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Via Email (regulations@dfpi.ca.gov)

July 17, 2026

Ms. Pamela Hernandez
Senior Counsel for the Commissioner
California Department of Financial Protection and Innovation
Attn: Legal Division
651 Bannon Street, Suite 300
Sacramento, CA 95811

Re: Comments in Response to May 26, 2026 Invitation for Comments on Proposed Rulemaking Under the Fair Investment Practices by Venture Capital Companies Law (PRO 01-26)

Dear Ms. Hernandez:

Cooley LLP acts as primary fund counsel to more than 800 venture capital fund managers, a significant number of whom (collectively, our "**Clients**") may be subject to the registration, survey, and reporting obligations imposed by Division 2.5 of the California Corporations Code, commonly referred to as the Fair Investment Practices by Venture Capital Companies Law (the "**Law**").

We write in response to the Department of Financial Protection and Innovation's (the "**Department**" or "**DFPI**") Invitation for Comments on Proposed Rulemaking (PRO 01-26), issued May 26, 2026, and in follow-up to our prior correspondence with the Department dated March 5, 2026 (our **"March Letter,"** attached hereto as **Exhibit A**).

We appreciate the important public interest goals that the California state legislature (the "**Legislature**") sought to advance in enacting the Law. We also recognize that the Law, as written, would impose substantial compliance burdens without producing data relevant to the Law's goals of promoting transparency and equity in the venture capital industry.

The Department's March 17, 2026 decision to suspend enforcement and initiate formal rulemaking was widely welcomed by our Clients and the broader venture capital community. This offers the opportunity to resolve various ambiguities and gaps in a manner that gives all stakeholders clear, predictable obligations. We also recognize that the Law is currently subject to a constitutional challenge in the U.S. District Court for the Eastern District of California (*1517 Management Company, LLC, et al. v. Mohseni*, No. 2:26-cv-01957). While we submit these comments to assist the Department in the current phase of the rulemaking, we respectfully encourage the Department to refrain from finalizing regulations, and to maintain the current suspension of implementation and enforcement, until that constitutional challenge is finally resolved. Proceeding in that sequence would conserve the resources of the Department and stakeholders alike, avoid requiring covered entities to build compliance programs around obligations that may be enjoined or invalidated, and permit the Department to craft final regulations informed by the court's rulings. It would also allow the Department, where the statutory text permits, to adopt narrowing constructions of the kind proposed in this letter, several of which would mitigate the extraterritoriality and compelled-collection concerns at issue in that litigation.

Finally, while we welcome the opportunity to participate in both the informal and formal rulemaking processes the Department is undergoing with respect to the Law, we also recognize that such rulemaking has inherent limits. The Department's mandate is to interpret and implement the Law as written. And yet several of the most significant structural impediments to an efficient, accurate, and privacy-protective reporting regime are not amenable to cure absent an amendment to the Law itself. For example, we and many of our Clients are of the view that a more workable approach to achieving the Law's goals could be for covered entities to submit to the Department a consolidated report of all qualifying venture capital investments made by those entities in the relevant calendar year. The Department could then issue a single, centralized survey to the relevant founding team members on behalf of all covered entities that invested in the relevant business, and the Department could aggregate and anonymize the responses it receives before any public reporting. This approach would meaningfully improve founder response rates: founders are more inclined to complete one survey from the agency implementing the Law than with repeated, duplicative outreach from multiple investors or their own colleagues. It would also provide significantly stronger privacy protections because raw demographic responses would never need to be seen or retained by covered entities at all. The result would be a more complete, less duplicative, and more credible dataset. Implementing this approach, however, would require the Legislature to restructure the reporting obligation currently imposed by the Law, which directly assigns the duty to collect, compile, and report demographic data to covered entities. We flag this as part of the Department's rulemaking record, and we encourage the Legislature to revisit the core structure of the Law.

Within the bounds of the rulemaking process, our comments below propose the most workable regulatory framework we believe the current text will support. We have discussed a number of these issues with other industry participants, including the National Venture Capital Association ("**NVCA**"), and understand that their submissions will include several overlapping recommendations. The below comments are organized to track the structure of the DFPI's Invitation for Comments. The interpretive positions expressed in this letter represent our current views, do not necessarily reflect the views of each of our Clients or of any particular Client, and should not be construed as admissions or as binding positions in any subsequent administrative, judicial, or other proceeding. We and our Clients expressly reserve all rights with respect to each issue addressed herein.

I. Definition of "Covered Entity"

The Law applies to a "covered entity", which is defined as a "venture capital company"[1] that (1) "primarily engages in the business of investing in, or providing financing to, startup, early-stage, or emerging growth companies" and (2) meets one of multiple criteria indicating a sufficient nexus to California. We appreciate the attention the Department is giving to this definition, as it is a threshold item relating to the scope of the Law, and there are various interpretive ambiguities within the term as currently defined in the Law.

A. Scope of the Venture Capital Company's Business

Questions 1 and 1a in the Department's Invitation for Comments address the first prong of the covered entity definition, which assesses the scope of the covered entity's business.

We encourage the Department to define "startup, early-stage, or emerging growth companies" using objective criteria that reflect industry standards. Specifically, we recommend that the Department define "startup, early-stage, or emerging growth companies" as a single, unified concept referring to companies at the Seed, Series A, or Series B stage of financing, or otherwise exhibiting the financial and operational profile typical of companies at those stages. Although the statute lists three terms, none carries a settled legal or industry definition, and construing each term independently would extend the Law to the union of three open-ended categories, which is an outcome we do not believe the Legislature intended. A unified, stage-based definition also focuses the Law where funding decisions turn on the founders themselves: at the Seed through Series B stages, an investor is backing a founding team, while by later rounds, investment decisions turn principally on an established company's operating history, revenue, and professional

[1] The Law defines "venture capital company" as having the same meaning set forth in Section 260.204.9(a)(4) of Title 10 of the California Code of Regulations.

management team, and the identity of the original founders matters far less. A stage-based standard is also objective and administrable, permitting covered entities to classify each investment on the basis of information available when the investment is made.

We encourage the Department to clarify that an entity "primarily engages" in the business of investing in, or providing financing to, startup, early-stage, or emerging growth companies only when both of the following are true: (i) at least 80% of the capital the entity has deployed, valued at cost as of the end of the relevant calendar year, is invested in that asset class; and (ii) the entity holds itself out to investors and potential investors as pursuing a venture capital strategy. Both are informed by Rule 203(l)-1 under the Investment Advisers Act of 1940, as amended (the "**Advisers Act**"), which defines "venture capital fund" for purposes of the venture capital fund adviser exemption under the Advisers Act. Anchoring the standard to the federal venture capital fund definition provides an objective and familiar test that covered entities already apply in their federal compliance programs, and one the Department can readily verify by reference to publicly available Form ADV filings.

B. Venture Capital Company's Nexus to California

Questions 2-6 of the Department's Invitation for Comments are focused on the second prong of the covered entity definition, which provides for multiple ways that an entity may be found to have a sufficient nexus to California such that the entity is subject to the Law.

Providing clear interpretative guidance on this subject is critical to the Law's legitimacy and utility. The Legislature enacted this Law to advance transparency and accountability within the California venture capital community, and the nexus criteria exist to tether the Law's reach to that specific purpose. An overly expansive reading of the nexus prongs that sweeps in venture capital companies with only attenuated or incidental contacts with California does not serve the Law's purpose and would distort the data the Law is designed to collect. It also unfairly imposes compliance obligations on entities that do not operate in the State, which creates legal exposure and unintended downstream effects.

We have heard directly from numerous Clients with serious concerns that, as currently written, the nexus criteria could subject them to the Law's full suite of registration, surveying, and reporting obligations on the basis of contacts with California that are sporadic, passive, or de minimis. Sweeping these entities into the Law's broad compliance framework is not sound policy and opens the Law up to extraterritoriality-based legal challenges. It also could have unintended consequences, as some firms have indicated they may reconsider the scope of their California-facing activities altogether if this nexus definition is applied overly broadly. Such an outcome would be directly contrary to the Legislature's interest in fostering a vibrant and transparent venture capital market within the State.

We urge the Department to use this rulemaking to establish clear, objective nexus standards that confine the Law's reach to entities with an active, ongoing connection to California, consistent with both the Law's purpose and applicable constitutional limits on a state's authority to regulate out-of-state entities.

In particular:

- A venture capital company should be deemed to be "headquartered in California" when its principal office and place of business is in California. We encourage the Department to mirror the Securities and Exchange Commission ("**SEC**")'s Form ADV definition, which defines an entity's "principal office and place of business" as "the executive office from which" the entity's "officers, partners, or managers direct, control, and coordinate the activities" of the entity.

