



CAPITALISM AND ITS DISCONTENTS

(Article is courtesy of [Directors and Boards](#))



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ÉLECTIONS FÉDÉRALES: OÙ SONT LES SOUVERAINISTES?

François Meylan, Membre du Conseil du GSCGI

Dans notre pays, la politique bat son plein. Le 22 octobre, nous renouvellerons notre Parlement (la partie Conseil national). Il faudra attendre trois semaines de plus pour le renouvellement du Conseil des États (notre Sénat). La législature de quatre ans qui s'écoule fut certes compliquée avec trois crises d'une amplitude inouïe: celle de la Covid-19, celle de la guerre en Ukraine et celle du hold-up chez Credit Suisse.

La question est: «Est-ce que nos parlementaires sortants méritent d'être reconduits (réélus)?» La question subsidiaire est: «Ont-ils œuvré pour le bien de notre population?»

L'heure n'est plus à la politique politicienne ou au clivage entre les «faux ennemis» de toujours que sont la droite et la gauche. Ce ne sont que des machines à gagner les élections et qui tuent dans l'œuf toute initiative d'alternative. Récemment, les candidats vaudois au Conseil des États, Pascal Broulis et Pierre-Yves Maillard (professionnels de la politique) ont déclaré sur le plateau de la télévision régionale Vaud-Fribourg (La Télé) que leur objectif était pour l'un de conserver le siège de la Droite à Berne et pour l'autre de récupérer le siège perdu pour la Gauche. Messieurs les politiciens, ce n'est pas un programme ça! Le bilan de cette législature est affligeant!

Depuis 2020, notre souveraineté a été mise à mal, notamment (1) lors de la crise de la Covid-19 au profit de quelques laboratoires pharmaceutiques et des technocrates de la Commission européenne; et (2) lors de la guerre en Ukraine, notre pays a perdu durablement son rôle de 'bons offices' sur le plan international, alors que des petits pays tels que la Hongrie et la Bulgarie, membres de l'Union européenne et de l'OTAN, ont mieux manœuvré que nous en condamnant l'agression russe tout en évitant de se mettre à dos la Fédération de Russie. C'est la preuve que garder sa souveraineté est le fruit d'intelligence et de courage.

Récemment, notre Conseil fédéral s'est couché sous quelques pressions étrangères en sabrant la seconde banque du pays, Credit Suisse, reprise, dans la foulée et dans la plus grande opacité, pour «seulement» trois milliards de francs par sa concurrente UBS.

Notons que UBS a déclaré en juin dernier, au gendarme boursier américain la SEC, une reprise d'actifs nets pour 35 milliards de francs! Cherchez l'erreur.

Des pertes de souveraineté ... nous en avons vécu au cours de cette législature. Le diktat très à la mode de «l'urgence climatique» nous entraîne assurément sur la pente très glissante de la perte de nos libertés. Nous relèverons que aucun des «politiciens», qui surfent sur la «vague climat» pour exister, ne s'est insurgé face à l'augmentation de 10% de l'abonnement général des CFF – important moyen de transport national. La perte de souveraineté est la conséquence d'un cocktail extrêmement toxique composé par l'ignorance et l'instinct grégaire de suivre les modes et l'incohérence. Il appartient à chacun de nous, cet automne, de dire stop à l'absence d'anticipation et à la surréaction de nos autorités, de dire non au diktat de quelques groupes d'intérêts particuliers.

Usons de notre bulletin de vote pendant que nous pouvons encore le faire.

Francois Meylan
Meylan Finance
Membre du GSCGI



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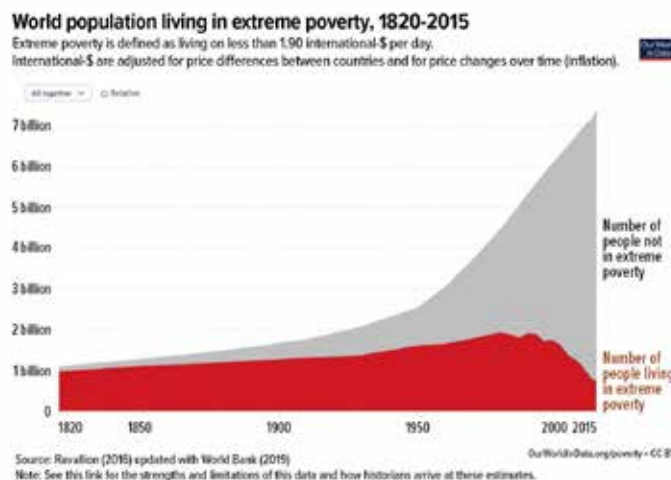
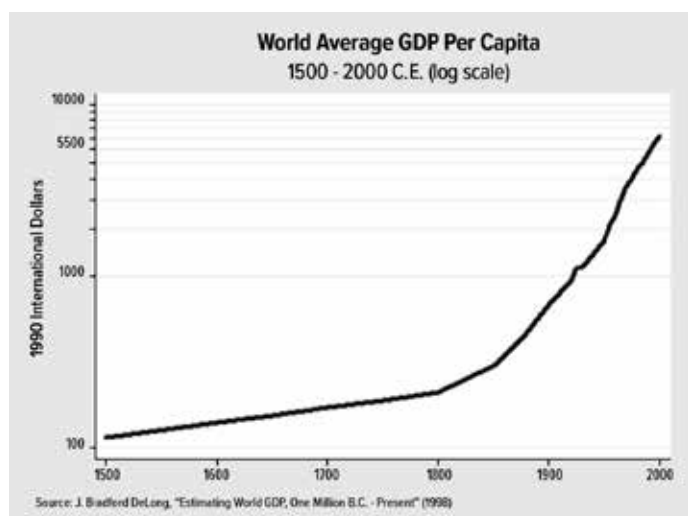
*Stephen B. Young—Global Executive Director—Caux Round Table for Moral Capitalism—CIFA Partner Association
(Following article is courtesy of [Directors and Boards](#))*

*To reduce risks to their companies,
boards must promote an understanding
of the true nature of capitalism.*

In their duty to owners, board members should act to defend capitalism against those who denigrate its advantages. This advocacy will optimize the ability of firms to create wealth for customers, employees, the community and owners. Society and humanity also will benefit, as has been the case since the dawn of the Industrial Revolution.

The promise of capitalism, according to Adam Smith, is its ability to “create the wealth of nations.” And it has done so.

Consider the following charts:



CAPITALISM MISUNDERSTOOD

The function of capitalism was, I thought, succinctly put by Walt Rostow in his 1960 book *The Stages of Economic Growth*. Capitalism arrives after a national economy “takes off” and thereafter experiences self-sustaining growth.

And yet for all the wealth created by capitalism over the last 300 years, there is disappointment over and resentment of its failure to bring good things to all people. An alternative has been proposed to remedy capitalism’s shortcomings: wise use of public power

to provide us with happy lives. The public power alternative has taken the form of socialism in both its communist and fascist expressions and its weak version of the benevolent welfare state, with its regulation of private firms and mandatory wealth transfers from the well-off to those less fortunate.

The primary disappointments with capitalism seem to arise from:

- A categorical intellectual mistake of confusing capitalism with money, and a deeply felt objection to its reliance on self-interest and individual greed.

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Stephen B. Young—Global Executive Director—Caux Round Table for Moral Capitalism—CIFA Partner Association

- Capitalism's cycles of asset booms and busts.
- The failure of capitalism to produce sufficient public goods, leading to inequality.

A discerning mind will intuit that these shortcomings of capitalism as a system of production, employment and distribution arise not from flaws inherent in the system itself but from systemic flaws in human nature. The problem is not the system; it is us, each and every one of us.

Undermining clear thinking about capitalism's achievements and shortcomings lies in rejection of our personal responsibility.

The Abrahamic religions put responsibility for life's outcomes on the individual, not on the family, the tribe, the nation or the system. Confucius and Mencius argued forcefully that we should seek to become virtuous and not live as "mean" persons. Buddha advocated personal enlightenment. The ancient Quiche Maya text, the Popul Vuh, objects to "self-magnification."

CONFLATING CAPITALISM WITH MONEY

Many wrongly confuse capitalism with money.

The Apostle Paul was convinced that the love of money is the root of all evil. Money is a pre-capitalism human invention. Traditional societies used money. Socialist, even communist, economies use money. As a consequence, those economies could not escape from the selfish abuse of money power.

When Charles Dickens created his wealth-accumulating character Ebenezer Scrooge, he made him a moneylender who heartlessly collected debts owed to his firm. In his magnum opus *Das Kapital*, Karl Marx stigmatized a capitalist as "Mr. Moneybags": "His person, or rather his pocket, is the point from which the money starts and to which it returns."

When love of money takes over our souls, we scheme for ways to extract "rents" (cash money) from others without allowing them much, if any, bargaining leverage. Such transactions are pretty much "take it or leave it" and lack fairness. Economists call this behavior "rent seeking" and "rent extraction." The latter happens when we have power — political power, social power and market power (monopolies, oligarchies, protective regulations, patents and copyrights). This kind of capitalism is more correctly understood as "crony capitalism," or a system of collusion between rent-seeking officials and private enterprises at the local or national level.

The love of money, as Saint Paul warned, stokes desire in our hearts and encourages our minds to scheme. The more money, the more we can be tempted.

Money gives us power when, as Lord Acton warned, "Power corrupts and absolute power corrupts absolutely."

Now, power is necessary for human flourishing. We can have no individual agency without power. Assets — intellect, skills, charm and wealth — drive life outcomes.

The wealthy, no doubt since the dawn of time, have lived better than the poor in every culture.



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Thus, we must accept owning money as a human good, even as a human right, perhaps. But the circulation of money can distort our judgment and warp our values.

Since capitalism produces more wealth than any other economic system, it generates money, which is both a public benefit and a private good. But money power is also a source of inequality and unfairness, as owners, workers, consumers and governments all bend their wills day in and day out to get money.

But capitalism is far more important to humanity than money. Capitalism raises living standards and thus brings hope to societies and individuals.

Briefly stated, one of the most ingenious capacities of capitalism is its superior ability to restrain excessive abuse of money power. Through competition, a prolific mechanism of checks and balances, capitalism uses self-interest to constrain self-interest. Inequality of outcomes in market economies very often comes about when competition is replaced with modes of rent extraction.

BOOMS THAT END UP IN BUSTS

In addition to wrongly objecting to capitalism because it thrives on the circulation of money, there is anger that, from time to time, capitalism does not create wealth but destroys it, or rather destroys the monetary value of assets.

People buy assets with money. They invest to make a profit and so enhance their agency capacity. But sometimes assets lose market value over time as buyers don't value them as highly as they once did. Owners then become poorer in money.

Financial crises have happened since the dawn of capitalism, including the Tulip Mania in Holland, the South Sea Bubble in England, the Mississippi

Bubble in France or, closer to home in the United States, the 1929 stock market crash, the 2008 collapse of credit markets and the recent collapses of some regional banks.

Taking on debt can also lead to financial distress. The borrower can misjudge the probability of repayment or events can happen that deplete the borrower's stock of ready money available to repay the debt. Too much debt is just as much a risk of potential loss as is any net present overvaluation of assets.

