



September 25, 2017

**VIA FIRST CLASS AND ELECTRONIC MAIL** ([wkunzman@kunzboll.net](mailto:wkunzman@kunzboll.net))

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Re: Atlas Resources Series 28-2010 L.P., Atlas Resources Public #18-2009(B), L.P.,  
Atlas Resources Public #18-2009(C) L.P. (collectively, the "Funds")  
Request for Interpretative Guidance or No Action Relief

Dear Mr. Kunzman:

The Pennsylvania Department of Banking and Securities (the "Department") is in receipt of your letter, dated September 11, 2017, requesting assurance of no action or interpretative guidance for your client regarding a "spin off" transaction (hereinafter, "Spin Off") for the afore-referenced Funds. Specifically, you state that the Funds are seeking to engage in distributions of units of newly created subsidiaries to the respective Fund unitholders. You further state your belief that these distributions should be exempt from registration in the Commonwealth of Pennsylvania pursuant to Section 203(n) of the Pennsylvania Securities Act of 1972 ("1972 Act"), 70 P.S. § 1-203(n).

You represent on behalf of your client that each entity in the Funds is a limited partnership that is a public reporting company (hereinafter, "Parent"). Each Parent will create a new limited partnership (hereinafter, "Subsidiary"), which will be wholly-owned by each Parent. The described reason for the Spin Off is so that each limited partnership can segregate its assets based on geography.

You state that the Parent will (1) own all units of the Subsidiary and (2) transfer certain oil and gas assets to the Subsidiary. Each Subsidiary will become a public reporting company and subsequently each Parent will distribute all of the units of its Subsidiary to the unitholders of the Parent on a pro-rata basis and for no consideration.

Further, your letter states that "upon completion of the distribution, all of the unitholders of a Parent will also be unitholders of its Subsidiary; and each Parent and its Subsidiary are public reporting companies."

You have noted in your letter that United States Securities & Exchange Commission's ("SEC") Staff Legal Bulletin No. 4 (issued September 16, 1997) ("Bulletin") from the SEC's Division of Corporate Finance is applicable to your client's transaction. In this Bulletin, SEC Staff states that

distributions of units to a Parents' unitholders do not have to be registered under the Securities Act of 1933 so long as the following criteria are met:

- the Parent unitholders do not provide consideration for the spun-off shares;
- the spin-off is pro-rata to the parent unitholders;
- the Parent provides adequate information about the spin-off and the Subsidiary to its unitholders and to the trading markets;
- the Parent has a valid business purpose for the spin-off; and
- if the Parent spins-off "restricted securities", it has held those securities for at least two years.

Your letter states that SEC counsel has advised you that your client's proposed Spin Off meets the above referenced criteria.

Specifically, your letter requests no action relief based on exemption through Section 203(n) of the 1972 Act, 70 P.S. § 1-203(n). Section 203(n) states

Any transaction pursuant to an offer of securities to existing equity security holders of (i) the issuer; (ii) a corporation which prior to the commencement of the offer owned substantially all of the voting stock of the issuer; or (iii) a corporation which organized the issuer for the purpose of the offer, if no compensation, other than a standby commission, is paid or given directly or indirectly for soliciting any equity security holder in this state. "Equity security holders" include persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance.

70 P.S. § 1-203(n)

As you mention in your September 11, 2017 letter to the Department, the proposed Spin Off that your client seeks to execute does not comport to the statutory language provided by Section 203(n) of the 1972 Act. Section 203(n) does not include an exemption for equity security holders of entities which are not corporations. Additionally, in the Spin Off, the Funds would not be offering their own securities to unitholders; instead, the Funds would be offering the securities of Subsidiaries. As such, the distributions are not to the equity security holders of the issuers. Accordingly, Staff cannot confirm that Section 203(n) of the 1972 Act covers the stated Spin Off.

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Moreover, Staff declines to offer relief to your client pursuant to Sections 204(a) and/or 203(r) of the 1972 Act. We cannot conclude that the proposed distributions of units will not involve “offers” or “sales” of “securities” for value under the 1972 Act. *See* 70 P.S. §§ 1-203(r) and 1-204(a).

While the staff of the Department cannot provide your client with its requested relief on the bases of Sections 203(n), 203(r), and/or 204(a) of the 1972 Act, in light of the facts presented, including your representation that the Funds will comply with the Bulletin, the staff will not recommend that enforcement proceedings be initiated against the Funds, Subsidiaries, Parents, and/or their officers or employees, for violation of the securities registration requirements of the 1972 Act. *See* 70 P.S. § 1-201. However, this recommendation against enforcement proceedings does not include any type of waiver of the anti-fraud provisions of the 1972 Act. *See* 70 P.S. § 1-401.

Based on, and in reliance upon the representations set forth in your letter and other communications with you, the staff of the Department will not recommend enforcement action to the Department in the event the Spin Off occurs, and the units are “offered” and “sold” in Pennsylvania without compliance with the securities registration provisions of the 1972 Act.

This letter is provided pursuant to Regulation 604.023 and expresses only the current position of Department staff with respect to an enforcement action relating to the specific transactions detailed in your August 7, 2017 correspondence (and which you state will comport with the Bulletin). Any different facts or circumstances may require a different response. This letter merely expresses the position of the Department on enforcement and does not purport to express any binding or precedential legal conclusion.

Should you have any questions, please do not hesitate to contact the undersigned.

For the Commonwealth of Pennsylvania  
Department of Banking and Securities:



Scott A. Lane  
Senior Deputy Chief Counsel

cc: The Honorable Robin L. Wiessmann, Secretary of Banking and Securities  
Leo Pandeladis, Chief Counsel  
Joseph J. Minisi, Deputy Secretary for Securities  
Jeffrey P. Soderstedt, Corporation Finance Office Director

