Maritime Practice

2019 Year in Review

SEWARD & KISSEL LLP

To Our Clients & Friends

2019 was another successful year for Seward & Kissel, and we are thankful for the continued support received from our clients and friends. We are fortunate to be given the trust and confidence of our clients to continue to advise them on complex corporate and financing transactions, precedent-setting litigation and bankruptcy cases and novel tax, sanctions and regulatory issues.

Much of the conversations around the conference venues in 2019 related to the impending IMO 2020 sulfur emission regulations and their impact on the shipowners' bottom lines. The choices in essence came down to the following – install scrubbers or operate vessels using low sulfur bunker fuel. It remains to be seen which of the two choices may have been the more cost-efficient alternative.

The dearth of financing available to shipowners also dominated the discussions. While the IPO market remained shut to shipping companies, certain shipping issuers were able to raise capital in the U.S. capital markets and acquire vessels, which are discussed here. With traditional shipping banks continuing to exit or pull back from the industry and only a few issuers able to access the U.S. capital markets, shipowners have had to be more open-minded about financing options. Leasing, particularly with East Asian leasing houses, continued to fill the gap. Other "alternative" credit providers – credit funds and other lending vehicles established to provide funding – were also continuing to increase their market share. The joke that is now getting old is that such "alternative" lenders should no longer be labeled "alternative" but just "lenders". Likewise, there has been a resurgence in joint venture activity, and some of the key considerations in establishing a shipping JV are explained here.

The discontinuance of LIBOR (expected in 2021) started to gain attention in 2019 both from the industry participants and the regulators. Shipping being a capital-intensive industry and heavily dependent on LIBOR-based bank debt, LIBOR's impending sunset will have a major impact. Some of the issues unique to shipping are discussed here.

2019 saw major shipping companies undergo judicial or out-of-court restructuring. The United States continues to be the venue of choice for in-court proceedings, but other countries have introduced or are contemplating legislation to institute similar regimes. Some of those new regimes across the world are detailed here.

In early 2019, the European Union and the Organization for Economic Cooperation and Development released new economic substance guidance, and economic substance rules were adopted or amended in many of the jurisdictions around the world. The rules recently enacted by the Marshall Islands are summarized here.

When shipowners face arrest or attachment claims involving judicial seizure of a vessel, the business consequences can be severe. In 2019, our maritime litigators successfully defended against such a claim, asserted under an "alter ego" theory, by establishing the facts about the shipowner's business and the limited circumstances when the theory applies, as detailed here.

As we look forward and ponder about the future, 2020 certainly seems to have all the ingredients of an exciting year. What impact may the U.S. presidential election have on the world at large and the shipping industry in particular? To what extent will the rapidly spreading coronavirus slow down the global economy and China specifically? Will shipping banks continue to retreat from ship finance or will some banks now see an opportunity to re-enter? How will the industry cope with existing and new environmental regulations? Is the trade war between China and the U.S. now over, or has it only just begun? Will Brexit have any impact on shipping?

We at Seward & Kissel are here to help guide our clients through these tumultuous times. Our unique insight and capabilities have been honed through decades of experience and as a result of our being involved in all facets of the maritime industry, including shipping finance, public offerings and private placements, private equity investments, restructurings, litigation and bankruptcy, purchase and sale transactions, mergers and acquisitions, and from our having acted in varied capacities in each of these types of transactions. We look forward to continuing to assist our clients as the maritime industry finds its bearings and charts its course for 2020 and beyond.

The Seward & Kissel Maritime Team

Shipping Joint Ventures – Key Considerations

Over the last year, there has been a resurgence in joint venture activity in the shipping industry, with Seward & Kissel taking an active role in many of these transactions on behalf of its clients. Whether due to the continued shortage of financing available from traditional providers of capital to the shipping industry, which has driven ship owners/managers ("Ship Owners") to seek alternative financing sources, such as private equity and hedge fund investors, or simply as a result of the cyclical nature of the shipping industry, we have observed a significant increase in Ship Owners and third party investors forming new shipping joint ventures to invest in both second-hand vessels and newbuilds. The following are some of the key issues that must be carefully considered by the parties to such a transaction.

