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# The State of the Market – June 2023 Asset Manager Market Update

D&O/E&O Insurance Global Market Overview  
and Notable Trends

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This update analyses our observations of the current market conditions for Asset Managers and is based on our existing clients. It is not a review of the whole market. All rate changes are for guidance only and vary depending on risk profile and individual circumstances.

# Asset Management – D&O/E&O Liability

## State of the GB market and notable trends



### Rate Predictions

	Trend	Range
Primary:	▼	Nil to -20%
Excess:	▼	Nil to -20%

### Risk Trends

<b>Regulatory</b> 	Compliance with existing regulations and implementation of new requirements underscores an ongoing risk of related claim activity. Consumer Duty implementation is a key focus for H1 2023.
<b>Cyber</b> 	Enhanced operational resilience scrutiny via the upcoming Digital Operational Resilience Act ( <b>DORA</b> ) in the EU as well as the UK's Critical Third-Party regime will increase the responsibility on firms to fully understand third party risks and maintain rigorous governance around cyber incidents.
<b>Climate and ESG</b> 	Complex fund disclosure requirements continue to represent an area of underwriting focus. While there is a trend towards taking a conservative approach to Sustainable Finance Disclosure Regulation ( <b>SFDR</b> ) fund categorisation, some detail is still required from the FCA on the exact requirements that will come in under the Sustainability Disclosure Requirements ( <b>SDR</b> ). Likelihood that increased reporting of nature-related factors and net zero commitments will be required in future.
<b>Crypto</b> 	Limited insurer appetite given recent market turmoil. Markets in Crypto Assets (MiCA) regulation is likely to come into effect in 2023 and is expected to be part of a wider co-ordinated regulatory response to the crypto industry.

### What to expect

<b>Premium</b> 	Increased competition among insurers has led to downward pressure on premium levels. Competition has come from established firms as well as new entrants.
<b>Markets</b> 	Credible lead D&O/E&O insurers remain limited in number, however increased competition for market share has led some to look at differentiating themselves by broadening their coverage appetite.
<b>Retentions</b> 	Retentions remain flat in general.
<b>Capacity</b> 	We have seen increased capacity from established insurers as well as from new entrants. Insurers are increasingly willing to 'move down' placements in search of higher premium rates.



# Asset Management Industry Trends

## Risk Trends – Regulatory – GB



### Observations

- Busy UK regulatory timetable in 2023, covering a broad range of areas.
- Heavy focus on sustainability as well as operational resilience owing to the increased reliance on third party providers.
- Implementation planning for the introduction of the Consumer Duty in July 2023 will be a key priority for firms over H1 2023.
- Questions arose following the Edinburgh Reforms on the future application of SMCR and whether it needs to evolve for UK to remain competitive. [Bank of England report in December 2022](#) highlights the importance of Financial Market Infrastructure firms (FMI) to the financial system which will likely lead to greater scrutiny and oversight.
- The [consultation paper](#) on operational resilience with respect to Critical Third Parties (CTPs) that was issued by the Bank of England, PRA & FCA in July 2022 indicates a greater emphasis will be placed on asset managers to fully understand their operational risk profile and have a rigorous framework around it.



### Concerns

- Under the proposed CTP regime the PRA and FCA will be focussed on operational risk management and governance to reduce systemic market impact caused by disruption of services.
- Supervision and stress testing of FMIs/CCPs by the Bank of England is ongoing however the likelihood is that this will encompass a larger group of firms in future, in particular technology & data platforms that have become integral to a large number of financial services businesses. Given the international connectivity of many FMIs, the Bank of England is committed to working closely with counterpart regulators which could add layers of complexity to how oversight of FMIs is applied.
- Clarity is still needed from the FCA regarding the requirements under SDR and the impact on eligibility rather than just disclosure. FCA consultation (CP22/20) concluded at the end of January 2023.
- The [FCA](#) has acknowledged that some firms need to make significant changes in order to be ready for Consumer Duty implementation in July this year.



### Considerations

- Clients should consider their operational risk profile and appropriate cover.
- An enhanced Third Party Risk Management programme and increased regulatory scrutiny over CTPs will require greater resource.
- Final CTP rules are expected in 2023. Asset managers should consider the impact these may have on their current outsourcing, cyber and resilience programmes.
- SDR is a labelling regime, not a disclosure regime like SFDR. Firms will need to consider applicability of each based on the nature of their business in order to manage greenwashing risks.

