

# Memorandum

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## SEC Expands Favorable Rule 144 Interpretive Guidance to UP-PTP Structures

November 17, 2016

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On November 16, 2016, the staff of the Division of Corporation Finance of the Securities and Exchange Commission orally confirmed to Simpson Thacher & Bartlett LLP that its recent interpretive guidance relating to the Rule 144(d) holding period for corporation shares or REIT shares acquired upon an exchange of operating partnership units in UP-C and UPREIT structures also applies to similar Umbrella Partnership – Publicly Traded Partnership (UP-PTP) structures.<sup>1</sup>

Accordingly, the Rule 144(d) holding period for publicly traded partnership units acquired upon an exchange of operating partnership units in an UP-PTP structure having features analogous to the UP-C and UPREIT structures described in the previously-issued interpretive guidance commences upon the holder's acquisition of (including payment of the full consideration for such operating partnership units under Rule 144(d)(1)) the operating partnership units.

While relatively few companies employ an UP-PTP structure, we believe that the staff's oral guidance is sufficiently broad that it should apply to those UP-PTP structures employing the range of features that have developed in the marketplace to date and permit holders of operating partnership units in these UP-PTP structures who have held such units for the requisite holding period under Rule 144 to rely on that rule to immediately publicly resell the publicly traded partnership units they receive upon an exchange of such operating partnership units, subject where applicable to the limitations of Rule 144 relating to affiliates of the PTP.

Click [here](#) for additional information regarding the UP-C and other umbrella partnership structures.

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<sup>1</sup> See UP-C Structure, available at <https://www.sec.gov/divisions/corpfin/cf-noaction/2016/up-c-110116-144.htm>; and Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Inc., available at <https://www.sec.gov/divisions/corpfin/cf-noaction/2016/bankofamerica-merrilllynch-pfs-031416-144.htm>.

For further information about this development, please contact one of the following members of the Firm's Corporate Department.

WASHINGTON, D.C.

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**Joshua Ford Bonnie**  
+1-202-636-5804  
[jbonnie@stblaw.com](mailto:jbonnie@stblaw.com)

NEW YORK CITY

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**Joseph H. Kaufman**  
+1-212-455-2948  
[jkaufman@stblaw.com](mailto:jkaufman@stblaw.com)

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UNITED STATES

---

New York  
425 Lexington Avenue  
New York, NY 10017  
+1-212-455-2000

Houston  
600 Travis Street, Suite 5400  
Houston, TX 77002  
+1-713-821-5650

Los Angeles  
1999 Avenue of the Stars  
Los Angeles, CA 90067  
+1-310-407-7500

Palo Alto  
2475 Hanover Street  
Palo Alto, CA 94304  
+1-650-251-5000

Washington, D.C.  
900 G Street, NW  
Washington, D.C. 20001  
+1-202-636-5500

EUROPE

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London  
CityPoint  
One Ropemaker Street  
London EC2Y 9HU  
England  
+44-(0)20-7275-6500

ASIA

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Beijing  
3901 China World Tower  
1 Jian Guo Men Wai Avenue  
Beijing 100004  
China  
+86-10-5965-2999

Hong Kong  
ICBC Tower  
3 Garden Road, Central  
Hong Kong  
+852-2514-7600

Seoul  
25th Floor, West Tower  
Mirae Asset Center 1  
26 Eulji-ro 5-Gil, Jung-Gu  
Seoul 100-210  
Korea  
+82-2-6030-3800

Tokyo  
Ark Hills Sengokuyama Mori Tower  
9-10, Roppongi 1-Chome  
Minato-Ku, Tokyo 106-0032  
Japan  
+81-3-5562-6200

SOUTH AMERICA

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São Paulo  
Av. Presidente Juscelino  
Kubitschek, 1455  
São Paulo, SP 04543-011  
Brazil  
+55-11-3546-1000