

J. ARON & COMPANY'S ("ARON") COMMENTS TO THE PROPOSED CHANGES
TO THE GAS INDUSTRY STANDARDS BOARD BASE CONTRACT FOR SALE
AND PURCHASE OF NATURAL GAS

Section 10.3.1: Forward Contract Damages Apply.

- (i) Recommendation: (a) delete the phrase "and options to extend" in the parenthetical in the penultimate sentence of the above referenced section, and (b) add the following sentence before the last sentence in the above referenced section: "For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction **shall** be considered in determining Contract Values and Market Values."

It is not unusual for gas purchase/sale transaction to feature an option that entitles one party to the transaction to extend its terms for a specified period. These options are commonly referred to as an "extendible". For example, a seller may agree to sell 1,000 MMBTUs of gas a month to a purchaser for one year at a contract price of \$2.50 while granting the purchaser the right to extend those terms at the year expiration for an additional six months. If at the expiration the cost of natural gas has risen to \$3.00 per MMBTU, the right to extend a \$2.50 purchase for an additional six months represents significant value to the purchaser. In the event that the seller defaulted, it should be made clear that the value of the extendible should be taken into account for purposes of Section 10.3.1.

Section 10.3.2: Other Agreements Setoffs Apply.

- (i) Recommendation: add the following as new subsection 10.3.2(ii), "any Net Settlement Amount owed to the Defaulting party against any margin or other collateral held by the Defaulting Party in connection with any Credit Support Obligation relating to the Contract,"

We believe that this is worthwhile clarification. As currently drafted, Section 10.3.2 makes it clear that the Non-Defaulting Party may set off margin/collateral that it is holding from the Defaulting Party against amounts that the Non-Defaulting Party owes the Defaulting Party. A corresponding provision should be included to make it clear that any amounts owing by the Non-Defaulting Party to the Defaulting Party would be reduced to the extent that the Non-Defaulting Party has posted margin/collateral that is held by the Defaulting Party. We believe that having this provision within the terms of the GISB will help to ensure that such reduction of amounts owing by the Non-Defaulting Party would not be subject to any automatic stay.

Section 14.1: The Transfer Provision.

- (i) Recommendation: add the following after the word “party” in Section 14.1(ii), “provided, however, that (a) such transfer or assignment is to an entity whose credit worthiness is equal to or better than that of the transferee party immediately preceding the transfer and (b) such transfer has no adverse tax consequences to the non-transferring party”.

The purpose of this recommended change is to allow a party to transfer its rights and obligations under this agreement to an affiliate without the consent of the other party while providing a basic standard of protection for the non-transferring party. Without these recommended changes a party could find itself suffering from adverse tax consequences or dealing with an entity with unacceptable credit simply because that entity fell within the broad definition of Affiliate.

Section 14.5: Choice of Law.

- (i) Recommendation: remove Texas law as the default choice and leave the choice of law up to the parties to negotiate.

The purpose of this recommended change is to allow the parties greater flexibility to negotiate and determine the choice of law to govern the contract. By including a default choice for this issue, any party who would rather have the Agreement governed by a choice of law other than the default choice is at a distinct negotiating disadvantage. We would recommend addressing this issue as it is presently addressed in the GSIB Agreement, which is to leave the choice of law up to negotiation with no default choice.