

2. On October 14, 2008, the UST filed its Application for Order Approving the Appointment of Louis J. Freeh, Esq. as the Examiner in the Debtors' cases (the "Freeh Examiner Application"). The Freeh Examiner Application was approved pursuant to the Order Approving the Appointment of Examiner entered on October 14, 2008, under which Louis J. Freeh, Esq. was appointed as the examiner in the Debtors' cases (the "Examiner").

3. The Examiner Order directed the Examiner to: (a) investigate the circumstances surrounding (i) the Debtors' Trading Strategy¹ and the transfer of their NYMEX account; (ii) the Insider Transactions and the formation of Energy Partners; and (iii) the potential improper use of borrowed funds and funds generated from the Debtors' operations and the liquidation of their assets to satisfy margin calls related to the Trading Strategy for the Debtors and certain entities owned or controlled by the Debtors' officers and directors; and (b) otherwise perform the duties of an examiner set forth in sections 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code (collectively, the "Examiner Investigation"). *See* Examiner Order at ¶ 2. The Examiner Order also directed the Examiner to report on whether: (a) any directors, officers, or employees of the Debtors participated in fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the Debtors; and (b) the Debtors' estates have claims or causes of action against current or former officers, directors, or employees of the Debtors arising from any such participation (collectively, the "Insider Investigation" and, together with the Examiner Investigation, the "Investigation"). *Id.* at ¶ 6.

4. Pursuant to the terms of the Examiner Order, the Examiner is required to complete the Investigation within 120 days following the approval of the Examiner's work plan

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion of the UST for an Order Directing the Appointment of an Examiner dated August 12, 2008 (the "Motion"). [Docket No. 667].

by the Bankruptcy Court (*i.e.* on or about March 24, 2009), unless extended by the Bankruptcy Court on notice to parties who have filed notice of appearance in the Debtors' cases (the "Investigation Deadline".) *Id.* at ¶8.

THE INVESTIGATION IS UNDERWAY

5. Since his appointment, the Examiner and his professionals² have worked diligently to understand the Debtors' Trading Strategy, the Debtors' businesses and organizational structure and the significant issues related and parties relevant to the Investigation based upon the evaluation of publicly available information, including the Motion, the various responses filed to the Motion, the Examiner Order, the motions filed by the Debtors and the Official Committee of Unsecured Creditors (the "Creditors Committee") for Bankruptcy Rule 2004 examinations of various parties (collectively, the "Pending 2004 Motions"), and other pleadings filed in the Debtors' bankruptcy cases. The Examiner and his professionals have also been in preliminary discussions with the Debtors and their professionals, the UST and counsel for the Creditors Committee, and Bank of America, N.A., in its capacity as administrative agent for itself ("Agent") and certain other banking and financial institutions as secured lenders (the "Pre-Petition Secured Parties"), and certain other parties-in-interest regarding the Investigation.

6. Shortly after the appointment of the Examiner, representatives of Examiner's firm, the Freeh Group International (the "Freeh Group"), traveled to the Debtors' offices in Tulsa, Oklahoma and met in person with counsel for the Debtors and telephonically with certain of the Debtors' professionals and toured the Debtors' offices. Thereafter, a meeting was held between the Examiner's professionals and the Debtors' professionals on November 3 and 4,

² As described in more detail below, the Examiner has retained, subject to Bankruptcy Court approval, the following professionals to assist him in fulfilling his duties in connection with the Investigation: The Freeh Group International and KPMG LLP, as his consultants, and Morrison & Foerster LLP, as his counsel, and Polsinelli Shalton Flanigan Suelthaus PC, as his local counsel.

