

ATLAS PIPELINE PARTNERS LP
Form POS AM
March 08, 2010
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As filed with the Securities and Exchange Commission on March 5, 2010

Registration No. 333-161713

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Post-Effective

Amendment No. 1

to

FORM S-1

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

ATLAS PIPELINE PARTNERS, L.P.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

23-3011077
(I.R.S. Employer
Identification No.)

Westpointe Corporate Center One

1550 Coraopolis Heights Road

Moon Township, PA 15108

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(412) 262-2830

(Address, including zip code, and telephone number, including area code, of
registrant's principal executive office)

Eugene N. Dubay

Atlas Pipeline Partners GP, LLC

Westpointe Corporate Center One

1550 Coraopolis Heights Road

Moon Township, PA 15108

(412) 262-2830

(Address, including zip code, and telephone number, including area code, of
agent for service)

Please send copies of communications to:

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Ledgewood

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Philadelphia, PA 19103

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Approximate date of commencement of proposed sale to the public: From time to time after this registration statement becomes effective.

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If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

(Check one):

Large accelerated filer Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

PROSPECTUS

SUBJECT TO COMPLETION, DATED MARCH 5, 2010

5,379,530 Common Units

ATLAS PIPELINE PARTNERS, L.P.

This prospectus relates to the sale of up to 5,379,530 common units representing limited partner interests for the account of the selling unitholders named in this prospectus. The common units may be sold in the open market, on the New York Stock Exchange, in privately negotiated transactions or a combination of these methods. We will not receive any of the proceeds from the sale of the common units covered by this prospectus.

Our common units are quoted on the New York Stock Exchange under the symbol APL. The last reported sales price of our common units was \$14.26 per unit on March 4, 2010.

Investing in our common units involves risks. You should carefully consider the risks described under Risk Factors on page 1 of this prospectus before you make an investment in our securities.

Our principal executive offices are located at Westpointe Corporate Center One, 1550 Coraopolis Heights Road, Moon Township, PA 15108. Our telephone number is (412) 262-2830.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Prospectus dated _____, 2010

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No dealer, salesperson or other individual has been authorized to give any information or make any representations not contained in this prospectus in connection with the offering made by this prospectus. If given or made, such information or representations must not be relied upon as having been authorized by us. This prospectus does not constitute an offer to sell, or a solicitation of an offer to buy, any of our securities in any jurisdiction in which such an offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation. Neither the delivery of this prospectus nor any sale made hereunder shall, under any circumstances, create an implication that there has not been any change in the facts set forth in this prospectus or in the affairs of our company since the date hereof.

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GUIDE TO READING THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, utilizing a shelf registration process or continuous offering process. Under this shelf registration process, the selling unitholders may, from time to time, sell the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities which may be offered by the selling unitholders. Additional information, including our financial statements and the notes thereto, is incorporated in this prospectus by reference to our reports filed with the SEC. See [Where You Can Find More Information](#). You are urged to read this prospectus, including the [Risk Factors](#), and our SEC reports in their entirety.

The following information should help you understand some of the terms used in this prospectus. Unless the context indicates otherwise:

the terms [the Partnership](#), [we](#), [our](#) and [us](#) refer to Atlas Pipeline Partners, L.P. and its subsidiaries;

the term [our general partner](#) refers to Atlas Pipeline Partners GP, LLC; and

[we](#) refer to natural gas liquids, such as ethane, propane, normal butane, isobutane and natural gasoline, as [NGLs](#).

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RISK FACTORS

You should carefully consider the specific risks described in our Annual Report on Form 10-K for the fiscal year ended December 31, 2009, the risk factors described under the caption Risk Factors in any applicable prospectus supplement and any risk factors set forth in our other filings with the SEC before making an investment decision. See Where You Can Find More Information.

