FOUNDATIONS OF FUND COUNSEL SERIES: PART 2

Key Rules and Regulations for Counsel Advising Investment Funds and Advisers

Dallas Bar Association Securities Section
November Meeting

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November 24, 2025

Defining Private Equity

Asset Class. Private equity is an asset class that involves investing in companies that do not have publicly listed securities. It encompasses a wide range of investment opportunities, from early-stage startups in need of seed capital to well-established companies generating significant cash flow.

Key Characteristic. Closed-end, private equity investments are typically characterized by longer holding periods and illiquidity, requiring investors to commit their capital for extended periods.

Risks. While private equity offers potential higher returns, it also entails risks such as limited liquidity and the absence of oversight from regulatory bodies from governmental agencies and other regulators such as the SEC and FINRA in the U.S.

Multiple Access Points. Investing in private equity may directly or indirectly involve investments in LBOs, direct equity, debt instruments, co-investments, feeder investments, fund-of-fund investments, participations in secondary market trading of private fund interests, VC-style investments, PIPEs, and more.

Alternative Investments as an Asset Class

"Private Equity" is a specific type of Alternative Investment that leverages both mainstream and alternative asset classes and investment products

Equities

- Publicly traded stocks/shares

Fixed Income

- Bonds and other debt securities

Cash and Cash Equivalents

- Money markets, treasury bills and deposits
- Foreign Currencies (FOREX)

Alternative Investments

- All other financial/securities products
- Private Equity

Alternative Investments as an Asset Class

"Private Equity" is a specific type of Alternative Investment that leverages both mainstream and alternative asset classes and investment products

Real Estate
- Including direct property ownership and REITs

Private Equity
- Generally viewed as focusing exclusively on non-public company equity positions (e.g., buy-side M&A)

Hedge Funds
- Actively managed pooled investment vehicles investing using single or multi-strategy models focused on public and private equities and derivatives

Private Credit
- Direct lending, distressed debt, second-lien and mezzanine financing

Venture Capital
- Specific to early-stage equity investment in non-public companies

Commodities
- Gold, silver, oil, and agricultural products

Collectibles
- Art, antiques, wine, rare coins

Cryptocurrencies
- Bitcoin, Ethereum, and similar

Infrastructure
- Private investment in public roads, airports, and utilities

Managed Futures and Derivatives
- Options contracts, futures, swaps

Exchange Traded Funds
- Public securities trading based on underlying portfolios of alternative investments

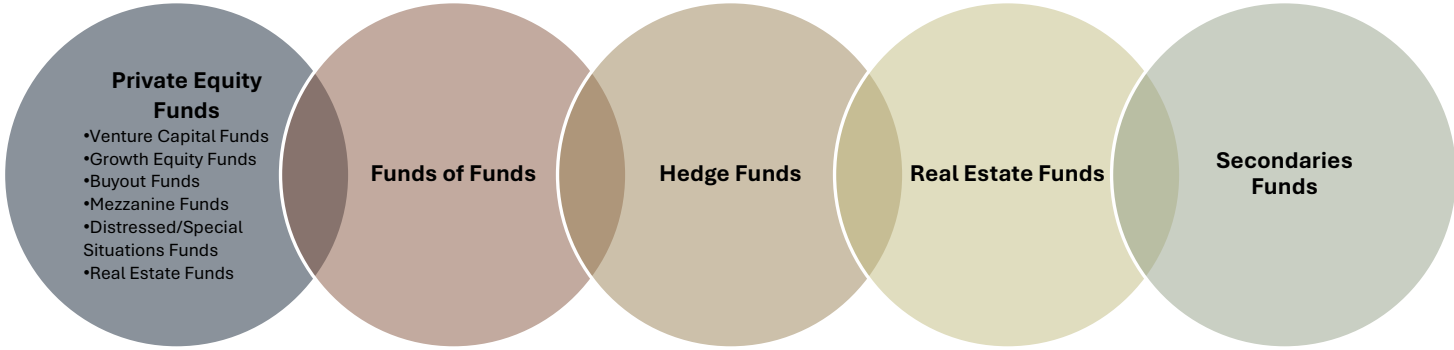
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Types of Funds

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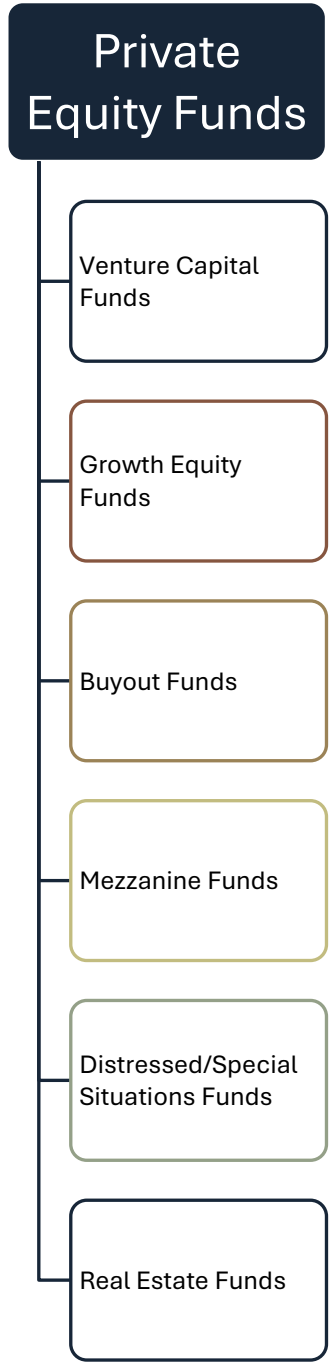
Broadly-Defined Fund Types