2008, at the office of Weil Gotshal & Manges (“WGM”) in Dallas, Texas (the “November 3rd Meeting”). During the November 3rd Meeting, the Debtors’ attorneys who are primarily responsible for the Debtors’ internal investigation (the “Internal Investigation”), provided the Examiner’s professionals with certain background information regarding the Debtors and the Internal Investigation including, without limitation, an overview of the various interviews conducted, documents collected and certain ongoing investigations by governmental agencies. Additional meetings were held between the Examiner’s professionals and the Debtors’ professionals on November 10 and 11, 2008 at WGM’s offices in Dallas at which time the Debtors’ professionals provided greater details regarding the Internal Investigation including the various interviews which were conducted in connection with the investigation.

7. The Examiner’s professionals have conducted interviews with several of the Debtors’ professionals and employees in connection with the Investigation. The Examiner’s professionals have also met with the Debtors’ counsel and received extensive downloads of information regarding the sum and substance of their interviews conducted in connection with the Internal Investigation. To date, the Examiner’s professionals have conducted over ten interviews with various parties in interest and others regarding the Investigation.

8. The Examiner’s professionals have also met with certain governmental agencies that may be investigating the Debtors, including, but not limited to, the Securities and Exchange Commission, the Department of Justice and the Commodity Futures Trading Commission (collectively, the “Governmental Agencies”), in an effort to understand and coordinate the investigations.

9. The Examiner’s counsel engaged in negotiations and discussions with the Debtors’ counsel in order to reach an agreement regarding the Debtors’ sharing of information

and documents the Debtors have gathered regarding the Investigation. These discussions culminated in the parties' execution on November 12, 2008 of a stipulation, subject to Bankruptcy Court approval, setting forth the terms and conditions of the Debtors' sharing of information and documents with the Examiner (the "Information Sharing Stipulation").

10. This information gathering process and the full cooperation of the various entities have been and will continue to be vital to the Investigation in order to, among other things, coordinate the efforts of all interested parties and avoid unnecessary duplication of work undertaken or to be undertaken by the Debtors, the Creditors Committee, the Governmental Agencies and the Examiner. The information obtained to date and continued cooperation are also crucial to the Examiner's formulation and implementation of a streamlined work plan to timely complete the Investigation, which under the terms of the Examiner Order, is due within 120 days following the approval of the work plan by the Bankruptcy Court (*i.e.*, on or about March 24, 2009) unless extended by the Bankruptcy Court. *See* Examiner Order at ¶ 8.

EXAMINER'S PROPOSED WORK PLAN GOING FORWARD

11. As a result of these preliminary discussions, interviews and meetings and based upon the information currently available to the Examiner, the Examiner's preliminary work plan for the Investigation includes, but is not limited to, the following:

A. Information Gathering and Verification

12. Requesting, gathering, reviewing and analyzing data and information relevant to the subject matter of the Investigation from various parties, including, but not limited to, the Debtors, certain of the Debtors' current and/or former officers, directors, employees and other persons and entities including, without limitation, the Debtors' auditors, corporate counsel, professionals, lenders, investors, Westback Purchasing Co., L.L.C., Westback Holdings, LLC,

and counterparties to certain financial transactions with the Debtors (collectively, the “Witnesses”).

13. Specifically, now that the Examiner and the Debtors have executed the Information Sharing Stipulation, the Examiner anticipates that his professionals will have access to the hundreds of thousands of pages of documents collected by the Debtors regarding the Investigation. The Examiner’s professionals will analyze and review these documents, and, to the extent information is missing or additional information is necessary to verify the underlying information, the Examiner will request such information from additional sources.

B. Interviews and Depositions of Witnesses

14. The Examiner will also seek to conduct voluntary interviews of Witnesses with respect to the issues subject to the Investigation. At this juncture, the Examiner anticipates that interviews with at least 60 Witnesses will be conducted. In order to facilitate the Examiner’s ability to timely and efficiently complete a comprehensive Investigation and fulfill his fiduciary and statutory duties, the Examiner has filed a motion with the Bankruptcy Court granting the Examiner the authority to issue subpoenas, including document requests, upon Witnesses who either refuse to voluntarily cooperate with the Examiner’s requests or who condition their cooperation on the issuance of a subpoena (the “Subpoena Motion”).

