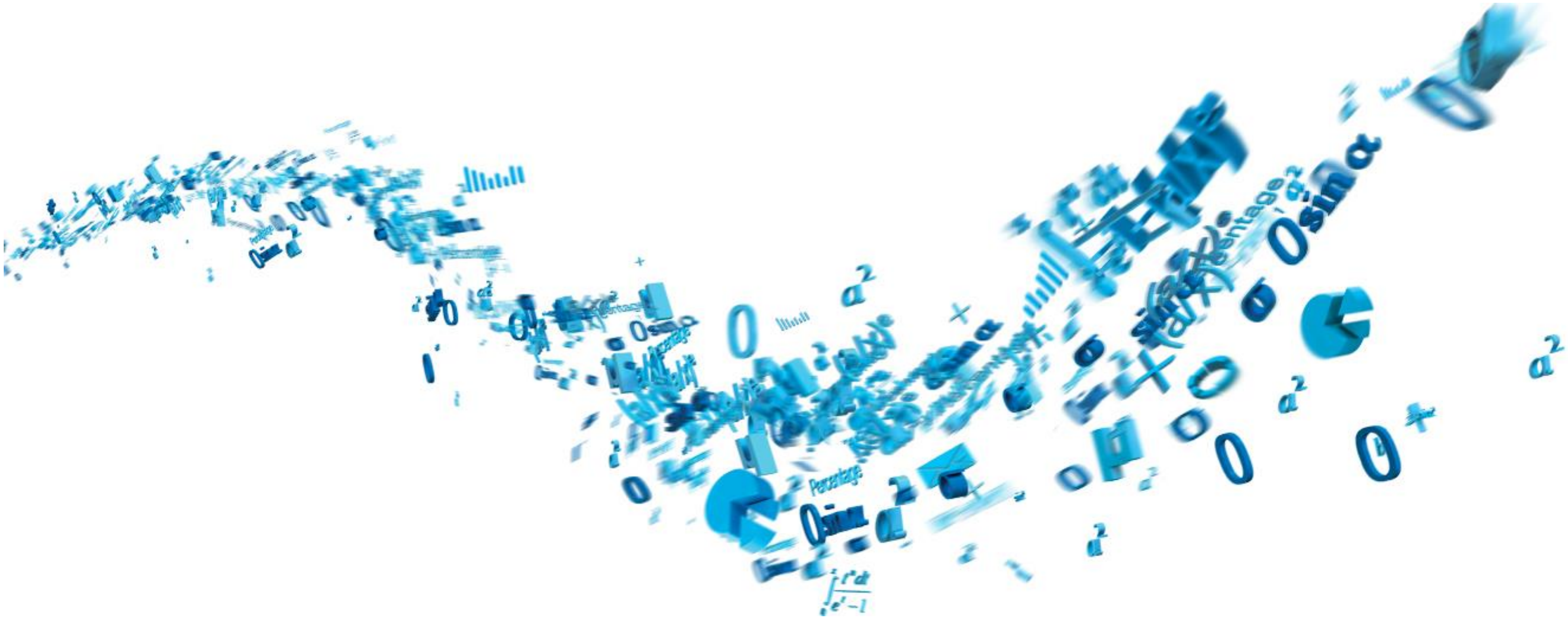


Pension Discussion Guide

Town of Wilton
February 9, 2022

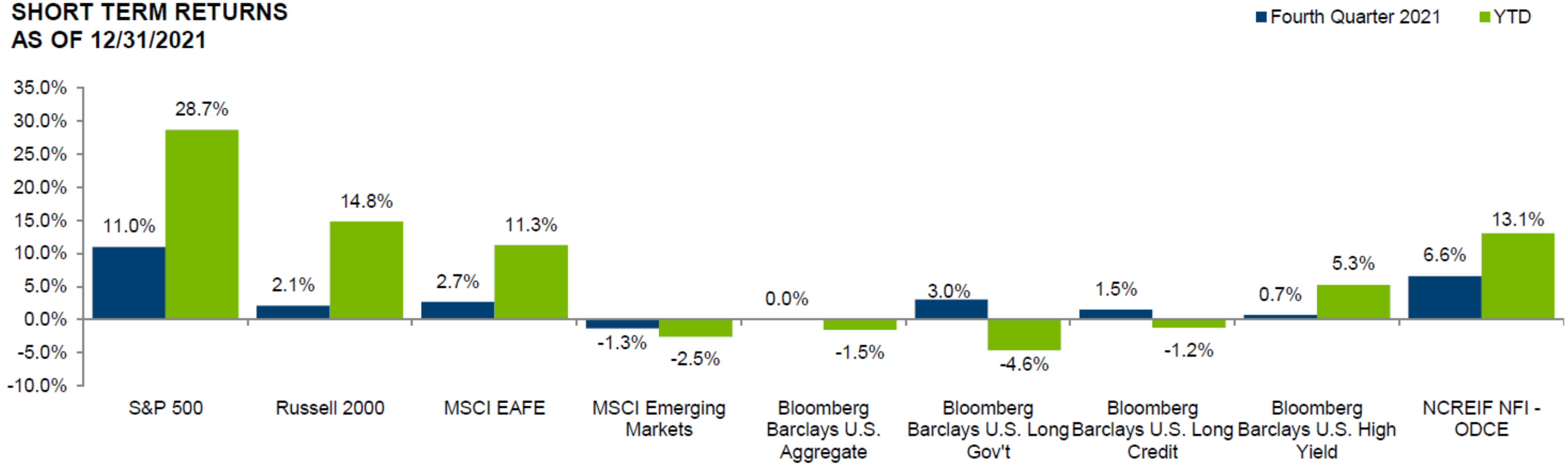
Empower Results®

Contents

Executive Summary

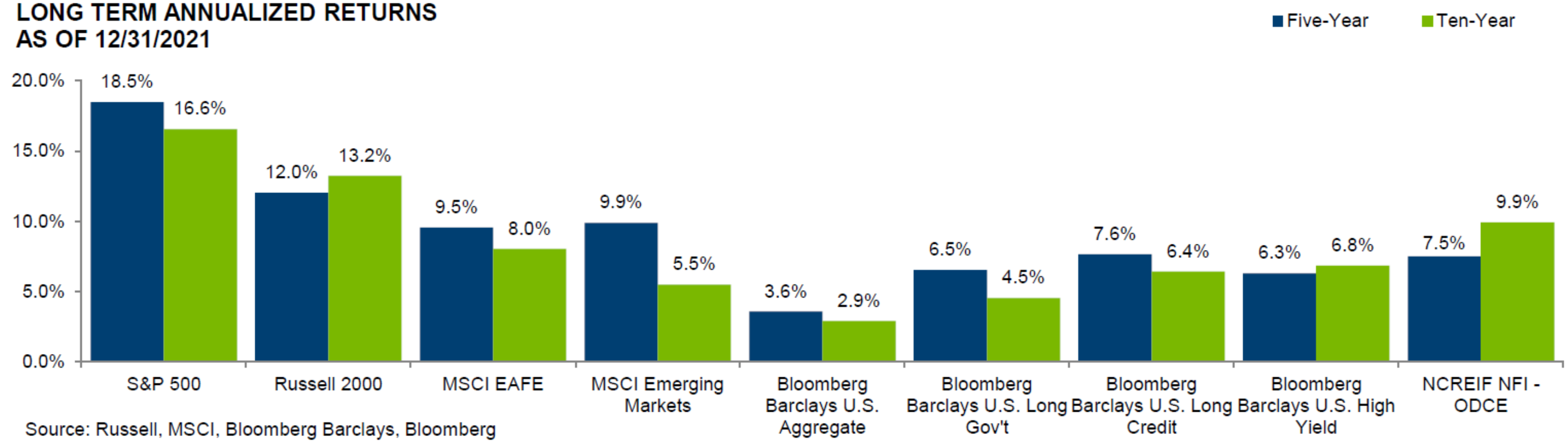
Market Highlights

SHORT TERM RETURNS
AS OF 12/31/2021



Source: Russell, MSCI, Bloomberg Barclays, Bloomberg

LONG TERM ANNUALIZED RETURNS
AS OF 12/31/2021



Source: Russell, MSCI, Bloomberg Barclays, Bloomberg

Note: MSCI Indices show net total returns throughout this report. All other indices show gross total returns.

Market Highlights

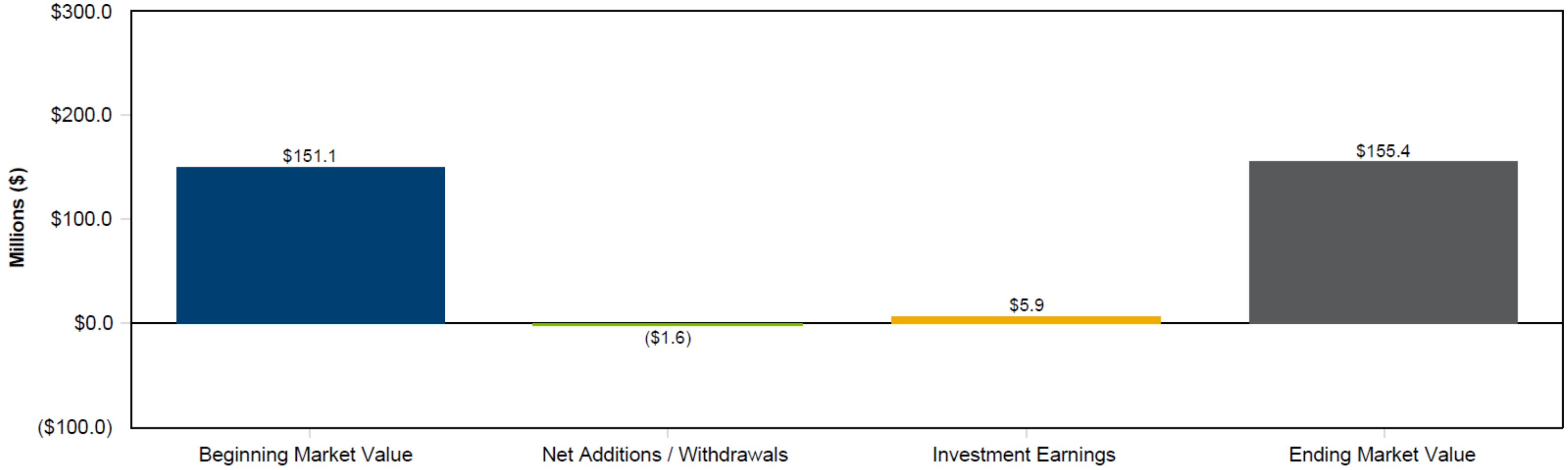
Returns of the Major Capital Markets						
Period Ending 12/31/2021	**Fourth Quarter**	**YTD**	**1-Year**	**3-Year[1]**	**5-Year[1]**	**10-Year[1]**
Equity						
MSCI All Country World IMI	6.10%	18.22%	18.22%	20.20%	14.12%	11.84%
MSCI All Country World	6.68%	18.54%	18.54%	20.38%	14.40%	11.85%
Dow Jones U.S. Total Stock Market	9.14%	25.66%	25.66%	25.72%	17.92%	16.24%
Russell 3000	9.28%	25.66%	25.66%	25.79%	17.97%	16.30%
S&P 500	11.03%	28.71%	28.71%	26.07%	18.47%	16.55%
Russell 2000	2.14%	14.82%	14.82%	20.02%	12.02%	13.23%
MSCI All Country World ex-U.S. IMI	1.64%	8.53%	8.53%	13.62%	9.83%	7.57%
MSCI All Country World ex-U.S.	1.82%	7.82%	7.82%	13.18%	9.61%	7.28%
MSCI EAFE	2.69%	11.26%	11.26%	13.54%	9.55%	8.03%
MSCI EAFE (Local Currency)	3.91%	18.70%	18.70%	13.35%	8.36%	10.09%
MSCI Emerging Markets	-1.31%	-2.54%	-2.54%	10.94%	9.87%	5.49%
Equity Factors						
MSCI World Minimum Volatility (USD)	7.00%	14.84%	14.84%	13.70%	11.34%	11.02%
MSCI World High Dividend Yield	7.17%	16.81%	16.81%	13.61%	10.27%	9.70%
MSCI World Quality	10.32%	26.10%	26.10%	28.37%	20.53%	16.00%
MSCI World Momentum	5.84%	14.95%	14.95%	23.80%	19.69%	15.72%
MSCI World Enhanced Value	4.19%	20.77%	20.77%	11.84%	8.28%	9.66%
MSCI World Equal Weighted	3.10%	15.40%	15.40%	16.53%	11.58%	11.07%
MSCI World Index Growth	8.19%	21.40%	21.40%	29.76%	21.31%	16.06%
Fixed Income						
Bloomberg Barclays Global Aggregate	-0.67%	-4.71%	-4.71%	3.59%	3.36%	1.77%
Bloomberg Barclays U.S. Aggregate	0.01%	-1.54%	-1.54%	4.79%	3.57%	2.90%
Bloomberg Barclays U.S. Long Gov't	3.05%	-4.57%	-4.57%	8.78%	6.53%	4.53%
Bloomberg Barclays U.S. Long Credit	1.52%	-1.18%	-1.18%	11.37%	7.64%	6.42%
Bloomberg Barclays U.S. Long Gov't/Credit	2.15%	-2.52%	-2.52%	10.62%	7.39%	5.72%
Bloomberg Barclays U.S. TIPS	2.36%	5.96%	5.96%	8.44%	5.34%	3.09%
Bloomberg Barclays U.S. High Yield	0.71%	5.28%	5.28%	8.83%	6.30%	6.83%
Bloomberg Barclays Global Treasury ex U.S.	-1.45%	-8.17%	-8.17%	1.86%	2.74%	0.44%
JP Morgan EMBI Global (Emerging Markets)	0.02%	-1.51%	-1.51%	6.06%	4.47%	4.95%
Commodities						
Bloomberg Commodity Index	-1.56%	27.11%	27.11%	9.86%	3.66%	-2.85%
Goldman Sachs Commodity Index	1.51%	40.35%	40.35%	7.99%	2.80%	-5.50%
Hedge Funds						
HFRI Fund-Weighted Composite[2]	0.56%	10.30%	10.30%	10.86%	7.10%	5.79%
HFRI Fund of Funds[2]	0.77%	6.53%	6.53%	8.59%	5.78%	4.59%
Real Estate						
NAREIT U.S. Equity REITS	16.31%	43.24%	43.24%	18.41%	10.75%	11.38%
NCREIF NFI - ODCE	6.59%	13.09%	14.59%	7.05%	7.50%	9.92%
FTSE Global Core Infrastructure Index	10.03%	17.84%	17.84%	13.91%	11.35%	10.23%
Private Equity						
Burgiss Private iQ Global Private Equity[3]			54.98%	22.55%	20.17%	15.22%

MSCI Indices show net total returns throughout this report. All other indices show gross total returns.
[1] Periods are annualized.
[2] Latest 5 months of HFR data are estimated by HFR and may change in the future.
[3] Burgiss Private iQ Global Private Equity data is as of June 30, 2021

Pension Performance Summary

Total Plan Asset Summary

Change in Market Value
From October 1, 2021 to December 31, 2021



Summary of Cash Flow

	1 Quarter	1 Year	Since Inception	Inception Date
Beginning Market Value	151,124,603	142,808,828	73,939,906	
+ Additions / Withdrawals	-1,570,163	-3,473,965	-7,356,215	
+ Investment Earnings	5,890,270	16,109,847	88,861,020	
= Ending Market Value	**155,444,710**	**155,444,710**	**155,444,710**	

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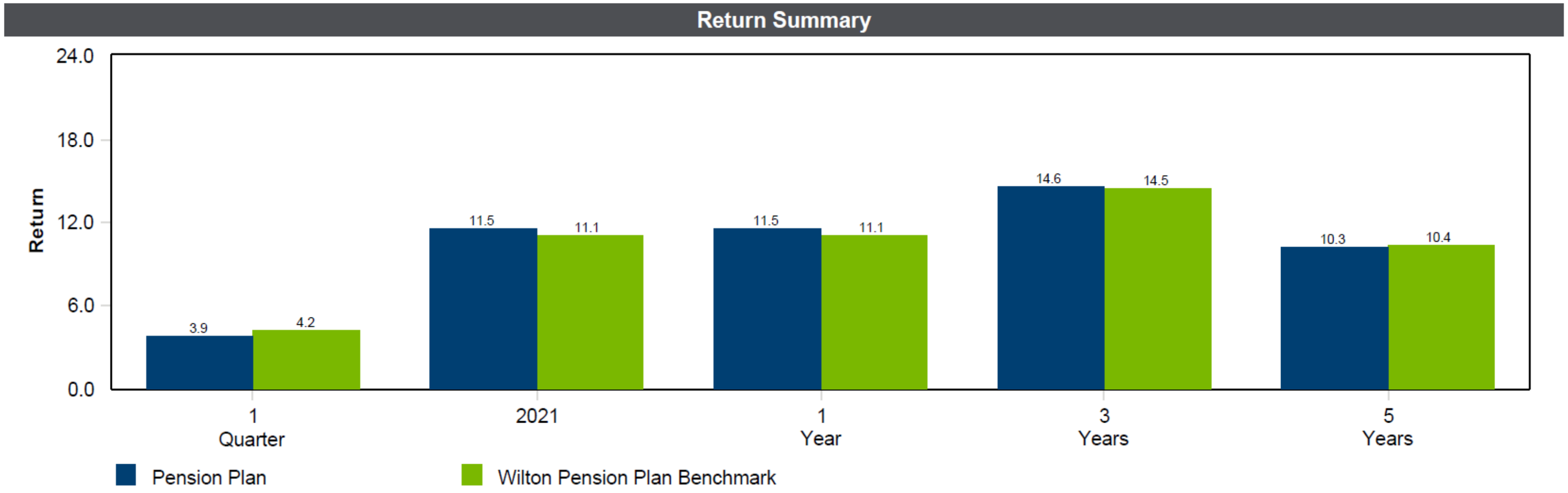
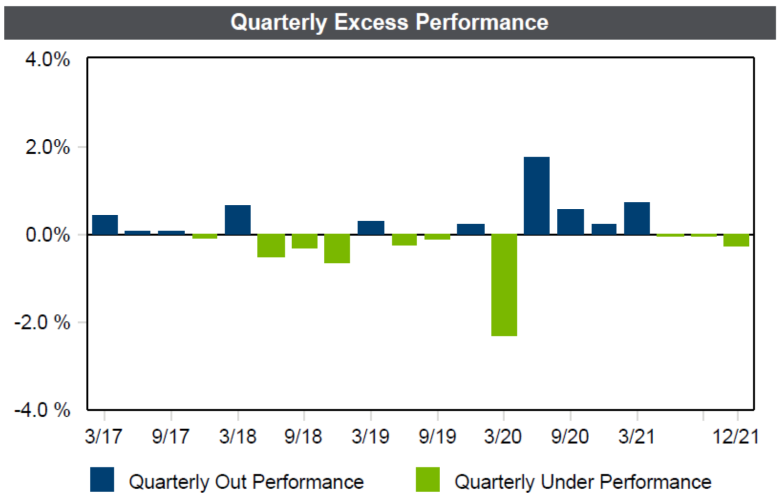
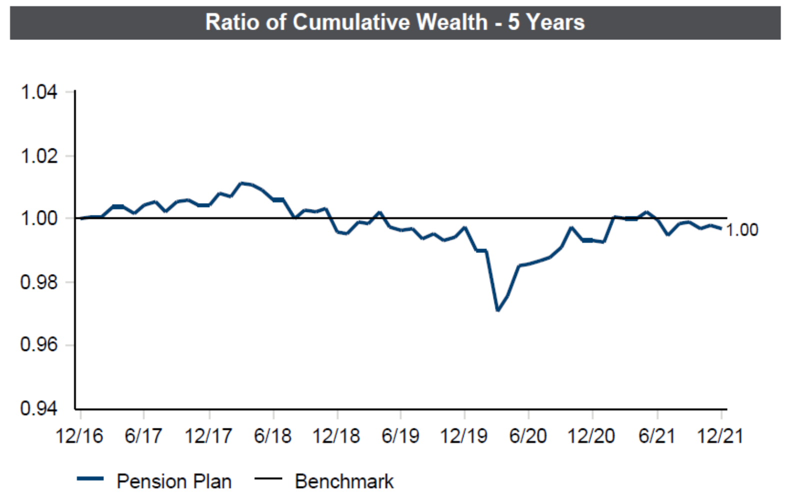
Total Plan Performance Summary







