UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE CHAIRMAN

December 22, 2020

Ed Bernard
Chair, Asset Management Advisory Committee
c/o T. Rowe Price Group
100 East Pratt Street
Baltimore, Maryland 21202

Rama Subramaniam
Chair, AMAC Private Investments Subcommittee
c/o GTS
545 Madison Ave.
New York, NY 10022

Re: Thoughts on Future Progress of Private Investment Subcommittee

Dear Mr. Bernard and Mr. Subramaniam:

It was my pleasure to attend the meeting of the AMAC on December 1, 2020 at which you and your colleagues reviewed the work of the Private Investments Subcommittee (the "Subcommittee"). I have closely followed the progress of the AMAC's Subcommittees since their inception. I want to thank the AMAC members and the impressive guest speakers who have participated at the AMAC's meetings this year, for their contributions, and want to encourage you to continue your work which I am certain is benefiting the Commission and our Main Street investors. I also would like to take this opportunity to share some thoughts on possible future areas of focus for the Private Investment Subcommittee.

As has been discussed in several meetings of the Subcommittee, private equity investments over the last decade have made positive contributions in most years to the portfolios of some of the largest institutional investors, including municipal and state pension funds, insurance companies, and college and university endowments, as well as high net worth investors. These contributions include both net investment returns as well as the benefits of diversification.

Although certain of our Main Street investors may have participated in these investments indirectly through, for example, pension funds or as annuity beneficiaries, most Main Street investors have had no or very limited opportunities to enhance their long-term returns by adding private equity or other private investment to their retirement or other investment portfolios. Both the SEC and the Department of Labor have taken steps this year to ease some obstacles that Main Street investors face in investing in private markets while ensuring appropriate investor protections. For example, on June 3, 2020, the Department of Labor issued an Information Letter confirming that a professionally-managed asset allocation fund with a private equity component can be a prudent investment alternative for participant-directed individual account plans subject to ERISA.[1] And in August 2020, the SEC amended the "accredited investor" definition in our rules to add new categories of qualifying natural persons and entities, thereby allowing sophisticated investors, rather than simply those of financial means, to be eligible to invest in private offerings.[2]

Like all investing, private equity investments – direct or indirect through a pooled investment vehicle – involve risks, including risks related to illiquidity. It is critical that investors understand those risks and that acceptance of those risks is appropriate for investors in light of their personal circumstances. I believe that appropriately structured investment vehicles that facilitate private equity investments can mitigate investment risk and enhance investment return for Main Street investors. In particular, I am envisioning vehicles that have (1) transparent fee structures and (2) incentive alignment both between Main Street investors and institutional investors and between Main Street investors and the investment adviser. For these reasons, I encourage AMAC to assess the range of possible vehicles that may provide Main Street investors with access to private equity funds and other pooled private investments, with such transparency and alignment of interests, and otherwise with appropriate investor protection. Said another way, allowing the construction and returns of Main Street investors' long-term portfolios to better reflect those of well-managed pension funds, will certainly redound to the benefit of those investors.

A variety of structures have been discussed by the Subcommittee and by market participants generally, including the following:

- **Target Date Funds:** Many asset managers have created target date funds that hold a mix of equity, debt instruments, and other investments. These funds are designed to be long-term investment vehicles for investors with particular retirement dates in mind, and are often available through 401(k) plans. Today, those funds do not generally have "sleeves" or underlying fund allocations that invest in private equity. Target date funds are often mutual funds, and as such are permitted to have up to 15% of their assets invested in illiquid investments, which would include private investments, including private equity funds. I note that, speaking personally, I would expect a 5-15% allocation to these types of investments in a target date fund would, depending on the target date and characteristics of other investments, provide a retirement portfolio that was more in alignment with many well-managed pension funds.

