

# BUYING PRIVATE EQUITY



To assist you with your Private Equity purchase, PENSCO Trust Company (PENSCO) has compiled the following list of pitfalls of which you should be aware that may delay processing or could cause your request to be considered a possible prohibited transaction.

## Third Party Documents Not Signed By the Account Owner

Anything that requires PENSCO's signature or initials must be signed by the Account Owner.

Some Asset Sponsors require your original signature on all purchase documents. Please be sure to inquire with the Asset Sponsor of this requirement before submitting your documents to PENSCO. If your original signature is required, send your request to PENSCO via US postal service mail delivery.

## Vesting Reflected on the Purchase Documents

The vesting should read: PENSCO Trust Company Custodian FBO [Account Owner Name], IRA \_\_\_\_\_%

"Retirement Plan" or "Solo(k)" may be substituted where appropriate.

## Prohibited Transactions

Your purchase must not be considered prohibited. The IRS prohibits personal use or use by disqualified parties as defined under [Section 4975](#) to include the 50% Rule

Additionally, a loan to an investment held in an IRA is prohibited, so be sure that the Operating Agreement does not have a clause for loans.

## Capital Calls

PENSCO requires the notice from the Asset Sponsor informing of the Capital Call.

If the Capital Call purchase will result in an increase of value, the Asset Sponsor may require new subscription documents, and these should be included with your request.

## Asset Sponsor Contact Information

PENSCO requires that the Asset Sponsor confirm the value and registration on any purchases that result in an increase in value. Please be sure to provide the most updated Asset Sponsor contact information with your request, and please keep PENSCO informed of any changes.

## Transferring Into PENSCO

PENSCO requires the original subscription documents reflecting the resigning custodian registration.

## Family Controlled and Single Member LLCs

All Operating Agreements must include specific text as outlined in paragraph II of the Investment Authorization Forms.

A Special Advisor is required. The Special Advisor must be a duly licensed certified public accountant or attorney in good standing, and s/he is responsible for monitoring if the transaction may be a "prohibited transaction" or "listed transaction," may generate "unrelated business taxable income" or "unrelated debt-financed income," or violate any requirement of Section 408 of the Internal Revenue Code.

One-time funding: Family Controlled entities can only be funded once as additional funding would exceed the 50% rule.

Retirement  
Account



\$\$



Private  
Equity

### Parties *not* considered disqualified:

- Step Grandparents
- Step Parents
- Spouse's Parents
- Aunts, Uncles, & Cousins
- Siblings/Step Siblings
- Step Children & Their Spouses

### Parties that are considered disqualified:

- Grandparents
- Parents
- Spouse
- Children/Adopted Children and their spouses
- Grandchildren and their spouses
- A Fiduciary
- A person providing services to the plan, such as a CPA or Attorney.
- Companies owned by disqualified parties.

**PENSCO does not provide investment advice, does not sell investments and does not offer tax or legal advice. PENSCO does not evaluate, recommend or endorse any advisory firm or investment. Investments are not FDIC insured and are subject to risk, including the loss of principal.**

## FAMILY CONTROLLED COMPANIES INVESTMENT AUTHORIZATION

# Checklist

These guidelines define the information required from investment issuers (Sponsors) for PENSCO Trust Company (PENSCO) to review and consider their investment offering for acceptance by PENSCO. "Acceptance" means that the investment meets PENSCO's existing systems and procedures and that PENSCO will hold the investment in its custodial Accounts.

**Note:** Acceptance does not imply that PENSCO endorses, promotes, approves, performs due diligence on, qualifies, certifies, sponsors, or in any other manner suggest that the issuer's investment is endorsed or recommended for investment, nor does it guarantee or constitute a representation that the investment complies with any applicable law or will not result in tax consequences to any person. PENSCO has no responsibility for determining the necessity or advisability of, or arranging for, advising on, or monitoring, the issuer's or the investment's registration, reporting, or other compliance with any applicable law or regulatory provision (other than that as may be imposed on PENSCO under Internal Revenue Code section 408); such will be the sole responsibility of the issuer and/or the PENSCO Account Owner. PENSCO has no responsibility for determining the advisability of, or arranging for, or creating, filing, or perfecting any security interest with respect to any investment and such will be the sole responsibility of the PENSCO Account Owner.

