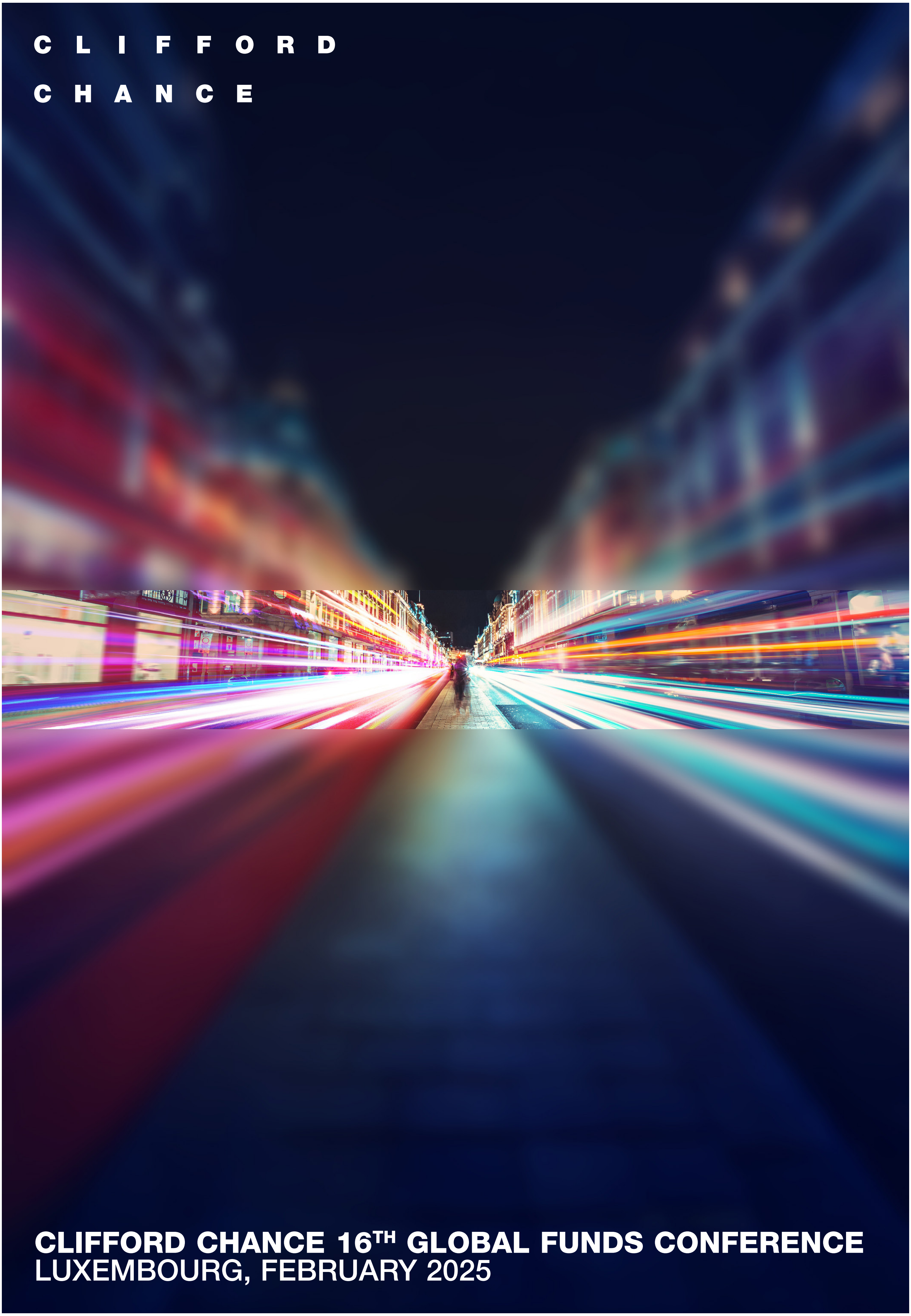

CLIFFORD CHANCE

CLIFFORD CHANCE 16TH GLOBAL FUNDS CONFERENCE
LUXEMBOURG, FEBRUARY 2025

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CLIFFORD CHANCE 16TH GLOBAL FUNDS CONFERENCE

Foreword

The sixteenth Luxembourg edition of our global funds conference took place in February 2025 at the Luxembourg Philharmonie.

As in previous years, the conference promoted the sharing of ideas and experiences with our clients and business partners.

