VIA ELECTRONIC SUBMISSION

November 2, 2015

Financial Crimes Enforcement Network
U.S. Department of Treasury
P.O. Box 39
Vienna, Virginia 22183

RE: Comments on Proposed Rulemaking for Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers – RIN 1506-AB10; Docket Number FINCEN-2014-0003

The Association for Corporate Growth ("ACG") appreciates the opportunity to comment on the Notice of Proposed Rulemaking issued by the Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") entitled "Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers" (the "Proposed Rule"). If adopted, the Proposed Rule would, among other things, require registered investment advisers ("advisers") to adopt significant new anti-money laundering ("AML") policies and procedures, as well as subject advisers to new reporting obligations under the Bank Secrecy Act ("BSA") without any corresponding benefit in reducing money laundering.

As noted previously by FinCEN, due to their long-term investment focus and illiquid nature, private equity funds "are not likely to be used by money launderers."[1] ACG believes the Proposed Rule would impose significant costs upon advisers to private equity funds and other illiquid pooled investment vehicles but not prevent or deter money laundering in any meaningful way. Moreover, the multitude of federal statutes that regulate advisers already addresses potential money laundering by requiring advisers to conduct significant due diligence into potential investors before they invest.

For these reasons, ACG believes advisers to private equity funds and other illiquid other pooled investment vehicles should be excluded from the AML requirements described in the Proposed Rule. In the alternative, FinCEN could require private equity fund advisers to adopt AML policies without subjecting advisers to the other onerous provisions of the BSA, including the reporting, recordkeeping, training and independent training obligations under the BSA. Given the admittedly low risk posed by private equity advisers, these costly requirements are unnecessary to prevent money laundering.

[1] Federal Register, Vol. 67, No. 187, Thursday, September 26, 2002, at 60619.

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The Association for Corporate Growth and Middle Market Private Equity

ACG was founded in 1954 and has more than 14,500 members and 57 chapters throughout the world, 45 of which are located within the United States. ACG members are people who invest in, own, lead, advise or lend to growing middle-market companies. This includes professionals from private equity firms, corporations, banks and other lenders to middle market companies, as well as professionals from law firms, accounting firms, investment banks and other advisors to deal making.

A particular focus of ACG is middle-market private equity ("MMPE"). ACG's membership includes over 1,000 private equity firms that focus on the middle-market. The mission of ACG is to "drive middle-market growth." ACG helps to facilitate growth by bringing together middle-market dealmakers and business leaders who build value in companies. ACG accomplishes this by hosting hundreds of chapter events every year, providing online tools for its members, organizing networking opportunities and providing leading-edge market intelligence and thought leadership.

The Proposed Rule Would Subject Private Equity Fund Advisers to Unnecessary Regulations

The Proposed Rule would apply to all investment advisers who are registered or required to be registered with the SEC under the Advisers Act. The Proposed Rule would, among other things:

- amend the definition of "financial institution" in the BSA to include advisers, thereby subjecting advisers to the BSA's recordkeeping and reporting obligations;
- require advisers to develop and implement a written AML program;
- require that the AML program be approved in writing by the adviser's general partner;
- require advisers to provide for independent testing of the AML programs on a periodic basis; and
- require advisers to provide ongoing training for adviser personnel.

These requirements are unnecessary given the low risk profile that private equity funds present for money laundering.

Private Equity Funds are Long-Term, Illiquid Investment Vehicles, Making Them a Poor Vehicle for Money Laundering

Typically, private equity funds are structured as limited partnerships, with the adviser or an affiliate of the adviser serving as the fund's general partner. The general partner enters into a detailed, comprehensive limited partnership agreement ("LPA") with the fund's limited partners, which describes the obligations and rights between the adviser and the investors in the fund.

Unlike many other investment products, private equity funds are long-term investment vehicles. Most private equity funds are structured as ten-year partnerships, with the LPA generally providing for further extension of the agreement at the adviser's discretion and/or with the consent of the limited partners.

Crucially, investors in private equity funds are generally prohibited from redeeming their investment. This is because private equity funds make long-term investments in privately held companies, which requires invested capital to be locked up for extended periods of time. This differs from most investment companies, commodity pools and other pooled investment vehicles, which do offer redemption rights.

