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The Honorable Mark Uyeda
Acting Chairman
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Submitted via email to: uyedam@sec.gov

January 22, 2025

Dear Mark

On behalf of our members, the Alternative Investment Management Association Limited (“AIMA”)¹ and the Alternative Credit Council (“ACC”)² would like to congratulate you on your appointment as Acting Chair of the U.S. Securities and Exchange Commission (“SEC”). We also greatly appreciate your decision to create the Crypto Task Force and look forward to helping it achieve its goals. As the global representative of the alternative investment industry and global body for private credit and direct lending industries, AIMA and the ACC, respectively, look forward to working with you and your colleagues as you look to promote economic growth, maintain and enhance the vitality of U.S. capital markets and protect investors.

Your appointment presents an opportunity to address several urgent items, which are discussed further below, that are of critical importance to our members, market participants and capital markets in general.

¹ The Alternative Investment Management Association (“AIMA”) is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA’s fund manager members collectively manage just over \$4 trillion in hedge fund and private credit assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 250 members that manage over \$2 trillion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialized educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA’s website, www.aima.org.

² The Alternative Credit Council (ACC) is a global body that represents asset management firms in the private credit and direct lending space. It currently represents 250 members that manage over US\$2 trillion of private credit assets. The ACC is an affiliate of AIMA and is governed by its own board which ultimately reports to the AIMA Council. ACC members provide an important source of funding to the economy. They provide finance to mid-market corporates, SMEs, commercial and residential real estate developments, infrastructure as well the trade and receivables business. The ACC’s core objectives are to provide guidance on policy and regulatory matters, support wider advocacy and educational efforts and generate industry research with the view to strengthening the sector’s sustainability and wider economic and financial benefits.

We encourage you and your fellow Commissioners to act swiftly to pause, review and/or remediate some of these issues.

1. The SEC or SEC staff should provide institutional investment managers (“Managers”) an additional six months to begin complying with Rule 13f-2 under the Securities Exchange Act of 1934, as amended (“Exchange Act”), and Form SHO, and require the first Form SHO reports to be filed on August 14, 2025, instead of February 14, 2025.³

On October 13, 2023, the SEC adopted new Exchange Act Rule 13f-2 that requires Managers that meet or exceed a specified threshold to report monthly to the SEC, using new Form SHO, certain specified short position data and short activity data for equity securities (the “Short Sale Rule”).⁴ The compliance deadline for the Short Sale Rule was January 2, 2025, with first Form SHOs due to be filed via EDGAR on February 14, 2025. Unfortunately, the Short Sale Rule is rife with ambiguity and/or inconsistencies that will likely lead to Managers reporting, due to no fault of their own, inconsistent data that will ultimately impact the reliability and correctness of the aggregated data the SEC plans to publish. Moreover, Managers are currently in the unenviable position of preparing their first Form SHO filings without any significant experience with the technical specifications, which were finalized in late December 2024.

We understand that the SEC and staff from the Division of Trading and Markets have declined to publish FAQs or provide other interpretive/assistive guidance for Managers and the marketplace in general due to, among other things, the ongoing litigation challenging the Short Sale Rule, to which AIMA is a party.⁵ While the court continues to deliberate the outcome of the litigation and while the SEC and its staff contemplate if and to what extent it may issue FAQs or otherwise provide another remedy, we believe a delay of the compliance and first-report dates would be a proper and appropriate step to prevent some of the unintended harm and costs that are likely to materialize without a delay. Accordingly, we encourage the SEC or its staff to immediately provide Managers with an additional six months to begin complying with the Short Sale Rule, with first Form SHO reports to be filed on August 14, 2025.

2. The SEC should withdraw its appeal of the decision by the U.S. District Court for the Northern District of Texas vacating the Dealer Rule.

On January 17, 2025, the SEC appealed⁶ the District Court’s decision⁷ vacating the SEC’s rule⁸ to further define the Exchange Act definitions of “dealer” and “government securities dealer” (the “Dealer Rule”). Hedge funds managed by AIMA’s members are not dealers. They do not have customers – a requirement for determining whether a market participant is indeed a dealer. The District Court affirmed this view when AIMA challenged the rule last year. It found that the SEC exceeded its statutory authority by adopting the Dealer Rule and vacated it in its entirety.

We disagree with the SEC’s decision to appeal the District Court’s ruling and encourage the SEC to swiftly withdraw the appeal so that market participants can continue to operate with regulatory certainty and clarity on this issue.

³ This request is consistent with the AIMA/MFA letter shared with you on January 20, 2025.

⁴ SEC, “Short Position and Short Activity Reporting by Institutional Investment Managers”, 88 Fed. Reg. 75,100 (Nov. 1, 2023).