The requirements in this section are categorized by investment type and may be negotiable depending upon the age, business purpose, and scope or scale of the issuer or the investment.

### REQUIREMENTS FOR ANY FAMILY-CONTROLLED INVESTMENT

- Fully completed, signed, and dated Private Equity Investment Authorization (page 5 - 7)
- Special Advisor appointment must be mentioned in formation documents of entity and the Special Advisor Engagement Letter must be completed (page 4)
- Issuer Representation Letter for Family Controlled Companies (page 2 - 3)

**Corporate Stock** (IRAs may only invest into C Corporations. Solo(k)s may invest into either S or C Corporations.)

- Certificate of Incorporation
- Articles of Incorporation
- Offering Memorandum
- Subscription Agreement, Stock Purchase Agreement and/or any other form the investor is required to sign (if applicable)

### Limited Liability Company

- Certificate of Organization/Articles of Organization
- Operating Agreement
- Subscription Agreement, or any other agreement or form the investor is required to sign (if applicable)

**Limited Partnership** (PENSCO Trust does not accept General Partnership investments)

- Certificate of Partnership
- Articles of Organization
- Limited Partnership Agreement



## ISSUER REPRESENTATION LETTER FOR FAMILY CONTROLLED COMPANIES

### Terms Defined:

- The "IRA Owner" is referred to as: "Account Owner"
- "IRA" is referred to as: "Account"
- Issuer = Entity 'issuing' or 'sponsoring' the Investment, or an authorized representation thereof.

PENSICO Trust Company (PENSICO) neither endorses nor recommends any investment program nor investment and does not provide any legal, tax, investment, nor other advice with respect to any investment. Furthermore, PENSICO's responsibility is limited. PENSICO will only make investments for a PENSICO Account Owner upon and pursuant to the Account Owner's specific instructions to do so.

### Prior to funding an Investment, PENSICO requires that the Investment's Issuer agree to the following by signing page 3:

- I. The Issuer of the investment hereby indemnifies PENSICO and its related entities from any and all legal or financial damages, claims, costs, etc. that may result from legal actions involving the Investment or Issuer to the extent attributable to the fraud, gross negligence, or willful misconduct of the Issuer or the breach of this agreement for the diminution in value, lost profits, or other investment losses.
- II. Issuer agrees to engage and maintain at all times an unrelated Special Advisor to be consulted with respect to any proposed exchange, transfer, provision of goods and services, purchase, sale, income allocation, or other transaction involving the Issuer or its assets for the purposes of determining whether, with respect to any investing IRA or Solo(k) plan, the transaction may be a "prohibited transaction" or "listed transaction," may generate "unrelated business taxable income" or "unrelated debt-financed income," or violate any requirement of Section 408 of the Internal Revenue Code. The Special Advisor shall be a duly licensed certified public accountant or attorney in good standing who is knowledgeable in the foregoing matters. Further, the Issuer's governing document will provide for the existence, appointment, removal, resignation and replacement of the Special Advisor; also, the Issuer's governing document shall include a clause, requiring the Issuer to notify PENSICO's Compliance Department as soon as the services of the Special Advisor are terminated, and the submission of a new Special Advisor Engagement and Representation Letter, naming a replacement Special Advisor; the Issuer agrees not to engage any transactions, etc. as outlined above until a replacement Special Advisor has been appointed. The appointment shall be in writing, substantially in the attached form and an executed copy of which shall be provided to PENSICO.
- III. Issuer agrees to inform PENSICO promptly of any significant change in its legal structure, if it becomes insolvent, or of pending litigation seeking damages greater than \$1,000,000.
- IV. Issuer agrees that all income associated with the Investment made by PENSICO Account Owners will be sent directly to PENSICO in a timely manner for crediting to the appropriate PENSICO Account. Under no circumstances will Issuer distribute principal monies or assets associated with said Investment directly to PENSICO's Account Owners. Issuer hereby indemnifies PENSICO and its related entities and takes full responsibility for any tax, legal, or penalty damages and charges associated with the direct distribution of monies or assets by Issuer to the Account Owner.
- V. Issuer agrees to provide PENSICO with annual (calendar year-end) updates of the fair market value of the Investment listed below as "Investment," as such value may be estimated in good faith by Issuer.
- VI. Issuer agrees to promptly forward to PENSICO for custody purposes the original physical indicia of ownership (such as stock certificates) for the investment made by the IRA(s) in the Issuer.
- VII. Issuer agrees that PENSICO has neither endorsed nor approved the Investment or Issuer and will make no representation to the contrary. Issuer also hereby acknowledges that PENSICO's acceptance of said Investment solely indicates that it meets PENSICO's existing systems and procedures and in no way can be construed to be either an endorsement or evaluation of merit of any kind or an acknowledgment that the investment complies with any sanction, legal authority, or regulatory statute.
- VIII. I acknowledge that written confirmation of purchase is required. If no confirmation is received PENSICO may resign as trustee/custodian.
- IX. Issuer agrees to not use PENSICO's name in advertising, printed or web-based material, or any other form of communication without the express written consent of PENSICO.
- X. Issuer shall not distribute PENSICO IRA Applications, Solo(k) Plan Establishment Kits or other marketing or operative documents to prospective clients without the express written consent of PENSICO.