In addition, investors in private equity funds do not contribute all of their committed capital upon making their investment. Rather, capital is committed on an as-needed basis, generally over a five-year investment period. Investors generally do not receive a return on their capital until 3-6 years from the time that an investment is made, as the adviser "harvests" its portfolio company investment.

For these reasons, in its prior AML proposals FinCEN excluded funds that did not offer redemption rights to investors for the first two years of their investment. FinCEN does not provide, and ACG is not aware of, any change in facts or circumstances that would now warrant requiring all advisers to adopt the AML procedures described in the Proposed Rule. In fact, most advisers are now required to register with the U.S. Securities and Exchange Commission ("SEC") and are subject to SEC examination, resulting in arguably significantly more regulation and transparency now than at the time of the prior proposals.

One of the justifications FinCEN provides in the Proposed Rule for requiring advisers to be subject to the BSA is that "there may be a lack of transparency regarding the entities that invest in private funds and other unregistered pooled investment vehicles."[2] However, to support this assertion FinCEN merely references its 2002 AML proposal[3] – apparently ignoring the increased transparency resulting from the 2010 Dodd-Frank Act, implementation of the Fair and Accurate Credit Transactions Act of 2003 (FACTA) and other statutes.

The Current Statutory Framework Adequately Addresses AML Risk By Advisers to Private Equity Funds

FinCEN acknowledges that private equity funds are unlikely to be used by those seeking to launder money. Given the relatively low AML risk posed by advisers to private equity funds, the current statutory regulatory framework adequately addresses these risks.

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[2] Proposed Rule, at 52688.
[3] Id., fn. 66

Advisers to private equity funds are subject to a host of federal statutes, including the 1933 Securities Act, the Investment Company Act, the Investment Advisers Act, the Foreign Corrupt Practices Act and the 1934 Securities Exchange Act. These statutes already require an adviser to conduct considerable due diligence regarding potential investors and to keep a watchful eye out for illegal or illicit activity.

Prior to allowing an individual or entity to invest in a fund, advisers require potential investors to complete a lengthy subscription agreement, which includes significant disclosures, representations and documentation. For example, the adviser will conduct diligence regarding, and the potential investor will need to demonstrate to the adviser, that he or she:

- is an "accredited investor"[4] for purposes of determining whether the offering qualifies as a private offering under Regulation D of the 1933 Act;
- is an "accredited investor" or "qualified purchaser"[5] for purpose of Sections 3(c)(1) and Section 3(c)(7) of the Investment Company Act;
- is a "qualified client"[6] for purposes of Rule 205-3 under the Advisers Act;
- is neither disqualified under the many federal statutes administered by the Office of Foreign Assets Control (OFAC), nor on OFAC's list of "Specially Designated Nationals."

In addition, the Investment Company Act and the Advisers Act contain "look-through" and other provisions that require advisers to conduct diligence into underlying investors in the funds.

Interests in middle-market private equity funds are typically sold in private rather than public offerings, to high-net worth and other sophisticated investors. Middle-market private equity fund advisers typically have a pre-existing, substantive relationship with the investors in their funds. Moreover, advisers that conduct offerings through general solicitations or advertising pursuant to Rule 506(c) under Regulation D of the 1933 Act are required to take reasonable steps to ensure that all of their investors are "accredited investors."

Finally, middle-market private equity funds typically have U.S.-based investors, and make investments exclusively or primarily in U.S.-based privately held companies.

Conclusion

As FinCEN acknowledges, private equity funds are poor vehicles for money laundering due to their long-term, illiquid nature. Moreover, the current statutory framework already addresses AML concerns.

[4] Securities Act of 1933, §230.501(a), 17 CFR 230.501(a).
[5] Investment Company Act of 1940, Section 2(a)(51), 15 U.S. Code § 80a–2(a)(51).
[6] Investment Adviser Act of 1940, Rule 205-3(d)(1), 17 CFR 275.205-3(d)(1).

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ACG appreciates the opportunity to comment on the NPRM and welcomes the opportunity to discuss further any of the issues addressed in this letter. If you have any questions, or if we can provide any additional information, please feel free to contact Amber Landis, vice president of public policy, at alandis@acg.org or at (312) 957-4272.

Sincerely,

Gary A. LaBranche, FASB, CAE
President & CEO
Association for Corporate Growth