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Energy Finance in the New Industry Economics

Craig W. Murray
Vinson & Elkins LLP
Houston, Texas

Introduction

Remember Finance? Remember Banks? Remember the good old days of just a few months ago when high commodity prices had the bankers on the ropes and revolving credit lines were committed but undrawn?

How did we get in this mess? Fortunately, that is not our topic today, but we are indeed in it – and we are likely a long way from bottom. We are on the cusp of a new era. A hundred or so years ago, it was not in vogue to borrow money for many endeavors. Debt was considered a "bad" thing. Then, certain folks made it work, and "leverage" became an acceptable business practice.

Then, like everything else, we overdid it. Isn't that the American way? If some is "good," then "some more" is better.

Like it or not, we "live in interesting times." Many say that the American business financial statement will no longer reflect the same degree of leverage as seen in the past 25 years. "Equitize" is the new buzz word. Banks have been burned. Investment banking firms are now bank holding companies, and the entire senior lending market is more risk adverse, more expensive and more conservative on the percentages of a deal it will finance. Recent and ongoing deals reflect bank requirements of as much as 60% new equity in acquisitions.

So, where are we? The paper I had on "Energy Finance" in August was obsolete by October/November. So, I changed the title slightly to include some "New Industry Economics," and moved the now-historical descriptions of various traditional energy finance structures to the Appendix as Annexes. In their place, I have inserted throughout views and reflections of current market conditions and concerns to hopefully make this paper more useful in today's world.

Notwithstanding the current economic climate, the oil and gas industry and the service support industry remain very capital intensive. Acquisitions are just as important as they always were, especially for those who have the ability and desire to take advantage of current suppressed commodity prices and consequential lower asset values. Producers' and investors' desire to find creative and innovative financing techniques to access capital is perhaps even keener with today's tight credit.

Senior level term loans and revolving credit (borrowing base) loans will still be around, but how will they be different? Mezzanine Finance, which has been around for many years in various forms and provided by

various sources, will still be around, but there will be fewer providers and how much money will they have? Volumetric Production Payments, which, as most of you know, have been around since prior to the early thirties, will yet again be popular. But how and why? What about equity kicker transactions and net profit interest deals? These topics, along with acquisition strategies, joint venture arrangements, farmouts and other popular techniques and strategies will be explored herein. Also, in light of the current climate of loan workouts, restructures and borrowing base adjustments, we will talk about current trends in existing financings as well as current documentation issues relating to things such as defaulting lenders. We will also point out how certain bankruptcy devices can be acquisition strategies and how certain tax considerations may have new significance in today's market.

Finally, we will observe that Islamic Finance is a topic of interest within the oil and gas community inasmuch as more companies are discovering ways to assess capital from Islamic nations and Islamic investors throughout the world. We will find that Islamic Finance is not that much different. Even the Volumetric Production Payment works with Islamic capital.

I. Basic Historical Structures

Annex A contains a discussion of term loans and revolvers, which have been used in the oil and gas business for many decades. Presumably, these structures are indeed not things of the past, but they likely will look very different going forward as underwriting criteria tighten and regulatory constraints increase. You already know that term loans are used in connection with acquisitions or projects and revolving lines of credit are used to fund working capital and certain capex. Annex A covers the documentation typically utilized. Volumetric Production Payments are still around. We will touch on those later and there is a broader discussion in Annex E. The appendix also contains annexes covering net profit interests, equity kicker transactions and royalty trusts. The annexes can be emailed upon request at: **cmurray@velaw.com**.

In light of the current financial situation, it seems more appropriate to talk about changes that are occurring and form part of what is being called "New Industry Economics" for the oil and gas industry.

II. Current Market Observations

Undrawn Commitments.

On February 10th, J.P. Morgan Chase & Co., CitiGroup Inc. and Bank of America Corp., the three biggest U.S. lenders, were among banks that announced they were cutting back on $1.6 trillion of existing credit lines as those banks faced increased demand for loans that threat-

ened to drain capital.[1] Those banks use loan negotiations to not only reduce the lines but to also increase interest rates for troubled companies. After more than $1 trillion of write-downs and credit losses, lenders are moving to lessen the chance that troubled companies will withdraw funds.[2] At that time, such banks also served notice that they will not be renewing $450 billion of additional credits when they mature this year.[3] U.S. syndicated bank lending totaled just under $12 billion for 2008, compared with $132 billion in 2007.[4] This points to the need for alternative sources of capital and innovative techniques.

In addition, the "net interest margin" for bank loans, which is a measure of profitability for banks, fell in 2008 to its lowest point since records began in 1984, according to the Federal Reserve Bank of St. Louis.[5] Obviously, this means that banks will have to charge a lot more going forward.

Anticipatory Funding; Draws on Commitments (Dry Powder).

Some borrowers fearing lack of bank liquidity have drawn down their revolver or requested a delayed draw term loan in advance of either actual need or an anticipated lender default.

Considerations.

Borrower should consider implications of borrowing in Base Rate or LIBOR. Base Rate may have some advantages that were not present until recently.

Does the Credit Agreement force the representations to be remade (*i.e.*, "true-up") upon draws as well as conversion/continuations? If so, can the representations still be truthfully made?

How will the proceeds be used?

- Does the Credit Agreement limit purpose of funding?
- Consider treatment of accounts upon bank default.
- Consider cash sweeps / cash dominion.

Financial covenant impact / clean down requirements.

Heightened focus on representation / covenant compliance.

Consider impact on lender relationships. We have heard anecdotal evidence that lenders "will remember" anticipatory fundings when it comes time for a consent / renewal.

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1 Moore, M.J. & Pavlsen, P., Bloomberg News, P1-3 Feb. 10, 2009.

2 *Id.*

3 *Id.*

4 *Id.*

5 *Id.*, at 3.

Annex K contains examples of draws in some of these circumstances.

