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April 20, 2009

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-27-08

Dear Ms. Murphy:

The Private Equity Council (PEC) is a Washington, D.C. based advocacy, communications and research organization established to develop, analyze and distribute information about the private equity industry and its contributions to the national and global economy. The PEC appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC" or "Commission") Roadmap for the Potential Use of Financial Statements Prepared in Accordance with International Financial Reporting Standards by U.S. Issuers ("IFRS Roadmap"). We support the convergence of accounting standards across reporting jurisdictions and the SEC's efforts to facilitate this within the U.S. capital markets. Our businesses operate in a global marketplace on global financial exchanges. Having a single financial reporting language provides better information for the investing public in their allocation of capital investment and benefits financial statement preparers by eliminating the redundancies of preparing financial information under multiple financial reporting frameworks.

Our comments on the IFRS Roadmap will focus on the impact of International Financial Reporting Standards ("IFRS") as published by the International Accounting Standards Board ("IASB") on the investment management industry and the funds they manage in the preparation of their financial statements.

Executive Summary

While we support the movement towards a single global financial reporting framework, we have significant concerns with respect to the application of IFRS by entities within the investment management industry. The lack of specialized industry accounting within IFRS is the basis of our concerns as it both limits the usefulness and distorts, if not obfuscates, the relevancy of reported

financial information to investors of both the funds and the investment managers because:

- IFRS requires a fund with control over an investment to consolidate that investment. This would misrepresent the fund's financial position and performance by potentially consolidating tangible assets (e.g. property and inventory) and financial results of the underlying investment (e.g. sales and cost of sales).
- IFRS requires an investment manager to consolidate an investment fund that it controls. In addition to the above noted concerns flowing up to the investment manager, this would also eliminate the advisory and incentive fees earned from the fund and instead consolidate the fund's investment performance.
- IFRS requires that the parent and consolidated subsidiaries' financial statements are prepared as of the same date using similar accounting policies. Investment funds could have investments in hundreds of entities in multiple industries. This could result in the following issues:
 - Based on the SEC's filing requirements, an entity could have only sixty days to consolidate hundreds of individual financial statements into its own consolidated financial statements to be filed with the Commission.
 - The investment fund or fund managers' consolidated financial statements could include portfolio companies audited by several different audit firms which could create a principal auditor issue.
 - For private equity investments, the management teams of the investment manager would likely have significant concerns in certifying the consolidated financial statements under Section 906 of the Sarbanes-Oxley Act as the finance departments of the portfolio companies do not report operationally to the finance departments of the investment manager.
- IFRS does not permit an investment fund to carry all investments (non-financial assets) it controls at fair value with changes in fair value recognized in earnings; rather, those investments would be carried on a cost basis.
- IFRS does not have industry specific financial reporting requirements of information highly important to investors that is required under U.S. GAAP.

If IFRS included industry specific accounting, the above concerns would be minimized and the users of the financial statements would be provided more useful information in making their capital investment decisions.

Additionally, we have certain concerns with the IFRS Roadmap and its application of IFRS for U.S. based registrants.

- The IFRS Roadmap exempts investment companies and other regulated entities from applying IFRS in their SEC filings. However, if these entities were consolidated subsidiaries of an SEC registrant parent company, those entities would be required to maintain two accounting systems, under U.S. GAAP for its own filings with the commission, and under IFRS for consolidation into the parent company for their SEC filings. Additionally, as mentioned earlier, a fund may have investments in hundreds of entities which could also require those entities to maintain accounting systems under both U.S. GAAP and IFRS. We believe this would be overly burdensome and costly for all entities involved.
- The IFRS Roadmap includes a transition date of 2014 through 2016. However, in 2011 the SEC will evaluate certain milestones and make a final decision mandating IFRS. In order to comply with the 2014 timeline and to have three years of IFRS audited financial statements, a company would need to start its conversion efforts by 2009 or 2010 at the latest. However, it is difficult to allocate the significant resources and capital commitments required for a conversion without knowing a certain conclusion on when, and if, a requirement to report under IFRS will occur.

