

CVR ENERGY INC  
Form DEF 14A  
April 29, 2016

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

SCHEDULE 14A  
(Rule 14a-101)  
SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the  
Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

CVR Energy, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

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(2) Aggregate number of securities to which transaction applies:

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(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

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Fee paid previously with preliminary materials.

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(1) Amount Previously Paid:

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(2) Form, Schedule or Registration Statement No.:

\_\_\_\_\_

(3) Filing Party:

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(4) Date Filed:

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April 29, 2016

To the Stockholders of CVR Energy, Inc.:

You are cordially invited to attend the 2016 Annual Meeting of Stockholders of CVR Energy, Inc., on June 8, 2016 at 10:00 a.m. (Central Time) at 2245 Texas Drive, Suite 300, Sugar Land, Texas 77479.

At the Annual Meeting, we will ask you to (1) elect eight directors, (2) ratify the appointment of Grant Thornton LLP, an independent registered public accounting firm, as our independent auditors for the fiscal year ending December 31, 2016, (3) consider an advisory vote on the compensation of our named executive officers, (4) re-approve the performance incentive plan, and (5) take action upon any other business that may properly come before the Annual Meeting or any adjournments or postponements thereof.

We have elected to take advantage of the rules of the U.S. Securities and Exchange Commission that allow us to furnish our proxy materials over the Internet. As a result, we are mailing a Notice of Internet Availability of Proxy Materials (the "Notice"), rather than a full paper set of the proxy materials, unless you previously requested to receive printed copies. The Notice contains details regarding the date, time and location of the meeting and the business to be conducted, as well as instructions on how to access our proxy materials on the Internet and instructions on how to obtain a paper copy of the proxy materials. This process will substantially reduce the costs associated with printing and distributing our proxy materials.

Whether or not you are able to attend, it is important that your shares be represented at the meeting. You can vote your proxy by telephone by following the instructions on the Notice. Alternatively, you may complete, sign, date and return the proxy card included in our proxy materials at your earliest convenience. If you hold your shares through a broker, bank or other nominee, please complete and return the voting instruction form that you receive from them or follow the telephone voting instructions provided on the form. If you attend the meeting in person, you may revoke your proxy, if you wish, and vote personally.

As the representation of stockholders at the meeting is very important, we thank you in advance for your participation.

Sincerely yours,

John J. Lipinski

Chief Executive Officer and President

CVR ENERGY, INC.  
2277 Plaza Drive, Suite 500  
Sugar Land, Texas 77479  
(281) 207-3200  
www.cvrenergy.com

**NOTICE OF 2016 ANNUAL MEETING OF STOCKHOLDERS**

NOTICE IS HEREBY GIVEN that the 2016 Annual Meeting (the “Annual Meeting”) of Stockholders of CVR Energy, Inc. (“CVR Energy”) will be held on June 8, 2016 at 10:00 a.m. (Central Time), at 2245 Texas Drive, Suite 300, Sugar Land, Texas 77479, to consider and vote upon the following matters:

1. Election of eight directors, each to serve a one-year term expiring upon the 2017 Annual Meeting of Stockholders or until his successor has been duly elected and qualified;
2. A proposal to ratify the Audit Committee’s selection of Grant Thornton LLP as CVR Energy’s independent registered public accounting firm for the fiscal year ending December 31, 2016;
3. A non-binding proposal to approve, on an advisory basis, the compensation of CVR Energy’s named executive officers;
4. Re-approval of the performance incentive plan; and
5. Transaction of such other business as may properly come before the meeting or any adjournments or postponements thereof.

Only stockholders of record as of the close of business on April 19, 2016 will be entitled to notice of, and to vote at, the Annual Meeting and any adjournments or postponements thereof. A list of stockholders entitled to vote at the meeting will be available for inspection during normal business hours beginning May 27, 2016 at CVR Energy’s offices at 2277 Plaza Drive, Suite 500, Sugar Land, Texas 77479. You can vote your proxy by telephone by following the instructions on the Notice. Alternatively, you may complete, sign, date and return the proxy card included in our proxy materials at your earliest convenience. If you hold your shares through a broker, bank or other nominee, please complete and return the voting instruction form that you receive from them or follow the telephone voting instructions provided on the form. If you attend the meeting in person, you may revoke your proxy, if you wish, and vote personally.

**YOUR VOTE IS VERY IMPORTANT. EVEN IF YOU PLAN TO ATTEND THE ANNUAL MEETING, WE REQUEST THAT YOU READ THE PROXY STATEMENT AND VOTE EITHER (I) BY TELEPHONE BY FOLLOWING THE INSTRUCTIONS PROVIDED ON THE NOTICE OR (II) BY SIGNING, DATING AND RETURNING THE PROXY CARD INCLUDED IN OUR PROXY MATERIALS. IF YOU HOLD YOUR SHARES THROUGH A BROKER, BANK OR OTHER NOMINEE, PLEASE COMPLETE AND RETURN THE VOTING INSTRUCTION FORM THAT YOU RECEIVE FROM THEM OR FOLLOW THE TELEPHONE VOTING INSTRUCTIONS PROVIDED ON THE FORM.**

**IMPORTANT INFORMATION REGARDING THE AVAILABILITY OF PROXY MATERIALS**

Our Proxy Statement and the CVR Energy 2015 Annual Report (our “Annual Report”), which includes our Annual Report on Form 10-K for the year ended December 31, 2015 and financial statements, are available at <http://annualreport.cvrenergy.com>.

By Order of the Board of Directors,  
John R. Walter  
Senior Vice President, General Counsel and Secretary  
Sugar Land, Texas  
April 29, 2016

If you vote by telephone, you do not need to return your proxy card.

CVR ENERGY, INC.  
2277 Plaza Drive, Suite 500  
Sugar Land, Texas 77479  
(281) 207-3200  
www.cvrenergy.com  
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PROXY STATEMENT FOR CVR ENERGY, INC.  
2016 ANNUAL MEETING OF STOCKHOLDERS

INFORMATION ABOUT THE ANNUAL MEETING AND VOTING

Why has CVR Energy prepared this proxy statement?

We have prepared this proxy statement (“Proxy Statement”) in connection with the solicitation by the Board of Directors (“Board”) of CVR Energy, Inc. (“CVR Energy,” the “Company,” “we,” “us” or “our”) of proxies to be voted at our 2016 Annual Meeting of Stockholders and at any adjournment or postponement thereof (“Annual Meeting”).

This Proxy Statement describes the matters on which we would like you to vote and provides information on those matters so that you can make an informed decision.

The Notice is being mailed starting April 29, 2016.

What matters will be voted on at the Annual Meeting?

There are four matters scheduled to be voted on at the Annual Meeting:

• the election of eight directors;

• a proposal to ratify the selection by the Audit Committee of Grant Thornton LLP (“Grant Thornton”) as CVR Energy’s independent registered public accounting firm for 2016, which we refer to as the “auditor ratification proposal”;

• a non-binding proposal to approve, on an advisory basis, the compensation of CVR Energy’s named executive officers, which we refer to as the “say-on-pay proposal”; and

• re-approval of the CVR Energy Performance Incentive Plan (the “Performance Incentive Plan”).

What is our Board’s voting recommendation?

Our Board recommends that you vote your shares:

• “FOR” the election of each of the Board’s eight director nominees;

• “FOR” the auditor ratification proposal;

• “FOR” the say-on-pay proposal; and

• “FOR” the re-approval of the Performance Incentive Plan.

Who is entitled to vote at the Annual Meeting?

Holders of CVR Energy common stock at the close of business on April 19, 2016 (the “Record Date”) are entitled to receive the Notice and to vote their shares at the Annual Meeting. On that date, there were 86,831,050 shares of CVR Energy common stock outstanding. CVR Energy common stock is our only class of voting stock issued and outstanding.

How many votes do I have?

You will have one vote for every share of CVR Energy common stock that you owned at the close of business on the Record Date.

What is the difference between holding shares as a stockholder of record and as a beneficial owner?

If your shares are registered directly in your name with CVR Energy’s transfer agent, American Stock Transfer & Trust Company, you are considered the “stockholder of record” with respect to those shares. The Notice would have been sent directly to you.

If your shares are held in a stock brokerage account or by a bank or other nominee, you are considered the “beneficial owner” with respect to those shares. These shares are sometimes referred to as being held “in street name.” The Notice has been forwarded to you by your broker, bank or other holder of record who is considered the stockholder of record with respect to those shares. As the beneficial owner, you have the right to direct your

broker, bank or other nominee on how to vote your shares by using the voting instruction form included in the mailing or by following the instructions on the form for voting by telephone.

How do I vote in accordance with the Board's recommendations?

You may vote using any of the following methods:

By telephone

Telephone voting has been provided for your convenience. Simply follow the instructions on the Notice. If you are a beneficial owner of shares, follow the instructions provided by your broker, bank or other nominee.

By mail

Be sure to complete, sign and date the proxy card and return it in accordance with the instructions included in our proxy materials. If you are a beneficial owner of shares, follow the instructions provided by your broker, bank or other nominee. If you are a stockholder of record and you return your signed proxy card but do not indicate your voting preferences, the persons named in the proxy card will vote the shares represented by that proxy as recommended by our Board.

Whether or not you plan to attend the Annual Meeting, we urge you to vote. Returning the proxy card or voting by telephone will not affect your right to attend the Annual Meeting and vote in person.

In person at the Annual Meeting

All stockholders may vote in person by ballot at the Annual Meeting. You may also be represented by another person at the Annual Meeting by executing a proper proxy designating that person. If you are a beneficial owner of shares but not the record holder, you must obtain a legal proxy from your broker, bank or other nominee and present that legal proxy to the inspectors of election with your ballot to be able to vote at the Annual Meeting.

What can I do if I change my mind after I vote?

If you are a stockholder of record, you can revoke your proxy before it is exercised by:

• written notice of revocation to the Company's Secretary at CVR Energy, Inc., 2277 Plaza Drive, Suite 500, Sugar Land, Texas 77479;

• timely delivery of a valid, later-dated proxy or a later-dated vote by telephone; or

• attending the Annual Meeting and voting in person by ballot.

If you are a beneficial owner of shares but not the record holder, you may submit new voting instructions by contacting your broker, bank or other nominee. You may also vote in person at the Annual Meeting if you obtain a legal proxy as described in the answer to the question "How do I vote in accordance with the Board's recommendations?" above. All shares that have been properly voted and not revoked will be voted at the Annual Meeting.

How can I attend the Annual Meeting?

You are entitled to attend the Annual Meeting only if you were a stockholder of record as of the Record Date (April 19, 2016) or you hold a valid proxy for the Annual Meeting as described in the previous questions. Since seating is limited, admission to the meeting will be on a first-come, first-served basis. You should be prepared to present photo identification for admittance. If you are not a stockholder of record but hold shares as a beneficial owner, you should provide proof of beneficial ownership as of the Record Date (April 19, 2016), such as your most recent account statement prior to the Record Date (April 19, 2016), a copy of the voting instruction form provided by your broker, bank or other nominee, or other similar evidence of ownership. You may contact us via the Internet or by telephone at (281) 207-3200 to obtain directions to vote in person at the Annual Meeting.

What votes need to be present to hold the Annual Meeting?

Under our Amended and Restated By-Laws, the presence, in person or by proxy, of the holders of a majority of the aggregate voting power of the common stock issued and outstanding on the Record Date (April 19, 2016) entitled to vote at the Annual Meeting will constitute a quorum for the transaction of business at the Annual Meeting.

Abstentions and broker “non-votes” are counted as present and entitled to vote for purposes of determining whether a quorum exists. Although not expected, if a quorum is not present or represented, we may adjourn and reschedule the Annual Meeting, without notice other than announcement at the Annual Meeting, until a quorum is present or represented.

What vote is required to approve each proposal?

Proposal 1: Elect Eight Directors The affirmative vote of a plurality of the votes present in person or by proxy and entitled to vote at the Annual Meeting is required to elect directors (meaning that the eight nominees for director who receive the most votes "FOR" their election will be elected).

Proposal 2: Ratify Selection of Independent Auditors The affirmative vote of a majority of the votes present in person or by proxy and entitled to vote at the Annual Meeting is required for the proposal to ratify the selection of Grant Thornton as CVR Energy’s independent registered public accounting firm for 2016 to be approved.

Proposal 3: Non-binding, Advisory Vote on Named Executive Officer Compensation (“Say-on-Pay”) The affirmative vote of a majority of the votes present in person or by proxy and entitled to vote at the Annual Meeting is required to approve the Say-on-Pay proposal. However, the vote is non-binding and CVR Energy will not be required to take any action as a result of the outcome of the vote.

Proposal 4: Re-approval of the Performance Incentive Plan The affirmative vote of a majority of the votes present in person or by proxy and entitled to vote at the Annual Meeting is required to re-approve the Performance Incentive Plan.

How are votes counted?

In the election of directors, your vote may be cast “FOR” all of the nominees or your vote may be “WITHHELD” with respect to one or more of the nominees. If you withhold your vote with respect to any nominee, your vote will have no effect on the election of such nominee. For all other proposals, your vote may be cast “FOR” or “AGAINST” or you may “ABSTAIN.” If you “ABSTAIN” from voting with respect to any of these proposals, it has the same effect as a vote “AGAINST” the proposal. If you sign your voting instruction form with no further instructions and you are a stockholder of record, then your shares will be voted in accordance with the recommendations of our Board. If you sign your voting instruction form with no further instructions and you are a beneficial owner, then please see the response to the question immediately below for a description of how your shares will be voted.

What is the effect of broker non-votes?

A broker “non-vote” occurs when a broker, bank or other nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary voting power with respect to that item and has not received voting instructions from the beneficial owner. Under current New York Stock Exchange (the “NYSE”) rules, a broker, bank or other nominee may exercise discretionary voting power for the ratification of the selection of Grant Thornton and, therefore, no broker non-votes are expected for this proposal. However, your broker, bank or other nominee will not be permitted to exercise discretion to vote your shares for the election of directors, the say-on-pay proposal or the re-approval of the Performance Incentive Plan. Directors are elected by a plurality vote and, therefore, shares subject to a broker non-vote with respect to the election of directors will have no effect on the election of nominees. Shares subject to a broker non-vote with respect to the say-on-pay proposal or the re-approval of the Performance Incentive Plan will be considered to be entitled to vote at the Annual Meeting and, therefore, will have the effect of a vote "AGAINST" these proposals. Therefore, if you are a beneficial owner and do not provide your broker, bank or other nominee with voting instructions with





respect to the say-on-pay proposal or the re-approval of the Performance Incentive Plan, then your shares will be counted as votes "AGAINST" those matters.

Who will pay the costs of soliciting these proxies?

We will bear all costs of solicitation. Upon request, we will reimburse brokers, banks and other nominees for the expenses they incur in forwarding the proxy materials to you.

Is this Proxy Statement the only way that proxies are being solicited?

No. In addition to our mailing the Notice, members of our Board, executive officers and certain employees may solicit proxies by telephone, by fax or other electronic means of communication (through electronic mail and the Company's webpage), or in person. They will not receive any compensation for their solicitation activities in addition to their regular compensation. We have not engaged an outside solicitation firm in connection with the solicitation of proxies at this year's Annual Meeting.

Where can I find the voting results?

We will publish voting results in a current report on Form 8-K that we will file with the Securities and Exchange Commission ("SEC") within four business days following the Annual Meeting. If on the date of this filing the inspector of election for the Annual Meeting has not certified the voting results as final, we will note in the filing that the results are preliminary and publish the final results in a subsequent amended Form 8-K filing within four business days after the final voting results are known.

