Risk Factors Comparison 2024-02-29 to 2023-03-15 Form: 10-K

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● create unrestricted subsidiaries; ● enter into sale and leaseback transactions; ● enter into a merger, consolidation or transfer or sale of assets, including equity interests in our subsidiaries; and ● engage in certain business activities. Our revolving credit facility also contains a springing financial covenant which provides that only if the Company' s availability to borrow loans under the revolving credit facility falls below the sum of (a) the greater of (i) (x) 15 % of the borrowing base then in effect at any time that the refinery asset borrowing base component is greater than $ 0 and (y) 10 % of the borrowing base then in effect at any time that the refinery asset borrowing base component is equal to $ 0 and (ii) $ 45. 0 million (which amount is subject to certain increases) plus (b) the amount of FILO Loans outstanding, then we will be required to maintain as of the end of each fiscal quarter a Fixed Charge Coverage Ratio (as defined in the Credit Agreement) of at least 1. 0 to 1. 0. As of December 31, 2023, the Company was in compliance with all covenants under the revolving credit facility. Our existing indebtedness imposes, and any future indebtedness may impose, a number of covenants on us regarding collateral maintenance and insurance maintenance. As a result of these covenants and restrictions, we will be limited in the manner in which we conduct our business, and we may be unable to engage in favorable business activities or finance future operations or capital needs. Our ability to comply with the covenants and restrictions in our revolving credit facility, the MRL revolving credit agreement, our secured hedge agreements and the indentures governing our senior notes may be affected by events beyond our control. If market or other economic conditions deteriorate, our ability to comply with these covenants and restrictions may be impaired. A failure to comply with the covenants, ratios or tests in our revolving credit facility, the MRL revolving credit agreement, our secured hedge agreements, the indentures governing our senior notes or any future indebtedness could result in an event of default under our revolving credit facility, the MRL revolving credit agreement, our secured hedge agreements, the indentures governing our senior notes or our future indebtedness, which, if not cured or waived, could have a material adverse effect on our business, financial condition and results of operations. Among other things, in the event of any default on our indebtedness, our debt holders and lenders: ~~•~~ **●** will not be required to lend any additional amounts to us; ~~•~~ **●** could elect to declare all borrowings outstanding, together with accrued and unpaid interest and fees, to be due and payable; ~~•~~ **●** could elect to require that all obligations accrue interest at the default rate, if such rate has not already been imposed; ~~•~~ **●** may have the ability to require us to apply all of our available cash to repay these borrowings; ~~•~~ **●** may prevent us from making debt service payments under our other agreements, any of which could result in an event of default under our notes; or ~~•~~ **●** in the event of a default by Calumet or its restricted subsidiaries, could foreclose on the collateral pledged pursuant to the terms of the revolving credit facility or the indenture and security documents governing the 2024 Secured Notes, respectively, or in the event of a default by Montana Renewables Holdings or MRL, could foreclose on the accounts receivables and open blenders tax credit refunds securing the MRL revolving credit agreement. ~~If~~ **39If** our existing indebtedness were to be accelerated, there can be no assurance that we would have, or be able to obtain, sufficient funds to repay such indebtedness in full. Even if new financing were available, it may be on terms that are less attractive to us than our then existing credit facilities or it may not be on terms that are acceptable to us. In addition, our obligations under our revolving credit facility are secured by a first priority lien on our accounts receivable, inventory and substantially all of our cash; the obligations under the MRL revolving credit agreement are secured by accounts receivables and open blenders tax credit refunds; our obligations under our secured hedge agreements and the BP Purchase Agreement are secured by a lien on certain of our real property, plant and equipment, fixtures, intellectual property, certain financial assets, certain investment property, commercial tort claims, chattel paper, documents, instruments and proceeds of the forgoing (including proceeds of hedge agreements); and the 2024 Secured Notes are secured by a first- priority lien on all of the fixed assets that secure our obligations