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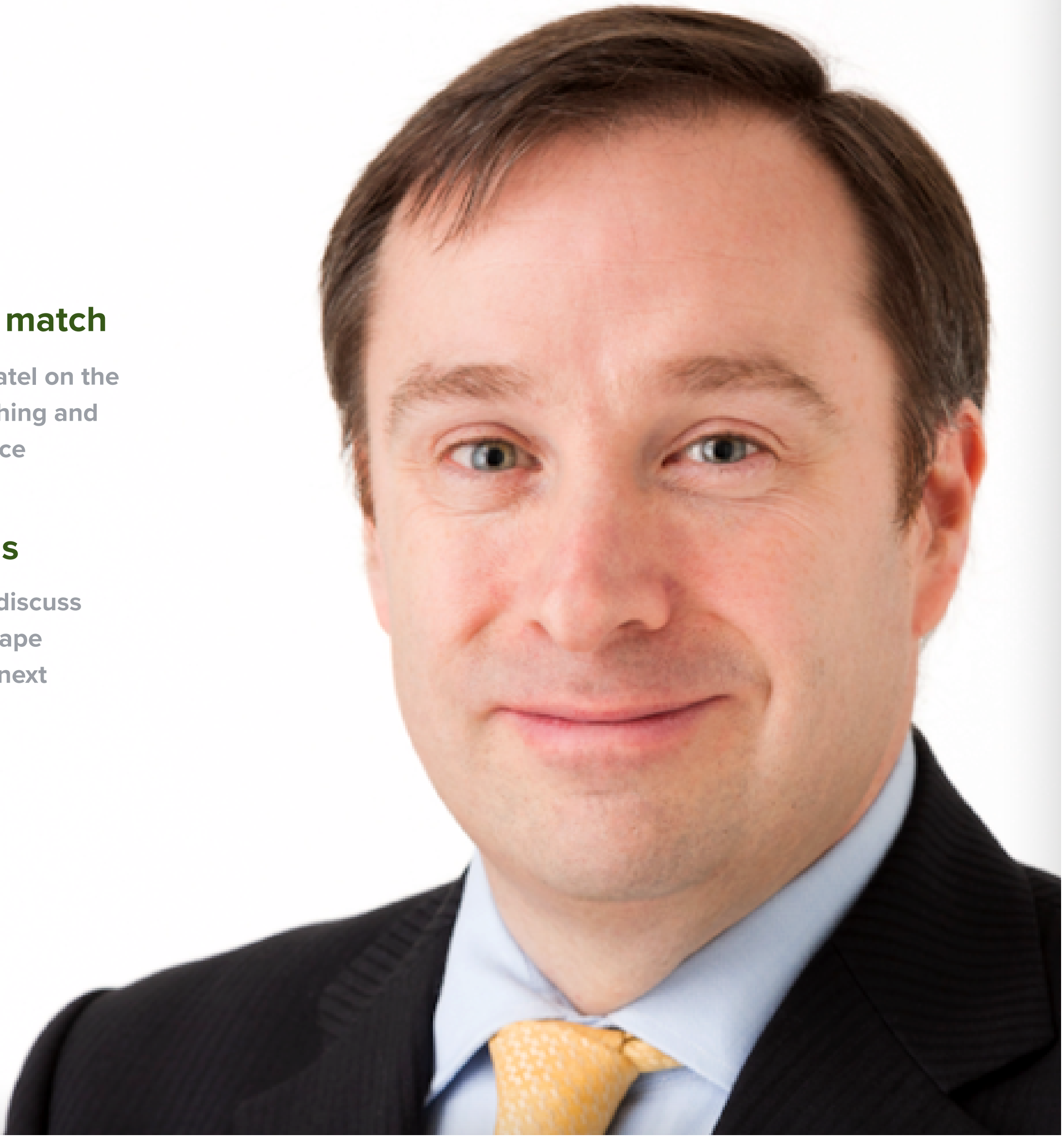
Growing interest

Apex's Mark Bennett on Japan's economic outlook, its domestic demands and its influx of foreign investors post-pandemic



Meeting the match

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Class Actions

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Federal Reserve Board hands out $268.5 million fine for Credit Suisse's misconduct

The Federal Reserve Board (FRB) has announced a consent order and US$268.5 million fine with UBS Group AG for misconduct by Credit Suisse, which UBS subsequently acquired in June 2023.

The misconduct involved Credit Suisse's unsafe and unsound counterparty credit risk management practices with its former counterparty, Archegos Capital Management LP.

The Federal Reserve and FINMA have imposed remedial requirements relating to credit, liquidity and non-financial risk management as well as oversight of remedial efforts.

In 2021, Credit Suisse suffered approximately US $5.5 billion in losses because of the default of Archegos, an investment fund.

During Credit Suisse's relationship with Archegos, Credit Suisse failed to adequately manage the risk posed by Archegos despite repeated warnings, says the FRB.

The board has said Credit Suisse must improve counterparty credit risk management practices and must address additional long-standing deficiencies in other risk management programmes at Credit Suisse's US operations.

The board's action is being taken in conjunction with actions by the Swiss Financial Market Supervisory Authority and the Bank of England's Prudential Regulation Authority.

The penalties announced by the board and the Prudential Regulation Authority total approximately US$387 million. ■

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Sidra Capita continues partnership with Apex

Sidra Capita, a shariah-compliant asset manager that specialises in income generating real estate, has expanded its partnership with Apex. As part of the extended mandate, Apex will provide Sidra Capita with fund administration services, directorship and corporate secretarial solutions. Sidra Capital is licensed by the Saudi Capital Market Authority and first partnered with Apex Group in 2018. Apex Group also supports Sidra Capital with anti-money laundering officer services, delivered by Apex Group and subsidiary EDB.

The news of the renewed mandate comes after Apex Group announced the acquisition of specialist accounting and administration software PFS-PAXUS to enhance the delivery of timely, accurate and independent portfolio accounting, fund and investor reporting for its clients.

Naveed Zamir, country head of Dubai at Apex Group, comments: “With continued and growing investor appetite for Shariah-compliant strategies, especially in the real assets and alternative arena, Sidra Capital is well positioned to meet this demand.”

The IA picks Fundipedia for data collection platform

The Investment Association (IA) has adopted data management solution Fundipedia, replacing its existing ECHOWeb fund data collection platform.

Fundipedia’s flexible reporting model allows IA members to create reports and dashboards that are customised to their individual requirements.

