

# Master Limited Partnerships for Companies Operating Outside of the US

# Presentation Overview

- This presentation provides an overview of the public offering process for companies domiciled in non-US jurisdictions wishing to access the US capital markets using a “master limited partnership” structure.
- Although this presentation may provide information concerning potential legal issues, it is not a substitute for legal advice from qualified counsel.
- The presentation is not created or designed to address the unique facts or circumstances that may arise in any specific instance, and you should not and are not authorized to rely on this content as a source of legal advice and this seminar material does not create any attorney-client relationship between you and Latham & Watkins.

# About Latham

MLPs are a critical component of energy infrastructure in the United States. Latham's MLP Practice combines capital markets, M&A, finance, tax and environmental expertise in Houston with expertise in employee benefits and regulatory practices in other offices around the country to provide premier advisory services to energy industry clients.

Latham attorneys have decades of experience advising clients on MLPs, beginning with the structuring of the first MLPs in the early 1980s.

Latham is a **thought leader in the MLP space**, having created, among other things, the MLP portal and the MLP Book of Jargon.

Latham is ranked **#1 for MLP IPOs** by Deal Count for 1H2013 by Thomson Reuters.

Since January 2010, Latham has represented issuers and underwriters on **more than half of all MLP IPOs filed**.

Consistently ranked among the **elite IPO legal advisors**, our attorneys have worked on IPOs throughout the world.

Our **team includes several former SEC** officials and we have unique insight on the SEC and access with its review process.

## Top Initial Public Offerings Law Firms IPO Leaders:

### Issuer and Underwriter Representations\* Rankings by Number of Completed US IPOs

Firm	No. of IPOs	Rank
<b>Latham &amp; Watkins</b>	<b>97</b>	<b>1</b>
Davis Polk & Wardwell	81	2
Skadden Arps Slate Meagher & Flom	69	3
Simpson Thacher & Bartlett	60	4
Wilson Sonsini Goodrich & Rosati	47	5
Vinson & Elkins	35	6
Maples and Calder	35	7
Commerce & Finance	28	8
Cooley	28	9
Conyers Dill & Pearman	27	10

\* Source: IPO Vital Signs 2009 - 2012



## THE MLP PORTAL

[www.lathammlp.com](http://www.lathammlp.com)

# Presentation Overview

- **Part I – The Basics of US Securities Laws**
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  - Benefits of Being a Foreign Private Issuer
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  - Golar LNG Partners LP
  - KNOT Offshore Partners LP
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# Part I – The Basics of US Securities Laws

# Background to US Securities Laws

- **Two federal statutes govern capital markets transactions**
  - US Securities Act of 1933 (the “Securities Act”)
    - Governs initial offer and sale of securities
  - US Securities Exchange Act of 1934 (the “Exchange Act”)
    - Governs post-issuance trading of securities, on-going reporting obligations and activities of certain market participants
- **Other relevant statutes:**
  - Investment Company Act of 1940
    - Regulates the organization of companies, including mutual funds, that engage primarily in investing, reinvesting, and trading in securities, and whose own securities are offered to the investing public (this act can have structuring implications for an MLP, particularly those using an OPCO structure)
- **US Internal Revenue Code**
  - Federal statutory tax law
- **OFAC; US Sanctions**
  - The US Treasury Department’s Office of Foreign Assets Control (OFAC) administers and enforces a range of comprehensive and targeted economic sanctions programs (sanctioned countries include, among others, Iran, Syria, Sudan, Cuba, Burma/Myanmar and North Korea)
- **Foreign Corrupt Practices Act**
  - The FCPA’s books-and-records provisions require the issuer to maintain and keep books, records and accounts that “accurately and fairly reflect” the transactions and dispositions of assets of the FPI, and design and maintain a system of adequate “internal accounting controls”
  - A FPI is subject to the FCPA’s limitations on corrupt payments to foreign officials, foreign political parties or their intermediaries

# Definition of Foreign Private Issuer

- A foreign private issuer (“FPI”) is an entity (other than a foreign government) incorporated or organized under the laws of a jurisdiction outside of the US, *unless*:
  - more than 50% of its outstanding voting securities are directly or indirectly owned of record by US residents and
  - any of the following:
    - majority of the executive officers or directors are US citizens or residents
    - more than 50% of its assets are located in the US
    - its business is administered principally in the US
- FPI status may be gained or lost
  - Newly registered companies: FPI determination is made as of a date within 30 days prior to the filing of the initial F-1
  - Thereafter: FPI status tested annually at the end of the most recently completed second fiscal quarter

# Benefits of Being a Foreign Private Issuer

- There are several benefits accorded FPIs as compared to domestic issuers:
  - Ability to use US GAAP, IASB IFRS or local GAAP (but reconciled to US GAAP)
  - Quarterly reports (i.e., Form 10-Q) are not required
  - Current reports on Form 8-K are not required; instead, current reports on Form 6-K are furnished
  - Additional time to file annual reports (4 months vs. 75 days)
  - Financial information goes stale more slowly
  - Ability to make confidential submissions
  - Exempt from proxy rules, Regulation FD and Section 16 (short swing profit rules)
  - Exempt from limited aspects of Sarbanes-Oxley



# SEC Registration Forms for FPIs

Form	Description
<b><i>Securities Act Forms</i></b>	
Form F-1	Form for first-time issuers and all other issuers who are not eligible for Form F-3
Form F-3	A short form available for certain offerings by seasoned issuers. Issuers may incorporate by reference information contained in filings made under the Exchange Act, such as an annual report on Form 20-F
Form F-4	The form for business combinations and exchange offers
Form F-6	The form for American Depositary Shares evidenced by American Depositary Receipts
Form S-8	The form for registering securities issued to employees under an employment plan, and interests in such plans
<b><i>Exchange Act Forms</i></b>	
Form 20-F	The form for registering outstanding securities that will be listed on the NYSE or Nasdaq and for annual reports
Form 8-A	A short form available for registering newly issued securities that will be listed on the NYSE or Nasdaq in connection with a concurrent public offering in the US. This form is used in conjunction with the applicable Securities Act registration form.

# Webcast

## Part II - MLP Basics

# MLP Basics

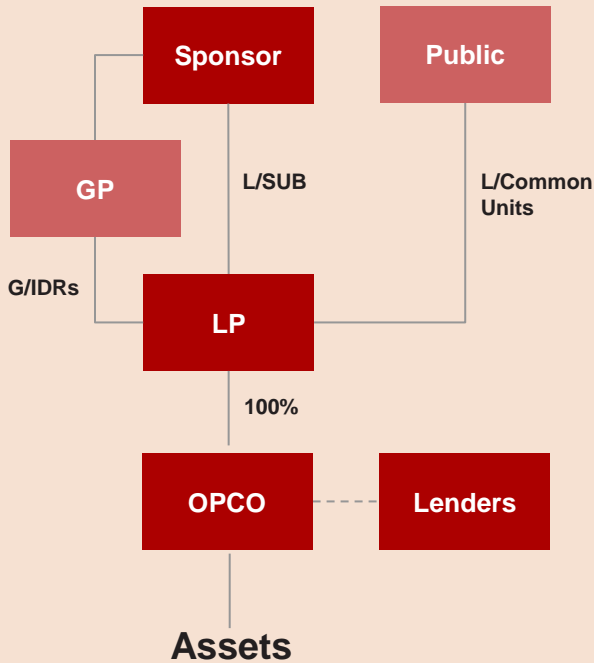
- A master limited partnership (“MLP”) is a partnership or limited liability company that is traded on a stock exchange
  - In contrast to corporations, partnerships generally do not pay federal income tax at the entity level
  - However, publicly traded partnerships are taxed as corporations unless 90% of the gross income is “qualifying income” (the “Qualifying Income Test”)
    - The most prominent category of qualifying income relates to natural resources activities
- Most offshore shipping and drilling rig MLPs are organized as partnerships or limited liability companies under the laws of the Marshall Islands but elect to be treated as corporations for US federal income tax purposes
  - The election to be treated as a corporation for US federal income tax purposes eliminates the need to satisfy the Qualifying Income Test

# MLP Basics

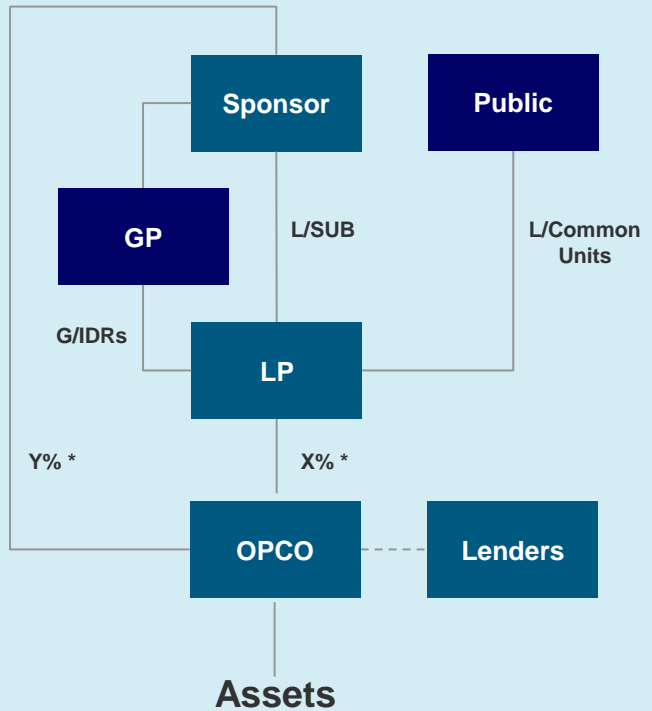
- **Sponsor**
  - Rationale for MLP formation
    - Separate existing lines of business to improve each line's investment profile
    - Access to a lower cost of capital
    - Exit opportunity for a large strategic investor
- **General Partner (“GP”)**
  - Manages and controls the MLP
    - Typically wholly owned by the Sponsor
    - Often is the legal employer of the MLP's employees
    - Typically owns the incentive distribution rights
- **MLP**
  - Public unit issuer
  - Often holds no assets directly
- **Operating Company**
  - Own operating assets
  - May own stock of corporate subsidiaries
  - Incurs debt

# MLP Basics

## Traditional Structure



## OPKO Structure

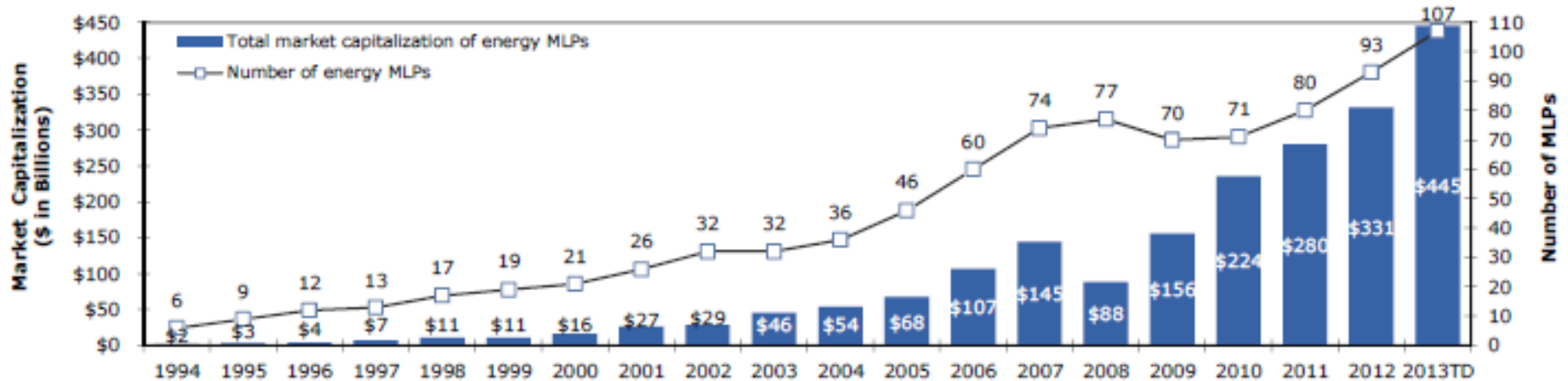


G = general partner interest  
 L = limited partner interest  
 IDRs = incentive distribution rights  
 SUB = subordinated units

