



May 28, 2026

Via Electronic Mail

Jamie Selway
Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Empirical Analysis Supporting Modernization of Rule 105 of Regulation M to Promote Capital Formation

Dear Director Selway:

MFA, AIMA, and SIFMA¹ appreciate the opportunity to supplement the MFA’s and AIMA’s September 2025 submissions that recommended ways in which the Securities and Exchange Commission (“**SEC**” or “**Commission**”) could modernize Rule 105 of Regulation M (“**Rule 105**” or the “**Rule**”) under the Securities Exchange Act of 1934 (“**Exchange Act**”)² to promote capital formation and improve regulatory efficiency.³ In this letter, we provide an empirical analysis that demonstrates how Rule 105 impedes capital formation by adversely affecting the pricing of follow-on and secondary offerings.

We support the regulatory objectives of Rule 105; however, the Rule is no longer fit for purpose.⁴ The Rule fails to account for how equity securities are offered to investors,

¹ Descriptions of these trade associations are included in Appendix A.

² 17 CFR § 242.105.

³ See Letter from Jennifer W. Han, Chief Legal Officer & Head of Global Regulatory Affairs, MFA, to Jamie Selway, Director, Division of Trading and Markets, SEC (Sept. 16, 2025), available at: [MFA-Letter-re-Reforming-Rule-105-of-Regulation-M-As-submitted-9.16.25.pdf](#); Letter from Jiří Król, Deputy CEO, Global Head of Government AIMA, to Ms. Vanessa Countryman, Secretary, SEC (Sep. 16, 2025), available at: [Petition for rulemaking to amend Rule 105 of SEC Regulation M](#).

⁴ Recently, the Commission proposed amendments that would make Form S-3 available to significantly more issuers, thereby expanding the scope of eligibility to conduct follow-on and secondary offerings, precisely those offerings that raise the concerns with respect to Rule 105 discussed in this letter. See SEC, “Registered Offering Reform”, File. No. S7-2026-17 (May 19, 2026), available at: <https://www.sec.gov/files/rules/proposed/2026/33-11418.pdf>.



particularly the dramatic growth of overnight or one-day marketed offerings subject to Rule 105 (“**Covered Offerings**”). Moreover, since Rule 105 was last updated more than 18 years ago, the Rule unnecessarily restricts the ability of many institutional investment managers (“**Investment Managers**”) to commit capital to participate in Covered Offerings.

The market for Covered Offerings has evolved dramatically since 2007, with Covered Offerings becoming the primary means for issuers and selling security holders to raise capital through follow-on and secondary offerings conducted on a firm commitment basis. For example, of the 1,363 follow-on or secondary offering deals we analyzed from 2022 to 2025, 94.25% were overnight or one-day marketed deals.

Rule 105 does not work for these Covered Offerings because the Rule’s five business-day restricted period captures investors who, just by chance, happened to engage in short selling *before the public announcement* of the Covered Offering and therefore, by definition, without any intent to depress the price of Covered Offerings or to realize a profit by covering the short sale with securities received in the Covered Offering.⁵ The application of the Rule’s prohibitions to trading activity that takes place prior to a public announcement of a Covered Offering has produced unintended negative consequences in the market for these offerings by reducing pricing efficiency and, as a result, increasing market discounting. In addition, the Rule’s bona fide purchase exception often is not available in these situations, leaving potentially interested investors who sold short before announcement with no option but to decline participation in the Covered Offering.

Modernization of Rule 105 that includes, for example, clearer standards, intent-based considerations, or safe harbors for bona fide hedging and liquidity provision, would better realign Rule 105 with its original purpose. Economically, such reforms would be designed to:

- Preserve protections against actual manipulation;
- Enhance participation by Investment Managers;
- Improve pricing efficiency and reduce issuance costs;

⁵ Although the Rule’s restricted period may, in some cases, be shorter than five business days before pricing (*e.g.*, where the registration statement for the Covered Offering is initially filed within such five business-day period), the experience of Investment Managers is that this takes place only in a small percentage of all Covered Offerings that occur on an overnight basis.



- Support capital formation without compromising market integrity; and
- Result in higher prices for Covered Offerings, thus benefitting such sales by issuers and selling shareholders.

In short, modernizing Rule 105 would strengthen—not weaken—the independent market dynamics the Rule was designed to protect.