"Vicinity of Default" Dilemma. An interesting situation is one in which a company wants to make a draw under a credit facility (typically a revolving credit facility) whether they need the funds or not, and the Chief Financial Officer or financial responsible officer wants to ensure that the draw will be proper under the credit facility documentation. Typically, that documentation will require that the approving officer represent and certify a number of things to the lenders. One of these would be that no defaults exist under the facility and that the company is otherwise in compliance with the facility. The draw request will also require the responsible officer to "bring down" (in effect, "make again") the same representations that were made upon the closing and initial funding under the credit facility. Naturally, this will require some due diligence on behalf of the responsible officer. Herein lies the dilemma. One of the covenants requires the company to be in compliance with certain financial covenants which may be tested at month end, quarter end, year end or at any time. The responsible officer must represent that the company is in compliance with that financial covenant. The problem is that the financial covenant is to be based upon information which has not yet been set in concrete, i.e., it has not been finalized by the company's internal accounting / audit personnel or blessed by the company's outside accountants. Thus, the responsible officer may or may not have a "feel or belief" that the company will or will not, or is or is not, in compliance with that covenant. Only the passage of time and the delivery of final financial information will allow the responsible officer to make that determination with any degree of certainty.

So the question becomes, can the company properly borrow under the credit facility? Also, most financial officers know that it is a federal crime to use false statements to obtain funds from a federally insured institution. So this is a real problem, especially for those companies wanting to execute "Anticipatory Funding" requests to store dry powder for what they believe are rough times ahead.

The following is a list of considerations for the financial officer in dealing with the Vicinity of Default decision:

Confirm that financial covenants are tested only at quarter or month end. If tested 'at any time' the analysis changes. Other covenants (limitations on debt and liens, etc.) are tested at all times, so knowledge of default is 'realtime' with incurrence of the breach.

Once financial statements for a year, month or quarter have been completed (or even substantially completed), even if compliance certificate is not yet due, Company must know if it is in compliance for period then ended. It cannot ignore reality or be willfully ignorant.

After year, quarter or month end (as applicable), financial covenants are capable of being calculated even though not yet calculated. The most conservative position is to advise Company not to borrow/obtain letters of credit unless they know with a relative degree of certainty that they will be in compliance for the period then ended. The middle of the road position is to permit borrowings unless the Company knows that it is not in compliance. Consider whether similar issues exist with LIBOR roll-overs.

Prior to year, quarter or month end (as applicable), the covenant is not being tested and thus does not have to be met. As a result the Company can continue to borrow even in the face of knowledge that it is likely to be in breach once the test date arrives and the covenant is actually tested.

As counsel to Agent/Lenders, it may be prudent to advise client to request confirmation that financial covenants have been satisfied after end of period and prior to receipt of financial statements as a condition to fundings.

New York law provides a duty of good faith in contractual matters. Texas does not. Additionally under New York law, if one enters into an agreement with knowledge that it violates another agreement, it may be voidable.

Once a Company is in the zone of insolvency, some courts have held that the fiduciary duties of the board and officers run for the benefit of all creditors of the Company including unsecured creditors (not just shareholders). Other courts have held directors to a slightly lower standard, comparing the directors' duties to that of trustees administering the Company's assets for the benefit of the creditors. At a minimum, directors of the Company have the responsibility to maximize the Company assets for payment of the creditors. The Company must consider its need to have cash to run the business in the face of prospective defaults.

18 U.S.C. § 1014 provides that 'Whoever knowingly makes any false statement or report... for the purpose of influencing in any way the action of... (a federally insured bank)... upon any application, advance[,] loan, or any change or extension of the same... shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.' Research ongoing to determine if this applies only to a new advance of funds or also to obtaining a waiver, consent or amendment.

Remember that most credit agreements include an affirmative obligation to give the agent/lenders notice of default within three or five days after the default occurs.

6. Additional considerations related to borrowing when possibly in the "Vicinity of Default":

Are accounts under dominion? If so any money there will be swept to secured lenders.

Is there a MAC condition precedent to borrowing, or a MAC and/or solvency rep that are repeated via reaffirming reps as a condition to borrowing?

Borrow at Prime/Base Rate, which only requires one business day's notice versus two or three days for LIBOR (less time for banks to ask questions and put up roadblocks to funding).

Considerations relating to moving funds to an account not under control of lender or agent (note risk that the Company has then created an undisputed default).

Be prepared for next steps if lenders refuse to fund.

Be aware of risk that the lenders could seek a court order to freeze the funds drawn eliminating the benefit.

Relationship issues. When should a Company approach the lenders: at the first sign of potential storm clouds, when results are clear, or when reporting is due? Do you need to bring a "plan for recovery/cure" to them when you approach; will bringing equity dollars avoid draconian re-pricing?

Borrowing Base Revolvers.

General. As you probably know, traditional borrowing base revolvers start out with an Initial Borrowing Base amount. Thereafter, based on prior year-end reserve reports and reserve reports as of June 30, most Borrowing Base facilities are reexamined each March and September with Scheduled Borrowing Base Redeterminations to be effective as of April 1 and October 1 of each year, accordingly. At the time of submission of this paper, the Borrowing Base Redeterminations were still ongoing. Nonetheless, we have seen a number of issues emerge as lenders work through resetting the Borrowing Base for their customers.

Current Situation. Current situations fall in two camps. Obviously, all Borrowing Bases are being redetermined in a downward direction in light of the fact that we have commodity prices in the neighborhood of one-third of the amount from six or seven months ago. The first camp of redetermination consists of those in which the reduced Borrowing Base is nonetheless still in excess of (or at least no less than) the Maximum Aggregate Credit Amount which the lenders collectively have committed to loan against the reserves of the borrower. The second camp involves situations in which the redetermined Borrowing Base is less than the Maximum Aggregate Commitment Amounts and in some cases less than actual amounts outstanding plus Letter of Credit obligations. The second camp has the bigger problem.

Some in the second camp are there due to the sudden, drastic decrease in commodity prices. Others made large acquisitions with debt and an expectation of higher or at least continued high commodity prices and failed to hedge against price risk. Others experienced an abrupt and steep decline in production due to hurricanes and other unforeseen events.

The investment-grade E&P's are not impacted nearly as much as E&P's with borrowing base revolvers. The latter at a minimum have a reduced borrowing capacity and a more limited ability to fund operations. As a consequence, some will have difficulty fulfilling drilling obligations, whether their own or as farmees.

Of course, the timing could not be worse for such redeterminations. At the same time, we also have low commodity prices, tight credit, reduced access to capital markets, and the time for E&P's to release their audited financials. To top it off, it is also time for national banks to begin their annual examination process.

Borrowing Base Deficiency Situations. E&P's with greater amounts outstanding under their credit facilities than their borrowing base will support will want to consider taking some or all of the following actions with respect to their bank facility:

Raise cash by monetizing existing hedge contracts that are in the money before they roll off.

Study your Credit Agreement provisions. Determine for a certainty that your loan is not in default as a result of the borrowing base deficiency (it should not be). Determine what provisions are made in your credit agreement concerning the deficiency.

