2016 HOT TOPICS FOR ENERGY COMPANIES

Thoughts for Officers and Directors of MLPs in 2016

The U.S. energy industry has gone through a dramatic period of commodity price decline, a trend which has continued as we start 2016. The headlines are full of stories predicting further price declines or a "lower for longer" outlook. At best, 2016 likely involves further spending cuts, layoffs and limited access to the capital markets for many energy companies.

We expect this extended period of depressed commodity prices—and the impact throughout the upstream, midstream and downstream oil and natural gas industries—to present significant and complex legal issues for our MLP clients, even those that have no direct exposures to commodity prices. We are providing this note to our friends in the industry to help you consider how best to survive these challenging times. Specifically, this note addresses:

- ***Issues related to managing liquidity and growth in challenging economic times, including alternative sources of capital available to MLPs and legal and practical considerations when considering distribution cuts;***
- ***How to protect midstream MLPs from counterparty credit risk, in a year in which many expect chapter 11 filings by E&P companies to increase;***
- ***Considerations for managing and minimizing unitholder litigation risk at a time of heightened scrutiny;***
- ***Considerations and best practices for officers and directors of MLPs when managing through distress;***
- ***Debt repurchases and restructurings and how to avoid tax pitfalls associated with realizing cancellation of debt income;***
- ***A look forward towards the new qualifying income regulations expected to be released by the Internal Revenue Service and the U.S. Treasury Department in 2016; and***
- ***Compensation trends and issues in today's MLP market.***

Managing Liquidity and Growth in Challenging Times

Because most MLPs regularly pay a substantial portion of their cash as distributions to unitholders, growth capital is typically funded through capital market issuances of equity and debt. With MLP yields nearly double their five-year average, issuing common units in public offerings is not currently an attractive financing alternative for most MLPs. At the same time, issuing new debt without the infusion of new equity capital threatens credit ratings for many MLPs who are already under significant stress, and such additional indebtedness may not be permitted under existing debt agreement covenants in any event.

With this backdrop, even our healthiest MLP clients are facing difficult decisions as to how to raise capital and utilize their cash, resulting in at least two key questions we expect many of our MLP clients to consider this year:

- What alternative sources of capital are available to me to delever or finance growth projects or acquisitions?
- When does it make sense to consider cutting distributions to unitholders, and how do we manage that process to minimize legal risk?

Alternative Sources of Capital for MLPs

We expect to see a continued and increased reliance on alternative sources of capital by MLPs seeking to fund growth without reducing distributions to limited partners in 2016, including private placements of preferred units, asset-level joint ventures with financial partners, supportive financing arrangements from sponsors, and, potentially, issuances of retail preferred units.

Institutional Preferred Private Placements: Private placements of preferred units to third party investors, typically private equity funds, are a popular investment structure in times of instability in the capital markets for a number of reasons. Perhaps most critically, MLPs have almost unlimited flexibility in structuring the terms of preferred units under typical MLP partnership agreements (though such terms must be negotiated with investors) and may issue an unlimited number of preferred units (though the size of the issuance on an as-converted basis may be limited by rating agencies for 50% equity treatment) to sophisticated investors on an expedited time frame, all without unitholder approval or SEC registration. Subject to finding a willing investor, MLP preferred units can generally be structured to (i) be non-yielding or paid-in-kind for a period following issuance, a critical feature for MLPs that are finding their distribution coverage squeezed; and (ii) be given 50% equity treatment for purposes of credit rating metrics and full equity treatment for purposes of compliance with covenants in existing credit agreements and indentures. Preferred units are typically structured such that no incentive distribution rights accrue with respect to any distributions paid out to holders of preferred units. Some MLPs sign commitments for a private placement of preferred units concurrently with entering into acquisition agreements, using the private placement as acquisition financing. For example, in connection with signing up a deal to acquire Tall Oak Midstream for $1.55 billion in December, EnLink Midstream announced a private placement of $750 million of convertible preferred units to funds managed by TPG Capital and the Merchant Banking Division of Goldman Sachs. Preferred units typically are convertible into common units after a negotiated time period.

