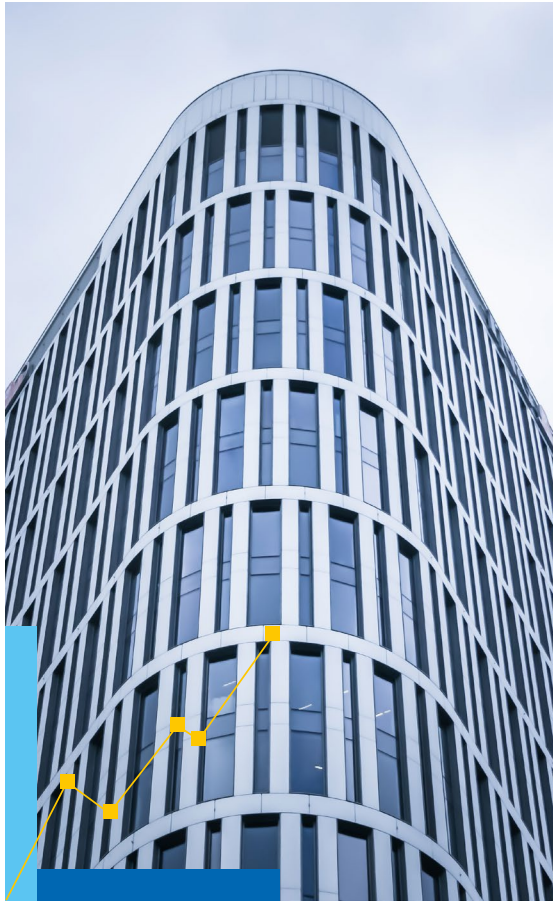
Although the objective of the new rules was to build on the existing SFDR and Taxonomy Regulation requirements, it was criticized for creating new sub-categories of products and a lack of clarity which adds to the already complex legal framework.

On 14 December 2023, ESMA published an update to its November 2022 guidelines ("**Guidelines**").

Subject to a few but notable changes, ESMA intends to apply the Guidelines as first released. The changes include:

- funds which use sustainability-related terms. This category has changed significantly from the Guidelines. These funds must:
  - invest a minimum of 80% of funds in investments used to meet sustainability characteristics or objectives
  - apply EU Paris-aligned Benchmark ("**PAB**") exclusions
  - invest meaningfully in sustainable investments under Article 2(17) SFDR
- a new category for funds which use transition related terms:
  - EU Climate Transition Benchmark ("**CTB**") exclusions should be applied
  - invest a minimum of 80% of funds in investments used to meet sustainability characteristics or objectives
- measurability of transition and impact: funds using transition or impact-related terms should ensure that environmental or social impact generated by designated investments is measurable
- "E" terms are separated from "S" and "G" terms:
  - fossil fuel exclusions could be too restrictive for funds using only social terms
  - PAB exclusions should continue to apply to funds using environmental terms
  - if terms are combined in fund names, the rules apply cumulatively

ESMA will introduce the new rules under a mandate in the draft AIFMD II rules. The European Parliament and the Council are currently considering the AIFMD II rules, which are expected to come into force in Q2 2024. Once published, the ESMA fund naming rules will come into force three months later. Existing funds with ESG terms in their names will have six months to comply with the new rules.



ESAs Final Report on amendments to the SFDR RTS

On 12 April 2023, the European Supervisory Authorities (the "**ESAs**") published a joint Consultation Paper proposing amendments to the SFDR RTS (the "**Consultation Paper**"). The Consultation Paper was a response to a mandate the ESAs received from the Commission to review the SFDR RTS in the context of principle adverse impact and principle adverse impact indicators. Following the summer 2023 Consultation Paper, on 4 December 2023 ESMA published a final report including draft delegated regulation amending SFDR RTS (the "**Final Report**").

