

Blueknight Energy Partners, L.P.
Form 8-A12B/A
September 14, 2011

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 8-A/A
(Amendment No. 1)

FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES
PURSUANT TO SECTION 12(b) OR 12(g) OF THE
SECURITIES EXCHANGE ACT OF 1934

BLUEKNIGHT ENERGY PARTNERS, L.P.
(Exact name of registrant as specified in its charter)

DELAWARE
(State of incorporation or
organization)

20-8536826
(I.R.S. employer identification
number)

Two Warren Place
6120 South Yale Avenue, Suite 500
Tulsa, Oklahoma 74136
(Address of principal executive offices and zip code)

Securities to be registered pursuant to Section 12(b) of the Act:

Title of each class to be so registered	Name of each exchange on which each class is to be registered
Common Units representing limited partner interests	The NASDAQ Stock Market LLC

If this form relates to the registration of a class of securities pursuant to Section 12(b) of the Exchange Act and is effective pursuant to General Instruction A.(c), check the following box. [X]

If this form relates to the registration of a class of securities pursuant to Section 12(g) of the Exchange Act and is effective pursuant to General Instruction A.(d), check the following box. []

Securities Act registration statement file number to which this form relates: Not applicable.

Securities to be registered pursuant to Section 12(g) of the Act: None.



EXPLANATORY NOTE

On September 14, 2011, Blueknight Energy Partners G.P., L.L.C., the general partner (“our general partner”) of Blueknight Energy Partners, L.P. (“we” or “us”), adopted the Fourth Amended and Restated Agreement of Limited Partnership of Blueknight Energy Partners, L.P. (the “Amended and Restated Partnership Agreement”), pursuant to which the terms and rights of the common units representing limited partner interests in the Registrant (“common units”) were amended. The terms and rights of the common units, as amended, are set forth in the Amended and Restated Partnership Agreement. We hereby amend Item 1 of our Form 8-A dated May 10, 2011 to read in its entirety as follows:

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 1. Description of Registrant's Securities to be Registered.

The classes of securities to be registered hereby are common units representing limited partner interests of Blueknight Energy Partners, L.P.

DESCRIPTION OF COMMON UNITS

Transfer Agent and Registrar

Duties. American Stock Transfer & Trust Company serves as the registrar and transfer agent for the common units. We pay all fees charged by the transfer agent for transfers of common units, except the following that must be paid by unitholders:

- surety bond premiums to replace lost or stolen certificates, taxes, and other governmental charges;
- special charges for services requested by a unitholder; and
- other similar fees or charges.

There is no charge to the holders of common units for disbursements of our cash distributions. We will indemnify the transfer agent, its agents, and each of their stockholders, directors, officers, and employees against all claims and losses that may arise out of acts performed or omitted for its activities in that capacity, except for any liability due to any gross negligence or intentional misconduct of the indemnified person or entity.

Resignation or Removal. The transfer agent may resign by notice to us or may be removed by us. The resignation or removal of the transfer agent will become effective upon our appointment of a successor transfer agent and registrar and its acceptance of the appointment. If no successor has been appointed and has accepted the appointment within 30 days after notice of the resignation or removal, our general partner may act as the transfer agent and registrar until a successor is appointed.

Transfer of Units

By transfer of common units in accordance with the Amended and Restated Partnership Agreement, each transferee of common units shall be admitted as a limited partner with respect to the common units transferred when such transfer and admission is reflected in our books and records. Each transferee:

represents that the transferee has the capacity, power, and authority to become bound by the Amended and Restated Partnership Agreement;

automatically agrees to be bound by the terms and conditions of, and is deemed to have executed, the Amended and Restated Partnership Agreement; and

- gives the consents and approvals contained in the Amended and Restated Partnership Agreement.

A transferee will become a substituted limited partner of our partnership for the transferred common units automatically upon the recording of the transfer on our books and records. Our general partner will cause any transfers to be recorded on our books and records no less frequently than quarterly.

