

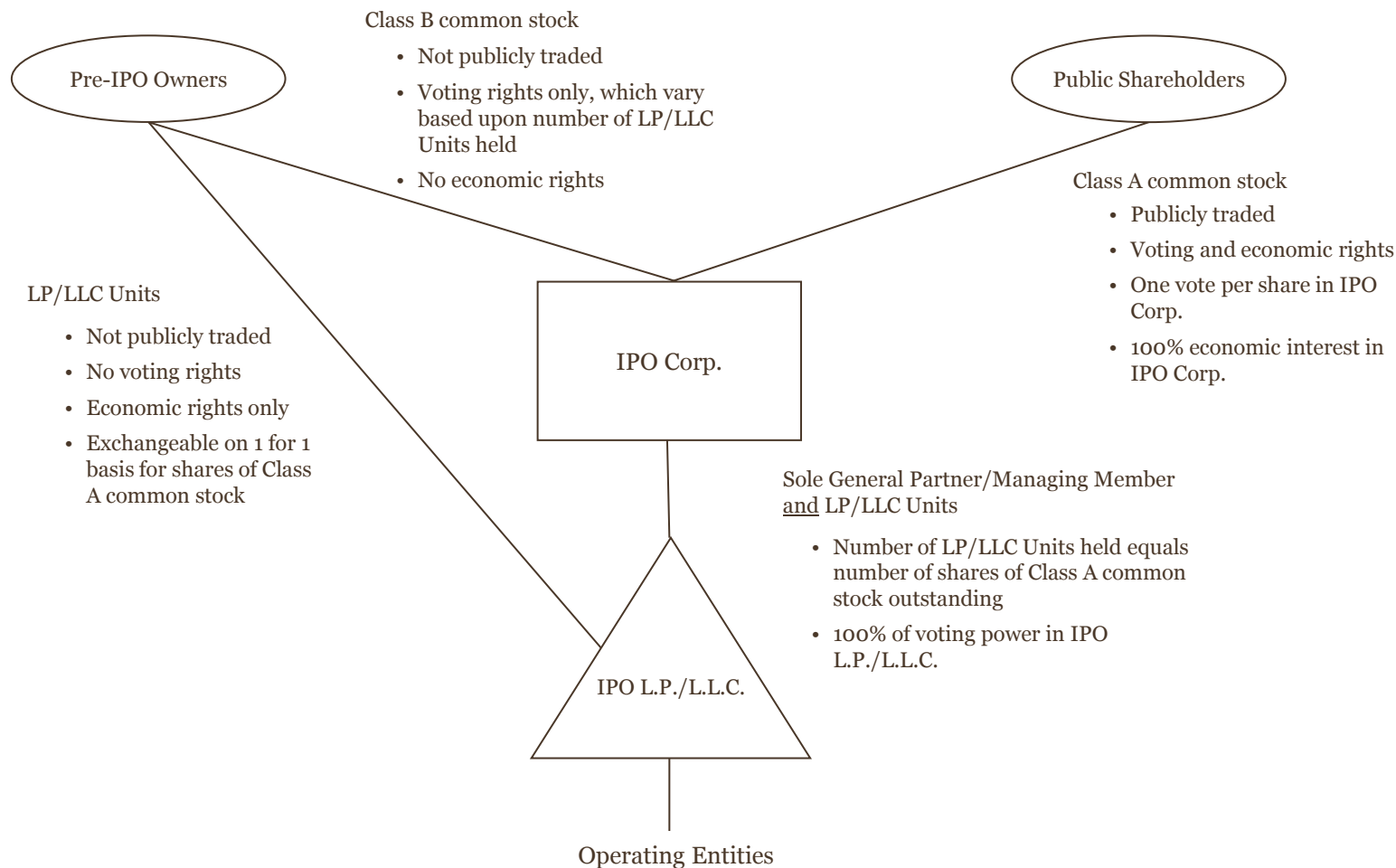
The “UP-C” Structure

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

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January 19, 2016

Simple UP-C Organizational Structure



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What is an “UP-C” structure?

- Two-tier ownership structure where public investors hold stock in a publicly-traded corporation that in turn owns interests in a partnership in which pre-IPO owners directly hold interests

IPO Corp. is a holding company

- Sole material asset is equity interest in IPO L.P./L.L.C.

