



# *WSG 2016 Meeting of the Americas*

25 – 26 FEBRUARY 2016 | HOUSTON, TEXAS, USA



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#WSGevents2016

# Market Trends Affecting Consolidation and Restructuring

PANEL DISCUSSION | 14:45 – 16:00

MODERATOR:

**Michael Bernard**, Member, *Dykema*

PANELISTS:

**Andrew McKay**, Head of Investment Banking, *Hilliard Lyons*

**Kenric Kattner**, Partner, *Haynes and Boone, LLP*

**Sergio Michelsen Jaramillo**, Partner, *Brigard & Urrutia*

**David Allard**, Partner, *Lawson Lundell LLP*

# Market Trends Affecting Consolidation and Restructuring

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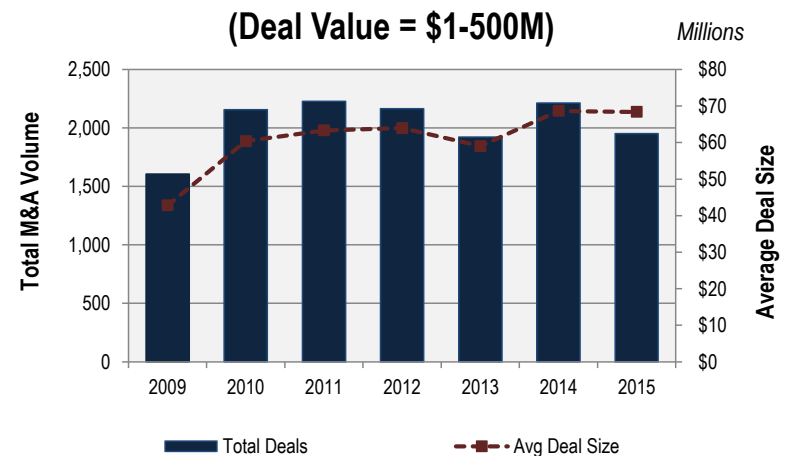
**February 2016**



# U.S. M&A Market Overview: *Middle Market Activity Reflects a Seller's Market*

- In terms of both deal flow (number of transactions) and total transaction value, M&A activity in the middle market has recovered from the 2009 downturn.
- Average deal size has surpassed pre-recession levels.
- Q4 2012 saw accelerated activity as business owners sought to exit prior to capital gains tax changes.
- As a result of that accelerated pipeline, deal flow experienced a temporary slowdown in 2013.
- M&A activity in 2015 has been slowed by reduced private equity deal flow at the upper end of the middle market.
- Heated competition from strategic acquirors has resulted in private equity firms investing in platforms at lower enterprise values.
- High multiples, highly competitive auctions, and increasing PE activity in the lower middle market reflect a seller's market in 2016.

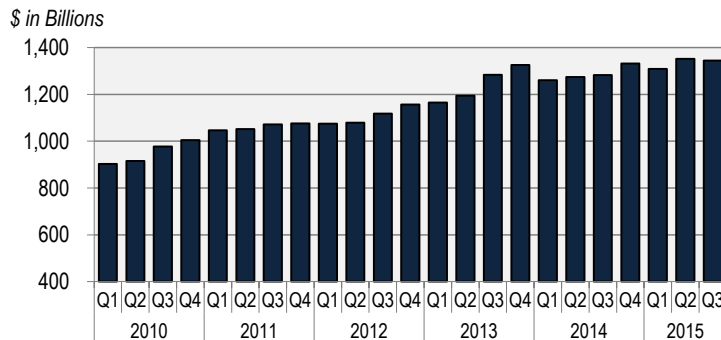
## Middle Market M&A Activity



Source: S&P Capital IQ

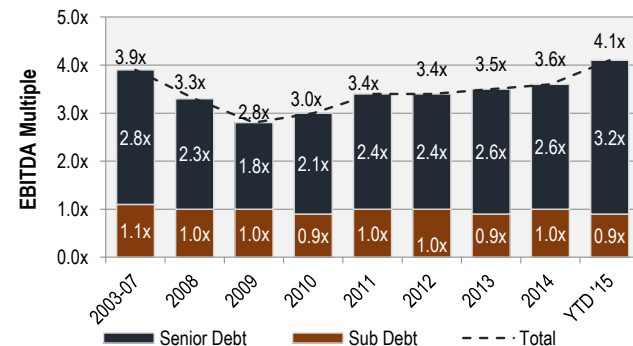
- Cash reserves held by non-financial members of the S&P 500 remain at all-time highs, currently over \$1.3 trillion.
- Managements are under increasing pressure to transform large pools of “minimal-return” cash into positive IRR through share buy-backs, capital investment, and acquisitions.
- Much of this dry powder will be reinvested through strategic growth acquisitions.
- The return of 3.5x+ average EBITDA lending multiples is supporting acquisition growth and has been critical to robust private equity activity.

