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Portfolio Structuring Activities

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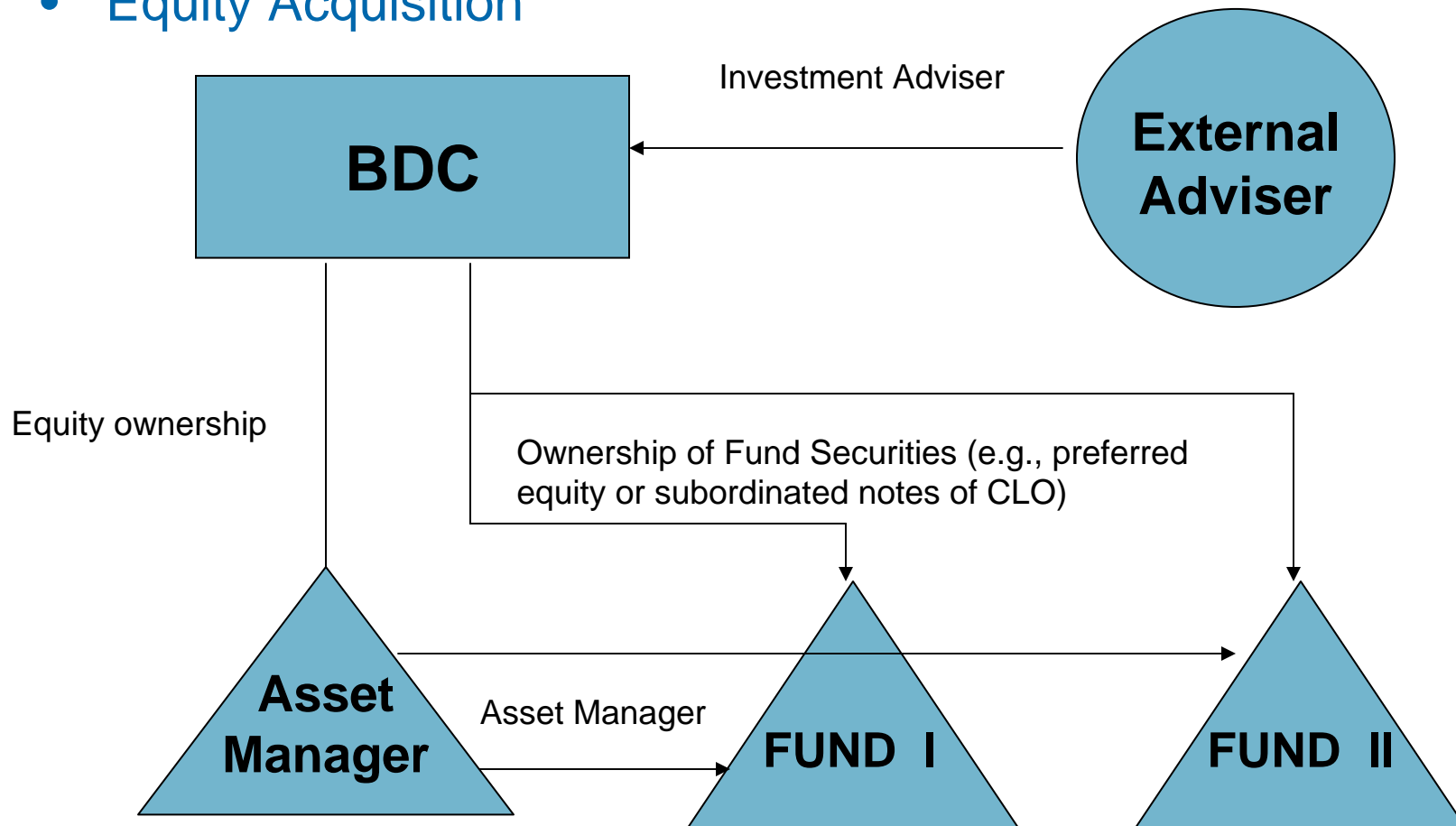
Portfolio Structuring Activities

