

# Investment Club Partnership Agreement & Bylaws

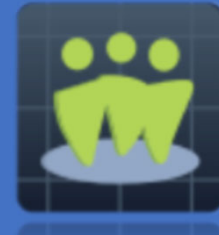
OCTOBER 2023

MYICLUB.COM WEBINAR SERIES

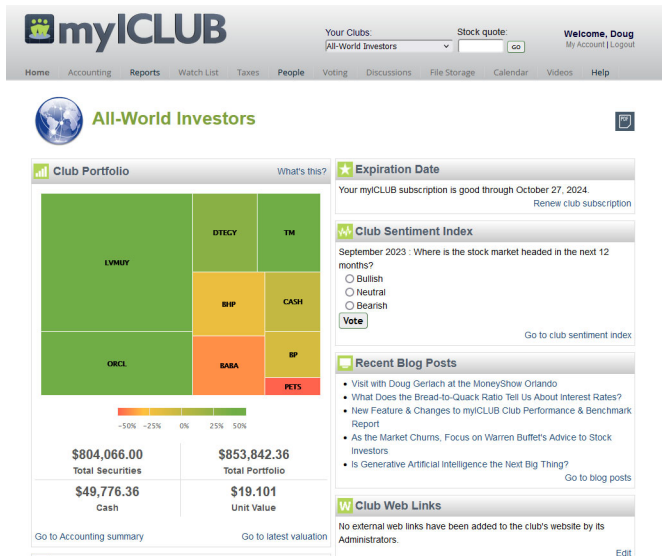


Doug Gerlach

Sean Pulrang



2



The screenshot shows the myICLUB website interface. At the top, there is a navigation bar with the myICLUB logo and a "Welcome, Doug" message. Below the navigation bar, there is a "Club Portfolio" section with a treemap chart showing various investments. The chart includes categories like DTECY, TM, BIP, CASH, ORCL, RABA, BP, and PETS. Below the chart, there are two boxes: "Total Securities" with a value of \$804,066.00 and "Cash" with a value of \$49,776.36; and "Total Portfolio" with a value of \$853,842.36 and "Unit Value" with a value of \$19.101. To the right of the portfolio, there is an "Expiration Date" section stating the subscription is good through October 27, 2024. Below that is a "Club Sentiment Index" section with a poll for September 2023 asking where the stock market is headed in the next 12 months, with options for Bullish, Neutral, and Bearish. There is also a "Recent Blog Posts" section with several links to articles.

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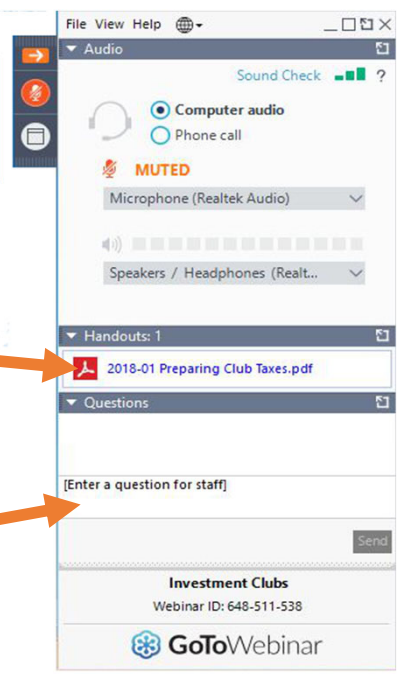
*The World's Most Popular Website for Investment Club Accounting & Operations.*

[www.myICLUB.com](http://www.myICLUB.com)

**Handout & Questions**

Handout in PDF format is available in Handouts tab.

Type questions in Questions box.



**IMPORTANT CAVEATS & DISCLAIMERS**

- This presentation does not include “legal” advice.
- However, concepts here are based on ~80 years of investment club experience from BetterInvesting & myICLUB.
- Topics are suited for **BetterInvesting-style investment clubs** & may not be applicable to other types of investing partnerships.
- Tax & business law often treats investing partnerships differently from business partnerships.
- When in doubt, check with attorney experienced with investment partnership law & tax matters.

