

The Hedge

A look back at the month's news, views and a little more

ESG

With regulators increasingly focusing in on ESG labels, can funds now become a force for good?

**Performance
News
Trends**

Regulatory updates

This month, hot off the back of COP 27, we turn to ESG with **AIMA**, **Simmons & Simmons**, **Perigon** and **Turnkey** to look at recent developments and the move to make the financial industry better ESG practitioners. We also have **Simmons & Simmons** writing about important upcoming changes to KIDs in Europe and UK.



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

EQUITY UP, MACRO DOWN AND CRYPTO WAY DOWN

The big story in November was the resurgence of equity hedge funds as global equity markets, particularly the US, rallied. For the macro managers, it was a different story, who for once this year, were on the backfoot as the USD weakened, central banks became more dovish, and oil markets dropped. At the back of the field, unsurprisingly, were the crypto managers. The **HFRI Fund Weighted Composite Index** closed the month up 1.0%.

The **HFRI Equity Hedge (Total) Index** was up 2.7%, led by **Quantitative Directional** managers up 6.0%, followed by **Fundamental Value** up 3.4%. In fact, all but one sub-strategy was up for the month, with the one outlier being **Energy/ Basic Materials**, down 0.7%. Most of these sub-strategies remain in firm negative territory for the year, with only two showing positive figures, **Equity Market Neutral** and **Energy Basic Materials**, up 0.6% and 5.1%, respectively.

Event Driven managers were likewise largely up, with the **HFRI Event Driven (Total) Index** ending the month up 0.8%. **Activists** and **Credit Arbitrage** were the best performing sub-strategies, up 2.8%, then **Special Situations**, up 1.7%. **Merger Arbitrage** was, however, down 0.8% for the month.

Macro was a different story as these markets weighed on this space, particularly for some of the largest managers. The **HFRI Macro (Total) Index** was down 2.7% but remains up 8.2% for the year - in the **HFRI 500 Macro Index**, the November figure was down 3.7% and up 13.0% for the year. **Systematic Diversified** was the worst-performing sub-strategy, down 5.22%, then **Active Trading** down 4.6%.

The **HFRI Relative Value (Total) Index** was up 1.1%, with the **Fixed Income Sovereign Index** leading by some distance, up 4.8%.

With so many crypto funds directly impacted by FTX and given the drop in crypto prices, the **HFR Cryptocurrency Index** dropped 13.5% for the month, taking the year's decline to 52.5%. This follows the 240% gain in 2021.

The fund of funds sector has a heavy equity bias, so there will be few surprises that the **Fund of Funds Composite Index** closed the month up 0.8%.

80,000

Number of UK traders caught-up in FTX bankruptcy

Source: FTX bankruptcy hearing

18.31bn

USD size of Blackstone's secondaries fund raise to date

Source: Secondaries Investor

MONEY HEADS TO COMMODITIES

Commodity hedge funds are once again back in vogue after several years in the wilderness, although the last month has been a more difficult market for these managers.

Bloomberg reports that money is flooding back to the sector, particularly to quant traders. Funds in this space include the \$1.7 billion **Quantix Commodities Alpha Fund** and the \$2 billion **Pimco Commodity Alpha Fund**.

Using **Bridge Alternatives** data, Bloomberg has written that the *'largest 15 commodity hedge funds have posted gains of 10.5% this year [to end October], following two years of returns above 20%'*

Macro funds are likewise chasing many of the same opportunities and have been rapidly expanding their commodities teams.

SKYBRIDGE FALLS TO EARTH

The future of **SkyBridge** hangs by a thread. Back in September, a third of the business was sold to **FTX**. But now, with the FTX bankruptcy, life has become very unclear. SkyBridge founder and CEO, **Anthony Scaramucci**, has been quoted as saying that this is the worst time ever for crypto and he may well buy the business back.

If Scaramucci is to repurchase the company, he has his work cut out, with the unwinding of FTX and its VC arm, **Alameda**, likely to take years - with multiple jurisdictions, entities and creditors. According to the **Financial Times**, there are around 500 investments on the books ([see list](#)).

Timing is an important trait in investing; unfortunately for Scaramucci, he got his timing very wrong. Over the past year, he pivoted SkyBridge funds increasingly away from their traditional markets to crypto and when he sold the stake to FTX, around \$10 million of the \$45 million paid was invested back into the now worthless FTT token, according to reports.

At the time, SkyBridge and FTX ties were exceptionally close. Only a few months ago, Fortune writes, *'Sam Bankman-Fried and Anthony Scaramucci were fundraising together in the Middle East'*

HIDING IN PLAIN SIGHT

The Times has opened the door to a very private yet highly successful London fund, **Quadrature Capital**.

This is a London-based quant fund that we feel we should all know - reason being, its profits for 2021 were larger than **Marshall Wace's** - £560.5 million in 2021 vs £481.6 million.

Based in the *'Cheesegrater'* building, Quadrature was launched by **Greg Skinner** and **Suneil Setiya** in 2010, both ex-DE Shaw, and today it has 98 staff.

Since 2018, the firm has not run external investor money.

Straight from **Chris Hohn's** charity playbook, central to their approach is the **Quadrature Climate Foundation** (QCF), an independent entity, which was founded in 2019 to tackle the climate emergency. To achieve this, QCF is looking to 'disrupt the current climate trajectory' and *'support those that have already or have the potential to demonstrate progress.'*

Over the past year, the fund has already donated a very impressive £117.3 million to the foundation and an additional £78.5 million in previous years.

Upcoming Industry Events

11 January

CFC St Moritz (digital assets and blockchain)

23-24 January

Pension Bridge: Private Markets Europe 2023 (UK)

30 January - 2 February

Global Alts 2023 (Miami)

[Click here](#) to see upcoming events

NEWS (cont.)

SCULPTING A NEW PATH

Sculptor Capital Management, the NYSE-listed multi-strategy hedge fund manager once called **Och Ziff**, is looking at its next steps.

The firm's share price has been a disaster this year, down over 55%, and allegations are being thrown around by the founder **Dan Och** about the CEO, **Jimmy Levin**.

Additionally, there has been a public dispute over Levin's compensation, which according to a court filing, was a staggering \$145.8 million in 2021 (although small change compared with **Chris Hohn's** \$690

million!). It is all getting very messy, to the extent that the **Financial Times' Robin Wigglesworth** believes that this would make for a good episode of Succession.

The result is a 'special committee to explore potential transaction' with third parties, which will allow the unhappy shareholders - namely Och and his crew - to exit.

CITADEL UP 32%

Citadel, the fifth largest hedge fund manager, is set for a record year, with the flagship Wellington Fund up 32% to end of November and is now up 172% over the past five years. Citadel's Global Fixed Income Fund is up 28.1% this year, Citadel Tactical Trading up 22.4% and Equities Fund up 17.8%. In comparison, **Millennium International** is up 10.2% this year and many of the big brand equities funds down double digits.

Ken Griffin has celebrated the end of year in usual style, flying all employees from Citadel and Citadel Securities to Miami from around the world, where they have been treated to **Coldplay** and **DJ Diplo**, amongst others, as well as 'three days of celebrations' at Disney World, according to **Reuters**.

MICROSOFT #1 HOLDING

According to **Goldman Sachs's** latest **Hedge Fund Trend Monitor**, **Microsoft** (down 24% YTD) is now the most commonly held top stock among large hedge funds. Of the 786 hedge funds monitored by Goldman, representing \$2.3 trillion of gross equity positions, 82 have this as a top ten holding. **Amazon** (down 44% YTD) and **Alphabet** (down 30% YTD) follow as the second and third largest holdings.