The remainder of this letter will address in further detail the concerns we have with IFRS in its current form and the IFRS Roadmap for entities within the investment management industry.

Specialized Industry Accounting

Under U.S. GAAP, the investment management industry reports under specialized industry accounting which provides more relevant information to its investors, shareholders, and other relevant stakeholders. Overly complex and rules-based standards are a common criticism of U.S. GAAP, and we understand that industry accounting is a source of complexity within U.S. GAAP. However, in certain situations, specific industry accounting is needed not only to provide more relevant information to financial statement users, but also to avoid providing information that would be confusing or misleading to stakeholders.

Other industry groups have also expressed concern with respect to IFRS's application to investment managers and funds. In a discussion paper on the application of IFRS to investment funds, the European Fund and Asset Management Association ("EFAMA") states that:

EFAMA is of the clear view that under the current conditions IFRS cannot constitute the nucleus of a comprehensive and common accountancy framework for investment funds in the European Single Market and it is its intention to bring forward this position to the European Commission and the Committee of European Securities Regulators (CESR).

Additionally, the Investment Company Institute, in a letter to the SEC on the IFRS roadmap concept release, stated that:

We have strong concerns that investment company financial statements prepared under IFRS are less meaningful and less transparent than those prepared under investment company GAAP...We recommend that the Commission ensure that there is substantial convergence relating

specifically to investment company financial reporting before it provides investment companies with the option to prepare their financial statements under IFRS, and urge that the standards converge toward investment company GAAP, which we believe better serves the interests of fund shareholders.

Consolidation Accounting

Under U.S. GAAP, investment companies apply the specialized industry accounting provided within the American Institute of Certified Public Accountants' ("AICPA") Audit and Accounting Guide for Investment Companies (the "Guide") and Articles 6 and 12 of the SEC's Regulation S-X. An investment company is not permitted to consolidate or apply the equity method of accounting to a non-investment company investee, unless that operating company provides services to the investment company.¹ This requirement also extends to variable interest entities subject to Interpretation 46(R).²

However, IFRS does not provide similar industry guidance. Instead, companies apply the accounting guidance within IAS 27,³ SIC 12,⁴ or IAS 28⁵ to these investments. For investments where an entity does not control the investment entity, but only retains significant influence, IAS 28 provides a scope exception for investments in associates held by venture capital organizations, mutual funds, unit trusts and other similar entities that are designated upon initial recognition as either trading or at fair value through profit or loss in accordance with IAS 39.⁶ A similar exception within the IFRS consolidation model would improve the financial reporting for investment management entities. Instead, IAS 27 requires a fund to consolidate all investments in which it has control, which is presumed to exist when a parent directly or indirectly has more than half of the voting power of an entity, including potential voting rights through warrants, convertible debt, or other financial instruments that are currently convertible into voting shares. Additionally under IFRS, SIC 12 provides consolidation guidance for special-purpose entities based on investor's decision making abilities and the potential risks and benefits associated with the investment.

If an investment company were required to apply the current consolidation requirements under IFRS to its investments, this could lead to a significant distortion in the presentation of the financial position and performance of the fund. For example, funds investing in private companies or similar investments within private equity, where the underlying investment might be an operating company, would consolidate the sales, cost of sales, inventory, and other long-lived assets of the entity. Including those

¹ Paragraph 7.04 of the AICPA Audit and Accounting Guide for Investment Companies and SEC Regulation S-X, Rule 6-03(c)(1).

² FASB Interpretation No. 46(R), *Consolidation of Variable Interest Entities*.

³ International Accounting Standards No. 27, *Consolidated and Separate Financial Statements*.

⁴ SIC Interpretation No. 12, *Consolidation – Special Purpose Entities*.

