ACG®
Association for Corporate Growth

September 24, 2019

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington D.C. 20549-1090

RE: Comments of the Association for Corporate Growth on "SEC Concept Release on Harmonization of Securities Offering Exemptions," File Number S7-09-18

Dear Ms. Countryman:

The Association for Corporate Growth ("ACG") welcomes the opportunity to comment on the Concept Release on Harmonization of Securities Offering Exemptions (the "Concept Release") issued by the U.S. Securities and Exchange Commission ("SEC" or "Commission").[1] As described in detail below, ACG represents nearly 2,000 private investment firms that focus on the middle-market. Virtually all of these firms rely on exemptions under the Securities Act of 1933 ("Securities Act"),[2] most notably Rule 506(b) under Regulation D[3] ("Rule 506(b)"), to raise capital from investors which is then invested in U.S. middle-market businesses, helping these businesses expand and grow.

ACG applauds the Commission for seeking to harmonize the offering exemptions under the Securities Act. A recent survey of ACG members taken in connection with the preparation of this comment letter confirms our members find the current patchwork of exemptions to be overly complex and confusing, particularly for middle-market investment advisers and firms that may lack the resources of larger firms. It is our view that certain aspects of these regulations impose unnecessary burdens on middle-market firms with little corresponding benefit to investors. ACG strongly believes that clarifying and simplifying the offering exemptions as described in this comment letter will result in increased capital formation and investment in middle-market companies, ultimately producing economic growth and job creation.

Because many of ACG's members raise private funds through the Rule 506(b) exemption, our comments focus primarily on this exemption. In order to facilitate capital formation, simplify the regulatory framework and alleviate market confusion, ACG recommends that the Commission:

- Allow "knowledgeable employees" of firms to be considered "accredited investors" as to private funds sponsored by their employer;
- Allow any person who is a "family office" or a "family client" to be an accredited investor;

[1] 84 Fed. Reg. 30460 (June 26, 2019) (the "Concept Release").
[2] 15 U.S.C. 77a *et seq.*
[3] Regulation D [17 CFR 230.501 *et seq*] relates to transactions exempted from the registration requirements of Section 5 of the Securities Act under 17 CFR 230.504, 506(b) and 506(c).

- Expand the definition of an "accredited investor" to include persons that have passed examinations that test their knowledge and understanding in the areas of securities and investing, have been certified as a public accountant or comparable profession, or have passed an accredited investor qualification examination;
- Clarify that firms may communicate with data aggregators such as *Pitchbook* and *Preqin* without it being considered a "general solicitation;" and
- Formalize the *Citizens VC, Inc.* No Action Letter, which provides that if an issuer takes certain steps to establish a relationship with a potential investor, the issuer will be deemed to have a "substantive" relationship with the investor.

I. Background on the Association for Corporate Growth and Middle-Market Private Equity

ACG was founded in 1954 and has more than 14,500 members and 59 chapters throughout the world, 45 of which are located within the United States. ACG members are people who invest in, own, advise or lend to growing middle-market companies. This includes professionals from middle-market private equity and private debt firms, corporations, banks and other public and private lenders to middle market companies, as well as professionals from law firms, accounting firms, investment banks and other advisors engaged in the process of middle-market deal making.

A particular focus of ACG is middle-market private investment. ACG's membership includes nearly 2,000 middle-market private equity ("MMPE"), mezzanine and private debt firms that focus on providing capital to middle-market businesses. ACG's private investment firm members invest in small and midsize U.S. businesses, providing these companies with vital capital allowing them to expand and grow.

In 2014, ACG formed its Private Equity Regulatory Task Force (PERT) to help middle-market private equity firms navigate increasing compliance challenges. Comprised of chief compliance officers, chief financial officers and in-house counsel to middle-market private equity firms from around the country, PERT provides a community of peers for middle-market firms to discuss common regulatory concerns and exchange compliance best practices.