TWITTER \$

Last month we wrote about funds profiting from their investments in **Twitter**. It is now clear from regulatory filings that investors have made far more than we initially thought. Forbes reports that **Citadel Advisors**, **Millennium Management**, **DE Shaw**, **Farallon Capital** and **Third Point** all had significant positions. **Carl Icahn** said, "you didn't have to be a genius to realise [Musk] was going to finish the deal," a throwaway line you can comfortably say after taking a \$240 million profit. Another manager, **Pentwater Capital Management**, walked away with a chunky \$324 million profit.

CHINA & BRIDGEWATER

Many managers have come unstuck in China over the past few years. Even the almighty **Bridgewater Associates** has found it a tough nut to crack. Looking at the firm's 13F filings, it has seen an 11% fall in value from its 44 US-listed Chinese equity investments during the third quarter. **Ray Dalio**, however, remains a China bull. While he acknowledges that there are ongoing problems of Covid and debt, he was quoted at the **Greenwich Economic Forum** in October as saying that the "longer-term picture in China is still bright."

CHINA FLOWS

Lock-downs, slowing growth and widespread demonstrations have sapped investor confidence in China. After experiencing years of elevated investor flows, China's private capital markets appear to have dried-up. According to **Preqin** data, China-focused private capital fundraising was \$115.9 billion in 2021, compared with this year's paltry \$21.5 billion.

DOUBLE DOWN

Cathie Wood believes that some of today's discounts are just too big to ignore. This accounts for **ARK Investment Management** buying more than 315,000 shares in the **Grayscale Bitcoin Trust** for the **ARK Next Generation Internet ETF**. It also comes as the \$10 billion Trust sits at an unprecedented discount of 45% relative to its value, having sunk even lower after the **FTX** bankruptcy and ongoing security concerns. Year-to-date the Trust is down around 75%, while ARK ETF is down 60%.

NEWS (cont.)



SEARCHING FOR MAGIC DUST

The big activist story of the past month was the return of **Bob Iger** as the **Walt Disney** CEO and downfall of the incumbent **Bob Chapek**.

The move to bring Iger back, who was previously CEO for 15 years, is firmly aimed at appeasing some of the activist shareholders. These include **Dan Loeb's Third Point**, which has increasingly been turning the screw on the firm.

Disney's share price has been disappointing, down almost 40% this year, with sizeable losses coming from its

streaming services.

The latest CEO development comes just a few weeks after **Nelson Peltz's Trian** bought more than \$800 million in shares, although Trian has said that Iger should not be back in control of the company.

Earlier this year, Third Point increased its stake in the firm and was agitating for big changes across the firm, with the first success being the addition of **Carolyn Everson**, former **Meta** exec, to the executive.

ALPHABET SOUP

The other activist story of the past month was **TCI** and **Alphabet**. In a letter to **Sundar Pichai**, **Google** CEO, TCI called for costs and headcount to be cut.

With a \$6 billion position in the business and being TCI, Alphabet should take note and shares rose 5% on this development. This comes at a time when tech businesses have been forced to restructure. Alphabet in October has already announced it was aiming to reduce hiring by more than 50% but TCI wants more.

POWER OF INNOVATION

A new UK fund launch in November was **Innovation Investment Capital**, an Alternative Investment Fund created to provide long-term capital to innovative businesses within the Cardiff region. This fund is backed in the first instance by **Cardiff Capital Region**, which has injected an initial £50 million, with further funding expected to come from co-investors. The launch was in Cardiff at the Principality Stadium on 15 November, with **PwC** sourcing and running the due diligence on the investments and **Capricorn Fund Managers** providing the Alternative Investment Manager structure.

David Davies, Secretary of State for Wales, launching Innovation Investment Capital

Money Maze Podcast

Est. 2020

Venture Capital Miniseries



Over the last two decades, low interest rates and the tech boom have resulted in significant growth of the venture capital industry. VC firms are behind some of today's most innovative and exciting businesses, notably in software, biotech, energy and consumer products. To explore the world of venture capital, we have looked at a handful of organisations providing critical capital to early and growth-stage companies.

In the first episode of our four-part series, Simon speaks to **Dame Kate Bingham**, Managing Partner of **SV Health Investors**. She describes the revolutionary changes to have taken place in medical research, which have allowed us to move from primarily focusing on the symptomatic treatment of disease to targeting the underlying pathologies. She summarises the key challenges and opportunities in biotech, and explains what the future may look like for the sector. She then reflects on her time as Chair of the **Vaccine Taskforce**, where she served under **Boris Johnson** to co-ordinate the creation and distribution of a vaccine for COVID-19.

In the second episode of this series, we featured **Roberto Italia**, CEO of **Verinvest**, which launched in 1995 with backing from the families behind **AB InBev**. Their portfolio includes brands

such as **Oatly**, **Tony's Chocolonely**, **Vita Coco**, **Pedego** and **Chewy.com**. In this discussion, Roberto explains how Verinvest helped support Oatly's international expansion and why they've invested in the pet care and e-bike sectors. He then shares his thoughts on adapting to the macro challenges, investment holding periods, exits and consumers' changing appetites.

In the penultimate instalment, we welcomed one of the world's greatest baseball players, and now seasoned VC investor, **Alex Rodriguez** (better known as A-Rod). He played 22 seasons in Major League Baseball and twice broke the sport record for the most valuable contract signed. Since retiring from baseball in 2016, he's focused on his finance career as CEO of **A-Rod Corp**. The firm has stakes in 30 companies, including **Snap Inc**, **Vita Coco**, **Wheels Up** and **Hims & Hers**, as well as a real estate portfolio. In this episode, he reflects on both his sporting and finance career, sharing some key case studies and lessons learnt.

We wrapped up this series with **David Haber**, GP at **Andreessen Horowitz (a16z)**, one of the world's most highly respected software-focused VC firms. Before joining a16z, David was the Founder and CEO of **Bond Street**,

a fintech firm acquired by **Goldman Sachs** in 2017. He shares with us some case studies of their investments in fintech, before describing how they engage with firms of various sizes and how they're adapting to the current macro conditions.

Established in 2020 by two finance industry veterans, **Simon Brewer** and **Will Champion**, the **Money Maze Podcast** features some of the biggest names in investment management, finance & business. Through direct, entertaining and insightful interviews with masters of the real life money maze, it aims to help listeners learn about the different approaches to allocating capital and better navigate the pitfalls that line the path to prosperity. Whether you're a current or aspiring investor, entrepreneur, professional or student exploring career options, we hope you gain some helpful insights and enjoy the show.

To listen, search 'Money Maze Podcast' on any major podcast app or YouTube. You can also find out more via www.moneymazepodcast.com.



NEWS (cont.)

CARLYLE'S PROFITS FALL

Carlyle Group released its third-quarter results on 8 November, which were above Wall Street estimates, but still saw profits fall by 47%, and the shares dropped by 7.5%. The interim CEO, **William Conway**, who stepped in when former boss Lee resigned in August, described this environment as "volatile".

Fundraising has been more difficult for Carlyle than competitors, having raised new commitments of \$6 billion during the quarter, compared

with \$10 billion in the previous. The **Financial Times** report that this is 'far below the amounts gathered by US private equity rivals,' with **Blackstone** raising \$45 billion, **Apollo Global Management** \$34 billion and **KKR** \$13 billion.