Remember that Private Equity is an "Asset Class" within the spectrum of "Alternative Investments"



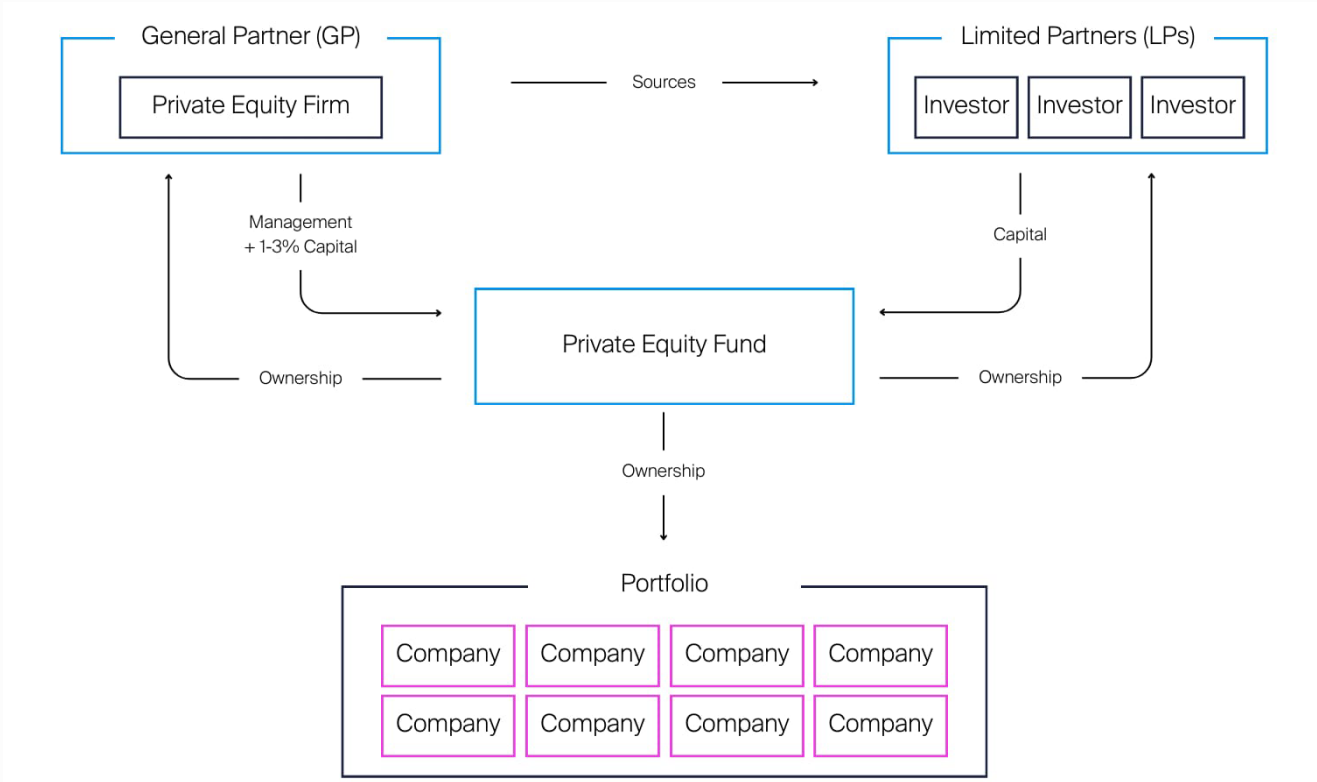
Types of Private Funds

Several discrete types or styles of Private Equity funds have evolved within the Alternative Investment asset class



What is the Structure?

Basic structure of a traditional Private Equity fund



- Defined under Investment Advisers Act § 202(a)(29)
- Typically structured as LPs or LLCs
- Relies on exemptions from Investment Company Act registration (3(c)(1) and 3(c)(7))
- Serves accredited investors and qualified purchasers’