Joint Ventures: An alternative method for funding both third party and organic growth is through creating a joint venture with a third party, often a financial investor, that will own or develop some subset of the MLP's assets. In this construct, an MLP contributes existing assets, contracts, and regulatory permits to a joint venture in exchange for a JV partner's disproportionate future contribution of cash to fund growth capital expenditures or acquisitions, for an immediate cash distribution from the joint venture, or a combination of both. These types of transactions are highly negotiated, both with respect to the financial obligations and returns of the parties and the governance rights each party has with respect to the joint venture's operations. Joint ventures are also typically easier to implement with respect to assets that are somewhat discrete from an operational standpoint, as contractual rights and permits may need to be segregated from the MLP's other operating assets. In addition to being used to fund growth projects, joint ventures can also provide a mechanism for MLPs to partially liquidate an investment in an asset while retaining operational control. For example, in 2014, Crestwood Equity sold its Tres Palacios Gas Storage assets to a joint venture between its sponsored MLP, Crestwood Midstream Partners, and Brookfield Infrastructure Group, using a portion of the proceeds to repay indebtedness. While structuring a joint venture, it is important to carefully consider, among other things, whether the structure complies with the provisions of existing debt agreements and the impact the joint venture structure will have on the MLP's financial statements (potential debt consolidation) and the calculation of key financial metrics under existing debt agreements.

Sponsor Support: For MLPs whose sponsors remain healthy, we also expect to see financing transactions between MLPs and sponsors designed to be supportive of the MLP and signal to the markets that the MLP can continue to rely on strong sponsorship. These supportive transactions can take a variety of forms, including (i) the purchase of non-yielding units in the MLP to fund growth projects, that convert to common units when the growth projects generate positive cash flows; (ii) the waiver of certain IDR payments the sponsor would otherwise be entitled to, in order to permit funding of a growth project or acquisition; and (iii) purchases of common units in the MLP, potentially that the MLP may redeem in the event unit prices increase to a certain level. Tallgrass Energy Partners and its sponsor, Tallgrass Development, utilized the third of these structures in connection with the dropdown of a 31.3% interest in the Tallgrass Pony Express Pipeline to Tallgrass Energy Partners in January 2016, for $1.1 billion in cash and common units. In the transaction, Tallgrass Development granted Tallgrass Energy Partners an 18-month call option to repurchase the newly issued units at a price modestly higher than the then-current trading price of its units.

Retail Preferred Offerings: Another potential financing source for MLPs looking to opportunistically raise capital at a time of volatile capital markets is the issuance of retail preferred units. As Vinson & Elkins has described previously[1], retail preferred units are structurally senior to common units in the capital structure; as a result, distributions on retail preferred units are more protected than distributions on common units, providing for a yield at pricing materially lower than current common unit distributions. Preferred distributions are paid monthly or quarterly prior to distributions on the common units, with a strong preference for preferred distributions to be paid on a monthly basis due to recent tax regulations. In addition, in the event of liquidation, the preferred units generally will have preference to the common units in accordance with their stated liquidation preference. Because each series of preferred units that has been issued by MLPs has been issued, to date, on a "cumulative" basis, any suspended payments to preferred unitholders must be paid prior to the resumption of distributions to common unitholders. Notwithstanding these attributes, retail preferred units are not debt instruments and preferred holders cannot require payment from the issuer nor can they force the issuer into bankruptcy. Retail preferred units are often marketed as a substitute investment for retail debt investors, but they result in partial equity treatment (typically 50%) from the ratings agencies. Tax reporting for retail preferred units are designed to have simpler tax reporting.

Considering Distribution Cuts

For MLP boards that are beginning to consider whether their MLP is generating sufficient cash to continue to pay distributions at current levels, there are a number of important factors that should be carefully considered before making a determination.

First, because an MLP's distribution is viewed as a key investment criterion by analysts and investors, we recommend a careful review of prior public guidance regarding distributions and liquidity. To the extent that current market and industry conditions would result in different disclosures today, appropriately updating those disclosures should receive significant focus for the year-end earnings and financial reporting season. Disclosures should be carefully drafted to include discussions of necessary assumptions and appropriate caveats regarding potential factors that could impact distribution decisions going forward. In addition, we recommend our clients in this situation develop corresponding talking points for the investor relations team to use when fielding questions from investors and analysts.

Second, we recommend that clients think carefully about the timing of an announcement to make a distribution cut. While most of our clients declare distributions in advance of announcing quarterly or annual earnings, a substantial minority announce distributions and earnings concurrently. For clients who expect to release both disappointing earnings and announce a distribution cut, it may be preferable to include all of the information in a single announcement. A single disclosure both avoids sequential negative announcements and provides the ability to respond to investor questions with the benefit of publicly disclosed financial results. To the extent a single announcement is inconsistent with past practice, we encourage clients to discuss with legal counsel, including a securities litigator, the alternative approaches.

