January 6, 2010

Mr. Russell Golden
Technical Director
File Reference No. 1750-100
Financial Accounting Standards Board
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116

Re: Amendments to Statement 167 for Certain Investment Funds

Dear Mr. Golden,

Deerfield Capital Corp. ("we" "us" "our") appreciates the opportunity to comment on the recent proposed guidance regarding deferral of Statement 167 for certain investment funds. As a publicly traded investment management firm with approximately $9.2 billion of collateralized debt obligations ("CDOs") under management, our comments are primarily focused on the specific exclusion of CDOs from the deferral. However, we believe that our approach could be extended to all investment management relationships.

The Financial Accounting Standards Board ("FASB") has outlined specific criteria that must all be met for a reporting enterprise's interest in an entity to meet the deferral guidelines. Additionally, entities such as mutual funds, private equity funds and venture capital funds were specifically identified as entities that may meet the conditions of deferral. However, the FASB also indicated that securitization entities, asset-backed financing entities, entities formerly classified as qualifying special-purpose entities and specifically CDOs would not qualify for deferral. We believe that a significant amount of CDOs would otherwise meet the deferral criteria if such entities were not specifically carved out by the deferral guidelines. For the reasons set forth in this letter, we also believe that CDOs should not be categorically excluded from the deferral.

We agree that CDOs in which the manager has a more than de minimis ownership interest in the equity and/or debt of a CDO should not be eligible for deferral from Statement 167. We also believe that a de minimis investment by an investment manager in any investment vehicle they manage, which is commonly required by investors to show that a manager has "skin in the game," would not automatically result in consolidation. We understand that many securitization transactions, including CDOs, were designed as financing transactions and, in many cases, resulted in the investment manager or an affiliate thereof retaining ownership of all or a majority of the equity or most subordinated debt tranche of the CDO. We agree that the FASB should not extend relief under Statement 167 to those types of transactions. However, we believe that the Statement 167 deferral guidelines should further examine the relationships between the investment manager and the managed entity, rather than categorically carving out all entities with multiple levels of subordination from the deferral. We believe that the deferral should be extended to include situations in which the investment manager's interest in a CDO is derived through its receipt of management fees as a result of a contractual relationship to provide services relating solely to management of the collateral underlying the CDO. As a result of our previous experience consolidating CDOs into our financial statements, we also have serious concerns about the confusion among financial statement users that can result from such consolidation, which we

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will discuss in more detail below. We believe an approach that incorporates the following criteria is more appropriate for determining which relationships qualify for deferral from Statement 167:

- The investment manager receives management fees, including performance fees, which are customary and commensurate with the level of service and industry practice;
- The investment manager's contract is with an entity established for the benefit of unrelated third party investors and not as a funding or investment vehicle for the investment manager; and
- The risk of investment loss is substantially borne by third party investors and is not accompanied with an explicit or implicit obligation to fund actual losses by the investment manager or its affiliates. For the sake of clarity, the failure to earn subordinated management fees or performance related fees would not be considered an explicit or implicit obligation to fund actual losses by the investment manager or its affiliates. A de minimis ownership interest in the entity would also not automatically disqualify one from the deferral.

We encourage the FASB to build the above guidance directly into the Statement 167 deferral or adopt one of the two measures outlined below to provide more consistent relief to investment managers:

1) Include CDOs with respect to which the receipt of management fees pursuant to a management contract is the only potential variable interest in the list of enterprises allowed to defer the application of Statement 167. We believe an investment manager's power over these structures as well as the related management fees are, at worst, no greater than the powers of managers of mutual funds, hedge funds, private equity funds and venture capital funds that received deferral from Statement 167 and, in most cases, that CDO structures result in less power for the investment manager and less variability in fees than such other structures; or
2) Provide investment advisors and/or CDO managers with relief under paragraph B22-b of Statement 167 by allowing subordinated management fees, which are calculated as a fixed amount of assets managed and not as a percentage of total investment returns, and incentive fees to qualify under B22-b of Statement 167.

The following provides more background and reasoning for our recommendations.