Can a stockholder communicate directly with our Board?

Stockholders and other interested parties may communicate with members of our Board by writing to:

CVR Energy, Inc.

2277 Plaza Drive, Suite 500

Sugar Land, Texas 77479

Attention: Senior Vice President, General Counsel and Secretary

Stockholders and other interested parties may also send an e-mail to CVR Energy's Senior Vice President, General Counsel and Secretary at [jwalter@cvrenergy.com](mailto:jwalter@cvrenergy.com). Our General Counsel will forward all appropriate communications directly to our Board or to any individual director or directors, depending upon the facts and circumstances outlined in the communication.

Why did I receive only one Notice when there are several stockholders at my address?

If you and other residents at your mailing address own shares in street name, your broker, bank or other nominee may have sent you a notice that your household will receive only one annual report and proxy statement for each company in which you hold shares through that broker, bank or nominee. This practice is called "householding." If you did not respond that you did not want to participate in householding, you are deemed to have consented to that process. If these procedures apply to you, your broker, bank or other nominee will have sent one copy of the Notice and, if applicable, our Annual Report and Proxy Statement to your address. You may revoke your consent to householding at any time by contacting your broker, bank or other nominee.

If you did not receive an individual copy of the Notice or our Annual Report or Proxy Statement, we will send copies to you if you contact us at 2277 Plaza Drive, Suite 500, Sugar Land, Texas 77479, (281) 207-3200, Attention: Senior Vice President, General Counsel and Secretary. If you and other residents at your address have been receiving multiple copies of the Notice or, if applicable, our Annual Report and Proxy Statement, and desire to receive only a single copy of these materials, you may contact your broker, bank or other nominee or contact us at the above address or telephone number.

Whom should I call if I have any questions?

If you have any questions about the Annual Meeting or your ownership of CVR Energy common stock, please contact our transfer agent at:

American Stock Transfer & Trust Company, LLC

6201 15<sup>th</sup> Avenue

Brooklyn, NY 11219

Telephone: (800) 937-5449

Website Address: [www.amstock.com](http://www.amstock.com)

INFORMATION ABOUT THE ANNUAL REPORT

Will I receive a copy of the Annual Report?

Unless you have previously requested a printed copy of the Annual Report or request a printed copy via the methods set forth herein, we will not be mailing you the Annual Report, and you should access it electronically pursuant to the instructions set forth herein.

How can I receive a copy of our Annual Report on Form 10-K for the year ended December 31, 2015 (“2015 Form 10-K”)?

You can obtain, free of charge, a copy of the 2015 Form 10-K, by:

- accessing the Internet site at <http://annualreport.cvrenergy.com>; or
- writing to:

CVR Energy, Inc.

Attention: Investor Contacts

2277 Plaza Drive, Suite 500

Sugar Land, Texas 77479

You can also obtain a copy of our 2015 Form 10-K and other periodic filings with the SEC from the SEC’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) database at [www.sec.gov](http://www.sec.gov).

## PROPOSAL 1

### ELECTION OF DIRECTORS

#### Nominees for Election as Directors

Our Board has nominated eight people for election as directors at the Annual Meeting. Each of the nominees currently is a director of our Company. If our stockholders elect these directors, then the directors will hold office until the next annual meeting of stockholders, or until their successors have been elected and qualified. Each of the Board's nominees has consented to be named in this Proxy Statement and has agreed to serve if elected. If for some reason any of the Board's nominees is unable to serve or for good cause will not serve if elected, the persons named as proxies may vote for a substitute nominee recommended by the Board and, if you are a stockholder of record, unless you indicate otherwise on the proxy card, your shares will be voted in favor of the Board's remaining nominees.

A Board consisting of eight directors is proposed to be elected. The eight nominees of the Board are Bob G. Alexander, SungHwan Cho, Jonathan Frates, Carl C. Icahn, Andrew Langham, John J. Lipinski, Stephen Mongillo and James M. Strock. Biographical information regarding these eight director nominees is included beginning on page 14 of this Proxy Statement. Messrs. Alexander, Cho, Mongillo and Strock were appointed to the Board in May 2012 pursuant to the Transaction Agreement among the Company, IEP Energy LLC ("IEP"), an affiliate of Icahn Enterprises L.P., and each of the other parties listed on the signature pages thereto, dated as of April 18, 2012 (the "Transaction Agreement") and were recommended by Carl C. Icahn and certain of his affiliates. Mr. Icahn was appointed to the Board in June 2012, Mr. Lipinski has served on the Board since September 2006 and was last appointed to the Board in May 2012, Mr. Langham was appointed in September 2014 and Mr. Frates was appointed in March 2016.

We believe each of the Board's nominees meets the qualifications established by the Board for service on our Board and has professional experience in areas that are extremely relevant to our strategy and operations. We also believe the Board's nominees have attributes necessary to create a cohesive and effective Board, including high personal and professional ethics, integrity and values, vision and long-term strategic perspective, experience in our industry, practical judgment, the ability to devote significant time to serve on our Board and its committees, and a commitment to representing the long-term interests of all our stockholders.

The Board recommends that our stockholders vote FOR the election of the eight nominees listed above. The recommendation of the Board is based on its carefully considered judgment that the skills, experience, backgrounds and attributes of the Board's nominees make them the best candidates to serve on our Board.

#### Vote Required and Recommendation of Board

The affirmative vote of a plurality of the votes present in person or by proxy and entitled to vote at the Annual Meeting is required to elect directors (meaning that the eight director nominees receiving the greatest number of votes duly cast for election as directors will be elected).

**OUR BOARD UNANIMOUSLY RECOMMENDS THAT YOU VOTE "FOR" THE ELECTION OF ALL EIGHT OF THE BOARD'S NOMINEES.**



PROPOSAL 2

RATIFICATION OF THE AUDIT COMMITTEE'S  
SELECTION OF GRANT THORNTON LLP

The Audit Committee has selected Grant Thornton as our independent registered public accounting firm for fiscal year 2016. Our Board requests stockholders to ratify such selection.

Grant Thornton will:

- audit our consolidated financial statements and internal control over financial reporting;
- review certain reports we will file with the SEC;
- provide you and our Board with certain reports; and
- provide such other services as the Audit Committee and its chairman from time to time determine.

Grant Thornton served as our independent registered public accounting firm for 2015, performing professional services for us. We expect representatives of Grant Thornton to attend the Annual Meeting. We will allow them to make a statement if they desire and to respond to appropriate questions.

The Audit Committee is responsible for selecting the Company's independent registered public accounting firm for 2016. Accordingly, stockholder approval is not required to appoint Grant Thornton as the Company's independent registered public accounting firm. However, the Board of Directors believes that the submission of the Audit Committee's selection to the stockholders for ratification is a matter of good corporate governance. If the Company's stockholders do not ratify the selection of Grant Thornton as the Company's independent registered public accounting firm, the Audit Committee will review its future selection of an independent registered public accounting firm. The Audit Committee may retain another independent registered public accounting firm at any time during the year if it concludes that such change would be in your best interest.

Vote Required and Recommendation of Board

The affirmative vote of a majority of the votes present in person or by proxy and entitled to vote at the Annual Meeting is required for the proposal to ratify the selection of Grant Thornton as CVR Energy's independent registered public accounting firm for 2016 to be approved.

OUR BOARD UNANIMOUSLY RECOMMENDS THAT

YOU VOTE "FOR" THE RATIFICATION OF

THE AUDIT COMMITTEE'S SELECTION OF GRANT THORNTON.

### PROPOSAL 3

#### NON-BINDING, ADVISORY VOTE ON COMPENSATION OF THE NAMED EXECUTIVE OFFICERS ("Say-on-Pay")

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (known as the "Dodd-Frank Act") added provisions to Section 14A of the Securities and Exchange Act of 1934 (as amended, the "Exchange Act") to provide that a public company's proxy statement in connection with the annual meeting of stockholders must, at least once every three years, allow stockholders to cast a non-binding, advisory vote regarding the compensation of the company's named executive officers as disclosed pursuant to Item 402 of Regulation S-K, including the Compensation Discussion and Analysis, compensation tables and narrative discussion.

In accordance with the Dodd-Frank Act and rules adopted by the SEC required thereunder, at the Annual Meeting, we are providing stockholders with an opportunity to cast an advisory vote on our compensation program for our named executive officers. This vote is referred to as a "Say-on-Pay" vote. Further, based on the results of the advisory vote on the frequency of future say-on-pay votes at our 2011 Annual Meeting of stockholders, we intend to provide our stockholders with an annual, non-binding advisory say-on-pay vote on executive compensation at least until the next required non-binding advisory vote on the frequency of future advisory say-on-pay votes as required by the rules of the SEC, which shall take place in connection with our 2017 Annual Meeting.

As described in the Compensation Discussion and Analysis section of this Proxy Statement and the compensation tables and narrative discussions that follow, our executive compensation program is based on our pay-for-performance philosophy and is designed with the following goals in mind: (1) aligning named executive officer and stockholder interests, (2) attracting and retaining quality leadership and (3) supporting a pay-for-performance philosophy. In excess of 92% of our outstanding shares voted to approve our say-on-pay proposal related to compensation for the 2014 fiscal year. For additional information on the compensation program for our named executive officers, including specific information about compensation in fiscal year 2015, please read the Compensation Discussion and Analysis section of this Proxy Statement, along with the subsequent tables and narrative descriptions, beginning on page 26 of this Proxy Statement.

The Board recommends that stockholders vote in favor of the following resolution:

"RESOLVED, the stockholders hereby approve, on an advisory basis, the compensation paid to the Company's named executive officers, as disclosed in the Company's Proxy Statement for the 2016 Annual Meeting of Stockholders pursuant to Item 402 of Regulation S-K, including the Compensation Discussion and Analysis, compensation tables and narrative discussion included in this Proxy Statement."

Because the vote is advisory, it will not be binding upon the Board or the compensation committee and the Company will not be required to take any action as a result of the outcome of the vote. However, our Board and compensation committee value the opinions of our stockholders and, to the extent there is any significant vote against the named executive officer compensation as disclosed in this Proxy Statement, our Board and compensation committee will consider the stockholders' concerns and evaluate whether any actions are necessary to address those concerns.

#### Vote Required and Recommendation of the Board

The affirmative vote of a majority of the votes present in person or by proxy and entitled to vote at the Annual Meeting is required for the say-on-pay proposal to be approved.

**OUR BOARD UNANIMOUSLY RECOMMENDS THAT YOU VOTE "FOR" APPROVAL OF THE COMPENSATION OF OUR NAMED EXECUTIVE OFFICERS, ON AN ADVISORY, NON-BINDING BASIS, AS DISCLOSED IN THIS PROXY STATEMENT PURSUANT TO ITEM 402 OF REGULATION S-K, INCLUDING THE COMPENSATION DISCUSSION AND ANALYSIS, COMPENSATION TABLES AND NARRATIVE DISCUSSION.**





## PROPOSAL 4

### RE-APPROVAL OF THE PERFORMANCE INCENTIVE PLAN

#### Purpose of Proposal

Section 162(m) of the Internal Revenue Code and the regulations promulgated thereunder (the “Code”) provide that the Company may not deduct remuneration in excess of \$1 million for services performed by any employee who, on the last day of the taxable year, was the chief executive officer or whose compensation is reported in the Summary Compensation Table by reason of being among the three highest paid compensation executive officers of the Company. The deduction limit described in the preceding sentences will not apply, however, to any compensation that constitutes “qualified performance-based compensation.” “Qualified performance-based compensation,” which can include compensation derived from cash bonus compensation, is compensation that meets certain conditions under the Code. One of these conditions is periodic stockholder approval of the material terms of the performance goals under which the compensation is paid.

The Company’s Performance Incentive Plan (referred to in this proposal as the “PIP”) was adopted by the compensation committee of the Board in March 2011, and approved by the Company’s stockholders at the Annual Meeting in May 2011. The PIP contains features designed to comply with the exemption for “qualified performance-based compensation.” Section 162(m) of the Code requires re-approval of the performance goals under the PIP after five years if the compensation committee has retained discretion to vary the targets under the performance goals from year to year. The compensation committee of the Board has retained discretion to vary the targets under the performance goals from year to year. Accordingly, the Company is seeking re-approval of the performance goals included in the PIP in order to preserve the Company’s ability to deduct compensation earned by certain executives pursuant to any performance-based award that may be made in the future under the plan. As such, the Company asks that the stockholders re-approve the material terms of the performance goals to which cash awards may be subject under the PIP to give the compensation committee the ability to structure cash bonuses to qualify as “qualified performance-based compensation” for executive officers who are subject to Section 16 of the Securities Exchange Act of 1934 (the “1934 Act”) or who the compensation committee determines at the beginning of the year may be subject to Section 162(m) of the Code as of the end of the performance period. If the Company’s stockholders do not approve these material terms at the Annual Meeting, no cash bonuses will be made under the PIP.

#### Material Terms of the Performance Goals

The material terms of the performance goals for cash bonus awards under the PIP for purposes of the stockholder approval requirement under Section 162(m) of the Code consist of (i) the class of employees eligible to receive these awards; (ii) the types of business criteria on which the payouts may be based; and (iii) the maximum amounts that can be paid during a specified period to any employee for awards under the PIP.

**Eligible Class.** Employees of the Company or its subsidiaries at the level of vice president or above are eligible to participate in the PIP (approximately 32 employees of which 3 are eligible to participate in comparable plans adopted by the Company’s subsidiaries, in which case such employees are expected to participate in those plans in lieu of participation in the PIP). However, participation is generally limited to those employees who, because of their significant impact on the current and future success of the Company, the compensation committee selects. Under the PIP, certain provisions will apply only to “Covered Officers” and a Covered Officer is defined as (i) any employee who, as of the beginning of the performance period, is an officer subject to Section 16 of the 1934 Act, and (ii) who, prior to determining target awards for the performance period, the compensation committee designates as a Covered Officer for purposes of the PIP. If the compensation committee does not make the designation in clause (ii) for a performance period, all employees described in clause (i) shall be deemed to be Covered Officers for purposes of the PIP.

**Business Criteria.** To determine the payments of cash bonuses subject to performance goals, the compensation committee sets performance goals, target award percentages and targets with respect to participants; provided that the compensation committee may delegate the setting of performance goals, target award percentages and targets with respect to participants other than Executive Officers. These goals, percentages and targets will be used to determine awards for specified performance periods, generally one-year in duration unless otherwise designated by the compensation committee. Performance objectives, for any performance period, may be expressed in terms of (i) stock

price, (ii) earnings per share, (iii) operating income, (iv) return on equity or assets, (v) adjusted operating cash flow, (vi) free cash flow (vii) EBITDA or adjusted EBITDA, (viii) revenues, (ix) overall revenue or sales growth, (x) expense reduction or management, (xi) market position, (xii) total shareholder return, (xiii) return on investment, (xiv) earnings before interest and taxes (EBIT), (xv) net income, (xvi) pre-tax income, (xvii) return on net assets, (xviii) economic value added, (xix) shareholder value added, (xx) cash flow return on investment, (xxi) net

operating profit, (xxii) net operating profit after tax, (xxiii) return on capital, (xxiv) return on invested capital, (xxv) gross margin (per barrel), (xxvi) operational costs (per barrel), (xxvii) cost reductions; (xxviii) cost ratios; (xxix) reportable air emissions or spills to ground or water; (xxx) OSHA-recordable personal injuries or lost time accidents; (xxxi) facility reliability measured through the processing of crude oil, fertilizer components and/or other measures relating to the operation of facilities, (xxxii) process safety incidents, (xxxiii) trucking incidents, or (xxxiv) any combination, including one or more ratios, of the foregoing. For participants other than Covered Officers, the compensation committee may also set other financial or non-financial performance measures. Generally, a participant earns an award for a performance period based on the Company's and/or his or her operating unit's achievement of the applicable performance objectives. In addition, the award for any participant (other than a Covered Officer) may be adjusted based on the participant's personal performance.

