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Ms. Vanessa Countryman
Acting Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

Submitted via email to rule-comments@sec.gov

2 May 2019

Dear Ms. Countryman,

Subject: File Number S7- 27-18

The Alternative Credit Council¹ (ACC) is a global body that represents asset management firms in the private credit and direct lending space. We are pleased that the Securities and Exchange Commission (SEC) is seeking comments on the impact of the Acquired Fund Fee and Expense (AFFE) disclosure requirements. This is an area of concern to our members with Business Development Companies (BDC) and we support the SEC's consideration of this issue. We also welcome the opportunity to provide our comments on the proposals to reform the regulatory framework for fund of fund arrangements put forward by the SEC.

BDCs and AFFE Disclosures:

BDCs play a unique role in the economy by providing debt financing to companies, primarily in small and middle markets, that may find it difficult to obtain traditional bank financing. There are nearly 200,000 U.S. middle market businesses that represent one-third of private sector GDP and employ approximately 47.9 million people.² These small and medium-sized businesses are vital to promoting job formation and the growth of the U.S. economy. BDCs benefit borrowers by providing an alternative to the banking sector and promoting competitive markets. Diversifying the sources of funding available to businesses also promotes a strong and resilient economy.

In addition to supporting economic growth BDCs also provide investors with access to an asset class that is typically only accessible to institutional and wealthy investors through private funds.

¹ The ACC represents over 170 members that manage more than \$400 billion of private credit assets. ACC members provide an important source of funding to the economy by providing finance to mid-market corporates, small and mid-sized enterprises, commercial and residential real estate developments, infrastructure, as well the trade and receivables business. The ACC's core objectives are to provide direction on policy and regulatory matters, support wider advocacy and educational efforts, and generate industry research with the view to strengthening the sector's sustainability and wider economic and financial benefits.

² Source: https://www.middlemarketcenter.org/Media/Documents/MiddleMarketIndicators/2019-Q1/FullReport/NCMM_MMI_Q1_2019_FINAL_web.pdf

This is particularly important for some investors in the current low-interest-rate environment. BDCs also pay out strong dividends, making them attractive to income-seeking investors, such as retirees.

The ACC strongly supports the ability of investors to make informed choices. Under current AFFE disclosure requirements for registered investment companies, an acquiring fund is required to disclose in its prospectus fee table the fees and expenses it incurs indirectly from investing in other funds. These disclosure requirements were intended to help investors understand the costs of investing in a fund that invests in another fund however, in practice, these requirements lead to an overstatement of the expenses of registered funds that invest in BDCs. This makes these investments less attractive and consequently listed BDCs were removed from several major stock indices in 2014.

It is our understanding that the SEC's intention when approving these rules was to improve the disclosure of costs to investors and to help them make informed investment decisions. It is also our understanding that the SEC's intention was that these rules would not have an adverse impact on capital formation. The ACC supports the SEC's intentions on both counts, but we believe that the current AFFE rules do not meet these policy objectives in at least two key respects:

- (i) The impact of the AFFE Rule on the registered funds' overall expense ratios, as a result of the inclusion of BDCs, has resulted in an effective ban on BDCs from most indices. This exclusion has restricted the market for BDCs, limiting institutional ownership of BDCs, and has reduced investor choice.
- (ii) The application of the AFFE rule to investments in a BDC's tradeable securities essentially requires a double-counting of the BDC operating expenses, resulting in grossly overstated expenses of registered funds that invest in BDCs, and potentially misleads registered fund investors.

The ACC would respectfully suggest that the SEC grant the class exemptive relief requested by the Coalition for Business Development in their application submitted in September 2018.³ Excluding listed BDCs from the definition of "acquired funds" would be consistent with other SEC practices in relation to similar investment products, such as REITs, and would result in clearer, more accurate information being provided to investors in relation to expense disclosure. This outcome would be consistent with the SEC's policy objective in relation to the AFFE disclosure rule, and would allow the acquiring fund's prospectus fee table information to be consistent with the financial highlights included in the prospectus and the financial statements provided to shareholders. This approach would also promote more institutional ownership of BDCs to the benefit of retail investors and enable BDCs to provide greater financial support for lower and middle-market companies.

Fund of fund arrangements:

The ACC supports the SEC's stated objective to streamline the regulatory framework for fund of fund arrangements by introducing a more consistent approach across acquiring and acquired funds. The evolution of SEC rules, as well as exemptive and no action relief, means that substantially similar fund of fund arrangements can be subject to different conditions. This has

³ Application for an order pursuant to section 6(C) of the Investment Company Act of 1940 to exempt certain business development companies from the meaning of the term "Acquired Fund" for the purposes of Form N-1A, Form N-2, Form N-3, Form N-4 and Form N-6 under the Investment Company Act of 1940 https://www.sec.gov/Archives/edgar/data/1449853/000147361218000002/a26449579_12xcsbgexemptive.htm

encouraged the formation of overly complex arrangements that can complicate investment decisions for investors. It also can make it harder for funds to meet their investment objectives in an efficient manner. This does not serve the interests of investors as it makes it harder for them to make informed choices while also frequently increasing costs.

We encourage the SEC to carefully evaluate the impact of its proposals, including the proposed rescission of Rule 12d1-2, so that the final rules provide a streamlined regulatory framework while maintaining appropriate flexibility to address the needs of the industry.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J. Król", is positioned above the printed name.

Jiří Król
Global Head of the ACC