As we discuss in the following paragraphs, we believe that the deferral should be expanded to focus on the relationship between the investment manager and the structure, rather than on the structure itself. This would not only provide a more appropriate and uniform treatment for investment managers but would also properly address the more significant concept of differentiating management fees (services) from direct ownership (risk of gains and losses). While we also believe that the deferral should be extended to a CDO manager that has a de minimis "skin in the game" investment, in any case, we ask that the FASB provide further guidance and interpretation to clarify the meaning of the language "...could potentially be significant..." from Paragraph 14A-b of Statement 167. We have also included in Appendix B answers to the specific questions directed by the FASB.

A. Power of the Investment Manager

CDOs are governed by indentures that outline the overall terms and conditions that must be followed by their investment managers and include various tranches of debt and equity with different credit

exposures and enhancements. The existence of these different exposures requires the negotiation and structuring of numerous significant protections for the various investor tranches. These protections typically include interest coverage tests, overcollateralization tests, asset quality tests and restrictions on the manager's ability to buy and sell assets. These tests and the requirement that the manager manage the structure fairly with respect to each class of investors from the most senior tranche (AAA-rated notes) to the most junior tranche (equity or subordinated notes) impose significant limitations on the power of the investment manager. Such limitations can be especially onerous when certain of these tests have been breached, which breach may result in, among other things, termination of or limitations on reinvestment, acceleration of the debt issued by the CDO, removal of the investment manager and, in some cases, liquidation of the CDO. As such, CDO investment managers have more limited control over the investment activities and performance of CDOs than managers of mutual funds, private equity funds and venture capital funds do over such vehicles.

B. Variability of Management Fees

Generally speaking, the structure of a CDO, although not specifically designed for this purpose, has the effect of minimizing the variability of the management fees (potential variable interests) paid to the investment manager as compared to the returns on the debt and/or equity holdings (variable interests) in the CDO. A manager of a CDO typically receives (i) a senior management fee (the "Senior Fee") paid with expenses at the top of the disbursement waterfall prior to payments of interest and principal on the tranches of debt issued by the CDO and (ii) a subordinated management fee (the "Subordinated Fee") paid after the debt payments but prior to any payments to equity holders. The Senior Fee and Subordinated Fee are a fixed percentage of the total assets held in the CDO and the management fees of our CDOs typically total approximately 0.10% to 0.50% per annum (0.05% to 0.20% Senior Fee and 0.05% to 0.30% Subordinated Fee). Because the Senior Fees are paid at the top of the disbursement waterfall and are calculated as a fixed percentage of the principal balance of the assets held by the CDO (versus as a percentage of returns to debt and/or equity investors), the Senior Fees are extremely unlikely to absorb any material variability.

CDO management contracts also typically include an incentive management fee, although this fee is usually much smaller in size than performance fees on other types of investment vehicles, such as hedge funds, and is generally calculated as a percentage of cash flows to the equity holders above and beyond a stated internal rate of return hurdle. The vast majority of the cash flows from a CDO are paid to the debt holders and, therefore, not considered in the calculation of the incentive fee. Essentially, the incentive fee is:

- a percentage (equity is typically a small portion of the CDO's total capital structure) of;
- a percentage (an internal rate of return hurdle must be achieved prior to payment of the incentive management fee) of;
- a percentage (only a portion of returns to equity holders above and beyond the hurdle goes to the manager).

Therefore, although variability may exist with respect to CDO incentive management fees, the magnitude of such fees is significantly smaller than that of performance fees that may be applicable to hedge funds, private equity funds or venture capital funds, which are generally calculated as a fixed percentage of the total returns for the entire fund. Please see Appendix A "Illustrative Example of a

CDO Performance Fee vs. a Typical Hedge Fund Performance Fee" for a further illustration of these differences.

