

# ASIC's Private Credit Crackdown: Key Risks, Regulatory Trajectory, Global Context

## JANA Summary and Comments

Australia's private credit market has surged fivefold in the past decade to A\$200–224 billion, now representing circa 5-10% of the global ~ US\$2.5-US\$5 trillion market. This rapid expansion—driven by superannuation capital and banks' retreat from riskier lending—has prompted the Australian Securities & Investments Commission (ASIC) to intensify scrutiny. In September 2025, ASIC's Report 814 identified serious sector-wide concerns: hidden fees, conflicts of interest, opaque risk disclosures, inconsistent asset valuations, and liquidity mismatches. Drawing on the report as well as media coverage and industry comments, this note summarises the main concerns and provides JANA's views on the major thematic concerns raised and the takeaways for institutional investors.

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## ASIC's Core Concerns in Private Credit

### 1. Conflicts of Interest, Misaligned Incentives, Opaque Fees

ASIC's review found widespread conflicts where fund managers' financial incentives diverged from investors' interests:

- **Misleading Headline Fees / Retention of Borrower Fees:** Some managers retain 50–100% of borrower-paid fees (origination, extension, default penalties) instead of passing them to the fund. ASIC flagged at least three wholesale managers taking all origination fees, and others profiting from default-related fees—creating a “fee gouging” dynamic. As the CIO of Cbus noted, hidden fees can make returns appear only marginally higher than safer assets, masking the true risk: *“By the time you see the cut that's been taken out, you realise [the loans] are at the pointy end of the risk spectrum.”* In some cases, the true cost to investors was 3–5× the advertised management fee.
- **Spread Skimming via SPVs:** Some managers use special purpose vehicles to lend at higher rates to borrowers than the fund receives, quietly capturing the difference. This practice can inflate reported performance and trigger unwarranted performance fees.
- **Related-Party Lending & Asset Shuffling:** ASIC observed managers lending to related parties and shifting loans between funds without independent oversight, raising the risk of a “race to the bottom” in investor treatment. The CEO of Qualitas praised ASIC's intervention, noting that “unsophisticated capital” inflows had sparked competitive pressures to cut corners. A high-profile example: a leading fund took an equity stake in Jon Adgemis' pub empire while also lending to it; the venture later collapsed under \$1.8 billion of private credit debt.

- **Weak Governance:** Many funds lack effective Information Barriers, with the same teams originating and monitoring loans. Only a minority have independent trustees or boards to vet conflicts.

**ASIC's stance:** These conflicts are not theoretical—they risk real financial harm. Managers must eliminate or robustly manage conflicts, rebate borrower fees to the fund, avoid related-party lending unless fully disclosed and independently vetted, and implement independent oversight. ASIC Chair Joe Longo warned: “Unless we see [better practices] in a consistent way... we will be calling for additional regulation.”

**JANA View and Comment:** JANA for the most part agrees with ASIC's stance here. It is paramount that conflicts of interest are avoided, or where they can't be, that there are robust and independent processes to deal with the conflict. This should form part of the robust governance structure that is vital in external asset manager structures. JANA would note that there can on occasion be some degree of conflict that arises, in both domestic and global private credit strategies, such as sales of assets from one fund to another within the same manager, or different parts of the capital structure of a company being owned by different funds at a manager. But in almost all cases there are robust and independent processes to mitigate the impacts and governance structures that deal with the conflict – though we do note that there is some more progress needed with some managers in Australia.

On the retention of borrowing fees, JANA has long had a strong preference for all fees (origination fees, restructuring fees, etc) to flow through to the fund investors, and indeed this is one of the earlier issues we investigate with managers. JANA notes that in the institutional-grade Corporate Debt space, it is now rare for the manager to keep any of these extra fees for themselves (though in earlier times it was somewhat more common) – though we note that for smaller or less established managers, and especially for managers in the property debt space, keeping some level of the origination fees can be more common in Australia).