- *Purpose.* The purpose of the joint venture should be carefully defined from the outset. If the venture will be set up for a one-off transaction or is intended to invest in a particular segment of the shipping industry, the parties may wish to limit its purpose so that no party is authorized to cause the joint venture to take any actions outside of the stated business purpose.
- *Form of Entity and Jurisdiction.* Another important issue that the parties will need to consider is the form of the joint venture vehicle and the jurisdiction of its organization. This determination will likely be driven primarily by tax and regulatory implications resulting from the types of investors involved and the nature of the joint venture's activities.
- *Economic Terms.* The parties will need to consider a number of economic terms, including, among others, each party's percentage ownership interest in the venture, the size of each party's capital commitment, the amount and type of capital contributions (such as cash and/or vessels), the length of the investment period, procedures for calling capital contributions and remedies for defaults, the allocation of profits and losses and the distribution waterfall mechanism (including whether any parties will be entitled to priority or preferred returns), and the Ship Owner's compensation, if any (including any management or performance compensation, such as a carried interest, and the amount of any commercial and technical vessel management fees).
- *Governance Issues.* Another key issue is determining how the joint venture will be managed and how much say each party will have in running the business. For example, the parties must determine if there will be a governing body, such as a board of directors, and if so, how the size and composition of such governing body will be determined. The parties must also decide what decisions will require simple majority approval and which items, if any, will require supermajority or even unanimous consent.
- *Conflicts of Interests; Non-Competition/Non-Solicitation.* The parties should address potential conflicts of interests that may arise from time to time between the Ship Owner's existing operations and the joint venture's business. At a minimum, the parties should determine how potential vessel acquisitions, chartering opportunities and vessel dispositions will be allocated between the joint venture and the Ship Owner's other business to the extent there is any overlap in the businesses or any potential for conflicts of interest. In addition, during the term of the venture (or at least during the investment period), the parties may wish to consider restricting the other's ability to establish or invest in competing ventures or to solicit the joint venture's customers or employees.
- *Commercial and/or Technical Management Issues.* The parties will also need to consider issues relating to the Ship Owner's commercial and/or technical management responsibilities, such as having the right to remove or replace the Ship Owner if it has engaged in certain proscribed conduct, as well as any ramifications resulting therefrom, such as forfeiture of any unearned carried interest or loss of governance rights.
- *Limitation on Transfers; Exit Strategy.* The parties to a joint venture must consider how, and under what circumstances, the venture will terminate and whether a party is free to exit the venture. In order to lock up each party and to prevent a party from transferring its ownership interest in the joint venture to an unwanted third party (such as competing shipping owners or investors), most joint venture agreements have varying degrees of restrictions on transferability of interests, ranging from a total prohibition to prescribed limited transfer rights, such as rights of first refusal, tag-along and/or drag-along rights, to put-call arrangements or even a forced sale, IPO or liquidation of the venture or its assets.
- *Deadlock Events and Dispute Resolution Mechanisms.* The parties should try to plan for possible contingencies, including deadlock events. Deadlock events can vary, but typically include a lack of agreement on certain material issues related to the business or management of the venture. The parties should provide for the mechanism to resolve such a deadlock. The mechanisms vary, but may include, mediation, arbitration, litigation, forced sale or liquidation of the joint venture, or exercising a buy-sell right.

The above list covers only some of the issues that parties should consider before entering into a joint venture. Identifying and resolving these issues up front should enhance the likelihood of a smooth and successful venture. When considering any such transaction, please consult with your Seward & Kissel relationship attorney early on to walk you through these and other important issues and discuss the alternatives available to you.

Unique Challenges of LIBOR's Disappearance for Shipping Loans[1]

As many of us are well aware, LIBOR will likely disappear in 2021. The transition away from LIBOR is no longer a distant event that may sort itself out, but a near that needs immediate attention. Bank regulators are now requiring information as to how banks under their supervision are preparing themselves, and the financial industry as a whole has started to address the issue with a greater sense of urgency. In this article, we will examine how the market is preparing for this watershed event and the challenges associated with LIBOR's disappearance specifically for shipping loans.

