IPAA's Private Capital Conference 2017

New Product Structures/ Innovative Transactions

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COMPARISON OF CONVENTIONAL PUBLIC CO. & UP-C STRUCTURES

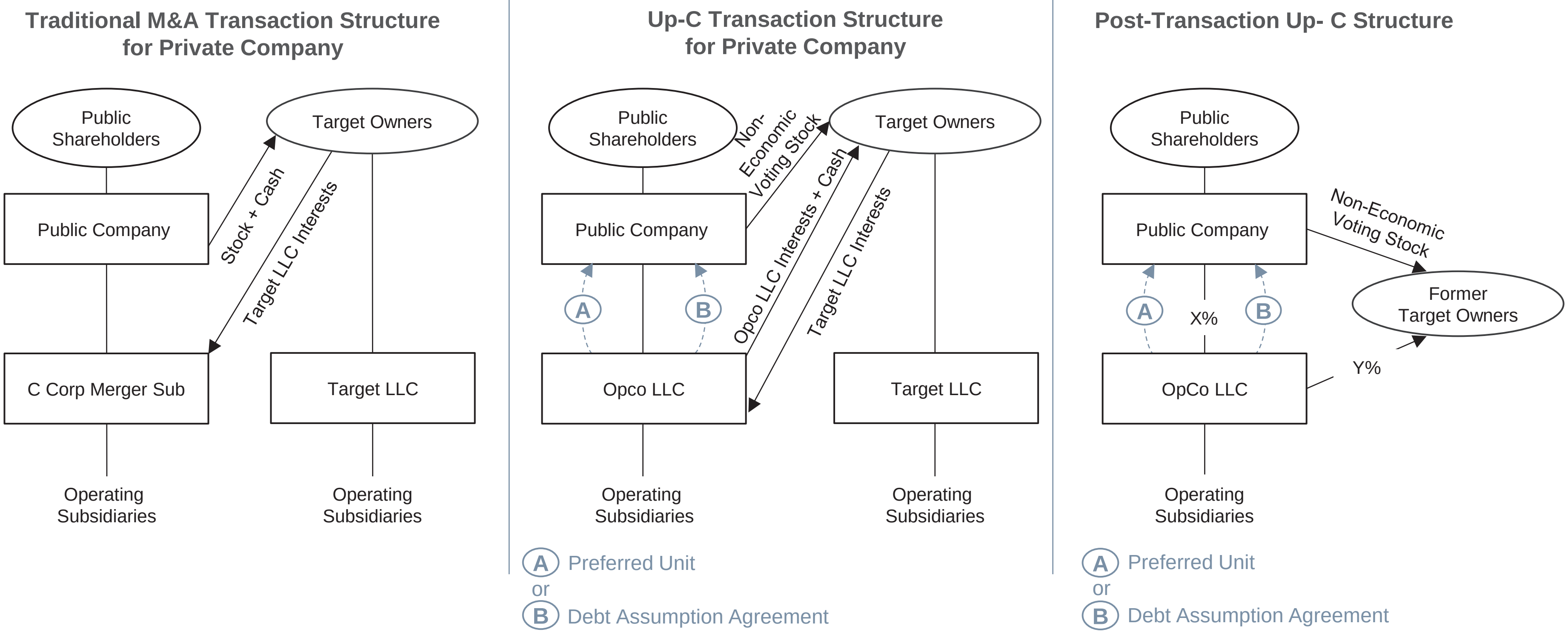
	Conventional Public Company	UP-C Structure
Public Market Transparency / Investor Demand	▪ Corporate structure is well recognized and accepted by public markets ▪ Variations such as dual class voting and control by parent company should be analyzed on case-by-case basis	▪ Structure provides same economics and value to public investors as conventional structure ▪ In a variety of scenarios, the structure could result in substantial tax benefits to public shareholders (e.g., asset basis step-up results from company effecting secondary sale via taxable exchange of its LLC interest for C Corp stock)
Tax Consolidation / Single Level Taxation	▪ All of public company's earnings are subject to corporate level tax and any dividends would be subject to second level of tax ▪ No ability to use operating losses from other sources to offset taxable income of public company	▪ Under certain limited circumstances, public company management can receive flow-through tax benefits of OpCo structure ▪ Under certain limited circumstances, OpCo owners can use operating losses from operations or other sources to offset taxable income allocations from OpCo
Increased Tax Depreciation / Amortization	▪ Future secondary sales by partner owners will result in capital gains tax but will not result in any tax basis step-up in public company's assets	▪ Future secondary sales (via exchange of OpCo interests for public company stock) will increase tax basis of the public company's interest in OpCo by amount of gain recognized ▪ This will increase cash flow due to less public company current taxes