II. Comments of ACG

In the Concept Release, the Commission reviews the patchwork of available exemptions to the registration process and seeks to gather input to assess the current exempt offering framework, including whether changes should be made to simplify or improve the framework. The Commission also asks whether overlapping exemptions may create confusion – especially for smaller issuers – on the most efficient path to raise capital, and whether investor limitations in certain exempt offerings pose an undue obstacle to capital formation or investor access to investment opportunities.[4]

The issues raised in the Concept Release are particularly important to ACG members whose interests in middle-market private funds are most frequently offered not through public offerings, but rather via a private placement under Rule 506(b) of Regulation D of the Securities

[4] Concept Release at 30461.

Act.[5] While after the 2012 JOBS Act[6] private offerings under Regulation D may be conducted using general solicitations and advertising via Rule 506(c), most middle-market firms continue to offer their funds solely to high net worth, sophisticated investors through Rule 506(b) private placements.

Unfortunately, however, smaller and mid-size firms have faced significant obstacles and confusion in navigating offerings under Rule 506(b). Specifically, ACG members have consistently voiced substantial concern over: (i) the under-inclusive definition of "accredited investor;" and (ii) confusion arising from the vague definition of "general solicitations." Given this, ACG's comments below urge the Commission to expand the definition of an "accredited investor" to increase investor access to investment opportunities, as well as to take concrete steps to clarify "general solicitations" in order to mitigate current marketplace confusion. ACG respectfully requests that the Commission address both of these issues as part of its much-needed effort to harmonize and simplify exempt offerings.

A. The Current Definition of "Accredited Investor" is Under-Inclusive and Unnecessarily Inhibits Investor Access

The "accredited investor" definition set forth in Regulation D is "intended to encompass those persons whose financial sophistication and ability to sustain the risk of loss of investment or ability to fend for themselves render the protections of the Securities Act's registration process unnecessary."[7] The definition is crucial, for it is a central component of several exemptions from registration, including Rules 506(b) and 506(c) of Regulation D.

Accredited investors are a vitally important source of funding for private equity firms that invest in middle-market businesses. This is especially true as over the past several years other sources of funding have reduced their investments in smaller private equity firms. Public pension funds are increasingly inclined to reduce the number of funds they invest in by making bigger investments in large funds. In addition, banks – long a funding source for private equity firms – are generally no longer permitted to invest significantly in private equity funds as a result of the Volcker Rule.[8] The fact that these historical sources of funding for middle-market firms are reducing their exposure to smaller firms makes it all the more important that the Commission not take steps that would significantly reduce the number of accredited investors, interrupting the flow of capital to middle-market companies.

i. <u>"Knowledgeable Employees" of Private Funds Should Be Considered Accredited Investors for Purposes of Their Employer's Funds</u>

Most middle-market private funds are offered through Rule 506(b). As a technical matter, non-accredited investors are not prohibited from participating in 506(b) offerings. However, issuers that sell securities in a 506(b) offering to non-accredited investors are required to furnish

[5] Rule 506(b) offerings require that the issuer not use general solicitation or advertising to market the securities. To avoid a general solicitation or general advertising, securities may only be offered to persons with whom the issuer has a "pre-existing, substantive" relationship.
[6] JOBS Act, Pub.L. 112–106, 126 Stat. 306 (2012).
[7] Concept Release at 30470.
[8] *See* §619 of the 2010 Dodd–Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. § 1851).

the non-accredited investors with the additional information required by Rule 502(b) and provide the non-accredited investors with the opportunity to ask questions and receive answers. The information required to be furnished to the non-accredited investors varies depending on the size of the offering and the nature of the issuer, but is generally the same type of information as required in a Regulation A offering or in a registered offering.

For this reason, amongst others, most middle-market firms strictly prohibit non-accredited investors from investing in the funds they sponsor. Unfortunately, this prohibition includes non-accredited investors that are employees of the firm sponsoring the private fund – even those who are considered "knowledgeable employees"[9] of the firm under Rule 3c-5 of for purposes of the Investment Company Act of 1940 ("ICA").