We would also note though that despite our strong preference against the retention of fees by private credit managers, there have been some (rare) cases of institutional investors that have had a preference for a (often very) low management fee structure to be stapled with the manager keeping a portion of the origination fees. Whilst not our preference, as long as there is complete transparency of what portion is being kept, this can still be an acceptable practice. An example might be that instead of the manager charging a management fee of 100bp and passing all origination fees to the investor, they charge 50bp of management fees and keep half of the origination fees (which might work out to be on average 40bp p.a.).

ASIC's main concern, we think, is the lack of transparency here in terms of potential for conflict and especially the fee structures, and their impact on uninformed borrowers. For institutional investors and asset consultants these issues should not be present – some wealth and retail investors may encounter these issues and should assess them carefully, ideally with the assistance of an asset consultant to navigate the complexities of private credit. Overall transparency is vital and something that JANA insists upon. Managers will not pass through JANA's due diligence process unless we are comfortable that their financial incentives are strongly aligned with investor's interests.

## 2. Inconsistent Valuations and Risk Reporting

ASIC is concerned that investors may not be getting a true picture of portfolio health due to inconsistent valuation and selective reporting:

- **Non-Uniform Default Definitions:** Default rates reported (0–6% p.a.) varied widely due to differing definitions. Some funds counted a loan as in default at 30 days past due, others only at formal enforcement. This allows funds to claim “zero defaults” by restructuring loans or extending terms. Fewer than half had formal policies for recognizing impairments.
- **No Write-downs or Loss Provisions:** Several funds reported no loan losses, even in high-yield portfolios. ASIC is sceptical, suspecting aggressive refinancing (“extend and pretend”) rather than genuine loan quality. Two funds were found paying distributions from new capital inflows—a red flag for Ponzi-like dynamics.
- **Valuation Frequency and Independence:** Many funds do not obtain independent valuations quarterly, relying on internal assessments. Some valuations were based on projected future property values or stale appraisals, making loans appear safer than they are.
- **Sparse Portfolio Disclosure:** Investors often receive only high-level summaries, with little data on LVRs, borrower concentration, or arrears. Only four of 28 funds published borrower interest rates; just two retail funds detailed interest and fee income splits.

**ASIC’s push:** Standardise key metrics and disclosures. All funds should report a common “default” metric (e.g., loans >90 days past due), adopt RG 46-style disclosure for credit funds, and conduct regular stress testing. ASIC wants a culture of “if you can’t measure it, you can’t manage it.” As John Knox of Ares Australia noted, ASIC’s standards will challenge others to “get to that level”, benefiting the sector’s credibility.

**JANA’s View and Comment:** Valuations of private assets, and defining when an asset is in default, are certainly contentious topics, and ASIC and the wider media (including the AFR and Bloomberg/FT etc) have certainly focused on these in recent articles. But these thematic are also complex in nature and are ones (especially valuations) for which we doubt there are any ‘perfect’ / ‘one size fits all’ solutions.

On **defaults**, even in global markets that have existed for many decades, there can be various definitions of when a default has occurred. The strict legal definition, used in the market for many years, is a ‘hard default’, where there has not been a timely payment of a coupon or the par amount. Increasingly though, the industry has extended the definition out to include ‘distressed exchanges’ and/or ‘liability management exercises’. This ‘Defaults + Distressed Exchanges’ is the most common measurement of defaults used in global markets. However, there are rare examples of even wider definitions, such as Fitch using a definition that includes maturity extensions.

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In JANAs view, **adjusting a loan through agreement** (including extensions, or deferral of interest), under the right circumstances and with proper compensation (such as a sponsor injecting more equity into the company) are quite frequently seen in markets and should not be included in a definition of defaults. But there are various views on what are the “right circumstances”, so the topic is open for debate. But in our view, this debate should be one conducted within rational and sensible frameworks, and glib language such as “extend and pretend” helps no-one.

