UP, UP AND AWAY

THE UP-C IPO

THE JOBS ACT was created to enable smaller companies to gain access to the US capital markets, and, in the case of our client, Truett-Hurst, Inc., many of the Act's provisions smoothed the way. Truett is an innovative and fast-growing wine sales, marketing and production company based in Sonoma County, California. In its IPO, which was led by WR Hambrecht+Co, the company relied on many of the disclosure accommodations and other benefits afforded to emerging growth companies. Always an innovator, the investment bank conducted the IPO using the OpenIPO® auction-based process in which participation in the offering is open to all investors. An auction determined the public offering price and allocation of the shares. This also was the first instance in which pre-deal research was employed.

Perhaps of longer term significance, the IPO relied on the use of an "Up-C" structure, the first Up-C structure for a winery. In an Up-C structure, the publicly offered company acquires an ownership interest in an LLC, which is a partnership for tax purposes. Existing investors retain their interests in the LLC (subject only to one level of tax), which become convertible on a one-for-one basis into the public company stock. This permits existing owners to retain flow-through taxation while giving the enterprise a tool for tax-free acquisition of new properties through use of LLC units. Pre-IPO existing equity owners achieved liquidity with respect to LLC interest which may be exchanged for public stock. The public company receives a "step-up" in tax basis in the assets of the LLC upon exchanges by the pre-IPO existing equity owners. The up-C structure is not useful to all issuers. Yet, the increasing frequency of its use suggests that issuers considering IPOs should keep this structure in mind.