We may, at our discretion, treat the nominee holder of a common unit as the absolute owner. In that case, the beneficial holder's rights are limited solely to those that it has against the nominee holder as a result of any agreement between the beneficial owner and the nominee holder.

Common units are securities and are transferable according to the laws governing transfers of securities. In addition to other rights acquired upon transfer, the transferor gives the transferee the right to seek to become a substituted limited partner in our partnership for the transferred common units subject to the conditions of, and in the manner provided under, the Amended and Restated Partnership Agreement.

Until a common unit has been transferred and recorded on our books, we and the transfer agent may treat the record holder of the unit as the absolute owner for all purposes, except as otherwise required by law or stock exchange regulations.

The Longview system is, and any additional interstate pipelines that we acquire or construct may be, subject to rate regulation by the Federal Energy Regulatory Commission, or FERC. Our general partner has the right under the Amended and Restated Partnership Agreement to institute procedures, by giving notice to each of our unitholders, that would require transferees of units and, upon the request of our general partner, existing holders of our units to certify that they are Eligible Holders (as defined below). The purpose of these certification procedures would be to enable us to utilize a federal income tax expense as a component of the pipeline's cost of service upon which tariffs may be established under FERC rate making policies applicable to entities that pass-through their taxable income to their owners. Eligible Holders are individuals or entities subject to United States federal income taxation on the income generated by us or entities not subject to United States federal income taxation on the income generated by us, so long as all of the entity's owners are subject to such taxation. If these tax certification procedures are implemented, transferees of common units will be required to certify, and our general partner, acting on our behalf, may at any time require each unitholder to re-certify:

• that the transferee or unitholder is an individual or an entity subject to United States federal income taxation on the income generated by us; or

• that, if the transferee unitholder is an entity not subject to United States federal income taxation on the income generated by us, as in the case, for example, of a mutual fund taxed as a regulated investment company or a partnership, all the entity's owners are subject to United States federal income taxation on the income generated by us.

In the event that this notice is given by our general partner, which we refer to as a FERC Notice, transfers of a unit will not be recorded by the transfer agent or recognized by us unless the transferee executes and delivers a properly completed tax certification.

Following a FERC Notice, a transferee's broker, agent or nominee may, but is not obligated to, complete, execute and deliver a tax certification. We are entitled to treat the nominee holder of a unit as the absolute owner. In that case, the beneficial holder's rights are limited solely to those that it has against the nominee holder as a result of any agreement between the beneficial owner and the nominee holder.

Following a FERC Notice, in addition to other rights acquired upon transfer, the transferor gives the transferee the right to request admission as a limited partner in our partnership for the transferred units. A purchaser or transferee of units who does not execute and deliver a properly completed tax certification obtains only:

- the right to assign the common unit to a purchaser or other transferee; and
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the right to transfer the right to seek admission as a limited partner in our partnership for the transferred common units.

As a result, following a FERC Notice, a purchaser or transferee of units who does not execute and deliver a properly completed transfer application:

- will not receive cash distributions;
- will not be allocated any of our income, gain, deduction, losses or credits for federal income tax or other tax purposes;
- may not receive some federal income tax information or reports furnished to record holders of common units; and
- will have no voting rights,

unless the units are held in a nominee or “street name” account and the nominee or broker has executed and delivered a tax certification as to itself and any beneficial holders.

CASH DISTRIBUTION POLICY

Distributions of Available Cash

General. The Amended and Restated Partnership Agreement requires that, within 45 days after the end of each quarter, we distribute all of our available cash to unitholders of record on the applicable record date.

Definition of Available Cash. Available cash, for any quarter, consists of all cash on hand at the end of that quarter:

- less the amount of cash reserves established by our general partner to:
 - o provide for the proper conduct of our business;
 - o comply with applicable law, any of our debt instruments or other agreements; or
 - o provide funds for distributions to our unitholders for any one or more of the next four quarters;

plus all additional cash and cash equivalents on hand on the date of determination of available cash for the quarter resulting from working capital borrowings made after the end of the quarter. Working capital borrowings are generally borrowings that are made under a credit facility, commercial paper facility or similar financing arrangement, and in all cases are used solely for working capital purposes or to pay distributions to partners and with the intent of the borrower to repay such borrowings within 12 months.

