

## TRANSACTION DESCRIPTION AND ANALYSIS

### FACTS

Three individuals will form a new entity, A LLC, which they will own in equal shares, and A LLC will be its own ultimate parent entity. A publicly traded master limited partnership ("MLP"), which is its own ultimate parent entity, will form a new entity, B LLC, and MLP will be the ultimate parent entity of B LLC. A LLC and B LLC will be formed for the purpose of acquiring a barge transportation business, including vessels and other related assets. Currently neither the three individuals nor the MLP engage in the barge transportation business.

Immediately prior to the transactions described below, JVco LLC will own 75% of Holdco LLC, Holdco LLC will own 52.5% of Newco LLC, and Newco LLC will operate the barge transportation business, including owning the vessels and related assets. A third party entity unrelated to the three individuals or the MLP ("Third Party") will own 99.99% of JVco LLC (a selling affiliate of Third Party owning the other 0.01%), the remaining 25% of Holdco LLC and the remaining 47.5% of Newco LLC.

A LLC and B LLC will enter into an agreement with Third Party and the selling affiliate pursuant to which A LLC will purchase 90.67% of JVco LLC for a purchase price of approximately \$46.92 million, and pursuant to which B LLC will purchase 9.33% of JVco LLC, 25% of Holdco LLC and 17.5% of Newco LLC for an aggregate purchase price of approximately \$45.08 million, with the aggregate purchase price being approximately \$92 million. Following closing of the purchases, Newco LLC will redeem the 30% interest in Newco LLC held by Third Party for \$30 million, which redemption payment counts as part payment of the purchase price. The redemption has the effect of converting Holdco LLC's 52.5% interest in Newco LLC to a 75% interest and converting B LLC's 17.5% interest in Newco LLC to a 25% interest. Immediately following closing of the purchases and the redemption, JVco LLC, Holdco LLC and Newco LLC will be owned as set forth on the attached Ownership Structure, and prior to and following the



redemption A LLC will be the ultimate parent entity of JVco LLC, Holdco LLC and Newco LLC.

Part of the related assets owned by Newco LLC include contracts for new vessels that are currently under construction. Approximately \$27 million will be still payable under such contracts if certain terms and conditions are satisfied, and it is contemplated that the approximately \$27 million will be paid by Newco LLC following the closing as the vessels are completed.

At the time of the closing of the approximately \$92 million purchase, A LLC will not have had any revenues and will not have a regularly prepared balance sheet. At such time of closing, A LLC will have enough cash to pay its portion of the purchase price and the expenses related to the purchase and closing, which are currently estimated to be approximately \$2.22 million in the aggregate. However, the value of any other cash or other assets in A LLC will be less than \$10 million, and it is contemplated that the amount of cash in A LLC after paying its portion of the purchase price and related expenses will be \$4 million or less. It is not contemplated that A LLC, JVco LLC or Holdco LLC will hold any assets other than the ownership of interests shown on the attached Ownership Structure.

#### **QUESTION**

Is any filing required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), in connection with the transactions described above? **NO**

#### **ANALYSIS**

The acquisition of control of JVco LLC by A LLC is not reportable under the Act because the value of the interests received is less than \$63.1 million, the current threshold. The acquisition by B LLC of interests in JVco LLC, Holdco LLC and Newco LLC are not reportable under the Act because B LLC did not acquire control of any of those entities and because the value of the interests received is less than \$63.1 million.

In addition, the acquisition by A LLC is not reportable under the Act because A LLC is not a \$10 million person in that A LLC will have less than \$10 million of assets, after paying its purchase price and related expenses, in accordance with 16 C.F.R. §801.11(e).

In view of the foregoing, it is our understanding that the transactions described above would be exempt from the filing requirements under the Act.

AGREE -  
B ✓  
6/18/08

# BARGE TRANSPORTATION BUSINESS

## Ownership Structure