From the platform’s increased data flexibility, users will be able to share more data without disrupting existing flows.

As data collection will be automated, the IA will have no need for manual oversight.

The two organisations have collaborated before, with Fundipedia a member of the IA’s fintech accelerator programme, IA Engine, in 2020.

In 2021, the firm partnered with the IA to produce the Common ShareClass Register.

Following the initial launch, Fundipedia plans to continue its work with the IA and introduce additional services and efficiencies.

SCF achieves Gold Standard’s design certification

Global blended finance initiative the Subnational Climate Fund (SCF) has been awarded a design certification from sustainability standards provider Gold Standard.

Through its pilot scheme, whereby impact funds and bond issuers must meet specific requirements, Gold Standard aims to validate impact results and help investors and bond holders measure and manage the impact of their investments on sustainable development.

The requirements are compatible with other leading standards, including the Operating Principles for Impact Management (OPIM), the UN Principles for Responsible Investment (UN PRI) and United Nations Development Programme (UNDP) SDG Impact Standards. This reduces reporting obligations for firms. The design certification recognises that the SCF applies the Gold Standard for Global Goals safeguarding principles and requirements to its investments, and that the fund’s governing body considers the UN’s sustainable development goals when making decisions.

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[1] Provided by CIBC
[2] Provided by BNY Mellon

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In order to achieve the certification, SCF must also include an exit strategy in all of its investments to ensure that the 'do no harm' principle is maintained for the investment's lifecycle.

Margaret Kim, CEO of Gold Standard, says: "By working with Gold Standard and focusing on impact, SCF can be sure that they are identifying investments that will make a genuine, tangible, verifiable difference to the UN's Sustainable Development Goals, and demonstrate results in the real world."

AccessPay launches anti-fraud and error prevention tool

Corporate-to-bank integration provider AccessPay has launched Detect, the first product in its series of anti-fraud and error prevention tools.

Detect scans corporate payment files and checks them against customisable rules, with any potential errors and issues flagged for finance teams to investigate. It is fully integrated into the client's payments platform, allowing for faster and more efficient action. If problems arise it can handle both domestic and cross-border payments.

The product suite has been developed in response to new UK corporate governance reforms, which require large corporates to include fraud statements, detailing their detections and prevention processes, in their annual reports.

As the Fraud & Error Prevention Suite develops, AccessPay intends to include products that will allow corporations to be more proactive in their handling of fraud and risk management, identifying potential issues before they become problems.

Commenting on the launch, Anish Kapoor, CEO of AccessPay, says: "Standards and expectations in relation to how corporates manage operational resilience and fraud risk are increasing. The new additions to AccessPay's product roadmap will help businesses of all sizes to take a multifaceted approach to managing fraud and preventing errors, as well as helping them to be audit-ready and able to demonstrate the impact of controls to regulators.

"AccessPay has long helped corporates in consolidating their payments data and automating processes, which helps reduce manual errors. Now we are taking this to another level, thanks to our new fraud and error prevention suite, which has been designed to alert finance teams to payment issues before making a transaction. Foresight is always better than hindsight."

Spectrum becomes a supporting member of Germany's derivatives association

Spectrum Markets, the pan-European trading venue for securitised derivatives, has joined the German Derivatives Association (DDV) as a supporting member. Its introduction to the association underpins the association's work for structured products.

The DDV represents the issuers of structured securities to improve the political and regulatory framework for structured products in Germany and Europe, contributing to the increasing level of private investors opting for certificates and warrants.

DDV is the industry representative of the leading issuers of structured securities in Germany. Together with its members and supporting members, DDV sets industry standards for the self-regulation of structured securities.

ISS launches GPD voting solution

Corporate governance and sustainable investment solutions producer Institutional Shareholder Services (ISS) has launched ISS Exchange, a voting solution for its Global Proxy Distribution (GPD) provision.

ISS Exchange joins the company's outsourced solutions suite, designed to help custodians and wealth managers meet SRD II requirements. These include notifying clients when shareholder meetings occur and allowing them to vote on meetings in their portfolio.

The solution provides clients with information on their holdings in a streamlined format and facilitates voting, supported by ISS' ballot generation and vote processing technology.

It covers more than 68,000 shareholder meetings annually, across 118 markets. It is compatible with other ISS solutions, including benchmark and speciality research and ESG data.

Axioma partners with EDS to deliver factor risk models

Axioma has expanded its partnership with Equity Data Science (EDS), to allow hedge funds and asset managers access to its Equity Factor Risk Model Suite.

The partnership comes as EDS's hedge fund and asset manager clients seek to enhance risk management practices amid fast-moving and increasingly complex market conditions. The initiative will integrate the entire suite of Axioma Equity Factor Risk Models, which will provide insights into drivers of portfolio risk and return.

Through utilising Axioma, EDS's clients will be able to better understand exposures and sources of risk in their equity portfolios, to drive data-driven portfolio construction decisions, and deliver risk reporting to stakeholders.

Brian Rosenberg, chief revenue officer at Qontigo, comments: "We are pleased to partner with EDS to deliver their clients our institutionally proven factor risk models, inform their portfolio construction process, and enable greater risk and factor awareness, particularly during continued uncertain market conditions." ■

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Growing interest

Apex's Mark Bennett talks to Brian Bollen about Japan's economic outlook, its domestic demands, and its influx of foreign investors post-pandemic

"Japan has been undervalued for years," says Apex's Mark Bennett, country head of Japan. "The yen has weakened as interest rates have risen around the world, and asset prices have remained subdued over the past 30 years."

After moving to the country in 2009, Bennett knows a thing or two about Japan and its economics. He joined Sanne in 2019, focusing on real estate and asset servicing, and now works for Apex, following its acquisition of Sanne a year ago. Based in Tokyo, he continues to use his expertise to help grow Apex's strength in the region. He also serves as the group's representative director for Japan.

"Japan has an established economy; it is comfortable with its size and identity, and represents a very attractive investment environment," Bennett tells Asset Servicing Times. "If you want to invest in Asia, Japan is the largest and most diverse market. Japan is a more open market to foreign investors than ever before, because it needs to be."

While domestic investors remain wary, their international counterparts see opportunities for the long term. Investment in data centres is projected to return yields of 6 to 7 per cent over 20 years. The country's attractiveness to international investors also presents opportunities for non-Japanese asset services providers, catering to the needs and demands of inward investors.