Performance goals may be absolute or relative (to prior performance or to the performance of one or more other entities or external indices) and may be expressed in terms of a progression within a specified range. To the extent permitted under Section 162(m) of the Code without adversely affecting the treatment of any cash bonus award as "qualified performance-based compensation," the compensation committee may provide for the manner in which performance will be measured against the performance goals (or may adjust the performance goals) to reflect the impact of specified corporate transactions, special charges, foreign currency effects, accounting or tax law changes and other extraordinary or nonrecurring events.

**Maximum Amounts.** The maximum award a Covered Officer may receive for any fiscal year of the Company is \$5 million. There is no maximum award for participants other than the Covered Officers.

#### Other Material Features of the Performance Incentive Plan

##### General

The PIP is intended to provide a means of annually rewarding certain employees based on the performance of the Company and/or its operating units. The PIP is designed to qualify the compensation payable to a Covered Officer under the PIP as "qualified performance-based compensation" eligible for exclusion from the tax deduction limitation of Section 162(m) of the Code. It is expected that the PIP will be used primarily to provide annual cash incentive compensation for those employees who participate in the PIP and, for those employees, would be in lieu of the Company's historical use of discretionary annual bonuses. The approval by stockholders of the material terms of the performance goals, and the certification by the compensation committee that the performance goals and other material terms were in fact satisfied, will be a condition to the payment of compensation to the Covered Officers pursuant to the PIP.

Although the Company generally will attempt to structure cash incentive compensation under the PIP so as to preserve deductibility, there may be circumstances where the Company's best interests may be best served by maintaining flexibility in the way compensation is provided even if it might result in the non-deductibility of such cash incentive compensation. In this regard, the PIP is not exclusive. The Company may pay other compensation to named executive officers and other key employees as authorized by the Board of Directors and applicable law. In addition, because of the uncertainties associated with the application and interpretation of Section 162(m) of the Code and the regulations issued thereunder, there can be no assurance that compensation intended to satisfy the requirements for deductibility under Section 162(m) of the Code will in fact be deductible.

The principal provisions of the PIP are summarized below. This summary, however, does not purport to be complete and is qualified in its entirety by the terms of the PIP, included as Appendix A to this Proxy Statement.

##### Purpose

The purpose of the PIP is to enhance the Company's ability to attract, motivate, reward and retain key employees, to strengthen their commitment to the success of the Company and to align their interests with those of the Company's stockholders by providing additional compensation to designated key employees of the Company based on the achievement of performance objectives. To this end, the PIP provides a means of rewarding participants primarily based on the performance of the Company and/or its operating units.

As discussed above, any of the approximately 32 employees of the Company and its subsidiaries at the level of vice president and above are eligible to participate in the PIP of which 3 are eligible to participate in comparable plans

adopted by the Company's subsidiaries, in which case such employees are expected to participate in those plans in lieu of participation in the PIP. However, participation is generally limited to those key employees who,

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because of their significant impact on the current and future success of the Company, are selected by the compensation committee.

#### Administration

The PIP will be administered by the compensation committee with respect to participants who are Covered Officers; provided, however, that with respect to employees who are not Covered Officers, the compensation committee may delegate to the CEO the authority and responsibility to administer the PIP to the same extent as the compensation committee (or to such lesser extent as the compensation committee may provide). Each member of the compensation committee is an “outside director” within the meaning of the regulations promulgated under Section 162(m) of the Code. The compensation committee shall have full authority to establish the rules and regulations relating to the PIP, to interpret the PIP and those rules and regulations, to select participants in the PIP, to determine the Company’s and, if applicable, operating unit’s performance objectives and each participant’s target award percentage for each performance period, to approve all the awards, to decide the facts in any case arising under the PIP and to make all other determinations and to take all other actions necessary or appropriate for the proper administration of the PIP, including the delegation of such authority or power, where appropriate.

#### Determination of Awards

For each performance period, the compensation committee shall determine the employees who will participate in the PIP during that performance period and determine each such participant’s target award percentage and the performance goals for that performance period.

Generally, as described above, a participant earns an award for a performance period based on the Company’s and/or his or her operating unit’s achievement of the applicable performance goals. In addition, awards for any participant (other than the Covered Officers) may be adjusted based on the participants’ personal performance. The compensation committee may, in its discretion, reduce the amount otherwise payable to any participant. However, with respect to any participant who is a Covered Officer, the compensation committee may not increase the amount otherwise payable under the PIP.

#### Payment of Awards

Generally, each award to the extent earned is paid in a single lump sum cash payment and in no event later than two and one-half months following the end of the performance period. The compensation committee certifies the amount of the Covered Officers’ awards prior to payment thereof.

#### Limitations on Rights to Payment of Awards

No participant shall have any right to receive payment of an award under the PIP for a performance period unless the participant remains in the employ of the Company through the payment date of the award for such performance period. However, the compensation committee, in its sole discretion, may determine that a participant whose employment terminates prior to the payment date of the award for a performance period may receive a prorated portion of any earned award, based on the number of days that the participant was actively employed and performed services during such performance period; provided, that, with respect to a Covered Officer, a prorated portion of any earned award shall be paid only (i) based on actual performance with respect to the applicable performance objectives for such performance period and (ii) if the compensation committee makes the determination at the time the award is granted that such Covered Officer shall be entitled to a prorated portion of an award (or such determination had previously been made or the right to a prorated portion is provided for in an agreement between the Company and the Covered Officer) or, if permitted under Section 162(m) of the Code, at any time thereafter.

#### Amendment and Termination

The compensation committee may at any time amend or terminate (in whole or in part) the PIP. No such amendment may adversely affect a participant’s rights to, or interest in, an award granted prior to the date of the amendment, unless the participant shall have agreed thereto.

#### Non-Transferability

Except in connection with the death of a participant, a participant’s right and interest under the PIP may not be assigned or transferred. Any attempted assignment or transfer will be null and void and will extinguish, in the Company’s sole discretion, the Company’s obligation under the PIP to pay awards with respect to the participant.



**Unfunded Status**

The PIP will be unfunded. The Company will not be required to establish any special or separate fund, or to make any other segregation of assets, to assure payment of awards.

**New Plan Benefits**

Future benefits that will be awarded or paid under the PIP cannot currently be determined. Awards granted under the PIP are within the discretion of the compensation committee. For additional details on the PIP awards granted as compensation for 2015, please read the Compensation Discussion and Analysis section of this Proxy Statement, along with the subsequent tables and narrative descriptions, beginning on page 26 of this Proxy Statement.

**Vote Required and Recommendation of the Board**

The affirmative vote of a majority of the votes present in person or by proxy and entitled to vote at the Annual Meeting is required for the proposal to re-approve the Performance Incentive Plan to be approved.

**OUR BOARD UNANIMOUSLY RECOMMENDS THAT YOU VOTE “FOR”**

**THE RE-APPROVAL OF THE PERFORMANCE INCENTIVE PLAN.**



## MEMBERS OF AND NOMINEES TO OUR BOARD

The following table sets forth the names and ages (as of April 19, 2016) of each of our existing directors, each of whom is a nominee, and the year they first joined our Board:

Name	Age	Position	Joined Board
Bob G. Alexander	82	Director	5/12
SungHwan Cho	42	Director	5/12
Jonathan Frates	33	Director	3/16
Carl C. Icahn	80	Chairman of the Board	6/12
Andrew Langham	43	Director	9/14
John Lipinski	65	Chief Executive Officer, President and Director	9/06
Stephen Mongillo	54	Director	5/12
James M. Strock	59	Director	5/12

## Principal Occupations and Qualifications

The Board has concluded that each of its members, all of who have again been nominated to serve as a director, is qualified to serve as a director due to the value of his experiences, qualifications, attributes and skills as noted below: Bob G. Alexander has served as a director since May 2012 when IEP acquired the majority of our common stock (the "IEP Acquisition"). Mr. Alexander has served as a director of TransAtlantic Petroleum Corp., an international exploration and production company doing business in Turkey, Poland, Bulgaria and Romania, since June 2010, and Seventy Seven Energy Inc., a diversified oilfield services company, since June 2014. Mr. Alexander previously served on the board of directors of Chesapeake Energy Corporation, an oil and gas exploration and production company, from June 2012 until June 2014. Mr. Alexander, a founder of Alexander Energy Corporation, served as Chairman of the Board, President and Chief Executive Officer of Alexander Energy from 1980 to 1996. Alexander Energy merged with National Energy Group, Inc., an oil and gas property management company, in 1996 and Mr. Alexander served as President and Chief Executive Officer from 1998 to 2006. National Energy Group was previously indirectly controlled by Carl C. Icahn. From 1976 to 1980, Mr. Alexander served as Vice President and General Manager of the Northern Division of Reserve Oil, Inc. and President of Basin Drilling Corporation, both subsidiaries of Reserve Oil and Gas Company of Denver, Colorado. Mr. Alexander also served on the board of Quest Resource Corporation from June to August 2008. Mr. Alexander has served on numerous committees with the Independent Petroleum Association of America, the Oklahoma Independent Petroleum Association and the State of Oklahoma Energy Commission. Mr. Alexander received a Bachelor of Science degree in Geological Engineering from the University of Oklahoma. Based upon Mr. Alexander's experience in the oil and gas services industry, as well as his experience serving as a director of other public companies, we believe that Mr. Alexander has the requisite set of skills to serve as a Board member.

SungHwan Cho has served as Chief Financial Officer of Icahn Enterprises L.P., a diversified holding company engaged in a variety of businesses, including investment, automotive, energy, gaming, railcar, food packaging, metals, mining, real estate and home fashion, since March 2012. Prior to that time, he was Senior Vice President and previously Portfolio Company Associate at Icahn Enterprises since October 2006. Mr. Cho has been a director of: Trump Entertainment Resorts, Inc., a company engaged in the business of owning and operating casinos and resorts, since February 2016; The Pep Boys - Manny, Moe & Jack, an automotive parts installer and retailer, since February 2016; Ferrous Resources Limited, an iron ore mining company with operations in Brazil, since June 2015; IEH Auto Parts LLC, an automotive parts distributor, since June 2015; CVR Refining, LP ("CVR Refining"), an independent downstream energy limited partnership, since January 2013; Icahn Enterprises L.P., since September 2012; CVR Partners LP ("CVR Partners"), a nitrogen fertilizer company, since May 2012; Federal-Mogul Holdings Corporation, a supplier of automotive powertrain and safety components, since May 2012; XO Holdings, a competitive provider of telecom services, since August 2011; American Railcar Industries, Inc., a railcar manufacturing company, since June 2011 (and has been Chairman of the Board of American Railcar Industries since July 2014); WestPoint Home LLC, a home textiles manufacturer, since January 2008; PSC Metals Inc., a metal recycling company, since December 2006; and Viskase Companies, Inc., a meat casing company, since November 2006. Mr. Cho has also been a member of the

Executive Committee of American Railcar Leasing LLC, a lessor and seller of specialized railroad tank and covered hopper railcars, since September 2013. Mr. Cho was previously a director of Take-Two Interactive Software Inc., a publisher of interactive entertainment products, from April 2010 to November 2013. Trump Entertainment, Pep Boys, Ferrous Resources Limited, IEH Auto Parts,

American Railcar Leasing, CVR Refining, Icahn Enterprises, CVR Energy, CVR Partners, Federal-Mogul, XO Holdings, American Railcar Industries, WestPoint Home, PSC Metals and Viskase Companies each are indirectly controlled by Carl C. Icahn. Mr. Icahn also previously had a non-controlling interest in Take-Two Interactive Software through the ownership of securities. Mr. Cho received a B.S. in Computer Science from Stanford University and an MBA from New York University, Stern School of Business. Based upon Mr. Cho's deep understanding of finance and risk obtained from his past experience, including his position as an investment banker at Salomon Smith Barney, we believe that Mr. Cho has the requisite set of skills to serve as a member of our Board.

Jonathan Frates has been a Portfolio Company Associate at Icahn Enterprises L.P., a diversified holding company engaged in a variety of businesses, including investment, automotive, energy, gaming, railcar, food packaging, metals, mining, real estate and home fashion, since November 2015. Prior to joining Icahn Enterprises, Mr. Frates served as a Senior Business Analyst at First Acceptance Corp. and as an Associate at its holding company, Diamond A Ford Corp. Mr. Frates began his career as an Investment Banking Analyst at Wachovia Securities LLC. Mr. Frates has served as a director of: American Railcar Industries, Inc., a railcar manufacturing company, since March 2016; Viskase Companies, Inc., a meat casing company, since March 2016; and CVR Refining since March 2016. American Railcar Industries, Viskase Companies, CVR Energy and CVR Refining are each indirectly controlled by Carl C. Icahn. Mr. Frates received a BBA from Southern Methodist University and an MBA from Columbia Business School. Based upon Mr. Frate's strong financial background and experience as an analyst, we believe that Mr. Frates has the requisite set of skills to serve as a member of our Board.

Carl C. Icahn has served as chairman of our board since June 2012 and as chairman of the board and a director of Starfire Holding Corporation, a privately-held holding company, and chairman of the board and a director of various subsidiaries of Starfire, since 1984. Since August 2007, through his position as Chief Executive Officer of Icahn Capital LP, a wholly owned subsidiary of Icahn Enterprises L.P., and certain related entities, Mr. Icahn's principal occupation is managing private investment funds, including Icahn Partners LP and Icahn Partners Master Fund LP. Since November 1990, Mr. Icahn has been chairman of the board of Icahn Enterprises L.P. (a diversified holding company engaged in a variety of businesses, including investment, automotive, energy, gaming, railcar, food packaging, metals, mining, real estate and home fashion). Mr. Icahn has been: chairman of the board of CVR Refining since January 2013; chairman of the board of Tropicana Entertainment Inc., a company that is primarily engaged in the business of owning and operating casinos and resorts, since March 2010; and President and a member of the executive committee of XO Holdings, a competitive provider of telecom services, since September 2011, and chairman of the board and a director of its predecessors since January 2003. Mr. Icahn was previously: director of Federal-Mogul Holdings Corporation, a supplier of automotive powertrain and safety components, from December 2007 to May 2015, and the non-executive chairman of the board of Federal-Mogul from January 2008 to May 2015; chairman of the board and a director of American Railcar Industries, Inc., a railcar manufacturing company, from 1994 to July 2014; a director of American Railcar Leasing LLC, a lessor and seller of specialized railroad tank and covered hopper railcars, from June 2004 to November 2013; a director of WestPoint Home LLC, a home textiles manufacturer, from October 2005 until December 2011; and a director of Cadus Corporation, a company engaged in the acquisition of real estate for renovation or construction and resale, from July 1993 to July 2010. Mr. Icahn received his B.A. from Princeton University. Mr. Icahn brings to his role as director his significant business experience and leadership role as director in various companies as discussed above. In addition, Mr. Icahn is uniquely qualified based on his historical background for creating value in companies across multiple industries. Mr. Icahn has proven to be a successful investor over the past 40 years.