\*  $X\% + Y\% = 100\%$

# Part III – MLP Market Overview

# MLP Market Capitalization

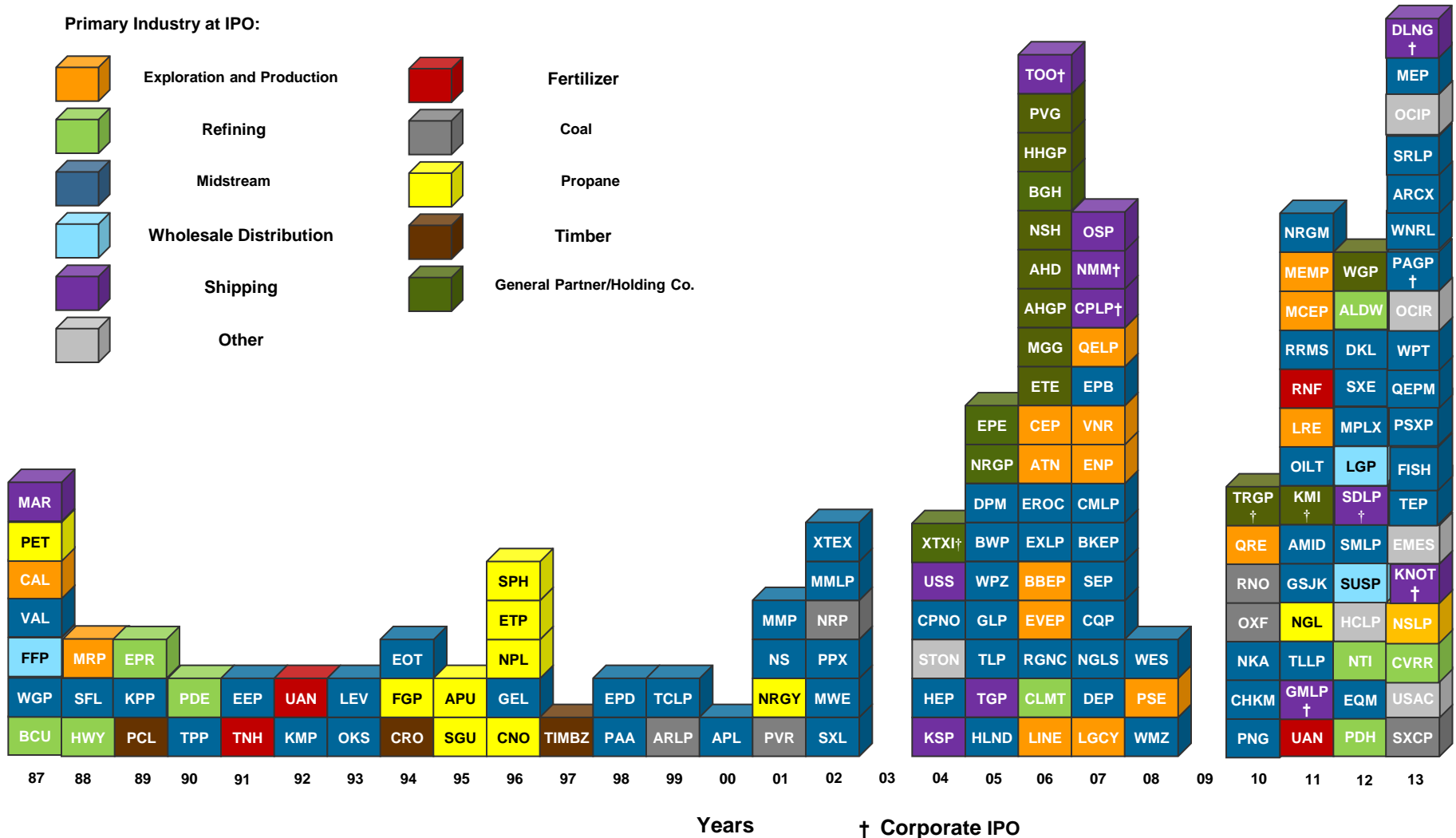
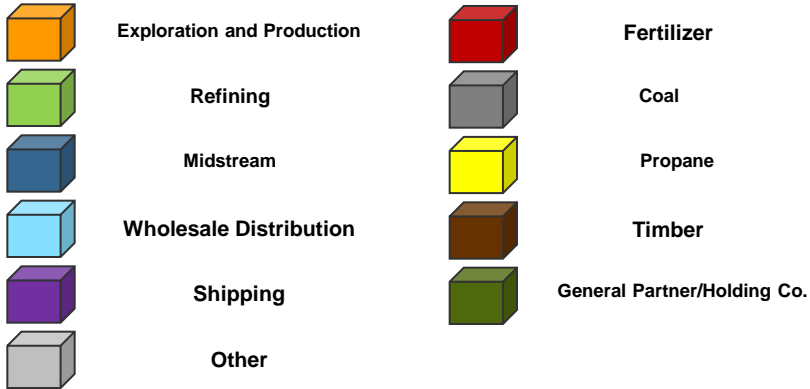


As of October 22, 2013

Source: FactSet, National Association of Publicly Traded Partnerships, and Wells Fargo Securities, LLC

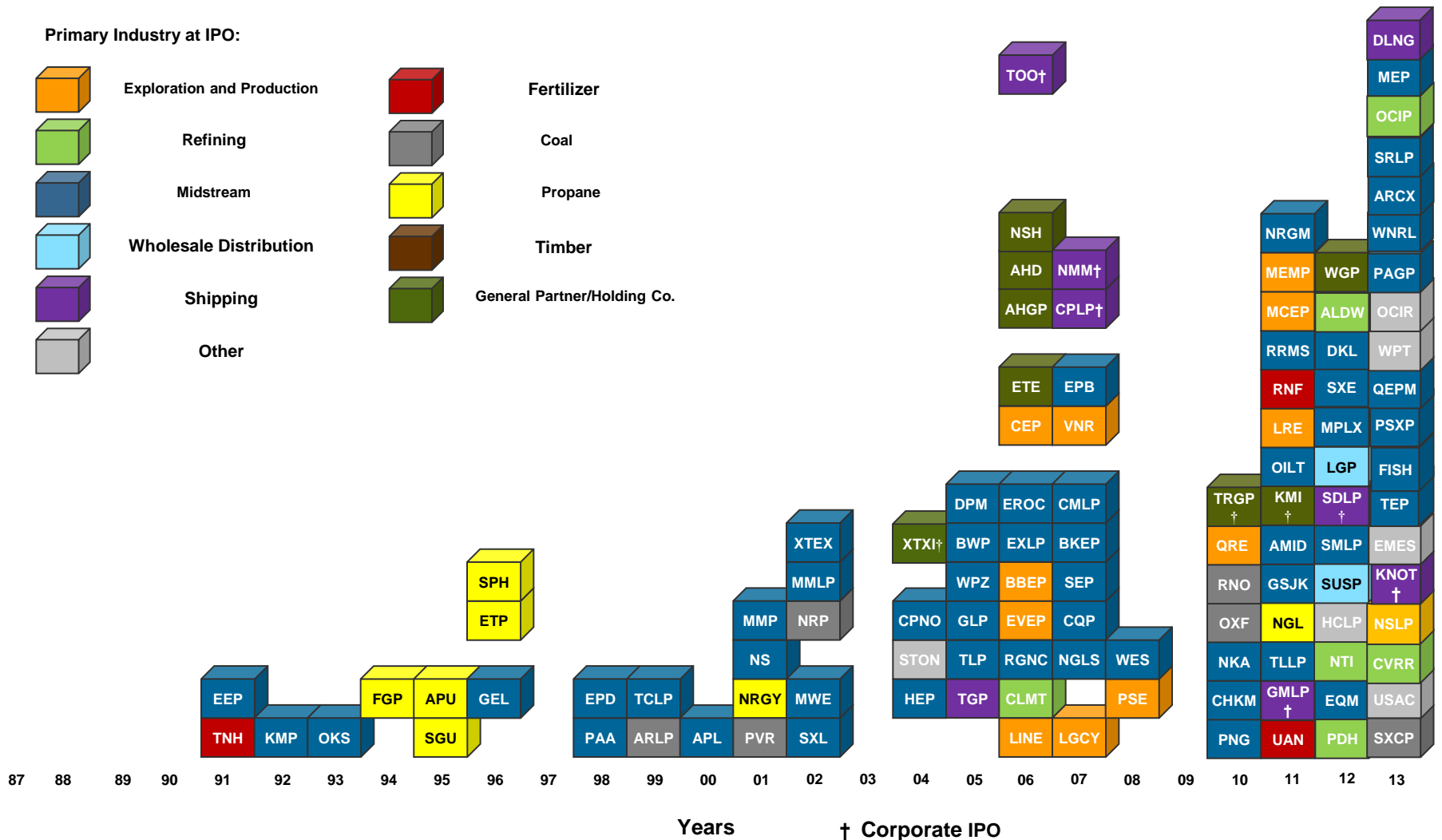
# History of MLPs – IPOs: 1987-2013

## Primary Industry at IPO:





# History of MLPs – Currently Traded



# Recent Market Backdrop

- **2012**

- 2012 was a record year for MLP equity offerings, with approximately 80 offerings for total proceeds of approximately \$22 billion (almost 9% of all equity issuances in 2012)
- 13 MLP IPOs priced for total proceeds of \$3.7 billion
- MPLX LP priced its IPO at \$22, representing a 4.8% yield, the lowest ever MLP yield at IPO at that time (average MLP yield is currently about 6.3%)
- Western Gas Equity Partners LP priced their GP IPO at 10% above the midpoint of the range at a 3.0% yield
- Three variable MLP IPOs priced in 2012 (PetroLogistics, Northern Tier, Alon)
- Approx. 75 reported M&A transactions with total proceeds of \$50 billion (over 100 reported transactions in 2011 with total proceeds of \$72 billion)

- **2013**

- There have been 19 MLP IPOs during 2013.
- PSXP LP priced its IPO at US\$23, representing a 3.7% yield, now the lowest ever MLP yield at IPO. PSXP LP traded up 29% on its first trading day, thereby closing with a 2.9% yield

# Part IV – Potential Issues and Complexities

# Potential Issues and Complexities

- **Tier I – Getting to a Decision by Evaluating the Pros and Cons of an MLP**
  - **Pros**
    - Substantial cash proceeds from the initial public offering
    - Additional source of lower cost capital
    - Strong pricing environment for MLPs
    - Continued control of strategic assets
    - Possible valuation uplift for Sponsor
    - A vehicle to acquire third party assets on more competitive terms
    - Potential future value through IDR distributions
  - **Cons**
    - Subordination of retained equity interest
    - Requirement to distribute all available cash on a quarterly basis
    - Significant retail investor base
    - Managing conflicts of interest
    - Additional costs from running another public company
    - Increased complexity in the organization
    - Risk of value loss during a period of rising interest rates
    - Possible taxable gain on transfers of assets from Sponsor to MLP
    - Difficulties in managing two shareholder constituencies (Sponsor and MLP)
    - Post-IPO indemnification obligations for environmental, title, tax and other matters

# Potential Issues and Complexities

- **Tier II – Considerations After Making Decision to Proceed and Before Initial Filing of Form F-1**
  - **General Business**
    - Finalize business plan, including strengths and strategies and “IPO story”
    - Determination of MLP accounting predecessor and preparation of financial statements
    - Identification of consents and/or amendments to loan agreements and other financing arrangements (existing Sponsor debt/new MLP debt)
    - Evaluate benefits of public vs. confidential filing
  - **IPO Structure, Forecast and Asset Selection**
    - Evaluation of structure of MLP (OPCO vs. traditional)
    - Evaluation of structure of offering (primary and/or secondary; directed share program)
    - Preliminary determination of IPO size, target level of EBITDA and forecasted available cash
    - Calculation of estimated maintenance and replacement capex
    - Identification of assets (asset conveyance issues)
  - **Sponsor/MLP Relations**
    - Determination of business contracts necessary between MLP and Sponsor with respect to contributed assets
    - Identification of employees to service MLP assets and necessary services agreements for dedicated and shared employees
    - General parameters of “omnibus” agreement that will govern relationship between the MLP and Sponsor
      - Future dropdown sales from Sponsor to MLP
        - Will the MLP have a ROFR on any Sponsor assets and/or OPCO interests?
      - Any non-compete provisions between MLP and Sponsor

# Potential Issues and Complexities

- **Tier II – Considerations After Making Decision to Proceed and Before Initial Filing of Form F-1**
  - **Governance**
    - While no decisions need to be made prior to first filing, Sponsor should start considering:
      - Overall board size and board committees
      - Independence analysis for directors
      - Non-independent director candidates
  - **Compensation Matters**
    - Assess preliminary contours of equity incentive plan, including:
      - Types of awards to be available under the plan
      - Outside director annual awards
      - Executive officer awards at IPO, if any
  - **Other**
    - Sponsor “backstop” indemnity in underwriting agreement
    - Selection of underwriters and recommend underwriters’ counsel
    - Selection of stock exchange
    - Selection of financial printer
    - Monitor public communications and adhere to gun jumping rules
    - Update D&O insurance coverage
    - Organize a data room of key documents for diligence purposes

# Potential Issues and Complexities

- **Tier III – Considerations After Initial Filing but Before Marketing of the IPO**
  - Board size
  - Identification of independent directors
  - Selection of non-independent directors
  - Committee assignments and chairpersons
  - Director annual retainers and meeting fees
  - Forecasted cash available for distribution
  - Common unit/subordinated units split
  - MQD and IDR target levels
  - Other economics of IPO
    - Number of units to be sold
    - Primary/secondary sale split
    - Initial quarterly distribution level
    - Anticipated distribution coverage ratio
  - IPO equity awards to officers and directors

# Potential Issues and Complexities

- **Tier IV – Considerations For Dropping Down Assets**
  - Identification of Assets
  - Appointment of Conflicts Committee
  - Engagement of legal and financial advisors to the Conflicts Committee
  - Assessment of restrictions on asset transfers under existing contractual arrangements, including loan agreements
  - Analysis of tax considerations and refreshing the PFIC analysis
  - Negotiation of transaction agreements, including a contribution agreement and potential amendments to the omnibus agreement
  - Determination of financing plan
  - Assessment of whether the acquisition will require the filing of acquisition financial statements with the SEC and, if so, whether those financial statements must be filed prior to launching an SEC-registered debt or equity offering



# Part V – Indicative IPO Timeline and Tasks

# Indicative IPO Timeline and Tasks

October 2013							November 2013							December 2013							January 2014						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
		1	2	3	4	5						1	2	1	2	3	4	5	6	7				1	2	3	4
6	7	8	9	10	11	12	3	4	5	6	7	8	9	8	9	10	11	12	13	14	5	6	7	8	9	10	11
13	14	15	16	17	18	19	10	11	12	13	14	15	16	15	16	17	18	19	20	21	12	13	14	15	16	17	18
20	21	22	23	24	25	26	17	18	19	20	21	22	23	22	23	24	25	26	27	28	19	20	21	22	23	24	25
27	28	29	30	31			24	25	26	27	28	29	30	29	30	31					26	27	28	29	30	31	

February 2014							March 2014							April 2014						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
						1						1			1	2	3	4	5	
2	3	4	5	6	7	8	2	3	4	5	6	7	8	6	7	8	9	10	11	12
9	10	11	12	13	14	15	9	10	11	12	13	14	15	13	14	15	16	17	18	19
16	17	18	19	20	21	22	16	17	18	19	20	21	22	20	21	22	23	24	25	26
23	24	25	26	27	28		23	24	25	26	27	28	29	27	28	29	30			
							30	31												