under our secured hedge agreements, and if we are unable to repay our indebtedness under the revolving credit facility, the MRL revolving credit agreement, the 2024 Secured Notes or satisfy the payment obligations under our secured hedge agreements or the payment obligations under the BP Purchase Agreement or obtain waivers of such defaults, then the lenders under our revolving credit facility and under the MRL revolving credit agreement, the counterparties to such agreements, and the holders of the 2024 Secured Notes could seek to foreclose on these assets. Please read Part II, Item 7 " Management' s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources — Debt and Credit Facilities, " " — Short- Term Liquidity, " " — Long- Term Financing " and " — Master Derivative Contracts and Collateral Trust Agreement " for additional information regarding our long- term debt. An increase in interest rates will cause our debt service obligations to increase. **Borrowings under both** ~~Prior to the amendment of~~ our revolving credit facility **and** ~~on January 20, 2022 (~~ the **MRL** ~~" Third Amendment "), borrowings under our~~ revolving credit ~~facility bore~~ **agreement bear** interest at a rate **based on** ~~equal to prime plus a basis points margin or~~ the ~~London Interbank Offered Rate (" LIBOR ") plus a basis points margin, at our option. In light of announcements by the Chief Executive of the United Kingdom Financial Conduct Authority (the " FCA "), which regulates LIBOR, that it intends to stop persuading or requiring banks to submit rates for the calculation of LIBOR after 2021, the Third Amendment provided for the replacement of the LIBOR borrowing option with a~~ daily Secured Overnight Financing Rate (" SOFR ") ~~borrowing option. Additionally, borrowings under the MRL revolving credit agreement bear interest at a rate based on the daily SOFR~~. As of December 31, ~~2022~~ **2023**, we had $ ~~104~~ **136**. ~~0~~ **7** million outstanding borrowings under our revolving credit facility, $ ~~35~~ **29**. ~~8~~ **9** million in standby letters of credit were issued under our revolving credit facility, and ~~no~~ **$ 13. 0 million of** outstanding borrowings under the MRL revolving credit agreement. The **foregoing** interest ~~rate~~ **rates** ~~is~~ **are** subject to adjustment based on fluctuations in daily SOFR or the prime rate, as applicable. An increase in the interest rates associated with our floating- rate debt would increase our debt service costs and affect our results of operations. In addition, an increase in interest rates could adversely affect our future ability to obtain financing or materially increase the cost of any additional financing. A change of control could result in us facing substantial repayment obligations under our revolving credit facility, our senior notes, our secured hedge agreements, our ~~S & O~~ **Supply and Offtake** Agreements, the MRL revolving credit agreement ~~and~~ **,** MRL' s financing arrangements with Stonebriar **, and MRL' s term loan credit agreement with I Squared Capital** . There is no restriction in our partnership agreement on the ability of our general partner to enter into a transaction which would trigger the change of control provisions of our revolving credit facility agreement, the indentures governing our senior notes, our Collateral Trust Agreement, our ~~S & O~~ **Supply and Offtake** Agreements, the MRL revolving credit agreement ~~and~~ **,** MRL' s financing arrangements with Stonebriar **, and MRL' s term loan credit agreement with I Squared Capital** . Certain events relating to a change of control of our general partner, our partnership and our operating subsidiaries would constitute an event of default under our revolving credit facility, our Collateral Trust Agreement and our ~~S & O~~ **Supply and Offtake** Agreements. In addition, an event of default under our revolving credit facility would likely constitute an event of default under the indentures governing our senior notes, our master derivatives contracts and the BP Purchase Agreement. As a result, upon a change of control event, we may be required to immediately repay the outstanding principal, any accrued interest on and any other amounts owed by us under our revolving credit facility, the senior notes and ~~S & O~~ **Supply and Offtake** Agreements and the outstanding payment obligations under our master derivatives contracts and the BP Purchase Agreement. In addition, if a change of control event occurs under the MRL revolving credit agreement, MRL may be required to immediately repay the outstanding principal, any accrued interest on and any other amounts owed by MRL under the MRL revolving credit agreement. The source of funds for these repayments would be our available cash or cash generated from other sources and there can be no assurance that we would have, or be able to