Involve your legal counsel to help analyze your plan and your approach to the banks, including what you and your counsel know about the particular lenders in your lender group and their current propensities.

Be proactive in dealing with the bankers. Bring information to the bankers. Have a plan and call them before they call you. (See workout strategies at Section II G hereof).

Demonstrate to the bankers that your E&P is reducing capex and cutting G&A expenses, and show the bankers your plan for divesting assets, cutting costs and increasing cash flow, coupled with the relief needed under the Credit Agreement.

Seek a Forbearance Agreement with your lenders and negotiate a 6-month period to amortize the over advance amount. Consider offering incentives like equity kickers if necessary.

Sell properties to pay down debt and cure the borrowing base deficiency, starting with noncore assets.

Focus first on expansion projects that will maximize short-term returns. Convert PUDs and PDNPs into PDPs.

Pursue a more aggressive farmout program.

Investigate whether it makes sense to add additional hedges.

Approach industry partners to consolidate projects or certain operations.

Approach major vendors and explore creative ways to decrease the cost of their services while still maintaining them, such as offering equity kickers to vendors in exchange for reduced costs for a period of time.

Historically, E&P's could use the "yank-a-bank" provisions in their credit documentation to remove a problematic lender. There is no real applicability of those provisions with current credit constraints, because those provisions require the "yanked" bank to be replaced by another lender, and none are available.

Watch out for lenders which may be looking to buy a portion of your debt at a discount. These lenders will join your lender group and be aggressive problem makers in the negotiation process. Their desire will be to accelerate your indebtedness and seek liquidation in order to get a greater return on their purchase of your debt.

Watch out for mechanic's and materialmen's liens that may be filed against your assets. The M&M liens can, over time, cause a default under your main credit facility.

Explore possible additional equity or subordinated debt infusions from major shareholders or unit holders.

Explore Mezzanine Finance options for equity, subordinated debt or preferred stock opportunities (both with and without equity kickers).

Limitations and Tightening of Credit Agreements.

"Accordion" features in borrowing base credits are being eliminated. "Accordions" allow the borrower to increase the borrowing commitment with existing or new banks provided they follow a certain protocol and no default exists.

In some cases, banks are decreasing the borrowing base down to the Maximum Aggregate Commitment Amount, not only for borrowing base reasons (due to a lower price deck) but also because those banks want to limit the ability of the borrower to upsize its facility without 100% consent vote of all lenders (as compared to the traditional "Accordion" features, which have no vote requirement, or a borrowing base increase (within the Maximum Aggregate Credit Amount), which usually only requires a majority vote).

Borrowing base revolvers are generally being amended to tighten the requirements in the event any redetermined borrowing base exceeds

the Maximum Aggregate Commitment Amount or maximum amounts outstanding. Time periods for mandatory prepayments to reduce aggregate outstanding amounts vary from overage amounts being due immediately, to being due within 30 days or being due in installments of up to six months.

Another feature in borrowing base revolvers that has been tightened is the percentage level of mortgages required and the percentage level of required title work. Currently, banks seem to be going back to the standards as they existed prior to the "borrower dominated era" of these credits. Now it is common to see a requirement of 90% of the total value of the Reserves (those given value by the bank) being covered by a mortgage and title requirements in the range of 90% of either the total amount of the Reserves valued by the bank or at least 80-90% of properties covered by Mortgages (which obviously is a lesser standard, but is agreed to in negotiations which increased the percentage requirement from 60-75% to 80-90%).

Term Loans and Revolvers Generally.

As borrowers need amendments, waivers and consents for various matters under Credit Agreements, banks are taking the opportunity not only to assess the interest rate and look for ways to charge fees, but also to tighten basic provisions in the credit documentation which became liberalized due to the pendulum swinging in favor of borrowers on negotiations over the past several years and high competition among bank lenders. Below is a selective list of some of these.

Commitment Letters.

The "Market MAC" language is being reinserted. This excuses lenders from funding loans in the event of a material adverse change ("MAC") in the syndicated loan market or other capital markets.

Borrower MAC's are being insisted upon in a greater number of cases. These excuse lenders from funding loans in the event of a material adverse change in the borrower's business or prospects. Lenders will likely show renewed interest in reviewing the specific language of MACs used in purchase agreements, and some will likely try to decouple MAC's in commitment letters from MAC's in the applicable purchase agreement.

Market Flex language is being reinserted. This language allows lenders to change pricing, terms or structure of proposed facility to ensure successful syndication, the failure of which allows the lenders to properly refuse funding.

Big Picture: Commitment Letters will not be viewed as "money in the bank." Also, purchase agreement negotiations must consider how the risk is to be allocated with respect to the financing commitment.

Commitment Letter negotiations will be more protracted.

Definitional Changes.

The Alternative Base Rate ("ABR") definition used by major banks to define a rate of interest generally equal to the Prime Rate or the Federal Funds Effective Rate was never intended to be lower than a rate based on LIBOR (London Inter Bank Offered Rate). With the current historically low levels of LIBOR, it became necessary to redefine the ABR to equal the **greatest** of the Prime Rate, the Federal Funds Effective Rate and the Adjusted LIBO Rate for a one-month Interest Period on the day of borrowing (plus a margin).

Market Disruption Clause.

This clause provides for the making of LIBOR loans using a different rate if LIBOR cannot be determined or if LIBOR does not reflect funding cost to the lenders.

This clause is being added because lenders apparently have not been providing the true cost of funds when providing information to the British Bankers Association. As a result, LIBOR, which appears on the LIBOR screens at Reuters, is a lesser rate than many lenders' actual cost of funds. Lenders and borrowers are coming to the realization that the pre-credit crunch versions of the market disruption clause are not adequate in the current environment.

Some lenders are imposing a 50 basis point market disruption spread if a majority of the lenders claim market disruption for either Base or LIBOR loans (not merely LIBOR loans any longer) and there is no requirement to determine the actual cost of funds.

Some lenders are also adding floors in the LIBOR provisions (typically 2.5 to 3.0%).

Issues regarding the market disruption clause:

How does the process of invoking the clause work? Is the Agent required to poll the Lenders?

Is there a materiality threshold that must be met before the clause can be invoked?

Can the borrower require a lender to prove its excess funding costs?

Once the clause is invoked, how long does it remain in effect?

