

Vinson & Elkins

JANUARY 2016

ALTERNATIVE SOURCES OF CAPITAL RAISING IN A DISTRESSED MARKET

Energy Series

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TODAY'S PANEL



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V&E Energy Series

Seminars and Continuing Legal Education Courses

ENERGY FINANCE
Key Considerations in Distressed Upstream M&A
Keith Fullenweider; John M. Grand; Bryan Loocke; James S. Meyer
Wednesday, February 17, 2016

ENERGY FINANCE
MLP Restructurings and Simplifications
Ryan Carney; Ramey Layne; Doug McWilliams; Lande Spottswood
Wednesday, March 9, 2016

DISCUSSION TOPICS

Institutional Preferred Offerings	05
Retail Preferred Offerings	15
PIPE Offerings	22

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INSTITUTIONAL
PREFERRED
OFFERINGS

RECENT PRESS RELEASES

- **January 12, 2016:** Plains All American Pipeline, L.P. Announces \$1.5 Billion Private Placement of 8% Perpetual Series A Convertible Preferred Units
- **December 7, 2016:** Enlink Midstream Partners, LP Announces \$750 Million Offering of Convertible Preferred Units to Partially Fund Acquisition of Tall Oak Midstream, LLC
- **October 7, 2015:** Targa Resources Partners LP Announces \$110 Million Offering of Series A Fixed-to-Floating Rate Cumulative Redeemable Perpetual Preferred Units

MLP INSTITUTIONAL PREFERRED OFFERINGS

Date	Company Name	Type of Security	Investor(s)	Offering Size
Announced 01/12/16	Plains All American Pipeline, L.P.	Perpetual Series A Convertible Preferred Units	EnCap, The Energy Minerals Group, Kayne Anderson Capital Advisors, First Reserve	\$1.5 billion
12/6/15	Enlink Midstream Partners, LP	Series B Cumulative Convertible Preferred Units	Enfield Holdings, L.P. (affiliate of TPG Management)	\$750 million
10/14/15	Sanchez Production Partners LP	Class B Preferred Units	Stonepeak Infrastructure Partners	\$350 million
06/30/15	Teekay Offshore Partners L.P.	Series C Convertible Preferred Units	Magnetar Capital, Triangle Peak Partners	\$250 million
04/08/15	Breitburn Energy Partners LP	Series B Perpetual Convertible Preferred Units	EIG Management Company, Anchorage Capital Group	\$350 million
06/17/14	Crestwood Midstream Partners LP	Class A Convertible Preferred Units	Blackstone Group, General Electric Company, Magnetar Capital	\$500 million
04/16/13	Atlas Pipeline Partners, L.P.	Class D Convertible Preferred Units	Various Investors	\$400 million
04/15/13	American Midstream Partners, LP	Series A Convertible Preferred Units	High Point Infrastructure Partners	\$90 million
11/30/12	Atlas Pipeline Partners, L.P.	Class D Convertible Preferred Units	Various Investors	\$200 million

MLP INSTITUTIONAL PREFERRED OFFERINGS

Date	Company Name	Type of Security	Investor(s)	Offering Size
05/22/12	Capital Product Partners L.P.	Class B Convertible Preferred Units	Capital Maritime & Trading Corp, Various other Investors	\$140 million
05/14/12	Cheniere Energy Partners, L.P.	Class B Units	Blackstone CQP Holdco	\$500 million
04/09/12	Penn Virginia Resource Partners, L.P.	Class B Units	Riverstone	\$400 million
09/11/11	QR Energy LP	Class C Convertible Preferred Units	Quantum Resources and other Investors	\$234 million
10/25/10	Blueknight Energy Partners, L.P.	Series A Preferred Units	Blueknight Energy Holding, CB-Blueknight	\$140 million
09/01/10	K-Sea Transportation Partners L.P.	Series A Preferred Units	KA First Reserve	\$100 million
07/21/10	Copano Energy, L.L.C.	Series A Convertible Preferred Units	TPG Capital	\$300 million
05/26/10	Energy Transfer Equity, L.P.	Series A Convertible Preferred Units	Regency	\$3 billion
01/07/10	Crosstex Energy, L.P.	Series A Convertible Preferred Units	Blackstone Group / GSO Capital Partners	\$125 million

INSTITUTIONAL PREFERRED OFFERINGS

WHY PREFERRED OFFERINGS?