In March 2022, the executive board of the International Monetary Fund (IMF) concluded a consultation with Japan and published its own assessment. It began with the observation that the economy continues to recover, while a weaker global economy has been weighing on external demand.

Private consumption led the recovery, and private investment also rebounded. Industrial production recovered strongly during the summer of 2022; as pandemic lockdown rules eased, supply chain constraints lessened.

A year down the line, Bennett identifies bank-owned providers such as State Street, BNY Mellon and J.P. Morgan as 'prominent international names' that are active in Japan in 2023 — modestly conceding that the independently-owned Apex is somewhat smaller at present.

Another potential driver for international service providers is outward investment, although Bennett takes care not to overstate its magnitude both in the present and when making predictions.

"There are investors here who want to invest, as is demonstrated by the statistic that around a quarter of all assets in the Cayman Islands are owned by Japanese investors," he says.

"The Japanese market has become attractive to large global asset managers, particularly real estate asset managers," Bennett continues. This is evident when considering the large global managers that have opened or reopened in Japan in the last five years. Among these are property management company Greystar, private equity firm Starwood Capital, and Hines Real Estate.

Real estate

In large cities such as Tokyo, Osaka and Fukuoka, the demand for new residential development is high. The population is ageing, and while rural Japan is becoming desolate, Japan's largest cities have housing stock that is less than 40 years old and already in need of regeneration.

Japan's Financial Services Agency has been working to help the corporate debt market develop, particularly over the last 20 years, Bennett explains. Much of the debt is held on corporate balance sheets, including what has come to be known as 'non-performing debt'. The Japanese Accounting Standards Board does not require mark-to-market valuations in financial statements, so they remain at book cost.

"As and when International Financial Reporting Standards becomes an accounting standard in domestic Japan, it is likely that there will be big write downs and a much greater drive towards debt securitisation," Bennett affirms.

On the macroeconomic front, he says that it "remains unlikely that Japanese central bank interest rates will rise back to zero, or increase above zero." Underlying inflation in Japan is still less than 4 per cent, and will likely fall below the Bank of Japan's medium-term target of 2 per cent.

"Wage growth in Japan has been low over multiple decades. Unions are not aggressively pushing for higher wages, and while pockets of the economy such as finance are seeing some increases in wages, it is not a broad market growth," he says.

Company demographics are another area to analyse: "Some 99 per cent of all companies in Japan would be considered small- or medium-sizes enterprises (SMEs)," estimates Bennett.

He adds: "In many cases, they have issues with succession plans. Family sizes have dropped considerably, large metropolitan centres have increased significantly, and other countries such as China and Korea have taken business away from Japanese companies. It is likely that many of these SMEs will either cease to exist, or will need to merge to survive.

"Corporates in Japan are holding near record levels of cash, which given the zero interest rate environment is a drag on return on investment and equity. The share buyback schemes seen in places such as the US are not as prevalent in Japan.

"At some point, these cash reserves will need to be invested or returned to shareholders in the form of dividends or buybacks. We would expect that while private equity has a part to play in Japan domestically, given the low borrowing costs locally, it is unlikely that many companies will be seeking to add private equity investors to their capital structure."

Socioeconomics and maintaining stability

As Japan's immigration is less than 2 per cent, it is unlikely that the issue of an ageing population can be realistically mitigated any time soon. Japan has a well-publicised level of government debt, as much of this is held by the older generations.

Given that inheritance tax is up to 50 per cent, it is likely that the Ministry of Finance (the Japanese Treasury) will use these incoming taxes to pay back the debt.

"Given that most Japanese government bonds are held by Japanese citizens, corporations, institutions and pension schemes, there is a more limited risk related to these Japanese government bonds than would be the case in other markets such as the US, where treasuries are held by a broader global set of investors," Bennett highlights.

The Bank of Japan has found that the country's wider financial system has been maintaining stability. It outlined this view in a report released in April 2023, the findings of which suggested that Japanese banks have sufficient capital bases to perform financial intermediation activities appropriately — even amid the global tightening of financial conditions and the resultant various types of stress. Additionally, despite heightened uncertainty about the financial sector in the US and Europe triggered by some US bank failures in March, Japan's financial system has been sound and resilient, the report found.

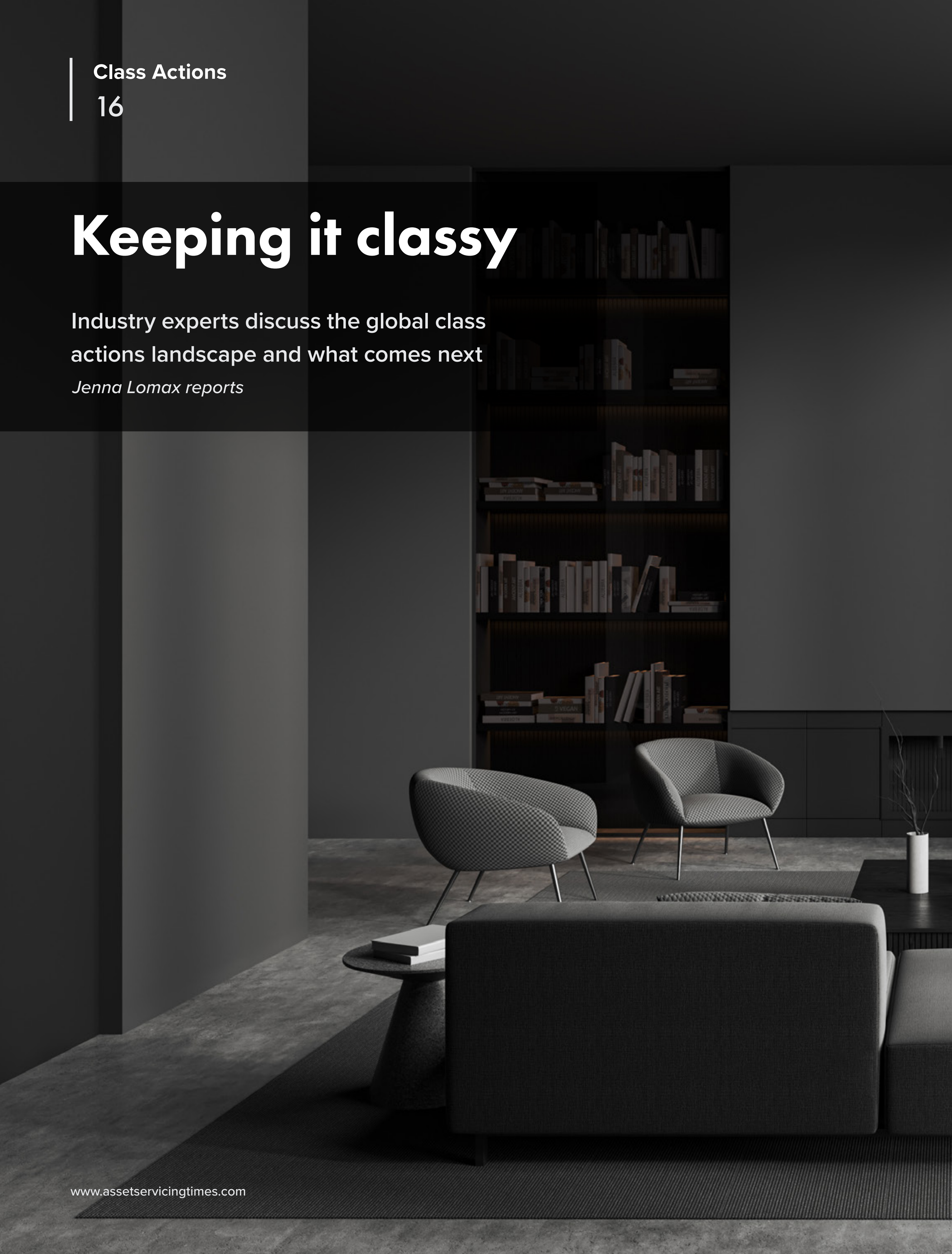
Although the quality of banks' domestic and foreign loan portfolios has remained high on the whole, some loans entail high credit risk. From a long-term perspective, if banks' core profitability was to stagnate and capital accumulation was to stall, financial intermediation could be impaired due to a decline in loss-absorbing capacity, the Bank of Japan said. Additionally, vulnerabilities in the financial system could increase through excessive search for yield.