Carlyle's total assets under management stand at \$369 billion, up 23% year-to-date.

BLACKSTONE CLOSING ON \$20BN FUND

Blackstone is closing in on \$20 billion for its private equity secondaries fund, **Blackstone Strategic Partners IX**. This is a flagship offering and significantly above the initial target of \$13.5 billion. According to **Secondaries Investor**, it has raised as much as \$18.31 billion so far. This is an impressive fund raise in a tough environment, as Blackstone COO **Jonathan Gray** said: "The overallocation to private equity makes fundraising more challenging... [which] means that those same institutions are now thinking more and more about selling in secondaries."

SOFTBANK GOES DEFENSIVE

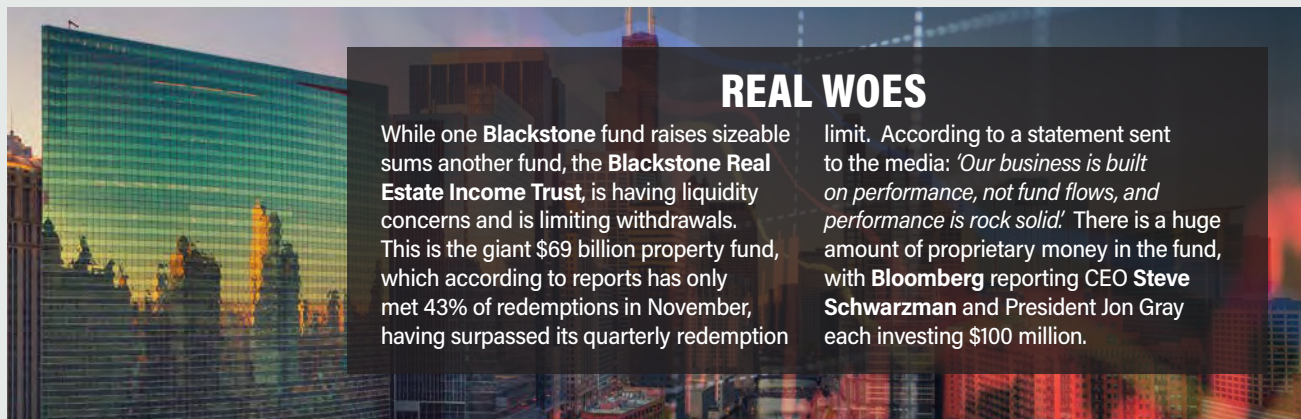
On 11 November, **SoftBank's Vision Fund** reported losses of ¥1.02 trillion (\$7.2 billion) for the third quarter. Of these losses, China's **Sense Time** was responsible for ¥364 billion and **Doordash Inc** ¥225 billion. SoftBank Group did, however, report a net profit of ¥3.0 trillion for the same period, compared with a loss of ¥3.1 trillion the previous quarter. This was primarily the result of selling part of its **Alibaba Group** investment.

Given the current environment, founder **Masayoshi Son** said that the firm is now playing "defensive" and he will now be taking a back seat, "delegating" CFO **Yoshimitsu Goto** to take the "helm". Son will instead focus on "aggressively" growing **Arm Limited**.

This year has actually been a reasonable period for SoftBank, with the shares up around 10%, having at one point been up

27%, although they are still down 40% from their absolute peak in 2021.

SoftBank has also had an accident-prone few years with some of its investments, including **WeWork**, which lost around 90% of the \$10.3 billion invested (source **Bloomberg**), and most recently a \$100 million loss from its **FTX** investment.



REAL WOES

While one **Blackstone** fund raises sizeable sums another fund, the **Blackstone Real Estate Income Trust**, is having liquidity concerns and is limiting withdrawals. This is the giant \$69 billion property fund, which according to reports has only met 43% of redemptions in November, having surpassed its quarterly redemption

limit. According to a statement sent to the media: 'Our business is built on performance, not fund flows, and performance is rock solid.' There is a huge amount of proprietary money in the fund, with **Bloomberg** reporting CEO **Steve Schwarzman** and President Jon Gray each investing \$100 million.

CRYPTO

WIPED OUT BY FTX

Ikigai Asset Management, a crypto fund launched in 2018, has been wiped out by the **FTX** bankruptcy. With the majority of the fund's total assets sitting on FTX, the business clearly cannot continue to operate, and it joins a long list of creditors.

As **Travis Kling**, founder and Chief Investment Officer, tweeted, the firm

had got very little out when they tried to withdraw assets and now "we're stuck alongside everyone else." He went on to add, "I have publicly endorsed FTX many times and I am truly sorry for that. I was wrong."

Another fund, **Galois Capital** had exposure of around \$45 million. It remains

to be seen which other crypto funds were caught up by FTX, with **Blockworks** writing that somewhere between 25% and 40% of cryptocurrency-focused hedge funds were exposed to FTX or **FTT**, many of which earlier this year were the best-performing market funds.

CRYPTO (cont.)

THE FALLOUT FROM FTX WILL TAKE A LONG TIME TO FIX

There have been plenty burnt by the fallout from **FTX**. What has happened should be the wake-up call the crypto sector needed for greater transparency and increased regulation.

Investors included some of the biggest and best-known in the world. A snapshot shows **Tiger Global** down for \$38 million, **SoftBank** \$100 million, **Paradigm** \$278 million, **Sequoia** \$210 million, **Temasek** \$275 million, **Ontario Teachers** \$95 million and **Thoma Bravo** \$130 million. While **ThirdPoint Ventures**, **NEA**, **Iconiq Capital**, **Millennium Management**, **Brevan Howard** and **Altimeter Capital Management** all participated in recent funding rounds.

These are all investors that every fund and business dreams of getting in front of - they have the most capital to deploy, and from their side, they have the most demanding criteria and lay down some of the most onerous terms. And yet they all fell incredibly short in FTX. What's extraordinary is how founder and CEO **Sam Bankman-Fried** pulled the wool over their eyes and how quickly his business unravelled to reveal such a dud carcass of a structure that should never have cut the mustard with any of them.

Yes, hindsight is wonderful but the red flags were plentiful. Was it a case of FOMO - a tulip-type mania - the need to be in rather than out? Sequoia even penned a 13,000-word article on the wonders of FTX, that has been removed from their website, and was particularly impressed by Bankman-Friedman, who was then still in his late 20s, playing *League of Legends* during the negotiation process.

Bankman-Friedman should have been the one wowing the funds and the bankers, yet in this case, his charisma and vision shone through and, instead, it was down to these same funds and bankers to wow him as to why he should take their money. These investments have all now been written down to zero and no doubt the responsible individuals have joined former **Twitter** employees in the hunt

for new roles.

According to **John Ray III**, the new CEO of FTX (ex-**Enron** bankruptcy), this was a "complete failure of corporate controls [and] absence of trustworthy financial information." The FTX story is going nowhere fast, and it will continue to be the story over the coming months and even years.

Disentangling the business will take more than liquidators, given the multi-jurisdictional locations of this business (see list) and the nature of the underlying investors beyond the big institutional players. **Law 360** writes that an "international fight over control... playing out in three jurisdictions... will have far-reaching impacts on how creditors might receive recoveries." There will be more class actions and individual lawsuits; it is a mess.

This was a business valued at \$32 billion earlier this year and is worth next to nothing today as it unravels, and there are still around 100 affiliated firms, many of which have solvent balance sheets.

With his vision, apparent rock-solid business and 'tech look', Bankman-Friedman epitomised 'genius', mesmerising some of the best-known and hardest-nosed investors. These same investors need to take a long hard look at their due diligence processes.