 = US federal (SEC) holiday

# Indicative IPO Timeline and Tasks

October 2013	November 2013	December 2013
<ul style="list-style-type: none"> <li>• Conduct initial IPO meetings</li> <li>• Discuss partnership structure</li> <li>• Tax structuring/analysis</li> <li>• Discuss required financial statements</li> <li>• Evaluate benefits of public vs. confidential filing</li> <li>• Discuss communication and “gun-jumping”</li> </ul>	<ul style="list-style-type: none"> <li>• Select Underwriters and Underwriters’ counsel</li> <li>• Conduct organizational meeting</li> <li>• Finalize and submit accounting treatment letter, if necessary</li> <li>• Organize diligence materials</li> <li>• Begin drafting F-1</li> <li>• Select and reserve ticker symbol (+ 2 alternates)</li> <li>• Select exchange (NYSE/NASDAQ)</li> <li>• Drafting sessions</li> <li>• Discuss internal controls, governance matters, board committee composition</li> <li>• Distribute F-1</li> <li>• Discuss Omnibus Agreement</li> <li>• Review material contracts and discuss confidential treatment</li> <li>• Begin process of selecting and appointing independent directors</li> <li>• Distribute D&amp;O Questionnaires to directors and officers</li> <li>• Consider directed unit program</li> <li>• Select financial printer</li> <li>• Discuss Omnibus Agreement</li> <li>• Form the MLP, GP and OpCo</li> <li>• Obtain EDGAR codes for MLP</li> </ul>	<ul style="list-style-type: none"> <li>• UW counsel continues diligence</li> <li>• Continue drafting sessions</li> <li>• Distribute F-1</li> <li>• Complete D&amp;O Questionnaires</li> <li>• Board meeting to adopt IPO resolutions</li> <li>• Submit registration statement to printer</li> <li>• Conduct accounting diligence</li> <li>• Discuss and prepare confidential treatment requests</li> <li>• Analyst meeting</li> <li>• Prepare FINRA filing (UW counsel)</li> <li>• Drafting sessions at printer to finalize F-1</li> <li>• Submit F-1 (including 2012 audited and Q1 unaudited financials) and confidential treatment requests with SEC (either publicly or on a confidential basis)</li> <li>• After submitting, contact SEC to determine examiner</li> <li>• File F-1 with FINRA</li> <li>• Prepare draft roadshow</li> <li>• Prepare NYSE listing application</li> <li>• Draft underwriting agreement and lock-up letters and comfort letter</li> </ul>

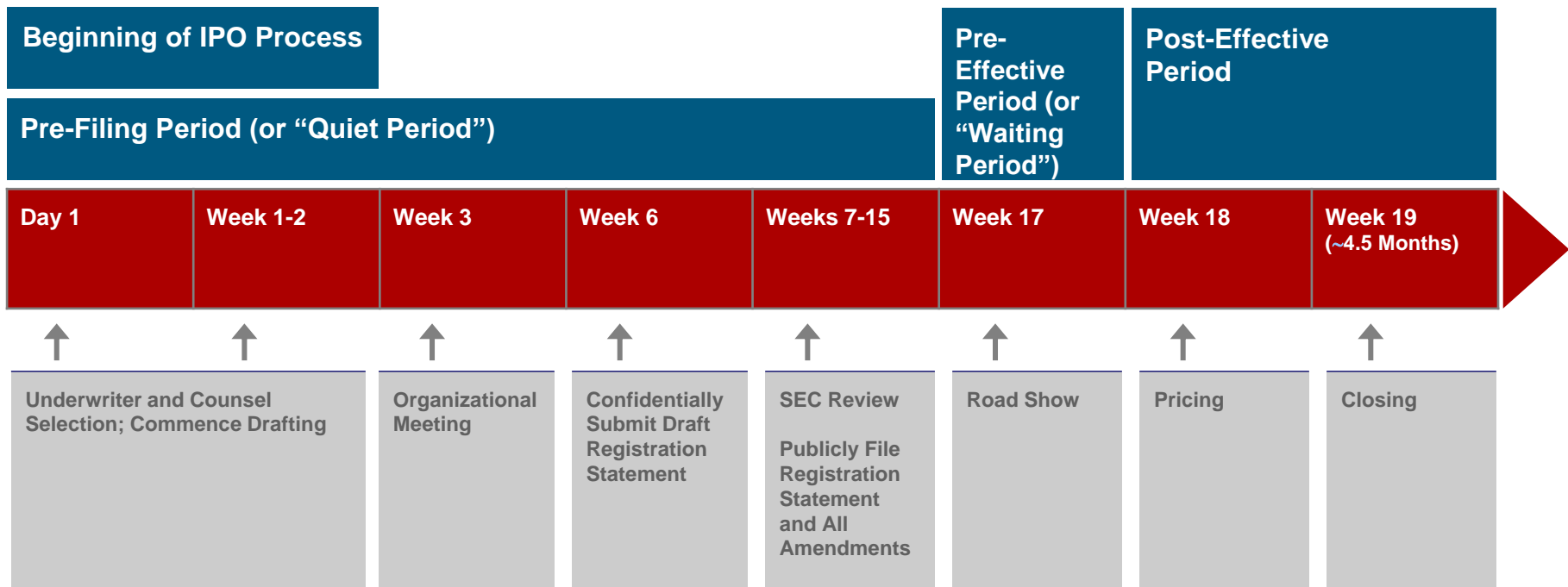
# Indicative IPO Timeline and Tasks

January 2014	February 2014	March 2014
<ul style="list-style-type: none"> <li>• Begin drafting Partnership Agreement, GP LLC Agreement and Omnibus Agreement</li> <li>• File listing application with NYSE</li> <li>• Receive / respond to SEC comments</li> <li>• Submit Amendment No. 1 with SEC (including Q2 financials)</li> <li>• Select transfer agent and registrar</li> <li>• Continue work on roadshow</li> <li>• Continue work on governance matters</li> </ul>	<ul style="list-style-type: none"> <li>• Continue work on roadshow</li> <li>• Continue work on governance matters</li> <li>• Continue drafting Partnership Agreement, GP LLC Agreement and Omnibus Agreement</li> <li>• Receive / respond to SEC comments</li> <li>• Submit Amendment No. 2 with the SEC</li> <li>• Select additional underwriters</li> <li>• If F-1 submitted confidentially, file F-1 with SEC publicly to start 21-day clock</li> <li>• Finalize comfort letter, underwriting agreement and circulate lock-up letters</li> <li>• File Amendment No. 3 with the SEC</li> </ul>	<ul style="list-style-type: none"> <li>• Clear with SEC to print reds</li> <li>• Finalize roadshow presentation</li> <li>• Bring down diligence call</li> <li>• Prepare and file press release</li> <li>• Launch roadshow</li> <li>• Continue roadshow</li> <li>• Price IPO</li> <li>• Deliver comfort letter and execute underwriting agreement/lock-up letters</li> <li>• Deliver bring down comfort letter and exchange legal opinions and other closing documentation</li> <li>• Close IPO</li> </ul>

# Webcast

## Part VI – Going Public

# Illustrative IPO Timeline



# Before You File

- Selecting an Underwriting Syndicate and Due Diligence
- Understanding Restrictions on Publicity
- Preparing Financial Statements
  - Are financial statements prepared on accounting standards other than US GAAP or IASB IFRS? How long will it take to prepare a US GAAP reconciliation?
  - Have all the required audits been conducted in accordance with US auditing standards?
  - Any significant acquisitions or minority investments in another entity?
  - Is the business managed in separate segments?
- Understanding Sarbanes-Oxley
  - Do you have the mechanisms to comply with Sarbanes-Oxley's requirements?
- Evaluating Stock Exchange Listing Requirements
- Determining Emerging Growth Company Status
- Assessing On-Going Reporting Obligations

# Selecting a Syndicate

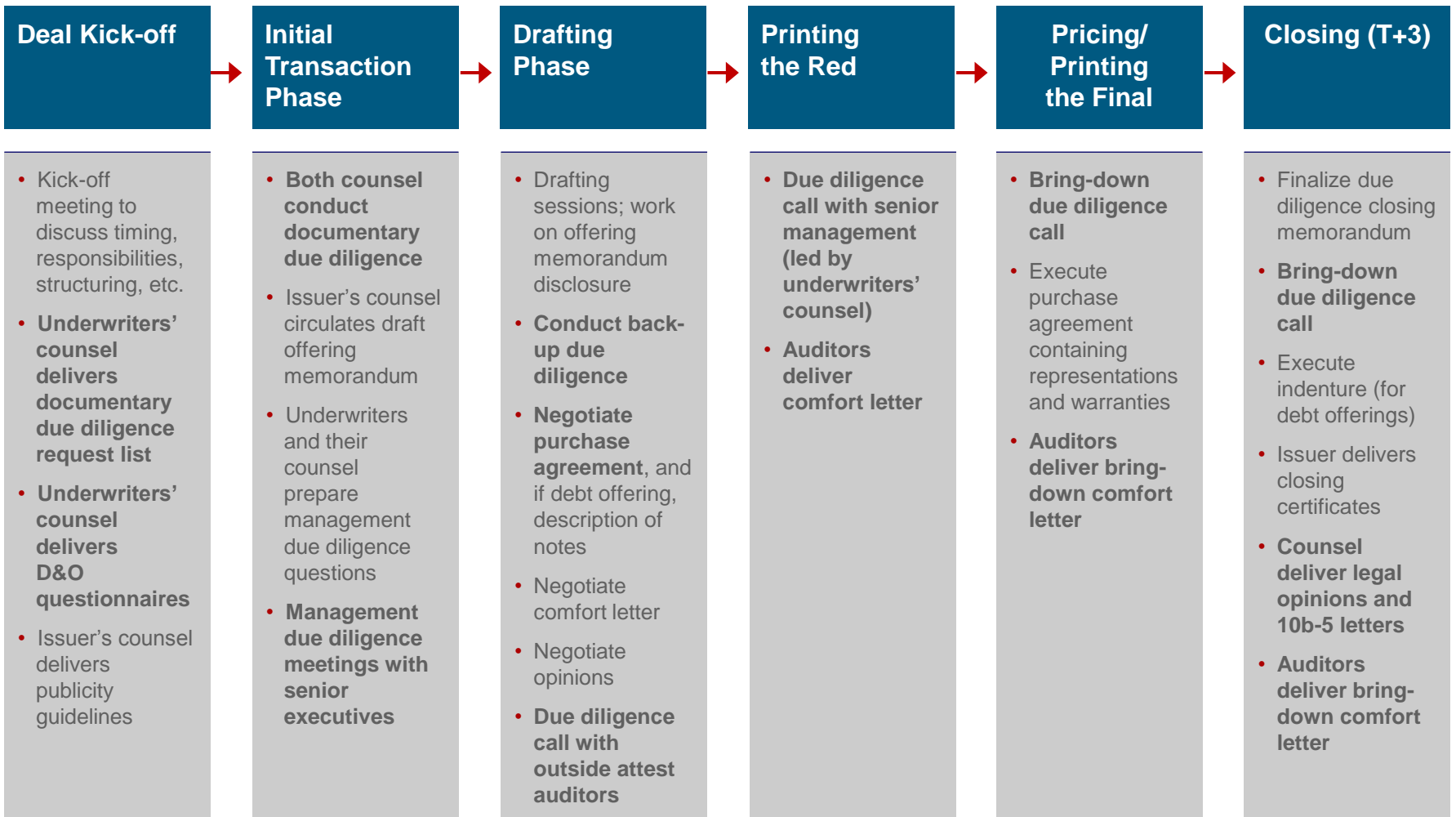
- One, two or more lead managers
  - Define responsibilities
  - Consider history of cooperation among key bankers
  - Consider key decision makers within each bank
- Factors to Consider When Selecting an Underwriter:
  - Banks' knowledge of, and experience working with, your company and others in your industry
  - Strength of equity capital markets desk
  - Institutional and retail distribution system
  - Research and analyst coverage
  - Industry knowledge
  - Post-pricing unit performance
  - Post-IPO investment banking capabilities



# Due Diligence

- Underwriters will conduct diligence and require “10b-5” (negative assurance) letters from both issuer’s counsel and underwriters’ counsel
  - Purpose is to provide an affirmative defense against liability under securities laws
- The US diligence process is different than the diligence regime in many non-US jurisdictions and involves the following steps:
  - Documentary due diligence
  - Management due diligence
  - Financial and accounting due diligence

# Timeline of the Due Diligence Process



# Documentary Due Diligence

- Comprehensive due diligence request letter tailored to your business. Typical requests include:
  - Organizational documents
  - Board, shareholder and committee minutes
  - D&O questionnaires
  - Finance documents
  - Material contracts
  - Others (employment, environmental, intellectual property, insurance, etc.)
- Purpose
  - Seeks to ensure that the securities offering doesn't violate laws, regulations or material contracts
  - Informs the drafting process and acts as a factual basis for statements in the offering document (risk factor disclosure, material contracts, debt summaries, MD&A, compensation discussion and analysis)
  - Provides backup sources/data for disclosure in the offering document

# Management Due Diligence

- The purpose of management due diligence is to locate potential business or financial issues in order to appropriately tailor the disclosure.
- Management diligence meetings will typically cover:
  - business and operations
  - industry and competition
  - strategy, acquisitions and dispositions
  - properties
  - management and employee matters
  - litigation and legal matters
  - financial and accounting
- Process
  - Management due diligence meetings often occur once parties have had a chance to review the offering document (or sometimes before drafting has begun)
  - Underwriters' counsel may circulate a set of questions prior to the meeting and you may prepare answers/presentation. The underwriters and their counsel may ask further questions.
  - Conduct due diligence calls prior to printing preliminary offering document and bring down information prior to printing final and closing (timing – consider proximity to earnings availability; who – CFO and/or CEO)

# Financial and Accounting Due Diligence

- Negotiation and preparation of the comfort letter are part of the due diligence process
  - The underwriters will conduct due diligence interviews with your auditors and will seek a comfort letter from the auditors.
- Purpose is to provide evidence that the financial information in offering document is accurate and has been independently verified
- Importance of accountants due diligence
  - Audit process and internal systems and controls
  - Management letters (may have a clean audit but highlight deficiencies to deal with going forward)
  - Critical accounting policies and estimates
  - Non-recurring items
  - Disagreements with accountants and management

# Understanding Restrictions on Publicity – The Quiet Period

- The “quiet period” begins when you decide to make a public offering, typically by retaining an investment bank, and ends with the first public filing
- US “quiet period” rules prohibit the offer and sale of securities being registered
  - The expansive definition of offers can complicate communications while you are in registration, which is further complicated if you are already public
  - You generally should not publicly release any forecasts, projections or predictions relating to your revenues, income or earnings per share
- Safe harbors are available including:
  - press statements made outside the United States
  - factual business communications
- You should address the communications strategy at an early stage with your communications team and external advisors

# Restrictions on Publicity - The Waiting Period and Post-Effective Period

- The “waiting period” begins at the time of the first public filing and ends when the SEC declares the registration statement effective.
- US rules permit oral offers and only certain types of written offers during the “waiting period”
- Additional safe harbors are available during the waiting period such as:
  - circulating a preliminary prospectus
  - conducting road shows
  - circulating a free writing prospectus
- After effectiveness of the registration statement, underwriters must deliver a final prospectus

# Restrictions on Publicity – Permissible and Impermissible Communications

Permissible	Impermissible
<b>A. Communications made more than 30 days prior to filing of registration statement</b>	
1. Any communications made by or on behalf of the issuer that do not reference a securities offering that is or will be the subject of a registration statement (including the IPO). Issuers <b>must</b> take reasonable steps within their control to prevent further distribution or publication of the communication during the 30-day period immediately before the issuer files the registration statement.	1. Any communication that references a securities offering that is or will be the subject of a registration statement (including the IPO).
2. Technical articles in the technical press.	2. Communications by an underwriter or prospective underwriter on behalf of the sponsor or the MLP.
3. Shareholders' meetings – answering factual questions from shareholders.	
<b>B. Within the 30-day period before the filing of the registration statement:</b>	
1. Items A.1., A.2. and A.3. above.	1. Any publicity that might stimulate investor or dealer interest in the MLP or its securities.
2. (a) Dissemination of factual information about the issuer, its business or financial developments, or other aspects of its business;  (b) advertisements of, or other information about, the issuer's products or services, <i>so long as</i> : (i) the issuer has previously released or disseminated such information in the ordinary course of business; and (ii) the timing, manner and form is materially consistent with similar past releases or disseminations.	2. (a) Communications containing information about a registered offering (including the IPO) or released or disseminated as part of the offering activities in a registered offering (including the IPO); and (b) statements that would separately include predictions, projections, forecasts or opinions with respect to value for the assets or businesses that will be contributed to the MLP.
3. Announcement of intention to file (SEC Rule 135).	3. Any significant increase in product and service advertisement or promotion
	4. Interviews, speeches and articles in the popular press; discussions with analysts inconsistent with the Sponsor's historical practice.



