

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Submitted via email to CountrymanV@SEC.GOV

September 17, 2025

Dear Ms. Countryman,

Petition for Rulemaking to Amend Rule 3c-5 under the Investment Company Act of 1940 to Expand the Category of Employees Qualifying as “Knowledgeable Employees”

The Alternative Investment Management Association¹ (“AIMA” or the “Petitioner”) respectfully petitions the Securities and Exchange Commission (the “Commission” or the “SEC”) pursuant to Rule 192 of the Commission’s Rules of Practice, 17 C.F.R. § 201.192(a), for a rulemaking to amend Rule 3c-5 under the Investment Company Act of 1940, as amended (the “1940 Act”), §§ 17 C.F.R. 270.3c-5, to expand the types of employees that would qualify as “knowledgeable employees” under that Rule by including two alternative qualifying measures for employees who are also not performing solely clerical, secretarial or administrative functions: (1) a simple, bright-line test based on annual compensation; or (2) holding a Series 65 license.

Notably, AIMA’s petition is being made at a time when several actions have been proposed or taken to expand retail investor access to alternative assets, including H.R. 3339 - *Equal Opportunity for All Investors Act of 2025*² and Executive Order “Democratizing Access to Alternative Assets for 401(k) Investors”³. To date, none of these actions address the issues raised herein. AIMA believes that the amendments proposed in this petition would address this incongruence.

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, 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. For further information, please visit AIMA’s website, www.aima.org.

² H.R.3339 – 119th Congress (2025-2026), Equal Opportunity for All Investors Act of 2025, available at <https://www.congress.gov/bill/119th-congress/house-bill/3339>

³ August 7, 2025 Executive Order, “Democratizing Access to Alternative Assets for 401(k) Investors”, <https://www.whitehouse.gov/presidential-actions/2025/08/democratizing-access-to-alternative-assets-for-401k-investors/>

Background

Many investment advisers to private funds seek to provide a means for non-clerical employees to invest in the private funds under management but are stymied by the prohibition against those who do not either meet the income/asset thresholds for all investors or satisfy one of the available alternative measures in Rule 3c-5. Allowing employee investment in the funds under management aligns interests between the employee and employer, deepening their connection. Investment in the funds also provides these employees with investment opportunities they otherwise must seek through personal trading, which at best can be distracting and at worst may conflict with a firm's personal trading policies or appear to benefit from the firm's trading activity.

The benefit of employee investment in the firm's funds is not lost on investors, either; they regularly ask whether employees are invested and to what extent, viewing such investments as a positive sign of commitment to the firm and internal confidence in the long-term success of the funds under management.

In August 2020, Rule 501(a) of Regulation D⁴ was amended to expand the definition of "accredited investor" in an effort to broaden access to private funds.⁵ More specifically, the 2020 amendments permitted the SEC to "designate qualifying professional certifications, designations, and other credentials by order, with such designation to be based upon consideration of all the facts pertaining to a particular certification, designation, or credential."⁶

In an order accompanying the adopting release for the 2020 Amendments, the SEC identified the Investment Adviser Representative license (Series 65), among other qualifications, as meeting the attributes specified in Rule 501(a)(10).⁷ Accordingly, it can be reasonably concluded that the SEC believed that persons obtaining the Series 65 license have demonstrated their "comprehension and sophistication in the areas of securities and investing" and "can reasonably be expected to have sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of a prospective investment."⁸ The study outline for the Series 65, which includes a section on characteristics of pooled investments including fee structures and other costs (e.g., performance fees), further supports this conclusion.⁹

At the time of the release, the SEC identified certain alternative criteria as "a nonexclusive list of attributes" for the accredited investor definition, noting that, "this approach will provide the Commission with flexibility to ...designate other certifications, designations, or credentials if new certifications, designations, or credentials develop or are identified that are consistent with the specified criteria and that the Commission determines are appropriate."¹⁰

While helpful, the 2020 Amendments were of limited utility to many employees of fund managers whose funds under management charge performance fees. Under Rule 205-3(d)(1) of the Investment Advisers Act of 1940, as amended (the "Advisers Act"), investors in private funds whose investment advisers charge performance

⁴ Rule 501(a) of Regulation D under the Securities Act of 1933, as amended, § 230.501(a).