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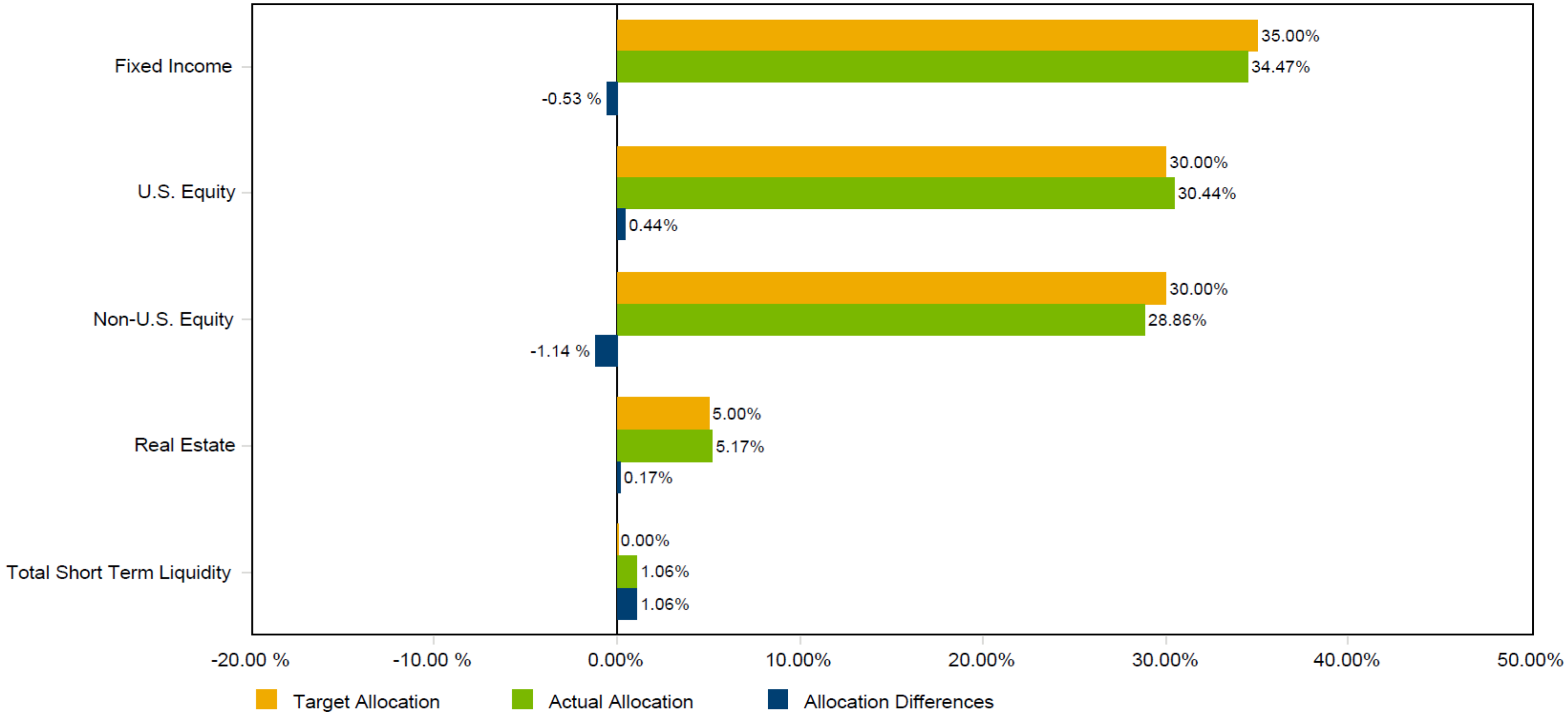
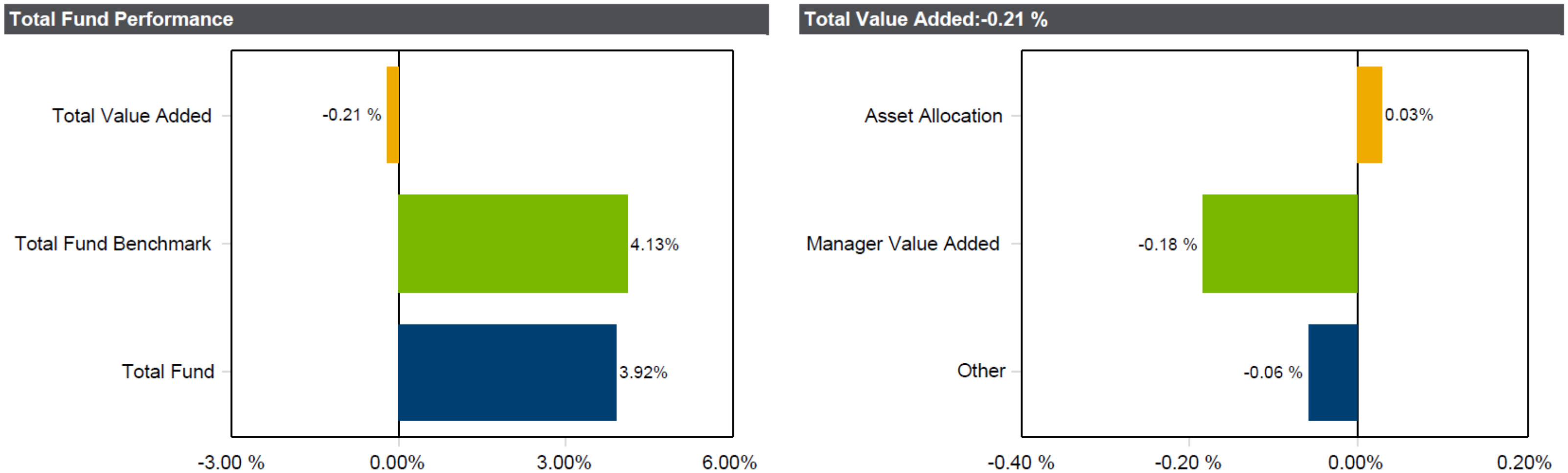
Asset Allocation as of December 31, 2021

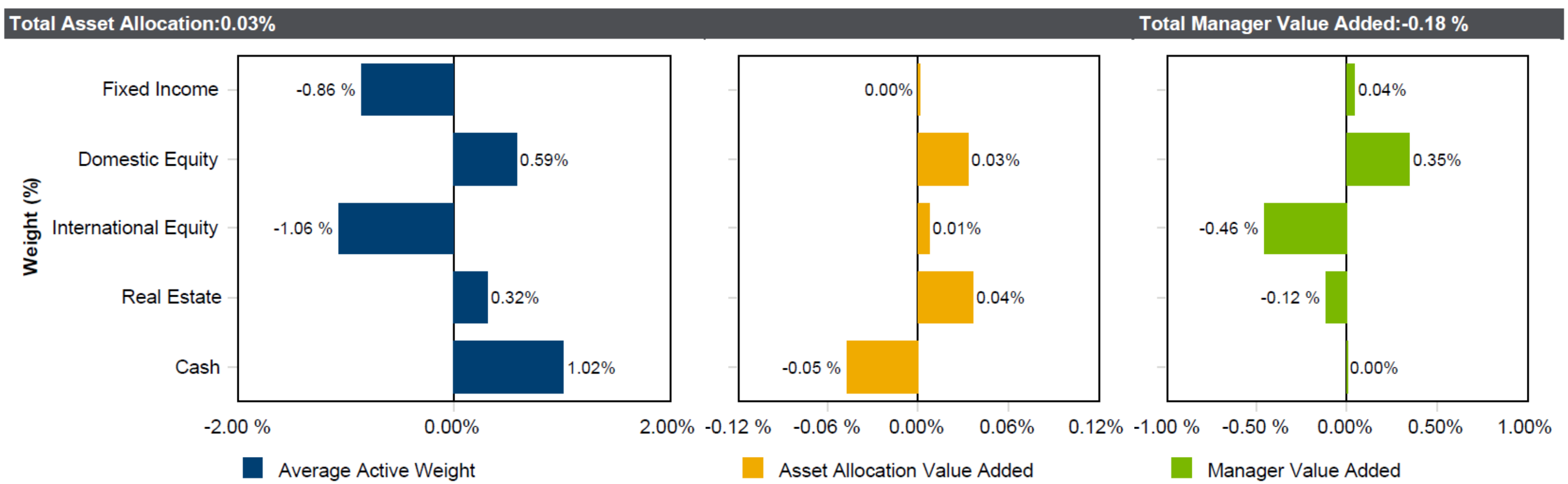
	Market Value ($)	Current Allocation (%)	Target Allocation (%)	Differences (%)
Pension Plan	155,444,710.43	100.00	100.00	0.00
Fixed Income	**53,586,380.01**	**34.47**	**35.00**	**-0.53**
U.S. Equity	**47,316,018.20**	**30.44**	**30.00**	**0.44**
Non-U.S. Equity	**44,859,842.86**	**28.86**	**30.00**	**-1.14**
Real Estate	**8,035,087.82**	**5.17**	**5.00**	**0.17**



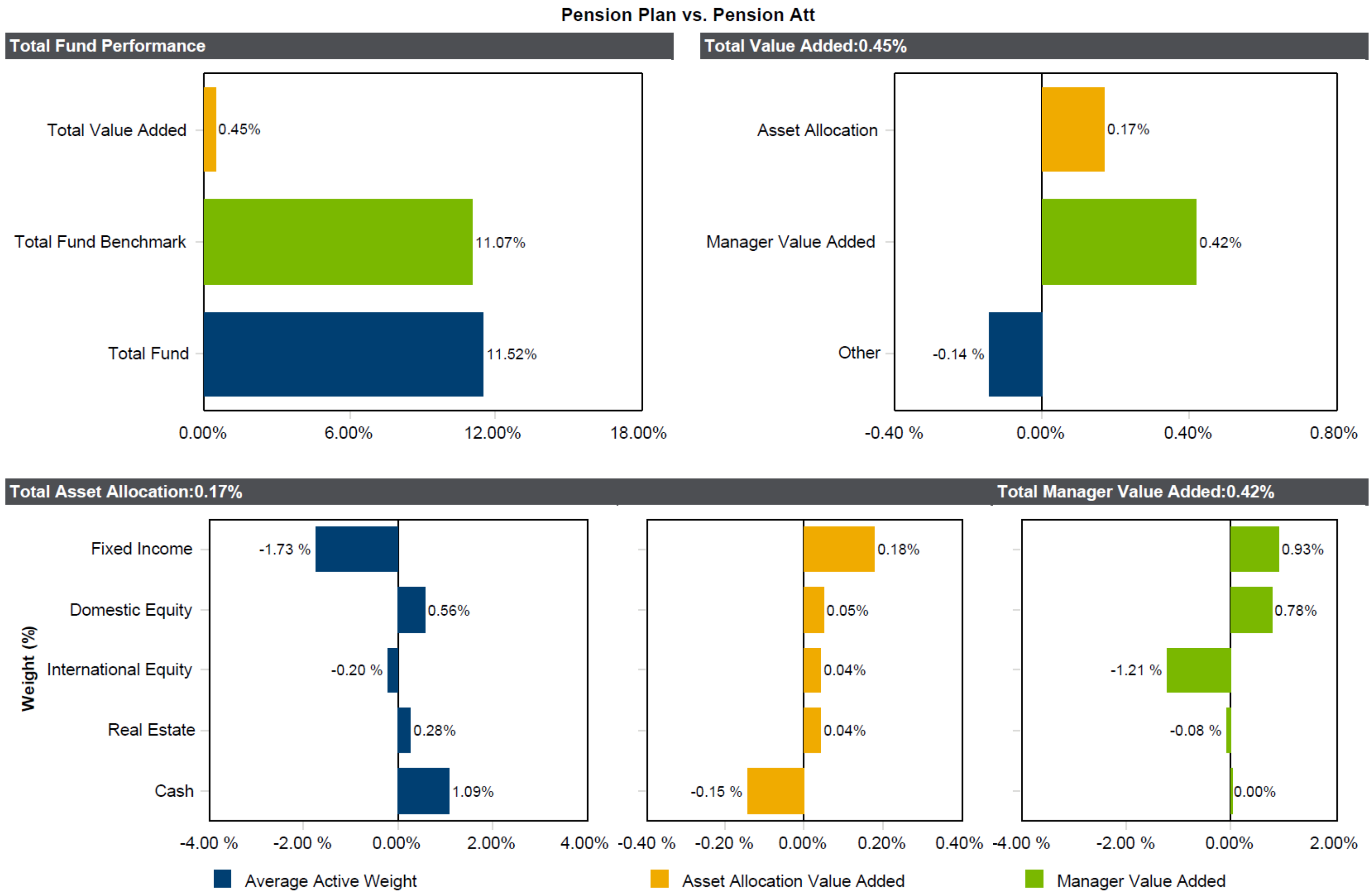
Pension Total Fund Attribution:
1 Quarter as of December 31, 2021

Pension Plan vs. Pension Att





Pension Total Fund Attribution:
1 Year as of December 31, 2021



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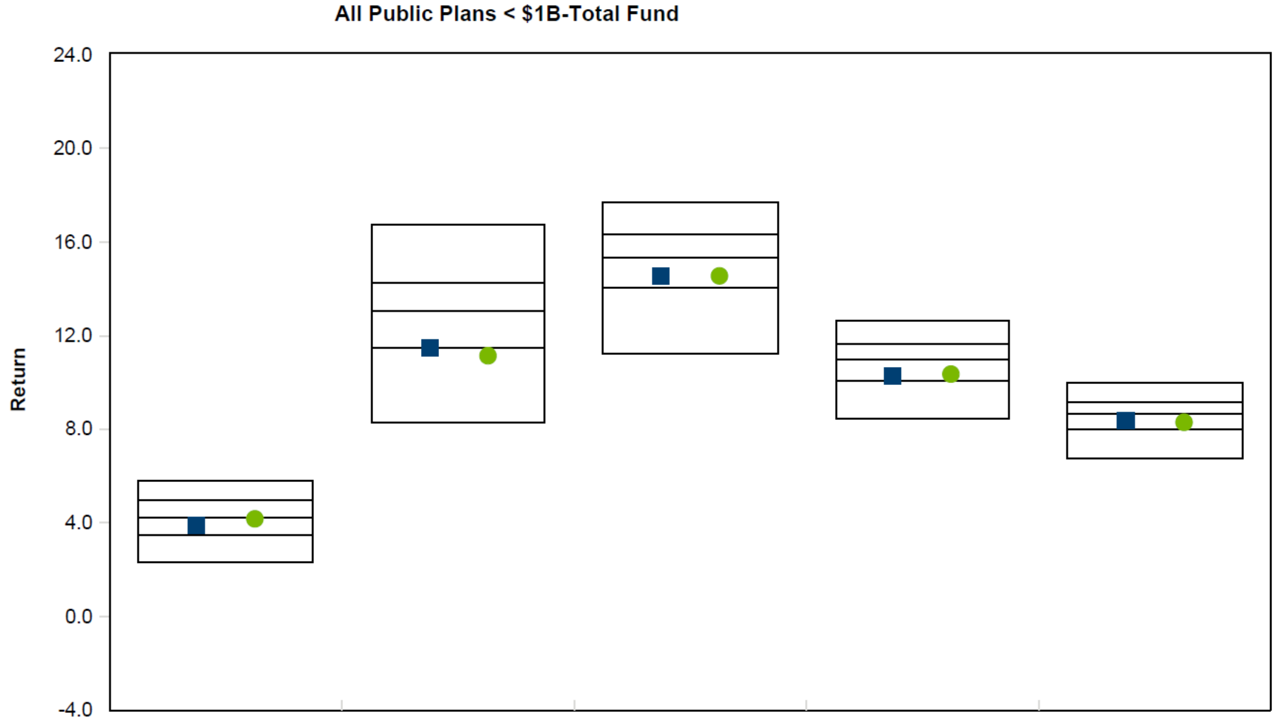
Plan Sponsor Peer Group Analysis
As of December 31, 2021



	1 Quarter	1 Year	3 Years	5 Years	7 Years
■ Pension Plan	3.9 (62)	11.5 (75)	14.6 (67)	10.3 (70)	8.4 (64)
● Wilton Pension Plan Benchmark	4.2 (52)	11.1 (81)	14.5 (68)	10.4 (67)	8.3 (68)
5th Percentile	5.8	16.7	17.7	12.6	10.0
1st Quartile	4.9	14.2	16.3	11.7	9.1
Median	4.2	13.0	15.3	11.0	8.6
3rd Quartile	3.5	11.5	14.1	10.1	8.0
95th Percentile	2.4	8.3	11.2	8.5	6.7
Population	298	294	282	262	240