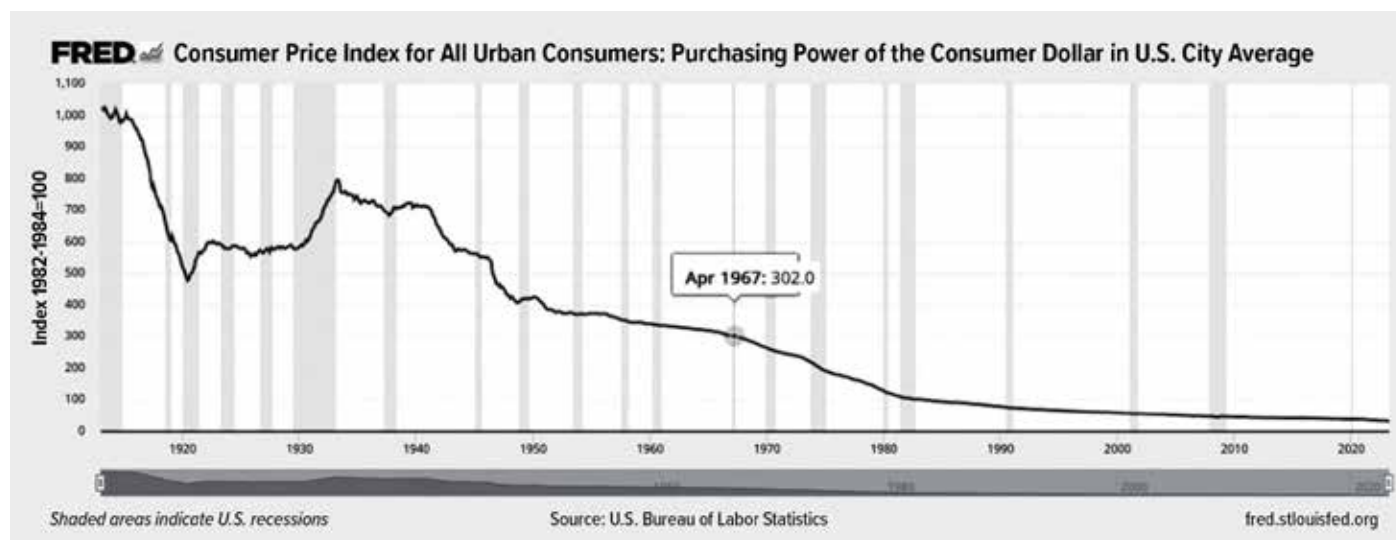
The cause of these losses is not the system of markets but lies in the minds of buyers and sellers, borrowers being only buyers of money. Human nature disposes us to making misjudgments and so choosing illusions over reality. The old saying was "If wishes were horses, beggars would ride."

Both financial crises and debt/income mismatches arise from misjudgments in valuation. In financial crises, the market value of financial contracts becomes unrealistic or even irrational, and then buyers balk, driving prices down. In assuming debt, the value of the asset, or the net present value of future earnings, is misjudged. In time, the borrower lacks capacity to repay the financial obligation and must default, most likely losing ownership rights to the asset.

Now in its own way, capitalism provides a check on making excessive valuations. At some point in a competitive market, prices get so high that the supply of buyers shrinks and prices must drop to draw them forth again. The rationality of self-interest — human nature — prevails again. But here State action intervenes to affect the price equilibrium in financial markets. Financial enterprises are regulated, and the state influences the value of money by increasing or decreasing its supply.

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The chart above depicts the real value of the U.S. dollar over the years the American welfare state was evolving into its present scale as the federal government injected more and more money into the economy.

But it is not feasible for capitalism as a system to correct misjudgments of individuals about their ability to assume and repay debt. In some jurisdictions, however, bankruptcy laws attempt to minimize the harm done to borrowers by such misjudgments.

NOT ENOUGH PUBLIC GOODS

There is disappointment that capitalism does not produce, either in quality or in quantity, the public goods many desire and that capitalism does not sufficiently inhibit the production of public “bads.” In economics, this is the problem of externalities — the consequences that come with our actions.

Consider our need to offset the accumulation in our planet’s atmosphere of trillions of tons of carbon dioxide, leading to changes in our weather and climates. Capitalism gave us the Industrial Revolution.

The Industrial Revolution has given us climate change — a public “bad” — as an unintentional by-product of its technologies.

Public “goods” are things like education, housing, a living wage, healthy food, roads and bridges, and freedom of speech and thought. Capitalism does not internally generate these goods in quantity. Nor can capitalism always provide them in quality. Capitalism is a pay-as-you go system when most of us either can’t, or are unwilling to, pay for these and other public goods.

This third source of dissatisfaction with capitalism also arises from the quandaries of human nature. How far does my duty to others go? How much should I sacrifice my money to benefit others? Am I always my “brother’s keeper”? Doesn’t “my brother” have obligations arising from human dignity to make the best out of life? Am I a steward of community well-being, or is that the government’s job?

A notorious insight of Adam Smith gives us a clue about capitalism’s capacity to bridge the gap

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between our private interest and the creation of public goods. Smith observed that we humans live by “truck and barter.” What I don’t have, maybe I can get from you — that is, if we can agree on an exchange value between what I want and what you have. Smith pointed out that, often, self-interest more than altruism generates outcomes that benefit others. In that sense, something of a public advantage is created by the intersection of differing self-interests. Both parties to the exchange benefit and society is better off for their having benefited from one another.

Consider education and health care: Are they public or private goods?

On one hand, both education and health are private goods. The individual “owns” the advantage that comes with education and good health. They contribute importantly to personal human capital balance sheets.

On the other hand, a society that has provided high levels of human capital for its members is more productive, more resilient, more progressive, more tolerant — all important public goods. Such goods are “non-rivalrous” in the language of economists, and so are shared in common with all members of the community.

I call these goods “quasi-public/quasi-private,” as they are an amalgam of that which belongs to one and that which also benefits others.

Decelerating climate change follows a similar model. Some innovative private goods or services — electric vehicles; new, smart, nuclear reactors; carbon removal and sequestration; changes in production methodologies for cement making and shifts in agricultural practices — have public benefits.

So, one way capitalism can achieve more in the production of beneficial “public” outcomes is to

introduce products and services that will attract customers willing to buy such quasi-public/quasi-private goods.

The appropriate competence of the State in encouraging such production of quasi-public/quasi-private goods is to transfer “rents” from taxpayers to private entrepreneurs to shift the risk/return calculus associated with their private interests toward more favorable valuations of their innovative enterprises.

The State can also adopt and enforce laws that change the calculus of self-interest on the part of market participants. Law can set specifications, provide preferences and impose penalties on goods and services. The State can thus constructively change the calculus of self-interest — bring the cost of future consequences into the present to minimize the deleterious and shortsighted effects of unenlightened self-interest.

Thus, capitalism with help from the State can cope with human nature, warts and all, to better serve the common good. Though many of capitalism’s perceived evils stem in fact from our human nature, capitalism can influence our behaviors for the better but will never change our natures.

IMPLICATIONS FOR BOARDS

Boards of public companies would be wise to promote this understanding of capitalism in order to strengthen the performance of the companies they serve and to advance the common good. Capitalism is a quasi-private/quasi-public system dependent on our human nature but capable of offsetting our shortcomings.

Understanding the true nature of capitalism — including what appears to be its list of necessary evils (see the sidebar on next page) — will enable directors to respond to the many issues

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Stephen B. Young—Global Executive Director of the Caux Round Table for Moral Capitalism—CIFA Partner

THE “NECESSARY EVILS” OF CAPITALISM: PROS, CONS AND SOLUTIONS

Proponents of the following nine practices argue that they are good and necessary. Their arguments are usually in response to a proposed bill, rule, regulation or stockholder proposal advocating for a ban or curb on them as if they were evil. In each case, ways of working with these “necessary evils” can emerge from their pros and cons.

ALGORITHMIC TRADING

Pros. Uses computer power to improve buy-sell decisions and speed their occurrence based on if-then formulas.

Cons. Entirely dependent on quality of programming. Can intensify buy or sell panics.

Solution. Continually improve programs and use market circuit breaker if market overheats.

BUYBACKS

Pros. Enables companies to increase the shares they hold, decreasing dilution of share value and lowering chances of involuntary change of control. Also increases flexibility of executive and employee compensation programs.

Cons. Deprives company of cash that may be needed for capital investments, R&D or dividends.

Solution. Set policy for capital allocation to ensure appropriateness of buybacks.

CEO PAY INFLATION

Pros. Basing CEO pay on stock price (one major cause of pay inflation) aligns CEO decisions with shareholder interests and, if structured for generous outcomes, can give boards a wider choice of leaders, as some are reluctant to jump ship without a major financial incentive. High pay puts greater pressure on the CEO for high performance.

Cons. CEO pay that is high relative to peers and other employees can be a magnet for stakeholder criticism and can incentivize short-termism. Seeing the CEO as an “owner” is contrary to the CEO’s fiduciary duty as an officer.

Solutions. Restructure pay packages to be heavier on base pay and lighter on equity pay, structuring the latter solely as restricted stock grants. Eliminate stock options entirely except for start-ups. Ensure that golden parachutes, if any, fall below the “excessive parachutes” level that triggers taxation.

DERIVATIVE HEDGING

Pros. Enables companies to offset their strategies without making major and possibly irreversible capital investments.

Cons. Can lead to disastrous outcome if bets are wrong and big.

Solution. Ensure expertise of choice and use in moderation.

GOLDEN PARACHUTES

Pros. Being assured of continued pay after a change of control will prevent CEOs and senior executives from resisting an acquisition offer that may be in the best interests of shareholders and other stakeholders.

Cons. Golden parachutes, if overly generous or too easily triggered, can create a perverse incentive to sell the company and depart from leadership when this is not in the long-term interests of shareholders and other stakeholders.

Solutions. Ensure that golden parachutes are triggered only when two events occur — change of control and dismissal/demotion (so-called double-trigger). Also, make sure that they are reasonable in size (e.g., will not trigger Rule 280G taxation as “excess parachute payments”).

LOBBYING

Pros. Gives companies the chance to tell their story in detail directly to legislators and regulators, supplementing and balancing media accounts that can be overly simplistic or unnecessarily negative.

Cons. When combined with political contributions — especially through anonymous

PACs — can have undue influence on legislative and policy decisions.

Solutions. Require transparency in both political contributions and lobbying. Via an ethics code, set boundaries on lobbying so it does not cross a line into rent-seeking and anticompetitive behavior.

POLITICAL ACTION COMMITTEES

Pros. Can be a way for corporations to support candidates and policies consistent with the needs of their industry, contributing to better state and national policy.

Cons. Can cause corruption and confusion — the identity of contributors to PACs may be known to candidates, who may be beholden to them, but not to voters, who may be misled by them.

Solutions. Get buy-in on PACs from stakeholders. Candidates and companies should be transparent, disclosing sources of funding and purpose of formation. As stated above (under “Lobbying”), ensure ethical behavior to avoid rent-seeking and anticompetitive behavior.

RESTRUCTURING

Pros. Enables companies to weather hard times through structural changes, such as layoffs that lower labor costs, divestitures that raise cash or share buybacks that discourage takeovers.

