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The Honorable Paul S. Atkins
Chairman
U.S. Securities and Exchange Commission
Office of the Chair
100 F Street, NE
Washington, DC 20549

Submitted via email

April 22, 2025

Dear Chairman Atkins,

On behalf of the Alternative Investment Management Association ("AIMA"),[1] we would like to congratulate you on your confirmation as the next Chairman of the Securities and Exchange Commission ("SEC" or the "Commission"). At a time when markets are facing significant turbulence and uncertainty, your leadership at the helm of the SEC will be more critical than ever. Your deep understanding of capital markets – grounded in years of experience across both the public and private sectors – uniquely positions you to guide the SEC through the challenges ahead.

As the world's largest membership association for alternative investment managers, AIMA believes your leadership presents a valuable opportunity to enhance the world's largest and most dynamic capital markets. We particularly appreciate that, during your recent testimony before the Senate Committee on Banking, Housing and Urban Affairs, you highlighted how your years of public service at the SEC combined with private sector experience have enabled you to appreciate how regulation "can stoke innovation, facilitate investment goals, and create opportunities – or burdens – on businesses' ability to compete and serve their customers."[2]

We also recognize the vital role of the SEC in implementing President Donald Trump's recent executive orders to streamline existing regulations, foster innovation, reduce compliance costs and promote increased capital formation. We believe that reducing regulatory burdens on capital markets and encouraging financial innovation are integral components of achieving the administration's target of 3% economic growth.

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[1] AIMA is the world's largest membership association for alternative investment managers. Its membership has more firms, managing more assets than any other industry body and, through our 10 offices located around the world, we serve over 2,000 members in 60 different countries. AIMA's mission, which includes that of its private credit affiliate, the Alternative Credit Council (ACC), is to ensure that our industry of hedge funds, private market funds and digital asset funds is always best positioned for success. Success in our industry is defined by its contribution to capital formation, economic growth, and positive outcomes for investors, while being able to operate efficiently within appropriate and proportionate regulatory frameworks. AIMA's many peer groups, events, educational sessions, and publications, available exclusively to members, enable firms to actively refine their business practices, policies, and processes to secure their place in that success. For further information, please visit www.aima.org.

[2] Nomination Hearing to Consider Paul Atkins for Chairman of the U.S. Securities and Exchange Commission: Hearing Before the S. Comm. on Banking, Hous., and Urban Affs., 119th Cong. (2025) (statement of Paul Atkins).

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As a membership organization representing alternative asset managers, we respectfully submit these potential regulatory reform priorities for your consideration, which can be summed up in the following core principles:

- **Support for Innovation and Capital Formation:** The SEC can reestablish a regulatory environment that fosters competition, eliminates unnecessary barriers and promotes capital formation across both public and private markets. A fair, transparent and comprehensive regulatory framework for digital assets is particularly necessary to facilitate the next generation of financial innovation. Reforms that allow greater access to private investment opportunities via reforms to outdated and burdensome restrictions on liquidity, affiliated investments and co-investment rules would simultaneously increase capital formation and allow for greater diversification.

- **Promotion of Sound Practices and Financial Stability**: We urge the Commission to adopt a balanced regulatory approach that promotes financial stability without stifling innovation or capital formation. This includes supporting nonbank financial intermediation frameworks that appropriately distinguish between different risk profiles and funding structures. In particular, we emphasize that private credit lowers the potential for systemic risk in financial markets because of its superior asset-liability matching, lower leverage levels and proactive loan management practices, all of which significantly mitigate liquidity and contagion risks. We also encourage the SEC to avoid regulatory overreach in enforcement and examinations that could introduce unintended volatility or uncertainty into financial markets. A coordinated and transparent regulatory environment – particularly in areas such as Treasury clearing, shadow trading enforcement and SEC oversight – can enhance stability while preserving market integrity and investor confidence.

- **Improve SEC Functioning:** To improve regulatory transparency and foster more constructive oversight, the SEC should adopt procedural reforms that enhance communication and industry engagement. These include requiring Commission divisions to regularly consult with market participants, publishing examination manuals to clarify expectations and ensuring timely closure of examinations by notifying firms when they conclude and clearly stating any deficiencies in closing letters. The SEC should also inform entities when they are referred to the Division of Enforcement and seek industry input before implementing significant changes in regulatory positions. Additionally, establishing a working group comprised of private sector chief compliance officers would provide a valuable channel for ongoing feedback on market practices and regulatory clarity.