Empower Results®

Performance as of December 31, 2021

	Allocation			Performance(%)						
	Market Value ($)	%	Policy(%)	1 Quarter	1 Year	3 Years	5 Years	7 Years	Since Inception	Inception Date
Pension Plan	155,444,710	100.0	100.0	3.9	11.5	14.6	10.3	8.4	8.4	05/01/2012
Wilton Pension Plan Benchmark				*4.2*	*11.1*	*14.5*	*10.4*	*8.3*	*8.5*	
Fixed Income	53,586,380	34.5	35.0	0.1	1.0	5.0	3.8	3.2	4.5	05/01/2008
Wilton Pension FI Hybrid BB				*0.2*	*-1.4*	*4.8*	*3.7*	*2.9*	*4.0*	
Vanguard Total Bond Market Index Instl	7,363,615	4.7		-0.1 (42)	-1.7 (69)	4.8 (70)	3.6 (65)	3.0 (67)	3.0 (67)	12/01/2014
Blmbg. U.S. Aggregate				*0.0 (22)*	*-1.5 (64)*	*4.8 (72)*	*3.6 (69)*	*3.0 (66)*	*3.0 (63)*	
IM U.S. Broad Market Core Fixed Income (MF) Median				-0.1	-1.3	5.2	3.8	3.3	3.2	
Metropolitan West Total Return Bond Pl	15,145,932	9.7		-0.1 (56)	-1.1 (64)	5.6 (52)	4.1 (62)	3.3 (64)	3.9 (36)	05/01/2012
Blmbg. U.S. Aggregate				*0.0 (32)*	*-1.5 (79)*	*4.8 (86)*	*3.6 (88)*	*3.0 (90)*	*2.9 (93)*	
IM U.S. Broad Market Core+ Fixed Income (MF) Median				0.0	-0.7	5.7	4.3	3.6	3.7	
PGIM Total Return Bond R6	7,882,456	5.1		0.3 (4)	-1.2 (72)	5.9 (47)	4.7 (24)	4.1 (22)	4.1 (22)	01/01/2015
Blmbg. U.S. Aggregate				*0.0 (32)*	*-1.5 (79)*	*4.8 (86)*	*3.6 (88)*	*3.0 (90)*	*3.0 (90)*	
IM U.S. Broad Market Core+ Fixed Income (MF) Median				0.0	-0.7	5.7	4.3	3.6	3.6	
PIMCO Income Fund	12,412,066	8.0		0.2 (38)	2.6 (39)	-	-	-	3.8 (35)	12/01/2020
Blmbg. U.S. Aggregate				*0.0 (53)*	*-1.5 (98)*	-	-	-	*-1.3 (99)*	
IM Multi-Sector General Bond (MF) Median				0.1	1.5	-	-	-	2.4	
Apollo Total Return Fund	5,891,142	3.8		0.7 (14)	1.7 (48)	-	-	-	1.7 (48)	01/01/2021
50/50 ML Master II & Credit Suisse LLI				*0.7 (14)*	*5.4 (8)*	-	-	-	*5.4 (8)*	
IM Multi-Sector General Bond (MF) Median				0.1	1.5	-	-	-	1.5	
Aon Opportunistic Credit Fund	4,016,168	2.6		0.0	-	-	-	-	11.2	02/01/2021
*Opportunistic Credit Custom Index**				*0.0*	-	-	-	-	*4.9*	
Barings North American Private Debt Fund	875,000	0.6		-	-	-	-	-	0.0	11/01/2021
Cash Equivalents	1,647,382	1.1	0.0	0.0	-0.7	0.6	0.8	0.6	0.5	05/01/2008
90 Day U.S. Treasury Bill				*0.0*	*0.0*	*1.0*	*1.1*	*0.9*	*0.6*	
Wells Fargo Government MM Fund	1,647,382	1.1		0.0	0.0	0.8	0.9	0.7	0.5	05/01/2012
90 Day U.S. Treasury Bill				*0.0*	*0.0*	*1.0*	*1.1*	*0.9*	*0.6*	

*As of January 2011, The Opportunistic Credit Custom Index consists of 12.5% Bloomberg U.S. Corporate High Yield Index, 12.5% S&P/LSTA Leveraged Loan Index, 25% HFRI RV: Fixed Income-Asset Backed Index, 25% HFRI ED: Distressed/Restructing Index and 25% Barclays U.S. CMBS 2.0 Index

Performance as of December 31, 2021

	Allocation			Performance(%)						
	Market Value ($)	%	Policy(%)	1 Quarter	1 Year	3 Years	5 Years	7 Years	Since Inception	Inception Date
U.S. Equity	47,316,018	30.4	30.0	10.5	28.6	25.0	17.2	14.4	11.6	05/01/2008
Russell 3000 Index				*9.3*	*25.7*	*25.8*	*18.0*	*14.5*	*11.7*	
Vanguard Institutional Index Fund Instl	34,998,601	22.5		11.0 (17)	28.7 (8)	26.0 (9)	18.4 (12)	14.9 (10)	15.8 (9)	05/01/2012
S&P 500 Index				*11.0 (3)*	*28.7 (1)*	*26.1 (4)*	*18.5 (3)*	*14.9 (3)*	*15.8 (3)*	
IM S&P 500 Index (MF) Median				11.0	28.5	25.9	18.3	14.8	15.6	
Diamond Hill Small-Mid Cap Y	6,094,863	3.9		7.2 (81)	31.2 (38)	19.4 (38)	10.2 (50)	10.0 (35)	12.6 (22)	05/01/2012
Russell 2500 Value Index				*6.4 (90)*	*27.8 (82)*	*18.3 (52)*	*9.9 (60)*	*9.6 (47)*	*11.7 (49)*	
IM U.S. Mid Cap Value Equity (MF) Median				8.6	30.2	18.4	10.1	9.2	11.6	
Eaton Vance Atlanta Capital SMID Instl	6,222,554	4.0		9.7 (1)	22.2 (5)	22.3 (83)	16.6 (69)	14.8 (50)	15.1 (40)	05/01/2012
Russell 2500 Growth Index				*0.2 (74)*	*5.0 (73)*	*25.1 (59)*	*17.7 (60)*	*13.8 (64)*	*14.8 (43)*	
IM U.S. SMID Cap Growth Equity (MF) Median				2.6	9.6	26.6	19.0	14.6	14.5	
Non-U.S. Equity	44,859,843	28.9	30.0	0.3	3.8	14.2	10.5	7.4	3.4	05/01/2008
MSCI AC World ex USA Index (Net)				*1.8*	*7.8*	*13.2*	*9.6*	*6.6*	*3.3*	
American Funds EuroPacific Growth R6	11,987,874	7.7		-1.1 (100)	2.8 (100)	18.0 (1)	12.9 (1)	9.1 (1)	7.6 (1)	07/01/2014
MSCI AC World ex USA Index (Net)				*1.8 (75)*	*7.8 (75)*	*13.2 (46)*	*9.6 (22)*	*6.6 (28)*	*4.8 (29)*	
IM International Large Cap Core Equity (MF) Median				2.9	10.6	12.8	8.8	5.8	4.1	
T. Rowe Price Overseas Stock Instl	12,450,213	8.0		3.5 (27)	12.4 (18)	14.8 (16)	10.4 (5)	-	-	07/01/2014
MSCI EAFE Index (Net)				*2.7 (57)*	*11.3 (27)*	*13.5 (41)*	*9.5 (23)*	*6.8 (24)*	*4.9 (23)*	
IM International Large Cap Core Equity (MF) Median				2.9	10.6	12.8	8.8	5.8	4.1	
Templeton Instl Foreign Smaller Companies Fund Adv	5,865,435	3.8		0.5 (52)	10.7 (77)	14.0 (54)	10.1 (38)	7.3 (71)	7.7 (57)	05/01/2012
MSCI AC World ex USA Small Cap (Net)				*0.6 (50)*	*12.9 (47)*	*16.5 (14)*	*11.2 (17)*	*8.9 (28)*	*8.4 (31)*	
IM International SMID Cap Core Equity (MF) Median				0.6	12.7	14.1	9.2	7.8	7.8	
GQG Partners Emerging Markets Equity	7,435,674	4.8		-0.2 (36)	-2.4 (65)	-	-	-	-2.4 (65)	01/01/2021
MSCI Emerging Markets Index				*-1.2 (55)*	*-2.2 (64)*	-	-	-	*-2.2 (64)*	
IM Emerging Markets Equity (MF) Median				-1.0	-0.7	-	-	-	-0.7	
William Blair Emerging Markets Leaders Fund; R6	7,120,646	4.6		-2.4 (70)	-7.3 (86)	-	-	-	-7.3 (86)	01/01/2021
MSCI Emerging Markets Index				*-1.2 (55)*	*-2.2 (64)*	-	-	-	*-2.2 (64)*	
IM Emerging Markets Equity (MF) Median				-1.0	-0.7	-	-	-	-0.7	

*As of January 2011, The Opportunistic Credit Custom Index consists of 12.5% Bloomberg U.S. Corporate High Yield Index, 12.5% S&P/LSTA Leveraged Loan Index, 25% HFRI RV: Fixed Income-Asset Backed Index, 25% HFRI ED: Distressed/Restructing Index and 25% Barclays U.S. CMBS 2.0 Index

Performance as of December 31, 2021

	Allocation			Performance(%)						
	Market Value ($)	%	Policy(%)	1 Quarter	1 Year	3 Years	5 Years	7 Years	Since Inception	Inception Date
Real Estate	8,035,088	5.2	5.0	13.8	39.5	19.3	12.8	12.2	11.4	07/01/2012
Wilton Pension Real Estate				*16.2*	*41.3*	*20.1*	*11.4*	*9.7*	*10.7*	
Cohen & Steers Institutional Realty Shares	7,142,684	4.6		16.1 (38)	42.8 (32)	-	-	-	42.8 (32)	01/01/2021
FTSE NAREIT All Equity REITs				*16.2 (38)*	*41.3 (56)*	-	-	-	*41.3 (56)*	
IM Real Estate Sector (MF) Median				15.8	41.5	-	-	-	41.5	
Westbrook Real Estate Fund XI	892,404	0.6		0.4	-	-	-	-	9.1	02/01/2021

*As of January 2011, The Opportunistic Credit Custom Index consists of 12.5% Bloomberg U.S. Corporate High Yield Index, 12.5% S&P/LSTA Leveraged Loan Index, 25% HFRI RV: Fixed Income-Asset Backed Index, 25% HFRI ED: Distressed/Restructing Index and 25% Barclays U.S. CMBS 2.0 Index

Aon Medium Term Views

Core Views

*

The challenges come to the fore

Our warning that market conditions were more challenging coming into 2022 is being borne out. Return challenges are considerable for both equities and bonds.

Persistent inflation risk is key to market turbulence

The sharp reset to interest rate expectations reflects the dangers of 'persistent inflation', and may lead to more volatility spikes in the year. Central banks are under pressure to move quickly to restore credibility. The risk is that higher policy rates might create a strong market upset – remember 2018!

De-risking but not disinvesting

We stress that our less constructive view on the markets is not a prediction of large market falls. Timing such an event accurately is, in any case, impossible.

Our views reflect what we see to be the gradual erosion of market supports (rather than a sudden step change in conditions) and appropriate responses to reduce portfolio volatility and build resilience.

View shifts

No change in views this quarter

Actions

Being sparing with equity risk in portfolios

- Dependent on the size of equity exposure, there are several options available. Reducing equity exposure for those with high weightings, diversification options and even direct equity protection are all on the table.

Be selective in credit markets

- Rising yields and spread risks are bringing return challenges so selectivity is essential. Credit has little to offer at present for return-focused investors though this could change if yields rise far enough.

Diversifiers review

- This is a good time to see which of the existing diversifiers in a portfolio might be expected to perform well and whether some reinforcing is required.

Objective

Portfolios should focus on managing the risk/reward challenge of current high asset valuations and high correlations between risk-assets.

Empower Results®

Recommended actions

Total Return Cross Asset Class Views

---	--	-	=	+	++	+++
		Equities		Alternatives		
		Core fixed income		Cash		
		Credit				

Equities still face headwinds from inflation, tightening policy and a weakening economic recovery

We favour uncorrelated sources of return. Holding some cash is reasonable now given the return profiles for stocks and bonds

Relative Asset Class Views

Equity Regions

---	--	-	=	+	++	+++
			USA			
			EAFE			
			Emerging			

Regional views remain neutral as the outlook for equities becomes more uncertain

Equity Styles

---	--	-	=	+	++	+++
		Value	Low Vol.			
		Growth	Quality			

We maintain a defensive posture on equity styles

Alternatives

---	--	-	=	+	++	+++
			Commodities	Diversifying Hedge Funds		
			Real Estate	Global Infra.		
				Private Credit		

Non-correlated alternatives still generally preferred

Credit

---	--	-	=	+	++	+++
	High Yield	USD EMD	Bank Loans	Selected ABS		
		Local EMD				

Expensive valuations and uncertainty surrounding the macro and market environment keeps us cautious despite some good fundamental support

Core Fixed Income Duration*

---	--	-	=	+	++	+++
			Treasuries			
			Inv. Grade			
			TIPS			

We still lean negative on duration

No preference between nominal and inflation-linked bonds

Currencies versus USD

---	--	-	=	+	++	+++
			EUR			
			GBP			
			JPY			
			EM			

US dollar strength is fading with tighter US monetary policy now priced in

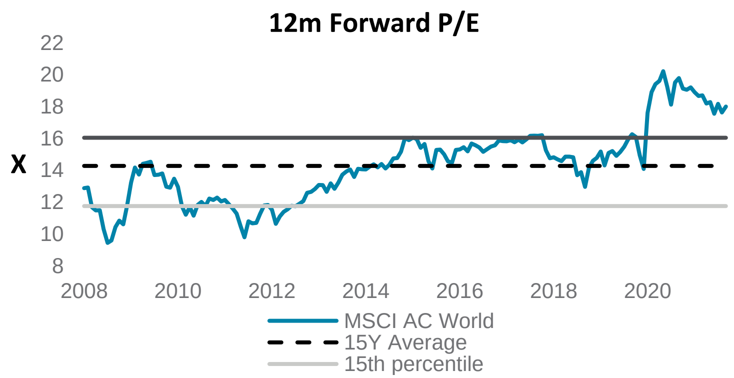
Equities
The outlook remains less supportive

- Equity markets performed relatively well over Q4, but momentum has clearly slowed from earlier in the year. Rising inflation, coupled with mounting concern that monetary and fiscal policy are moving firmly into tightening mode, are still important headwinds. The rise of the Omicron variant may have led to perceptions that economic growth would be curtailed somewhat, while energy prices fell back somewhat.
- We continue to think that supports for equity markets are likely to be eroded gradually this year. The key pinch-point for equities is a changing macroeconomic growth-inflation balance, led by the US. The persistence of inflationary pressures into 2022 squeezes margins, threatens a higher interest rate trajectory and weaken spending by consumers and businesses.
- Analyst earnings revisions, having peaked in the middle of Q3, have fallen back significantly. Meanwhile, earnings forecasts are now acknowledging weaker growth this year and next relative to 2021. The result has been a gradual trend to less expensive earnings-based valuations, such as Price to Earnings, although we cannot say that equities are obviously cheap. Indeed, particularly against bonds, equities are looking less and less attractive, as yields have continued to trend higher.
- It is important to note that we are not necessarily expecting an imminent strong market downturn. There are still important supports in the form of market sensitive central banks, pent-up demand and the prospect of further virus control progress.
- However, we believe that the balance is no longer clearly in favour of equities now.

Earnings revisions have fallen back

Source: Factset, Aon

Earnings-based valuations look less expensive

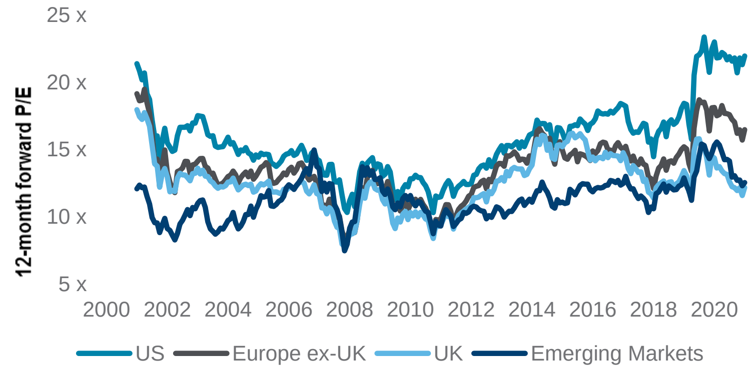


Source: Factset, Aon

Equities
Defensive stance still merited

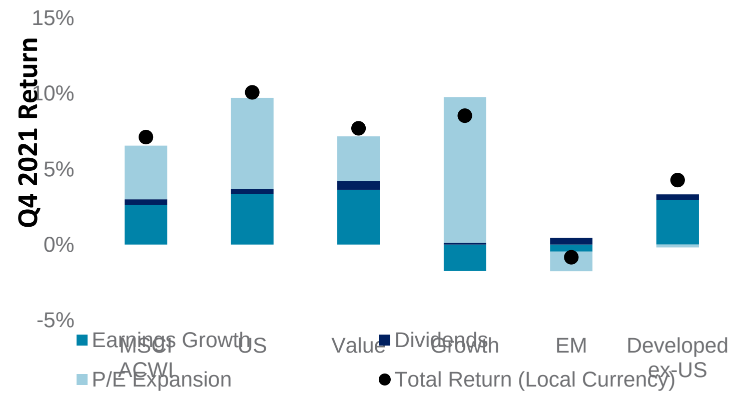
- Emerging market performance suffered over the fourth quarter as the Chinese regulatory crackdown created headwinds for several key sectors. As the virus continues to rage and trigger restrictions, the near-term prospects for EM equities remain uncertain, so we have maintained our neutral view this quarter.
- Indeed, we have decided to maintain our neutral regional views as, even though the US looks set to be most challenged by rising inflation and higher yields, other regions are also facing similar headwinds and will find it difficult to escape the downdraft from the US. The relative pace of monetary policy tightening and infection waves will fluctuate so there could be short periods of relative outperformance for the regions, but we do not believe that these periods will last long.
- Similarly, we do not think that recent Value stock outperformance, due to a sharp sell-off in technology stocks, will endure throughout the year. Value stocks tend to perform better in a rising yield environment, but we believe that higher yields will be driven more by inflation than growth expectations this year. Such a backdrop could help energy and financial stocks but this would likely be in the context of struggling markets in general. It is possible that there will be further short-lived periods of Value stock outperformance, of course. However, given our more pessimistic outlook, we think it appropriate to remain defensive in our equity style views.