Andrew Langham has been General Counsel of Icahn Enterprises L.P. (a diversified holding company engaged in a variety of businesses, including investment, automotive, energy, gaming, railcar, food packaging, metals, mining, real estate and home fashion) since January 2015. From 2005 to January 2015, Mr. Langham was Assistant General Counsel of Icahn Enterprises. Prior to joining Icahn Enterprises, Mr. Langham was an associate at Latham & Watkins LLP focusing on corporate finance, mergers and acquisitions, and general corporate matters. Mr. Langham has been a director of: Manitowoc Foodservice, Inc., a commercial foodservice equipment manufacturer, since March 2016; Freeport-McMoRan Inc., the world's largest publicly traded copper producer, since October 2015; CVR Partners since September 2015; and CVR Refining since September 2014. CVR Partners, CVR Refining and CVR Energy are each

indirectly controlled by Carl C. Icahn. Mr. Icahn also has non-controlling interests in Manitowoc Foodservice and Freeport-McMoRan through the ownership of securities. Mr. Langham received a B.A. in 1995 from Whitman College, and a J.D. from the University of Washington in 2000. Based on Mr. Langham's extensive corporate and public company experience, we believe that Mr. Langham has the requisite set of skills to serve as a member of our Board.

John J. Lipinski has served as our chief executive officer, president and a member of our Board since September 2006 and served as chairman of our Board from October 2007 until the IEP Acquisition. In addition, Mr. Lipinski has served as executive chairman of the general partner of CVR Partners since June 2011 and as chief executive officer and president from October 2007 to June 2011 and from January 2014 to May 2014. He has been a director of the general partner of CVR Partners since October 2007. In addition, Mr. Lipinski has served as the chief executive officer, president, and director of the general partner of CVR Refining since its inception in September 2012. For a discussion of CVR Partners and CVR Refining, see “Certain Relationships and Related Party Transactions - Transactions with CVR Partners and CVR Refining.” Mr. Lipinski has over 40 years of experience in the petroleum refining and nitrogen fertilizer industries. He began his career with Texaco Inc. In 1985, Mr. Lipinski joined The Coastal Corporation, eventually serving as Vice President of Refining with overall responsibility for Coastal Corporation’s refining and petrochemical operations. Upon the merger of Coastal with El Paso Corporation in 2001, Mr. Lipinski was promoted to Executive Vice President of Refining and Chemicals, where he was responsible for all refining, petrochemical, nitrogen-based chemical processing and lubricant operations, as well as the corporate engineering and construction group. Mr. Lipinski left El Paso in 2002 and became an independent management consultant. In 2004, he became a managing director and partner of Prudentia Energy, an advisory and management firm. Mr. Lipinski currently serves on the board of directors of Chesapeake Energy Corporation, an oil and gas exploration and production company. Mr. Lipinski graduated from Stevens Institute of Technology with a bachelor’s degree in Engineering (chemical) and received a Juris Doctor degree from Rutgers University School of Law. Mr. Lipinski’s over 40 years of experience in the petroleum refining and nitrogen fertilizer industries adds significant value to the Board. His in-depth knowledge of the issues, opportunities and challenges facing the Company provides the direction and focus the Board needs to ensure the most critical matters are addressed.

Stephen Mongillo has served as a director since the IEP Acquisition. Mr. Mongillo is a private investor. From 2009 to 2011, Mr. Mongillo served as a director of American Railcar Industries, Inc. From January 2008 to January 2011, Mr. Mongillo served as a managing director of Icahn Capital LP, the entity through which Mr. Carl Icahn managed third-party investment funds. From March 2009 to January 2011, Mr. Mongillo served as a director of WestPoint International Inc. Prior to joining Icahn Capital, Mr. Mongillo worked at Bear Stearns for 10 years, most recently as a senior managing director overseeing the leveraged finance group’s efforts in the healthcare, real estate, gaming, lodging, leisure, restaurant and education sectors. American Railcar Industries and WestPoint International are each, directly or indirectly, controlled by Carl C. Icahn. Mr. Mongillo received a B.A. from Trinity College and an M.B.A. from the Amos Tuck School of Business Administration at Dartmouth College. Based upon Mr. Mongillo’s over 25 years of experience in the financial industry and his strong understanding of the complex business and financial issues encountered by large complex companies, we believe that Mr. Mongillo has the requisite set of skills to serve as a Board member.

James M. Strock has served as a director since the IEP Acquisition. Mr. Strock is CEO of the Serve to Lead Group, which he founded in 1997. The Serve to Lead Group serves diverse sectors including: finance, manufacturing, transportation, technology, defense, aerospace, health care, real estate, chemicals, professional services, insurance, environmental safety and health, remediation, clean tech, sustainability, energy, and medical cannabis. Mr. Strock, individually and as part of various teams and organizations, serves various functions, including: management, project management, financing, sales and marketing, stakeholder engagement, public advocacy, communication (including new media), crisis communication, strategic planning, regulatory compliance, negotiation, mediation, facilitation, human resources, and training. Mr. Strock has served in senior executive and board positions in the public, private, and not-for-profit sectors. He served as California’s founding Secretary for Environmental Protection, and as Assistant Administrator for Enforcement (chief law enforcement officer) of the U.S. Environmental Protection Agency. Mr. Strock is the author of three books on leadership, management, and communication. He is a member of the Council on Foreign Relations, and the Authors Guild. Mr. Strock holds an A.B. from Harvard College and a J.D. from Harvard Law School. He served to captain in the USAR-JAGC. Based upon Mr. Strock’s extensive business and public service experience, which enable him to assist boards in meeting their responsibilities in various functions, we believe that Mr. Strock has the requisite set of skills to serve as a Board member.

None of our directors or executive officers has any family relationship with any other director or executive officer.



## CORPORATE GOVERNANCE

We believe that good corporate governance helps to ensure the Company is managed for the long-term benefits of our stockholders. We regularly review and consider our corporate governance policies and practices, the SEC's corporate governance rules and regulations, and the corporate governance listing standards of the NYSE, the stock exchange on which our common stock is traded. The Board initially consisted of nine directors in 2015, but currently consists of eight directors, three of whom at all times the Board has affirmatively determined are independent in accordance with the rules of the NYSE (Stephen Mongillo, Bob G. Alexander and James M. Strock). Effective September 25, 2015, Andrew Roberto resigned from the Board, and the Board subsequently reduced its size to eight directors. Effective March 14, 2016, Courtney Mather resigned from the Board and Jonathan Frates was concurrently appointed to the Board.

### Operation and Meetings

The Board oversees the business of the Company, which is conducted by the Company's employees and officers under the direction of the chief executive officer of the Company. The Board performs a number of specific functions, including: (1) reviewing, approving and monitoring fundamental financial and business strategies, risks and major corporate actions; (2) selecting, evaluating and compensating the chief executive officer and other executive officers of the Company; and (3) reviewing the Company's compliance with its public disclosure obligations. The Board appoints the members of the three Board committees: the audit committee, the compensation committee and the nominating and corporate governance committee. Members of the Board are kept informed about our Company's business by various documents sent to them before each meeting and oral reports made to them during these meetings by members of the Company's management. The full Board is also advised of actions taken by the various committees of our Board by the chairmen of those committees. Directors have access to all of our books, records and reports and members of management are available at all times to answer their questions. Management also communicates with the various members of our Board on a regular informal basis as is needed to effectively oversee the activities of our Company.

During 2015, the Board held five meetings. All of the directors who served during 2015 attended at least 75% of the total meetings of the Board and each of the Board committees on which such director served during their respective tenure on the Board, except that Mr. Mather was absent for one of the two compensation committee meetings during the year. In addition, while we do not have a specific policy regarding attendance at the annual meeting of stockholders, all director nominees are encouraged to attend the Annual Meeting. In 2015, one of the directors attended our annual meeting of stockholders.

### Meetings of Non-Management Directors and Executive Sessions

To promote open discussion among non-management directors, we schedule regular executive sessions in which our independent or non-management directors meet without management participation. "Non-management directors" are all directors who are not executive officers. During 2015, three of our directors were independent (Messrs. Alexander, Mongillo and Strock) and all of our directors are non-management directors, except for Mr. John J. Lipinski, our president and chief executive officer. Currently, we do not have a lead independent director. Our independent directors met in executive session two times during 2015. Mr. Mongillo presided over the executive sessions held by our independent directors. Our non-management directors did not meet during 2015. In the absence of further action, Mr. Carl C. Icahn, chairman of the Board, will serve as chairman of the executive sessions held by our non-management directors.

### Board Leadership Structure and Risk Oversight

The Board believes that it should have the flexibility to make determinations as to whether the same individual should serve as both the chief executive officer and the chairman of the Board, and the Board's leadership has varied over time. In determining the appropriate leadership structure, the Board considers, among other things, the current composition of the Board and the challenges and opportunities specific to the Company. Mr. Lipinski served as the Company's chief executive officer and chairman of the Board until the IEP Acquisition. Since the IEP Acquisition, Mr. Lipinski has served as the Company's chief executive officer, president and a director, and Mr. Icahn has served as chairman of the Board since June 2012. The Board believes that this leadership structure, which separates the chairman and chief executive officer roles, is appropriate at this time in light of IEP's ownership of over 80% of our

common stock. In particular, the Board believes that this structure clarifies the individual roles and responsibilities of Mr. Lipinski and Mr. Icahn and enhances accountability. The Board recognizes that there is no single, generally



accepted approach to providing Board leadership and that the Board's leadership structure may vary in the future as circumstances warrant.

Our governance processes, including the Board's involvement in developing and implementing strategy, active oversight of risk, regular review of business results and thorough evaluation of the chief executive officer's performance and compensation, provide rigorous Board oversight of the chief executive officer as he fulfills his various responsibilities.

The Board considers oversight of CVR Energy's risk management efforts to be a responsibility of the entire Board. The Board's role in risk oversight includes receiving regular reports from members of senior management on areas of material risk to the Company, or to the success of a particular project or endeavor under consideration, including operational, financial, legal and regulatory, strategic and reputational risks. The full Board (or the appropriate committee, in the case of risks that are under the purview of a particular committee) receives these reports from the appropriate members of management to enable the Board (or committee) to understand the Company's risk identification, risk management, and risk mitigation strategies. When a report is vetted at the committee level, the chairman of that committee subsequently reports on the matter to the full Board. This enables the Board and its committees to coordinate the Board's risk oversight role. The Board also believes that risk management is an integral part of CVR Energy's annual strategic planning process, which addresses, among other things, the risks and opportunities facing the Company. The audit committee assists the Board with oversight of the Company's material financial risk exposures and the Company's material financial statement and financial reporting risks. The compensation committee assists the Board with oversight of risks associated with the Company's compensation policies and practices. The nominating and corporate governance committee assists the Board with oversight of risks associated with the Company's governance. In each case, the Board or the applicable committee oversees the steps Company management has taken to monitor and control such exposures.

The chief executive officer's membership on and collaboration with the Board allows him to gauge whether management is providing adequate information for the Board to understand the interrelationships of our various business and financial risks. He is available to the Board to address any questions from other directors regarding executive management's ability to identify and mitigate risks and weigh them against potential rewards.

We have performed an internal review of all of our material compensation programs and have concluded that there are no plans that provide meaningful incentives for employees, including the named executive officers and other executive officers, to take risks that would be reasonably likely to have a material adverse effect on us.

#### Communications with Directors

Stockholders and other interested parties wishing to communicate with our Board may send a written communication addressed to:

CVR Energy, Inc.  
2277 Plaza Drive, Suite 500  
Sugar Land, Texas 77479

Attention: Senior Vice President, General Counsel and Secretary

Our General Counsel will forward all appropriate communications directly to our Board or to any individual director or directors, depending upon the facts and circumstances outlined in the communication. Any stockholder or other interested party who is interested in contacting only the independent directors or non-management directors as a group or the director who presides over the meetings of the independent directors or non-management directors may also send written communications to the contact above and should state for whom the communication is intended.

#### The "Controlled Company" Exemption and Director Independence "Controlled Company" Exemption

Our Board has determined that we are a controlled company under the rules of the NYSE and, as a result, we qualify for and may rely on exemptions from certain director independence requirements of the NYSE.

Under the rules of the NYSE, a listed company is a controlled company when more than 50% of the voting power is held by an individual, a group or another company. Our Board has determined that we are a controlled company because IEP currently owns approximately 82% of our outstanding common stock. Consequently, the Company has availed itself of the controlled company exemption.



### Director Independence

Due to our status as a controlled company, we are relying on exemptions from the NYSE rules that require that (a) our Board be comprised of a majority of independent directors as defined under the rules of the NYSE, (b) our compensation committee be comprised solely of independent directors and (c) our nominating and corporate governance committee be comprised solely of independent directors.

The controlled company exemption does not modify the independence requirements for the audit committee. The Sarbanes-Oxley Act of 2002 (as amended, the “Sarbanes-Oxley Act”) and NYSE rules require that our audit committee be composed entirely of independent directors. The members of the audit committee are Messrs. Mongillo, Alexander and Strock. Our Board has affirmatively determined that Messrs. Mongillo, Alexander and Strock are independent directors under the rules of the SEC and the NYSE.

### Committees

Our Board has the authority to delegate the performance of certain oversight and administrative functions to committees of the Board. Our Board currently has an audit committee, a compensation committee and a nominating and corporate governance committee. In addition, from time to time, special committees may be established under the direction of our Board when necessary to address specific issues.

Each committee has adopted a charter which is reviewed annually by that committee and changes, if any, are recommended to our Board for approval. The charters for the audit committee, the compensation committee and the nominating and corporate governance committee are subject to certain NYSE rules and our charters for those committees comply with such rules. Copies of the audit committee charter, compensation committee charter and nominating and corporate governance committee charter, as in effect from time to time, are available free of charge on our Internet site at [www.cvrenergy.com](http://www.cvrenergy.com). These charters are also available in print to any stockholder who requests them by writing to CVR Energy, Inc., at 2277 Plaza Drive, Suite 500, Sugar Land, Texas 77479, Attention: Senior Vice President, General Counsel and Secretary.

The following table shows the membership of each committee of our Board as of December 31, 2015 and the number of meetings held by each committee during 2015.

#### Committee Membership as of December 31, 2015 and Meetings Held During 2015

Director	Audit Committee	Compensation Committee	Nominating and Corporate Governance Committee
Carl C. Icahn			
Bob G. Alexander	X		
SungHwan Cho			X
Andrew Langham		Chair	
John J. Lipinski			
Courtney Mather		X	Chair
Stephen Mongillo	Chair		X
James M. Strock	X		X
Number of 2015 Meetings	7	2	0

#### Audit Committee

The Board has established an audit committee, in accordance with Section 3(a)(58)(A) of the Exchange Act, comprised of Stephen Mongillo (chairman), Bob G. Alexander and James M. Strock. Each of the members of the audit committee meets the independence and experience standards established by the NYSE and the Exchange Act. Our Board has determined that Mr. Mongillo qualifies as an “audit committee financial expert,” as defined by applicable rules of the SEC, and that each member of the audit committee is “financially literate” under the requirements of the NYSE.



The audit committee (1) appoints, terminates, retains, compensates and oversees the work of the independent registered public accounting firm, (2) pre-approves all audit, review and attest services and permitted non-audit services provided by the independent registered public accounting firm, (3) oversees the performance of the Company's internal audit function, (4) oversees and reviews the independence, qualifications and performance of the independent registered public accounting firm, (5) reviews external and internal audit reports and management's responses thereto, (6) oversees the integrity of the financial reporting process, system of internal accounting controls and financial statements and reports of the Company, (7) oversees the Company's compliance with certain legal and regulatory requirements, (8) reviews the Company's annual and quarterly financial statements, including disclosures made in "Management's Discussion and Analysis of Financial Condition and Results of Operations" set forth in periodic reports filed with the SEC, (9) discusses with management earnings press releases, (10) meets with management, the internal auditors, the independent auditors and the Board, (11) provides the Board with information and materials as it deems necessary to make the Board aware of significant financial, accounting and internal control matters of the Company, (12) oversees the receipt, investigation, resolution and retention of all complaints submitted under the Company's whistleblower policy, (13) produces an annual report for inclusion in the Company's proxy statement and (14) otherwise complies with its responsibilities and duties as stated in the Company's Audit Committee Charter. At each regularly scheduled meeting, audit committee members have the opportunity to meet privately with representatives of Grant Thornton, the Company's internal auditors and management of the Company.