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- A venture capital company should be deemed to have a "significant presence" in California when more than 50% of the individuals making investment decisions on behalf of such entity are physically located in California.

- A venture capital company should be deemed to have an "operational office" in California only when it maintains a physical office within California at which one or more of its officers, partners, or managers regularly performs investment decision-making functions on behalf of the entity. This standard parallels Item 1.F of Form ADV, under which investment advisers already identify the offices at which they conduct advisory business, giving both covered entities and the Department a familiar and verifiable reference point. A physical workspace at which no investment decision-making occurs (for example, a location used for administrative or back-office functions, or an office used intermittently by remote personnel) should not by itself bring an entity within the Law's registration, survey, and reporting regime. We also encourage the Department to confirm that the adjective "significant" in the statutory phrase "significant presence or operational office" modifies both terms, such that an incidental or occasional office presence does not itself establish a nexus to California.

- A venture capital company should be deemed to have made "venture capital investments in businesses that are located in, or have significant operations in, California" only when, in the relevant calendar year, the entity has made more than one "venture capital investment," as defined in Section 260.204.9(a)(5) of Title 10 of the California Code of Regulations, in businesses that are headquartered in California or as to which more than 50% of the individuals making leadership and operational decisions are physically located in California, and the aggregate amount of such investments exceeds $500,000. The statutory text supports this reading: Section 27500(b)(2)(C) speaks of "investments" and "businesses" in the plural, indicating that the Legislature contemplated a pattern of California-directed investment activity rather than a single, potentially incidental transaction. A modest aggregate dollar floor serves the same function, ensuring that a small participation in a single syndicated round does not subject an out-of-state manager to the Law's full compliance framework.

- A venture capital company should be deemed to have "solicit[ed] or receive[d] investments from a person who is a resident of California" only where two conditions are both satisfied: first, one or more California residents acquired interests in the venture capital company as a result of solicitation activity directed at California residents by or on behalf of the venture capital company; and second, California residents collectively represent more than ten percent (10%) of the venture capital company's aggregate committed capital, with residency determined as of the date of each investor's admission. We further encourage the Department to clarify that "solicitation" does not include reverse solicitation (i.e., unsolicited contact initiated by a prospective investor) consistent with concepts recognized in analogous regulatory regimes, and that an investor's relocation to California after its admission does not, by itself, cause the venture capital company to satisfy this prong. In response to Question 5, we encourage the Department to confirm that "person" as used in this prong refers to investors and prospective investors in the venture capital company, and does not include service providers, portfolio company personnel, or other persons who neither hold nor seek an ownership interest in the venture capital company. Finally, we request that the Department clarify that a venture capital company that is past its investment period, or that is winding down or in liquidation, does not have a nexus to California under this prong solely because a legacy investor is, or has become, a California resident.

C. Other Clarifications

In promulgating regulations, we encourage the Department to further clarify that the following entities are not "covered entities" subject to the law:

- **Fund of Funds**. An entity that holds itself out to investors or potential investors as primarily pursuing a fund of funds strategy or that otherwise commits more than 50% of its capital to other funds rather than operating companies should not be a covered entity under the Law.

- **Buyout, Private Equity, or Growth Equity Funds**. An entity that primarily engages in acquiring controlling or significant minority interests in mature operating companies that do not meet the Law's definition of "startup, early-stage, or emerging growth" companies should not be a covered entity under the Law.

- **Corporate Venture Arms.** An entity that invests proprietary balance-sheet capital of an operating company or its affiliates, rather than capital pooled from outside investors, should not be a covered entity under the Law. Such an entity is not a "qualifying private fund" as defined in Section 260.204.9(a)(2) of Title 10 of the California Code of Regulations, and it is not advised by an "investment adviser" within the meaning of Section 202(a)(11) of the Advisers Act. The Law's registration, survey, and reporting framework presupposes professionally managed pooled investment vehicles; extending it to operating companies deploying their own capital would sweep in entities that lack the compliance infrastructure the Law assumes, without advancing the Law's purpose of examining institutional venture capital funding patterns.

- **Family Offices.** An entity that is a "family office" within the meaning of Rule 202(a)(11)(G)-1 under the Advisers Act, or that otherwise manages only the capital of a single family and its related persons and entities, should not be a covered entity under the Law. Congress and the SEC have determined that family offices are excluded from the definition of "investment adviser" altogether, rather than merely exempted from registration, reflecting a considered judgment that the private management of a family's own capital is not the type of institutional investment advisory activity warranting this form of regulatory oversight. The same judgment applies with equal force here: a family deploying its own wealth is not engaged in the institutional capital-allocation activity with which the Law is concerned, and such entities generally lack the personnel and systems needed to administer the Law's survey, anonymization, and reporting obligations.

- **Smaller Venture Capital Companies**. We support the adoption of a de minimis accommodation for smaller managers, consistent with the recommendation of the NVCA. The Law's registration, survey distribution, anonymization, reporting, and five-year recordkeeping obligations assume a compliance infrastructure that solo general partners and emerging managers (who frequently operate with no dedicated compliance personnel) do not possess, and the costs of engaging third-party administrators are proportionally most burdensome for these firms. We accordingly encourage the Department to exempt covered entities whose sponsors have fewer than 20 employees or, at minimum, to adopt a simplified compliance pathway for such entities, such as, for example, a streamlined combined registration-and-report form, a reduced fee, and express reliance on the third-party administration and company point-of-contact mechanisms described in Sections III.B and III.F below.

More generally, we encourage the Department to clarify that an entity is a "venture capital company" subject to the Law only if it is a "qualifying private fund" as defined in Section 260.204.9(a)(2) of Title 10 of the California Code of Regulations that is advised by an "investment adviser" within the meaning of Section 202(a)(11) of the Advisers Act. This clarification would confine the Law's obligations to the professionally managed fund vehicles whose investment practices the Law was enacted to examine, and would resolve each of the four categories identified above through a single, administrable standard grounded in existing law.

II. Registration and Reporting

As described in more detail in our March Letter, much of the venture capital industry operates under a multi-fund structure that leads to various open questions as to the scope of relevant registration and reporting obligations.

It is readily foreseeable and quite common that a single venture capital firm will have multiple distinct fund-level entities, each of which may independently satisfy the covered entity definition. At any given time, however, many of those entities will have made no venture capital investments during the prior calendar year and thus have nothing to report. These structural realities bear directly on the questions raised in the Department's Invitation for Comments, which we address below.

A. Registration Obligations for Covered Entities with No Reporting Obligations

Question 8 of the Department's Invitation for Comments raises a key interpretive question as to which our Clients received conflicting informal guidance earlier this year, as described in our March Letter. We continue to maintain that a covered entity that has no reporting obligations under the Law should bear no burden to register with the Department. This is consistent with the statutory text, enforcement structure, and fee structure, as described in detail in Section III of our March Letter.

There may be a host of reasons why a covered entity may not have made a venture capital investment in the prior year. The fund in question may be beyond its applicable investment period, focused on value creation activities with respect to an existing portfolio rather than deploying new capital, in a harvesting phase managing portfolio companies toward exit, winding down or in liquidation following the disposition of its portfolio, or formed to hold a single investment that has already been made. Regardless of the reason, in each of these instances, we ask that the Department clarify that, where the entity has no reporting obligation (including because it did not make any venture capital investments in the relevant reporting year), such entity also has no corresponding obligation to register with the Department.

In response to Question 9 of the Invitation for Comments, we ask that the Department clarify that whether an entity is a covered entity be measured as of the registration deadline for the relevant reporting year, such that if the entity for whatever reason does not meet the definition of "covered entity" as of that date, it has no obligation to register or report. Similarly, a fund that was a covered entity at some point during the relevant reporting year but that has been dissolved prior to the relevant registration deadline should have no independent obligation to register or report, as it no longer exists as a legal entity capable of doing either. Where such a dissolved fund made venture capital investments during the reporting year and was controlled by a business that continues to exist, those investments may be captured in the controlling business's consolidated report pursuant to Section 27501(d)(3), consistent with Section II.C below. This approach preserves the completeness of the data reported to the Department without purporting to impose obligations on entities that no longer exist. Where a covered entity has been sold but continues to exist, its compliance obligations under the Law should remain with the entity itself, to be discharged by or at the direction of its then-current control persons; a change in ownership should neither extinguish the entity's obligations nor impose obligations on an acquiror in its individual capacity with respect to periods preceding the acquisition.