Valuation gaps remain big as valuations get cheaper



Source: Factset, MSCI, Aon

US and Growth stocks outperformed over Q4, with EM equities continuing to struggle

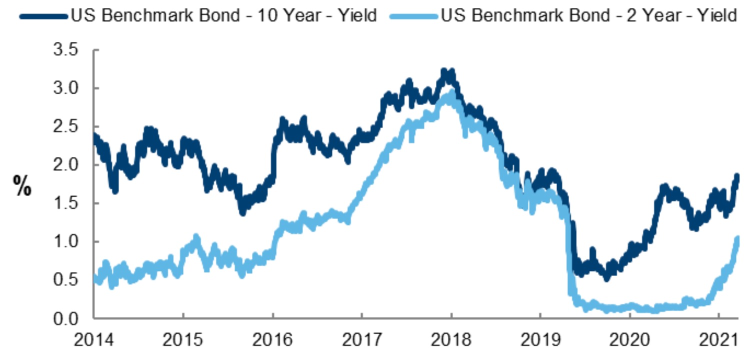


Source: Factset, MSCI, Aon. Changes in the 12-month forward P/E and earnings per share shown. Local currency returns and MSCI World Growth and Value indices shown.

Government Bonds
Rising yield trend still in place

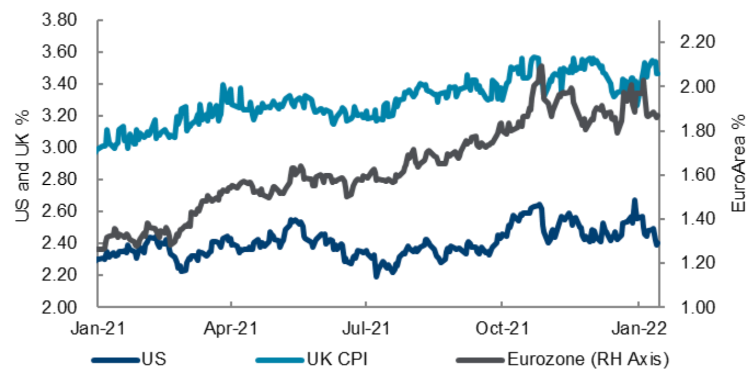
- With inflation remaining high, nominal yields have continued to mover higher in most developed economies. The Federal Reserve will likely start raising interest rates soon but, whilst several are expected this year and next, the number of hikes necessary to reduce inflation is a big unknown. With this more 'hawkish' stance (statements suggesting monetary policy will be less expansionary), it has been real yields rather than inflation break-evens that have driven fixed yields higher.
- Despite higher yields, we still think on balance there is further downside to bond prices: i.e. higher yields are likely. We think that tighter monetary policy and less fiscal support will combine to take the wind out of the sails of the US economy, putting downward pressure on mid- to long-term Treasury yields.
- Inflation swaps still suggest that markets believe inflation will eventually be brought back under control. Nonetheless, inflation will likely persist in the near-term, putting pressure on the Fed to remain on a tightening path for much of this year.
- Notably yield moves have been less strong at the long-end, so although 10 year Treasury yields have reached post-Coronavirus highs, the 30 year high has not yet been reached. This suggests that a bit of relative value has crept in to long-dated bonds. We think that a degree of flattening is justified by a more hawkish stance.

Treasury yields rebound as inflation remains high



Source: Factset

Forward-starting inflation swaps (5Yx5Y) suggest that markets believe inflation will be brought under control



Source: Bloomberg

Credit

Preference for leveraged loans and asset-backed securities remains

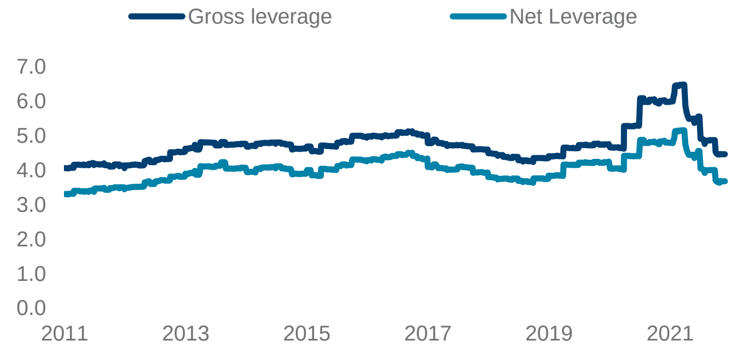
- High yield (HY) bonds caught up with loans in December, leading to similarly good returns from US HY bonds and loans over 2021. However, US CLOs posted the highest return of the year. We have preferred them throughout the year and we continue to think that they remain attractively valued, alongside some other asset-backed securities such as property debt.
- M&A activity and private equity fund cash reserves will keep loan and CLO issuance high next year but we expect investor demand for these floating rate instruments to more than match supply given the expected rising rate environment after the Fed signalled three rate hikes over 2022 in December.
- Corporate fundamentals are supportive of HY bonds with strong earnings helping leverage to fall last year and, though they have longer duration than loans, HY bonds are shorter than investment grade (IG) bonds and therefore will suffer less from treasury bond yield rises. However, we expect HY credit spreads to be most hit from equity market volatility given their current tight levels and lower support from overseas investors' and pension funds' demand.
- EM debt is attractively valued relative to US corporate debt with under-control inflation boosting EM real yields. We think that US headwinds will weaken as we expect US dollar strength to fade and suspect that US policy rate hike expectations may be overdone. However, uncertainty surrounding Fed hikes, China and investor appetite is keeping us cautious although we are preparing to become more positive as easing US inflationary pressures and more Chinese pro-growth policies become more evident.

US CLOs and HY (loans and bonds) had a good 2021

2021 Return (% in US$)

Source: CS Leveraged Loan, BAML US Non-Financial HY, JPM Post-Crisis CLOIE BB, JPM GBI-EM and EMBI Global Diversified, Bloomberg Barclays US Corporate Index

HY bond leverage has dropped which helps to offset higher financing costs from rising yields



Source: BofA Securities

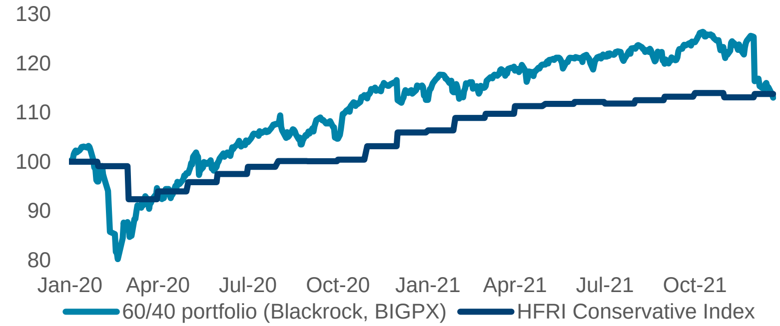
Alternatives

Challenged returns from 60/40 portfolio helps the relative outlook for diversifying hedge funds

- The standard balanced 60-40 portfolio has delivered very strongly in the past 5 years, annualised returns exceeding double digits.
- However, we may be in a period when pressures on bonds and equities lead to a period of much lower returns for this 60-40 mix.
- This benefits the relative outlook for defensive or diversifying hedge funds. The HFRI conservative index, a combination of defensive hedge fund strategies like equity market neutral and fixed income arbitrage (which are less dependent on rising markets) is a good point of comparison with the traditional 60/40 index. It has underperformed in absolute terms over several years, but has provided equivalent risk-weighted performance and now may be on a better relative footing looking ahead (see chart).
- Other less liquid alternatives compared with hedge funds are also likely to provide some diversification to portfolios – private real estate and infrastructure are two of our favoured choices at present.

Are defensive/diversifying hedge funds better placed now?

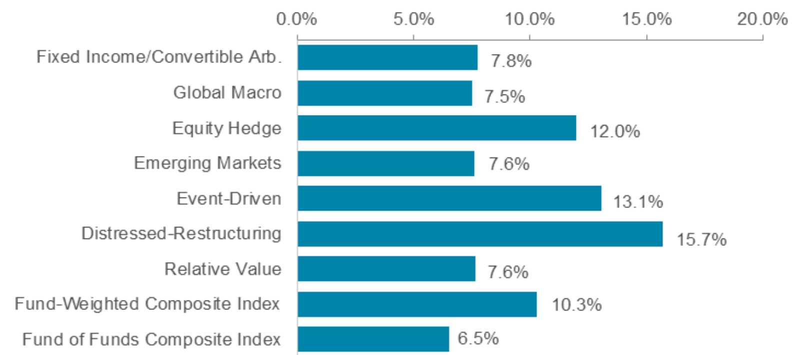
Re-indexed returns



Source: Bloomberg

Hedge funds were able to capitalize on uncertainty in 2021

Year-to-Date Performance



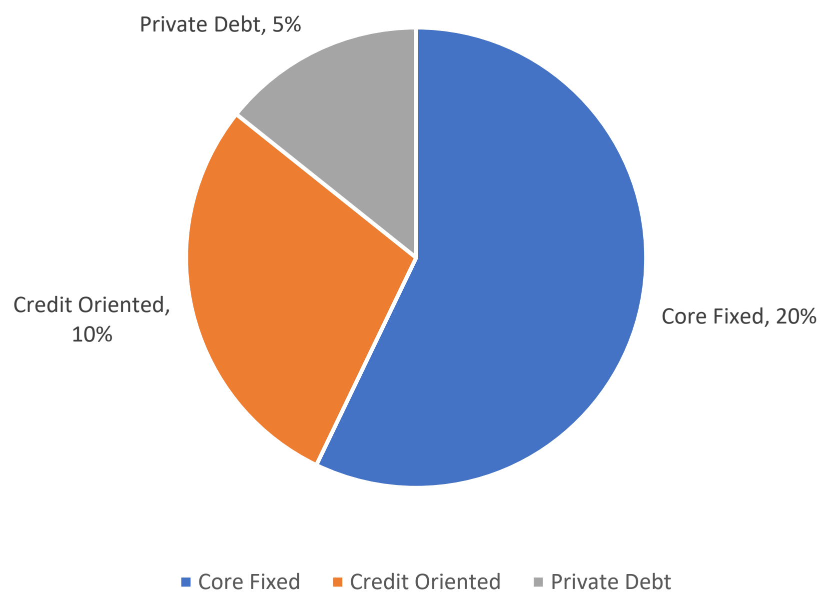
Source: HFRI, as of 12/31/2021.

Fixed Income Structure Review

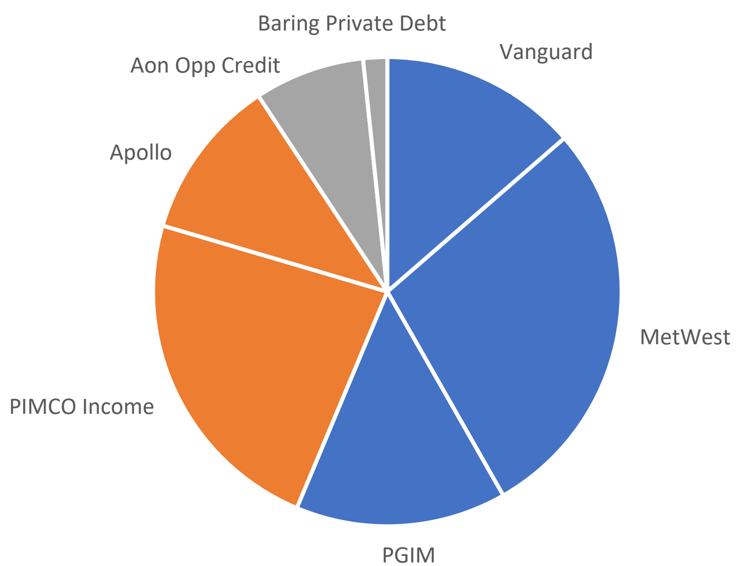
Current Fixed Income Structure

*

Investment Policy Targets



Current Portfolio



Sector	Portfolio %
Core	20%
Credit Oriented	12%
Private Debt	3%

As of 1/31/22

Portfolio Risk/Reward

7 Years Ending December 31, 2021

Manager Lineup Review
Summary of Manager Ratings

Manager	Rating	Comment
Vanguard Total Bond Index Fund	BUY	• Passive Portfolio • Low Tracking Error
Metropolitan West Total Return Bond	BUY	• Value Oriented Portfolio • Emphasize Structured Credit
PGIM Total Return Bond Fund	BUY	• Spread Sector Manager • Emphasizes Credit • Higher Volatility, Aggressive Manager
PIMCO Income Fund	BUY	• High Income strategy • Low Duration • Emerging Markets Exposure
Apollo Total Return Fund	BUY	• Diversified High Yield and Bank Loan portfolio • Exposure to floating rate bank loans • Benchmark agnostic
Aon Opportunistic Credit Fund	N/A	• Diversified Private Debt portfolio • Exposure to Distressed Debt, Real Estate Debt an Relative Value strategies
Barings NA Private Debt Portfolio	BUY	• Private Debt, Direct Lending strategy • Primarily Senior Secured 1st Lien Loans • Loan portfolio is floating rate

Current Fixed Income Manager Characteristics

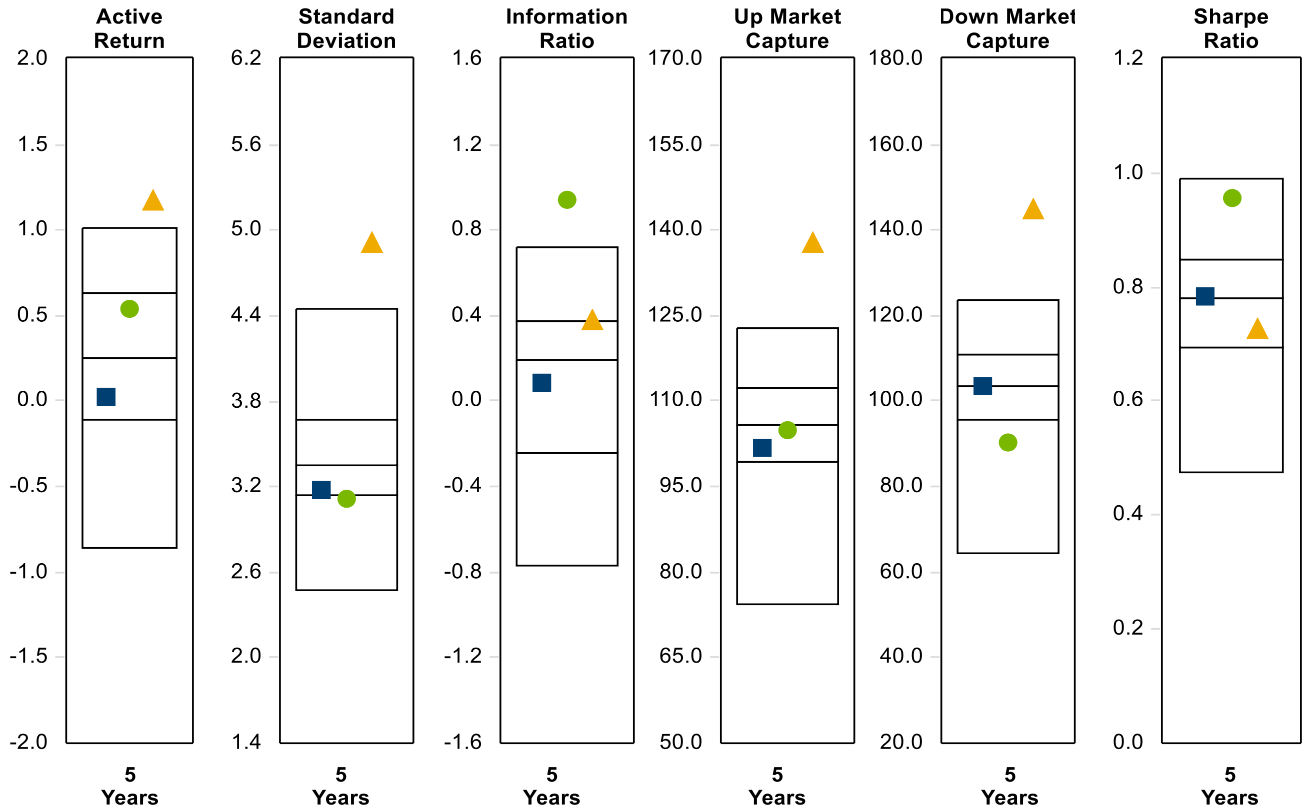
	Vanguard	MetWest	PGIM Total Return	PIMCO Income	Apollo Total Return	Bloomberg Aggregate
Characteristics						
Yield	1.72%	2.20%	2.74%	3.61%	5.3%	1.76%
Duration	6.86	6.31	7.49	1.15	2.2	6.78
Credit Distribution						
AAA	69.10%	66.7%	43.59%	41.89%	0.0%	71.69%
AA	3.22%	4.15%	2.56%	5.19%	0.2%	3.26%
A	12.14%	9.59%	9.92%	6.41%	2.6%	11.17%
BBB	15.54%	13.61%	20.90%	16.21%	15.1%	13.88%
>BBB	0.00%	5.95%	23.03%	30.30%	48.0%	0.00%
Sector Allocation						
Gov't/Agency	44.45%	34.38%	15.51%	-11.61%	0.00%	41.24%
Investment Grade Corporate	28.30%	15.26%	26.48%	11.15%	6.30%	29.04%
High Yield	0.00%	1.80%	9.95%	14.90%	57.80%	0.00%
ABS	0.40%	3.78%	1.93%	2.10%		0.30%
MBS	19.90%	28.37%	9.65%	38.1%	14.30%	27.42%
CMBS	2.20%	7.11%	32.76%	4.13%		2.00%
Other	4.70%	9.30%	3.72%	41.23%*	21.60%*	0.00%
5 Year Risk Characteristics vs. Bloomberg Aggregate						
Tracking Error	0.31%	0.57%	3.09%	6.04%**	2.91%***	NA
Information Ratio	0.09	0.95	0.38	0.13**	-0.98%***	NA
Standard Deviation	3.17%	3.12%	4.92%	5.80%**	2.40%***	NA
Correlation	1.00	0.98	0.80	0.22**	0.01%***	NA

*Includes Emerging Markets, Derivatives such as interest rate swaps, Cash and Real Estate
**3 Year Statistics
***1 Year Statistics

As of December 31, 2021

Peer Group Analysis

IM U.S. Broad Market Core Fixed Income (MF) vs. Blmbg. U.S. Aggregate



	Active Return 5 Years	Standard Deviation 5 Years	Information Ratio 5 Years	Up Market Capture 5 Years	Down Market Capture 5 Years	Sharpe Ratio 5 Years
■ Vanguard Total Bond Market Index Instl	0.03 (66)	3.17 (67)	0.09 (62)	101.95 (64)	103.64 (50)	0.78 (48)
● Metropolitan West Total Return Bond Pl	0.54 (28)	3.12 (77)	0.95 (2)	104.88 (55)	90.37 (83)	0.96 (9)
▲ PGIM Total Return Bond R6	1.18 (5)	4.92 (3)	0.38 (24)	138.03 (1)	144.88 (1)	0.73 (70)
5th Percentile	1.02	4.44	0.72	122.74	123.65	0.99
1st Quartile	0.63	3.68	0.38	112.23	110.70	0.85
Median	0.26	3.34	0.19	105.88	103.54	0.78
3rd Quartile	-0.10	3.14	-0.24	99.40	95.76	0.69
95th Percentile	-0.85	2.48	-0.77	74.26	64.34	0.48

Parentheses contain percentile rankings.
Calculation based on monthly periodicity.