CDO indentures include various structural provisions designed to provide protection to the debt and equity investors. The disbursement waterfalls contained in these indentures contain various provisions that result in the redirection of payments when certain tests, typically interest coverage and overcollateralization tests, have been breached. Items paid at the bottom of the disbursement waterfall, including (working from the bottom upward) payments to the equity, Subordinated Fees and payments to the most subordinated debt tranche, are more likely to remain unpaid on any given payment date as a result of the redirection of payments to the most senior debt tranches. The Subordinated Fees, which are calculated as a fixed percentage of the principal balance of the assets held by the CDO and are paid near the bottom of the disbursement waterfall, and incentive fees, as discussed in the prior paragraph, are the management fees most exposed to variability. In the event that Subordinated Fees are not paid on a given payment date as a result of the diversion of cash flows to the most senior tranches of debt pursuant to the CDO's disbursement waterfall, the due and unpaid Subordinated Fees are deferred and may be recouped at a later date if the health of the CDO improves and the disbursement waterfall returns to making typical payments. The Subordinated Fees are capped, as they are fixed fees based on the amount of the underlying collateral and are not paid unless the tranches of debt senior to them in the disbursement waterfall have received all payments owed to them at that time. In addition, in most circumstances in order for significant variability (or loss) to occur related to the Subordinated Fees, the equity investors in the CDO would have also lost substantially all of their investment in the CDO. The most significant variability, or loss, in the CDO structure in this scenario would be to the equity investors, and not to the investment manager. The incentive fees are payable at the bottom of the waterfall and are only paid if the tranches of debt senior to them in the disbursement waterfall have received all payments owed to them at that time and the equity investors have received a targeted return. The Senior Fees and Subordinated Fees are based on the par value of assets (as defined in the CDO's indenture), which is another limitation on the variability of such fees. This is unlike management fees on many other investment vehicles which are exposed to more variability to increases in assets under management through capital contributions by attracting new investors and growth in assets through appreciation in more variable asset classes, and which are generally not required to disburse earnings at regular intervals. Therefore, the potential variability of a CDO's management fees is structurally limited and would be significantly less variable than management fees applicable to a hedge fund, mortgage real estate investment trust, private equity fund or venture capital fund, each of which were granted deferral under Statement 167.

To further the argument that CDO management fees are structurally less variable than management fees received from other structures that received deferral under Statement 167, CDOs are closed structures. Therefore, once investors fund the debt and equity, the cash is used to purchase assets, and no additional funds are raised. While the returns on CDOs are driven by the interest income generated by the assets, the earnings on those assets and eventually the principal proceeds from the sale or paydown of those assets are paid out to the investors at regular intervals. The underlying assets held in the structures are credit investments which also by their nature are largely asymmetrical in return as they are typically capped at receiving back par, or in certain occasions an additional amount, plus interest. However, when credit losses occur in the underlying assets, the risk of principal loss by the investors in the CDO's equity and subordinated debt is significant, and the risk and actual variability is borne by the investors in the debt and equity of the CDOs rather than the CDO manager.

C. Deterioration in Value and Usability of GAAP Financial Statements

On a less technical level, the exclusion of CDO managers from the deferral of the application of Statement 167 creates an unfair burden on CDO managers and the users of their financial statements. The application of Statement 167 to CDO managers who do not have any debt or equity ownership in the CDOs they manage (other than certain de minimis amounts as discussed above) will result in a disproportionate impact on such CDO managers, requiring them to incur significant accounting burdens and costs to prepare financial statements that will be misleading and, therefore, less useful for their investors. With respect to our company in particular, none of the CDOs we manage has previously been treated as a special purpose vehicle, and, under the prior guidance, we typically were not required to consolidate the CDOs we manage (other than in the situation in which we owned 100% of the equity in a CDO) because we held less than 50% of the variability of such CDOs. In the case in which we owned 100% of the CDO equity and therefore consolidated a CDO, we have experienced first-hand the confusion and lack of transparency that consolidating CDOs has on financial statements. We have previously consolidated CDOs and currently consolidate one CDO into our financial statements. We are constantly being asked by investors, counterparties and other stakeholders to back-out or exclude the consolidation effect of the CDOs on our financial statements on a supplemental basis so that they can more clearly see the actual results of our operations and financial position. Statement 167, as drafted will significantly multiply financial statement user issues as a result of the significant ballooning of our assets, liabilities, equity, interest income, interest expense, other expense and gains/losses related to the CDO structures we may be required to consolidate. These structures will have zero impact on our actual financial results, however their consolidation will result in the elimination of the investment advisory fee income line related to the CDOs we consolidate, which is a key component and metric for an investment manager.