Minimum Quarterly Distribution. We will distribute to the holders of common units on a quarterly basis at least the minimum quarterly distribution of \$0.11 per unit, or \$0.44 per unit annually, to the extent we have sufficient cash from our operations after establishment of cash reserves and payment of fees and expenses, including payments to our general partner.

There is no guarantee that we will pay the minimum quarterly distribution on the units in any quarter in the future. Even if our cash distribution policy is not modified or revoked, the amount of distributions paid under our policy and the decision to make any distribution is determined by our general partner, taking into consideration the terms of the Amended and Restated Partnership Agreement. The board of directors of our general partner will have broad discretion to establish cash reserves for the proper conduct of our business and for future distributions to our unitholders, and the establishment of those reserves could result in a reduction in cash distributions to you from levels we currently anticipate pursuant to our stated distribution policy. In addition, our cash distribution policy is subject to restrictions on distributions under our amended credit facility. Specifically, the agreement related to our amended credit facility contains material financial tests and covenants that we must satisfy.

General Partner Interest and Incentive Distribution Rights. As of September 14, 2011 (after the adoption of the Amended and Restated Partnership Agreement), our general partner is entitled to 2.5% of all quarterly distributions that we make prior to our liquidation. Our general partner has the right, but not the obligation, to contribute a proportionate amount of capital to us to maintain its general partner interest. Our general partner has indicated that it does not expect to contribute capital to us to maintain its general partner interest in connection with either our expected distribution in October 2011 to our common unitholders of transferable subscription rights to subscribe for Series A Preferred Units (“our rights offering”) and the issuance of Series A Preferred Units in connection therewith or the conversion of our convertible debentures (the “Convertible Debentures”). As such, after the consummation of our rights offering and/or the conversion of the Convertible Debentures, we expect our general partner will be entitled to approximately 2.1% of all quarterly distributions that we make prior to our liquidation. The remainder of the discussion in this section assumes that our general partner maintains its general partner interest at approximately

2.1%. Our general partner's interest in our distributions may be reduced if we issue additional units in the future and our general partner does not contribute a proportionate amount of capital to us to maintain its general partner interest.

Our general partner also currently holds incentive distribution rights that entitle it to receive increasing percentages, up to a maximum of approximately 50%, of the cash we distribute from operating surplus (as defined below) in excess of \$0.1265 per unit per quarter. The maximum distribution of approximately 50% includes distributions paid to our general partner in respect of its general partner interest and assumes that our general partner maintains its general partner interest at approximately 2.1%. The maximum distribution of approximately 50% does not include any distributions that our general partner may receive on Series A Preferred Units or common units that it may own. No distributions will be paid to the holders of the incentive distribution rights in respect of such incentive distribution rights for an eight quarter period beginning with the quarter in which the special meeting occurs. Please see “—General Partner Interest and Incentive Distribution Rights” for additional information.

Operating Surplus and Capital Surplus

General. All cash distributed to unitholders will be characterized as either “operating surplus” or “capital surplus.” The Amended and Restated Partnership Agreement requires that we distribute available cash from operating surplus differently than available cash from capital surplus.

Operating Surplus. For any period operating surplus generally means:

- an amount equal to two times the amount needed for any one quarter for us to pay a distribution on all of our units (including the general partner units) and the incentive distribution rights at the same per-unit amount as was distributed in the immediately preceding quarter; plus

- all of our cash receipts, excluding cash from (1) borrowings that are not working capital borrowings, (2) sales of equity and debt securities, (3) sales or other dispositions of assets outside the ordinary course of business, (4) capital contributions received or (5) corporate reorganizations or restructurings (provided that cash receipts from the termination of a commodity hedge or interest rate swap prior to its specified termination date shall be included in operating surplus in equal quarterly installments over the scheduled life of such commodity hedge or interest rate swap); plus