Cons. Can cause loss of talent, business lines or funds that will be needed later.

Solution. Consider impacts on all stakeholders in the short and long term.

SHORT SELLING

Pros. Can prevent overvaluation of stock by betting on a reasonably likely downturn.

Cons. Can drive stock prices down too low based on false information.

Solutions. Refrain from short selling. Support stocks victimized by short selling. At the exchange level, insist on strong circuit breakers per Regulation SHO (but with no exemptions).

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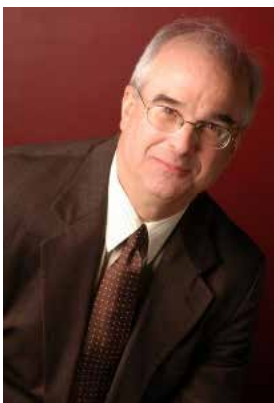
Stephen B. Young—Global Executive Director—Caux Round Table for Moral Capitalism—CIFA Partner Association

confronting them in the course of fulfilling their duties. At the same time, board members must act with a view to optimizing the public goods produced by the companies they supervise and minimizing the public “bads” associated with the goods and services that those firms introduce into our economies. This goal is consistent with

their duty of due care to owners. Optimizing the benefits and minimizing the harms will lower risks and increase the firm’s net present value as enlightened self-interest always seeks to do.

NB: This article was originally published by [Directors & Boards](#) in their 2023 Annual Report.

ABOUT THE AUTHOR



Stephen B. Young is the global executive director of the Caux Round Table for Moral Capitalism. Young has published *Moral Capitalism* and *The Road to Moral Capitalism*, two well-received books written as a guide to implement the Caux Round Table Principles for Business. In her 2008 book, *The Difference Makers*, Professor Sandra Waddock listed Young among the 23 persons who created the corporate social responsibility movement.

Young was educated at Harvard College and Harvard Law School. He served as an assistant dean at the Harvard Law School and as the third dean of the Hamline University School of Law. He has taught at the University of Minnesota and at the SASIN Graduate School of Management in Bangkok and spoken at many workshops and conferences on corporate social responsibility and business ethics.

He has written numerous opinion articles for the St. Paul Pioneer Press, Minnesota Journal on Law and Politics, St. Paul Legal Ledger and has been published in the Wall Street Journal, the New York Times and the Washington Post.

ABOUT CIFA

The founding principles of CIFA are built around an ethical reflection and the reform of the worldwide financial system. Through its many assignments, CIFA is working towards a unique goal: putting finance back at the service of investors. CIFA regroups 70+ professional associations, which represent more than one million individuals or legal entities involved in the financial intermediation worldwide.

In 2007, CIFA, through its active participation in the works of various United Nations organisms, obtained the «*special consultative status*» with the United Nations in the framework of the Economic and Social Council (ECOSOC). In 2015, CIFA has obtained the «*general consultative status*» with the UN-ECOSOC. CIFA is the only NGO within global finance with such a status!



Le Groupement apprécie beaucoup la fidélité des ses Membres Partenaires et tient à les remercier de leur précieuse collaboration et de leur contribution (sponsorship et articles) au succès du WealthGram.

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KESTREL WEALTH MANAGEMENT S.A. OBTIENT SON ACCRÉDITATION FINMA



**Kestrel Wealth Management S.A.
a le plaisir d'annoncer l'obtention de son accréditation à la FINMA
en tant que gestionnaire de fortune indépendant,
en date du 7 septembre 2023.**

Ce précieux sésame place Kestrel Wealth Management S.A.
dans le cercle restreint des gérants de fortune indépendants
qui bénéficient de cette reconnaissance.

Cette accréditation, obtenue l'année de nos 35 ans d'existence,
atteste de notre engagement envers l'excellence, de la qualité de notre organisation,
de nos procédures rigoureuses et de notre gouvernance irréprochable.

Cette autorisation, combinée à nos savoir-faire et notre solide expérience,
nous permet d'envisager l'avenir de manière sereine et enthousiaste.

Nous tenons à remercier
toutes celles et ceux qui nous ont soutenus dans ce long processus.

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FECIF—NewsFlash—187/2023—ESMA: Work programme 2024

EXECUTIVE SUMMARY—Today (28 Sept. 2023), the European Securities and Markets Authority (ESMA) published its work programme for 2024. ESMA will ensure close market and risk monitoring and support the effective implementation of the European regulatory framework related to the digital and sustainability transitions. By fostering effective regulation and supervision of the European capital markets, ESMA contributes to addressing the challenges faced by the EU and its citizens.

ANALYSIS—ESMA 2024 Work programme:

- In 2024, ESMA will develop rules for sustainable finance as part of the new European Green Bond Regulation and will deliver its final report on greenwashing, proposing actions to combat this practice. ESMA will finalise technical standards for the European Single Access Point (ESAP) and continue preparatory work on the necessary IT infrastructure that will support it. In the digital finance area ESMA will conclude the work on technical standards and guidelines in relation to the MiCA regulation and the Digital Operational Resilience Act (DORA).
- ESMA will work to enhance financial stability and investor protection also through tasks mandated in the asset management area under the recently concluded reviews of the Alternative Investment Fund Managers (AIFMD), Undertakings for Collective Investment in Transferable Securities (UCITS) Directives, and the Central Securities Depositories Regulation (CSDR). The ongoing reviews of the European Market Infrastructure Regulation (EMIR) as well as the new Listing Act may also lead to new mandates for ESMA in 2024.
- ESMA will assist in the finalisation (and possibly start of implementation) of the new Retail

Investment Strategy, and will also in 2024 assess whether the NCAs have sufficiently improved their supervision of investment firms' cross-border activities. To enhance investor understanding, ESMA will engage with retail investors through coordinated communication with National Competent Authorities (NCAs), complementing and amplifying their actions and messages.

- In 2024, ESMA expects to continue to adapt its supervisory efforts to be ready for the entry into application of DORA in 2025, and begin the process of selecting and authorising Consolidated Tape Providers (CTPs) in the EU. ESMA will develop technical standards for the European Single Access Point (ESAP) and continue preparatory work on the necessary IT infrastructure needed to support it.
- Finally, effective use of data and Information and Communication Technologies is a key part of ESMA's strategy for 2023-2028, and ESMA will work on further improving data quality outputs for all supervisory data and enhance the ability to share and analyse this data, in close cooperation with NCAs and other EU authorities.

SOURCES—The ESMA 2024 annual work programme is available [here](#).

* * *

FECIF—NewsFlash—179/2023—European Commission: public consultation on report on SFDR

EXECUTIVE SUMMARY—Today (14 Sept. 2023), the European Commission launched a public consultation on the report on the Regulation on sustainability-related disclosures in the financial services sector. The deadline for comments is the 15th of December.

FECIF INFORMS...

Federico Martinengo & C.M. Carvello | Analysts
Cattaneo Zanetto & Co. | Rome | Milan | Brussels
www.cattaneozanetto.it

ANALYSIS—The Regulation on sustainability-related disclosures in the financial services sector (SFDR) requires financial market participants to disclose sustainability-related information to investors. However, stakeholders have raised concerns about several aspects of the SFDR. Therefore, the Commission launched a comprehensive assessment of the SFDR to examine these aspects in the context of the broader sustainable finance framework, with a focus on legal certainty, usability, and prevention of greenwashing.

Regarding the **next steps**, comments will be considered in the further development and refinement phase of the initiative. Adoption of the report, by the Commission, is scheduled for the second quarter of 2024.

SOURCES—The consultation is available on the European Commission website [Have your say](#) and is available [here](#). Moreover, the consultation document is available upon request from either FECIF or GSCGI.

* * *

FECIF—NewsFlash—178/2023—CMU: France and Germany co-signed a joint roadmap

EXECUTIVE SUMMARY—Today (14 Sept. 2023), France and Germany co-signed a roadmap in which the two countries set out the priorities that should be established with a view to completing the Capital Markets Union (CMU).

ANALYSIS—According to the joint roadmap, particular emphasis should be placed on giving SMEs and innovative businesses access to equity and debt finance, through legislation on stock market listing, as well as on strengthening securitization to finance the real economy, as part of the ongoing review of Solvency II. Targeted amendments to prudential rules on securitization are expected to be tabled by France and Germany.

The document also stresses the need for “attractive and dynamic” marketplaces and a “competitive clearing infrastructure”, and states that the two countries hope to reach an agreement on this issue before the end of the legislative cycle.

The roadmap also considers the retail investment strategy (RIS) - which both countries support - and the issue of sustainable finance.

Regarding sustainable finance, France and Germany stress the need to complete the EU taxonomy with economically important activities linked to the transition. The two countries also highlight that the current European regulatory framework does not fully prevent the risk of greenwashing in the marketing of financial products and call for greater clarity.

France and Germany also suggest complementing the current CMU agenda by exploring an approach in which best practices could be shared.

SOURCES—The joint French-German roadmap is available [here](#).

* * *

FECIF—NewsFlash—176/2023—European Commission Event: The Sustainable Finance Disclosure Regulation (SFDR) - What next?

EXECUTIVE SUMMARY—The European Commission's Directorate-General for Financial Stability, Financial Services, and the Capital Market Union (DG FISMA) organized an online workshop on The Sustainable Finance Disclosure Regulation (SFDR) - What next?, which will be held on the 10th of October. The deadline to register is the 6th of October.

ANALYSIS—The event is designed to ensure transparency, the SFDR is one of the main pillars of the EU framework for sustainable finance. However, the regulation is not functioning entirely as

FECIF INFORMS...

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intended. For this reason, the European Commission has launched a comprehensive assessment of the SFDR. The goal is to ensure legal certainty and that the SFDR plays its role in combating greenwashing.

As part of this assessment, and to accompany a public consultation to be launched in September, DG FISMA is organizing this high-level online workshop. The event will be opened by Commissioner Mairead McGuinness.

The objective of the workshop is to discuss the current challenges of the SFDR and possible ways forward for sustainability reporting in the EU. Among the issues that will be addressed is how to ensure greater consistency between the SFDR and other parts of the EU's sustainable financial framework, how to make reporting more effective, and the potential introduction of product categories.

SOURCES—The workshop agenda is available [here](#). The link to register is available [here](#).

* * *

FECIF—NewsFlash—174/2023—European Commission: Adoption of Delegated Regulations on RTS according to CRR

EXECUTIVE SUMMARY—Today (6 Sept. 2023), the European Commission adopted the Delegated Regulation regarding the technical standards that

credit institutions will have to use for reporting exposures to shadow banking entities, as required by the Capital Requirements Regulation (CRR).

ANALYSIS—The technical standards define criteria for identifying shadow banking entities, ensuring harmonization and comparability of exposures reported by credit institutions.

The standards will also provide supervisory authorities with robust data to assess banks' risks in relation to non-bank financial intermediaries.

The adoption of this delegated regulation will strengthen the prudential framework, allowing greater transparency of the material links between the traditional and shadow banking sectors.

As for the **next steps**, the delegated regulation will now be transmitted to the European Parliament and the Council, which will have three months to examine the act. If no objections are raised, the delegated regulation will be published in the Official Journal of the European Union and will enter into force on the 20th day following its publication.

SOURCES—The delegated regulation is available [here](#) and the annex is available [here](#).