Finally, as a technical but important matter, we encourage MLPs to review their partnership agreement and applicable debt instruments and to ensure that distribution determinations are being made in compliance with the terms of both sets of documents. Under most partnership agreements, Available Cash from "Operating Surplus" is paid out under the traditional MLP waterfall, while Available Cash from "Capital Surplus" is paid out as a return of capital, resulting in a reduction of the IDR tiers. While to our knowledge, no MLP has paid distributions from Capital Surplus, MLPs with negative distribution coverage should confirm that ongoing distributions can be sourced to Operating Surplus rather than Capital Surplus.

Protecting Yourself from Counterparty Risk

Given distress caused by low commodity prices, it is reasonably likely that there will be a significant increase in chapter 11 bankruptcy filings in 2016 by upstream exploration and production ("E&P") companies. One of the most powerful tools available to a chapter 11 debtor is the ability to reject executory contracts, including contracts for gathering and processing. Because these executory contracts are among a midstream MLP's most valuable assets, we suggest a comprehensive review to identify actions to protect or enhance the leverage of the MLP in the event of a chapter 11 filing by an upstream customer.

In conducting this review, the first question is a practical one: does the distressed producer have a viable alternative to transporting or processing their oil or gas at a lower cost than under the existing contract? The existence (or lack) of viable economical alternatives to the current contractual agreements may indicate whether a distressed producer is likely to attempt to reject, renegotiate, or retain their midstream contracts. It should be kept in mind that a distressed producer, even if intent on retaining a contract because of a lack of practical alternatives, may attempt to renegotiate the contract "in the shadow of bankruptcy."

[1] See "Retail Preferred Offerings Expand Outside of the Traditional E&P MLP Space" at http://www.velaw.com/Insights/Retail-Preferred-Offerings-Expand-Outside-of-the-Traditional-E-P-MLP-Space/.

Other issues to evaluate include: whether the contract is regulated by FERC, as FERC-regulated contracts have unique legal issues; whether specific oil and gas reserves have been dedicated to a gathering or transportation agreement; whether specific leases have been identified and linked with the contract; whether the contract contains (or lacks) covenants running with the land or integration clauses; and whether the midstream company's interests in the contracts have been recorded or otherwise perfected. Another issue to evaluate is whether the midstream company, as a non-debtor, non-working interest owner, may be held joint and severally liable for the producer-debtor's obligations in the event of the debtor's bankruptcy (and possible default under the contracts).

On balance, by assessing (and remediating, as necessary) the above issues, midstream companies may be able to improve their leverage with regards to both a distressed E&P producer (who may ultimately evolve into a chapter 11 debtor) and other prospective chapter 11 creditors, thereby enhancing the value of its assets in a period of increasing uncertainty.

Managing Unitholder Litigation Risk

During periods of significant financial distress, directors should expect heightened scrutiny of their decisionmaking by both unitholders and the plaintiffs' lawyers representing them.

As many of you are aware, in May 2015, Vice Chancellor Travis Laster of the Delaware Court of Chancery in a case titled *In re El Paso Pipeline Partners*, awarded $171 million in damages against an MLP's general partner in connection with a dropdown that was approved by a conflicts committee with the help of legal and financial advisors and after the receipt of a fairness opinion. As we noted at the time,[2] the judgment represented the first time that a Delaware court has held an MLP general partner liable for monetary damages in connection with a related party transaction, and it set a concerning precedent for both MLP practitioners and board members.

As we move into 2016, we continue to believe that judgments like Vice Chancellor Laster's in *In re El Paso* will be outliers compared to the overwhelming majority of litigation that is resolved in favor of the general partner. Despite this view, we believe that *In re El Paso* and other recent litigation in the Delaware courts offer important lessons for directors of MLPs in an environment that will cause directors' decisions to be subject to heightened scrutiny after the fact. In addition, we expect to see a continuation of the trend of less "boilerplate" litigation as potential plaintiffs dig for more substantive claims.

