

Sean T. Wheeler
Latham & Watkins MLP Practice

Comparison of Typical MLP and Yieldco Structures

The rise of master limited partnerships (MLPs) as an asset class has coincided with investors' desire for stable and growing cash flow. In 2013, there were 21 initial public offerings (IPOs) of MLPs and more are on the way in 2014. In general, only entities that generate income from qualifying natural resource activities can be traded on a national securities exchange and be treated as a pass-through for federal income tax purposes (that is, not be subject to federal income taxes at the entity level). The economic structure of an MLP is unique relative to other publicly traded entities, because the entire economic structure of an MLP revolves around cash flow. In fact, MLPs are traded based on a multiple of cash flow — not net income.

In 2013, a new type of vehicle went public with a story very similar to an MLP but without possessing assets that would qualify for pass-through tax treatment. This entity (Yieldco) owns, operates and acquires contracted renewable and conventional generation and thermal infrastructure assets, which are not "MLP-able" assets. Like MLPs, Yieldco and similar companies are positioning themselves as vehicles for investors seeking stable and growing dividend income from a diversified portfolio of lower-risk high-quality assets. More of these types of vehicles are in the planning stages.

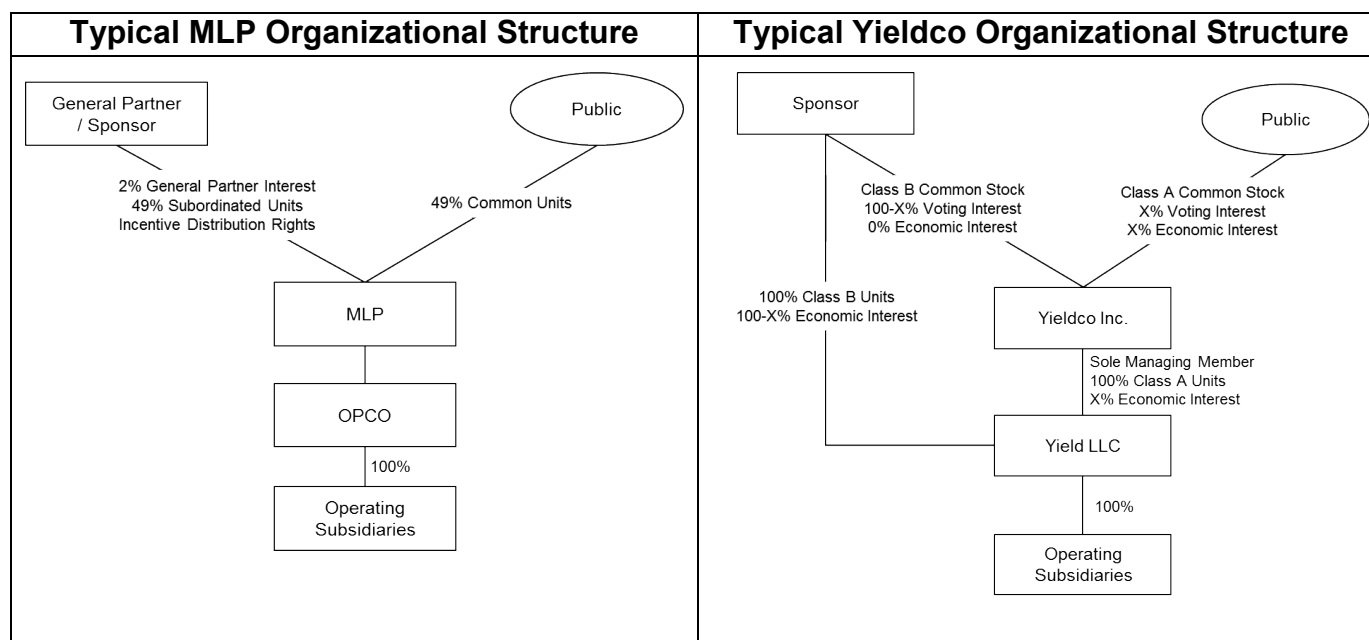
This article examines the similarities and differences between a typical MLP and Yieldco.