B. Venture Capital Investment Definition

The Law makes clear that entities are only expected to report on investments that qualify as venture capital investments, which turns on whether the entity has "management rights" as defined in Section 260.204.9(a)(7) of Title 10 of the California Code of Regulations. We view this as an important limiting principle that goes to the broader overall purpose of the Law. Management rights signify an active investment relationship, rather than passive capital deployment, and therefore it is only when a covered entity obtains management rights with respect to an investment that the Law's surveying and reporting obligations should apply with respect to the demographics of the founding team of that company.

Section 260.204.9(a)(5) of Title 10 of the California Code of Regulations specifically defines a "venture capital investment" as an acquisition of securities in an operating company "as to which the investment adviser, the entity advised by the investment adviser, or an affiliated person of either has or obtains management rights." The word "obtains" is in the present tense and refers to rights obtained in connection with the specific investment. Where a covered entity makes a follow-on investment in a company in which it already holds management rights from an earlier investment, it does not newly "obtain" management rights. Those rights already exist. The companion word "has" in the definition does not compel a different result: it performs the definition's original function in Section 260.204.9 of counting an adviser's existing holdings toward venture capital company status, and does not address whether a later acquisition constitutes a new reportable event under this Law. On this reading, a follow-on or pro-rata exercise that does not carry new or additional management rights does not independently constitute a new "venture capital investment" for reporting and survey purposes. Separately, a draw-down of tranches under a single investment agreement executed in a prior year should not constitute a new venture capital investment, since the investment decision was made and management rights were obtained in the prior year.

For this reason, we respond to Question 10 of the Department's Invitation for Comments by seeking clarification that, where an investment does not involve the acquisition of any new management rights that were not previously held by the entity in question, such investment should not be considered a venture capital investment for that reporting year for purposes of the Law. Entities therefore should not be required to survey the relevant founders or include any information relating to that investment in any report submitted to the Department for that calendar year. This interpretation also helps avoid any questions regarding re-surveying founding team members who were also surveyed.

If the Department nonetheless determines that follow-on investments constitute reportable venture capital investments, we request, in response to Questions 10(a) and 10(b), that the Department clarify that (i) a covered entity is not required to re-survey a founding team member who received the survey in connection with an earlier investment by the covered entity or by an entity under common control with the covered entity, and (ii) the covered entity may, but is not required to, rely on the founding team member's most recent prior survey response for the current reporting year. Reliance on prior responses should be permissive rather than mandatory. An individual's self-identification may change over time, and a covered entity should not be placed in the position of attributing to a founding team member a characterization that the individual no longer holds, or of certifying the continued accuracy of information it has no means to verify. Permissive reliance also avoids the duplicative-outreach and response-rate concerns described in Section II.C below.

We also encourage the Department to clarify when an entity is deemed to have obtained management rights in a company. For example, the Department could clarify that if a covered entity sits on a portfolio company's board with voting rights, or is party to a management rights letter or comparable contractual arrangement, it will be deemed to hold management rights with respect to that company. The Department could also clarify that if a covered entity merely holds certain informational rights or board observer rights or provides general advice or guidance to a company in which it has made an investment (as opposed to holding a right, obtained contractually or through ownership of securities, to provide the "significant guidance and counsel" contemplated by Section 260.204.9(a)(7)), that alone, with no further voting or contractual management or control rights, shall not constitute "management rights" for purposes of the Law. The Department could further adopt an objective ownership benchmark for this purpose: absent a board seat or contractual management rights, a covered entity's provision of significant guidance and counsel should be treated as giving rise to management rights only where the covered entity also beneficially owns 25% or more of a class of the portfolio company's outstanding voting securities, the level at which a controlling influence is commonly presumed under analogous federal frameworks.

Similarly, if a covered entity undergoes a secondary transaction whereby it acquires an ownership interest in a company from an existing holder and does not otherwise obtain any management rights it does not already hold, such transaction should not constitute a venture capital investment for purposes of the Law.

C. Consolidated Reporting by a Controlling Business

We view Question 11 and its subparts as raising one of the most crucial structural questions relating to the Law. We appreciate that the Department is paying attention to this and has invited stakeholder commentary.

As extensively detailed in Section II of our March Letter, we continue to hold the view that consolidated, firm-level reporting by a controlling business is the most faithful reading of the Law. Section 27501(d)(3) affirmatively authorizes consolidated filing by a controlling business as a legally sufficient alternative to entity-by-entity filing, and any contrary interpretation would render the provision surplusage.

We read this language as permitting a controlling business to register on behalf of various covered entities and to prepare and submit a consolidated report on behalf of those entities. We therefore ask the Department to affirm that a controlling business's timely registration and filing of a single consolidated report should fully discharge the statutory obligation of each covered entity it controls. In response to Question 11(a), we further request that the Department confirm that the consolidated report may be submitted directly by the controlling business on behalf of the covered entities it controls, without any requirement that each controlled covered entity separately transmit or re-file the same report.

As to the definition of "control," we urge the Department to adopt a functional standard that is consistent with analogous definitions under federal securities law and reflects the realities of fund governance. A business should be deemed to "control" a covered entity if it (i) has the power to exercise a controlling influence over the management or policies of a covered entity, unless such power is solely the result of an official position with such covered entity, (ii) owns, directly or indirectly, a majority of the economic interests of such covered entity, or (iii) serves as the general partner, managing member, or investment adviser of such covered entity with authority to direct its investment activities.

We recommend that aggregated data across all controlled covered entities be deemed sufficient for a consolidated filing. The Law's reporting framework is explicitly oriented toward firm-level, aggregated, anonymized data, not entity-level granularity. Section 27501(d) mandates that survey response data be collected and reported in a manner that does not associate responses with individual founding team members, and Section 27502(a) further authorizes the Department to publish aggregate results or aggregate information based on the information received. Requiring fund-by-fund segregation would generate no additional informational value in the many common structures where parallel vehicles and special purpose vehicles hold identical or overlapping investments, as the demographic profile of any given founding team is the same regardless of which vehicle holds the investment. As noted in our March Letter, this concern is especially acute for SPVs whose names incorporate the name of the underlying portfolio company: any requirement that data within a consolidated report remain segregable by fund entity would, in practical effect, reconstitute the very association between demographic information and individual portfolio companies that the anonymization mandate exists to prevent.

We urge the Department to confirm that a controlling business filing a consolidated report owes one fee per consolidated filing, regardless of the number of covered entities included. This follows directly from Section

27502(d)'s cost-recovery mechanism, which caps fees at the "reasonable costs of that administration." The marginal cost to the Department of processing each additional covered entity within a single consolidated submission is, at most, de minimis. A per-entity fee applied to a consolidated filing would bear no rational relationship to the Department's actual administrative costs and would directly contravene the statutory cap. Section 27506(b) further confirms that the fee is a cost-recovery mechanism, rather than a revenue-generating one, by stating that moneys collected under the Law are appropriated for its administration and are not retained as surplus. For firms managing twenty or more fund vehicles, a per-entity fee regime would impose thousands of dollars annually in filing fees alone, entirely disproportionate to the administrative burden a single consolidated submission places on the Department.

Where a controlling business manages multiple covered entities that each made a venture capital investment in the same portfolio company during the same reporting year, the controlling business should be permitted to send a single survey to each qualifying founding team member and to rely on that single response for all covered entities for which the individual is a founding team member. The demographic characteristics of a founding team member do not change based on which fund vehicle holds the investment, and there is no rationale for requiring repeated outreach to the same individual in connection with what is, economically, a single firm-level investment decision. Beyond the compliance burden, duplicative survey requests directed at the same founder from multiple funds sharing a common management team are more likely to depress response rates than to improve data quality. They are also difficult to square with the Law's concern for the privacy and autonomy of the individuals being surveyed.

In response to Question 13, and to the request in Question 11(e) regarding other types of affiliations, we ask that the Department confirm that special purpose vehicles, alternative investment vehicles, feeder vehicles, and co-investment vehicles organized around a primary fund are treated, together with that primary fund, as part of a single covered-entity group that may register, survey, and report on a unified basis (whether through the primary fund or through the controlling business). The vehicle through which an investment is held reflects tax, regulatory, and investor-specific structuring considerations, not a distinct investment decision. When the same sponsor deploys capital into a portfolio company through both its primary fund and a parallel special purpose vehicle, it is making one economic investment decision, and requiring separate registrations, reports, surveys, and fees for each vehicle would multiply compliance obligations without generating any additional information about the sponsor's funding practices. Unified treatment also avoids the acute re-identification problem, described in our March Letter, that arises where a special purpose vehicle bears the name of its sole portfolio company: a standalone report filed by such a vehicle would, in practical effect, publicly associate sensitive demographic data with an identified company and its founders, in direct tension with the Law's anonymization mandate.

