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Client Alert

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Australia: Private credit surveillance report on retail and wholesale funds released by ASIC

ASIC's new surveillance report exposes the good, the poor and the "requiring material improvement" of Australia's rapidly expanding private credit market

In this issue

In brief

On 5 November 2025 ASIC released its surveillance report on retail and wholesale private credit funds (**Report 820**). In preparing Report 820 ASIC conducted surveillance on 28 private credit funds over the period of October 2024 to August 2025. ASIC surveilled listed, unlisted, retail and wholesale funds to assess how private credit funds manage key risks that are critical to investor confidence and market operation as well as overall compliance within the sector with the legal and policy framework that applies to retail and wholesale funds.

As part of its review ASIC identified a number of poorer practices which ASIC intends to address by updating its regulatory guidance (including clarifying that the guidance is applicable to both retail and wholesale funds). ASIC will continue its surveillance during 2026 with a particular focus on fees, margin structures and conflict-of-interest management in wholesale private credit funds, including those with a focus on real estate lending, and distribution of private credit funds to retail clients through direct and advised channels.

The full report can be found at: REP 820 Private credit surveillance: retail and wholesale funds

Key takeaways

- The report highlighted the following activities as examples of poorer practices that were observed in the private credit funds market:
  - Inconsistent and unclear reporting and terms, masking portfolio risks and challenging investor decisions;
  - Opaque interest margins and fee structures, obscuring the risk and cost to investors;
  - Weak governance and poorly managed conflicts of interest, risking harm to investors and confidence;
  - Poor valuation practices, impacting entry and exit prices, performance and fees; and
  - Inadequate practices in key risk areas, indicating poor preparedness for stress scenarios.
- The poorer practices identified in the report may amount to contraventions of financial services laws. ASIC expressed its intention to use its regulatory and enforcement powers in circumstances of misconduct and "egregious conduct".
- Research houses may significantly influence investment decisions, however, ASIC found that research houses often rely on fund-provided data which they have limited capacity to verify and their assessments prioritise governance structures over direct credit risk analysis. Research houses should ensure they have robust ratings processes, to help influence industry practices and support trust and confidence in the private market.
- ASIC intends to update the regulatory guidance to make it more clearly applicable for wholesale private credit funds.

In depth

Background

The Australian private credit market has grown significantly in recent years with the size of the market estimated at around $200 billion, approximately half of which is focused on real estate construction and development finance. Report 820 follows an earlier report released in September, a review of Australia's private credit funds sector by infrastructure investment executive Richard Timbs and former banker and chief risk officer Nigel Williams, commissioned by ASIC (**Report 814**). Report 814 provided foundational insights on the better and poorer practices currently being exercised in the private credit space, which have been developed upon further by ASIC in Report 820.

ASIC's principles for good practice for private credit fund providers

The table below summarises the key principles identified by ASIC as guides for private credit funds done well, as well as poorer practices to avoid. ASIC considers that private credit fund participants (including responsible entities (REs), trustees and investment managers) in the private credit market should adopt strong industry practices, benchmarked against the below principles and better practices. ASIC has also provided a number of case studies as real-world examples of what ASIC considers to be poorer practices.

Principles	Better practices	Poorer practices to avoid
1. Stewards of other people's money Responsible entities (**REs**) and trustees act as stewards of investor capital, ensuring that their decisions are fair and in investors' best interests.	RE/trustee should actively oversee fund operations including: • Valuations; • Conflicts; • Liquidity; and • Impaired assets.	• Minimal oversight by REs, with heavy reliance on investment managers to self-report issues, including performance. • Limited engagement by REs with underlying fund transactions, including related party dealings, reducing transparency and control. • Weak oversight by related trustees, including lack of reporting from investment managers, absence of active oversight arrangements, and boards dominated by investment manager representatives. • Absence of policies governing internal management responsibilities of trustees and/or investment managers, particularly around liquidity, valuations, allocations, and credit risk management.
2. Organisational capability Human, financial and technological resources are adequate. REs and	• Maintain adequate staffing, systems and capital, with regular reviews as fund size and complexity grow.	• Having insufficiently skilled staff to undertake key risk management activities such as due diligence, site visits and progress payment evaluation (in property development), and manage troubled loans.

