KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

200 East Randolph Drive
Chicago, Illinois 60601

312 861-2000

Facsimile:
312 861-2200

www.kirkland.com

17

July 7, 2003

James F. Sloan
Director
Financial Crimes Enforcement Network
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Section 352 Investment Adviser Rule Comments

Dear Mr. Sloan:

We are pleased to have this opportunity to comment on the Financial Crimes Enforcement Network's ("FinCEN") proposed amendments (RIN 1506-AA28) to its Bank Secrecy Act rules which would require certain investment advisers to establish anti-money laundering programs (the "Proposing Release"). Our firm acts as legal counsel for numerous general partners and management companies ("Advisers") of venture capital and other private investment funds, including private equity and real estate investment funds ("Private Funds"). While we generally support FinCEN's proposal to require certain investment advisers to establish anti-money laundering programs, we respectfully ask FinCEN to reconsider its application of such requirements to Advisers of Private Funds that are not registered with the Securities and Exchange Commission ("SEC"). Additionally, we submit that if FinCEN ultimately requires Advisers of Private Funds to establish anti-money laundering programs and make annual notice filings ("Notice") with FinCEN, that FinCEN consider some requests for clarification and suggestions with respect to such Notice filings as set forth below.

1. Exemption for Advisers of Private Funds.

As currently drafted, the Proposing Release would require investment advisers relying on the registration exemption provided by section 203(b)(3) of the Investment Advisers Act of 1940, as amended ("Advisers Act"), to establish anti-money laundering programs (as described in the Proposing Release) and also file an annual Notice with FinCEN. We respectfully submit that Advisers solely to Private Funds should be exempted from these requirements because we believe Private Funds are unlikely to be used as vehicles to launder money.

Investments in Private Funds are long-term, illiquid investments. In a typical Private Fund, investors subscribe for capital commitments which are then "called" (i.e., drawn down) by the Private Fund's Adviser over a period of several years (e.g., three to five years) as needed from time to time to fund Private Fund investments and expenses. Additionally, once capital commitments are "called," Private Funds typically invest in companies that are not publicly traded and which must be held by the Private Fund for a number of years before the Private Fund realizes a return on its investment. Accordingly, distributions to investors in Private Funds are typically made from time to time over the duration of a Private Fund's term, which may be up to ten years or more, only when and if a Private Fund realizes a distribution from an underlying investment. Because of the nature of Private Funds, investors typically are unable to redeem all or any portion of their investment for many years.

We believe the illiquid nature of investments in Private Funds would make them less attractive to money launderers than other types of investment vehicles in which investments are more readily available for redemption. Under current rules and regulations, Private Funds are not required to adopt anti-money laundering programs for many of the same reasons that we have articulated here, namely, that investors in Private Funds are long term investors with very limited, if any, redemption rights. We request that FinCEN consider the necessity of requiring Advisers solely to Private Funds to adopt anti-money laundering programs when the Private Funds they advise are exempt from anti-money laundering program requirements. For these reasons, we believe that subjecting Advisers of Private Funds to the anti-money laundering program requirements would be an unnecessary burden on both Advisers of Private Funds and the federal regulatory agencies charged with preventing money laundering.

2. Annual Notice Filing Requests and Clarifications.

If FinCEN ultimately decides to subject Advisers of Private Funds to the requirements of the Proposing Release, including the annual Notice filing, we ask that FinCEN consider the following points and/or requests with respect to the Notice:

- Private Funds are typically organized as limited partnerships with a general partner and/or affiliated management company or companies ("Affiliated Advisers") providing investment advisory services to the Private Fund. Affiliated Advisers of a Private Fund typically share common personnel, management, and control persons. We suggest that Affiliated Advisers subject to FinCEN's proposed Notice requirement be permitted to submit a combined Notice. A combined Notice would eliminate unnecessary mostly duplicative filings. In addition, since Affiliated Advisers often serve multiple advisory functions for the same Private Fund, the combined reporting would eliminate double counting of assets under management.

- The annual Notice required to be filed by unregistered investment advisers requires disclosure of "the total number of clients of the unregistered investment adviser." We suggest clarification that an Adviser of a Private Fund should calculate clients in accordance with Rule 203(b)(3)-1 under the Advisers Act.

- The annual Notice required to be filed by unregistered investment advisers requires disclosure of "the total amount of assets under management" as determined under the instructions to Form ADV, Part 1A. We request clarification that unfunded capital commitments should be included in the calculation of assets under management.

We thank you for this opportunity to present our comments to you regarding the Proposed Release and would welcome the opportunity to discuss our views with you in more detail. Please feel free to contact either Scott A. Moehrke (312-861-2199) or Nabil Sabki (312-861-2369) with any questions you may have.

Sincerely,

Kirkland & Ellis LLP

By: Scott A. Moehrke
Nabil Sabki