



*Via Electronic Mail*

September 27, 2019

Vanessa A. Countryman  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: SEC Concept Release on Harmonization of Securities Offering Exemptions  
File No. S7-08-19 (June 26, 2019)

Dear Ms. Countryman:

We appreciate this opportunity to comment on the Securities and Exchange Commission’s (“Commission”) Concept Release on Harmonization of Securities Offering Exemptions (the “Release”). The Release includes a request for comment on regulatory restrictions that we believe have had the effect of limiting retail investment in, and access to, private equity investments. The Commission acknowledged in the Release that while accredited investors may be able to obtain exposure to private equity investment opportunities through exempt offerings, similar opportunities are typically limited to investing in business development companies for retail investors. We believe that investing through a pooled investment fund (such as a tender offer fund or interval fund) would provide retail investors with the opportunity to gain exposure to a diversified portfolio of private equity investments that have historically increased an investor’s total return.

[REDACTED]

[REDACTED]

[REDACTED]

As acknowledged in the Release, in recent years U.S. companies have raised more equity through exempt offerings that are only available to institutional and high net worth accredited investors than through offerings that are available to retail investors. As a result, the number of U.S. public companies has been declining while the valuations of privately-held companies have grown significantly, including typical issuers of private equity, but retail investors have not been able to participate in this appreciation.

In a speech to the Economic Club of New York in September 2019, Commission Chairman Jay Clayton said that the lack of more public offerings and the inability of the Main Street investing public to access private markets was a “growing concern.” Chairman Clayton noted that the current private markets included private equity and expressed a desire to expand opportunities for Main Street investors to participate in such markets. Chairman Clayton said he wants the Commission to take a “fresh look” at initiatives to expand access to the private markets while at the same time providing “appropriate investor protections.”

We agree with the Chairman’s remarks and believe private equity has been, and can be, used in professionally managed multi-asset portfolios and other structures to minimize risk and maximize returns. We believe a registered tender offer or interval fund structure would provide the best “pooled” approach for retail investors. The Commission would significantly encourage retail participation in private equity if it were to permit registered tender offer and interval funds to implement private fund investment structures that are currently commonplace in the private equity market.

### **Private Equity Investment Structures**

Unlike public markets in which retail investors have the ability to purchase the same securities as large institutions, the most attractive private equity opportunities are often first presented to a limited pool of select private equity investors before approaching retail-focused channels. The private equity industry relies on the use of blocker or aggregator investment vehicles in order to pool capital from these select private equity investors into one vehicle so that the underlying

investment does not have multiple shareholders and is instead led by one managing member or general partner who has organized and developed the investment plan for the opportunity alongside the issuer. This structure allows for business efficiencies as a single shareholder can make operational and financial decisions without needing to consult with other shareholders. Additionally, blocker or aggregator investment vehicles protect shareholders from exposure to taxable revenue that is typically generated by the underlying private equity issuer. In the absence of such a blocker or aggregator investment vehicle, if taxable income is generated, the shareholders would be responsible for paying those taxes even though there may be no cash flow passed from the underlying private equity issuer to meet these obligations. We believe retail investors would significantly benefit if given the opportunity to access the efficiencies provided by these commonly used private equity investment structures.

Several registered fund-of-funds that primarily invest in private equity funds (as opposed to directly investing in the underlying private equity asset) already exist in the market today. However, the Commission only permits such funds to register under the 1940 Act so long as their securities offerings are limited to accredited investors that make a substantial minimum initial investment in the Fund (typically \$25,000) or qualify under other suitability standards imposed by the Commission. We understand the Commission's concerns about the use of registered funds to feed capital into unregistered funds which have unpredictable timeframes or transparency, and recommend that the Commission view registered funds that invest in direct private equity transactions via blockers or aggregators as separate from "funds of private equity funds", since the aggregators are used for individual transactions and more in line with other registered funds that invest in direct exempt transactions, which allow for retail investor participation.

