



Self-Directed Solo 401(k) Private Equity Investment



A self-directed Solo 401(k) may be invested in private equity provided it is not a company that you also work for or operate.

Solo 401k Investment Rules: Private Placements

- ❖ **Private Placement “Do’s & Don’ts”**
- ❖ **5 Rules for Self-directed Investing**
- ❖ **Sample Subscription Agreements/Offering Memoranda**
- ❖ **Get more info**

Solo 401k Investment Rules – Private Placements

➤ DO's:

- **DO** take ownership in the name and EIN of the Solo 401k (e.g. K-1 will be issued to the Solo 401k)
- **DO** sign as Trustee of the Solo 401k
- **DO** consider whether unrelated business income tax applies to the investment income (e.g. equity stake in a business that provides goods/services and not taxed as a C-corporation)
- **DO** ensure that any dividends/income is paid back to the 401k plan

➤ DON'Ts:

- **DO NOT** invest Solo 401k funds in your own business (or a business owned by a related/disqualified person)
- **DO NOT** later sell the investment to an unrelated person
- **DO NOT** earn a commission personally in exchange for the Solo 401k investment



5 Rules of Solo 401k Investing

➤ **Rule 1: Understand the allowed self-directed 401k investments under the IRS Rules**

- There are relatively few limits on the types of investments that are permissible under a self-directed 401k plan.
- Solo 401k plans cannot invest in S-Corp stock, collectibles, such as art, antiques, gems, coins, or alcoholic beverages, and only certain precious metals.

➤ **Rule 2: Make sure the self-directed 401k plan allows for the particular investments**

- Make sure the plan provider's self-directed 401k plan allows for the type of investments that you are planning to make.
- For example, not all self-directed 401k plans allow for investing in real estate.



5 Rules of Solo 401k Investing (continued)

- **Rule 3: Understand who is a disqualified person for purposes of placing self-directed 401k investments**
 - The IRS prohibits transactions between self-directed 401k plans and certain individuals known as “disqualified persons.”
 - A disqualified person is the self-directed 401k participant, or anyone who has control over the assets or who can influence investment decisions.
 - Members of the self-directed 401k participant’s family (i.e., a spouse, an ancestor, any lineal descendant, or any spouse of a lineal descendant) also are considered disqualified persons.
- **Rule 4: Understand roundabout prohibited transactions**
 - Under the self-directed 401k prohibited transaction rules, a disqualified person may not indirectly do what cannot be done directly.
- **Rule 5: Consider not doing the investment or get an Advisory Opinion**

Private Placement Investment Documents

- ❖ *Sample Provisions from
Subscription Agreements/Offering
Memoranda*
- ❖ *Recurring Issues*



(M) if the Purchaser is an entity, plan, or account, the Purchaser represents and warrants as follows (please check all boxes that apply):

- the Purchaser is purchasing the Interest with funds that constitute, directly or indirectly, the assets of:
 - an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), that is subject to Part 4 of Subtitle B of Title I of ERISA (an "**ERISA Plan**");
 - a plan described in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the "**Code**"), that is subject to Section 4975 of the Code (including an individual retirement account); or
 - an entity or account whose underlying assets include the "plan assets" of any of the foregoing plans by reason of a plan's investment in the entity or account;

If so, the percentage of the Purchaser's Commitment derived from the above plans is %.

The Purchaser hereby covenants that if, at any time after its initial acquisition of Interests, the percentage of assets that constitute "plan assets" of the above plans exceeds the maximum expected percentage set forth above, the Purchaser shall promptly notify the Manager of the revised maximum percentage, and the Manager may require the Purchaser to dispose of or transfer all or a portion of its Interests.

- the Purchaser is not purchasing the Interest with funds that constitute, directly or indirectly, the assets of any of the above.
- the Purchaser is not a trust forming part of a stock bonus, pension, or profit-sharing plan described in Section 401(a) of the Code that is exempt from tax under Section 501(a) of the Code.

Such an entity would generally include an LLC whose sole member is your Solo 401k

"No" - A Solo 401k is excluded from the definition of "Employee Benefit Plan" in ERISA

"Yes" - A Solo 401k is subject to Section 4975 (i.e., prohibited transaction rules)

Accredited Investor Status of the Entity (if applicable)

Please select a category for the entity:

- (1) A bank as defined in section 3(a)(2) of the Act, or a savings and loan association or other institution as defined in section 3(a)(5)(a) of the Act, whether acting in its individual or fiduciary capacity;
- (2) A broker or dealer registered pursuant to section 15 of the Act;
- (3) An insurance company as defined in section 2(13) of the Act;
- (4) An investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act;
- (5) A Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;
- (6) Any plan established and maintained by a State, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000;
- (7) *An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) thereof, which is either a bank, savings and loan association, insurance company or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
- (8) A private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;
- (9) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment in the Company;
- (10) **A trust, with total assets in excess of \$5,000,000, not formed the specific purpose of acquiring the securities of the Company being offered, whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment in the Company;

“Yes” if the Solo 401k owner is an accredited investor

Such an entity would generally include an LLC whose sole member is your Solo 401k

Exhibit D

BENEFIT PLAN INVESTOR REPRESENTATIONS

The Investor hereby represents and warrants as follows:

(Please Check "Yes" or "No" as Applicable)

(1) The Investor is, or is acting on behalf of: (i) an "employee benefit plan" within the meaning of Section 3(3) of U.S. Employee Retirement Income Security Act of 1974, as amended ("ERISA"), that is subject to Title I of ERISA; or (ii) a "plan" within the meaning of Section 4975(e)(1) of the Internal Revenue Code that is subject to Section 4975 of the Internal Revenue Code.