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Financial Advisers and
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CIFA INFORMS...



THERE ARE NOT ENOUGH RICH PEOPLE TO FINANCE EUROPEAN-SIZED GOVERNMENT

Dan Mitchell—Member of CIFA's Advisory Board—www.cifango.org

URL Link: <https://danieljmitchell.wordpress.com/2023/10/02/there-are-not-enough-rich-people-to-finance-european-sized-government/>

Mostly because of [an aging population](#), entitlement spending in the United States is [projected to become a much bigger burden](#).

Without [reform](#) of those programs, the U.S. within a few decades will have a European-sized level of government spending.

[Joe Biden](#) and [Donald Trump](#) have [both stated](#) that they oppose entitlement reform, so this raises the very important question of how they would finance this massive expansion in the burden of government.

Biden's answer is "tax the rich" while Trump simply pretends the problem doesn't exist.

Since there's no way of dealing logically with Trump's head-in-the-sand approach, let's address Biden's supposed solution of [soak-the-rich taxes](#) (and keep in mind [Biden wants several trillion dollars of new spending](#) on top of the trillions of dollars of higher spending that's already in the pipeline for existing entitlements).

I've [written about this issue before](#), but this is an opportune time for some new data since Brian Riedl of the Manhattan Institute has a [new study](#) on the topic.

Here's the table (top right) he put together of the revenue that might be generated by the various class-warfare tax proposals the left has offered:

Figure 5

Maximum Sustainable Revenue from Taxing the Rich

Tax Proposal	2023–2032 (\$Billions)	New Revenues %GDP
Individual Income Taxes (1.0% of GDP)		
Raise top two income tax brackets by 10%	\$1,661	0.50%
Aggressive tax enforcement	\$1,196	0.36%
Pare back retirement incentive abuses	\$133	0.04%
Cap itemized deductions at 28% rate	\$332	0.10%
Investment Taxes (0.2% of GDP)		
Tax capital gains and dividends at a top rate of 39.6% at incomes over \$1 million, and tax unrealized capital gains at death	\$332	0.10%
Other capital gains loophole closures and tax enforcement	\$332	0.10%
Corporate Taxes (0.8% of GDP)		
Raise corporate tax rate to 28%	\$930	0.28%
Biden international corporate tax hikes	\$1,163	0.35%
Other Biden corporate tax hikes	\$332	0.10%
Various additional corporate savings	\$233	0.07%
Estate Taxes (0.1% of GDP)		
Raise estate taxes to 2009 levels	\$332	0.10%
Revenue Subtotal	\$6,976	2.10%
Additional macroeconomic losses		0.1% to 1.0%
Net Revenue Increases		1.1% to 2.0%

Source: CBO, OMB, Tax Policy Center, U.S. Treasury

Note: Tax proposals generally limited to corporations and the richest 1% to 2% of households.

As you can see, establishment sources estimate the maximum revenue from all of these soak-the-rich tax increases is 2 percent of GDP.

And the actual revenue collected would be lower because all of these tax hikes would [significantly undermine incentives](#)

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to engage in productive behavior by entrepreneurs, investors, small business owners, and others.

Would 1-2 percent of GDP be enough to finance existing spending promises, as well as Biden's proposals for more spending? Not even close. As Brian explains, it doesn't even deal with current levels of spending:

Budget deficits have risen to nearly 6% of GDP and are projected to rise to 10% of GDP over three decades. ... To close these baseline deficits and finance additional expansions, most progressives reject most spending cuts as well as middle-class tax increases. Instead, just "tax the rich" has become an easy and popular answer. However, ... the plausible revenue estimates from these proposals fall far short of closing these budget gaps. ... America's federal tax code is already the most progressive in the Organisation for Economic Co-operation and Development (OECD) and has become sharply more progressive over the past 40 years. Much of this tax progressivity is the result of drastic cuts to low- and middle-income taxes while leaving upper-income-tax rates closer to international norms. ... Europe's significantly higher tax revenues are driven overwhelmingly by broad-based consumption and payroll taxes, rather than by notably higher tax rates on the wealthy.

The Limits of Taxing the Rich

In other words, Brian's research confirms my [Twelfth Theorem of Government](#). This is true [even in Nordic nations](#), as Brian explains:

American progressives often hold up Europe—and especially the Scandinavian social democracies of Denmark, Finland, Norway, and Sweden—as successful tax-the-rich utopias that the U.S. should replicate. In reality, European tax systems do not fit the American progressive stereotype, as their higher revenues are overwhelmingly raised through steep income, payroll, and consumption taxes on the middle class.

Figure 11
America's Tax Rates for Corporations and High-Earning Families are Within International Norms

	Personal Income	Capital Gains	Corporate Income	Estates and Inheritances	Broad Tax Rate Value-Added Tax (VAT)
United States	43.7%	29.2%	25.8%	40.0%	—
OECD Average	42.6%	19.1%	23.6%	30.0%	19.2%
Scandinavian Average	49.4%	34.4%	21.2%	17.0%	24.8%
Denmark	55.9%	42.0%	22.0%	15.0%	25.0%
Finland	51.2%	34.0%	20.0%	19.0%	24.0%
Norway	38.2%	31.7%	22.0%	—	25.0%
Sweden	52.3%	30.0%	20.0%	—	25.0%

Source: OECD, Tax Foundation. Other nations apply unique estate and inheritance tax rates based on the relationship of the inheritor. These tax rates apply to the children of the deceased. Data includes all levels of government.

Here's a table (above) from the study showing that Denmark, Finland, Norway, and Sweden have slightly higher taxes on income and capital gains, but that's offset by lower taxes on corporations and lower death taxes.

So what's the bottom line? Simply stated, as explained in my [Fifteenth Theorem of Government](#), there is no way to have European-sized government without European-level taxes on lower-income and middle-class households.

As you can see from this table, it's the only place where there is substantial potential tax revenue.

Figure 4
Broad Tax Increases Can Raise Substantially More Revenue Than Taxing the Rich

Tax Proposal	2023-2032 (\$Billions)	%GDP
Raise Payroll Taxes by 10%	\$11,357	3.60%
Raise Income Tax Rates by 10% Across-the-Board	\$10,813	3.38%
Impose a 20% Value-Added Tax	\$7,800	2.75%
Repeal Tax Exclusion for Employer-Paid Health Premiums	\$3,671	1.69%
Carbon Tax of \$25/Metric Ton - No Rebate	\$865	0.29%

Source: CBO Options, Dec. 2022

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P.S. There's one final excerpt from the study I want to share.

I mentioned above that class-warfare taxes would be very detrimental to growth. Well, don't forget that payroll and consumption [taxes are bad for growth as well](#). And a [bigger burden of government spending](#) also is very [harmful to prosperity](#).

So if we go down [the wrong path](#) of bigger government and higher taxes, we can expect [European-style economic anemia](#). And Brian explains that also has fiscal consequences:

...a tax package that reduces annual economic growth rates by 1 percentage point would, in turn, reduce tax revenues by \$3.3 trillion over the decade—likely canceling all static tax-revenue gains while also costing jobs and reducing incomes. In other words, tax-the-rich advocates cannot afford to ignore economic considerations. Raising every upper-income-tax rate to its revenue-maximizing level—the point at which the economic damage cancels out any additional revenues—is a recipe for economic stagnation, job losses, and declining incomes.

At the risk of understatement, we [don't want to copy Europe](#).

Dan Mitchell
Founder & Chairman
Center for Freedom and Prosperity

TRUSTING 2020-2021 is available here:

https://cifango.org/welcome/cifa_magazine_details/15



www.cifango.org

TRUST SUISSE: UNE OCCASION MANQUÉE

Luc Thévenoz—Centre de droit bancaire et financier—<https://cdbf.ch/1302/>

Le Conseil fédéral [vient d'annoncer](#) qu'il ne souhaite pas poursuivre les travaux sur la création d'un trust de droit suisse. Le dernier mot reviendra à l'[Assemblée fédérale](#), qui pourrait refuser de classer la motion de 2018, mais un tel refus est improbable. Pourquoi ce projet a-t-il échoué? Était-il inutile?

On aurait pu craindre que l'introduction du trust comme institution du droit privé suisse, inscrite dans le code des obligations sans être un contrat, soit rejetée comme trop étrangère à notre ordre juridique. Les [résultats de la consultation publique](#) montrent que ce n'est pas le cas. Une majorité des [prises de position](#) qui s'expriment sur le volet civil de l'avant-projet sont favorables sur le principe. Il y a bien sûr des voix critiques, mais elles se partagent assez également entre l'expression d'un scepticisme de principe et des appels à un trust plus audacieux, plus libéral.

Comme on pouvait l'anticiper, c'est le volet fiscal qui a tué l'[avant-projet de 2022](#). Le Conseil fédéral considérait qu'il serait politiquement impossible d'introduire le trust dans le droit matériel suisse sans consacrer dans la législation fiscale un régime qui procure plus de sécurité juridique et respecte mieux les principes de légalité et de capacité contributive.

La montagne a accouché... d'une montagne. Un groupe de travail réuni par le Département fédéral des finances avait identifié sept options, chacune

avec deux variantes. Aucune n'a recueilli de consensus. (Leur discussion occupe 15 pages dans le [rapport explicatif](#)!) L'administration a finalement choisi la solution la plus pénalisante pour les trusts discrétionnaires irrévocables, que ceux-ci soient d'ailleurs soumis au droit suisse ou à un autre droit. Une forte majorité des avis exprimés dans la consultation rejettent la solution proposée, les organisations économiques indiquant clairement leur refus de soutenir la proposition d'un trust suisse si c'est au prix d'un pareil bouleversement de la fiscalité des trusts.

Est-il possible de mieux faire sur le volet fiscal?

D'autres approches que celles soumises au Conseil fédéral sont envisageables. Elles reposent sur le principe que les impôts sur le revenu, la fortune et les donations et successions ne concernent que les settlors et les bénéficiaires assujettis à la fiscalité suisse. Pour ceux-ci, la création d'un trust (quel que soit le droit qui le régit) devrait être envisageable sans incidence fiscale majeure. Plus précisément, pour un settlor et des bénéficiaires domiciliés en Suisse, la création d'un trust ne devrait, dans la durée, ni créer de surcoût ni procurer d'avantage fiscal significatifs. Des modèles ont déjà été esquissés et discutés à cet effet, mais pas à Berne. Il faudrait maintenant les explorer pour formuler des propositions qui soient acceptables autant pour la Confédération et les cantons que pour les intéressés. C'est possible, il y faut une volonté politique qui pour le moment semble faire défaut.



CENTRE DE DROIT
BANCAIRE ET FINANCIER

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La décision du Conseil fédéral, si elle est suivie par le parlement, rend-elle inutile les quatre années de travail dont le résultat semble devoir être classé sans suite? Non. Même si une solution fiscale reste à inventer, il est désormais acté que l'ajout du trust aux institutions du droit privé suisse est acceptable et n'enfreint aucun principe fondamental. En outre, les craintes de mettre la Suisse en difficulté au GAFI ou au Forum mondial sur la transparence et l'échange de renseignements à des fins fiscales ne se sont pas avérées. Du reste, l'obligation pour tous les trustees d'identifier et documenter les ayants droit économiques d'un trust, qui figurait à l'art. 529j de l'avant-projet sur le trust, se retrouve en substance à l'art. 16 du tout récent [avant-projet de loi sur la transparence des personnes morales](#) (K. Villard, cdbf.ch/1300/), qui renonce à créer un registre public pour les trusts.