# Restrictions on Publicity – Permissible and Impermissible Communications

Permissible	Impermissible
<b>C. The “waiting period” (from filing through effectiveness of Registration Statement)</b>	
1. Items B.1. and B.2. above.	1. (a) Distribution by the MLP of any written materials other than the preliminary prospectus or a free writing prospectus; and (b) distribution by the Sponsor of any written materials outside of the ordinary course consistent with past practice, or that contain forward-looking information about the IPO, the MLP or assets or businesses to be contributed to the MLP.
2. Distribution of preliminary prospectuses that contain a <i>bona fide</i> estimate of the price range for the units	2. Making oral statements or “offers” to potential investors that violate the “anti-fraud” provisions of the law (or selectively disclosing information to prospective investors).
3. Making <i>oral</i> statements about the MLP or <i>oral</i> offers of the MLP’s securities. (Although permissible in limited situations such as road show presentations, doing so in other contexts is not recommended.)	
4. Rule 134 announcements.	
5. Distribution of free writing prospectuses, subject to prospectus delivery, information, legend and filing requirements.	
<b>D. The “post-effective period”</b>	
1. Items C.1., C.3., C.4. and C.5. above.	1. (a) Distribution by the MLP any written materials identified above as “impermissible” unless accompanied or preceded by a final prospectus; and (b) distribution by the Sponsor of any written materials outside of the ordinary course consistent with past practice, or that contain forward-looking information about the IPO, the MLP or assets or businesses to be contributed to the MLP.
2. Distribution of final prospectus, and distribution of any written materials other than the final prospectus (including free writing prospectuses) as long as they are accompanied or preceded by the final prospectus.	

# Preparing Financial Statements

- You may want to convert your financial statements to IASB IFRS or US GAAP
  - You may prepare your financial statements in accordance with local GAAP/non-IASB IFRS but you must reconcile your financial statements to US GAAP
- You will need a PCAOB audit (i.e., US GAAS standards)
- Auditor will have to meet complex US independence standards
  - More involved than standards in most non-US jurisdictions
- The audit and independence issues can add time to the IPO process
  - You should engage with your auditor early and make sure they are speaking with their SEC specialists
- Financial statements of any significant business (>20%) that you have recently acquired will need to be disclosed

# Preparing Financial Statements

- Basic Requirements for Financial Statements
- Annual audited financial statements consisting of:
  - balance sheet
  - income statements
  - statement of changes in equity
  - statement of cash flows
  - related notes and schedules
- Audited financial statements must cover each of the latest three fiscal years (with certain exceptions) and must be accompanied by an audit report issued by auditors registered with PCAOB
  - If you have been in existence less than three years, financial information covering your predecessor entities may need to be provided
  - if your jurisdiction does not require a balance sheet for the earliest year of the three year period, that balance sheet may be omitted

# Preparing Financial Statements

- Interim Unaudited Financial Statements and Selected Financial Information
  - Consolidated interim unaudited financial statements must be provided if a registration statement becomes effective more than 9 months after the end of the last audited fiscal year
    - must cover at least the first six months of the fiscal year
    - may be unaudited and in condensed form
    - should include comparative interim statements for the same period in the prior fiscal year
  - Selected financial information comprised of income statement and balance sheet data for each of the last five fiscal years must be disclosed unless you can show that this cannot be provided without unreasonable expense
    - if interim unaudited financial statements are included, the selected financial data for that interim period and comparative data for the same period in prior fiscal year should be provided

# Preparing Financial Statements

- Staleness of Annual Audited Financial Statements
  - Generally, the last year of audited financial statements cannot be more than 15 months old at the time of the offering except in the case of an IPO
  - For an IPO, the audited financial statements must be as of a date not older than 12 months prior to the time the document is filed unless:
    - you are already public in another jurisdiction (in which case the 12 month rule does not apply)
    - you include audited financial statements as of an interim date less than 12 months prior to filing, or
    - you can show that you are not required to comply with this requirement in any other jurisdiction outside the US and complying is impracticable and would involve undue hardship (in which case, you are subject to the 15-month rule above)

# Filing Material Contracts

- You will need to publicly file material contracts, which include:
  - Certain contracts not in the ordinary course of business
  - Ordinary course contracts on which you are “substantially dependent”
    - Any >10% customers?
  - Contracts with directors, officers, security holders named in the registration statement or underwriters other than contracts involving the purchase and sale of the current securities (e.g., related-party transactions)
  - Contracts for the acquisition or sale of property for consideration > 15% of fixed assets on a consolidated basis
  - Any material lease under which a part of the property described in the registration statement is held
- Confidential treatment is available
  - Take a surgical approach
  - Requires coordination with customers and a consideration of confidentiality provisions in material contracts

# Understanding Sarbanes-Oxley: Key Aspects

- Applies to all issuers (including FPIs) that:
  - have registered securities under the Exchange Act,
  - are required to file reports under Section 15(d) of the Exchange Act, or
  - have filed a registration statement under the Securities Act which has not yet become effective
- Sarbanes-Oxley governs various aspects such as:
  - Internal controls over financial reporting
  - Effectiveness of disclosure controls
  - Certifications of CEO and CFO
  - Audit committees
  - Prohibitions on loans to officers and directors
  - Forfeiture of bonuses by CEO and CFO in certain circumstances
  - Whistleblower requirements

# Understanding Sarbanes-Oxley: Key Aspects

- Internal Control Over Financial Reporting
  - Section 404 requires an assessment by management of internal control over financial reporting and an auditors attestation report on the management's assessment
  - You have until your second SEC annual report on Form 20-F to provide the required internal control auditor attestation
- Evaluate Effectiveness of Disclosure Controls
  - No auditor attestation required
- Certification Requirements by CEO and CFO
  - Must be included with your annual report



# Understanding Sarbanes-Oxley: Key Aspects

- Audit committee members must be a member of the board and meet certain independence requirements
  - Additionally, you must disclose whether a “financial expert” serves on your audit committee or state why not
- A board member is “independent” if the member:
  - is not an “affiliated person”
  - receives no compensation other than in its capacity as a member of the board
  - FPIs are entitled to certain exemptions from the independence requirements
- Audit Committee Role and Requirements
  - required to appoint and oversee external auditors
  - establish procedures for receipt of complaints regarding accounting, internal controls or auditing matters
  - must have authority to engage independent counsel and advisers as necessary and funding to pay external auditors and advisers

# NYSE Listing Criteria – Quantitative Standards

- **An IPO issuer must meet the following quantitative standards:**
  - Minimum distribution of at least 400 holders of 100 shares or more and 1.1 million publicly held units,
  - Market value of publicly held units must be at least \$40 million and an IPO price per unit of \$4, and
  - One of the following financial standards:
  - Earnings Test: pre-tax earnings of
    - at least \$10 million in the aggregate for the last three fiscal years with a minimum of \$2 million in each of the two most recent fiscal years and positive amounts in all three) or
    - \$12 million in the aggregate for the last three fiscal years together with a minimum of \$5 million in the most recent fiscal year and \$2 million in the next most recent fiscal year
  - Valuation/Revenue Test: measured in one of three ways
    - Cash flow test: at least \$500 million in global market cap, at least \$100 million in revenues during the most recent 12-months and \$25 million aggregate cash flows for the last 3 fiscal years with positive cash flow
    - Pure valuation/revenue test: at least \$750 million in global market cap and at least \$75 million in revenues during most recent fiscal year
    - Assets and equity test: at least \$150 million in global market cap and at least \$75 million in total assets together with at least \$50 million in stockholder equity

# NYSE Listing Criteria – Corporate Governance

- You are permitted to follow your home country's corporate governance practice with two exceptions
  - You must have an audit committee that meets the requirements discussed on the previous slide
  - The CEO must provide prompt notification of non-compliance with NYSE rules

# Determining Emerging Growth Company Status

- An “emerging growth company” (EGC) is an issuer with less than \$1 billion in annual revenue for the most recently completed fiscal year
- EGC status continues until the earliest of
  - the fiscal year-end with \$1 billion or more in revenue
  - fiscal year-end after the 5th anniversary of IPO pricing date
  - you achieve large accelerated filer status (fiscal year-end on which total market value held by non-affiliates is \$700 million as of last business day of Q2)
  - date when issuer has, during the prior 3 year period, issued more than \$1 billion in non-convertible debt securities
- Some significant advantages include:
  - disclose audited financial statements covering two years instead of three years
  - exempt from the internal control audit required by Sarbanes-Oxley
  - scaled disclosure requirements under Regulation S-K
  - “test-the-waters” communications are allowed during the pre and post filing period with QIBs and institutional investors

# Assessing On-Going Reporting Obligations After an IPO

- Following an IPO you must file with the SEC annual reports on Form 20-F and interim reports on Form 6-K until you deregister
  - Form 20-F must be filed within four months after the end of each fiscal year
  - Form 6-Ks are required to be promptly furnished to the SEC when you make material information public in your home country or elsewhere or when an extraordinary event occurs (i.e. a material acquisition)
- Shareholders who own 5% or more of your ordinary shares are subject to US reporting under Section 13(d)
- Existing 5% or greater shareholders can report on Schedule 13G (short form)
  - First report is not due until February 14 of the following year
- Exempt from proxy rules and certain Section 16 reporting obligations and insider trading restrictions

# Webcast

## Part VII – Tax Considerations

# Federal Income Tax Considerations

- An offshore shipping/drilling rig MLP typically elects to be treated as a corporation for US federal income tax purposes
  - As a result and subject to the passive foreign investment company (PFIC) rules, income and losses do not flow to the unitholders
  - Unitholders receive a Form 1099 instead of a Schedule K-1
- US federal income tax concerns:
  - Is the MLP a passive foreign investment company (commonly called a “PFIC”)? If so, there are adverse tax consequences to the US holders.
  - Is the MLP subject to US income taxation on its operations?
- Other tax concerns:
  - Is the MLP subject to taxation in any other jurisdiction (e.g., its jurisdiction of organization or operation)? If so, what is the overall effective tax rate?

# PFIC Considerations

- A foreign corporation such as an MLP would be a PFIC if:
  - at least 75% of its gross income (including income of certain subsidiaries) for a taxable year consists of passive income; or
  - at least 50% of the average value of the assets held by the MLP (including the assets of certain subsidiaries) during the taxable year produce, or are held for the production of, passive income.
- Passive income consists of dividends, interest, capital gains from the sale or exchange of investment property and rents derived other than in the active conduct of a rental business.
  - Whether the MLP is a PFIC depends on whether the income it receives is treated as passive income.
  - For example, if a drilling rig is chartered to a customer for a fee, with no service component attached, the income is passive rent. If, however, the drilling rig is chartered to a customer in connection with the provision of services with respect to that rig, such as well-drilling services, the income is not passive. This is a fact intensive analysis.



# Determining PFIC Status

- If the MLP were to be treated as a PFIC for any taxable year, a US unitholder that does not make either a “Qualified Electing Fund,” or QEF, election or a “mark-to-market” election for that year would be subject to special rules resulting in increased tax liability with respect to (1) any excess distribution (i.e., the portion of any distributions received by the holder in a taxable year in excess of 125% of the average annual distributions received by the holder in the three preceding taxable years, or, if shorter, the holder’s holding period for the units) and (2) any gain realized on the sale, exchange or other disposition of the units.

# US Taxation of MLP's Income

- MLP taxed on any income it receives that is effectively connected with the conduct of a trade or business in the US
- US source gross transportation income, if any, generally is subject to a 4% US federal income tax without allowance for deduction of expenses, unless an exemption from tax applies under a tax treaty or Section 883 of the Internal Revenue Code.
- Under Section 883 of the Internal Revenue Code, U.S source gross transportation income consists of 50% of the gross shipping income that is attributable to the transportation that begins or ends, but that does not both begin and end, in the US

# Other Tax Concerns

- Offshore MLPs are generally organized in jurisdictions that does not impose taxes on their income.
  - If the MLP operates in another jurisdiction, the tax laws of that jurisdiction must also be considered to ensure that the MLP will not be subject to tax in that jurisdiction.
- Withholding tax issues must also be considered for distributions to unitholders.

# Webcast

## Part VIII – Case Studies






# Foreign Private Issuer MLPs – Five Case Studies








TEEKAY LNG PARTNERS L.P.

TEEKAY OFFSHORE PARTNERS L.P.






