



January 31, 2019

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Re: Concept Release: Expanding Private Offerings – Potential Areas of Focus

Dear Ms. Zepralka and Ms. Cortes:

The American Investment Council (the “AIC”) is delighted that the Securities and Exchange Commission (the “SEC”) and its staff are considering retail access to private investments. Further to our meeting on December 10, 2018, we enclose for your consideration a list of matters the SEC might explore so as to improve, harmonize, and streamline its current private offering framework while providing greater investment opportunities to retail investors and addressing investor protection concerns. The focus of these questions is on expanding the ability of retail investors to access professionally managed private funds that make investments in private companies. Our questions address (i) limitations on access to private funds; (ii) revisiting the definitions of “accredited investor” and “qualified purchaser”; (iii) increasing the flexibility for Target Date Funds to invest in private funds; (iv) regulatory barriers imposed on closed-end fund investment in private funds; and (v) reexamination of fund of fund arrangements.

The AIC is an advocacy, communications and research organization established to advance access to capital, job creation, retirement security, innovation, and economic growth by promoting responsible long-term investment. In this effort, the AIC develops, analyzes, and distributes information about the private equity and growth capital industry and its contributions to the U.S. and global economy. Established in 2007, and formerly known as the Private Equity Growth Capital Council, the AIC is based in Washington, D.C. The AIC’s members are the world’s leading private equity and growth capital firms, united by their commitment to growing and strengthening the businesses in which they invest. For further information about the AIC and its members, please visit our website at <http://www.investmentcouncil.org>.

AMERICAN INVESTMENT COUNCIL

The AIC appreciates the opportunity to explore an improved private offering framework and would be pleased to further discuss or answer any questions you might have regarding our suggested topics.

Respectfully,



Jason Mulvihill
Chief Operating Officer & General Counsel
American Investment Council

CC: Division of Corporate Finance

William Hinman, Director

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Annex

Potential Questions for Concept Release

We are delighted that the Securities and Exchange Commission (the “SEC”) and its staff are considering retail access to private investments. Set forth below is a list of matters the SEC might consider exploring so as to provide such access to investors in a diversified and generally less risky manner.

| Concept | Potential Questions |
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| <p>Access to Private Funds: Given the SEC’s objective of exploring ways in which smaller investors can gain access to securities issued by private issuers, the SEC should explore ways in which individual investors may obtain access to such issuers through investment vehicles managed by registered investment advisers and other fiduciaries.</p> | <ol style="list-style-type: none"> 1. Do retail investors have access to the same spectrum of investments as institutional investors? If not, what are the causes and consequences of this divide? 2. Are there benefits to allowing retail investors to invest in a diversified portfolio of private placement offerings, such as in a fund managed by a registered investment adviser as opposed to in a single offering? Are there additional benefits to retail investors if such fund is managed by an investment adviser that meets certain protective standards? For example, should such investment manager have appropriate scale in terms of assets under management or ability to supervise compliance and valuation internally (as opposed to through third-party service providers)? Would retail investors benefit from access to investment advisers with extensive experience managing institutional capital? 3. What are the provisions of the securities laws that limit retail access to private funds and how might those provisions be revised to facilitate such access in appropriate circumstances? 4. Should the SEC propose factors, guidelines or criteria for financial intermediaries to consider when recommending private funds or private fund strategies to retail investors? 5. How do other jurisdictions approach retail access to private funds? What are the costs and benefits of these approaches? |

