



# Investment-management Business Set Up

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# Speaker Bios:

## Roger D. Lorence

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- **Mr. Lorence recently returned to our team, after being with GreenTraderTax and GreenTraderFunds for several years. Mr. Lorence is one of the leading attorneys for the investment-management industry.**
- **Besides being a tax and securities/commodities/forex attorney catering to investment-management businesses, he is also a leading writer, speaker and teacher on these topics.**
- **Mr. Lorence consults our investment management clients on development and handles their investment management business formation (incubator funds, hedge funds, management accounts, domestic and international).**
- **Mr. Lorence has significant experience at leading law firms and CPA firms, so he also plays a role in reviewing our investment management accounting and tax service work product as well. Mr. Lorence helps our clients with compliance manuals too.**

# Speaker Bios:

## Roger D. Lorence (2/2)

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- **PUBLICATIONS AND PUBLIC SPEAKING ENGAGEMENTS**  
**Member, Board of Advisors of: Journal of Investment Compliance, Journal of International Taxation, and Derivatives Financial Products Report.**
- **Mr. Lorence has published more than fifty articles on tax and investment management topics. He has lectured widely on the taxation of hedge funds, commodities, derivative financial products, international taxation, as well as many other subjects.**
- **Mr. Lorence is the Co-Chair of the annual Hedge Fund Forum sponsored by the Center for Professional Education.**

# Speaker Bios:

## Robert A. Green (1/2)

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- **Robert A. Green is a CPA and founder and CEO of Green & Company Inc. (GreenTraderTax.com and GreenTraderFunds.com), a publishing company; Green & Company CPAs, LLC, a virtual tax and accounting firm catering to traders and investment management businesses; and the Traders Association.**
- **He is a leading authority on trader tax. He is the author of *The Tax Guide for Traders* (McGraw-Hill, 2004), *Green's 2011 Trader Tax Guide*, and the annual GreenTrader tax return example guides. Mr. Green writes the “Business of Trading” section for *Active Trader* magazine, and is a frequent contributor to Forbes blog “Great Speculations”, Fidelity’s Active Trader Newsletter, and several other publications.**

## Speaker Bio: Robert A. Green (2/2)

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- **Mr. Green is frequently interviewed and has appeared in the *Wall Street Journal*, *Forbes*, *Fortune*, and *Barron's*. Mr. Green has also appeared on CNBC, Bloomberg Television, and Forbes.com Video Network.**
- **He is the main tax speaker at the MoneyShow University, Traders Expo, and other trade shows.**
- **You can find more information about Mr. Green, his company's services and products at [www.greencompany.com](http://www.greencompany.com).**

## In this online Webinar, learn:

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- **If you are interested in forming an investment management business at some point in the future, this Webinar is right for you.**
- **Our incubator fund strategy is a great low-cost way to get started in investment management, read our Feb. 10 blog on incubator funds.**
- **How to start your own incubator fund and trade your own money with a performance record you can use later to attract investors into your own full-fledged hedge fund.**
- **If you already have an investment management business, this Webinar is a good way to learn some of our special tax and regulatory strategies.**

# In this online Webinar, learn

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- **The biggest pitfall for new investment-management businesses is “blowing tax elections.” Learn how to handle tax matters correctly. We drill down on investment management taxes in a separate upcoming Webinar to be scheduled soon.**
- **Learn about licenses and the state and national regulations that apply to trading other people’s money in securities, futures or forex.**
- **See sample provisions of investment-management business documents including hedge fund documents (private placement memorandums, LP partnership and LLC operating agreements, and subscription materials) and managed account agreements.**
- **Learn the latest structures with onshore and offshore hedge funds of all types.**

# Incubator Funds (1/4)

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- **A GreenTraderFunds incubator fund is the least expensive and most flexible hedge-fund business plan around! We can form your incubator fund for around \$3,000 and our formation, accounting and tax preparation package is an excellent value.**
- **That's basically your investment fund vehicle like a Delaware LLC, and possibly your management company in your home state, if needed to start. Plus, we provide with various restrictions and a road map on how to proceed, so as not to go beyond the bounds of trading your own money only in the incubator fund.**
- **Our heavy lifting on the fund paper work including private placement memorandum, LLC operating agreement, and subscription materials can wait until phase II, when you have investors ready to join the fund. We consider important licensing, registrations, and other plans in phase I too.**