In the Final Report, the ESAs noted that the scope of their proposals goes beyond the mandate granted by the Commission. However, in the ESA's view, broader amendments are necessary to address issues that arose since SFDR RTS first entered into force on 1 January 2023. The Final Report proposes a series of wide-ranging amendments, including:

- extending the list of social principal adverse impact indicators
- refinement of other principal adverse impact indicator definitions, applicable methodologies, metrics and presentation methods
- new decarbonization targets disclosures
- for sustainable investments, enhanced disclosure requirements for do no significant harm ("**DNSH**") principle compliance
- technical adjustments to treatment of derivatives, calculation of sustainable investments, and provisions for financial products with underlying investment options
- amendments to pre-contractual and periodic report templates and the introduction of a new dashboard

The Final Report is separate from a broader review of SFDR that was announced by the Commission in September 2023 and the two public consultations that followed in late 2023. The European Commission has three months to consider the changes to SFDR RTS put forward in the Final Report. If the Commission endorses the ESAs' amendments, they will pass them to the European Parliament and the Council for approval. This would be the second round of amendment to SFDR RTS since they entered into force on 1 January 2023.

European Commission consults on a wider SFDR Framework

On 14 September 2023, the European Commission launched a consultation on SFDR which aims to assess how it has been implemented and to identify any potential shortcomings which require improvement. The consultation is composed of two papers:

- the first paper is a public consultation aimed at stakeholders with a general knowledge of SFDR. This paper focuses on the present requirements of SFDR and its interaction with other legal acts that form part of the EU Sustainable Finance Framework (the "**General Consultation**")
- the second paper is a targeted consultation aiming to gather feedback from stakeholders who are more familiar with SFDR and the EU Sustainable Finance Framework. This paper duplicates questions from the General Consultation and adds a series of more detailed questions on potential changes to the disclosure requirements for financial market participants and the potential establishment of a labelling system for financial products (the "**Targeted Consultation**"). Rather than setting out detailed proposals at this stage, the Targeted Consultation seeks views on broad topics on the existing framework and potential changes which range from small amendments to current rules to transforming SFDR into a labelling regime similar to the UK SDR

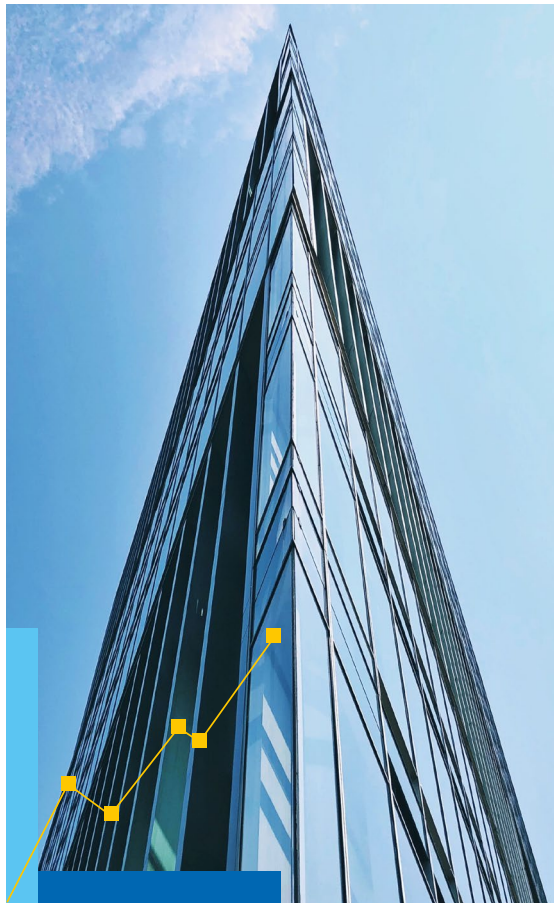
The consultations closed on 22 December 2023. The European Commission is currently reviewing the feedback provided.

Please click the links below to read our briefings:

Flash update: The ESAs publish the final report on amendments to SFDR RTS

Putting the plan into action: Implementation of SFDR by EU Member States





AIFMD II

On 25 November 2021, the European Commission published a proposal to amend Directive 2011/61/EU on alternative investment fund managers ("**AIFMD**") and Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (the "**UCITS Directive**"). The aim of the proposed changes is to modernize provisions on delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by alternative investment funds and to harmonize requirements of the AIFMD and UCITS Directive in certain areas. Despite the reforms applying to both AIFMD and the UCITS Directive, they have come to be referred to collectively, and somewhat misleadingly, as AIFMD II.