obtain, sufficient funds to repay such indebtedness and other payment obligations in full. In addition, our obligations under our revolving credit facility are secured by a first- priority lien on our accounts receivable, inventory and substantially all of our cash; the obligations under the MRL revolving credit agreement are ~~secured~~ **40secured** by accounts receivables and open blenders tax credit refunds; our 2024 Secured Notes are secured by a first- priority lien on all of the fixed assets that secure our obligations under our secured hedge agreements; and our obligations under our master derivatives contracts and the BP Purchase Agreement are secured by a first- priority lien on our and our subsidiaries' real property, plant and equipment, fixtures, intellectual property, certain financial assets, certain investment property, commercial tort claims, chattel paper, documents, instruments and proceeds of the forgoing (including proceeds of hedge agreements). If we are unable to repay our indebtedness under the revolving credit facility, the 2024 Secured Notes, or satisfy the payment obligations under our master derivative contracts or the payment obligations under the BP Purchase Agreement or obtain waivers of such defaults, then the lenders under our revolving credit facility, the holders of our 2024 Secured Notes, the derivative counterparties under our master derivative contracts and BP, respectively, would have the right to foreclose on those assets, which would have a material adverse effect on us. Additionally, if we are unable to repay our indebtedness under the MRL revolving credit agreement, the lenders thereunder would have the right to foreclose on the accounts receivables and open blenders tax credit refunds securing that facility. Capital Projects and Future ~~Growth~~ **GrowthWe** ~~We~~ make capital expenditures in our facilities to maintain their reliability and efficiency. If we are unable to complete capital projects at their expected costs and / or in a timely manner, or if the market conditions assumed in our project economics deteriorate, results of operations or cash flows could be adversely affected. Delays or cost increases related to the engineering, procurement and construction of new facilities, or improvements and repairs to our existing facilities and equipment, could have a material adverse effect on our business, financial condition, results of operations or our ability to make payments on our debt obligations. Such delays or cost increases may arise as a result of unpredictable factors in the marketplace, many of which are beyond our control, including: ~~•~~ **●** denial or delay in obtaining regulatory approvals and / or permits; ~~•~~ **●** changes in government regulations, including environmental and safety regulations; ~~•~~ **●** unplanned increases in the cost of equipment, materials or labor; ~~•~~ **●** disruptions in transportation of equipment and materials; ~~•~~ **●** severe adverse weather conditions, natural disasters or other events (such as equipment malfunctions, explosions, fires or spills) affecting our facilities, or those of our vendors and suppliers; ~~•~~ **●** shortages of sufficiently skilled labor, or labor disagreements resulting in unplanned work stoppages; ~~•~~ **●** market- related increases in a project' s debt or equity financing costs; and / or ~~•~~ **●** nonperformance or declarations of force majeure by, or disputes with, our vendors, suppliers, contractors or sub- contractors. Equipment, even if properly maintained, may require significant capital expenditures and expenses to keep it operating at optimum efficiency. Any one or more of these occurrences noted above could have a significant impact on our business or subject us to significant cost overruns. If we were unable to make up the delays or to recover the related costs, or if market conditions change, we may not realize the anticipated benefits of our capital projects and it could materially and adversely affect our financial position, results of operations or cash flows and, as a result, our ability to make payments of our debt obligations. ~~From~~ **41From** time to time, we may seek to divest portions of our business, which could materially affect our results of operations and result in disruption to other parts of the business. We may dispose of portions of our current business or assets, based on a variety of factors and strategic considerations, consistent with our strategy of preserving liquidity and streamlining our business to better focus on the advancement of our core business. We expect that any potential divestitures of assets will also provide us with cash to reinvest in our business and repay indebtedness. These dispositions, together with any other future dispositions we make, may involve risks and uncertainties, including disruption to other parts of our business, potential