A more complete list of recommendations in the attached Annex is designed to ensure the continued growth and vibrancy of the world's largest capital markets center, promote economic growth and capital formation and foster competition through streamlined regulatory frameworks. AIMA believes that your leadership presents a unique opportunity to engage constructively with the alternative investment management industry, striking a balance between appropriate market protections and the need to enhance capital formation and market efficiency.

We appreciate your consideration of these priorities and look forward to working constructively with you and your staff in the coming months. We, along with AIMA representatives, would welcome the opportunity to meet with you to discuss these recommendations in greater detail.

We would be happy to elaborate on any of the points raised in the Annex below. For further information, please don't hesitate to get in touch with us, Joe Engelhard, Head of Private Credit & Asset Management Policy, Americas (jengelhard@aima.org), or Daniel Austin, Head of U.S. Markets Policy and Regulation (daustin@aima.org).

Yours faithfully,

Jack Inglis
CEO

Jiří Król
Deputy CEO
Global Head of Government Affairs

CC: Commissioner Mark Uyeda
Commissioner Hester Peirce
Commissioner Caroline Crenshaw

Annex

Proposed SEC Reform Priorities for Alternative Investments

Greater Access to Private Credit: Funds registered under the Investment Company Act of 1940 (the "40 Act") should have increased access to private credit investments. We recommend that the Commission provide co-investment relief from Section 17(d) and 57(a)(4) of the 1940 Act and Rule 17(d)-1 to permit registered funds to participate in attractive investment opportunities alongside affiliated private funds, particularly in the private credit space where such opportunities often arise.[3]

We also urge the Commission to issue exemptive or broad-based relief for affiliated transactions as expeditiously as possible to allow all registered funds to engage in certain transactions with affiliated entities when appropriate safeguards are in place to prevent conflicts of interest and ensure fair treatment of all investors.

Additionally, the Commission should consider granting relief to illiquid assets from current restrictions, recognizing that the existing limitations can unnecessarily constrain registered funds' ability to access private credit investments. In particular, we would like to highlight that, currently, informal staff guidance limits closed-end funds' investment in private credit funds to no more than 15% unless the closed-end fund is limited to accredited investors, which significantly restricts retail investors' access to private markets through regulated investment vehicles. Easing this informal limitation would enable a broader range of investors to benefit from the diversification and return potential of private credit strategies.

The Commission could also significantly enhance capital formation in private credit assets through target date funds ("TDFs") and other registered funds, including those that invest in business development companies ("BDCs") which lend to private companies, by removing the requirement in Form N-2 registration statements to disclose Acquired Fund Fees and Expenses ("AFFE"). TDFs and BDCs are crucial channels to provide investors with indirect access to private credit assets. The AFFE rule requires that TDFs and funds acquiring BDCs (*e.g.* mutual funds and ETFs) report "total annual fund operating expenses" of such BDCs. Potential investors typically only reference fund total expense ratios (which include AFFE) given its prominence in fund literature, rather than the financial statements that reveal the actual costs borne by investors. As such, the AFFE disclosure requirement grossly overstates the costs of investing in these products and discourages investment due to what investors interpret as higher investment costs compared to other specialty finance companies (e.g., REITs) that are not required to present AFFE. Sponsors of mutual funds, closed-end funds, ETFs, and other registered investment companies are disincentivized from investing in BDCs because of artificially inflated expense ratios indicative of higher operating expenses rather than actual net expenses, which are borne by investors.[4] TDFs similarly must compete with other products on price and are penalized

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[3] We acknowledge that the SEC recently granted a new form of co-investment relief that moves towards a more principles-based approach and addresses aspects of the issue discussed above, but additional issues remain. *See, e.g.*, Investment Company Institute, Comment Letter In the Matter of FS Credit Opportunities Corp., et al. (SEC Accession No. 0001193125-25-030936) (March 4, 2025), available at https://www.ici.org/letters/25-cl-fs-application-support, ("Co-investment relief has become a virtual necessity for managers of regulated funds investing in privately placed assets, in particular managers of private credit focused closed-end funds and BDCs.").

[4] Consider also that when an acquiring fund purchases a mutual fund, shares are purchased at the acquired fund's net asset value ("NAV"). The NAV reflects the portfolio asset values but does not capitalize the present value of the future management fees, and

by having to report AFFE. We urge the Commission to remove the AFFE reporting requirement in Form N-2 to avoid the disproportionate negative impact on capital formation for investments in private credit assets through TDFs and BDCs or alternatively to exempt TDFs and funds acquiring BDCs from such requirement.