⁵ SEC Final Rule, "Accredited Investor Definition", 85 FR 64234 (Oct. 9, 2020) ("2020 Amendments").

⁶ *Id.* at 64241.

⁷ SEC Order, "Order Designating Certain Professional Licenses as Qualifying Natural Persons for Accredited Investor Status", 85 FR 64234 (Oct. 9, 2020).

⁸ 2020 Amendments, *supra* note 3, at 64235.

⁹ North American Securities Administrators Association Series 65 – Uniform Investment Adviser Law Exam outline: <https://www.nasaa.org/wp-content/uploads/2023/02/Series-65-Outline-June-2023.pdf> ("Exam Outline").

¹⁰ 2020 Amendments, *supra* note 3, at 64241. Currently, H.R. 3339 - Equal Opportunity for All Investors Act of 2025 – a bill that would require the Commission to establish another such examination to demonstrate financial sophistication for purposes of participating in private offerings of securities – is pending in Congress, having been passed by the House of Representatives on July 21, 2025. H.R.3339 – 119th Congress (2025-2026), Equal Opportunity for All Investors Act of 2025, available at <https://www.congress.gov/bill/119th-congress/house-bill/3339>. Should this bill eventually become law, the alternative examination may also be relevant for purposes of this Petition.



fees must be “qualified clients” - a designation of financial sophistication with higher net worth or income requirements than an accredited investor – and certain “Knowledgeable Employees” who are defined in Rule 3c-5(a)(4) under the 1940 Act. Although the 2020 Amendments also enabled “Knowledgeable Employees” of a private fund adviser to qualify as Accredited Investors for investments in their employer’s private funds under management - thereby acknowledging their financial sophistication – that accredited investor designation bears no effect on the Rule 205-3 restriction related to performance fees.

Distinct from the accredited investor criteria, the Knowledgeable Employee definition includes executive employees as well as certain non-executive employees who actively participate in the investment activities of the fund, any other private fund or any investment company the investment activities of which are managed by the fund’s affiliated management person. We agree that this participation in investment activities demonstrates an employee’s sufficient knowledge and expertise to participate in investment opportunities that do not have the additional protections provided by registration under the Securities Act. However, it should not be the only path to qualifying as a Knowledgeable Employee.

Many other employees materially support the firm, the investment process, the funds under management, and/or fund investors, yet are excluded from the Knowledgeable Employee definition. For example, a staff member in client services who handles requests for information, responds to due diligence questionnaires, or compiles information used in marketing material could be argued as one of the most knowledgeable at the firm in terms of investment process and risks. Still, this employee typically cannot invest in the funds under management because they cannot satisfy qualified client wealth requirements, or do not hold an executive-level position or have direct involvement in the investment process itself to qualify for the Knowledgeable Employee exemption. Furthermore, under the present definition of Knowledgeable Employee, employees who directly participate in the firm’s investment activities still must sit on the sidelines for 12 months before investing, unless a prior role could count toward this time requirement.

The Petitioner appreciates the safeguards that are intended by SEC Rule 3c-5(a)(4), in the same way more general restrictions exist to prevent those without investment sophistication from exposure to the more pronounced risks of private fund investment. However, the majority of employees actively involved in an investment adviser’s business are well aware of these risks, working continuously to avoid, mitigate, or inform fund investors of them while contributing to investor protection and success. The current paradigm effectively blocks investment by employees who are demonstrably knowledgeable about investing to all but the SEC. AIMA therefore suggests two additional means of satisfying the knowledgeable employee requirements under Rule 3c-5, which are similar to existing options but untethered from certain additional, impeding criteria. Adding these alternative paths of qualification would align well with the Commission’s efforts to expand investment in private funds.

Rather than add further ambiguity to the Knowledgeable Employee criteria in order to account for knowledgeable-but-excluded employees, the Petitioner proposes two additional, straightforward approaches to satisfying the Knowledgeable Employee requirements for employees of SEC-registered investment advisers, State-registered investment advisers and exempt reporting advisers meeting the requirements of Section 203(m) of the Advisers Act and Rule 203(m)-1 thereunder:

1. A bright-line compensation test for employees who receive, or can reasonably expect to receive, a minimum total compensation of \$200,000 per year; and
2. Employees who obtain or maintain in good standing, a Series 65 license, passing the Uniform Investment Adviser Law Examination.