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INFORMATION REGARDING FORWARD-LOOKING STATEMENTS

The matters discussed or incorporated by reference in this prospectus may include forward-looking statements. These statements may be identified by the use of forward-looking terminology such as anticipate, believe, continue, could, estimate, expect, intend, may, might, potential, predict, should, or will, or the negative thereof or other variations thereon or comparable terminology. In particular, statements about our expectations, beliefs, plans, objectives, assumptions or future events or performance contained in this report are forward-looking statements. We have based these forward-looking statements on our current expectations, assumptions, estimates and projections. While we believe these expectations, assumptions, estimates and projections are reasonable, such forward-looking statements are only predictions and involve known and unknown risks and uncertainties, many of which are beyond our control. These and other important factors may cause our actual results, performance or achievements to differ materially from any future results, performance or achievements expressed or implied by these forward-looking statements. Some of the key factors that could cause actual results to differ from our expectations include:

the demand for natural gas and NGLs;

the price volatility of natural gas and NGLs;

our ability to connect new wells to our gathering systems;

adverse effects of governmental and environmental regulation;

limitations on our access to capital or on the market for our common units; and

the strength and financial resources of our competitors.

Other factors that could cause actual results to differ from those implied by the forward-looking statements combined herein or incorporated by reference are more fully described in the Risk Factors section of this prospectus. Given these risks and uncertainties, you are cautioned not to place undue reliance on these forward-looking statements. The forward-looking statements included or incorporated by reference in this prospectus are made only as of the date hereof. We do not undertake and specifically decline any obligation to update any such statements or to publicly announce the results of any revisions to any of these statements to reflect future events or developments.

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USE OF PROCEEDS

This prospectus relates to our common units that may be offered and sold from time to time by the selling unitholders referred to in this prospectus. We will not receive any of the proceeds from the sale of the common units contemplated by this prospectus.

A portion of the common units covered by this prospectus were issued upon exercise of warrants to purchase our common units. From January 8, 2010 to January 12, 2010, the holders of the warrants exercised all 2,689,765 warrants for net proceeds to us of approximately \$15.3 million. Proceeds from the exercise of the warrants was used to repay a portion of our outstanding indebtedness under our senior secured term loan and to enhance our hedge positions. We do not consider the repayment of debt to be material.

DESCRIPTION OF COMMON UNITS

We describe our common units under the heading Our Partnership Agreement.

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The selling unitholders may from time to time offer and sell any or all of the common units set forth below pursuant to this prospectus. When we refer to selling unitholders in this prospectus, we mean those persons listed in the table below, and the pledges, donees, permitted transferees, assignees, successors and others who later come to hold any of the selling unitholders' interests in our common units other than through a public sale.

The following table sets forth, as of the date of this prospectus, the name of each selling unitholder for whom we are registering units for resale to the public, and the number of common units that each selling unitholder may offer pursuant to this prospectus, assuming exercise of all warrants held by the selling unitholders on that date. The common units being offered by the selling unitholders were acquired from us in private placements that were exempt from the registration requirements of the Securities Act. Each selling unitholder that is affiliated with a registered broker-dealer has represented to us that the common units and warrants were purchased in the ordinary course of business and that, at the time of purchase, it did not have any agreements or understandings, directly or indirectly, with any person to distribute the common units purchased by it or the common units issuable upon exercise of the warrants held by it.

Based on the information provided to us at the time of the initial filing of the registration statement of which this prospectus is a part by each selling unitholder and as of the date the same was provided to us, assuming that the selling unitholders sell all of the common units beneficially owned by them that have been registered by us and do not acquire any additional units during the offering, each selling unitholder will not own any units other than those appearing in the column entitled "Number of common units owned after the offering." We cannot advise you as to whether the selling unitholders will in fact sell any or all of such common units. In addition, the selling unitholders may have sold, transferred or otherwise disposed of, or may sell, transfer or otherwise dispose of, at any time and from time to time, the common unit in transactions exempt from the registration requirements of the Securities Act after the date on which they provided the information set forth on the table below.