Harmonization via a Primary Regulator: We urge the Commission to adopt a primary regulator safe harbor for registrants dually registered with the SEC and the Commodity Futures Trading Commission ("CFTC"). In the past, AIMA and other trade associations have advanced initiatives to streamline and eliminate duplicative regulatory requirements at the SEC and CFTC. However, these reforms were never realized. We support a reconsideration of these proposals, including the possibility of a safe harbor. Under this approach, the dual SEC-CFTC registrant would generally comply with the reporting requirements of the primary regulator, and this would be deemed to satisfy the corresponding requirements of the non-primary regulator while remaining registered with both regulators. Regarding the method of selecting the primary regulator, we agree that there should be an unambiguous test, or a series of tests, designed to identify which regulator should serve as a firm's primary regulator for this purpose. This would enable firms to comply with the reporting requirements of their primary regulator, thereby satisfying the corresponding requirements of the non-primary regulator and reducing duplicative compliance burdens.

Regulatory Clarity for Digital Assets: We believe the SEC should provide clear guidelines for digital assets rather than relying on case-by-case enforcement. Instead, the SEC should develop a clear, principles-based approach that clearly distinguishes between securities and commodities. Specifically, we urge consideration of five specific factors that can indicate when a digital asset is sufficiently decentralized so as not to be considered a security, including: (i) distributed governance; (ii) network autonomy; (iii) permissionless use; (iv) open-source code; and (v) economic independence.

We appreciate the SEC staff's recent guidance that administrative blockchain functions like mining should not be considered securities transactions. The same logic applies to proof-of-stake blockchain functions, and we, therefore, urge the Commission or staff to explicitly recognize that staking should also not be considered a securities transaction. Our letter to the SEC Crypto Task Force goes into more detail on these and other digital asset policy concerns from an institutional investor perspective.[5]

Custody Rule: Appropriate rules for the custody of digital assets are urgently needed; however, we urge the Commission to first formally withdraw the 2023 proposed rule, "Safeguarding Advisory Client Assets,"[6] and restart any future efforts from first principles. As a first step, we recommend affirming that the Custody Rule (current Rule 206(4)-2 under the Investment Advisers Act of 1940) only applies to assets that are cash or securities. As one example of many, real estate should not be in scope. We request clarification on the use of alternative custodial solutions for digital assets, including state-approved and supervised custodians, segregated on-chain storage, exchange omnibus accounts and self-custody solutions.

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these future management fees will represent a reduction in the investor's returns. When an acquiring fund purchases a BDC at its market price, however, that price effectively capitalizes future expenses. The BDC's NAV and trading price will already reflect its operating expenses, which in turn will reduce the total return of the acquiring fund's investment in the BDC. Reflecting these expenses again under the AFFE rule results in double-counting a BDC's expenses, and hence the AFFE rule disclosure requirements will result in significantly overstating acquiring fund expense ratios.

[5] Letter from Jiří Król, Deputy CEO, Global Head of Government Affairs, AIMA, to Hester Peirce, Commissioner, SEC (Mar. 25, 2025), available at https://www.sec.gov/files/ctf-input-alternative-investment-management-association-3-25-25.pdf.

[6] Proposed Rule, "Safeguarding Advisory Client Assets", 88 FR 14672 (Mar. 9, 2023).

Treasury Clearing: We urge the SEC to prioritize expanding the availability of central clearing through new covered clearing agencies for Treasury securities (a "Treasury CCA") and ensure that a viable done-away clearing model is in place before the clearing mandates take effect. The current approach allows clearing members to condition access to clearing on the forced bundling of clearing and execution services. This places significant competitive burdens on indirect participants (i.e., AIMA member firms) and creates unnecessary costs.[7] We strongly support the entry of ICE and CME as Treasury CCAs to provide needed competition and optionality. We also urge the Commission to work with these entities to implement robust cross-margining capabilities for indirect participants.[8]

We would also highlight the need for the SEC to amend and expand the inter-affiliate exemption in its December 2023 final rule to include repurchase and reverse repurchase transactions between a private fund and a subsidiary that is a direct participant or member of a Treasury CCA. Without such a change, current AIMA members with a direct participant subsidiary will face unnecessary costs and complexity to clear these trades. Moreover, AIMA members who may be considering direct participation or membership in a Treasury CAA may nonetheless be deterred from taking such action because of the exemption's limited scope.