Neither of these proposed approaches would have any additional stipulations, such as tenure, title or direct involvement in investment activities. However, both of these proposed approaches may explicitly exclude



employees performing solely clerical, secretarial or administrative functions uncorrelated to the investment process.

Supporting Arguments

For the bright-line compensation test, the Petitioner factored in the compensation differences between various investment adviser firms. Compensation for an equivalent role at various firms can vary greatly, with differences driven by size, investment profile, geographic location, new versus established managers and so forth. This said, a \$200,000 annual compensation would denote a more experienced employee in a materially supportive role at most investment advisers and is certain to capture the more senior employees. As well, this income level suggests a certain degree of financial literacy and ability to bear potential risks.

As a result, the addition of a bright-line compensation test alone is not sufficient to address the shortcomings of the current knowledgeable employee criteria. A \$200,000 compensation level is certain to exclude many employees who have a deep understanding of the private fund investment process and risks but receive lower compensation for a variety of reasons. As noted above, compensation practices can vary greatly; a small firm, a new launch or an adviser in a geographic location with a substantially lower cost of living are likely to pay employees less than larger, established firms in high-cost metropolitan areas. Their employees are no less knowledgeable, yet their merit as an investor is judged by their compensation – the same problem that the Commission sought to correct in revising the Accredited Investor qualifications.

As a practical solution, the Petitioner recommends also making available a long-established industry examination for investment advisers as a means of satisfying the Knowledgeable Employee designation. As noted above, in the order accompanying the 2020 Amendments, the SEC designated Series 65 license as a “Qualifying Credential” for designation as an Accredited Investor, noting that it demonstrates “a sufficient level of financial sophistication to be able to evaluate and participate in investment opportunities that do not have the additional protections provided by registration under the Securities Act.”¹¹ We see no extenuating circumstances that make the Series 65 suitable for demonstrating requisite financial sophistication for investment in private funds, yet ineligible to demonstrate understanding of the impact of performance fees charge by private fund managers. The Series 65 examination specifically covers investment advisory fees, including how they are structured, disclosed, regulated, and ethical considerations such as conflicts of interest, among other aspects.¹²

The Uniform Investment Adviser Law Examination which is required for a Series 65 license is used by state regulators and the SEC alike to test the knowledge of a person seeking to qualify as an investment adviser representative who makes recommendations for investment products bearing all manner of fee structures. Notably, the Series 65 license does not have specific prerequisites and its enhanced uniform qualification standards are seen as a benefit by the industry as a whole. It is because the Series 65 is designed – and periodically updated - to “reliably and validly demonstrate an individual’s comprehension and sophistication in the areas of securities and investing”¹³ that we believe it also can be an appropriate proxy in demonstrating the required financial sophistication of a Knowledgeable Employee at an investment adviser that is actively managing assets.

The implicit requirement under Rule 3c-5 that the person is an employee of an investment adviser that actively manages assets (i.e., the private funds in which the employee is seeking to invest) should address the concerns the Commission had with members of the public who also may legally take this unrestricted test in order to become an accredited investor for the purposes of investing in private funds. Notably, in 2021, former registrant

¹¹ 2020 Amendments, *supra* note 3, at 64242.

¹² Exam Outline, *supra* note 9.

¹³ Rule 501(a)(10)(ii) of Regulation D under the Securities Act of 1933, as amended, § 230.501(a)(10)(ii).



Nathan H. Leung¹⁴ attempted to satisfy the accredited investor standard by obtaining a Series 65 license and registering an ineligible investment adviser with the SEC for the sole purpose of supporting his Series 65. We do not opine on whether the Series 65 can, as a standalone credential, become a means of demonstrating the knowledge and sophistication required by the accredited investor standard. Rather, we note that the current requirement to couple the Series 65 with an active investment adviser would be met through this approach to knowledgeable employees under Rule 3c-5.

