

Private Credit 2026

First Edition

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Investment-grade private credit product design for insurance investors: overview of NAIC, Solvency UK and Matching Adjustment

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Introduction

Insurers globally have significant balance sheet assets that must be appropriately managed to support the liability-generating nature of their businesses. In the United States (“U.S.”), the sale of life and annuities products has contributed to insurers holding large amounts of assets on their balance sheets, with a need for such balance sheet assets to generate net returns sufficient to support the corresponding liabilities. In the United Kingdom (“UK”), there has been significant growth in the transfer by pension schemes of their liabilities to insurers, referred to as the pension risk transfer (“PRT”).¹ PRT insurers receive a large upfront premium from the pension scheme in return for assuming their liabilities to scheme members, which is invested and held against those liabilities. To lighten their balance sheets, U.S.-domiciled insurers are increasingly migrating blocks of liabilities (insurance policies) to reinsurance entities (“reinsurers”), often domiciled in Bermuda or the Cayman Islands. Similarly, in the UK, reinsurers are using funded reinsurance to reinsure an increasing proportion of UK PRT liabilities. As part of these reinsurance transactions, reinsurers may provide collateral assets so that the ceding insurer is protected against counterparty default risk and, in order to obtain credit for reinsurance on its regulatory balance sheet, those assets must also be appropriately invested. Historically, insurers invested large portions of their balance sheet assets in public debt assets, such as publicly traded corporate bonds and broadly syndicated loans. However, since the global financial crises and the maturation of the private credit sector, insurers have turned to private credit in search of higher-yielding investments. For these and other reasons, many insurers and reinsurers have built out investment sourcing and execution capabilities, have entered into strategic arrangements with, acquired, or have been bought by asset managers, or have entered into separately managed accounts (“SMAs”) or funds-of-one arrangements with unaffiliated asset managers to act as allocators on behalf of the insurer.

Generally speaking, both U.S. and UK insurers are required to be relatively conservative investors by law. For example, in the U.S., each state has a set of investment rules for insurers domiciled in their state, which are set forth in state statutes. In the UK, under the capital adequacy regime for (re)insurers referred to as “Solvency UK” (with the equivalent regime in Europe known as “Solvency II”), insurers must use the “prudent person principle” when making investment decisions. Additionally, the regulatory bodies of

both U.S. and UK (re)insurers have implemented mechanisms to monitor the liquidity of insurers and collateral posted for reinsurance so that the relevant invested assets do not create outsized risk relative to their liabilities. The combined effect of the investment laws and liquidity management regimes means these investors have a strong appetite for debt investments, particularly investment-grade debt.

Historically, the available types of investment-grade debt were somewhat limited. But the landscape has dramatically shifted over the past 15 years because of the increased sophistication of private credit managers and the development of new credit rating methodologies or the application of existing credit rating methodologies to bespoke structures or new asset classes. Private credit managers are increasingly structuring, originating and sourcing debt investments that are designed to achieve a private, investment-grade rating.

Sophisticated private credit managers with robust deal sourcing capabilities can routinely structure assets in an investment portfolio so as to achieve a specific yield, risk-adjusted return profile, diversification and liquidity profile, leverage ratio, and tenor to meet an investor's particular suitability requirements. This increased capability has led to a plethora of diverse asset types and product offerings now seeking to attract the deployment of insurance company capital. For example, until recently, if an investor desired a 30-year fixed-rate debt investment from a non-bank lending source, the options were somewhat limited. Now such investments can and have been created using non-bank originated private debt assets. For these reasons, investment-grade private credit is attractive for insurer investment strategies, which need to match assets to liabilities (referred to generally as asset and liability matching). Between 2019 and 2023, the number of investments submitted to the U.S. National Association of Insurance Commissioners ("NAIC") with private letter ratings instead of public ratings almost tripled (from 2,850 to 8,152, respectively).² In 2024, it is estimated that U.S. life insurers have invested roughly 14% of their balance sheets into the private placement market, driven in part by these private credit investments.³ It is estimated that half of that figure is in private placements issued by business development companies and that the remainder is in other private credit private placements.⁴

