

**MAKING AN INVESTMENT:
PRIVATE SECURITIES, FUNDS & STAYING OUT OF JAIL**

Nathaniel Dodson, Esq.



MANDATORY DISCLAIMER

(TL;DR – THIS IS NOT LEGAL ADVICE)

This presentation is solely for educational purposes and to provide general information about the subject matter covered. It is neither exhaustive nor intended as a substitute for specific legal or other professional advice. No attorney-client relationship is intended or created by this presentation. You should consult your own attorneys, accountants, investment advisors, etc. before soliciting investors or participating in any investment in private securities. So there.



WHY YOU MUST CARE ABOUT THIS STUFF

- SEC REQUIREMENTS
Is it a security or loan?
- Liabilities, Liabilities, Liabilities
- How do Notes vary from other investments?

Strategy Options

Promissory Note Strategy

Fund Strategy

Single Property Loan

Reg A Series REIT Fund



ARE YOU SELLING A SECURITY?

- There is an investment of money
- In a common enterprise
- With an expectation of profits
- Through the efforts of a promoter

THERE IS A TEST.....



PRIVATE LENDING AS SECURITIES

Loans **SECURED** by real estate are rebuttably as securities exempt but consider:

- Where do proceeds go
- General business scheme of finance (fees and working capital)
- Business vs personal loans
- HOW MANY LENDERS

Maybe/ Maybe Not - Factors of Consideration:

- Motivations
- Plan of distribution
- Reasonable expectations of the investing public
- Applicable financial regulations to reduce the risk of the instrument
- 9 months or less transaction?



PENALTIES FOR NON-COMPLIANCE

Civil Liabilities

Breach of Duties, Fraud

Triple Damages

Civil Penalties

Failure to File, Misleading
Statements

*Repay investors with interest
Lose all profits and fees*

Criminal Penalties

Securities Fraud, Wire
Fraud

Jail Time

Bankruptcy is NOT an option
securities and financial violations of law are non-dischargeable



SO, WHAT IS A SYNDICATION ANYWAY?

