SUBMITTED VIA COURIER

August 20, 2012

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: CFTC, Notice of Proposed Rulemaking on Aggregation, Position Limits for Futures and Swaps (RIN 3038-AD82)

Dear Mr. Stawick:

This letter is submitted by the Private Equity Growth Capital Council ("***PEGCC***", "***we***" or "***us***", as applicable) to supplement our comment letter, dated as of June 29, 2012 ("***Initial Letter***"), that was made in response to the above-referenced Notice of Proposed Rulemaking on Aggregation, Position Limits for Futures and Swaps (the "***Proposing Release***") issued by the Commodity Futures Trading Commission ("***CFTC***" or "***Commission***"). The PEGCC is an advocacy, communications and research organization established to develop, analyze and distribute information about the private equity and growth capital investment industry and its contributions to the national and global economy.[1] We appreciate the opportunity to supplement our Initial Letter. All capitalized terms used but not defined herein should be read as having the meanings assigned to them in our Initial Letter.

As discussed in our Initial Letter, we believe that the Non-Majority Investment Exemption should be expanded to permit, in appropriate circumstances, disaggregation notwithstanding an investment that exceeds 50 percent. Because the proposed exemption would be limited to non-majority investments, the exemption would not be available with respect to

[1] Established in 2007, and formerly known as the Private Equity Council, the PEGCC is based in Washington, D.C. The PEGCC's members are 36 of the world's leading private equity and growth capital firms united by their commitment to growing and strengthening the businesses in which they invest. The members of the PEGCC are: American Securities; Apax Partners; Apollo Global Management LLC; ArcLight Capital Partners; The Blackstone Group; Brockway Moran & Partners; The Carlyle Group; CCMP Capital Advisors, LLC; Crestview Partners; The Edgewater Funds; Francisco Partners; Genstar Capital; Global Environment Fund; GTCR; Hellman & Friedman LLC; Irving Place Capital; The Jordan Company; Kelso & Company; Kohlberg Kravis Roberts & Co.; KPS Capital Partners; Levine Leichtman Capital Partners; Madison Dearborn Partners; MidOcean Partners; New Mountain Capital; Permira; Providence Equity Partners; The Riverside Company; Silver Lake; Sterling Partners; Sun Capital Partners; TA Associates; Thoma Bravo; TPG Capital (formerly Texas Pacific Group); Vector Capital; Vestar Capital Partners; and Welsh, Carson, Anderson & Stowe.

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many investments ordinarily made by PE funds.[2] PE funds commonly make these investments in portfolio companies, while maintaining the independence of those companies' operations from one another and the fund.[3] Requiring PE funds to aggregate the positions of their majority owned portfolio companies would impose a number of significant costs.[4] For reasons explained in the Initial Letter, we believe that the CFTC has authority not to require aggregation notwithstanding an ownership or equity interest that exceeds 50 percent.[5]

In the Initial Letter, we respectfully requested that the CFTC consider adopting two independent exemptions that would permit disaggregation notwithstanding ownership of a majority interest in another entity.[6] In this letter, we respectfully request that the CFTC consider a third alternative, discussed below. This alternative is designed to permit disaggregation of positions in the limited circumstances in which the PE fund investor does not control the trading of an owned company notwithstanding that it holds a majority interest in that company. Accordingly, the proposal incorporates the conditions ensuring absence of control of derivatives trading under the Non-Majority Investment Exemption. Also, consistent with the proposals in our Initial Letter, our proposal herein would be elective, meaning that an investor with a majority interest in an owned entity that does not qualify for disaggregation would aggregate the positions of that owned entity while other qualified entities would be disaggregated.

Specifically, we respectfully request that the CFTC consider permitting a "private investment fund"[7] to be exempt from aggregation if:

(i) the private investment fund, including any entity with which such private investment fund would otherwise be required to aggregate, and the owned entity meet the conditions of proposed Subsection 151.7(b)(1) other than Subsection 151.7(b)(1)(ii);

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[2] As discussed in our Initial Letter, our concerns with aggregation by virtue of ownership are focused at the PE fund level. In general, the ownership or equity interest of a private equity firm sponsor (or its affiliates) in its PE funds will not exceed the 10 percent threshold, and is ordinarily at the one to three percent level. Therefore, the sponsoring GP should not be required to aggregate the positions of a PE fund (or the PE fund's portfolio companies) based on direct or indirect ownership; and furthermore, notwithstanding that the private equity firm typically wholly owns the GP, the private equity firm should not be required to aggregate with the PE fund on the basis of direct or indirect ownership.

[3] See Initial Letter Section I (providing background on the private equity industry and the structure of private equity firms).

[4] See Initial Letter Section II.C (explaining costs that would be imposed if PE funds could not disaggregate majority investments).

[5] See Initial Letter Section III (explaining CFTC authority to permit disaggregation notwithstanding a majority interest).

[6] See Initial Letter Section IV (setting forth proposals for permitting disaggregation notwithstanding a majority interest).

[7] We define "private investment fund" as any private fund that (1) does not provide investors with redemption rights in the ordinary course, and (2) calculates incentive fees or allocations (carried interest) based primarily on gains realized from sales or other dispositions of portfolio investments.

(ii) the private investment fund does not, in the presentation of its audited financial statements, consolidate the results of operations of the owned entity pursuant to accounting principles generally accepted in the United States of America;[8]

(iii) the private investment fund certifies to the CFTC that any representative of the private investment fund on the owned entity's board of directors or similar controlling body does not "control" the derivatives trading of the owned entity (as "control" is used in proposed Subsection 151.7(b)(1))[9]; and

(iv) the private investment fund certifies to the CFTC that the owned entity's derivatives activity, to the extent that it is subject to position limit rules under Part 151, qualifies as "bona fide hedging" under CFTC Regulation 151.5(a) (or, with respect to transactions in "excluded commodities," 1.3(z)).

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The PEGCC appreciates the CFTC's consideration of this letter and the above proposal and is available to discuss any questions that the CFTC may have.

Respectfully submitted,

Steve Judge
President and CEO
Private Equity Growth Capital Council

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[8] This requirement further distinguishes private investment funds from traditional operating companies who consolidate the results of operations of their majority owned subsidiaries. Under US GAAP, companies that follow investment company accounting are not permitted to consolidate the results of operations of a majority-owned portfolio company into their own operating results in their audited financial statements. PE funds satisfy the standards for, and follow, investment company accounting principally because their primary business involves (i) investing in assets for appreciation, current income, or both, and (ii) investors' assets are pooled so that investors can avail themselves of the professional investment management services of the PE fund manager. Because a PE fund does not consolidate a portfolio company's operating results, a PE fund is not required to have in place the same internal controls to oversee the portfolio company's financial processes, *e.g.*, controls over trading activities. The internal financial control requirements applicable to companies that consolidate their majority-owned subsidiaries are meaningfully higher.

[9] As discussed in Section II.D of our Initial Letter, we respectfully request that the CFTC clarify and confirm, in the release finalizing the Proposing Release, that the Conditions with respect to any investment of greater than 10 percent, permit and contemplate the type of high level oversight of owned entities exercised by PE funds, including actions taken by directors of portfolio companies in satisfying their fiduciary duties and other legal obligations.