# Summary of Key Business Terms

<b>COMPANY</b>	 Golar LNG Partners LP	 KNOT Offshore Partners LP	 Seadrill Partners LLC	 TEEKAY LNG PARTNERS L.P.	 TEEKAY OFFSHORE PARTNERS L.P.
<b>Ticker Symbol</b>	GMLP	KNOP	SDLP	TGP	TOO
<b>Exchange</b>	NASDAQ	NYSE	NYSE	NYSE	NYSE
<b>Jurisdiction of Formation</b>	Marshall Islands	Marshall Islands	Marshall Islands	Marshall Islands	Marshall Islands
<b>OPCO Structure</b>	No	No	Yes	No	Yes
<b>Initial Public Offering</b>					
Date	7-Apr-2011	9-Apr-2013	18-Oct-2012	4-May-05	14-Dec-2006
Enterprise Value (\$mm)	\$896.8	\$781.8	\$909.9	\$661.6	\$420.0
Units Offered in the IPO	12,000,000	7,450,000	8,750,000	6,000,000	7,000,000
Over-allotment Option	15%	15%	15%	15%	15%
MQD (annual)	\$1.54	\$1.50	\$1.55	\$1.65	\$1.40
Estimated Preliminary Price	\$20.00-\$22.00	\$19.00-\$21.00	\$20.00-\$22.00	\$21.00	\$19.00-\$21.00
Yield Preliminary	7.3%	7.5%	7.4%	7.86%	7.4%
IPO Price	\$22.50	\$21.00	\$22.00	\$22.00	\$21.00
Yield at IPO	6.8%	7.1%	7.0%	7.50%	7.0%
<b>Equity Capitalization (%)</b>					
Common Units Offered	30.1%	42.6%	21.2%	20.0%	35.0%
Common Units – Sponsor	27.9%	6.4%	38.8%	29.0%	17.6%
Subordinated Units – Sponsor	40.0%	49.0%	40.0%	49.0%	45.4%
GP Interest – Sponsor	2.0%	2.0%	N/A	2.0%	2.0%
<b>Taxed As C-Corp</b>	Yes	Yes	Yes	No	Yes
<b>Public Appoints Majority of Board</b>	Yes	Yes	Yes	No	No
<b>Limitation on Issuance of Additional Units</b>	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
<b>Limited Call Right</b>					
% of Common Outstanding	20%	20%	20%	20%	20%

# Summary of Key Business Terms






COMPANY	 Golar LNG Partners LP	 KNOT Offshore Partners LP	 Seadrill Partners LLC	 TEEKAY LNG PARTNERS L.P.	 TEEKAY OFFSHORE PARTNERS L.P.
<b>Incentive Distributions</b>					
Preliminary Prospectus					
MQD – Split	7.3% - 98/2/0	7.5% - 98/2/0	7.0% – 98/2	8.8% – 98/2	7.4% - 98/2
First Tier – Split	8.4% - 98/2/0	8.6% - 98/2/0	8.1% – 85/15	10.2% – 85/15	8.5% - 98/2
Second Tier – Split	9.2% - 85/2/13	9.4% - 85/2/13	8.8% – 75/25	12.4% – 75/25	9.2% - 85/15
Third Tier – Split	11.0% - 75/2/23	11.25% - 75/2/23	10.6% – 50/50	12.4% – 50/50	10.0% - 75/25
Fourth Tier – Split	>11.0% - 50/2/48	>11.25% - 50/2/48			>10.0% - 50/50
Final Prospectus					
MQD – Split	6.8% - 98/2/0	7.1% - 98/2/0	7.0% – 100/0	8.4% – 98/2	7.0% - 98/2
First Tier – Split	7.9% - 98/2/0	8.2% - 98/2/0	8.1% - 100/0	9.8% – 85/15	7.7% - 98/2
Second Tier – Split	8.6% - 85/2/13	8.9% - 85/2/13	8.8% – 85/15	11.8% – 75/25	8.3% - 85/15
Third Tier – Split	10.3% - 75/2/23	10.7% - 75/2/23	10.6% – 75/25	11.8% – 50/50	10.0% - 75/25
Fourth Tier – Split	>10.3% - 50/2/48	>10.7% - 50/2/48	>10.6% – 50/50		>10.0% - 50/50
<b>Cash Reserve Basket</b>					
Amount (\$mm)	\$35.0	\$17.0	\$35.0	\$10.0	\$15
% of Enterprise Value at IPO	3.9%	2.2%	3.8%	1.5%	3.6%
% MQD (public units)	189.4%	151.8%	158%	101%	153%
% MQD (all units)	57.0%	64.8%	54.6%	20.2%	53.6%
<b>Tax Shield</b>					
Amount of Shield	30%	30%	80%	80%	30%
Duration	2 Yrs, 9 Mos	3 Yrs, 6 Mos	2 Yrs	2.5 Yrs	3 Yrs
<b>Subordination Provisions</b>					
Subordination Period	5 Yrs	3.5 Yrs	5 Yrs	5 Yrs	3 Yrs
Early Conversion	None	None	None	25% after 3 Yrs 25% after 4 Yrs	100% after 2 Yrs
<b>Est. Annual Capex (\$mm)</b>					
Drydrinking	\$ 4.0	\$ 1.1	\$29.5	\$ 4.4	\$12.2
Replacement	\$19.1	\$10.8	\$47.2	\$12.0	\$61.7

# Summary of Key Business Terms






COMPANY					
<b>General Business Description</b>	Own and operate floating storage and regasification units (FSRUs) and LNG carriers under long-term charters	Own, operate and acquire shuttle tankers under long-term charters of five years or more	Own, operate and acquire offshore drilling rigs with major oil companies	International provider of LNG and crude oil marine transportation services and owner and operator of medium-sized crude oil tankers	International provider of marine transportation and storage services to offshore oil industry
<b>Types of Vessels at IPO</b>	<ul style="list-style-type: none"> <li>• 2 FSRUs</li> <li>• 2 LNG carriers</li> </ul>	<ul style="list-style-type: none"> <li>• 4 shuttle tankers</li> </ul>	<ul style="list-style-type: none"> <li>• Two semi-submersibles</li> <li>• One drillship</li> <li>• One tender rig</li> </ul>	<ul style="list-style-type: none"> <li>• 4 LNG carriers</li> <li>• 5 Suezmax class crude oil tankers</li> </ul>	<ul style="list-style-type: none"> <li>• 36 shuttle tankers</li> <li>• 4 floating storage and offtake units</li> <li>• 9 conventional oil tankers</li> </ul>
<b>Average remaining term for contracts</b>	9 years as of December 31, 2010	8.1 years as of December 31, 2012	4.1 years as of September 30, 2012	As of October 1, 2005: <ul style="list-style-type: none"> <li>• 20 years for LNG carriers</li> <li>• 17 years for Suezmax tankers</li> </ul>	As of December 2006: <ul style="list-style-type: none"> <li>• 6 years for shuttle tankers</li> <li>• 5 years floating storage and offtake units</li> <li>• 8 years for conventional oil tankers</li> </ul>
<b>Customers</b>	<ul style="list-style-type: none"> <li>• Petrobras</li> <li>• Pertamina</li> <li>• BG Group</li> </ul>	<ul style="list-style-type: none"> <li>• BG Group</li> <li>• Statoil</li> <li>• Transpetro</li> </ul>	<ul style="list-style-type: none"> <li>• ExxonMobil</li> <li>• BP</li> <li>• Total</li> <li>• Chevron</li> </ul>	<ul style="list-style-type: none"> <li>• Repsol YPF</li> <li>• Gas Natural SDG</li> <li>• Union Fenosa Gas</li> <li>• RasGas II</li> <li>• Compañía Española de Petróleos</li> <li>• Teekay Shipping Corporation</li> </ul>	<ul style="list-style-type: none"> <li>• Statoil</li> <li>• Teekay Shipping Corporation</li> <li>• Numerous others</li> </ul>
<b>Business Strategies</b>	<ul style="list-style-type: none"> <li>• Pursue strategic and accretive acquisitions of FSRUs and LNG carriers</li> <li>• Compete for long-term charter contracts for FSRUs and LNG carriers</li> <li>• Manage our fleet and our customer relationships to provide a stable base of cash flows</li> </ul>	<ul style="list-style-type: none"> <li>• Pursue strategic and accretive acquisitions of shuttle tankers on long-term, fixed-rate charters</li> <li>• Expand global operations in high-growth regions</li> <li>• Manage our fleet and deepen our customer relationships to provide a stable base of cash flows</li> </ul>	<ul style="list-style-type: none"> <li>• Grow through strategic and accretive acquisitions</li> <li>• Pursue long term contracts and maintain stable cash flows</li> <li>• Provide excellent customer service and continue to prioritize safety as a key element of operations</li> <li>• Maintain a modern and reliable fleet</li> </ul>	<ul style="list-style-type: none"> <li>• Acquire LNG carriers after long-term, fixed rate time charters have been awarded for an LNG project</li> <li>• Expand LNG operations globally</li> <li>• Leverage our own and Teekay Shipping Corporation's operational expertise</li> <li>• Manage fleet of Suezmax tankers to provide stable cash flows</li> </ul>	<ul style="list-style-type: none"> <li>• Expand global operations in high growth regions</li> <li>• Pursue opportunities in floating production, storage and offloading sector</li> <li>• Acquire additional vessels on long-term fixed rate contracts</li> <li>• Provide superior customer service by maintaining high reliability, safety, environmental and quality standards</li> <li>• Manage the conventional tanker fleet to provide stable cash flows</li> </ul>



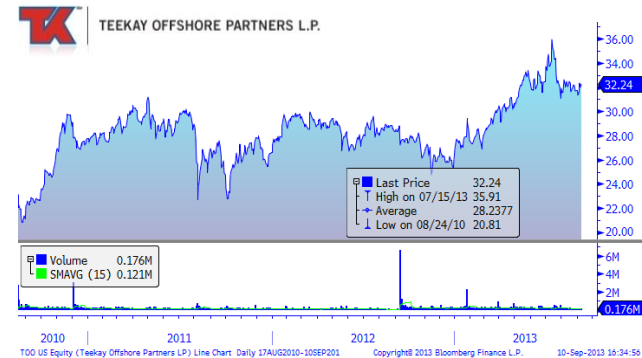
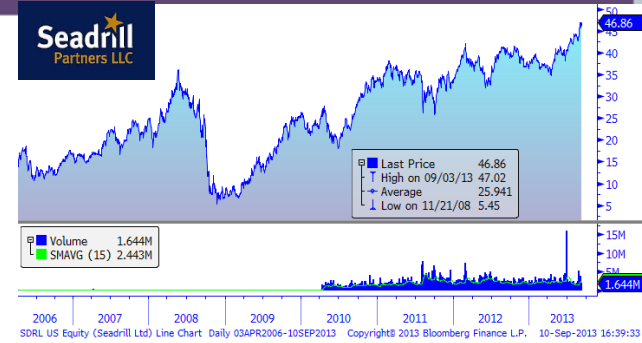
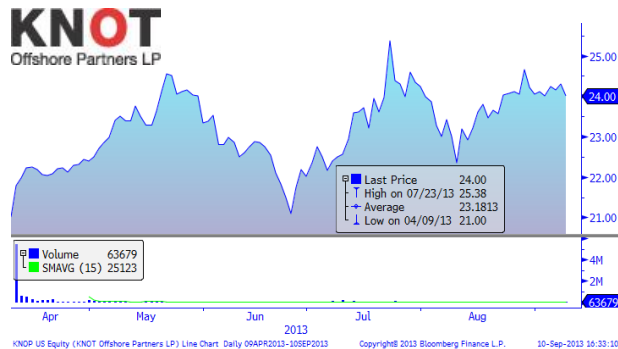
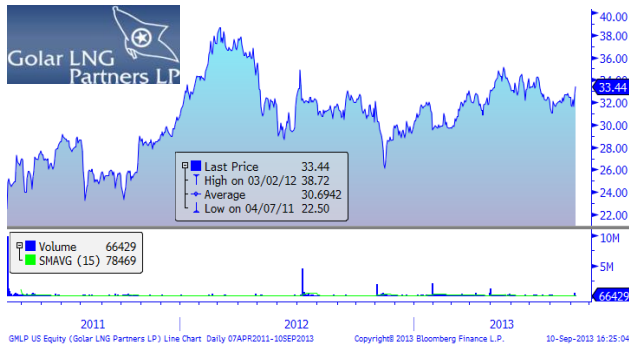
# Summary of Key Business Terms

COMPANY					
<b>Competitive Strengths</b>	<ul style="list-style-type: none"> <li>Secure and stable cash flows from long-term contracts</li> <li>Leader in FSRU technology</li> <li>Strong relationship with Golar LNG Limited and Fredriksen Group</li> <li>Financial ability to pursue growth opportunities</li> </ul>	<ul style="list-style-type: none"> <li>Relationship with leading shuttle tanker operator</li> <li>Built-in growth opportunities</li> <li>Enhanced growth opportunities</li> <li>Enhanced growth opportunities through our relationship with KNOT</li> <li>Sustainable cash flow supported by charters with leading energy companies</li> <li>Modern fleet equipped with the latest technology</li> <li>Financial flexibility to support our growth</li> </ul>	<ul style="list-style-type: none"> <li>Relationship with Seadrill</li> <li>Long-term contracts with high quality customers</li> <li>Modern, technologically advanced fleet</li> <li>Financial flexibility to pursue growth opportunities</li> </ul>	<ul style="list-style-type: none"> <li>Strategic platform to expand presence in LNG shipping sector</li> <li>Relationship with Teekay Shipping Corporation</li> <li>Financial flexibility to pursue acquisitions and other expansion opportunities</li> </ul>	<ul style="list-style-type: none"> <li>Leading position in shuttle tanker sector</li> <li>Relationship with Teekay Shipping Corporation</li> <li>Cash flow stability from contracts with leading energy companies</li> <li>Disciplined vessel acquisition strategy and successful project execution</li> <li>Financial flexibility to pursue acquisitions</li> </ul>
<b>Scope of Noncompete</b>	FSRU or LNG carriers under contract for five or more years	May not own, operate or charter certain shuttle tankers operating under charters of five or more years	Drilling rigs, semi-submersibles, drillships and tender rigs under contract for five or more years	LNG carriers	Dynamically-positioned shuttle tankers, FSO units or FPSO units
<b>ROFO on Existing Assets</b>	Yes	Yes	Yes	Yes	Yes
<b>ROFO on OPCO Equity Interests</b>	Not Applicable	Not Applicable	Yes	Not Applicable	Yes
<b>Environmental Indemnification</b>	Term: Five years Cap: \$5 million Deductible: \$500,000	Term: Five years Cap: \$5 million Deductible: \$500,000	Term: Five years Cap: \$10 million Deductible: \$500,000	Term: Five years Cap: \$10 million Deductible: \$0	Term: Five years Cap: \$10 million Deductible: \$500,000
<b>Other Indemnification</b>	<ul style="list-style-type: none"> <li>Defects in title (three years)</li> <li>Failure to hold necessary consents and permits (three years)</li> <li>Tax liabilities (unlimited)</li> <li>Liabilities in excess of scheduled payments under UK tax lease for Methane Princess</li> </ul>	<ul style="list-style-type: none"> <li>Defects in title (five years)</li> <li>Failure to hold necessary consents and permits (five years)</li> <li>Tax liabilities (unlimited)</li> </ul>	<ul style="list-style-type: none"> <li>Defects in title (three years)</li> <li>Failure to hold necessary consents and permits (three years)</li> <li>Tax liabilities (unlimited)</li> </ul>	<ul style="list-style-type: none"> <li>Defects in title (three years)</li> <li>Failure to hold necessary consents and permits (three years)</li> <li>Tax liabilities (unlimited)</li> </ul>	<ul style="list-style-type: none"> <li>Defects in title (three years)</li> <li>Failure to hold necessary consents and permits (three years)</li> <li>Tax liabilities (unlimited)</li> </ul>