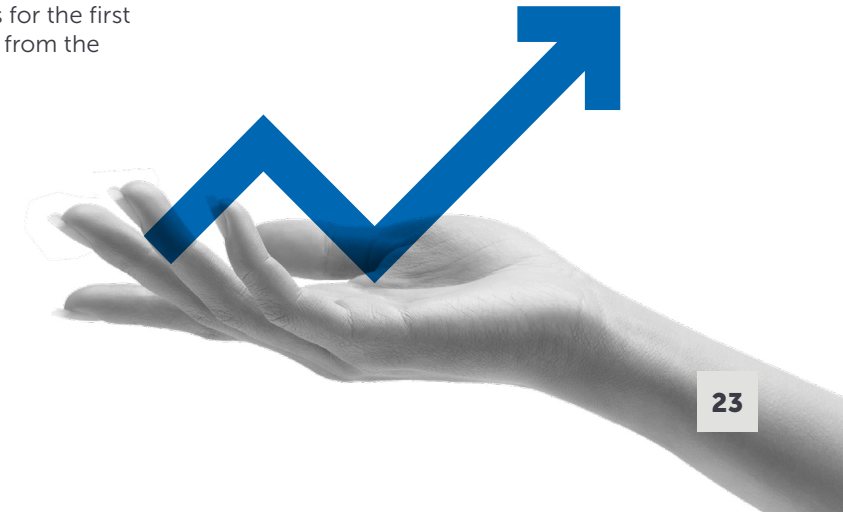
Nearly two years later, on 10 November 2023, the Council published the final text which is the result of a political agreement reached between the European Parliament, the Council and the European Commission in July 2023.

Key amendments include a new regime for loan originating AIFs and rules on the application and use of liquidity management tools which have proven to be necessary in the wake of the covid pandemic. AIFMD II also adds additional reporting and disclosure requirements for AIFMs and UCITS management companies, stricter delegation and substance requirements as well as additional disclosures to investors. Despite the strong support of the majority of stakeholders, AIFMD II does not include an EU-wide depositary passport. Instead, it sets out a limited framework for the provision of depositary services on a cross-border basis for smaller markets with limited access to depositary services. Amendments to the UCITS Directive are very similar to those proposed for the AIFMD. However, the revised UCITS Directive does allow for the provision of depositary services on a cross-border basis. It also introduces for the first time Annex IV reporting, well known from the AIFMD regime.

AIFMD II is currently pending formal approval by the European Parliament and the Council after which the final text will be published in the Official Journal of the European Union. Once published, Member States will have two years to transpose AIFMD II into national legal systems. This means that, subject to grandfathering provisions, AIFMD II is likely to be fully live from the first or second quarter of 2026.

It should be noted that at present the UK has no plans to adopt measures equivalent to AIFMD II and these reforms will create greater regulatory divergence between the EU and the UK.

Please click here to read our full report –
EU: Final text of political agreement on AIFMD II published



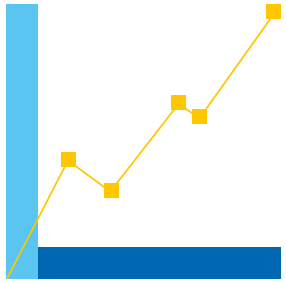
Horizon scanning

Every year we look ahead to evaluate whether there are any trends emerging in the market which may have an impact on private funds in the near future. This is an ever-evolving market and our chosen topics are by no means exhaustive.

Carbon credits

Carbon credits have been gaining popularity in recent years as an asset class. The benefits of investing in carbon credits are twofold – they are an investment with a market value, but they can also be used to offset carbon emissions of the holder.

There are two types of systems that generate carbon credits: voluntary and mandatory. Unlike mandatory carbon credits issued by a public body, voluntary carbon credits are not deemed to be eligible assets for direct holding in authorized funds, but can be held by unauthorized funds.