"To ensure the stability of Japan's financial system, it is necessary to examine these risks of contraction and overheating in the financial system, and to address potential vulnerabilities appropriately," it added. ■

Mark Bennett began his career as an accountant, qualifying in 1997. He has worked at BNY Mellon and Goldman Sachs, moving to Japan with the latter in 2009 and becoming CEO of State Street Trust Bank in Japan in 2014.

He joined Sanne in 2019, focusing on real estate and asset servicing. Apex acquired Sanne in August 2022.

Mark Bennett
Country head of Japan and representative director
Apex



Keeping it classy

Industry experts discuss the global class actions landscape and what comes next

Jenna Lomax reports

How has the class action landscape evolved over the past few years?

Bryan Gray: Class action litigation has become a prominent feature of the legal landscape in Australia and other jurisdictions in recent years. It was only in 1988 that the Australian Law Reform Commission (ALRC) issued its first recommendation that a class actions procedure be introduced in the Federal Court of Australia.

In the report, the federal court expressed its aim to retain “access to justice” by reducing the cost of court proceedings to the individual, while improving the individual’s ability to access legal remedies.

In 2018 the ALRC issued a further report (ALRC Report 134), which focused on the integrity, fairness and efficiency of the class action process. It found that contrary to fears that there would be an ‘explosion’ of litigation in class action matters, these fears had, in large measure, not materialised.

To date, the cases that have been brought under the regime reflect a broad range of both commercial and non-commercial causes of action, including shareholder and investor claims, anti-cartel claims, mass tort claims, consumer claims for contravention of consumer protection law and environmental claims.

A significant development has also been the growth of third-party litigation funding. Another important development has been the expansion of the range of cases that can be brought as class actions. While class actions were initially limited to consumer and investor disputes, they are now being used for competition law, product liability and environmental disputes.

I think we are likely to see future cases involving greenwashing as more shareholders hold the companies they invest in to account for factors such as net-zero commitments.

An interesting feature of the Australian class action landscape has been the relatively high rate of out-of-court settlements. According to an Australian Securities and Investments Commission (ASIC) report, approximately 90 per cent of class actions in Australia settle before going to trial. This is in part due to the risks associated with going to trial, particularly in complex cases, as well as the costs of litigation.

Ben Phi: The Australian class action landscape remains heavily influenced by the availability of litigation funding and the limited introduction of solicitors’ contingency fees in the Supreme Court of Victoria via group costs orders (GCOs).

The current Australian Federal Government has unwound many of the measures taken by the previous government that were intended to reduce the availability of litigation funding and reduce access to justice. As plaintiff law firms increasingly look to self-fund shareholder class actions under the Victorian GCO regime, litigation funders have been increasingly open to funding different kinds of actions – most notably competition, consumer and environmental contamination claims.

There continues to be a number of overlapping or competing class actions being introduced by different law firms in relation to the same underlying claims. The courts have grappled with this challenge by determining which proceeding (or proceedings) should continue. They evaluate a range of factors that include the proposal to fund the proceeding, the scope of the claims and group member definition, and the manner in which the proceeding has been conducted. Courts have also had to manage overlapping claims brought in different jurisdictions, by transferring or connecting certain proceedings.

In the last three years, a much higher proportion of class actions have been going to trial rather than settling. This has increased costs and the timeframe to settle. It has also led to complexities in resolving the claims of the class after a successful judgment. While a party-to-party costs order might require respondents to pay 50 to 70 per cent of the applicant’s costs, the overall costs to be deducted from any settlement are generally much higher than a pre-trial settlement.

Ronald Koo: Lawyers are now permitted to charge their legal costs as a percentage of any recovered amount in a class action. This has only been introduced in the state of Victoria and is limited to class actions. By enabling legal costs to be charged as a percentage of any amount recovered, GCOs have generally simplified the economics of a class action and provide clarity regarding likely returns for group members.

GCOs are also achieving their intended aim of increasing competition in the class action market and encouraging downward pressure on pricing. Some of the GCO funding structures proposed in various cases have seen proposed total legal costs fall to unprecedented levels.

The second landscape shift has been the continuing increase of competing actions where two or more proceedings are separately commenced but relate to overlapping legal and factual matters.

There is now a relatively established body of case law on the likely assessments that a court will undertake when seeking to resolve competing proceedings. However, there remains uncertainty as to how those assessments will be determined.

The competitive environment is unlikely to abate; this is simply a reflection of Australia being a mature class actions jurisdiction.