## Incubator Funds (2/4)

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- **The benefit of our incubator fund strategy is that you can begin generating an attractive historical performance record now and wait on completing the setup of a hedge fund (Phase II) that can be offered to others when the fund is already a proven success. This takes considerable start-up risk capital off the table.**
- **GreenTraderFunds can also handle the accounting and preparation of your annual income tax return filings for a very reasonable cost, less than what full-fledged hedge funds pay, since you don't have complex investor-level accounting requirements.**
- **Incubator funds can be scaled up to hedge funds or scaled down to a good solution for trading your own funds too.**
- **We use FundCount software for accounting on incubator funds, which includes full general ledger, securities, futures and forex, which means your entire set of entity books are in one program.**

# Incubator Funds (3/4)

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- **Incubator Formation Service \$2,500 (retainer and minimum price).**  
**Plus, Delaware LLC online incorporation and state filing fees of \$245 (expedited service).** In some cases, a management company is wise from inception too, so there are additional filing fees in your home state, figure around \$300 in total including the online incorporator.
- **Incubator Formation, Accounting & Tax Package \$5,000 retainer.**  
**Includes above incubator formation service;**  
**Quarterly investment management accounting service including performance records;**  
**Tax planning (trader tax status, tax elections and more); and**  
**Year-end tax preparation;**

**The entire package of services may cost \$7,500 to \$10,000, with the balance billed after the retainer is applied in full. This is an excellent value package with coordination of our proven tax and regulatory strategies for investment management businesses.**

# Incubator Funds (4/4)

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- **You'll have a performance record prepared by a respected CPA firm to show your future investors when you go to Phase II of the hedge fund strategy or for separate managed accounts. The incubator fund also serves as your personal trader entity in the meantime, delivering our trader tax status breaks if you qualify too. This is our most popular package and way to get started in the investment management business.**
- **Process. Most incubator fund jobs are done fairly quickly, in a matter of a week or two. With full-fledged hedge funds and/or investment adviser registrations, there is often some delay due to back and forth with regulators and state, SEC or NFA registrations. You don't need any other service providers, as GreenTraderFunds handles all your needs under one roof.**
- **[Feb 10 11 - Incubator funds](#) - read our latest blog article.**

## Incubator Fund Sample Provisions LLC Operating Agreement/Limited Partnership Agreement

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- **Purposes of the Company.**

The Company is formed to invest, trade, pledge, hypothecate or otherwise buy, hold and sell, securities, commodities, and financial assets, of every kind, whether or not listed on a board or exchange, and whether or not such board or exchange is authorized by an agency of the United States or its delegate. To accomplish such purposes, the Managing Member [General Partner] may engage in any activity or transaction that may, in the discretion of the Managing Member [General Partner] be appropriate to effectuate such purposes.

## Incubator Fund Sample Provisions LLC Operating Agreement/Limited Partnership Agreement

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- **Expenses and Reimbursements.**  
Nonmanaging Members [Limited Partners] will pay their pro rata share of the Company's expenses, either directly or through reimbursement to the Managing Member [General Partner], including, but not limited to, commissions, fees and expenses to brokers and custodians; interest on borrowings of the Company; accounting, legal, research, bookkeeping and audit fees and expenses; governmental fees, licenses and taxes; bookkeeping and other professional fees; and all other expenses related to the management and operation of the Company and/or the purchase, sale or transfer of Company assets. The Managing Member [General Partner] will be reimbursed for all organizational expenses it has advanced for the account of the Company to the extent of the pro rata share of Nonmanaging Members [Limited Partners] in the Company as of the first date of transaction of Company business.

## Incubator Fund Sample Provisions LLC Operating Agreement/Limited Partnership Agreement

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- **Authority of the Managing Member [Limited Partner].** Except as otherwise provided in this Agreement, the Nonmanaging Member [Limited Partner] has the exclusive power to manager and direct the Company's business and, except as otherwise provided in this Agreement, to make all decisions relating to the Company and its assets. In addition to the authority granted under the Act [Limited LLC Act or Limited Partnership Act], the Managing Member [General Partner] has the authority to obligate the Company to, without limitation, the following: to buy, hold and sell securities and other financial assets; to borrow monies and to pledge or hypothecate the Company's assets in respect of such borrowings or pledges; to open financial accounts in the name of the Company and to direct the bank, custodian, administrator or other person acting on behalf of the Company, to draw checks or other negotiable instruments or orders for payment of monies by the Company, including to the Managing Member's [General Partner's] account; to employ counsel, accountants and other professional services firms and advisers, to make tax elections and to file or cause to be filed, tax forms and returns; and to conduct and defend legal proceedings of any nature on behalf of the Company, and to engage in any activity of any nature, and to enter into and perform any contracts, as are necessary to, or in connection with or incidental to the effectuation of the Company's purposes.