As background, the rate of interest being charged on a commercial loan often has two components: a reference rate (which is used as a proxy for the lender's cost of funding) and a margin (which represents the lender's profit). By far the most common reference rate used for this purpose (especially in shipping loans) is LIBOR, and without it, the lender will not be able to calculate the interest rate. A loan agreement typically contains a so-called "market disruption" provision intended to address temporary unavailability of the reference rate, but such a provision is likely inadequate to deal with a permanent event like LIBOR's disappearance.

In order to address LIBOR's transition, what has become prevalent in the loan market is inclusion of a fallback provision, which specifies the steps to be followed upon LIBOR's disappearance. While there are variations, conceptually, the LIBOR fallback provision provides a framework for the replacement of LIBOR either by hardwiring into the loan agreement a specified alternate reference rate (for example, the Secured Overnight Financing Rate discussed below) or allowing the parties to amend the loan agreement within certain parameters.

The Alternative Reference Rates Committee (ARRC) is a group of market participants convened by the Federal Reserve Board to help with this issue (as related to U.S. dollar-based LIBOR). They have developed and published (after a public comment period) recommended fallback language for various financial products, including syndicated loans, to be inserted into loan agreements and have also identified the Secured Overnight Financing Rate as a potential alternative to LIBOR. ARRC's recommended language employs two separate approaches: an "amendment approach" and a "hard-wired approach". Both approaches start with pre-determined triggers for the replacement of LIBOR, which include LIBOR's actual or impending disappearance or the lenders' election for early transition.

Upon the occurrence of any such trigger, the "amendment approach" provides for a mechanism by which the lenders and the borrower can amend the loan agreement to replace LIBOR and to adjust the margin pursuant to the then-prevalent market conventions (and with a set level of lender approval right, or a negative approval right where the amendment becomes effective unless a required number of lenders object). The "hard-wired approach", on the other hand, takes all discretion away from the parties. It spells out exactly what will happen upon a trigger event. It pre-bakes into the contract which rate will replace LIBOR and how the margin will adjust.

The replacement of LIBOR presents several unique issues for ship finance lenders and owner-borrowers.

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[1] A version of this article was published in Marine Money International October/November 2019 Legal Issue.

Unique Challenges of LIBOR's Disappearance for Shipping Loans[1]

(Continued from page 3)

First, many shipping loans are bilateral or "club" deals, which, on one hand, may make the amendment process efficient (given the small number of lenders), but on the other hand, because some of these loans are documented on legacy form documents on a relationship basis, they may not fully protect the lenders or the borrowers when it comes to an unexpected event like LIBOR's disappearance. The transition event may also place the agent bank in a precarious position both legally and from a relationship perspective, given its connection both to the owner-borrower and "club" participants, where it cannot act without all lender and borrower consent but still needs to be able to calculate interest on the loan.

Second, given that a small number of shipping banks capture a large percentage of the market share, amending each and every existing loan all at the same time (or in a very short window of time) will be very difficult, which warrants early preparation.

Third, if the loan agreement is amended to provide for a replacement reference rate, the ship mortgages securing the loan will need to be amended, as the change in the interest calculation method is a substantive matter material to the interests of third party creditors. This prospect, especially in the context of a credit facility collateralized by a large fleet of vessels, makes early preparation even more important.

Fourth, many shipping sale-leaseback transactions have a LIBOR component in calculating the charter hire. Because these transactions are often documented on a BIMCO-form bareboat charter with additional clauses, they don't always contain the boilerplate protective language that one would typically find in a loan agreement. These bareboat charters will need to be amended to provide for a different method of interest calculation.

Fifth, interest rate hedges are prevalent in shipping. Many shipping companies have entered into derivative instruments to fix their interest rate exposure. Like loan agreements, these derivative instruments (which are based on LIBOR) will need to be amended to provide for an alternate reference rate to replace LIBOR, and shipping companies need to ensure harmonization between amendments to the underlying loan and the hedging instrument, so that there is no gap in derivative coverage.

Sixth, for public companies, LIBOR's likely disappearance warrants disclosure, given the risks involved in amending the loan agreement and other related transaction documents. Many public companies (shipping or otherwise) have started to include such disclosure in the form of a risk factor in their periodic filings.

The replacement of LIBOR is an important but fluid issue fraught with uncertainty. Borrowers and lenders are all encouraged to review their loan documentation and be kept up-to-date on the latest market developments. Seward & Kissel has established a LIBOR transition task force to help clients with all legal issues relating to this important change and maintains a client portal that includes all the pertinent literature, latest developments and analysis across all the relevant jurisdictions.