Le coup de frein donné au trust suisse va-t-il servir, à tout le moins, à favoriser les fondations de famille et permettre les fondations d'entretien, comme le réclame la [motion Burkart](#) «Renforcer les fondations de famille suisse en supprimant l'interdiction des fondations d'entretien»? La motion ne vise qu'une modification de l'[art. 335 al. 2 CC](#). Sans réforme, la fiscalité des fondations d'utilité privée reste très dissuasive. Dans son rapport proposant l'abandon du projet trust suisse, le Conseil fédéral confirme d'ailleurs son rejet de la motion Burkart. «L'objectif qu'elle poursuit n'est pas susceptible d'obtenir une majorité à l'heure actuelle, eu égard notamment

à ses effets dans le domaine fiscal.»

Il reste que le droit suisse n'offre toujours pas aux Suissesses et aux Suisses une palette adéquate d'instruments permettant de structurer et de transmettre un patrimoine sur le long terme. Très libéral, notre droit international privé permet de recourir aux véhicules offerts par de nombreux autres ordres juridiques, mais ces solutions ne sont pas à la portée de la plupart de celles et ceux qui pourraient les souhaiter, et elles se heurtent à une fiscalité pénalisante. La décision du Conseil fédéral d'interrompre les travaux sur le trust suisse n'est pas un enterrement, mais elle invite à entamer une réflexion plus globale sur les instruments manquants.

Luc Thévenoz, Trust suisse : Une occasion manquée, publié le 20 septembre 2023 par le Centre de droit bancaire et financier, <https://cdbf.ch/1302/>



CENTRE DE DROIT
BANCAIRE ET FINANCIER

RÉVISION DU DISPOSITIF ANTI-BLANCHIMENT

Katia Villard—Centre de droit bancaire et financier—<https://cdbf.ch/1300/>

Bis repetita, sanctions pécuniaires et transparence

L'avant-projet du Conseil fédéral portant révision du dispositif anti-blanchiment et mis en consultation le 30 août est, pour partie, du déjà-vu. Rappelons en effet que, lors de la dernière modification de la loi sur le blanchiment d'argent (LBA) – entrée en vigueur il y a moins de neuf mois –, une majorité parlementaire avait sèchement refusé l'assujettissement à la LBA de certaines activités liées à la création et la gestion de sociétés de domicile ou de trusts. Comme indiqué par le représentant du Conseil fédéral lors des débats parlementaires, on aurait toutefois eu tort de considérer le sujet clos. Le Conseil fédéral est revenu à la charge mais, et c'était à prévoir, la nouvelle mouture, qui colle davantage aux recommandations internationales, est plus incisive et aboutie que la précédente. Le cercle des activités de conseil soumises à l'arsenal anti-blanchiment s'est élargi. Premièrement, ce ne sont plus uniquement des prestations liées à des sociétés de domicile qui sont concernées mais celles relatives à des sociétés en général, soit y compris des sociétés opérationnelles (art. 2 al. 3bis let. b à e et al. 3ter AP-LBA). Secondement, les conseils juridiques ou comptables en matière d'achat ou vente d'un immeuble sont également assujettis à la LBA (art. 2 al. 3bis let. a AP-LBA). La surveillance est assurée par un organisme d'autorégulation (OAR; art. 12 let. d AP-LBA).

Lorsque les activités susmentionnées sont exercées par un avocat assujetti à la loi sur la libre circulation des avocats (LLCA), l'AP-LBA prévoit d'ancrer les obligations LBA – avec mesures disciplinaires à la clé – dans cette loi, qui constituera donc une *lex specialis* par rapport à la LBA (art. 13a à 13e et 17a AP-LLCA). Une disposition exempte les avocats des obligations de diligence LBA lorsque la prestation est effectuée dans le cadre d'une procédure (art. 13a al. 2 AP-LLCA). Deux clauses réservent – comme le droit

actuel le prévoit déjà pour l'avocat soumis à la LBA du fait de son activité d'intermédiaire financière (art. 9 al. 2 LBA) – le secret professionnel en dérogation à l'obligation de communiquer (art. 13e al. 2 AP-LLCA et 9 al. 2 AP-LBA). En résumé, le système prévu est le suivant: l'avocat est soumis à des obligations *de diligence* LBA lorsqu'il effectue une prestation au sens de l'art. 2 al. 3bis et 3ter AP-LBA, qui peut ressortir de l'activité typique ou atypique de l'avocat. Ces devoirs ne sont toutefois pas applicables lorsque la prestation – qui relève alors nécessairement de l'activité typique de l'avocat – s'inscrit dans le cadre d'une activité de représentation en justice (quelques précisions à tout le moins temporelles à cet égard seraient bienvenues). S'agissant, en revanche, de l'obligation de *communiquer*, le secret professionnel s'oppose à toute transmission au MROS d'informations obtenues dans le contexte de l'activité classique de l'avocat, y compris le conseil. La surveillance est assurée par l'autorité de surveillance des avocats (art. 14 AP-LLCA).

À noter qu'une autre mesure qui avait été refusée par le Parlement a été remise sur le tapis, soit l'abaissement du seuil de CHF 100'000.- à CHF 15'000.- pour l'assujettissement des négociants en métaux précieux et pierres précieuses au dispositif anti-blanchiment (art. 8a al. 4 AP-LBA). La présente révision y ajoute ceux qui négocient des immeubles, sans limite de seuil pour le paiement en espèces (art. 8a al. 4bis AP-LBA).

Sur le plan des nouveautés, une modification significative de la LBA anticipe un changement probable de jurisprudence, suite à un «*fair warning*» du Tribunal fédéral dans son rapport de gestion 2021 (p. 16): les sanctions – notamment pécuniaires – prises par les OAR, qui étaient jusque-là ancrées dans les règlements de ces organismes et considérées

RÉVISION DU DISPOSITIF ANTI-BLANCHIMENT

Katia Villard—Centre de droit bancaire et financier—<https://cdbf.ch/1300/>

comme du droit privé, sont désormais prévues dans la LBA et relèveront donc du droit public (art. 19 AP-LBA). Diverses mesures administratives sur le modèle des [art. 30 ss LFINMA](#) sont prévues. En cas de violation grave ou répétée des obligations LBA par l'affilié – soit un intermédiaire financier au sens de l'[art. 2 al. 3 LBA](#) ou un conseiller –, l'OAR en informe le Département fédéral des finances (DFF) qui peut notamment prononcer des sanctions pécuniaires allant jusqu'à CHF 100'000.- (art. 19b AP-LBA). En d'autres termes, selon l'avant-projet du Conseil fédéral, des sanctions pécuniaires pour violations des obligations de diligence LBA peuvent être prononcées sur la base du droit public à l'encontre d'un intermédiaire financier au sens de l'art. 2 al. 3 LBA ou d'un conseiller, mais non – en tout cas pas en l'état juridique actuel – d'un intermédiaire financier soumis à la surveillance de la FINMA.

Par ailleurs, ou plutôt en premier lieu selon l'ordre choisi par le Conseil fédéral, la révision – sans surprise au vu de l'évolution internationale – prévoit l'introduction d'un registre fédéral des ayants droit économiques, par le biais d'une nouvelle loi sur la transparence des personnes morales et l'identification des ayants droit économiques (AP-LTPM).

Sous réserve de quelques exceptions, les personnes morales de droit privé suisse et certaines entités étrangères présentant un lien particulier avec la Suisse seront dans l'obligation d'identifier les personnes physiques qui, selon les définitions posées par la loi, doivent être considérées comme leurs ayants

droit économiques (art. 2, 4, 5 et 6 AP-LTPM). Les informations seront consignées dans un registre électronique tenu par le Département fédéral de justice et police (DFJP), accessible aux autorités, ainsi que, pour les besoins de la lutte anti-blanchiment, aux intermédiaires financiers, aux conseillers et aux avocats soumis aux obligations LBA (art. 18 ss, 25 et 28 AP-LTPM). La violation des obligations imposées par la loi sera punie, conformément aux dispositions du droit pénal administratif, d'une amende pouvant atteindre un demi-million de francs (art. 41 ss AP-LTPM).

Enfin, la nouvelle prévoit un élargissement de l'objet de la LBA, qui mentionnerait désormais la prévention de violations des mesures de coercition fondées sur la loi sur les embargos (LEmb) (art. 1 et 8 AP-LBA).

La procédure de consultation dure jusqu'au 29 novembre 2023.

Katia Villard, *Révision du dispositif anti-blanchiment: Bis repetita, sanctions pécuniaires et transparence*, publié le: 10 septembre 2023 par le Centre de droit bancaire et financier, <https://cdbf.ch/1300/>



CENTRE DE DROIT
BANCAIRE ET FINANCIER

PLAN-CADRE D'ASSURANCE RESPONSABILITÉ CIVILE PROFESSIONNELLE

... POUR LES MEMBRES DU GSCGI

Le GSCGI offre à ses membres une couverture cadre d'assurance exclusive, négociée avec les assureurs ZURICH et LIBERTY. Ces deux assureurs sont nos partenaires exclusifs autorisés à présenter les couvertures des risques (ci-après) aux conditions préférentielles pour les Membres du GSCGI.

Ces couvertures étendues et complètes — Responsabilité civile professionnelle (RCPI) couvrant également les cas de médiation; Responsabilité des dirigeants (D&O); Assurance Fraude (FR); Assurance Cyber (AC) — offrent une sécurité accrue aux Gestionnaires de fortune et Conseillers financiers dans leur activité quotidienne. L'assurance professionnelle met les professionnels

à l'abri de situations inattendues et génératrices de conséquences financières parfois dévastatrices.

Pratiquement, les Membres pourront s'adresser au Secrétariat du GSCGI, ou à la Commission Assurances, pour obtenir tous les renseignements. Un formulaire/questionnaire spécifique du GSCGI a été édité pour obtenir les offres des assureurs, il figure sur le site web du Groupement et est donc à disposition des Membres. Il devra être complété par le gestionnaire de fortune et le Conseiller financier pour demander les offres avec la preuve de sa qualité de Membre et envoyé confidentiellement au courtier Patrimigest.

Le GSCGI n'a pas accès à ces informations.

COUVERTURES D'ASSURANCES

Responsabilité civile professionnelle (RCPI)

Elle couvre les actes fautifs commis par la société du gérant indépendant ou l'un de ses représentants en cas d'erreur, d'omission dans le cadre de l'activité professionnelle qui entraînerait un préjudice financier d'un tiers.

Les fautes les plus courantes sont:

- Mauvaise exécution d'un ordre
- Oubli d'un délai
- Non respect de la stratégie convenue
- Rupture abusive d'un crédit
- Défaut de conseil
- Délit de fraude fiscale

Qui est assuré?