- Cost of Common Unit Equity Capital
 - Volatile and uncertain capital markets
 - High yields/low trading prices for common units
 - IDR burden associated with common units
- Leverage Ratios/Debt Capacity
 - Rating Agencies: 50% Equity Credit
 - Rating agencies/accounting treatment materially impact structure (i.e., mandatory cash redemptions)
- Capital Expenditures or Acquisition Finance
- Issuer Specific/Terms Vary Substantially

INSTITUTIONAL PREFERRED OFFERINGS

KEY TERMS

- Pricing/Terms
 - Highly situation specific but have typically been perpetual in order to maximize equity credit from the ratings agencies
 - Recently some MLP preferred investors have been willing to price convertible dividends inside the common yield
 - Possible to have dividend payable-in-kind (PIK) for an initial period
 - Some have included a delayed draw feature (situation specific)
- Conversion
 - Typical conversion premium is 15-25% but highly situation specific
 - Typically issuer has right to cause conversion after some period of time if the preferred units are significantly “in the money”
- Issuer Provisions
 - Dividend can be structured to include (i) a PIK toggle, (ii) step-up in the event of the partnership being in arrears, (iii) distribution stopper on junior equity, (iv) unpaid dividends accrue and accumulate at an increasing rate each quarter until paid; or other types of protective features
 - Potential to structure terms based on achievement (or lack thereof) of certain milestones

INSTITUTIONAL PREFERRED OFFERINGS

KEY TERMS

- Downside Protection
 - Preferred units are senior to the common units in a liquidation scenario and receive a liquidation preference
 - Consent of the preferred units, voting as a separate class, necessary for the partnership to take material actions or actions that adversely affect the rights, powers, privileges or preferences of the preferred units
 - Weighted average anti-dilution rights
 - Change of Control (COC) protective provisions, depending on:
 - Whether the COC is cash or stock
 - The time from closing in which a COC occurs
 - Degree of flexibility depending upon objectives
- Governance
 - Board designation rights typical either (i) commensurate with fully diluted pro forma equity ownership or (ii) following specified number of missed preferred payments
 - May either be full board seat or board observation rights

SUMMARY OF RECENT TRANSACTION

ENLINK MIDSTREAM PARTNERS, LP



Signing Date: December 6, 2015

- Investment Amount: \$750 million (50,000,000 Series B Cumulative Convertible Preferred Units), with the opportunity to increase the preferred investment by \$500 million
- Issue Price: \$15.00
- Investor: Enfield Holdings, L.P. (Affiliate of TPG Capital)
- Distribution Rate
 - Quarterly distributions payable-in-kind (PIK) in additional preferred units at annual rate of 8.5% on the issue price for the first six distributions
 - Coupon thereafter set to the greater of (a) 7.5% on the issue price payable in cash plus 1.0% PIK or (b) 7.5% on the issue price payable in cash plus PIK amount above the cash payment that achieves in total the same distribution as the underlying common units
- Use of Proceeds:
 - Partially fund the acquisition of Tall Oak Midstream, gathering and processing midstream company
 - Proceeds from additional investment would be used to fund Tall Oak capital expenditures or to fund installment purchase

SUMMARY OF RECENT TRANSACTION

ENLINK MIDSTREAM PARTNERS, LP



- Conversion Rights: preferred units may be converted on a one-for-one basis after record date for fifth quarter following consummation of the private placement
 - In full or in part at the option of the Holders
 - In full at option of the Issuer if the then current unit price (based on 30-day VWAP) is greater than 150% of the issue price
- Change of Control: preferred units automatically convert into a number of common units equal to the greater of:
 - Number of common units into which preferred units would convert; or
 - Number of preferred units to be converted multiplied by (i) 140% of issue price divided by (ii) the 30-day VWAP

SUMMARY OF RECENT TRANSACTION

ENLINK MIDSTREAM PARTNERS, LP



- Board Composition and Governance Rights
 - Board of General Partner increases by two members, one of whom is appointed by TPG
 - Board designation right terminates when (i) TPG holds less than 25% of preferred units, (ii) preferred units represent less than 7.5% of outstanding common units or (iii) purchaser ceases to be an affiliate of TPG
 - Certain committee observation rights
- Voting Rights
 - Voting rights with common units on an as-converted basis
 - Affirmative vote of majority of preferred units required to:
 - Amend the terms of the preferred units or otherwise amend the LPA in any adverse way
 - Make distributions from capital surplus
 - Exceed specified consolidated debt ratios
 - Issue senior securities
- Registration Rights and Expenses
 - Holders entitled to demand and piggyback registration rights for underlying common units
 - Liquidated damages payable if registration statement not effective within 180 days
 - Transaction fee of 2.5% paid by the partnership to the purchaser plus out-of-pocket expenses up to \$1.5 million