Name of selling unitholder	Number of common units owned before the offering	Number of common units being registered	Percentage of common units owned before the offering	Number of common units owned after the offering⁽¹⁾	Percentage of common units owned after the offering
Morgan Stanley Strategic Investments, Inc. ⁽²⁾	2,310,483	1,600,000	4.6%	710,483	*
Roth Evergreen Partners, LLC ⁽³⁾	629,922	629,922	*	0	
Susquehanna Equity Investments, Inc. ⁽⁴⁾	3,149,608	3,149,608	6.2%	0	

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* Less than 1%.

- (1) Assumes the selling unitholder sells all of the common units it is offering pursuant to this prospectus.
- (2) Morgan Stanley Strategic Investments, Inc. is a wholly-owned subsidiary of Morgan Stanley (ticker: MS). Ownership information relating to MS is available online at www.sec.gov.
- (3) Yoav Roth, managing member, has sole voting and investment power over these securities.
- (4) Heights Capital Management, Inc., the authorized agent of Susquehanna Equity Investments, Inc. (SEI), has discretionary authority to vote and dispose of the securities held by SEI and may be deemed to be the beneficial owner of these securities. Martin Kobinger, in his capacity as Investment Manager of Heights Capital Management, Inc., may also be deemed to have investment discretion and voting power over the securities held by SEI. Mr. Kobinger disclaims any such beneficial ownership of the securities. SEI is an affiliate of a registered broker-dealer.

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OUR PARTNERSHIP AGREEMENT

The following is a summary of our partnership agreement, as amended through the date of this prospectus. The limited partnership agreement defines the rights and obligations pertaining to our units.

Organization and Duration

We were formed in May 1999. We will dissolve on December 31, 2098, unless sooner dissolved under the terms of our partnership agreement.

Purpose

Our purpose under our partnership agreement is limited to serving as the limited partner of our operating partnership and engaging in any business activity that may be engaged in by our operating partnership or that is approved by our general partner. The operating partnership agreement provides that our operating partnership may, directly or indirectly, engage in:

operations as conducted on February 2, 2000, including the ownership and operation of our gathering systems;

any other activity approved by our general partner, but only to the extent that our general partner reasonably determines that, as of the date of the acquisition or commencement of the activity, the activity generates qualifying income as that term is defined in Section 7704 of the Internal Revenue Code; or

any activity that enhances the operations described above.

The Units

Common Units. Our common units represent limited partner interests in us. The holders of common units are entitled to participate in partnership distributions and exercise the rights or privileges available to limited partners under our partnership agreement. However, we were restricted under the terms of our revolving credit and term loan facility from paying distributions on our common units for the remainder of 2009. Commencing with the first fiscal quarter of 2010, we may pay distributions and purchase or redeem equity only if, pro forma for such payment, our Senior Secured Leverage Ratio is less than or equal to 2.75 to 1.00 and our Minimum Liquidity is at least \$50 million. Senior Secured Leverage Ratio is the ratio of our consolidated senior secured funded debt (defined generally as total secured funded debt that is not subordinated to the credit facility) to Consolidated EBITDA (as defined in the credit agreement). Minimum Liquidity means:

the total amount classified as cash and cash equivalents on the Partnership's consolidated balance sheet less amount classified as restricted cash plus

any amounts available for borrowing under the revolver portion of the credit facility.

Class B Preferred Units. In December 2008, we sold 10,000 12.0% cumulative convertible Class B preferred units of limited partner interests to Atlas Pipeline Holdings, L.P., the parent of our general partner, for cash consideration of \$1,000 per unit. On March 30, 2009, Atlas Pipeline Holdings, pursuant to its right within the Class B preferred unit purchase agreement, purchased an additional 5,000 Class B preferred units at \$1,000 per unit.