# Asset Management Industry Trends

## Risk Trends – Cyber – GB



### Observations

- Cyber risks continue to be a key priority for all financial services firms, including regulators and investors. The impact of sanctions and international political tensions resulting from the ongoing conflict in Ukraine have only served to heighten the focus on cybersecurity.
- The Digital Operational Resilience Act ([DORA](#)) will be implemented by the European Commission in July 2023 and will seek to address a number of key themes:
  - Roles & Responsibilities
  - Risk Strategy
  - Monitoring and Oversight of Third Party/ICT(Information and Communication Technology) Risk
  - Training and Awareness
- While DORA will emphasise detailed ICT third-party risk management requirements, the UK CTP regime will focus on operational resilience more broadly.



### Concerns

- Increasing digitalisation and interconnectivity in financial services has meant that cyber risks are more widespread and harder to monitor.
- DORA will introduce prescriptive requirements and criteria across the EU on how financial services firms manage ICT (Information and Communication Technology) and cyber risk.



### Considerations

- Firms will need to consider the requirements of the upcoming DORA regulations and those that operate in multiple jurisdictions should be aware of the varying approaches taken by different regulatory bodies to operational resilience.
- Firms should have rigorous controls around their digital and ICT activities and have protocols in place around scenario testing, business continuity and breach response.
- Operational resilience policies and procedures will need to be regularly audited by ICT auditors.

# Asset Management Industry Trends

## Risk Trends – Environmental, Social & Governance (ESG), Climate & Sustainability - GB



### Observations

- Disclosure requirements under the Sustainable Finance Disclosure Regulation ([SFDR](#)) have created uncertainty in recent months, leading firms to manage greenwashing risks by scaling back Article 8 & 9 funds in order to take a more conservative approach.
- In April 2023, the European Commission announced that it would be conducting a full [review](#) of the SFDR regulations with particular focus on the Article 9 category and whether it will continue to remain relevant.
- Investor appetite for sustainable funds continues to grow, with [65%](#) of all net inflows into European exchange-traded funds (ETFs) in 2022 going into ESG ETFs.
- Some firms have shifted to an approach of seeking to be compliant rather than a market leading in their sustainable fund offering.



### Concerns

- Some high profile greenwashing allegations in 2022 have resulted in significant focus from the regulator and substantial fines being issued. The FCA is currently consulting on a general 'anti-greenwashing' rule, which will apply from mid-2023.
- Increasing sustainability-related regulations will drive closer scrutiny of outcomes driven by sustainable investment strategies.
- Environmental campaigners are increasingly using legal action to force companies to strengthen their climate commitments. The number of climate lawsuits filed globally has more than doubled since 2015, according to the London School of Economics.



### Considerations

- Firms should start to consider the growing requirements to report on climate impact and their net zero strategies. TCFD has been a requirement for larger firms since April 2022, however these reporting obligations will take effect for all firms in the next couple of years. A similar pattern is likely to take place for the Nature-related Financial Disclosures ([TNFD](#)) regulations with greater focus around reporting coming into play.
- Biodiversity and nature-related factors will start to play a larger role in strategic planning, risk management and asset allocation decisions.

# Asset Management Industry Trends

## Risk Trends – Crypto – GB



### Observations

- Market turbulence that occurred towards the end of 2022 following the collapse of FTX spread to other market participants, which damaged investor trust in digital assets and prompting calls for increased regulation of crypto markets.
- The Markets in Crypto Assets ([MiCA](#)) regulation is likely to become law in the EU in 2023. The aim will be to regulate public access to most tokens, also creating an EU-wide regime with prudential and conduct rules for crypto service providers.
- In the UK, the [Financial Services and Markets Bill](#) is expected to come into effect in 2023, bringing most digital assets (but not NFTs) into the financial promotions regime for the first time.



### Concerns

- Recent crypto failures will inevitably lead to significant additional regulatory scrutiny.



### Considerations

- Firms need to consider the increased insolvency risk of crypto market participants and whether any exposure to such a scenario is appropriately covered.
- Insolvency law relating to crypto assets is complex and time-consuming. The distribution of proceeds is similarly complex given assets can be illiquid and hard to value and the collapse of a large exchange or service provider can give rise to a significant quantity of creditors with claims.

