

# DE MICCO & FRIENDS

PRIVATE PLACEMENT PROGRAM TRADING  
STRUCTURING, SETUP, DUE DILIGENCE  
FRAUD PROTECTION

LAWYERS FOR INVESTORS, BANKS, INSTITUTIONS



DE MICCO & FRIENDS  
BUSINESS LAWYERS

*„... make ideas happen“*

## PRIVATE PLACEMENT PROGRAM LAWYERS

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**As an experienced team of economists, lawyers and bankers specialized in the financial sector, De Micco & Friends is one of a small number of law firms which provide qualified assistance and consulting in Private Placement Programs (PPP). More than twenty years of experience in private and public financial transactions makes the group a good partner for investors, institutions and banks.**

### THE PRIVATE PLACEMENT PROGRAM

Private Placement Programs, also called "High Yield Investment Programs", are private (non-public) investment programs which are based on the purchase or sale of bank financial instruments. In most cases MTNs are mainly used. These instruments are bought fresh-cut with a high discount on their base value to later be resold at a higher price in the secondary market. The difference between the sale price and the purchase price is the investor's profit. These programs are offered to investors with high spending capacity and can only be executed by qualified traders with a license to carry out these kinds of transactions. A very special aspect of these programs is that usually the largest part of the returns is allocated to humanitarian causes as well as to the financing of larger business projects. So, any institution takes precedence on this type of operation.

Actually, PPPs are not well known publicly, and only a very small group of investors that own significant funds or Bank Instruments have access to them. Most programs can be joined by invitation only. These programs have been issued since for the past 60 years to finance humanitarian projects and international trade.

### RISKS FOR INVESTORS

Private Placement Programs do pose risks for the investor! Indeed, one of the biggest risks is to have the funds blocked for one year or more. This happens when a transaction was not well prepared and organized. All rules given by financial institutions, the law and international money laundering regulations have to be complied with fully. The purchase and sale of MTNs is "risk-free" provided that the trader is guaranteed the exit to the instrument that was previously acquired (arbitrage trades). If De Micco & Friends selects, engages and contracts a trader, such an exit will be guaranteed by contracts and therefore the risks for the investor is minimized. Before the start of the program, the trader will "prepare" such a program by planning the future purchases and sales and determining beforehand the benefits that each of them will bring.

In a second phase the program will be executed, which means nothing but carrying out the purchases and sales that were previously planned and negotiated with the cutting houses.

**In any case, there are significant risks for an investor, as we will explain below.**

## PRIVATE PLACEMENT TRADING

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### RISKS FOR INVESTORS

The funds of an investor will not be turned over to the trader but will always remain in the investors account. To start a program, the funds will only need to be locked for a period of time. The one and only safe way is to lock the funds with a Swift **MT-799** and **Swift MT-760**. The MT-760 is a Swift message used to block funds in favour of someone other than the owner, **collateralizing** the asset via this message, while allowing for loans and liens against it. Most private placements require the investor to send an MT-760 to the trader's account, allowing the trader to use this swift as a collateral guarantee for their bank. This block will remain in place for the length of the program, which is a minimum of one year.

And here we have another risk for the investor. The fees for blocking a large amount of funds via an MT-760 can be more than some people expect. In most cases, a bank will charge 1-2% of the value being blocked for this service. For example, on a 100M bank instrument this can be 1-2M that the investor must pay, unless they have a very special relationship with their bank. The final conditions have to be negotiated in any case.

The POF (Proof of Funds) will be issued by the Bank where the investor has the resources deposited, demonstrating their quality and amount, but does not enable anyone to move them or dispose of them.

When all the required documents are submitted, including the due diligence and the bank documents, we proceed to verify the funds.

Once these preliminary procedures are successfully completed, within 48 to 72 hours the Program Manager will contact the investor or his representant for a formal presentation and also to agree on how to block the funds.

For the last step, the investor will receive and sign an LOI (pre-contract) which later will be delivered to the traders' office.

When the trade starts, the profits are collected weekly at the bank or paymaster designated by the trader. From the time that the first profit is collected, this capital will be fully available to the client. The investor's funds must be clear, clean and of course must have a non-criminal origin. For every asset, the location of the deposited resources should be clearly stated by the bank in question. If any doubts arise at the time of verification, the transaction will be automatically dismissed.