## What Is “BetterInvesting-Style Investment Club?”

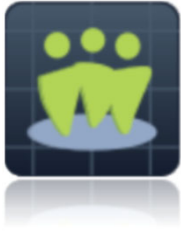


- Private group of individuals (typically fewer than 30) who pool capital to invest in common portfolio of securities.
- No member is paid or serves as “portfolio/investment manager.”
- All members have say in operations & decisions according to their personal investment in club.
- Primary focus on investing (not trading) in equities (not options, commodities, cryptocurrency, precious metals).
- Accepted by SEC & IRS as legitimate entities with minimal regulatory oversight/filing requirements.

## Other Types of Investment Clubs



- “Clubs” can be constructed in many different ways with many types of operations, such as:
  - Single individual who manages portfolio from capital paid in by silent partners.
  - Very large (> 100 member) clubs.
  - Investments in options, commodities, cryptocurrency, precious metals.
  - Focus on trading or short-selling.
- **These are outside our purview & may require additional regulatory filings such as SEC & state registration & filings.**



## WHY A PARTNERSHIP?

8

## Possible Forms for Investing Partnerships



- General partnership.
- Limited partnership.
- Limited Liability Company (LLC) or Limited Liability Partnership (LLP).
- C or S Corporation.

## General Partnership (GP)



- All partners share in ownership, management, & liabilities of club.
- Most common legal entity for investment clubs since they offer:
  - Lowest overall costs.
  - More than adequate legal protection (when following suggested partnership agreement).
  - None or easy low-cost state/local registration procedures & annual renewals.
  - Relatively simple annual tax filings.

## Limited Liability Co. (LLC)



- Hybrid of general partnership & corporation entities.
- Provides pass-through tax treatment like partnerships for most investment clubs.
  - Certain LLCs are treated by IRS like corporations & must file accordingly.
- Shields members from debt & liabilities of LLC.
- No passive members allowed.
- All states require registration (\$) & annual renewal filings (\$) with Secretary of State.
- Probably require attorney to draw up formation documents.
- Beginning 2024, LLCs must report “Beneficial Ownership Information” (BOI) to US Treasury Dept. each year.

## Limited Partnership (LP)



- All partners share in ownership, but:
  - General partners make decisions & may be compensated, but are personally liable for LPs debts & obligations.
  - Limited (“silent”) partners don’t participate in management & liability doesn’t exceed invested capital.
- Most states require registration & annual filing with Secretary of State.
- Probably require attorney to draw up formation documents.
- Tax reporting similar to general partnership.
- Often used by hedge funds & investing professionals.
  - Compensation of partner is one SEC criteria used to determine if partnership is subject to SEC regulations requiring offerings of securities.
  - Other factors may require LP to register with SEC.

## Limited Liability Partnership (LLP)



- Often used by attorneys, physicians, accountants, other professional service providers.
- For tax & regulatory purposes, usually same as LLC.
- No passive members allowed.
- All states require registration (\$) & annual renewal filings (\$) with Secretary of State.
- Probably require attorney to draw up formation documents.
- Beginning 2024, must report “Beneficial Ownership Information” (BOI) to US Treasury Dept. each year.

## S Corporation



- Must first create & register C Corporation, then make election with IRS to be taxed as partnership under Subchapter S.
- For tax & regulatory purposes, usually same as LLC once election is made.
- All states require registration (\$) & annual renewal filings (\$) with Secretary of State.
- Probably require attorney to draw up formation documents.

## C Corporation



- Traditional “corporation” business entity.
- Profits taxed at corporate level & to shareholders.
- All states require registration (\$) & annual filings (\$) with Secretary of State.
- Attorney required to draw up formation documents.
- Additional requirements to consider include requirement for annual meetings, SEC registration once specific thresholds are met, other requirements regarding employee compensation & taxes.