In sum, we respectfully request that the Department clarify that a controlling business may register and file a single consolidated report on behalf of all covered entities it controls, pay a single fee for such consolidated filing, send a single survey to each relevant founding team member, and provide aggregated data in its report. We ask for a functional definition of control that also permits investment advisers to file collectively on behalf of all advised funds. This tracks how venture capital firms operate and allows for data to be collected and reported in a manner that honors the purposes of the Law while minimizing compliance obligations for the relevant covered entities.

D. Foreign Investments

Question 12 of the Department's Invitation for Comments asks whether investments made by a covered entity in businesses outside the United States should be included in the report. We encourage the Department to resolve this question in a manner that is anchored in the Law's stated purpose.

The Law was enacted to determine whether diverse founders building businesses in California have equal access to venture capital. Information regarding the demographic characteristics of founding teams located elsewhere in the world will thus dilute and distort the dataset the Law is designed to generate. Such information will not provide the data the Law seeks with respect to investment patterns within the California venture capital ecosystem. If anything, given that founders located outside the United States may be more likely to meet the statutory definition of "diverse", including foreign investments may artificially inflate the diversity data reported for various firms.

Beyond the data quality problem, requiring covered entities to solicit sensitive demographic information from founders located in foreign jurisdictions creates significant legal risk. Many jurisdictions, including those governed by the European Union's General Data Protection Regulation and analogous frameworks in the United Kingdom, South Korea, and elsewhere, impose heightened restrictions or outright prohibitions on the collection of data revealing racial or ethnic origin, gender identity, sexual orientation, and similar characteristics. Yet these are precisely the categories the Law's survey requires. In several jurisdictions, the mere act of distributing the survey, whether or not any founder ultimately responds, may itself constitute a violation of applicable law. Covered entities that distribute the Law's required survey to founders in these jurisdictions without a recognized legal basis risk regulatory enforcement and civil liability under foreign law, creating an untenable compliance conflict that the Department has the authority – and we would argue the obligation – to address through this rulemaking.

We therefore respectfully request that the Department clarify that (1) covered entities are not required to survey or report on venture capital investments made in businesses whose principal place of business is located outside the United States; and (2) covered entities are not required to survey founding team members who are physically located outside the United States.

Should the Department decline to adopt either of the foregoing clarifications, we request at a minimum that any founding team member whom a covered entity is not required to survey (whether because the individual is located outside the United States or because distributing the survey to that individual is prohibited by, or lacks any lawful basis under, applicable foreign law) be excluded from the denominator when determining whether "more than one-half of the founding team members responded to the survey" for purposes of Section 27500(f). Absent that adjustment, the exclusion would mechanically prevent any business with foreign-resident founders from ever being counted as primarily founded by diverse founding team members, distorting the published data in a manner wholly unrelated to the covered entity's investment practices.

III. Survey and Aggregated Annual Report

We next turn to specific matters related to the surveying and reporting obligations enumerated in the Law.

A. Surveying Obligations Limited to Venture Capital Investments

Before addressing the questions identified by the Department, we wish to raise again, for the rulemaking record, an issue raised in Section IV of our March Letter.

If covered entities are not required to report with respect to investments made in the relevant calendar year that are not venture capital investments, we respectfully request that the Department clarify that the covered entity should also have no surveying obligation with respect to those non-venture capital investments. Indeed, the Department's own written guidance has acknowledged that covered entities "will not be required to report on investments that do not meet the definition of venture capital investments"; it follows that no coherent statutory purpose is served by requiring covered entities to collect, through the survey, data that the Law does not permit them to report. In other words, for the reasons set forth in Section IV of our March

Letter, we ask the Department to clarify that covered entities need only distribute the survey to founding team members of those businesses in which the covered entity made a venture capital investment in the relevant calendar year.

B. Founding Team Members

The Law requires that covered entities send a standard survey to the founding team members of certain businesses in which the covered entity has invested. Section 27500(e) of the Law offers two alternative definitions for founding team member.

A covered entity may not be able to confidently identify all individuals who meet the definition in question, especially if those individuals (i) had already departed the business at the time the covered entity made the investment; (ii) were not known to the covered entity at the time the entity made the investment; or (iii) have already left the company by the time the covered entity is distributing surveys for that reporting year.

In response to Questions 14 and 15, we request that the Department establish a reasonable diligence standard whereby a covered entity satisfies its obligations under the Law by distributing the survey to all individuals it knows or reasonably believes qualify as founding team members, based on information available to the covered entity at the time of the investment. We also request that the Department clarify that a covered entity is not required to distribute the survey to a founding team member who has stopped providing services to the business by the time the survey is distributed, or for whom the covered entity is not able to ascertain contact information. As noted above, we also request that covered entities not be required to distribute the survey to individuals who are known to reside outside of the United States.

In response to Question 16, we request that the Department confirm that a covered entity may satisfy its survey distribution obligation either by sending the survey directly to founding team members or by providing it, with written distribution instructions, through a designated contact at the portfolio company, such as its chief executive officer, general counsel, or personnel lead. Covered entities that participated in a syndicated financing round, or that invested without board representation, frequently lack current contact details for individual founders and have no reliable way to obtain them. The company itself can identify and reach its founding team readily, and founders are likelier to engage with a request that arrives through their own company's leadership than with unsolicited outreach from an investor they may never have dealt with directly. Permitting this channel would therefore improve, not diminish, each founding team member's opportunity to participate in the survey. At the same time, the rulemaking should make clear that a business receiving an investment assumes no obligation or liability under the Law by receiving or forwarding a survey. The Law places its compliance obligations on covered entities; the portfolio company's role is one of voluntary facilitation only; and a covered entity that has provided the survey and instructions to the designated contact has satisfied its distribution obligation whether or not the company completes the internal distribution. Many businesses receiving venture financing are themselves thinly staffed, and nothing in the Law suggests that the Legislature intended the reporting regime's burdens to fall on the businesses it was designed to benefit.

Relatedly, we request that the Department clarify that the individual "designated as the chief executive officer or president" for purposes of Section 27500(e)(2) is determined as of the date of the venture capital investment.

C. Survey and Reporting Format

While the Law requires that the covered entity provide founding team members with a survey that is consistent with the standardized form specified by the Department, Section 27501(d)(1) also requires that covered entities "[c]ollect survey response data from the founding team members in a manner that does not associate the survey response data with an individual founding team member."

Earlier this year, the Department made available the standardized form of survey to be used by covered entities, in the form of a PDF. Many firms planned to survey founding team members by emailing the Department's form of PDF to such founders and requesting a response email with the completed PDF. However, that common sense default approach is in tension with the above requirement that covered entities collect survey responses in a manner that does not associate any response data with the individual, as the founding team member's response email will necessarily associate their data with them.

Many third-party tools were created to address these and other privacy, compliance, and administration concerns. Yet we also heard mention that the Department may strictly require use of its form PDF with no exceptions for other surveying methods or tools. This reinforces the inherent tensions identified above.

To avoid this issue and give covered entities maximum flexibility in how they meet their obligations under the Law, we request, in response to Question 21, that the Department clarify that, while a covered entity can use the exact form of survey posted by the Department on its website, it is not required to do so, provided that the survey provided by the covered entity to the founding team members (i) presents the same substantive content specified in the Department's standardized form; and (ii) collects responses in a manner that does not associate the survey response data with an individual founding team member. Covered entities using a third-party platform should be able to rely on that third party's certification and documentation that its data collection and storage practices comply with the requirements of the Law.

As for the report submitted by the covered entity to the Department, we similarly request that the Department clarify that, while a covered entity can use the exact form of report posted by the Department on its website, it is not required to do so, provided that the report submitted by the covered entity provides all information required by the Law.

D. Investment-Level Reporting – Amounts Invested

In the report submitted each year to the Department, the Law requires that covered entities report on total dollar amounts invested, as well as the principal place of business, for each company in which the covered entity made a venture capital investment.

While we appreciate that this reporting requirement is limited only to those businesses in which the covered entity made a venture capital investment (i.e., in which it obtained management rights) during the relevant reporting year, our Clients have still posed significant concerns with respect to providing this information in a report that is then made publicly accessible.

Many venture capital firms treat their investment track record, including the specific amounts they invest in each individual business, as confidential, proprietary, and/or trade secret information. While the total amount an operating company has raised in a particular round of financing may often be publicized, the exact amount each investment firm has invested in such company often is not made public. Many venture capital firms carefully guard information relating to amounts invested in each business, average check size, investment pacing and deployment strategy, investment theses and criteria, deal selection patterns, the geographic concentration and sector focus of a portfolio, the total investments made by a particular fund in any given year, and/or the total assets under management.