Hopefully, there will be lessons learnt, but the financial community tends to have short-term memories. We have seen this type before - just look at **Elizabeth Holmes** and **Bernie Madoff** - ultimately, there will always be individuals selling snake oil. As one of my old bosses said, describing Madoff: "If they are too good to be true, they probably are too good to be true."

CRYPTO (cont.)

WHERE NEXT FOR VC CRYPTO CASH?

For the last few years, the venture capital community has been ploughing money into the crypto space. According to **Institutional Investor**, around \$41 billion has been invested over the past 18 months.

It is not too hard to see why this was the direction of the money - in 2021 the sector grew by six times to \$3 trillion. In May alone, there were several big fund launches, including **a16z** raising \$4.5 billion for its fourth cryptocurrency fund and former a16z partner **Kathryn Haun's** \$1.5 billion for **Haun Ventures** to invest in start-up equity and tokens issued by these same start-ups.

With the **FTX** debacle and chastened investors, this is now going to be a far tougher market to crack. Taking a line from **Eyal Malinger** from **Beringea**, a transatlantic VC firm, in the same *II* piece: "It was easy to raise money, but what's going to happen with all that money... There are few places where crypto can be interesting and add value."

ACKMAN BACKS CRYPTO

Bill Ackman is one of the few big investors in recent weeks to come out and publicly back crypto at a time when most people are hiding or throwing mud at the sector. According to **Cryptoslate**, Ackman has said that he has investments in several crypto ventures, including **DIMO**, **Goldfinch Finance** and **Origyn**. Ackman also has investments in seven VC funds and has a couple of direct investments. In total, he says that these account for less than 2% of his assets. Ackman believes that 'crypto has the potential to benefit society,' but it does need "sensible regulation and oversight."

MAN LAUNCHES CRYPTO FUND

While timing is not great, **Man Group** has launched its first dedicated crypto fund. This is through **AHL**, with **Bloomberg** reporting that this will be ready for the end of the year. This has been developed by **Andre Rzym**, partner and portfolio manager. AHL already trades cryptocurrency futures. Unsurprisingly, given everything that has happened in recent weeks, there was no public comment from Man Group on this news.

CANADIAN PAIN

Crypto has seen a fair number of casualties over the past few months. Two of which are leading Canadian pension funds.

Ontario Teachers lost \$95 million in **FTX** and **Caisse de depot et placement du Quebec** \$150 million in **Celsius Network**. Heads have or will undoubtedly roll.

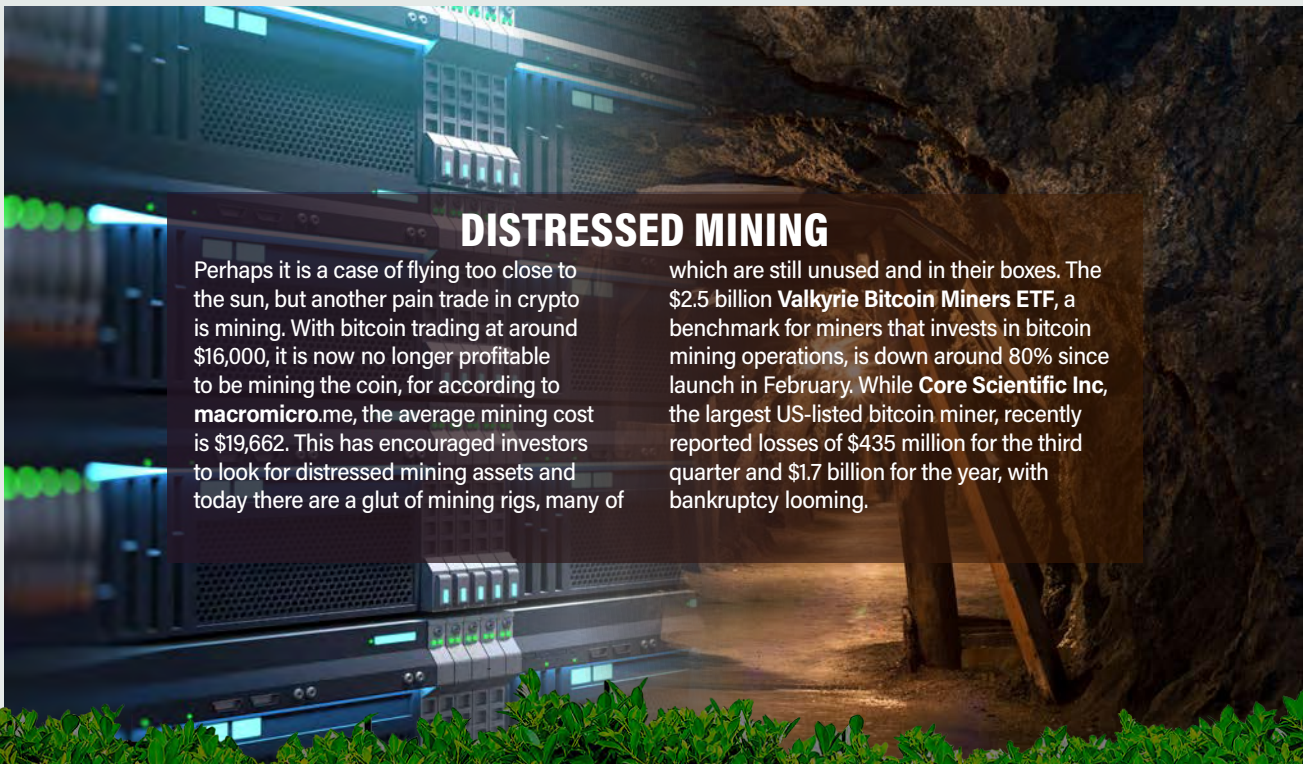
Commenting on these investments, **John Rekenhaller**, vice president of research at **Morningstar**, said that there are 'serious questions around due diligence' and "that's part of the judgement call that the pension fund manager has to make."

CONTAGION

Ken Griffin was, until earlier this year, a prominent critic of crypto and had long been calling out investments in this space. In March, however, he appeared to have a change of heart and had come round to its merits, saying he was wrong.

With everything that has been going on with **FTX**, Griffin has once more reaffirmed his bearish stance. Speaking at the **Bloomberg New Economy Forum** in Singapore, Griffin said that the fallout goes beyond just crypto and "undermines trust in financial markets."

Another vocal critic is **Mark Mobius**, who believes bitcoin may well fall to \$10,000 and a deep sell-off in crypto is likely to drag down global stock markets.



DISTRESSED MINING

Perhaps it is a case of flying too close to the sun, but another pain trade in crypto is mining. With bitcoin trading at around \$16,000, it is now no longer profitable to be mining the coin, for according to **macromicro.me**, the average mining cost is \$19,662. This has encouraged investors to look for distressed mining assets and today there are a glut of mining rigs, many of

which are still unused and in their boxes. The \$2.5 billion **Valkyrie Bitcoin Miners ETF**, a benchmark for miners that invests in bitcoin mining operations, is down around 80% since launch in February. While **Core Scientific Inc**, the largest US-listed bitcoin miner, recently reported losses of \$435 million for the third quarter and \$1.7 billion for the year, with bankruptcy looming.

Knowing how and where to position your business has never been more important to stand out and raise funds in this environment.

Branding

Building and strengthening a firm's identity to tell a clearer story.



Marketing

Developing and updating collateral to enhance a firm's offering.