The existing market disruption clause may not provide much protection for the lenders. Recently, the historical relation between LIBOR and Base Rate has turned upside down with LIBOR being more costly. As a result, if Lenders in a U.S. market deal invoke the market disruption clause because LIBOR does not reflect their funding costs, they risk put-

ting themselves in a worse position because the Base Rate all-in interest rate recently has been less than the LIBOR all-in interest rate.

Will the Agent share lender funding information with the Borrower and other lenders?

If a borrower has obtained interest rate hedges, the invocation of the clause may throw the hedging program out of balance.

How may the market disruption clause be modified in future deals?

Reduce the number of banks needed to invoke the clause.

If clause invoked, switch to Base Rate, but define the Base Rate as the highest of the Prime Rate, the Federal Funds Rate, and one-month LIBOR.

If clause invoked, require the Agent to request from designated Reference Banks (geographically dispersed) their cost of funds. New LIBOR will be median/average of quotes plus applicable LIBOR Margin.

If clause invoked, each Lender to provide Agent with its costs of funds, with each Lender then lending at its cost of funds plus applicable LIBOR Margin. Administrative difficulties for Borrower and Agent in calculating each Lenders' interest payments.

Add non-LIBOR funding options.

On the issue of length of the LIBOR suspension and whether Agent and Lenders are required to be proactive in calling a halt to the suspension, perhaps documents should require the Lenders to meet the market disruption test on each new borrowing, conversion or continuation instead of deeming LIBOR unavailable until Agent says otherwise.

Borrower Debt Buy-Back Situations:

Borrowers whose debt is trading in the secondary market well below par (often for 50-70 cents on the dollar) have entered into or proposed transactions to allow the borrower to purchase its own debt at the discounted trading price.

Proponents of such transactions argue that they provide much needed liquidity in the secondary market, and they allow the borrower to reduce his debt at a discount resulting in a stronger company for the remaining lenders.

Credit documentation often contains obstacles that make buy-back of debt more difficult whether it is debt under that particular credit document or other indebtedness. (Also see Section F "Defaulting Lenders" below for the debt buy-back situation involving a defaulting lender.)

Caveat: there may be adverse tax consequences related to cancellation of debt. (See Section III herein.)

Borrower may have an affiliate repurchase and hold the indebtedness.

Debt Exchanges. Another way to take advantage of market dislocation is for companies to replace junior debt with a lower face value of senior debt other than the form of a loan or bond. Then buy the junior debt at a discount thereby reducing leverage. Caveat: debt exchange scenarios are often viewed negatively by rating agencies. They view such scenarios as tantamount to default scenarios.

Auctions. There have been situations recently in which lenders (even major banks) have cooperated with amendments to allow certain buy-backs. These have application beyond merely the Defaulting Lender situation.

"Dutch Auction" – borrower invites lenders to specify the price at which they would sell.

"Reverse Dutch Auction" – borrower offers the lenders a price at which it would purchase a portion of its debt.

Defaulting Lenders.

Definition. A "Defaulting Lender" typically means any Lender that has, as determined by the Administrative Agent, (i) failed to fund, (ii) notified anyone in writing that it does not intend to comply with any of its funding obligations or has made a public statement to that effect, (iii) become insolvent or has a parent company that has become insolvent or (iv) become the subject of a bankruptcy or insolvency proceeding, etc.

Lehman. The decline of Lehman started a flurry of activity among borrowers and Administrative Agents under Credit Agreements – each trying to determine how to handle the Defaulting Lender situation. Credit Agreements simply did not contemplate or address a defaulting lender scenario.

Problems:

Documentation does not permit elimination of a lender, except by existing or new lenders.

Documentation does not allow the problem lender to be paid off (due to typical pro rata treatment provisions).

Fees and other amounts due the defaulting lender still have to be paid even after defaulting lender's default.

No offset is available (documentation typically waives offset).

Credit Agreement obstacles that make buy-backs difficult or impossible (since they typically would require several amendments that otherwise would block the borrower buy-back):

First, payments on debts must be pro rata among all creditors. One slice of the debt simply cannot be repaid in full.

Second, many agreements specifically prevent the borrower from being a lender.

Others go further and prohibit the borrower or any affiliate from being a lender.

Other provisions dictate that lenders can only sell their debt to other lenders (not the borrower or any affiliate).

A 100% vote is required to amend the pro rata sharing provision.

A practical problem is that the borrower must have access to adequate excess cash through operations or new equity to purchase/repay the debt and maintain adequate liquidity.

Applicable Credit Agreement Fundamentals:

Obligation to fund under syndicated facility is several not joint.

Effectively the total commitment becomes the commitment minus the defaulting lender's commitment.

In existing facilities, defaulting lenders are often only treated in the "yank-a-bank" provision and possibly voting provisions. There is significant variation. The only way to understand the rights of the parties is to read the documents.

"Fronted" Credit (LOCs, swingline):

In existing facilities, typically full LOC and swingline is available regardless of defaulting lender.

Not adequate from fronting bank's perspective.

Payments to defaulting lenders:

In general, the Borrower must continue paying amounts (including fees) to defaulting lender under existing frameworks (set-off is waived).

Agents may have more ability to set-off, however, and may choose to retain payments intended for defaulting lenders as adequate assurance.

"Yank-a-Bank" – Borrower has ability to replace a lender that exercises certain rights or defaults (but only with a replacement lender).

Very common. But replaced lender must receive par.

Of dubious value in current market (*i.e.*, for loans trading at discounts).

How will Credit Agreements change to address defaulting lenders?

Agents will shift risk of defaulting lender to the borrower and to other lenders

Defaulting lenders will not have the right to vote.

Expansion of definition of defaulting lender likely.

Removing defaulting lender may become possible without lender vote.

Ability to set off against a defaulting lender will be negotiated.

Obligations to defaulting lenders may be creatively tranched.

Agent replacement/resignation provisions will be reexamined.

Swingline reimbursement provisions will be tightened.

Workouts, Consents, Waivers and Covenant Relief.

Practical Considerations to avoid or cure a Default.

In seeking relief and thus modification of, or consents or waivers under, your credit documentation, there are a number of practical steps you should consider.

Study your credit documentation and ask your legal counsel to do likewise. In particular, study the events of default, the covenants (particularly the financial covenants), and the mandatory and scheduled payments. Determine any Defaults or potential Defaults.

Expect the banks to charge higher fees for any waiver, consent or adjustment. Also, expect the interest rate to possibly increase.

Discuss the relief you need to seek with your Administrative Agent under your credit documentation.