Pooling of Investor
Money for a Specific
Business Transaction

'Sponsors' are active
participants

All other investors are
passive

Passive investors have
limited liability & limited
authority



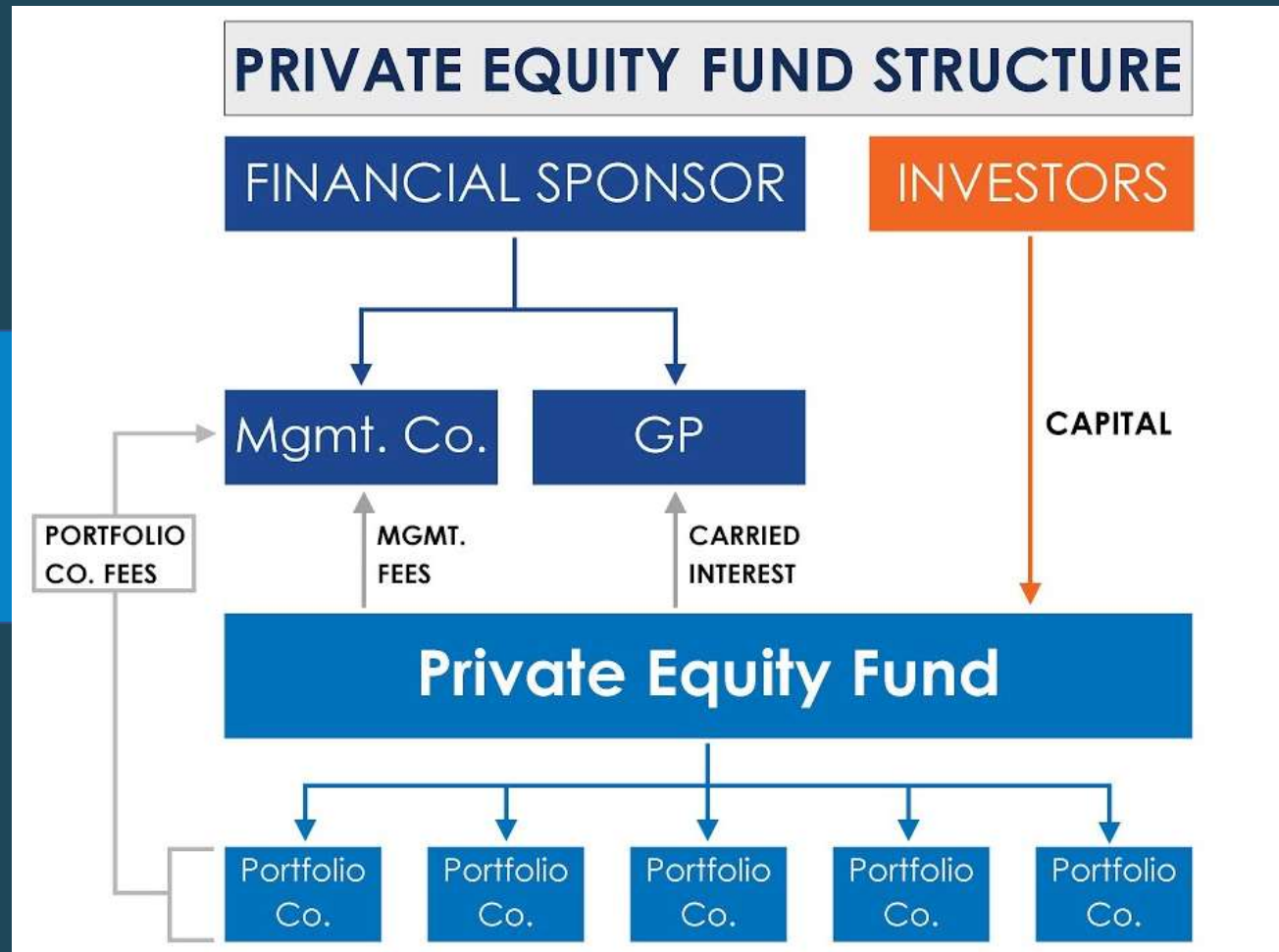
WHAT IS AN EQUITY FUND?



A **private equity fund** is a collective investment scheme used for making investments in various equity (and to a lesser extent debt) securities according to one of the investment strategies associated with private equity



STRUCTURE



FUND AS AN INVESTMENT CO.