**INVESTMENT OFFERING INFORMATION (\*ALL SECTIONS REQUIRED)**

\*Full Name of Offering: \_\_\_\_\_

**\*Valuation/Price (Required to Provide)**

Price per share/unit is: \$ \_\_\_\_\_

Values are reported indicating the investor/capital Account balance

**\*Price Frequency:**

Annual  Quarterly  Monthly

**\*Company Contact**

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Primary Phone: \_\_\_\_\_ Type:  Cell  Home  Business

Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

**ISSUER SIGNATURE**

**Name of Investment** (This might be the name of an LLC, LP or C-Corp)

Name: \_\_\_\_\_ EIN Number: \_\_\_\_\_



\_\_\_\_\_  
Issuer Signature (Must be signed by an authorized representative of entity issuing Investment.)

\_\_\_\_\_  
Date

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

PENSCO must agree to "accept" the Issuer's offering before any transactions can occur between a PENSCO Account and the Issuer.

**INVESTMENT PRODUCTS: NOT FDIC INSURED • NO BANK GUARANTEE • MAY LOSE VALUE**

**Upload forms to:**  
[www.pensco.com/upload](http://www.pensco.com/upload)

**Send mail to:**  
PENSCO  
P.O. Box 173859  
Denver, CO 80217-3859

**For express deliveries:**  
PENSCO  
1560 Broadway, Suite 400  
Denver, CO 80202-3331

**Questions?**  
Call 1-800-962-4238

**Fax to:** 303-614-7040




**SPECIAL ADVISOR ENGAGEMENT LETTER**

**The undersigned Special Advisor represents that s/he is:**

- (1) a duly licensed certified public accountant or attorney in good standing,
- (2) knowledgeable regarding “prohibited transactions” under the Internal Revenue Code of 1986 (“Code”), authorities applicable to the foregoing, including the Tax Court case *Rollins v. Commissioner* and Department of Labor Opinion 2006-1A, Internal Revenue “listed transactions,” under Internal Revenue Service Notice 2004-8, “unrelated business taxable income,” “unrelated debt financed income,” and the requirements of Section 408 of the Code and
- (3) unrelated to and unaffiliated with (except as a service provider) any individual whose Individual Retirement Account (“IRA”) or Solo(k) plan invests in \_\_\_\_\_ (the “Issuer”).

The Special Advisor agrees to review any proposed exchange, transfer or other transaction involving the Issuer or its assets for purposes of determining whether, with respect any IRA or Solo(k) plan that is an investor in the issuer, the transaction may be a “prohibited transaction” or “listed transaction,” may generate “unrelated business taxable income” or “unrelated debt-financed income,” or violate any requirement of Section 408 of the Code. It is then the Special Advisor’s duty to advise the Issuer or any party whose transaction would violate the rules not to proceed, and to the extent possible propose an alternative that would satisfy the rules. Remuneration for the service to be provided is outside the scope of the letter.