Determine the waiver you need for necessary relief and the needed duration for that relief.

Determine the vote required for any consent or waiver needed.

Propose the cure in a comprehensive plan.

Workouts (Additional Considerations) to fix a loan in the ditch.

In addition to the steps enumerated in section 1 above, in any workout situation you will want to take the following additional steps:

Identify all possible cost-saving items.

Address cutting capex and G&A.

Identify assets which can be sold, starting with noncore assets.

Identify ways to increase cash flow.

Identify joint venture opportunities with industry partners to maximize operational efficiency and share assets/expertise.

Identify vendors you can approach to reduce the cost of their services. Consider offering equity kicker incentives (see section VI and Annex D hereof).

Make a Plan for recovery based upon the results of the above steps.

Be proactive in approaching the banks. It is better for you to go to them than to wait for them to come to you.

Be forthright with information to your banks and be prompt in responding to their questions and supply full information.

Get with you Administrative Agent and plan a strategy to approach the other lenders.

Ask for a Forbearance on performance of mandatory payments or scheduled payments as needed. Consider offering equity kickers as necessary to secure the needed relief.

SEC Disclosure. This is not Securities Law advice, but as a heads up, be aware that according to remarks by Michael Fay, Associate Chief Accountant of the Division of Corporate Finance at the SEC, the SEC is drafting new disclosure rules pertaining to credit document compliance. In the past, registrants typically provided a statement that they were in compliance with their debt covenants. Preliminary indications are that the SEC is now seeking more detailed disclosure regarding expected near and long-term compliance and a brief basis for that conclusion. News articles report that registrants will be asked to identify and discuss any known trends or uncertainties that may affect future covenant compliance. Also, when a breach of a financial covenant is reasonably likely, a registrant will be encouraged to discuss whether the breached debt (i) can be avoided or cured, or (ii) can be refinanced. The registrant will be asked to also identify any cross-default provisions and discuss whether the breach will cast doubt on its future viability. Merely stating there may be a material impact on liquidity will not be viewed as informative. Registrants will be encouraged to address reasonably likely implications. Additionally, registrants often state that certain financial covenants limit their ability to incur additional indebtedness. However, if it is reasonably likely that the covenant will affect liquidity, the SEC suggests a registrant should discuss the amount that can be raised, the amount needed, and the implications of a shortfall, for this determination.

III. Tax Considerations

(by John E. Lynch, Vinson & Elkins Tax Partner)

As with all tax issues, you should consult a tax expert. Our concern today is merely to alert you to certain circumstances in which there may be tax issues and about which you should consult your tax expert.

A. Heightened Tax Concerns in Present Day Financing Transactions.

As Lenders in the current economic climate receive equity-flavored securities in connection with their financing transactions (see Section VI and Annex D "**Equity Kickers**" in this paper), such arrangements frequently have tax implications far more complex than those involved in historically traditional financings. Many of those implications are con-

cerns for the lender. However, some are concerns for the oil and gas borrower.

Debt issued at a discount or combined with options, warrants, stock or other equity interest. Even in today's market, debt may be issued at a discount and in other situations debt issuance may be combined with equity interests in favor of the lender. In both of these circumstances, "Original Issue Discount" issues may be present.

"OID" or Original Issue Discount generally is the difference between the "Issue Price" of debt and the principal amount due at maturity. The difference is included as "phantom" interest income over the term of the loan on a yield to maturity basis. OID arises when Notes are sold at a discount or, more importantly for our purposes, when notes are issued with warrants or other interests.

The allocation of a part of the "issue price" of the debt to other interests (*e.g.*, warrants) for tax purposes may create original issue discount or OID (*i.e.*, phantom income to the lenders). It is important to allocate the amount of the loan between the "Issued Price" of the loan and the fair market value of the warrant or other interests. You will need to have support for the value of the warrant or other interest in order to properly quantify their value.

More importantly for borrowers, the creation of OID may subject the borrower to other rules, such as the applicable high-yield discount obligation (**"AHYDO"**) rules which defer or eliminate the borrower's ability to claim some interest deductions.

AHYDO rules apply when:

Maturity Date more than 5 years.

Yield greater than Applicable Federal Rate (AFR) + 5%.

"Significant" OID.

Interest deduction may be disallowed if yield greater than AFR + 6% (disallowed interest treated as a dividend).

This generally occurs in situations which involve debt, warrants and a high interest rate or when a substantial portion of the interest is "PIK" interest. It also occurs when there are layers of interest, (i) a cash pay of fixed rate interest, plus (ii) a layer of PIK interest, plus (iii) a contingent component of interest based upon the level of leverage from time to time.

B. Debt Restructuring Tax Issues.

In the current economic climate involving debt restructurings, you should be aware that these restructurings can have significant income tax consequences.

1. ***Cancellation of Indebtedness***. In a debt restructuring, the cancellation of a portion or all of the indebtedness can create cancellation of debt income (**"COD Income"**) for the debtor.

For federal income tax purposes, the modification of the terms of an existing debt instrument may result in a deemed issuance of a new debt instrument in exchange for the existing debt instrument. This deemed exchange will result in the recognition of COD Income if the "issue price" of the new debt instrument is less than the outstanding balance of the existing debt instrument. Because of the manner in which the issue price of the new debt instrument is determined, substantial COD Income can occur even in situations where the principal of the restructured debt is not changed.

Changes to the terms of a debt instrument will result in a deemed issuance of a new debt instrument in exchange for the existing debt instrument if the changes constitute a "significant modification" as defined in applicable regulations.

What is a Modification? An alteration of any legal right of a party to a debt instrument will constitute a modification. Although alterations that occur by operation of the debt instrument generally are not modifications, such an alteration will be a modification if it changes the obligor or co-obligor, extends or reduces the term of the debt, converts the debt into equity, or changes the recourse nature of the debt.

When is a Modification Significant? In general, a modification is "significant" if it is "economically significant". If more than one aspect of a debt instrument is modified, then the aggregate effect of all modifications will be tested for significance. Modifications that having the following results will generally be treated as significant:

Change in Yield – a greater than 25 basis point change in yield.

Change in Timing of Payments – a material deferral of scheduled payments (note: a regulatory safe harbor may be available for payment deferrals that do not extend more than the lesser of five years or 50% of the original term of the instrument).

Changes in the Obligor – (i) a substitution of an obligor on a recourse instrument (other than in connection with certain acquisitions), or (ii) the addition or deletion of a co-obligor causing a change in payment expectations.