## S&P 500 – Cash Reserves (\$B)



Source: Capital IQ

## Average Lending Multiples



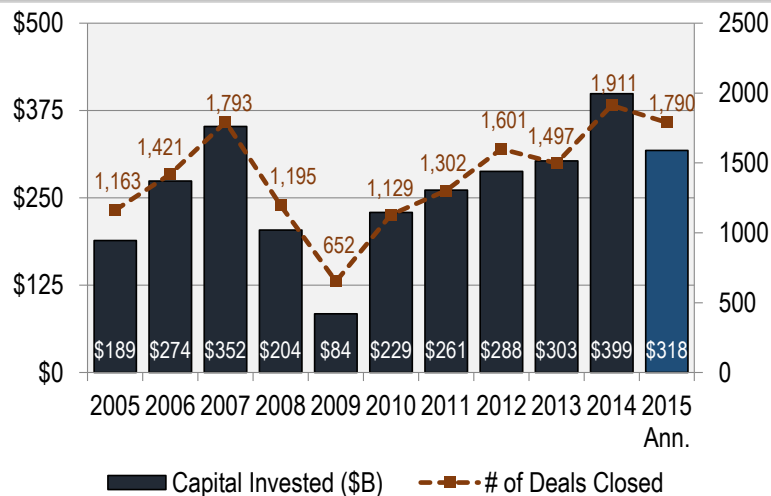
Source: GF Data Resources LLC – YTD '15 through September 30

# Private Equity Capital Availability

## Private equity funds continue to invest historic amounts of “dry powder”

- The number of PE closed deals and dollars of capital invested in the middle market skyrocketed in 2014, reaching levels not seen since the peak year of 2007.
- Private Equity firms raised \$140B of capital specifically geared for the middle market in 2014, also representing a post-recession high.
- An approximated \$400B in total private equity “dry powder” and access to low-cost debt capital continues to drive transaction volume.

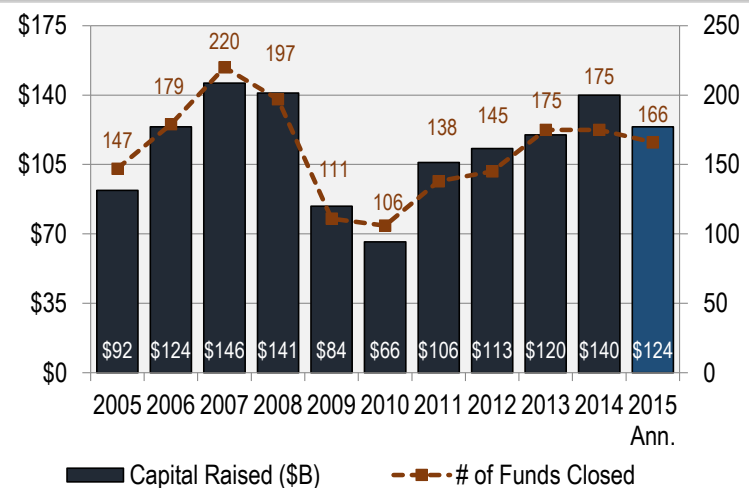
**PE Middle Market Deal Flow**



Source: Pitchbook

\*2015 data based on 1H

**Middle Market Fundraising**



Source: Pitchbook

\*2015 data based on 1H



# Valuation Update & Expectations

- GF Data Resources, a specialty provider of transaction data and intelligence, maintains a database of private equity-sponsored middle market transactions that have occurred since 2007. Lower middle market data from this reference source has reflected a steady valuation increase since 2010.
- There are a multitude of steps that an owner can take to maximize the value of her/his business, such as planning ahead of time, paying attention to market dynamics that could affect the company, and engaging early with accountants and bankers. Overall, the size of the deal is positively correlated with EBITDA multiple improvement.
- We expect valuations in the first-half of 2016 to be in line with the numbers highlighted in 2015, with strategic activity fetching slightly higher multiples substantiated by synergistic processes.