## Note about Single-Member Entities



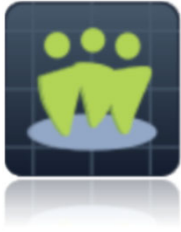
- Can't form "investment club" as general/limited partnership or LLC/LLP with only one member.
- However, Subchapter S corporation does allow single member.
  - Individual who buys & sells securities may qualify as "trader in securities" for tax purposes & thus report income & expenses as business.
  - See Internal Revenue Code section 475(f)/ IRS Publication 550 for more information.

## LLCs vs. General Partnerships



- Majority of BI-style investment clubs are general partnerships—**not LLCs**—since they are:
  - Easy & inexpensive to form, with no initial state/local filings.
  - Easy & inexpensive to maintain, with no annual state/local filings
  - Accepted by most brokerage firms & financial institutions.
  - Effective at providing legal protections for partners when focused on investing.
  - Can follow BI/ICLUBcentral model partnership agreement for ease in creation.
  - Can access informal support from BetterInvesting & ICLUBcentral for questions about general partnership format, creation, operation, taxation, & dissolution.





# GENERAL PARTNERSHIP OVERVIEW

18

## Are Investment Clubs Legal?



- In short, **yes**.
  - See [www.betterinvesting.org/learn-about-investing/investor-education/joining-an-investment-club/are-investment-clubs-legal](http://www.betterinvesting.org/learn-about-investing/investor-education/joining-an-investment-club/are-investment-clubs-legal).
- Partnership agreement binds partners, but only for purposes outlined in agreement.
- Oral agreements may be valid in some jurisdictions, but are not advised.
- In theory, partnership agreement may be for any legal purpose (investing in securities, investing in real estate, operating business, owning property, etc.).
- Clubs are structured as “businesses,” but with principal focus on investing are often not considered to be “doing business.”
  - IRS regulations for partnerships often make distinction, or treat securities not as investments but as property in some cases.

## Duties of General Partners



- Broadly considered, general partners share following fiduciary duties:
  - Duty of Good Faith & Fairness.
  - Duty of Loyalty.
  - Duty of Care.
  - Duty of Disclosure.
- When activities are conducted according to partnership agreement, partners' ability to file suit against other partners or partnership is usually limited.

## Bylaws vs. Partnership Agreement



- Club's partnership agreement & bylaws are collectively known as "operating documents."
- Clubs may have one partnership agreement that dictates how club is run, or may separate provisions into 2 documents:
  - Partnership Agreement that governs how individuals may join/leave partnership, allowable investments, key operating principles, etc.
  - Bylaws that provide amount of monthly member payments, meeting schedule, defined officers, etc.

## Advantages of Separate Bylaws



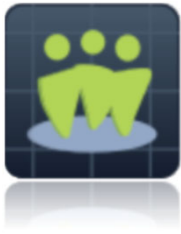
- Better organizes club's operating principles which can change from time to time as club matures.
- Bylaws may be created or amended by club without changing key provisions of partnership agreement.
  - Changes to partnership agreement must be ratified & signed by all members



USE QUESTIONS BOX IN WEBINAR APPLLET

## QUESTIONS?

The screenshot shows a GoToWebinar interface. At the top, there is a menu with 'File', 'View', and 'Help'. Below the menu is the 'Audio' section, which includes a 'Sound Check' button and two options: 'Computer audio' (selected) and 'Phone call'. A 'MUTED' indicator is visible next to the 'Microphone (Realtek Audio)' dropdown menu. Below the audio settings is a volume slider and a 'Speakers / Headphones (Real...)' dropdown menu. The 'Handouts' section shows a single handout titled '2018-01 Preparing Club Taxes.pdf'. The 'Questions' section is currently empty and contains a text input field with the placeholder text '[Enter a question for staff]' and a 'Send' button. At the bottom of the interface, the text 'Investment Clubs' and 'Webinar ID: 648-511-538' is displayed, along with the GoToWebinar logo.