Change in Security or Credit Enhancement – a release, substitution, addition or other alteration of the collateral for, a guarantee on, or other form of credit enhancement of a nonrecourse debt instrument or for a recourse debt instrument if the change causes a change in payment expectations.

Change in Priority – a change in priority of a debt instrument resulting in a change in payment expectations.

For purposes of these rules, a change in payment expectations occurs if as a result of the modification (i) there is a substantial enhancement of the obligor's capacity to meet the payment obligations under a

debt instrument and that capacity was primarily speculative prior to the modification and is adequate after the modification, or (ii) there is a substantial impairment of the obligor's capacity to meet the payment obligations under a debt instrument and that capacity was adequate prior to the modification and is primarily speculative after the modification.

2. American Recovery and Reinvestment Act of 2009 ("ARRA").

ARRA created a special rule for COD Income recognized in 2009 and 2010. Taxpayers may elect to defer COD Income recognized in 2009 and 2010 until 2014 – a 5-year grace period for COD Income recognized in 2009 (a 4-year grace for COD Income recognized 2010).

Beginning in 2014 deferred COD Income recognized ratably (1/5th each year) over a five-year period.

Certain OID deductions of the debtor related to the deferred COD Income will be required to be deferred.

This Subsection B and Subsection A above are only an overview of the complex rules governing the tax consequences of debt restructurings. They are intended to make you aware of the potential issues that might arise. Please consult with a qualified tax expert to determine how these rules would apply to a particular situation.

IV. Mezzanne Finance

What is Mezzanine Finance?

Even in today's market, mezzanine finance is a viable option for the oil and gas industry and the service support industry, notwithstanding diminution in the capabilities of certain traditional mezzanine finance providers such as hedge funds. Mezzanine finance generally refers to that level of financing which exceeds the risk profile of traditional bank finance. Mezzanine loan providers command higher interest rates and most often equity kickers as a cost of their providing funds. In the last five or six years, competition among mezzanine providers was so keen that the market required that they also invest a portion of the required capital up front as equity. Thus, the mezzanine provider would end up with a loan with a coupon rate in the range of 16%, plus warrants, plus an upfront equity position in the borrower. The mezzanine level of the debt falls beneath senior secured debt and ahead of equity. Issues of intercreditor arrangements and subordination are typically involved when the mezzanine finance is with a borrower which also has senior debt. Mezzanine finance should not be confused with private equity.

Mezzanine finance was a hot topic in the frenzied world of 2006 commodity prices and deal opportunities. So much so that a host of mezzanine finance providers entered the market. Once senior lenders started to become unwilling to extend themselves on highly leveraged transactions at the beginning of 2007, financial sponsors were either faced with

the need to contribute additional equity or turn to mezzanine finance to fill the gap. Larger mezzanine financings even replaced high-yield bonds as the high-yield bond market tightened. With the disappearance of the second-lien market, mezzanine finance became even more popular. However, the economic meltdown beginning in September 2008 left many mezzanine providers without adequate capital once investors in hedge funds made redemption calls.

Nonetheless, there appears to be dry powder at a number of the traditional mezzanine providers, many of whom are waiting to see what will shake out from the first quarter of 2009.

Advantages of Mezzanine Finance.

As noted above, mezzanine financing is more expensive than senior debt but is typically provided in a much shorter time frame and with minimal due diligence by the lender and many times without typical collateral security. Maturities generally range from three to five years and most often there is no amortization until maturity. Thus, the mezzanine piece functions as long-term capital. When large enough in dollar amount, the mezzanine debt is typically easy to syndicate because there is a well known community of mezzanine providers, each of whom generally acts the same and underwrites in the same manner with respect to the mezzanine debt and its structure and requirements.

Another attractive feature is that, although the interest rate range is between 13-16%, a portion of that is frequently payable in kind ("PIK Interest"). There is typically only a minimum administrative burden with mezzanine finance, and the level of disclosure and due diligence is significantly less than senior indebtedness.

Besides replacing the second-lien market, mezzanine finance gained further popularity as senior lenders shied away from traditional bridge financing.

Subject to funds availability, mezzanine finance should continue to provide an alternative source of finance in workouts and restructures.

V. Acquisition Strategies

We should touch on a number of vehicles and approaches utilizing finance options to acquire assets.

Term Loans. See Section I A hereof. In recent transactions, banks have reportedly insisted on 60% equity or the equivalent to be behind a 40% senior secured loan.

Mezzanine Finance. See Section IV hereof.

Volumetric Production Payments. See Section VII hereof.

VPP's have successfully been used a number of times in the last 10 years in connection with acquisitions. The property seller sells a VPP to an SPV created by a Trust Company. The underlying properties are then

sold to the property buyer burdened by the VPP. The property buyer then assumes the obligation of the producer as to the VPP.

The benefit is that the larger amount of the properties never appears on the buyer's books. In effect, the easy properties (those that would sell at or close to market value) are presold, and an otherwise $2 billion acquisition becomes an $800 million acquisition. The property buyer has an $800 million asset on its books which will increase in value with development instead of having a $2 billion asset on its books with declining value.

Joint Ventures.

With tight credit, joint ventures with industry partners and vendors at times can be very attractive. Participants contribute their assets, time and attention, as well as industry and technical expertise, which presumably are superior to that which is available with a financial institution as a finance partner.

The pooling of interests with other oil and gas competitors many times leads to not only sharing assets and the success of the venture, but also to building relationships, gaining greater technical information and other data as well as access to other opportunities for future participation.

In joint ventures with vendors, the vendor provides its services as consideration for a share of the assets in lieu of cash payment, which lessens the need for finance that may not even be available.

Farmouts.

The traditional farmout, with which all of you are familiar, thrives for various reasons in all phases of the economic cycle. For a variety of reasons, working interest owners have a need to outsource or farmout their drilling obligations in order to preserve a lease and maintain the farmor's (assignor's) working interest in the lease. The assignee or farmee will receive a contractual right to receive a portion of the working interest in the lease once drilling has been completed.

What has always been important, but is even more significant now, is that the so called "contractual" right that the farmee receives has special protection under the Bankruptcy Code in the event of the assignor's/farmor's bankruptcy – a real possibility today. Section 541(b)(4)(A) of the Bankruptcy Code provides that, as long as the farmout arrangement is in writing (even unrecorded), the farmee's earned but unconveyed interest is not to be treated as being property of the bankruptcy estate of the respective assignor/farmor.