	MLP	Yieldco
Type of Entity	Partnership or Limited Liability Company	Corporation
Capital Structure		
Types of Equity Securities of the Public Company; Sponsor Ownership of Operating Company	<ul style="list-style-type: none"> • Common Units (rights to quarterly distributions, subject to limited voting rights on significant matters) • Subordinated Units (rights to quarterly distributions after payment on common units, subject to limited voting rights on significant matters) • Incentive Distribution Rights (the right to increasing percentages of cash flow ranging from 13%-48% based on increases in common unit distributions) • General Partner Interest (represents the controlling voting interest in the MLP, subject to limited exceptions) • MLP owns 100% of the operating company, unless using an OPCO structure (in 	<ul style="list-style-type: none"> • Class A common stock of Yieldco issued to the public (initially representing x% of the voting interest in Yieldco and indirectly providing holders x% of the consolidated distributable cash flows of Yieldco's subsidiaries) • Yieldco holds a Class A unit of its operating subsidiary (OPCO) for each share of outstanding Class A common stock (providing Yieldco x% of the consolidated distributable cash flows of Yieldco's subsidiaries) • Sponsor issued Class B common stock of Yieldco (initially representing 100-x% of the voting interest in Yieldco) and a corresponding Class B unit of OPCO (providing

	which case the MLP owns a percentage of the OPCO and the sponsor owns the remainder)	sponsor 100-x% of the consolidated distributable cash flows of Yieldco's subsidiaries)
Common Post-IPO Capitalization	49% held by public, 49% held by sponsor and 2% held by general partner	Majority of voting control and economics held by sponsor
Exchange and Registration Rights	No exchange rights but subordinated units convert to common units and the sponsor has registration rights	Each Class B unit of OPCO is exchangeable with Yieldco for a share of Class A common stock; sponsor has registration rights
Economics		
Quarterly Cash Payment	Yes	Yes
Projection of Quarterly Distribution Increase	No	Yes (20% within first 18 months)
Subordination of Sponsor Distributions from Yieldco to Public Distributions	Yes	No (sponsor does not own dividend paying securities in Yieldco; sponsor owns dividend paying securities in subsidiary of Yieldco that can be exchanged for dividend paying securities — that is, Class A common stock — of Yieldco)
Incentive Distribution Rights	Yes	No
Forecasted Cash Available for Distribution in Prospectus	Yes (generally 12 months after most recent balance sheet date)	Yes (24 months after most recent balance sheet date)
Reliance on Net Operating Losses and Carryforwards (NOLs) to Offset Future Income Taxes	No	Yes
Yield at IPO (the ratio of the annualized distribution to the IPO price)	Midstream: 4-6% Shipping: 6.8-8.0% Refining: 11-15%	Approximately 5.5%
Governance		
Board of Directors	Yes (at general partner)	Yes (at Yieldco)
Requirement for Majority Independent Board	No	No for so long as the sponsor retains voting control
Requirement for Independent Audit Committee	Yes	Yes
Requirement for Independent Compensation Committee	No (but some MLPs have compensation committees)	No for so long as the sponsor retains voting control (but Yieldco has a compensation committee)
Requirement for Independent Governance Committee	No (but some MLPs have governance committees)	No for so long as the sponsor retains voting control (but Yieldco has a governance committee)
Use of Independent Conflicts Committee	Yes (special provisions in partnership agreement regarding the	Yes (part of governance committee)