According to SEC staff, Rule 3c-5 of the ICA "is premised on the belief that certain persons, because of their financial knowledge and sophistication and their relationship with [the sponsored fund], do not need the protection of the Investment Company Act."[10] Because of their financial knowledge and understanding of their employer's fund, "knowledgeable employees" may invest in Section 3(c)(7) [11] funds even though such funds are otherwise restricted to persons who meet the very high threshold of being a "qualified purchaser"[12] under the ICA. "Knowledgeable employees" of a firm also do not count towards the 100-beneficial owner limit of Section 3(c)(1)[13] fund.

The "qualified purchaser" standard is a much higher threshold than the "accredited investor" threshold, so it makes little sense for a person to be deemed a "qualified purchaser" due to their sophistication and knowledge but not an "accredited investor." The same reasoning that supports "knowledgeable employees" being deemed a "qualified purchaser" for purposes of the ICA also supports such persons being considered an "accredited investor" under the 1933 Act.

Correcting this aberration of the law has been made in previous reports that studied the issue of accredited investors, including an October 2017 report by the U.S. Department of the Treasury.[14]

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[9] "Knowledgeable employees" generally include persons who perform a policy-making function at the firm and/or regularly participate in the management of the fund's investments.

[10] *See Managed Funds Association*, SEC No Action Letter (pub. avail. February 6, 2014), *available at* https://www.sec.gov/divisions/investment/noaction/2014/managed-funds-association-020614.htm.

[11] ICA Section 3(c)(7) exempts investment vehicles, all of whose beneficial owners are "qualified purchasers" from having to register as an investment company.

[12] A "qualified purchaser" is defined to include a natural person or trust with not less than $5,000,000 of investments and a company with not less than $25,000,000 of investments.

[13] ICA Section 3(c)(1) exempts investment vehicles with fewer than one hundred (100) beneficial owners from having to register as an investment company.

[14] *See* "A Financial System That Creates Economic Opportunities Capital Markets," U.S. Dept. of the Treasury (Oct. 2017), *available at* https://www.treasury.gov/press-center/press-releases/documents/a-financial-system-capital-markets-final-final.pdf, at p. 44.

ii. The Commission Should Clarify any Person that is a "Family Office" or a "Family Client" is an "Accredited Investor"

Another aberration in the definition of an "accredited investor" exists with respect to "family offices" and "family clients," both as defined under the Investment Advisers Act of 1940 ("Advisers Act").[15] The 2010 Dodd-Frank Act[16] and the rulemaking thereunder created the notion of a company that is a "family office,"[17] which is excluded from the registration requirements under the Advisers Act. To qualify as a "family office," the company (broadly defined) must, among other things:

- have no clients other than "family clients";
- be wholly owned by family clients and exclusively controlled (directly or indirectly) by one or more family members and/or family entities; and
- not hold itself out to the public as an investment adviser.

"Family clients" for these purposes generally include (i) any family member or former family member;" (ii) any "key employee" or former key employee of the family office; and (iii) certain trusts, estates, companies or other entities of a family client. Under current law, if a single "family client" of the family office is not an accredited investor individually, the entire family office may not be considered an accredited investor.

Family offices are generally highly sophisticated with respect to financial and investment-related matters. A family office that would otherwise meet the definition of an "accredited investor" should not lose its accredited investor status because a single child or family member does not meet the income or wealth qualification for being an "accredited investor." This is a reasonable, modest change that the Commission should implement as it modifies the regulations regarding exempt offerings.

iii. The Commission Should Expand the Definition of "Accredited Investor" Beyond Wealth-Based Criteria

As noted above, the definition of "accredited investor" is intended to encompass persons who possess the financial sophistication to make informed investment decisions without needing to rely on the protections of the Securities Act. ACG, together with a host of other commentators, believe that income and net worth[18] should not be the sole indicator of sophistication for determining whether a person may invest in 506(b) offerings, and the SEC should expand the definition to include other persons who may not meet the income or net worth tests but possess the acumen to make informed investment decisions.

