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RE: Equity claw language in bond prospectuses

Dear Sir or Madam:

The Credit Roundtable<sup>[1]</sup> urges caution around provisions in bond prospectuses once again, as another company chooses legal compliance over the spirit of the documentation agreed to by bondholders.

Following the merger of equals in January between Devon Energy Corp (DVN) and WPX Energy, DVN issued a press release on March 11, 2021 that announced that WPX would be redeeming various unsecured debt tranches “in accordance with the terms set forth in the Indenture regarding the redemption of Notes following a cash equity contribution to, or other equity offering by, WPX.” This was closely followed by a statement that “this debt redemption is another important step in our plan to return value to shareholders”.

The CRT notes that none of these bonds included in the proposed transaction are currently within their call period, and given the wording in the press release, the company is using the “equity claw” provision to reduce debt outstanding following the equity-funded merger. The indenture language states that WPX can use “cash not greater than the net proceeds that we



raise in certain equity offerings at a redemption price equal to (par+coupon) of the principal amount of the notes being redeemed, plus any accrued and unpaid interest.”

While some bondholders would argue that the equity claw provision is meant to apply to public or private equity offerings, the company believes that the all-equity merger satisfies the conditions of the equity claw provision. Nonetheless, the pricing of the redemption of each bond is a number of points lower than the trading levels the day before the press release was issued, and significantly lower than the make-whole price. This highlights how ambiguous covenants in bond documentation can create flexibility for a company to choose to transfer wealth from debtholders to shareholders.

In future bond issuances, not only by these companies, the CRT believes that a relatively easy fix would be to strengthen the language in the covenant to specifically reference issuing equity to raise new capital, thereby precluding the use of a stock swap. We welcome the opportunity to discuss our concerns, opinions and recommendations regarding this topic in greater detail.

Please direct any questions to Kelly Byrne Skarupa of The Credit Roundtable at [kbyrne@taminc.com](mailto:kbyrne@taminc.com) or (914) 332-0042.

Sincerely,

The Credit Roundtable

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[1] Formed in 2007, The Credit Roundtable (“CRT”) is a group of large institutional fixed income managers including investment advisors, insurance companies, pension funds, and mutual fund firms, responsible for investing more than \$4 trillion of assets. The Credit Roundtable advocates for creditor rights through education and outreach and works to improve fixed income corporate actions, ineffective covenants, and the underwriting and distribution of corporate debt. Its mission is to improve risk assessment and management through education and seeks to benefit all bond market participants through increasing transparency, market efficiency and liquidity.