AiA Art News-service

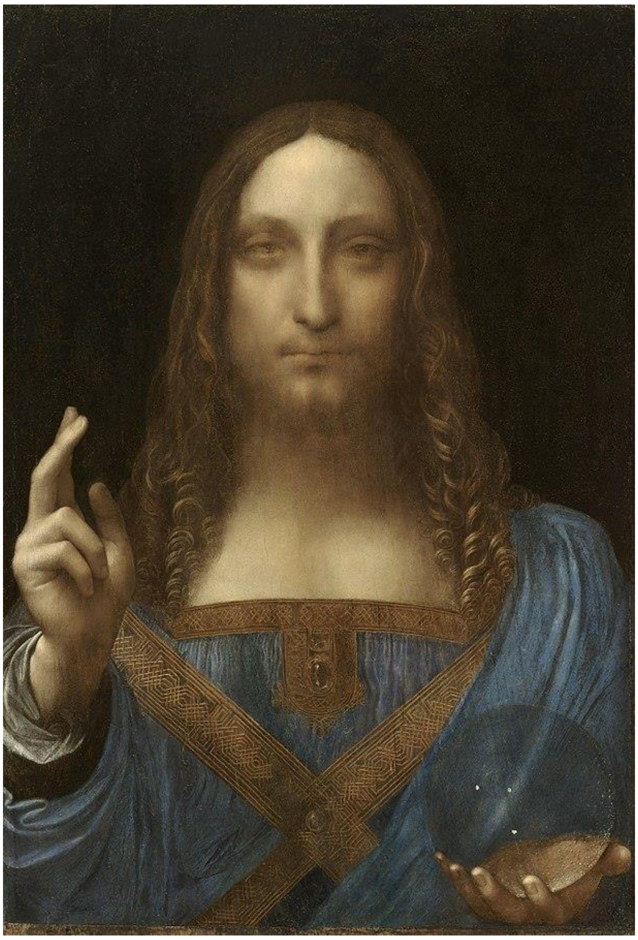
BUYER BEWARE: REGULATORY CHANGES IN ART INVESTMENT

ARTICLE | 13 DECEMBER, 2017 02:00 PM | BY LOWRIE ROBERTSON

Wealth managers are increasingly engaged in a growing art market. However, as a market driven by personal tastes, with imperfect information, dealing and regulatory infrastructure, art poses unique challenges as an investment.

***Lowrie Robertson*, a paralegal in the Art Law Group at Slaughter and May, says in a developing regulatory context, an integrated team incorporating legal expertise can help wealth managers realise value for their clients.**

It’s a good time to be in the art industry. In November, Leonardo da Vinci’s *Salvator Mundi*painting (pictured) sold for a record $450 million, while according to the Knight Frank luxury investment index, art will overtake wine in 2017 as the number one best performing luxury investment. Deloitte’s 2017 Art and Finance report, which surveys a number of wealth managers amongst other financial and art professionals, declares that art and wealth management is now part of a longer term trend, with 88% of wealth managers surveyed saying that they think art and art collectibles should be included as part of wealth management offerings and 83% stating they offer art advisory services.