The market is still settling on what to call the "new" types of investment-grade private credit assets. Some are calling these investments "privately placed asset-backed securities"⁵ or "private structured credit". The nomenclature that develops will likely relate closely to credit rating methodologies. For example, in the last several years, private credit managers have privately placed debt that uses a "debt of investment fund" rating methodology. Anecdotally, the market calls these assets "rated note feeder funds". The assets supporting these rated note feeder funds are often loan assets, just like in private credit collateralised loan obligations ("CLOs"), but they are not being issued as part of a CLO using CLO rating methodology. Similarly, another "new" type of asset class is privately placed debt collateralised by limited partnership (or other equity) assets. The market calls these collateralised fund obligations ("CFOs"). As an indication of just how developing this market is, the first rating methodologies specifically looking to the net asset value ("NAV") of a pool of underlying limited partnership interests were published within the last two years.⁶ Beyond these asset classes there are a plethora of other bespoke private credit debt securities, particularly in the growing segment of asset-backed finance ("ABF"),⁷ that are obtaining private, investment-grade ratings using a variety of new credit rating methodologies or new applications of existing credit rating methodologies.

While this new investment-grade private credit, and the ability to better match originators with borrowers,⁸ is a welcome development for insurers and private credit managers alike, there is a threshold question for allocators of insurance company capital of whether such investment-grade private credit meets the criteria for the insurer to obtain favourable insurance regulatory treatment. Generally speaking, in the U.S. and the UK, obtaining an investment-grade credit rating on a debt investment is not sufficient to guarantee favourable insurance regulatory treatment of such debt investment. This chapter provides an overview of insurance regulatory considerations in the U.S. and the UK for private credit managers, including those owned by or affiliated with insurers, who want to create investments that are attractive to insurers from an insurance-regulatory perspective.

The U.S. and the NAIC

In the U.S., insurers are regulated by the state insurance regulator in their state of domicile. Insurers prepare their financial statements using the Statutory Accounting Principles (“SAPs”) set forth in the Statements of Statutory Account Principles (“SSAPs”), which are developed by the NAIC.⁹ Investments are reported in an insurer’s financial statements, and each investment has an associated risk-based capital (“RBC”) factor.¹⁰ RBC is a method of measuring the minimum amount of capital appropriate to support an insurer’s operations based on its size and risk profile. Regulators use RBC standards to initiate actions with respect to insurers that show weak capitalisation. RBC is calculated by applying factors to various asset, premium, claim, expense and reserve items. The factor is higher for items considered to have greater underlying risk and lower for items considered less risky. Therefore, as between two investments that have the same risk/return profile, an investment with a lower RBC factor may be more attractive to an insurer.

Some of the lowest RBC factors can be obtained for investment-grade bonds that are exempt from filing with the NAIC’s Securities Valuation Office (“SVO”), and thus private credit managers may seek to offer, and insurers may seek to restructure their existing investments into, this type of bond. The SAPs have created an insurance-regulatory specific definition of a “bond”. The principles-based bond definition is laid out in SSAP No. 26 and became effective on January 1, 2025. SSAP No. 26 defines a bond as: “[A]ny security representing a creditor relationship, whereby there is a fixed schedule for one or more future payments, and which qualifies as either an issuer credit obligation or an asset-backed security as described in this statement.”

Below we walk through considerations with respect to the development of investments that (i) are securities, (ii) represent a creditor relationship with a fixed schedule for one or more future payments, (iii) qualify as an issuer credit obligation (“ICO”) or an asset-backed security (“ABS”), (iv) are exempt from filing with the SVO, and (v) have a credit rating. Obtaining a credit rating, even an investment-grade credit rating, for an investment does not necessarily mean that the investment is a “bond”. It is the responsibility of the insurer’s statutory accountant to make the determination as to whether an investment meets the principles-based bond definition, which determination is made as of the time of acquisition.¹¹ To the extent an issuer makes representations about the issued debt securities to an insurance company investor, the issuer, generally speaking, disclaims any representations with respect to the investment’s treatment under the SAPs. Despite this, it behoves private credit managers to be familiar with these requirements as an investor relations matter.