All programs are strictly confidential. The parties involved, including lawyers, brokers and traders, sign a non-disclosure agreement.

**In conclusion, before blocking any funds, the whole deal structure of the PPP transaction must be organized, prepared and committed to in advance by all involved parties. The preparation and structuring of such a transaction takes 3-4 months.**



YORK STOCK EXCHANGE

## PPP - THE SETUP- PROCEDURES

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### INDIVIDUAL ANALYSIS AND ASSESSMENT

A Private Placement Program trade is a complex process and is not really daily business. Every case is different. De Micco & Friends is NOT a broker or mediator and we never provide representation for them! Our experienced lawyers and economists take care of the structure, connecting the involved parties, such as banks, investors, program managers and traders, the communication between the parties and due diligence. As previously explained, it makes no sense to block funds, pay upfront fees or sign any contracts before the structure is settled and committed to in advance.

### THE PROCEDURES

#### 1. Mandate

The investor files a mandate with De Micco & Friends which includes legal advice and representation. The mandate includes the following services:

- **Analysis of the investor's situation and needs**
- **Legal advice before and during the whole process**
- **Structuring of the private placement program**
- **Due diligence regarding the source of funds**
- **Localisation and contacting all involved parties and presentation of the project**
- **Selection, negotiations and contracting the banks**
- **Presentation and negotiation with the program manager**

- **Localisation and contracting of a qualified (and real) trader or a trading team**
- **Preparing the pay-outs to the investor with the receiving banks**
- **Monitoring the trades and pay-outs of the profits**

If an investor has an offer from a program broker or mediator, we offer a legal check and verification of the offered program for a fixed fee. We strongly recommend that the investor not sign any contracts, joint ventures or consultant contracts and never pay any upfront-fee before obtaining legal advice, verification and examination of the offer.

**2. Analysis of the investor's situation, KYC and due diligence regarding the funds**

#### 3. Setup compliance

After studying the viability of the operation, the investor will be provided with a compliance set (a set of documents) for them to be properly completed and signed. We will complete 90% of the compliance set so the client will simply need to review and then proceed to sign it.

#### 4. Proof of Funds

Fund verification, source, bank certificate and verification by the Euroclear system/DTCC.



## **PPP - THE SETUP- PROCEDURES**

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### **THE PROCEDURES**

#### **5. Joint Venture Agreement**

Together with the compliance set of documents, the client will be provided with a "Commercial Agreement", which is determined and managed by the ICC 600.

#### **6. Due Diligence and asset verification**

These are procedures which include verification of the assets and the execution of due diligence (under study for acceptance) for the client and the submitted assets. The client must not be connected with crime organizations, drug trafficking, weapons, terrorism or any other illegal activities. Also, the asset must be clear, clean, with a non-criminal origin and must be 100% freely available to the investor.

#### **7. Direct contact with the program manager**

The client will be contacted directly by the program manager via phone, Skype or a personal meeting.

#### **8. Execution**

The client's bank will issue a Swift MT-799 prior notice and a Swift MT-760 lock to the bank the Trader specifies on the contract. The recipient of the MT-760 will be the trader, which enable him to "use" the funds through a loan given by a second bank that accepts the MT-799.

#### **9. Contracting the trader**

Trading contract will be concluded between trader and investor which includes the timing, arbitrage regulations, funds volume, markets, profit distribution, pay outs, etc.

#### **10. Acceptance of the investor**

Once the trading contract is signed and the assets are locked, the investor will be admitted to the program within about 15 banking days.

#### **11. Start of trading**

The trader will start trading after a final confirmation from the program manager.

#### **12. The yields**

The trader will continue with a formal invitation to collect the first yields. On the invitation, the investor will be informed of the day, time, place and bank venue where the pre-opened account will be located. For the length of the program, each account that is opened will be the destination for the collected yields.

The investment's benefits will be fully and freely available for the client from the outset.