15. If this Bankruptcy Court grants the Subpoena Motion, the Examiner will coordinate with the Debtors, the Creditors Committee, and the Agent regarding the examination of any Witnesses who are also subject to the Pending 2004 Motions. Coordination of these examinations is necessary in order to avoid duplication, to minimize the cost to the Debtors’ estates and comply with the provisions of the Examiner Order, which requires the Creditors

Committee to refrain from seeking discovery regarding its investigation to the extent it is duplicative of the scope of the Examiner's Investigation. *See* Examiner Order at ¶ 6.

C. Maintaining Open Lines of Communication

16. During the course of the Investigation, the Examiner intends to continue to maintain open lines of communication with the UST and counsel for the Debtors, the Creditors Committee and the Pre-Petition Secured Parties regarding the status of the Investigation.

17. The Examiner and his professionals will also continue to meet, confer and coordinate with the Governmental Agencies that may be investigating the Debtors.

18. The Examiner, through his counsel, intends to provide periodic reports regarding the Investigation to the Bankruptcy Court at omnibus hearings scheduled in the Debtors' cases and at such other hearings that the Bankruptcy Court may request.

D. Monitoring of Bankruptcy Cases and Any Government Investigations

19. The Examiner's counsel will continue to monitor and review pertinent filings with the Bankruptcy Court regarding or involving any issues related to the Investigation.

20. The Examiner's professionals will also continue to monitor any investigation of the Debtors undertaken by any Governmental Agencies.

E. Preparation of Examiner's Report

21. At this juncture, the Examiner anticipates that during the last 30 to 60 days of the Investigation, a substantial amount of time will be expended by his professionals to prepare for the filing with the Bankruptcy Court of the Examiner's report containing the Examiner's factual findings regarding the Investigation.

RETENTION OF PROFESSIONALS

22. In accordance with the provisions of the Examiner Order, the Examiner has determined that it necessary and appropriate to employ and retain, subject to approval of this Bankruptcy Court, certain professionals in order to fully discharge his fiduciary and statutory duties. *See* Examiner Order at ¶ 9. Specifically, the Examiner seeks authorization to retain the following professionals in connection with the Investigation: A) the Freeh Group; B) Morrison & Foerster LLP; C) KPMG LLP (“KPMG”); and D) Polsinelli Shalton Flanigan Suelthaus PC (“Polsinelli”), each of which is discussed below. The Examiner’s applications to retain these entities will be filed shortly. The Examiner reserves the right to retain additional professionals, as needed based upon modifications to the work plan, subject to Bankruptcy Court approval.

23. The Freeh Group is an international consulting firm consisting in part of former United States Judges, United States Attorneys and agents for the Secret Service and Federal Bureau of Investigation, based in Wilmington, Delaware. The Examiner is the founder and senior managing partner of the Freeh Group. The Freeh Group, led by the Examiner, will be primarily responsible for handling the day-to-day activities regarding the Investigation. These activities include, without limitation, the following: A) scheduling, preparing for, and conducting Witnesses interviews; B) analysis and review of documents regarding the Investigation, including documents produced by Witnesses in response to the Examiner’s document requests and those produced by the Debtors regarding the Internal Investigation; C) meeting and conferring with the Debtors’ counsel regarding the details of the Internal Investigation; D) meeting, conferring and coordinating with representatives of the Governmental Agencies; E) preparing the Examiner’s report; and F) assisting the Examiner in undertaking additional tasks that the Bankruptcy Court may direct.