If an insurer has allocated investment authority over some portion of its investments to an allocator, the investment management agreement between the insurer and its allocator only sets forth contractual liability as between them; it does not change the obligations the insurer has under state law. Even for investments for which the investment decision has been allocated to a third party, it is still the responsibility of the insurer’s statutory accountant to determine how to report particular investments on the relevant financial statement schedules in order to calculate its RBC. SSAP No. 26 provides examples of rationales to support the reporting of an investment as a “bond”, which insurers and, if applicable, their allocators may find helpful.¹²

Each insurance company investor has a different risk tolerance in analysing whether an investment-grade private credit opportunity meets all the above prongs. This dynamic has contributed to variability in the product design of these investments. Below we take each prong of the product design analysis in turn. It should be noted that if an investment opportunity is structured as the purchase of different classes, each class should be analysed. Issuers are also often asked if the investment opportunity is debt or equity for tax purposes, or to provide opinions with respect to this point, and it bears noting that the materials provided by the NAIC to date, including SSAP No. 26, do not make any reference to the tax treatment of an investment opportunity in determining whether the investment opportunity is or is not a “bond”.

- Security.** SSAP No. 26 defines a “security” as “a share, participation, or other interest in property or in an entity of the issuer or an obligation of the issuer that has all of the following characteristics: [(i)] It is either represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer; [(ii)] It is of a type commonly dealt in on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or dealt in as a medium for investment; and [(iii)] It is either one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations”.¹³ Under this definition, insurers could determine that both loans (such as bilateral NAV loans) and securities (such as private placements or preferred equity) can be a “security” under SSAP No. 26. If the investment is offered as a security, the security may be offered and sold directly to the insurer utilising the private placement exemption of Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”) or indirectly through a placement agent utilising the safe harbour under Rule 144A of the Securities Act. In either case, the securities may be issued with a Rule 144A CUSIP number and settled through the Depository Trust Company, if desired. Individual insurer preferences as to these aspects of the investment also create variability in documentation in the market.
- Creditor relationship with a fixed schedule for one or more future payments.** The NAIC and SSAP No. 26 have provided commentary, but not bright-line rules, as to what securities represent creditor relationships with a fixed schedule for one or more future payments. “Determining whether a security represents a creditor relationship should consider its substance, rather than solely the legal form of the instrument.”¹⁴ In addition, “[t]he analysis of whether a security represents a creditor relationship should consider all other investments the [insurer] owns in the [borrower or issuer] as well as any other contractual arrangements”.¹⁵
 - Is the collateral of the issuer (or, if the issuer is a feeder vehicle of the underlying vehicle, such as a “master fund”) equity?** If yes, then the security *presumptively does not* represent a creditor relationship.¹⁶ This presumption can be overcome.¹⁷ While the NAIC materials use the term “collateral” here, the market has generally understood this as referring to the asset or investment owned by the issuer that is supporting the subject security instead of referring to a secured creditor relationship. Several examples given in SSAP No. 26 refer to securities that have historically been unsecured. The design of the makeup of the underlying collateral or investments and the variety of factors that can be used to overcome the presumption lead to this prong being an area for considerable creativity and variability in product design. For example, many issuers with a primary underlying strategy of senior secured debt origination still include small percentages of warrants or other equity kickers as permitted investments. Understanding whether the underlying investments are themselves debt or equity can require a nuanced analysis of the contractual relationship between the issuer and the ultimate obligor. Similarly, securities with long durations supported by a blind pool of to-be-purchased investments require a different analysis than a static, known pool at the time of purchase of the security.
 - Does principal or interest on the security vary based on more than nominal non-debt variables?** If yes, then the security *does not* represent a creditor relationship.¹⁸ In product design, determining how to allocate upside or to set interest rates is often implicated in this prong. SSAP No. 26 requires that “all returns from a debt instrument in excess of principal are required to be considered as interest”.¹⁹
 - Does the security possess any characteristics of an equity interest?** If yes, then the security *does not* represent a creditor relationship.²⁰ Characteristics that may be analysed in this prong include: indefinite deferral of interest; non-*pro rata* funding advances or note purchases as between different holders of the same security; recycling dynamics around repaid interest; risk to the holder of the security for liabilities of the issuer; and penalties to the holder of the security

for failing to fulfil its commitments under the security. For example, the market penalties for defaulting lenders or investors in the loan, private placement and 144A markets have developed differently than those in the private, unregistered equity markets.