The Class B preferred units receive distributions of 12.0% per annum, paid quarterly on the same date as the distribution payment date for our common units. The record date of determination for holders entitled to receive distributions of the Class B preferred units will be the same as the record date of determination for common unit holders entitled to receive quarterly distributions. However, we are restricted under the terms of our revolving credit and term loan facility from paying distributions for the remainder of 2009. Commencing with the first fiscal quarter of 2010, we may pay distributions and purchase or redeem equity only if, pro forma for such payment, our Senior Secured Leverage Ratio is less than or equal to 2.75 to 1.00 and our Minimum Liquidity is at least \$50 million. The Class B preferred units are not convertible into our common units.

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The certificate of designation also gives us the right at any time to redeem some or all of the outstanding Class B preferred units for cash at an amount equal to the Class B preferred unit liquidation value being redeemed, provided that such redemption must be exercised for no less than the lesser of 2,500 Class B preferred units or the number of remaining outstanding Class B preferred units.

Distributions paid on the Class B preferred units and the premium paid upon the redemption of the Class B preferred units, if any, will be recognized as a reduction of our net income (loss) in determining net income (loss) attributable to common unitholders and the general partner. The Class B preferred units are reflected on our consolidated balance sheet as Class B preferred equity within partners' capital.

Limited Voting Rights

Holders of our units have limited voting rights and generally are entitled to vote only with respect to the following matters:

a sale or exchange of all or substantially all of our assets;

our dissolution or reconstitution;

our merger; and

termination or material modification of the omnibus agreement or master natural gas gathering agreement with Atlas America. Removal of our general partner requires a two-thirds vote of all outstanding common units, excluding those held by our general partner and its affiliates. Our partnership agreement permits our general partner generally to make amendments to it that do not materially adversely affect unitholders without the approval of any unitholders.

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Cash Distribution Policy

Quarterly Distributions of Available Cash. Our operating partnership is required by the operating partnership agreement to distribute to us, within 45 days of the end of each fiscal quarter, all of its available cash for that quarter. We, in turn, distribute to our partners all of the available cash received from our operating partnership for that quarter.

Available cash generally means, for any of our fiscal quarters, all cash on hand at the end of the quarter less cash reserves that our general partner determines are appropriate to provide for our operating costs, including potential acquisitions, and to provide funds for distributions to the partners for any one or more of the next four quarters. We generally make distributions of all available cash within 45 days after the end of each quarter to holders of record on the applicable record date. However, we are restricted under the terms of our revolving credit and term loan facility from paying distributions for the remainder of 2009. Commencing with the first fiscal quarter of 2010, we may pay distributions and purchase or redeem equity only if, pro forma for such payment, our Senior Secured Leverage Ratio is less than or equal to 2.75 to 1.00 and our Minimum Liquidity is at least \$50 million.

Distributions of Available Cash from Operating Surplus. Cash distributions are characterized as distributions from either operating surplus or capital surplus. This distinction affects the amounts distributed to unitholders relative to our general partner.

Operating surplus means:

our cash balance, excluding cash constituting capital surplus, less

all of our operating expenses, debt service payments, maintenance costs, capital expenditures and reserves established for future operations.

Capital surplus means capital generated only by borrowings other than working capital borrowings, sales of debt and equity securities and sales or other dispositions of assets for cash, other than inventory, accounts receivable and other assets disposed of in the ordinary course of business.

We treat all available cash distributed from any source as distributed from operating surplus until the sum of all available cash distributed since we began operations equals our total operating surplus from the date we began operations until the end of the quarter that immediately preceded the distribution. This method of cash distribution avoids the difficulty of trying to determine whether available cash is distributed from operating surplus or capital surplus. We treat any excess available cash, irrespective of its source, as capital surplus, which would represent a return of capital, and we will distribute it accordingly. For a discussion of distributions of capital surplus, see *Distributions of Capital Surplus* below.

We distribute available cash from operating surplus for any quarter in the following manner:

first, 98% to the common units, pro rata, and 2% to our general partner, until we have distributed \$.42 for each outstanding common unit, which we refer to as the minimum quarterly distribution; and

after that, in the manner described in *Incentive Distribution Rights* below.