However, there are certain problems for private funds holding these assets:

- organizations that certify voluntary carbon credits are not public bodies or accredited and there is a lack of regulation governing the creation of these assets. This makes comparison and valuation difficult
- potential for a conflict of interest to arise between the fund manager and the investors if fund managers plan to retire them to gain the benefit of the carbon emission to hit internal targets, as this reduces the value of the carbon credit to nil, lowering the net asset value of the fund. A more palatable solution would be to instead transfer the carbon credits as an in-specie distribution to investors, but this also comes with custody issues given that custodians are not used to dealing with this asset class
- if a carbon credit is contingent upon its original source, for example a forest, continuing to exist, this could also pose risks and problems. This is because once the carbon credit has been transferred, there is no mechanism to stop the original source from being destroyed, potentially rendering the carbon credit meaningless from a carbon emissions perspective

The interest in carbon credits is global, with established and start-up GPs across all key fund jurisdictions testing the waters with fund launches which offer exposure to carbon credits. The range of options is vast and this market is in its infancy.

Carbon credits are clearly an asset class with promise and growing popularity in a world in which reducing carbon emissions is a priority. However, until there is more regulation and structure around them and their certifying organizations, the fundamental issues outlined above will persist.

Move into infrastructure

The private funds market in certain asset classes, in particular real estate, remains volatile and, despite some recovery, GPs that traditionally managed other asset classes are moving into the infrastructure market which appears to be a more stable proposition.

From a GP's perspective the challenge can be that managing a new asset class requires expertise which the GPs might not have in-house. Therefore, there appears to be increased interest in team lifts or mergers in this market.

Even within the infrastructure funds market, GPs are getting more creative with their offerings, with alternative foods, agriculture and aquaculture strategies growing traction.



Our 2023 deals



1. Advised NextEnergy Capital (NEC) on the structure and launch of its fifth investment vehicle NextPower V, which is also NEC's largest fund to date and a flagship OECD-focused solar strategy, targeting capital commitments of $1.5 billion with a $2 billion hard cap. Our teams in London, Luxembourg and the US advised the client on legal and tax.

2. Advised a Canadian investor on its $250 million investment in a climate infrastructure fund and related direct investment in a leading renewable energy company. A cross-border and multidisciplinary team advised the client.

3. Advised Charter Oak Capital Advisers on the formation of a $300 million carbon credit fund to participate in California carbon credits and in the formation of a $50 million carbon credit fund to participate in Washington State carbon credits.

4. Advised a leading real estate manager on the extension of their Luxembourg open-ended platform available to retail investors and the related liquidity management strategy.

FundsTrack means we can offer our clients a full service

The team advises fund managers and GPs on the establishment and ongoing management of investment vehicles. We advise GPs on structuring funds, co-investment vehicles, carried interest vehicles, parallel vehicles and segregated mandates. We assist from the structuring stage, through preparation of the fund documents to negotiating side letter terms with investors, assisting with closing and advising throughout the life cycle of the fund and its restructuring and winding-up.

We advise institutional investors including large public and private pension schemes, development finance institutions (DFIs), sovereigns, family offices, funds of funds, multi-managers and insurance companies on the full range of their investments. When acting for investors, this includes running the legal and tax due diligence on their proposed fund investments, through to negotiating fund terms in side letters, reviewing legal and tax opinions and assisting with closing mechanics and subscription documentation.

Our industry leading experience means we understand sticking points in negotiations and can resolve them efficiently and effectively, achieving the best possible outcome for our clients while limiting protracted negotiations. Our expert knowledge in this field, backed up by hard data, gives our clients the confidence to push for certain points while also not wasting valuable time and resources on points which are off market.

We have advised on hundreds of funds over the past ten years.

