



**OPPORTUNITYZONEEXPO**



# CAPITAL RAISING PANEL 4

Building Blocks For Success:

Steven Hadjilogiou, Esq. | McDermott Will & Emery LLP

William Levy, Esq. | Kirkland & Ellis LLP

Paul R. Wassgren, Esq. | DLA Piper LLP

Evan Kinne | George Smith Partners

Moderated by: Ronald R. Fieldstone, Esq.

Saul Ewing Arnstein & Lehr LLP



# FUNDAMENTAL TAX PLANNING STRATEGIES FOR SUCCESSFUL STRUCTURING

- A. Tracking The Timing For Each Investors Capital Gains Deployment
- B. QOF Requirements
  - (1) QOF must be either a corporation or partnership.
  - (2) QOF must be organized for the purpose of investing in qualified opportunity zone property (“QOZP”).
  - (3) At least 90% of QOF's assets must be QOZ property.



# FUNDAMENTAL TAX PLANNING STRATEGIES FOR SUCCESSFUL STRUCTURING (CONT'D)

- (4) QOZB property means tangible property used in a trade or business that meets all of the following criteria:
  - (i) the QOF purchased the property from an unrelated party after December 31, 2017,
  - (ii) the original use of the property in a QOZ starts with the QOF, or the QOF substantially improves the property, and
    - Definition of Substantially Improved: QOZB property will be treated as “substantially improved” by a QOF only if during any 30-month period beginning after the date of the property’s acquisition its basis is increased by an amount exceeding its initial cost basis.



# FUNDAMENTAL TAX PLANNING STRATEGIES FOR SUCCESSFUL STRUCTURING (CONT'D)

- (iii) substantially all of the use of the property was in a “qualified opportunity zone” during substantially all of the time the QOF holds the property.
- (5) Ownership of QOZ stock or QOZ partnership interests must satisfy the qualified opportunity zone business (“QOZB”) test, meaning the issuing entity must be engaged in a QOZB. These five requirements are not applicable to QOZB property owned directly by the QOF, so if the QOF acquires QOZB property directly, there are fewer restrictions.



## FUNDAMENTAL TAX PLANNING STRATEGIES FOR SUCCESSFUL STRUCTURING (CONT'D)

- (6) More favorable treatment for QOZ stock and QOZ partnership interests than QOZ business property (e.g., satisfaction of 90% test). Thus, it appears that QOFs are better suited to become funds of funds.
- (7) The entity to be used as a QOF must be organized in the United States, District of Columbia, or a U.S. possession (with an additional “purpose” criteria for U.S. possessions).



# FUNDAMENTAL TAX PLANNING STRATEGIES FOR SUCCESSFUL STRUCTURING (CONT'D)

## C. What Works, What Doesn't Work and What May Work

- What happens if a QO Fund sells its QOZ Business Property after the ten-year holding period?
- What happens if a QO Fund sells an asset before the ten-year holding period has expired?
- A plethora of partnership tax accounting issues still need to be addressed. Does a QO Fund have to reduce the basis of its assets to reflect the fact that the investors in the QO Fund have a zero “outside” basis (or is there a huge disparity between “inside” and “outside” tax basis).



# FUNDAMENTAL TAX PLANNING STRATEGIES FOR SUCCESSFUL STRUCTURING (CONT'D)

- Suppose investors fund a QO Fund with equity. After the QOZ Business Property is substantially improved, and leased up, the property is financed (or refinanced) on a nonrecourse basis and the proceeds are sufficient to return all capital previously contributed (and maybe more).





## FUNDAMENTAL TAX PLANNING STRATEGIES FOR SUCCESSFUL STRUCTURING (CONT'D)

- The Proposed Regulations say that land costs are ignored for purposes of determining whether the building has been “substantially improved.” What about capital expenditures for things like equipment (e.g., laboratory equipment or manufacturing equipment that is affixed to the real estate) and building systems? Does that count as additions to the basis in the “building”? Or can the QO Fund only count expenditures that are added to the depreciable basis of the building itself?