We discussed with industry leaders and experts from around the Clifford Chance network developments regarding responsible investing and digital assets as well as the latest regional and global legal, regulatory, tax and market developments. The discussions addressed challenges and opportunities faced by the industry, as well as evolving market practices.

If you were not able to join us on the day or would like to refresh your memory of the topics discussed, we have prepared this summary briefing for you.

Please contact our team if you would like to discuss in detail any of the topics addressed during the conference, or for any other questions you may have surrounding the management of your funds and their assets.

Responsible Investment: recent developments and challenges

Over the last few years, official guidance on the interpretation of the EU Sustainable Finance Disclosure Regulation (the "**SFDR**") has evolved, whilst the funds industry has developed valuable experience applying the SFDR's detailed requirements in practice. Unsurprisingly, considering the scope of the SFDR, various challenges have emerged, including the application of the SFDR's core definitions and standardised disclosure templates to a broad range of investment strategies and asset classes. In particular, the rigid design of pre-contractual disclosure and reporting templates that apply to funds disclosing under articles 8 and 9 of the SFDR and the focus on retail investors mean that the templates are often not a satisfactory medium for conveying the depth and breadth of sustainability-related actions that may be undertaken by alternative investment funds at the investment level. In addition, many institutional investors require compliance with their own reporting frameworks, which are often granular and highly tailored and do not align with the SFDR reporting templates. Further, the shifting geo-political landscape, although not new, has become an acutely challenging environment for alternative investment fund managers to navigate, and adds to the complexity facing alternative investment fund managers when discussing sustainability-related matters with potential investors.

Although the detailed SFDR disclosure and reporting requirements first came into effect in January 2023, we have already completed the first stage of a consultation exercise on SFDR 2.0. The scope of the consultation was broad, with open questions as to whether the current regime should be retained, amended or entirely restructured. Following the closing of the first stage of the consultation, we are now starting to see more concrete proposals for SFDR 2.0 emerge, which suggest that a shift to a categories-based system is likely. The number and type of future SFDR 2.0 categories is not yet known, however the Platform for Sustainable Finance's proposals (published in December 2024), suggest three possible categories: sustainable, transition and ESG collection.

For an example of how a categories-based sustainability disclosure regime may be structured, we can consider the recent experience of the United Kingdom, which introduced its own sustainable disclosure framework, based on four sets of voluntary labels that sit under an overarching anti-greenwashing rule, requiring sustainability-related disclosures to be fair, clear and not misleading. The UK's product labels cover: (a) sustainability impact, for products that invest in assets that are environmentally or socially sustainable, determined by a robust, evidence-based standard of sustainability; (b) sustainability focus, for products that invest in assets that have the potential to become more sustainable over time, determined by their potential to meet a robust, evidence-based standard of sustainability over time; (c) sustainability improvers, for products that aim to achieve a predefined positive, measurable environmental and social impact; and (d) sustainability mixed goals, for products that aim to invest in assets that meet or have the potential to meet a robust, evidence-based standard for sustainability and/or invest with an aim to achieve a positive impact. The labels are supported by qualifying criteria and minimum asset alignment requirements and are accompanied by disclosure requirements, including short-form and long-form disclosures and ongoing reporting.

The funds industry has appreciated the opportunity to provide feedback on the SFDR and, for now, we will need to wait for SFDR 2.0 to take shape. In the meantime, the SFDR in its original form remains effective and fund managers should take care to ensure that their products' SFDR disclosures are accurate, comprehensive and well maintained, as we are seeing that investors, NGOs and regulators are scrutinising SFDR disclosures for consistency and potentially misleading statements.

Digital Assets: blockchain, crypto and tokenisation – insights from Europe, the United States and the United Kingdom

Europe

From a European standpoint, when we talk about digital assets, we have two applicable frameworks to consider: digital assets that fall within the traditional financial instruments framework and crypto-assets that are covered by the new European Market in Crypto-Assets Regulation ("**MiCA**"), which regulates crypto-assets in a similar fashion to traditional financial instruments in terms of issuance and service requirements. Prior to the introduction of MiCA, you may also have come across references to "virtual assets", but following MiCA coming into force, these would now likely be referred to as crypto-assets instead.

From a funds perspective, the digital assets frameworks may be relevant both above and below the fund structure, with digital assets being considered as possible target investments (if permitted under the fund's investment strategy) and the development of the tokenisation of fund interests, whereby the fund issues interests using distributed ledger technology.