loss of employees, customers or revenue, exposure to unanticipated liabilities or result in ongoing obligations and liabilities to us following any such divestiture. In addition, any such divestitures may not yield the targeted improvements in our business. Any of the foregoing could adversely affect our financial condition and results of operations or cash flows and, as a result, our ability to make payments of our debt obligations. Environmental and Regulatory ~~Matters~~ **MattersWe** ~~We~~ may incur significant environmental remediation costs and liabilities in the operation of our refineries, facilities, terminals and related facilities. The operation of our refineries, blending and packaging sites, terminals, and related facilities subject us to the risk of incurring significant environmental remediation costs and liabilities due to our handling of petroleum hydrocarbons and wastes or hazardous substances or wastes, because of air emissions and water discharges related to our operations and activities, and as a result of historical operations and waste disposal practices at our facilities or in connection with our activities, some of which may have been conducted by prior owners or operators. We could incur significant remedial costs in the cleanup of any petroleum hydrocarbons or wastes or hazardous substances or wastes that may have been released on, under or from the properties owned or operated by us. While we believe we have adequately reserved for these possibilities, such costs and liabilities are difficult to predict and could exceed the amount reserved. Some environmental laws may impose joint and several, strict liability for releases of petroleum hydrocarbons and wastes or hazardous substances or wastes, which means in some situations, we could be exposed to liability as a result of our conduct that was lawful at the time it occurred or the conduct of, or conditions caused by, prior operators or other third parties. Private parties, including the owners of properties adjacent to our operations and facilities where our petroleum hydrocarbons or wastes or hazardous substances or wastes are taken for reclamation or disposal, may also have the right to pursue legal actions to enforce compliance as well as to seek damages for non- compliance with environmental laws and regulations or for personal injury or property damage. We may not be able to recover some or any of these costs from insurance or other sources of indemnity. To the extent that the costs associated with meeting any or all of these requirements are significant and not adequately secured or indemnified for, there could be a material adverse effect on our business, financial condition and results of operations or cash flows and, as **a** result, our ability to make payments of our debt obligations. We are subject to operational compliance with stringent environmental and occupational health and safety laws and regulations that may expose us to significant costs and liabilities. Our refining, blending and packaging site, terminal and related facility operations are subject to stringent federal, regional, state and local laws and regulations governing worker health and safety, the discharge of materials into the environment and environmental protection. These laws and regulations impose legal requirements that are applicable to our operations, including the obligation to obtain permits to conduct regulated activities, the incurrence of significant capital expenditures for air pollution control equipment to limit or prevent releases of pollutants from our facilities, the expenditure of significant monies in the application of specific health and safety criteria addressing worker protection, the requirement to maintain information about hazardous materials used or produced in our operations and to provide this information to required parties, and the incurrence of significant costs and liabilities for pollution resulting from our operations or from those of prior owners or operators of our facilities. Numerous federal and state governmental authorities, such as the U. S. EPA, OSHA and the Louisiana Department of Environmental Quality (“ LDEQ ”), have the power to enforce compliance with these laws and regulations and the permits issued under them, often requiring challenging and costly actions. From time to time, we receive notices of violation, other enforcement proceedings and regulatory inquiries ~~from~~ **42from** governmental agencies alleging non- compliance with applicable environmental and occupational health and safety laws and regulations. Failure to comply with such laws and regulations as well as any issued permits and orders may result in the assessment of administrative, civil, and criminal sanctions, including monetary penalties, the imposition of remedial or corrective action obligations or the incurrence of capital expenditures, the