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April 6, 2022

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Houston, TX 77002-6760

Dear Mr. Michael:

I am writing in response to your letter of March 16, 2022, on behalf of Tidewater, Inc. ("Tidewater"), a Delaware corporation, that owns and operates a fleet of U.S.-flagged offshore support vessels in the U.S. coastwise trade.

As you have stated, on March 9, 2022 Tidewater announced a transaction, pursuant to which Tidewater would acquire from Banyan Overseas Limited, a Bermuda Limited Company ("Seller"), all of the issued and outstanding common shares of Swire Pacific Offshore Holdings Limited, also a Bermuda Limited Company, that owns and operates a fleet of foreign-flagged offshore support vessels that operate in regions outside of the U.S. As partial consideration in lieu of shares of Tidewater's common stock, warrants will be issued by Tidewater to Seller.

Tidewater is a U.S. citizen within the meaning of the Jones Act (meaning, collectively, the U.S. citizenship and cabotage laws principally contained in 46 U.S.C. § 50501 and 46 U.S.C. Chapters 121 and 551 and any successor statutes thereto, together with the rules and regulations promulgated pursuant thereto) ("U.S. Citizen" or "U.S. Citizenship"), and, as such, is qualified to own and operate vessels in the Coastwise trades of the U.S.

Seller is a non-U.S. Citizen.

Tidewater and Seller have structured the issuance of warrants to Seller in lieu of common shares of Tidewater with the intent and purpose that Tidewater would remain a U.S. Citizen and remain qualified to own and operate vessels in the U.S. coastwise trade. Accordingly, you have requested confirmation from the National Vessel Documentation Center ("NVDC") that the warrants to be issued by Tidewater to Seller will not adversely affect the U.S. Citizen status of Tidewater.

In 2017, Tidewater filed a plan of reorganization under the bankruptcy laws of the U.S. that called for the conversion of a substantial amount of Tidewater debt into equity and for the issuance by Tidewater of warrants to non-U.S. Citizens. Confirmation was sought at that time from the NVDC that, when issued to non-U.S. Citizens, the warrants as structured in that case would not adversely affect the status of Tidewater as a U.S. Citizen. Following review of the documents submitted to accompany that request, the NVDC granted that confirmation by letter dated June 9, 2017.

I have referenced Tidewater's 2017 plan for the issuance of warrants and the NVDC's confirmation of that plan because, with the exception of one feature of the warrants to be issued to a non-U.S. Citizen in this case (a feature discussed below and which appears to be the primary focus of your request for confirmation) you have patterned the warrants after the approved issuance of warrants in 2017. In fact, included among the documents submitted is a "redline" showing the differences, and similarities, between the 2017 warrants and the warrants in this case. I also note, as did the NVDC's June 9, 2017 letter, that the 2017 warrants were, themselves, deliberately patterned after, and substantially similar to warrants issued in a debt-for-equity conversion by Horizon Lines and confirmed by the NVDC by letter dated September 11, 2011. The NVDC's June 9, 2017 confirmation letter to Tidewater also traced the development of a kind of "template" for the issuance of warrants to non-U.S. Citizens further back to the requirements established in the case of U.S. Shipping Partners L.P. (NVDC letter dated October 15, 2009) and forward as well (e.g., to Overseas Shipholding Group, Harvey Gulf International, and GulfMark Offshore, Inc.).

In short, the necessary conditions for the confirmation by the NVDC of the issuance of warrants to non-U.S. Citizens in its analysis of the U.S. Citizen status of companies owning and operating vessels in the coastwise trades of the U.S. have been well-established and documented. In general, those conditions can be summarized as follows:

- (i) that, the warrant holder has no right to vote as stockholder, to receive dividends or distributions upon liquidation (although, certain anti-dilution provisions have been found not to be objectionable);
- (ii) that, the warrants can only be exercised for common stock by the non-U.S. Citizen, if, at the time of exercise, the non-U.S. Citizen ownership in the U.S. Citizen vessel owner is, and is maintained, at less than 25%;
- (iii) that, the warrants do not give the warrant holders any control by restrictive or negative covenants;
- (iv) that, the warrants do not enable the holder to vote for the Board of Directors or officers; and
- (v) that, prior to their exercise and the issuance of the underlying shares, the warrant holder has no title to the underlying unissued shares.

With the possible exception of the feature to the warrants in this case that you have drawn our attention to, I find that the warrants in this case have been structured to comply, and do comply, with that previously accepted pattern. I will now address that possibly non-conforming feature.

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As I alluded to earlier in this letter, there is one feature that has been incorporated into the warrants in this case that was not present in the case of the 2017 Tidewater warrants. This feature also does not appear in any of the warrant proposals previously considered by this office.

However, this feature was also not hidden or glossed over or minimized by your submission. Rather, it was highlighted by inclusion of a "redline" of the 2017 warrant agreement, discussed

and explained extensively in the narrative of your cover letter and supported by inclusion with your submission of supporting transaction documents and by copies of applicable Securities Exchange Commission ("SEC") regulations to which your letter has referred.