The 2% allocation of available cash from operating surplus to our general partner includes our general partner's percentage interest in distributions from us and our operating partnership on a combined basis.

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Adjusted operating surplus for any period generally means operating surplus generated during that period, less:

any net increase in working capital borrowings during that period and

any net reduction in cash reserves for operating expenditures during that period not relating to an operating expenditure made during that period,

and plus:

any net decrease in working capital borrowings during that period and

any net increase in cash reserves for operating expenditures during that period required by any debt instrument for the repayment of principal, interest or premium.

Operating surplus generated during a period is equal to the difference between:

the operating surplus determined at the end of that period and

the operating surplus determined at the beginning of that period.

Incentive Distribution Rights. By incentive distribution rights we mean our general partner's right to receive an increasing percentage of quarterly distributions of available cash from operating surplus after we have made the minimum quarterly distributions and we have met specified target distribution levels, as described below. Our general partner may transfer its incentive distribution rights separately from its general partner interest without the consent of the unitholders.

We make incentive distributions to our general partner for any quarter in which we have distributed available cash from operating surplus to the common unitholders in an amount equal to the minimum quarterly distribution plus amounts necessary to eliminate any cumulative arrearages in payment of the minimum quarterly distribution on the common units. If this condition is satisfied, the remaining available cash will be distributed as follows:

first, 85% to all units, pro rata, and 15% to our general partner, until each unitholder has received a total of \$.52 per unit for that quarter;

second, 75% to all units, pro rata, and 25% to our general partner, until each unitholder has received a total of \$.60 per unit for that quarter; and

after that, 50% to all units, pro rata, and 50% to our general partner.

The distributions to our general partner that exceed its aggregate 2% general partner interest represent the incentive distribution rights.

In connection with our private placement in July 2007, we amended our partnership agreement to subordinate incentive distributions as follows:

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For each quarter from the quarter beginning July 1, 2007 until the quarter ending December 31, 2007, after the holders of the incentive distribution rights have

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received an aggregate of \$3.7 million with respect to those rights, they will not be entitled to further distributions with respect to those rights until the amount distributable, but for the application of this provision, to the holders of the incentive distribution rights would have been \$8.7 million.

For each quarter from the quarter beginning January 1, 2008 until the quarter ending June 30, 2009, after the holders of the incentive distribution rights have received an aggregate of \$7.0 million with respect to those rights, they will not be entitled to further distributions with respect to those rights until the amount distributable, but for the application of this provision, to the holders of the incentive distribution rights would have been \$12.0 million.

For each quarter from and after the quarter beginning July 1, 2009, after the holders of the incentive distribution rights have received an aggregate of \$7.0 million with respect to those rights, they will not be entitled to further distributions with respect to those rights until the amount distributable, but for the application of this provision, to the holders of the incentive distribution rights would have been \$10.75 million.

Any amounts not distributed to the holders of incentive distribution rights because of the operation of these provisions will be distributed 1.0101% to our general partner and 98.9899% to all unitholders.

Distributions from Capital Surplus. We distribute available cash from capital surplus in the following manner:

first, 98% to all units, pro rata, and 2% to our general partner, until each common unit has received distributions equal to \$13.00 per unit; and

after that, we will distribute all available cash from capital surplus, as if it were from operating surplus.

When we make a distribution from capital surplus, we will treat it as if it were a repayment of your investment in your common units. For these purposes, the partnership agreement deems the investment to be \$13.00 per common unit, which is the unit price from our initial public offering, regardless of the price you actually pay for your common units in this offering. To reflect this repayment, we will reduce the amount of the minimum quarterly distribution and the distribution levels at which our general partner's incentive distribution rights begin, which we refer to in this prospectus as target distribution levels, by multiplying each amount by a fraction, determined as follows:

the numerator is \$13.00 less all distributions from capital surplus including the distribution just made, and

the denominator is \$13.00 less all distributions from capital surplus excluding the distribution just made.

We refer to the initial public offering price of \$13.00 per common unit, less any distributions from capital surplus, as the unrecovered unit price.