International Restructuring Regimes Present New Opportunities

Over the past few years, and particularly in 2019, multiple jurisdictions have incorporated changes to their restructuring laws. These changes have largely been debtor friendly (often taken from current US and UK insolvency laws), and give distressed companies new opportunities to restructure and continue as going concerns. They also contemplate greater cooperation between jurisdictions in multinational restructurings. These changes should be viewed as a positive for both prospective debtors and creditors, although both parties should be cognizant of their impact.

These modifications have been made or initiated in many key shipping jurisdictions, including Singapore, Dubai, the Netherlands, Australia, and the European Union. Singapore led the charge, amending its laws in 2017, which laws are currently being tested. 2019 saw similar modifications take root in other jurisdictions, which we describe briefly below.

Dubai implemented the Insolvency Law No. 1 of 2019 in June of last year, which is now in effect. The new law, applicable to entities registered and operating in Dubai, introduced a debtor-in-possession procedure known as rehabilitation, permitting directors of a distressed company to continue to manage the company's affairs and providing the company with additional protections, including a moratorium on the appointment of a rehabilitation nominee and protection against the termination of contracts. Additionally, the law provides for the sanctioning of new priority financing and contains a cram-down provision, allowing the debtor to implement a plan over non-consenting creditors in certain circumstances.

Some very significant legislation was approved by the European Parliament in March 2019 that was aimed at harmonizing Member State restructuring and insolvency laws. The directive, which entered into force in July 2019, establishes minimum standards for Member State insolvency laws that must be adopted and published by July 17, 2021. Some of the baseline requirements will be management and moratorium provisions similar to those referenced above, as well as protection against non-debtor contract termination, priority financing provisions, and cram-down provisions.

In July 2019, the Netherlands Parliament was provided with a bill creating a revised restructuring regime. However, this bill still requires debate and adoption, which is expected to occur in 2020. This bill would implement a restructuring framework as dictated by the EU Directive. Key provisions of the Dutch law include additional access requirements, increased debtor control via continued management during the restructuring period, a court-ordered moratorium, contract termination protections, and a cram-down provision.

These changes reflect a global shift in the restructuring paradigm. More debtor-friendly regimes will allow for more creative multi-jurisdictional restructurings, and bring new opportunities for distressed companies, but they also come with inherent limitations. Many of these regimes remain untested, and issues may remain with respect to the enforcement of foreign judgments. As a result, the US and the UK will likely remain restructuring hubs in the near future. Should you be confronted with any restructuring issue, please consult with Seward & Kissel's Corporate Restructuring and Bankruptcy Group to determine your alternatives and how to address your needs and concerns.

Marshall Islands Economic Substance Rules

In early 2019, in response to anti-tax avoidance initiatives by The Organization for Economic Cooperation and Development (OECD) and the European Union, the Marshall Islands released new economic substance guidance.

As a general matter, economic substance rules are being adopted around the world to combat perceived tax avoidance by multinational corporations. These rules are intended to target economically mobile activities (such as headquarters operations, intellectual property ownership and shipping) that are conducted in jurisdictions with favorable tax regimes. In the absence of such rules, economically mobile activities can be located in low- or no-tax jurisdictions without any corresponding personnel located in those jurisdictions.

The Marshall Islands economic substance rules, which are similar to those enacted by the Cayman Islands and Bermuda, require that any "relevant entity" conducting a "relevant activity" in the Marshall Islands have sufficient economic substance in the Marshall Islands.

A "relevant entity" for Marshall Islands purposes is a "non-resident" Marshall Islands entity, including a corporation, limited liability company or limited partnership. "Non-resident" Marshall Islands entities are typically used by shipping companies. Relevant activities include the "shipping business" which is broadly defined to include owning, operating, chartering or managing a vessel as well as the use, maintenance and rental of shipping containers.

Certain types of activities are exempt from the economic substance guidelines. For example, a so-called "pure equity holding company" which only holds equity participations in other entities, only earns dividends and capital gains and performs no commercial activity is not subject to the economic substance rules.