- working capital borrowings made after the end of a quarter but on or before the date of determination of operating surplus for the quarter; plus

- interest paid on debt incurred by us, and cash distributions paid on the equity securities issued by us, to finance all or any portion of the construction, expansion or improvement of our facilities during the period from such financing until the earlier to occur of the date the capital asset is put into service or the date that it is abandoned or disposed of; plus

- interest paid on debt incurred by us, and cash distributions paid on the equity securities issued by us, in each case, to pay the construction period interest on debt incurred, or to pay construction period distributions on equity issued, to finance the construction projects referred to above; less

- all of our operating expenditures (as defined below); less

- the amount of cash reserves established by our general partner to provide funds for future operating expenditures; less

- all working capital borrowings not repaid within twelve months after having been incurred or repaid within such twelve-month period with the proceeds of additional working capital borrowings.

If a working capital borrowing, which increases operating surplus, is not repaid during the twelve-month period following the borrowing, it will be deemed repaid at the end of such period, thus decreasing operating surplus at such time. When such working capital is in fact repaid, it will not be treated as a reduction in operating surplus because operating surplus will have been previously reduced by the deemed repayment.

Operating expenditures generally means all of our expenditures, including, but not limited to, taxes, reimbursements of expenses to our general partner, repayment of working capital borrowings, debt service payments and capital expenditures, provided that operating expenditures will not include:

payments (including prepayments) of principal of and premium on indebtedness, other than working capital borrowings;

- capital improvement expenditures;
- payment of transaction expenses relating to interim capital transactions; or
- distributions to partners.

Where capital expenditures are made in part for acquisitions or for capital improvements and in part for other purposes, our general partner, with the concurrence of the conflicts committee, shall determine the allocation between the amounts paid for each.

Maintenance capital expenditures reduce operating surplus, from which we pay the minimum quarterly distribution, but expansion capital expenditures do not. Maintenance capital expenditures represent capital expenditures made to replace partially or fully depreciated assets, to maintain the existing operating capacity of our assets and to extend their useful lives, or other capital expenditures that are incurred in maintaining existing system volumes and related cash flows. Maintenance capital expenditures include expenditures required to maintain equipment reliability, storage and pipeline integrity and safety and to address environmental regulations. Expansion capital expenditures represent capital expenditures made to expand or to increase the efficiency of the existing operating capacity of our assets or to expand the operating capacity or revenues of existing or new assets, whether through construction or acquisition. Costs for repairs and minor renewals to maintain facilities in operating condition and that do not extend the useful life of existing assets will be treated as operational and maintenance expenses as we incur them. The Amended and Restated Partnership Agreement provides that our general partner determines how to allocate a capital expenditure for the acquisition or expansion of our assets between maintenance capital expenditures and expansion capital expenditures.

Capital Surplus. Capital surplus will typically be generated only by:

- borrowings other than working capital borrowings;
- sales of our equity and debt securities;
- sales or other dispositions of assets for cash, other than inventory, accounts receivable and other current assets sold in the ordinary course of business or as part of normal retirement or replacement of assets;
- capital contributions received; and
- corporate reorganizations or restructurings.

Characterization of Cash Distributions. The Amended and Restated Partnership Agreement requires that we treat all available cash as coming from operating surplus until the sum of all available cash distributed since the closing of our initial public offering equals the operating surplus as of the most recent date of determination of available cash. We will treat any amount distributed in excess of operating surplus, regardless of its source, as capital surplus. As reflected above, operating surplus includes an amount equal to two times the amount needed for any one quarter for us to pay a distribution on all of our units (including the general partner units) and the incentive distribution rights at the same per-unit amount as was distributed in the immediately preceding quarter. The basket amount does not reflect actual cash on hand that is available for distribution to our unitholders. Rather, it is a provision that will enable us, if we choose, to distribute as operating surplus up to this amount of cash we receive in the future from non-operating