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After the minimum quarterly distribution and the target distribution levels have been reduced to zero, we will treat all distributions of available cash from all sources as if they were from operating surplus. Because the minimum quarterly distribution and the target distribution levels will have been reduced to zero, our general partner will then be entitled to receive 48% of all distributions of available cash in its capacity as general partner and holder of the incentive distribution rights, in addition to any distributions to which it may be entitled as a holder of units.

Distributions from capital surplus will not reduce the minimum quarterly distribution or target distribution levels for the quarter in which they are distributed.

Adjustment of Minimum Quarterly Distribution and Target Distribution Levels. In addition to adjustments made upon a distribution of available cash from capital surplus, we will proportionately adjust each of the following upward or downward, as appropriate, if any combination or subdivision of units occurs:

the minimum quarterly distribution,

the target distribution levels,

the unrecovered unit price,

the number of common units issuable upon conversion of the subordinated units, and

other amounts calculated on a per unit basis.

For example, if a two-for-one split of the common units occurs, we will reduce the minimum quarterly distribution, the target distribution levels and the unrecovered initial unit price of the common units to 50% of their initial levels.

We will not make any adjustment for the issuance of additional common units for cash or property.

We may also adjust the minimum quarterly distribution and the target distribution levels if legislation is enacted or if existing law is modified or interpreted in a manner that causes us or our operating partnership to become taxable as a corporation or otherwise subject to taxation as an entity for federal, state or local income tax purposes. In this event, we will reduce the minimum quarterly distribution and the target distribution levels for each quarter after that time to amounts equal to the product of:

the minimum quarterly distribution and each of the target distribution levels multiplied by

one minus the sum of:

the highest marginal federal income tax rate which could apply to the partnership that is taxed as a corporation plus

any increase in the effective overall state and local income tax rate that would have been applicable in the preceding calendar year as a result of the new imposition of the entity level tax, after taking into account the benefit of any deduction allowable for federal income tax purposes for the payment of state and local income taxes, but only to the extent of the increase in rates resulting from that legislation or interpretation.

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For example, assuming we are not previously subject to state and local income tax, if we became taxable as a corporation for federal income tax purposes and subject to a maximum marginal federal, and effective state and local, income tax rate of 40%, then we would reduce the minimum quarterly distribution and the target distribution levels to 60% of the amount immediately before the adjustment.

Distributions of Cash Upon Liquidation. When we commence dissolution and liquidation, we will sell or otherwise dispose of our assets and adjust the partners' capital account balances to reflect any resulting gain or loss. We will first apply the proceeds of liquidation to the payment of our creditors in the order of priority provided in our partnership agreement and by law. After that, we will distribute the proceeds to the unitholders and our general partner in accordance with their capital account balances, as so adjusted.

We maintain capital accounts in order to ensure that the partnership's allocations of income, gain, loss and deduction are respected under the Internal Revenue Code. The balance of a partner's capital account also determines how much cash or other property the partner will receive on liquidation of the partnership. A partner's capital account is credited with (increased by) the following items:

the amount of cash and fair market value of any property (net of liabilities) contributed by the partner to the partnership, and

the partner's share of book income and gain (including income and gain exempt from tax).

A partner's capital account is debited with (reduced by) the following items:

the amount of cash and fair market value (net of liabilities) of property distributed to the partner, and

the partner's share of loss and deduction (including some items not deductible for tax purposes).

Partners are entitled to liquidating distributions in accordance with their capital account balances.