# CREATING CLUB'S FIRST PARTNERSHIP AGREEMENT

24

## Leverage Sample Partnership Agreements



- Both BetterInvesting & myICLUB offer sample partnership agreements that new clubs may use to get started.
  - See **myICLUB.com Club Hub “Investment Club Learning Center.”**
- Can customize as desired by members.
- Clubs often spend several months reviewing/studying/finalizing partnership agreement.
- Do not change any provision so that it runs contrary to Best Practices (on next page).

## Minimal Agreement Provisions



- Partnership name & address.
- Names of partners.
- Effective date and purpose of partnership.
- Voting requirements.
- How profits are shared.
- Required contributions of partners.
- How costs are shared.
  - IRS says must be same as how profits are shared if not specified otherwise in agreement.
- How partners can be added or withdrawn.
- How partnership can be dissolved.

## Investment Club Best Practices Summary



- Don't charge fees on withdrawals above actual costs.
- Don't charge late fees.
- Don't require equal ownership.
- Voting should be by % ownership.
  - Allow for 1-person/1-vote by default with option for any to call for % ownership vote.
- Don't collect fees to cover member expenses.
- Don't record expenses by member, only by % ownership.
- Only invest in stocks (no REITs, ETFs, mutual funds, bonds, commodities, crypto, LPs, MLPs).
- Limit members to ~25-30 at max.
- Don't allow member investments to be made at valuations other than monthly.
- Don't allow trusts or corporations as members.

## All Partners Must Sign

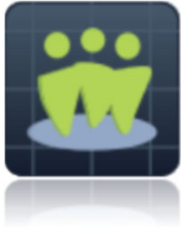


- All partners must agree to entire agreement & sign.
- In case of online or geographically-dispersed club, members may sign separate copy or signature page of agreement.
- Officer should keep original agreement & signatures in safe location.

## Filing Partnership Agreement



- Most states & localities don't require general partners to file.
- Some localities may require business filing.
  - Check with town or county clerk's office to see if business/dba/fictitious name filing is required.
- Not aware of any state requiring general partnerships to file with state, but check with state's requirements to confirm.
- Many brokerage firms require copy of partnership agreement before opening investment club account.



# ADVANCED PARTNERSHIP AGREEMENT PROVISIONS

30

## For Dispute Resolution



**#XX) Dispute Resolution** :The partners agree, except as otherwise provided in this Agreement, any dispute arising out of this Agreement or the partnership business that the partners are not able to resolve shall first be resolved by mediation, if possible. The partners are aware mediation is a voluntary process and pledge to cooperate fully and fairly with the mediator in any attempt to reach a mutually satisfactory resolution to a dispute. In the event mediation is unable to resolve a dispute the partners agree to have the dispute arbitrated.

- A. Mediation - If any partner to a dispute feels it cannot be resolved by the partners, he or she shall notify the other partners, in writing.
  1. The partners shall then appoint a mediator (or mediators) who is mutually acceptable to all parties in the dispute.
  2. Mediation shall begin within 30 days of the partners receiving written notice of the need for mediation.
  3. The partnership shall bear this cost from partnership funds.
- B. Arbitration - If the dispute is not settled at the expiration of sixty (60) days from the time such notice is received of, then the entire matter shall be submitted to binding arbitration. The arbitration shall be conducted under the rules set forth in the Code of Civil Procedure of the State of \_\_\_\_\_, except to the extent that the parties at that time may agree upon other rules. The arbitrator shall be bound to the strict interpretation and observance of the terms of this Agreement. The successful party to any arbitration shall be awarded all costs and attorney's fees attributable to the arbitration and the dispute or controversy to which it relates. The arbitration award shall be conclusive and binding and shall be set forth in such a way that a formal judgment can be entered in the court having jurisdiction over the dispute if any partner so desires.