- 1 L'institution financière et/ou ses filiales
2. Toutes les personnes physiques agissant dans l'exercice de leur fonction dans la société (salarié, stagiaire, dirigeant, administrateur)

Quelle est la couverture? L'assureur va payer:

- Les frais de médiation
- Les frais engagés pour la défense des assurés
- Les dommages et intérêts dus au lésé après jugement et condamnation
- Les réparations résultant d'un accord amiable (après acceptation de l'assureur)

Responsabilité des dirigeants (D&O)

En tant que dirigeant de votre entreprise, vous n'êtes pas à l'abri de revendications à titre personnel même s'il s'agit d'une erreur d'un employé. En effet, un lésé peut aller chercher une responsabilité personnelle vers le directeur ou l'administrateur de la société pour obtenir réparation du préjudice sur les biens propres du dirigeant.

Il peut vous être reproché une mauvaise décision ou de ne pas avoir pris une décision, d'avoir fait un choix stratégique contraire au but social, d'avoir effectué des investissements hasardeux, communication financière insuffisante ou erronée, manque de surveillance des dirigeants ou

d'une filiale. Font aussi partie les conflits du travail: licenciement abusif, discrimination, harcèlement.

Qui est assuré? Tous les dirigeants exécutifs et les administrateurs ainsi que leur famille directe.

Quelle est la couverture?

- Les frais engagés pour la défense des assurés à titre privé
- Les dommages et intérêts dus au lésé après jugement et condamnation
- Les réparations résultant d'un accord amiable (après acceptation de l'assureur)

Assurance Fraude (FR)

L'évolution technologique et économique des sociétés financières a beaucoup évolué et les risques au sein de ces entreprises aussi. Le risque de fraude devient élevé dans les services financiers surtout en fonction de l'importance croissante des équipements informatiques. L'infidélité et la malhonnêteté des employés sont aussi une source de fraude. L'usage intensif d'Internet fragilise les services en terme de risques de sabotage ou de terrorisme cybernétique. Des fraudes peuvent aussi être commises sur les marchés ou sur l'octroi des crédits.

Qui est assuré? L'entreprise

Couverture d'assurance: Une telle assurance a pour but de garantir les pertes subies par la société suite à la fraude:

1. Commise par un ou plusieurs employés y compris la fraude informatique et le transfert de fonds
2. Fraude informatique interne ou externe (hacking)
3. Frais de procédure et honoraires d'avocat

Assurance Cyber (AC)

Le risque cyber peut affecter l'activité des Gestionnaires de fortune indépendants et des Conseillers financiers.

Couvertures: Cyber-RC, restauration des données et des systèmes, gestion des crises & perte d'exploitation.

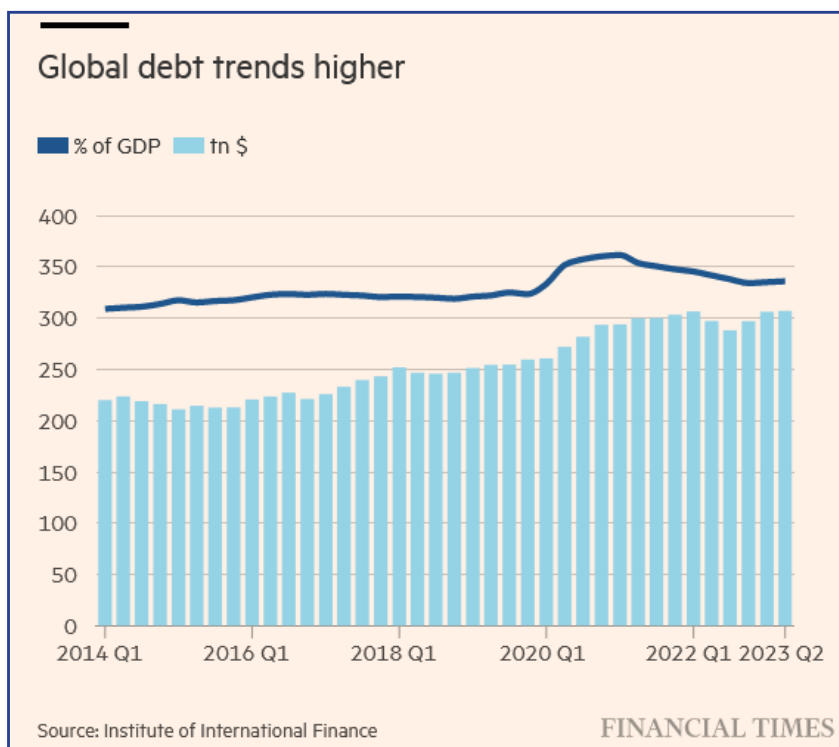
GLOBAL DEBT PILE HITS RECORD HIGH OF \$307TN

[...] The world economy's debt pile hit a fresh high in the first half of this year, while borrowing as a share of gross domestic product is rising again after nearly two years of declines, according to the Institute of International Finance. [...]

[...] Total debt — spanning sovereigns, corporates and households — rose by \$10tn to about \$307tn in the six months to June, the IIF said in its global debt monitor report. [...]

[...] Global debt as a share of GDP rose to 336 per cent by June this year ... it remains below a peak of about 360 per cent hit during the coronavirus pandemic. [...]

[...] The IIF said that more than 80 per cent of the additional debt in the first half of the year came from mature markets, with the US, Japan, UK and France registering the largest increases. [...]



Financial Times—Sept. 19, 2023—<https://www.ft.com/content/d650865b-8ba1-4881-a1ed-d6e025459f09>

HOW THE US IS CRUSHING EUROPE'S DOMESTIC EXCHANGES

[...] Policymakers fight tooth and nail to retain big international companies on their home exchanges but lose out. [...]

[...] A hundred years ago, the UK had more than a dozen stock exchanges ... London was the biggest ... Within 50 years, Aberdeen, Cardiff, Leeds and Edinburgh etc. were all gone, merging with the London Stock Exchange in 1973. Is something similar under way today on a transatlantic scale? [...]

[...] Investment bankers report that most sizeable Europe-based candidates for initial public offerings are contemplating a Nasdaq or NYSE listing. [...]

[...] Is New York this century's irresistible force, set to marginalise and perhaps consume European exchanges just as the City did to its provincial rivals last century?

US equities account for nearly 70 per cent of the MSCI World index; the next five largest — in Japan, UK, France, Canada and Germany — total less than 20 per cent. [...]

[...] The top 10 constituent equities of the MSCI World index, which are all US companies including Apple at number one and ExxonMobil at number 10, aggregate to more than 20 per cent. To put it bluntly, the 10 most valuable US equities are larger than the market capitalisations of Japan, UK, France, Canada and Germany combined. [...]

[...] The US has become the world's stock exchange ... non-US investors own \$14tn of US equities. [...]

Financial Times—Sept. 25, 2023—<https://www.ft.com/content/217771e8-72b1-452e-b953-bd68feb0f0b>

INVESTING IN AI BEYOND NVIDIA

Charles-Henry Monchau—Chief Investment Officer—SYZ GROUP—Membre Partenaire du GSCGI

*Nvidia has become the must-have name
when it comes to investing into the artificial intelligence theme.
But there are other options to consider. Including vigilance...*

2023, the year of AI

Since the announcement of ChatGPT 3.5 in November 2022, the financial markets and much of the public have been captivated by the seemingly limitless possibilities of AI. How can we explain such enthusiasm?

Firstly, the free availability of ChatGPT has enabled everyone to realize the tremendous potential of generative AI. Unlike traditional AI models, which operate within predefined parameters, generative AI uses algorithms (such as ChatGPT) to create new content, including audio files, coding, images, text, simulations, and videos.

Another factor explaining the buzz around AI: wage pressure in an inflationary context unseen since the 1980s and geopolitical upheavals forcing companies to relocate their formerly foreign-based entities ("reshoring" or "nearshoring").

Both contribute to creating a sense of urgency to improve productivity in order to preserve margins. In this context, the explosion in the number of AI tools comes at just the right time for many companies, who are setting up task forces or specialized entities before reinventing their business models.

What about investment opportunities?

The AI bubble

Bank of America doesn't hesitate to speak of the birth of a new investment bubble on par with the Internet bubble, the Biotech bubble, Ark Invest stocks, bitcoin or FANGs. While some AI-related

stocks have the potential to deliver a growth rate in line with current market expectations, history tells us that most of them will not. As explained in a recent article by Research Associates, picking future AI winners is the equivalent to investing in Amazon, Apple and ADP in early 2000.

These three stocks are the only ones among the 40 biggest names in the technology sector at the turn of the century to have recorded double-digit performances in the 23 years since. Since ChatGPT 3.5 was released by Open AI in November 2022, companies deemed likely to be AI leaders in the coming years have seen their share prices significantly outperform the rest of the market.

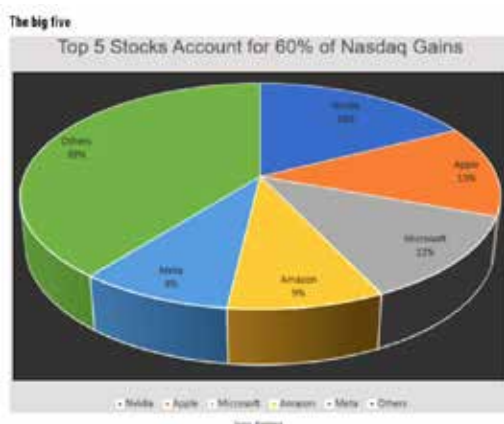


In fact, a new term has emerged on Wall Street - "The Magnificent Seven", or the seven large-cap tech companies considered to be the likely AI winners. At the time of writing, these seven stocks account for almost 28% of the S&P 500's market capitalization.

INVESTING IN AI BEYOND NVIDIA

Charles-Henry Monchau—Chief Investment Officer—SYZ GROUP—Membre Partenaire du GSCGI

Indeed, since the start of the year, the performance of the major US stock market indices has been heavily concentrated on a small number of stocks. As the chart below shows, 5 stocks are responsible for over 60% of the Nasdaq 100's gains in 2023. AI is a common denominator for these American market behemoths.



Many investors tend to see these stocks as the sole beneficiaries of the AI revolution, not only because of their ability to attract talent, but also because of their financial strength, which enables them to make huge R&D investments in their AI branches. This is an important difference from the dot-com bubble of the 2000s, when not only large-cap companies were riding the ".com" wave; indeed, numerous IPOs of Internet stocks had broadened the spectrum of available investment opportunities.

Should we deduce from the above that the best way to invest in AI is to be positioned in a very limited number of stocks? Are there other stocks and sectors that stand to benefit from this technological transformation?

The potential winners of the AI revolution

We believe there are two types of beneficiaries:

1. The Innovators—First and foremost, these are the companies that stand to benefit from the immense

investment capital expenditure associated with AI. A vast ecosystem of industries and sectors is poised to benefit directly from the rise of AI, each playing a unique role in technological transformation.