sources, such as asset sales, issuances of securities, and borrowings, that would otherwise be distributed as capital surplus. If we were to increase our quarterly distribution amount during a period when our operating surplus actually generated from our operations had not increased by a corresponding amount, or if we were to maintain our quarterly distribution amount when our operating surplus generated from our operations had declined, by using these provisions we could use cash from non-operating sources, such as asset sales, issuances of securities and borrowings, to make distributions substantially in excess of actual cash generated by our business. These types of distributions could deteriorate our capital base, which could have a material adverse effect on our ability to make future distributions to our unitholders. In addition, these provisions could enable our general partner, if it so chooses, to receive distributions on its incentive distribution rights that would normally be treated as distributions from capital surplus and to which our general partner would not otherwise be entitled if we did not have sufficient available cash from operating surplus to make such distributions. We do not anticipate that we will make any distributions from capital surplus.

Adjusted Operating Surplus. Adjusted operating surplus is intended to reflect the cash generated from operations during a particular period and therefore excludes net increases in working capital borrowings and net drawdowns of reserves of cash generated in prior periods. Adjusted operating surplus consists of:

- operating surplus generated with respect to that period; less
- any net increase in working capital borrowings with respect to that period; less
- any net decrease in cash reserves for operating expenditures with respect to that period not relating to an operating expenditure made with respect to that period; plus
- any net decrease in working capital borrowings with respect to that period; plus
- any net increase in cash reserves for operating expenditures with respect to that period required by any debt instrument for the repayment of principal, interest or premium.

Distributions of Available Cash from Operating Surplus during the Eight Quarter Period

We will make distributions of available cash from operating surplus for any quarter during the eight quarter period ended June 30, 2013 (the "Eight Quarter Period") in the following manner:

first, 97.9% to the holders of the Series A Preferred Units, pro rata, and 2.1% to our general partner, until we distribute for each outstanding Series A Preferred Unit an amount equal to the Series A Quarterly Distribution Amount (as defined below) for that quarter;

second, 97.9% to the holders of the Series A Preferred Units, pro rata, and 2.1% to our general partner, until we distribute for each outstanding Series A Preferred Unit an amount equal to any arrearages in the payment of the Series A Quarterly Distribution Amount for any prior quarters; and

- thereafter, 97.9% to all unitholders holding common units, pro rata, and 2.1% to the general partner.

Series A Quarterly Distribution Amount means (i) in the case of any quarter or partial quarter during the period ending on October 25, 2011, \$0.138125 per unit and (ii) thereafter, \$0.17875 per unit.

The preceding discussion is based on the assumptions that our general partner maintains its 2.1% general partner interest and that we do not issue additional classes of equity securities.

Distributions of Available Cash from Operating Surplus after the Eight Quarter Period

The Amended and Restated Partnership Agreement requires that we make distributions of available cash from operating surplus for any quarter after the Eight Quarter Period in the following manner:

first, 97.9% to the holders of Series A Preferred Units, pro rata, and 2.1% to our general partner, until we distribute for each outstanding Series A Preferred Unit an amount equal to the Series A Quarterly Distribution Amount for that quarter;

second, 97.9% to the holders of Series A Preferred Units, pro rata, and 2.1% to our general partner, until we distribute for each outstanding Series A Preferred Unit an amount equal to any arrearages in the payment of the Series A Quarterly Distribution Amount for any prior quarters;

third, 97.9% to all common unitholders and Class B unitholders, pro rata, and 2.1% to our general partner, until we distribute for each outstanding common and Class B unit an amount equal to the minimum quarterly distribution for that quarter; and

- thereafter, in the manner described in “—General Partner Interest and Incentive Distribution Rights” below.

The preceding discussion is based on the assumptions that our general partner maintains its 2.1% general partner interest and that we do not issue additional classes of equity securities.