Charlie Morris: Collective redress is becoming commonplace. In an increasingly globalised world, where consumers and other stakeholders interact and do business with large multinational corporations, the only viable way for those consumers and stakeholders to have proper redress — in the event they are wronged — is through collective action.

While certain jurisdictions, such as the US and Australia, have long benefitted from class action regimes (which continue to develop and mature), other jurisdictions have been slower to catch on. However, that is changing fast — there is real momentum as governments and authorities around the world seek to implement class action regimes.

In Europe, the EU has introduced the Collective Redress Directive, which EU Member States are in the process of implementing. In the UK, the collective action regime in the Competition Appeal Tribunal (implemented in 2015) is maturing, and the UK's Supreme Court gave important guidance on how representative actions can be brought in its 2021 decision in the case of Lloyd versus Google.

Scotland's first class action regime was introduced in 2020. In June 2022, New Zealand's Law Commission published its final report on class actions, making numerous recommendations for the implementation of a class action regime. These are just a few examples of how class action regimes are becoming more prevalent, jurisdiction by jurisdiction.

Another key factor driving this change is the ever-burgeoning litigation funding industry. As legal aid has all but disappeared, providers of litigation finance have stepped in to enable these actions for mass redress to be pursued, removing the risks involved in litigation from the consumers and other stakeholder claimants.

This allows them to access justice against well-resourced opponents, which would not have been previously possible.

Bryan Gray
Brand ambassador
Goal Group

Ronald Koo
Principal lawyer
Maurice Blackburn

Charlie Morris
Chief investment officer, EMEA & APAC
Woodsford

Ben Phi
Managing director
Phi Finney Mcdonald

What role do class actions play in an active ownership or investment stewardship strategy for funds and other institutional investors?

Morris: As stewards of their investee companies, investors have a responsibility to hold companies to account. The UN Principles of Responsible Investment (UN PRI) actively promote engagement by stakeholders, including institutional investors and with their investee companies. This includes collaborative engagement, where stakeholders combine to take action together.

When early engagement efforts flounder, the UN PRI acknowledges the importance of escalating engagement, and, if necessary, litigation. If and when that becomes necessary, class actions are a vital tool in an institutional investor's armoury.

They allow investors to act collectively, bringing power in numbers and increasing the prospects of holding their investee companies to account while changing behaviours for the greater good and for the long term.

Koo: For institutional investors with an active ownership strategy, class actions offer an avenue to achieve potentially significant litigation outcomes without having to exert much individual effort or upfront expense.

Class actions also enable participants to send a signal to the market that investors are concerned about improving market integrity and corporate governance and the adherence to disclosure laws.

Australian regulators such as ASIC have publicly acknowledged the de facto regulatory role that class actions play in maintaining the integrity of the equity capital market.

Whether an institutional investor is driven by financial compensation, active ownership, ESG considerations or investment stewardship, class actions are an important mechanism for achieving those drivers in a manner that is economically viable. It rebalances dynamics in large-scale litigation.

Gray: At Goal Group, we see class actions sitting alongside a wider active ownership or investment stewardship strategy. From my experience in the Australian market, large institutional investors typically engage with the companies they invest in, either directly or through external asset managers they appoint, to try to change poor company behaviour. Sometimes this engagement is successful and sometimes it's not. Often, the only remaining option investors have is to dispose of their holding.

"Participation in class actions can support ESG objectives by promoting corporate responsibility and accountability in areas such as climate change impact, labour and human rights violations and diversity action"

Bryan Gray, Goal Group

With the significant number of companies that a major pension fund or fund manager invests in across multiple jurisdictions, it's not always possible to engage directly with each of the companies who may have been involved in wrongful conduct.

Participating in a class action alongside other impacted shareholders provides an efficient mechanism for redress and accountability. They can send a message to boards and management that they are serious about holding the company accountable for its actions and are looking to promote good corporate governance.

Many institutional investors are also seeking to promote their strong ESG objectives in line with the values of their members or clients. Participation in class actions can also support these ESG objectives by promoting corporate responsibility and accountability in areas such as climate change impact, labour and human rights violations and diversity action. Such actions can help to drive the behaviours of company management towards more sustainable business practices.

Phi: Class actions strengthen investment stewardship strategies by providing a consequence for the company's failure to proactively implement appropriate forms of governance. Ensuring that companies are accountable for legal wrongdoing carries longer term benefits through increased awareness and compliance. Further, class actions offset investor losses. Active institutional investors can also play a critical role in improving settlement outcomes at mediation.

What factors are currently hindering effective participation in class actions, globally?

Phi: Probably the biggest challenge is complexity. There are significant and material differences in class action regimes that apply in different jurisdictions. Some jurisdictions have no class actions procedure, while others limit class actions to specific causes of action.

In those jurisdictions, there may be an inferior regime, such as a consolidation or grouping of large claims, or a 'test case' approach. Where class actions are prevalent (Australia, the US, Canada, Israel), the biggest challenge is to establish high participation rates among group members, which requires multi-channel communications to ensure as much of the group as possible is made aware of the litigation.

Gray: The primary challenge to effective class action participation is access to data. In most cases, accurate holding and transactional data is a key requirement. Oftentimes, the courts require this information to be certified by a custodian or, in some jurisdictions, by the local custodian in a particular market.

Goal has established strong working relationships with all of the major custodians who are servicing our clients and we are usually able to access securities transactions and holding data from seven to 10 years ago.

However, on occasion, obtaining this information from prior custodians has proven difficult, particularly where there has been a change of custodian along the way — the custodian may have left the market entirely. Working alongside the custodians, Goal has obtained access to their online systems, so our team is able to obtain more timely answers to data queries.

Obtaining data for some of the antitrust class actions, such as futures data or foreign exchange transactional data, has been more challenging than securities data. In some cases, custodians have simply not been able to provide this information and that has precluded some of our clients from participating in these cases.

In certain jurisdictions, there are particular data requirements. In the UK market, there is a need to demonstrate reliance on particular statements made by corporations or information that they disclose to the market. Given the reliance framework operating in the UK, it has been incumbent on the client to demonstrate what type of information they relied upon when making investment decisions.

Morris: The main challenges are posed by defendants, their insurers and the political lobbyists who seek to stymie meritorious legal claims by shutting down class action mechanisms.

This often makes it more difficult for claimants to obtain funding for their actions.