## PRIVATE PLACEMENT TRADING

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### RESUME OF VARIOUS RULES

The involved parties:

- Investor
- Bank which issues the Swift MT-760
- Bank which accepts the Swift MT-760 against liquidity for the trading
- Program manager, lawyers, brokers, paymasters
- Trader or trading group
- Financial institutions and authorities

The customer's bank must be a TOP 50.

It can't be a bank from a communist country.

Chinese citizens with a Chinese passport can't be signatories to the Trading Contract. They are not allowed to participate in a PPP.

The two options available to access a Private Placement Program are:

1. Cash deposit
- 2 Any of the following financial instruments: BG (Bank Guarantee), CD (Certificate of Deposit), MTN (Medium Term Notes), SBLC (Stand By Letter of Credit), and SKR (Safekeeping Receipt) about high value assets like gold or diamonds.

All these non-cash instruments should have FULL BANK RESPONSIBILITY of the issuing bank.

If the investor is not the owner of the asset or cash, he can't enter the program unless he is assigned to the bank account where the asset is deposited.

The asset will be blocked for the time estimated by the contract. So before being blocked, the asset must have a reasonable life cycle (maturity date) that can be determined.

The bank must be able to block the assets with a SWIFT MT-760.

If the investor is a company, one representant must be named. The representant, who signs all contracts in the name of the company, must be registered as a director in the company registry.

The asset or cash is not feasible unless the bank is based in the US or Europe. Any bank from South America or Asia must be based in Europe and must confirm the client's assets through a "Confirmation Letter" from a city Europe such as London, Zurich or Frankfurt.

**De Micco & Friends supports and assists transactions starting with a volume of about 100 M Euro. We don't assist "pool-transactions" with more than 3 investors.**

## PRIVATE PLACEMENT TRADING

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### FRAUD PROTECTION ATTORNEYS

The Internet is full of various fast and easy money-making opportunities that promise to return a high yield, especially on the money of small investors. In many of these cases, such programs are pyramid or snow-ball schemes. The first problem is the 100 M EURO minimum investment. Actually, there is no realistic point in trying to pool less than 100 M EURO. And here we have the first legal conflict! In many countries, it's strictly illegal to pool money with promises of a high return. It is nearly impossible to manage bulk transactions (raising capital with many investors).

Another problem is the management and the brokers. How can they be trusted? If some party manages to aggregate 100 M Euro from hundreds of participants, they will not be able to pass the due diligence process, because pooled funds like that are not allowed to enter trading.

Most scams are usually made, or attempted, with smaller investors who will in fact never qualify as investors.

De Micco & Friends offers a fraud-check to investors for a fixed fee. As we know the business and also many programs and the players, we can proof every offer and all documents to protect unexperienced investors in this field.

### FRAUD PROTECTION

- Checking and verification of documents like bank instruments, MTNs, guaranties and Swift transactions
- Proof and verification of funds
- Review of the local and international legal situation
- Scam checking, forensic investigations
- Review of licences and reputations (brokers, advisors, mediators)
- Compliance, money laundering and data protection

### FRAUD DEFENCE AND CLAIMS

De Micco & Friends attorneys also defend clients who are victims of fraud related to private placement programs and other crimes related to finance investment. As we know these financial businesses and the players, we offer a qualified defence and we submit claims to international courts if necessary. In some cases, we cooperate very closely with institutions like the FBI, Interpol and Europol, as well as financial regulators like the SEC.

Some investors contact us because their funds indeed are blocked in programs and they haven't received pay-outs for a variety of reasons. We are also able to successfully defend the interests of these clients.

**If you are a victim of a fraud, please contact De Micco & Friends at [office@demicco.ch](mailto:office@demicco.ch).**

**We accept cases starting with a damage of about 500 T Euro.**

## PRIVATE PLACEMENT TRADING

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### FURTHER INFORMATION AND COMMENTS

The “Private Placement Program” which we describe here is the process to trade discounted bank instruments (MTNs, BGs) to generate profits, and should not be confused with “Private Placements” of private equity shares, for example to raise funds pre-IPO.