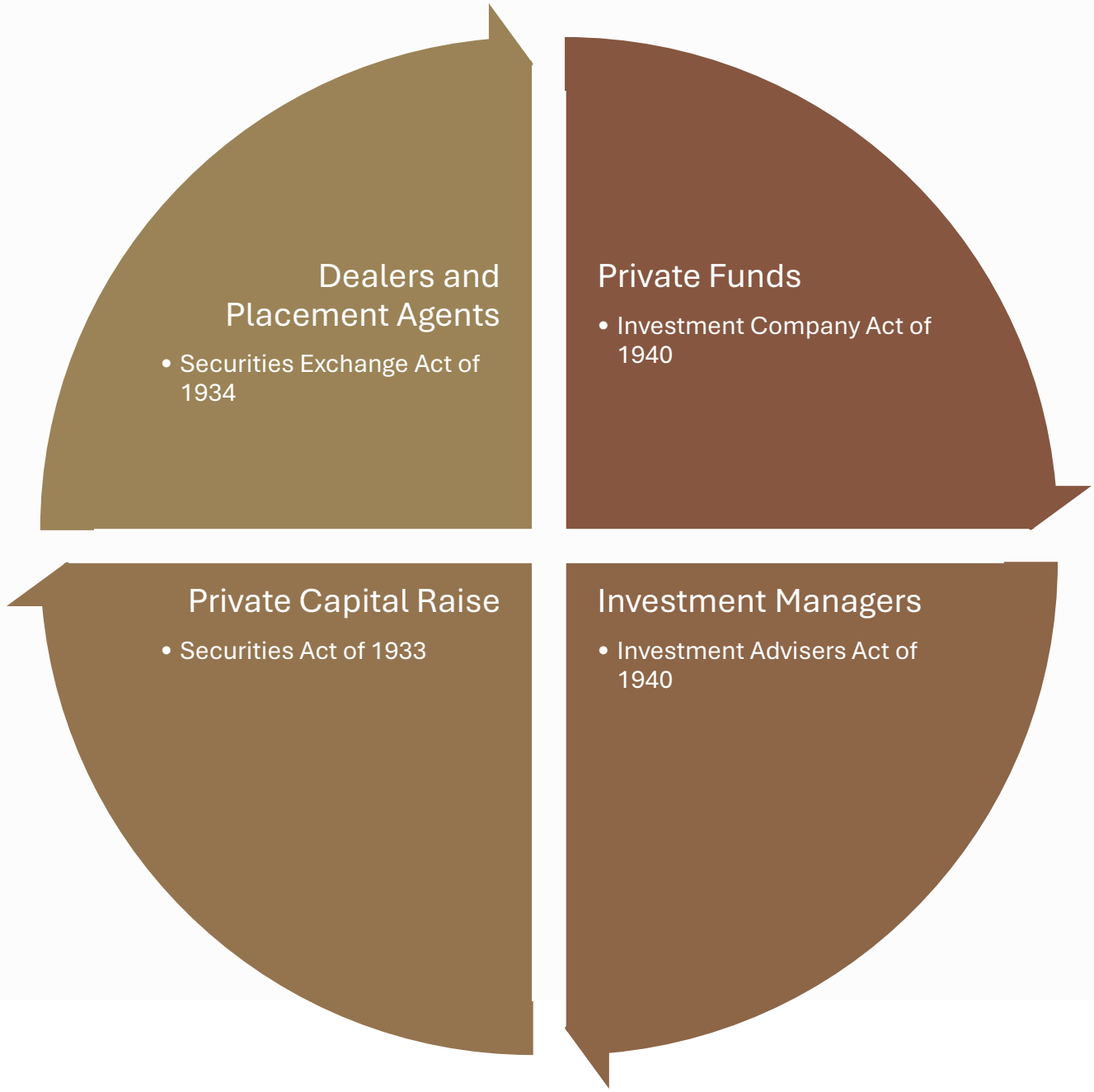
Rules and Regulations

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Regulatory Quick Reference

The Key Rules and Regulations



Regulatory Quick Reference

The Key Rules and Regulations

Key Regulations

- The laws and regulations most directly affecting private equity funds and their investments, including:
  - Investment Company Act of 1940
  - Investment Advisers Act of 1940
  - Securities Act of 1933
  - Securities Exchange Act of 1934

Funds vs. Companies

- How do private funds provide capital to early-stage companies?
  - A fund is an entity created to pool money from multiple investors- often referred to as “limited partners”
  - Each investor makes an investment in the fund by purchasing an interest in the fund entity, and the adviser uses that money to make investments on behalf of the fund
  - Traditional venture funds typically invest in businesses in exchange for equity and some firms specialize in particular industries or in companies at a certain stage

Key Rules and Regulations

For offerings, structuring, management and compliance matters

Securities Act (Offerings)

- Rule 506(b): Unlimited accredited investors, up to 35 sophisticated investors
- Rule 506(c): All accredited investors with verification required
- Rule 501: Defines accredited investor standards
- Form D filings: Notice filing within 15 days of first sale

Investment Company Act (Structure)

- Section 3(c)(1): 100 or fewer beneficial owners exemption
- Section 3(c)(7): Qualified purchaser exemption
- QPs: Qualified purchasers must have $5M+ in investments
- Affect: Choice affects investor eligibility and marketing flexibility

Investment Advisers Act (Management)

- Section 203(m): Private fund adviser exemption (under $150M AUM)
- Quarterly Statement Rule: Detailed performance, fees, expenses
- Annual Audit Rule: GAAP financial statements required

Key Rules and Regulations

For offerings, structuring, management and compliance matters

Rule 506(b) Private Placements

- Allow companies to raise unlimited capital from investors with whom the company has a relationship and who meet certain wealth thresholds or have certain professional credentials. A company cannot use general solicitation in a 506(b) private placement

Rule 506(c) General Solicitation Offerings

- Allow companies to raise unlimited capital by broadly soliciting investors who meet certain wealth thresholds or have certain professional credentials

Rule 504 Limited Offerings

- Allow companies to raise up to $10 million in a 12-month period, in many cases from investors with whom the company has a relationship.