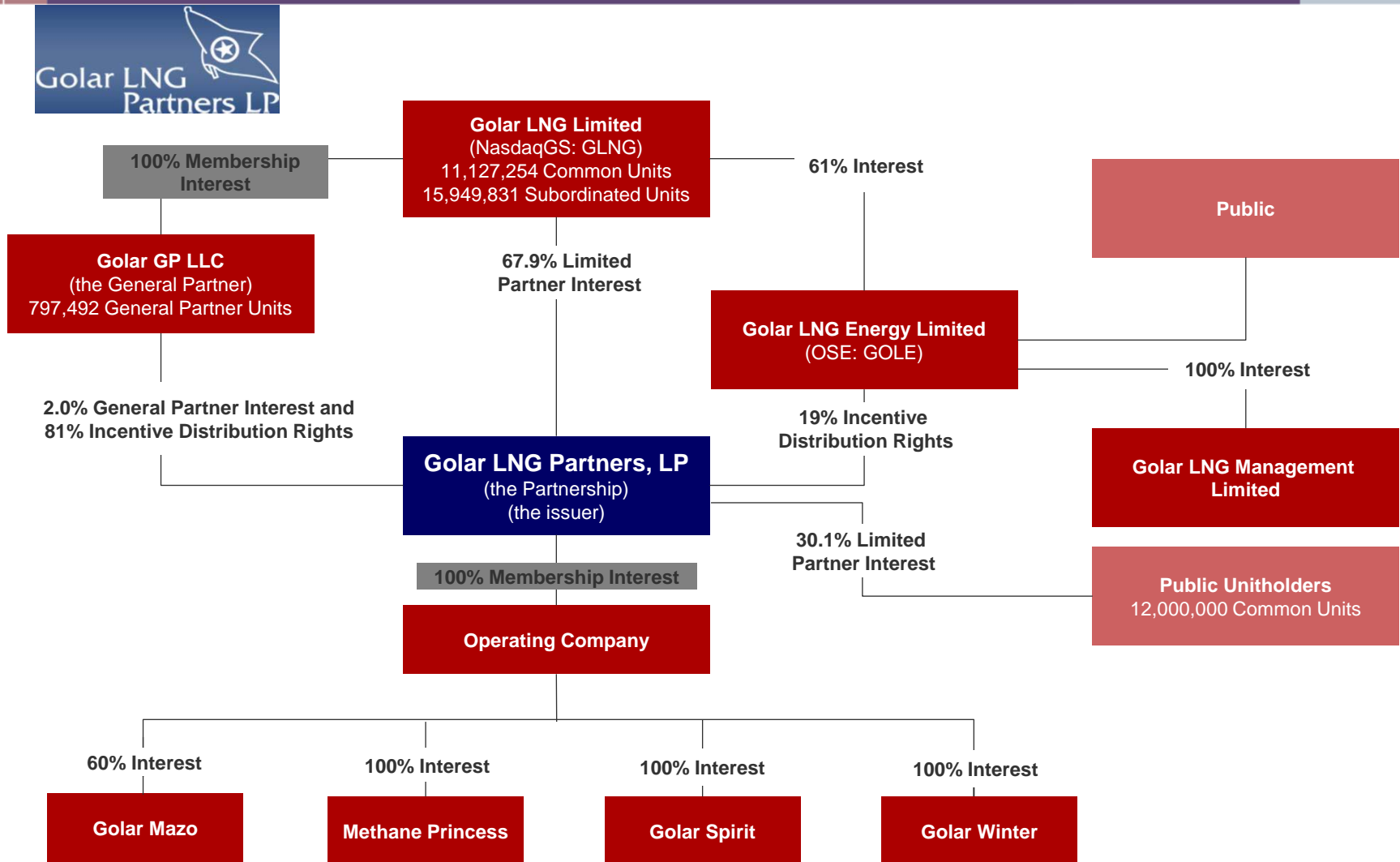
# Summary of Key Business Terms

COMPANY					
<b>Administrative Services</b>					
<b>Scope of Services</b>	<ul style="list-style-type: none"> <li>Commercial management</li> <li>Bookkeeping, audit and accounting</li> <li>Legal and insurance</li> <li>Administrative and clerical</li> <li>Banking and financial</li> <li>Law compliance</li> <li>Client and investor relations</li> <li>Integration of any acquired businesses; divestments</li> </ul>	<ul style="list-style-type: none"> <li>Commercial management</li> <li>Bookkeeping, audit and accounting</li> <li>Legal and insurance</li> <li>Administrative and clerical</li> <li>Banking and financial</li> <li>Advisory</li> <li>Client and investor relations</li> <li>Integration of any acquired businesses</li> </ul>	<ul style="list-style-type: none"> <li>Marketing services</li> <li>Bookkeeping, audit and accounting</li> <li>Banking and financial</li> <li>Legal and insurance</li> <li>Accidents – contingency plans</li> <li>General administrative services</li> <li>Integration of any acquired assets/businesses; divestments</li> </ul>	<ul style="list-style-type: none"> <li>Bookkeeping, audit and accounting</li> <li>Legal and insurance</li> <li>Administrative and clerical</li> <li>Law compliance</li> <li>Client and investor relations</li> </ul>	<ul style="list-style-type: none"> <li>Bookkeeping, audit and accounting</li> <li>Legal and insurance</li> <li>Administrative and clerical</li> <li>Law compliance</li> <li>Client and investor relations</li> </ul>
<b>Notification Period to Terminate</b>	<ul style="list-style-type: none"> <li>90 days</li> </ul>	<ul style="list-style-type: none"> <li>90 days</li> </ul>	<ul style="list-style-type: none"> <li>90 days</li> </ul>	<ul style="list-style-type: none"> <li>90 days</li> </ul>	<ul style="list-style-type: none"> <li>90 days</li> </ul>
<b>Technical Management</b>					
<b>Dispute Mechanism for Management Fee</b>	<ul style="list-style-type: none"> <li>N/A; any disputes under the agreement put to arbitration in The Bahamas</li> </ul>	<ul style="list-style-type: none"> <li>N/A; any disputes under the agreement put to arbitration under the Norwegian Arbitration Act 2004</li> </ul>	<ul style="list-style-type: none"> <li>N/A; any disputes under the agreement put to arbitration under the Norwegian Arbitration Act 2004</li> </ul>	<ul style="list-style-type: none"> <li>N/A; any disputes under the agreement put to arbitration in London under the Arbitration Act of 1996</li> </ul>	<ul style="list-style-type: none"> <li>N/A; any disputes under the agreement put to arbitration in The Bahamas</li> </ul>
<b>Unrestricted Termination by Owner</b>	<ul style="list-style-type: none"> <li>30 - 90 days</li> </ul>	<ul style="list-style-type: none"> <li>Unrestricted termination</li> </ul>	<ul style="list-style-type: none"> <li>90 days</li> </ul>	<ul style="list-style-type: none"> <li>60 days</li> </ul>	<ul style="list-style-type: none"> <li>60 days</li> </ul>
<b>Termination for Failure to Pay</b>	<ul style="list-style-type: none"> <li>30 - 90 days depending on vessel</li> </ul>	<ul style="list-style-type: none"> <li>10 days of receipt by owners of manager's written request or repossession by mortgagees</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Party may at any time terminate agreement forthwith if the other party breaches the agreement. No clear provision regarding number of days.</li> </ul>	<ul style="list-style-type: none"> <li>Party may at any time terminate agreement forthwith if the other party breaches the agreement. No clear provision regarding number of days.</li> </ul>
<b>Indemnification</b>	<ul style="list-style-type: none"> <li>Indemnification of management services provider excludes claims resulting from negligence, gross negligence or willful default of the subcontractor or its employees, agents or subcontractors</li> </ul>	<ul style="list-style-type: none"> <li>Indemnification of management services provider excludes claims resulting from negligence, gross negligence or willful default of the manager or its employees, agents or subcontractors</li> </ul>	<ul style="list-style-type: none"> <li>Indemnification of management services provider excludes claims resulting from fraud, gross negligence or willful misconduct of the subcontractor or any of its officers, employees, agents or subcontractors</li> </ul>	<ul style="list-style-type: none"> <li>Indemnification of management services provider excludes claims resulting from gross negligence or willful misconduct of the subcontractor or its employees or agents</li> </ul>	<ul style="list-style-type: none"> <li>Indemnification of management services provider excludes claims resulting from gross negligence or willful misconduct of the subcontractor or its employees or agents</li> </ul>