## Incubator Fund Sample Provisions LLC Operating Agreement/Limited Partnership Agreement

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- **Capital Contributions.** Contributions to the capital of the Company will be in cash or cash equivalents, except that, the Managing Member [Limited Partner] may, in its sole discretion, consent to the contributions of securities or other financial assets having a readily ascertainable market value at time of such contribution. Any Nonmanaging Member {Limited Partner} contributing securities or other financial assets shall provide a statement at the time of such contribution setting forth, on a lot-by-lot basis, the date of the contributor's tax holding period, the contributor's adjusted tax basis, and the basis for the valuation at the time of contribution.

## Incubator Fund Sample Provisions LLC Operating Agreement/Limited Partnership Agreement

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- **Managing Member [General Partner].** As of the date the Company first conducts business, the Managing Member [General Partner] will make an initial capital contribution to the Company in an amount of cash, securities and/or other financial assets[, as set forth in the Company's books and records] [in an amount equal to or in excess of \$xxxx].

# Separately Managed Accounts

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- **Some of our clients prefer to start their investment management business as separately managed accounts rather than a hedge fund.**
- **We advise clients on licensing, investment adviser registrations, regulations, accounting methods, tax and business matters.**
- **We can form their management company, handle their investment adviser registrations, structure and prepare their advisory agreements, handle their investor accounting and offer tax advice to their investors.**
- **We have everything you need for separately managed accounts, with both onshore and offshore investors.**

# Separately Managed Accounts

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- **Some of our clients are only interested in managing money for family and friends and they don't intend to take compensation in the future.**
- **Managing multiple separate accounts can be difficult. Although a few online brokers offer useful friends and family account structures (omnibus accounts), incubator funds often save on total commissions, accounting and tax compliance costs.**

# Licenses, Registration & Regulation (1/4)

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- **You don't need a license - like a Series 7 (securities) or Series 3 (futures) - to trade your own money.**
- **Generally, you do need a license to trade other peoples' money in return for compensation.**
- **The need for investment adviser licenses is usually commensurate with the need for registering in some capacity with a regulator (SEC, state or NFA).**
- **In general, you may need a license along with registration, if you are receiving compensation in any form, either current or deferred. Expense reimbursement is not compensation, but profit-allocation is.**
- **You can manage an incubator fund without a license or registration, but you will most likely need a license and registration for a for-profit hedge fund.**

# Licenses, Registration & Regulation (2/4)

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- **Individuals take a test to receive a license, and then hang that license with a registrant, whether that's a registered investment adviser (RIA or IAR), or a broker/dealer (brokerage firms and proprietary trading firms).**
- **The firm becomes the registrant with the appropriate regulator. With RIAs, it's the management company and not the investment fund. The management company is the general partner in an LP, and the managing member of an LLC.**
- **Licenses, registration and regulation varies by what you trade, your role (investment manager versus broker) and where you live and work.**

# Licenses, Registration & Regulation (3/4)

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- **In general, securities are regulated by the SEC on the national level, and it applies to larger advisers.**
- **Dodd-Frank Financial Regulation enacted in July 2010 raised the threshold from \$30 to \$100 million under management. More importantly, Dodd-Frank closed the private adviser exemption, meaning some of the largest investment advisers can no longer avoid registration.**
- **If you fall under the SEC threshold, you are then under the regulatory reach of your home state, with notice filings in the states of your investors. State regulatory rules often mirror the SEC, but their interpretations can be more or less aggressive. You need to work with attorneys who know these “blue sky laws” for investment advisers well.**

# Licenses, Registration & Regulation (4/4)

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- **State regulations for securities vary significantly, some have a “de minimus rule” allowing a certain number of clients before you have to register – figuring that until you reach a certain level, it’s not worth the state’s trouble. The trend is to follow CA, and scrap de minimus rules to take the trouble to protect the investment community. In CA, if you have one paying client, you need to register.**
- **If you trade futures and forex, you are saved the national versus state maze, and are regulated no matter of size by the CFTC and NFA, the self-regulatory body. The NFA site has good pages for CTAs and CPOs, with all the exemptions and thresholds displayed. Basically, you can have up to 15 clients before you register as a CTA. <http://www.nfa.futures.org/nfa-registration/cta/index.HTML> CTA and <http://www.nfa.futures.org/nfa-registration/cpo/index.HTML> CPO. There is a good chart for all the CPO exemptions.**

# Licenses for Investment Managers (1/2)

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- **In general, securities investment advisers need a Series 65, or a Series 7 plus a Series 66. There are grandfather rules and exceptions, and it varies by state.**
- **Some RIAs have an existing Series 7 when they leave a broker/dealer, so they just prefer to get the Series 66.**
- **If you trade futures, you need a Series 3 license only, you may not need a Series 65.**
- **For forex, there are new license requirements on the NFA Web site including Series 34 <http://www.nfa.futures.org/NFA-registration/forex-registration-overview.HTML>.**

# Licenses for Investment Managers (2/2)

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- **Series 65** –

A securities license required by most U.S. states for individuals that act as an investment advisor.