If the Law requires covered entities to publicly report exact dollar amounts invested in each venture capital investment, this disclosure, especially when combined with the principal place of business of each such company, enables sophisticated third parties (and, increasingly, AI-assisted analytical tools) to reverse-engineer highly sensitive firm-level information that these firms have long maintained as confidential. This is not a theoretical concern. The proliferation of machine learning and large language model tools capable of drawing inferences from structured datasets means that investment-level disclosures of this kind, when aggregated across reporting years and cross-referenced against publicly available information, including on Pitchbook or Crunchbase, can now yield far more detailed intelligence about a firm's investment strategy. Many firms purposefully maintain such information as confidential and are concerned with the implications of this Law.

We do not believe that public reporting of dollar amounts for each venture capital investment adds meaningful informational value to the Department's core objective of assessing the venture capital industry's commitment to investing in diverse founders. The same is true with respect to the principal place of business: while this field may have administrative utility in scoping the Law's application, it adds little to no analytical value once an investment has been included in a covered entity's report.

While we encourage the Legislature to revisit and eliminate Section 27501(b)(4) and (5) from the Law entirely, we request that in the interim the Department permit covered entities to satisfy their obligation under Section 27501(b)(4) by providing an aggregate figure (e.g., a total dollar amount across all venture capital investments made during the reporting year) rather than an investment-by-investment breakdown. An aggregate figure is sufficient to demonstrate a firm's overall financial commitment to the relevant asset class without enabling the reverse-engineering of deal-level strategy described above.

If the Department nonetheless determines that Section 27501(b)(4) requires reporting at the individual business level, we request, in response to Question 19(a), that covered entities be permitted to report the amount invested in each business by dollar range rather than by exact amount. We propose the following ranges: under $500,000; $500,000 to $2,000,000; $2,000,000 to $5,000,000; $5,000,000 to $10,000,000; $10,000,000 to $25,000,000; $25,000,000 to $50,000,000; and over $50,000,000. Range-based reporting preserves the analytical utility of the data for the Department's purposes while materially reducing the reverse-engineering and confidentiality risks described above. At a minimum, we request that any exact per-business amounts submitted to the Department be treated as confidential, excluded from the publicly posted version of the report, and reflected in public disclosures only on an aggregate or range basis.

We also request that the Department establish a mechanism by which covered entities may elect to have their firm's name redacted from any publicly posted version of the Department's annual aggregated report if the covered entities have a reasonable belief that inclusion of certain required data fields in the report may lead to improper disclosure or reverse engineering of confidential or trade secret information. Such a redaction mechanism would permit the Department to publish meaningful, usable data at the aggregate level while honoring the legitimate confidentiality expectations of individual firms. The existence of a redaction option would also reduce the risk that firms subject to genuine confidentiality obligations are forced to choose between compliance with the Law and compliance with their contractual commitments. Such a conflict, if left unresolved, may itself become a source of litigation risk for covered entities and the Department alike and may lead to some firms doing less business within California to avoid coming within the scope of the Law.

We note that Question 20 of the Invitation for Comments expressly contemplates such a mechanism, asking whether covered entities should be able to request confidentiality and non-disclosure of the covered entity's identity and what requirements should govern such requests. In response, we propose that a redaction request be granted where the covered entity demonstrates a reasonable, documented basis to believe that publication of its identity in association with the required data fields would (i) reveal trade secret or competitively sensitive information of the kind described above, including investment strategy, pacing, or check-size information, or (ii) permit the re-identification of an individual founding team member or portfolio company in a manner inconsistent with the Law's anonymization mandate. A covered entity should be permitted to submit its request concurrently with its report, the report should be withheld from public posting while the request is pending, and the Department's determination should be communicated in writing. We recognize the tension between any redaction mechanism and Section 27502(a)(1)'s directive that reports be readily accessible and searchable; the standard proposed above reconciles the two by preserving public access to all reported data while withholding only the identity of the reporting firm, and only upon a documented showing.

Until the Legislature revisits this requirement entirely, we believe that (1) permitting aggregate-level investment reporting and (2) establishing a name-redaction option for firms with confidentiality concerns represent a workable accommodation that preserves the utility of the Department's dataset while avoiding the significant competitive and confidentiality harms that investment-level public disclosure would otherwise cause.

E. Investment-Level Reporting – Principal Place of Business

We wish to address separately the question of what information covered entities should be required to provide with respect to each portfolio company's principal place of business. As an initial matter, we reiterate the request set forth in Section II.D above: covered entities should not be required to survey or report on venture capital investments made in businesses whose principal place of business is located outside the United States.

With respect to domestic investments, we respectfully request that the Department clarify that covered entities are required to report only the state in which each portfolio company's principal place of business is located, rather than any more granular geographic information (such as city, county, or street address). State-level disclosure is fully sufficient to serve the Law's analytical purposes by enabling the Department to assess patterns in the geographic distribution of venture capital investment. Requiring city- or address-level disclosure would go beyond what is necessary for that analysis, add no meaningful informational value, and create heightened confidentiality risk, particularly for investments in early-stage companies where the precise location of operations may not be publicly known and could itself be a competitively sensitive detail. We therefore request that the Department confirm that, for domestic portfolio companies, reporting the state of principal place of business satisfies the Law's location-reporting requirement.

Finally, and consistent with the cell-suppression protocol proposed in Section III.F below, we request that where a covered entity made a venture capital investment in only one business in a given state during the reporting year, the covered entity be permitted to report the location of that business as "California" or "outside California," as applicable, rather than by state. Where a report reflects a single investment in an identified state, the combination of the state, the amount invested, and the aggregated demographic data may permit identification of the portfolio company and, by extension, its founding team members, contrary to the Law's anonymization mandate.

F. Privacy and Anonymization

The Law's anonymization mandate is among the most technically demanding obligations the Law imposes, and one of the most consequential for founders' privacy. We appreciate how thoughtfully the Department is engaging with this issue, as evidenced by the questions posed in Question 17 and its subparts of the Department's Invitation for Comments. We encourage the Department to continue to partner with industry stakeholders and data and privacy experts on these topics.

The re-identification risk inherent in the Law's framework is most acute for the businesses with which the Law is most concerned: early-stage companies whose founding teams consist of one or two individuals. For such companies, the combination of data points the Law requires to appear in a single public report (aggregated demographic characteristics, the amount invested, and the principal place of business) can operate as a mosaic that effectively identifies each founder and publicly associates that individual with his or her responses regarding race, ethnicity, gender identity, sexual orientation, disability status, and veteran status. In response to Questions 17(a) and 17(b), we therefore request that the Department adopt a cell-suppression protocol under which demographic data is omitted or reported only at a higher level of generality where a founding team consists of fewer than three members, or where fewer than three survey responses were received with respect to a business. Suppression thresholds of this kind are a standard feature of governmental publication of sensitive demographic data, and they resolve the otherwise irreconcilable tension between the Law's anonymization mandate in Section 27501(d) and its public-accessibility mandate in Section 27502(a)(1).

In response to Question 17(c), we request that the Department confirm that a covered entity satisfies its obligation to safeguard survey response data where it (i) restricts access to raw survey responses to a limited number of designated personnel or to a third-party administrator engaged for that purpose; (ii) anonymizes and aggregates responses promptly upon receipt; and (iii) thereafter maintains records solely on an anonymized and aggregated basis, consistent with the record-retention clarification requested in Section IV below. This anonymize-on-receipt approach reflects data-minimization principles common to domestic and foreign privacy regimes and materially reduces the risk of inadvertent disclosure during the period between survey collection and report submission.

Relatedly, and consistent with our requests in Sections III.C and IV, we ask the Department to confirm that a covered entity that engages a qualified third-party administrator to distribute surveys, collect and anonymize responses, and prepare the data required for the covered entity's report satisfies its collection, anonymization, and safekeeping obligations under the Law, provided the administrator certifies that its practices meet the requirements of the Law and the final regulations. Third-party administration should be recognized as a sufficient means of compliance, but not the only one, so that smaller covered entities are not compelled to bear vendor costs where they are able to implement the protocols described above internally.

We recommend that the Department establish a mechanism by which covered entities that are concerned that the Law's survey and reporting mechanisms may lead to inadvertent identification of a particular founding team member or otherwise conflict with applicable privacy laws may petition the Department for redaction of certain items in the report or other accommodations as appropriate to ensure privacy and anonymization.