Registered investment companies and business development companies are typically able to participate in exempt offerings when they are able to hold an operating company's securities directly (instead of holding the securities indirectly through an affiliated blocker or aggregator entity). Investors often make private equity investments through a separately managed vehicle that has multiple unaffiliated co-investors. If the investor is a registered fund, these vehicles may be deemed affiliates of the fund as defined in the 1940 Act and thus trigger the Section 17(a) restriction on affiliated ownership interests. Accordingly, registered funds with an investment

focus on private equity have had difficulty obtaining the underlying assets needed to provide such exposure to retail investors. Registered funds that partner with unaffiliated private equity investors can avoid the 17(a) issue; however, investing in this fashion requires complex transaction structures that can make it difficult and more expensive for the fund (and consequently retail investors) to gain access to top investment opportunities. Therefore, retail investors could gain access to more direct private equity opportunities through registered funds if the Commission were to grant Exemptive Relief to affiliates of funds from restrictions posed by Section 17(a).

### **Tender Offer and Interval Funds**

We believe tender offer and interval funds would be an ideal closed-end fund option for retail private equity investors. These funds are registered under the 1940 Act and subject to the rigorous 1940 Act legal framework, which would be consistent with the Commission's investor protection objectives. Also, these funds are subject to FINRA Rule 5110, which imposes fixed lifetime caps on sales compensation and distribution fees. Tender offer funds are not subject to the portfolio liquidity requirements under Rule 23c-3 and have the flexibility to conduct repurchase offers subject to the discretion of their board of directors. As a result, instead of maintaining a portion of their assets in more liquid securities, tender offer funds can liquidate assets based on participation levels at the expiration of a particular repurchase offer. In addition, tender offer funds do not automatically face oversubscription issues, as repurchases are conducted at amounts approved by the funds' board of directors and the board can amend the repurchase offer and approve an increased repurchase amount if necessary.

### **Additional Protection for Retail Investors**

We believe the regulatory protections that currently exist under the 1940 Act are sufficient to enable retail investors to invest safely in registered tender offer and interval funds that primarily invest in private equity. These protections include oversight of the fund by an independent board of directors or trustees, restrictions on leverage and conflicts of interest, and all of the disclosure requirements applicable to a registered investment fund that makes filings under a Registration Statement on Form N-2. Disclosure regarding the risks of investing in private equity, including

risks associated with the timing and uncertainty of private equity returns, is already required by Form N-2.

Retail investor interests also would be protected in the context of a tender or interval fund because there will be a registered investment adviser involved that is subject to significant regulation and oversight by the Commission. In addition, the presence of the registered investment adviser that manages an underlying private equity investment would provide a second layer of protection for retail investors. Finally, given that both tender offer and interval fund offerings would be registered with the Commission, and subsequent to their offerings, these funds would be subject to ongoing reporting requirements, Rule 10b-5 under the Securities Exchange Act of 1934, as amended, would impose liability for material false statements or omissions of fact in these disclosures or public filings. Such liability would offer retail investors a further measure of assurance that registered funds that invest in private equity investments accurately disclose any specific risks of doing so.

Nonetheless, the Commission may consider imposing additional restrictions or limitations on this type of fund structure in a manner that helps promote investor protections. Potential guidelines could include the following:

- Advisers would have to demonstrate to the registered fund's board of directors or trustees that fund-level fees, if any, are for services that are in addition to, and not duplicative of, services performed at the underlying private fund level (to avoid impermissible layering of fees);
- The registered fund would not be permitted to allocate more than a certain percentage of its assets into any underlying private funds (to avoid the concern that retail money is being funneled for use by an unregistered fund);
- The registered fund would vote its interests in any underlying private fund or transaction in the same proportion as the vote of all other holders in the particular underlying private fund or transaction (to avoid complex control structures).

## Conclusion

ALTI believes it has outlined the key issues in the current regulation that have prevented private equity from becoming widely available to retail investors. We believe the Commission should take steps to reduce the barriers on a retail investor's ability to gain exposure to private equity investment opportunities through pooled investment funds, including tender offer and interval funds. The Commission's stance on the use of blockers or aggregator vehicles for private equity investments along with potential Exemptive Relief from Section 17(a) issues that private equity issuers sometimes face can help to streamline and simplify retail investor participation in quality investment opportunities. ALTI believes that the Commission can provide greater retail investor participation through these suggestions.

If you have any questions regarding the foregoing, feel free to contact Anna Pinedo at [REDACTED] or me at ([REDACTED]). Thank you.

Sincerely,



Joseph Bonvouloir  
ALTI LLC

Cc: Anna Pinedo, Mayer Brown LLP