	legal consequences of using this type of committee)	
Annual Election of Directors by Security Holders	No	Yes
Requirement to Mail Annual Proxy Statement	No	Yes
Subject to "Good Faith" Duty as a Replacement for Customary Fiduciary Duties	Yes	No
Shareholder Approval Required to Issue Greater Than 20% of Equity	No	Yes
Shareholder Approval Required to Issue Equity to Affiliates	No	Yes
Shareholder Approval Required to Approve Equity Compensation Plans	Yes	Yes
FERC-related Repurchase or Redemption Provisions	Yes	Yes
Related Party Agreements		
Services Agreement	Common	Yes
Indemnification for Environmental, Tax and Other Liabilities	Yes	No
Right of First Offer on Sponsor Assets	Common	Yes (but only in respect of certain enumerated assets)
Noncompete on Specified Business Opportunities	Common	No
License to Use Sponsor Marks	Yes	Yes
Registration Rights	Yes	Yes
Tax Matters		
General	A partnership is not a taxable entity and incurs no federal income tax liability. Instead, each partner of a partnership is required to take into account his share of items of income, gain, loss and deduction of the partnership in computing his federal income tax liability, regardless of whether cash distributions are made to him by the partnership. Distributions by a partnership to a partner are generally not taxable to the partnership or the partner unless the amount of cash distributed to him is in excess of the partner's adjusted basis in his partnership interest.	Distributions treated as dividends under US tax law only to the extent paid out of current or accumulated earnings and profits. If cash dividends exceed current and accumulated earnings and profits for a taxable year, the excess cash dividends would not be taxable as a dividend but rather be treated as a return of capital for US federal income tax purposes, which would result in a reduction in the adjusted tax basis of the shares to the extent thereof, and any balance in excess of adjusted basis would be treated as a gain for US federal income tax purposes.
Requirement to Have 90% Qualifying Income Under	Yes. Qualifying income includes income and gains derived from the	No

Section 7704 of IRC	transportation, processing, storage and marketing of crude oil, natural gas and products thereof. Other types of qualifying income include interest (other than from a financial business), dividends, gains from the sale of real property and gains from the sale or other disposition of capital assets held for the production of income that otherwise constitutes qualifying income.	
Period During Which Federal Income Taxes are Expected to be Insignificant	Infinite	5 to 10 years due to NOLs, unless further NOLs are created
Form of Annual Federal Income Tax Statement	Schedule K-1	Form 1099
Tax Shield (the reciprocal of the ratio of taxable income to cash distributions)	Typically 80%	100% for 5 to 10 years using NOLs



This article is one of a series that examines the unique characteristics of MLPs. For further information on MLPs, visit the MLP Portal at www.lathammlp.com.

CONTACT

Sean T. Wheeler

Houston

sean.wheeler@lw.com

+1.713.546.7432



Sean T. Wheeler is a partner in Latham & Watkins' Houston office and Co-chair of the Oil & Gas Industry Team. His practice focuses on corporate transactions in the oil and gas industry including substantial experience representing master limited partnerships.

Unsubscribe and Contact Information

If you wish to update your contact details or customize the information you receive from Latham & Watkins, please visit <http://events.lw.com/reaction/subscriptionpage.html> to subscribe to our client mailings. To ensure delivery into your inbox, please add LathamMail@lw.com to your e-mail address book. If you wish to be removed from our distribution, please click this link, unsubscribe@lw.com, or reply to this message with "Unsubscribe" in the subject line.

Over the coming months we will be transitioning to a new, dedicated, domain for Latham & Watkins marketing materials. Please look out for messages from @LWCommunicate.com and add to your whitelist as appropriate. Messages from individual lawyers regarding matters will continue to come from addresses @LW.com

Latham & Watkins operates worldwide as a limited liability partnership organized under the laws of the State of Delaware (USA) with affiliated limited liability partnerships conducting the practice in the United Kingdom, France, Italy and Singapore and as affiliated partnerships conducting the practice in Hong Kong and Japan. The Law Office of Salman M. Al-Sudairi is Latham & Watkins associated office in the Kingdom of Saudi Arabia. In Qatar, Latham & Watkins LLP is licensed by the Qatar Financial Centre Authority. Under New York's Code of Professional Responsibility, portions of this communication contain attorney advertising. Prior results do not guarantee a similar outcome. Results depend upon a variety of factors unique to each representation. Please direct all inquiries regarding our conduct under New York's Disciplinary Rules to Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022-4834, Phone: +1.212.906.1200. © Copyright 2014 Latham & Watkins. All Rights Reserved.