G. Data Accuracy and Non-Response

Because a founding team member's participation in the survey is voluntary, as it must be, the data a covered entity reports is a function of founder response rates, not merely of the covered entity's funding decisions. The Law's own definitions compound the issue. Under Section 27500(f), a business is treated as "primarily founded by diverse founding team members" only if more than one-half of its founding team members responded to the survey and at least one-half of the founding team members are diverse founding team members. A business whose founding team is entirely composed of diverse founding team members will therefore be recorded as not primarily diverse if too few of its founders elect to respond. This inaccurate report would be a result of who happened to respond, rather than a reflection of the founding team's actual composition or of the covered entity's investment practices. Declined responses compound the effect: a founding team member who returns the survey but selects "decline to state" has responded for purposes of the Section 27500(f) threshold, yet cannot be counted as a diverse founding team member, so even a founding team whose members all participate but decline to state will be recorded as not primarily diverse. Yet the published report will attribute that result to the covered entity, on a website the Law requires to be readily accessible, easily searchable, and easily downloadable.

Our Clients are investment advisers subject to fiduciary duties and anti-fraud obligations, and they are appropriately reluctant to submit for public attribution data they know may materially misstate the composition of the founding teams they fund. In response to Question 24(a), we request that the Department permit contextual disclosure on the face of the report (and, where response rates fall below the Section 27500(f) threshold, require the report form to accommodate that disclosure), including the aggregate survey response rate, the rate of “decline to state” responses, and a notation of the percentage of founding teams for which the response threshold was not met. We also encourage the Department to clarify, in the report form and accompanying instructions, how “decline to state” responses are treated in the Section 27500(f) determination. In response to Question 24(b), we further encourage the Department to present published data in a manner that distinguishes non-response from reported demographics, so that the public dataset does not conflate a founder’s decision not to participate with a covered entity’s funding patterns. These accommodations require no departure from the statutory text; they simply ensure that the information the Department publishes is an accurate reflection of the information the covered entity was lawfully able to collect.

IV. Record Retention

Section 27502(c)(1) requires that a covered entity keep records demonstrating compliance for a period of five years after the covered entity delivers its report to the Department. In response to Questions 28 through 30, we ask that the Department clarify that, in order to meet their anonymization and privacy obligations, covered entities are not required to retain any individually-identified survey responses and rather may destroy such underlying records once the data has been aggregated and anonymized for reporting purposes. This approach is consistent with data minimization principles under both domestic and foreign privacy frameworks and directly advances the Law’s stated purpose of protecting founder privacy.

We also ask the Department to clarify that, if a covered entity uses a third-party platform to fulfill its obligations under the Law, the covered entity should be able to rely on that third party’s certification that it is retaining relevant records in an aggregated and anonymized manner.

V. Economic Impact; Fees; Effective Date, Transition Period, and Enforcement

Consistent with the Invitation’s request that comments include information regarding economic impacts, we offer the following observations drawn from our experience as fund counsel to more than 800 venture capital fund managers. A typical multi-fund sponsor controls 10 to 30 or more legal entities (vintage funds, parallel funds, feeders, alternative investment vehicles, special purpose vehicles, and co-investment vehicles) many or all of which may independently satisfy the covered entity definition. Under a disaggregated, per-entity reading of the Law, each such sponsor would face annual filing fees of at least $175 per entity, together with the internal personnel time and external legal, compliance, and vendor costs of preparing multiple registrations and reports, administering surveys, and implementing the anonymization and recordkeeping protocols the Law requires. These costs fall disproportionately on emerging managers operating without dedicated compliance personnel. The interpretations proposed in this letter (consolidated registration and reporting, unified treatment of special purpose vehicles, survey obligations coextensive with reportable venture capital investments, and reliance on third-party administrators) would materially reduce these costs without any loss of the information the Law directs the Department to collect.

We respectfully request that the final regulations confirm that the Law's survey and reporting obligations apply prospectively only – that is, to venture capital investments made on or after the effective date of the final regulations – and that the first annual report be due no earlier than June 30 of the year following the first full calendar year commencing after that effective date. Covered entities cannot retroactively survey founding team members in connection with investments that closed before the applicable requirements were knowable, and any attempt to do so would generate incomplete and unreliable data while placing covered entities in the untenable position of submitting reports they cannot substantiate. Setting the annual reporting deadline at June 30, rather than in the first calendar quarter, would also avoid layering the Law's obligations on top of the annual investor reporting, audit, tax, and federal regulatory filing obligations that covered entities must already discharge early in each year.

Consistent with our introductory comments above, we further request that the Department confirm on the record that the current suspension of implementation and enforcement will remain in place until final regulations are adopted and effective, and, in light of the pending constitutional challenge described above, that the Department will not require registration, surveying, or reporting while that litigation remains unresolved.

Finally, we ask that the Department adopt a good-faith compliance safe harbor for an initial transition period of no less than 18 months following the first compliance date. During that period, a covered entity that makes reasonable, documented efforts to comply should not be subject to the monetary penalties authorized by Section 27504, which may accrue at $5,000 per day, per violation. Even with the benefit of final regulations, covered entities will need time to build, test, and document the surveying, anonymization, reporting, and recordkeeping systems the Law requires, which many would be doing for the first time, and often in reliance on third-party vendors whose tools may still be under development. A safe harbor of this kind rewards diligent implementation and focuses the Department's enforcement resources on genuine noncompliance, while reducing the risk that the Law's penalty structure deters venture capital firms from investing in California businesses or accepting California investors at all.

In response to Question 27, we encourage the Department to charge each registrant a uniform per-report fee rather than tiered fees based on the annual dollar amount invested by the covered entity. Section 27502(d) caps fees at the reasonable costs of administering the Law, and the Department's cost of processing a report does not vary with the dollar amount of the investments it describes. A fee schedule tiered by amounts invested would function as a levy on investment activity rather than a cost-recovery mechanism, in tension with the statutory cap and with Section 27506(b)'s directive that moneys collected be appropriated to the Law's administration.

* * *

We appreciate the Department's commitment to a transparent rulemaking process and the opportunity to submit these comments. We remain committed to working constructively with the Department to implement the Law in a manner that advances its public interest objectives while providing the legal clarity and operational workability the venture capital industry requires. We would welcome the opportunity to meet with Department staff to discuss any of the issues raised herein.

Please direct any response or inquiry to Stacey Song, stacey.song@cooley.com, (212) 479-6820, or Selin Akkan, selin.akkan@cooley.com, (650) 843-5076.

Respectfully submitted,

Stacey Song and Selin Akkan

Exhibit A

Letter to California Department of Financial Protection and Innovation dated March 5, 2026

[*See attached*]

Cooley

Via Email

March 5, 2026

Ms. Claudia Quiroz
General Counsel
California Department of Financial Protection and Innovation (the “Department”)
651 Bannon Street, Suite 300
Sacramento, CA 95811

Re: Request for Written Guidance Regarding Consolidated Reporting, Registration Obligations, and Survey Distribution Under the Fair Investment Practices by Venture Capital Companies Law

Dear Ms. Quiroz:

Cooley LLP acts as primary fund counsel to more than 800 venture capital fund managers, a significant number of whom (collectively, our “Clients”) are subject to the reporting obligations imposed by Division 2.5 of the California Corporations Code, commonly referred to as the Fair Investment Practices by Venture Capital Companies Law (the “Law”). We appreciate the important public interest goals that the Legislature sought to advance in enacting the Law. We note, however, that there are a number of legal and interpretive questions surrounding the Law. The interpretive positions expressed in this letter represent our current views for purposes of seeking regulatory guidance and should not be construed as admissions or as binding positions in any subsequent administrative, judicial, or other proceeding. Our Clients expressly reserve all rights with respect to each of the specific interpretive questions addressed herein, including the right to take different or additional positions as circumstances warrant.

We write today to address three specific, narrow, and particularly urgent interpretive questions. The first is whether each fund-level entity that independently qualifies as a “covered entity” under Section 27500(b) must file a separate, independently fee-bearing report, or whether a controlling business entity may file a single consolidated report on behalf of all covered entities under its common control pursuant to Section 27501(d)(3). Based on informal guidance reportedly communicated to individual industry participants, the Department appears to take the position that a separate report must be filed for each covered entity. The second question is whether a venture capital company that meets the definition of “covered entity” but made no venture capital investments during the prior calendar year is required to register with the Department notwithstanding that no reporting obligation arises. We understand that Department staff have communicated conflicting informal positions on this question to different industry participants. The third question is whether the survey distribution obligation under Section 27501(c) is coextensive with the reporting obligation (i.e., limited to businesses in which the covered entity made a “venture capital investment”) or extends to any business that received any form of funding from the covered entity. Department staff communicated a specific interpretation on this third question in writing to our firm, and we respectfully disagree with that interpretation for the reasons set forth below.