- **ICO or ABS.** If a security represents a creditor relationship, then the next step is to assess whether the security is an ICO or ABS. Only an ICO or ABS is permitted to be reported as a bond.²¹ As more product design is taking place with respect to novel “private ABS” structures, we go into more detail with respect to ABS below. In particular, insurance company investors have expressed a strong appetite for ABF, with some expressing more interest in ABF than in middle-market direct lending strategies.²²
- **ICO.** “An issuer credit obligation is a bond, for which the general creditworthiness of an operating entity or entities through direct or indirect recourse, is the primary source of repayment.”²³
- **ABS.** “An asset-backed security is a bond issued by an [issuer that is] created for the primary purpose of raising debt capital backed by financial assets or cash generating non-financial assets owned by [such issuer], for which the primary source of repayment is derived from the cash flows associated with the underlying defined collateral rather than the cash flows of an operating entity.”²⁴ “The [insurance company investor must be] in a different economic position than if the [insurance company investor] owned the [issuer’s] assets directly. The [insurance company investor] is in a different economic position if [the investment opportunity (i.e. the security)] benefits from substantive credit enhancement through guarantees (or other similar forms of recourse), subordination and/or overcollateralization.”²⁵ Much focus in the market is on innovative ways to provide this substantive credit enhancement and, specifically with respect to subordination, how much subordination to absorb losses is required for a given underlying investment strategy. Again, there are no bright-line rules. The amount of substantive credit enhancement “is specific to each transaction; determined at origination; and refers to the level of credit enhancement a market participant (i.e., knowledgeable investor transacting at arm’s length) would conclude is substantive”.²⁶ In a multi-class or multi-tranche security, the class or tranche most at risk for potential failure to meet the ABS definition is the one directly senior to the “equity” or true first-loss position in the structure. The market has not interpreted substantive credit enhancement to prohibit the insurance company investor from also holding the investment that is creating the substantive credit enhancement, which may be different from the regulatory schemes of other jurisdictions. However, generally speaking, such “residual” investment receives an RBC factor of 45%, and some market participants as a business matter do not find the residual investment attractive enough to justify this RBC factor.
- **Financial asset.** A financial asset is: “[i] cash, [ii] evidence of an ownership interest in an entity, or [iii] a contract that conveys to one entity a right (a) to receive cash or another financial instrument from a second entity or (b) to exchange other financial instruments on potentially favourable terms with the second entity.”²⁷ However, financial assets exclude contracts that convey a right to receive cash if that right is premised on the issuer’s performance of an obligation,²⁸ such as an issuer having performance obligations under a lease in order to receive the cash lease payments. Understanding the nuances in this particular SSAP definition will be relevant in product design related to ABF given the interest in novel lease and royalty-oriented credit asset classes given their predictable cash flows.
- **Cash-generating non-financial asset.** “Cash-generating non-financial assets are defined as assets that are expected to generate a meaningful level of cash flows toward repayment of the bond through use, licensing, leasing, servicing or management fees, or other similar cash flow generation.”²⁹ As a “practical expedient” (to be contrasted with the “rebuttable

presumption” language used by SSAP No. 26 with respect to underlying equity interests), if more than 50% of principal repayment “relies on sale or refinancing” then cash flows *are not* meaningful. “This practical expedient should not be construed to mean that assets cannot meet the meaningful criteria if they rely on sale or refinancing to service greater than 50% of the original principal...” but such investment opportunities “would require a complete analysis” of the substantive considerations for “meaningful” provided within SSAP No. 26.³⁰ We similarly expect this prong to be an area of focus in product design given the growth in ABF.