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- Acquiring an Asset Manager
 - Transaction Structure:
 - Equity Acquisition: BDC to acquire all of the outstanding equity of the Asset Manager (AM)
 - Asset Acquisition: BDC (or a newly formed shell) to acquire substantially all of the assets of the AM

Portfolio Structuring Activities

- Equity Acquisition



Portfolio Structuring Activities

Equity Transaction Advantages	Disadvantages
<p><u>Consents</u>: Fewer consents typically needed</p>	<p><u>Liabilities</u>: Liabilities/historic risk of business transfers at some point (indemnification typically lasts 1-2 years, with certain exceptions)</p>
<p><u>Anti-Assignment</u>: Anti-assignment provisions in fund agreements might not be triggered (but need to review operative documents)</p>	<p><u>RIA Issues</u>: If target is a registered investment adviser, could be a problem from a BDC perspective; deregistration might be an option, unless limited by Dodd-Frank.</p>
<p><u>Portfolio Company</u>: Allows AM to be held as a portfolio company (good asset for BDC purposes)</p>	<p><u>Bad RIC Income</u>: The management fees may be “bad” RIC income unless a blocker corporation is used</p>
	<p><u>Key Person/Employment Arrangements</u>: Might trigger change-of-control provisions in employment agreements; departures could trigger “key person” provisions of management agreement</p>

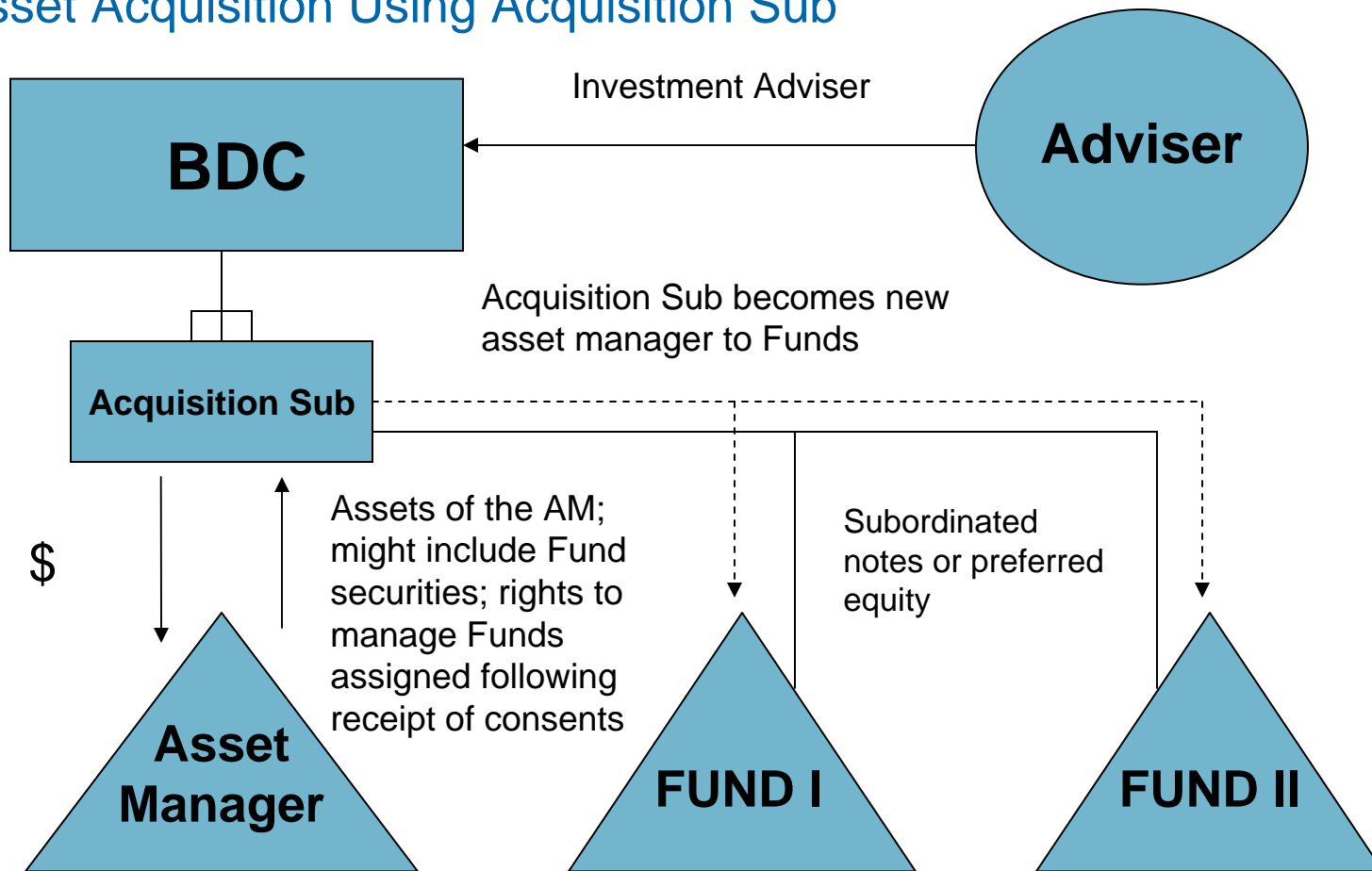
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- Regulatory Considerations:
 - Ownership structure (Subsidiary or Portfolio Co)
 - Good/Bad Asset
 - Consolidation Issues
 - Percentage ownership
 - Allocation Issues
 - RIA Issues