The new feature introduced by the warrants in this case is a mechanism for the exercise of those warrants and sale of the warrant shares which is designed to enhance the warrant holder's liquidity in the warrants. It would allow the warrant holder to sell warrant shares short (in other words, to sell warrant shares that it does not then own), to U.S. Citizens through the stock market and then to exercise warrants that it holds in order to satisfy its obligation to cover those short sales. These transactions will be executed using broker-dealers that Tidewater and the Seller, and their respective counsel, will have vetted prior to execution to assure that they themselves are U.S. Citizens.

In summary, the Seller would place orders to sell warrant shares short with the broker-dealer who would, in turn, sell short such shares into the stock market. Upon receipt of confirmation that such short sales have been filled (but not yet settled), Seller would deliver an irrevocable warrant exercise notice to Tidewater and the warrant agent for an identical number of warrant shares. Whereupon, Tidewater would instruct the transfer agent for Tidewater's common stock to issue and deliver those warrant shares to the broker-dealer to cover the short sales. Within the time prescribed by the rules of the SEC, the broker-dealer would then settle the short sale of warrant shares by delivering them to the ultimate purchaser in the stock market. Finally, each such sale to the ultimate purchaser through the stock market would be subject to the general U.S. Citizenship safeguards implemented by Tidewater included in its governance documents which prevent the percentage of its shares held by non-U.S. Citizens from exceeding the statutorily prescribed percentage for U.S. Citizens (which percentage, in Tidewater's case, has been self-limited to 24%). Those safeguards are fully set forth and described in your submission.

In other words:

By selling the warrant shares short, Seller (a non-U.S.-Citizen) will never have vested title to, voting power, or ability to exercise any corporate control pertaining to those warrant shares within the meaning of 46 U.S.C. § 50501. In support of this contention you have cited rule 200 of SEC Regulation SHO; including

- (i) Rule 200 (a), which defines the term "short sale" and provides that "the term ***short sale*** shall mean any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller"; and
- (ii) Rule 200 (b), which provides that "[a] person shall be deemed to own a security if...[t]he person has rights or warrants to subscribe to it and has exercised those warrants"; but also
- (iii) Rule 200 (c), which provides that "[a] person shall be deemed to own securities only to the extent that he has a net long position in such securities."

In this case the order for a short sale would be placed and filled prior to exercise of the warrant exercise notice and that short position will remain outstanding until such time as the short sale is

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settled by delivery of the warrant shares to the ultimate purchaser's account. Seller would never be in a long position in the warrant shares and, in accordance with the regulations cited above, would, therefore, not be deemed to own the warrant shares at any time (nor, critically to the NVDC, to have vested title, voting power or the ability to exercise any corporate control within the meaning of 46 U.S.C. § 50501).

It is not the responsibility, nor is it the purpose of the NVDC by issuing this letter, to purport to interpret or administer the regulations of the SEC. Nor do I or NVDC representatives proclaim any special expertise in the application, purpose or derivation of those regulations. It is, however, the responsibility and the purpose of the NVDC to examine transactions brought before us, in the light of and guided by regulations promulgated by agencies with the special expertise to do so, in order to aid the NVDC in administering and protecting the statutory mandates which are the responsibility of the NVDC. I do so here just as my predecessors have done in the past. [Note: I refer here to the Memorandum of Timothy V. Skuby, Acting Director, National Vessel Documentation Center, regarding the Investigation into the U.S. Citizenship Status of Trico Marine Services, Inc. dated January 12, 2011, which found that the SEC regulatory definition of "beneficial ownership" in 17 C.F.R. § 240.13(d) – 3(a) "appears consistent with the description of "controlling ownership" in 46 U.S.C § 50501."]

Guided by the regulations and interpretations of the agency with special expertise in this area, I find that, in the mechanism described in your submission, the shares used to cover the short sale of warrant shares are deemed to have been sold at the time of the underlying short trade. This finding is consistent, again, with SEC interpretations and opinions. (see, SEC CDI 239.10 of the SEC, Division of Corporation Finance, Questions and Answers of General Applicability). Thus, from the moment Seller's order for the short sale of warrant shares is filled, Seller is deemed to have sold such warrant shares issuable upon exercise of the warrants, even before Seller exercises the warrants to cover the short sale. That being the case, (i) Seller (a non-U.S. Citizen) would never have beneficial ownership of or any other means to exercise any control over the warrant shares it has obligated itself to deliver to the broker-dealer to cover the short sale, and (ii) the citizenship of the ultimate purchaser will have been vetted by Tidewater's compliance mechanisms prior to it having assumed title and control.

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In light of all of the foregoing, I confirm that the warrants described in your submission are structured in conformity with U.S. vessel documentation rules and regulations and, more specifically, that the mechanism for exercise of the warrants described will not cause Tidewater to cease to be a U.S. Citizen for the purpose of owning and operating vessels eligible to engage in the coastwise trades of the United States.

Sincerely,



Christina G. Washburn  
Director