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Coast Guard Issues New Citizenship "Mechanisms of Compliance"

This morning, the Coast Guard issued a Notice in the Federal Register entitled **"Mechanisms of Compliance With United States Citizenship Requirements for the Ownership of Vessels Eligible to Engage in Restricted Trades by Publicly Traded Companies."** The notice informs the public of how the Coast Guard plans to exercise its discretion in enforcing the citizenship requirements for public companies. The Coast Guard has moved away from its longstanding position regarding direct proof of citizenship by stating that changes in the trading of securities over the past 20 years have caused it "to take another look" at the ways public companies can establish their citizenship:

The Coast Guard recognizes that in the modern, complex, multi-faceted, and dynamic securities market no single measure or combination of measures may always provide direct proof of the citizenship of every shareholder. The Coast Guard also recognizes that the choice of compliance measures is best left up to the individual company as each one is best positioned to evaluate initially and on an on-going basis the totality of its circumstances. Companies that employ, and diligently administer and adhere to, measures such as those identified [in the Notice] in an active system of monitoring stock ownership may use these as a sufficient basis to file an Application ... to document a vessel with a coastwise endorsement.

Among the measures described in the Notice were analysis of registered shareholders, monitoring SEC filings of 5 percent shareholders and communications with non-objecting beneficial owners.

Left unclear is the Coast Guard's position regarding the use of the "fair inference" test, which has been accepted by the U.S. Maritime Administration and widely employed by public companies in order to establish citizenship. We will continue to monitor developments in the wake of this announcement and inform you of any relevant changes.

The maritime attorneys at Thompson Coburn have years of experience in advising public companies on these laws and regularly counsel clients on methodologies for determining their citizenship status, including the implementation of the protective measures described in the Notice. If you are in need of assistance with a maritime issue, you may contact your Thompson Coburn attorney or one of the maritime attorneys listed below.

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