Particularly in opt-in group actions, but also in opt-out class actions, defendants seek to make participation as burdensome as possible in the hope that a 'war of attrition' will cause meritorious claims to be abandoned or cause class members to withdraw or opt out.

The cost of bringing class actions is often prohibitively high. Litigation finance assists in unlocking these actions.

However, there are a large number of valuable actions which are not pursued because the significant cost of pursuing them is not justified by the potential returns. J

urisdictions that introduce class action regimes must work hard to devise a regime that is inexpensive and efficient, as that will allow for greater access to justice for harmed stakeholders.

Koo: As mentioned above, one the biggest changes in Australia in the last five years has been the rise in competing actions where two or more proceedings are separately commenced in relation to factual and legal issues that overlap.

Competing proceedings have caused some difficulties for the institutional investors who seek to participate in Australian class actions. This is due to the complexity of navigating competitive situations and deciding on which, if any, proceeding to join.

A further challenge to effective participation tends to be the considerable resourcing required to monitor and participate in recovery actions within Australia (and also other jurisdictions). Few institutional investors have dedicated resources to commit to recovery activities. These are likely some of the reasons why we have observed increased interactions with third-party recovery specialists or claim aggregators.

Institutional investors appear to be outsourcing more frequently to such service providers, which tend to be fluent with class action developments in our jurisdiction and are able to reduce the reporting and monitoring costs for both sides.

As law firms now compete in class actions against the same companies, how do participants decide which action to support? What can we expect to see in terms of trends?

Koo: The key consideration for group members, when faced with competing proceedings, is to assess which proceeding is likely to maximise a group member's recovery return. The maximisation of one's recovery is largely driven by the overall total pricing. Traditional funding structures tend to be more costly when compared to cases with GCO (lawyer contingency fee) structures. In traditional funding structures, group members must pay both funders and lawyers. Group members have to pay a funding commission to the funder and, on top of that, the legal costs of the firm running the proceeding.

By comparison, the majority of GCO arrangements approved to date have been 'all-in' structures where the total fee rates have found an equilibrium of around 22 to 27.5 per cent of any outcome. In other words, GCOs operate as a cost cap and, in those cases, group members can expect a recovery of 72.5 to 78 cents in every dollar returned — regardless of the costs incurred by a law firm.

Therefore, any relative cost assessment between competing proceedings should account for additional layers of cost and the total financial impact on one's potential return.

A law firm's recovery track record should also be considered for competitive proceedings. A firm's track record is arguably the best indicator that group members have to determine how competing firms are going to perform, and who is likely to end up with a strong recovery for group members.

For instance, in Australian listed securities class actions, Maurice Blackburn is the only Australian firm to date that has managed to obtain a recovery sum exceeding AUD $100 million. It has now achieved this eight times.

Gray: Over the past few years, we have seen a number of competing law firms undertake class actions for the same corporate failure. In some cases, as many as three different law firms can commence proceedings against a company at the same time. This occurs in Australia and in other jurisdictions around the world. It makes it very difficult for Goal's institutional clients to determine which action to support.

Many of those clients ask for our advice on which action to support, but we make it clear that Goal doesn't provide advice or recommend particular legal firms. Goal's role is to be an impartial independent administrator that provides a highly efficient process to ensure our clients can participate effectively in the case of their choice.

However, to assist them, we work with each of the competing law firms to obtain all the facts on the case in pursuance – merits of their case, funding arrangements and relevant documentation. We then distil these responses into a report for our client. It outlines all of the information we have available to help them decide which case to support.

There is some evidence that competing class actions may create competition that reduces commission charges to shareholders. As a result, we will likely see continued class action competition.

In the Australian market, there is a mechanism to allow the Australian Federal Court to manage competing class actions and promote efficient resolution of claims. The Australian Federal Court can consolidate cases, issue stay orders or transfer competing class actions between state jurisdictions to ensure the interest of group members are protected and the proceedings are conducted in a fair and efficient manner.

Morris: Over time, participants will, and will need to, become more sophisticated when analysing different propositions that are presented to them. Competition between law firms and their funders in the class action space is generally a positive development for class members. Although it can sometimes be confusing and difficult to choose which action to support, the competition is healthy and tends to result in lower cost and much better returns for class members.

Phi: Group members are encouraged to speak to advisors and put questions to the firms conducting competing class actions, to determine which offers the better option. While some group members will wait until the court determines the carriage questions, those that are engaged in the process and understand the strengths and weaknesses of competing actions can 'vote with their feet' and provide a strong basis for a particular firm to be preferred, while being mindful of all the options on the table.

This rewards firms that have carefully calibrated their strategy to provide better outcomes for group members, as well as those firms that consistently provide quality and timely client service to the group members on whose behalf the proceeding is brought.

Securities class actions in the UK are a relatively recent development. How do you think the UK class actions landscape is evolving?

Morris: The UK doesn't have a specific class action regime for securities class actions, therefore most securities actions in the UK have been brought as 'group actions' where each investor is a named party to the litigation. This has occasionally resulted in investors being burdened by the travails of litigation, such as providing disclosure and evidence.

However, in some of the most advanced Woodsford securities actions in the UK, significant gains have been made in recent times. For example, in the Woodsford actions brought against RSA, Serco and G4S, the English Court ordered a split trial, effectively bifurcating the defendant's liability from claimant-side issues, with the defendant's wrongdoing to be examined at a first trial.

More recently, Woodsford securities actions in the UK have been brought by way of representative action, where one investor, acting on behalf of many others, seeks declarations from the court that the defendant has knowingly breached its disclosure obligations (both to it and the investors it represents).

Again, this should ensure that 'common' or defendant-side issues are addressed first before investors are required to prove 'individual' issues, such as reliance, causation and loss. The defendants facing these representative actions have sought to fight them hard, in some cases filing strikeout applications.

The first such applications are due to be heard in the Woodsford actions against Reckitt Benckiser and Indivior in November 2023, with judgment to follow. The outcome of those applications could be transformative for securities actions in the UK; watch this space!

Phi: While the UK's class actions regime is nascent, it has the potential to become one of the world's leading class action jurisdictions. Competition class actions are increasingly plaintiff-friendly, enabling an 'opt-out' mechanism that has supported litigators acting on behalf of entire classes, resulting in competition class actions increasing six-fold over the last year.

The case of Lloyd v Google has arguably increased the power and scope of the 'representative proceeding' mechanism to include shareholder class actions, potentially allowing investors to passively participate in class actions as they would in Australia, Canada or the US.