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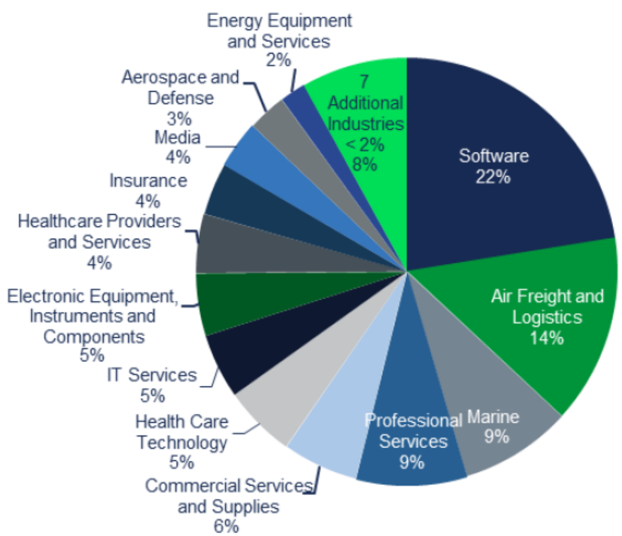
Barings NA Private Debt Fund Portfolio Overview
September 30, 2021

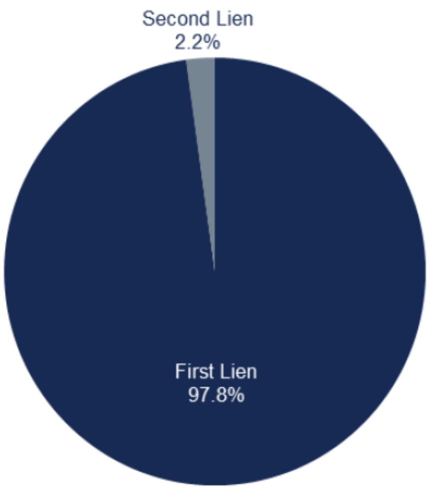
GEOGRAPHIC EXPOSURE (COUNTRY OF RISK)	
United States	100.0%
Canada	-

CURRENT PORTFOLIO OVERVIEW	
Running Unleveraged Cash Yield[1]	7.3%
EBITDA (at Close)	$51.4 MM
Loan to Value (at Close)	42.4%
Asset Leverage (at Close)	5.2x
Maintenance Covenants	100%
Unique Issuer Count	53
Invested	$390.4 MM

INDUSTRY DIVERSIFICATION[2]



ASSET MIX



Source: Barings

Empower Results®

Quarterly Investment Summary

Aon Opportunistic Credit Fund

Third Quarter 2021

Fund Overview

Investment Objective: Seek to generate attractive returns by taking advantage of global credit market opportunities and dislocations

Target Net Return: 10–12%

Minimum Commitment: $1MM

First Close: July 2020

Committed Capital: $502.1 MM

Final Close: February 17, 2021

Term: 6 years with 2 1-year extensions

Investment Period: Ends December 2021

Fee*: Aon fee – 0.25% per annum; Underlying manager fees – 0.87% mgt, 17% performance over hurdle

Time-Weighted Returns			
Periods ending September 30, 2021	Quarter	One Year	Since Inception***
Opportunistic Credit Portfolio – Net of Fees	1.7%	20.7%	20.4%
Primary Benchmark: 3 M LIBOR + 6.0%	1.5%	6.2%	6.2%
Secondary Benchmark: Custom Composite**	0.6%	12.4%	12.9%

Portfolio Detail	Private Markets
Vintage Year	2020
Commitments	$502,100,000
Unfunded Commitments	$190,869,022
Total Paid-In	$351,688,088
Total Distributions	$41,285,588
Net Asset Value	$361,967,095
Total Value[1]	$403,252,683
DPI[2]	0.12x
TVPI[3]	1.15x
IRR since inception	18.7%

* Aon fee: 0.25% per annum of Shareholder's Capital Commitment during the investment period; 0.25% per annum on invested capital thereafter; Fee for capital commitments above $100M: 0.20%. Aon fee applies to class B and M only; subadvisor fees based on current target allocations; ** Barclays HY Bonds Index (12.5%), SP/LSTA Levered Loan Index (12.5%), HFRI Asset Backed Index (25.0%), HFRI ED: Distressed/Restructuring Index (25.0%), Barclays U.S. CMBS 2.0 index (25.0%); Benchmark returns may be revised as underlying indices are subject to revision. ***Performance since inception is annualized. 1. Total Value = Total Distributions + Net Asset Value. 2. DPI = Total Distributions / Total Paid-In. 3. TVPI = Total Value / Total Paid-In

Past Performance is no guarantee of future results. Returns are net of sub-advisor fees and expenses, but do not reflect the deduction of Aon advisory fees. Your actual returns will be reduced by your advisory fees and other expenses you may incur as a client. Aon's advisory fees are described in Part 2A of Aon's Form ADV. Indices cannot be invested in directly. Unmanaged index returns assume reinvestment of any and all distributions and do not reflect our fees and expenses. Please refer to Appendix for Index Definitions and other General Disclosures.

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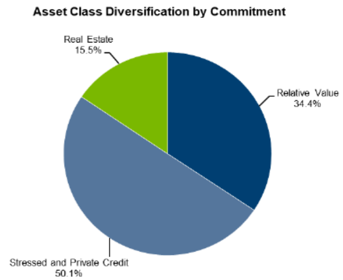
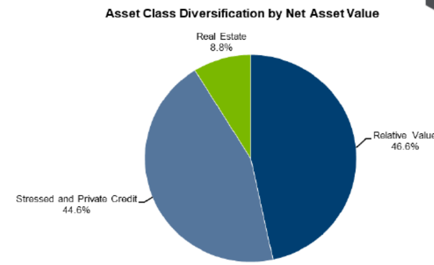
Portfolio Exposures as of 9/30/2021





Performance by Investment

Partnership Name	Vintage Year	Commitments	Unfunded Commitments	Total Paid-In	Total Distributions	Net Asset Value	Total Value	DPI	TVPI	IRR
Brigade Structured Credit Offshore Fund Ltd	2020	$104,970,000	$0	$104,970,000	$0	$135,157,750	$135,157,750	0.00x	1.29x	24.2%
Schroder Focus II Cayman Fund, L.P.	2020	50,000,000	17,500,000	32,781,204	1,062,479	33,632,097	34,694,576	0.03x	1.06x	8.3%
Total Relative Value		154,970,000	17,500,000	137,751,204	1,062,479	168,789,847	169,852,326	0.01x	1.23x	22.2%
Bain Capital Total Return Credit Feeder, L.P.	2020	40,000,000	0	40,000,000	0	42,474,084	42,474,084	0.00x	1.06x	6.2%
Chorus Capital Rondo LP	2020	45,000,000	13,310,353	35,634,879	5,102,079	32,922,285	38,024,364	0.14x	1.07x	9.0%
HPS Credit Value Ontario Fund VI LP	2020	50,000,000	17,567,727	33,364,443	1,180,776	36,044,577	37,225,353	0.04x	1.12x	21.9%
Davidson Kempner Distressed Opportunities International (Cayman) Ltd	2020	34,990,000	0	34,990,000	0	43,846,574	43,846,574	0.00x	1.25x	21.4%
Taconic European Credit Dislocation Offshore Fund III L.P.	2020	56,000,000	49,840,000	6,160,000	0	6,118,887	6,118,887	0.00x	0.99x	-0.7%
Total Stressed and Private Credit		225,990,000	80,718,080	150,149,322	6,282,854	161,406,407	167,689,261	0.04x	1.12x	15.6%
AG Commercial Real Estate Debt Opportunities Holdings III, L.P.	2020	30,000,000	10,500,000	19,710,744	25,133	22,371,451	22,396,584	0.00x	1.14x	19.7%
Kayne Anderson Real Estate Debt IV, L.P.	2020	40,000,000	30,600,000	9,400,000	0	9,588,984	9,588,984	0.00x	1.02x	3.8%
Total Real Estate		70,000,000	41,100,000	29,110,744	25,133	31,960,435	31,985,568	0.00x	1.10x	16.4%

Commentary

Primary Contributors

- All managers, except one, had positive performance during the quarter, as in general, borrower fundamentals were stable and loan valuations improved, although at a slower pace than in prior quarters. Managers continue to rotate out of liquid credit, and into less liquid investments, such as shorter-duration structured credit, private commercial and residential loans, and capital solutions such as warehousing and receivables.
- Through mid-December, the fund had called approximately 82% of capital. In November, we committed the remaining $51 MM to the Oaktree Real Estate Debt fund, which invests in a broad range of commercial and residential real estate credit.

Primary Detractors

Taconic's negative Q3 return and IRR since inception are due primarily to a markdown in their litigation portfolio. The majority of the portfolio is invested in private investments which are therefore marked at cost unless there has been a revaluation event such as a partial sale or market transaction activity. In the case of the litigation portfolio there was some secondary market trading in the claims which had an impact on reported performance.

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Appendix: Index Definitions

Bloomberg Barclays US CMBS 2.0: The US CMBS 2.0 Index is a rules-based index constructed to measure the market of investment-grade CMBS conduit and fusion deals issued since the beginning of 2010. To date, these securities have been issued as private placements and are therefore not eligible for the Barclays Capital US Aggregate Index. While many of the CMBS 2.0 deals are already eligible for the broader Barclays Capital US Investment-Grade CMBS Index, this new index also captures additional securities with a broader set of eligibility criteria including a lower minimum deal size of $250 million. Sub-indices based on quality rating and average life will also be available.

Bloomberg Barclays Corporate High Yield Bond Index: An index that covers the U.S.D-dominated, non-investment grade, fixed rate, taxable corporate bond market. Debt issues from emerging market countries are excluded. Securities are classified as high-yield if the middle rating is Ba1/BB+ or below.

HFRI Distressed/Restructuring Index: Strategies which employ an investment process focused on corporate fixed income instruments, primarily on corporate credit instruments of companies trading at significant discounts to their value at issuance or obliged (par value) at maturity as a result of either formal bankruptcy proceeding or financial market perception of near-term proceedings. Managers are typically actively involved with the management of these companies, frequently involved on creditors' committees in negotiating the exchange of securities for alternative obligations, either swaps of debt, equity or hybrid securities. Managers employ fundamental credit processes focused on valuation and asset coverage of securities of distressed firms; in most cases portfolio exposures are concentrated in instruments which are publicly traded, in some cases actively and in others under reduced liquidity but in general for which a reasonable public market exists. In contrast to Special Situations, Distressed Strategies employ primarily debt (greater than 60%) but also may maintain related equity exposure.

HFRI RV: Fixed Income-Asset Backed Index: Fixed Income: Asset Backed includes strategies in which the investment thesis is predicated on realization of a spread between related instruments in which one or multiple components of the spread is a fixed income instrument backed physical collateral or other financial obligations (loans, credit cards) other than those of a specific corporation. Strategies employ an investment process designed to isolate attractive opportunities between a variety of fixed income instruments specifically securitized by collateral commitments which frequently include loans, pools and portfolios of loans, receivables, real estate, machinery or other tangible financial commitments. Investment thesis may be predicated on an attractive spread given the nature and quality of the collateral, the liquidity characteristics of the underlying instruments and on issuance and trends in collateralized fixed income instruments, broadly speaking. In many cases, investment managers hedge, limit or offset interest rate exposure in the interest of isolating the risk of the position to strictly the yield disparity of the instrument relative to the lower risk instruments

LIBOR: London interbank offered rate, the basic rate of interest used in lending between banks on the London interbank market and also used as a reference for setting the interest rate on other loans.

S&P Leverage Loan Index: A daily total return index that uses LSTA/LPC Mark-to-Market Pricing to calculate market value change.

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Aon Investments USA Inc.

200 E. Randolph Street
Suite 700
Chicago, IL 60601
ATTN: Aon Investments Compliance Officer

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Core Fixed Income Portfolio

*

Manager	Style	12/31/21 Market Value	%	Aon Proposed Target
MetWest	Value Oriented	14,820,213	50%	50%
PGIM	Spread	7,675,739	26%	30%
Vanguard	Core/Low TE	7,192,521	24%	20%
Total		29,688,473	100%	

Summary/Conclusions

Observations

- Fixed Income portfolio is well diversified and includes allocations to high yield, private debt, opportunistic credit and bank loans
- All Investment Managers are Buy rated
- Portfolio is primarily actively managed
- Average Fees for the portfolio is 0.50%
- PGIM the spread sector manager tends to perform better in a risk on environment and traditionally has underperformed in a rising rate environment

Recommendations

- Reduce slightly the allocation to passive to 20% of the core allocation
- May want to consider reducing PGIM and adding another spread sector manager that may perform better in a rising rate environment

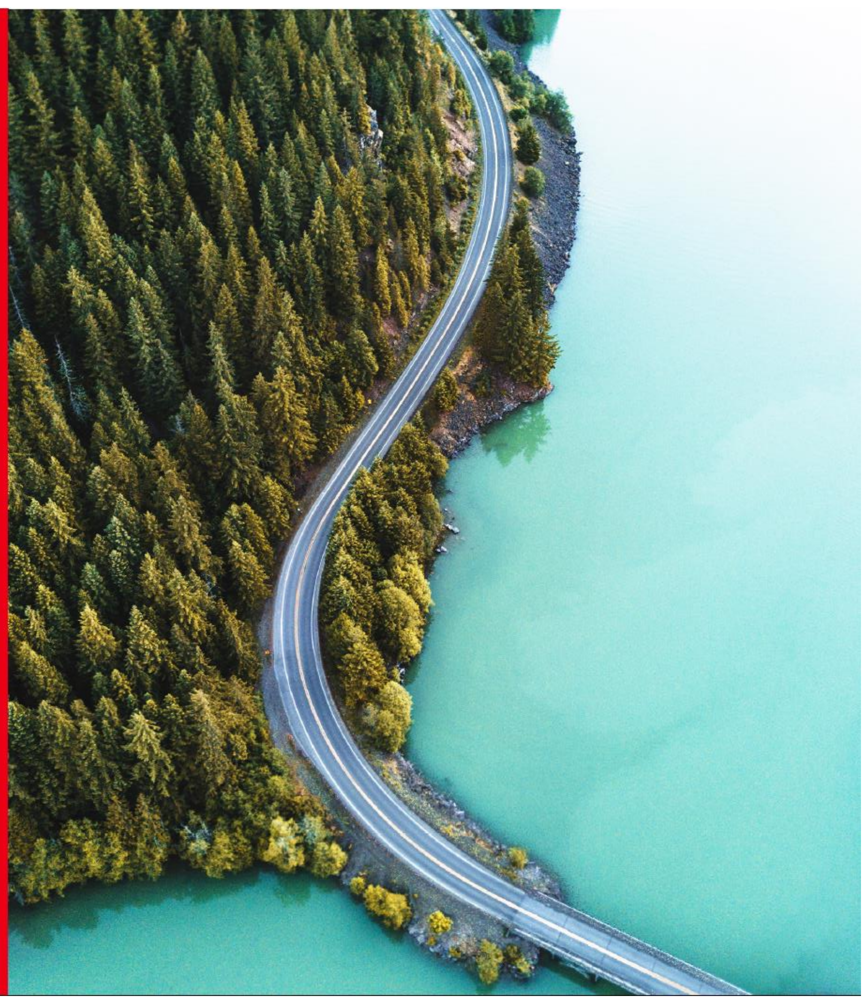
Legal Consulting & Compliance Update

First Quarter 2022

Aon Quarterly Update

Retirement Legal Consulting & Compliance

In this Issue



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Editor's Note

The new year brings a new look to our *Quarterly Update!* While our design may be different, we remain committed to provide quality, informative, and timely content in areas of interest to our readers.

Aon continues its leadership in the pooled employer plan (PEP) marketplace. In December 2021, Aon hosted its first PEP Forum which included a panel discussion by industry experts who offered their expertise explaining why PEPs provide an easier, safer, and more enriched experience for employers and their employees saving for retirement. We open this edition of the *Quarterly Update* with the highlights of the PEP Forum and our latest reporting on PEPs, a year of accelerated growth with new employers joining all of the time.

Another area of growing attention involves the use (or alleged misuse) of participant data by third-party recordkeepers, particularly when they attempt to cross-sell other financial products to defined contribution plan participants. As many of our readers have interest in this area, we report on the first wave of litigation in this area and the Department of Labor's (DOL's) increasing focus on the use and disclosure of participant data.

Since our readers also know the importance of having strong plan governance rules—and the need to follow them—we report on a recent Second Circuit decision. The article notes that not only is it important to have governance rules in place, but also to make sure that the parties acting are actually authorized to do so under those rules.

Our readers continue to rely on our annual compliance tools. We include an article with links to these tools: our update on Internal Revenue Service (IRS) 2022 compensation and benefit limitations for retirement plans, our detailed 2022 Compliance Calendar that lists key compliance milestones and due dates that apply to qualified retirement and health and welfare plans, and our year-end (and 2022) plan guidance relating to retirement plans.

As both the IRS and the DOL have been busy with guidance and enforcement activities, we provide four articles reporting on these activities. The first article continues our reporting on the push-pull journey of guidance in the area of "environmental, social and corporate governance" (or ESG) investments, reporting on the latest DOL shift to a more positive approach towards ESG investments, as compared to the final 2020 DOL regulations. We also include an article on an IRS release intended to address COVID-related labor shortages, specifically two helpful frequently asked questions (FAQs) to remind defined benefit plan sponsors of rules regarding rehiring retirees or providing in-service distributions to participants. The third article reports on the recently issued Fact Sheet of the Employee Benefits Security Administration (EBSA) of the DOL which details EBSA's enforcement activities and continuing areas of focus on audit (e.g., late payments of benefits owed to terminated vested participants, missing participants, and fiduciary responsibilities). We close with reporting on the extent to which taxpayers may rely upon IRS answers to FAQs posted on its website as compared to guidance formally published in the Internal Revenue Bulletin.

If you have any questions or need any assistance with the topics covered, please contact the author of the article or Tom Meagher, our practice leader.