Yes No

(2) The Investor represents that it is, or is acting on behalf of, a person or entity the underlying assets of which are "plan assets" within the meaning of Section 3(42) of ERISA.

Yes. The Investor holds "plan assets" and the percentage of interests in the Investor held by benefits plan investors, determined in accordance with Section 3(42) of ERISA is _____%.

No. None of the Investor's assets are "plan assets" within the meaning of Section 3(42) of ERISA.

IF AT ANY TIME DURING THE TERM OF THE PARTNERSHIP, THE FOREGOING REPRESENTATION BECOMES INACCURATE, THE INVESTOR WILL NOTIFY THE PARTNERSHIP IMMEDIATELY.

"Yes" - While a Solo 401k is excluded from the definition of "Employee Benefit Plan" in ERISA...

....a Solo 401k is subject to Section 4975 (i.e. prohibited transaction rules).

PROPOSED FORM OF OWNERSHIP: *Please check appropriate box:*

- | | | |
|--|--|---|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Trust | <input type="checkbox"/> IRA |
| <input type="checkbox"/> Company | <input type="checkbox"/> Employee Benefit Plan | <input checked="" type="checkbox"/> Keogh Plan |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Joint/Tenants in
Common with Spouse |
| <input type="checkbox"/> Joint/Tenants In
Common with Person
other than Spouse | <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Other: _____ |

If Investor is a corporation, trust, company, association or other entity, please identify (a) the jurisdiction under the laws of which Investor is organized and existing, and (b) the jurisdiction where Investor's principal place of business is located:

Kansas, USA

/14718 W 74th St., Shawnee, KS 66216

Uncheck the box
in front of
"Keogh" &

Check the box in
front of "Other"
and enter
"Retirement
Trust"

1. Is the undersigned subscriber a "benefit plan investor" (a "Benefit Plan Investor") as defined in Section 3(42) of the Employee Retirement Income Security Act of 1974 ("ERISA"), and any regulations thereunder (i.e., (i) an "employee benefit plan" that is subject to the provisions of Title I of ERISA; (ii) a "plan" that is not subject to the provisions of Title I of ERISA, but is subject to the prohibited transaction provisions of Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"), such as IRAs and certain retirement plans for self-employed individuals; or (iii) a pooled investment fund whose assets are treated as "plan assets" under Section 3(42) of ERISA and any regulations promulgated thereunder because "employee benefit plans" or "plans" hold 25%¹ or more of any class of equity interest in such pooled investment fund)?

Yes

No

If the answer to question 1 is "Yes" because the undersigned subscriber is a pooled investment fund whose assets are treated as "plan assets" under Section 3(42) of ERISA and any regulations promulgated thereunder, what percentage of the equity interests in the Subscriber is held by Benefit Plan Investors?

_____ %

2. Is the Subscriber an insurance company investing the assets of its general account (or the assets of a wholly

"Yes" – a Solo 401k meets the definition of a benefit plan investor

Additional Recurring Issues

➤ Limited to Accredited Investors?

- The investment offering may be limited to accredited investors (i.e. you may need to be an accredited investor in order to invest your Solo 401k funds).

➤ Jurisdiction of Formation?

- A solo 401k is a federal retirement trust and is not registered in any state.

➤ Subject to Title 1 of ERISA?

- While a Solo 401k plan is exempt from Title 1 of ERISA (because it is a one-participant plan), it is subject to the prohibited transaction rules and as such falls within the ERISA definition of a “benefit plan investor.”

➤ A Solo 401k is a Revocable Trust

➤ A solo 401k is NOT a bank or an insurance company

Solo 401k Investments – Private Placements

✓ How to Complete W-9 Form for your Solo 401k

Form **W-9**
(Rev. November 2017)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form W-9 to requester. Do not send to the IRS.

Go to www.irs.gov/FormW9 for instructions and the latest information.

1 Name (as shown on your income tax return. Name is required on this line; do not leave this line blank.)
Enter name of solo 401k here: e.g., Go Chargers Trust

2 Business name (disregarded entity name, if different from above)

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

Individual/sole proprietor or single-member LLC
 C Corporation
 S Corporation
 Partnership
 Trust/estate
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
 Exempt payee code (if any) **1**
 Exemption from FATCA reporting code (if any)

5 Other (see instructions) ▶ Enter: "Retirement Trust"

5 Address (number, street, and apt. or suite no.) See instructions.
Enter address for the plan here.

6 City, state, and ZIP code
Enter City and State here

7 List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

OR

Employer identification number

ENTER EIN FOR SOLO 401K TRUST--->

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here Signature of U.S. person ▶ **Trustee signs here.** **Date** ▶ **Make sure to date**



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