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Equity and Debt Co-Investing in Lower Middle Market Financing Transactions

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Economic Considerations

- Class or Series of Equity Interests
- Distribution Waterfall
- Redemption/exit
- Tax Distributions
- Anti-dilution Protections
- Warrants

Protective Provisions

- Range of outcomes for investor consent/veto rights
- What are the essentials?
- When do you need more than the essentials?
- How do debt protections affect equity protections?
- Who has management control of the entity?

Minority Equityholder Rights

May include the following, among others:

- Preemptive Rights
- Right of First Refusal
- Tag Along Rights
- Drag Along Rights
- Registration Rights
- Information Rights

Relation to Debt

- No Effect on Lending Relationship
- Treatment of Equity in Lender/Investor Credit Documents
- Treatment of Equity in Subordination/Intercreditor Agreement

SBIC Considerations

- Limitation on Number of Holding Companies
- Affiliation Rules
- Equity Redemption Features
- Remedies

Other Key Terms

- Board or Observer Seats
- Powers of Attorney
- Management Fees
- Indemnification
- Fiduciary duty waivers
- Transfer Restrictions

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