Dealer Definition: We strongly encourage the SEC to adhere to the statutory definition and traditional understanding of securities "dealer," maintaining the long-established understanding that a customer relationship is a fundamental requirement to be considered a dealer under the Securities Exchange Act of 1934 (the "Exchange Act"). We commend the Commission's recent decision to withdraw its appeal of the U.S. District Court for the Northern District of Texas ruling that vacated the February 2024 final rule that further defined "as part of a regulation business" in the definitions of dealer and government securities dealer.[9] The court's decision and the SEC withdrawing its appeal affirmed our view – as plaintiffs in that case – that having a customer is a bedrock principle and requirement for determining whether a market participant is a securities dealer.

Despite the withdrawal of the appeal, we have been troubled by past and pending enforcement actions in which the SEC has argued an interpretation of the dealer definition based on a hyper literal reading of the term. However, we are encouraged by recent Commission actions that seem to indicate a change of course in its interpretation in these cases. Nevertheless, because a subsequent administration could return to embracing a flawed reading of the term, we encourage the Commission to take appropriate action through formal rulemaking or otherwise to codify the customer requirement. We further recommend that, in any such action, the SEC also affirm the longstanding position that pooled investment vehicles are not dealers.

Expansion of Knowledgeable Employee Definition: We recommend expanding the definition of "knowledgeable employee" in Rule 3c-5 under the 1940 Act to allow for a broader set of employees of investment advisers to invest in private funds managed by their employers. This would increase the alignment of interests of fund investors and managers and would provide attractive investment opportunities for the employees in question. However, we strongly caution against broader changes that might blur the distinctive

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[7] *See* Letter from Jiří Król, Deputy CEO, Global Head of Government Affairs, AIMA, to Vanessa Countryman, Secretary, SEC (Apr. 23, 2024), available at https://www.sec.gov/comments/sr-ficc-2024-005/srficc2024005-462051-1209434.pdf; Letter from Jiří Król, Deputy CEO, Global Head of Government Affairs, AIMA, to Vanessa Countryman, Secretary, SEC (Dec. 22, 2022), available at https://www.sec.gov/comments/s7-23-22/s72322-20153388-320795.pdf.

[8] *See* Letter from Jiří Król, Deputy CEO, Global Head of Government Affairs, AIMA, to Vanessa Countryman, Secretary, SEC (Mar. 10, 2025), available at https://www.sec.gov/comments/600-44/60044-579135-1664282.pdf.

[9] SEC, "Further Definition of 'As Part of a Regular Business' in the Definition of Dealer and Government Securities Dealer in Connection with Certain Liquidity Providers", 89 Fed. Reg. 14938 (Feb. 29, 2024).

boundaries between retail and institutional investors. We, therefore, recommend maintaining clear, objective criteria that are verifiable to avoid any inconsistency or ambiguity.

Modernize the Issuer Exemption in Rule 3a4-1: The SEC's "issuer exemption" from broker-dealer registration (Exchange Act Rule 3a4-1) is outdated, having remained largely unchanged for 40 years despite significant market evolution. While some private fund managers can utilize this exemption when marketing their funds to investors, most find its restrictions prohibitive since they were originally designed for corporate issuers. Consequently, private fund managers must either collaborate with external broker-dealers or bear the expense of maintaining their own registered broker-dealers when raising capital or processing investor redemptions. These costs are ultimately passed on to investors.

SEC staff have acknowledged this problem and its negative impact on capital formation, noting that smaller firms often cannot afford to hire a broker-dealer or register themselves.[10] Commission staff have also previously solicited feedback on whether a specialized broker-dealer registration exemption for private funds would be beneficial.[11] We strongly urge the SEC to modernize this exemption.

Short Selling and Securities Lending: We recommend reassessing the necessity for Exchange Act Rule 13f-2 and Form SHO, the compliance date for which was delayed until January 2026, and the first Form SHO filings until February 17, 2026. Instead, we believe enhancing existing FINRA short sale data would provide a less burdensome, costly alternative that would also satisfy the statutory mandate in section 929X(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). Specifically, we propose streamlining the FINRA regime by accelerating current bi-monthly reporting to weekly, with a one-week delay prior to dissemination. This would provide more timely data than what would be reported under Rule 13f-2 and from a broader group of market participants.