## To Opt Out of IRS Audit Regime



### **#XX) 6 US Code Sections 6221 — 6223 designation and election:**

The Club Treasurer shall be the designated Partnership Representative (PR) for purposes of Section 6223 and shall be responsible for dealing with the IRS in the event of an audit. Unless otherwise directed by the partners, the PR shall annually, in connection with filing the Club's Form 1065 tax return, indicate the Club elects to be treated under subsection 6221(b)(1)(a), that is, an election out of the audit rules of Section 6221. The Treasurer shall include with such election any required information to make such election effective. In the event of an IRS audit, the PR will represent the club but is not authorized to make any settlement agreement without the majority consent of the partners. Partners of the Club shall consist only of individuals; no trust may be a partner.



## UPDATING PARTNERSHIP AGREEMENT



## Changing the Partnership Agreement



- Technically, whenever member leaves or joins club, partnership changes.
- Incoming partners may sign original agreement, or separate signature page that is attached to original.
- May choose to cross out outgoing partners on original with date of withdrawal.

## Conduct Periodic Review



- Partnership agreement can be updated as often as desired, though most clubs don't need to revise more than every few years.
- If original members or club procedures have changed significantly, can be good idea to revise agreement.
- Can also be good idea to review current best practices & incorporate in revised agreement.

## Updating the Agreement




- Once agreement changes are finalized, prepare final agreement & add to top:
  - *This amended agreement of partnership, made \_\_\_\_Date\_\_\_\_ by and between the undersigned:*
- All partners sign revised agreement.

## Re-Filing Agreement

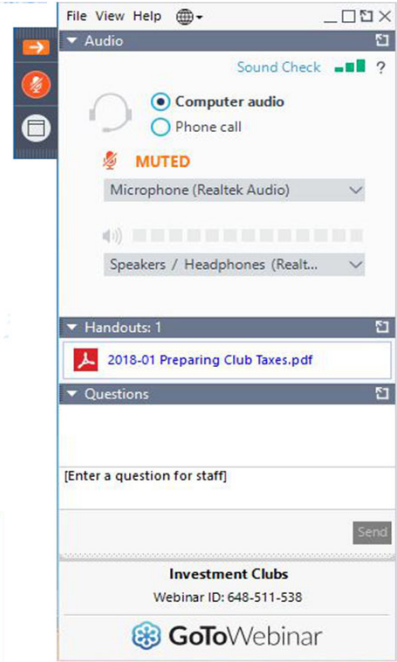


- In general, re-filing agreement with locality, state, or brokerage firm isn't required.
  - However, check requirements with each.
- Many brokerage firms require current list of members, so may require notification when members are added or depart.



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## QUESTIONS?



## Tools from ICLUBcentral





**StockCentral**  
Stock analysis tools, screener, sector & industry averages, ratio analyzer, technical charts, REIT analysis, dividend tools, & company reports with 10 years of data.  
[www.StockCentral.com](http://www.StockCentral.com)



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40

# Thank You!



Doug  
Gerlach

Sean  
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## Resources



- myICLUB.com Sample Partnership Agreement & Bylaws:  
[www.myiclub.com/clubhub/learninglibrary.aspx](http://www.myiclub.com/clubhub/learninglibrary.aspx)
- BetterInvesting Sample Partnership Agreement:  
[www.betterinvesting.org/investment-clubs/how-to-start/form/legal-structure](http://www.betterinvesting.org/investment-clubs/how-to-start/form/legal-structure)
- Are Investment Clubs Legal?  
[www.betterinvesting.org/learn-about-investing/investor-education/joining-an-investment-club/are-investment-clubs-legal](http://www.betterinvesting.org/learn-about-investing/investor-education/joining-an-investment-club/are-investment-clubs-legal)
- myICLUB.com Investment Club Webinars:  
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