Writing

Editing and/or writing materials, commentaries, thought pieces.



Design

Designing PPTs, documents, infographics, adverts.



Website

Scoping, design, development and SEO for websites.



Comms

Reactive and proactive, external and internal communications.



For further information contact the team at TheHedge@brodiecg.com

ESG

GOOD COP... BAD COP

It has never been more critical for funds and managers to have a robust ESG policy. It is no secret that the doomsday clock is ticking. We all know change is required, but all too often, it is something to look at tomorrow, and then it will be too late.

Unfortunately, many ESG funds have disappointed, having underperformed this year, although they are certainly not alone.

The threat of greenwashing is also too common. If an investor wants to buy a green fund, they need to be confident that it is doing what it says. **Morningstar** made it clear earlier in the year that this was not the case - but it is probably just the tip of the iceberg.

There is a great deal of global posturing, but how many **COPs** will it take to enforce change? If this is our annual alarm clock, which we promptly put on sleep mode, then it is no good to us whatsoever.

It will only be by mandating immediate change that you will see a real difference. Most institutional managers are trying but not always effectively. Perhaps this is style over substance - ultimately, policies and procedures must be the same.

This year, ESG has fallen off the radar. There have been various good initiatives and fund launches, but they are mostly small, and many are more of a sideshow. Actions, macro and mainstream, where you are talking to trillions of assets rather than billions, need to take place to see real change.

We need priorities and positioning, and we need to stick to them.

One of the most prominent advocates of ESG was **BlackRock**. Every action and utterance was about the E, the S or the G. Yet earlier this year, the asset manager partly pulled back, describing climate-related shareholder proposals as being *'too prescriptive'*.

Unfortunately for BlackRock, they are now somewhere in the middle, with a somewhat confused position, which is not ideal when we need leaders in this space. On the one hand, they have seen investments pulled by the likes of Florida, Louisiana and Missouri who see ESG as being *"prioritised"* over shareholder returns; while on the other they have been pilloried by Democrats who think they have not gone far enough.

Change will only come about as more funds on-board ESG principles to the extent that not doing so will appear abnormal. This had seemed to be the case at the start of this year. It is only with this that you will see better performances.

Change is required today. The problems are not disappearing - China has pumped out more pollution in the past eight years than Britain has since the industrial revolution. The fragility of our world, particularly catalysed by the geopolitical ructions we are currently experiencing, has never been more apparent.

As a final note, one of the other problems is complexity. There are still too many ESG structures and acronyms. It needs to be more accessible, more unified and better understood. There are, however, promising developments on this front, as you will see in the **Perigon Partners** article.

GOLDMAN FINED FOR ESG FAILURES

Goldman Sachs has been fined \$4 million by the SEC for ESG investment policy failures.

According to the **SEC**, the asset management unit had *'several policies and procedures failures involving the ESG research its investment teams used to select and monitor securities.'*

Andrew Dean, co-head of the SEC's asset management enforcement division, added: *"[These] actions reinforce that investment advisers must*

develop and adhere to their policies and procedures, including ESG research."

This dates back to between April 2017 and February 2020. Goldman did not admit or deny guilt in paying the fine.

Regulators are taking a far closer interest on ESG claims and procedures, with another example being **Deutsche Bank's DWS**, which was investigated earlier this year by the SEC and **BaFin** over accusations of greenwashing.

ARTICLE 9 OVER ARTICLE 8

There was an interesting story in the **Financial Times** on the direction of flows to green funds. Taking **Refinitiv Lipper** data, the paper found that in the nine months to the end of September, Article 8 products saw outflows of €173 billion, while Article 9 funds saw net flows of €32.8 billion.

As a reminder, Article 8 funds promote environmental or social characteristics, while Article 9 target sustainable investments and have a specific objective.

These flows are perhaps indicative of the **Morningstar** clear-out from earlier this year, which saw 1,200 funds removed from the sustainable list for effectively greenwashing.

It also makes a good case for funds upping their game to Article 9 and employing a greater ESG focus. As **Patrick Wood Uribe**, Chief Executive of **Util**, commented, *"there is huge potential for much better products that do the job better."*

CHINA FUND INFLOWS

According to **Morningstar Direct** data, China-domiciled sustainable funds saw net inflows in the third quarter for the first time this year.

During this period, there were 24 sustainable fund launches, totalling \$3.7 billion, compared with 23 in total for the previous two quarters.

The largest of these was **E Fund CSI SEEC Carbon Neutral ETF**, which launched with \$374 million.

Although these are

reasonable numbers, according to **Dean Wang**, Morningstar China analyst, the take-up has been slow. He added: *"ESG adoption in China still faces challenges due to low awareness of ESG investing... encouragingly, the Chinese regulator has been promoting greater ESG adoption among asset managers."*

OPINION

EXPLORING HEDGE FUNDS' CONTRIBUTIONS TO THE RACE TO NET-ZERO

Investors' interest in whether hedge funds have established net zero investment strategies and targets is on the rise, with questions about the firm- or product-level net zero targets increasingly featuring in the due diligence process. This is incentivising hedge funds to consider how the net zero philosophy might work in the context of their investment strategies. As traditionally, net zero commitments and reporting have been focused on a specific model of long-term, buy-and-hold, engagement-heavy equity investing. But, things are slowly shifting.

HOW HEDGE FUNDS INCORPORATE NET ZERO COMMITMENTS

Something that differentiates hedge funds from long-only products is their ability to use more sophisticated investment tools and techniques, including short positions and derivatives. AIMA argues that this sophistication could ultimately give alternative investment managers the edge when it comes to sustainable investing.

Short selling, for example, can be an excellent tool for achieving two common goals of contemporary responsible investment: mitigating undesired ESG risks, and, when taken in aggregate, creating an economic impact by influencing the nature of capital flows through 'active' investing. We've seen a growing industry consensus that disclosure to investors of both long and short exposures to ESG risks is vital to allow them to fully assess how their investment managers are doing when it comes to sustainability considerations.

How specifically shorting should be handled in the context of net zero commitments is currently the subject of a lively debate in the industry. This is welcome. For AIMA's part, we are focused on ensuring that how hedge funds report to end investors provides sufficient detail about the approach they follow and what its strengths and limitations are.

THE CHALLENGES

Investment managers must confront the challenges that arise in articulating a net zero target for an alternative investment strategy.

A net zero commitment entails defining what share of AUM will be managed in line with net zero by 2030, with a view to achieving 100% coverage by 2050.

In the meantime, setting a credible interim target is not straightforward for a high turnover portfolio that might change radically in terms of its composition by that date (not an issue that long-only, index tracking portfolios have to grapple with, given they enjoy much less freedom than hedge funds in terms of what they invest in).

Equally, a hedge fund might invest in asset types for which methodologies for assessing emissions and emissions reduction plans are much less developed, including sovereign investments. These challenges will take time to resolve, but the desire to confront them is building.

REGULATING INVESTMENT MANAGERS' ESG APPROACHES

Future regulations, such as the FCA's Sustainability Disclosure Requirements (SDR), will need to properly accommodate a range of investment strategies to have the best prospect of supporting the transition to a net zero economy. We've argued that regulation should not ignore the impact of short positions and derivatives exposures and that further thought should be given to the question of how firms should report on these under climate or sustainability reporting requirements.

AIMA has also underscored the point that any future regulation of investment managers' ESG approaches should be based on the principle of materiality, whilst also acknowledging the reality that investment managers can only report on their ESG exposures if the corporates in which they invest are reporting comprehensive data on ESG factors. This has important implications for the sequencing of rules.

