Expanding access to
Non-traditional investments

September 24, 2019

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

VIA ELECTRONIC MAIL: rule-comments@sec.gov

Re: File Number S7-08-19: Concept Release on Harmonization of Securities Offering

Dear Ms. Countryman,

Aditum Alternatives and Aditum Asset Management welcome the opportunity to respond to the SEC's request for comments "on possible ways to simplify, harmonize, and improve the exempt offering framework to promote capital formation and expand investment opportunities while maintaining appropriate investor protections". The Aditum companies' mission is "Expanding access to non-traditional investments". In executing that mission, our current view is that there is more than an adequate supply of capital available to fuel the growth of private companies. Institutional investors and other Qualified Purchasers are competing for investment opportunities. As noted in the forward to the Preqin Quarterly Update: Private Equity & Venture Capital Q2 2019

> "The unprecedented period of fundraising has pushed dry powder to a new high of $1.54tn as of the end of June, meaning that many investors have significant commitments yet to be deployed…
>
> …Private equity is certainly more difficult to navigate than ever, and with almost 4,000 funds seeking capital, the challenges are greater than ever for both for allocators and operators. Long-term performance is strong, investor appetite is substantial and deal opportunities are certainly out there. But for investors and fund managers alike, it will require more intensive analysis, more granular insights and more sophisticated strategies to succeed in private equity than ever before."

The challenge is providing those opportunities to other, smaller investors on a competitive basis. With this in mind, we appreciate the scope of the effort begun by the Commission with this Concept Release. Our responses to select questions posed in the Release are below.

114. Are there any regulatory provisions or practices, including those promulgated or engaged in by the Commission, that discourage or have the effect of discouraging participation by registered investment companies and BDCs in exempt offerings? For closed-end funds and BDCs, are there any existing regulatory provisions or practices that discourage the introduction of investment products that focus on issuers seeking capital at key stages of their growth cycle? If so, how do these regulatory provisions or practices create barriers?

As other commenters have noted, the current position of the Commission's staff is that sales of registered closed-end funds that invest more than 15% of their assets in private funds (including private equity funds) must be limited to Accredited Investors. While this position is not currently in SEC rules or guidance, it has been consistently communicated during the registration review process. It is our view

that the use of underlying private equity funds and adviser-sponsors with experience, access to private company information and deal flow, can substantially reduce risk and improve outcomes for investors in private equity. Of course, this view assumes that the adviser to a registered closed-end fund conducts the appropriate on-going due diligence and monitoring of the underlying adviser-sponsors, in order to be confident of their approach, execution and value added. However, we acknowledge that investing in underlying private equity funds may expose the registered closed-end fund investor to the risks of substantial leverage and as such may require more prominent disclosure.

We recommend that the Commission reverse the staff's current position limiting sales of registered closed-end funds that invest more than 15% of their assets in private equity funds to Accredited Investors, and instead require such registrants to establish financial suitability standards for subscribers akin to those employed by BDCs.

115. What restrictions should there be, if any, on the ability of closed-end funds, including BDCs, to invest in private funds, including private equity funds and hedge funds, and to offer their shares to retail investors? For example, should there be a maximum percentage of assets that closed-end funds and BDCs can invest in private funds? Should such closed-end funds be required to diversify their investments across a minimum number of private funds, if they are not restricting their offerings to accredited investors?

With regard to offering restrictions, please see our response to Question 114. We recommend that closed-end funds that are available to retail investors and invest primarily in private funds should limit each underlying private fund investment to 25% of either closed-end fund assets (if closed-end fund shares are purchased in cash) or closed-end fund commitments (if closed-end fund shares are subscribed via unfunded commitments). As a practical matter based on our experience, to consistently remain within the 25% limit, closed-end funds comprised primarily of private funds will likely have at least 6 underlying private fund investments.

121. Should we consider making any changes to our rules regarding tender offer funds? If so, what type of changes? To what extent would any changes to the interval fund rule lessen the need for tender offer funds? Should we permit tender offer funds to use the conditions described in Rule 23c3-3(c)589 in place of the Exchange Act tender offer rules, if investors in those tender offer funds are limited to accredited investors or qualified purchasers?