In the context of the shipping business, the regulations recognize that the shipping business is inherently mobile and that most of the core income generating activities are performed in transit outside of the Marshall Islands. Therefore, the level of value creation attributable to a fixed location is "more limited" than other types of activities. As a result, the requisite economic substance required in the Marshall Islands for companies engaged in the shipping business may be less than for certain other businesses.

Those organizations with Marshall Islands entities or other entities formed in low- or no-tax jurisdictions in their structures should carefully consider the implications of the economic substance rules in the relevant jurisdiction to their operations.

In 2020, the Marshall Islands is expected to release the details of its reporting regime for economic substance. Organizations with Marshall Islands entities in their structure should pay attention to any potential requirements and deadlines that may apply to them.

Defeating "Alter Ego" Claims in the Shipping Industry

Powerful pre-judgment remedies are available to creditors with maritime claims in a U.S. federal court, including the attachment of a debtor's assets or the arrest of its vessel. These remedies can provide significant leverage to a creditor seeking recovery on a maritime claim. From a shipowner's perspective, however, an unwarranted maritime claim asserted against its vessel can create a substantial unexpected burden on the vessel and severely disrupt the shipowner's business. In 2019, Seward & Kissel's maritime litigators successfully defended such a claim on behalf of a shipowner, under which a vessel had been arrested for the debt of an unrelated third party and the plaintiffs had alleged a complex theory that the ship managers, shipowner and the underlying vessel were somehow each "alter egos" of one another. Plaintiffs argued that, because the ship managers were contractually obligated to perform all of the day-to-day management of the vessel, they "dominated and controlled" the shipowner's decisions as well. If their "domination and control" allegations were accepted, the shipowner would have been made responsible for the obligations of a wholly-unrelated third party.

Often, Plaintiffs seek to establish "domination and control" by pointing to indicia such as common ownership, overlapping officers or directors, undercapitalization, or the failure to follow corporate formalities. If these factors are established, a court may permit a claim to enter discovery, but these factors should be insufficient standing alone to prevail unless they are shown to be part of an abuse of the corporate form or a scheme to defraud third parties. Here, following an intensive period of discovery, including nine depositions in two weeks, S&K developed a detailed record to establish that the plaintiffs' alter ego claims had no merit. In fact, courts may only find alter ego status under limited circumstances in an admiralty case, where the controlling entity used its subsidiary "to perpetrate a fraud" or where it has "so dominated and disregarded [its] corporate form that [it] primarily transacted [controlling entity's] personal business rather than its own corporate business."[1] This is based on a long-standing policy of limited corporate liability protection in the United States. As found by the Supreme Court, a corporate veil should only be pierced in the extraordinary circumstances where the corporate form is "misused to accomplish certain wrongful purposes, most notably fraud, on the shareholder's behalf."[2] This is particularly important in the shipping industry where "overlapping ownership structure and management agreements are. . .common."[3]

[1] *Kirno Hill Corp. v. Holt*, 618 F.2d 982, 985 (2d Cir. 1980)).
[2] *See United States v. Bestfoods*, 524 U.S. 51, 62 (1998); *see id.* at 61-62 ("It is a general principle of corporate law deeply ingrained in our economic and legal systems that a parent corporation … is not liable for the acts of its subsidiaries….[and] the exercise of the control which stock ownership gives to the stockholders . . . will not create liability beyond the assets of the subsidiary…..[n]or will a duplication of some or all of the directors or executive officers be fatal.") (internal citations and quotations omitted)).
[3] *See Swaidan Trading Co., LLC v. Dileton Mar. S.A.*, CV 18-994, 2018 WL 2017597, at *3 (E.D. La. May 1, 2018).

U.S. Shipping Capital Markets 2019 – Year in Review

The U.S. shipping capital markets continue to present challenges for public companies, with proceeds raised by shipping companies from equity and debt offerings during 2019 at historic lows. While some issuers raised capital through traditional debt and common equity offerings, given the status of the shipping capital markets, many companies turned to alternative transactions and financing sources to meet their financing and growth needs.