As the UK class action landscape continues to develop, we expect it will remain favourable to plaintiffs, and will likely offer a new and significant avenue for large scale investor redress.

Gray: The UK has a relatively new class action landscape compared to the US, but it seems like it has been growing in recent years. We have seen more cases being initiated which we've presented to our clients and that they have participated in.

Several UK law firms we work with have indicated that the Lloyd v Google case provided some useful clarification relating to representative class actions, even though the case was in the context of data protection.

In late 2021, Richard Lloyd brought an opt-out class action against Google in the UK Courts on behalf of more than four million iPhone users who were allegedly affected by a Safari system workaround that Google had implemented. This allowed Google to harvest browser generated information (BGI) from iPhone users without their knowledge.

Google used this BGI to target advertising that generated significant revenue for the company. Lloyd argued that the four million iPhone users should be compensated for the value of their BGI used without their knowledge.

Ultimately, Lloyd's claim failed. However, the court did make several interesting comments supporting the use of representative actions. These actions can include a claim where no individualised assessment is needed in situations where the entitlement can be calculated. This is on a basis that is common to all members of the class. They also stated that there is scope for a bifurcated process. If the damage claim did require individualised assessment, there may be merit in the process being split to allow a first stage representative action. This would decide common issues of fact or law. A second stage of proceedings would be introduced to determine individual damages and liability issues.

The law firms we have spoken to believe this may assist them to take an initial action without having to deal with specific issues of damage impact or reliance in the early stages. It will be interesting to see how the UK class actions landscape changes, but whatever happens we will be here to support client participation in the UK and in other jurisdictions around the world. ■

Meeting the match

SS&C managing director Parthiv Patel updates Lucy Carter on the firm's trade matching and settlements service, T+1 readiness and the importance of transparency

"SS&C's Trade Matching & Settlements Service (TMSS) is a cross-asset solution that allows investment managers to outsource their matching, trade communication, affirmation and settlement administration functions to SS&C," Parthiv Patel summarises.

The service "is based on [SS&C's] proprietary technology, which has best-of-breed integration with major trading matching utilities," facilitating straight-through trade confirmations and allocation delivery, he explains. TMSS' "highly flexible operational model" makes it adaptable to specific market, product and recipient requirements. TMSS can automate and track both market and settlement statuses, Patel continues, and clients are given a transparent view of settlement and confirmation processes in real time. This is accessible via SS&C's online portal, which aggregates data from matching utilities, custodians and prime brokers to create a unified view of a trade's lifecycle.

A well-oiled machine

As of June 2023, the service had more than 150 clients. As the US market gears up to T+1 implementation, expected to go live in May 2024, a variety of services and solutions are on offer to help firms to prepare; one way in which TMSS stands out from market competitors is its "very low entry barrier to clients who are looking to enhance their post-trade functions through outsourcing," Patel says.

Considering the shift, "the operational impact is pretty widespread," Patel remarks. He anticipates straight-through processing and improved workflow efficiency in the post-trade space as the country takes this step, with these becoming "must-have items" in the new climate.

Outside the US, there are concerns around the impact that the shift could have on international trades, with the potential for fragmentation and increased settlement fails putting many market participants on edge. It's an area that SS&C has honed in on, with TMSS "enabling international clients to match, allocate, affirm and communicate trades on trade date."

This is achieved, in part, through the 24-hour service team that TMSS users gain access to. The team "ensures that SS&C's international clients have proper coverage during US hours. They monitor and make sure that all trades are matched and settled within the market cut off, and they are able to quickly resolve any issues that may slow the process down," Patel explains, "acting as an extension of the client's team."

Using the service, any mismatches that occur outside of local hours can be resolved by SS&C's team on behalf of the investment manager, allowing for round-the-clock operations without the need for a constant in-office presence.

Outsourcing such as this continues to be a popular option for managers as they face increased regulatory demands, rapid technology evolution and, of course, reduced settlement cycles. "While we cannot predict any decline or increase in in-house development, we have definitely observed that through outsourcing, clients are able to prioritise their technology resources and redeploy their development dollars to focus on what matters to them — generating alpha," Patel reports. Although it's difficult to predict which way the wind will blow, this approach is proving successful across the industry.

Moving parts

As part of SS&C's broader middle-office administration offerings, TMSS' offering is compatible with the firm's other fund services products. "Since this solution listens to the same trade messages as our existing fund services ecosystem, it's very easy for our existing clients to integrate this service," Patel explains. Additionally, "it does not require a long implementation cycle; it acts as a plug-and-play solution."

Those already using SS&C's services can quickly benefit from "a high level of operational synergies," Patel adds. One example is the ability to capture real-time statuses from various utilities, custodians and prime brokers. Using this data, "we can apply intelligent automation for issue resolution on T itself, greatly reducing the amount of time our reconciliation team is spending on T+1 to review cash and position breaks."

Conducting work on T "has a significant impact on downstream reconciliation and net asset value delivery," Patel continues. "Those are going to be much cleaner, given the pre-work that we are already doing during the matching and settlement cycle."

For existing SS&C clients, adding TMSS to their operations is easy. Taking a modular approach to outsourcing operations is a common practice, Patel says. "If a client is moving away from an existing service provider, then we would see a 'big bang' approach. But if a client is doing a lot of their functions in-house, then they may start by outsourcing activities with the biggest pain points and later decide to outsource other functions as they get comfortable."

"Clients need to ensure that they follow a straight-through approach, and that their custodians and prime brokers are not resorting to manual touch points in order to settle trades on their behalf"

Soothing the pain

Pain points in a shortened settlement cycle are numerous. "From a matching and settlements perspective, one of the major pain points that the buy-side firms are facing is that they will have less time to process trade confirmations, allocations and affirmations compared to what they have today," Patel affirms. A review of communication practices is essential, he advises. "Clients need to ensure that they follow a straight-through approach, and that their custodians and prime brokers are not resorting to manual touch points in order to settle trades on their behalf."

It's not all gloomy skies, though; Patel expects T+1 to bring a reduction in margin requirements, manual touch point risk and operational risk as firms automate their post-trade processes. Costs will drop, too, as technology conducts operations that currently require human intervention.

As for what TMSS can offer, "our solution is aligned with the best industry practices for T+1 readiness," Patel assures. Standard settlement instructions are systematically maintained in order to reduce the risk of delays, and clients can outsource to the business' straight-through matching and affirmation workflow using industry standard utilities.