## Private Equity: TEV/EBITDA Multiples by Year

Enterprise Value						
Range (\$M)	2003 - 2010	2011	2012	2013	2014	2015
10 - 25	5.6x	5.3x	5.8x	6.0x	5.4x	5.9x
25 - 50	6.2x	6.4x	6.2x	6.9x	6.7x	6.7x
50 - 100	6.7x	7.5x	6.8x	6.8x	8.6x	7.5x
100 - 250	7.2x	7.7x	7.4x	7.5x	7.8x	9.0x
<b>All Deals</b>	<b>6.1x</b>	<b>6.4x</b>	<b>6.3x</b>	<b>6.5x</b>	<b>6.8x</b>	<b>6.7x</b>

Source: GF Data Resources LLC



# M&A Outlook: *Current Factors Affecting M&A Landscape*

## ECONOMIC ENVIRONMENT

- Stabilization and continued improvement, though sustainability uncertain.
- Consumer confidence is well off its lows, and sentiment is more positive following the key retail season; these trends have strengthened in 2015.
- Stocks have rebounded slightly after getting off to a tumultuous start in 2016.

## EQUITY MARKETS

- Many companies continue to meet or exceed expectations and generate impressive profitability. Balance sheets remain conservative.
- The equity markets have begun to experience some pricing corrections, but interest rates were raised in late 2015; the Fed's outlook for 2016 is cautious.

## DEBT MARKETS

- Debt markets have improved steadily since 2010. Interest rates continue to be accommodative.
- Leverage multiples are increasing and pricing has tightened.
- Low volume of quality credits → supply/demand imbalance that favors issuers.

## CAPITAL ACCESSIBILITY

- Corporate cash balances near record levels and unprecedented supply of private equity capital propel rising M&A activity.
- Private equity capital under management remains near record levels.
- Private equity interest is making private businesses a far more liquid asset class.

## POLITICAL OUTLOOK

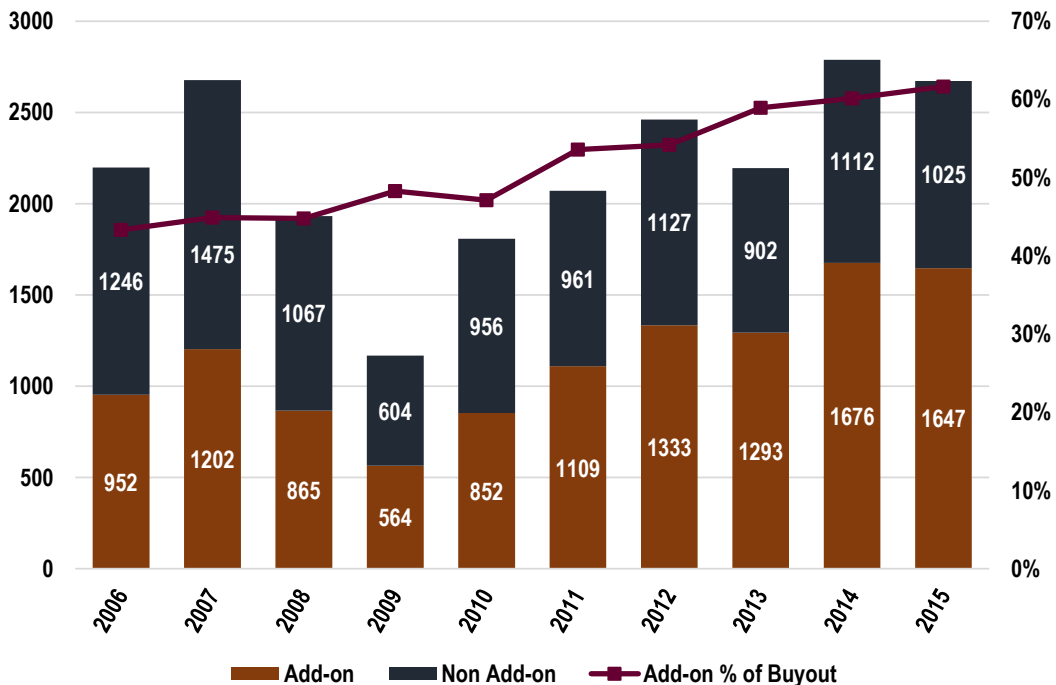
- Broader political uncertainty in areas like Eastern Europe, the Middle East, and China may impair investor confidence going forward.
- The political atmosphere in the United States is highly uncertain concerning the election in November 2016, with no party yet having selected a candidate.