- **Exempt from filing with the SVO.** Generally speaking, investment opportunities that meet the SSAP bond definition and that obtain a credit rating from an appropriate credit rating agency will be filing-exempt. However, there are transactions that could require filing with the SVO, which are beyond the scope of this chapter.
- **Credit rating.** If (i) a private credit investment opportunity meets the SSAP bond definition and is exempt from filing with the SVO, and (ii) the insurer submits annually to the applicable NAIC office,³¹ a private letter rating issued by a nationally recognised credit rating agency,³² the private letter rating of which includes a rationale report that is as comprehensive as a report for a similar publicly rated security,³³ then the insurer is permitted to report an RBC factor on its financial statements that is tied to that credit rating. The insurer typically receives the annual private letter rating and related rationale report through coordination between the issuer and the credit rating agency, and it behoves private credit managers to understand the significance of the rationale reports as an investor relations matter.³⁴ While obtaining a credit rating does not make an investment a bond for insurance statutory accounting purposes, the analysis the credit rating agency undertakes to support its rating can overlap with portions of the creditor relationship and ABS analyses discussed above. There is an ongoing dialogue between private credit managers and credit rating agencies with respect to rating methodologies because private credit managers may design investment opportunities that do not yet neatly fit within any existing rating methodology.

To conclude this section, we note that we expect there to be continued focus on the bond definition, particularly the aspects of the definition related to (i) rebutting the presumption of non-bond status for the inclusion of underlying equity investments, (ii) the determination of meaningful cash flows for private ABS structures that involve non-financial assets, and (iii) substantive credit enhancement with respect to all private ABS as private credit managers design investment opportunities that rely on diversified underlying strategies (such as blended credit strategies) and on ABF strategies.

The UK and Solvency UK (including Matching Adjustment (“MA”))

In the UK, insurers are regulated by the Prudential Regulation Authority (“PRA”). Solvency UK requires insurers to hold sufficient assets to meet the best estimate of their future liabilities (as valued in accordance with Solvency UK). In addition, to be appropriately protected against adverse shocks to the value of those assets and liabilities, insurers must hold sufficient assets in excess of those liabilities that are sufficiently permanent and subordinated (“eligible own funds”) to meet their Solvency Capital Requirement (“SCR”). The SCR is intended to be calibrated such that insurers can still meet their liabilities upon the occurrence of a one-in-200 years shock event within a one-year time horizon. An insurer can calculate its SCR using an internal model, but the standard model in Solvency UK applies risk based capital charges in relation to each of the insurer’s assets and liabilities, across a number of “risk sub-modules” (for example, counterparty risk, spread risk, currency risk, and mortality risk, etc.) each calibrated to reflect the value-at-risk on the occurrence of a one-in-200 years shock in the kind of risk represented by the sub-module as it applies to the asset or liability in question. Different capital charges apply depending on the nature of the asset or liability and multiple sub-modules can apply in respect of

the same asset or liability (compared to in the U.S., where RBC factors are tied solely to assets and only a single RBC factor may apply to a single asset). All else being equal, higher capital charges (taking into account all relevant risk sub-modules and the correlation between them) will result in a higher SCR.

A “ladder of intervention” exists, requiring insurers to work with the PRA to remedy a fall below their SCR (or their baseline sub-threshold Minimum Capital Requirement calibrated to represent a one-in-six years event), failing which the PRA may withdraw such insurer’s licence to write a new business. If an insurer has assets in excess of its required SCR, generally speaking, such excess can be seen as the “free profit” available to the insurer to reinvest and/or pay dividends. Therefore, as between two investments that have the same risk/return profile, an investment with a more favourable capital charge treatment will be more attractive to an insurer.

In addition to SCR capital charge considerations, certain insurers, such as PRT insurers, can optionally apply a MA benefit to certain long-duration liabilities, reducing the assets needed to be held against such liabilities and thereby increasing the potential for profit. MA is a feature within Solvency UK that allows insurers of long-term risks to reduce the best estimate of their future liabilities (and, therefore, the assets required to support those liabilities) by applying a more favourable discount rate than the “risk free” rate ordinarily required. This more favourable discount rate can be applied to the extent the cash flow of assets held against those liabilities is suitably matched to those liabilities. The rationale for the MA is that, where an insurer’s asset cashflows are matched to its liabilities, the insurer will not be forced to sell those assets before maturity and is therefore not subject to such assets’ liquidity risk, so can treat the compensation (the incremental increase in interest rate spread) delivered by such assets for such liquidity risk as if such compensation was also risk free.