⁵ Nat’l Ass’n of Private Fund Managers et al. v. SEC, No. 23-60626 (filed Dec. 13, 2023).

⁶ Nat’l Ass’n of Private Fund Managers et al. v. SEC, No. 4:24-cv-00250 (notice of appeal) (filed Jan. 17, 2025).

⁷ Nat’l Ass’n of Private Fund Managers et al. v. SEC, No. 4:24-cv-00250 (N.D. Tex. Nov. 21, 2024).

⁸ SEC, “Further Definition of ‘As a Part of a Regular Business’ in the Definition of Dealer and Government Securities Dealer in Connection With Certain Liquidity Providers”, 89 Fed. Reg. 14,938 (Feb. 29, 2024).

3. We strongly support your creation of a Crypto Task Force and its stated objectives to “draw clear regulatory lines, provide realistic paths to registration, craft sensible disclosure frameworks, and deploy enforcement resources judiciously.”⁹

As an initial step to achieve those goals, we would recommend that the immediate cessation of “regulation via enforcement” should include all crypto-related enforcement activity outside of fraud or clear misbehavior. We also support the withdrawal of 2019 SEC staff guidance on “investment contract” analysis and Staff Accounting Bulletin (“SAB”) No. 121, which requires entities involved in the custody of digital assets to record those assets as liabilities on their balance sheets.

We believe the Crypto Task Force should study how best to end the block on IPOs by digital assets companies and provide greater insights into the appropriate interpretation of the Howey test analysis for digital assets. More generally, we believe it would be helpful for the SEC to provide no-action relief or even a regulatory safe harbor for digital assets until legislation for a comprehensive crypto asset regulatory regime can be enacted.

4. We respectfully request the SEC to extend the compliance date for the pending amendments to Form PF until September 12, 2025.

When the SEC and the Commodity Futures Trading Commission adopted the revisions to Form PF on February 8, 2024, which apply to all SEC-registered private fund advisers, they set March 12, 2025 as the effective date and the compliance date. The SEC staff has since released FAQs, which include an interpretation that the revised Form PF must be used for all filing purposes after the effective date, regardless of whether the filing is making amendments to a previously filed Form PF based on the earlier version of the form.¹⁰

Most private fund advisers file their Form PF shortly after their annual audits are completed and Form ADV updates are filed in April. As a result, our members will face a number of both technical and compliance difficulties if required to use the new Form PF by March 12.

As an initial matter, the technical specifications for the new Form PF have not yet been finalized, and our members will need more time than they are currently allowed to make the appropriate adjustments once those changes are finalized. Furthermore, our members still have a number of unresolved interpretive questions that need clarification prior to completing the new Form PF. In addition, the compliance and IT staff working to make those changes are concurrently working to comply with other new reporting requirements, including the Short Sale Rule. Extending the compliance date to September 12, 2025 will provide sufficient time to address these interpretative and technical challenges and will result in better, more consistent reporting on the new Form PF. Finally, extending the compliance date beyond March 12 would be consistent with the Executive Order issued by President Trump on January 20, 2025, that calls for postponing for 60 days the effective date for any rules that have already been published in the Federal Register but that have not yet taken effect.¹¹

Finally, we are heartened by the Administration’s goal of increasing and facilitating capital formation, including the potential to expand retail access to various private market vehicles or opportunities. We are working

⁹ SEC press release, SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force (Jan. 21, 2025), available at https://www.sec.gov/newsroom/press-releases/2025-30?utm_medium=email&utm_source=govdelivery.

¹⁰ SEC Staff, Amended Form PF Frequently Asked Questions, last updated December 20, 2024, available at <https://www.sec.gov/about/divisions-offices/division-investment-management/amended-form-pf-frequently-asked-questions>.

¹¹ Presidential Executive Order, Regulatory Freeze Pending Review, 90 Fed. Reg. [page number] (Jan. 20, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/>.

closely with our hedge fund and private credit manager members to understand their views on this topic and by what means, if appropriate, the SEC should proceed to best achieve these goals. As the SEC ponders these questions, we welcome the opportunity to serve as a resource to you, your fellow Commissioners and SEC staff so that any changes that are made to existing rules and regulations expand capital formation and protect investors, while also preserving private funds' unique place within the regulatory regime and the critical role they play in domestic and global financial markets.

We would greatly appreciate the opportunity to meet with you to discuss in greater detail the above topics and others that are impacting our members. Please do not hesitate to reach out to us.

We would also be happy to elaborate further on any of the points raised in this response. For further information, please contact Daniel Austin (daustin@aima.org) or Joe Engelhard (jengelhard@aima.org).

Yours sincerely



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CEO



Jiří Król
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