	Rule 504	Rule 506(b)	Rule 506(c)
Maximum size of offering	$5 million (in aggregate with all securities sold under Section 3(b)(1) or in violation of Section 5(a) of the Securities Act) per year	No limit on size of offering	No limit on size of offering
Issuers permitted to rely on this exemption	Non-reporting companies; non-investment companies (as defined in the Investment Company Act of 1940, as amended (ICA)), nor blank check companies	Any issuer. It can be used by both reporting companies and non-reporting companies	Any issuer. It can be used by both reporting companies and non-reporting companies
"Bad actor" disqualification	Bad actor disqualification by reference to Rule 506 bad actor disqualification	Certain Criminal Convictions (5-10 years old) Court Injunctions (5 years old) SEC Administrative Orders (5 years old) State Securities Regulator Orders Security Industry Bars, Suspensions, Expulsions	Same
Types of investors that can buy the securities	Any investor. No limits on number or sophistication of investors	Unlimited accredited investors and up to 35 non-accredited investors (must be sophisticated investors)	Unlimited accredited investors
Limitations on resale of securities?	Yes, subject to the exceptions provided by Rule 504(b)(1)	Yes	Yes
Form D filing?	Yes	Yes	Yes
Blue Sky Preemption?	No	Yes	Yes

Three Primary Fundraising Paths

Confirm Exemption and Related Requirements

Key Rules and Regulations

For offerings, structuring, management and compliance matters

Regulation Crowdfunding Offerings

- Allow eligible companies to raise up to $5 million in investment capital in a 12-month period from investors online via a registered funding portal

Intrastate Offerings

- Allow companies to raise capital within a single state according to state law. Many states limit the offering to between $1 million to $5 million in a 12-month period

Regulation A Offerings

- Often referred to as a “mini-IPO”, allow eligible companies to raise up to $20 million in a 12-month period in a Tier 1 offering and up to $75 million in a 12-month period in a Tier 2 offering through a process similar to, but less extensive than, a registered offering

Key Rules and Regulations

For offerings, structuring, management and compliance matters

Avoiding General Solicitation

- Conduct an offering that is limited to investors with whom the company (or its broker dealer or investment adviser) has a pre-existing, substantive relationship

Pre-Existing

- Generally, means the relationship was formed **before** the start of the offering.
- Can be established through a broker-dealer or investment adviser prior to that investment professional's participation in the offering

Substantive

- Formed when the entity offering securities (i.e., the company or its broker- dealer or investment adviser) has **sufficient information to evaluate** and evaluates a potential investor's status as an accredited investor

Key Rules and Regulations

For offerings, structuring, management and compliance matters

AML Compliance

- Bank Secrecy Act applies to certain investment advisers
- FinCEN proposed AML rules for PE and VC funds

KYC Procedures

- Investor identification and verification
- Suspicious activity reporting obligations

Funds Types in Detail

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Venture Capital Funds: Overview

Basic documentation and terms

Key Documents

- Governance: LP/LLC Agreement with management rights and waterfall
- Offerings: Private Placement Memorandum (PPM) with risk disclosures; Subscription agreement and investor questionnaire
- Templates: NVCA model documents for portfolio company investments

Key Terms

- Investment Period: Typically 3-5 years for new investments
- Fund Term: 10 years with 1-2 year extensions
- Waterfall: European
- Management Company Structure: GP entity with LLC tax treatment
- Key Person Clause: Suspension if named partners depart

Key Players

- Sequoia Capital ($56B AUM)
- Andreessen Horowitz (a16z) ($46B AUM)
- Accel ($20B AUM)
- Benchmark Capital ($12B AUM)

Private Equity Funds: Overview

Basic documentation and terms

Key Documents

- Governance: Partnership/LLC agreement; carried interest; waterfall mechanics
- GP/Management: GP LLC; key person provisions and "no-fault divorce" clauses; incentives and economic allocations
- Offering: PPM, subscription docs, side letters for major investors

Key Terms

- Investment Period: Typically 2-5 years for new investments
- Fund Term: 7-8 years with 1-2 year extensions
- Management Structure: Investment Committee/Advisory Committee
- AC Rights: Consent for conflicts, valuations, adviser changes
- Management fee structures: Typically 2% + 20% Carried Interest
  - Hedge Funds (2% + 20% “Performance Fee”/High Water Marks)
- No-Fault Divorce: LP removal rights (typically 75% vote)
- For-Cause Removal: Lower threshold (50-66% vote) for misconduct

Key Players

- Blackstone ($1.1T AUM)
- KKR ($143B AUM)
- Apollo Global Management ($108B AUM)
- TPG Capital ($127B AUM)

Commercial Real Estate Funds: Overview

Basic documentation and terms

Key Documents

- Governance: Partnership/LLC agreement: carried interest, waterfall mechanics, scope/type restrictions
- GP/Management: Key person provisions and "no-fault divorce" clauses
- Offering : PPM, subscription docs, side letters for major investors

Key Terms

- Investment Period: Typically 2-5 years for new investments
- Fund Term: 7-8 years with 1-2 year extensions
- Management fee structures:
  - Typically 2% + 20% Carried Interest
  - Common to see tiered Carried Interest structures based on IRR Hurdles
- Investment Strategy: Core, value-add, or opportunistic defined
- Leverage Limits: 50-75% LTV caps in operating agreement
- Geographic Restrictions: Specified markets or MSAs
- Property Type Limits: Multifamily, office, retail, industrial mix
- Fee Offsets: Project-level fee offsets, acquisition/dispo fees, development fees, other

Key Players

- Blackstone Real Estate Partners ($46B+ raised)
- Starwood Capital Group ($15B+ AUM)
- Brookfield Asset Management ($440B+ real estate AUM)
- BREIT (Blackstone Real Estate Income Trust, $59B)

Private Credit Funds: Overview

Basic documentation and terms

Key Documents

- Governance: Partnership/LLC agreement: carried interest, waterfall mechanics, scope/type restrictions
- GP/Management: Key person provisions and "no-fault divorce" clauses
- Offering : PPM, subscription docs, side letters for major investors