In 2019 Seward & Kissel's Capital Markets attorneys represented clients in a broad array of transactions ranging from the standard to the more unique and complex, including without limitation, convertible notes offerings, baby bonds, at-the-market offerings and non-capital raising transactions including, vessel acquisitions in exchange for shares (commonly referred to as "ships for shares"), direct listings and going-private transactions. Seward & Kissel attorneys also assisted a number of client in various "balance sheet" transactions utilizing the capital markets to return value to shareholders through traditional share buyback programs and the use of SEC registered self-tender offers. Additionally, Seward & Kissel served as seasoned U.S. securities counsel on a number of Norwegian securities offerings where capital markets activity remained comparatively robust compared to the New York markets. Seward & Kissel continues to remain the best positioned law firm to advise maritime companies during this prolonged downturn.

Although it was a down year in terms of the number of transactions closed, Seward & Kissel's Capital Markets attorneys were involved in some of the biggest and most complex transactions in the shipping industry during 2019. These transactions included:

- Eagle Bulk Inc.'s private placement pursuant to Rule 144A and Regulation S of a $114.2 million aggregate principal amount of 5.00% Convertible Senior Notes due 2024 and related share borrow facilities. Concurrently with the private offering of the Notes and by means of a prospectus supplement and accompanying prospectus, up to 3,582,880 shares of the Company's common stock were offered by selling shareholders, who borrowed such shares through a lending arrangement with one of the initial purchasers of the Notes, which is borrowing the shares from one of the Company's shareholders. The transaction closed in July of 2019

- Global Ship Lease Inc.'s underwritten public offering of 7,613,788 common shares resulting in gross proceeds to the company, after the exercise in full of the underwriters' over-allotment option, of approximately $55.2 million. Seward & Kissel attorneys also represented Global Ship Lease in connection with its underwritten public offering of 8.00% senior unsecured notes in $25.00 denominations, which are often referred to as "Baby Bonds." The common shares and Baby Bond offerings closed in September and October of 2019, respectively.

- Seward & Kissel represented Global Ship Lease, Scorpio Tankers Inc., Seanergy Maritime and Tops Ships Inc. in 2019 in at-the-market or "ATM" offerings. ATM offerings allow shipping clients to raise capital opportunistically by allowing companies to sell shares at prevailing market prices when there is a market uptick and allowing them to avoid selling shares when share prices are not favorable to the Company.

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U.S. Shipping Capital Markets 2019 – Year in Review

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- Scorpio Tanker Inc.'s acquisition from subsidiaries of Trafigura Maritime Logistics Pte. Ltd. of leasehold interests in 19 newly built product tankers for an aggregate value of $803 million in exchange for the assumption of debt and the issuance of approximately 4.76 million Scorpio Tankers common shares. Concurrently with this "Ship for Shares" transaction, Scorpio Tankers issued an additional $50 million of common shares to an affiliate of Trafigura for cash in a private placement, which common shares were subsequently registered for resale under the Securities Act.

- Flex LNG's successful listing on the New York Stock Exchange. A direct listing is an alternative to a traditional IPO that allows a company to be listed on an exchange without conducting an offering. Using a direct listing rather than an IPO allows companies to avoid large underwriting fees, restrictions on when insiders can sell shares, lockup periods and quiet periods before an offering in which an issuer must refrain from promotional publicity referencing the offering and cannot offer or sell securities prior to registration. The transaction closed in June of 2019

- Seward & Kissel represented DryShips Inc. in connection with the acquisition by SPII Holdings Inc. ("SPII"), a company that may be deemed to be beneficially owned by DryShips' chairman and chief executive officer, Mr. George Economou, of all of the outstanding shares of DryShips not owned by SPII for $5.25 per share in cash, without interest. The transaction closed in October of 2019.

Additionally, Seward & Kissel's Capital Markets attorneys represent dozens of companies as disclosure counsel, in the area of corporate governance and in a public company advisory capacity. Certain recent announcements by the SEC relating to cybersecurity, reduced disclosure requirements in annual reports and new rules requiring public companies to establish and maintain internal policies, controls and procedures reasonably designed to prohibit executive officers and directors from trading company stock after the company has determined that a significant corporate event has occurred but before the event is publicly disclosed (i.e. during the "trading gap") will impact the internal control and disclosure processes of public companies in the coming years.