RETAIL PREFERRED
OFFERINGS

PRIMARY FEATURES OF RECENT MLP RETAIL PREFERRED OFFERINGS

- Ranking
 - Structurally senior to common units in capital structure
 - Preferred distributions are paid prior to distributions on common units
 - In event of liquidation, preferred units generally will have preference to the common units in accordance with their stated liquidation preference
 - To date, preferred units have been issued on a “cumulative” basis, meaning any suspended payments on the preferred units must be paid prior to the resumption of distributions on the common units
- Not Debt Instruments
 - Holders cannot require payment of distributions from the MLP or force the MLP into bankruptcy
 - Results in equity treatment from ratings agencies
- Tax Reporting is Simplified
 - Treated as guaranteed payments for the use of capital
 - Investors’ IRS Form K-1 has only a single number with income equal to cash

KEY CONSIDERATIONS FOR MLPS CONTEMPLATING ISSUANCE

- Liquidation Preference
 - Typically \$25.00 per unit, plus accumulated and unpaid dividends
 - Primary sales of preferred units by the MLP must be made at a price per unit equal to or above the stated liquidation preference
- Distribution Payment Dates
 - Generally paid on a monthly basis, in each case being paid on the 15th day of the month following the corresponding period
- Distribution Rate
 - Traditionally issued with either a fixed distribution rate or a fixed-to-floating distribution rate (typically fixed for 5 years and then a floating LIBOR-adjusted rate thereafter)
- Optional Redemption
 - Typically allow for the MLP to redeem the units after a fixed period (5 or 10 years) at a redemption price equal to the stated liquidation preference per unit, plus accumulated and unpaid distributions up to redemption date, whether or not declared

KEY CONSIDERATIONS FOR MLPS CONTEMPLATING ISSUANCE

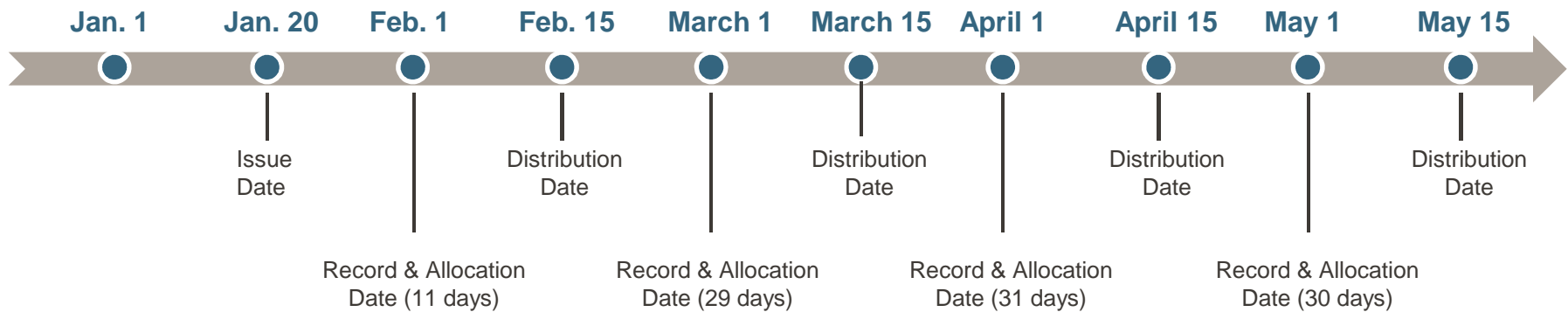
- Change of Control Rights
 - Upon change of control, preferred units issued to date are convertible (at holder's option) into common units unless prior to the change in control date, the MLP exercises its redemption rights
 - Recent movement to limit the definition of “change in control” to only occur if the surviving entity no longer has any publicly traded common equity
- Classification of Units
 - For MLPs with high-yield debt outstanding, terms of retail preferred units may need to be structured to not be classified as a “disqualified equity security” (generally meaning that the preferred units cannot be redeemable or puttable while high-yield debt is outstanding)
 - Disqualified equity securities are effectively treated like indebtedness under most high-yield indentures
- Maturity
 - Most common is a perpetual maturity unless redeemed or converted
 - Alternatively, a mandatory redemption date could be specified