Susan Motter

Susan Motter
Associate Partner

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Pooled Employer Plans Launched and Ready for Acceleration

by Rick Jones

Since the passage of the SECURE Act in December 2019, we've provided regular updates on Pooled Employer Plans (PEPs) as a new way to deliver 401(k) benefits. In full disclosure, Aon is "all in" with PEPs—believing they will be an important piece of improving retirement security for tens of millions of American workers and retirees from organizations of all shapes and sizes.

PEPs have now been operational for a year following January 1, 2021—the first date they were allowed under the terms of the SECURE Act. Aon launched its PEP on January 1, 2021, and since then we have added employers, participants, assets, and capabilities, and we believe PEPs are already adding significant value in their early days. Eighty-five organizations, including Aon, have registered to be Pooled Plan Providers at year-end 2021, so there is significant market interest and growing capacity.

So why do we believe PEPs are off to a successful start? In short, because for many organizations and their people they are providing ***an easier, safer, and enriched 401(k) experience.*** Aon recently hosted its first PEP Forum on December 8, 2021. The Forum included a panel discussion of three industry experts, all quoted below, offering their views on the value of PEPs in the marketplace today. If you didn't get a chance to participate in our Forum, the replay for the industry expert panel discussion, and other sessions can be accessed using this **link**.

Here's why we believe PEPs provide an easier, safer, and enriched experience for employers and their employees.

- **Easier.** Consider the value of having a 401(k) expert on your team and leveraging a best-in-class solution, while retaining the ability to define the areas where you really compete for talent in your industries and geographies—like who's eligible, and what matching and other contributions they may receive. It is the PEP's responsibility to negotiate with carriers, define a best-in-class investment line-up, and provide an ever-enhanced participant experience. As Tresia Franklin, former head of Total Rewards at Hallmark and immediate past chairperson of the American Benefits Council said during our Forum, "I've watched over many years how complex our benefit rules have become. Every new piece of legislation made it a little more complicated. The SECURE Act sent a clear message and provides a true ability for employers to use a simpler approach." Michael Curto, head of Squire Patton Bogg's Washington, D.C. law firm office, noted "PEPs allow companies to focus more on their core business to move the revenue dial rather than extraneous duties that go with a traditional 401(k) plan."
- **Safer.** Tired of seeing the stream of lawsuits for excessive fees in the 401(k) space, or wondering if you are getting the best deal you can with your other 401(k) providers? PEPs are a way to offload those fiduciary and compliance responsibilities and risks to organizations who do it as part of their core business. PEPs also provide a great avenue to manage all the compliance-related aspects of today's retirement plans for employers. As Johan Joseph, a Principal at Grant Thornton noted during our Forum, "We also see the adoption of PEPs by larger employers both from a cost standpoint, but more importantly the de-risking nature of PEPs for governance and costs."

  From a participant perspective, PEPs can provide the stability of a robust and tested platform, offering the best of investment choices as well as lifetime income solutions. And from the regulatory angle, Michael Curto added, "The Department of Labor has finalized its regulations with regard to registration requirements, and most of the guidance needed has been provided. . . it is pretty much blue sky ahead." He continued, "Employers no longer need to worry about all the rules, and it is on Aon and other Pooled Plan Providers to color within the lines and comply with all the rules and regulations."
- **Enriched.** PEPs are already delivering better outcomes for employers and employees alike. In fact, three early adopters in the Aon PEP are seeing per-participant fees go down 3%, 7%, and 12% just from their initial "live" dates in 2021 to January 1, 2022. These pricing adjustments are happening without the need for renegotiation—they are part of the pricing model we've adopted to provide fair and equitable pricing to all participants. Plan participants are also benefiting from comprehensive and sophisticated investment education and financial advice, as well as lower costs, which ultimately increase asset balances and retirement security. Tresia Franklin noted, "PEPs make a lot of sense for any size employer, any shape employer. What makes PEPs unique is that 'better' or 'best' usually costs more, but the opposite is true in the case of PEPs. . . this is a win-win for employers and employees."

And Aon and PEP providers more broadly are just getting started, as Johan Joseph noted, “We see the opportunity to create more specific plans by employer and individual demographics. Given economies of scale and data analytics, we will see plans and opportunities becoming more specific to individual needs using the power of technology and analytics.”

Overall, we believe PEPs are off to a great start, and given our experience in the inaugural first year, we are even more bullish on the future of PEPs. We stand by our prediction that half of the 580,000 401(k) plans in the U.S. right now will be in PEPs by the year 2030. In fact, we may need to expand on that estimate! And as Tresia Franklin remarked, “Why would I want to do this the hard way? If I can find a more streamlined approach to things, why wouldn’t I move forward that puts all of this together for me?”

Contact your Aon Consultant and learn how you can move forward with a PEP that is right for your organization!

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Plaintiffs and Regulators Take Aim at Cross-Selling Participant Data

by Hitz Burton

In the past two years, plaintiffs’ attorneys have made a number of fiduciary breach allegations against retirement plans and their fiduciaries under the Employee Retirement Income Security Act of 1974. One of the areas receiving increased attention from plaintiffs involves the use (or alleged misuse) of participant data by third-party recordkeepers. This use (or misuse) can occur when recordkeepers cross-sell or market other financial products, including individual retirement accounts (IRAs), annuities, and various other brokerage service and life insurance products among other offerings to plan participants. Central to these allegations is the notion that participant data may be a plan asset. In this context, participant data would include details such as a participant’s age, marital status, income, and expected retirement date. For defined contribution plans, recordkeepers would also likely be in possession of a participant’s contribution history, current and prior investment allocations, and vested account balance.

The federal district courts that have directly addressed these allegations have not found plaintiffs’ allegations involving plan data persuasive. In *Harmon v. Shell Oil Co.,* the court noted that the Department of Labor’s (DOL’s) long-standing plan asset regulation, which was finalized in the 1990s, was directed at a plan’s financial investments such as stock and bond holdings. In litigation involving Northwestern University, the court noted that while participant data has economic value, it does not meet the definition of an asset of the relevant retirement plan under “ordinary notions of property rights” as that phrase was used in a 2013 DOL Advisory Opinion.

While the initial litigation outcomes have been favorable to plan sponsors, sponsors should also be aware that the DOL is now also very much focused on the use and disclosure of participant data. We have previously covered various aspects of the DOL’s ongoing plan audit initiatives in the **Fourth Quarter 2017** issue of our *Quarterly Update*. Recently, individual governmental auditors have been requesting detail, including copies of service agreements, regarding the recordkeeper’s use of participant or plan data to market various financial products to participants. Requesting this type of documentation is also consistent with the DOL’s recent cybersecurity guidance where it recommended that plan sponsors evaluate current or possible plan service providers with respect to their written commitments to keep participant data confidential and to obtain written permission before such information is released to third parties.

In light of the DOL’s multi-year plan audit initiative and its current focus on cybersecurity best practices, it is reasonable to assume that regulators will continue to place heightened emphasis on these marketing practices, including perhaps, reaching private settlement agreements with individual plan sponsors (and their recordkeepers) that include restrictions or outright prohibitions on the use of participant data for cross-selling purposes. This type of outcome would be similar to several settlement agreements ending excessive fee litigation against 403(b) plan sponsors including several major U.S. universities where such cross-selling activities were prohibited.

Against these heightened litigation and regulatory risks, a plan sponsor should carefully review and evaluate existing service agreements to the extent such agreements permit (or do not expressly prohibit) cross-selling and other marketing activities. Additionally, to the extent that existing service providers can market financial products (like IRAs) to current or former plan participants, plan sponsors and their service providers should engage in meaningful and substantive conversations about whether such arrangements make sense going forward in the current environment.

If you would like to more fully evaluate your existing agreements with plan service providers, Aon's Retirement Legal Consulting & Compliance consultants can help evaluate those agreements and assist plan sponsors in how best to negotiate updates to these agreements in light of emerging risks.

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Litigation May Result if Plan Governance Rules Not Followed

by Tom Meagher

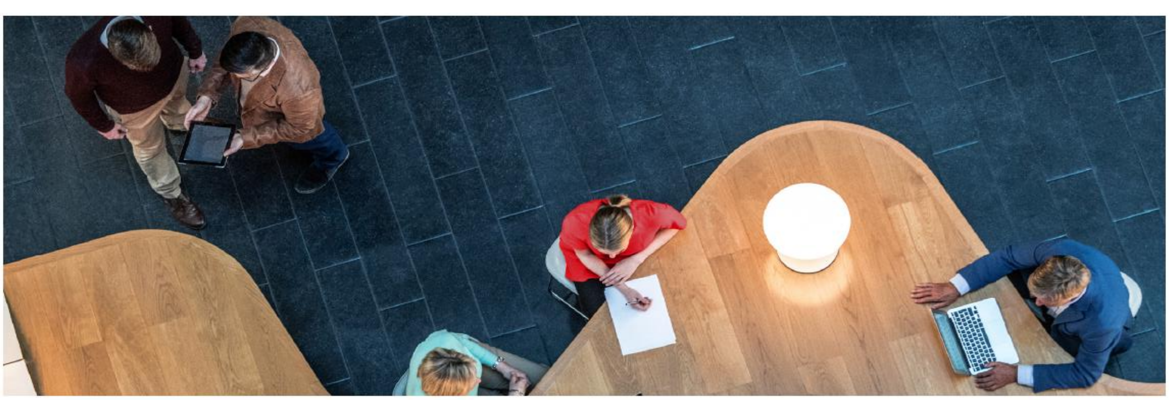
This is an interesting case that underscores the importance of having strong plan governance rules—and following them.

The case is *Massaro v. Palladino,* a Second Circuit decision involving the appeal of a district court ruling that granted summary judgment in favor of the plan's employer-appointed trustees ("employer trustees"), finding that the amendments to certain multiemployer plan trust agreements required that such amendments be passed by unanimous consent. In this instance, the trust agreements had been amended without unanimous consent and, thus, the action was properly challenged by the employer trustees. The district court concluded that the trust agreements were not properly amended.

While the district court properly noted that the approval process had not been followed, the court improperly concluded that the failure to follow the procedure was a breach of fiduciary duty. Thus, the Second Circuit vacated the earlier decision and directed the parties to proceed again before the district court.

While it is generally well settled that amending a plan (or trust agreement) is a settlor (non-fiduciary) decision, the moral to the story is that employers should examine their plan governance processes from time to time with respect to their plans to make sure that there is authority for the actions being taken. We have seen on more than one occasion a situation where the plan has historically been amended by a particular individual or committee only to discover that formal authority had never been delegated to such individual or committee. While this can (and does) arise regarding defined benefit plans and defined contribution plans, it is also appearing quite common for health and welfare plans that seem to change coverage every year but are subject to less well-developed policies and approval processes.

Aon's Retirement Legal Consulting & Compliance consultants can review an employer's existing plan governance process and assist in confirming (or documenting) the authority for specific plan actions—these authorities may appear in board resolutions, committee charters or bylaws, plan or trust documents, or other forms of delegation.



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Do Not Ignore Compliance Regulations in 2022

by Linda M. Lee

With the start of the new year, it is once again time to remind plan sponsors of the importance of reviewing their plan administration and qualified plan documents to maintain compliance. As in prior years, Aon continues to publish annual updates on plan limits and key compliance factors and provide up-to-date information for required plan amendments as they relate to defined benefit (DB) and defined contribution (DC) plans.

2022 Benefits Limits

The Internal Revenue Service (IRS) announced its annual dollar limitations for pension and other retirement-related plans—including limits on the amount of contributions that may be made to DC plans, the annual amount that can be paid from DB plans, and the amount of compensation that can be used while calculating benefits. The limits are adjusted for price and wage inflation and general law changes. Qualified retirement plan administration ***must be adapted annually*** to remain compliant. Below is a brief summary of the limits released for 2022.

	2022	2021
Employee Elective Deferral Limit (IRC §402(g)(1))	$20,500	$19,500
DC Plan Annual Addition Limit (IRC §415)	$61,000	$58,000
DB Plan Annual Benefit Limit (IRC §415)	$245,000	$230,000
Annual Compensation Limit (IRC §401(a)(17))	$305,000	$290,000
HCE Pay Threshold (IRC §414(q))	$135,000	$130,000
Catch-up Contribution Limits (IRC §§401(k) and 403(b))	$6,500	$6,500

You can access a copy of Aon's annual, comprehensive report that includes all dollar limitations for 2022 **here**.

Aon's 2022 Compliance Calendar

Plan sponsors must keep their retirement and health and welfare plans compliant with all relevant tax and obligations under the Employee Retirement Income Security Act of 1974 (ERISA), many of which have important deadlines. Aon's annual Compliance Calendar provides plan sponsors and other interested parties with significant IRS, Department of Labor (DOL), and other federal regulatory agency due dates and deadlines for benefit-related compliance obligations. This calendar is designed to assist plan sponsors maintain compliance with these due dates for critical deadlines, helps promote timely disclosure and compliance with related filing obligations, and helps avoid civil monetary penalties for violations under ERISA.

Following is an overview of the topics addressed in the 2022 Compliance Calendar:

- Timing of participant communications and notices (e.g., summaries of material modifications, pension benefit statements, and summaries of benefits and coverage);
- Changes to health plan reporting obligations;
- Plan contribution due dates; and
- Filing dates for IRS forms (e.g., Forms W-2 and 1099-R).

While plan-level deadlines in 2022 were not affected by COVID-19 relief, Aon continues to monitor regulations that may affect these deadlines.

Click **here** to download your complimentary copy of the 2022 Compliance Calendar.

2022 Plan Document Considerations for Plan Sponsors

Sponsors of individually designed tax-qualified retirement plans should continue to review recent developments and other regulatory guidance that may impact operation of their DB and DC plans.

- The SECURE Act and CARES Act included a number of required and discretionary changes for retirement plans. While many plans have been administered consistent with the statutory changes (to the extent required), many plan amendments are not technically required before the last day in 2022 (for calendar year plans). The SECURE Act and CARES Act changes include addressing eligibility for part-time employees to make elective deferrals, reviewing whether to change the plan's required beginning date from age 70½ to age 72, required changes for non-spousal death benefits paid by DC plans, and various COVID-19 related distribution options that may have been put in place in the past but, due to the immediacy of the need to implement, were not included in the plan document at the time.
- Plan sponsors should begin planning for plan document and administrative changes that may need to be implemented in 2022 or for which regulatory guidance may require actions to be taken. Following are some of the more significant areas likely to require the attention of plan sponsors as this new year begins.
  - **Lifetime Income Illustrations for DC Plans.** Although plan documents may require amendments, the SECURE Act established a requirement that DC plan administrators annually disclose to participants certain lifetime income illustrations (relating to how much monthly retirement income a participant could expect to purchase with his or her account balance). While the DOL's interim final rule (and subsequent FAQs) relating to lifetime income illustrations was effective on September 18, 2021, plans are only required to provide the lifetime income illustration annually. For most participant-directed DC plans, the first lifetime income illustration disclosure may be provided as late as the second quarterly statement sent to participants in 2022.
  - **Cybersecurity—Fiduciary Governance.** In April 2021, the DOL issued guidance regarding a plan fiduciary's responsibility to protect plan and participant data. Plan fiduciaries should be reviewing their internal data security safeguards and the safeguards offered by third-party service providers who may have access to that data. The topic is a high priority for DOL auditors, and these requirements should be evaluated by plan fiduciaries.

If you need assistance evaluating whether your retirement plan(s) should be updated or how best to reflect or implement a required update, please reach out to Aon's Retirement Legal Consulting & Compliance consultants. Their contact information is included on the last page of this *Quarterly Update*.

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Proposed Rule on ESG Considerations and Investment Duties

by John Van Duzer

In the latest chapter of the ongoing storyline relating to fiduciary duties under the Employee Retirement Income Security Act of 1974 and Environmental, Social, and Governance (ESG) investments, the Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) published proposed regulations on October 14, 2021. Consistent with the ongoing tension between Republican and Democratic administrations on this issue, the new regulations include important differences and distinctions from the final regulations previously published in November 2020 (discussed in the **First Quarter 2021** issue of our *Quarterly Update*). (As further discussed in the **Second Quarter 2021** issue of our *Quarterly Update,* those 2020 final regulations are not currently being enforced by the DOL pursuant to a March 10, 2021 DOL Announcement.)

The new regulations generally take a more positive approach towards ESG investments, as compared with the 2020 regulations. Furthermore, the new proposed regulations include guidance relating to the exercise of shareholder rights, specifically including the management of voting rights by the plan. These rights had previously been addressed in a separate set of final regulations issued in December 2020. The new proposed regulations reaffirm that a fiduciary may not subordinate the interest of plan participants and beneficiaries to other objectives and provide that rigorous prudence and loyalty standards will continue to apply. However, the regulations also suggest that a fiduciary may have a duty to consider various environmental and social components of an investment in certain cases.

While the November 2020 final regulations did not mention ESG factors by name, they emphasized the importance of “pecuniary factors” that would have a material effect on the risk and/or return of an investment. These latest proposed regulations allow for a plan fiduciary to focus on non-pecuniary factors and state that a prudent analysis may often require consideration of non-financial factors. ESG factors, such as climate change and workforce diversity, may be considered if and when they are material to the risk-return analysis.

As part of this overriding change, the following specific provisions of the 2020 regulations were changed or clarified:

- **Relaxing the Tie-Breaker Standard.** The November 2020 regulations stated that non-financial (collateral) benefits could be considered only when investment options were economically indistinguishable; furthermore, plans that did choose to consider collateral benefits were directed to comply with various documentation requirements. The new proposed regulations say that collateral benefits may be considered so long as the investments “equally serve the financial interests of the plan over the appropriate time horizon.” The special documentation requirement would be eliminated, although existing fiduciary obligations (which might also require documentation) continue in effect.
- **Eliminating QDIA Restriction.** Although the 2020 regulations prohibited a qualified default investment alternative (QDIA) from reflecting “non-pecuniary” factors in their investment strategy, that restriction would be eliminated under the proposed regulations. An ESG fund could conceivably be used as a QDIA, assuming the relevant collateral benefits are disclosed to participants.
- **Proxy Voting.** The DOL is concerned that the 2020 regulations have been interpreted to allow plan fiduciaries to avoid proxy voting without considering the interest of the plan as a shareholder. The proposed regulations are intended to reemphasize the fiduciary duty to manage plan assets, including the exercise of shareholder rights associated with those assets. Fiduciaries would need to weigh the cost and effort of voting proxies against the significance of the issue to the plan, applying general fiduciary principles. More generally, proxy voting guidance from the DOL would be returned to the standards that had been in place before the 2020 regulations were issued.

