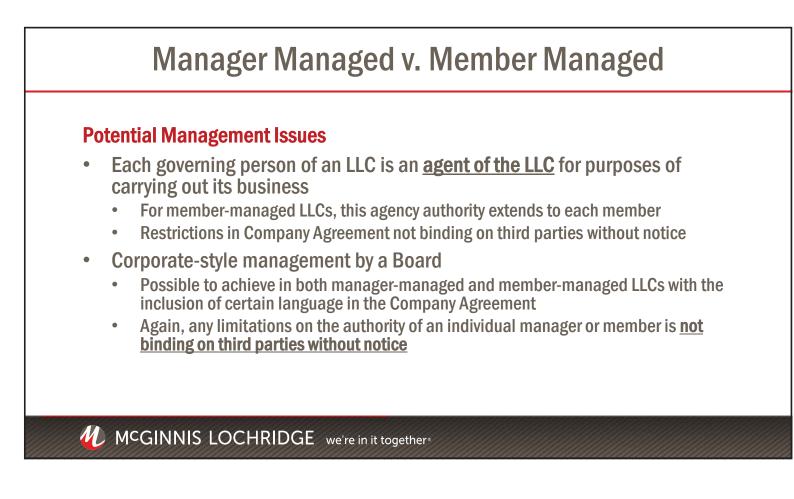
Management Provisions: Pros and Cons of Manager Managed v. Member Managed Limited Liability Companies Presented By: Allen Sparkman and Shana McGirl Date: July 12, 2018

Manager Managed v. Member Managed Certificate of formation <u>must state</u> whether the LLC will or will not have <u>managers</u> Must provide the name and address of each initial manager, or if no managers, each initial member Texas law does not permit anonymity Even foreign LLCs that register in Texas must disclose governing persons on Public Information Reports



Agency Relationship

- Members may truly want to operate the LLC as a traditional general partnership with limited liability, with each member having the authority to act on behalf of the member-managed LLC
- In a member-managed LLC, each member, no matter how small the member's interest, is an <u>agent of the LLC</u> for the purposes of its business
- While this agency relationship can be <u>contractually restricted</u> in the company agreement, those restrictions are not effective against any third party without actual notice

Manager Managed LLCs	
•	Except in rare cases, LLC membership interests in manager-managed LLCs are <u>securities</u> under federal and state securities laws
•	If each of the members is also a manager, and each of the managers <u>actually participates</u> in management decisions, there may be a credible argument that the membership interests in the manager-managed LLC are <u>not securities</u> because no member was dependent "solely" or "primarily" on the efforts of others

Possible Securities Law Differences

- Generally, a membership interest is a security if it is an "investment contract"
- One test, frequently applied by the SEC in this context, is the *Howey* test for investment contracts
- Investment contracts involve:
 - An investment of money
 - Into a common enterprise
 - With the expectation of profits
 - Solely from the efforts of the promoter or a third party

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