[15] Pub.L. 115-417; codified at 15 U.S.C. § 80b-1 through 15 U.S.C. § 80b-21.
[16] 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111–203
[17] *See* Advisers Act Rule 202(a)(11)(G)-1.
[18] A natural person is considered an accredited investor if they meet one of the following two criteria: (a) their income exceeds $200,000 in each of the two most recent years (or $300,000 in joint income with a person's spouse) and they reasonably expect to reach the same income level in the current year; or (b) their net worth exceeds $1 million (individually or jointly with a spouse), excluding the value of their primary residence.

As noted in the Concept Release, a number of prior studies have recommended expanding the definition of an "accredited investor." ACG believes that the definition of "accredited investor" should be expanded in line with these recommendations to include criteria such as:

- having passed examinations that test their knowledge and understanding in the areas of securities and investing. This should include, but not be limited to, the Series 7, Series 65, Series 66, Series 82;
- being a certified public accountant; a certified financial analyst; certified management accountant, registered investment advisor or registered representative; or
- passing an accredited investor examination that demonstrates financial sophistication to qualify as accredited investors.

Each of the discrete categories of persons listed above possess the financial sophistication and industry knowledge to not need the full protection of the Securities Act, and should not be essentially excluded from participating in exempt offerings – which as a practical matter they currently are. Moreover, a person's qualification under any of the above-listed categories should be an objective matter, relatively easy for the potential investor to prove and the issuer to verify. Broadening the definition of accredited investor to include these specific categories of persons will allow these persons to expand and diversify their investment portfolios, as well as better build wealth and prepare for retirement. In addition, it will increase the flow of capital to U.S. businesses and result in increased economic growth.

B. B. Rule 506(b) and Confusion Regarding "General Solicitations"

Section 4(a)(2) of the Securities Act exempts from registration "transactions by an issuer not involving any public offering." Rule 506(b) of Regulation D is a non-exclusive "safe harbor" which provides that an offering will qualify for the Section 4(a)(2) exemption if (i) no "general solicitation" or "general advertising" takes place and (ii) no more than 35 non-accredited investors purchase securities. As noted above, Rule 506(b) private placements are the exemption most commonly relied upon by ACG's middle-market members to raise capital for emerging companies, private equity funds, private debt funds and a broad range of other private issuers.

The Securities Act does not define "general solicitation" or "general advertising," although SEC staff has consistently articulated the view that a general solicitation has not occurred if there is a "pre-existing, substantive relationship" between the issuer and the offeree.[19] This nebulous description requires middle-market issuers seeking to undertake a Rule 506(b) offering to either navigate a host of SEC No Action Letters, staff guidance and enforcement activity, or expend resources to retain outside counsel to determine the parameters of prohibited and permissible activities under Rule 506(b). The lack of clear definition creates significant market confusion for ACG members as to what does and does not constitute a general solicitation.

As a preliminary matter, it should be noted that "general solicitation" refers solely to an offering of securities and not general marketing communications by firms. There are many

[19] *Royce Exchange Fund, Quest Advisory Corp.*, SEC No Action Letter (pub. avail. Aug. 28, 1996).

legitimate reasons why ACG members seek to communicate with the public that are wholly unrelated to an offering of securities or fundraising. These reasons include:

- improving the overall brand of the firm;
- promoting group purchasing from vendors to a firm's portfolio companies;
- promoting deal flow;
- improving name recognition with investment banks, entrepreneurs and other private equity firms in furtherance of sourcing investments; and
- the recruitment of new talent.