The issue of **valuations** is even more contentious. The companies involved in private credit are invariably private in nature. The underlying documents of the individual loan are equally esoteric – being directly negotiated between the lender(s) and the borrower, and each will vary slightly in structure and contents, with varying terms and measurement of what is and what is not allowed to occur. Given the private nature of the companies and the esoteric nature of the loans, valuing a loan for a company under financial stress is very difficult. For the most part loans are marked close to “par”, on a ‘hold to maturity basis’, if the company is expected to still pay back in full the agreed coupons and principal amount on time – even if there is a degree of stress to earnings (say). But if this level of stress becomes significant, and there is a significant risk to the timely receipt of coupons and principle, then the loan should be clearly “marked down”. In such cases we would expect to see the loan marked down on the managers “books”, with this loan valuation independently verified by the regular (usually quarterly) independent process involving accountants and valuation agents. However, each manager and valuation agent will have their own view on the probability of a default, and the likely recovery in a hard default/bankruptcy situation. This part of the valuation process is a mixture of ‘science’ and ‘art’, and it is to be expected that we see various valuations for the same asset across the manager space. JANA has noted that there can be a wider degree of valuation differences in the domestic market than we have seen (to date) in the global market – though the ‘data set’ is very small. Further, JANA suspects that even the major banks would have different valuations on stressed loans in their books for the same assets, if we were ever to see through to the internal accounts.

There are no “easy” answers here – by their very nature private assets are very unique and there is no market reference to value them when the loan is stressed. To counter the risks of poor valuations, JANA carefully reviews the Valuation policy for all potential managers, and insists on credit managers having robust (and conservative) valuation approaches, which are regularly and independently verified by appropriate firms and processes.

Finally, on **disclosures**, JANA contends that this factor, like many in the report, is much more focused on ‘retail’ and ‘wealth’ targeted products. Through our deep due diligence process, JANA insists on full transparency into the private credit loans in the portfolios of the managers we research. This includes full line-by-line data for each individual loan, including risk characteristics (Leverage levels, Interest Coverage, LVRs, EBITDA, both at inception and current) as well as maintenance covenants and restrictive covenants in the documents. We also interrogate managers based on this data, often focusing on stressed assets, or those with unique characteristics (unusually high and/or increasing leverage, for example), or upon those that have had variations in their loan contracts.

### 3. Terminology Confusion and Liquidity Mismatch

- **Inconsistent Terminology:** Terms like “senior secured” or “investment grade” are used inconsistently, sometimes based on internal judgment rather than external ratings. This can mislead investors. ASIC is pushing for clear definitions in offering documents.
- **Illiquid Assets vs. Liquid Promises:** Open-ended private credit funds sometimes offer frequent redemptions despite holding illiquid loans, risking liquidity crunches in stress scenarios. In 2025, one fund suspended redemptions and side-pocketed assets. ASIC imposed stop orders on two retail funds (La Trobe and Reliance) for overstating liquidity. The regulator may eventually require structural solutions such as interval funds or side-pocket provisions, aligning with global trends.

**ASIC’s push:** Product terms must match underlying asset liquidity and be clearly communicated. ASIC is using its Design & Distribution Obligations (DDO) powers to ensure retail-targeted funds have appropriate liquidity terms and risk disclosures.

**JANA’s View and Comment:** ASIC’s concerns around **terminology** are clearly directed at the retail and wealth space, rather than the institutional market. Terminology such as “investment grade” without a formal external rating, would not be used in such a misleading way in the institutional market.

**Liquidity terms** though are something we do see discussed and debated frequently in investment markets, both at the wealth end as well as the institutional end of the markets. All investors need to realise that private credit assets are very infrequently (if ever) traded and thus must be considered illiquid. No portfolio or investment structure around private credit assets can magically create liquidity for investors. JANA notes the increasing prevalence of “evergreen” or “open-ended” vehicles that invest in illiquid assets, which have as frequent as monthly application and redemption terms. But investors should not mistake these as indicating that a full redemption can be made and paid within those time frames. Often, we see, sometimes deep into the fund documents, restrictions of say “5% a quarter”, which means the “monthly” redemptions will need to occur over 5 years to fully redeem. Institutional investors for the most part understand these structures and treat them accordingly (i.e. as “illiquid”) – but JANA shares ASICs concerns that wealth and retail investors can mistake these redemption terms for full liquidity.