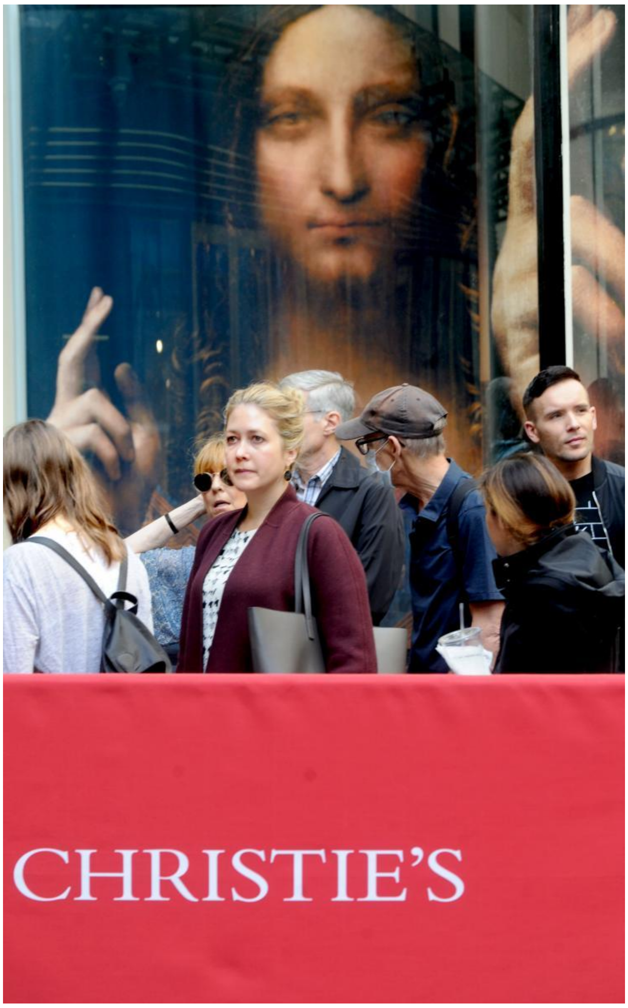


Art is a unique investment. As an aesthetically appealing object, a status symbol or a philanthropic gesture for future generations, there is no doubt that an artwork is a social and emotional investment as well as a financial one. Furthermore, art can also hold long-term, multigenerational wealth. According to Market Watch, the United States is set to see a wealth transfer of $30 trillion from baby boomers to their heirs over the next 30 years, including art and art assets. This new generation of art collectors is likely to be more comfortable with monetising art collections, including new investment products and strategies.

However, challenges exist. The art industry lacks many regulatory, information or liquidity features found in other markets, especially in comparison to highly regulated financial institutions. Deloitte's report identified that two of the biggest concerns are the art market's unregulated nature and its lack of transparency. Problems of authenticity, lack of provenance, forgery and attribution were likewise listed as threats to credibility and trust for collectors.

Conflicts of interest and price manipulation are also a concern. Wealth managers in United Kingdom and the US have noted the problem of inconsistent valuation and lack of a single pricing index for art. To further muddy the waters, dealers can bid privately (and legally) at auction to raise the price of the painting they are selling, without needing to disclose this fact to potential buyers.

Truthfully, art is not an easy investment. Art is illiquid, does not follow market trends and lacks the daily dealing structure that would help wealth mangers protect client money from volatility. In addition, the burden is generally on the collector to ensure they've purchased a genuine and legally obtained work.