# FUNDAMENTAL TAX PLANNING STRATEGIES FOR SUCCESSFUL STRUCTURING

- Suppose a developer (who has no capital gains to be deferred) forms a QO Fund using as much leverage as possible. After the QOZ Business Property (e.g., an office building) is completed, can the developer start selling interests in the QO Fund to investors who have capital gains they want to defer? Will the investors qualify for the QOZ tax benefits (even though they are just replacing existing capital)? Is this a way for a developer (with no need for QOZ benefits) to monetize a project located in an O Zone?

**2019**  
OPPORTUNITY ZONE EXPO  
LOS ANGELES



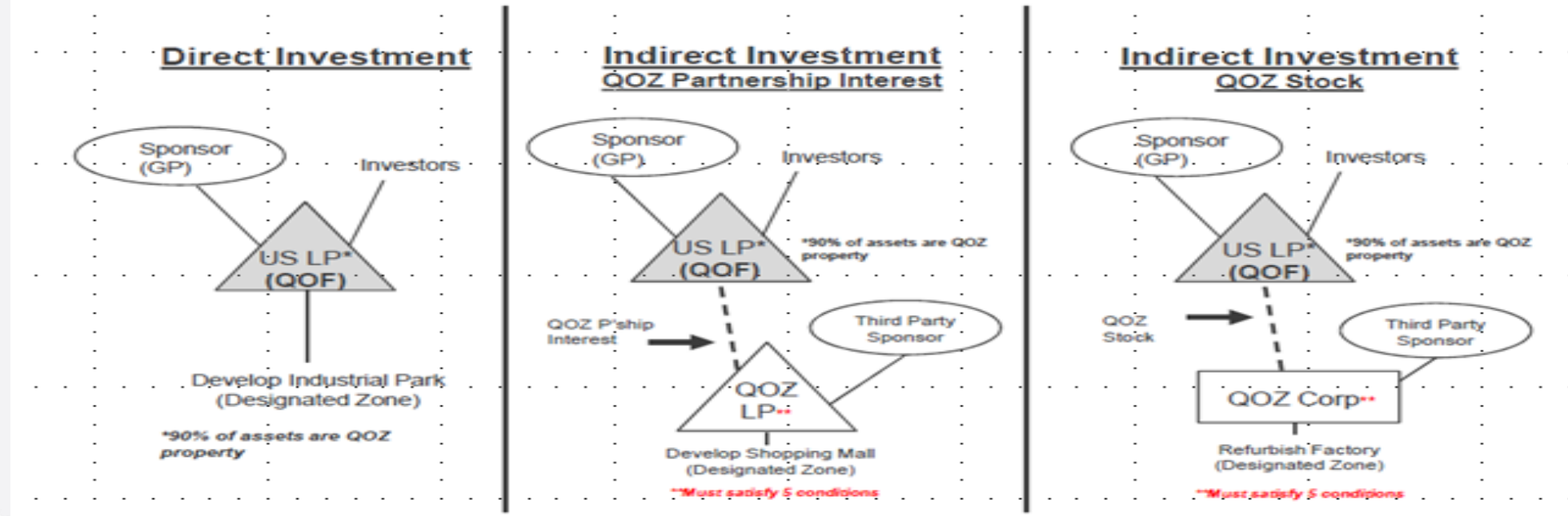
# FUNDAMENTAL TAX PLANNING STRATEGIES FOR SUCCESSFUL STRUCTURING (CONT'D)

- What if the developer or other promoter of a QO Fund makes a “qualifying” investment (i.e., he had capital gain income and makes a deferral election), but is entitled to a profits interest in addition to the “regular” interest in the QO Fund that all the other investors get (e.g., a 20% profits interest that is paid after all investors get their investment back). Will the profits interest qualify for the exclusion from gain after ten years?