## SUMMARY

- Deal volume and multiples are expected to be relatively consistent with 2015 levels over the first-half of 2016.
- Enough uncertainty persists to make further prognostication unreliable.

# Strategic Consolidation

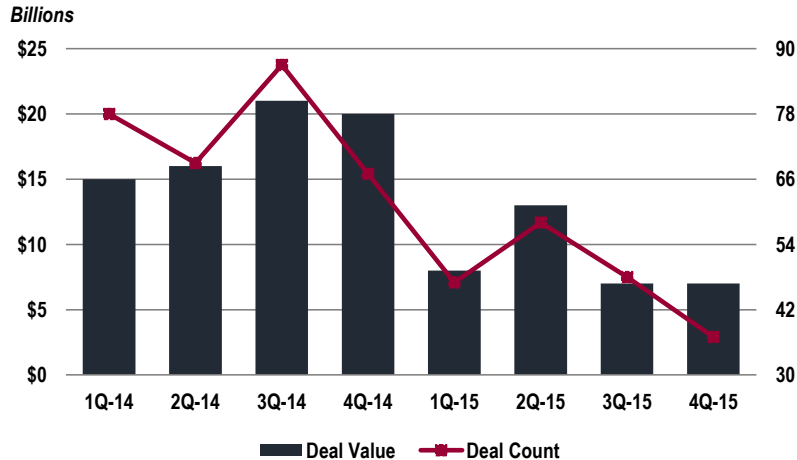
U.S. Add-on % of Buyout Activity



- With increased competition amongst PE funds and dry powder still at a post-recession high of \$400B, valuations continue to be supported at near peak levels.
- Buyers are showing selectiveness by focusing on strategic acquisitions (add-ons) to bolster their growth.
- The M&A activity for PE sponsors is closer to 45% as compared to a high of 80% a few years ago.
- As a result, the role of the strategic buyer has become more pronounced. Seeking acquisitions with the intention of complementing current operations (or portfolio company) to generate synergies has become the new *modus operandi*.

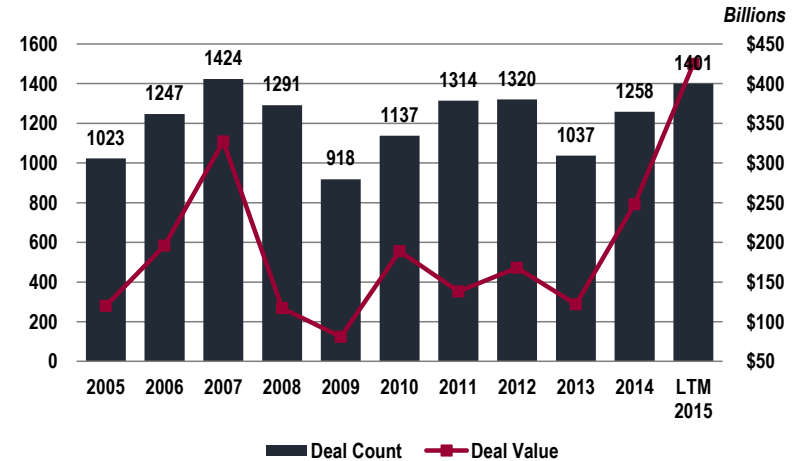
# Industry Trends and Inbound M&A

## U.S. Energy Sector Deal Flow



- The U.S. energy sector has contracted as concerns over the decline in commodity prices and a glut in the oil supply create market uncertainty.
- Overall in North America, however, the Energy, Mining & Utilities sector was the second most active in terms of deal volume (245) and value (\$25B) with Technology, Media & Telecommunication coming in first in deal volume (353) and value (\$28.9B).
- The least active sectors were Pharmaceutical, Medical & Biotech and Business Services with 187 and 181 in deal volume, respectively.