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| <p>Accredited Investor Definition: Retail investor access to private funds is subject to certain limitations imposed by the Securities Act, specifically, the definition of “Accredited Investor” under Securities Act Rule 501.</p> | <ol style="list-style-type: none"> 1. Is the definition of “Accredited Investor” in Rule 501 unduly narrow or limited? Are there other measures of financial sophistication the SEC should consider adding to the definition of “Accredited Investor”? 2. Should the “Accredited Investor” definition be broadened to include any investor who is advised on the merits of making a private placement investment by a fiduciary, such as an SEC- or state-registered investment adviser? Should this category also include an investor who is advised by any other intermediary that has an obligation to act in the best interests of the investor? 3. In order to streamline private placements by private funds that rely on Section 3(c)(7) of the Investment Company Act, should the definition of “Accredited Investor” be amended to specify that a “Qualified Purchaser” is an “Accredited Investor”? |
| <p>Qualified Purchaser Definition: Retail investor access to private funds is also limited by the definition of “Qualified Purchaser” under the Investment Company Act. This definition was adopted in, and has not been modified since, 1996.</p> | <ol style="list-style-type: none"> 1. Is the definition of “Qualified Purchaser” unduly narrow or limited? Should Congress consider revisiting the definition of “Qualified Purchaser”? 2. Should the SEC consider adopting a rule that would permit an investor seeking access to a private fund to be treated as a “Qualified Purchaser” if such access is provided by a fiduciary, such as an SEC- or state-registered investment adviser, or by any other intermediary that has an obligation to act in the best interests of the investor? 3. Should the SEC consider modifying Rule 2a51-3 under the Investment Company Act to treat a fund managed by a registered investment adviser as a “Qualified Purchaser” even if such fund were formed for the purpose of investing in a specific private fund? |
| <p>Target Date Funds, 401(k) Plans and the Mutual Fund Liquidity Limitation: A registered open-end investment company (“mutual fund”) may not</p> | <ol style="list-style-type: none"> 1. Should the SEC consider providing mutual funds greater flexibility to invest in illiquid assets, including private equity funds? 2. Should this approach be limited to mutual funds whose investors are limited to Target Date Funds offered |

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| <p>invest more than 15% of its net assets in illiquid securities. This limits the extent to which a mutual fund may invest in private funds. However, “Target Date Funds” held in 401(k) plans, have longer investment horizons than the typical mutual fund. These funds may not be subject to the same type of liquidity constraints as mutual funds generally.</p> | <p>exclusively to 401(k) plans or similar state-sponsored retirement plans?</p> |
| <p>Closed-End Funds: Certain closed-end funds registered under the Investment Company Act invest a significant portion (more than 15%) of their assets in private funds and (including private equity funds). Currently, the SEC staff requires that offerings of such “registered funds of private funds” be limited to “Accredited Investors”.</p> | <ol style="list-style-type: none"> 1. Should the SEC staff consider easing or eliminating this limitation? Why or why not? Are existing regulations under the Securities Act, Investment Company Act and Investment Advisers Act sufficient to protect retail investors who wish to access such funds? Why or why not? 2. Are there benefits to allowing registered funds of private funds to list their securities on a national securities exchange? Is there a need for additional or revised exchange listing standards to allow such listing? |
| <p>Affiliated Funds of Private Funds:¹ Section 12(d)(1)(G) of the Investment Company Act and Rule 12d1-2 thereunder permit the establishment of fund of fund arrangements involving open-end investment companies. These arrangements provide investors with access to</p> | <ol style="list-style-type: none"> 1. Should the SEC provide greater flexibility to permit affiliated “fund-of-private funds” arrangements similar to fund of fund arrangements involving mutual funds? Would investors benefit by having access to a registered fund of private funds managed by an affiliated investment adviser? 2. What sorts of conditions should be imposed on such arrangements? Should such funds of funds be subject to additional disclosure requirements? |

¹ Certain of these questions are also addressed in the recent release proposing new Rule 12d1-4 under the Investment Company Act (see SEC Rel. No. IC-33329 (Dec. 19, 2018), so it may not be necessary to include all of these questions in the Concept Release.

greater diversification through a registered fund that invests in other registered funds managed by the same investment adviser that sponsors the investing fund.

The Investment Company Act imposes restrictions on the ability of a private fund sponsor to establish a registered “fund of affiliated private funds”; rather, these types of funds, as a practical matter, are established by an unaffiliated investment adviser.