To minimize the likelihood of a negative outcome in unitholder litigation, we recommend the following to our clients as best practices in addition to our prior recommendations on the issue:

- In connection with conflicted transactions, carefully evaluate the likelihood of litigation and the potential magnitude of claimed damages in advance of determining what procedural safeguards to utilize in connection with evaluating the transaction. While we give the same advice in a more stable economic environment, transactions that may have been unlikely to generate litigation previously may have higher litigation risk in 2016. As a result, clients may want to adopt more robust procedural approval processes than they would have previously.

- When considering potential litigation risk, always remember that the decisions of board members will be judged by a court with the benefit of hindsight, even though the law usually focuses on the information actually available to directors at the time a decision is made. Accordingly, it is important to consider how a particular decision or course of action may be viewed by a court in the event of a "worst case scenario," and ensure that your legal and financial advisors assist you in creating a robust record that will withstand scrutiny even in such a circumstance.

- Treat the negotiation of related party transactions as a substantive and important process, which should be tailored to the deal in question, and not a perfunctory "cost of doing business." In doing so, seek out and engage legal and financial advisors who will help you not only document a good process but also assist you in evaluating the myriad substantive financial and legal issues and considerations boards should consider in approving the conflicted transaction.

Considerations and Best Practices for Officers and Directors of MLPs When Managing Through Distress

Managing an MLP through financial distress—which may be particularly acute for MLPs in the upstream and coal industries in 2016—presents an additional layer of complexity for officers and directors. The nature of MLP officer and director duties do not typically change during financial distress, and the general partner will continue to be judged by the standards set forth in the MLP's limited partnership agreement. Such agreements typically provide, with some variation, that the general partner act with the subjective belief that it is doing so "in the best interests of the partnership." While the general partner owes no duty to the MLP's creditors under the partnership agreement, as an MLP moves towards insolvency, it is important for officers and directors of MLPs to consider the positions and potential claims and assertions, contractual and otherwise, of creditors.

[2] See "Lessons from Delaware Court of Chancery's Recent El Paso Decision" at http://www.velaw.com/Insights/Lessons-from-Delaware-Court-of-Chancery-s-Recent-El-Paso-Decision/.

Patience, prudence and proactively addressing issues facing a company in distress are key to avoiding regrettable mistakes. Below are some practical ideas for management and boards of particularly distressed MLPs to consider as they navigate 2016:

- Conduct regular meetings with management and outside advisors, ensure necessary information is shared, and develop a common understanding of key deadlines and facts. More frequent meetings should be held as the company's financial distress becomes more acute.
- If it appears that the MLP is or may become insolvent, assemble a contingency planning team and engage with experienced business people and financial and legal professionals.
- Develop a clear understanding of the MLP's liquidity position and cash flow forecast on a regular basis (more frequent monitoring is standard practice when financial distress is present), as well as any near term potential restrictions on liquidity and sensitivities to various reasonably possible future commodity prices.
- Engage as soon as possible with sophisticated tax and restructuring counsel regarding the tax implications of a restructuring, as partnerships cannot take advantage of the same exemptions corporations can with respect to avoiding the recognition of cancellation of debt income in a bankruptcy. This could result in an MLP's unitholders recognizing taxable income in a bankruptcy that results in the underlying limited partner interest being worthless.
- Develop strategic options that anticipate various market scenarios. Overall, insolvent MLPs have considerable latitude to pursue value-maximizing strategies designed to benefit the enterprise as a whole. However, given continued commodity price volatility and uncertain markets, boards should avoid relying on a single transaction or solution and ensure that alternatives are continuously evaluated. In particular, a distressed MLP should evaluate all of its options for addressing problems with its capital structure – including capital injections, sales of assets and other types of out-of-court restructurings and, in extreme cases, bankruptcy.
- Communicate with key creditors and critical providers early and often, as dialogue and collaboration often lead to better results, and negative surprises generate results which might have otherwise been avoided or improved.
- Communicate regularly with counsel regarding litigation threats or suits, operating concerns, and business strategies; it is helpful for counsel to understand the "big picture" when being asked to render legal advice.
- Communicate strategically with management and employees to maintain workforce stability, morale and competency.
- Understand that information, including internal documents and emails, is in most cases discoverable and subject to review by adverse parties, and communications regarded as privileged may (in certain circumstances) be subject to waiver of the privilege by a bankruptcy trustee in the event such trustee is appointed in a chapter 11 case or a case is filed under or converted to chapter 7.
- Do not incur debt that cannot be repaid when mature based on reasonable business expectations, and do not declare distributions to unitholders if the MLP is faced with the prospect of insolvency.
- Avoid transactions that do not provide the MLP with reasonably equivalent value, especially related party transactions with a sponsor.
- Review and maintain adequate property, casualty, and D&O insurance coverage.