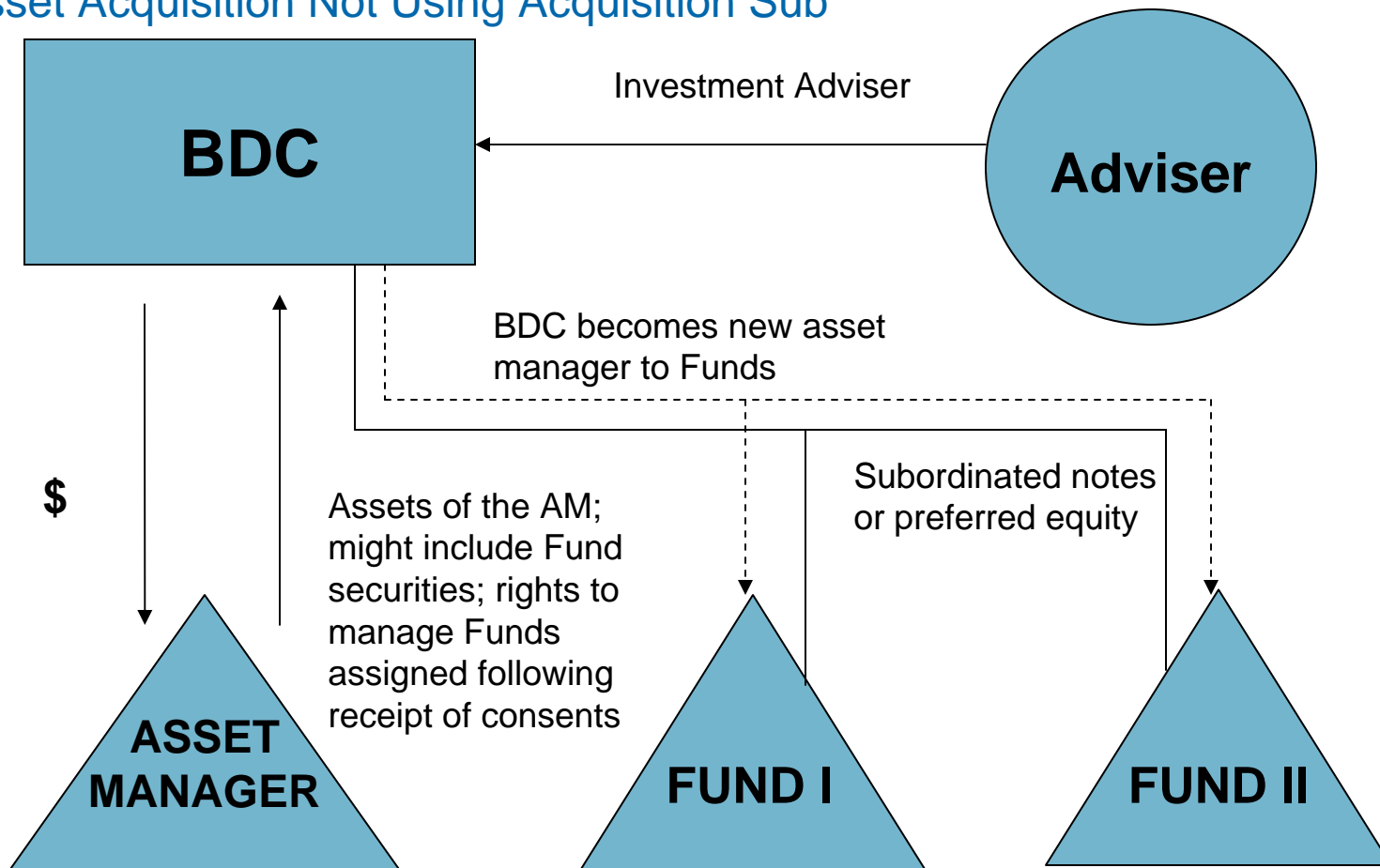
Portfolio Structuring Activities

- Asset Acquisition Using Acquisition Sub



Portfolio Structuring Activities

- Asset Acquisition Not Using Acquisition Sub



Portfolio Structuring Activities

Asset Deal Advantages	Disadvantages
<u>Liabilities</u> : Leave behind unwanted liabilities	<u>Anti-assignment</u> : Anti-assignment clauses will be triggered
<u>Asset Manager</u> : Either BDC or a portfolio company could become Asset Manager	<u>Other Consents</u> : Other consents may be required (e.g., software, space, etc.)
<u>RIA Issues</u> : Eliminates concern with BDC owning an RIA (i.e., adviser registration won't transfer)	<u>Key Person triggers</u> : transaction might trigger "key person" provisions in fund management agreement if key players are not retained
<u>RIA Issues</u> : If RIA registration is necessary (e.g., because of the number of funds), the BDC itself can register without running afoul of the 1940 Act	<u>Bad RIC Income</u> : The management fees may be "bad" RIC income unless the Fund is consolidated into BDC based on equity ownership of Fund or a blocker corporation is used
	<u>Consolidation Issues</u> : If equity/subordinated notes of Fund are acquired, could raise consolidation issues with respect to Fund and affect leverage ratio of BDC

Portfolio Structuring Activities

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- Due diligence