#### Compensation Committee

In addition, the Board has established a compensation committee. During 2015, the compensation committee was initially comprised of Andrew Roberto (chairman), Andrew Langham and Courtney Mather. Mr. Roberto resigned from the Board on September 25, 2015 and Mr. Mather resigned from the Board on March 14, 2016. Effective March 14, 2016, Jonathan Frates was appointed to the Board and was named to serve on the compensation committee. The compensation committee currently consists of Andrew Langham (chairman), and Jonathan Frates.

The principal responsibilities of the compensation committee are to (1) make determinations or recommendations to the Board, as deemed appropriate by the committee, with respect to annual and long-term performance goals and objectives as well as the annual salary, bonus and other compensation and benefits, direct and indirect, of the chief executive officer and our other senior executives as well as non-employee directors, (2) review and authorize the Company to enter into employment, severance or other compensation agreements with the chief executive officer and other senior executives, (3) recommend changes in employee benefit programs, (4) provide counsel regarding key staffing, (5) administer our equity incentive plans, (6) establish and periodically review perquisites and fringe benefits policies, (7) administer the Company's Performance Incentive Plan and (8) assist the Board in assessing any risks to the Company associated with the Company's employee compensation practices and policies. In addition, the compensation committee reviews and discusses our Compensation Discussion and Analysis with management and produces a report on executive compensation for inclusion in our annual proxy statement in compliance with applicable federal securities laws.

As discussed in Compensation Discussion and Analysis, the compensation committee has engaged Longnecker & Associates ("Longnecker"), a compensation consultant, to assist the committee with benchmarking of certain executive compensation levels and to generally assess the level of compensation increases from 2013 to 2014, 2015 and 2016. In 2015, the fees for any additional services provided by Longnecker to the Company did not exceed \$120,000.

Pursuant to SEC rules, the compensation committee has assessed the independence of Longnecker and concluded that no conflict of interest exists that would prevent Longnecker from independently representing the compensation committee.

#### Nominating and Corporate Governance Committee

Our Board has also established a nominating and corporate governance committee. During 2015, the nominating and corporate governance committee was initially comprised of Andrew Roberto (chairman), SungHwan Cho, Stephen Mongillo and James M. Strock. On September 25, 2015, Mr. Roberto resigned from the Board, and Mr. Frates was subsequently appointed to the Board and as chairman of the nominating and corporate governance committee.

The nominating and corporate governance committee (1) annually reviews the Company's Corporate Governance Guidelines, (2) oversees the performance of the Board and committees thereof and (3) otherwise



complies with its responsibilities and duties as stated in the Company's Nominating and Corporate Governance Committee Charter.

#### Identifying and Evaluating Nominees for Directors

The Board seeks a diverse group of directors who have attributes necessary to create a cohesive and effective Board, including high personal and professional ethics, integrity and values, vision and long-term strategic perspective, experience in our industry, practical judgment, the ability to devote significant time to serve on our Board and its committees, and a commitment to representing the long-term interests of all our stockholders.

As a result of its control of a majority of our outstanding common stock, IEP ultimately controls the election of all of the members of our Board. Consequently, our Board has deemed it appropriate not to maintain a formal policy with respect to the review of potential nominees or to charge the nominating and corporate governance committee with the nomination of directors. However, all of our directors ultimately participate in the review of potential nominees to our Board.

The Board may consider candidates recommended by stockholders, as well as from other sources such as other directors or officers, third-party search firms or other appropriate sources. If a stockholder wishes to recommend a candidate for director for election at the 2017 Annual Meeting of Stockholders, it must follow the procedures described below under "Stockholder Proposals."

#### Compensation Committee Interlocks and Insider Participation

During 2015, the compensation committee was initially comprised of Andrew Roberto (chairman), Andrew Langham and Courtney Mather. Mr. Roberto resigned from the Board on September 25, 2015 and Mr. Mather resigned from the Board on March 14, 2016. Effective March 14, 2016, Jonathan Frates was appointed to the Board and was named to serve on the compensation committee. The compensation committee currently consists of Andrew Langham (chairman) and Jonathan Frates. No member of the compensation committee (1) was or is an officer or employee of the Company, or (2) had any relationship requiring disclosure by the Company under the SEC's rules requiring disclosure of certain related-party transactions. Additionally, none of the Company's executive officers served as a director or member of a compensation committee (or other committee serving an equivalent function) of any other entity, an executive officer of which served as a director or member of the Company's compensation committee during 2015.

#### Corporate Governance Guidelines and Codes of Ethics

Our Corporate Governance Guidelines, as well as our Code of Ethics, which applies to all of our directors, officers and employees, and our Principal Executive and Senior Financial Officers' Code of Ethics, which applies to our principal executive and senior financial and accounting officers, are available free of charge on our Internet site at [www.cvrenergy.com](http://www.cvrenergy.com). Our Corporate Governance Guidelines, Code of Ethics and Principal Executive and Senior Financial Officers' Code of Ethics are also available in print to any stockholder who requests them by writing to CVR Energy, Inc., at 2277 Plaza Drive, Suite 500, Sugar Land, Texas 77479, Attention: Senior Vice President, General Counsel and Secretary. Amendments to and waivers from the Principal Executive and Senior Financial Officers' Code of Ethics will be posted on our website within four business days after approval by the Board.

## DIRECTOR COMPENSATION FOR 2015

The fees for independent non-employee directors are described below on an annual basis.

## Compensation

For 2015, independent non-employee directors (Messrs. Mongillo, Alexander and Strock) received an annual retainer of \$75,000, paid on a quarterly basis, and meeting fees of \$1,000 per meeting. In addition, these directors received an additional annual retainer of \$5,000 for serving as the chairman of any Board committee and an additional annual retainer of \$1,000 for serving on a Board committee. These directors are also reimbursed for travel expenses and other out-of-pocket costs incurred in connection with their attendance at meetings. Messrs. Icahn, Cho, Frates and Langham are employees of Icahn Enterprises L.P., or its affiliates, and did not receive compensation for services as a director of the Company.

## Director Compensation Table

The following table reflects compensation received by independent non-employee directors for their service on the Board during 2015.

Name	Fees Earned or Paid in Cash (\$)	All Other Compensation (\$)	Total (\$)
Bob G. Alexander	81,000	—	81,000
Stephen Mongillo	87,000	—	87,000
James M. Strock	82,000	—	82,000



SECURITIES OWNERSHIP OF CERTAIN  
BENEFICIAL OWNERS AND OFFICERS AND DIRECTORS

The following table presents information regarding beneficial ownership of our common stock by:

- each of our current directors and nominees for director;
- each of our named executive officers;
- each stockholder known by us to beneficially hold five percent or more of our common stock; and
- all of our executive officers and directors as a group.

Beneficial ownership is determined under the rules of the SEC and generally includes voting or investment power with respect to securities. Unless indicated below, to our knowledge, the persons and entities named in the table have sole voting and sole investment power with respect to all shares beneficially owned by them, subject to community property laws where applicable. Except as otherwise indicated, the business address for each of the beneficial owners listed in the table is c/o CVR Energy, Inc., 2277 Plaza Drive, Suite 500, Sugar Land, Texas 77479.

Beneficial Owner Name and Address	Shares Beneficially Owned	
	Number	Percent(1)
Carl C. Icahn (2) c/o Icahn Associates Holding LLC 767 Fifth Avenue, 47 <sup>th</sup> Floor New York, NY 10153	71,198,718	82%
Bob G. Alexander	—	—
SungHwan Cho	—	—
Jonathan Frates	—	--
Andrew Langham	—	—
John J. Lipinski	—	—
Stephen Mongillo	—	—
James M. Strock	—	—
Susan M. Ball	—	—
Robert W. Haugen	1	*
Martin J. Power	—	—
John R. Walter	—	—
All directors and executive officers, as a group (12 persons)(3)	71,198,719	82%

\* Less than 1% of our outstanding common stock as of the record date.

(1) Percentage based upon 86,831,050 shares of common stock outstanding as of the record date.

The following disclosures are based on a Schedule 13D/A filed with the Commission on May 29, 2012 by IEP, IEP Energy Holding LLC, American Entertainment Properties Corp., Icahn Building LLC, Icahn Enterprises Holdings (2) L.P. (“Icahn Enterprises Holdings”), Icahn Enterprises G.P. Inc. (“Icahn Enterprises GP”), Beckton Corp. (“Beckton”) and Carl C. Icahn (collectively, the “Icahn Reporting Persons”).

According to the filing, the principal business address of each of (i) IEP, IEP Energy Holding LLC, American Entertainment Properties Corp., Icahn Building LLC, Icahn Enterprises Holdings, Icahn Enterprises GP and Beckton is White Plains Plaza, 445 Hamilton Avenue - Suite 1210, White Plains, NY 10601 and (ii) Mr. Icahn is c/o Icahn Associates Holding LLC, 767 Fifth Avenue, 47th Floor, New York, NY 10153. According to the filing, IEP has sole voting power and sole dispositive power with regard to 71,198,718 shares. Each of IEP Energy Holding LLC, American Entertainment Properties Corp., Icahn Building LLC, Icahn Enterprises Holdings, Icahn Enterprises GP, Beckton and Carl C. Icahn has shared voting power and shared dispositive power with regard to such shares. According to the filing, each of IEP Energy Holding LLC, American Entertainment Properties Corp., Icahn Building LLC, Icahn Enterprises Holdings, Icahn Enterprises GP, Beckton and Carl C. Icahn, by virtue of their relationships to

IEP, may be deemed to indirectly beneficially own (as that term is defined in Rule 13d-3 under the Exchange Act) the shares which IEP directly beneficially owns. Each of IEP Energy Holding LLC, American Entertainment Properties Corp., Icahn Building LLC, Icahn Enterprises Holdings, Icahn Enterprises GP, Beckton and Carl C. Icahn disclaims beneficial ownership of such shares for all other purposes.

The number of shares of common stock owned by all directors and executive officers, as a group, reflects the sum (3) of the 71,198,718 shares of common stock beneficially owned by Mr. Icahn and the 1 share of common stock owned by Mr. Haugen.

#### SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Exchange Act requires our executive officers and directors and each person who owns more than 10% of our outstanding common stock, to file reports of their stock ownership and changes in their ownership of our common stock with the SEC and the NYSE. These same people must also furnish us with copies of these reports and representations made to us that no other reports were required. We have performed a general review of such reports and amendments thereto filed in 2015. Based solely on our review of the copies of such reports furnished to us or such representations, as appropriate, to our knowledge all of our executive officers and directors, and other persons who owned more than 10% of our outstanding common stock, fully complied with the reporting requirements of Section 16(a) during 2015.

#### EQUITY COMPENSATION PLANS

The table below contains information about securities authorized for issuance under our long-term incentive plan as of December 31, 2015. This plan was initially approved by our stockholders in October 2007 and re-approved by our stockholders in June 2014.

##### Equity Compensation Plan Information

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options Warrants and Rights(a)	Weighted Average Exercise Price of Outstanding Options Warrants and Rights(b)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in (a) (c))	
Equity compensation plans approved by security holders:				
CVR Energy, Inc. Long Term Incentive Plan	—	—	6,787,341	(3)
Stock Options	—	(1)—	—	
Common stock	—	(2)0.63		

(1) Distributions are shown in the quarter in which they were declared but relate to the prior quarter's performance.

#### Distributions

Our limited liability company agreement requires us to make quarterly distributions to unitholders of all available cash. Available cash means, for each fiscal quarter, all cash on hand at the end of the quarter less the amount of cash reserves established by the Board of Directors to:

provide for the proper conduct of our business (including reserves for future capital expenditures, future debt service requirements and anticipated credit needs); and

comply with applicable laws, debt instruments or other agreements;

plus all cash on hand on the date of determination of available cash for the quarter resulting from working capital borrowings made after the end of the quarter for which the determination is being made. Working capital borrowings are borrowings that will be made under our revolving credit facility and in all cases are used solely for working capital purposes or to pay distributions to unitholders.

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**MATERIAL TAX CONSEQUENCES**

This section is a summary of the material tax consequences that may be relevant to prospective unitholders who are individual citizens or residents of the United States and, unless otherwise noted in the following discussion, is the opinion of Baker Botts L.L.P., counsel to us, insofar as it relates to matters of United States federal income tax law and legal conclusions with respect to those matters. This section is based upon current provisions of the Internal Revenue Code of 1986, as amended (the Code), existing and proposed regulations and current administrative rulings and court decisions, all of which are subject to change. Later changes in these authorities may cause the tax consequences to vary substantially from the consequences described below. Unless the context otherwise requires, references in this section to us or we are references to Linn Energy, LLC and our operating subsidiaries.

The following discussion does not comment on all federal income tax matters affecting us or the unitholders. Moreover, the discussion focuses on unitholders who are individual citizens or residents of the United States and has only limited application to corporations, estates, trusts, nonresident aliens or other unitholders subject to specialized tax treatment, such as tax-exempt institutions, foreign persons, IRAs, real estate investment trusts, employee benefit plans or mutual funds. Accordingly, we urge each prospective unitholder to consult his own tax advisor in analyzing the federal, state, local and foreign tax consequences particular to him of the ownership or disposition of units.

All statements as to matters of law and legal conclusions, but not as to factual matters, contained in this section, unless otherwise noted, are the opinion of Baker Botts L.L.P. and are based on the accuracy and completeness of the representations made by us. An opinion of counsel represents only that counsel's best legal judgment and does not bind the Internal Revenue Service (IRS) or the courts. Accordingly, the opinions and statements made here may not be sustained by a court if contested by the IRS. Any contest of this sort with the IRS may materially and adversely impact the market for the units and the prices at which units trade. In addition, the costs of any contest with the IRS, principally legal, accounting and related fees, will result in a reduction in cash available for distribution to our unitholders and thus will be borne indirectly by our unitholders. Furthermore, the tax treatment of us, or of an investment in us, may be significantly modified by future legislative or administrative changes or court decisions. Any modifications may or may not be retroactively applied.

For the reasons described below, Baker Botts L.L.P. has not rendered an opinion with respect to the following specific federal income tax issues: (1) the treatment of a unitholder whose common units are loaned to a short seller to cover a short sale of common units (Please read Tax Consequences of Unit Ownership Treatment of Short Sales); (2) whether our monthly convention for allocating taxable income and losses is permitted by existing Treasury Regulations (Please read Disposition of Units Allocations Between Transferors and Transferees) and (3) whether our method for depreciating Section 743 adjustments is sustainable in certain cases (Please read Tax Consequences of Unit Ownership Section 754 Election and Uniformity of Units).

**Partnership Status**

Except as discussed in the following paragraph, a limited liability company that has more than one member and that has not elected to be treated as a corporation is treated as a partnership and each member a partner for federal income tax purposes, and therefore, is not a taxable entity and incurs no federal income tax liability. Instead, each member is required to take into account his share of items of income, gain, loss and deduction of us in computing his federal income tax liability, regardless of whether cash distributions are made to him by us. Distributions by us to a unitholder are generally not taxable unless the amount of cash distributed is in excess of the unitholder's adjusted basis in his partnership interest.