⁵ International Accounting Standards No. 28, *Investments in Associates*.

⁶ International Accounting Standards No. 39, *Financial Instruments: Recognition and Measurement*.

amounts within a fund's consolidated financial statements would detract, if not obfuscate, the usefulness to fund investors. The purpose of the fund is to hold an investment for a short to medium time frame with the intention of disposing of the investment to maximize profits to its constituents based on market timing and conditions. Carrying the investment by the fund at fair value (which will be discussed in further detail later) provides more relevant information to constituents than consolidating the underlying assets and liabilities of the investee entity.

Additionally, for an investment fund manager, the business model is to earn advisory fees (such as management and incentive fees) from their fiduciary role as an investment advisor. While the manager may invest an amount of its own capital into the fund to more closely align its own interest with investors, earning income from advisory services, rather than investing activities, is the primary revenue generating activity behind the business. However, under the IFRS consolidation model, the manager could be required to consolidate the fund, and by doing so would eliminate the advisory and incentive fees earned from the fund and instead consolidate the investment earnings of the fund with the third party investor's portion of income recorded as non-controlling interest. Again, this does not provide more relevant or useful information to the investors or other stakeholders of the investment management entity.

Another issue in applying the consolidation guidance under IFRS is that IAS 27 requires that the parent and consolidated subsidiaries' financial statements be prepared as of the same date using similar accounting policies.⁷ Investment funds could have investments in hundreds of entities, each of which would have to coordinate their financial reporting periods and accounting policies to the fund, or manual adjustments to each would be required. This has the potential to create several practice issues, including the following:

- For those entities consolidating into an SEC registrant parent, each investee entity would be required to close its books and records and report its consolidated financial statements to the fund in order to then also be consolidated into the registrant. Based on the SEC's filing requirements, an entity could have only 60 days to consolidate hundreds of individual financial statements into its own consolidated financial statements.
- When an investment fund or investment manager is consolidating a number of portfolio investees, those investees will likely have been audited by a number of different auditing firms. This has the potential to create issues as to whether the audit firm of the investment fund or investment manager may serve as the principal auditor based on such things as the materiality of the portion of the financial statements they have audited in comparison with the portion audited by other auditors, the extent of knowledge of the overall financial statements, and the importance of the components audited in relation to the enterprise as a whole.⁸
- Another concern with the consolidation of portfolio investees into the investment fund or investment manager's consolidated financial statements is the certification by management of

⁷ Paragraphs 22 – 24 of International Accounting Standards No. 27, *Consolidated and Separate Financial Statements*.

⁸ PCAOB Interim Auditing Standards, AU Section 543, *Part of Audit Performed by Other Independent Auditors*.

public entities required by Section 906 of the Sarbanes-Oxley Act of 2002. The portfolio investees of private equity funds typically retain their management teams and operate autonomously with financial and management oversight provided by the investment fund manager. The finance departments of these entities operationally report to the management of the portfolio investee rather than the finance departments of the investment fund or investment manager. The executives required to sign the Section 906 certifications, as well as auditor management representations, would have significant reservations with assertions regarding entities in which they do not have operational responsibility or influence.