24. Morrison & Foerster is an internationally recognized law firm with extensive experience and expertise in the fields of, among other things, debtors' and creditors' rights, business reorganizations under Chapter 11 of the Bankruptcy Code, litigation and energy law. In connection with the Examiner's carrying out of his fiduciary duties and responsibilities under the Bankruptcy Code and the Examiner Order, Morrison & Foerster will be the Examiner's lead counsel in connection with the Investigation and the Chapter 11 Cases. Specifically, Morrison & Foerster will render the following services on behalf of the Examiner: A) prepare motions, applications, notices, answers, orders and documents necessary in the discharge of the Examiner's duties; B) appear before this Bankruptcy Court to represent the interests of the Examiner; C) analyze and advise the Examiner regarding any legal issues that arise in connection with the Investigation; D) liaise with the UST and counsel for the Debtors, the Creditors Committee, the Pre-Petition Secured Parties and counsel for Witnesses regarding the Investigation; E) assist with Witness interviews and examinations; F) assist in preparing the Examiner's report; G) perform all other necessary legal services on behalf of the Examiner in connection with the Chapter 11 Cases; and H) assist the Examiner in undertaking additional tasks that the Bankruptcy Court may direct.

25. KPMG is an experienced financial consulting and forensic accounting firm with significant experience evaluating potential corporate malfeasance and investigating alleged corporate fraudulent activity and financial misconduct. The Examiner has retained KPMG as his consultant, in connection with the discharge of his fiduciary and statutory duties. Specifically, the services KPMG will provide to the Examiner include assistance with respect to the Investigation of the Debtors' alleged fraud, impropriety of the trading strategy and trading activities, alleged misuse of loan funds, insider transactions. In particular, KPMG's services will

focus on A) the review and analysis of the Debtors' policies and procedure, trading strategies, and trading transactions; and B) the investigation and analysis of i) the Debtors' use of the funds obtained from the financial institutions; and ii) insider transactions. KPMG will also assist in preparing the Examiner's report and assist the Examiner in undertaking additional tasks that the Bankruptcy Court may direct.

26. Polsinelli is a nationally recognized law firm with extensive experience and expertise in the fields of, among other things, debtors' and creditors' rights, and business reorganizations under Chapter 11 of the Bankruptcy Code. In connection with the Examiner's carrying out of his fiduciary duties and responsibilities under the Bankruptcy Code and the Examiner Order, the Examiner has retained Polsinelli as his local counsel in connection with the Investigation and the Chapter 11 Cases. Specifically, Polsinelli will coordinate with Morrison & Foerster to render the following services on behalf of the Examiner: A) prepare motions, applications, notices, answers, orders and documents necessary in the discharge of the Examiner's duties; and B) appear before this Bankruptcy Court to represent the interests of the Examiner.

ESTIMATED FEES AND EXPENSES

27. The Examiner estimates that the total fees and expenses for the Examiner and his professionals, the Freeh Group, Morrison & Foerster, KPMG, and Polsinelli through the Investigation Deadline will be \$5.9 million. To the extent that Investigation Deadline is extended beyond March 24, 2009, the estimated fees and expenses shall be revisited and, if requested by the Debtors, the Creditors Committee and the Agent, an updated estimate will be filed with the Bankruptcy Court.

28. In accordance with the terms of the Examiner Order, the fees and expenses of the professionals retained by the Examiner are subject to the filing of applications with and approval of the Bankruptcy Court.

RESERVATION OF RIGHTS

29. The Investigation is still in the nascent stage. The Examiner's preliminary work plan is based upon currently available information and presumes the full and complete cooperation of the Debtors, the Creditors Committee and the Pre-petition Secured Parties in accordance with the Examiner Order. *See* Examiner Order at ¶ 5. Given the early stage of the investigation, the Examiner has not yet completed a comprehensive review of the Debtors' internal documents. Given the volume of the documents, it will take significant time to review and analyze the documents. It is inevitable, therefore, that as the process unfolds, the Examiner's work plan will be amended, as necessary, to fulfill the Bankruptcy Court-ordered task. The Examiner reserves his right to modify the work plan accordingly and will keep the Bankruptcy Court informed of his progress on a periodic basis.

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Respectfully submitted,

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