- **Interval Funds and other Closed End Funds:** Unlike mutual funds, including most target date funds, closed end funds do not offer daily redemptions and hence can and do invest in illiquid investments such as private equity without a particular limit. These funds provide limited liquidity options for their investors, though there is a category of closed end funds known as interval funds, which provide quarterly or other periodic redemptions. One issue in establishing a closed-end fund of private funds is balancing investors' need for periodic liquidity at net asset value with the fund's long-term

[1] Available at https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/information-letters/06-03-2020

[2] Accredited Investor Definition, Release No. 33-10824 (August 26, 2020) [85 FR 64234 (October 9, 2020)].

investment strategy, which may require it to be fully invested or close to fully invested at various times. Another issue is whether the fund should diversify its investments across multiple private equity firms and strategies, which would provide the benefits of selection by a professional asset manager, but at a cost; or focus on funds sponsored by only a few private equity firms, which may limit the benefits of diversification. Also, closed-end funds with more than 15% of their assets in private funds have historically limited their offerings to accredited investors, at the staff's request.[3] Again, speaking personally, I believe such a fund, as part of a well-balanced portfolio, could provide our Main Street investors with access to an investment mix that is comparable to many well-managed pension funds.

- **Single Manager Public Fund of Multiple Private Funds:** A variation of the closed end fund structure described above would involve a publicly available registered fund sponsored by a private equity manager that would invest in a portfolio of private equity funds sponsored by that manager. In this construction, the investors in the public fund would be investing alongside (and presumably on comparable terms) to the institutional investors in the underlying private funds. Said another way, such a public fund would be structured so that the public investors (the Main Street investors) would benefit from the competitive fee arrangements and oversight provided by the institutional investors. In the same vein as my comments regarding closed-end and interval-funds, such a public fund of private funds, as part of a well-balanced portfolio, could provide our Main Street investors with access to an investment mix that is comparable to many well-managed pension funds.

- **Collective Investment Trusts (CITs) and custom separate accounts:** Some multi-asset class pooled investment vehicles available on retirement platforms that invest in private equity are structured as CITs, custom separate accounts, or other pooled investment vehicles that are exempt from registration as investment companies. These structures are designed to achieve investment exposures similar to those of the fund types described above. A plan sponsor that selects such an investment alternative would still be subject to the fiduciary standards of ERISA, however, as discussed in the Department of Labor's June 3, 2020 letter.

I encourage the Subcommittee to evaluate how each of these structures could be refined and offered to our Main Street investors in a manner that both (1) provides them with the opportunity to invest in a portfolio that is comparable to well-managed pension funds and (2) addresses important investor protection concerns, including protection from duplicative and/or excessive fees and conflicts of interest. My sense is, with the power of technology to facilitate coordination and drive down transactions costs, it must be possible to efficiently replicate the portfolios of well-managed pension funds for our Main Street investors who do not have access to those funds.

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[3] *See* Dalia Blass, Director, Division of Investment Management, Speech: PLI Investment Management Institute 2020 (July 28, 2020), available at https://www.sec.gov/news/speech/blass-speech-pli-investment-management-institute (referencing the staff position regarding closed-end funds with more than 15% of their assets in private funds, and identifying questions related to the reexamination of that staff position).

While I am cautious about expressing an opinion on the relative merits of any of these particular types of investment vehicles or structures, my initial sense is that a combination of these vehicles may prove attractive. For example, target date funds that invest 5-15% of their assets in closed-end or public funds of multiple private funds may prove to be attractive to Main Street investors and market intermediaries. However, this is only a preliminary view and I believe the Subcommittee is well-suited to reviewing these and other alternatives.

Any analysis and recommendations of the Subcommittee would provide important insight into for the Commission on the staff with regard to how to proceed in this area. A particular matter of focus that would be helpful to the Commission and staff include is the extent to which SEC exemptive relief, changes in exchange listing standards, or rule changes may be necessary or appropriate. It will be important for the Subcommittee to address any investor protection considerations that would be raised by such actions on the part of the Commission, keeping in mind the importance of fee transparency and alignment of incentives.

While I will not be the Chairman of the SEC at the time that the work of the Subcommittee is completed, I look forward to reading your recommendations. Thank you again for your service.

Very truly yours,

Jay Clayton
Chairman