To further complicate our financial statements, we believe that Statement 167 will not result in all of our CDOs being consolidated, therefore we will have some CDOs being consolidated while others will be excluded. This will further increase confusion and reduce the usefulness of our financial statements to users. The lack of comparability between the financial statements of investment managers that qualify under the deferral and those that do not will eliminate a user's ability to evaluate an investment manager's financial results against its peers. In addition, we believe that we will likely need to develop several additional non-GAAP financial measures to assist the users of our financial statements in understanding our actual results of operations which would essentially back-out the consolidation of these CDOs. To summarize, requiring us and other CDO managers to consolidate CDOs without deferral under Statement 167 will result in a nearly complete decoupling of economic impact from financial statement results. The effect of Statement 167 and the limited deferral as currently proposed will contribute to significant non-GAAP measures being disclosed which will proliferate the deterioration of the value of GAAP financial statements to users.

D. Consideration of Convergence Project

We believe that the FASB should further consider the larger convergence project currently under consideration by the FASB and the International Account Standards Board ("IASB") with respect to granting deferral to investment managers in connection with consolidation. In addition to the reasons we have previously discussed, we do not believe that investment managers that have contractual relationships with CDOs should be required to consolidate such structures. We also believe that the

ongoing deliberations between the FASB and IASB and the resulting unknown outcome are another reason for deferral. We believe it would be best if Statement 167 is deferred for CDO investment managers and their stakeholders until the two boards have had the opportunity to review their overall consolidations project and finalize their conclusions.

E. Burden on Financial Statement Preparers

The final point we would ask the FASB to consider is the significant burden that has been placed on financial statement preparers as a result of these new rules and the relatively short time frame provided for compliance therewith. The changed rules are fundamentally different from the prior variable interest rules and an enormous amount of time and resources is required to scope and evaluate these extremely complicated structures, as well as to gain consensus in the interpretation of Statement 167's rules. Additionally, some of the covered investment structures (CDOs in particular) do not currently have any requirements under GAAP to have financial statements prepared. The generation of financial statements (and the internal controls related to that process) for a CDO is a significant and complicated process and is completely outside the operations of managing a CDO. The relatively short time-frame of less than seven months from initial issuance of Statement 167 combined with the current proposed amendments, which will not be finalized until after the effective date for the new rule will have a profound impact on investment managers and other preparers and poses an unfair burden and risk to financial reporting. As we write this letter there are still significant divergences in opinion with respect to the application of Statement 167, which we believe is attributable to the significant issues and complexities that preparers, reviewers and users of financial statements are trying to address when a rule change of such magnitude occurs. We fear that the short time for implementation will result in many negative unintended consequences as well as put financial statements at risk for significant divergence in the application of the new rules as well as a high risk for errors in their application.

CONCLUSION

In summary, we believe that the determination of the deferral from Statement 167 should be focused on the relationship between the investment manager and the entity managed, and that CDOs should not be categorically excluded from the deferral. Specifically, the CDO structure provides less power to the manager and less variability in management fees relative to other investment vehicles receiving deferral under Statement 167.

We appreciate the FASB providing us the opportunity to express our views and opinions and would welcome the opportunity to discuss our comments further with the FASB or its staff.

Sincerely,

Francis P. Straub III
Chief Financial Officer

Appendix A - Illustrative example of a CDO Performance Fee vs. a Typical Hedge Fund Performance Fee

	CDO	Hedge Fund
Fund Size	$ 300,000,000	$ 300,000,000
Rate of Return	20%	20%
Total Return in Dollars	$ 60,000,000	$ 60,000,000
Total Equity Ownership %	8%	100%
Total Equity Earnings	$ 4,800,000	$ 60,000,000
Equity Hurdle Rate for Performance Fee	15%	0%
Equity Earning Over Hurdle	$ 240,000	$ 60,000,000
Performance Fee %	20%	20%
Performance Fee to Manager	$ 48,000	$ 12,000,000
Performance Fee to Manager as a % of Fund Size	0.016%	4.0%

Appendix B

Question 1: Do you agree that the Board should defer the effective date of Statement 167 for entities that meet the requirements in the proposed Update? Please elaborate as to why you believe that this deferral is appropriate or not?