- [http://www.investopedia.com/articles/professionaleducation/07/63\\_65\\_66.asp](http://www.investopedia.com/articles/professionaleducation/07/63_65_66.asp)  
[http://www.nasaa.org/industry\\_regulatory\\_resources/exams/733.cfm](http://www.nasaa.org/industry_regulatory_resources/exams/733.cfm)

**“Each Series 65, Uniform Investment Adviser Law Examination, is assembled to have a total of 140 questions. One hundred thirty (130) of the questions count toward whether the candidate passes or fails the Series 65 exam. The other 10 questions are pretest and could appear in any position within the exam but do not count towards the final grade. In order for a candidate to pass the Series 65 Exam, he/she must correctly answer at least 94 (72%) of the 130 questions. Applicants are allowed 180 minutes to complete the exam. New! Effective January 1, 2010, candidates must attain scores of 72% in order to pass. “**

# Current Fund Structures

## Onshore Funds (1/7)

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- **Stand-Alone Delaware Limited Partnership (LP).**
- **Investors are limited partners in the LP. The management company is the General Partner of the LP, and its usually organized as an LLC. The LLC can file an S-Corp. election for SE tax reduction purposes, see [Feb 08 11 - Investment management update](#).**
- **LP versus LLC. If you have foreign investors or make foreign investments, the LP may be better and its more traditional. Incubator funds can start as LLCs, and easily change into an LP in Phase II of the incubator plan.**

# Current Fund Structures

## Offshore Funds (2/7)

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- **Stand-Alone Fund Organized as Corporation (U.S. Tax Classification) in Nil/Low Tax Jurisdiction**
- **U.S. Manager Receives Fees via Contractual Relationship with Fund**
- **Investors Own One or More Share Classes/Typically Foreign or US Tax-Exempts**
- **Manager's Fees Subject to Self-Employment Tax (if Entrepreneurial Manager), Regular Income Tax,**
- **NYC UBT May Apply.**
- **The previously very-popular deferral of income strategy for offshore managers (Section 409A) was significantly cut-back a few years ago.**

# Current Fund Structures

## Master-Feeder Funds (3/7)

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- **Master-Feeder, or Mini- Master Feeder. What's the difference?**
- **One or More Domestic LPs as Feeder Funds**
- **One or More Offshore Feeder Funds (Corporations for US Tax Classification)**
- **Master Either DE LP or Caymans Company Electing on Form 8832 as Partnership (US Tax Classification)**
- **Master Fund Holds the Portfolio**

# Current Fund Structures

## Fund of Funds (4/7)

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- **Fund of Funds (“FoF”):**
- **Domestic: DE LP Becomes LP in Domestic LPs**
- **Investee Funds Pursue Various Strategies; FoF Generally Does Not Have Own Portfolio**
- **IRS Position: All Fees, Expenses to FoF LPs Are Section 212 (investment expenses) as FoF Is Passive Investor in Other Partnerships**

# Current Fund Structures

## Fund of Funds (5/7)

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- **Domestic FoF Problems: Numerous, Inconsistent K-1s; Late K-1s, Missing K-1s,**
- **Investee Fund Frauds (e.g., Madoff, Petters, Lancer)**
- **Multiplicity of Costs to Investor, Lack of Transparency**
- **Risk of PFIC Reporting, Multistate Filings (e.g., via Publicly-Traded Partnerships, Oil and Gas Properties); Tax Shelter Reporting**

# Current Fund Structures

## Onshore Fund of Funds (6/7)

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- **Does Not Collect K-1s; Tax Function Simpler**
- **Risk of Investee Funds Generating ECI, Tax Shelter Reporting, FIRPTA, Other Tax Undesirables**
- **Variations: Fund (D or F) Parcels Out Capital to Managers in Managed Accounts – And/Or Part FoF, Part Managed Accounts**

## Current Fund Structures International Rules & Opportunities (7/7)

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- **Treaty-Based Structures**
- **Ireland and Luxembourg the Commonest**
- **Treaty-Based Fund Pays Reduced or Nil US Withholding Taxes (as Opposed to 30% Statutory Rate)**
- **Used for Applicable Asset Classes, Including Life Insurance, Annuities, Legal Settlements, Profit Participating Notes**

# Contact Information

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