In the following, we begin by describing the core objectives of Rule 105, the current impediments to capital formation, and finally provide empirical observations on participation by Investment Managers in Covered Offerings.

I. Rule 105’s Core Objective and the Importance of Economic Calibration

Rule 105 is designed to protect the integrity of Covered Offerings by preventing manipulative short selling that could artificially depress the pricing of such offerings. As the Commission explained, the Rule seeks to “foster secondary and follow on offering prices that are determined by independent market dynamics and not by potentially manipulative activity.”⁶ That objective is sound and broadly supported by market participants.

In its current form, however, Rule 105 penalizes routine trading behavior even in the absence of manipulative intent, informational advantage, or price impact. *The result has been a measurable contraction in investor participation in Covered Offerings, which indicates higher issuance costs for issuers and weaker price discovery—outcomes that are inconsistent with the Commission’s mandate to facilitate capital formation.*

As shown in Section II below, a core economic consequence of Rule 105 is a reduction in the number of investors willing or able to participate in Covered Offerings. Faced with strict liability, ambiguous standards, and the risk of significant penalties—even where short sales are unrelated to an offering—many Investment Managers rationally choose to abstain from participation altogether. This negatively impacts capital formation because Investment Managers play a central role in the functioning of primary and secondary securities markets. Economically, they serve several interrelated functions:

⁶ Securities Exchange Act Release No. 56206 (Aug. 6, 2007), 72 Fed. Reg. 45094, 45096 (Aug. 10, 2007) (the “**Adopting Release**”).



- Supporting the efficient execution of overnight and block transactions, in which issuers or selling shareholders must place with investors substantial volumes of securities within a highly compressed time window;
- Absorbing risk by committing capital to offerings that require substantial balance sheet capacity and portfolio flexibility;
- Facilitating price discovery by incorporating firm specific and broader market information into trading decisions before and throughout the offering process; and
- Enhancing distribution efficiency.

Rule 105 currently results in a smaller pool of potential buyers, particularly for offerings that depend on a limited number of sophisticated institutions capable of absorbing large allocations. This may lead to:

- Less competitive book building;
- Greater bargaining power for remaining buyers;
- Increased discounts relative to fair value to ensure full distribution.

These effects are most pronounced in overnight or one-day marketed Covered Offerings, where investors cannot anticipate the transaction or adjust positions in advance. In this context, disqualifying participation in Covered Offerings based on prior short sales—regardless of intent or knowledge—effectively penalizes routine trading activity, including in unrelated positions common to multi-strategy Investment Managers.

The Rule’s “bona fide purchase” exception is largely unavailable in Covered Offerings because purchases must be completed no later than the business day prior to pricing, a condition that cannot be satisfied in overnight or one day marketed offerings.⁷ For example,

⁷ This is because, as discussed in the Adopting Release, the SEC intended for there to be a full trading session cooling off period between the completion of the bona fide purchase(s) and the pricing of the offering. See Adopting Release, 72 Fed. Reg. at 45097-98. One way to address the unavailability of the bona fide purchase exception in such situations would be to amend the exception to eliminate the requirements that the purchase(s) occur “during regular trading hours” and “no later than the business day prior to the day of pricing” (*i.e.*, such that bona-fide purchases could be effected in the after-hours market after the announcement of an overnight deal and/or during the trading session immediately preceding



only 6.75% of the 1,363 follow-on or secondary offering deals we analyzed from 2022-2025 were eligible for the bona fide purchase exception.

II. Empirical Observations on Participation by Investment Managers in Covered Offerings

Pricing efficiency of Covered Offerings depends on the participation of informed traders willing to commit capital at prices that reflect present valuations. When these participants are excluded, prices become less efficient. The 2007 amendment to Rule 105 made overnight offerings significantly more expensive for issuers and selling shareholders, with no offsetting market benefit. This section presents empirical observations on Investment Managers’ participation in secondary offerings and provides estimates of the extent to which Rule 105 constrains their participation.

As demonstrated by Exhibit 1 below, Rule 105 materially reduces institutional participation in Covered Offerings, with economically meaningful consequences for capital formation. Across responding firms, Exhibit 1 shows estimated uninvested capital for the years 2021-25 and deals not pursued annually due to Rule 105’s prohibition. These figures are consistent with the conclusion that the current Rule meaningfully restricts the supply of capital in Covered Offerings.

