

January 20, 2025

Via Electronic Mail

The Honorable Mark T. Uyeda Acting Chair Securities and Exchange Commission 100 F Street, NE Washington, DC 20549

Re: SEC Day One Recommendations

Dear Acting Chair Uyeda

Congratulations on your position as Acting Chair of the Securities and Exchange Commission (the "SEC" or "Commission"). MFA¹ stands ready to work with you and the new Administration to advance policies that support U.S. economic growth and the financial well-being of all Americans. The SEC under the Trump Administration has an opportunity to turn the page on the Biden-era agenda and revisit the misguided policies that have harmed markets, investors, and the economy. In your capacity as Acting Chair, MFA urges you to address a few pressing items that will have an immediate impact on investors and markets. We know that the recommendations below will:

- Be consequential to market participants;
- Allow the Commission staff additional time to be thoughtful and take all necessary steps in rolling-out SEC policies and regulation; and
- Ensure that the SEC collects consistent and meaningful data.

Day One Recommendations

The SEC, under the previous regime, harmed investors by hastily adopting ill-considered rules with impractical, short compliance deadlines, and denying registrants of due process by regulating through enforcement. These actions punish investors by imposing significant, unjustified costs and burdens on

Washington, DC 1301 Pennsylvania Ave NW Suite 350 Washington, DC 20004 New York 546 5th Avenue 12th Floor New York, NY 10036 **Brussels** 40 Rue D'Arlon 1000 Brussels, Belgium **London** 14 Hanover Square, Mayfair, London, United Kingdom, W1S 1HT

¹ Managed Funds Association (MFA), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.



them with little to no corresponding benefit. We believe the Commission should immediately halt, review, and provide relief from these actions. We recommend that:

1. The Commission should immediately withdraw its appeal of the Dealer Rule

On November 21, 2024, the U.S. District Court of the Northern District of Texas vacated the Commission's rule to further define the term "dealer" ("Dealer Rule"). The court's ruling affirmed what MFA has maintained all along—alternative asset managers are not dealers, dealers have customers, and the Commission exceeded its statutory authority. The Commission's rushed rulemaking resulted in a final rule that was unworkable and harmful to investors and the markets.

On Friday, January 17, the Commission appealed the U.S. District Court's decision to vacate the unlawful Dealer Rule. The Commission's appeal jeopardizes the benefits the decision provided markets, fund managers, and investors. MFA encourages you to unwind the Commission's ill-advised appeal, change the adversarial relationship with market participants during the rulemaking process, and support robust capital markets.

2. The Commission (or staff) provide market participants with an additional 6 months to begin complying with Rule 13f-2 and Form SHO, with the first Form SHO report being due on August 14, 2025, for short sale position and activity in the month of July 2025.

Rule 13f-2 and related Form SHO ("**Short Position Reporting Rule**")³ require market participants to file with the Commission monthly reports of their end-of-month gross settled short positions and daily changes to those positions. Rule 13f-2 is effective January 2, 2025, with the first Form SHO due February 14, 2025. The Commission only finalized the technical specifications in late December 2024, providing market participants and service providers with the month of January—an inadequate amount of time—to finalize technical builds for testing and reporting Form SHO. Form SHO as finalized is extremely costly and burdensome as the reporting includes manual processes that cannot yet be automated. Moreover, dealers currently report extensive short sale data to FINRA that is available to regulators and market participants.

2 www.MFAalts.org

² Nat'l Ass'n of Private Fund Managers et al. v. Securities & Exchange Comm'n, No. 4:24-cv-00250 (N.D. Tex. Nov. 21, 2024); Crypto Freedom All. of Texas et al. v. Securities & Exchange Comm'n, No. 4:24-cv[1]00361 (N.D. Tex. Nov. 21, 2024).

³ Short Position and Short Activity Reporting by Institutional Investment Managers, 88 Fed. Reg. 75100 (Nov. 1, 2023), available at: https://www.govinfo.gov/content/pkg/FR-2023-11-01/pdf/2023-23050.pdf.