Upon our liquidation, any gain, or unrealized gain attributable to assets distributed in kind, will be allocated to the partners in the following manner:

first, to our general partner and the holders of units who have negative balances in their capital accounts to the extent of and in proportion to those negative balances;

second, 98% to the common units, pro rata, and 2% to our general partner, until the capital account for each common unit is equal to the sum of:

the unrecovered unit price, and

the amount of the minimum quarterly distribution for the quarter during which our liquidation occurs.

third, 85% to all units, pro rata, and 15% to our general partner, until there has been allocated under this paragraph an amount per unit equal to:

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the excess of the \$.52 target distribution per unit over the minimum quarterly distribution per unit for each quarter of our existence less

the cumulative amount per unit of any distribution of available cash from operating surplus in excess of the minimum quarterly distribution per unit that was distributed 85% to the units, pro rata, and 15% to our general partner for each quarter of our existence;

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fourth, 75% to all units, pro rata, and 25% to our general partner, until there has been allocated under this paragraph an amount per unit equal to:

the excess of the \$.60 target distribution per unit over the \$.52 target distribution per unit for each quarter of our existence less

the cumulative amount per unit of any distributions of available cash from operating surplus in excess of the first target distribution per unit that was distributed 75% to the units, pro rata, and 25% to our general partner for each quarter of our existence; and

after that, 50% to all units, pro rata, and 50% to our general partner.

Upon our liquidation, any loss will generally be allocated to our general partner and the unitholders in the following manner:

first, 98% to the holders of common units in proportion to the positive balances in their capital accounts and 2% to our general partner, until the capital accounts of the common unitholders have been reduced to zero; and

after that, 100% to our general partner.

In addition, we will make interim adjustments to the capital accounts at the time we issue additional equity interests or make distributions of property. We will base these adjustments on the fair market value of the interests or the property distributed and we will allocate any gain or loss resulting from the adjustments to the unitholders and our general partner in the same manner as we allocate gain or loss upon liquidation. In the event that we make positive interim adjustments to the capital accounts, we will allocate any later negative adjustments to the capital accounts resulting from the issuance of additional equity interests, our distributions of property, or upon our liquidation, in a manner which results, to the extent possible, in the capital account balances of our general partner equaling the amount which would have been our general partner's capital account balances if we had not made any earlier positive adjustments to the capital accounts.

Power of Attorney

Each limited partner, and each person who acquires a unit from a unitholder and executes and delivers a transfer application, grants to our general partner and, if appointed, a liquidator, a power of attorney to, among other things, execute and file documents required for our qualification, continuance or dissolution and the amendment of our partnership agreement, and to make consents and waivers under our partnership agreement.

Capital Contributions

Unitholders are not obligated to make additional capital contributions, except as described below under Limited Liability.

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Limited Liability

So long as a limited partner does not participate in the control of our business within the meaning of the Delaware Revised Uniform Limited Partnership Act and otherwise acts in conformity with the provisions of our partnership agreement, the limited partner's liability under the Delaware Act will be limited to the amount of capital he is obligated to contribute to us for his common units plus his share of any undistributed profits and assets. If it were determined that a limited partner participated in the control of our business, then the limited partner could be held personally liable for our obligations under Delaware law to the same extent as our general partner. This liability would extend only to persons who transact business with us who reasonably believe that the limited partner is a general partner. However, what constitutes participating in the control of a limited partnership's business has not been clearly established in all states. If it were determined, for example, that the right, or exercise of a right, by the limited partners to:

remove our general partner,

approve some amendments to our partnership agreement, or

take other action under our partnership agreement

constituted participation in the control of our business, then limited partners could be held liable for our obligations to the same extent as our general partner.

Under the Delaware Act, we cannot make a distribution to a partner if, after the distribution, all our liabilities, other than liabilities to partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specific property, exceed the fair value of our assets. For the purpose of determining the fair value of the assets of a limited partnership, the Delaware Act provides that the fair value of property subject to liability for which recourse of creditors is limited shall be included in the assets of the limited partnership only to the extent that the fair value of that property exceeds the nonrecourse liability. The Delaware Act provides that a limited partner who receives a distribution and knew at the time of the distribution that the distribution was in violation of the Delaware Act is liable to the limited partnership for the amount of the distribution for three years. Under the Delaware Act, an assignee who becomes a substituted limited partner is liable for the obligations of his assignor to make contributions to the partnership, except the assignee is not obligated for liabilities unknown to him at the time he became a limited partner and which he could not ascertain from our partnership agreement.