United States

Historically in the United States, the Securities and Exchange Commission (the "**SEC**") had approached crypto-assets and the blockchain through an enforcement approach, which the market perceived as arbitrary and lacking clarity or consistency on how digital assets should be treated. The new US administration has signalled that a different approach will be taken in the future and, as a result, the SEC is expected to become more technology-neutral. President Trump has stated that his goal is to ensure regulatory clarity in this area and has set a deadline of 180 days for the development of proposals to address this. A key point for consideration by the SEC will be how to classify digital assets; for example, are digital assets considered to be "securities" for the purposes of the US Securities Act of 1933 and, if so, how (given that the form of digital assets was not foreseen at the time the Act was drafted)?

United Kingdom

So far, the approach to digital assets in the United Kingdom has been to observe and learn from the development of global regimes in order to support the formulation of a new UK digital assets framework, whilst addressing discreet areas of immediate concern in the short term (such as limiting retail marketing of digital assets). The new government in the UK has indicated its intention to continue this policy, with the aim of the UK becoming a global leader in digital assets regulation and an attractive location for businesses. The top priority for the UK in the development of a digital assets framework will be balancing risk controls (e.g., consumer protections), with enabling growth. We know that, globally, regulators talk to each other about key issues, so it will be interesting to see what, if any, impact the new US administration may have on the UK's current approach to developing a digital assets regime.

Alongside limiting retail marketing of crypto-assets, regulators are also focussed on limiting the exposure of banks and credit institutions to crypto-assets. We have seen Basel 3 introduce a new, sophisticated framework of prudential rules that create disincentives to banks' having exposure to certain assets, particularly "un-backed" assets.

The World Tour: key legal, regulatory and tax developments from Asia, Europe, the United Kingdom and the United States

Asia

The Asian funds environment (excluding China) has been very active over the last six to 12 months across a broad range of geographies and asset classes, including private equity, real estate, private credit and infrastructure. However, managers in the region are paying particular attention to foreign direct investment as countries continue to refresh and update their lists of sensitive/strategic industries.

The region has been focussed on improving the ease of doing business and, as a result, we have seen both the Singapore and Hong Kong regulators simplifying the licensing processes and tax exemption frameworks for locally based funds and managers.

Germany

German private equity and venture capital funds have experienced a steady fundraising environment, characterised by a sustained flight to quality together with a focus on liquidity events, with GP-led secondaries and continuation vehicles proving popular. There continues to be a strong focus on the use of international fund structures where German managers do not have a substantive presence in the relevant jurisdiction, with investors consequently focussing on such matters during negotiations and due diligence.

Luxembourg

The Luxembourg financial regulatory authority (the "CSSF") is expected to announce in the coming weeks the abolishment of the visa stamp for regulated funds' prospectuses, with the intention of streamlining the approval process and shortening the time to market for regulated funds (although a maximum timeline for approval will not be provided). The new process will be supported by the CSSF's eDesk and will include three stages: (i) submission to the CSSF of a file with the relevant fund documents, together with a letter confirming that the prospectus is fully compliant with applicable rules; (ii) the CSSF will perform a partial review of the file and will give approval on this basis (at which point the manager may continue marketing and operating the fund); and (iii) the CSSF may perform ex post compliance checks, such as thematic or on-site reviews, which may result in enforcement actions. Although the new procedure is not yet effective, managers should already be thinking about what steps they will need to take to support the issuance of the conformity letter at the first stage of the process. The conformity letter is a crucial element of the new process and is likely to be an area of focus for enforcement actions by the CSSF.

From a tax perspective, there have been several positive developments in Luxembourg. First, there are a number of helpful points to note from the latest tax package (issued in December 2024), in particular: there has been a 1% reduction in the corporate income tax rate, legislative blessing of the class of shares, which is important for the structuring of investment platforms underneath funds, the "group of one" to get rid of the issuance barrier issue when repackaging fund units into securitisation vehicles, and also the Pillar 2 carve-out for securitisation vehicles. Secondly, the processes of the Luxembourg tax authority continue to improve; we have recently received two positive rulings on sophisticated tax questions within around three months, whereas a few years ago, waits for rulings would take up to 12 months (and would often receive a negative response). Thirdly, the appetite of insurance companies to cover Luxembourg tax risk has grown significantly.

United Kingdom

In the UK, we have seen huge growth in direct lending products, leading to a broader range of specialised debt strategies (such as trade or NAV financings) and the creation of a private credit ecosystem. The fundraising environment has been strong and, as the funds are getting bigger, they have become more complex with the use of more innovative structures, resulting in greater optionality for investors. Alongside this, we've also seen a trend for larger investors to prefer single managed accounts, which, in some cases, can be larger than the funds. Levered funds, which first emerged in the US market, are also now being seen in the European market. The exponential growth of debt and levered debt funds coincides with greater regulatory focus on this asset class. AIFMD II will impact funds that are running a levered strategy; imposing enhanced disclosure requirements and new caps on leverage amounts, which (in the context of open-ended funds in particular) may require significant model adjustments.