# Asset Management – D&O/E&O Liability

## State of the NA market and notable trends



### Rate Predictions

	Trend	Range
Primary:	▼	Flat to -10%
Excess:	▼	Flat to -10%

### Risk Trends

<b>Regulatory</b>	Enforcement under the Biden Administration underscores the risk of both formal and informal investigation claim activity.
<b>Cyber</b>	Increasing regulatory focus on cybersecurity, notably the SEC's proposed rules for registered advisers and funds.
<b>ESG &amp; Climate</b>	"Greenwashing" enforcement actions and evolving global regulatory regimes are a growing underwriting concern.
<b>COVID-19</b>	Any lingering impact on portfolios and overall business operations; plans for vaccine requirements going forward.
<b>Private Funds</b>	SEC's proposed rules may impact the use of "hold harmless" agreements and indemnification by private funds.
<b>Crypto-currency</b>	Limited insurer appetite, particularly for newly established advisers with crypto-focused investment offerings.
<b>Bank Failures and Stressors</b>	Market volatility arising from the collapse of SVB, Signature Bank and Silvergate Bank may potentially give rise to more trade errors and investor (and perhaps regulatory) claims.
<b>Interest Rate Risk</b>	Whether in the adviser's own portfolio or in third party investor portfolios, investments directly or indirectly impacted by rising interest rates (e.g., treasury holdings, real estate) may be scrutinized.

### What to expect

<b>Premium</b>	Rates stabilizing with most programs realizing flat to modest premium decreases at renewal.
<b>Retentions</b>	Generally remaining flat, though an uptick in trade errors is causing some insurers to apply upward pressure on Cost of Corrections retentions.
<b>Coverage</b>	Remains stable, though some insurers are reassessing the scope of Cost of Corrections coverage following a series of significant trade error losses.
<b>Risk Profile</b>	Insureds with claims activity, material growth in exposure, negative performance and/or other significant changes to their risk profile may receive greater underwriting scrutiny and possibly less favorable renewal terms than average.
<b>Markets</b>	Several new insurers have entered the D&O/E&O space, creating meaningful competition on renewal programs, though mostly on an excess basis.
<b>Capacity</b>	Most insurers continue to limit their capacity to \$10M, though some may cap their limit to \$5M for more challenged risks.
<b>Appetite</b>	Asset management, particularly registered investment advisers and registered funds, continues to be the most desirable subset of the financial services sector; however, interest in private equity, BDCs, and risks with material cryptocurrency exposure remains limited.



# Asset Management Industry Trends

## Risk Trends – Environmental, Social, and Governance (ESG) - NA



### Observations

- The SEC has once again included “greenwashing”, or the overstatement or misrepresentation of the ESG factors considered or incorporated into portfolio selections, as a significant focus area in its 2023 [Examination Priorities](#).
- Demonstrating the seriousness with which they view this issue, the SEC brought charges against multiple investment advisers in 2022 alleging ESG-related misrepresentations and compliance failures.
- The actions taken by the SEC thus far have culminated in the proposal of the Investment Company Act “[Names Rule](#)” and the Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices [Rule](#), both of which are intended to further protect investors in ESG-themed products. Both rules are expected to be finalized in H2 2023.



### Concerns

- Increased regulatory scrutiny often equates to increased risk of regulatory enforcement actions and possible follow-on civil litigation against asset managers, investment funds and potentially fund directors.
- Recent actions by the SEC, combined with their proposed disclosure rules, make it clear that ESG is an increasing concern for regulator and one that must be taken seriously by investment advisers, funds and fund directors engaged in these strategies.
- Insurers are taking note of the regulatory focus on ESG. Underwriters are now asking increasingly probing questions during the underwriting process. Topics of particular interest include the types of ESG strategies/products being offered, the credentials of the asset manager’s ESG teams, the policies and procedures in place to mitigate the risk of greenwashing, and the process for vetting disclosures and statements made to investors in ESG products.



### Considerations

- ESG-related claims are expected to come in the form of regulatory proceedings and investor-driven civil litigation. While most asset management D&O/E&O policy forms should generally respond to such matters, it is important for insureds to review and understand both the scope and limitations of coverage under these policies.
- Attention should be given to the availability of both formal and informal regulatory investigations coverage. Further, the applicability of certain exclusions (e.g. pollution), should be reviewed and modified where appropriate.
- To the extent a screening approach is used to construct an ESG portfolio, reviewing the scope of Cost of Corrections coverage, including the often-strict reporting obligations it imposes, is also recommended.