Our operating partnership currently conducts business in Kansas, Oklahoma, and Texas. The limitations on the liability of limited partners for the obligations of a limited partnership have not been clearly established in many jurisdictions. If it were determined that we were, by virtue of our limited partner interest in our operating partnership or otherwise, conducting business in any state under the applicable limited partnership statute, or that the right or exercise of the right by the limited partners as a group to remove or replace our general partner, to approve some amendments to our partnership agreement, or to take other action under our partnership agreement constituted participation in the control of our business for purposes of the statutes of any relevant jurisdiction, then the limited partners could be held personally liable for our obligations under the law of that jurisdiction to the same extent as our general partner. We operate in a manner our general partner considers reasonable and appropriate to preserve the limited liability of the limited partners.

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Transfer Agent and Registrar

American Stock Transfer and Trust Company is the registrar and transfer agent for our common units. We pay all fees charged by the transfer agent for transfers of common units, except that the following fees 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 holder of a common unit, and

other similar fees or charges.

There is no charge to unitholders for disbursements of cash distributions.

We have agreed to indemnify the transfer agent, its agents and each of their particular shareholders, directors, officers and employees against all claims and losses that may arise out of acts performed or omitted in its capacity as our transfer agent, except for any liability due to any negligence, gross negligence, bad faith or intentional misconduct of the indemnified person or entity.

Transfer of Common Units

The transfer agent will not record a transfer of common units, and we will not recognize the transfer, unless the transferee executes and delivers a transfer application. The form of transfer application appears on the reverse side of the certificates representing the common units. By executing and delivering a transfer application, the transferee of common units:

becomes the record holder of the common units and is an assignee until admitted as a substituted limited partner;

automatically requests admission as a substituted limited partner;

agrees to be bound by the terms and conditions of our partnership agreement;

represents that the transferee has the capacity, power and authority to enter into our partnership agreement;

grants powers of attorney to officers of our general partner and, if one is ever appointed, our liquidator, as specified in our partnership agreement; and

makes the consents and waivers contained in our partnership agreement.

An assignee will become a substituted limited partner as to the transferred common units upon the consent of our general partner and the recordation of the name of the assignee on our books and records. Our general partner may withhold its consent in its sole discretion.

A transferee's broker, agent or nominee may complete, execute and deliver the transfer applications. We are entitled to 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.

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Common units are securities and are transferable according to the laws governing transfer of securities. In addition to the rights acquired upon transfer, the transferor gives the transferee the right to request admission as a substituted limited partner. A purchaser or transferee of common units who does not execute and deliver a transfer application will have only

the right to assign the common units to a purchaser or other transferee and

the right to transfer the right to seek admission as a substituted limited partner.

Thus, a purchaser or transferee of common units who does not execute and deliver a transfer application will not receive

cash distributions or federal income tax allocations unless the common units are held in a nominee or street name account and the nominee or broker has executed and delivered a transfer application and

may not receive federal income tax information or reports furnished to record holders of common units.

The transferor of common units must provide the transferee with all information necessary to transfer the common units. The transferor will not be required to insure the execution of the transfer application by the transferee and will have no liability or responsibility if the transferee neglects or chooses not to execute and forward the transfer application to the transfer agent. See Status as Limited Partner or Assignee.

Until a common unit has been transferred 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, even if either of us has notice of an attempted transfer.

Issuance of Additional Securities

Our partnership agreement authorizes us to issue an unlimited number of additional limited partner interests, debt and other securities for the consideration and on the terms and conditions established by our general partner in its sole discretion without the approval of any limited partners. We have funded, and will likely continue to fund, acquisitions through the issuance of additional common units or other equity securities and debt securities. Holders of any additional common units we issue will be entitled to share equally with the then-existing holders of common units in our distributions of available cash. In addition, the issuance of additional common units may dilut