Finally, we would like to discuss the ongoing consolidation projects of both the IASB and the Financial Accounting Standards Board (“FASB”). We find it troubling that rather than working on a converged comprehensive consolidation standard, the FASB is intent on a separate amendment to Interpretation 46(R). This has the potential for preparers to implement two major changes to consolidation accounting within a relatively short period of time, should the timeline within the IFRS’ Roadmap be maintained. With respect to the IASB’s consolidation project, the recently issued consolidation exposure draft⁹, consistent with current guidance in IAS 27, does not contain a scope exception for the investment management industry. Rather, it provides that an entity can control another entity when it “has the power to direct the activities of that other entity to generate returns for the reporting entity.”¹⁰ An additional concern with the IASB’s exposure draft is the lack of clarity on the consideration of kick-out rights. Our interpretation is that substantive kick-out rights provided to a single entity would overcome the presumption that a general partner has control, similar to the view the FASB has proposed in its proposed amendments to Interpretation 46(R). However, the IASB’s exposure draft is less clear on the application of kick-out rights when those rights are held by a diverse group of investors. We do not support a standard setting move by the IASB or the FASB to require that a majority of kick-out rights be maintained by a single investor in order for those rights to be considered substantive. In applying current U.S. GAAP, it is common practice within the investment management industry to grant limited partners substantive kick-out or liquidating rights, in accordance with Interpretation 46(R) and EITF 04-5,¹¹ resulting in not consolidating the investment fund because the limited partners of the such fund are then deemed to maintain effective control.

Fair Value Accounting

The Guide requires investment companies under U.S. GAAP to report their investments at fair value.¹² While the merits of fair value accounting have been fiercely debated in recent months, we believe that measuring investments at fair value rather than consolidation and carrying at historical cost is a more

⁹ IASB Exposure Draft (ED) 10, *Consolidated Financial Statements*.

¹⁰ Paragraph 4 of ED 10, *Consolidated Financial Statements*.

¹¹ EITF Issue No. 04-5, “Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights.”

¹² Paragraph 1.33 of the AICPA Audit and Accounting Guide for Investment Companies.

relevant measurement attribute for investors. The Guide's basis for conclusion supports this notion by providing:

...that practice [long-standing industry practice] results in investment company financial statements that focus on a net asset value that reflects the fair value of the underlying investments. The purpose and nature of investment companies makes fair value for their investments the most relevant measure to report to their investors, the principal users of their financial statements who typically evaluate the performance of the investment company based on changes in net asset value.¹³

Unlike the FASB's Statement 157,¹⁴ IFRS does not have a comprehensive standard for measuring fair value. We support the IASB's current project to develop its own fair value measurements standard using Statement 157 as the base model for discussions. We believe that the IFRS's fair value measurements standard should include sufficient guidance with respect to the measurement of fair value for assets in inactive markets. We appreciate the steps the Commission and standard setters have made during the last few months, including the SEC and FASB joint release, the issuance of FSP 157-3,¹⁵ the report from the IASB's Expert Advisory Panel,¹⁶ the SEC's report to Congress concluding the study of fair value accounting, and lastly the issuance of FSP 157-4.¹⁷

During the Commission's study on fair value accounting, one of the concepts discussed was the bifurcation of losses resulting from credit and liquidity. In this concept, losses from credit would be recognized in earnings immediately while losses from liquidity constraints would be recognized within other comprehensive income. While we are not currently advocating such a measurement model, we do believe there needs to be further consideration of an entity's intent and ability to hold an investment until market conditions recover and its impact on the recognition of fair value measurements within earnings.

Financial Reporting Issues

There are also other financial reporting issues with IFRS for the investment management industry that we would like to bring to your attention, including disclosures of financial highlights and investments, and income statement and statement of cash flows presentation issues.

¹³ Paragraph 12.01 of the AICPA Audit and Accounting Guide for Investment Companies.

¹⁴ FASB Statement No. 157, *Fair Value Measurements*.

¹⁵ FASB Staff Position (FSP) No. 157-3, "Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active."

¹⁶ Expert Advisory Panel report "Measuring and disclosing the fair value of financial instruments in markets that are no longer active."

¹⁷ FSP No. 157-4, "Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly."

U.S. GAAP requires the disclosure of a schedule of investments¹⁸ within the fund's financial statements. This schedule categorizes the investments by type, industry, and country. For funds registered with the SEC, a complete schedule of investments is required while for private funds either a complete or condensed schedule can be included. However, under IFRS, a schedule of investments disclosure is not required. We support a requirement to disclose a schedule of investments under IFRS as we believe this disclosure provides valuable information to investors and insight into the fund's investment objectives and strategies.