Key Terms

- Scope: Lending strategy, risk allocation, servicing standards
- Investment Period: Typically 2-5 years for new investments
- Fund Term: 5-7 years with 1-2 year extensions
- Management Fees: Typically 2% + 20% Carried Interest
- Compliance: BSA/AML, state lending laws, consumer protection
- Investment Criteria: Loan-to-value, DSCR, industry restrictions
- Fund-Level Credit: Fund-level leverage with warehouse lines
- Recycling Provisions: Reinvestment of principal repayments
- Default Management: Workout authority and LPAC consent thresholds

Key Players

- Ares Capital Corporation ($22B AUM)
- Blackstone Credit ($285B+ credit AUM)
- Apollo Hybrid Value Fund ($7B+)
- Owl Rock Capital Partners ($55B+ AUM)

Hedge Funds: Overview

Basic documentation and terms

Key Documents

- Governance: Partnership/LLC agreement: NVCA model type and restrictions
- GP/Management: Key person provisions (“star managers”)
- Offering: PPM, subscription docs, side letters for major investors

Key Terms

- Model: Single-Strategy or Multi-Strategy
- Investment Period: Rolling (No Commitments)
- Fund Term: 3-5 years
- Management Fees: Typically 2%
- Performance Fees: Typically 20% subject to “High Water Mark” or other metric
- Redemption Rights: Quarterly or annual with 30-90 day notice
- Lock-Up Periods: 1-3 years from initial investment
- Gates and Suspensions: 10-25% quarterly redemption caps
- Side Pockets: Illiquid assets segregated with special terms

Key Players

- Bridgewater Associates ($97B+ AUM)
- Renaissance Technologies ($130B+ AUM)
- Citadel ($63B+ AUM)
- Elliott Management ($70B+ AUM)

Funds In Practice

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What Tools do You Need?

Hint: You already have what you need…

Good News/Bad News?

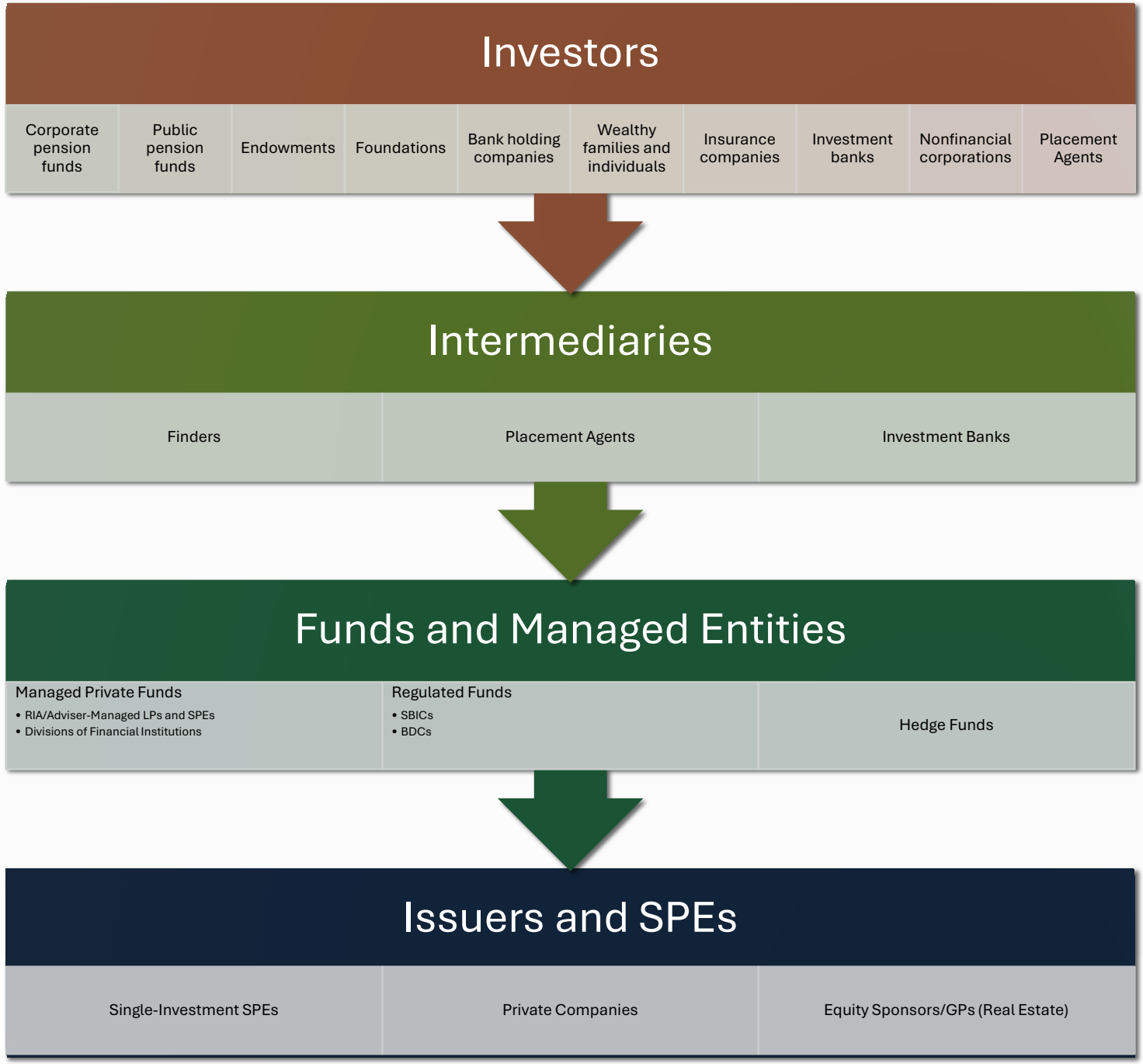
- Do you need a degree in finance?
- Should you have interned with a company or bank?
- Will what you learned in law school make or break your career as a deal lawyer?