We believe that the deferral should be expanded to focus on the relationship between the investment manager and the structure, rather than on the structure itself. This would not only provide a more appropriate and uniform treatment of investment managers but would also properly address the more significant concept of differentiating management fees (services) from direct ownership (risk of gains and losses). We believe that the below conceptual framework should be included into Statement 167 to expand the eligibility criteria for deferral:

- The investment manager receives management fees, including performance fees, which are customary and commensurate with the level of service and industry practice;
- The investment manager's contract is with an entity established for the benefit of unrelated third party investors and not as a funding or investment vehicle for the investment manager; and
- The risk of investment loss is substantially borne by third party investors and is not accompanied with an explicit or implicit obligation to fund actual losses by the investment manager or its affiliates. For the sake of clarity, the failure to earn subordinated management fees or performance related fees would not be considered an explicit or implicit obligation to fund actual losses by the investment manager or its affiliates. A de minimis ownership interest in the entity would also not automatically disqualify one from the deferral.

We would encourage the FASB to build the above guidance directly into the Statement 167 deferral or adopt one of the two measures outlined below to provide more consistent relief to investment managers:

1) Include CDOs with respect to which the receipt of management fees pursuant to a management contract is the only potential variable interest in the list of enterprises allowed to defer the application of Statement 167. We believe that an investment manager's power over these structures as well as the related management fees are, at worst, no greater than the powers of managers of mutual funds, hedge funds, private equity funds and venture capital funds that received deferral from Statement 167 and, in most cases, that CDO structures result in less power for the investment manager and less variability in fees than such other structures; or
2) Provide investment advisors and/or CDO managers with relief under paragraph B22-b of Statement 167 by allowing subordinated management fees, which are calculated as a fixed amount of assets managed and not as a percentage of total investment returns, and incentive fees to qualify under B22-b of Statement 167.

We believe that not providing this further deferral for investment managers will result in a significant and unfair burden to certain investment managers to generate financial statements that will result in the complete decoupling of economic impact from financial statement results while promoting further non-GAAP measures being disclosed in financial statements and proliferating the deterioration of the value of GAAP financial statements to users.

Question 2: The Board expects that the deferral would only affect a limited number of types of entities, including but not limited to mutual funds, hedge funds, mortgage real estate investment trusts, private equity funds and venture capital funds. The Board expects that this deferral would not apply to securitization entities, asset-backed financing entities, and entities formerly classified as qualifying special-purpose entities. For example, the Board does not expect this deferral to apply to (a) structured investment vehicles, (b) collateralized debt/loan obligations, (c) commercial paper conduits, (d) credit card securitization structures, (e) residential or commercial mortgage-backed entities, and (f) government-sponsored mortgage entities. This list is not meant to be all-inclusive as to the entities that the Board expects would not meet the requirements in this proposed Update for deferral. Do you believe that the amendments to paragraph 810-10-65-2 in this proposed Update clearly identify the population of entities that would qualify for the deferral? If not, please provide suggested language to assist the board in achieving this goal.

While we believe that the current list is clear we believe that the deferral should be expanded to focus on the relationship between the investment manager and the structure, rather than on the structure itself.

Question 3: Do you believe that the Board's proposed change to include language to clarify that related-party arrangements should be considered for all of the conditions in paragraph B22 of Statement 167 is operational and achieves the Board's objective?

We do believe that language is operational and achieves the Board objective.

Question 4: Do you believe that the Board's proposed changes to condition (c) in paragraph B22 of Statement 167 are operational and achieve the Board's original objective in Statement 167 that a quantitative test should not be the sole determinant of whether a fee arrangement is a variable interest?

We believe that the language in paragraph B22 of Statement 167 should be expanded to provide investment advisors, including CDO managers, with relief under paragraph B22-b of Statement 167 by allowing subordinated management fees, which are calculated as a fixed amount of assets managed and not as a percentage of total investment returns, to qualify under B-22 of Statement 167 as well as incentive fees which are customary and commensurate with the level of service and industry practice. Although it is not currently clear to us whether a qualitative vs. quantitative approach is more appropriate, the Board's desire to implement a qualitative approach into Statement 167 requires more time for interpretation. As we write this letter there are still significant divergences in opinion with respect to the application of Statement 167, which we believe is attributable to the significant issues and complexities that preparers, reviewers and users of financial statements are trying to address when a rule change of such magnitude occurs. We fear that the short time for implementation will result in many negative unintended consequences as well as put financial statements at risk for significant divergence in the application of the new rules as well as a high risk for errors in their application. Therefore, we believe that this new guidance further complicates the operational implementation of Statement 167.