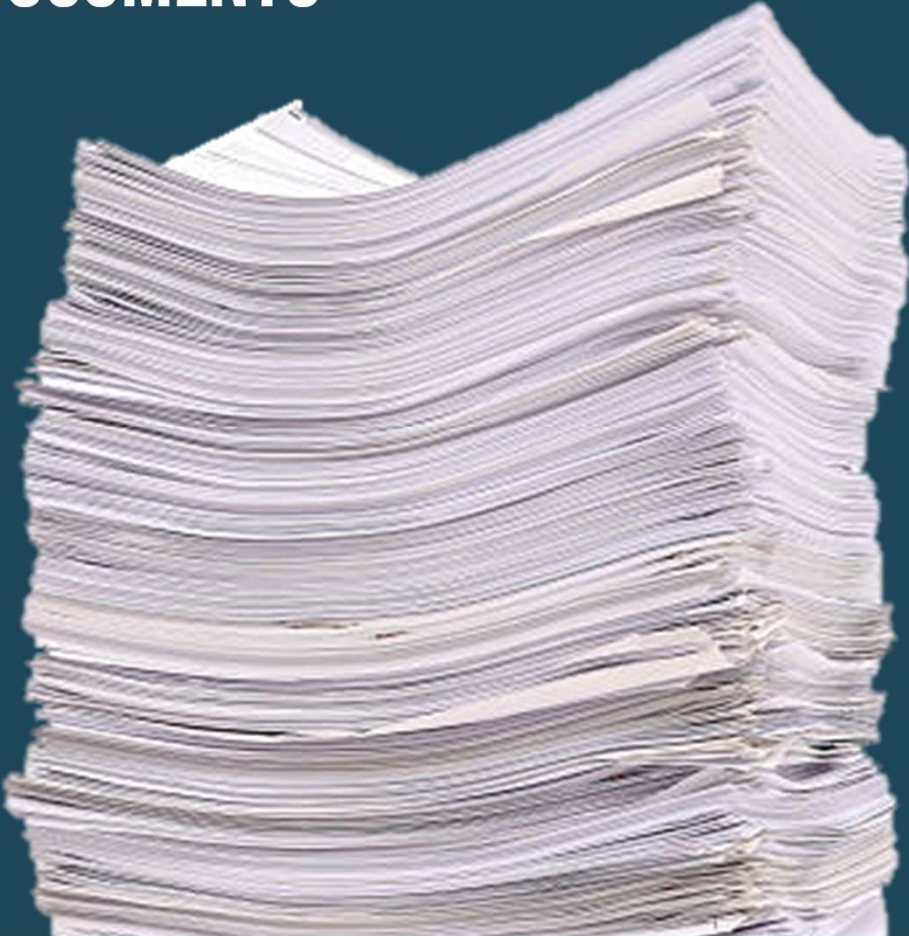
- Investment Company Act of 1940
Regulates the organization of companies that engage primarily in investing, reinvesting, and trading in securities, and whose own securities are offered to the investing public
- YOU WANT AN EXCLUSION!!!
- There are other strategies to avoid Act

Primary exclusions are:

- **3C(1)** – limited to 99 investors
- **3C(5)** – mostly real estate
- **3C(7)** – qualified purchasers



OFFERING DOCUMENTS



COMPLETE OFFERING DOCUMENTS

- Disclosure Prospectus
 - Private Placement Memorandum
 - Offering Circular
 - Offering Memorandum
- Operating Agreement
- Business Plan / Pro Forma
- Investor Questionnaire
- Subscription Agreement



WHAT IS A PRIVATE PLACEMENT?

- An offering of securities that is not available on the open market.
- Not registered with the SEC.
 - “Exempt Offering” or “Unregistered Offering”
- Investors generally have limited ability to re-sell.
- Used for Reg D – Other terms for other Regulations



USING INVESTORS TO SATISFY YOUR CAPITAL NEEDS

REG CF



Up to \$5,000,000.

Limited unaccredited investment amounts

Unlimited accredited investors

Must use crowdfunding portal

506(B)



The Old Rule! Still a good rule

Raise as much as you want; use sophisticated investors

NO GENERAL SOLICITATION except Demo Days

506(C)



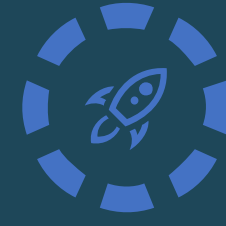
General Solicitation Allowed

Accredited Investors Only

Must verify investor

Great for crowdfunding portals

REG A+



Regulation A+. Raise up to \$20 million under Tier 1; \$75 million under Tier 2.

Need OK from SEC. General solicitation allowed.

Any type of investor allowed.



QUALITY OF INVESTORS



Investors Matter
which ones you solicit *matter*

1

Accredited:

Make \$200k+ or
\$1 Mil net worth

2

Sophisticated:

Smart, but not rich

3

Unaccredited:

Not so smart, not so
rich





ADVERTISING FOR INVESTORS IS ALLOWED UNDER CERTAIN RULES

Reg 506(c)

Reg A

Reg CF



YOU NEED IT ALL

EVERY SINGLE PIECE OF THE PUZZLE IS IMPORTANT

Make Decisions
Put your plan together, including a marketing plan.



Document Creation
Communicate your plan to your investors.

Launch Offering
Set sail with your offering.



Nate Dodson



Nate@CrowdfundingLawyers.net