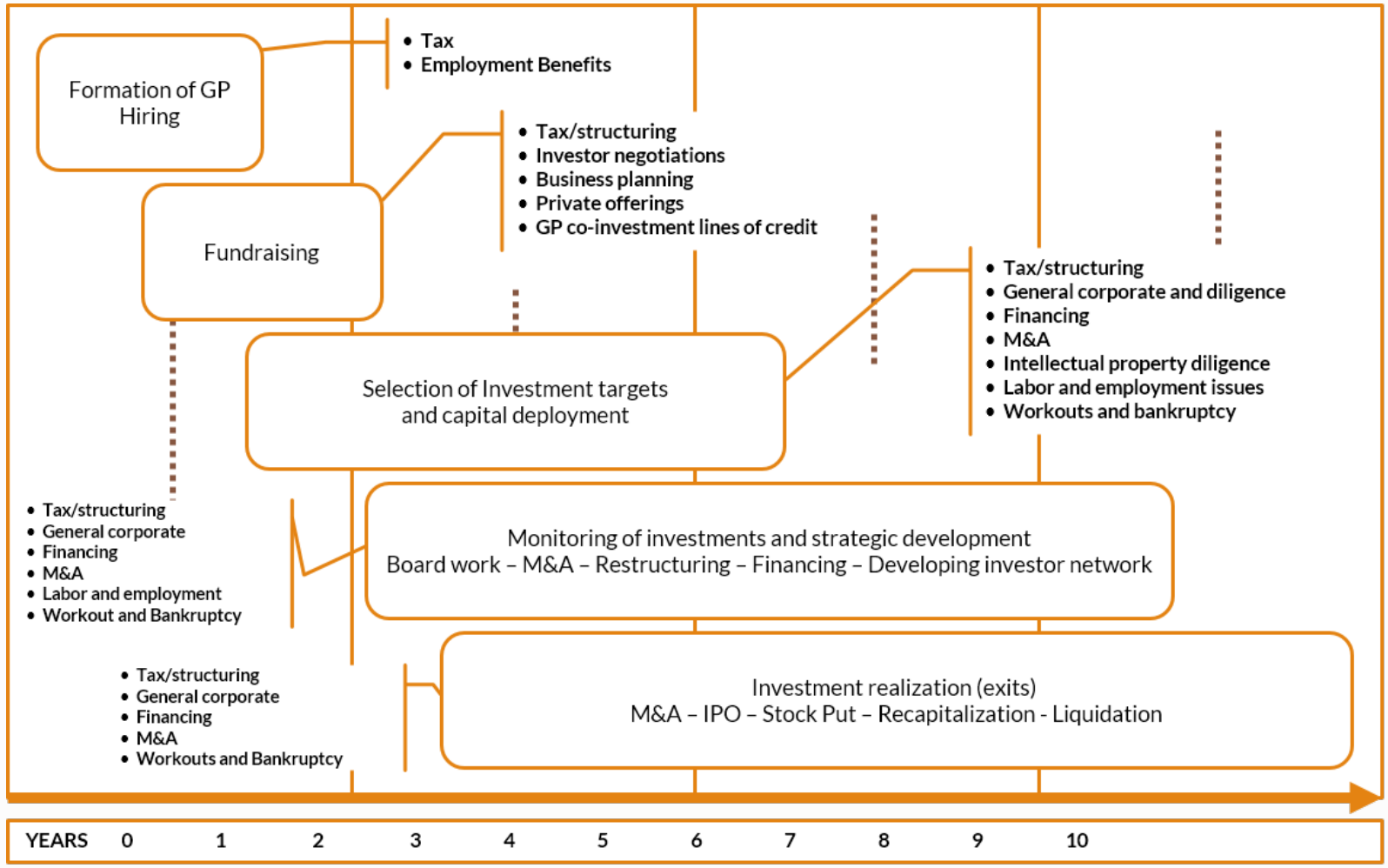
Good News: The Bottom Line

- You already bring most of the tools to your desk, or have them at your desk
- Being committed and relentless about using them and refining them is what separates the good from the great, the average from the good, and the…you get the idea

Where are the Clients?