# Asset Management Industry Trends

## Risk Trends – Cyber - NA



### Observations

- In 2022, the SEC proposed new cybersecurity [rules](#) under the Investment Advisers Act of 1940 and the Investment Company Act of 1940.
- Advisers and funds subject to the rule, which includes registered investment companies and business development companies, would be required to adopt and implement cybersecurity risk management policies and procedures, and adhere to new cybersecurity incident reporting and disclosure requirements.
- Fund directors would be required to approve these policies and procedures, and any proposed material changes to them, and review reports on cybersecurity incidents.
- In March 2023, the SEC proposed additional cybersecurity rules impacting financial institutions, including amendments to [Regulation S-P](#) to further protect customer information, new policies and procedures for “[market entities](#)” (including certain broker-dealers), and an update of Regulation Systems Compliance and Integrity ([Reg SCI](#)).



### Concerns

- This rule, along with the SEC’s proposed [rule](#) for public companies, would be the latest in an ever-growing patchwork of cybersecurity regulatory requirements that must be carefully navigated by insureds.
- The potential to run afoul of these regulations has raised concerns not only within the Cyber insurance market, but within the Bond and D&O/E&O underwriting communities as well.



### Considerations

- The SEC’s proposed rules are a reminder that there are diverse insurance [issues](#) to consider as it relates to cybersecurity risks.
- While Cybersecurity insurance programs receive the most attention when discussing these risks, there are cyber-related issues that should be considered from a D&O/E&O and Bond perspective.
- From a D&O/E&O perspective, a limited number of insurers have sought to apply new language clarifying how such coverage is, and is not, intended to respond in the event of a cybersecurity incident. Any proposed cyber-related exclusions from insurers must be reviewed carefully to ensure the language is not overly broad in scope. If such language is overreaching, marketing the program to alternate insurers may be necessary.

# Asset Management Industry Trends

## Risk Trends – Market Volatility: Bank Failures & Stressors - NA



### Observations

- On March 10, 2023, the California Department of Financial Protection & Innovation (DFPI) closed Silicon Valley Bank (SVB) and appointed the Federal Deposit Insurance Corporation (FDIC) as receiver of the bank. This resulted in the largest U.S. bank failure since Washington Mutual was shuttered in 2008 during the financial crisis.
- In addition to SVB, crypto bank, Silvergate Bank announced that it would voluntarily liquidate on March 8, 2023, while another crypto-friendly bank, Signature Bank, was taken over by the New York Department of Financial Services on March 12, 2023, in conjunction with the decision to backstop SVB.
- Within the investment management industry, registered funds with meaningful exposure to SVB and Signature Bank experienced significant losses following the banks' failure. Notably, funds with significant exposure to the broader banking sector, especially the regional banking sector, also realized sharp declines.



### Concerns

- Significant market events that negatively impact investment performance may result in claims activity under investment management liability insurance programs. Such claims often come in the form of civil lawsuits and/or regulatory proceedings and may name the adviser, the funds, or both.
- Allegations may include misrepresentations and/or omissions by the adviser as it relates to the investment strategy, objectives and/or risks of a fund, and failure to provide proper oversight by the fund board of directors/trustees.
- The market volatility that often follows significant events often leads to an increase in trading activity and, in turn, an increase in trading errors. Such errors may result in an increase in claims under the Cost of Corrections coverage of an E&O policy. Such coverage is intended to reimburse the adviser for certain costs it incurs in rectifying errors (e.g., trading errors) that, if not corrected, would result in an otherwise covered claim under the policy (subject to the policy terms and conditions).



### Considerations

- Most well-endorsed investment management liability policy forms should generally respond to regulatory, or investor claims (subject to policy terms and conditions) and coverage typically applies to defense and legal expenses, as well as any resulting judgements or settlements. It is important, however, for insureds to review the scope (and limitations) of coverage available for such matters, especially with respect to formal and informal regulatory investigations.
- The breadth and scope of Cost of Corrections coverage will vary by insurer, but most impose strict reporting obligations upon the insureds. It is therefore imperative for insureds to review and comply with such obligations in the event of a Cost of Corrections claim, as the failure to do so may cause the insurer to disclaim coverage due to late reporting.

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