In addition, as MFA is in litigation with the SEC on its Short Position Reporting Rule,⁴ the SEC has deferred issuing staff FAQs or providing interpretive guidance on Form SHO, including with respect to inconsistencies in the adopting release of the Short Position Reporting Rule and the SEC's reply brief in our litigation. The lack of guidance will result in inconsistent data for the SEC and is costly and burdensome for market participants as they seek expensive legal counsel and spend hundreds of hours deliberating and building, only to possibly rebuild or change systems in the future. Accordingly, MFA urges the SEC to immediately provide market participants with an additional 6 months to comply with the SEC Short Position Reporting Rule, with the first Form SHO due no earlier than August 14, 2025, for short sale position and activity in the month of July 2025.⁵

3. The Commission (or staff) provide registrants with an extension of the compliance date for new amended Form PF requirements until September 12, 2025.

The Commission adopted wholesale revisions to Form PF on February 8, 2024 ("**New Form PF**").⁶ New Form PF is required to be filed by all registered private fund advisers. New Form PF goes live on March 12, 2025, an ill-conceived date as the Commission will receive a mix of old Form PF and New Form PF data for fourth quarter and annual 2024 reports rather than consistent data points. The March 12 compliance date also presents difficulties for private fund advisers with a mix of hedge funds and other private funds. Such advisers will need to file 4Q2024 reports 60 days from year-end for their hedge funds on old Form PF, but will then have inadequate time to build and prepare 2024 reports for their remaining non-hedge funds (private equity funds, real estate funds, etc.), due 120-days from year-end, on New Form PF.

Notwithstanding the arbitrary compliance date, private fund advisers face significant compliance challenges given the breadth and complexity of the changes in New Form PF, both with respect to the technological build and interpretive issues. The SEC has provided short compliance deadlines with respect to the New Form PF. We expect the technical specifications for New Form PF only to be finalized at the end of January, which further compresses the industry's ability to build compatible systems. Registrants need additional time to build and test New Form PF reporting systems and work through any outstanding reporting and interpretive questions with the goal of providing uniform data to the Commission.

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⁴ MFA has a pending lawsuit against the SEC on the Short Position Reporting Rule and the SEC's securities lending rule on grounds that the SEC acted arbitrarily and capriciously in adopting inconsistent rules on short selling. *See Nat'l Assoc. of Private Fund Managers, et al. v. SEC*, No. 23-60626 (filed Dec. 13, 2023).

⁵ MFA concurrently submits a more detailed letter requesting for relief on the Short Position Reporting Rule.

⁶ Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers, 89 Fed. Reg. 17984 (Mar. 12, 2024), available at: https://www.govinfo.gov/content/pkg/FR-2024-03-12/pdf/2024-03473.pdf.



Accordingly, MFA urges the SEC to provide registrants with an extension of the compliance date of New Form PF until September 12, 2025.

4. Immediately halt the Commission practice of regulation through enforcement, review current cases for Commission overreach, and dismiss or withdraw cases, as appropriate.

The SEC Division of Enforcement under the outgoing regime has engaged in a widespread practice of regulation by enforcement. In bringing enforcement actions that are overreaching and/or inconsistent with the Commission's or SEC staff's past interpretation of securities laws and regulations, the Commission puts market participants in the unfair position of choosing to settle an unwarranted enforcement action or to spend years in litigation with the SEC. This enforcement practice circumvents the Administrative Procedure Act, violates market participants' right to due process, and imposes significant costs and burdens on investors, markets, and the economy. Accordingly, MFA urges the SEC to immediately halt its practice of regulation by enforcement, review current cases for Commission overreach, and to dismiss or withdraw cases, as appropriate.

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MFA appreciates your consideration of our recommendations. We look forward to working with the Commission in developing long-term recommendations to improve securities regulation, support U.S. economic growth, and the well-being of all Americans. We would be pleased to discuss our recommendations in further detail. Please do not hesitate to reach out to Jennifer W. Han, Chief Legal Officer & Head of Global Regulatory Affairs, or me.

Sincerely, /s/ Bryan Corbett

Bryan Corbett
President and Chief Executive Officer

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⁷ See Letter from MFA, AIMA, IAA, and SIFMA AMG to Vanessa Countryman, Secretary, SEC, and Christopher Kirkpatrick, Secretary, CFTC (Dec. 13, 2024), available at: Form-PF-Reporting-Extension-Request-As-submitted-on-12.13.24.pdf.