Finally, regulators should be mindful of the risk that poorly crafted disclosure rules could heighten greenwashing risks, particularly if regulation is based on unclear product boundaries or classification systems.

Jack Inglis, CEO - AIMA



Jack Inglis, AIMA

We've argued that regulation should not ignore the impact of short positions and derivatives exposures and that further thought should be given to the question of how firms should report...

Jack Inglis, AIMA

OPINION (cont.)

COMPLYING WITH THE NEW FCA CLIMATE-RELATED DISCLOSURES

Hedge fund managers, particularly those with ESG oriented funds, have been kept busy complying with the EU's SFDR (Sustainable Finance Disclosures Regulation). However, work doesn't stop there for many UK managers with the FCA's TCFD requirements next on the compliance to do list, and the Sustainability Disclosure Requirements (SDR) and investment labels regime on the horizon.

The FCA has introduced new climate-related financial disclosure requirements, which apply to UK hedge fund managers and other UK investment managers.

The FCA's disclosure rules are aligned with and based on the existing recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). The FCA has implemented these rules as part of the UK Government's Roadmap towards mandatory climate-related disclosures across the UK economy by 2025.

The new rules are a significant development in the ESG regulatory landscape and create material new obligations. Compliance with these rules will require in-scope firms to make mandatory disclosures, both quantitative and qualitative, on climate-related matters, including risks and opportunities, and certain climate metrics.

Compliance may require implementation of new reporting processes, and potentially a broader re-evaluation of the firm's approach to climate risks. For firms that are already complying with TCFD recommendations on a voluntary basis, it will be important to assess whether such voluntary reporting is in compliance with the specific requirements and scope of the FCA rules.

The rules came into force for a small number of firms on 1 January 2022 (broadly speaking, firms with more than GBP 50 billion of AuM), with the first reports for those firms due by June 2023. For other in-scope firms, the rules will come into force on 1 January 2023, with the first reports due by June 2024. The new disclosure obligations will not apply to firm which has less than GBP 5 billion of assets under management.

Firms subject to the rules must satisfy two parallel new disclosure obligations:

1. a report prepared at the level of the investment management firm, in respect of its investment management activities (TCFD entity report) and
2. a report prepared at the level of each in-scope investment product (funds, managed accounts) managed by the firm (TCFD product report).



Significantly, unlike many SFDR obligations these reports are not triggered by managing sustainable or green oriented funds and apply regardless of the strategies being employed.

The TCFD recommendations are based around four key policy themes:

- **Governance:** The organisation's governance around climate-related risks and opportunities
- **Strategy:** The actual and potential impacts of climate-related risks and opportunities on the organisation's business, strategy and financial planning
- **Risk Management:** The processes used by the organisation to identify, assess and manage climate-related risks
- **Metrics and Targets:** The metrics and targets used to assess and manage relevant climate-related risks and opportunities

The TCFD annual report must be consistent with the four recommendations described above and also eleven recommended disclosures set out in the TCFD Final Report.

The TCFD product report disclosures comprise both a number of core metrics, and a set of additional metrics. For example, the core metrics are:

- Scope 1 and 2 greenhouse gas emissions
- Scope 3 greenhouse gas emissions
- Total carbon emissions
- Total carbon footprint
- Weighted average carbon intensity

These disclosures must be supported by contextualised information, such as explaining how the metrics should be interpreted and their associated limitations (for example, if particular assumptions or proxies have been used) and a historical time series for comparison (after the first year).

There is no mandatory format for the TCFD entity reports or TCFD product reports. (This is different to the EU SFDR, which prescribes the use of mandatory templates for certain key disclosures). Firms may therefore wish to develop their own reporting template, or purchase templates from third party service providers.

Lucian Firth, Partner, Simmons & Simmons

“The new rules are a significant development in the ESG regulatory landscape and create material new obligations.”

Lucian Firth, Simmons & Simmons

OPINION (cont.)

THE IMPACT OF DATA AND TECHNOLOGY ON ESG STRATEGIES

At **COP27**, we saw an increased urgency in the need to tackle ESG and climate change. Policymakers, regulators and businesses are facing numerous challenges, including the perception of greenwashing, managing climate risks and accelerating the adoption of technology across the world.

The role of technology is vital in creating new opportunities for businesses to overcome these challenges. The rapid development of ESG technology and data management tools is reflected in our wider society, which has become far more sophisticated and tech-savvy. In addition, consumers, employees and investors are now more connected and engaged in environmental and social issues. So, what is the impact of technology on ESG and how can businesses use it to accelerate their sustainability journey?

BUILDING A RELIABLE ESG STRATEGY

According to a 2021 study by **IBM**, 90% of consumers said that the pandemic affected their views on environmental sustainability, with 71% of employees and employment-seekers saying that environmentally sustainable companies were more attractive to them as employers. A 2022 survey by **Navex Global** found that 83% of respondents agreed that a business's brand reputation is impacted by ESG factors.

It's clear that the societal shift in recent years to a more environmentally-focused global ethos has meant consumer habits and attitudes are changing; people care more about the ethics of the companies they do business with, and as organisations change to keep pace with this there will, undoubtedly, be impact across supply chains, investment networks and even staff recruitment and retention. Therefore, businesses must build a long-term strategy to manage ESG risks, identify and track reliable ESG data and improve outcomes that affect consumers, stakeholders and investors.

MANAGING ESG RISK USING RELIABLE DATA

Companies will need reliable data to help tackle some of the biggest issues and risks facing society. According to a recent study by **EY**, in the finance sector alone, 74% of organisations have already seen an acceleration from traditional financial

reporting to enhanced corporate reporting models that include ESG reporting. The solution to effectively tackle ESG risks lies predominantly in technology, according to **Peter Hirsch**, Head of Sustainability at urban sustainability fund **'2150'**: "Businesses are leveraging tech to deliver on ESG outcomes, and we'll only see this space continue to grow over the next few years".

The requirement to access reliable ESG data on a regular basis is the key driver for all businesses going forward and the technology sector is paving the way to bring innovation across key areas of risk. Mitigating risk while maintaining strategic direction requires a comprehensive ESG data ecosystem.

USING TECHNOLOGY TO KEEP ON TRACK

Technology is a key driver for economic growth and that, combined with the growing importance of ESG issues at the forefront of investor, consumer and employee minds, means the pressures around tracking, reporting and acting on issues across the ESG spectrum have never been more in the spotlight.

Technology as a tool to combat climate change is more prevalent than ever; from adopting new working practices in sectors like building and agriculture to everyday solutions such as using renewable energy

technologies.

For most, the journey starts with an ESG strategy and gathering clear, informed and analytical data that can inform, shape and influence short and long-term goals.

INNOVATION MEETS HUMAN APPROACH

The combination of technology and human insights will be vital to our journey towards net zero emissions and combating climate change. Technology should be utilised to make things easier, more productive and better for the environment.

Wayne Ng, Head of Innovation, Turnkey



Wayne Ng, Turnkey

“For most, the journey starts with an ESG strategy and gathering clear, informed and analytical data.”

Wayne Ng, Turnkey

OPINION (cont.)

HOPES FOR GENUINE AND REINVIGORATED GREEN CAPITAL ALLOCATION

A ROUND-UP OF FRAMEWORK CONVERGENCE AND THE CREDIBILITY IT WILL BRING TO COMPANIES' NET ZERO TRANSITION PLANS.

