

# The UP-C Structure

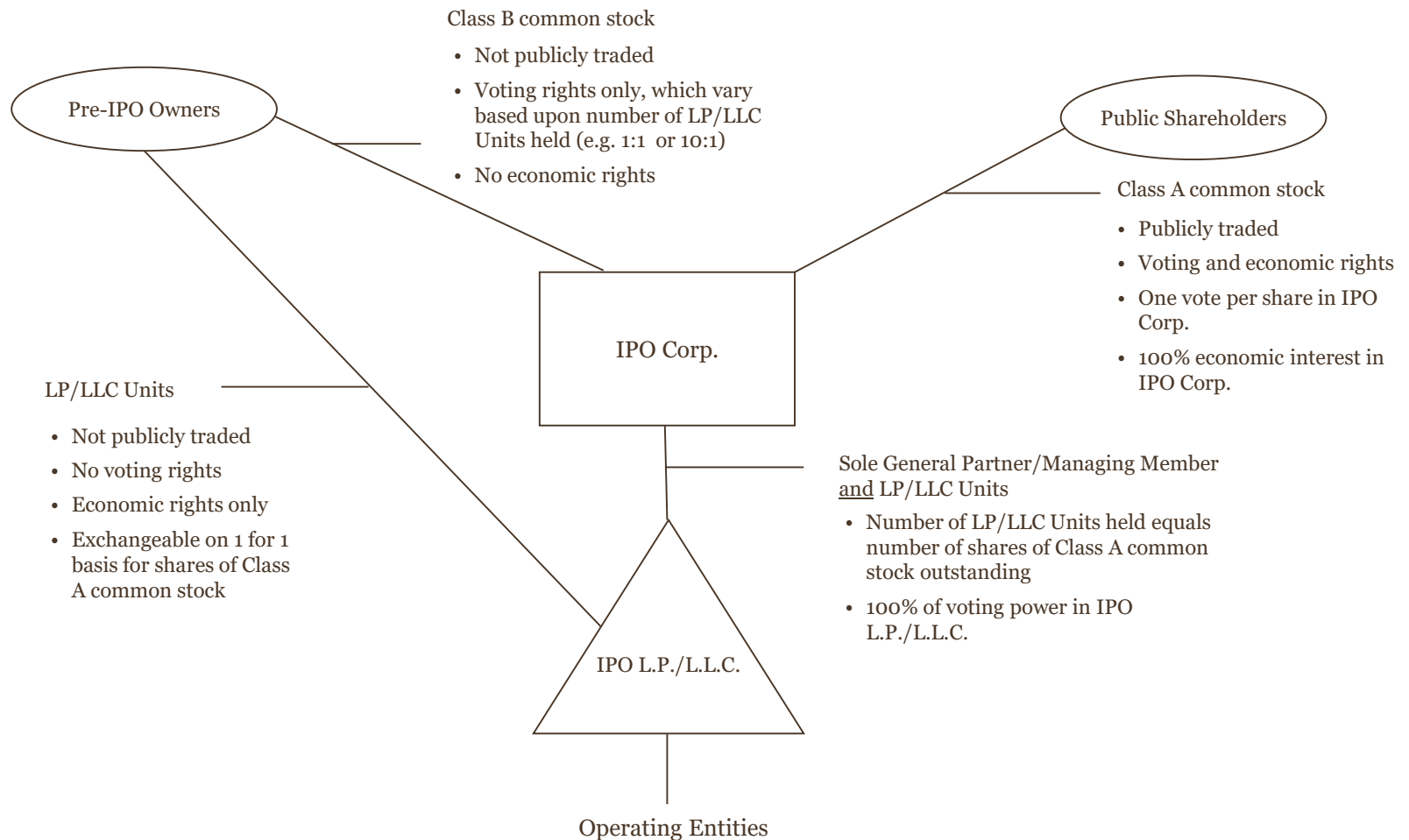
Employing the Umbrella Partnership–C-Corporation Structure  
in an IPO

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For additional UP-C Structure resources, please visit our [UP-C page](#).