Debt Repurchases, Exchanges, Modifications and Related Party Acquisitions–Potential for Cancellation of Debt Income

Given current conditions, many MLPs find that their debt is trading at a discount to its principal amount. While there are distressed issuers that warrant significant discounts, often the discount may seem irrational, particularly if the MLP is capable of sustaining substantial distributions to its equity holders. Although certain common transactions involving discounted debt may produce a benefit to the MLP by reducing its total leverage, these transactions require caution and diligence to avoid or minimize cancellation of debt income ("CODI") that may be allocated to the MLP's unitholders.

Debt Repurchases: In the last cycle of distress for MLPs, we saw a number of MLPs repurchase their debt at a discount. Beginning in the second half of 2015, we began seeing this again (initially with E&P MLPs), and we anticipate that a number of MLPs will repurchase portions of their debt in 2016. While repurchasing debt at a discount may be a reasonable use of an MLP's excess cash flow, it is important to remember that these repurchases generally will result in CODI that is allocated to the MLP's unitholders. It is also important to note that purchases of an MLP's debt at a discount by the sponsor or any other related party may also result in CODI to the MLP and its unitholders, even if there is no reduction in the actual amount of the MLP's debt outstanding.

Debt Exchanges for Debt or Equity: Several MLPs have executed or considered debt exchanges, which also produce CODI to the MLP and its unitholders. For example, late last year, Linn Energy exchanged $2 billion of unsecured notes for $1 billion of second lien secured notes. It may surprise MLPs and their investors that the CODI produced by a debt exchange may exceed the amount of debt reduction due to the public trading of the replacement notes below their principal amount. An exchange of MLP units for the MLP's existing debt also may produce CODI to the MLP and its unitholders.

Debt Modifications: Certain modifications to existing debt and related consent payments may result in a "deemed exchange" of the existing debt that triggers CODI without reducing the amount of debt actually owed by an MLP.

Exceptions to CODI/Phantom Income: Corporate entities may have net operating losses to offset CODI or may otherwise qualify for an exception to the recognition of CODI, such as the bankruptcy or insolvency exceptions. In the case of an MLP, however, these exceptions are available to a unitholder only if the unitholder itself is insolvent or in bankruptcy and thus these exceptions generally would not apply. As a result, unitholders may owe taxes on CODI that exceed the cash they receive as distributions from the MLP ("phantom income").

MLPs that are considering debt management strategies that involve discounted debt are encouraged to consult with their counsel and tax advisors prior to undertaking (or having a related party undertake) any transaction involving that debt. MLPs also should ensure that their disclosures address the potential for a significant amount of phantom income to its unitholders.

Qualifying Income Regulations

2016 is likely to bring final regulations regarding the scope of qualifying income. Last year the Internal Revenue Service and U.S. Treasury Department proposed regulations[3] that set forth significant guidance with respect to qualifying income, ending the year-long "pause" in issuing private letter rulings ("PLRs") on March 6. The proposed regulations were published on May 5 and have been heavily commented upon by the industry, individuals and other organizations. Over 30 publicly traded partnerships (or current or potential sponsors), 15 other interested organizations and numerous individuals commented on various portions of the regulations, with a particular emphasis on the definitions of "processing or refining" and the definition of a "natural resource." All public written comments are categorized here[4]. In addition, oral comments were provided at a hearing on October 27 during which MLP representatives directly addressed the questions of the IRS and Treasury. Most recently, the American Bar Association filed comments strongly supporting[5] the industry, stating that the proposed regulations, in current form, "may be damaging to the public's confidence in the administration of tax law."

The industry is cautiously optimistic that the IRS will improve upon the proposed regulations prior to publishing final regulations. However, the IRS's stated task of appropriately defining the scope of all qualifying activities is extremely challenging, and it is possible that final regulations may raise additional issues for the industry. In the interim, the IRS is working through the backlog of PLR requests that were pending during the "pause," and has released approximately 10 PLRs since issuing the proposed regulations. All PLRs are categorized here[6]. The IRS has publicly stated that it is "working quickly" on the final regulations, which are expected to be published prior to the November 2016 elections.

