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The Portfolio Company Playbook: A Fund Sponsor's Guide to Navigating Risks, Conflicts, and Regulatory Concerns Arising from Portfolio Companies

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Over the last few years, we have seen an uptick in litigation claims against sponsors and funds arising out of their interests in portfolio companies. A fund sponsor's participation on a portfolio company board, in particular, is a risk factor for the entire investment structure (the GP, the Management Company, individual members of the GP and Management Company, and the Fund) due to conflicts of interest, whether real or perceived, and related competing fiduciary duties. There are, however, steps that fund sponsors can take to manage and reduce their risks. The first step is to develop a full understanding of where, and why, risks lie in the investment structure. With that understanding, sponsors can develop and implement practices to manage and reduce those risks.

To assist fund sponsors, we have developed a "playbook" outlining legal risks and mitigation strategies related to portfolio companies. In a series of upcoming posts, we will introduce various topics from our playbook, including:

- fund sponsors' exposure to portfolio company shareholder suits;
- fund sponsors' potential to face direct liability and indemnification claims for breaches of fiduciary duties and unjust enrichment for actions related to the portfolio company;
- fund sponsors' risk of lawsuits brought by limited partners related to actions by a portfolio company director who is also a fund sponsor member;
- regulatory considerations and concerns for the fund sponsor related to both the fund and the portfolio company; and
- risks for the fund sponsor, fund sponsor directors, and the portfolio company arising from cash flow issues and conflicts in the zone of insolvency.

Watch for our upcoming posts on navigating risks for fund sponsors related to their portfolio company interests and board of director positions.

For further information regarding risks and liability for fund sponsors in connection with portfolio companies, contact us regarding *The Portfolio Company Playbook*: *A Fund Sponsor's Guide to Risks and Liability*.

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