- Exemptive relief required?
- Understanding fee stream
 - Covenant defaults? Amortization of Notes?
 - sub fees turned off?
 - will new AM affect waterfall?
 - still in investment period?
- Understanding timing matters (consents; exemptive relief, etc.)
- Understanding assignment/consent issues
 - Issuer consent
 - Controlling class and/or equity approval
 - Does protection provider control senior class vote?
 - Who are the owners of the approving classes?
 - Rating agency approvals

Portfolio Structuring Activities

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- Understanding key person triggers
- Understanding BDC-related issues
- Pricing Matters
 - Price (fixed price or fixed with earn-out?)
 - Split of pre- and post-closing fees (e.g., pro-ration, accounting for expenses and payment of deferred fees)
 - Include expenses (including “hold up” fees)
 - Is Fund equity or debt part of the deal?
 - Continuation of management/employment/key person matters
 - Governance/board membership
 - Price reduction for downgrades or failure of OC tests? Non-approval by one of several Funds?

- Closing conditions
 - Required consents
 - Issuer consent
 - Controlling class and/or equity
 - RAC
 - Ratings of Notes
 - Should downgrades can give right to terminate
 - Should downgrades can provide basis for purchase price adjustment
 - “Approved Replacements” for key person provisions
 - What happens if less than all funds approve?