In today's economy, farmouts are and will continue to be a valuable device utilized in decreasing the strain on an E&P as well as providing part of the acquisition strategy of a healthier E&P. The E&P in distress can reduce yet fulfill its drilling obligations and preserve leases by farm-

ing out the drilling obligations, and the less stressed E&P can supplement its acquisition program by functioning as a farmee.

Equity.

For the last number of years there have been numerous sources of equity dollars for investment in the oil and gas industry, including the service support industry. Dollar amounts available were quite large. Of course, this has dramatically changed in recent months.

Public equity for the industry has slowed, but see Annex J for examples of recent offerings. Preferred equity issuances have stronger possibility in the mid-term. As far as any creativity in this area is concerned, we will have to see what might come about as a result of tax changes intended to foster development, but it is too soon to identify anything new so far.

Project equity, typically drilling funds, is expected to be very limited in the near term.

Private venture equity is in an interesting situation. Reportedly there is a large amount of private equity dollars available from private equity funds, but understandably, they are being very selective on investments. They have money, and they have their eye on certain projects, but they are waiting for an uptick in commodity prices. They are also waiting to see what other counterparties will do in the market place. The question is, will those counterparties be active and utilize the assets or services of the company in which the private equity funds would invest? There will be plenty of would-be management groups seeking investors in this arena due to pent-up investment dollars at private equity funds.

As far as hedge funds are concerned, their numbers and financial strength have been significantly reduced, but many of them are experiencing increased growth of funds from investors who know that the particular hedge fund invests in distressed assets. They realize that for those hedge funds, "everything just went on sale." Of course, many other hedge funds have struggled or closed due to redemptions from investors.

Private Placement of Debt Securities.

The oil and gas industry has for a long time used the traditional private placement of notes with institutional investors and insurance companies as a significant source of capital. Although availability from this source is no doubt lessened in the current economic climate, it nonetheless remains viable for select companies. This is logical in light of the fact that in past times of tight credit, the private placement of notes with select companies remained a strong option. In practice, we are seeing this to be true thus far in the first quarter of 2009. Each of the situations we have observed consisted of a company going to the same investors which had prior experience with the company in holding its privately placed notes. Surprisingly, such investors are requiring very few changes to the

Note Purchase Agreement provisions. So far, these consist of tightening covenants (at least for certain periods of time) but only to the extent permitted by the company's senior bank indebtedness documentation. Pricing is slightly higher and interest provisions contain a requirement for "contingent interest" in cases where certain financial covenants exceed certain ceilings. On its face, the contingent interest provisions might be seen as covenants that violate the senor indebtedness limitations (which provide that the Note Purchase covenants cannot be any tighter than the senior indebtedness covenants), but careful drafting can make the "contingent interest" truly exist as an interest component and not as an additional covenant. An example is a contingent interest provision requiring additional basis points of interest in the event the leverage ratio exceeds a certain level, even though the actual covenant concerning the leverage ratio in the Note Purchase Agreement was set at a different level.

Capital Markets (Debt).

Encouragingly, there have been a number of successful public debt offerings in this first quarter. See Annex J for a listing.

Using Bankruptcy Devices.

Buying Properties out of Bankruptcy.

Another topic of current interest is the acquisition strategy of buying properties out of bankruptcy. While not itself a financing technique, it is a result of the current financial situation. Many property owners are in financial distress due to falling commodity prices, the current state of upheaval in the credit markets, and owners finding themselves on the wrong end of their hedges. Term loans are reaching maturity with no available refinancing options. Bankruptcy proceedings are often the only next step. Borrowers either have to sell assets prior to bankruptcy or file for bankruptcy protection.

Reorganization under Chapter 11 is not common for the typical E&P company. The reason is that the only way you can realistically reorganize under a Chapter 11 proceeding is if you have cash or access to financing. Typically, those funds are simply unavailable these days. More often, the company's properties are sold pursuant to a "Section 363" sale (labeled as such from the corresponding Bankruptcy Code designation allowing for such sale). In a Section 363 sale, potential purchasers can submit competing bids for the properties.

Advantages.

Not all of the interested parties must consent to the 363 sale. Obviously, the purchaser and the selling debtor have to consent but lienholders' consent is not required.

Because the 363 sale is approved by the Bankruptcy Court, the assets are sold free and clear of all liens, encumbrances and obligations (but see "Complication/Pitfalls" below).

Contractual Covenants (e.g., supply agreements, service contracts) are also removed.

Joint Operating Agreements and other like contracts can be terminated as "executory contracts" as well, but these can also be renegotiated as part of the purchase transaction.

"Stalking-Horse Bidder"

A "Stalking-Horse Bidder" is one who first steps up to the plate and suggests that it is the purchaser with whom the seller/debtor should negotiate for the initial best bid that will establish the purchase price above which any other bidders must bid. The advantage to this is that the Stalking-Horse Bidder has the opportunity to negotiate with the seller/debtor. This would apply not only to the purchase price but also to other terms, including those dealing with title and executory contracts. In addition, to compensate the Stalking-Horse Bidder for its time and expenses, typically a breakup fee is negotiated that has historically been between one and four percent of the purchase price in the typical situation. The breakup fee must be court approved and is an amount which is added to the bid to establish the watermark above which additional bidders must bid.

Complications/Pitfalls

Unlike the typical sale of properties prior to bankruptcy, there is not a data room for a typical 363 sale. Remember the seller is a company that has been in distress. Most likely, its records are not the best, and the company certainly has not had time to devote resources to compiling the traditional data room.

However, there are steps that you can take to bolster your due diligence. Obviously, you want to examine the public records. You will want to contact other working interest owners in the properties to learn what they know and to request copies of documents. Be sure to seek all amendments, especially for joint operating agreements.

Realize that your seller might be in default under joint operating agreement obligations. These obligations are not eliminated with respect to the properties, and you will be buying these properties subject to these obligations, including those which are in arrears. The cost of any arrearage is in addition to the purchase price.

Another complication is that covenants "running with the land" are not eliminated by a 363 sale. These would include obligations for royalty payments, continuous development provisions and any other like covenant contained in documents of record, most typically the lease agreement.

"Best" Bid?

The winning bid in a bankruptcy sale is the "Best" bid in the view of the court. The court considers the value of non-cash items in the bid as well as the buyer's financial soundness. It is often the case that the "Best" bid is the one with the highest cash component but not necessarily the largest total price. The court also considers the buyer's ability to close within the prescribed period.

