



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: Recommendation for Clarifying the Separate Accounts Exception in Rule 105 of Regulation M to Promote Capital Formation

Dear Director Selway:

MFA and AIMA¹ appreciate the opportunity to supplement our September 2025 submissions to you 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 (“**September 2025 Filings**”).³

We fully support the laudable goal of Rule 105; however, the Rule is no longer fit for purpose. The Rule fails to account for how equity securities are offered to investors, particularly the dramatic growth of overnight or one-day marketed follow-on or secondary offerings (“**Covered Offerings**”). Moreover, since Rule 105 was updated 18-plus years ago, the way in which SEC staff has interpreted and enforced the Rule unnecessarily restricts the ability of many institutional investment managers (“**Investment Managers**”) to commit capital to participate in Covered Offerings.

¹ Descriptions of the 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.](#)



In a separate letter, MFA and AIMA recommend that the Commission provide exemptive relief with respect to the restricted period in Rule 105 to promote capital formation. The clarification of the Separate Accounts Exception requested in this letter complements, but is not a substitute for, our request that the Commission provide exemptive relief with respect to the restricted period, which we think is necessary regardless of the clarification the Commission may grant with respect to the Separate Accounts Exception.

In the following, we provide a recommendation on how the Commission can provide clarity regarding the operation of the Separate Accounts Exception (defined below).

Recommended Clarity re: Operation of the Separate Accounts Exception

***Recommendation:** The separate accounts indicia, including Indicia 6, should be narrowly tailored to the actual language from the Rule and the guidance from the Adopting Release, and should not be interpreted more broadly to apply to other activity by senior management that is unrelated to the particular Covered Offerings in question.*

The 2007 Adopting Release provided additional guidance, recognizing that Indicia 6 “is designed to ensure non-coordination by a single person with control over multiple accounts.” In practice, market participants have observed that the SEC’s Divisions of Examinations and Enforcement treat *each* of the six indicia in the Separate Accounts Exception as *required* elements for reliance on the exception.

Questions have arisen in particular with respect to the sixth indicia of separateness (“**Indicia 6**”), which states:

Personnel with oversight or managerial responsibility over multiple accounts in a single entity or affiliated entities, and account owners of multiple accounts, do not have authority to execute trades in individual securities in the accounts and in fact, do not execute trades in the accounts, and do not have the authority to pre-approve trading decisions for the accounts and in fact, do not pre-approve trading decisions for the accounts.

Senior management may generally engage in oversight and risk management across separate accounts, but they are not involved in specific trading decisions for the separate accounts or the specific decisions to participate in a Covered Offering. While we believe the 2007 Adopting Release clearly delineates the scope of permissible activities by senior managers and other individuals who have access to information of multiple separate accounts as part of their oversight responsibilities, we are concerned about the possibility



that the SEC staff could continue to take a broader interpretation of Indicia 6 that would not be supported by the guidance from the Adopting Release.

Stated another way, the separate accounts indicia, including Indicia 6, should be narrowly tailored to the actual language from the Rule and the guidance from the Adopting Release, and should not be interpreted more broadly to apply to other activity by senior management that is unrelated to the particular Covered Offering(s) in question. Properly defining the scope of the Separate Accounts Exception and indicia would allow senior management to utilize strategies, including in “individual securities,” which are generally designed to deploy capital in an efficient and cost-effective manner, and consistent with their fiduciary duties to investors.

We have included, as an Appendix, a proposed FAQ to be issued by the Division of Trading and Markets concerning the operation of the Separate Accounts Exception.

* * *

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 modernizing Rule 105 in further detail. Please do not hesitate to reach out to us with any questions regarding this letter.

Respectfully yours,

MFA 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.



Appendix B

Proposed FAQ for Issuance by SEC Division of Trading and Markets

Question: Included within the six “Indicia of Separateness” from the 2007 Adopting Release on Rule 105 of Regulation M is the sixth indicia, which states that:

Personnel with oversight or managerial responsibility over multiple accounts in a single entity or affiliated entities, and account owners of multiple accounts, do not have authority to execute trades in individual securities in the accounts and in fact, do not execute trades in the accounts, and do not have the authority to pre-approve trading decisions for the accounts and in fact, do not pre-approve trading decisions for the accounts.

Is this sixth indicia of separateness intended to prohibit senior managers or others with transparency and oversight over multiple separate accounts from engaging in any trading (or pre-approval of trading) in individual securities, even if wholly unrelated to an offering subject to Rule 105?

Answer: No. The 2007 Adopting Release provided specific guidance on the intended scope of the sixth indicia of separateness, namely that it “is designed to ensure non-coordination by a single person with control over multiple accounts. Thus, such person may neither direct an account to sell short during the restricted period, nor direct another account to purchase securities in an offering.”

Individuals and firms relying on the Separate Accounts Exception should have carefully constructed processes, policies, and procedures to enable senior management, risk management, and others with transparency and oversight over multiple separate accounts to both meet their fiduciary obligations and simultaneously comply with the Separate Accounts Exception. It would be inappropriate and inconsistent with the sixth indicia of separateness for personnel with oversight or managerial responsibility over multiple separate accounts to (i) sell short, or direct another person to sell short, during the restricted period for a specific offering subject to Rule 105, and (ii) purchase, or direct another separate account to purchase, in such an offering.

However, it is permissible under the sixth indicia of separateness for personnel with oversight or managerial responsibility over multiple separate accounts to generally engage in oversight and risk management across the separate accounts which is unrelated to participation in offerings subject to Rule 105. This includes utilizing strategies, including in “individual securities,” which are for risk management purposes and/or are generally designed to deploy capital in an efficient and cost-effective manner, and consistent with their fiduciary duties to investors.



In addition, as noted in the 2007 Adopting Release, the staff reminds firms that compliance with each of the six indicia of separateness is not required in order to be eligible for the Separate Accounts Exception. Specifically, the 2007 Adopting Release recognized that, “depending on the facts and circumstances, accounts not satisfying each of these conditions may nonetheless fall within the exception if the accounts are separate and operating without coordination of trading or cooperation.”