In 2017, ACG PERT created a series of industry-led best practices, or Principles, across a range of issue areas where there was industry confusion, including advertising/marketing. The Principles represent ACG's attempt to create industry-wide standards for what public communications may be made without it being considered a general solicitation, including:

- issuance of press releases;
- private equity firm websites;
- communications with the press; and
- public speaking engagements;

Although PERT's Advertising/Marketing Principles were never published, ACG believes there is significant market confusion regarding the advertising/marketing regulations under the 1933 Act, particularly as applied to MMPE firms. This causes these firms to divert valuable time, attention and resources from their core investment activities. ACG believes the entire marketplace would benefit from clarity, and welcomes the opportunity to discuss these Advertising/Marketing Principles with staff as the Commission seeks to make changes to the regulation of exempt offerings over the coming months.

i. The Commission Should Clarify that Communications with *Pitchbook* and *Preqin* are not a General Solicitation

A particular area of confusion for ACG and PERT members is that most firms have been advised by their outside counsel that any communication with industry data aggregators such as *Pitchbook* or *Preqin* is considered a general solicitation. Firms are advised they will be engaging in a general solicitation *even where the firm merely seeks to correct erroneous information that has been published about the firm, its funds or its portfolio companies*. The fear of engaging in a general solicitation leads many firms to impose a blanket prohibition on communications with *Pitchbook* and *Preqin*, putting ACG members in the difficult situation of having to choose between potentially engaging in a general solicitation or fulfilling their duty under the Advisers Act to prevent misleading or inaccurate information about them from being disseminated.

Moreover, ACG believes the prohibition on investment advisers communicating with *Pitchbook* and *Preqin* has a number of negative consequences for the market, including:

- inaccurate information being provided to investment banks, M&A brokers, entrepreneurs and others regarding MMPE firms, because the firms are unable to correct published data that is wrong;

- significant market confusion amongst MMPE firms as to how to balance their desire not to engage in a general solicitation with their obligations under the Advisers Act; and
- conflicting advice from reputable, knowledgeable outside counsel firms, which places certain firms at a competitive disadvantage due to inconsistent advice being given by outside counsel.

ACG believes there is a material, net negative effect of this inaccurate, and in some instances misleading, information being shown on *Pitchbook*, *Preqin* and other websites.

ACG understands SEC staff has articulated in Compliance and Disclosure Interpretations ("CD&I"), Questions 256.24 and 256.25[20] that "factual business information that does not condition the public mind or arouse public interest in a securities offering is not an offer and may be disseminated widely" without it being considered a general solicitation or general advertising. Question 256.25 states that factual business information "typically is limited to information about the issuer, its business, financial condition, products, services, or advertisement of such products or services, provided the information is not presented in such a manner as to constitute an offer of the issuer's securities." However, ACG has concerns with the SEC's interpretation of what does and does not constitute "factual business information." To clarify this, ACG urges the Commission to make clear that information provided to data aggregators such as *Pitchbook* and *Preqin* is factual business information and therefore not a general solicitation.

ACG has previously drafted criteria that it believes would be appropriate for communications with data aggregators such as *Pitchbook* and *Preqin* to not be considered a general solicitation. These criteria are attached as Exhibit A. ACG would be pleased to speak with staff on this issue, and urges the Commission to rectify this issue as part of its efforts.

ii. The Commission Should Formalize the *Citizens VC, Inc.* No Action Letter

In August 2015, SEC staff issued important guidance in the *Citizens VC*[21] No Action Letter that no minimum time is required for an issuer to establish a 'pre-existing' relationship with an investor, and an issuer that takes certain steps to establish a relationship prior to an investment will not be deemed to have engaged in a general solicitation.

In *Citizens VC, Inc.*, the issuer posted multiple potential investment opportunities on its website, which was available to the public. However, the issuer also initiated a "relationship establishment period" during which time the company took a number of actions prior to the time an investor could invest, including but not limited to (as needed):

- offline conversations by telephone to discuss investing experience and the prospective investor's sophistication;
- sending an introductory email to the prospective investor;
- online interactions to answer investor's potential questions; and

[20] *See* SEC Division of Corporate Finance, Questions and Answers of General Applicability, Questions 256.24 and 256.25, https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm.
[21] *See Citizens VC, SEC* No Action Letter *available at* http://www.sec.gov/divisions/corpfin/cf-noaction/2015/citizen-vc-inc-080615-502.htm

- using third-party credit reporting services to confirm the prospective investor's identity and gather additional financial information to support the prospective investor's suitability.