IPO Corp. is sole managing member of IPO L.P./L.L.C.

- IPO Corp. operates and controls the business and affairs of IPO L.P./L.L.C.
- IPO Corp. consolidates IPO L.P./L.L.C. and records a noncontrolling interest related to the LP/LLC Units held by the Pre-IPO Owners

UP-C Organizational Structure – Relationship Between Class A Common Stock and LP/LLC Units

Maintenance of “Parity” between holders of Class A common stock and holders of LP/LLC Units

- Equivalence between Class A common stock issued and LP/LLC Units held by IPO Corp.
- No assets at IPO Corp. except LP/LLC Units
 - Activities conducted at IPO L.P./L.L.C. 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 IPO L.P./L.L.C.

UP-C Organizational Structure – Why?

What benefits does it provide?

- Increasingly common in IPOs of businesses taxed on a pass-through basis
- Permits owners of private business taxed on a pass-through basis to continue to retain this treatment in respect of their ownership interests even following an IPO
- The publicly-traded corporation receives a step-up in tax basis that reduces its corporate income tax as pre-IPO owners exchange their partnership interests for publicly-traded shares. The benefit of these tax reductions is commonly shared with the pre-IPO owners

What costs does it impose?

- Can adversely impact liquidity for pre-IPO owners and result in additional complexity and ongoing reporting and compliance costs

UP-C Structure – Equityholder Agreements

Exchange Right

- Unitholders of IPO L.P./L.L.C. may exchange their units for shares of Class A common stock of IPO Corp. on a one-for-one basis

Registration Rights

- IPO Corp. required to file a registration statement that will permit exchanging unitholders of IPO L.P./L.L.C. to sell shares of Class A common stock received upon exchange without additional holding period

Tax Receivable Agreement

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

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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 initial public offerings, including Hilton Worldwide, The Carlyle Group, Blackstone, MasterCard and Accenture. Josh has extensive experience with complex IPOs, including those employing UP-C and other multiple-tier umbrella partnership structures.

Josh has also advised on spin-offs and other significant strategic transactions, including:

- Blackstone on its 2015 spin-off of its financial advisory businesses and its 2007 sale of \$3 billion of non-voting common units to a sovereign wealth fund established by the People's Republic of China
- 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 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 "Josh Bonnie is 'excellent – very bright and very practical.'"

- MasterCard on its first euro-denominated bond offering in 2015, its inaugural bond offering in 2014 and its 2006 IPO, the largest U.S. IPO of the year
- Ares Management L.P. 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, the third largest IPO in history by a U.S. REIT
- Quintiles on its 2013 IPO
- The Carlyle Group on its 2012 IPO and on all of its subsequent capital markets offerings
- Blackstone in its 2007 IPO, the largest U.S. IPO of the year, and on all of its subsequent capital markets offerings
- Evercore on its 2006 IPO and on all of its subsequent capital markets offerings

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Head of Simpson Thacher's Tax Department, John Hart advises on an array of tax matters—including UP-C, UP-PTP and UPREIT IPOs, formation of private investment funds; REITs and real estate transactions; and asset manager M&A.

He was the lead tax adviser for IPOs by Blackstone and Oaktree and was part of the tax team advising Ares, Carlyle and KKR on their IPOs. He also represented issuers in other recent IPOs, including Hilton, Brixmor, Extended Stay Hotels (counsel to co-sponsor) and La Quinta.

He presents each year on umbrella partnership transactions at the annual Practising Law Institute partnership tax conferences in Chicago and NY and has presented at conferences sponsored by the NYU Real Estate Institute, the International Bar Association, the International Tax Institute, the Yale School of Management and many other groups.

- Hilton Worldwide in its \$2.35 billion IPO (the largest lodging IPO ever), as well as over \$5 billion of secondary offerings and in connection with the restructuring of \$15 billion in debt
- Brixmor in its \$825 REIT IPO (one of the largest REIT IPOs in 20 years), as well as in nearly \$3 billion of secondary offerings and its \$700 million maiden investment grade bond offering
- LaQuinta Holdings Inc. in its IPO, as well as in its \$460 million secondary offering
- Oaktree Capital Group, LLC in its IPO
- Blackstone in the spin-off of its financial and strategic advisory services, restructuring and reorganization advisory services

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