Regarding securities lending (Exchange Act Rule 10c-1), we believe the Commission has adopted a reporting regime that goes beyond what was intended by Dodd-Frank section 984(b) and poses the risk of commercial harm for market participants in the "retail" segment of the securities lending market, which includes loans between prime brokers and institutional clients, like AIMA's members, to facilitate short selling. We, therefore, recommend reassessing the scope of the rule and limiting it to wholesale market loans – from lending programs to broker-dealers – which would create a low-cost, comprehensive and consistent data set. If the retail market remains in scope, we urge the Commission to eliminate the dissemination of loan-by-loan information in favor of aggregating all transactions in a particular issuer prior to publication after an appropriate lag time.

Return to Statutory Authority for Examinations: We encourage the SEC to return to enforcing and examining within its authority rather than engaging in statutory and regulatory overreach. While we expect the Commission to continue its vital work protecting investors and markets through appropriate examinations and enforcement activity, we urge it to depart from attempts to exceed its statutory and regulatory boundaries and from pursuing examinations that take an adversarial stance against market participants.

Nonbank Financial Intermediation: We recommend that the Financial Stability Oversight Council ("FSOC") return to its 2019 nonbank designation guidelines and analytical framework, reversing the changes made by

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[10] David W. Blass, Chief Counsel of the Division of Trading and Markets, "A Few Observations in the Private Fund Space," Speech at the American Bar Association, Trading and Markets Subcommittee, Washington, D.C. (Apr. 5, 2013), available at https://www.sec.gov/news/speech/2013-spch040513dwghtm.

[11] *Id.*

the previous administration. We encourage FSOC, with the SEC and CFTC as more outspoken voices on the Council, to moderate the disproportionate focus on open-ended investment funds regarding liquidity risk management and leverage.

It is critical to recognize that private credit does not create systemic risk for several fundamental reasons:

- *Superior Asset-Liability Matching*: Unlike banks and some other financial institutions, private credit funds are typically structured with long-term capital commitments that better align with the duration of their loan portfolios. This structural advantage eliminates the maturity transformation risks that contributed to previous financial crises.

- *Low Leverage Levels*: Private credit funds generally employ significantly less leverage than banks and other traditional lenders. This conservative approach to balance sheet management provides substantial buffers against market stress and reduces interconnectedness within the financial system.

- *Proactive Loan Management*: Private credit managers have greater flexibility to adjust loan terms prior to default compared to syndicated lending markets. This hands-on approach enables early intervention when borrowers encounter challenges, thereby reducing the frequency and severity of defaults and potential market disruptions.

Shadow Trading: We urge the SEC to reassess its shadow trading enforcement theory, which succeeded in *SEC v. Panuwat* and is currently under appeal. This theory poses particular threats for asset managers who trade in crowded sectors and could ensnare fund managers who have long- or short-term investments in comparable companies to those involved in mergers and acquisitions. Any expansion of this theory would inflict considerable harm on fund managers and their respective sectors. The theory poses special challenges for larger managers whose active trading in comparable names can occur through different portfolio managers in other regions or subsidiaries who have little to no information overlap. We welcome the opportunity to discuss with the Commission how lawful trading regularly occurs in crowded sectors and the particular threats this theory poses.

Procedural Improvements: There are a number of improvements that we believe the Commission and its staff could make in relation to its processes, including the following:

- *Establishing structured obligations for Commission divisions to engage with a broad range of stakeholders*: The SEC should implement formal procedures that require its divisions to engage regularly with a broad range of stakeholders, including affected regulated entities, to ensure that regulatory decisions are informed by practical market insights.

- *Engaging with industry and the public before making significant changes in regulatory positions*: The SEC should consult with the industry and the public before adopting major shifts in regulatory interpretations to avoid market disruption and ensure stakeholder input is considered.

- *Publishing examination manuals to increase transparency*: To foster greater clarity and predictability, the SEC should publicly release its examination manuals, thereby allowing registrants to better understand expectations and prepare accordingly.

- *Requiring the Division of Examinations ("EXAMS") to inform managers when examinations conclude*: EXAMS should be required to promptly notify investment managers when an examination has formally concluded to provide closure and reduce prolonged uncertainty.

- *Ending examinations with clearly stated deficiencies in closing letters*: All SEC examinations should conclude with a formal closing letter that outlines any identified deficiencies, giving firms a clear record and opportunity to address issues.

- *Considering a chief compliance officer working group to gather feedback on market understandings*: The Commission should consider forming a working group of chief compliance officers from across SEC-registered entities to regularly provide feedback on evolving market practices and regulatory clarity.