We raise all three issues now because informal responses to individual inquiries, while appreciated, do not provide the clarity and consistency that our Clients (and the industry broadly) require in order to structure their compliance programs and budget accordingly. The April 1, 2026 deadline is rapidly approaching, and our Clients must make consequential decisions about how to organize their data submissions, how many registrations and filings to prepare, and how much to budget for fees and administrative resources.

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I. Background: The Multi-Entity Structure of Venture Capital Firms

Our Clients are investment managers and advisers to venture capital funds. The venture capital industry operates through a structure that, for legal, regulatory, tax, liability, investor relations, economic, and governance reasons, typically requires the formation of multiple separate legal entities, each constituting a discrete "fund vehicle," even where those entities share common sponsors, advisers, or investment teams. The reasons for this structure are numerous and well understood:

- **Vintage year funds.** Venture capital managers typically raise a new fund every two to four years, resulting in a family of sequentially launched funds (e.g., Fund I, Fund II, Fund III) that may invest simultaneously during overlapping periods.

- **Parallel funds.** Many managers form parallel structures (e.g., a domestic vehicle alongside an offshore one, or a separate entity for specific investor types) to accommodate the distinct legal, tax, regulatory, or other requirements of different investor classes.

- **Opportunity funds and special purpose vehicles.** It is common practice to form special purpose vehicles ("SPVs") for concentrated follow-on investments in specific portfolio companies, each constituting its own legal entity.

- **Sector-specific or strategy-specific funds.** Some managers operate distinct funds targeted at specific sectors or investment stages.

- **Geographic or regulatory structuring.** Certain fund structures are created to comply with specific regulatory requirements, including limitations under the Employee Retirement Income Security Act of 1974, unrelated business taxable income considerations, or jurisdiction-specific regimes.

- **Co-investment vehicles.** Managers routinely create co-investment vehicles that allow specific investors to participate alongside the primary fund in individual portfolio companies.

Under Section 27500(b), "covered entity" means a "venture capital company" (as defined in paragraph (4) of subdivision (a) of Section 260.204.9 of Title 10 of the California Code of Regulations) that (i) primarily engages in investing in or providing financing to startup, early-stage, or emerging growth companies, and (ii) is headquartered in California, has a significant presence or operational office in California, makes venture capital investments in California-based businesses, or solicits or receives investments from a California resident. The definition operates at the entity level.

Given the multi-fund structures described above, it is readily foreseeable, and in our Clients' experience common, that a single venture capital firm will have a large number of distinct fund-level entities, each of which independently satisfies the definition. At any given time, however, many of those entities will have made no venture capital investments during the prior calendar year and thus have nothing to report, whether because they are beyond their applicable investment period, they are focused on value creation activities with respect to an existing portfolio rather than deploying new capital, are in a harvesting phase managing portfolio companies toward exit, are winding down or in liquidation following the disposition of their portfolio, or have been formed to hold a single investment that has already been made. These structural realities bear directly on the three interpretive questions we raise below: (1) whether Section 27501(d)(3) permits a controlling business to satisfy the reporting obligation for all of its covered entities through a single consolidated filing; (2) whether entities with no venture capital investments to report must nonetheless register; and (3) whether the survey distribution obligation under Section 27501(c) is limited to businesses that received venture capital investments. We address each in turn.

II. Section 27501(d)(3) (Reporting by a Controlling Business) Should Not Be Rendered Surplusage

Section 27501(d)(3) provides that "[a] covered entity may satisfy the requirements of this chapter by providing a report prepared by a business that controls each covered entity at any time during the prior calendar year, if the report contains all of the information required by subdivision (b)." The plain text of this provision is significant in several respects. First, it is permissive, not mandatory. The word "may" confirms that covered entities retain the option of filing individually, but equally confirms that consolidated filing by a controlling entity is a fully recognized and legally sufficient means of satisfying the statutory obligation. Second, it is content-focused, not form-focused. The only condition the Legislature imposed is that the report contains all of the information required by subdivision (b). The Legislature did not require a separate document per fund, or that each covered entity's data appear in isolation. Third, the provision speaks to a single act—i.e., "a report" (singular) "prepared by a business that controls each covered entity." The natural reading is that one report, prepared by one controlling business, is sufficient to discharge the reporting obligation for all covered entities it controls.

We also note that the Legislature's evident purpose in enacting the Law is to capture investment practices at the level of the firms and decision-makers responsible for capital allocation, and not to generate a fund-by-fund accounting of individual legal entities. A consolidated report prepared by a controlling entity fully serves that purpose. Where the Department may be concerned that a consolidated filing obscures fund-level granularity, we would note that in many common structures, including where parallel vehicles are formed solely to accommodate differing tax or regulatory requirements, the funds invest in identical portfolio companies, rendering any fund-by-fund breakdown devoid of additional informational value. Even in cases where funds have genuinely distinct investment mandates, the firm-level picture that a consolidated report provides is precisely the information most relevant to evaluating the investment practices of those who control capital deployment. The particular legal entities through which investment dollars are deployed are in a sense arbitrary, such that the demographic outcomes driven by a firm's investment team and decision-making process are not illuminated by distributing the same firm's aggregate investment activity across a series of legal vehicles.

In our view, the plain text and evident purpose of Section 27501(d)(3) compel the conclusion that a single consolidated report is both legally sufficient and consistent with the structure of the Law. Any contrary interpretation would render Section 27501(d)(3) surplusage: a controlling entity could nominally file "on behalf of" its covered entities, but that filing would provide no relief from the per-entity report or fee obligation, leaving the provision without any substantive effect.

This reading of Section 27501(d)(3) is further reinforced by the statute's overarching design with respect to data collection and disclosure. Section 27501(d) expressly requires that survey response data be collected and reported in a manner that does not associate the data with any individual founding team member. The reporting obligation under Section 27501(b) is framed in terms of aggregated information about the founding teams of all businesses in which the covered entity made a venture capital investment during the prior calendar year. Section 27502(a) further provides that the Department shall make reports publicly accessible and that it may publish aggregate results or aggregate information based on the information received. The Law is thus oriented toward firm-level, aggregated, anonymized data, and not entity-by-entity granularity.

This aggregated and anonymized design has particular significance in the context of SPVs. Many of our Clients routinely form SPVs to make a single investment in a specific portfolio company. In practice, the name of the SPV often incorporates the name of the underlying portfolio company itself. If the Department were to require each such SPV to register and file a separate report, the resulting public disclosure would include, in the context of a fund vehicle whose name identifies a specific portfolio company, the demographic data, including gender identity, race, ethnicity, disability status, LGBTQ+ identification, and veteran status of the founding team members of that portfolio company. Because Section 27502(a)(1) requires the Department to make reports readily accessible, easily searchable, and easily downloadable on its public website, a report filed by an SPV named after its single portfolio company investment would, in practical effect, publicly associate the sensitive demographic characteristics of the founding team with that portfolio company. This outcome is in direct tension with the Law's anonymization mandate and its aggregate reporting framework. A consolidated report filed by the controlling business would avoid this result entirely: the individual SPV's investment data would be subsumed within the aggregate data of the controlling firm, precisely as the Legislature's design contemplates.

Our reading is further confirmed by the statute's fee structure. Section 27502(d) provides that fees must not exceed the reasonable costs of administering the Law and designates the applicable charge as a "fee per report" of at least $175. That fee authority is expressly cabined: it is a cost-recovery mechanism, not a revenue-generating one, and Section 27506(b) confirms that moneys collected under the Law are to be appropriated for its administration and not retained as surplus. Where multiple funds managed by the same investment adviser operate as part of a common enterprise, the marginal administrative cost to the Department of processing each additional entity's submission is, at most, minimal. Requiring a separate $175 fee for each such entity would produce a fee obligation bearing no rational relationship to the Department's actual administrative costs. That outcome is precisely what Section 27502(d)'s cost-recovery limitation is designed to prevent and what consolidated filing under Section 27501(d)(3) is designed to avoid.

III. A Covered Entity With No Reporting Obligation Is Not Required to Register

A related interpretive question arises directly from conflicting informal guidance that Department staff have communicated to different industry participants. In one instance, staff reportedly indicated that a covered entity must register under Section 27501(a) even in a year in which the entity has no reporting obligation under Section 27501(b) because it made no venture capital investments during the prior calendar year. In another instance, staff reportedly indicated the opposite (i.e., that registration is not required absent a reporting obligation). We respectfully submit that the latter position is correct as a matter of statutory text and structure, and we ask that the Department resolve this conflict through formal written guidance.