Principles	Better practices	Poorer practices to avoid
trustees operate efficiently, honestly and fairly.	• Ensure appropriate expertise and experience, including in credit, risk, compliance, systems support, valuation, reporting, liquidity and conflict management. • Undertake appropriate monitoring and supervision, including of.	
3. Transparency Investors have access to timely, transparent information on investment strategy, exposures, valuations, risks and fees.	• Adopt consistent reporting practices and terminology, including timing, form and substance.	• Unclear investment strategies in PDS, with insufficient detail on underlying assets, related party transactions, investment managers, or loan types, obscuring associated risks. • Vague descriptions of fund assets, especially for investments via interposed vehicles (e.g., feeder funds or SPVs), leaving investors unclear on ultimate exposures (e.g., junior tranche of ABS). • Poor quality and inconsistent reporting to investors. • Failure to properly disclose level of exposure to unsecured lending and associated risks • Not providing investors with details about the nature of security interests and/or the type of collateral used by the fund. **<u>Case Study of Poorer Practice:</u>** • An Investment Manager provided a select group of direct investors and platforms, that had entered into non-disclosure agreements, with access to an online portal which contained more comprehensive information about the risk and performance of the fund assets, including information about the loans within the portfolio, credit risk scores and internal loan ratings. • This was identified by ASIC as an example of poorer practice as the fund provided specific investors with an advantage to make more informed investment decisions than other investors.
4. Design and distribution Design and distribution practices are fair, transparent and appropriately targeted for investors.	• Determine an appropriate target market, taking care that it reflects any high-risk or complex fund structures or features.	• Employing aggressive marketing tactics such as utilising incentive structures or bonuses for new investors or referrals, which may encourage unsuitable investment decisions.

Principles	Better practices	Poorer practices to avoid
	• Strengthen distribution oversight to ensure product suitability (including via platforms). • Ensure platforms provide clear and accessible information.	• Issuing offer documents and marketing materials which contain unbalanced risk disclosures or overstated benefits (e.g., "stable returns" and "investment grade loans") which may mislead investors. • Understating the risks of financial products such as the risk of capital loss or mislabelled products in ways that could mislead consumers into thinking they were bank products. • Continuing to distribute fund products in circumstances where investor redemptions are frozen. • Failure to verify investor eligibility under wholesale client rules. • Mischaracterisation of risk in Target Market Determinations (TMDs) such as retail funds describing themselves as "low risk", inconsistent with their higher-risk strategies. • Questionable portfolio allocation guidance such allocating 75% of an investor's portfolio to the fund. • Missing or inadequate distribution conditions in TMDs. **<u>Case Study of Poorer Practice:</u>** ASIC identified inaccurate information in the TMD for a contributory mortgage scheme, including: • Inaccurate classification of the fund as a 'core component' (25-75%) of an investor's portfolio; • Labelling the fund as "low to medium" risk when the risks associated with the fund may have been higher; • Stating the fund was suitable for investors seeking capital preservation, when the risks did not ensure capital preservation; • Not specifying distribution conditions for the fund • ASIC issued an interim stop order as a result of the above concerns.
5. Fees and costs Fees and costs are fair and transparent, giving investors and borrowers a clear view of total costs.	• Disclose all fees and income streams (e.g. management and performance fees, borrower-paid fees, origination margins, default interest).	• Retention of undisclosed fees and income such as fund managers keeping origination, extension, restructure, or roll-over fees paid by borrowers without disclosing the amount, rate, or proportion of income derived from

Principles	Better practices	Poorer practices to avoid
	• Be clear about the manager's total remuneration. • Avoid complex fee and margin structures that obscure true cost to investors.	these fees or retention of income from default fees and default interest rates instead of passing it on to investors bearing the credit risk. • Non-disclosure of substantial income streams beyond stated management fees, including net interest margins, loan-related fees, and default income, leaving investors unaware of true cost structures. • Lack of transparency on interest rates details (e.g., ranges, weighted averages, or net interest margins), limiting investors' ability to assess pricing and returns. **<u>Case Study of Poorer Practice:</u>** • A fund operator failed to adequately disclose to investors the nature and extent of the fees it earned, as well as the fact that distributions were substantially funded by investor capital due to the practice of capitalising interest repayments within loans. • The fund operator disclosed that any income exceeding the target distribution rate was paid to the investment manager, but did not disclose that significant other income was already being retained by the investment manager, such as origination fees, default charges, and interest margins. • The financial impact of this lack of disclosure resulted in $12.5 million (43% of net income) going to the manager's principals, while $15.6 million (53%) was distributed to investors, over a 2 year period.
6. Conflicts of interest Conflicts of interest (**COIs**) are identified, disclosed, and effectively managed or avoided.	• Avoid arrangements (e.g. fees, interest, coinvestment, loan structuring) that unduly favour one party. • Ensure clear and fair allocation across funds. Disclose related party transactions and multiple exposures to the same borrower with independent oversight. • Where related party transactions occur, an independent third party reviews and signs off on pricing and terms	• Retention and non-disclosure of loan revenue or additional income to fund manager (e.g., fees or interest spreads) from loans under management instead of passing the benefit on to investors. • No COI policy for Net Asset Value or Gross Asset Value-based fees. • Non-disclosure or inadequate detail on related party transactions. • Conflicted allocation decisions or lack of adequate allocation policies. • COIs within appointed investment committees such as the same committee members overseeing debt and equity investments for the same fund. • Poor COI governance and record-keeping. **<u>Case Study of Poorer Practice:</u>**