General Partner Interest and Incentive Distribution Rights

The Amended and Restated Partnership Agreement provides that our general partner will be entitled to an approximate 2.1% of all distributions that we make prior to our liquidation. Our general partner has the right, but not the obligation, to contribute a proportionate amount of capital to us to maintain its approximate 2.1% general partner interest if we issue additional units. Our general partner's approximate 2.1% interest, and the percentage of our cash distributions to which it is entitled, will be proportionately reduced if we issue additional units in the future (other than the issuance of partnership securities issued in connection with a reset of the incentive distribution target levels relating to our general partner's incentive distribution rights or the issuance of partnership securities upon conversion of outstanding partnership securities) and our general partner does not contribute a proportionate amount of capital to us in order to maintain its then current general partner interest. Our general partner will be entitled to make a capital contribution in order to maintain its then current general partner interest in the form of the contribution to us of common units based on the current market value of the contributed common units.

Incentive distribution rights represent the right to receive an increasing percentage (13%, 23% and 48%) of quarterly distributions of available cash from operating surplus after the minimum quarterly distribution and the target distribution levels have been achieved. Our general partner currently holds the incentive distribution rights, but may transfer these rights separately from its general partner interest, subject to restrictions in the Amended and Restated Partnership Agreement.

The following discussion assumes that our general partner maintains its approximate 2.1% general partner's interest and continues to own the incentive distribution rights.

If for any quarter after the Eight Quarter Period:

- we have distributed available cash from operating surplus to the holders of our Series A Preferred Units in an amount equal to the Series A Quarterly Distribution Amount;
- we have distributed available cash from operating surplus to the holders of our Series A Preferred Units in an amount necessary to eliminate any cumulative arrearages in the payment of the Series A Quarterly Distribution Amount; and
- we have distributed available cash from operating surplus to the common unitholders and Class B unitholders in an amount equal to the minimum quarterly distribution;

then, the Amended and Restated Partnership Agreement requires that we distribute any additional available cash from operating surplus for that quarter among the unitholders and our general partner in the following manner:

- first, 97.9% to all unitholders holding common units or Class B units, pro rata, and 2.1% to the general partner, until each unitholder receives a total of \$0.1265 per unit for that quarter (the "first target distribution");
- second, 84.9% to all unitholders holding common units or Class B units, pro rata, and 15.1% to the general partner, until each unitholder receives a total of \$0.1375 per unit for that quarter (the "second target distribution");
- third, 74.9% to all unitholders holding common units or Class B units, pro rata, and 25.1% to the general partner, until each unitholder receives a total of \$0.1825 per unit for that quarter (the "third target distribution"); and

thereafter, 49.9% to all unitholders holding common units or Class B units, pro rata, and 50.1% to the general partner.

General Partner's Right to Reset Incentive Distribution Levels

Our general partner, as the holder of our incentive distribution rights, has the right under the Amended and Restated Partnership Agreement to elect to relinquish the right to receive incentive distribution payments based on the initial cash target distribution levels and to reset, at higher levels, the minimum quarterly distribution amount and cash target distribution levels upon which the incentive distribution payments to our general partner would be set. Our general partner's right to reset the minimum quarterly distribution amount and the target distribution levels upon which the incentive distributions payable to our general partner are based may be exercised without approval of our unitholders or the conflicts committee of our general partner, at any time when we have made cash distributions to the holders of the incentive distribution rights at the highest level of incentive distribution for each of the prior four consecutive fiscal quarters and the amount of each such distribution did not exceed adjusted operating surplus for such quarter. The reset minimum quarterly distribution amount and target distribution levels will be higher than the minimum quarterly distribution amount and the target distribution levels prior to the reset such that our general partner will not receive any incentive distributions under the reset target distribution levels until cash distributions per unit following this event increase as described below. We anticipate that our general partner would exercise this reset right in order to facilitate acquisitions or internal growth projects that would otherwise not be sufficiently accretive to cash distributions per common unit, taking into account the existing levels of incentive distribution payments being made to our general partner.

In connection with the resetting of the minimum quarterly distribution amount and the target distribution levels and the corresponding relinquishment by our general partner of incentive distribution payments based on the target cash distributions prior to the reset, our general partner will be entitled to receive a number of newly issued Class B units based on a predetermined formula described below that takes into account the "cash parity" value of the average cash distributions related to the incentive distribution rights received by our general partner for the two quarters prior to the reset event as compared to the average cash distributions per common unit during this period.