Whether 2020 will mark a turning point in shipping capital markets is impossible to predict in light of the uncertainty surrounding the impact of the recent coronavirus outbreak. However, absent a continuation of significant economic disruptions beyond the first quarter of the year, there is still reason to believe the same favorable industry fundamentals that led to optimism during fourth quarter of 2019, including an improving rate environment in a number of sectors, signs of easing of international trade disputes and a favorable demand and supply-side dynamic, may result in a strong 2020. If there is one certainty in shipping capital markets, it is that when a window opens, it opens quickly and market participants must be ready and well-prepared to act.

If contemplating a transaction or for all of your corporate governance and public and private company advisory needs, please contact your Seward & Kissel Capital Markets relationship attorney.

Case Updates & Other News

Sanctions Update

Seward & Kissel had one of its busiest years in recent memory in the sanctions space in 2019 in connection with its work advising institutional clients on US sanctions, export controls, and anti-boycott laws, including in relation to Iran, Venezuela, North Korea, Russia/Ukraine, Syria, and Cuba and other countries. This included, for example, the US Treasury Department's Office of Foreign Assets Control (**OFAC**) addition of Petróleos de Venezuela, S.A. (**PDVSA**) to its Specially Designated Nationals and Blocked Persons List in January 2019, and accompanying General Licenses providing guidance on permitted and prohibited activities; the imposition of new sanctions focused on Iran's iron, steel, aluminum, and copper sectors on May 8, 2019, one year to the day following the United States' withdrawal from the Joint Comprehensive Plan of Action; and the October 2019 announcement, and subsequent removal, of certain sanctions on individuals and entities in Turkey. The firm routinely advises on large-scale financial transactions and complex regulatory issues that arise in public offerings, M&A deals, credit arrangements, investment management agreements, and public disclosures.

Promotions

Andrei Sirabionian was promoted to counsel on January 1, 2019. Andrei specializes in capital markets, securities law and general corporate matters. Brian Maloney was promoted as Counsel on January 1, 2020. Brian specializes in shipping and commercial litigation matters, including civil and criminal enforcement matters and investigations.

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2019 Highlights

Nordic American Tankers Limited (NYSE: NAT) in connection with a $306 million senior secured credit facility arranged by Beal Bank

Windstar Cruises Marshall Islands, LLC in connection with a senior secured credit facility in the aggregate principal amount of €180 million extended by a group of European lender syndicate

Diamond S Shipping Inc. (NYSE: DSSI) in connection with a senior secured term and revolving loan facility in the aggregate principal amount of up to US$525 million

Euroseas Ltd. (NASDAQ: ESEA) in connection with its acquisition of four feeder containerships for $15 million and 22.5 million Euroseas shares

Diamond S Shipping Inc. (NYSE: DSSI) in connection with a senior secured term and revolving loan facility in the aggregate principal amount of US$360 million

Dryships Inc. (NASDAQ: DRYS) in the completion of its acquisition by SPII Holdings Inc.

Scorpio Tankers Inc. (NYSE: STNG) in its acquisition of subsidiaries of Trafigura Maritime Logistics Pte. Ltd. In the aggregate principle amount of $800 million

Flex LNG Ltd. (NYSE: OSE:FLNG) in connection with the direct listing of $500 million of its ordinary shares on the New York Stock Exchange

Hudson Structured Capital Management Ltd. in connection with its joint venture with Pangaea Logistics Solutions Ltd. (NASDAQ: PANL) to acquire, own and operate four newbuilding bulk carriers

Eagle Bulk Shipping Inc. (NASDAQ: EGLE) in connection with the issuance of 5.00% Convertible Senior Notes due 2024 in the aggregate principal amount of $114.12 million, together with the structuring of related share borrow arrangements

Global Ship Lease, Inc. (NYSE: GSL) in connection with the issuance of $55.2 million of its common shares

Global Ship Lease, Inc. (NYSE: GSL) in connection with the public offering of $25 million of "Baby Bonds"

Ridgebury Tankers in connection with its joint venture with Riverstone Capital and Tufton Marine to acquire three product tankers

DryShips Inc. (NASDAQ: DRYS) in connection with its $17 million purchase, from a Morgan Stanley affiliate and management, of the 50.2% of shipping pool operator Heidmar Inc. it did not already own

Euroseas Ltd. (NASDAQ: ESEA) in connection with its $40 million acquisition of four containerships from Synergy Holdings Ltd.

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