Principles	Better practices	Poorer practices to avoid
		• A wholesale fund did not implement specific COI controls and procedures for related parties, which gave rise to inherent COIs, including: o The investment manager and trustee were part of the same corporate group o The investment committee's members included executives and employees of the group, and o The fund invested in SPVs that made loans to borrowers for real estate investments. The borrowers then used some of these loans to engage a development manager that was owned by the founders of the corporate group, allowing the corporate group to earn additional revenue. • ASIC observed that potential and actual conflicts were not properly recorded in investment committee meetings, trustee decisions, or conflicts registers. Additionally recusal practices were ineffective as the remaining decision makers were direct reports of the conflicted individuals, undermining independence.
7. Governance Structures, processes and people promote sound decision-making, compliance and accountability.	• Establish well-defined, documented roles, decision-making and escalation processes, with clear accountability. • Embed a culture of risk-awareness, compliance and transparency. Empower staff to challenge poor practices. • Ensure independent oversight, with REs and trustee boards independent of the business. • Avoid overly complex structures that heighten the risks of conflicts and unfair treatment of investors and borrowers.	• Underdeveloped operational policies and failure to maintain detailed default management procedures. • Inadequate allocation policies for fair distribution of investment opportunities across multiple funds. • Conflicted allocation decisions, where investment committee members with ownership interests influenced allocations without adequate COI management or policies.

Principles	Better practices	Poorer practices to avoid
8. Valuations Valuations are fair, timely and transparent, with robust governance.	• Implement clear and consistent valuation methodologies, policies and processes that produce fair valuations. • Undertake valuations regularly (monthly or quarterly), with appropriate independence. Include periodic external audits.	• Absent or inadequate valuation policies covering governance, frequency, methodology for private credit assets, use of independent valuers, and triggers for revaluation. • Collateral for construction loans valued on an "as if complete" basis instead of "as is", resulting in misleading Loan-to-Value Ratios and inconsistent approaches across portfolios. • Limited disclosure of valuation procedures and methodologies, with some funds failing to provide monthly valuations to investors. • Reliance on credit risk processes without clear linkage to valuation outcomes, such as provisioning and impairments that affect unit prices. • Extremely infrequent valuations (e.g., once every 42 months), undermining accuracy and investor confidence, or valuations only performed after credit risk triggers (defaults, covenant breaches), with assets otherwise carried at cost plus accrued interest. • Timing mismatches between master and feeder fund valuations, compromising integrity of reported values.
9. Liquidity Liquidity risk is effectively disclosed and managed, avoiding structural mismatches, with fair redemption terms aligned to portfolio liquidity.	• Disclose redemption terms, liquidity gates and stress-testing practices to investors. • Ensure the source of funds for distributions is sustainable and stems predominantly from cashflows generated by underlying assets. • Avoid paying distributions from investor capital or that of new investors.	• Absence of any or infrequent stress testing exercises to test liquidity risks. • Failure to design and implement a liquidity policy. Failure to describe liquidity risk or liquidity policy in an offer document. • Use of side letters which include negotiated redemption terms and distribution rates as a capital raising technique on unequal terms to those offered to investors using the offer document.
10. Credit risk Credit risk is effectively managed across loan origination, portfolio construction, monitoring, impairment, default and repayment.	• Apply standardised credit assessment and monitoring frameworks as part of a well-governed and documented risk management framework.	• Failure to consider the origination of the loan when conducting loan selection due diligence and vetting. • Not applying an internal credit risk rating or scoring guide to monitor loans in the fund's portfolio on an ongoing basis.

Principles	Better practices	Poorer practices to avoid
	• Document credit decisions and risk ratings, and regularly review borrower performance. • Establish escalation protocols for early signs of distress. • Use portfolio stress tests. • Apply a consistent approach to impairments, and ensure independent oversight of credit and default and impairment processes.	• Absence of formal record keeping or poor record keeping on credit assessment processes. • Failure to record regular reviews of credit assessments conducted after the initial loan origination. • Failure to implement a default management policy. Failure to properly define default in investor communications for the purpose of default reporting. Adoption of misleading “protection” mechanisms which do not disclose the true default rates for prospective investors.

ASIC's next steps

ASIC has confirmed they are responding to the findings in Report 820 with a range of regulatory actions, including ongoing monitoring of the private credit market (through enhanced data collection, analysis and surveillance), and further compliance and enforcement action to protect consumers.

In 2026, the focus of ASIC's surveillance of the private credit funds market will include:

- Fees, margin structures and conflict-of-interest management in wholesale private credit funds, including those with a focus on real estate lending, and
- Distribution of private credit funds to retail clients through direct and advised channels.

How we can help

Private credit fund providers should closely review their practices to ensure they are meeting the key principles and better practices identified by ASIC in Report 820. ASIC's inclusion of an enforcement roadmap within the report suggests that private credit funds will be an area of regulatory scrutiny moving forward, including for wholesale funds. Should you have any questions on how you can better align with ASIC's good practice recommendations in Report 820, please do not hesitate to contact us.

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