KEY CONSIDERATIONS FOR MLPS CONTEMPLATING ISSUANCE

- Listing
 - Typically listed on the securities exchange that the MLP is listed on
 - Underwriters typically make a market, but are not required to do so
- Voting
 - Generally the holders of preferred units do not vote
 - Super majority (2/3) required to (i) issue senior securities; (ii) issue parity securities if dividends are in arrears; or (iii) amend the LPA in a materially diverse way
 - NYSE listing requirements may grant certain additional voting rights in certain circumstances
- Registration Requirements
 - S-3 (or an amendment thereto) should register preferred units, the specific terms of which will be described in a prospectus supplement
 - Form 8-A will be required to register the preferred units under the Exchange Act

DISTRIBUTIONS AND ALLOCATIONS EXAMPLE

2016



- Distributions (Monthly)
 - Accrue within a month
 - Payable to holder at close of business last day of month
 - Paid 15 days in arrears
- Allocations
 - Monthly allocations matched to holder with distributions
 - Accrue even if not paid

RECENT MLP RETAIL PREFERRED OFFERINGS

TARGA RESOURCES PARTNERS LP

\$125 million

October 2015 – *Issuer's Counsel*

9.00% Series A Fixed-to-Floating Rate Cumulative Redeemable Perpetual Preferred Units

DYNAGAS LNG PARTNERS LP

\$75 million

July 2015

9.00% Series A Cumulative Redeemable Preferred Units

TEEKAY OFFSHORE PARTNERS L.P.

\$125 million

April 2015 – *Underwriters' Counsel*

8.50% Series B Cumulative Redeemable Preferred Units

ATLAS RESOURCE PARTNERS, L.P.

\$80 million

September 2014

8.625% Class D Cumulative Redeemable Perpetual Preferred Units

VANGUARD NATURAL RESOURCES, LLC

\$100 million

September 2014 – *Issuer's Counsel*

7.75% Series C Cumulative Redeemable Perpetual Preferred Units

LEGACY RESERVES LP

\$175 million

June 2014 – *Underwriters' Counsel*

8.00% Series B Fixed-to-Floating Rate Cumulative Redeemable Perpetual Preferred Units

BREITBURN ENERGY PARTNERS LP

\$175 million

May 2014 – *Issuer's Counsel*

8.25% Series A Cumulative Redeemable Perpetual Preferred Units

LEGACY RESERVES LP

\$300 million

April 2014 – *Underwriters' Counsel*

8% Series A Fixed-to-Floating Rate Cumulative Redeemable Perpetual Preferred Units

ATLAS PIPELINE PARTNERS, L.P.

\$110 million

March 2014 – *Underwriters' Counsel*

8.25% Class E Cumulative Redeemable Perpetual Preferred Units

VANGUARD NATURAL RESOURCES, LLC

\$175 million

March 2014 - *Issuer's Counsel*

7.625% Series B Cumulative Redeemable Perpetual Preferred Units

VANGUARD NATURAL RESOURCES, LLC

\$250 million

November 2013 - *Issuer's Counsel*

7.875% Series A Cumulative Redeemable Perpetual Preferred Units

VANGUARD NATURAL RESOURCES, LLC

\$63.1 million

June 2013 - *Issuer's Counsel*

7.875% Series A Cumulative Redeemable Perpetual Preferred Units

PIPE OFFERINGS



PIPE OFFERINGS

- Definition - Private Investment in Public Equity
 - A non-registered offering of equity (typically common equity)
 - To a limited number of institutional investors (potential offerees all accredited investors)
- Attractiveness to issuer
 - Large capital raise possible in short amount of time
 - Flexibility to obtain commitment in advance of closing pricing without underwriter
 - Requiring preparation by the investor only of very streamlined information, including publicly filed Exchange Act reports;
- Attractiveness to investors
 - Potential to obtain a large block of equity at substantial discount to market
 - Possibly a different (preferred) class of equity
- Downside for issuer/investors
 - Shares will be restricted = administrative costs for resale
 - Concentration of ownership

PIPE PROCESS

- Process often controlled by the placement agent
 - Placement agent conducts its own business and financial due diligence.
- An express agreement of confidentiality from each potential investor must be obtained, including an agreement not to trade on the information
 - Possibility of the offering could be Material Non-Public Information = Reg FD, insider trading issues
 - Typically placement agent develops wall crossing script and runs this process; agreement may be email confirmation of agreement (issuer and agents want an audit trail)
 - Agreement often provides that termination is the earlier of (i) public disclosure of MNPI (including transaction announcement); or (ii) ultimate termination date (“cleansing date”)
 - On cleansing date, issuer must typically either make MNPI public or conclude that it is no longer material
 - Cleansing date may put issuer in awkward position if deal is delayed and all investors will not extend date