An MT-760 Swift message is used to block funds in favour of a third party, collateralizing the asset via this message, while allowing for loans and liens against it. The fees for blocking a large amount of funds via MT-760 are about 1-2 %. Once the MT 760 reaches the trader’s account, the line of credit should become available within about 3 working days. At that time, the trader should be able to make their first bank instrument purchase and give a clear timeline to the investor for the first profit disbursement.

The key to run a successful PPP is to find a real trader. When an investor considers a private placement program, one should always be sceptical of the offers. Since there are only a few “real” traders in the markets, the chances of finding one are not very high. Traders in these secondary markets usually don’t advertise their services on Facebook.

### THE APPLICATION STEPS

1. Compliance package: the investor provides a proof of funds and their compliance package
2. Trader or trade group submits application to the compliance department for review
3. Investor “due diligence”, trader contact, contracting
4. Investor contacts their bank to complete the private placement transaction
5. Investor’s funds are blocked, conditionally assigned to the trader in accordance with the contract
6. Trader accesses the line of credit from the trading bank
7. Trader uses line of credit to deal discounted bank instruments issued from bank
8. Investor receives payment of his part of the profits weekly

Most private placement programs are intended to fund humanitarian projects. Typically, 60-70% of the program’s profits must go to projects, while the remaining 30-40% is for “administrative use”. As a result, the 30-40% can be used at the investor’s discretion. In any case, the investor must make sure he is funding projects. Actually, the platform does not regulate this, but authorities like the FED or the European Central Bank oversees all of the parties who have applied and received money in these types of programs.

## PRIVATE PLACEMENT TRADING

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### PRIVATE PLACEMENT TERMS

**Administrative Hold:** A term usually used by brokers. It refers to the investor's bank reserving funds in favor of another individual, without actually encumbering or moving the assets.

**Asset Backed:** A note or bank instrument which is collateralized by hard assets, not liquid assets such as gold, arts, diamonds, or other rare valuables.

**Assignment:** Transferring ownership, or rights to use the collateral, to another individual for a specific period of time.

**Bank Instrument:** A debt instrument issued by banks to access immediate liquidity, providing an annual interest and face value for the purchaser such as BGs and MTNs.

**Beneficiary:** The individual listed as the owner of a debt instrument, such as a medium term notes (MTNs) or bank guarantees (BGs).

**Best Efforts:** This term (contract with trader) states that the trader, or investment manager, will use their best efforts to achieve high profits. For example, a contract may say "profits will be achieved on a best efforts basis".

**Blocked Funds:** A phrase which refers to blocking liquid assets in favor of another person. This is most commonly achieved via a Swift MT-760

**Broker Chain:** Also known as a "daisy chain", this frequently-used term describes the "layers" of brokers that one must go through before one reaches a trader.

**Bullet Program:** Phrase used by brokers that describes "short-term" private placement programs, promising high returns in less than 30 days.

**Cash Backed:** Assets which are backed by cash, the most common type of backing.

**Collateral:** An asset guaranteeing the line of credit the bank gives, which can be seized upon default from the loan terms. Bank instruments, such as cash and MT-760s.

**Commitment Holder:** An individual/institution who is contractually obligated to purchase a bank instrument at an agreed upon value.

**Compliance:** The process of completing due diligence on a new investor. At this time, the investor must complete the required documentation, usually referred to as the "compliance package".

**Corporate Resolution:** A compliance document which asks the client to formally state their relationship to the business entity they represent.

**Cutting House:** Term referring to a bank which creates, issues, and backs discounted bank instruments. The instruments are "cut", and sold to traders at discounts, who then sell them at a higher price to "exit buyers".

**Discount:** The concept that bank instruments can be purchased at a discount from face value, leaving the opportunity to profit from resale or the difference from the face value.

**Due Diligence:** Phrase referring to the process of qualifying people or companies, verifying and investigating their financial and legal background.

**Escrow:** An escrow service is a licensed and regulated company that collects, holds, and sends money, according to conditions specified by both the investor and service provider.

**Euroclear:** The world's largest settlement system for securities transactions, covering bonds and equities, as well as bank instruments. This system allows transactions to be completed directly and remotely, while ensuring safety for both the buyer and seller of the asset.