The last UK budget announced the reform of carried interest taxation. The current tax treatment of carried interest in the UK depends on how the returns are funded (i.e., whether the returns are capital gains, dividends or interest). In April 2026, changes are expected to be introduced to simplify the regime, by removing the need to look through fund structures to the source of revenue and instead applying income tax at a flat rate. The applicable effective tax rate is expected to be set around 33-34%, which, although not out of step with comparable jurisdictions, is towards the higher end. The new carried interest regime will apply conditions, which will look at the period of the investment and may also include a minimum co-investment or a hold period. The particular details of the carried interest regime are yet to be provided, but draft legislation is expected to be made available in the coming months.

United States

As we've also seen in Europe, alternative investment fund managers are experimenting with moving away from traditional closed-ended fund structures, whilst investors are looking for liquidity, resulting in an active secondaries market (both in respect of continuation funds and GP-led secondaries). The democratisation of privates funds (one of the key themes of our 2024 Funds Conference) continues in the US, with large asset managers looking beyond the traditional pool of institutional investors to the retail market and its vast potential capital pool.

From a regulatory perspective, following the change in the US administration, the SEC is expected to become more business-friendly and disclosure-focussed.

Global tax considerations

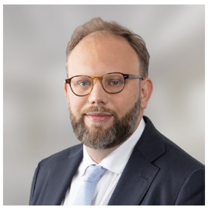
We are seeing a lot more attention from certain groups of sophisticated investors wanting to understand how a fund approaches global tax issues, including the use of low tax jurisdictions, allocation of hybrid disallowance and investment improvement plans. Some investors also request that managers sign up to the investors' own tax principles in side letters. We regularly review such requests, and care must be taken to ensure any tax-related side letter obligations are clear and certain, and that managers have appropriate processes in place to accommodate the requests in practice.

CONTACTS

Maren Stadler-Tjan
Partner
Luxembourg
T: +352 48 50 50 472
E: maren.stadlertjan@cliffordchance.com

Emmanuel-Frédéric Henrion
Partner
Luxembourg
T: +352 48 50 50 491
E: emmanuelfrederic.henrion@cliffordchance.com

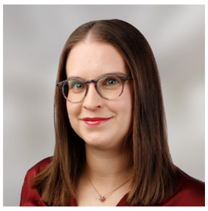
Kristof Meynaerts
Partner
Luxembourg
T: +352 48 50 50 226
E: kristof.meynaerts@cliffordchance.com



Oliver Zwick
Partner
Luxembourg
T: +352 48 50 50 476
E: oliver.zwick@cliffordchance.com

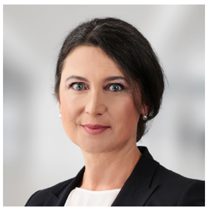
Clifford Cone
Partner
New York
T: +1 212 878 3180
E: clifford.cone@cliffordchance.com

Geoffrey Scardoni
Partner
Luxembourg
T: +352 48 50 50 410
E: geoffrey.scardoni@cliffordchance.com



Laura Underhill
Partner
London
T: +44 207006 2203
E: laura.underhill@cliffordchance.com

Daryl Liu
Partner
Singapore
T: +65 6661 2047
E: daryl.liu@cliffordchance.com

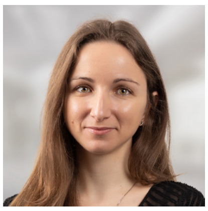


Sonya Pauls
Partner
Munich
T: +49 89 21632 8550
E: sonya.pauls@cliffordchance.com

Simon Crown
Partner
London
T: +44 207006 2944
E: simon.crown@cliffordchance.com

Jonathan Bray
Partner
London
T: +44 207006 2137
E: jonathan.bray@cliffordchance.com

Paul Ellison
Partner
London
T: +44 207006 3207
E: paul.ellison@cliffordchance.com



Boika Deleva
Counsel
Luxembourg
T: +352 48 50 50 260
E: boika.deleva@cliffordchance.com

CLIFFORD
CHANCE

www.cliffordchance.com

Clifford Chance, 10 boulevard G.D. Charlotte, L-1330 Luxembourg

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