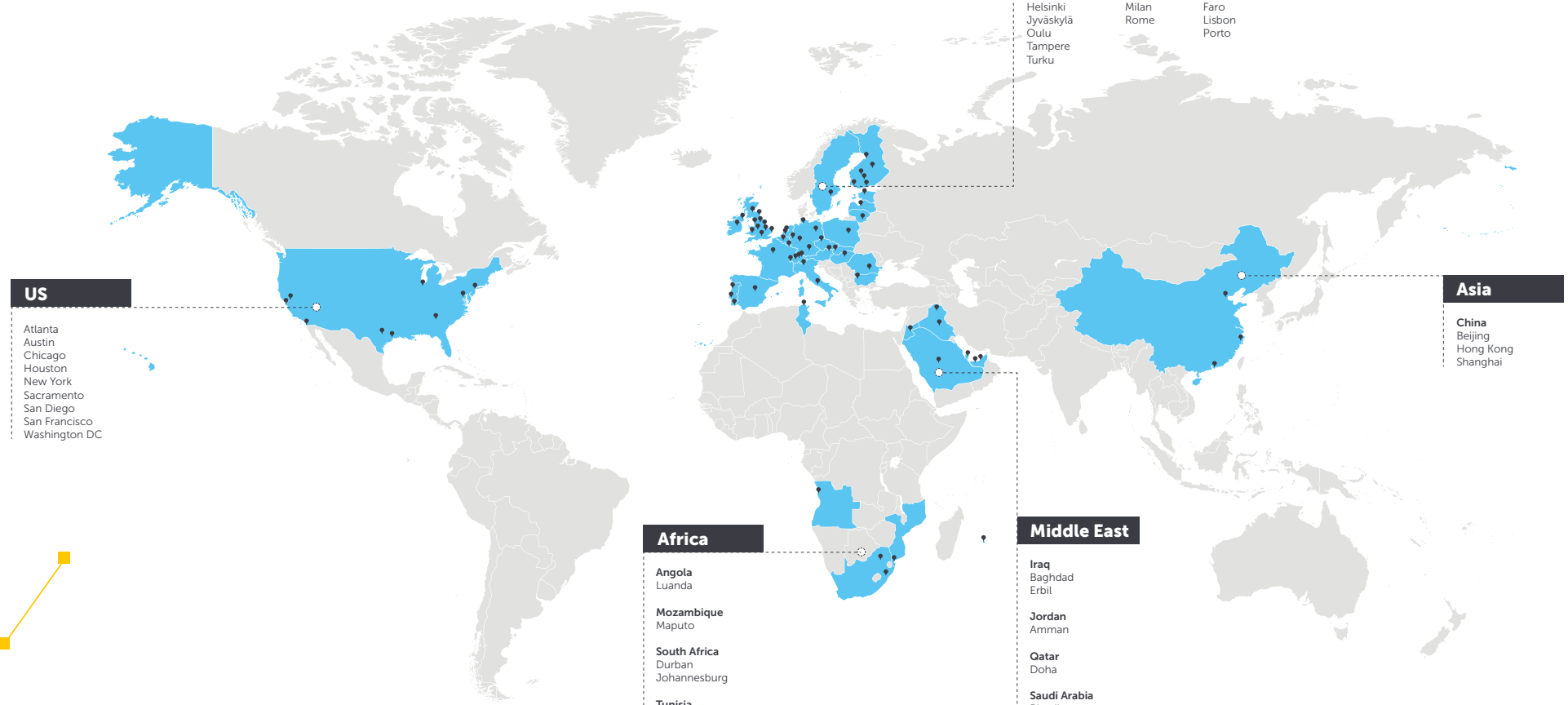








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Sofia

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Prague

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Tallinn

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Hämeenlinna
Helsinki
Jyväskylä
Oulu
Tampere
Turku

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Iraq
Baghdad
Erbil

Jordan
Amman

Qatar
Doha

Saudi Arabia
Riyadh

United Arab Emirates
Abu Dhabi
Dubai

Key contacts

Ireland

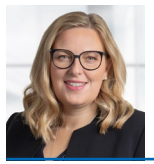


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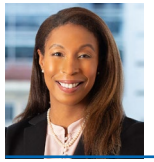


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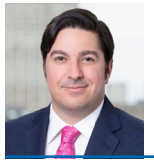
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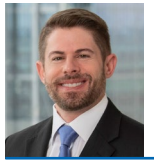
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