Given the institutional interest and activity in private equity, it would stand to reason that the broader investing public would quickly embrace an opportunity to invest in private equity. Over the past few years, such opportunities have been available to Accredited Investors in the form of registered closed-end tender offer funds of private equity funds. However, despite the launch of several such registered closed-end funds, they have raised relatively modest assets, particularly over the past two years. We believe that those Accredited Investors who are not also Qualified Purchasers have hesitated to invest in private equity in large part due to liquidity concerns**.** By definition, Accredited Investors who are not Qualified Purchasers have less investable assets than Qualified Purchasers, and therefore put a greater emphasis on the potential to liquidate their investments during periods of personal and market duress. It is exactly at a time of market duress, when investors may most want liquidity – and may be willing to accept a substantial discount to net asset value, that a tender offer fund of private equity funds is least likely to offer liquidity, in part due to the impact on remaining fund investors.

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We believe that tender offer rule modifications that would permit share repurchases in a combination of cash and in-kind holdings of underlying securities would allow a tender offer fund to provide regularly scheduled tenders as a fundamental policy under a wide variety of fund and market conditions, while still protecting the interests of remaining fund investors. Of course, this would need to be coupled with providing repurchased investors with some form of secondary market access to liquidate the underlying securities received as repurchase proceeds. (Please see our response to Question 128 below.)

128. Does the issue of secondary market liquidity have a significant effect on investors' decision-making with respect to whether to invest in pooled investment vehicles, particularly with respect to closed-end funds and BDCs?

Driven in part by the record levels of dry powder in the form of unfunded commitments, institutional investors seeking immediate private equity exposure are buying interests in existing private equity funds that have already drawn and applied capital. These purchases are generally made in privately negotiated, secondary market transactions between two institutional investors. Historically, these secondary interests were frequently acquired at a discount to the fund sponsor's valuation, as the selling investor experienced a reversal of the illiquidity premium associated with holding the investment over the full 7 to 12 year life of the fund. More recently, secondary investments have at times been acquired at a premium to the fund sponsor's valuation (See Paul J. Davies, "Private Equity: So Hot Even Second-Hand Funds Can Sell at a Premium" Wall Street Journal, June 25, 2018). In addition, over the past several years, the institutional secondary market has grown substantially. As the Financial Times reported,

> "The game of pass the parcel in the private equity industry is booming with secondary market activity — the buying and selling of assets before the end of a PE fund's agreed term — running at record levels…
>
> …Deals worth $42.1bn were completed in the first half of 2019 in the private equity secondary market, up by a third on the same period last year" (See Chris Flood, "Private equity secondary deals soar", The Financial Times, September 15, 2019)

Increased demand led to increased secondary market participation, increased liquidity and more favorable pricing for sellers. However, to date, these benefits have largely accrued only to institutional investors.

Closed-end funds, as institutional investors, have participated in the secondary markets representing the common interests of their fund investors. We propose that, in conjunction with the tender offer rule changes suggested in response to Question 121, repurchased investors who have received in-kind holdings as proceeds, be given the opportunity to participate in adviser managed liquidation vehicles, whose purpose will be to expediently dispose of those in-kind holdings on behalf of the repurchased investors in the secondary market.

122. If a target date retirement fund were to seek a limited amount of exposure to exempt offerings in its portfolio, what measures, if any, should we consider taking to enable this? Similarly, if investment advisory services, including robo-advisers, that are focused on retirement savings seek to include a limited amount of exposure to securities from exempt offerings as part of a diversified retirement portfolio that they recommend to retail investors, should we consider making any changes to our rules to enable this? If so, what types of changes?

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Both target date funds and collective investment trusts (CITs) are growing in popularity among DC plans. As reported in Pensions & Investments:

> "The target-date managers are capitalizing on growing interest among plan sponsors for CITs, which boast lower costs, greater flexibility and fewer regulatory/administrative requirements.
>
> "We typically see 70% of inflows flowing into DC plans going to the target-date funds," said James Veneruso, a Summit, N.J.-based senior vice president and defined contribution consultant for Callan LLC, referring to the overall target- date market."

(See Robert Steyer, "CIT target-date assets surging as mutual funds hit by outflows", Pensions & Investments, June 24, 2019)

Given their well-defined, typically long-term investment horizon and relatively predictable pattern of inflows and outflows, target date funds are an ideal vehicle for incorporating private equity into an individual's retirement portfolio. Additionally, CITs have more flexibility regarding illiquid investments than do mutual funds, which may only invest up to 15% in illiquid securities. Our view is that a registered closed-end fund of funds which incorporates the liquidity features suggested in our responses to Questions 121 and 128 would be an ideal vehicle through which target date funds could access exempt offerings and their associated asset classes.

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Thank you again for the opportunity to comment on these matters of critical importance to the investing public. Should you have any questions, please feel free to e-mail me at [redacted].

Respectfully,

Ken McGuire
President
Aditum Alternatives & Aditum Asset Management

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