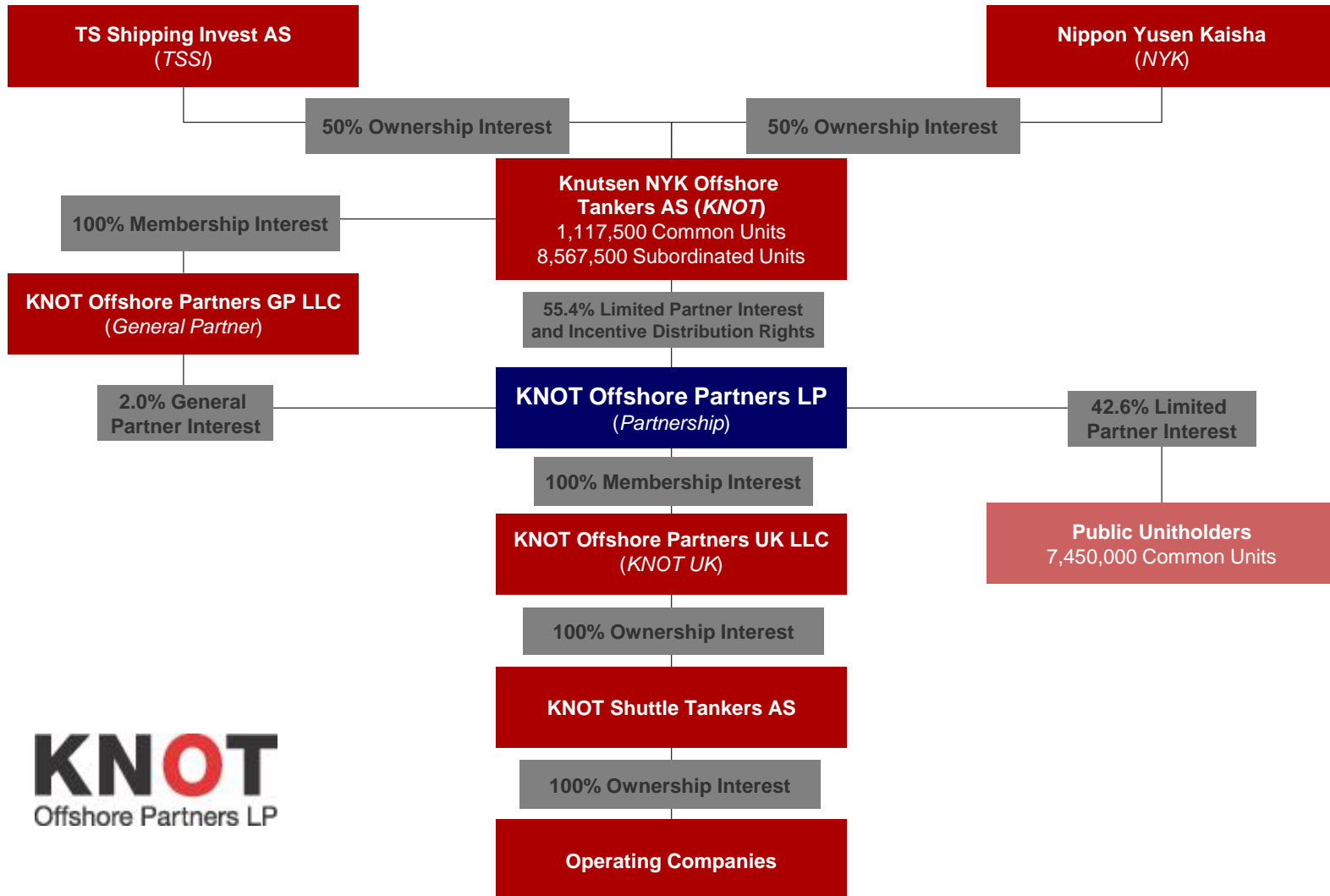
# Unit Price Performance



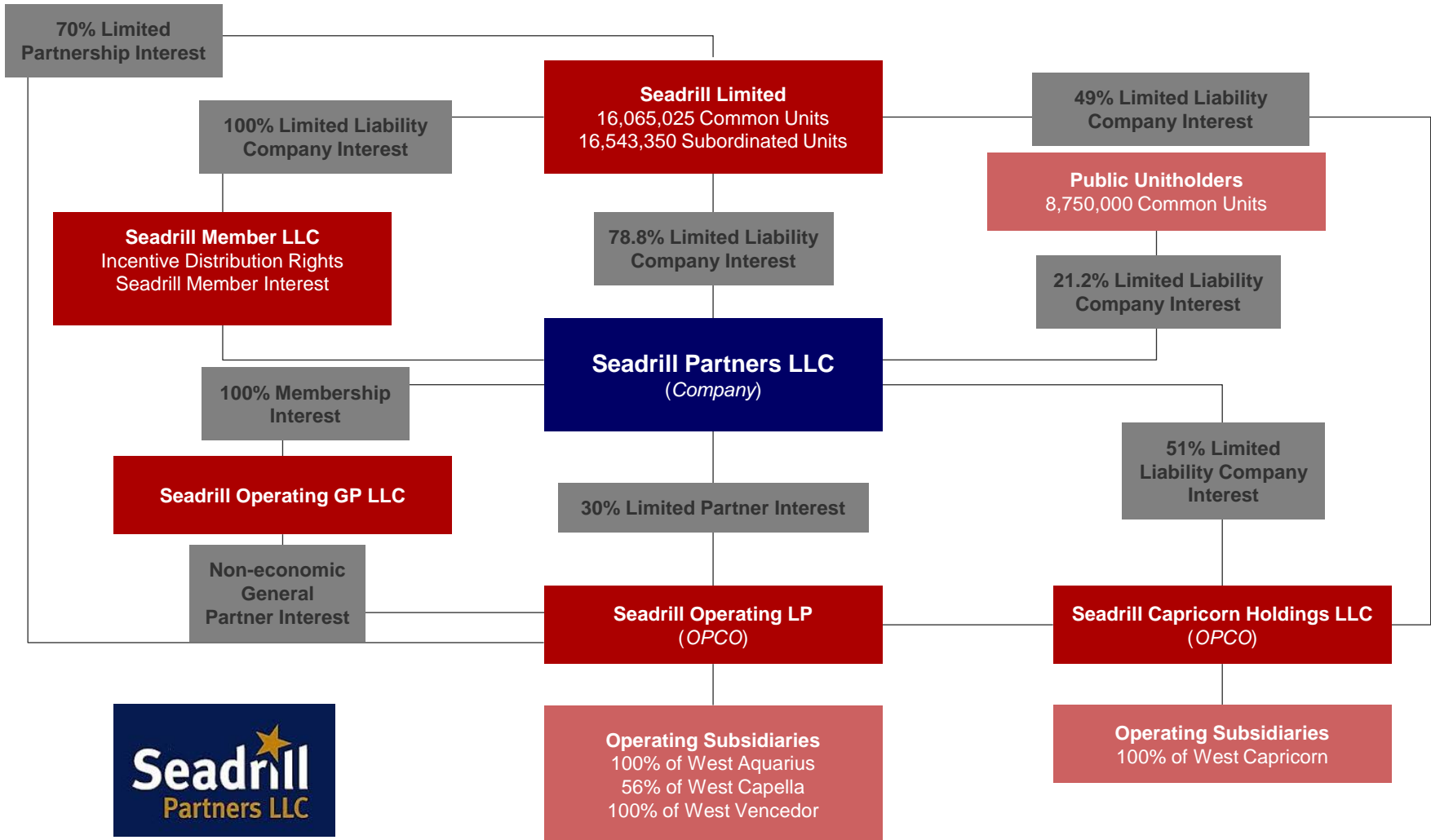
# Organizational Charts at IPO



# Organizational Charts at IPO



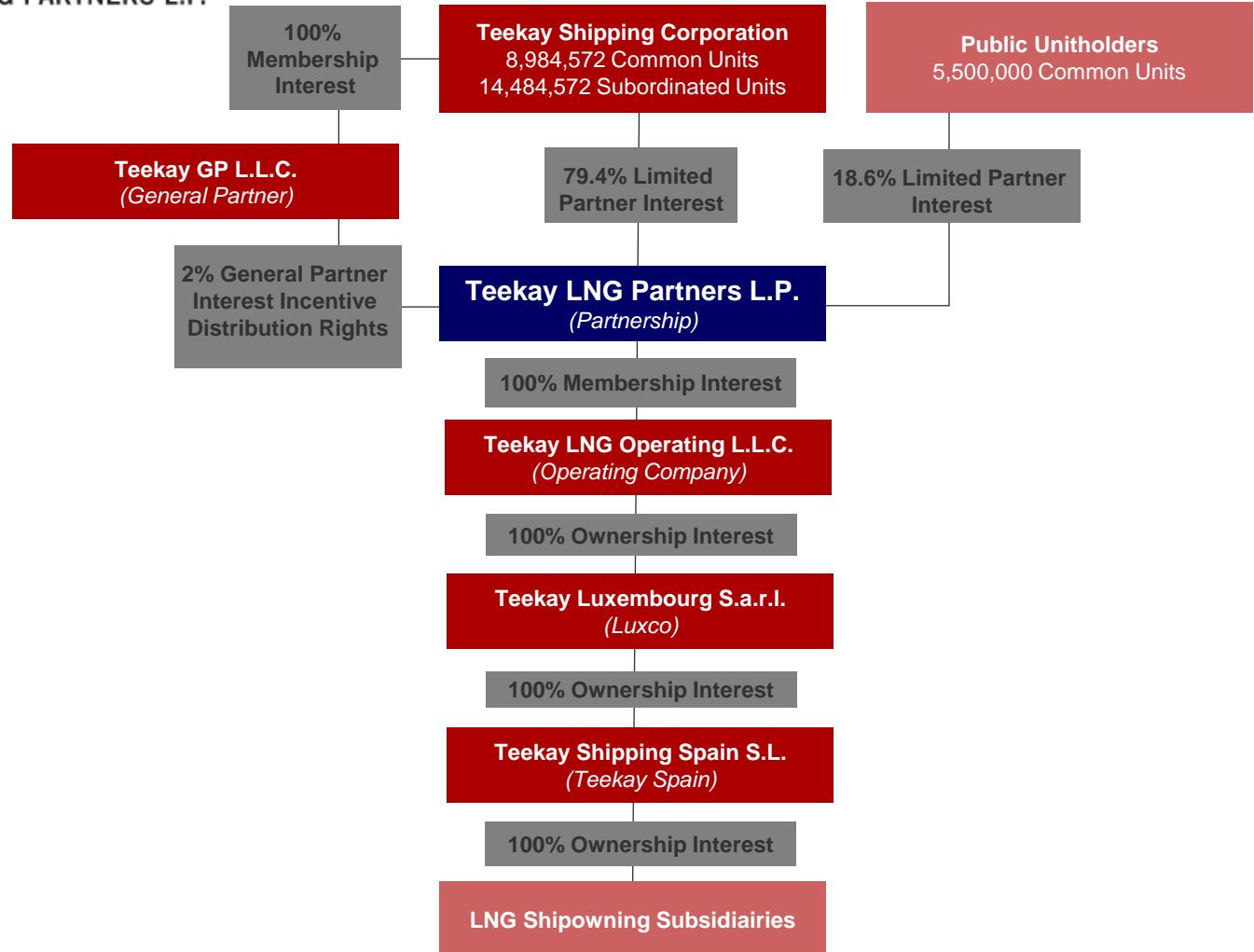
# Organizational Charts at IPO



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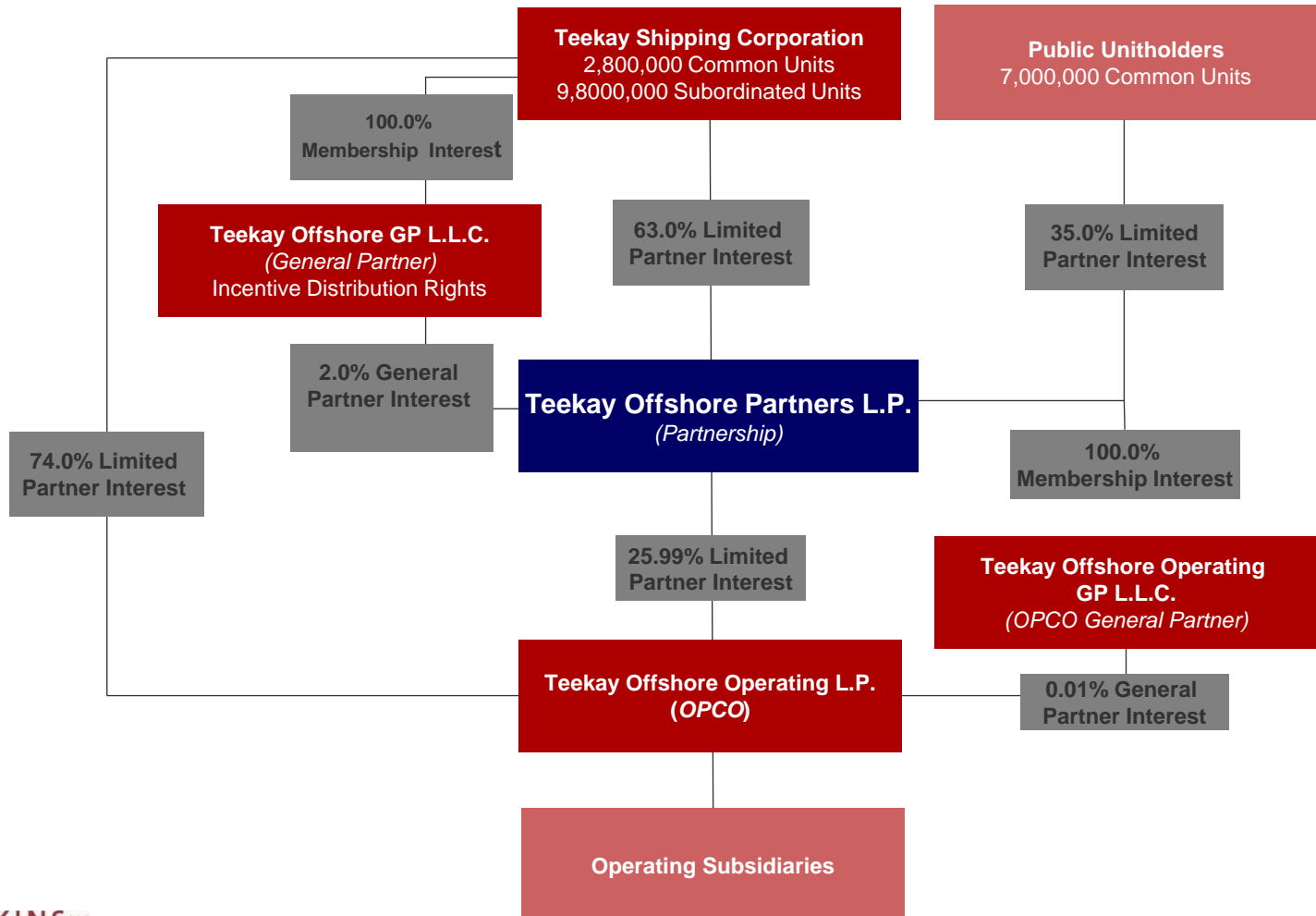
TEEKAY LNG PARTNERS L.P.



# Organizational Charts at IPO



## TEEKAY OFFSHORE PARTNERS L.P.





# Part IX – The Conflicts Committee Process

# MLP Fiduciary Duty Concepts – Governing Law

- The provisions of the Marshall Islands Limited Partnership Act resemble provisions of the limited partnership laws of a number of states in the United States, most notably Delaware.
  - The Marshall Islands Limited Partnership Act provides that it is to be applied and construed to make it uniform with the Delaware Revised Uniform Partnership Act and, so long as it does not conflict with the Marshall Islands Limited Partnership Act or decisions of the Marshall Islands courts, interpreted according to the non-statutory law (or case law) of the State of Delaware.
  - There have been, however, few, if any, court cases in the Marshall Islands interpreting the Marshall Islands Act, in contrast to Delaware, which has a fairly well-developed body of case law interpreting its limited partnership statute.
- Unlike under Delaware corporations, Delaware limited partnerships are largely creatures of contract. It is the express intent of the Delaware limited partnership statute to give **maximum effect to the principles of freedom of contract** and the enforceability of partnership agreements. Therefore, almost every aspect of a Delaware limited partnership can be governed by contract—the partnership agreement.

# Division of Powers

## **General Partner**

- Exclusive management powers over the business and affairs of MLP
- Board of Directors (“Board”) will be at this level
- Directors will owe duties to MLP and all of its unitholders (including the Parent) under MLP’s partnership agreement, and those directors will have personal liability for breaching those duties
- Directors should not be subject to undue influence from the Parent in carrying out their duties

## **Parent**

- Control General Partner, but no legal right to operate or otherwise directly control the MLP or its assets
- May be involved in decisions related to establishing initial governance structure, such as:
  - size of the Board
  - appointment of the individual members (including the independent directors)
  - designating committees of the Board
  - appointment of the initial executive officers of the General Partner
- Right, through ownership of the General Partner, to:
  - elect the members of the Board, who in turn elect the officers of the General Partner
  - remove the members of the Board
  - vote common units and subordinated units in any matter requiring unitholder approval in accordance with the MLP’s partnership agreement

# General Governance Framework

	Corporation	Limited Partnership
Board comprised of a majority of independent directors	Yes	No
Audit Committee	Yes	Yes
Compensation Committee	Yes	No
Nominating and Governance Committee	Yes	No
Conflicts Committee	No	Yes
Vote required to issue more than 20% of shares outstanding	Yes	No
Vote required to issue more than 5%/1% of shares outstanding to affiliates	Yes	No
Vote required to authorize shares for issuance under equity compensation plans	Yes	Yes
Subject to fiduciary duties of care and loyalty	Yes	No
Subject to “good faith” duty as a replacement for customary fiduciary duties	No	Yes

# Committee Requirements

## **Audit Committee**

- Comprised of at least three directors who meet the independence and experience standards established by the NYSE and the Exchange Act
- May rely on the phase-in rules of the SEC and the NYSE with respect to the independence of the Audit Committee
  - One independent member upon the effectiveness of the registration statement
  - A majority of independent members within 90 days thereafter
  - All independent members within one year thereafter
- Members should include at least one “audit committee financial expert”
- Assists the Board in its oversight of the integrity of the MLP’s financial statements and its compliance with legal and regulatory requirements and corporate policies and controls

## **Conflicts Committee**

- Comprised of at least two members of the Board who meet the Audit Committee independence requirements
- Members may not be officers or employees of the General Partner or directors, officers or employees of any of its affiliates
- Members may not hold any ownership interest in the General Partner or MLP, other than common units and other awards that are granted under MLP’s incentive plans
- Reviews specific matters as authorized by the Board that may involve conflicts of interest

# MLP “Fiduciary Duty” Concepts

## Corporate fiduciary duty standards

Fiduciary duties generally include the duty of care and duty of loyalty.