occurrence of delays or cancellations in the permitting, development or expansion of projects, litigation, and the issuance of injunctions limiting or preventing some or all of our operations. ~~38~~ **New worker safety and environmental laws and regulations, revised interpretations of such existing laws and regulations, increased governmental enforcement or other developments could require us to make additional, unforeseen expenditures. The adoption of more stringent environmental laws or regulations could impact us by requiring installation of new emission controls on some of our equipment, resulting in longer permitting timelines, and significantly increasing our capital expenditures and operating costs, which could adversely impact our business, cash flows and results of operation. Please read Items 1 and 2 “ Business and Properties — Environmental and Occupational Health and Safety Matters ” for additional information. The availability and cost of renewable identification numbers and results of litigation related to our SRE petitions could have a material adverse effect on our results of operations and financial condition and our ability to make payments on our debt obligations. Under the RFS provisions of the Clean Air Act, the EPA sets or adjusts volume mandates for the percentages of four compliance categories — cellulosic biofuel, biomass- based diesel, advanced biofuel, and total renewable fuel — to be blended into gasoline and diesel produced or imported during each calendar year. Most recently, the EPA has established these volume mandates for RFS program years 2023, 2024 and 2025 under final rules published in June 2023. We, and other refiners subject to RFS requirements, may meet those requirements by blending the necessary volumes of renewable transportation fuels into our production. To the extent that refiners cannot blend renewable fuels in the quantities required, those refiners may purchase renewable credits, referred to as RINs, which are created by blending done by others. Our Shreveport and Great Falls refineries are normally subject to compliance with the RFS volume mandates. Our annual RINs Obligation, which includes RINs that are required to be secured through either our own blending or through the purchase of RINs in the open market, is approximately 65 million RINs across the four compliance categories. However, the EPA granted certain of our refineries the small refinery exemption (“ SRE ”) provided by the RFS in past years including, most recently, for the 2018 program year. Refineries that receive a SRE are not subject to the RFS renewable blending requirements for the corresponding calendar year. We have submitted SRE petitions for our Shreveport and Great Falls refineries for program years 2018, 2019, 2020, 2021, 2022 and 2023. All of these SRE petitions are in various stages of litigation. For 2018, EPA granted our SREs then later reversed (along with other SRE petitions from other small refineries) under a “ blanket denial ” issued in April 2022. The blanket denial included an alternate compliance approach under which the refineries, in essence, were deemed to have met their 2018 compliance obligations without tendering additional RINs. EPA’ s 2018 alternate compliance approach is being challenged by Growth Energy, which in turn caused us to appeal the 2018 blanket denial. For 2019 and 2020 our SRE petitions were subject to a separate “ blanket denial ” in June 2022 (along with all other SRE petitions from all small**

refineries for those years) which we have appealed. For 2021 and 2022 our petitions were denied in July 2023 on the same grounds that EPA applied to our 2019 and 2020 petitions which we have appealed. For 2023 the EPA has not yet acted on our SRE petitions. Status of Appeals. The U. S. Court of Appeals for the Fifth Circuit in November 2023 found venue to properly reside in the regional circuit and vacated EPA' s denial of Shreveport refinery' s 2018, 2019 and 2020 SRE petitions on the basis that EPA' s actions were impermissibly retroactive and arbitrary and capricious and remanded the decision to EPA. Shreveport refinery' s 2021 and 2022 compliance obligations were stayed on September 14, 2023 while that appeal is pending. The D. C. Circuit granted a stay relating to the Montana refinery' s 2018, 2019 and 2020 compliance obligations in March 2023, and a stay of the 2021 and 2022 obligations on October 23, 2023, indicating that the Montana refinery is likely to be successful on the merits of its appeals which are pending. We cannot predict the final outcome of these matters or whether they may result in increased RFS program compliance costs. Moreover, the price of RINs remains subject to extreme volatility, with the potential for significant increases in price driven by political decisions rather than fundamentals. There also continues to be a shortage of advanced biofuel 43