Keeping it clear

Another key issue to be considered ahead of T+1 is the lack of transparency around settlement fails. Numerous industry participants have highlighted the lack of clarity around why a trade fails, something that TMSS wants to improve in the next enhancement to its central portal.

"We're developing an innovative approach called Watchlist," Patel reveals. Trades that require attention will be categorised under 'critical', 'warning' or 'monitor', with all unconfirmed and unsettled trades presented in a hierarchical view to ensure responsible parties are prioritising resolution."

By categorising and listing unsettled and unconfirmed trades by urgency, "clients can see their priority for the next hour, for the next six hours, for the next day. They can scan through and figure out where their highest risk is."

Beyond just a to-do list, Watchlist will be able to identify what's going wrong in a trade and allow clients to see exactly what they, their stakeholders and their service providers need to do next.

"They will know exactly what is going on, understand who the responsible parties are for a trade failing and will know if they need to do something, This is a major enhancement that we're looking to roll out," Patel confirms. "I think the level of transparency it provides is going to help clients tremendously." Patel explains.

TMSS may be ready to go for T+1, but what about T+0? Settlement cycle compression places progressively greater pressure on operations as time goes on, with firms already under strain from regulatory pressures, technology modernisation and a volatile macro environment. In regard to timeframes, "it's hard for us to predict anything," Patel comments. "It took the industry five years to move from T+3 to T+2. To move from T+2 to T+1 has taken us almost seven years."

That being said, he's confident that SS&C's outsourcing solutions will continue to help clients "seamlessly adapt" to, and be better equipped for, any changes on the horizon. ■

Parthiv Patel
Managing director
SS&C

"I am eager to work with our talented team to provide clients with technology solutions paired with local market expertise"

Mike Sleightholme to lead Broadridge International

Broadridge Financial Solutions has appointed Mike Sleightholme as president of Broadridge International.

Based in London, Sleightholme will be responsible for overseeing the company's customer support provisions, technology and data solutions across the EMEA and APAC regions. His remit includes capital markets trade lifecycle, global governance and communications and asset management products.

Sleightholme has 35 years of experience in the industry, and has been with Broadridge since February 2022 as president of asset management solutions.

Prior to this, he spent almost six years with SS&C Technologies as a managing director and was later CEO and general manager of DTS systems.

Earlier in his career, Sleightholme spent more than a decade with Citi as head of direct custody and clearing for APAC and then as global head of hedge fund services.

Commenting on the appointment, Chris Perry, president of Broadridge, says: "Mike has an impressive track record of building high performing global teams to deliver business transformation and growth. We look forward to him bringing this capital markets expertise and leadership, along with his passion and skills for helping clients."

Sleightholme adds: "Buy- and sell-side firms across Europe and Asia face their own unique set of technology and regulatory challenges, and I am eager to work with our talented team to provide clients with technology solutions paired with local market expertise to transform their businesses and drive growth." ■

Fund administrator Ocorian has appointed Anton J. Britton as head of business development for its US capital markets team.

Based in New York, Britton has more than 20 years' experience in the financial services industry.

Most recently, he was senior vice president, client executive for private capital administration at Northern Trust where he managed relationships with public and Taft Hartley pension plans.

He has also served at The LoBue Group, a consulting firm, and global bank J.P. Morgan.

Martin Reed, head of capital markets – New York, at Ocorian, says: "Anton brings extensive experience in business development, strategic relationship management, consulting and business transformation which will be important for our business as we continue to expand services in the US."

Commenting on his appointment, Britton adds: "Ocorian is building a significant presence in US capital markets, and I look forward to working with its experienced and expert teams to support clients."

NeoXam has appointed Daniel Joseph as country head for Australia in response to growing client demand in the region.

Based in Sydney, Joseph will report to Tim Versteeg, NeoXam's head of sales and general manager of the APAC region.

Joseph will be responsible for managing the Australian office, managing client accounts, increasing new client partnerships, and growing the NeoXam brand and reputation.He brings more than 16 years of experience in the financial

Michael Crumpler joins Credit Benchmark

Credit risk data and analytics firm Credit Benchmark has appointed Michael Crumpler as CEO. He replaces Donal Smith, current CEO and co-founder, who will retain his position as executive chairman.
In the role, Crumpler will be responsible for expanding the firm's global client footprint, maintaining its status and developing existing analytics and product functions.

Crumpler has close to 20 years of experience in the financial services industry, and has been a part of Credit Benchmark since 2016. He joined the firm as a managing director and global head of contributor relationships, before becoming chief operating officer and head of risk in 2021.

He has held senior roles at Goldman Sachs and Barclays Investment Bank, and currently serves as president of the board of directors at the Capital Markets Credit Analysts Society.

Commenting on his appointment, Crumpler says: "[Credit Benchmark] has grown so much since I joined in late 2016 and I'm confident that with the right focus and execution, we will be able to grow our business across our core markets, expand our efforts in new segments and continue to leverage emerging technologies such as AI to deliver best in class analytics for our clients."

Smith states: "[Crumpler's] vast experience and detailed knowledge of our customers and his experience in building Credit Benchmark made him the perfect choice for this position." ■

services sector, specifically across the buy- and sell-side capital markets.

Before joining NeoXam, Joseph was senior solutions director at software development company, DXC Luxoft. In this role, he consulted and outsourced data management solutions. Prior to this, Joseph worked at BNY Mellon's data and analytics business, focusing on developing and delivering innovative buy-side solutions for clients.

Versteeg says: "With over a decade of experience building new business pipelines for reputable global firms, Daniel's wealth of experience will be instrumental in supporting our rapidly growing Australia team as it seeks to continue delivering on new client partnerships."

UMB Financial Corporation has appointed Phil Mason as president of its institutional banking division.

Mason will oversee UMB's activities across corporate trust and agency services, institutional custody, fund services, the capital markets division, investor banking services and healthcare services. Mason has served at UMB since 2005.

Jim Rine, president and CEO of UMB Bank, says: "Phil is the ideal leader to continue our strong momentum in the institutional space. In his past role as chief operations officer for institutional banking, and more recently leading our healthcare business, Phil has launched multiple businesses and initiatives."

Mason adds: "Clients can expect seamless continuity and continued strategic counsel across all our verticals. Look for us to bring new initiatives that extend our services even further as we continue to focus on best-in-class offerings." ■

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