We can identify 3 distinct sub-categories:

i. The model builders or the so-called "platform" companies: these include Microsoft, Alphabet, Baidu, MetaPlatform, Amazon, Tencent, Alibaba and others. The software industry is undergoing a metamorphosis driven by the demands of generative AI. The total market for generative AI software is estimated at \$150 billion, opening up a veritable boulevard for software developers and companies specializing in AI-based applications. The tools and platforms these companies develop will certainly prove essential for harnessing the power of AI in a variety of sectors.

ii. Infrastructure and database companies: ServiceNow, Snowflake, Cloudflare, Datadog, Altassian, MongoDB, Alteryx, etc. The recent craze for AI has highlighted its insatiable thirst for data. Storing, managing and accessing this data requires a solid infrastructure. This is where data centers and cloud service providers come into play. These entities ensure that AI algorithms have uninterrupted access to the vast data sets they need, making them indispensable cogs in the AI machinery.

iii. Semiconductor companies: Nvidia, AMD, Intel, Marvell, SK Hynix, Samsung Electronics, Taiwan Semiconductors, etc. At the heart of AI's computing prowess are, of course, semiconductor companies. They provide the essential hardware that powers AI's complex algorithms. With the growing demand for AI algorithms, the need for computing power is increasing massively. Semiconductor companies, beyond Nvidia, are well placed to reap major benefits. Their role in making generative AI work, places them at the forefront of AI's direct winners.

INVESTING IN AI BEYOND NVIDIA

Charles-Henry Monchau—Chief Investment Officer—SYZ GROUP—Membre Partenaire du GSCGI



Beyond the established players, a new generation of startups and innovators are making their way into the AI landscape. These smaller entities are pushing the boundaries of what's possible with AI. Their innovations, whether niche AI applications or revolutionary algorithms, position them as future nuggets. As investors look to diversify their portfolios, identifying these direct beneficiaries offers a roadmap for navigating the AI investment landscape.

Whichever path the investor decides to take, he must do so by implementing a diversified approach and adopting all necessary measures to avoid idiosyncratic risk. One way of doing this is to include ETFs in the portfolio. ETFs with exposure to the AI theme include BOTZ, the Global X Robotics & Artificial Intelligence ETF, and ROBO, the ROBO Global Robotics and Automation Index ETF.

2. The beneficiaries of innovation—The AI technology revolution also affects the businesses that adopt and implement this technology. From retail giants leveraging AI to create personalized shopping experiences to healthcare facilities harnessing AI for diagnostics, the spectrum of end-user companies likely to benefit is vast. Investments by these companies in AI-based software and infrastructure services will not only improve

operational efficiency, but also redefine customer and workforce engagement paradigms.

AI beyond the United States

The USA has long been at the forefront of AI innovation, thanks to its tech giants and pioneering research institutions. It is precisely these tech giants, such as Nvidia, Microsoft and Alphabet, that are not only shaping the discourse on AI, but also setting benchmarks in the research and application of these technologies. But the USA does not have a monopoly on innovation. China is rapidly establishing itself as a formidable player in the AI field.

The country has drawn up ambitious plans to become the world's leading center of AI innovation by 2030. Its own tech giants, such as Baidu, Alibaba and Tencent, are by no means mere regional players, but rather global competitors pushing the boundaries of AI research and use. The country has made AI a strategic priority, recognizing its potential in sectors ranging from healthcare to national security.

Although Europe has recently lagged behind the USA and China in terms of innovation, it has a rich history of research and scientific discovery and is making its mark in the AI world. It may not have comparable technological behemoths, but Europe's strength lies in its regulatory foresight and its focus on AI ethics. In many ways, the EU is regarded as the global standard for regulatory guidelines, and this is no exception in the field of AI, as it strives to ensure accountability and fairness while emphasizing transparency.

Countries such as Singapore, South Korea and India are also emerging as important players in the AI world, thanks in part to government support, a talent pool and strategic collaborations.

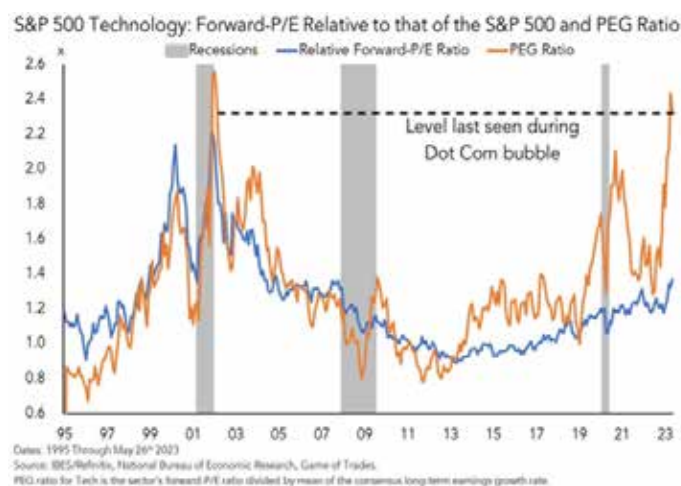
INVESTING IN AI BEYOND NVIDIA

Charles-Henry Monchau—Chief Investment Officer—SYZ GROUP—Membre Partenaire du GSCGI

Conclusion and Forewarn

From our point of view, the potential of AI is enormous, and we have probably entered a new era. Like the Internet, AI will revolutionize the business world and our daily lives. The history of financial bubbles tends to repeat itself. As was the case during the Internet boom, financial markets tend to pay very high valuation multiples for companies that seem best positioned to benefit from the new technological revolution.

Never before has a mega-cap traded on the basis of Nvidia's current multiple (nearly 45 times sales and over 100 times earnings). Looking at relative valuation ratios, like in the example below, with relative PEG - i.e. P/E compared with expected earnings growth rate, the S&P 500 technology index is trading at a valuation premium similar to that of the dot.com bubble. The potential for correction is therefore significant.



Source: Games of Trades

Another characteristic of financial bubbles is that investors too often tend to overlook the fact that the main beneficiaries of technological innovation are the customers of that innovation, and not necessarily the innovators themselves.

Finally, the companies that initially appear to be the leaders of a technological revolution are not necessarily those of tomorrow. In a recent article, Research Associates highlighted the example of the Smartphone. In 2000, Palm's market capitalization was briefly worth more than that of General Motors. But in 2003, Palm Pilot was supplanted by the Blackberry, which in turn was replaced by the iPhone in 2008. Often, it's the disruptors who pay the highest price for disruption.

Today, Nvidia is the most emblematic stock of the AI bubble. But it is also perhaps the one most likely to disappoint investors' very high expectations. As mentioned above, investors can consider other stocks and instruments to invest in AI innovators and should consider the impact of AI on companies as a whole. This means identifying companies capable of using AI to generate the greatest productivity gains and/or transform their business model. Investing in AI is likely to be more of a marathon than a sprint.

NB: These are not investment recommendations.

URL LINK: <https://blog.syzgroup.com/slow-food-for-thought/investing-in-ai-beyond-nvidia>



S&P500: REBOUND IN OCTOBER

Bruno Estier Strategic Technicals—<http://bruno.estier.net/>—bruno.estier@bluewin.ch

The last four-week decline may have ended with a low spike at 4238 along a short-term daily divergence that should allow a rebound toward the September gap of 4400-4377, which is also a 38% Fibo of the whole decline of 4607-4238. If the S&P500 is able to break above this level, then the momentum indicator, MACD, will confirm the rise with a crossing up of STO, following the oversold daily STO in the last week of September. A rebound of the S&P500 would take place with the VIX (*orange dotted line*) stalling below 19%, a former area of resistance during the summer of 2023. This rebound could follow the *Green Path* along the usual October seasonality and

the rise could extend into the year end with a target around the 5090 area.

Why are we also displaying a *Red Path*? Well, at this stage there is still a probability that the rebound would fail to reach the gap of 4400-4377 and then resume its downtrend by also breaking the weekly trend support during the first two weeks of October. In that case, the VIX would make a higher high above 20% and the S&P500 has the potential to decline toward the Cloud near 4000, before any later seasonal rebound. But we are in the seasonal period for a low, so we prefer the *Green Path*!

Chart: S&P500 is represented on a log scale from June 2021 in weekly candles with the Ichimoku Cloud. The orange dotted line represents VIX which is at its former resistance.

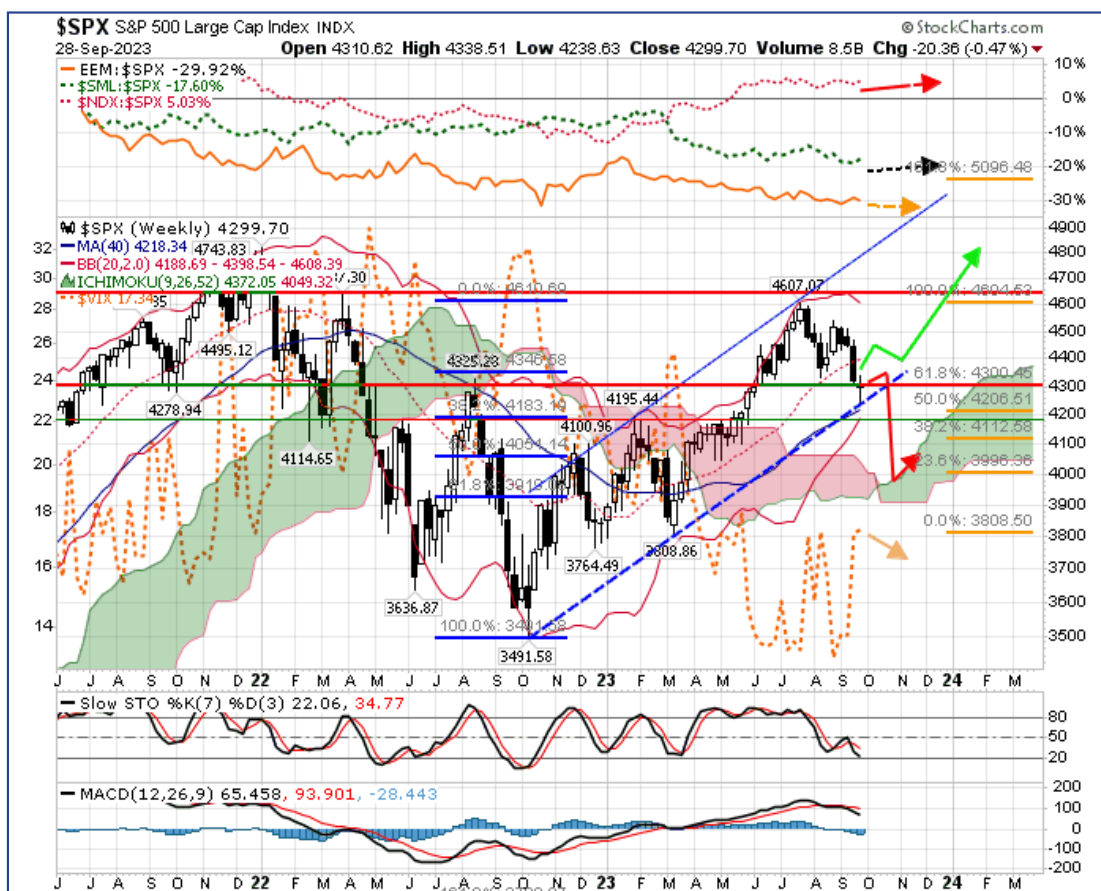
Upper panel: (green dotted line) the Relative Strength (RS) of Small Caps versus S&P500, which is rebounding a tad after a decline, the RS of Nasdaq100 versus S&P500 (red dotted line), which is making a higher low, and the RS of Emerging Equities versus S&P500 (orange solid line), which is bottoming after a long decline in 2023.