 \_\_\_\_\_  
 Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Notary Public:



## FAMILY CONTROLLED COMPANIES PRIVATE EQUITY INVESTMENT AUTHORIZATION

**\*Do not use this form for Private Debt, Real Estate, Promissory Note Investments secured by Mortgages/Trust Deeds. Always obtain the most current form from our Web site [www.pensco.com](http://www.pensco.com). Do not copy for future use.**

The items listed below must be received by PENSCO Trust Company (PENSCO) to begin a review for Administrative Feasibility. **Documents and forms will be returned if they are not complete and signed where required.**

- \_\_\_ Completed and signed Issuer Representation Letter and Special Advisor Engagement Letter. These forms are required and may not be modified. The Issuer Representation Letter must be signed by the General Partner, Managing Member, Fund Manager, Corporate Officer or an authorized individual for one of the aforementioned.
- \_\_\_ Offering materials, including items such as offering memorandums, prospectuses, subscription agreements, etc.
- \_\_\_ The role of the Special Advisor must be referenced in the operating agreement.
- \_\_\_ PENSCO Private Equity Investment Authorization Form
- \_\_\_ Applicable Subscription Agreement or enrollment documents completed and signed by Account Owner (Must be signed by Account Owner in all locations that PENSCO is required to sign.)
- \_\_\_ PENSCO Account application (if applicable)
- \_\_\_ PENSCO Transfer/Rollover Form (if applicable)

*PENSCO will execute subscription documents in its nominee capacity as a directed custodian/trustee; however, Investor Suitability standards/questions (investor accreditation) must be completed and signed by the Account Owner.*

*If you, a family member or another disqualified party (see Prohibited Transaction Disclosure) is an officer of, or has an ownership interest in the entry in which you are investing, PENSCO reserves the right to require that you obtain an opinion of counsel from an ERISA or tax attorney regarding the matter of Prohibited Transactions. If you have questions, please consult with your tax advisor prior to submitting your investment instructions.*

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### ACCOUNT OWNER INFORMATION (All Sections Required)

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last Name: \_\_\_\_\_  
 Account Number: \_\_\_\_\_ Email Address: \_\_\_\_\_  
 Primary Daytime Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
 Secondary Daytime Phone Number: \_\_\_\_\_

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### INVESTMENT INSTRUCTIONS (All Sections Required)

Name of Investment: \_\_\_\_\_  
 Number of Units/Shares: \_\_\_\_\_ Price per Unit/Share: \_\_\_\_\_  
 Total Percentage of IRA Ownership: \_\_\_\_\_  
 Total Amount of Investment \$: \_\_\_\_\_

I Authorize PENSCO to (check one):

- Purchase (One Time Funding Only)
- Transfer/Rollover
- Exchange investment \_\_\_\_\_

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**FUNDING INSTRUCTIONS** (select one below) Check

Payee Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_

 ACH or  Wire (Applicable fees will be assessed to your Account.)*Please complete EFT instructions below or attach wiring instructions*

Bank Name: \_\_\_\_\_

ABA Number: \_\_\_\_\_

Bank Account Name: \_\_\_\_\_

Bank Account Number: \_\_\_\_\_

Ref Number: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**Document Delivery Instructions** (If applicable, select one below) Regular Mail (if not received by recipient, PENSCO will charge a \$100.00 special services fee to place a stop payment and/or re-create documents) Overnight (charge my PENSCO Account) Overnight (use pre-addressed air bill, included) Overnight (send via 3rd party billing) Account # \_\_\_\_\_ Fed Ex UPS**\*\*If no box is checked the default will be to overnight at the client's expense. Please refer to the fee schedule for details\*\***

Send documents to (not required if information is same as stated above):

Payee Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

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**ACKNOWLEDGEMENT AND SIGNATURE**

1. I understand that I am responsible, and PENSCO and its related entities are not responsible, for selecting and reviewing the above investment and for determining the suitability, nature, value, risk, safety and merits of the investment that I authorize PENSCO to make for my Account.
2. I verify that I have received and read all pertinent information relating to the investment(s) named herein (i.e., private placement memorandum, purchase agreement, subscription documents, etc.).
3. I acknowledge that no funds will be paid to my PENSCO Account if an exchange from one asset (existing asset) held in my PENSCO Account is made to another issued by the same asset sponsor (new asset). I request that PENSCO update its records to reflect the exchange transaction and the new asset into my Account. I agree to indemnify and hold PENSCO and its related entities, affiliates, successors and assigns harmless from any and all claims, damages and losses that may result from such transaction.
4. I understand that distributions or dividends other than cash (i.e., distributions in-kind) paid by this investment are subject to administrative review by PENSCO. In the event that an asset paid as part of a distribution/dividend paid-in-kind, is determined that it is not considered administrative feasible, I may be required to remove the asset from my PENSCO Account by transfer or distribution.
5. I understand that PENSCO and its related entities are not related to or affiliated with the management or selling agent(s) of the investment(s) that I have directed PENSCO to purchase for my Account. I acknowledge that PENSCO has not reviewed, recommended or commented on the investment merits, risks, suitability or management of the asset(s) I have selected and I authorize PENSCO to process this transaction. I therefore agree to release, indemnify, defend, and hold PENSCO and its related