- The **duty of care** generally requires a director to act for the corporation in the same manner as a prudent person would act on his own behalf.
- The **duty of loyalty** would generally prohibit a director from taking any action or engaging in any transaction where a conflict of interest is present unless such transaction meets the entire fairness standard under Delaware law.

## Delaware limited partnership act

The Delaware limited partnership act enables a general partner to expand, restrict or eliminate its duties, including fiduciary duties, to the partnership and its unitholders; provided that the implied contractual covenant of good faith and fair dealing may not be eliminated.

## MLP modified standards

MLP’s partnership agreement will contain provisions that waive or consent to conduct by the General Partner and its affiliates that might otherwise raise issues as to compliance with corporate fiduciary duties or applicable law.

*When acting as general partner:*

it must act in “**good faith**,” meaning that it *subjectively believed* that the decision was not adverse to the best interests of MLP; it will not be subject to any other standard under applicable law, other than the implied contractual covenant of good faith and fair dealing.

*When acting in its individual capacity:*

it may act free of any duty or obligation to MLP or its limited partners, other than the implied contractual covenant of good faith and fair dealing.

# Two Concepts of “Good Faith”

Concept	Source	Definition	Commentary
Contractual standard of “good faith”	Partnership agreement	The person <i>subjectively believed</i> that the decision was not adverse to the best interests of the MLP	<ul style="list-style-type: none"> <li>Replaces common law fiduciary duty standards</li> <li>Analysis occurs at the time of the alleged wrong</li> </ul>
Implied contractual covenant of good faith and fair dealing	Common law	<ul style="list-style-type: none"> <li>The implied covenant requires that a party refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the benefits of its bargain. When exercising a discretionary right, a party to the contract must exercise its discretion reasonably.</li> <li>What is “arbitrary” or “unreasonable” - or conversely “reasonable” - depends on the parties’ original contractual expectations, not a “free-floating” duty applied at the time of the wrong.</li> <li>When conducting this analysis, the court will assess the parties’ reasonable expectations at the time of contracting; and will not imply terms to “rebalanc[e] economic interests after events that could have been anticipated, but were not, that later adversely affected one party to a contract.”</li> </ul>	<ul style="list-style-type: none"> <li>Cannot be eliminated or replaced</li> <li>In contrast to a contractual good faith claim, an implied covenant claim looks to the past – what terms would the parties have agreed to if they had thought to address them in the partnership agreement</li> </ul>

# Contractual Good Faith Standard

- Under an MLP's partnership agreement, the traditional corporate fiduciary duties of due care and loyalty are replaced with an overall standard of conduct called "good faith."
- The partnership agreement will provide that in order for an action or determination to be in good faith, **the director or officer must subjectively believe that the action or determination is not adverse to the best interests of the MLP.**
- While not completely defined in the partnership agreement or under Delaware law, the Delaware supreme court has said that, in the corporate context, acting in "good faith" means, among other things, acting "with an honesty of purpose and in the best interests and welfare of the corporation."
- The court has further explained that a failure to act in good faith may be shown, for instance, where a director:
  - intentionally acts with a purpose other than that of advancing the best interests of the corporation;
  - acts with the intent to violate applicable law; or
  - intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties.



# Implied Contractual Covenant of Good Faith and Fair Dealing

- Unlike the corporate fiduciary duties of due care and loyalty, the implied contractual covenant of good faith and fair dealing cannot be eliminated or replaced
- The implied covenant “seeks to enforce the parties’ contractual bargain by implying only those terms that the parties would have agreed to during their original negotiations if they had thought to address them.”
- The Delaware supreme court has recently provided hypothetical examples of actions that could meet the contractual standard of good faith (i.e, a general partner obtaining a fairness opinion from a qualified financial advisor), but are otherwise “arbitrary and unreasonable” and thereby “frustrat[e] the fruits of the bargain that the asserting party reasonably expected.” These hypotheticals, and the facts of the case in question, include:
  - a general partners’ obtaining a single fairness opinion covering multiple transactions, when the financial advisor could not have provided separate fairness opinions for the individual transactions;
  - a general partners’ concealing material information that would require a financial advisor to opine a transaction price was not fair;
  - a general partners’ bribing a financial advisor; or
  - a financial advisor providing a fairness opinion solely for the purpose of securing future work from the general partner.

# Conflicts of Interest – How They Arise

- Conflicts of interest may arise between the Parent and its affiliates (including the General Partner and its officers and directors), on the one hand, and MLP and its limited partners, on the other hand.
  - The most common source of conflicts will be transactions between affiliates of the Parent and MLP, such as asset “drop-downs” and related commercial arrangements.
  - Change of control transactions can also generate conflicts.
  - There also may be conflicts for the officers and directors of the General Partner who are also officers or directors of other affiliates of the Parent that are inherent in the MLP structure itself.

# Conflicts of Interest – How to Resolve Them

- MLP's partnership agreement will contain a provision that allows the General Partner and its directors to resolve conflicts of interest in a clear and decisive manner.
  - MLP's partnership agreement will provide that, whenever a potential conflict of interest exists, any resolution or course of action by the General Partner in respect of such conflict of interest:
    - shall be permitted;
    - shall be deemed approved by all Partners;
    - shall not constitute a breach of the partnership agreement; and
    - shall not constitute a breach of any duty stated or implied by law or equity
- if**
- the resolution or course of action in respect of such conflict of interest is:
    - approved by **Special Approval**;
    - approved by the vote of a **majority of the Outstanding Common Units** (excluding Common Units owned by the General Partner and its affiliates);
    - on **terms no less favorable** to MLP than those generally being provided to or available from unrelated third parties; or
    - **fair and reasonable** to MLP, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to MLP).

# Conflicts of Interest – How to Resolve Them

- “Special Approval” means approval by a majority of the members of the Conflicts Committee.
- Delaware courts have recognized conflicts committee approval as an effective means of resolving conflicts of interest between a general partner and the limited partners and defeating claims for breaches of the duty of loyalty.
- If Special Approval is sought, then it is presumed that, in making its decision, the Conflicts Committee acted in good faith.
- If Special Approval is not sought and the Board determines that the resolution or course of action taken with respect to a conflict of interest satisfies either of the standards set forth below, then it shall be presumed that, in making its decision, the Board acted in good faith:
  - on terms no less favorable to MLP than those generally being provided to or available from unrelated third parties
  - fair and reasonable to MLP, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to MLP)

# Characteristics of a Properly Structured and Functioning Conflicts Committee

## Characteristics of a Properly Structured and Functioning Conflicts Committee

- Consists of at least two members
- Members satisfy the independence requirements in the partnership agreement
- Members exercise independent judgment
- Members have no personal interest in the transaction being evaluated
- Members are well informed and act with due care in making a determination (including taking the appropriate time necessary to make a decision)
- The committee is represented by independent legal and financial advisors (in most cases)

**The “Special Approval” process must be assessed as to whether it complies with the implied contractual covenant of good faith and fair dealing.**

**For material transactions, the Board will likely want to obtain Special Approval because of the protections from legal liability that it affords, assuming the Special Approval was granted by a fully informed and disinterested Conflicts Committee that was exercising independent judgment.**

**It’s all about the process.**

# Conflicts of Interest – Reliance on Advisors

- The General Partner and the Conflicts Committee may consult with the following when considering a course of action:
    - legal counsel
    - accountants
    - appraisers
    - management consultants
    - investment bankers
    - other consultants and advisers
  - Any act taken or omitted to be taken in reliance upon the advice or opinion of the above advisors shall be conclusively presumed to have been done or omitted in good faith
- if**
- the General Partner or Conflicts Committee reasonably believes such advice or opinion to be within such advisor's professional or expert competence

# MLP Voting Rights

The following is a summary of the unitholder vote required for the matters specified below. Matters that require the approval of a “unit majority” require:

- during the subordination period, the approval of a majority of the outstanding common units, excluding those common units held by the General Partner and its affiliates, and a majority of the outstanding subordinated units, voting as separate classes; and
- after the subordination period, the approval of a majority of the outstanding common units.

Topic	Required Vote
Issuance of additional units	No approval rights
Transfer of incentive distribution rights	No approval rights
Reset of incentive distribution rights	No approval rights
Transfer of ownership interest in General Partner	No approval rights
Amendment of partnership agreement	Certain amendments may be made without unitholder vote; other amendments with a unit majority
Merger or sale of substantially all assets	Unit majority
Dissolution	Unit majority
Withdrawal of the General Partner	Unit majority, excluding common units held by the General Partner and its affiliates, prior to 10 years after the IPO
Removal of the General Partner	Two thirds of outstanding units, voting as a single class, including units held by the General Partner and its affiliates
Sale by the General Partner of its general partner interests (except for sale of all assets)	Unit majority

# Related Party Transactions Policy

- The Board will adopt a related party transactions policy in connection with the closing of the IPO that will provide that the Board or its authorized committee will review on at least a quarterly basis all related party transactions that are required to be disclosed under SEC rules and, when appropriate, initially authorize or ratify all such transactions.
- In the event that the Board or its authorized committee considers ratification of a related party transaction and determines not to so ratify, the code of business conduct and ethics will provide that MLP's management will make all reasonable efforts to cancel or annul the transaction.
- The related party transactions policy will provide that, in determining whether or not to recommend the initial approval or ratification of a related party transaction, the Board or its authorized committee should consider all of the relevant facts and circumstances available, including (if applicable) but not limited to:
  - whether there is an appropriate business justification for the transaction;
  - the benefits that accrue to MLP as a result of the transaction;
  - the terms available to unrelated third parties entering into similar transactions;
  - the impact of the transaction on a director's independence (in the event the related party is a director, an immediate family member of a director or an entity in which a director or an immediate family member of a director is a partner, shareholder, member or executive officer);
  - the availability of other sources for comparable products or services;
  - whether it is a single transaction or a series of ongoing, related transactions; and
  - whether entering into the transaction would be consistent with the code of business conduct and ethics.



# Director Protection from Personal Liability

## Satisfying Your Duties



The best protection for a director is **acting with due care, in good faith and without conflict.**

## Exculpation



A director **will not be liable for monetary damages** to MLP or its unitholders as a result of any act or omission by the director unless:

- there has been a final and non-appealable judgment determining that the director acted in bad faith, or,
- in the case of a criminal matter, acted with knowledge that the director's conduct was criminal.

## Indemnity



A director **is entitled to indemnity** from MLP for losses by reason of being a director unless:

- there has been a final and non-appealable judgment determining that the director acted in bad faith, or,
- in the case of a criminal matter, acted with knowledge that the director's conduct was unlawful.

## Expense Advancement



A director **may receive expense advancement**, pursuant to the MLP partnership agreement, in defending a claim, subject to:

- the director undertaking to repay these advances if indemnification is later determined to not be available.

## D&O Insurance



A director is **insured against liability** for criminal, administrative, civil, and regulatory proceedings based on actual or alleged acts, errors, omissions, misstatements, neglect, or breach of duty committed or allegedly committed.

# Illustrative Timeline

Date	Required Action
Week 1	<ul style="list-style-type: none"> <li>The Parent identifies assets to be dropped down and begin qualifying income analysis and valuation work</li> </ul>
Week 2	<ul style="list-style-type: none"> <li>The Parent continues qualifying income analysis and valuation work</li> <li>The Parent informally proposes dropdown to Conflicts Committee</li> <li>If the Parent credit facility requires delivery of a fairness opinion for related party transactions, the Parent engages a financial advisor to render fairness opinion</li> </ul>
Week 3	<ul style="list-style-type: none"> <li>The Parent's management team makes presentation regarding proposed dropdown to Conflicts Committee</li> </ul>
Week 4	<ul style="list-style-type: none"> <li>Conflicts Committee engages independent financial and legal advisors and holds initial meeting with advisors</li> <li>The Parent's counsel distributes draft contribution agreement to Conflicts Committee and its advisors</li> <li>The Parent's financial advisor conducts valuation work (if applicable)</li> </ul>
Weeks 5-6	<ul style="list-style-type: none"> <li>The Parent and Conflicts Committee negotiate contribution agreement</li> <li>Conflicts Committee's legal advisor conducts due diligence on dropdown assets</li> <li>Conflicts Committee's financial advisor conducts modeling and valuation work on dropdown assets</li> <li>The Parent's financial advisor continues valuation work (if applicable)</li> <li>The Parent's counsel prepares other documentation required for dropdown of assets, including amendments to omnibus agreement</li> </ul>

# Illustrative Timeline

Date	Required Action
Week 7	<ul style="list-style-type: none"> <li>• Parties finalize contribution agreement</li> <li>• The Parent receives fairness opinion from its financial advisor (if applicable) and approves dropdown</li> <li>• Conflicts Committee receives fairness opinion from its financial advisor and recommends dropdown to the Board</li> <li>• Board approves dropdown</li> <li>• Parties execute contribution agreement</li> <li>• Parties issue press release announcing proposed dropdown and MLP files Forms 8-K with SEC</li> <li>• Parties make HSR antitrust filing if required</li> <li>• MLP files supplemental listing application with NYSE if MLP common units will be issued as part of the consideration for the assets being contributed</li> </ul>
Week 9 (or sooner, if antitrust filings not required)	<ul style="list-style-type: none"> <li>• Obtain antitrust clearance</li> <li>• Close and fund transaction (possibly including borrowing under MLP's credit facility and/or equity or debt offering by MLP); execute omnibus agreement amendment and other closing documents</li> <li>• Parties issue press release regarding closing of dropdown</li> </ul>
Post-Closing	<ul style="list-style-type: none"> <li>• MLP files Form 6-K to report closing of dropdown</li> <li>• MLP files Form 6-K containing pro forma financial information</li> <li>• If MLP common units were issued to the Parent, Parent files updated Schedule 13D/G and Form 4 with the SEC to reflect the Parent's increased ownership interest in MLP</li> </ul>

# Contact Information



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