August 11, 2015

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Comments on Proposed Amendments to Form ADV and Investment Advisers Act Rules – Release No. IA-4091; File Number S7-09-15

The Association for Corporate Growth ("ACG") welcomes the opportunity to comment on the proposed rule (the "Proposed Rule") issued by the Securities and Exchange Commission ("SEC") to amend Form ADV and certain rules under the Investment Advisers Act of 1940 ("Advisers Act"). ACG is concerned that the proposed changes will impose a significant administrative burden on middle-market private equity firms without providing information useful to investors and potential investors in such funds.

Middle-market private equity funds make investments in small and medium-sized businesses – nearly all of which are located within the United States – and then help those businesses grow and expand. Generally, middle-market private equity funds neither trade securities nor employ leverage at the fund level. They pose no systemic risk, their investment strategy is straightforward, and their success is directly tied to the success of the companies they invest in.

As noted in the Proposed Rule, the SEC significantly enhanced reporting requirements for advisers to private funds only a few years ago as part of the Dodd-Frank Act's[1] private fund adviser registration requirements.[2] ACG is therefore disappointed that the SEC now seeks to impose many new reporting and recordkeeping obligations on private fund advisers, who are still reeling from the voluminous reporting and recordkeeping obligations that they already face.

It is ACG's belief that many, if not most, of the proposed changes would not enhance investor protection or education in any meaningful way yet, taken as a whole, would impose significant and undue burdens on advisers to private funds. ACG therefore strongly urges the SEC to reject most of the changes in the Proposed Rule. ACG supports the SEC's desire to implement an "umbrella registration" for private fund advisers but, as described below, believes that the requirements identified in the Proposed Rule for a unified registration are too narrow and should be expanded.

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[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).
[2] *See*, Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3221 (June 22, 2011), 76 FR 42950 (July 19, 2011).

In light of the potential burden the Proposed Rule would place on middle-market private equity firms in terms of both time and cost, ACG greatly appreciates the opportunity to provide industry insight and comments.

Background on the Association for Corporate Growth

ACG was founded in 1954 and has more than 14,500 members and 57 chapters throughout the world (45 of these chapters are 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.

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, structuring networking opportunities and providing leading-edge market intelligence and thought leadership.

Middle Market Private Equity

A particular focus of ACG is middle-market private equity. ACG's membership includes over 1,000 private equity firms that focus on the middle-market. Earlier this year, ACG updated its ground-breaking research, www.GrowthEconomy.org, using independent databases to better understand the relationship of private capital investment on corporate growth and job creation. The research found that between 1995 and 2013:

- Private equity-backed companies grew jobs by 83.7%, while all other companies in the U.S. economy grew jobs by 26.5%;
- Private equity-backed companies grew sales by 134%, while all other companies in the U.S. economy grew sales by 31%; and
- Middle-market private equity-backed companies created more than three times the amount of new jobs (970,869) than any other employment stage.[3]

Almost half of all private equity investment comes from foundations, public/private pension funds and university endowments. These investors have realized a 10-year annualized return in excess of 10% and superior to all other asset classes- helping to enable these organizations to meet their ongoing obligations.[4] Private equity firms provide that rate of return by improving the operational efficiency, governance and market strength of the companies in which they invest, as many studies have revealed. These facts are among the reasons that private equity continues to attract the investment and trust of highly demanding, sophisticated investors.[5]

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[3] *See*, http://www.growtheconomy.org/.

[4] Data according to Prequin.

[5] Investors in private equity funds are highly sophisticated and almost always "Qualified Purchasers," "Qualified Clients" and/or "Accredited Investors."

Private equity firms are similar to venture capital firms (who are, of course, exempt from most of the onerous requirements of the Adviser's Act) in that both make long term investments in companies with the purpose of growing the businesses in which each invests. The difference between venture capital and private equity firms is merely the stage at which each invests: venture capital firms invest in riskier startups or early-stage companies, whereas private equity firms invest in companies that are profitable and growing yet lack the financing or expertise to reach their full potential. Private equity firms differ markedly from hedge funds in that private equity firms make long-term investments in privately held companies and then add value to these companies through improving efficiencies, setting performance benchmarks, imposing fiscal discipline, improving corporate governance, facilitating add-on acquisitions and myriad other ways, whereas hedge funds generally trade marketable equity and debt securities.

Middle-Market Private Equity Firms Already Face A Significant Regulatory Burden

As a result of the Dodd-Frank Act,[6] nearly all advisers to private equity funds with over $150 million in assets under management ("AUM") must now register under the Advisers Act and are subject to the extensive recordkeeping[7] and reporting[8] obligations therein. As noted in the Proposed Rule, the rule implementing these changes significantly enhanced the reporting obligations for advisers to private funds.