**Listed Private Credit Funds** are a more recent development – the emergence of ASX listed private credit funds is noteworthy and warrants careful consideration. These structures are designed to open up the private credit market to retail investors, likely in response to the pending closure of the hybrid market in Australia (historically popular with retail investors and advisers alike) with new issuance to cease by 2027. JANA’s view is that these products raise several considerations. Private credit differs materially from the hybrid market it is seeking to replace, both in terms of underlying exposures and risk profile. Private debt is generally of lower credit quality and should, in general, be expected to see a higher incidence of default over time vs. the domestic hybrid market, which is predominantly highly rated bank issued paper. In addition, the listed-fund structure may introduce further challenges. Investors should be prepared for market prices that can diverge meaningfully from NAV, particularly during periods of uncertainty.

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Despite being exchange-traded, liquidity may prove limited, particularly in environments of market stress, exacerbating price volatility. These dynamics could be magnified if we see larger managed account portfolios invest significantly in these structures. Again, managers who are transparent and open with the true risk characteristics including liquidity of their structure, are already meeting ASIC's aims. We agree though that there is more work to do in the industry, partially on the domestic institutional manager side, but more so on the wealth and retail product side.

## JANA Comment - Investor Groups: Who Is Most at Risk?

ASIC's primary concern appears to be with retail and less-sophisticated wholesale investors, who are most vulnerable to opaque structures, hidden fees, and liquidity mismatches. Retail investors, often accessing private credit via managed funds or platforms, may not fully understand complex products or risks. ASIC's interventions—including stop orders on La Trobe, Reliance, and TruePillars - reflect a focus on protecting these investors from misleading disclosures and unexpected fund freezes. High-net-worth individuals and family offices are also at risk, as many problematic funds target this segment. Hence the importance of high quality research and discerning manager selection covering such investments.

ASIC notes that large institutional investors (super funds, insurers) are generally better equipped to negotiate transparency and alignment, though ASIC opines that systemic issues could still impact them, especially given the interconnectedness of the sector. JANA's due diligence process ensures managers and their strategies are transparent in the aspects ASIC raise, and our advice to our clients ensures they understand the underlying exposures and the potential risk / reward characteristics. JANA's clients, for example, should never be "surprised" by the illiquid nature of private investments. As such, despite the interconnected nature of some parts of the private credit markets in Australia, potential impacts on JANA advised clients should be minimal. Ultimately ASIC's efforts aim to raise standards across the board, but the most intense scrutiny is on products marketed to retail and mass-wealth investors.

## JANA Comment - Australia vs. Global Private Credit: Comparison of Concerns and Practices

The Australian private credit market has traditionally allowed broader retail access via unit trusts and "sophisticated investor" exemptions, while the US and European markets restrict retail participation to regulated vehicles. Recent ASIC comments and suggested reforms are clearly aiming to steer Australia towards global norms, with enhanced retail supervision, improved fee transparency, and stricter reporting standards. JANA notes though that Australia still faces unique challenges, such as liquidity mismatch risks in superannuation funds promising daily liquidity despite increasing illiquid exposures.

Importantly, private credit investing in the US and EU is far more advanced, with asset managers and investors operating under robust governance frameworks, detailed portfolio transparency, and stringent valuation and reporting requirements—including line-by-line asset data and regular external verification and valuation. These established practices mean that many of ASIC's current concerns—such as fee disclosure, valuation consistency, and conflict management—are largely addressed overseas by both regulatory developments and the maturity of managers and markets. As a result, the oversight and risk profile of private credit in the US and Europe are significantly stronger than in Australia, where the market is still catching up, and is one of the reasons JANA's preference is towards managers and strategies operating in the US and EU.