DIP Financing as an Approach.

An approach in situations in which a Chapter 11 proceeding is possible is for the would-be asset purchaser to become a debtor-in-possession lender, typically called a "DIP Lender." DIP Lending is covered as a topic in Annex C of this outline. Suffice it to observe at this point that DIP loans typically are made in situations in which there is adequate collateral to secure the existing secured lien holders plus a cushion to secure the DIP loan. Thus, the DIP lender can be recognized as having a superior claim to the otherwise senior secured lenders and receives a preferred return (typically 16%) that is blessed by the court. The DIP lender's lien, once blessed by the court, cannot be questioned.

The strategy behind a would-be purchaser becoming a DIP lender is to obtain information early in the bankruptcy process and to align itself with management.

The DIP lender might also want to purchase a claim, either secured or unsecured, from an existing creditor. The claim will give the proposed DIP lender standing in the bankruptcy case with early abilities to influence the sale's process, including the bidding procedure, agreement on the breakup fee and agreement on which assets will be sold.

Lock-Up Agreement

The Lock-Up Agreement is a strategy that blocks the auction process and is a variance by the courts from their preference for significant competition to achieve the highest value for assets being sold. The Lock-Up Agreement is between the debtor and a buyer and permits a quick final sale, which avoids the auction process that will drive up the price. Obviously, the court will not bless such an arrangement unless it believes the consideration is fair and all claimholders, including lienholders, agree to be bound by the sale. This is not a strategy designed to get a cheap price.

VI. Equity Kickers

Oil and gas borrowers that are unable to make required prepayments, amortization payments or interest payments on their loans or unable to pay fees associated with amendments and credit agreement adjustments, may seek to offer the lenders a share in any upside of the borrower. The equity kicker can either be in exchange for PIK interest or in lieu of required prepayments, fees or make-whole premiums. If a bor-

rower is unable to refinance a mature obligation, the borrower might offer an equity kicker to incentivize the lenders to extend the maturity of the present indebtedness for a period (together with increased interest most likely). Borrowers might offer equity incentives in the form of profits participation in a project or assets to vendors in exchange for reduced costs of vendor services.

As to the type and form of equity kickers, the terms and some protections, as well as exit strategies and rights, see Annex D in the Appendix.

VII. Volumetric Production Payments

It seems the Volumetric Production Payment ("VPP") is a hot transaction whenever commodity prices are high or credit is tight. Those two possibilities seem to cover all of the basics. When commodity prices are high, producers can sell a VPP in order to effectively monetize proved developed producing (PDP) reserves and use the proceeds from the VPP sale to create more production or acquire more reserves. When credit is tight, sources of capital will buy a VPP in situations in which they will not make a loan. Recovery of capital with a VPP is more certain than a loan, and VPP's avoid the time, expense and uncertainty of foreclosure and bankruptcy.

The VPP transactions are not ones which companies shy away from, even in the post-Enron era. Their viability was bolstered in an amendment a few years ago to Section 541(b)(4)(B)(i) of the Bankruptcy Code, which provides that a proper VPP (that is a limited term overriding royalty transferred of record to an entity that is not involved with operations) will not be a part of the bankruptcy estate of a producer debtor. Their use can be part of an acquisition strategy, as discussed in Section V C herein.

More detail on VPP's is set forth on Annex E.

VIII. Net Profits Interests

In recent years, net profits interests ("NPI'") saw renewed use as part of tax-exempt investors' portfolios in connection with industry transactions (particularly with service providers in the energy sector receiving them in lieu of cash for providing services) and as another means of investing in the oil and gas sector while limiting the investors' total exposure in the transaction. How much usage NPI's will receive and in what amounts and by whom are open questions at this time.

More detail on NPI transactions is contained in Annex F.

IX. Financing Transactions with Tax-Exempt Entities

Tax-exempt investors, given the limitations that the tax code imposes upon them, are exploring the use of VPP's and net profit interests, either through direct investment or through a trust structure, in order to participate in oil and gas investments. Even with the increased costs associated with setting up these structures, producers believe that these in-

vestors, given their tax-exempt status, may provide them with a source of less expensive capital. How much appetite these investors will have for these type investments in this market is still an open question.

See a discussion of this topic in Annex G.

X. Royalty Trusts

Royalty Trusts are utilized in connection with the transfer of a royalty interest or a net profit interest in transactions similar to those described with respect to tax-exempt entities in Section IX and in Annex G hereof. The only difference being that the term "Royalty Trust" is generally used in the situation in which the original sponsor has sold interests in the trust (commonly referred to as "trust units") to the public in a public offering underwritten by a syndicate of investment banks. The trust units are then listed on a securities exchange.

It is doubtful that any of these transactions will see the light of day any time in the near future given the presumed lack of public interest in equity investments in the near term. Also, there is the practical problem that most major investment banks are now bank holding companies. In recent years, commercial banks have undertaken debt and equity underwriting. The question is what limitations will be imposed on bank holding companies and their subsidiaries and affiliates in these areas with the anticipated increase in regulatory supervision and restrictions.

A discussion of Royalty Trusts appears in Annex H.

XI. Islamic Finance

The notion of Islamic Finance may sound exotic and strike you as curious to be included within "Energy Finance." However, especially in tight economic times, we will all want to consider all viable options in raising capital within the oil and gas sector. Islamic Finance is a largely untapped source for oil and gas finance among U.S. companies. In recent years it has gained significant usage within the international community. Very basically, it is not acceptable within the Islamic world to charge or receive "interest" on money. As such, financings have to be structured to provide a return without violating Islamic law in this regard. Once such a structure has been achieved, it is deemed to be "*Shari'a*" compliant.

A more detailed explanation of Islamic Finance appears in Annex I.

Appendix

Note: the Appendix is available electronically by request at cmurray@velaw.com. Total page count of the Appendix is 106 pages. Email will contain each Annex as a separate icon.

Annex A - Term Loans and Revolvers

Annex B - Section 363 Sales

Annex C - DIP Financing

Annex D - Equity Kicker Transactions

Annex E - Volumetric Production Payments

Annex F - Net Profits Interests

Annex G - Financing Transactions with Tax-Exempt Entities

Annex H - Royalty Trusts

Annex I - Islamic Finance

Annex J - Public Debt and Equity Offerings by Energy Companies since August '08

Annex K - Company Draws on Revolving Credit Facility within Last Few Months