*Lower panel: MACD is positive, but had crossed down in early September. The weekly STO is declining, reaching an oversold area. A spike low in September is leading to a break in trend support along the *Red Path* toward 4000, or it is leading to the seasonal October rebound until year-end along the *Green Path*.*

Source of data:

Stockcharts.com.

Supports line & parameters are provided by BEST.



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CONFÉRENCE PERFORMER—LUSENTI PARTNERS—MEMBRE DU GSCGI

Jeudi 12 Octobre 2023 — 09h/18h — Hôtel Mandarin Oriental — Genève

THÉMATIQUE

Les marchés d'investissements privés *Private markets investments*

Durant les deux dernières décennies, l'environnement économique, financier et bancaire s'est caractérisé par une réglementation financière relativement légère, de longs horizons d'investissements et des taux d'intérêt bas, voire négatifs – une époque de crises économiques et financières, qui ont durement affecté les activités et la profitabilité des banques. Durant cette période, l'implication des fonds du marché privé dans le financement des investissements et la restructuration des entreprises s'est sensiblement accru. Le financement externe en particulier des entreprises est de plus en plus réalisé par le biais d'intermédiaires (« gestionnaires d'actifs alternatifs ») qui ne relèvent pas des circuits traditionnels – autrement dit qui ne sont pas des banques ou des fonds cotés de placements en actions et en obligations de sociétés.

Les marchés privés ont trois caractéristiques qui les distinguent des marchés publics. Premièrement, la transformation de la liquidité est limitée, car les investisseurs institutionnels engagent des capitaux pendant de longues périodes. Deuxièmement, ces investisseurs ont tendance à être de grandes entités sophistiquées, telles que des fonds de pension ou des compagnies d'assurances, qui mettent l'accent sur les rendements à long terme. Troisièmement, la réglementation des véhicules d'investissement sur le marché privé est relativement légère.

Les marchés privés englobent un ensemble varié de types de transactions. Certaines se concentrent sur l'apport de fonds propres en prenant une participation minoritaire dans de petites entreprises en démarrage, à fort potentiel de croissance (*capital-risk*, *venture capital*), ou dans des entreprises un peu plus matures avec de bonnes perspectives ou en cours de restructuration (*capital de croissance*, *growth capital*). À leur tour, les fonds dits de capital-investissement (*private equity*) se spécialisent dans les fusions et acquisitions (*mergers & acquisitions*), visant principalement à acquérir des participations majoritaires dans des entreprises plus établies. En revanche, les actifs des fonds de crédit privé (*private credit*) consistent généralement en des prêts à de petites entreprises présentant un risque de crédit élevé. Enfin, il existe des fonds qui se concentrent sur les « actifs réels », investissant dans les infrastructures, l'immobilier, les matières premières et d'autres matériaux et ressources.

Plus récemment, en raison des pressions insistantes en particulier des caisses de pensions, les gérants spécialisés dans les placements privés ont également commencé à intégrer dans leurs placements la dimension de la gestion « durable » (critères ESG pour « environnement, société et gouvernance ») ainsi que celle de l'*Impact Investing*.

Lors de notre conférence « Performer », nous aborderons quelques-unes des dimensions et des solutions d'investissements les plus actuelles et les plus innovantes proposées aux institutions de prévoyance dans le marché suisse.

Réservez la date! Save the date!

Jeudi / Thursday 12. 10. 2023

Genève / Geneva, Hotel Mandarin Oriental

Placements dans les marchés privés Private Markets Investments

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LES GARANTIES BANCAIRES DANS LES ÉCHANGES INTERNATIONAUX: DROITS ET OBLIGATIONS DE LA BANQUE SUISSE — *DE MARIE DE GOTTRAU*



Le Centre de droit bancaire et financier a le plaisir de vous annoncer la parution d'un nouvel ouvrage dans sa collection:

Marie de Gottrau

Les garanties bancaires dans les échanges internationaux

Schulthess 2023

Une garantie bancaire est un instrument de sûreté qui confère au bénéficiaire une protection en espèces pour le cas où son cocontractant ne respecterait pas les obligations qu'il a envers lui. Elle se traduit par l'engagement irrévocable, pris par une banque sur instruction de son donneur d'ordre, de payer le bénéficiaire à sa simple demande.

Cette thèse clarifie les droits et obligations de la banque suisse, qui se trouve à la croisée des intérêts contradictoires des autres parties à l'opération de garantie. D'une part liée contractuellement au donneur d'ordre par un contrat de mandat, la banque doit exécuter les tâches qui lui

sont confiées avec toute la diligence nécessaire: ainsi, notamment, si le bénéficiaire requiert le paiement de la garantie, elle ne doit payer que si les conditions de paiement de la garantie sont réalisées. D'autre part, la banque ne peut se soustraire à son engagement de garant impartial: alors même que le donneur d'ordre estimerait avoir correctement exécuté ses obligations contractuelles envers le bénéficiaire, la banque devra honorer la garantie lorsque les conditions de paiement sont remplies.

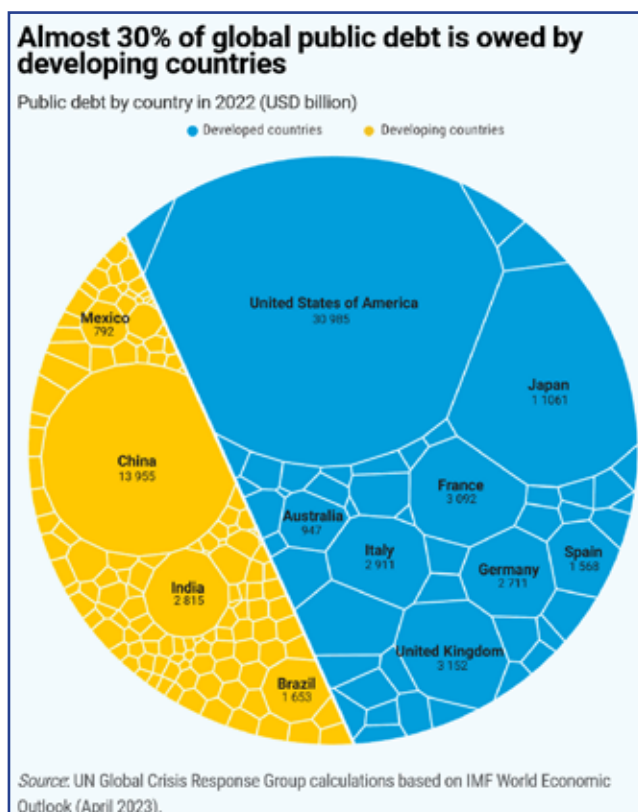
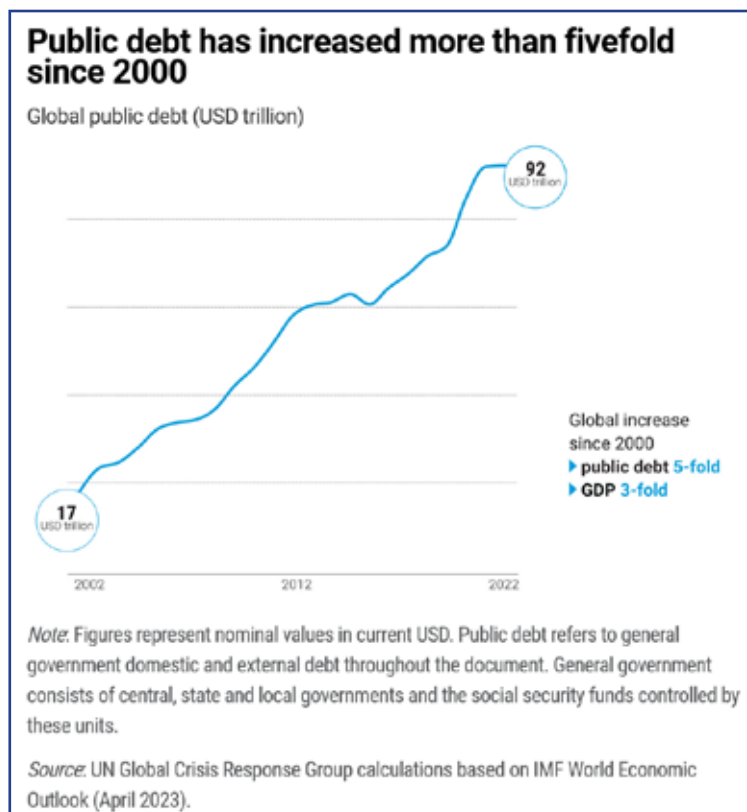
L'ouvrage clarifie les enjeux juridiques des différents rapports contractuels à une opération de garantie internationale, en se focalisant sur le comportement que la banque devrait adopter afin d'éviter de mettre en jeu sa responsabilité contractuelle.

Disponible en librairie ou sur le site internet de Schulthess au prix de CHF 79.- (462 pages).

[Commander en ligne](#)

Global public debt at unprecedented levels...

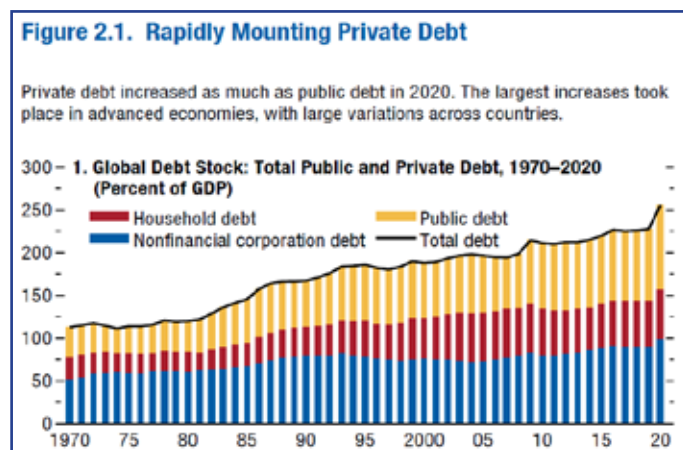
Cosima F. BARONE—FINARC SA—www.finarc.ch



According to UNCTAD (*United Nations Conference on Trade and Development*), global public debt has increased more than fivefold since the year 2000, clearly outpacing global GDP, which tripled over the same time ... see the above info-graphics. In 2022, global public debt – comprising general government domestic and external debt – reached a record USD 92 trillion, with developing countries owing almost 30% of the total, of which roughly 70% is attributable to China, India and Brazil (*the number of countries facing high levels of debt has increased sharply from only 22 countries in 2011 to 59 countries in 2022*). Private debt (*households and corporates*) must have also increased quite substantially, up to over USD 200+ trillion (kindly refer to the FT article mentioned on page 25 about the IIF global debt report). The historic graph (bottom right), courtesy of the IMF (*International Monetary Fund*), highlights how global

debt increased sharply since 1970, from slightly over USD 100 trillion to the present USD 307 trillion.

Deleveraging becomes an uphill battle in times of war! As, indeed, the last century historic data shows.



UNCTAD: A world of debt - <https://unctad.org/publication/world-of-debt>

CIFA—Convention of Independent Financial Advisors—www.cifango.org



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