entities harmless from any claims arising out of making such investment. I also understand and agree that PENSICO and its related entities will not be responsible to take any action should the investment noted herein become subject to default, including fraud, insolvency, bankruptcy, or other court order or legal process.

6. I understand that PENSICO will request confirmation of purchase as part of its role as custodian of my Account, I also understand and agree that if the asset sponsor of the investment does not provide documentation to confirm this investment, PENSICO may resign as custodian of my Account.
7. I agree that any dispute regarding this investment shall be submitted to binding arbitration pursuant to the Commercial Rules of the American Arbitration Association and the terms of the Custodial Agreement. I understand that the prevailing party shall be entitled to recover all legal fees, reasonable costs and expenses and that these shall be in addition to any award of damage or any other relief to which the prevailing party is entitled.
8. I represent that the above investment is not a prohibited transaction, as defined in the Internal Revenue Code and Department of Labor regulations.
9. I acknowledge that this investment is not insured by the FDIC, is not an obligation of or guaranteed by PENSICO and is subject to risk, including the possible loss of principal.
10. I understand that offshore entities are not organized under the laws of the United States and, most likely, are not subject to U.S. regulations and/or legal system. I am aware that I am responsible for all legal matters concerning my Account, and that PENSICO may resign as a directed custodian in the event of future legal proceedings.

The asset sponsor of any offshore fund that I may direct PENSICO to purchase in my Account may require that PENSICO provide additional documentation or other information pursuant to the anti-money laundering or other laws applicable to the asset sponsor in the country in which it operates or is domiciled. The particular requirement of each country and each asset sponsor may differ. It is my responsibility to determine these requirements prior to directing that an offshore investment be purchased in my Account, and by signing this form, I acknowledge that I have done so.

Additionally, the asset sponsor may impose similar requirements for PENSICO related to the processing of this purchase. PENSICO's policy is that it will provide a certification of compliance with United States anti-money laundering/anti-terrorism regulations applicable to PENSICO. If the asset sponsor requires additional information beyond the certification, PENSICO reserves the right to decline to provide such information and to instead characterize the offshore fund investment as no longer administratively feasible. I understand and acknowledge that PENSICO will not be responsible for any consequences resulting from such a determination.

11. I have read and understand the disclosure printed on this form about foreign financial Account reporting. I acknowledge that it is my responsibility to consult with my tax advisor and to determine if any actions are required on my part as an individual taxpayer with respect to any of the IRS requirements for reporting foreign financial Accounts.
12. I agree that this Private Equity Investment Authorization is further subject to all the terms and conditions of the Custodial Agreement. *(Please sign below and provide all requested information)*
13. I understand that this is a one time funding investment and that no additional funds can be invested in the future.

 \_\_\_\_\_  
Account Owner Signature \_\_\_\_\_ Date \_\_\_\_\_  
Print Name: \_\_\_\_\_ Account Number: \_\_\_\_\_  
Name of Investment: \_\_\_\_\_ Purchase Amount \$: \_\_\_\_\_

Private Equity Team Fax Number (303) 614-7051

**INVESTMENT PRODUCTS: NOT FDIC INSURED • NO BANK GUARANTEE • MAY LOSE VALUE**

<b>Upload forms to:</b> <a href="http://www.pensico.com/upload">www.pensico.com/upload</a>	<b>Send mail to:</b> PENSICO P.O. Box 173859 Denver, CO 80217-3859	<b>For express deliveries:</b> PENSICO 1560 Broadway, Suite 400 Denver, CO 80202-3331	<b>Questions?</b> Call 1-800-962-4238
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