Next Steps

Because these latest regulations are proposed, the EBSA had requested comments by December 13, 2021. Some of the language in the Preamble to the regulations suggests that when final regulations are eventually published, they may differ in some respects from the proposed regulations. In view of the fact that the DOL received over 29,000 comments to the proposed regulations, there may be some delay before the regulations are issued in final form. In the meantime, plan fiduciaries will need to make educated decisions on investment and proxy voting, recognizing that the two sets of final regulations from late 2020 are not currently being enforced by EBSA.

Consultants in Aon Investments USA Inc. and Retirement Legal Consulting & Compliance are available to offer guidance on investment decisions and fiduciary processes to be considered in light of the current legal and regulatory landscape.

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IRS Provides FAQs Regarding Rehiring or Retaining Retirees

by Dan Schwallie

On October 22, 2021, the Internal Revenue Service (IRS) issued a release to address COVID-related labor shortages. In two frequently asked questions (FAQs), the IRS reminds defined benefit (DB) plan sponsors of rules regarding rehiring retirees or providing in-service distributions to participants. Couched in terms of hiring and retention needs that employers may be facing due to the COVID-19 pandemic, the two FAQs do not provide new information but note actions for sponsors to consider that may help.

The first FAQ reminds plan sponsors that a distribution from a DB plan generally can only be made after a bona fide retirement, whether upon attainment of normal retirement age or satisfaction of the plan's early retirement requirements. A bona fide retirement cannot be a sham termination, arranged merely to result in a distribution from the plan. Whether an individual's retirement under a plan is bona fide is determined on a facts and circumstances basis. A rehire due to unforeseen circumstances that does not reflect any prearrangement to rehire the individual will not cause the individual's prior retirement to fail to be a bona fide retirement, provided the plan's terms do not define a bona fide retirement in a way that prevents the rehire, such as specifying a lapse of time before rehire.

When determining whether to rehire a retired employee, the plan sponsor should analyze the rehire under the plan by considering any plan terms, including any need for plan amendments, relating to rehires. For example, plan sponsors should review any plan terms requiring that an individual who retires and commences benefit distributions not be rehired within a specified period, any plan terms relating to the suspension of distributions upon rehire, and any other plan terms that may have an impact on the pension benefit of a rehire.

The second FAQ discusses an important exception to the requirement of a bona fide retirement to commence a plan distribution that may help retain employees considering retirement. A qualified pension plan may allow participants to commence distributions without terminating employment (i.e., may allow in-service distributions), if the participants have attained the plan's normal retirement age, or as early as age 59½, provided the provisions of the plan permit such in-service distributions.

Aon's Retirement Legal Consulting & Compliance consultants are available to consult with plan sponsors on complying with bona fide retirement requirements and offering in-service distribution options and related plan amendments.

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Recently Released EBSA Fact Sheet Provides Summary of Enforcement Efforts

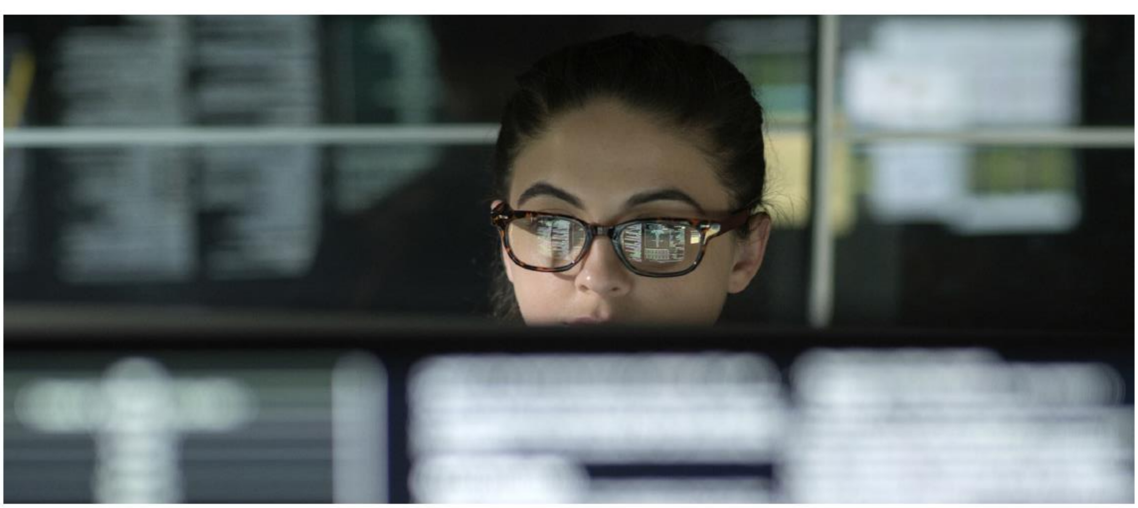
by John Van Duzer

The Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) is charged with the responsibility of enforcing provisions under the Employee Retirement Income Security Act of 1974 (ERISA). More specifically, EBSA has oversight authority for approximately 735,000 private retirement plans, and over 2 million health and other welfare benefit plans. Those ERISA plans cover nearly 160 million workers and include nearly $13 trillion in plan assets.

A recent Fact Sheet from EBSA offers a glimpse into the scope of its enforcement actions. In fiscal year 2021 (ending last September 30, 2021), EBSA recovered nearly $2.4 billion for plans, participants, and beneficiaries through a number of enforcement actions. Most significantly, over $1.5 billion was recovered from defined benefit plans relating to benefits owed to terminated vested participants. In addition, various non-monetary corrections were imposed, including removal of fiduciaries, barring certain individuals from becoming fiduciaries, and reforming plan procedures (e.g., “missing participant” procedures). In extreme cases, EBSA has referred 70 cases to the Solicitor of Labor for litigation and has also pursued claims of potential criminal misconduct. The EBSA Fact Sheet notes that in order to achieve compliance with ERISA, approximately 1,200 applications were filed and received under its Voluntary Fiduciary Correction Program, and over 22,000 filings were received under the Delinquent Filer Voluntary Compliance Program.

The information provided in this recent Fact Sheet serves as yet another reminder of the importance of ERISA compliance. Clearly, EBSA is pursuing employers and plan sponsors in ways that ultimately result in payment of additional benefits to plan participants, payment of fines, and other more severe consequences. In the context of retirement plans, identification of missing participants and providing necessary plan benefits to those missing participants continues to be a top priority. Most recently, EBSA has been focusing on cybersecurity safeguards and the plan fiduciary’s process for confirming that plan and participant data are secure.

Aon’s Retirement Legal Consulting & Compliance consultants can assist plan sponsors to mitigate the risk of adverse EBSA findings by helping them develop the fiduciary processes and written record that DOL auditors are looking for to confirm that plan fiduciaries are monitoring plan activities. The development of fiduciary processes and documentation of such efforts will go a long way to improve plan administration, thus reducing the likelihood of pursuit and interference by EBSA. In those situations where EBSA is already involved, either through an audit or other event, our consultants can assist in providing compliance strategies to respond to and correct various problems, thereby minimizing the imposition of potential financial and other EBSA penalties.



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IRS Clarifies Ability to Rely on IRS Answers to Frequently Asked Questions

by Dan Schwallie

The Internal Revenue Service (IRS) posted an article on October 28, 2021 that explains the extent to which taxpayers may rely upon IRS answers to frequently asked questions (FAQs) posted on its website as compared to guidance published in the Internal Revenue Bulletin (IRB). A taxpayer's reasonable reliance on an FAQ will be considered as to whether certain penalties apply, as described below.

- **Treasury Regulations.** Treasury Department (Treasury) regulations provide the most authoritative guidance under the Internal Revenue Code (Code) and are published in the Federal Register. Authoritative and precedential guidance from the IRS and Treasury regarding the Code and Treasury regulations and related laws is generally published in the IRB. For example, revenue procedures provide general authoritative guidance on how to comply with federal tax laws, and revenue rulings represent conclusions of the IRS on the application of federal tax laws to the facts stated in the ruling.
- **IRS Rulings and Procedures.** Rulings and procedures published in the IRB do not have the force and effect of Treasury regulations, but they may be helpful to taxpayers as precedents. Even so, when applying rulings and procedures published in the IRB, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and both IRS personnel and other taxpayers are cautioned against reaching the same conclusions in other cases, unless the facts and circumstances are substantially the same. Guidance not published in the IRB (such as private letter rulings, determination letters, technical advice memoranda, and chief counsel advice) will not be relied upon, used, or cited as precedents by the IRS in the disposition of other cases and cannot be relied upon or cited as precedents by other taxpayers.
- **IRS FAQs.** The IRS views FAQs as a valuable alternative to guidance published in the IRB because they more quickly communicate information to the public on topics of frequent inquiry and general applicability. However, FAQs that have not been published in the IRB cannot be relied upon, used, or cited as precedents. Further, if an FAQ turns out to be an inaccurate statement of applicable law as applied to a particular taxpayer's case, the law will control that taxpayer's tax liability.

Aon Comment

Nevertheless, a taxpayer's reasonable reliance on an FAQ, even one that is subsequently updated or modified, will be considered in determining whether certain penalties apply. Taxpayers who show that they relied in good faith on an FAQ, and that their reliance was reasonable based on all the facts and circumstances, will not be subject to a penalty that provides a "reasonable cause" standard for relief from the penalty, including a negligence penalty or other accuracy-related penalty, to the extent that reliance results in an underpayment of tax. In addition, FAQs that are published in a Fact Sheet linked to an IRS news release are considered authority for purposes of the exception to accuracy-related penalties that applies when there is substantial authority for the taxpayer's treatment of an item on a return.

Aon's Retirement Legal Consulting & Compliance consultants are available to assist plan sponsors and their legal counsel in understanding current or developing guidance from the IRS and Treasury.

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Quarterly Roundup of Other New Developments

by Sandy Combs, Teresa Kruse, Mark Manning, and Jan Raines

The Enron Meltdown—Continuing to Affect Retirement Plans Today

Just over 20 years ago, Enron Corporation (Enron)—then the seventh largest corporation in the U.S.—failed, resulting in Enron declaring bankruptcy and laying off thousands of employees. The company's stock price plummeted resulting in significant losses not only to investors, but to Enron workers who were heavily invested in employer stock through the company's 401(k) plan. WorldCom—a telecommunications giant—failed a year later, and numerous other corporate accounting scandals emerged.

To address the misconduct and accounting failures, to protect investors from fraudulent corporate reporting, and to increase investor confidence in the U.S. market's integrity, the Sarbanes-Oxley Act of 2002 (SOX) was enacted by Congress. SOX established corporate governance rules to increase the transparency, accuracy, and reliability of financial reporting and disclosures of U.S. public companies, management, and public accounting firms.

Among the new disclosure mandates, SOX introduced a "blackout notice" requirement applicable to "blackout periods" in individual account plans (such as 401(k) plans). Briefly, this notice is required to be sent to affected participants and beneficiaries when they will be restricted or limited from directing or diversifying their plan accounts or taking certain actions (such as requesting loans or plan distributions) for more than three consecutive business days. SOX also prohibits officers and directors from transacting in company stock outside of the plan during the blackout period.

The Pension Protection Act of 2006 (PPA) added new diversification[1] rules relating to qualified defined contribution (DC) plans that invest in publicly traded employer stock to ensure employees had the ability to transfer out of employer stock in the event it loses value. Briefly, PPA allows plan participants to diversify employer contributed company stock in their retirement plan after three years. Prior to PPA, some employers would not allow the employer stock plan contribution to be diversified until retirement age.

As a fiduciary, the lessons learned from the misconduct and scandals of 20 years ago remind us that it's important to remain diligent when making decisions that are in the best interest of retirement plan participants and to err on the side of disclosing the information that may be most helpful in placing plan participants in a position to make informed decisions regarding their retirement plan investments. Aon consultants can assist fiduciaries by providing training, plan governance support, and administrative and investment reviews for retirement plan programs.

Why Do We Have ERISA? "Everyone is a Thief and a Liar"

When the Employee Retirement Income Security Act of 1974 (ERISA) was enacted, this was the view that Congress attempted to address. And after 47 years, we are still seeing situations that test this very premise. The Department of Labor (DOL) recently filed a lawsuit against bankrupt Comprehensive Cancer Services Oncology, P.C. and its CEO *(Walsh v. Comprehensive Cancer Services Oncology, P.C.)* after the firm allegedly stole approximately $100,000 from 401(k) plan participants to pay the firm's debts. Allegedly the firm used employee contributions for its own purposes rather than depositing the funds into the plan. While the employer may have any number of defenses to the claims, the DOL, if successful, hopes to recover the money through various means—including removing money from the CEO's personal account in the 401(k) plan.

In another case that lasted for 18 years *(Harris v. Koresko)*, the DOL has obtained a $42 million judgment on behalf of health and welfare plan participants relating to a welfare benefit fund. Koresko, a now disbarred attorney and former employee benefit plan administrator, and other defendants stole tens of millions of dollars over a 12-year time span for their own use—including the purchase of property in the Caribbean and South Carolina, for boat rentals and other improper personal uses.

Following the end of the *Koresko* case, EBSA's Philadelphia Regional Director, Michael Schloss, stated "The conclusion of the litigation provides those participants with relief and demonstrates the [DOL's] commitment to ensuring that employers take seriously their responsibility to provide benefits to their employees and their beneficiaries." This sentiment is something that we have noted numerous times in this *Quarterly Update*—it's not hard to be a good fiduciary if you know your responsibilities and intend to follow them, but it does take diligence and effort.

[1] Diversification does not ensure a profit, nor does it protect against loss of principal. Diversification among investment options and asset classes may help to reduce overall volatility.

To assist fiduciaries in understanding and meeting their obligations under ERISA and what that means to them from a personal liability perspective, Aon's fiduciary consultants can provide comprehensive fiduciary training and ongoing fiduciary governance services. *Walsh v. Comprehensive Cancer Services Oncology, P.C., No. 1:21-cv-697 (W.D.N.Y. June 1, 2021); Harris v. Koresko, No. 2:09-cv-00988 (E.D. Pa. Aug. 19, 2021).*

Managed Accounts the Focus of Excessive Fee Suits

As DC (401(k)) plan fee litigation lawsuits continue to be common with retirement plans, some of these lawsuits have targeted managed accounts. These "managed accounts" are becoming more common and are individual customized portfolios where a professional investment manager sets the asset allocation for the individual participant. This service typically requires the individual participant selecting the managed account service to pay an added fee—usually from his or her plan account. Similar to other complaints, fees for managed accounts have been at the forefront of some lawsuits, but some lawsuits have also questioned offering managed accounts when lower cost target date funds are also available. As recordkeeping fees have trended lower over the past decade, many recordkeepers have used the revenue from managed accounts to offset lower recordkeeping fees. As such, recordkeepers are incentivized to promote managed account solutions to their clients.

Plan fiduciaries have a responsibility to properly evaluate every fund and investment offering in their qualified plans, including managed accounts solutions. Additionally, once an investment fund or managed account is offered, fiduciaries have a responsibility to maintain regular monitoring of those offerings. When reviewing managed accounts, it is important to consider the following:

- Assess if the benefits of enrollment are realized relative to the fees paid;
- Evaluate actual utilization and experience versus intended benefits;
- Determine if there is meaningful differentiation of risk levels and/or improved portfolio efficiency;
- Contrast participant enrollment versus engagement and awareness versus action taken; and
- Evaluate reasonableness of fees for a professionally managed solution.

Similar to target date funds, there are many aspects of a managed account solution that need to be carefully considered and reviewed. While fees remain in the spotlight, reviewing the underlying model, participant experience, and outcomes can be critical as well. Aon Investments USA Inc. consultants are available to assist fiduciaries in reviewing and monitoring managed account solutions and associated fees, as well as the overall impact to recordkeeping fees, and in developing a record to support the actions taken.

Department of Labor—Coming Attractions!

In the fourth quarter of each year the ERISA Advisory Council (EAC) presents recommendations to the DOL for designated topics of focus for the coming year. The EAC is a group of benefits experts from multiple disciplines and industries established by Congress and appointed by the DOL to provide relevant commentary to the Secretary of Labor on health and retirement issues. The topics for 2022 presented by the EAC in November 2021 are racial, ethnic, and gender-based disparities in access to retirement plans and understanding brokerage windows in self-directed retirement plans.

Regarding racial, ethnic, and gender-based retirement savings disparities, the EAC provided 14 recommendations to address five key facts or observations: (i) 50% of the American workforce is not covered under a workplace retirement plan; (ii) the American retirement system is "fragmented" with each plan sponsor managing its own plans; (iii) there is a real need to enhance financial education and outreach to underserved groups; (iv) women, and especially minority women, are more likely to have lower retirement benefits; and (v) retirement income disparities are real among women and people of color. Aon can provide an analysis focused on diversity, equity, and inclusion aspects of plan design across the employer's benefit package; reach out to your Aon consultant if this is of interest. In regard to brokerage windows, the EAC indicated a focus on brokerage window only plans that provide no core investment options other than the brokerage window.

In addition to the EAC's designated topics, the DOL has also noted three priorities for 2022: lifetime income solutions, portability and leakage, and state-based retirement efforts. Lifetime income solutions is an emerging topic with a focus on DC plans as lifetime retirement plans versus savings plans. Portability (or lack thereof) and leakage is estimated to result in $60-$100 billion leaving the retirement system each year. The process to consolidate assets when someone changes jobs can be improved. State-based retirement efforts are increasing with 14 states having already enacted legislation to increase the number of people who save and 30 other states with pending legislation.

These topics and recommendations serve as "coming attractions" for 2022 and provide insight into directives or guidance that may come from the DOL in the next year. Aon will continue to track and report on these items as the details emerge.

Revenue Sharing Declines Among DC Plan Sponsors

Over the last several years, the use of revenue sharing to pay for recordkeeping fees has been steadily declining in DC plans. Most of this decline has been the result of plan sponsors' concerns over increased litigation, higher fiduciary insurance costs, and the overall desire to lower participant fees. As revenue sharing declines, more plan sponsors are opting for a fixed fee to pay for recordkeeping services.

Historically, DC plans included investment options with revenue sharing built into the expense ratio, which was used to pay for or offset recordkeeping costs. One downside to this approach is that when plan assets grow, so does the amount of revenue sharing collected by recordkeepers. As a result, it is important to understand whether or not revenue sharing is included within each investment option and how it is being used. Periodic reviews of the investment fund fees, and other available share classes and investment vehicles help to ensure that plan fiduciaries are on top of this. Additionally, it is equally important to make sure that plan fiduciaries are conducting administrative fee benchmarking on a periodic basis. Failure to review how benefit plan fees are charged has been a major topic in fiduciary fee litigation. Aon Investments USA Inc. consultants can assist fiduciaries in reviewing and monitoring fund expenses and providing administrative fee benchmarking.