The ESG landscape has been ravaged by challenges these past months. Sweeping doubts about the effectiveness and legitimacy of ESG investing, a violent reminder of our reliance on fossil fuels and energy insecurity spurred by the war in the Ukraine, a tsunami of legislative and regulatory action to target greenwashing, and a drought of any real progress from **COP26** or **COP27** to name but a few recent events.

In medical terminology, a crisis is a turning point for better or worse. We are at that point with ESG and, although I'm confident in our collective ability to get it onto the path to 'better', the basic materials with which we are rebuilding in the wake of these challenges must be of greater quality. In the case of ESG investing, this goes to the foundations: the ESG plans and impact performance of the underlying portfolio companies, and robust evidence of their efforts.

ESG, by its very construction, is a broad church and following the religion is not always easy. The emergence of its fundamental text has been tortuous and the subject matter remains hard to navigate, particularly for companies operating across multiple jurisdictions, which in turn leads to uncertainty on how to demonstrate faith. The most urgent, most far reaching, and most challenging of the components deserves the most attention: climate change and the transition to a low-carbon (or 'net zero') economy.

So, how can companies demonstrate their transition planning and its impact?

Various frameworks have been taking root and growing in sophistication, some now reaching the point of

legislative adoption. They give companies a clearer architecture for building towards a net zero economy and standards on how to measure and report performance. But, significant differences exist between regions – **CSRD**, **ISSB** and the **SEC's** reporting requirements, for example (see the guide below to untangle the acronyms) – demonstrating a lack of coherence by practitioners and a superabundance of effort.

Nevertheless, there is growing hope of convergence, which will simplify the landscape for companies and contribute to greater adoption and action. Three new net zero transition frameworks were announced as part of COP27 last month. While not identical, two of them at least (**GFANZ** and **TPT**) give some comfort in that they are now devoutly "singing from the same hymn book" (and the third, **UN-HLEG**, focuses on a slightly different, complementary space). Furthermore, they are written in the same key as the principal international frameworks and legislation. That key is **TCFD**, which has done a successful job of establishing a common structure, language and guardrails across the globe.

That two new frameworks demonstrate such close alignment with each other and reinforce common TCFD foundations should be a sign that quicker convergence will yield value from here. Let's hope that this optimism is well-founded. Time is running out for markets to rebuild conviction in companies' transition plans such that investors can take decisive actions to direct capital where it will have the greatest positive impact, without fear of inadvertent greenwashing.



Emma Tottenham, Perigon Partners

Continued over page

... significant differences exist between regions... demonstrating a lack of coherence by practitioners and a superabundance of effort.

Emma Tottenham, Perigon Partners

OPINION (cont.)

Continued from previous page

'QUICK REFERENCE' GUIDE TO THE KEY FRAMEWORKS.

The Glasgow Financial Alliance for Net Zero's (GFANZ) voluntary framework on how to approach transition plans, launched 1 November 2022. Directed towards the financial services industry and global in reach. Contains three principles, encompassing five disclosure elements and ten recommendations for companies looking to credibly communicate their net zero transition approach.

The UK's **Transition Plan Taskforce's (TPT)** recommendations to inform regulatory requirements (i.e. expect to see this in future UK legislation) on net zero transition plan disclosures. Released 8 November 2022, targeted towards all sectors. Similar in structure to the GFANZ framework in all regards other than containing 19 rather than ten recommendations.

The **United Nations High-Level Expert Group's (UN-HLEG)** global voluntary framework to support a universal definition of net zero and prevent it being undermined by greenwash. Also released 8 November 2022, aimed towards large corporates from all sectors plus cities and regions. Contains five principles and ten recommendations that are less aligned to those above as the focus is on putting guardrails around the definition of net zero rather than on the entity's transition efforts.

The EU's **Corporate Sustainable Reporting Directive (CSRD)**, which contains rules and requirements for companies to report on sustainability-related impacts, opportunities and risks. Currently going through the final stages of legislative adoption, due to come into force for large companies from 2024. Will expand the number of EU companies mandated to provide sustainability (including climate) disclosures from c.12k to c.50k.

The **International Sustainability Standards Board's (ISSB)** principles for sustainability- and climate-related financial disclosures, currently in exposure draft form with a view to finalising the new global reporting baseline by end 2022. A sister body to IFRS (of accounting standards fame), expect to see widespread adoption even if not mandated.


The USA's **Securities and Exchange Commission's (SEC)** proposals for mandatory climate disclosure, released March 2022 with the aim of being finalised last month but, realistically, likely to be stuck in no-man's-land, bombarded by political crossfire, for some time yet.

Finally, the **Task Force on Climate-Related Financial Disclosures (TCFD)**: the global framework for climate risk reporting that implicitly underpins all the above and has also been explicitly mandated in certain jurisdictions (including the UK). Evidently a successful initiative by the G20 and soon to be joined by sister TNFD (N for "Nature-Related") – just in case any company was ready to rest on its laurels.

Emma Tottenham

Emma is a founding partner at Perigon Partners. Emma has extensive sustainability, communications and strategy expertise, developed most recently as Group Corporate Communications and Sustainability Director for one of the UK's largest banks. Prior to founding Perigon Partners, Emma was a member of the Executive Leadership Team for a FTSE250 company and Board Director for a large UK digital fundraising platform.

For further information about Perigon Partners services visit www.perigonpartners.co.uk.



... there is growing hope of convergence, which will simplify the landscape for companies and contribute to greater adoption and action.

Emma Tottenham, Perigon Partners

OPINION (cont.)

CHANGES TO PRIIPS KIDS: DO YOU NEED TO PRODUCE A KID FOR YOUR FUND?

The **PRIIPs** Regulation has required fund managers to prepare a **Key Information Document** ("KID") for EU-based retail investors since January 2018. Although most hedge funds are not targeted at retail investors, some do accept them in certain circumstances. This article sets out background in advance of changes to KID content requirements from 1 January 2023.

HOW ARE HEDGE FUNDS CAUGHT?

An interest in a hedge fund is a type of 'packaged retail and insurance-based investment product' ("PRIIP"). This means the manufacturer of a fund (generally the investment manager) must produce an EU KID if that fund is "made available" to EU-based retail investors. Following Brexit, a UK KID must be produced if a fund is "made available" to UK-based retail investors.

ARE THERE EXEMPTIONS?

There are no exemptions if EU or UK-based retail investors buy your fund. However, an adviser with full discretion for end-clients will be the relevant investor for PRIIP KID purposes, and is not a retail investor.

You could avoid producing a KID by 'opting-up' a retail investor to professional investor status. This option may be available if: (i) you consider the investor capable of making their own investment decisions and understanding the risks, and (ii) the investor meets two of the following three criteria:

1. has carried out transactions, of significant size, in similar funds at an average frequency of 10 per quarter over the previous four quarters;
2. their financial instrument portfolio (including cash deposits and financial instruments) exceeds €500,000;
3. they have worked in the financial sector for at least one year in a professional position which requires knowledge of investments in similar funds.

4. These criteria are difficult to meet, meaning most high net worth investors and the manager's staff cannot be opted-up.

WHAT'S THE BREXIT EFFECT?

There are now two separate PRIIPs regimes – an EU regime and a UK regime. From 1 January 2023 there will be significant divergence between EU KIDs and UK KIDs.

WHAT DOES PREPARING A KID INVOLVE?

A KID is a three page document setting out key features of the PRIIP. The content is highly prescribed, and complex calculations are also required to prepare a risk figure, performance details and cost figures. The KID must be provided to retail investors in good time before they invest and published on the manager's website.