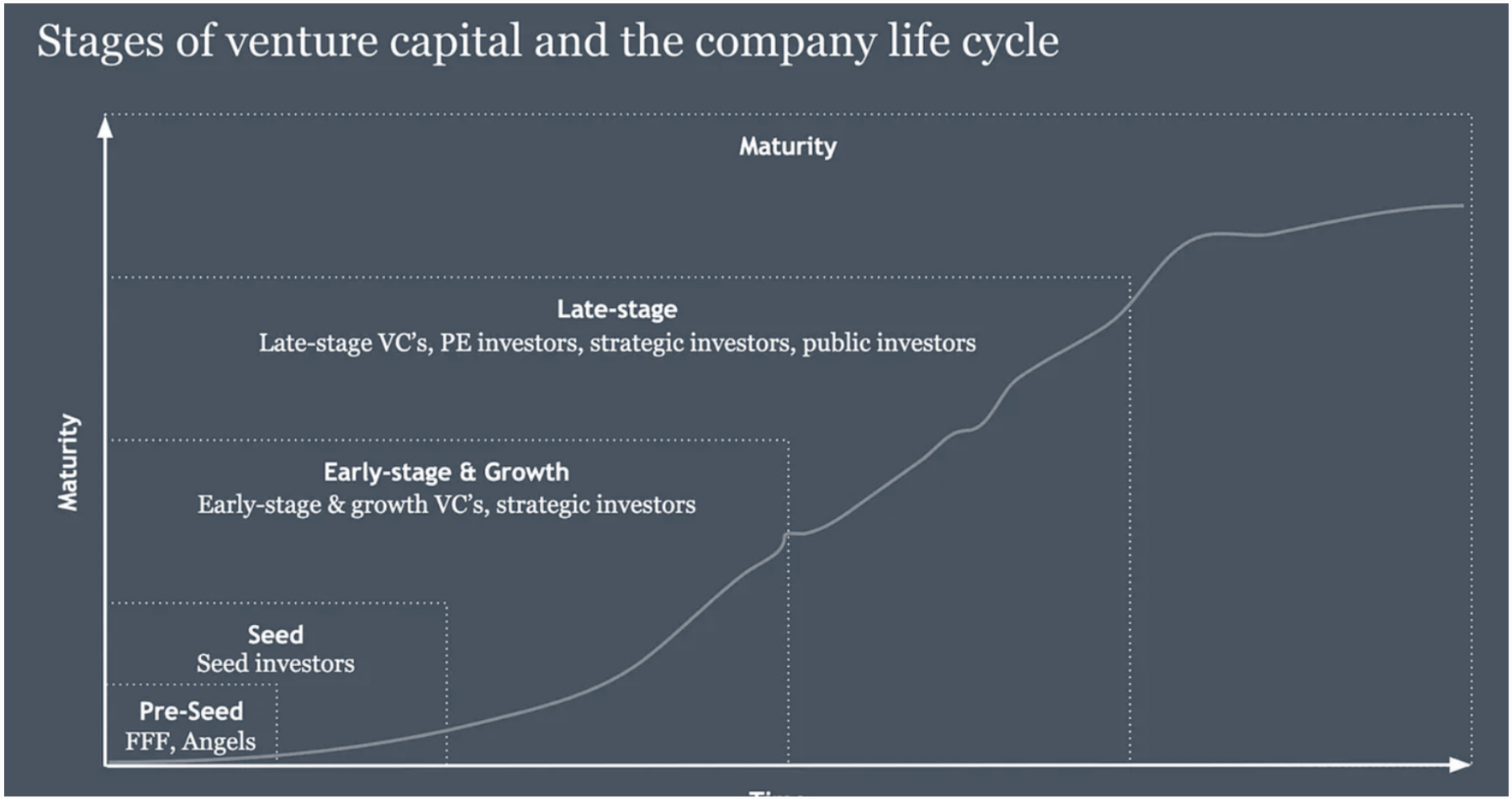
Broad spectrum and many access points





Where the Lawyers Get Involved

Different Specializations for Different Stages



Key Fundraising Cycles

Identifying Investment Targets and Likely Capital Audience

Types of Deals

Categorizing fund and investment quickly

Lending and Debt Financing
Senior Credit (Secured and Unsecured)
Syndicated Senior Credit (Secured and Unsecured)
Second-Lien Credit (Secured and Unsecured)
Subordinated Debt (Secured and Unsecured)
Syndicated Subordinated Debt (Secured and Unsecured)
Restructurings and Workouts
Bankruptcy and Foreclosures
Debt Trades and Participations
Securities Offerings and Investing
Investment Fund Formation
Investment Fund Deployment
Investment Fund Harvesting
General Partner Advisory
SBIC Funds
EB-5 Funds
Corporate Preferred Stock Offerings
Corporate Convertible Debt Offerings
Venture Capital
ESG and Social Impact Investing
Hedge Funds
Broker/Dealer and RIA Advisory (FINRA/SEC)