Plan Audits—The Best of Times and the Worst of Times

Every plan sponsor dreads the annual plan audit, due to many factors, including additional work on behalf of the benefits staff. However, ultimately the concern is driven by the "unknown" of whether something will be uncovered. Similar but heightened concerns abound if a plan is tapped for an audit by the DOL or the Internal Revenue Service (IRS)—certainly no one wants to see them knocking at the door! While plan sponsors historically have taken a reactive approach, addressing errors only upon audit, proactive examination of day-to-day operations is becoming a best practice to avoid costly corrections and penalties.

A focused operational compliance review allows sponsors and fiduciaries to focus on the administration of specific areas like eligibility determination, vesting calculations, loan administration, and required minimum distributions to ensure the plan is operating correctly and in compliance with the plan documents. Additionally, a review of the plan document in comparison to the recordkeeper's administrative processes can uncover errors and deficiencies in controls. These types of projects can be instrumental in discovering errors (and determining appropriate corrective action) before the DOL or IRS show up.

Aon's defined contribution and Retirement Legal Consulting & Compliance consultants have deep, practical experience understanding the operational workflows and potential pitfalls of day-to-day retirement plan operations. We can help you determine the best course of action and how to prepare for an audit before it happens.

Retirement Plan Litigation Update

Retirement plan litigation has been prevalent over the past decade impacting corporate plan sponsors, financial institutions that are also plan sponsors, and universities sponsoring 403(b) plans. DC plan cases generally fall into the following three areas: inappropriate or imprudent investment choices; excessive fees; and self-dealing. Recently, several cases involving universities and other institutions have been dismissed (in full or in part) or settled. While some of these dismissals may be appealed, these cases involve such well-known names as: Adidas America, Inc. (dismissed); AT&T, Inc./AT&T Services, Inc. (dismissed); Aetna, Inc. (dismissed); CommonSpirit Health/Catholic Health Initiatives (dismissed); NVIDIA Corp. (dismissed); Oshkosh Corp. (dismissed); The Prudential Insurance Co. of America (dismissed); TriHealth, Inc. (dismissed); Wesco Distribution, Inc. (dismissed); and University of Miami (settled for $1.9M and other remedies).

Plan sponsors seeking to reduce their litigation risk use a variety of strategies including improving their fiduciary process for plan governance, increasing the number of passive funds in their plans, and implementing better fee transparency.

New Retirement Plan Cases

In 2021 we reported, on average, approximately 14 new fiduciary liability cases filed each quarter. In a bit of a slowdown this quarter, approximately seven new cases were filed against plan fiduciaries as excessive fee cases. Why the slowdown? As reported in the **Fourth Quarter 2021** issue of the *Quarterly Update*, the Supreme Court was to review *Hughes v. Northwestern University*, a case that may impact pleading standards for plaintiffs to state a claim against plan fiduciaries. The slowdown may be attributable to plaintiffs and their attorneys waiting to see the outcome of *Hughes*. Before we went to press with this edition of the *Quarterly Update*, the Supreme Court decided *Hughes* and remanded the case to the Seventh Circuit. Our next edition of the *Quarterly Update* will provide our readers a comprehensive analysis of *Hughes*; in the meantime, we will continue to track and report on the outcome as it develops. Although the list of recently filed cases is only illustrative and does not represent all such cases filed, it is intended to provide a summary of the types of claims being alleged against plan fiduciaries and their committees. All cases this quarter involve excessive fees with cases brought against Advance Stores Co., Inc.; Deloitte, LLP; GKN North America Services, Inc.; KPMG, LLP; The Kroger Co. (also includes the failure to accurately report plan fees on the participant fee disclosure); Olin Corp.; and VCA, Inc.

Aon will continue to track these cases, and others, as they develop.

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Recent Publications

Is Your 403(b) Plan Truly Universally Available?
by Daniel Schwallie
Journal of Pension Planning & Compliance (Fall 2021)

The 403(b) universal availability rules can be confusing and present some unique challenges that can lead to noncompliance. This article reviews the universal availability rules and describes potential noncompliance issues that frequently arise in practice.

Click **here** to download and read the article.

Funding Matching Contributions with Terminated Defined Benefit Plan Excess Assets
By Daniel Schwallie
Journal of Pension Planning & Compliance (Winter 2022)

This article discusses a recent IRS private letter ruling that indicates excess assets from a terminating defined benefit plan, which would otherwise return to the plan sponsor, may be used to fund matching contributions in a defined contribution plan of the plan sponsor, provided certain conditions are satisfied. Beginning in 2006, it had generally been understood that such transferred assets could only be used to fund employer nonmatching contributions.

Click **here** to download and read the article.

"Hands-On Strategies" for Correcting 409A Operational Failures in Non-Qualified Plans
By Tom Meagher and Lee Nunn
Journal of Deferred Compensation (Spring 2022)

Section 409A (409A) of the Internal Revenue Code is most concerned with the time and form of payment of nonqualified deferrals of income and its taxation. Much of the time and effort to be undertaken by employers involving 409A relates to either ensuring that nonqualified deferred compensation payments are timely made or, unfortunately, correcting situations where such payments are either paid too early or paid too late. This article focuses on the correction of 409A operational failures by the end of the second year following the failure.

Click **here** to download and read the article.

Nonqualified Deferred Compensation—Accounting Treatment and Income Statement Geography
By Eric Keener and Lee Nunn
Journal of Deferred Compensation (Spring 2022)

Many employers offer nonqualified deferred compensation (NQDC) programs in which benefits are based on notional accounts and associated investment returns. While employers often have accounted for such programs using a simplified approach, some auditors have begun to reconsider the appropriate accounting treatment in recent years. This article explores the historically prevalent accounting approach and the implications of potential alternatives, focusing in particular on ERISA top hat plans with multiple participants.

Click **here** to download and read the article.

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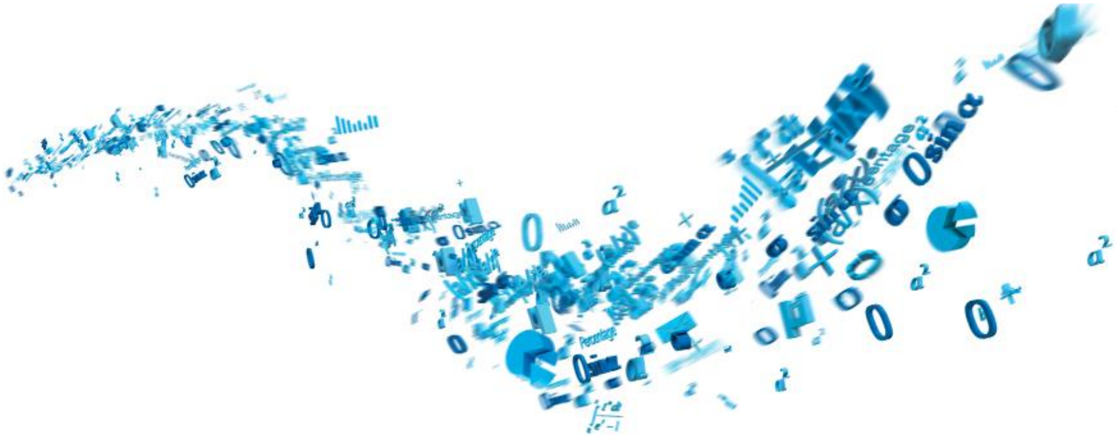


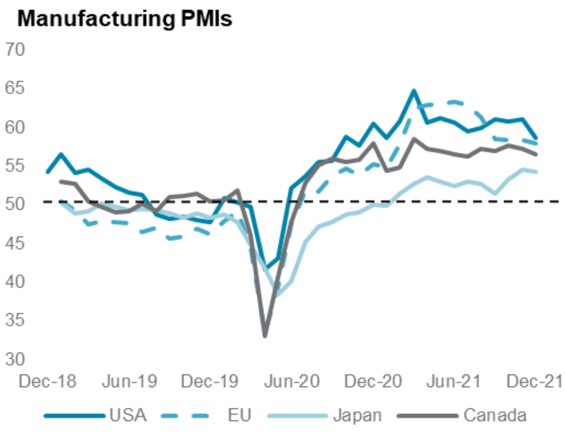
Appendix

Empower Results®

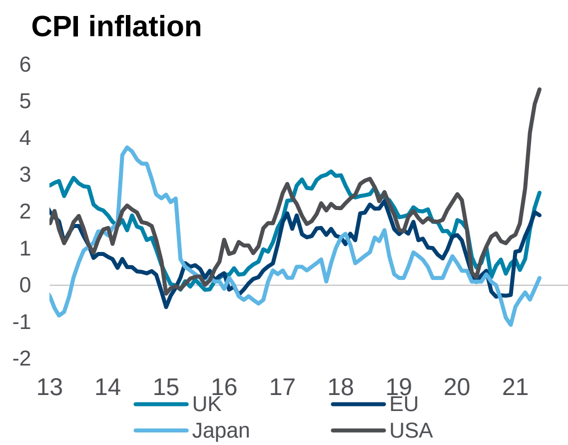
Economic Highlights

Economic growth showed signs of moderating over the quarter, with GDP slowing but still positive. The discovery of the latest Covid variant, Omicron, has led to increasingly bifurcated policy responses, with the US still easing restrictions while parts of Europe and the Asia-Pacific reinstated lockdowns. Meanwhile, inflation has continued to press higher as supply chain problems have showed little signs of being alleviated and can potentially worsen due to Omicron. Despite the emergent threat of a new variant, central banks have increasingly shifted their focus to inflation and tightening monetary policy. The Fed, which announced a cutback in Quantitative Easing in November, decided to double the pace at which it will reduce asset purchases. Additionally, the latest consensus forecast on interest rates signalled three hikes in 2022. The Bank of England introduced its first rate hike since the pandemic started, and the ECB is ending its emergency bond buying program in March. In terms of fiscal policy, the US now faces headwinds in the absence of direct fiscal spending that bolstered the economy during the past two years. Whilst a recession is unlikely, we think that developed world growth will continue to lose momentum over the coming year as accommodative monetary policy is withdrawn and growth returns to its slower pre-pandemic trend. The path forward for emerging economies is more opaque as it is contingent on Fed policy, the progression of Covid and the easing of supply chain bottlenecks.

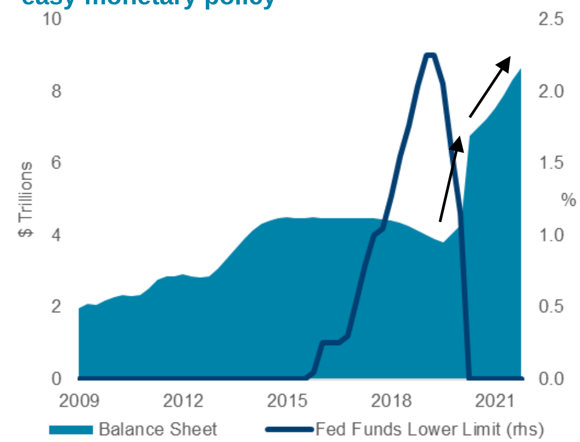
Economic recovery continues to slow



Inflation pressures persist



Fed tapering has begun, resulting in less easy monetary policy



Sources for charts: Factset, St. Louis Fed

Economic Highlights

USA

- US GDP for the third quarter was 2.3% (quarter-over-quarter annualized), slowing from Q2 as consumer spending was curtailed by the Delta variant.
- US annual headline inflation rose 7% year-over-year in December, its fastest pace in 40 years, with a broadening in the scope of price increases. Core CPI, which strips out food and energy costs, rose by 5.5% year-over-year. Logistic issues persist and the impact that Omicron will have on an already stressed supply chain is still yet to be determined.
- The Fed has become increasingly focused on inflation. For much of 2021, the Fed was able to rationalize the current easy policy stance by focusing on maximum employment. With US unemployment hitting post-pandemic lows, currently sitting at 3.9%, and inflation running in excess of the target range, Fed policy has begun to shift, with the potential to change materially over the coming months. A month after formally announcing the balance sheet taper, the Fed doubled the rate at which it would reduce monthly purchases. Additionally, multiple rate hikes in 2022 seem likely, potentially coupled with an actual reduction of the balance sheet (quantitative tightening).

EAFE

- The Eurozone posted quarter-on-quarter growth of 2.2% in Q3, up marginally from Q2. Eurozone inflation hit a fresh record high of 5% in December, driven by rising energy prices and continued supply chain bottlenecks. With inflation still rising, the ECB has inched closer to tightening monetary policy.
- In Japan, third quarter GDP was flat, compared to accelerating in Q2. However, industrial production has picked up through November. Inflation has remained muted, with CPI staying under 1%. Although producer prices have risen for most of 2021, the data through December has slowed moderately.
- UK GDP came in at 1.1% for the third quarter, slowing from the second quarter but still positive. The Bank of England was the first of the major central banks to raise rates, upping its benchmark interest rate by 15bps to 0.25%.

Emerging Markets

- After enduring several months of negative headlines surrounding the housing sector, energy shortages, and regulatory crackdowns, the news front in China was relatively calm. Chinese GDP was 4.9% (annualized) in the third quarter compared to 7.9% in Q2. There are still lingering issues that can resurface over the near-term. China also still maintains a zero-Covid policy stance which may hamstring its economic growth.
- Counterbalancing these negative trends, there are signs of monetary and fiscal stimulus which provides some economic and market stability in China. Given how China tends to set the tone for broader emerging economic activity, the EM macro environment is likely to remain challenged.
- EM central banks are also faced with the conundrum of supporting growth and reacting to the rising cost of living from rising inflation. The Turkish central bank's decision to cut its policy rate despite rapidly rising inflation, triggered a sharp depreciation in the currency. However, many other central banks raised interest rates early and are keeping inflation under control.

View guidance

- - -
Large under-performance expected with highest conviction
- Target larger underweight
- Bring forward selling plans and defer SAA buying implement-ation
- Do not rebalance to target weight yet

- -
More under-performance or stronger conviction
- Target underweight
- Bring forward selling plans and defer SAA buying implement-ation
- Do not rebalance up to target weight yet

-
More likely to underperform
- Target small underweight to strategic weight
- Prefer to avoid buying and selling on strength
- Buying for SAA reasons fine, but add slowly or into weakness.
- Consider partial rather than full rebalancing

=
Weak conviction or no view on relative performance
- Target benchmark or strategic weight
- Buying/ Selling both look ok coming from SAA changes or rebalancing

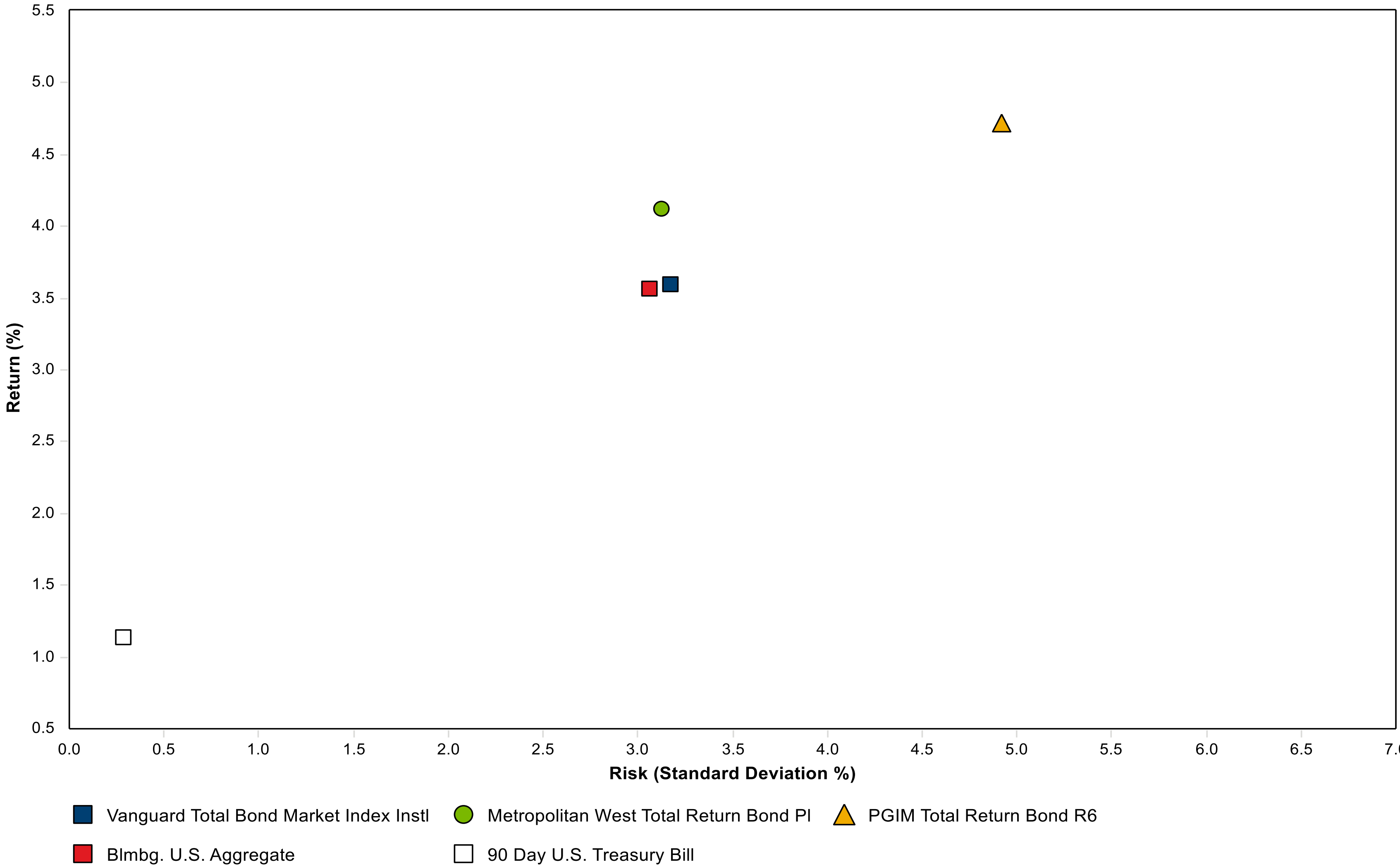
+
More likely to outperform
- Target small overweight to strategic weight
- Prefer to accumulate
- Selling for SAA reasons fine, but look to sell gradually
- Slow rebalancing moves back to benchmark weight

++
More outperformance or stronger conviction
- Target overweight
- Bring forward buying plans and defer SAA selling implement-ation
- Do not rebalance down to target weight yet

+++
Large outperformance expected with highest conviction
- Target larger overweight
- Bring forward buying plans and defer SAA selling implement-ation
- Do not rebalance to target weight yet

5 Years Ending December 31, 2021

Risk and Return



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