In the *Citizens VC, Inc.* matter, prospective investors were admitted as members only after the issuer determined that (i) the prospective investor had sufficient knowledge and experience in financial and business matters to enable it to evaluate the merits and risks of the investment, and (ii) the issuer had taken all reasonable steps it believes necessary to create a substantive relationship with the prospective investor.

The steps taken by the issuer in *Citizens VC, Inc.* are comparable to those regularly taken by MMPE firms when raising a fund. Investors in MMPE funds must generally complete a detailed questionnaire verifying their status as an "accredited investor" or "qualified purchaser" and confirming the investment is suitable for them. In particular, rather than invest all of their money at the time of the initial commitment, investors in MMPE firms sign a subscription agreement in which they agree to pay their capital commitment over a period of years as needed for investments or expenses. Because of the long-term nature of the obligation to fund their commitment, MMPE firms establish a relationship with their investors so that they have absolute confidence the investors will honor their commitment over several years.

The Commission would alleviate a great deal of confusion and consternation by broadening the scope of the No Action Letter. This includes clarifying in a more formal manner that even if a firm makes a communication that might otherwise be considered a general solicitation, so long as there are procedures in place comparable to those described in *Citizens VC, Inc*. designed to establish a "substantive" relationship with the potential investor within the meaning of CD&I 256.31,[22] the firm may still engage an a Rule 506(b) offering.

III. Conclusion

ACG applauds the Commission's efforts to simplify and harmonize the regulatory framework for exempt offerings of securities. The two primary areas of frustration for ACG's members involve the under-inclusive nature of the definition of "accredited investor" and the vague description of what constitutes a "general solicitation." ACG believes that by adopting the relatively modest changes described herein, the Commission can alleviate uncertainty, provide clarity to the marketplace, and ultimately facilitate additional capital formation involving U.S. middle-market businesses.

[22] CD&I 256.31 states a "substantive" relationship "is one in which the issuer has sufficient information to evaluate, and does evaluate, a prospective offeree's financial circumstances and sophistication, in determining his or her status as an accredited or sophisticated investor. Self-certification alone (by checking a box) without any other knowledge of a person's financial circumstances or sophistication is not sufficient to form a "substantive" relationship."

ACG welcomes the opportunity to further discuss any of the issues addressed in this letter. If you have any questions, or if we can provide any additional information, please feel free to contact Maria Wolvin, Vice President & Senior Counsel, Public Policy, at mwolvin@acg.org or at 312-957-4274.

Sincerely,

Maria Wolvin
Vice President & Sr. Counsel, Public Policy
Association for Corporate Growth
777 6th St., NW, 11th Floor
Washington, D.C. 20001

Exhibit A
Criteria for Permitted Communications with Data Aggregators

General Assumptions:

- The issuer of securities is a private fund ("Fund") that is managed by an investment adviser (the "Investment Adviser"); and
- The Fund is a private investment company that is, or will seek to be, exempted from the Investment Company Act of 1940 ("ICA") under Section 3(c)(1)[23] of the ICA or Section 3(c)(7)[24] of the ICA.

Conditions Relating to the Investment Adviser

- The Investment Adviser to the Fund (i) is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 ("IAA"); or (ii) is registered as an investment adviser under applicable state law; or (iii) is an exempt reporting adviser ("ERA") under Section 203(l)[25] of the Act or Section 203(m)[26] of the Act;
- Neither the Fund, the Investment Adviser, nor any of the Investment Adviser's "covered persons"[27] have experienced a disqualifying event[28] under Rule 506(d) of Regulation D; and
- The Investment Adviser is current with required filings with the SEC on Form ADV and, if applicable, Form PF.