However, the reporting and recordkeeping obligations under Form ADV, which are the subject of the Proposed Rule, are but a fraction of the reporting and regulatory requirements with which advisers to private funds must comply.

In addition to Form ADV, advisers to private funds with more than $150 million in AUM must also submit annual or quarterly[9] reports on Form ADV.[10] Earlier this year the Division of Investment Management released guidance describing the policies, systems and procedures advisers "may wish to consider" implementing in order to fulfill their "compliance obligations under the federal securities laws" regarding cybersecurity.[11] This is on top of the eight-page sample request contained in OCIE's 2014 Risk Alert on cybersecurity.[12]

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[6] Title IV of the Dodd-Frank Act eliminated the Section 203(b)(3) "private adviser" exemption under the Advisers Act, upon which many advisers to private funds relied.

[7] Advisers Act Rule 204-2 imposes dozens of categories and sub-categories of records that advisers are required to keep.

[8] The Advisers Act requires private equity firms to report annually on both Form ADV (at a minimum, material changes thereto) and also on Form PF.

[9] Large hedge fund advisers and large liquidity fund advisers must update information quarterly.

[10] Advisers Act Rule 204-1. *See*, http://www.sec.gov/rules/final/2011/ia-3308.pdf.

[11] Division of Investment Management, Guidance Update, Cybersecurity Guidance, April 2015 (http://www.sec.gov/investment/im-guidance-2015-02.pdf).

[12] *See*, National Exam Program Risk Alert, OCIE Cybersecurity Initiative, April 15, 2014 (http://www.sec.gov/ocie/announcement/Cybersecurity-Risk-Alert--Appendix---4.15.14.pdf)

In 2012, OCIE announced its goal to examine one quarter of the newly-registered investment advisers over a two year period. Since that time, many firms have been forced to spend a great deal of time, money and effort either being examined by the SEC or preparing for an examination.

Last year, the then-director of OCIE gave a speech critiquing the transparency of private equity firms regarding fees, expenses and other issues.[13] Since that time, many firms have spent significant time and effort reviewing their legal documents and analyzing the sufficiency of their past disclosures.

In addition to regulatory obligations relating to the SEC, private equity firms are, of course, impacted by regulations arising under other agencies as well. Most firms have been subject to significant time consuming and expensive reporting obligations under the Foreign Account Tax Compliance Act ("FATCA"), which went into effect earlier this year. Private equity firms are also required to respond to numerous surveys put out by the Bureau of Economic Analysis, including the BE-10,[14] BE-11, BE-15 and BE-180 surveys. There are also relevant non-U.S. regulations. For example, fund advisers that market overseas must comply with the complex regulatory framework of the Alternative Investment Fund Managers Directive (AIFMD).

And, of course, these regulations are all in addition to the quarterly and annual reporting obligations that private equity firms have to their investors.

This is not intended to complain, but rather to ensure that any discussion regarding increasing reporting requirements under Form ADV takes into account the explosive increase in regulatory and compliance costs that has occurred over the past few years. The changes in the Proposed Rule should not be viewed in isolation from the many other regulatory burdens that advisers currently face.

The Proposed Changes to Form ADV Will Not Improve Investor Protections Yet, In The Aggregate, Will Impose a Significant Burden

The Proposed Rule contains a number of potential changes to Form ADV. While many of these proposed changes may not *individually* be material, when taken as a whole they likely *would* have a material impact, significantly increasing the high regulatory burden that middle-market private equity firms already face.

ACG is also concerned that the SEC's motivation for several of the proposed changes appears to be improving its ability to conduct examinations rather than enhancing the

[13] "Spreading Sunshine in Private Equity," May 6, 2014, (http://www.sec.gov/News/Speech/Detail/Speech/1370541735361)

[14] The Final Rule implementing the BE-10 survey estimated that it would take an investment adviser, on average, 144 hours to complete the survey.

information available to potential investors.[15] ACG believes that this is misguided, and has led to an erroneous calculation of the costs and benefits of the proposed changes.

Here are ACG comments regarding some of the proposed revisions to Form ADV:

- Form ADV Item 1.I/Schedule D Section 1.I – The Proposed Rule would require advisers to indicate whether they have websites for social media platforms, such as Twitter, Facebook and LinkedIn, and provide the social media addresses for such sites. While the changes proposed by the SEC regarding use of social media would not impose a material burden, private equity firms are not retail-facing operations, and accept only accredited investors, qualified clients, and/or qualified purchasers as investors in funds. Social media is not used to reach potential investors, so the Proposed Rule will not provide the SEC with any greater information about the ways in which private equity firms seek clients. Moreover, it would be very helpful for the SEC to further clarify the rules surrounding the use of the social media platforms by investment advisers as this is an area where significant confusion remains.
- Form ADV Item 1.F/Schedule D Section 1.F – The Proposed Rule would require advisers to provide significant additional information regarding their largest 25 offices instead of largest 5. ACG believes this information would be of no or minimal use to investors or the SEC, yet impose a significant burden on advisers. Therefore, no change should be made.
- Form ADV Item 1.J – The Proposed Rule would require advisers to report whether their chief compliance officer function is outsourced. We believe this information would be of no or minimal use to investors, and therefore no change should be made.
- Form ADV Item 5 – The Proposed Rule would make a number of changes to Item 5, including requiring advisers to disclose (i) the number of clients and regulatory assets under management attributable to each category of clients, (ii) whether reported RAUM in Part 1A differs from reported RAUM in Part 2A, (iii) the approximate percentage of RAUM attributable to non-U.S. persons, and (iv) wrap fee programs. Although many of the proposed changes are relatively minor, ACG does not believe that they would provide any meaningful information to investors or potential investors in private equity funds.
- Form ADV Part 1A, Section 7.A - The Proposed Rule would require advisers to report the percentage of a private fund owned by Qualified Clients under Rule 205-3. Although this change alone would not add a material additional burden to private equity firms, ACG does not believe this information would provide any meaningful benefit to investors, potential investors or the SEC. In addition, private equity firms that are not required to register with the SEC and are, instead, registered at the state level may not have this information available to them. The final rule should clarify that any application of this change would be prospective, and private equity firms

[15] Proposed Rule, p. 17 ("Our staff could use this information to help prepare for examinations of investment advisers and compare information that advisers disseminate across different social media platforms as well as identifying and monitoring new platforms.")

would not be required to go back and contact prior investors to determine whether or not they are a Qualified Client.

The Proposed Changes to The Books and Records Rule (Rule 204-2) Will Not Benefit Investors, Yet Will Increase Advisers' Regulatory Burden Significantly

ACG is particularly concerned about the proposed amendments to Rule 204-2, which would require advisers to maintain (i) records supporting performance claims in communications with "any person" rather than ten or more persons, and (ii) originals of all written communications received and copies of written communications sent by an adviser related to the performance or rate of return of all managed accounts or securities recommendations. As noted previously, investors in private equity funds are sophisticated investors, over half of which are pension funds and university endowments. Another meaningful percentage of investors are insurance companies and foundations. These are all investors who conduct deep due diligence on a firm before making a commitment to a private equity fund. Private equity funds are closed-ended and illiquid. This means that, unlike mutual funds, investors cannot enter and exit at will. Therefore, communications with investors about returns are limited to providing information that investors can test themselves through the diligence process.

Whatever limited benefit to investors or the SEC that might result from these changes would be more than outweighed by the compliance-related time and effort that would be required. As noted above, advisers already face enormous recordkeeping obligations under the Advisers Act, and it is difficult to see how either proposed amendment would better protect investors from fraudulent performance claims in any material way. A major concern of private equity firms is that additional compliance burdens that do not actually provide protections to investors actually can harm investors because the private equity firm must divert resources from the active management of portfolio company investments and due course reporting to investors to focus attention on the compliance burdens.

Use of the "Umbrella Registration" Should Be Expanded

The Proposed Rule correctly points out that the current registration process for multiple private fund adviser entities operating a single advisory business is confusing and inefficient for advisers and investors alike. And while the SEC staff has provided helpful guidance to private fund advisers regarding umbrella registration within the confines of the current form,[16] it would be preferable to confirm the concept through formal rulemaking. Moreover, not all advisers are aware of the guidance.

ACG agrees that incorporating the "umbrella registration" into Form ADV would help alleviate confusion, lead to more uniform filings, and increase awareness of its availability. However, ACG is concerned that the requirements as described in the Proposed Rule may unduly limit the advisers that are able to take advantage of uniform registration.

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[16] See American Bar Association, Business Law Section, SEC Staff Letter, Jan. 18, 2012, (http://www.sec.gov/divisions/investment/noaction/2012/aba011812.htm).

In order to make an "umbrella registration," the Proposed Rule requires the filing adviser and each relying adviser seeking to "operate under a single code of ethics adopted in accordance with rule 204A-1 under the Advisers Act and a single set of written policies and procedures adopted and implemented in accordance with rule 206(4)-(7) under the Advisers Act. . . ."

This requirement will have the practical effect of preventing exempt reporting advisers, including those exempt under Sections 203(l) (venture capital fund adviser exemption) and 203(m) (private fund adviser exemption) from making an umbrella registration. These types of advisers were specifically excluded from the registration requirements of the Advisers Act by Congress as part of the Dodd-Frank Act, and are therefore not subject to IAA Rules 204A-1 or 206(4)-7. Prohibiting these advisers from undertaking an umbrella registration will result in uneven application of the reporting requirements and, therefore, investor confusion.

ACG appreciates the opportunity to comment on the Proposed Rule, 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, senior director of public policy, at [redacted] or at [redacted].

Sincerely,

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