COMPARISON OF CONVENTIONAL PUBLIC CO. & UP-C STRUCTURES

	Conventional Public Company	UP-C Structure
Control	▪ Vote and value typically linked unless separate class of supermajority stock issued	▪ Vote and value can be separated through several different options including issuing special non-economic "golden shares" to OpCo owners or via election of a majority of directors of public company or including approval rights on material transactions of OpCo
Subsequent Acquisitions by Public Company	▪ Can acquire public or private corporations in tax-free mergers using its publicly traded stock as acquisition currency ▪ The public company can offer preferred stock (convertible or non-convertible) as tax-free acquisition currency, but dividends on preferred are not tax deductible	▪ Can effect tax-free mergers with target corporations by merging target into the public company in exchange for public company stock and dropping assets into OpCo ▪ Ability to acquire private companies (S corps and partnerships) using a tax-deductible preferred partnership interest (convertible or non-convertible) as tax-free acquisition currency ▪ Cash acquisitions also feasible using variety of structures

UP-C STRUCTURES IN M&A CONTEXT

Different Transaction Structures for Private Company M&A by a Public Company Buyer



UP-C STRUCTURES IN M&A CONTEXT

Benefits and Disadvantages of Up-C Structure

Traditional M&A Transaction

- **Structure**
  - Public C corp buys a private company organized as a pass-through entity (e.g., LLC or LP) using cash and/or stock
- **Advantages**
  - Public company shares received as consideration can provide near-term liquidity for former target owners
- **Disadvantages**
  - Public company share consideration is immediately taxable, so some near-term selling is likely inevitable
  - Limited ability to capitalize on upside potential of target assets (to the extent of shares disposed of to satisfy tax payments)

Up-C M&A Transaction

- **Structure**
  - Public C corp uses its primary operating company (organized as a pass-through) to buy a private company organized as a pass-through using cash and/or OpCo interests that are exchangeable for public C corp stock
- **Advantages**
  - OpCo LLC interests received as consideration may not be immediately taxable
  - Former target owners can benefit in value appreciation of OpCo assets
  - Former target owners' income from OpCo is not subject to two levels of federal income tax
- **Disadvantages**
  - Increases complexity

UP-C STRUCTURES IN IPO CONTEXT

A Traditional Corporate IPO is the Most Common and Well-Known Form of Accessing Public Capital

The traditional corporate structure generally results in two levels of tax (double taxation) – the public corporation pays tax on its earnings, and the shareholders generally pay tax on distributions received from the public corporation.

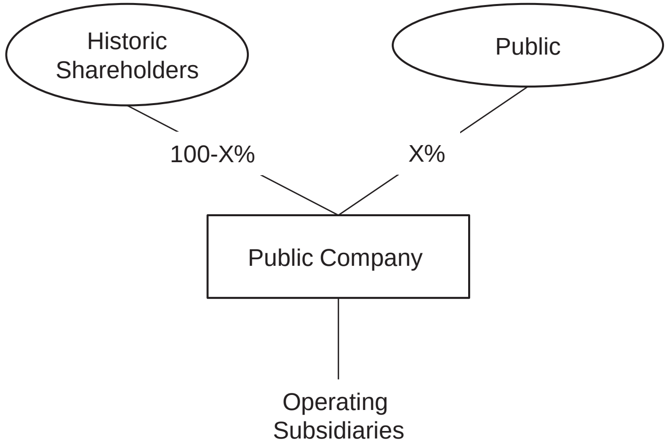
Well recognized and accepted in the public market.

Historically, a desirable form of accessing public capital for a variety of reasons/circumstances:

- Insufficient qualifying income to be an MLP – traditional public company is not subject to any qualifying income or qualifying asset tests
- Long-term capital expenditure needs
- Desire to reinvest or grow through acquisition, as opposed to distributing out profits
- Global investor base
- Value based on prospective earnings growth (as opposed to a cash yield-based valuation)

If currently in partnership form, consider method of conversion (and timing) to corporation in preparation of IPO (e.g., assets-over, assets-up, interests-over, formless).