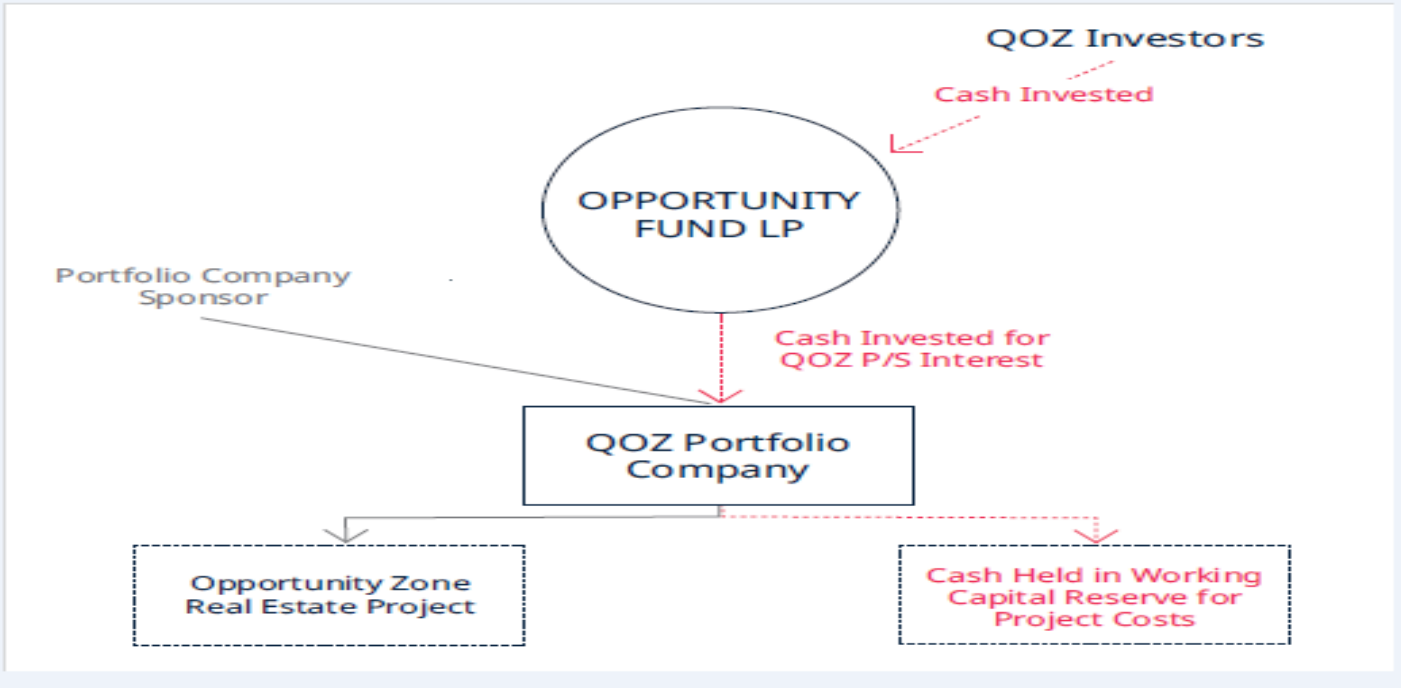
# FUNDAMENTAL TAX PLANNING STRATEGIES FOR SUCCESSFUL STRUCTURING (CONT'D)

## QOF Structures





# FUNDAMENTAL TAX PLANNING STRATEGIES FOR SUCCESSFUL STRUCTURING (CONT'D)





# FUNDAMENTAL TAX PLANNING STRATEGIES FOR SUCCESSFUL STRUCTURING (CONT'D)

## D. Other Factors

- (1) Fund of Funds
- (2) US Direct Investment Analysis
- (3) Qualifying as a QOF - the 90% Rule
- (4) Refinancing Tax Treatment
- (5) To QOF and Investors
- (6) Opportunities For Public/Private/Partnership(3P)
- (7) OZ Fund Benefits Not Exclusive as to Other Tax Benefits
- (8) Special Considerations For Non Real Estate OZ Business Investments



# DISCLAIMER

This presentation outline and the presentation itself are for general education purpose only and are not intended to provide specific guidance or legal advice about what to do or not to do in any particular case. You should not rely on this general information to make decisions about specific legal or tax matters. If you are not yourself a lawyer, you should seek the assistance of a qualified professional to help you resolve these issues. Thank you.