Section 7704 of the Code provides that publicly traded partnerships will, as a general rule, be taxed as corporations. However, an exception, referred to as the Qualifying Income Exception, exists with respect to publicly traded partnerships of which 90% or more of the gross income for every taxable year consists of qualifying income. Qualifying income includes income and gains derived from the exploration, development, mining or production, processing, transportation and marketing of natural resources, including crude oil,

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natural gas and products thereof. Other types of qualifying income include interest (other than from a financial business), dividends, gains from the sale of real property and gains from the sale or other disposition of capital assets held for the production of income that otherwise constitutes qualifying income. We estimate that less than 5% of our current gross income is not qualifying income; however, this estimate could change from time to time. Based upon and subject to this estimate, the factual representations made by us and a review of the applicable legal authorities, Baker Botts L.L.P. is of the opinion that at least 90% of our current gross income constitutes qualifying income. The portion of our income that is qualifying income can change from time to time.

Baker Botts L.L.P. is of the opinion that, based upon the Code, its regulations, published revenue rulings and court decisions and the representations described below, we will be classified as a partnership and our principal operating subsidiary, Linn Energy Holdings, LLC (the Operating Company), will be disregarded as an entity separate from us for federal income tax purposes. No ruling has been or will be sought from the IRS and the IRS has made no determination as to our classification as a partnership for federal income tax purposes. Instead, we will rely on the opinion of Baker Botts L.L.P.

In rendering its opinion, Baker Botts L.L.P. has relied on factual representations made by us. The representations made by us upon which Baker Botts L.L.P. has relied are:

neither we nor the Operating Company has elected or will elect to be treated as a corporation; and

for each taxable year since our inception, more than 90% of our gross income will be income that Baker Botts L.L.P. has opined or will opine is qualifying income within the meaning of Section 7704(d) of the Code.

If we fail to meet the Qualifying Income Exception, other than a failure that is determined by the IRS to be inadvertent and that is cured within a reasonable time after discovery, we will be treated as if we had transferred all of our assets, subject to liabilities, to a newly formed corporation, on the first day of the year in which we fail to meet the Qualifying Income Exception, in return for stock in that corporation, and then distributed that stock to the unitholders in liquidation of their interests in us. This deemed contribution and liquidation should be tax-free to unitholders and us so long as we, at that time, do not have liabilities in excess of the tax basis of our assets. Thereafter, we would be treated as a corporation for federal income tax purposes.

If we were taxable as a corporation in any taxable year, either as a result of a failure to meet the Qualifying Income Exception or otherwise, our items of income, gain, loss and deduction would be reflected only on our tax return rather than being passed through to the unitholders, and our net earnings would be taxed to us at corporate rates. In addition, any distribution made to a unitholder would be treated as either taxable dividend income, to the extent of our current or accumulated earnings and profits, or, in the absence of earnings and profits, a nontaxable return of capital, to the extent of the unitholder's tax basis in his units, or taxable gain, after the unitholder's tax basis in his units is reduced to zero. Accordingly, taxation as a corporation would result in a material reduction in a unitholder's cash flow and after-tax return and thus would likely result in a substantial reduction of the value of the units.

The discussion below is based on Baker Botts L.L.P.'s opinion that we will be classified as a partnership for federal income tax purposes.

### **Unitholder Status**

Unitholders who become members of Linn Energy, LLC will be treated as partners of Linn Energy, LLC for federal income tax purposes. Also:

assignees who are awaiting admission as members, and

unitholders whose units are held in street name or by a nominee and who have the right to direct the nominee in the exercise of all substantive rights attendant to the ownership of their units

will be treated as partners of Linn Energy, LLC for federal income tax purposes.

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A beneficial owner of units whose units have been transferred to a short seller to complete a short sale would appear to lose his status as a partner with respect to those units for federal income tax purposes. Please read [Tax Consequences of Unit Ownership](#) [Treatment of Short Sales](#).

Income, gains, deductions or losses would not appear to be reportable by a unitholder who is not a partner for federal income tax purposes, and any cash distributions received by a unitholder who is not a partner for federal income tax purposes would therefore be fully taxable as ordinary income. These holders are urged to consult their own tax advisors with respect to their status as partners in Linn Energy, LLC for federal income tax purposes.

## **Tax Consequences of Unit Ownership**

### ***Flow-through of Taxable Income***

We will not pay any federal income tax. Instead, each unitholder will be required to report on his income tax return his share of our income, gains, losses and deductions without regard to whether corresponding cash distributions are received by him. Consequently, we may allocate income to a unitholder even if he has not received a cash distribution. Each unitholder will be required to include in income his allocable share of our income, gains, losses and deductions for our taxable year or years ending with or within his taxable year. Please read [Tax Treatment of Operations](#) [Taxable Year and Accounting Method](#).

### ***Treatment of Distributions***

Distributions by us to a unitholder generally will not be taxable to the unitholder for federal income tax purposes to the extent of his tax basis in his units immediately before the distribution. Our cash distributions in excess of a unitholder's tax basis in his units generally will be considered to be gain from the sale or exchange of the units, taxable in accordance with the rules described under [Disposition of Units](#) below. Any reduction in a unitholder's share of our liabilities for which no unitholder bears the economic risk of loss, known as nonrecourse liabilities, will be treated as a distribution of cash to that unitholder. To the extent our distributions cause a unitholder's at-risk amount to be less than zero at the end of any taxable year, he must recapture any losses deducted in previous years. Please read [Limitations on Deductibility of Losses](#).

A decrease in a unitholder's percentage interest in us because of our issuance of additional units will decrease his share of our nonrecourse liabilities, and thus will result in a corresponding deemed distribution of cash. A non-pro rata distribution of money or property may result in ordinary income to a unitholder, regardless of his tax basis in his units, if the distribution reduces the unitholder's share of our unrealized receivables, including recapture of intangible development costs and depletion and depreciation deductions, and/or substantially appreciated inventory items, both as defined in Section 751 of the Code, and collectively, Section 751 Assets. To that extent, he will be treated as having been distributed his proportionate share of the Section 751 Assets and having exchanged those assets with us in return for the non-pro rata portion of the actual distribution made to him. This latter deemed exchange will generally result in the unitholder's realization of ordinary income, which will equal the excess of (1) the non-pro rata portion of that distribution over (2) the unitholder's tax basis for the share of Section 751 Assets deemed relinquished in the exchange.

### ***Ratio of Taxable Income to Distributions***

We are not providing an estimate of the ratio of our taxable income to cash distributions for purchasers of units in this offering.

### ***Basis of Unit***

A unitholder's initial tax basis for his units will be the amount he paid for the units plus his share of our nonrecourse liabilities. That basis will be increased by his share of our income and by any increases in his share of our nonrecourse liabilities. That basis will be decreased, but not below zero, by distributions from us, by the unitholder's share of our losses, by depletion deductions taken by him to the extent such deductions do

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not exceed his proportionate share of the underlying producing properties, by any decreases in his share of our nonrecourse liabilities and by his share of our expenditures that are not deductible in computing taxable income and are not required to be capitalized. A unitholder's share of our non-recourse liabilities will generally be based on his share of profits. Please read [Disposition of Units](#) [Recognition of Gain or Loss](#).

***Limitations on Deductibility of Losses***

The deduction by a unitholder of his share of our losses generally will be limited to the tax basis in his units. However, percentage depletion deductions in excess of basis are not subject to the tax basis limitation.

In addition, in the case of an individual unitholder or a corporate unitholder, if more than 50% of the value of the corporate unitholder's stock is owned directly or indirectly by five or fewer individuals or some tax-exempt organizations, the unitholder's deduction for his share of our losses is limited to the amount for which the unitholder is considered to be at-risk with respect to our activities, if that is less than his tax basis. A unitholder must recapture losses deducted in previous years to the extent that distributions cause his at-risk amount to be less than zero at the end of any taxable year. Losses disallowed to a unitholder or recaptured as a result of these limitations will carry forward and will be allowable as a deduction in a later year to the extent that his tax basis or at-risk amount, whichever is the limiting factor, is subsequently increased. Upon the taxable disposition of a unit, any gain recognized by a unitholder can be offset by losses that were previously suspended by the at-risk limitation but may not be offset by losses suspended by the basis limitation. Any excess loss above that gain previously suspended by the at-risk or basis limitations is no longer utilizable.

In general, a unitholder will be at-risk to the extent of the tax basis of his units, excluding any portion of that basis attributable to his share of our nonrecourse liabilities, reduced by any amount of money he borrows to acquire or hold his units, if the lender of those borrowed funds owns an interest in us, is related to another unitholder or can look only to the units for repayment. A unitholder's at-risk amount will increase or decrease as the tax basis of the unitholder's units increases or decreases, other than tax basis increases or decreases attributable to increases or decreases in his share of our nonrecourse liabilities. Moreover, a unitholder's at-risk amount will decrease by the amount of the unitholder's depletion deductions and will increase to the extent of the amount by which the unitholder's percentage depletion deductions with respect to our property exceed the unitholder's share of the tax basis of that property.

The at-risk limitation applies on an activity-by-activity basis, and in the case of natural gas and oil properties, each property is treated as a separate activity. Thus, a taxpayer's interest in each oil or natural gas property is generally required to be treated separately so that a loss from any one property would be limited to the at-risk amount for that property and not the at-risk amount for all the taxpayer's natural gas and oil properties. It is uncertain how this rule is implemented in the case of multiple natural gas and oil properties owned by a single entity treated as a partnership for federal income tax purposes. However, for taxable years ending on or before the date on which further guidance is published, the IRS will permit aggregation of oil or natural gas properties we own in computing a unitholder's at-risk limitation with respect to us. If a unitholder must compute his at-risk amount separately with respect to each oil or natural gas property we own, he may not be allowed to utilize his share of losses or deductions attributable to a particular property even though he has a positive at-risk amount with respect to his units as a whole.

The passive loss limitations generally provide that individuals, estates, trusts and some closely-held corporations and personal service corporations can deduct losses from passive activities, which are generally corporate or partnership activities in which the taxpayer does not materially participate, only to the extent of the taxpayer's income from those passive activities. The passive loss limitations are applied separately with respect to each publicly traded partnership. Consequently, any passive losses we generate will only be available to offset our passive income generated in the future and will not be available to offset income from other passive activities or investments, including our investments or a unitholder's investments in other publicly traded partnerships, or a unitholder's salary or active

business income. If we dispose of all or only a part of our interest in an oil or natural gas property, unitholders will be able to offset their suspended passive activity

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losses from our activities against the gain, if any, on the disposition. Any previously suspended losses in excess of the amount of gain recognized will remain suspended. Notwithstanding whether a natural gas and oil property is a separate activity, passive losses that are not deductible because they exceed a unitholder's share of income we generate may be deducted in full when he disposes of his entire investment in us in a fully taxable transaction with an unrelated party. The passive activity loss rules are applied after other applicable limitations on deductions, including the at-risk rules and the basis limitation.

A unitholder's share of our net earnings may be offset by any suspended passive losses, but it may not be offset by any other current or carryover losses from other passive activities, including those attributable to other publicly traded partnerships.

### ***Limitations on Interest Deductions***

The deductibility of a non-corporate taxpayer's investment interest expense is generally limited to the amount of that taxpayer's net investment income. Investment interest expense includes:

interest on indebtedness properly allocable to property held for investment;

our interest expense attributed to portfolio income; and

the portion of interest expense incurred to purchase or carry an interest in a passive activity to the extent attributable to portfolio income.

The computation of a unitholder's investment interest expense will take into account interest on any margin account borrowing or other loan incurred to purchase or carry a unit. Net investment income includes gross income from property held for investment and amounts treated as portfolio income under the passive loss rules, less deductible expenses, other than interest, directly connected with the production of investment income, but generally does not include gains attributable to the disposition of property held for investment. The IRS has indicated that net passive income earned by a publicly traded partnership will be treated as investment income to its unitholders. In addition, the unitholder's share of our portfolio income will be treated as investment income.

### ***Entity-Level Collections***

If we are required or elect under applicable law to pay any federal, state, local or foreign income tax on behalf of any unitholder or any former unitholder, we are authorized to pay those taxes from our funds. That payment, if made, will be treated as a distribution of cash to the unitholder on whose behalf the payment was made. We are authorized to amend the limited liability company agreement in the manner necessary to maintain uniformity of intrinsic tax characteristics of units and to adjust later distributions, so that after giving effect to these distributions, the priority and characterization of distributions otherwise applicable under the limited liability company agreement is maintained as nearly as is practicable. Payments by us as described above could give rise to an overpayment of tax on behalf of an individual unitholder in which event the unitholder would be required to file a claim in order to obtain a credit or refund.

### ***Allocation of Income, Gain, Loss and Deduction***

In general, our items of income, gain, loss and deduction will be allocated among the unitholders in accordance with their percentage interests in us.

For tax purposes, each time we issue units we are required to adjust the book basis of all assets held by us immediately prior to the issuance of the new units to their fair market values at the time the new units are issued. We are further required to adjust this book basis by the amount of book depletion, depreciation or amortization we later claim with respect to the asset. Section 704(c) principles set forth in Treasury regulations require that subsequent allocations of depletion, gain, loss and similar items with respect to the asset take into account, among other things, the difference between the book and tax basis of the asset. In this context, we use the term book as that term is used in Treasury regulations relating to partnership allocations for tax

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purposes. The book value of our property for this purpose may not be the same as the book value of our property for financial reporting purposes.

For example, at the time of an offering by us of units pursuant to this prospectus, a portion of our assets may be depletable property with a book basis in excess of its tax basis. In that event, Section 704(c) principles generally will require that depletion with respect to each such property be allocated disproportionately to purchasers of units in that offering and away from unitholders who acquired their units prior to the offering. To the extent these disproportionate allocations do not produce a result to purchasers of units in the offering that is similar to that which would be the case if all of our assets had a tax basis equal to their book basis on the date the offering closes, purchasers of units in the offering will be allocated the additional remedial tax deductions needed to produce that result as to any asset with respect to which we elect the remedial method of taking into account the difference between the book and tax basis of the asset. Upon a later issuance of units by us, similar adjustments may be made for the benefit of purchasers of units in the later offering, reducing the net amount of our deductions allocable to the purchaser of units in the earlier offering.

In addition, items of recapture income will be allocated to the extent possible to the unitholder who was allocated the deduction giving rise to the treatment of that gain as recapture income in order to minimize the recognition of ordinary income by unitholders that did not receive the benefit of such deduction. Finally, although we do not expect that our operations will result in the creation of negative capital accounts, if negative capital accounts nevertheless result, items of our income and gain will be allocated in an amount and manner to eliminate the negative balance as quickly as possible.

An allocation of items of our income, gain, loss or deduction, other than an allocation required under Section 704(c) principles, will generally be given effect for federal income tax purposes in determining a unitholder's share of an item of income, gain, loss or deduction only if the allocation has substantial economic effect. In any other case, a unitholder's share of an item will be determined on the basis of his interest in us, which will be determined by taking into account all the facts and circumstances, including:

his relative contributions to us;

the interests of all the unitholders in profits and losses;

the interest of all the unitholders in cash flow; and

the rights of all the partners to distributions of capital upon liquidation.

Baker Botts L.L.P. is of the opinion that, with the exception of the issues described in Section 754 Election, Uniformity of Units and Disposition of Units Allocations Between Transferors and Transferees, allocations under our limited liability company agreement will be given effect for federal income tax purposes in determining a unitholder's share of an item of income, gain, loss or deduction.