Typical Conventional Public Company Organizational Structure



UP-C STRUCTURES IN IPO CONTEXT

The UP-C Structure — Which Offers Tax Benefits to Pre-IPO Investors and Sponsors — Likely Will Expand Among Companies

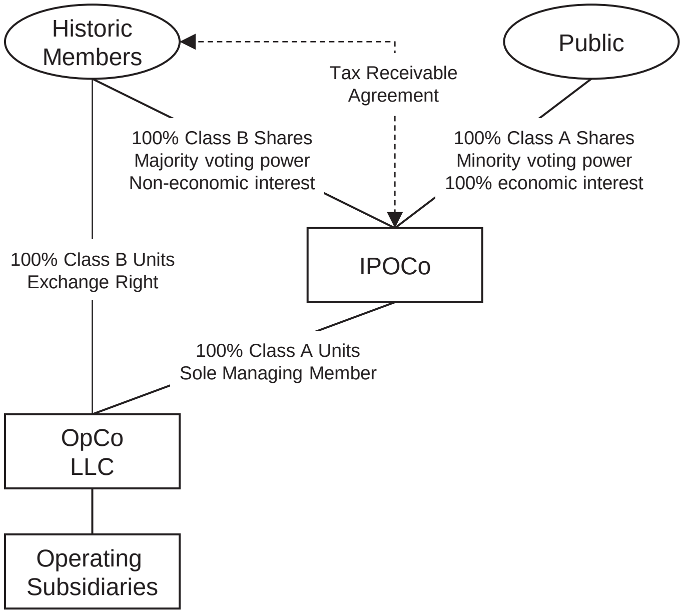
In using this structure, the public company (“IPOCo”) typically owns a substantial equity interest in a subsidiary tax passthrough holding company (“OpCo”), which owns the operating assets. The equity interests in OpCo not held by IPOCo are typically owned by the pre-IPO investors, which may consist of individual investors, private equity funds, management or others.

- The pre-IPO investors in OpCo have the right to exchange their OpCo equity interests for shares in IPOCo, at which point IPOCo gets a stepped-up tax basis in the OpCo equity interests (which results in tax savings to IPOCo through additional depreciation and amortization) and the pre-IPO investors are taxed on any gain recognized as a result of the exchange.
- The pre-IPO investors and IPOCo may enter into a tax receivable agreement pursuant to which IPOCo would pay the pre-IPO investors a portion (typically 75% to 85%) of the tax benefits (*e.g.* the increased depreciation and amortization) realized from the basis step-up resulting from the exchanges.

The following energy companies have gone public using a so-called UP-C structure:

- Athlon Energy Inc.
- Frank’s International N.V.
- Jones Energy, Inc.
- Plains GP Holdings, L.P.
- Parsley Energy, Inc.

Typical UP-C Organizational Structure



OUR EXPERTISE

LEADING ENERGY IPOs

68 ENERGY IPOS SINCE **2013**

LATHAM INVOLVED IN **43**

63% MARKET SHARE

LEADING IPOs ACROSS ALL INDUSTRIES

835 IPOS SINCE **2013**

LATHAM INVOLVED IN **209**

25% MARKET SHARE

Band 1

Top Ranked Debt & Equity Capital Markets in Texas

Chambers USA 2016

1

Global Oil & Gas Follow On Offerings Underwriter's Counsel by Deal Count

US Oil & Gas High Yield Debt Offerings by Deal Count and Deal Value

Thomson Reuters 1H 2016

RECENT NOTABLE M&A TRANSACTIONS

Noble Energy to Acquire Clayton Williams Energy for $2.7 Billion

1/16 – **Noble Energy Inc.** (**NBL**) and **Clayton Williams Energy** (**CWEI**) announced a definitive agreement under which Noble Energy will acquire all of the outstanding common stock of Clayton Williams Energy for $2.7 billion in Noble Energy stock and cash.

Following completion of the transaction, shareholders of Clayton Williams Energy are expected to own approx. ~11% of outstanding shares of Noble Energy. Closing is expected in 2Q17.

Latham & Watkins represented **Clayton Williams Energy** in the transaction.

Anadarko Announces $2.3 Billion Sale of Eagleford Shale Assets to Sanchez Energy and Blackstone Group

1/12 – **Anadarko Petroleum Corp.** (**APC**) announced an agreement to sell its Eagleford Shale assets in South Texas for approx. **~$2.3 billion** to **Sanchez Energy Corporation** and **Blackstone Group LP**. The divestiture includes approx. ~155,000 net acres primarily located in Dimmit and Webb counties with sales volumes of approx. ~45,000 barrels of liquids per day and ~131 million cubic feet of natural gas per day (as of the end of 4Q16).

Western Gas Partners (**WES**) will continue to own and operate its midstream assets in South Texas and is expected to benefit from drilling commitments made by the buyers in conjunction with this transaction, which is expected to close in 1Q17.

Latham & Watkins represented **Anadarko Petroleum** in the transaction.

Band 1

Top Ranked Firm for Corporate M&A in Texas

Chambers USA 2016

1

US Oil & Gas M&A Acquirer's Counsel by Value

Thomson Reuters 1H 2016