**Exit Buyer:** The "buyer in place" purchasing the bank instrument at a higher value from the current owner.

**Fishing:** When a "prospect" contacts a broker or advisor with little to no intent to move forward, but plenty of detailed questions in an effort to investigate (fish) for information.

**Free and Clear:** Also known as "unencumbered", there are no liens or debt obligations associated with an asset.

**Fresh Cut:** Phrase referring to a recently issued bank instrument that has had only one owner over the course of its existence. They are accessed at a steep discount from the face value.

**Gate-Keeper:** An individual who claims to be in direct contact to a trader with a private placement program.

**Hypothecate:** The process of assigning a monetary value to an illiquid asset, and then extracting liquidity in the form of a loan, using the illiquid asset as collateral.

## PRIVATE PLACEMENT TRADING

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### PRIVATE PLACEMENT TERMS

**In-Ground Assets:** Land areas which have been appraised based upon geological assessments of the assets which lie beneath.

**Intermediary:** Anyone involved in a private placement transaction, either through introduction or compensation, who is not the trader, program manager or investor.

**Junk Bond:** A bond issued by a company or institution which has poor financial integrity, making the bond effectively worthless.

**Ledger to Ledger:** A transfer between two accounts held by the same bank.

**Letter of Authorization:** A compliance document required for all private placement investors, allowing the trade group to verify the investor's assets from bank to bank

**Line of Credit:** Volume of a Bank loan.

**Managed Buy/Sell:** Managed buying and selling of bank instruments by a private placement trader.

**MT-103:** This is an improved version of the original Swift MT-100, which is similar to a wire transfer.

**MT-760:** Swift message used to block funds in favor of someone other than the investor, collateralizing the asset while enabling loans against it.

**MT-799:** Swift message used between banks to communicate in written form and is usually referred to as "pre-advice". Usually, the MT-799 will be used before the MT-760.

**MTN:** Medium Term Note, a tradable and discountable debt instrument issued by banks to collect annual interest before expiring upon maturity with a specified face value.

**Non-Depletion Account:** Article, used in private placement contracts which guarantees that the funds of the client will never be depleted by the trader.

**Paper:** A synonym used by private placement brokers referring to several bank instruments such as bank guarantees or medium term notes.

**Paymaster:** A lawyer / attorney or notary elected by intermediaries who will receive the commission payments on a financial transaction and distribute them in accordance to the agreement between the parties.

**Piggyback Program:** Pooling of investors to meet the minimum capital requirements of a private placement program.

**Pinging:** Leaving funds in an account while the trading bank verifies the full balance is still present on a daily or weekly basis. A ping verification system is NOT a guarantee to obtain a loan from a third bank without the Swift MT-760!

**Power of Attorney: (PoA):** A document signed by an individual or a company which gives authority for someone to act on their behalf, as specified in the agreement.

**Program Manager:** An individual who is directly connected to a trader or a trader group with a private placement program, accepting all applications and questions from investors.

**Promissory Note:** A LOU (letter of understanding) given from one party to another, stating debt repayment obligations and terms.

**Seasoned: Bank instruments,** such as medium-term notes (MTNs) and bank guarantees (BGs), which have been previously owned by several different beneficiaries.

**Shopping:** When a representative/broker sends out an investor's compliance package to several "program managers" at the same time. Not recommended!

**Signatory:** An individual or company who legally represents the assets/services of another person, entity or themselves.

**Slightly Seasoned:** A bank instrument which has been traded, having more than one owner over its lifespan before maturity. This is a bank instrument which is discounted and sold at a value of 65-80% of its face value.

**Swift:** A system of communication between banks. (MT-100, MT-103, MT-760, MT-799.)

**Tabletop:** Face to face meeting between a buyer/investor and a seller/trader.

**Trade Program:** Synonym of "private placement program", this is used by brokers and program managers.

**Trader:** A person with a direct contact to banks which are issuing discounted bank instruments that will later be sold to a pre-defined "exit buyer" for a higher value.

**Trading Bank:** Bank where the trader receives the collateral or assignment from an investor. This bank also provides the loan to the trader.

**Unencumbered assets:** These assets have no liens or debt obligations to third parties.

# DE MICCO & FRIENDS

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