

## **SAMPLE DEAL BY DEAL WATERFALL CLAUSE**

1. **Distributions of Investment Proceeds.** Each distribution of Investment Proceeds attributable to a Portfolio Investment will be made as follows. A portion of such distribution will be initially apportioned among the Partners (including the General Partner) in proportion to their respective Sharing Percentages in respect of such Portfolio Investment.
  - 1.1. **To the Limited Partners and the General Partner.** The portion initially apportioned to each Limited Partner (except the Special Limited Partner)<sup>1</sup> will be divided between such Limited Partner and the General Partner and be distributed as follows:
    - 1.1.1. In the case of Disposition Proceeds,<sup>2</sup>
      - 1.1.1.1. **Return of Realized Capital and Costs:** First, 100% to such Limited Partner until the sum of (x) cumulative distributions to such Limited Partner of Disposition Proceeds and (y) without duplication, cumulative distributions to such Limited Partner pursuant to section 1.1.2, equals:
        - (A) such Limited Partner's Capital Contributions used by the Fund in connection with the acquisition of the Portfolio Investment that gave rise to the Disposition Proceeds, plus
        - (B) such Limited Partner's Capital Contributions used by the Fund in connection with the acquisition of other Realized Portfolio Investments, plus
        - (C) the amount of such Limited Partner's share of any loss inherent in the carrying value of any Portfolio Investment other than a Marketable Security that has been written down, as reflected in the most recent valuation provided by the Fund to the Partners ("Aggregate Net Losses from Write-downs"), plus
        - (D) the product of (i) the sum of such Limited Partner's Capital Contributions for Management Fees, Organizational Expenses and Partnership Expenses as of such date and (ii) a fraction the numerator of which is the sum of such Limited Partner's Capital Contributions for all Realized Portfolio Investments as of such date and Aggregate Net Losses from Write-downs as of such date and the denominator of which is such Limited Partner's Capital Contributions for all Investments as of such dateThe sum of subclauses (A) to (D) shall be such Limited Partner's "Realized Capital and Cost";
      - 1.1.1.2. **Preferred Return:** Second, 100% to such Limited Partner until the sum of (x) cumulative distributions to such Limited Partner of Disposition Proceeds and (y) without duplication, cumulative distributions to such Limited Partner pursuant to section 1.1.2, equals an 8% per annum cumulative compounded internal rate of return on such Limited Partner's Realized Capital and Cost from the Payment Date of each related Capital

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<sup>1</sup> The Special Limited Partner here refers to the limited partner established by the general partner to make a Capital Commitment to the private equity fund. This is the "GP Commitment" and usually amounts to anywhere between 1 – 5% of the aggregate Capital Commitments made to the fund. Proceeds representing the return of Capital drawn down from the GP Commitment will not usually be required to proceed through the waterfall.

<sup>2</sup> Disposition Proceeds here refers to all consideration received by the Fund upon the disposition of a Portfolio Investment or portion thereof, net of Fund Expenses paid or payable out of such consideration and such reserves as the General Partner may determine, including the Fair Value of any Securities distributed in kind.

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Contribution to the date of distribution of amounts representing a return of such Capital Contributions (the "Preferred Return").

- 1.1.1.3. **General Partner Catch-up:** Third, 100% to the General Partner until the General Partner has received cumulative distributions of Disposition Proceeds with respect to such Limited Partner equal to 20% of the amount (if any) by which cumulative distributions to the General Partner and such Limited Partner of Disposition Proceeds exceed such Limited Partner's Realized Capital and Cost; and
- 1.1.1.4. **80/20 Split:** Thereafter, (A) 80% to such Limited Partner and (B) 20% to the General Partner.
- 1.1.2. In the case of Current Income,
  - 1.1.2.1. **Preferred Return:** First, 100% to such Limited Partner until such Limited Partner has received cumulative distributions of Current Income from the Portfolio Investment that generated such income equal to the Preferred Return on Capital Contributions used by the Fund in connection with the acquisition of such Portfolio Investment, other than Capital Contributions used to pay Management Fees, Organizational Expenses and Partnership Expenses allocable to the Portfolio Investment giving rise to the Current Income;
  - 1.1.2.2. **Return of Allocable Expenses:** Second, 100% to such Limited Partner until such Limited Partner has received cumulative distributions of Disposition Proceeds pursuant to subclause (D) of section 1.1.1.1 and this section 1.1.2.2 equal to the sum of the amount of such Limited Partner's Capital Contributions used by the Fund to pay Management Fees, Organizational Expenses and Partnership Expenses allocable to the Portfolio Investment giving rise to the Current Income, plus Management Fees, Organizational Expenses and Partnership Expenses allocable to Realized Portfolio Investments, plus in connection with a Portfolio Investment that has been written down, together with a Preferred Return on such amounts.
  - 1.1.2.3. **General Partner Catch-up:** Third, to the General Partner until the General Partner has received cumulative distributions of Current Income with respect to such Limited Partner and such Portfolio Investment equal to 20% of the total distributions under sections 1.1.2.1 and 1.1.2.3.
  - 1.1.2.4. **80/20 Split:** Thereafter, (A) 80% to such Limited Partner and (B) 20% to the General Partner.
- 1.2. **To the General Partner.** The portion initially apportioned to the General Partner will be distributed to the General Partner.
- 1.3. **To the Special Limited Partner.** The portion initially apportioned to the Special Limited Partner will be distributed to the Special Limited Partner.