

Date: 5<sup>th</sup> June 2017.

To: European Investment Bank Complaint Mechanism Division

By: [REDACTED]

Mr. Yehuda Benny

[REDACTED]

Sofia

Bulgaria

Telephone number: [REDACTED]

Email: [REDACTED]

**Regarding : Complaint a decision for [REDACTED] on “Call for  
the Expression of Interest JER-009/8 – 07”.**

Dear Sir or Madam,

My name is Yehuda Benny and I am the entrepreneur and sole owner of [REDACTED], together with my potential partners as presented on the application form. [REDACTED] participates in the tender “Call for the Expression of Interest JER-009/8 – 07”. On May 3<sup>rd</sup> 2017, we received a Rejection Letter. On May 5<sup>th</sup> 2017, we asked for clarifications regarding that decision and we received a Clarification Letter on May 22<sup>nd</sup> 2017 .

**By this letter I would like to officially submit a complaint, regarding the decision of the EIF, to reject our Expression of Interest and to address the reasons for this rejection, as presented in their Clarification Letter.**

According to the Clarification Letter, the EIF took note of the following points when rejecting our Expression of Interest:

- **“The proposed team, time commitment and overall capabilities were deemed less suitable to the proposed fund size and investment strategy;**
- **The investment strategy and involvement of the team in the acceleration compartment was considered not to be fully in line with the two-compartment structure of the instrument;**

- **The corporate governance and decision-making process, including the proposal of offering a golden share to EIF, were not considered in line with industry practices and the expectation for independent management of the instrument.”**

We will address each of the notes of the EIF in turn and we will present the reasons why we consider that our Expression of Interest was unfairly rejected and therefore constitutes a case of maladministration on the part of the EIF.

**Regarding the first note:**

The EIF has stated that the team proposed by us, the team’s time commitment and overall capabilities are less suitable for the proposed fund size and investment strategy. However, this is not the case since in our proposal we presented the Management Partners, as they are the only ones who are personally responsible for the management of the Fund and the Investment Strategy and they are competent to carry out professionally the whole range of activities related to it. As for the concerns expressed by the EIF regarding the time commitment, while some of the Management Partners are indeed not Bulgarian residents, they are willing to commit to a maximum stay in the country. Though, they are fully committed to the activities of the Fund and their current residence does not in any way mean that their capacities to fulfill their obligations regarding the Fund are limited, neither do their time involvement on the fund management.

On the contrary, our Management Team’s overall capabilities are the result of more than 100 years of experience in this particular industry, as well as in VC participation and partnership, startups establishment and management, mentoring, marketing, including Exits and IPOs and establishment and managing accelerators. Given the track record of our Management Team and their significant experience in similar projects, we consider that their qualifications to be selected as Financial Intermediaries implementing the Early Stage Fund with an Acceleration Compartment are sufficiently well established.

**Regarding the second note:**

The EIF has stated that the investment strategy and involvement of our team in the acceleration compartment were not fully in line with the two-compartment structure of the instrument. However, this Call for Interest is for an instrument defined as “Early Stage Fund *with* Accelerator Compartment” and by definition, a “Fund” does not hold any assets but holds parts or shares of invested companies or new ideas (formed as companies, or similar legal entities).

An “Accelerator Compartment” is an asset by itself and belongs (as a compartment) to the General Manager. Therefore, this instrument is wrongly considered a “Two Compartment Structure”. Rather, it is a single Fund with two scopes of investments: “Early Stage companies” and “Accelerator compartment”. This instrument provides, and allows, better synergy between those two types of investments when a “Follow on Investment” on the initial Accelerator investment is allowed.

We consider that in order to avoid a conflict of interest while observing the investments in each of the streams, especially in the “Follow on Investments” on the accelerator, precisely the kind of unique management structure, decision making processes and Fund’s distribution cascade that we offer is needed. By not understanding these critical issues, the EIF may fail to foresee the risk of a possible conflict between the Investor and the General Manager. Mainly as it’s not possible

to define a success, and the proceeds, from the Accelerator compartment investment, when a “Follow on Investment” is done.

We were unable to find in the EIF’s tenders’ records of the last 5 years a call for or an implementation of such an instrument and we suspect this may be the first time the EIF has dealt with these issues.

Additionally, we would like to note that both the first and the second note of the EIF rely solely on Quality Assessment Criteria No. 2.1.2 “Evaluation of the Fund Manager team profile, stability and ability to implement the Financial Instrument” which is one of a total 6 items on this paragraph with a total scoring of 60 points. Therefore, as we didn’t get any note regarding the other issues, we concenter them well done and accepted, and our total score should be minimum 90 points out of 100. Therefore, consider this reason to be an insufficient ground for the rejection of our application.

### **Regarding the third note:**

According to the EIF, our corporate governance and decision-making process, including our proposal of offering a golden share to the EIF, are not in line with industry practices and the expectation for independent management of the instrument. However, our corporate governance and decision-making processes are in fact fully in line with the industry practices. According to common definitions, on a “Venture Capital”, there are three types of participants:

- **General Partners (GP):** They manage all matters related to the operations, due diligence, investing, mentoring and exit decisions.
- **Limited Partners (LP):** They are just investors in a VC firm and may reap rewards or bear losses depending on the decisions made by the General Partners (this is the relationship between the two). However, limited Partners may not interfere with the business activities of the firm.
- **Venture Partner (VP)** is a person who a General Partner firm brings on board to assist with the investment and management.

The GP & VP are executive private entities on the General Partner’s legal entity (company). Their duties are as defined above. The LP is formed on a different legal entity, usually defined as “The Fund Level”. The LP has a limited liability, without any executive duties or responsibilities.

As for the note regarding the “**Golden Share**”, this share is a normal industry practice when public or state resources are involved. This share is offered on the “Fund Level”, that has nothing to do with the independent management, or any other management duties or responsibilities at all. Those performed only by the “General Partner”.

Therefore, we consider that this point is not relevant to our proposal.

Lastly, we would like to emphasize that evaluations should not be based on subjective assessments but on facts and that the entire process should be competitive and transparent. Given the lack of any information regarding the other applicants and their “Quality Assessment

Criteria” forms, it is impossible for us to determine whether or not our application was in fact rightfully rejected.

**For these reasons, we consider that the procedure was not performed in accordance with the principles of transparency, equal treatment and non-discrimination, that we should be provided with additional information and that our application should be reevaluated.**

**By participating on a public tender, it is clear to us, and should be to all participants, that this is a fully transparent and comparative process. Therefore, no confidentiality about the participants and their proposal should be expected or guaranteed.**

**Yehua Benny  
Sofia- Bulgaria**