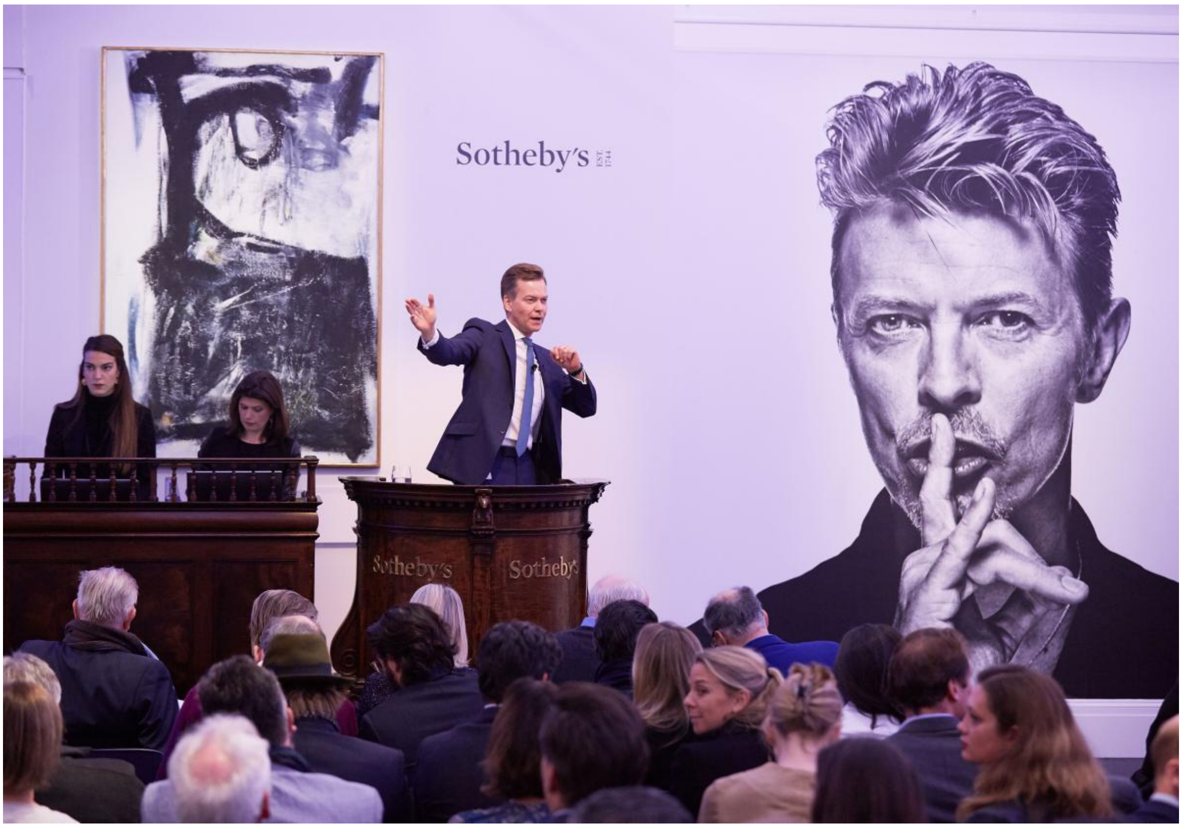


Despite this, there are practical steps that can be taken to minimise risk and new developments on the horizon that may encourage art investing in the future. Firstly, wealth managers should be aware of the pitfalls and issues of art as outlined above and have a firm foundation before investing in passion assets. Secondly, thorough due diligence before buying can help avoid (often high profile) legal cases further down the line. This may seem like obvious advice, but it is easy to get caught up in the emotion of art and the art world attracts conmen along with legitimate professionals. As a wealth manager who lost a client to Bernie Madoff recently told me: if the numbers seem too good to be true, they are.

There is some good news. Recent legal updates and court cases are changing the regulatory landscape and may help move the art industry towards a more regulated (and therefore safer) market framework for investors.

New EU and UK anti-money laundering regulations have placed the burdens of setting protective measures for highly valued works onto auction houses and art dealers. In light of the illicit antiquities trade's well known links to financing of terrorist groups like ISIS, art dealers will now need to establish measures to mitigate the risk of money laundering and terrorist funding. To a similar end, the EU Commission is also proposing regulations on the import of certain cultural goods, while The Responsible Art Market Initiative has seen the industry produce its own guidelines, in a move towards more self-regulation.

Most significantly, the British Government has closed consultation on new legislation that could open up new avenues for art secured lending in the UK and bring it more in line with the position in the US (the global leader of art secured lending). The Goods Mortgages Bill would allow collectors to be able to secure loans over artworks without losing physical possession, i.e. access the equity in an artwork and keep it hanging in the family home.



Art investment is not a one size fits all product. Each client, their family and their needs are unique, requiring innovative and bespoke financial solutions. As trends in wealth management industry move towards holistic strategies, an integrated team approach to art investment can help deal with the complexities of the market. Legal knowledge and expertise may help to guide through the complex due diligence process and regulatory changes, as well as provide a neutral third party without the conflicts of interest that can haunt art industry professionals.

This art industry is undoubtedly a complex and evolving field and requires treading carefully. That being said, change is happening, slowly but surely and it is worth watching for the outcome. Ultimately, there is no need to fear art if you can establish a good canvas to start.