### ***Treatment of Short Sales***

A unitholder whose units are loaned to a short seller to cover a short sale of units may be considered as having disposed of those units. If so, he would no longer be treated for tax purposes as a partner for those units during the period of the loan and may recognize gain or loss from the disposition. As a result, during this period:

any of our income, gain, loss or deduction with respect to those units would not be reportable by the unitholder;

any cash distributions received by the unitholder as to those units would be fully taxable; and

all of these distributions would appear to be ordinary income.

Baker Botts L.L.P. has not rendered an opinion regarding the treatment of a unitholder where common units are loaned to a short seller to cover a short sale of common units; therefore, unitholders desiring to assure their status as partners and avoid the risk of gain recognition from a loan to a short seller are urged to

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modify any applicable brokerage account agreements to prohibit their brokers from borrowing their units. The IRS has announced that it is actively studying issues relating to the tax treatment of short sales of partnership interests. Please also read [Disposition of Units](#) [Recognition of Gain or Loss](#).

### ***Alternative Minimum Tax***

Each unitholder will be required to take into account his distributive share of any items of our income, gain, loss or deduction for purposes of the alternative minimum tax. The current minimum tax rate for noncorporate taxpayers is 26% on the first \$175,000 of alternative minimum taxable income in excess of the exemption amount and 28% on any additional alternative minimum taxable income. Prospective unitholders are urged to consult with their tax advisors as to the impact of an investment in units on their liability for the alternative minimum tax.

### ***Tax Rates***

In general, the highest United States federal income tax rate for individuals is currently 35% and the maximum United States federal income tax rate for net capital gains of an individual is currently 15% if the asset disposed of was held for more than 12 months at the time of disposition. However, absent new legislation extending the current rates, in tax years beginning on or after January 1, 2013, the highest marginal U.S. federal income tax rate applicable to ordinary income and long-term capital gains of individuals will increase to 39.6% and 20%, respectively. Moreover, these rates are subject to change by new legislation at any time.

### ***Section 754 Election***

We have made the election permitted by Section 754 of the Code. That election is irrevocable without the consent of the IRS. The election will generally permit us to adjust a unit purchaser's tax basis in our assets ( *inside basis* ) under Section 743(b) of the Code to reflect his purchase price. This election does not apply to a person who purchases units directly from us, but it will apply to a purchaser of outstanding units from another unitholder. The Section 743(b) adjustment belongs to the purchaser and not to other unitholders. For purposes of this discussion, a unitholder's *inside basis* in our assets will be considered to have two components: (1) his share of our tax basis in our assets ( *common basis* ) and (2) his Section 743(b) adjustment to that basis.

The timing of deductions attributable to Section 743(b) adjustments to our common basis will depend upon a number of factors, including the nature of the assets to which the adjustment is allocable, the extent to which the adjustment offsets any Section 704(c) type gain or loss with respect to an asset and certain elections we make as to the manner in which we apply Section 704(c) principles with respect to an asset to which the adjustment is applicable. Please read [Allocation of Income, Gain, Loss and Deduction](#). The timing of these deductions may affect the uniformity of our units. Please read [Uniformity of Units](#).

A Section 754 election is advantageous if the transferee's tax basis in his units is higher than the units' share of the aggregate tax basis of our assets immediately prior to the transfer. In that case, as a result of the election, the transferee would have, among other items, a greater amount of depreciation and depletion deductions and his share of any gain or loss on a sale of our assets would be less. Conversely, a Section 754 election is disadvantageous if the transferee's tax basis in his units is lower than those units' share of the aggregate tax basis of our assets immediately prior to the transfer. Thus, the fair market value of the units may be affected either favorably or unfavorably by the election. A basis adjustment is required regardless of whether a Section 754 election is made in the case of a transfer of an interest in us if we have a substantial built-in loss immediately after the transfer or if we distribute property and have a substantial basis reduction. Generally, a built-in loss or basis reduction is substantial if it exceeds \$250,000.

The calculations involved in the Section 754 election are complex and will be made on the basis of assumptions as to the value of our assets and other matters. For example, the allocation of the Section 743(b) adjustment among our assets must be made in accordance with the Code. The IRS could seek to reallocate some or all of any Section 743(b) adjustment allocated by us to our tangible assets to goodwill instead.

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Goodwill, as an intangible asset, is generally either nonamortizable or amortizable over a longer period of time or under a less accelerated method than our tangible assets. We cannot assure you that the determinations we make will not be successfully challenged by the IRS and that the deductions resulting from them will not be reduced or disallowed altogether. Should the IRS require a different basis adjustment to be made, and should, in our opinion, the expense of compliance exceed the benefit of the election, we may seek permission from the IRS to revoke our Section 754 election. If permission is granted, a subsequent purchaser of units may be allocated more income than he would have been allocated had the election not been revoked.

## **Tax Treatment of Operations**

### ***Taxable Year and Accounting Method***

We use the year ending December 31 as our taxable year and the accrual method of accounting for federal income tax purposes. Each unitholder will be required to include in income his share of our income, gain, loss and deduction for our taxable year ending within or with his taxable year. In addition, a unitholder who has a taxable year different from our taxable year and who disposes of all of his units following the close of our taxable year but before the close of his taxable year must include his share of our income, gain, loss and deduction in income for his taxable year, with the result that he will be required to include in income for his taxable year his share of more than one year of our income, gain, loss and deduction. Please read [Disposition of Units](#) [Allocations Between Transferors and Transferees](#).

### ***Depletion Deductions***

Subject to the limitations on deductibility of taxable losses discussed above, unitholders will be entitled to deductions for the greater of either cost depletion or (if otherwise allowable) percentage depletion with respect to our natural gas and oil interests. Although the Code requires each unitholder to compute his own depletion allowance and maintain records of his share of the tax basis of the underlying property for depletion and other purposes, we intend to furnish each of our unitholders with information relating to this computation for federal income tax purposes.

Percentage depletion is generally available with respect to unitholders who qualify under the independent producer exemption contained in Section 613A(c) of the Code. For this purpose, an independent producer is a person not directly or indirectly involved in the retail sale of oil, natural gas or derivative products or the operation of a major refinery. Percentage depletion is calculated as an amount generally equal to 15% (and, in the case of marginal production, potentially a higher percentage) of the unitholder's gross income from the depletable property for the taxable year. The percentage depletion deduction with respect to any property is limited to 100% of the taxable income of the unitholder from the property for each taxable year, computed without the depletion allowance. A unitholder that qualifies as an independent producer may deduct percentage depletion only to the extent the unitholder's average daily production of domestic crude oil or the natural gas equivalent does not exceed 1,000 Bbls. This depletable amount may be allocated between natural gas and oil production, with six Mcf of domestic natural gas production regarded as equivalent to one Bbl of crude oil. The 1,000-Bbl limitation must be allocated among the independent producer and controlled or related persons and family members in proportion to the respective production by such persons during the period in question.

In addition to the foregoing limitations, the percentage depletion deduction otherwise available is limited to 65% of a unitholder's total taxable income from all sources for the year, computed without the depletion allowance, net operating loss carrybacks or capital loss carrybacks. Any percentage depletion deduction disallowed because of the 65% limitation may be deducted in the following taxable year if the percentage depletion deduction for such year plus the deduction carryover does not exceed 65% of the unitholder's total taxable income for that year. The carryover period resulting from the 65% net income limitation is indefinite.

Unitholders that do not qualify under the independent producer exemption are generally restricted to depletion deductions based on cost depletion. Cost depletion deductions are calculated by (1) dividing the unitholder's share of the tax basis in the underlying mineral property by the number of mineral units (Bbls of oil and Mcfs of natural gas) remaining as of the beginning of the taxable year and (2) multiplying the result

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by the number of mineral units sold within the taxable year. The total amount of deductions based on cost depletion cannot exceed the unitholder's share of the total tax basis in the property.

All or a portion of any gain recognized by a unitholder as a result of either the disposition by us of some or all of our natural gas and oil interests or the disposition by the unitholder of some or all of his units may be taxed as ordinary income to the extent of recapture of depletion deductions, except for percentage depletion deductions in excess of the tax basis of the property. The amount of the recapture is generally limited to the amount of gain recognized on the disposition.

Because depletion is required to be computed separately by each unitholder and not by our company and because the availability of the depletion deduction depends upon the unitholder's own factual circumstances, no assurance can be given to a particular unitholder with respect to the availability or extent of percentage depletion deductions to such unitholder for any taxable year. We encourage each prospective unitholder to consult his tax advisor to determine whether percentage depletion would be available to him.

### ***Deductions for Intangible Drilling and Development Costs***

We may elect to currently deduct intangible drilling and development costs (IDCs). IDCs generally include our expenses for wages, fuel, repairs, hauling, supplies and other items that are incidental to, and necessary for, the development and preparation of wells for the production of oil, natural gas or geothermal energy. The option to currently deduct IDCs applies only to those items that do not have a salvage value.

Although we may elect to currently deduct IDCs, each unitholder will have the option of either currently deducting IDCs or capitalizing all or part of the IDCs and amortizing them on a straight-line basis over a 60-month period, beginning with the taxable month in which the expenditure is made. If a unitholder makes the election to amortize the IDCs over a 60-month period, no IDC preference amount will result for alternative minimum tax purposes.

Integrated oil companies must capitalize 30% of all their IDCs (other than IDCs paid or incurred with respect to natural gas and oil wells located outside of the United States) and amortize these IDCs over 60 months beginning in the month in which those costs are paid or incurred. If the taxpayer ceases to be an integrated oil company, it must continue to amortize those costs as long as it continues to own the property to which the IDCs relate. An integrated oil company is a taxpayer that has economic interests in crude oil deposits and also carries on substantial retailing or refining operations. An oil or natural gas producer is deemed to be a substantial retailer or refiner if it is subject to the rules disqualifying retailers and refiners from taking percentage depletion. In order to qualify as an independent producer that is not subject to these IDC deduction limits, a unitholder, either directly or indirectly through certain related parties, may not be involved in the refining of more than 75,000 Bbls of oil (or the equivalent amount of natural gas) on average for any day during the taxable year or in the retail marketing of natural gas and oil products exceeding \$5 million per year in the aggregate.

IDCs previously deducted that are allocable to property (directly or through ownership of an interest in a partnership) and that would have been included in the tax basis of the property had the IDC deduction not been taken are recaptured to the extent of any gain realized upon the disposition of the property or upon the disposition by a unitholder of interests in us. Recapture is generally determined at the unitholder level. Where only a portion of the recapture property is sold, any IDCs related to the entire property are recaptured to the extent of the gain realized on the portion of the property sold. In the case of a disposition of an undivided interest in a property, a proportionate amount of the IDCs with respect to the property is treated as allocable to the transferred undivided interest to the extent of any gain recognized. Please read [Disposition of Units](#) [Recognition of Gain or Loss](#).

### ***Deduction for U.S. Production Activities***

Subject to the limitations on the deductibility of losses discussed above and the limitation discussed below, unitholders will be entitled to a deduction, herein referred to as the Section 199 deduction, equal to 9% of our qualified production activities income that is allocated to such unitholder.

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Qualified production activities income is generally equal to gross receipts from domestic production activities reduced by cost of goods sold allocable to those receipts, other expenses directly associated with those receipts, and a share of other deductions, expenses and losses that are not directly allocable to those receipts or another class of income. The products produced must be manufactured, produced, grown or extracted in whole or in significant part by the taxpayer in the United States.

For a partnership, the Section 199 deduction is determined at the partner level. To determine his Section 199 deduction, each unitholder will aggregate his share of the qualified production activities income allocated to him from us with the unitholder's qualified production activities income from other sources. Each unitholder must take into account his distributive share of the expenses allocated to him from our qualified production activities regardless of whether we otherwise have taxable income. However, our expenses that otherwise would be taken into account for purposes of computing the Section 199 deduction are taken into account only if and to the extent the unitholder's share of losses and deductions from all of our activities is not disallowed by the tax basis rules, the at-risk rules or the passive activity loss rules. Please read **Tax Consequences of Unit Ownership** **Limitations on Deductibility of Losses**.

The amount of a unitholder's Section 199 deduction for each year is limited to 50% of the IRS Form W-2 wages actually or deemed paid by the unitholder during the calendar year that are deducted in arriving at qualified production activities income. Each unitholder is treated as having been allocated IRS Form W-2 wages from us equal to the unitholder's allocable share of our wages that are deducted in arriving at our qualified production activities income for that taxable year. It is not anticipated that we or our subsidiaries will pay material wages that will be allocated to our unitholders.

Because the Section 199 deduction is required to be computed separately by each unitholder and its availability is dependent upon each unitholder's own factual circumstances, no assurance can be given to a particular unitholder as to the availability or extent of the Section 199 deduction to such unitholder. Each prospective unitholder is encouraged to consult his tax advisor to determine whether the Section 199 deduction would be available to him.

### ***Lease Acquisition Costs***

The cost of acquiring natural gas and oil leaseholder or similar property interests is a capital expenditure that must be recovered through depletion deductions if the lease is productive.

If a lease is proved worthless and abandoned, the cost of acquisition less any depletion claimed may be deducted as an ordinary loss in the year the lease becomes worthless. Please read **Tax Treatment of Operations** **Depletion Deductions**.

### ***Geophysical Costs***

The cost of geophysical exploration incurred in connection with the exploration and development of oil and natural gas properties in the United States are deducted ratably over a 24-month period beginning on the date that such expense is paid or incurred.

### ***Operating and Administrative Costs***

Amounts paid for operating a producing well are deductible as ordinary business expenses, as are administrative costs to the extent they constitute ordinary and necessary business expenses that are reasonable in amount.

### ***Tax Basis, Depreciation and Amortization***

The tax basis of our assets will be used for purposes of computing depreciation and cost recovery deductions and, ultimately, gain or loss on the disposition of those assets. The federal income tax burden associated with the difference between the fair market value of our assets and their tax basis immediately prior to this offering will be borne by our existing unitholders and such burden prior to any other offering will be

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borne by our unitholders prior to such other offering. Please read **Tax Consequences of Unit Ownership Allocation of Income, Gain, Loss and Deduction.**

To the extent allowable, we may elect to use the depreciation and cost recovery methods that will result in the largest deductions being taken in the early years after assets are placed in service. Property we subsequently acquire or construct may be depreciated using accelerated methods permitted by the Code.

If we dispose of depreciable property by sale, foreclosure or otherwise, all or a portion of any gain, determined by reference to the amount of depreciation previously deducted and the nature of the property, may be subject to the recapture rules and taxed as ordinary income rather than capital gain. Similarly, a unitholder who has taken cost recovery or depreciation deductions with respect to property we own will likely be required to recapture some or all of those deductions as ordinary income upon a sale of his interest in us. Please read **Tax Consequences of Unit Ownership Allocation of Income, Gain, Loss and Deduction** and **Disposition of Units Recognition of Gain or Loss.**

The costs incurred in selling our units (called **syndication expenses**) must be capitalized and cannot be deducted currently, ratably or upon our termination. The underwriting discounts and commissions we incur will be treated as syndication expenses.

### ***Valuation and Tax Basis of Our Properties***

The federal income tax consequences of the ownership and disposition of units will depend in part on our estimates of the relative fair market values, and the tax bases, of our assets. Although we may from time to time consult with professional appraisers regarding valuation matters, we will make many of the relative fair market value estimates ourselves. These estimates and determinations of basis are subject to challenge and will not be binding on the IRS or the courts. If the estimates of fair market value or basis are later found to be incorrect, the character and amount of items of income, gain, loss or deduction previously reported by unitholders might change, and unitholders might be required to adjust their tax liability for prior years and incur interest and penalties with respect to those adjustments.