Conditions Relating to the Offering of Securities

- The Offering is being undertaken pursuant to Rule 506(b) of the Securities Act and not Rule 506(c), meaning the Investment Adviser does not intend to engage in any general solicitation or general advertising regarding the Offering;
- Investors in the Fund shall be Accredited Investors, with whom the Investment Adviser has a "substantive"[29] relationship within the meaning of SEC CD&I 256.31;
- If the Investment Adviser receives an inquiry from a potential investor with whom the Investment Adviser does not have a pre-existing relationship, the Investment Adviser

[23] 3(c)(1) funds are limited to no more than 100 beneficial owners.
[24] 3(c)(7) funds are limited exclusively to "qualified purchasers" or "knowledgeable employees."
[25] Section 203(l) of the IAA exempts advisers solely to venture capital funds from having to register.
[26] Section 203(m) of the IAA exempts private fund advisers with less than $150 million in AUM from having to register.
[27] "Covered persons" includes the issuer (i.e. fund); any investment manager to an issuer that is a fund; directors, general partners, and managing members of the issuer, executive officers of the issuer and other officers that participate in the offering; persons paid to solicit interests in the issuer (i.e. placement agents) and 20 percent beneficial owners of the issuer.
[28] Disqualifying events include: certain criminal convictions, court injunctions and restraining orders; final orders of certain state and federal regulators; certain SEC orders and suspension or expulsion from membership in a self-regulatory organization, such as FINRA.
[29] A "substantive" relationship is one where the issuer has sufficient information to evaluate, and does, in fact, evaluate, a prospective offeree's financial circumstances and sophistication, in determining his or her status as an accredited or sophisticated investor.

shall have policies and procedures in place comparable to those described in the *Citizens VC, Inc.* SEC no action letter;

- If the Investment Adviser has a social media site accessible by the general public, no offering of securities or interests in any fund is conducted via the site. Specifically:
  - the website does not indicate that an offering of interests in any fund is currently taking place or will soon be undertaken;
  - no marketing materials, offering documents or other documents relating to the Offering are available via the website; and
  - the investor performance of any prior or other funds advised by the Investment Adviser are not displayed on the website.

Conditions Relating to the Data Aggregator

- The Data Aggregator is a media company whose primary business involves the publishing of financial information involving business transactions and private funds;
- The Data Aggregator is operated on a subscription model, such that, although general industry and firm information may be accessed by the general public, the only persons or entities with access to the Information (as defined below) are subscribers of the Data Aggregator;
- In other words, although members of the general public can access the Data Aggregator's website and see basic or general information, the Information is only available to subscribers;
- The Data Aggregator does not publish, post or display materials of any nature relating to any offering of securities by any fund, company or other issuer of securities;
- The Data Aggregator is not a (i) a broker-dealer or (ii) a funding portal; and
- The Data Aggregator does not receive a commission, fees or any form of compensation in connection with transactions (mergers, acquisitions, capital-raises, etc.) involving the companies or businesses on whom it reports.

Conditions on the Information Provided by the Investment Adviser

- The Information provided by the Investment Adviser to the Data Aggregator (the "Information") contains factual business information relating to the Investment Adviser, the funds that the Investment Adviser advises and/or companies that a fund has invested in (the "Portfolio Companies."
- None of the Information provided to the Data Aggregator is misleading, fraudulent or deceitful under Section 206 of the IAA and the rules promulgated under the IAA;
- The Information does not include any marketing materials, offering documents, subscription materials or other documents relating to the Offering;
- The Information is consistent with CDI 256.25 in that:
  - the Information is limited to information about the issuer, the Investment Adviser, the funds and/or the Portfolio Companies;
  - the Information is not presented in such a manner as to constitute an offer of the issuer's securities; and
  - the Information generally does not include future predictions, projections, forecasts or opinions with respect to the investment performance of any fund.