Tech Council Ventures
NETWORKED CAPITAL

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

Re: Private Fund Advisors; Documentation of Registered Investment Advisor Compliance Reviews (SEC Release No. IA-5955; File No. S7-03-22 (February 9, 2022))

Dear Ms. Countryman:

Tech Council Ventures appreciates the opportunity to comment on the Securities and Exchange Commission's proposed rules (the "Proposal") regarding investment advisors to private funds.

Tech Council Ventures is a small venture capital firm based in New Jersey that has been investing in markets underserved by venture capital in the Mid-Atlantic region for over 20 years. The firm is closely aligned with our local tech industry association committed to empowering entrepreneurs and innovators through education, networking, and sponsorship. Our firm also works closely with our state economic development organization, local universities, and other organizations to find and support new startups.

We have reviewed the rules proposed by the SEC and wish to point out that in aggregate they are likely to make it very difficult for a firm like ours to conduct business and even risks preventing or driving firms like ours out of the business. It is important to understand that firms like ours operate in the following context:

- Firms of our size generally charge fees that just cover the modest salaries of a few investment professionals, limited support, and expenses
- Firms of our size do not have the resources to engage enough support or spend time on substantial administrative requirements
- Small firms serving 2nd and 3rd tier markets rely on a diverse set of fund investors that may have specific, unique interests ranging from types of investments, interests in environmental, social, or governance goals, issues related to ERISA, etc. As a firm, we will try to balance and negotiate those demands to meet the overall goals of the Fund and meet those specific needs, which may be codified in side letters, in order to attract the commitment of investors
- The industry has already arrived at a reasonably good balance of effort necessary to finding entrepreneurs, investing in them, and nurturing their success and the effort spent ensuring good practices, disclosure and transparency, and risk management through regulatory, industry best practices adopted by firms and investors, and accounting standards. These issues have already reached acceptable, healthy compromise between investors and managers

Given the context described, here are some specific reactions to the new proposed rules:

- **Tax Clawbacks**. Funds sometimes allow potential clawbacks to be reduced by any taxes that may have been paid or are liable as managers may not have the ability to afford the full clawback and the tax amount as well. Preventing clawbacks from being reduced by these taxes would impose unaffordable risk on managers. If the SEC believes that this is not adequately understood by investors, perhaps additional disclosures could be used to address

- **Liability limitation ban.** The SEC proposal prohibits indemnification of investors for negligence. This new standard will directly interfere with the active management model that venture capitalists often use to build startups into successful enterprises. The proposal will also dramatically drive up insurance costs, increasing barriers to entry into the industry. We would suggest drawing the line on willful acts or gross negligence, but leaving simple negligence out of the ban.

- **Fee bans.** As described above, firms our size don't have the resources to afford substantial administrative costs for examinations, investigations, regulatory, or compliance requirements. We are often able to negotiate these fees as reimbursable by the Fund as these administrative costs benefit all partners in the partnership. Banning these arrangements would again impose substantial risks on small funds and may actually reduce compliance efforts.

- **Side letter rights.** As described above, side letters may be negotiated between firms and investors to be able to attract the diverse set of investors needed to support a venture capital fund. These practices are well understood in the industry and already treated appropriately. Further requirements regarding disclosures or regulatory reporting could further impose undue burden on managers and risk the ability to attract the investors necessary to raise viable funds

Thank you for your consideration.

Yours,

Stephen Socolof