# Simple UP-C Organizational Structure



# Simple UP-C Organizational Structure *(continued)*

- IPO Corp. is a holding company
  - Sole material asset is equity interest in IPO L.P./L.L.C. (the “OP”)
- IPO Corp. is sole managing member of the OP
  - IPO Corp. operates and controls the business and affairs of the OP
  - IPO Corp. consolidates the OP and records a noncontrolling interest related to the OP Units held by the Pre-IPO Owners

# Simple UP-C Organizational Structure *(continued)*

- Maintenance of “Parity” between holders of Class A common stock and holders of OP Units
  - Equivalence between Class A common stock issued and OP Units held by IPO Corp.
  - No assets at IPO Corp. except OP Units
    - Activities conducted at the OP or below
  - No liabilities at IPO Corp. except
    - Tax-related liabilities (taxes and payments under tax receivable agreement)
    - Liabilities as to which IPO Corp. has a “back-to-back” liability from the OP

# UP-C Structure – Equityholder Agreements

## Exchange Agreement

- Unitholders of the OP may exchange their units for shares of Class A common stock of IPO Corp. on a one-for-one basis
  - Registration Rights Agreement
    - Prior to recent SEC no action relief, IPO Corp. was required to file a registration statement in order to permit exchanging unitholders of the OP to sell the shares of stock received upon exchange without an additional holding period. As in non-UP-C IPOs, IPO Corp. may still enter into a registration rights agreement that requires it to register sales by significant unitholder(s)

## Tax Receivable Agreement

- Provides for payments to unitholders of the OP who sell or exchange their units in a transaction with IPO Corp.
  - The amount of the payments under the Tax Receivable Agreement is determined based on IPO Corp.'s use of certain tax attributes that become available to it as a result of the sale or exchange

# UP-C Structure – Advantages

- Pre-IPO Owners retain pass-through treatment and avoid corporate-level taxes
  - Illustrative “all in” effective tax rates on individual holding OP Units versus IPO Corp. shares
    - Operating income
      - OP Units: 37%, or 29.6% if 20% pass-through reduction is available
      - IPO Corp.: 36.8% (21% on corporation plus 20% on shareholder’s receipt of dividend)
    - Capital gains
      - OP Units: 20%
      - IPO Corp.: 36.8% (21% on corporation plus 20% on shareholder’s receipt of dividend)
- Tax Receivable Agreement can deliver significant incremental value to pre-IPO shareholders
  - If IPO Corp. share price is \$50/share and an OP Unit reflects \$10/unit of OP pre-exchange tax basis, a “traditional” Tax Receivable Agreement could generate \$10.79/unit of additional proceeds to an exchanging unitholder of the OP over time
    - This reflects an iterative step-up and assumes a 25% federal and state tax rate and an 85% payout rate
  - OP liabilities may increase the step-up
  - Benefits may be realized over 15 years, assuming that IPO Corp. has sufficient income to utilize all deductions
- M&A flexibility
- Compensation flexibility

# UP-C Structure – Disadvantages

- Impact on liquidity
- Incremental expense
- Impact on dividend/reinvestment policy
- Impact on index inclusion
- Complexity across domains



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Josh Bonnie is one of the preeminent IPO lawyers in the nation and regularly counsels public companies on spin-offs and other significant strategic transactions, capital markets offerings and general corporate and securities law matters. Josh has advised many companies on their IPOs, including Invitation Homes, Hilton Worldwide, The Carlyle Group, Blackstone, MasterCard and Accenture. Josh has extensive experience with complex IPOs, including those entailing cross-border elements or employing multiple-tier umbrella partnership structures.

