

Via e-mail: poststelle@bmf.bund.de

German Federal Ministry of Finance
Mr. Jürgen Tietze
Unit VII B 4 – Insurance Industry
11016 Berlin
Germany

May 5, 2014

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Doc: 2014/0357789

Dear Mr. Tietze:

On behalf of the Private Equity Growth Capital Council (PEGCC), I would like to thank you for your response letter to our letter dated April 7, 2014, in which we expressed our concerns at proposed amendments to the German Investment Regulation (*Anlageverordnung*) that could have a material adverse effect on our members who are located outside of the European Union (EU).

We are truly grateful that you offer to take our comments into consideration and to invite us to participate in the formal consultation procedure.

In your response letter, you mention that the “goal of the proposed amendments to the German Investment Regulation is to create a ‘level playing field’ for the companies regulated pursuant to the KAGB.” You note that “this means that, as a rule, the company managing the investment fund will need to have an authorization. It is expected that a mere registration will not be sufficient.”

We are convinced that the regulatory environment for investment fund managers in the EU and the US is equivalent. Among other things, this is evidenced by the cooperation agreements between the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) and the US Securities and Exchange Commission (“SEC”) as well as other US government authorities in connection with the AIFM Directive 2011/61/EU.

While the regulatory approach taken is different, the protections for funds, investors and the market as such are substantially similar. For your reference, we have prepared the attached summary of the regulation of investment advisers under the US Investment Advisers Act of 1940 (the “Advisers Act”). You will see from the summary, of which we attach the English language original version as well as the German translation, that registration with the US Securities and Exchange Commission (the “SEC”) requires an investment adviser to disclose extensive information and subjects the investment adviser to a large body of rules and regulations and to SEC inspection and oversight. This is no “mere” registration.

Registration

Specifically, and as further elaborated in the attached summary, the Advisers Act obliges US managers of private equity funds generally to register with the SEC as investment advisers by filing a Form ADV. Such form requires disclosure of a significant amount of information which is substantially similar to the information which must be provided in connection with the application for authorization according to Art. 7 AIFMD or Sec. 22 KAGB.

The key difference between the regulatory approach in the EU and the US is that there is no such authorization process in the US. The SEC review of the Form ADV filing is primarily focused on whether the investment adviser is disqualified from registering due to a disciplinary event in the past. This review is supplemented with comprehensive disclosure and delivery requirements, substantive regulation and strong supervision.

Substantive Regulation and Supervision

The general rules of conduct and organizational requirements applicable to a registered investment adviser are substantially similar to those applicable to a German fund manager (*Kapitalverwaltungsgesellschaft*). In particular, a registered investment adviser is subject to detailed requirements regarding (i) its fiduciary duties, (ii) conflicts of interest, (iii) adequate and appropriate human and technical resources that are necessary for the proper management of the fund, (iv) risk and liquidity management, (v) solicitation and advertisements, (vi) ongoing notification and disclosure, (vii) systemic risk reporting, (viii) remuneration, and (ix) books and records keeping.

The SEC actively monitors compliance with the Advisers Act through its examination program. An examination typically involves an SEC visit to an adviser’s offices. During an SEC inspection, an adviser’s books and records are usually the subject of careful review. An SEC inspection often occurs within a year after initial registration; the frequency of examinations thereafter depends upon the SEC’s assessment of the firm’s risk profile. SEC examinations can last anywhere from a week or more to many months, depending on the focus of the exam and the size and complexity of the adviser. Violations of the Advisers Act may result in the imposition of civil or administrative sanctions by the SEC, as well as substantial monetary penalties.

In 2012, the SEC launched an initiative to conduct focused, risk-based examination of AIFMs that recently registered with the SEC. This initiative is still ongoing.

Request

The PEGCC believes that it is important to create a true “level playing field” in connection with the proposed amendments to the German Investment Regulation. Therefore, we would be grateful if you could consider deeming a registration under the Advisers Act equivalent to an authorization under the KAGB. Alternatively, you could consider replacing the contemplated authorization requirement by reference to an equivalent supervision requirement and providing guidance to investors which non-EU regulatory regimes are considered equivalent in principle.

We appreciate that a determination of regulatory equivalence is complex. In our view, it is too complex for German insurance companies and retirement schemes to be responsible for such a determination and to assume the risks associated therewith. As stated in our letter dated April 7, 2014, the currently contemplated approach would create a hurdle which is likely to cause US private equity firms to be barred from the market. This appears to violate the spirit of the decision to introduce the non-EU-AIFM passport in 2015.

We sincerely hope that you will find this letter and the attached summary useful and would be pleased to answer any questions you might have in connection therewith.

Respectfully submitted,

A handwritten signature in blue ink that reads "Steve Judge". The signature is fluid and cursive, with the first name "Steve" and last name "Judge" clearly legible.

Steve Judge
President and CEO
Private Equity Growth Capital Council