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Sealing The Deal:
Allen Matkins Adjusts On The Fly For Opportunity Zone Fund

By **Andrew McIntyre**

Law360 (October 9, 2019, 11:17 AM EDT) -- SoLa Management recently wrapped up a $100 million opportunity zone fund for thousands of new housing units in Los Angeles, and Allen Matkins helped the California developer understand and navigate an ambiguous and fast-changing set of regulatory and tax rules to seal that deal.

The fund was tricky to put together in part because both SoLa and would-be investors had to understand the ways in which opportunity zone funds, which invest in certain zones that were created by the recent U.S. tax overhaul, operate differently from traditional funds. The deal was also complex because the fund will be used for multiple assets, which required SoLa to be able to ensure investors it would be able to get multiple real estate deals done within the accelerated timelines required by the new law, Allen Matkins Leck Gamble Mallory & Natsis LLP's Matt Ertman told Law360 in a recent interview.

The process was particularly tricky because while SoLa was courting investors for the fund, opportunity zone rules and regulations were not entirely clear, and as more clarity came from Washington, the company and investors had to adapt and rehash fund structures accordingly.

"There are some large differences between a general private equity fund or a private equity real estate fund versus an opportunity zone fund. Those primarily relate to the timing requirements," Ertman said. "There are tight time frames, which makes it hard to do a ... multiasset fund."

Congress signed opportunity zones into law as part of the Tax Cuts and Jobs Act of 2017. The program allows investors to defer capital gains if they invest those gains in an opportunity zone project and hold the investment for 10 years. Gains from the opportunity zone investment are also tax-free if the investor holds the position for 10 years.

Whereas more traditional funds typically involve investors committing capital and the fund then "calling" that capital, meaning collecting the funds, over the course of a couple years, federal rules dictate the timing and way opportunity zones funds are deployed.

"You generally have 180 days to take your capital gains and invest them in an opportunity zone fund. Then that opportunity zone fund has 180 days to invest that capital into an opportunely zone. That period can get extended up to 30 months if the fund has a plan in place on how to do it," Ertman said.

"You don't call the investors' capital over time. You can call it over a 180-day period, and have to get it into the fund quickly. If it's real estate, you have to identify real estate really quickly, get through an entitlement process in a quick time frame and get capital invested ... within the tax requirement," Ertman said.

Allen Matkins helps various clients form real estate and private equity funds, and Ertman heads the firm's group in charge of the law firm's fund work.

SoLa Management LLC CEO Martin Muoto said one of his company's early calls to discuss the opportunity zone regulations was with Allen Matkins, and ultimately SoLa decided to enlist the law firm for help.

SoLa Management had raised two other funds prior to the opportunity zone fund, and Muoto told Law360 he was able to leverage his expertise in the Los Angeles area to bring the latest fund to the finish line.

Muoto said he's been investing personally in Los Angeles for the past 10 years and for the last six years on behalf of funds. The company raised its first fund in 2014 and its second two years later. The first fund bought 35 buildings and the second purchased more than 130 buildings, Muoto told Law360.

"We didn't land on the opportunity zone. The opportunity zone landed on us. We've been here for awhile. For investors, longevity is a big plus. We've learned how to operate in what are historically neglected neighborhoods. We learned before the opportunity zone legislation came in," Muoto said.

Still, there were many challenges.

Muoto said the toughest part of the process from where he sat was helping investors navigate the ambiguity of the program. He said the company dialogued with investors and both sides worked to create structures that satisfied both parties, and that conversation sometimes shifted as more clarity came in from Washington.

The latest round of IRS guidance, in April, clarified some of the lingering questions SoLa investors had had.

That IRS guidance clarified that investors who sell opportunity zones projects after the 10-year hold can reinvest in another opportunity zone project, and the IRS also said opportunity zone landlords cannot use triple-net leases at those properties. Landlords often use such leases to pass on tax, insurance and maintenance costs to tenants.

"In some cases we were working within areas that weren't totally defined," Ertman said. "We were trying to make sure that we anticipated where we thought the regulations would go and how they would be implemented. We had to give ourselves room to do so."

Ertman said Allen Matkins worked on setting up the fund over the course of three or four months, earlier this year.

"They knew where their new investment opportunities were going to come from. They knew the timeline to acquire them and the timeline to approve them. They knew all the different stakeholders and players in the community that they'd need to work with to implement their plan. They weren't going into a new area," Ertman said.

The fund was also tricky, because SoLa had to convince investors to back a fund that was investing across a wide spectrum of properties, a shift from the common approach of having one fund back one project.

"A lot of opportunity zones have been single-asset funds. Ours was one of the very early, and is still one of the few, that are multiasset funds," Muoto said. "With fund three, we'll build upwards of 1,500 new affordable housing units in the next 24-36 months. In our minds, it's very exciting, and critical. We're very pleased with the pipeline that we have and the deals that we're finding."

And Ertman expects to continue to help SoLa going forward..

"They've got a lot of plans. We expect to be working together," Ertman said. "They weren't afraid ... to go and really do it, truly do it, in the heart of South Central L.A. This isn't Hollywood. ... It's a truly urban area."

--Editing by Rebecca Flanagan.