Josh has a depth of experience advising clients on some of their most significant strategic transactions, including:

- Blackstone on its 2019 corporate conversion, 2015 spin-off of its financial advisory businesses and 2007 sale of \$3 billion of non-voting common units to a sovereign wealth fund established by the People's Republic of China
- Dover Corporation in the 2018 spin-off of its upstream energy business into a standalone, publicly-traded company
- Hilton Worldwide on the 2017 spin-offs of the bulk of its real estate business, Park Hotels & Resorts, as a publicly traded real estate investment trust (REIT), and of its timeshare business, Hilton Grand Vacations, as a separate publicly traded company
- Ingersoll Rand on its 2013 spin-off of its commercial and residential security businesses and 2009 reorganization incorporating its parent company in Ireland
- The Carlyle Group on its announced corporate conversion and the 2010 and 2007 investments in that firm by Mubadala Development Company, the Abu Dhabi-based strategic development and investment company

Josh has been featured in *The American Lawyer's* "Dealmakers of the Year," is recognized in *Chambers Global: The World's Leading Lawyers for Business*, *Chambers USA: America's Leading Lawyers for Business* and *The Legal 500 United States* as one of the leading capital markets practitioners in the United States, and is endorsed by *PLC Which Lawyer?* *Chambers* says "Joshua Ford Bonnie is spoken of highly by sources, with one commenting: 'He is a true partner: He is highly commercial, thinks like a business person and anticipates what we'll need before we need it.' This source adds: 'His customer service is as good as it gets.' He is also highlighted as being 'very pragmatic and knowledgeable' and is particularly noted for his handling of IPOs." *The Legal 500 United States* says that "IPO powerhouse" Joshua Ford Bonnie is noted as 'second-to-none'.

- Change Healthcare in its 2019 IPO
- Underwriters on the 2018 IPO of Goosehead Insurance
- Invitation Homes on its 2017 IPO, the second largest IPO in history by a U.S. REIT
- Ares Management on its 2014 IPO
- Medley Management on its 2014 IPO
- Hilton Worldwide on its 2013 IPO, the largest IPO in history by a hospitality company and second largest U.S. IPO of the year
- Brixmor Property Group on its 2013 IPO
- Quintiles on its 2013 IPO
- Underwriters on the 2013 IPO of Artisan Partners
- The Carlyle Group on its 2012 IPO
- Blackstone in its 2007 IPO, the largest U.S. IPO of the year
- Evercore on its 2006 IPO
- MasterCard on its 2006 IPO, the largest U.S. IPO of the year
- Cohen & Steers on its 2004 IPO
- Ingersoll Rand on multiple capital markets offerings
- Allegion on multiple capital markets offerings





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A partner in the Firm's Tax Practice, Drew Purcell advises clients on an array of tax matters, including IPO and capital market transactions, credit transactions, mergers and acquisitions, spin-offs and private equity fund formations. Drew's clients have included Blackstone, Macquarie Infrastructure and Real Assets, New Mountain Capital, Cerberus, Hilton Worldwide and Gardner Denver.

Drew has a depth of experience representing clients on the tax aspects of some of their most significant transactions, including:

- Blackstone on its 2019 corporate conversion and 2015 spin-off of its financial advisory businesses
- Refinitiv on its ongoing acquisition by the London Stock Exchange
- Johnson Controls on the sale of its Power Solutions business to Brookfield
- Hilton Worldwide on the 2017 spin-offs of the bulk of its real estate business, Park Hotels & Resorts, as a publicly traded real estate investment trust (REIT), and of its timeshare business, Hilton Grand Vacations, as a separate publicly traded company

Drew has been named a "Rising Star" by *The Legal 500 United States*. He also co-authored *The Umbrellas of Subchapter K*, an article on UP-C and other umbrella partnership structures published as part of the Practising Law Institute's Partnership Tax Practice Series.

- Change Healthcare in its IPO
- Summit Materials in its IPO
- Blackstone in the spin-off its financial and strategic advisory services, restructuring and reorganization advisory services as an UP-C structure
- Refinitiv in its ongoing acquisition by the London Stock Exchange
- Performance Food Group in its IPO
- Pinnacle Foods in its IPO
- Underwriters in the IPO of Planet Fitness
- Underwriters in the IPO of Nordic American Offshore
- Gardner Denver in its ongoing merger with Ingersoll Rand Industrial as part of a "reverse Morris trust" transaction
- Hilton Worldwide on the spin-off of its hotel ownership and timeshare businesses
- Johnson Controls on the sale of its Power Solutions business to Brookfield
- PPL Corporation on the spin-off of its generation business and combination with affiliates of Riverstone