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From Peak to Trough: Structuring Energy Deals on the Way Down

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How Oil and Gas Deals are Sourced

- **Initial discussion involving oil and gas transactions come from a variety of sources:**
 - Co-interest owners in jointly-owned properties or owners of interests in contiguous areas
 - Investment bankers
 - Auction process
 - Brokers
 - Lenders
 - Others

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Structure of Oil and Gas Transactions Vary

- **Asset Sale**
- **Asset Exchange**
- **Sale of Equity**
- **Merger**
- **Other**
- **It is not uncommon for negotiations to commence before the parties agree on structure**
- **Determination of proper structure may depend on tax implications, accounting issues, transfer and conveyance issues, title, permit and license issues, liability allocation issues and other factors**

Confidentiality Agreements

- **Usually first binding agreement negotiated by the parties**
- **Seller will not permit the Buyer access to sensitive information, unless the Buyer agrees to (i) keep it confidential; and (ii) not use it for any other purpose other than evaluation of a transaction with the Seller**
- **Selling Agent may also require “areas of mutual interest”, non-competition agreements, restrictions on top leasing, standstill agreements (if Seller or affiliate is a public company), or other less standard provisions**
- **Buyer should review carefully because it is often more than just a confidentiality agreement**
- **Buyers often require the term to be limited to no more than one or two years**

Letter of Intent/Exclusive Dealing

- **Is a letter of intent necessary or required?**
 - Can confirm parties' general understanding of the transaction terms, scope of assets to be sold, etc.
 - Can permit early filing of Hart-Scott-Rodino, or requests for consent
 - Draft carefully and be clear if the LOI is not intended to be binding
 - May want some binding provisions– such as exclusive dealing, advance property or records access, disclaimers of certain agreements or representations and warranties, etc.

Pre-PSA Signing Diligence vs Post-PSA Signing Diligence

- Unless the purchase agreement will simultaneously sign and close (in which case, title and environmental due diligence is typically completed before signing/closing), most of the title and environmental due diligence will be conducted between the signing of the purchase agreement and closing
- However, some due diligence must be conducted prior to the signing of the purchase agreement– such as (i) review of all material contracts (beyond disclosure of list and “no defaults” rep, it’s rare for a buyer to receive a “there are no bad contracts” rep); (ii) confirm which properties are burdened by preferential purchase rights and consents (timing issue; may also be an issue for termination rights under PSA); (iii) pending and threatened litigation; (iv) transfer, tax and structure issues; and (v) other issues for which a seller may not be willing to provide a representation and warranty

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