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**BN&F NEWS
UPDATE**

OCEAN SHIPPING NEWS

The Federal Maritime Commission ("FMC") has amended its regulations to now allow Non-Vessel Operating Common Carriers ("NVOCC") to enter into written contracts with shippers. The regulations became effective January 19th and are now found at 46 CFR Part 531.

These agreements are referred to as "Service Arrangements" to distinguish them from "Service Contracts" that are entered into between ocean common carriers and shippers. The regulations define a Service Arrangement as follows:

NVOCC Service Arrangement ("NSA") means a written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVOCC or two or more affiliated NVOCCs, in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level. The NSA may also specify provisions in the event of nonperformance on the part of any party.

The regulations specify the minimum information that must be included in an NSA, and require the NVOCC to file a copy of the NSA with the FMC, and to publish a "statement of essential terms" in tariff form.

A shipper may enter into an NSA on be-

half of itself and its "affiliates". The FMC has also defined "affiliates":

Affiliate means two or more entities which are under common ownership or control by reason of being parent and subsidiary or entities associated with, under common control with, or otherwise related to each other through common stock ownership or common directors or officers.

Likewise, the FMC The NVOCC may not commence operations under an NSA until the NSA or any material amendment is filed with the FMC. The regulations also specify that:

Effective date means the date upon which an NSA or amendment is scheduled to go into effect by the parties to the NSA. An NSA or amendment becomes effective at 12:01 a.m. Eastern Standard Time on the beginning of the on the beginning of the effective date. The effective date cannot be prior to the filing date of the NSA or amendment with the Commission.

However, an NVOCC may not agree with one another or negotiate and form an NVOCC Service Arrangement under the antitrust laws.

In addition, regulatory oversight is more strict with NSAs than with carrier service contracts. There are numerous features an NSA must include. Significantly, a contract's

provisions must not be "uncertain, vague, or ambiguous"; and they may not refer to "terms not explicitly contained in the NSA itself unless those terms are contained in a publication widely available to the public and well known within the industry". An NVOCC is also prohibited from riding on the back of a carrier's tariff.

The new regulations will provide shippers involved in import and export many advantages in their new freedom to contract with NVOCC's, and negotiate rates, terms and conditions. Shippers, and ultimately consumers, should derive the ultimate benefit of lower shipping costs and more advantageous shipping options. In addition, the regulations will strengthen the positions of NVOCCs in their negotiations with carriers, as the former will be better situated to commit freight volumes to the latter. It also will enable NVOCCs to best allocate their resources, providing the most advantageous rates in the trades and services their customers require.

For more information on transport, shipping and trade matters, please contact Steve Weiss.

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ARE YOU PROTECTED?

Protecting personal and business assets is as important as ever. Companies and individuals make the decisions to separate their entities or interests in case a business idea goes sour, or a lawsuit is filed. In order to help insulate those interests to remain unaffected by unexpected events, one should consider creating separate business entities.

In the past year, Illinois has adopted statutes that allow for Series LLCs. The law per-

mits a Company's operating agreement to establish a designated series of members, managers, or LLC interests as having separate rights, powers, or duties with respect to specified property or obligations of the LLC, or profits and losses associated with specified property or obligations. Instead of creating a separate LLC or corporation for each interest, it may be beneficial to create a series LLC. Each series may have a separate business purpose or investment objective. Unless otherwise provided in the operating agreement, none of the general liabilities of the limited liability company shall be enforceable against the assets of an individual series.

For more information on protecting assets, and the series LLC please contact Howard Marks or Michael Zalay.

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