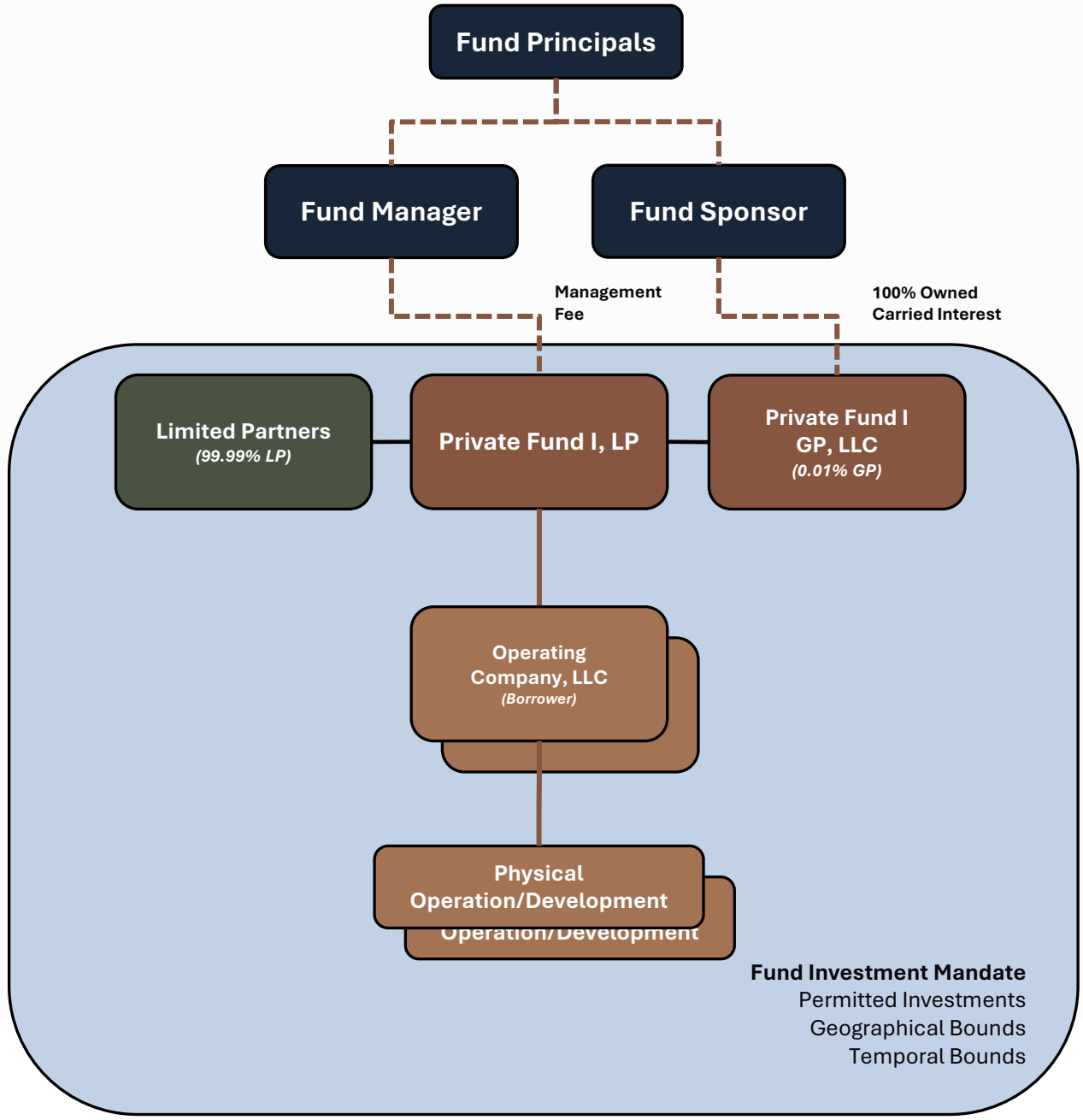
Types of Deals

Categorizing fund and investment quickly

Mergers and Acquisitions
Asset and Stock Purchase Transactions
Asset and Stock Purchase Financing
SPV Formation and Management
Contract Negotiating and Drafting
General Commercial Contracts
Equipment Leasing
Trade Credit
IP Licensing and Acquisitions
Business Formation and Tax Structuring
Corporate Organization and Management
Partnership and LLC Organization and Management
Tax-Driven Entity Structuring
Charitable Organizations and Foundations
Real Estate Acquisition and Leasing
Real Estate Acquisition
Real Estate Leasing
Real Estate Finance (Acquisition)
Real Estate Finance (Construction)
Real Estate Entitlements
Real Estate State and Municipal Incentives
Mortgage Finance and Warehouse Finance
Whole Loan Transactions

Key Documents and Issues for Advisors

Basic Structure



Key Documents and Issues for Counsel

Basic documentation and terms

LP/LLC Agreement: Governance, economics, waterfall

PPM: Investment strategy, risks, fees, team bios

Subscription Agreement: Investor commitments and reps

Investor Questionnaire: Accreditation verification

Side Letters: Customized terms for key LPs

Management Agreement: Services and fee structure

Form D: Notice filing with SEC within 15 days

Portfolio Investments: Customary investment-level documentation (equity, debt, etc.)

Reporting:

- Quarterly
  - Distribution within 45 days of quarter-end (75 for FOFs)
  - Fund-level performance metrics and returns
  - Detailed fee and expense breakdowns
  - Compensation paid to adviser and affiliates
- Annual
  - Financial statements audited per Reg S-X standards
  - Prepared in accordance with U.S. GAAP
  - Distribution within 120 days of fiscal year-end
  - Independent public accountant requirement
- RIAs
  - Annual compliance review documentation (Advisers Act Rule 206(4)-7)
  - Form ADV annual updates and material amendments
  - Conflicts of interest disclosure and management
  - Cybersecurity policies and incident response plans

Key Documents and Issues for Advisors

The Waterfall

European Waterfall

- Whole-fund carry after aggregate return of capital

American Waterfall

- Per-deal carry aggregate return of capital

“Fund” Expenses

- Allocated per deal or portfolio-wide
- Offering expenses

Management Fee

- Committed capital
- Invested capital

Return of Capital

- American: Per deal (plus losses?)
- European: All invested capital

Preferred Return (Hurdle Rate)

- Rate of return paid in priority to GP profit allocation
- Not all funds treat this as “interest” but, instead, only as a priority in payment of available proceeds

GP Catch-Up

- Prior to distributing profits, GP paid 100% until it receives 20% of Preferred Return

Profit Share

- Remainder distributed per profit share
- LP/GP = 80/20

Thank You

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