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- Other Issues
 - Employment arrangements
 - Security for Seller indemnification obligations (particularly in asset deal)
 - Obligation to pay hold-up fees

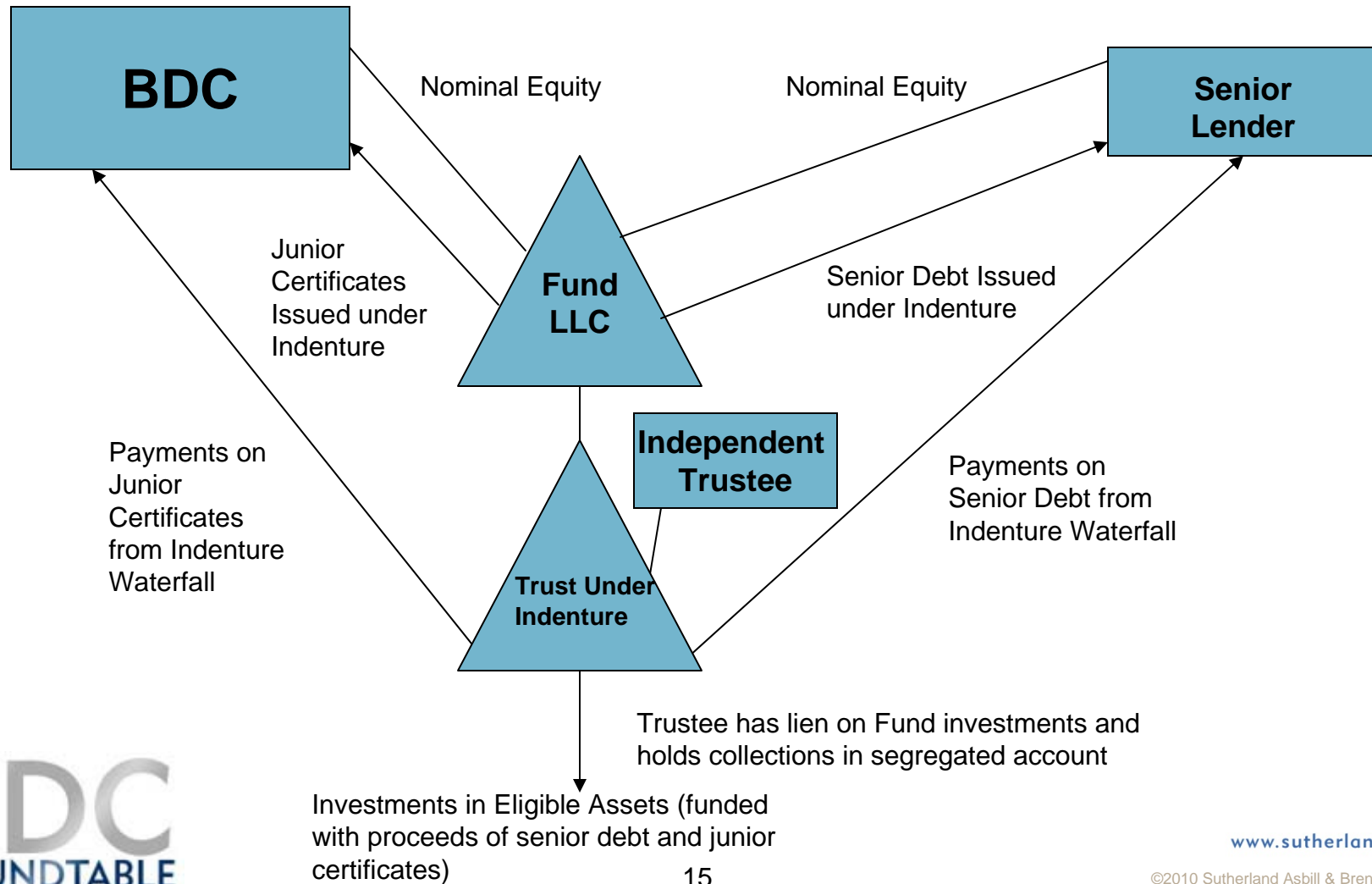
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- 3a-7 Structure for Loan Funds
 - Eligible Assets of Fund
 - Fixed Income and Other Securities of Fund
 - Sale of Securities by Fund
 - Acquiring and Disposing of Eligible Assets
 - Independent Trustee
 - Perfected Security Interest
 - Segregation of Cash Flows

Portfolio Structuring Activities

- Example of 3a-7 Structure



Portfolio Structuring Activities

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