The registration and reporting obligations imposed by Section 27501 are textually integrated, not independent. Section 27501(a)(1) requires a covered entity to submit basic identification and contact information in a manner prescribed by the Department, commencing March 1, 2026. Section 27501(a)(2), however, immediately conditions the obligation to keep that information current: the covered entity "shall keep the information provided under paragraph (1) updated by submitting any changes to that information when filing the report required by subdivision (b)." This language expressly ties the registration update mechanism to the act of filing a report. The Legislature did not provide any other occasion or mechanism by which a covered entity is to update or maintain its registration information. An entity that has no obligation to file a report under subdivision (b) therefore has no statutory occasion on which to fulfill its registration maintenance obligation, which strongly implies that the initial registration obligation was conceived of as arising in tandem with the reporting obligation, not independently of it.

This textual linkage is confirmed by the enforcement structure. Section 27501(a)(3) provides that if a covered entity fails to update its registration information in the report required by subdivision (b) by April 1 of any year, the Department shall notify the covered entity and allow a 60-day cure period before pursuing remedies. That enforcement mechanism presupposes the existence of a report: there is no parallel enforcement provision directed at a failure to register in the absence of a reporting obligation. Similarly, Section 27502(e) authorizes the Department to pursue remedies when a covered entity fails to file a report required by subdivision (b) of Section 27501, and not when a covered entity fails to maintain a standalone registration record. Section 27504(a)(1) likewise authorizes Commissioner action against covered entities who fail to meet the requirements of Section 27501, which, read in light of the foregoing, means the failure to file a compliant report under Section 27501(b), not the failure to register in a year in which no report is due.

The fee structure points in the same direction. Section 27502(d) designates the applicable charge as a "fee per report." It is not a registration fee or an annual maintenance fee. The statute provides no mechanism for any fee to be charged to or collected from an entity that has no report to file. If the Legislature had intended registration to be a standalone obligation, independent of the reporting requirement, one would expect some provision addressing how a registered-but-not-reporting entity interacts with the fee structure. There is none. The absence of any such mechanism is strong evidence that the Legislature did not contemplate registration as an obligation that arises independently of the duty to report.

In short, the statute provides no coherent framework for a registered-but-not-reporting entity: no mechanism to update registration information, no enforcement clock, and no fee obligation. The better reading is that registration and reporting are integrated obligations that arise and fall together.

This interpretive question carries significant practical weight. The Department's apparent position that registration is required even absent a reporting obligation would impose a recurring administrative burden on covered entities that have nothing to report (e.g., entities in value creation phase, harvesting phase, or wind-down or liquidation phase). These entities would be required to register with the Department, maintain registration information, and potentially respond to Department inquiries, all without any corresponding reporting obligation that would give that registration practical content or purpose. Nothing in the statute compels this result, and we respectfully ask the Department to formally confirm that it does not.

IV. The Survey Distribution Obligation Under Section 27501(c) Should Be Limited to Venture Capital Investments

A third interpretive question concerns the scope of the survey distribution obligation under Section 27501(c). In response to a written inquiry from our firm, Department staff communicated a specific interpretation of that provision: that a covered entity is required to distribute the standardized survey to founding team members of any business that received any form of funding from the covered entity, regardless of whether that funding constitutes a "venture capital investment" as that term is defined in the applicable regulation. The Department acknowledged that covered entities are not required to report on investments that do not qualify as venture capital investments, but took the position that the survey distribution obligation is nonetheless broader than the reporting obligation. We respectfully disagree with that interpretation.

Section 27501(c) provides that a covered entity shall distribute the standardized survey to "founding team members of a business that has received funding from a covered entity." The Department reads the phrase "received funding from a covered entity" as encompassing all forms of financial support, not merely venture capital investments as defined by regulation. We submit that this reading is in tension with the statute's text, structure, and purpose, for the following reasons.

First, the survey is the instrument through which the demographic data is collected, and the demographic data is the substance of the report. The reporting obligation under Section 27501(b) is expressly limited to information about founding teams of businesses in which the covered entity made a "venture capital investment." If the survey distribution obligation extends to businesses that received non-venture-capital funding, the data collected from those recipients cannot be reported. It is difficult to attribute to the Legislature an intent to impose compliance obligations on covered entities for the purpose of generating data that the statute does not permit to be reported. The more natural reading is that the survey distribution obligation is coextensive with the reporting obligation: surveys should be sent to the founding teams of businesses in which the covered entity made a venture capital investment, because those are the businesses about which a report must be filed.

That reading is reinforced by the precise language of Section 27501(c) itself: in describing the survey obligation, the statute provides that the covered entity "shall obtain the information required by subdivision (b)" (i.e., the information required to be reported under Section 27501(b) with respect to venture capital investments) by providing founding team members "with an opportunity to participate in a survey for the purpose of collecting the information." The natural reading of this language is that the covered entity need only survey the businesses on which it is required to report, which are limited to businesses in which it made a venture capital investment.

Second, the term "covered entity" is itself defined by reference to a venture capital company that primarily engages in making venture capital investments. The Law is built around the concept of venture capital investment activity specifically, and its data collection framework (including the survey, the report, and the public disclosure) is oriented entirely toward that activity. Reading "received funding from a covered entity" as encompassing all funding activity, irrespective of whether it constitutes a venture capital investment, would expand the survey obligation well beyond what the statutory framework is designed to address.

Third, the practical burden of the Department's reading is significant and unanticipated. Pre-conversion instruments and small-check participations are common in the venture capital industry, and the problem is not marginal: many covered entities will have a substantial number of portfolio relationships that involve funding without any accompanying governance rights or ongoing founder relationship. In those cases, the covered entity may have no board representation, no management rights, no continuing contact with the founding team, and no reliable means of identifying or reaching the individuals the Department would require it to survey. The Department's reading also produces consequences that are plainly at odds with the statute's purpose. For example, where a covered entity previously provided a bridge loan or other non-equity financing to a business that has since repaid that obligation and completed a public offering, the Department's interpretation would require the covered entity to distribute the survey to the founding team members of a publicly traded company – individuals who may have no ongoing relationship with the covered entity and no expectation of receiving such inquiries. This raises serious concerns under applicable privacy law, including California's comprehensive consumer privacy framework, entirely apart from the absence of any statutory basis for the obligation. The proposition that the Legislature intended to impose such requirements is untenable: they generate compliance costs and legal exposure for covered entities with no corresponding informational benefit to the Department or the public.

Indeed, the Department's own written guidance acknowledges that covered entities "will not be required to report on investments that do not meet the definition of venture capital investments." That concession is dispositive: if the data gathered from non-venture-capital investees cannot be reported, there is no coherent statutory purpose served by requiring covered entities to collect it. We respectfully submit that the survey distribution obligation should be understood as limited to businesses in which the covered entity made a venture capital investment during the prior calendar year, consistent with the scope of the reporting obligation, the overall design of the Law, and the privacy interests of the individuals whose sensitive demographic information would otherwise be solicited without any legitimate statutory basis for doing so.

V. Request for Written Guidance

We respectfully request that the Department respond in writing, on the record, to the following questions:

1. Does the Department take the position that each entity independently qualifying as a covered entity under Section 27500(b) must submit a separate registration and report and pay a separate $175 filing fee, even where all such entities are controlled by a single business?

2. Does the Department take the position that Section 27501(d)(3) permits a controlling entity to file on behalf of its covered entities but does not reduce the number of registrations, reports, or fees required, effectively rendering the consolidation contemplated by that provision surplusage?

3. Does a venture capital company that meets the definition of "covered entity" under Section 27500(b) but made no venture capital investments during the prior calendar year have an obligation to register with the Department under Section 27501(a) for that year, notwithstanding that no report would be required?

4. Does the Department maintain the position communicated to our firm that the survey distribution obligation under Section 27501(c) extends to businesses that received any form of funding from a covered entity, including funding that does not constitute a "venture capital investment," notwithstanding that covered entities are not required to report on such investments?

5. Will the Department commit to publishing formal written guidance on these questions, available to all covered entities, prior to the April 1, 2026 reporting deadline?

Our Clients must make compliance and budgeting decisions in the very near term. Formal written guidance is necessary to provide the consistency and legal certainty the industry requires. This letter is submitted solely for the purpose of obtaining regulatory guidance and without prejudice to any position our Clients may take in any subsequent proceeding, whether administrative, judicial, or otherwise. Our Clients expressly reserve all rights with respect to all issues arising under the Law, including the applicability of the Law, the validity of any requirement imposed thereunder, and the specific interpretive questions addressed in this letter.

We would welcome the opportunity to meet with Department staff at the Department's convenience. Please direct any response or inquiry to Stacey Song, stacey.song@cooley.com, (212) 479-6820 or Selin Akkan, selin.akkan@cooley.com, (650) 843-5076.

Respectfully submitted,

Stacey Song and Selin Akkan