HOW BIG ARE THE CHANGES ON 1 JANUARY 2023?

The incoming changes respond to widespread industry complaints about KIDs following their introduction, although the EU and UK have each responded differently. The EU KID content is changing significantly and some managers will also be required to publish additional information on their website. The UK KID requirements will change to a lesser degree.

WHAT TO DO NOW?

Check now if a fund is being "made available" to EU or UK-based retail investors and, if so, produce the relevant new form KID from 1 January 2023. Your legal advisors should be able to help.



John Dooley, Simmons & Simmons

John Dooley

John Dooley is a Managing Associate at Simmons & Simmons and specialises in investment funds and advising asset managers on regulatory matters.



From 1 January 2023 there will be significant divergence between EU KIDs and UK KIDs.

John Dooley, Simmons & Simmons

RAISING STANDARDS IN NEW FIRMS AND FINANCIAL PROMOTIONS

The FCA has created a [new function](#) to help newly-authorized firms adapt to its supervision.

The regulator acknowledges that newly authorized firms can sometimes struggle with its rules, and many firms can grow quickly in their initial stages thereby exacerbating any problems.

The new function was piloted in 2021 to 2022, with 32 newly-authorized firms. One common theme was how well these firms understood the rules on promoting financial products to the public.

For example, some firms were describing their products and services as 'FCA approved' on their website. However, the FCA does not 'approve' firms' offering as such; it authorises firms and gives them

permission to offer regulated products and services. Similarly, firms wrongly claimed on their websites 'We worked with the regulator to deliver a product/ service'. The FCA doesn't collaborate with firms to develop what they offer.

Other issues included firms advertising services that the FCA hadn't given them permissions for, and firms advertising attractive investment returns that they couldn't substantiate.

The FCA has now launched Phase 2 of the pilot, increasing the number of newly-authorized firms it's reviewing to 300. It will use the findings of this next stage to identify other common areas where firms need to raise their standards to meet its rules.

This initiative coincides with the FCA adopting a more 'hard-line' stance when processing FCA applications. This has led to a more forensic approach, which increases both the amount of resource applicant firms need to devote to the process and the total time it takes to complete the authorisation process. There has also been an increase in unsuccessful applications.



DIRECTOR BANNED BY FCA AFTER VIOLENT CRIMINAL CONVICTION

The FCA [has banned](#) Ashkan Zahedian from working in financial services following his conviction for serious, violent offences.

Mr. Zahedin was the sole director of a FCA authorised consumer credit firm and was approved by the FCA as a Senior Manager.

In May 2020, Mr. Zahedin pleaded guilty and was convicted of grievous bodily harm and possession of an offensive weapon, having attacked a security guard at a bar with a machete. He was sentenced to three years' imprisonment.

Mark Steward, the FCA's Executive Director of Enforcement and Market Oversight said:

'These were serious, violent criminal offences reflecting on Mr Zahedin's character and justifying the finding that he is not a person to be working in financial services.

This case acts as a reminder that the FCA can deem an individual to be not fit and proper due to actions outside of the workplace. This extends beyond

actions demonstrating dishonesty, such as committing fraud, and includes offences against the person and other serious offences. In September 2021, [the FCA banned Jon Frensham](#) following his conviction of attempting to meet a child following sexual grooming.

FORMER BANK CEO CENSURED OVER ANTI-MONEY LAUNDERING FAILINGS

The FCA has [publicly censured](#) **Mohammad Ataur Rahman Prodhan**, the former Chief Executive Officer of **Sonali Bank (UK) Limited** (SBUK) for anti-money laundering (AML) failings.

In 2012-2014, Mr. Prodhan failed to take reasonable steps to assess and mitigate the AML risks arising from a culture of non-compliance among SBUK's staff. He failed to ensure that there was a clear allocation of responsibilities to oversee SBUK's branches, and he also failed to properly oversee, manage and resource SBUK's Money Laundering Reporting Officer (MLRO) function.

In 2016, SBUK was fined over £3 million

and a restriction was placed on the take-on of new customers. **Steven Smith**, SBUK's MLRO, was also fined £17,900 and prohibited from holding compliance oversight and MLRO positions.

The FCA initially fined Mr. Prodhan £76,400 in May 2018. Mr. Prodhan referred the case to the Upper Tribunal, where proceedings have been delayed significantly as a result of the pandemic and limitations on Mr. Prodhan's ability to travel to the UK from Bangladesh, where he now resides.

While the FCA considers the financial penalty to be appropriate, there now exist exceptional circumstances for the case to

be resolved by agreement, including the lack of any prospect of enforcing payment of a financial penalty.

Mr. Prodhan has withdrawn his referral to the Upper Tribunal and agreed to accept a public censure.

Whilst the outcome vis-à-vis Mr. Prodhan is perhaps less than satisfactory from the FCA's perspective, this case does act as a reminder that both a firm and its senior managers can be sanctioned over a compliance failing.



CFTC RECOGNIZES THE FCA FOR CROSS-BORDER ENFORCEMENT COOPERATION

The CFTC has recognized and expressed [appreciation](#) to the FCA for taking actions that demonstrated critical cross-border cooperation to ensure the integrity of U.S. markets and markets abroad.

During an investigation into certain crude oil trading on a US derivatives exchange, the FCA obtained information from UK based traders on behalf of the CFTC. Subsequently, said traders challenged the FCA's authority to obtain such records, but permission to proceed with a judicial review was refused by the Court of Appeal of England and Wales.

According to the CFTC, the court's decision "shows that traders cannot hide from regulatory oversight just because they are overseas. The CFTC is grateful for the FCA's efforts to secure this result and its commitment to cross-border enforcement cooperation."


SEC ANNOUNCES ENFORCEMENT RESULTS FOR FY2022

The SEC has announced that it filed 760 total enforcement cases during its recently ended fiscal year, compared to 697 the year before. The 9% increase included 462 new, or "stand alone," enforcement actions which ranged from traditional securities law violations to "first of their kind" cases in the crypto space.

Money ordered in the SEC's actions totalled \$6.4 billion, an increase of 67% from FY2021 and the highest on record. It was also the second highest year ever in whistleblower awards, both in terms of the number of awards (103) and the total monetary amount rewarded (\$229 million).

Some cases of particular interest:

- Penalties totalling \$1.235 billion (17 entities) for failing to maintain and preserve work-related text messages on employees' personal devices.
- Enforcement action against individuals, including charging the former CIO of an asset manager for allegedly overvaluing assets managed by the firm by more than \$1 billion.
- Parallel investigations with criminal law enforcement including cases against **Archegos Capital Management** and its founder/owner **Bill Hwang**, who were charged with orchestrating a fraudulent scheme that resulted in billions of dollars in losses
- Using data analytics to assist in various enforcement actions related to market abuse (market manipulation and insider trading).
- A continued focus on cybersecurity and crypto-related enforcement actions.
- An increased focus on ESG-related enforcement actions, including an action charging BNY Mellon for materially misleading statement and omissions on their consideration of ESG principles when managing certain mutual funds. See the above article 'Goldman fined for ESG investment failures' for further examples.
- Private fund-related enforcement actions including in relation to:
 - A fraudulent scheme to conceal the downside risks of a complex options trading strategy
 - Failure to comply with the Custody Rule
 - Misrepresenting fund performance and misappropriating investor funds for personal use
 - Failing to properly offset management fees charged to private equity funds and making misleading statements to investors about fees and expenses

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