Trends in MLP Equity Compensation

In 2016 we expect many of our MLP clients to be focused on what implications, if any, the current economic landscape should have on the compensation, and particularly equity compensation, of executives who provide services to MLPs. To assist in that process, we have reviewed a significant portion of recent MLP compensation disclosures to determine trends in equity compensation awards, which we summarize below, together with a few takeaways that general partners and their boards of directors may want to consider as they review their equity compensation programs in light of current market conditions.

Unlike public corporations, MLPs most often grant executives full-value awards in the form of restricted units (defined for purposes of this summary as issued and outstanding MLP common units that are subject to forfeiture provisions) and/or phantom units (defined for purposes of this summary as notional units that track the value of MLP common units and are settled in cash upon vesting) rather than options or appreciation rights. This trend is likely due, at least in part, to the fact that many MLPs are focused more on maximizing their distributions to unitholders than creating capital appreciation. As such, awards that derive value from capital appreciation often do not create optimal alignment with MLP unitholders. Additionally, given the unique structure of MLPs in which executives are often employees of the MLP's general partner or another related company, if options and appreciation rights are not structured properly, executives can incur adverse federal income tax treatment with respect to options or appreciation rights.

Among full-value awards, our review confirms that MLPs continue to grant phantom units rather than restricted units. As phantom units do not result in the issuance of additional common units, these awards do not result in dilution. Phantom units can also result in less administrative cost than restricted units and generally have the same tax

[3] The proposed regulations are available here: http://www.velaw.com/uploadedfiles/VEsite/E-comms/ProposedQualifyingIncomeRegulations050515.pdf.
[4] All public written comments are categorized here: http://www.velaw.com/What-We-Do/MLP-Qualifying-Income/.
[5] The ABA's comments are available here: http://www.velaw.com/uploadedFiles/Velawcom/Assets/PDFs/Practice_PDFs/IRS-2016-7704-d-1-E.pdf.
[6] All PLRs are categorized here: http://www.velaw.com/What-We-Do/MLP-Qualifying-Income/.

consequences to executives as restricted units. At the same time, there are certain significant advantages to granting restricted units. For example, restricted units are not a cash draw on the MLP and granting restricted units generally allows an MLP to utilize simplified fixed accounting principles when booking the value of the awards.

As with nearly all other public companies, equity awards under MLPs' equity compensation plans are generally subject to vesting requirements. However, unlike the recent trend at many public corporations toward granting more performance-based awards, the results of our survey suggest that the majority of MLPs continue to grant equity compensation awards that are subject only to time-based vesting requirements. Our survey also shows that the most typical time-based vesting schedule is between three and four years. This difference could be due, at least in part, to the fact that the advocacy and pressure of institutional investors and proxy advisory firms, which have pushed public corporations toward performance-based equity compensation, has not yet been as prolific among MLPs. Additionally, because MLPs generally are not subject to the compensation deduction limitations under the Internal Revenue Code that apply to public corporations, there are fewer incentives for MLPs to grant performance-based awards that qualify for an exception to those rules. Nevertheless, some MLPs do grant performance-based awards, and the data we collected indicates that in these cases, the applicable performance metrics are most often based on relative total unitholder return and/or distributions to unitholders, with relative total unitholder return being the predominant metric.

Notwithstanding the trends highlighted above, recent volatility within the energy sector may cause MLP general partners to reconsider the structure of their equity compensation programs. For example, to conserve cash and maximize distributable cash flow, some general partners may look to pay awards that are traditionally paid in cash (e.g., annual bonuses) in the form of common units granted under their MLP's long-term incentive plan. General partners may also seek to increase equity compensation as an overall component of executives' total compensation packages. Alternatively, MLPs with depressed unit prices that have traditionally granted restricted units might consider granting phantom units in the future to keep executive compensation at current levels without depleting the number of units reserved for issuance as executive compensation, which would likely result in having to call special unitholder meetings for the purpose of approving the issuance of additional units under their long-term incentive plans. Finally, it is possible that increasing media exposure of executive compensation practices at public companies and the advocacy of institutional investors and proxy advisory firms will become more prevalent for MLPs and pressure will build for MLPs to grant more performance-based awards.

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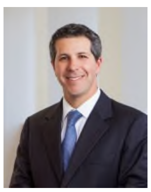

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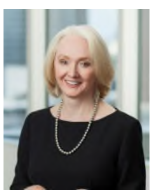

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