The number of Class B units that our general partner would be entitled to receive from us in connection with a resetting of the minimum quarterly distribution amount and the target distribution levels then in effect would be equal to (x) the average amount of cash distributions received by our general partner in respect of its incentive distribution rights during the two consecutive fiscal quarters ended immediately prior to the date of such reset election divided by (y) the average of the amount of cash distributed per common unit during each of these two quarters. Each Class B unit will be convertible into one common unit at the election of the holder of the Class B unit at any time following the first anniversary of the issuance of these Class B units. We will also issue an additional amount of general partner units in order to maintain the general partner's ownership interest in us relative to the issuance of the Class B units.

Following a reset election by our general partner, the minimum quarterly distribution amount will be reset to an amount equal to the average cash distribution amount per common unit for the two fiscal quarters immediately preceding the reset election (such amount is referred to as the "reset minimum quarterly distribution") and the target distribution levels will be reset to be correspondingly higher such that we would distribute all of our available cash from operating surplus for each quarter thereafter as follows:

first, 97.9% to all unitholders holding common units or Class B units, pro rata, and 2.1% to our general partner, until each unitholder receives an amount equal to 115% of the reset minimum quarter distribution for that quarter;

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second, 84.9% to all unitholders holding common units or Class B units, pro rata, and 15.1% to our general partner, until each unitholder receives an amount per unit equal to 125% of the reset minimum quarterly distribution for that quarter;

third, 74.9% to all unitholders holding common units or Class B units, pro rata, and 25.1% to our general partner, until each unitholder receives an amount per unit equal to 166% of the reset minimum quarterly distribution for that quarter; and

thereafter, 49.9% to all unitholders holding common units or Class B units, pro rata, and 50.1% to the general partner.

Distributions from Capital Surplus

How Distributions from Capital Surplus Will Be Made. The Amended and Restated Partnership Agreement requires that we make distributions of available cash from capital surplus, if any, in the following manner:

first, 97.9% to the holders of our Series A Preferred Units, pro rata, and 2.1% to our general partner, until we distribute for each outstanding Series A Preferred Unit an amount equal to any unpaid arrearages in the payment of the Series A Quarterly Distribution Amount;

second, 97.9% to all unitholders, pro rata, and 2.1% to our general partner, until a hypothetical holder of a common unit acquired on the original offering date has received with respect to such common unit, an amount of available cash from capital surplus equal to the initial public offering price per common unit; and

thereafter, we will make all distributions of available cash from capital surplus as if they were from operating surplus.

Effect of a Distribution from Capital Surplus. The Amended and Restated Partnership Agreement treats a distribution of capital surplus as the repayment of the initial unit price from the initial public offering, which is a return of capital. The initial public offering price less any distributions of capital surplus per unit is referred to as the “unrecovered initial unit price.” Each time a distribution of capital surplus is made, the minimum quarterly distribution and the target distribution levels will be reduced in the same proportion as the corresponding reduction in the unrecovered initial unit price. Because distributions of capital surplus will reduce the minimum quarterly distribution, after any of these distributions are made, it may be easier for our general partner to receive incentive distributions.

Once we distribute capital surplus on a unit in an amount equal to the initial unit price, the Amended and Restated Partnership Agreement specifies that the minimum quarterly distribution and the target distribution levels will be reduced to zero. The Amended and Restated Partnership Agreement specifies that we then make all future distributions from operating surplus, with 49.9% being paid to the holders of units and 50.1% to our general partner. The percentage interests shown for our general partner include its approximate 2.1% general partner interest and assume our general partner has not transferred the incentive distribution rights. We do not anticipate that we will make any distributions from capital surplus.

Adjustment to the Minimum Quarterly Distribution and Target Distribution Levels

In addition to adjusting the minimum quarterly distribution and target distribution levels to reflect a distribution of capital surplus, if we combine our units into fewer units or subdivide our units into a greater number of units, the Amended and Restated Partnership Agreement specifies that the following items will be proportionately adjusted:

- the minimum quarterly distribution;