Requested Relief

The Petitioner hereby respectfully requests that the Commission adopt a brightline income test of \$200,000 and an alternative, knowledge-based approach using the Series 65 examination as two additional means of satisfying the knowledgeable employee requirements for employees of SEC-registered investment advisers, State-registered investment advisers and exempt reporting advisers, full text of which can be found in Appendix A).

III. Conclusion

Accordingly, the Petitioner requests, on behalf of its members, that the Commission propose and adopt the two aforementioned revisions to Rule 3c-5 under the 1940 Act to expand the definition of “Knowledgeable Employee”.

The text of the proposed rule amendments is set forth in *Appendix A* to this letter.

* * * *

We appreciate the Commission’s willingness to consider this request. If you have questions or require further information, please contact Jennifer Wood of AIMA at jwood@aima.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Król", is positioned below the "Respectfully submitted," text.

Jiří Król
Deputy CEO
Global Head of Government Affairs

cc: Chairman Paul S. Atkins
Commissioner Hester M. Peirce
Commissioner Caroline A. Crenshaw
Commissioner Mark T. Uyeda
Brian T. Daly, Director of Investment Management
Sarah ten Siethoff, Deputy Director of Investment Management

¹⁴ Nathan H. Leung (CRD# 7375692); Leung Enterprises (CRD# 314878/SEC# 801-121441), registration terminated. Leung’s investment adviser was registered with the SEC from 2021 until it was examined in 2023, finding that his registration was ineligible and requiring him to withdraw. Leung’s account of his experience can be read here: <https://www.natecation.com/accredited-investor-investing-startups-series-65/>.



APPENDIX A

Text of Proposed Rule Amendments

Additions to current regulations in ***bold italics and underlined***. Deletions in ~~strikethrough~~.

§ 270.3c-5 Beneficial ownership by knowledgeable employees and certain other persons.

(a) As used in this section:

(1) The term Affiliated Management Person means an affiliated person, as such term is defined in section 2(a)(3) of the Act [15 U.S.C. 80a-2(a)(3)], that manages the investment activities of a Covered Company. For purposes of this definition, the term “investment company” as used in section 2(a)(3) of the Act includes a Covered Company.

(2) The term Covered Company means a Section 3(c)(1) Company or a Section 3(c)(7) Company.

(3) The term Executive Officer means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for a Covered Company or for an Affiliated Management Person of the Covered Company.

(4) The term Knowledgeable Employee with respect to any Covered Company means any natural person who is:

(i) An Executive Officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the Covered Company or an Affiliated Management Person of the Covered Company;~~or~~

(ii) An employee of the Covered Company or an Affiliated Management Person of the Covered Company (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of such Covered Company, other Covered Companies, or investment companies the investment activities of which are managed by such Affiliated Management Person of the Covered Company, provided that such employee has been performing such functions and duties for or on behalf of the Covered Company or the Affiliated Management Person of the Covered Company, or substantially similar functions or duties for or on behalf of another company for at least 12 months;~~‡~~

(iii) An employee of the Covered Company or an Affiliated Management Person of the Covered Company (other than an employee performing solely clerical, secretarial or similarly administrative functions) who receives, or can reasonably expect to receive, a minimum total compensation of \$200,000 per year by the Covered Company or an Affiliated Management Person of the Covered Company; or

(iv) An employee of the Covered Company or an Affiliated Management Person of the Covered Company (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) obtains and/or maintains in good standing the Licensed Investment Adviser Representative license (Series 65) as a demonstration of their financial proficiency.

(5) The term Section 3(c)(1) Company means a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the Act [15 U.S.C. 80a-3(c)(1)].

(6) The term Section 3(c)(7) Company means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a-3(c)(7)].



(b) For purposes of determining the number of beneficial owners of a Section 3(c)(1) Company, and whether the outstanding securities of a Section 3(c)(7) Company are owned exclusively by qualified purchasers, there shall be excluded securities beneficially owned by:

(1) A person who at the time such securities were acquired was a Knowledgeable Employee of such Company;

(2) A company owned exclusively by Knowledgeable Employees;

(3) Any person who acquires securities originally acquired by a Knowledgeable Employee in accordance with this section, provided that such securities were acquired by such person in accordance with § 270.3c-6.