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RISK MANAGEMENT ALERT

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**WHY ARE SOME NVOCC'S STILL PUBLISHING TARIFF RATES?**

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While most of our clients have happily opted for implementing NRAs, we are somewhat amazed that there has not been a mad rush by other U.S. NVOCCs to remove the expense and regulatory risks of tariff publishing. Some of the reasons may be, in our opinion, misunderstandings that are mis-guiding some NVOCCs. We will address some of these in this article.

**1. The FMC will target NVOCCs that opt to implement NRAs. False.** Nothing could be further from the truth. All our contacts with FMC officials point to the opposite conclusion. The staff would prefer to see more NVOCCs opt for NRAs. There is more concern by the FMC over NVOCCs that opt to publish tariff rates, and do not do so timely and accurately. Note that at the Commission Meeting Scheduled for November 3, 2011, an agenda item in Open Session was "Staff Briefing and Recommendation Concerning Publication of Inaccurate or Inactive Ocean Common Carrier Tariffs – Show Cause Order." The greater administrative burden for the Commission is monitoring the intricacies of tariff publishing (whether NVOCCs or VOCCs) while the ebb and flow of NRAs are generally the ebb and flow of the normal commercial transactions between NVOCC and customers. See item below.

**2. The NRA regulations are too burdensome and difficult to implement and require that the shipper execute an acknowledgment of the rates and charges. False.** Our experience has been just the opposite. Proper implementation usually involves either a quotation, e-mail exchanges, booking confirmation by the NVOCC, and conventional acknowledgments by the shipper that reflect the rates and charges which apply for a transaction or series of transactions. These, in most cases, are already the normal business practices currently in place between an NVOCC and its customers. Any deviations from originally agreed to rates and charges are implemented by further exchanges between the NVOCC and the shipper. How unusual or burdensome is that? Language in the quotations, bill of lading or e-mails will notify the shipper that NRAs are applicable and the web site location of the NVOCCs Rules Tariff.. A Rules Tariff is easily published on the NVOCCs web site. Our record for assisting one NVOCC recently to become fully NRA compliant was 24 hours. We would assist the NVOCC to file an FMC No. 1 which identifies the location of the Rules Tariff. That's it! The NVOCC is now NRA compliant.

**3. The NRA rules require that all surcharges be included in the Rules Tariff. False.** Applicable surcharges can be included in the Rules Tariff, but we have found that it is more customary for some NVOCCs to include applicable charges such as BAF, PSS, CAF, etc., as

separate line items in the quotations made to customers. This is permissible. It is also permissible to include the following statement in quotations and the Rules Tariffs with regard to local origin and destination port charges: "All origin and destination local charges apply whether or not included in this Rules Tariff or in quotations." We have found that most NVOCCs go through great lengths to quote applicable surcharges to their customers, and this meets the NRA requirement. However, most ports around the globe have local charges that are traditionally applied and these would be near impossible to quote accurately. It is our view that the above cited statement on local charges is permissible and appropriately addresses these local port charges.

4. **Record-keeping requirements are extra burdensome. False.** This is simple. The requirement is that the transaction records, including quote exchanges, be kept for five years and be retrieved, if required by the FMC, in a reasonable manner. There is no interactive retrieval feature required as there is for tariff rates, but the records can be electronically archived. The record-keeping requirement for NRAs is no more burdensome than what it is now for shipment records.

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