Exhibit 1. Aggregate Estimates of Participation Foregone in Covered Offerings Due to Rule 105

Year	Amount of Uninvested Capital	Deals Not Pursued
2025	\$7,602,963,118	575
2024	\$9,141,302,523	778
2023	\$7,019,470,279	820

the pricing in a one-day marketed deal). However, we believe this would be a substantially less desirable means of addressing the issue, as it arguably would introduce additional artificial market influences into the period immediately preceding pricing, whereas carving pre-announcement short sales out of the Rule’s prohibitions would simply recognize that such pre-announcement short sales were part of normal market activity uninfluenced by the motives the Rule is designed to protect against.



2022	\$4,217,525,835	603
2021	\$10,155,734,969	920

Note: This exhibit reports respondent-level aggregate estimates for calendar years 2021 through 2025. “Amount of Uninvested Capital” is the aggregate amount of capital respondent firms indicated they were unable to deploy in Covered Offerings due to Rule 105. “Deals Not Pursued” is the aggregate number of Covered Offerings respondent firms indicated they were unable to participate in due to Rule 105.

III. Academic Research Supports Empirical Observations on Participation by Investment Managers in Covered Offerings

Academic research conducted after the adoption of Rule 105 of Regulation M supports our empirical observations with respect to the Rule. A study of the Rule’s effects shows that:

- After the 2007 amendment, the average discount on overnight offerings nearly doubled, rising from 3.62% to 6.24%. Comparable non-overnight offerings showed no meaningful change in discounts over the same period.
- Investors participating in overnight offerings generally could not have known about the offerings before the announcement and had little practical ability to cure pre-announcement short sales before pricing.
- This pattern is consistent with Rule 105 excluding potential investors whose short sales were unrelated to the offering, rather than with the rule’s objective of reducing manipulative short selling.
- Issuers and selling shareholders bore the cost through lower offering prices and higher effective cost of capital. For a typical \$200 million overnight offering, the academic research suggests that the additional issuance cost is approximately \$3.32 million.⁸

⁸ See Autore, D. M., & Gehy, D. (2013). Changing the rules again: Short selling in connection with public equity offers. *Journal of Banking & Finance*, 37(6), 1974–1985. <https://doi.org/10.1016/j.jbankfin.2013.01.014>.



This outcome reflects a reduction in eligible demand rather than evidence that the Rule deterred manipulative short selling. In an overnight offering, investors who sold short before learning of the offering may be barred from participating and have no practical opportunity to cure the short sale before pricing. Excluding these otherwise willing buyers makes it more difficult to achieve the issuer’s funding objectives. To clear the offering, issuers may set a lower offer price, which may increase the discount to the price to the public. These issuance costs can reduce offering proceeds and raise the effective cost of capital formation.

These conclusions are consistent with the experiences of MFA and AIMA members and the evidence presented above.

IV. Conclusion

From an empirical standpoint, the current application of Rule 105 of Regulation M to overnight and one-day offerings imposes high and unnecessary costs on issuers, investors, and U.S. capital markets, no longer fully advancing the regulatory objective of safeguarding registered offerings from market manipulation. By working with market participants to adopt common-sense relief, the Commission can restore Rule 105 to its intended role: preventing abusive conduct while facilitating efficient capital formation.

* * * *

We appreciate your consideration of our analysis. We look forward to working with the Commission to improve securities regulation to protect investors, support U.S. economic growth, and promote capital formation. We would be pleased to discuss our analysis and recommendations for revising Rule 105 in further detail. Please do not hesitate to reach out to us with any questions regarding this letter.

Respectfully yours,

MFA SIFMA AIMA

cc:

- Honorable Paul S. Atkins, Chairman
- Honorable Hester M. Peirce, Commissioner
- Honorable Mark T. Uyeda, Commissioner



Appendix A

MFA

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.

AIMA

The Alternative Investment Management Association (“**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, 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, publications and practical tools like its Due Diligence Questionnaires and industry sound practice guidance available exclusively to members, enable firms to actively refine their business practices, policies and processes to secure their place in that success.

SIFMA

SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s one million employees, we advocate on legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in



New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.