PIPE PROCESS

- Confidential presentation of MNPI to potential investors after NDAs obtained
- Negotiation of documents (purchase agreement and registration rights agreement)
 - Purchasers frequently have own separate counsel
 - Purchasers buy directly from issuer; placement agent typically not a party to these documents
- Execution and Announcement - press release (including for Reg FD purposes) and 8-K

RECENT REPRESENTATIVE PIPE OFFERINGS SUNOCO LP (“SUNOCO”)



Signing Date: November 15, 2015

- 26,315,789 common units (52,373,639 common units outstanding as of 11/2/15)
- Gross proceeds of approximately \$750 million
- Underlying Transaction (the “Drop-Down”):
 - The contribution to Sunoco of the remaining 68.42% interest in Sunoco, LLC and 100% interest in the legacy Sunoco retail business for approximately \$2.226 billion. The transaction was effective as of January 1, 2016 and is expected to close in February 2016.
- Sunoco signed two Unit Purchase Agreements, each dated 11/15/15:
 - An agreement between Sunoco and certain institutional investors, which closed December 3, 2015; and
 - An agreement between Sunoco and Energy Transfer Equity, L.P., which offering is expected to close contemporaneously with the closing of the Drop-Down.
- Use of Proceeds:
 - Sunoco intends to use the net proceeds to repay outstanding borrowings under its revolving credit facility and for general partnership purposes.
- Registration Rights Agreement:
 - To be filed with the Securities and Exchange Commission no later than 120 days following the closing; such registration statement to become effective within 180 days following the closing.
- Lock-Up: 40 days

RECENT REPRESENTATIVE PIPE OFFERINGS

RICE MIDSTREAM PARTNERS LP (“RICE”)



Signing Date: November 4, 2015

- 13,409,961 common units (57,507,411 common units outstanding as of 11/2/15)
- Gross proceeds of approximately \$175 million
- Underlying Transaction (the “Acquisition”):
 - Rice acquired the water services business of Rice Energy Inc.’s wholly-owned subsidiary, Rice Midstream Holdings LLC, for \$200 million at closing plus a \$25 million earn out to be paid upon achievement of certain increases in connected water sources.
- Use of Proceeds:
 - Rice expects to use the net proceeds to repay a portion of the borrowings under Rice’s credit facility that were used to fund the consideration for the Acquisition.
- Registration Rights Agreement:
 - To be filed with the Securities and Exchange Commission within 30 days following the closing; such registration statement to become effective within 90 days following the closing.
- Lock-Up: 60 days

RECENT REPRESENTATIVE PIPE OFFERINGS

ANTERO MIDSTREAM PARTNERS LP (“ANTERO MIDSTREAM”)



Signing Date: September 17, 2015

- 12,898,000 common units (99,851,432 common units outstanding as of 10/22/15)
- Gross proceeds of approximately \$243 million
- Underlying Transaction (the “Contribution”):
 - Antero Midstream acquired Antero Resources Corporation's (“Antero Resources”) integrated water business for an aggregate \$1.05 billion in a combination of cash, assumed debt and Antero common units. In addition, Antero Resources is entitled to receive two potential \$125 million earn out payments at year-end 2019 and 2020 if certain fresh water volumetric delivery targets are met.
- Use of Proceeds:
 - An amount equal to the net proceeds of the private placement was paid to Antero Resources as a part of the cash consideration for the Contribution.
- Registration Rights Agreement:
 - To be filed with the Securities and Exchange Commission within 30 days following the closing; such registration statement to become effective within 90 days following the closing.
- Lock-Up: 60 days

RECENT REPRESENTATIVE PIPE OFFERINGS

SHELL MIDSTREAM PARTNERS, L.P. (“SHELL MIDSTREAM”)



Signing Date: May 12, 2015

- 7,692,308 common units (75,167,376 common units outstanding as of 11/12/15)
- Gross proceeds of approximately \$300 million
- Underlying Transaction (the “Acquisition”):
 - Shell Midstream acquired from Shell Pipeline Company an additional 19.5% ownership interest in Zydeco Pipeline Company, LLC and an additional 1.388% ownership interest in Colonial Pipeline Company for \$448 million. The acquisition closed on May 18, 2015 and was funded through a combination of proceeds from the private placement of common units, borrowings under the revolving credit facility and cash on hand.
- Use of Proceeds:
 - The net proceeds of the Private Placement were used to partially fund the Acquisition.
- Registration Rights Agreement:
 - To be filed with the Securities and Exchange Commission within 30 days following the closing; such registration statement to become effective within 120 days following the closing.
- Lock-Up: 60 days

THANK YOU

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