The ability of a life insurer to apply MA with respect to its financial reporting currently requires pre-approval by the PRA. Insurers applying MA must manage a separate “MA portfolio”, containing only assets and liabilities to which they apply an MA benefit, which must satisfy a number of eligibility conditions that go to the requirement that the assets and liabilities are suitably matched. The PRA approval for MA will set forth a scope of matched assets and liabilities that the insurer can hold in its MA portfolio. A high number of UK PRT insurers have obtained MA approvals, although the scope of such approvals will be specific to each life insurer.

Currently, to include assets with new features in the MA portfolio, an insurer must first apply to the PRA for approval to extend its MA permissions – a process that can take up to six months. Given the speed with which novel private credit private placements of debt typically transact to meet the capital-raising needs of the issuer or underlying investment assets, such pre-approval of scope processes is a challenging fit. Recently, however, the PRA has proposed the Matching Adjustment Investment Accelerator (“MAIA”).³⁵ Recent public announcements suggest the MAIA could be implemented as early as the end of October 2025. The proposal would allow insurers with an existing MA permission to apply for a MAIA permission. If the MAIA permission was granted, the insurer would be able to self-assess that an asset falling outside the scope of its existing MA permission would still be MA-eligible. An insurer with a MAIA permission could thus invest first and seek approval to amend its MA permissions to regularise the extension to the scope of its MA portfolio on a post-investment basis during the two years following investment. This proposed post-investment approval process could facilitate life insurers participating in private credit transactions and planning the fit and pipeline availability of such transactions with private credit managers as the approval process will not cause the life insurer to miss potential private credit fundraising or transaction closings.

If post-investment approval was not obtained, the consequence would be that the insurer would have to remove such assets from its MA portfolio and rebalance the existing portfolio to ensure it remained MA-compliant. The insurer loses 10% of its MA benefit if the MA portfolio is not compliant with the eligibility conditions for two months and a further 10% for each month thereafter, which would significantly impact the balance sheet of an insurer-applying MA. The insurer may therefore need to

divest from certain assets in favour of assets that are eligible to hold in its MA portfolio. While the market has generally received the MAIA proposal favourably, we note that for many of the “new” private credit investment opportunities, there is no active secondaries market and some investments are structured such that transfer of the investment requires issuer approval. Thus, even a post-investment approval process may be applied conservatively by the life insurer in practice. In addition, the insurer-specific nature of the approval process, whether pre- or post-investment, may create challenges for private credit managers to design broadly accepted investments that develop market standards.

Taking the SCR capital charge considerations and MA considerations together, a life insurer is likely to find MA-eligible assets to be attractive for investment as these assets increase the potential for such an insurer’s profitability. We note that life insurers are increasingly requesting reinsurers to pledge collateral assets that are MA-eligible as part of the investment guidelines agreements entered into with funded reinsurance transactions.

MA-eligible assets are investments that: (i) are bonds or other assets with similar cash flow characteristics; (ii) have expected cash flows that replicate each expected cash flow of MA liabilities in the same currency, where any mismatch does not give rise to material risks; (iii) must be maintained over the lifetime of the MA liabilities; and (iv) have cashflows that are (a) fixed and cannot be changed by third parties (unless there is “sufficient compensation” to obtain the same cash flow by re-investment), or (b) solely with respect to up to 10% of the MA portfolio, “highly predictable”.³⁶ Assets can be paired or restructured in order to meet the eligibility criteria (e.g. by pairing the asset with a currency hedge or other derivative, or restructuring by way of a securitisation or notes issuances where the senior tranches are MA-eligible).

While private credit product development to meet MA-asset eligibility is still developing, we note that the 10% “highly predictable” cash flow bucket together with the ability to include sub-investment-grade bonds in an MA portfolio, both of which were added as part of reforms to Solvency UK in 2024, have been well received by participants in the private credit and private ABS markets. For example, rated note feeder funds and CFOs typically include interest deferral and optional prepayment pursuant to waterfall provisions that create predictable, but not fixed, repayment. In addition, these structures typically include concurrent investment-grade and sub-investment-grade bond issuances. Whilst insurers will still need to consider whether the cashflows delivered by such “highly predictable” assets are suitable to match their liabilities, and their inclusion does not risk a material mismatch with their MA asset and liability cashflows, the reforms may increase long term insurers’ ability to hold such assets in their MA portfolio (and hence their appeal).