### **Disposition of Units**

#### ***Recognition of Gain or Loss***

Gain or loss will be recognized on a sale of units equal to the difference between the unitholder's amount realized and the unitholder's tax basis for the units sold. A unitholder's amount realized will be measured by the sum of the cash or the fair market value of other property received by him plus his share of our nonrecourse liabilities. Because the amount realized includes a unitholder's share of our nonrecourse liabilities, the gain recognized on the sale of units could result in a tax liability in excess of any cash received from the sale.

Prior distributions from us in excess of cumulative net taxable income for a unit that decreased a unitholder's tax basis in that unit will, in effect, become taxable income if the unit is sold at a price greater than the unitholder's tax basis in that unit, even if the price received is less than his original cost.

Except as noted below, a gain or loss recognized by a unitholder, other than a dealer in units, on the sale or exchange of a unit will generally be taxable as a capital gain or loss. Capital gain recognized by an individual on the sale of units held more than 12 months will generally be taxed at a maximum United States federal income tax rate of 15% for tax years beginning on or before December 31, 2012 and 20% thereafter (absent new legislation extending or adjusting the current rate). However, a portion of this gain or loss will be separately computed and taxed as ordinary income or loss under Section 751 of the Code to the extent attributable to assets giving rise to **unrealized receivables** or to **inventory items** we own. The term **unrealized receivables** includes potential recapture items, including

depreciation recapture. Ordinary income attributable to unrealized receivables, inventory items and depletion, depreciation, and IDC recapture may exceed net taxable gain realized upon the sale of a unit and may be recognized even if there is a net taxable loss realized on the sale of a unit. Thus, a unitholder may recognize both ordinary income and a capital loss

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upon a sale of units. Net capital losses may offset capital gains and no more than \$3,000 of ordinary income, in the case of individuals, and may only be used to offset capital gains in the case of corporations.

The IRS has ruled that a partner who acquires interests in a partnership in separate transactions must combine those interests and maintain a single adjusted tax basis for all those interests. Upon a sale or other disposition of less than all of those interests, a portion of that tax basis must be allocated to the interests sold using an equitable apportionment method. Treasury Regulations under Section 1223 of the Code allow a selling unitholder who can identify units transferred with an ascertainable holding period to elect to use the actual holding period of the units transferred. Thus, according to the ruling, a unitholder will be unable to select high or low basis units to sell as would be the case with corporate stock, but, according to the regulations, may designate specific units sold for purposes of determining the holding period of units transferred. A unitholder electing to use the actual holding period of units transferred must consistently use that identification method for all subsequent sales or exchanges of units. A unitholder considering the purchase of additional units or a sale of units purchased in separate transactions is urged to consult his tax advisor as to the possible consequences of this ruling and application of the regulations.

Specific provisions of the Code affect the taxation of some financial products and securities, including partnership interests, by treating a taxpayer as having sold an appreciated partnership interest, one in which gain would be recognized if it were sold, assigned or terminated at its fair market value, if the taxpayer or related persons enter(s) into:

- a short sale;
- an offsetting notional principal contract; or
- a futures or forward contract

with respect to the partnership interest or substantially identical property.

Moreover, if a taxpayer has previously entered into a short sale, an offsetting notional principal contract or a futures or forward contract with respect to the partnership interest, the taxpayer will be treated as having sold that position if the taxpayer or a related person then acquires the partnership interest or substantially identical property. The Secretary of the Treasury is also authorized to issue regulations that treat a taxpayer that enters into transactions or positions that have substantially the same effect as the preceding transactions as having constructively sold the financial position.

### ***Allocations Between Transferors and Transferees***

In general, our taxable income and losses will be determined annually, will be prorated on a monthly basis and will be subsequently apportioned among the unitholders in proportion to the number of units owned by each of them as of the opening of the applicable exchange on the first business day of the month, which we refer to in this prospectus as the Allocation Date. However, gain or loss realized on a sale or other disposition of our assets other than in the ordinary course of business will be allocated among the unitholders on the Allocation Date in the month in which that gain or loss is recognized. As a result, a unitholder transferring units may be allocated income, gain, loss and deduction realized after the date of transfer.

Although simplifying conventions are contemplated by the Code and most publicly traded partnerships use similar simplifying conventions, the use of this method may not be permitted under existing Treasury Regulations. Recently, however, the Department of the Treasury and the IRS issued proposed Treasury Regulations that provide a safe harbor pursuant to which a publicly traded partnership may use a similar monthly simplifying convention to allocate tax items among transferor and transferee unitholders. Existing publicly traded partnerships are entitled to rely on those

proposed Treasury Regulations; however, they are not binding on the IRS and are subject to change until the final Treasury Regulations are issued. Moreover, our method of proration differs from the proposed Treasury Regulations with respect to allocations of certain items of income and loss.

Accordingly, Baker Botts L.L.P. is unable to opine on the validity of our method of allocating income and deductions between unitholders. We use this method because it is not administratively feasible to make these

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allocations on a daily basis. If this method is not allowed under the Treasury Regulations, or only applies to transfers of less than all of the unitholder's interest, our taxable income or losses might be reallocated among the unitholders. We are authorized to revise our method of allocation between unitholders, as well as unitholders whose interests vary during a taxable year, to conform to a method permitted under future Treasury Regulations.

A unitholder who owns units at any time during a quarter and who disposes of them prior to the record date set for a cash distribution for that quarter will be allocated items of our income, gain, loss and deduction attributable to that quarter but will not be entitled to receive that cash distribution.

### ***Transfer Notification Requirements***

A unitholder who sells any of his units, other than through a broker, generally is required to notify us in writing of that sale within 30 days after the sale (or, if earlier, January 15 of the year following the sale). A unitholder who acquires units generally is required to notify us in writing of that acquisition within 30 days after the purchase, unless a broker or nominee will satisfy such requirement. We are required to notify the IRS of any such transfers of units and to furnish specified information to the transferor and transferee. Failure to notify us of a transfer of units may, in some cases, lead to the imposition of penalties.

### ***Constructive Termination***

We will be considered to have been terminated for tax purposes if there is a sale or exchange of 50% or more of the total interests in our capital and profits within a 12-month period. A constructive termination results in the closing of our taxable year for all unitholders. In the case of a unitholder reporting on a taxable year different from our taxable year, the closing of our taxable year may result in more than 12 months of our taxable income or loss being includable in his taxable income for the year of termination. Please read *Tax Treatment of Operations Taxable Year and Accounting Method*. A constructive termination occurring on a date other than December 31 will result in us filing two tax returns (and common unitholders may receive two Schedules K-1) for one fiscal year and the cost of the preparation of these returns will be borne indirectly by all common unitholders. We would be required to make new tax elections after a termination, including a new election under Section 754 of the Code, and a termination would result in a deferral of our deductions for depreciation. A termination could also result in penalties if we were unable to determine that the termination had occurred. Moreover, a termination might either accelerate the application of, or subject us to, any tax legislation enacted before the termination. The IRS has recently announced a relief procedure whereby if a publicly traded partnership that has technically terminated requests and the IRS grants special relief, among other things, the partnership will be required to provide only a single Schedule K-1 to a unitholder for the year in which the termination occurs, notwithstanding the two tax years for the partnership.

### ***Uniformity of Units***

Because we cannot match transferors and transferees of units, we must maintain uniformity of the economic and tax characteristics of the units to a purchaser of these units. In the absence of uniformity, we may be unable to completely comply with a number of federal income tax requirements, both statutory and regulatory. Any non-uniformity could have a negative impact on the value of the units. The timing of deductions attributable to Section 743(b) adjustments to the common basis of our assets with respect to persons purchasing units from another unitholder may affect the uniformity of our units. Please read *Tax Consequences of Unit Ownership Section 754 Election*. For example, it is possible that we own, or will acquire, certain depreciable assets that are not subject to the typical rules governing depreciation (under Section 168 of the Code) or amortization (under Section 197 of the Code) of assets. Any or all of these factors could cause the timing of a purchaser's deductions to differ, depending on when the unit he purchased was issued.

Our limited liability company agreement permits us to take positions in filing our tax returns that preserve the uniformity of our units even under circumstances like those described above. These positions may include reducing for some unitholders the depletion, depreciation, amortization or loss deductions to which they would

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otherwise be entitled or reporting a slower amortization of Section 743(b) adjustments for some unitholders than that to which they would otherwise be entitled. Our counsel, Baker Botts L.L.P., is unable to opine as to validity of such filing positions. A unitholder's basis in units is reduced by his share of our deductions (whether or not such deductions were claimed on an individual income tax return) so that any position that we take that understates deductions will overstate the unitholder's basis in his units, which may cause the unitholder to understate gain or overstate loss on any sale of such units. Please read *Disposition of Units - Recognition of Gain or Loss*. The IRS may challenge one or more of any positions we take to preserve the uniformity of units. If such a challenge were sustained, the uniformity of units might be affected, and, under some circumstances, the gain from the sale of units might be increased without the benefit of additional deductions. We do not believe these allocations will affect any material items of our income, gain, loss or deduction.

## **Tax-Exempt Organizations and Non-U.S. Investors**

Ownership of units by employee benefit plans, other tax-exempt organizations, nonresident aliens, foreign corporations, and other foreign persons raises issues unique to those investors and, as described below, may have substantially adverse tax consequences to them. If you are a tax-exempt entity or a non-U.S. person, you should consult your tax advisor before investing in our common units.

Employee benefit plans and most other organizations exempt from federal income tax, including individual retirement accounts and other retirement plans, are subject to federal income tax on unrelated business taxable income. Virtually all of our income allocated to a unitholder that is a tax-exempt organization will be unrelated business taxable income and will be taxable to it.

Nonresident aliens and foreign corporations, trusts or estates that own units will be considered to be engaged in business in the United States because of the ownership of units. As a consequence, they will be required to file federal tax returns to report their share of our income, gain, loss or deduction and pay federal income tax at regular rates on their share of our net earnings or gain. Moreover, under rules applicable to publicly traded partnerships, we will withhold at the highest applicable effective tax rate from cash distributions made quarterly to foreign unitholders. Each foreign unitholder must obtain a taxpayer identification number from the IRS and submit that number to our transfer agent on a Form W-8BEN or applicable substitute form in order to obtain credit for these withholding taxes.

In addition, because a foreign corporation that owns units will be treated as engaged in a United States trade or business, that corporation may be subject to the United States branch profits tax at a rate of 30%, in addition to regular federal income tax, on its share of our income and gain, as adjusted for changes in the foreign corporation's U.S. net equity, which is effectively connected with the conduct of a United States trade or business. That tax may be reduced or eliminated by an income tax treaty between the United States and the country in which the foreign corporate unitholder is a qualified resident. In addition, this type of unitholder is subject to special information reporting requirements under Section 6038C of the Code.

Under a ruling of the IRS, a foreign unitholder who sells or otherwise disposes of a unit will be subject to federal income tax on gain realized on the sale or disposition of that unit to the extent that this gain is effectively connected with a United States trade or business of the foreign unitholder. Apart from the ruling, a foreign unitholder will not be taxed or subject to withholding upon the sale or disposition of a unit if he has owned less than 5% in value of the units during the five-year period ending on the date of the disposition and if the units are regularly traded on an established securities market at the time of the sale or disposition.

## **Administrative Matters**

### ***Information Returns and Audit Procedures***

We intend to furnish to each unitholder, within 90 days after the close of each taxable year, specific tax information, including a Schedule K-1, which describes his share of our income, gain, loss and deduction for our preceding taxable year. In preparing this information, which will not be reviewed by counsel, we will take various accounting and reporting positions, some of which have been mentioned earlier, to determine his share

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of income, gain, loss and deduction. We cannot assure you that those positions will yield a result that conforms to the requirements of the Code, Treasury Regulations or administrative interpretations of the IRS. Neither we nor Baker Botts L.L.P. can assure prospective unitholders that the IRS will not successfully contend in court that those positions are impermissible. Any challenge by the IRS could negatively affect the value of the units.

The IRS may audit our federal income tax information returns. Adjustments resulting from an IRS audit may require each unitholder to adjust a prior year's tax liability, and possibly may result in an audit of his return. Any audit of a unitholder's return could result in adjustments not related to our returns as well as those related to our returns.

Partnerships generally are treated as separate entities for purposes of federal tax audits, judicial review of administrative adjustments by the IRS and tax settlement proceedings. The tax treatment of partnership items of income, gain, loss and deduction are determined in a partnership proceeding rather than in separate proceedings with the partners. The Code requires that one partner be designated as the Tax Matters Partner for these purposes. Pursuant to the limited liability company agreement, our board of directors may designate an officer of our company that is also a member as the Tax Matters Partner, subject to redetermination by our board of directors from time to time. Currently, our Tax Matters Partner is Kolja Rockov, our Executive Vice President and Chief Financial Officer.

The Tax Matters Partner will make some elections on our behalf and on behalf of unitholders. In addition, the Tax Matters Partner can extend the statute of limitations for assessment of tax deficiencies against unitholders for items in our returns. The Tax Matters Partner may bind a unitholder with less than a 1% profits interest in us to a settlement with the IRS unless that unitholder elects, by filing a statement with the IRS, not to give that authority to the Tax Matters Partner. The Tax Matters Partner may seek judicial review, by which all the unitholders are bound, of a final partnership administrative adjustment and, if the Tax Matters Partner fails to seek judicial review, judicial review may be sought by any unitholder having at least a 1% interest in profits or by any group of unitholders having in the aggregate at least a 5% interest in profits. However, only one action for judicial review will go forward, and each unitholder with an interest in the outcome may participate.

A unitholder must file Form 8082 with the IRS identifying the treatment of any item on his federal income tax return that is not consistent with the treatment of the item on our return. Intentional or negligent disregard of this consistency requirement may subject a unitholder to substantial penalties.

## ***Nominee Reporting***

Persons who hold an interest in us as a nominee for another person are required to furnish to us:

the name, address and taxpayer identification number of the beneficial owner and the nominee;

whether the beneficial owner is:

a person that is not a United States person;

a foreign government, an international organization or any wholly owned agency or instrumentality of either of the foregoing; or

a tax-exempt entity;

the amount and description of units held, acquired or transferred for the beneficial owner; and

specific information including the dates of acquisitions and transfers, means of acquisitions and transfers and acquisition cost for purchases, as well as the amount of net proceeds from sales.

Brokers and financial institutions are required to furnish additional information, including whether they are United States persons and specific information on units they acquire, hold or transfer for their own account. A penalty of \$100 per failure, up to a maximum of \$1,500,000 per calendar year, is imposed by the

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Code for failure to report that information to us. The nominee is required to supply the beneficial owner of the units with the information furnished to us.

***Accuracy-related Penalties***

An additional tax equal to 20% of the amount of any portion of an underpayment of tax that is attributable to one or more specified causes, including negligence or disregard of rules or regulations, substantial understatements of income tax and substantial valuation misstatements, is imposed by the Code. No penalty will be imposed, however, for any portion of an underpayment if it is shown that there was a reasonable cause for that portion and that the taxpayer acted in good faith regarding that portion.

For individuals, a substantial understatement of income tax in any taxable year exists if the amount of the understatement exceeds the greater of 10% of the tax required to be shown on the return for the taxable year or \$5,000. The amount of any understatement subject to penalty generally is reduced if any portion is attributable to a position adopted on the return:

for which there is, or was, substantial authority ; or

as to which there is a reasonable basis and the pertinent facts of that position are disclosed on the return.