U.S. GAAP also requires the disclosure of financial highlights¹⁹ for each share class for a five year period for registered funds and for each period presented within the financial statements for private funds. IFRS has no similar disclosure requirement. We support a requirement to disclose financial highlights under IFRS as we believe this disclosure provides important metrics which investors reference in evaluating funds and comparing fund performance.

Investment companies under U.S. GAAP are exempted, under certain conditions, from the requirements of providing a statement of cash flows in accordance with Statement 95.²⁰ Those conditions include the entity's investments being highly liquid and substantially all carried at fair value, the entity having little or no debt and the entity providing a statement of changes in net assets.²¹ However, under IFRS, a statement of cash flows is required for all entities. Additionally, specific differences in the presentation of the statement of cash flows exist including the separation of interest and dividend income and expense and the receipt and payment of interest and dividends. We support IFRS providing an exemption to investment companies from providing a statement of cash flows in their financial statements as the statement of cash flows provides users with little insight when a fund invests in highly liquid investments and has little or no debt.

IFRS Roadmap

Our understanding of the IFRS Roadmap is that investment companies and other regulated entities, such as broker-dealers, would be exempted from the use of IFRS in their filings with the Commission. However, a parent company eligible to file IFRS financial statements with the SEC under the provisions of the IFRS Roadmap, would consolidate these investment companies or other regulated entities which it controls. In this scenario, the investment company or regulated entity would be required to file U.S. GAAP financial statements for regulatory filing purposes. However, those entities could also be required to keep their books under IFRS for consolidation into the parent company's financial statements filed with the Commission.

¹⁸ Paragraph 7.14 - .19 of the AICPA Audit and Accounting Guide for Investment Companies.

¹⁹ Paragraph 7.73 - .78 of the AICPA Audit and Accounting Guide for Investment Companies.

²⁰ FASB Statement No. 95, *Statement of Cash Flows*.

²¹ Paragraph 7 of FASB Statement No. 102, *Exemption of Certain Enterprises and Classification of Cash Flows from Certain Securities Acquired for Resale*.

We have two primary concerns with the exclusion of investment and regulated entities from the IFRS Roadmap. The first concern is the potential burden created by requiring dual accounting systems as described above. The second concern is that the issues existing in applying IFRS to investment companies would be ignored for a period of time rather than timely addressed in an attempt to provide better financial reporting for all investment management entities.

We also have concerns with respect to the SEC's proposed timeline with respect to the IFRS Roadmap. The current proposal includes a transition date of 2014 through 2016 for U.S. based registrants to report under IFRS with the Commission. However, that is contingent on a 2011 date for the SEC to evaluate certain milestones and make a decision on whether to mandate IFRS. To file IFRS financial statements with the Commission for the 2014 reporting period (as in the case for large accelerated filers), an entity would need to have an IFRS financial reporting system in operation at the beginning of fiscal year 2012 to have three years of IFRS audited financial statements to be included within its filing. To do so, a company would need to start its conversion efforts by 2009 or 2010 at the latest. However, it is not practical to make the significant resource and capital commitments required for a conversion without knowing a certain conclusion on when, and if, a requirement to report under IFRS will occur.

Again, we appreciate the opportunity to comment on the IFRS Roadmap and understand what an important decision such a move would be for the global capital markets. We support globalization of the world's economies and believe that a single financial reporting framework across all local jurisdictions will ultimately benefit both financial statement users and preparers. However, IFRS, in its current state, has serious limitations with respect to the investment management industry and we hope that you work with both the FASB and IASB, as they continue their convergence efforts, to recognize the importance that specialized industry accounting has on financial reporting and the potential disservice eliminating industry accounting would be to the users of our financial statements.

Please feel free to contact me at 202-465-7713 if you would like further clarification or additional information.

Very truly yours,



Douglas Lowenstein
President