Conclusion

Investment-grade private credit creates potential synergies for both insurers and asset managers with respect to both the U.S. and UK insurance regulatory schemes for the treatment of investment assets. We expect continued innovation in product development in both jurisdictions given the growth in private credit and particularly private ABF.



Disclaimer

This article neither contains legal advice nor establishes an attorney-client relationship in any form. The opinions expressed herein are attributable to the author(s) alone, and they do not reflect the views, positions or opinions of Willkie Farr & Gallagher LLP or other attorneys at the firm.

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Endnotes

- 1 <https://www.willkie.com/-/media/files/publications/2024/04/willkie-london-international-insurance-industry-review-corporate-and-risk-transactions-regulation-an.pdf>; <https://reaction.willkie.com/Trends%20and%20Developments%20in%20the%20Longevity%20and%20Pension%20Risk%20Transfer%20Market/#p=1>
- 2 Valuation of Securities (E) Task Force March 16, 2024 Minutes: https://content.naic.org/sites/default/files/national_meeting/vostf-minutespacket-031624.pdf
- 3 <https://www.chicagofed.org/publications/working-papers/2025/2025-09>
- 4 <https://www.chicagofed.org/publications/working-papers/2025/2025-09>
- 5 <https://www.chicagofed.org/publications/working-papers/2025/2025-09>
- 6 <https://www.fitchratings.com/research/structured-finance/private-equity-collateralized-fund-obligations-rating-criteria-30-01-2025>; <https://www.fitchratings.com/research/fund-asset-managers/net-asset-value-finance-rating-criteria-27-02-2025>; <https://dbrs.morningstar.com/research/441192>
- 7 <https://pitchbook.com/news/articles/eighty-percent-of-insurers-plan-to-increase-holdings-in-private-credit-moodys>
- 8 <https://www.pwc.com/us/en/industries/financial-services/library/private-credit.html>
- 9 Some states have adopted variations to SAP in their particular state.
- 10 The NAIC's RBC instructions set forth rules for which investments get which RBC factors and all states have adopted these rules by reference since they have adopted the NAIC RBC for Insurers Model Act (#312).
- 11 SSAP No. 26 paragraph 45.
- 12 SSAP No. 26 Exhibit A.
- 13 SSAP No. 26 paragraph 5.
- 14 SSAP No. 26 paragraph 6.
- 15 SSAP No. 26 paragraph 6.
- 16 SSAP No. 26 paragraph 6.a.
- 17 SSAP No. 26 paragraph 6.a.
- 18 SSAP No. 26 paragraph 6.d.
- 19 SSAP No. 26 paragraph 6.d.
- 20 SSAP No. 26 paragraph 6 ("A security that in substance possesses equity-like characteristics... does not represent a creditor relationship").
- 21 SSAP No. 26 paragraph 44.
- 22 <https://pitchbook.com/news/articles/eighty-percent-of-insurers-plan-to-increase-holdings-in-private-credit-moodys>
- 23 SSAP No. 26 paragraph 7.
- 24 SSAP No. 26 paragraph 8.

- 25 SSAP No. 26 paragraph 8.
- 26 SSAP No. 26 paragraph 10.a.
- 27 SSAP No. 26 paragraph 8.
- 28 SSAP No. 26 paragraph 8.
- 29 SSAP No. 26 paragraph 9.
- 30 SSAP No. 26 paragraph 9.b.
- 31 Insurers that desire to use a NAIC Designation for reporting their RBC factor based on a private letter rating must report the private letter rating to the SVO.
- 32 The SAPs require such ratings to be from nationally recognised statistical rating organisations or nationally recognised statistical ratings organisations.
- 33 <https://www.willkie.com/-/media/files/publications/2025/08/naic-report-2025-summer-national-meeting.pdf>
- 34 <https://www.willkie.com/-/media/files/publications/2025/06/privatecreditratifiedinvestmentsnaicssvoproposesupdatesforratingagencyrationalereportrequirements.pdf>
- 35 <https://www.willkie.com/-/media/files/publications/2025/05/pr-consults-on-matching-adjustment-investment-accelerator-to-facilitate-investment-by-insurers.pdf>
- 36 PRA Rulebook, MA Part: <https://www.prarulebook.co.uk/prarules/matching-adjustment/08-09-2025>

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