## U.S. Inbound M&A



- Interest from abroad has grown significantly in the last three years, culminating in a record sum of deal value that surpasses the previously high mark set in 2007.
- The top targeted industry was Technology with 348 deals, followed by Healthcare & Professional Services (152).
- With 383 deals, Canada was the top source of the investors; U.K., Germany, France, and Switzerland represented the bulk of the European inbound activity with 336 deals in total.

Sources: Firmex; Pitchbook; Dealogic – LTM 2015 as of November 30

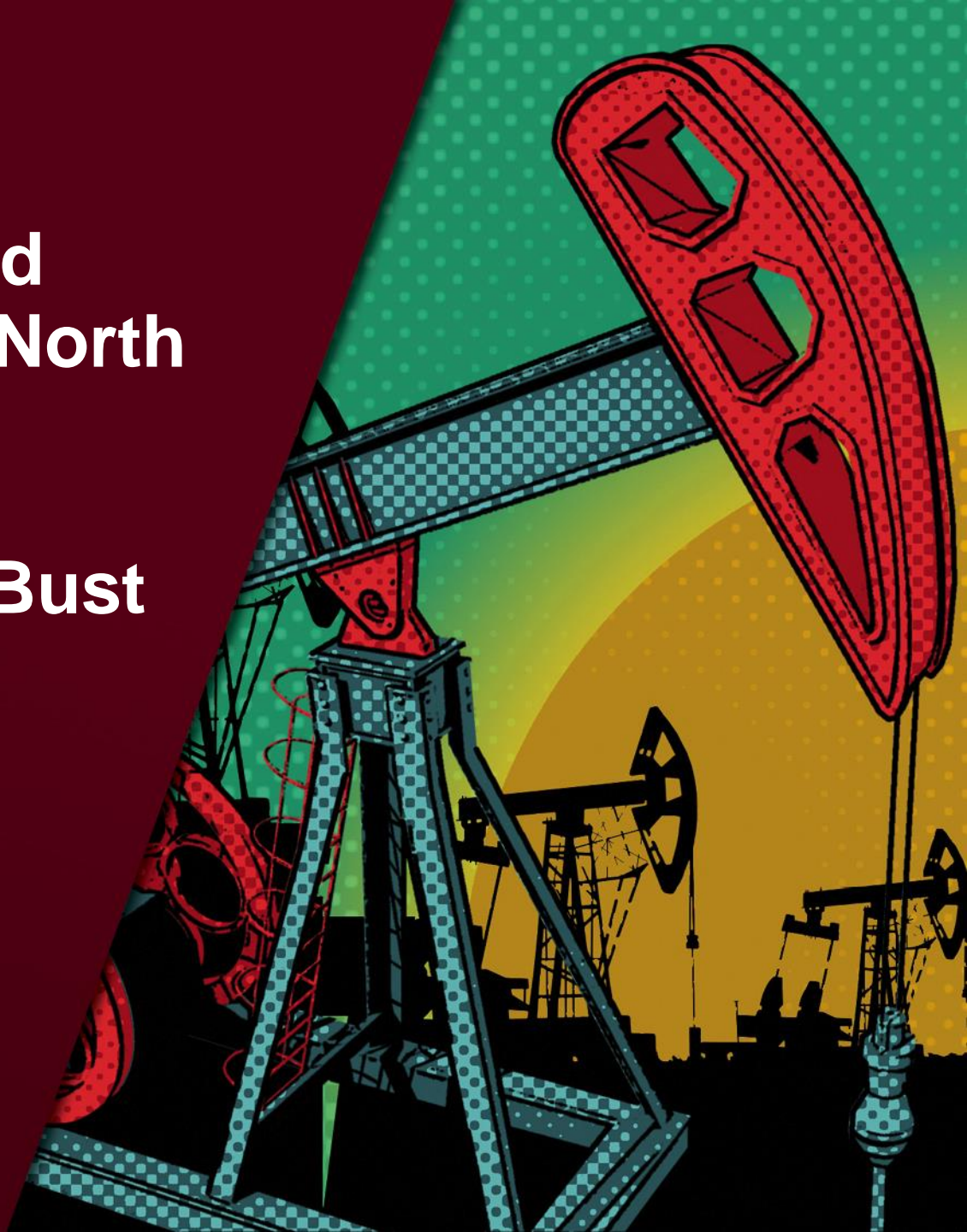
# Market Trends Affecting Consolidation and Restructuring

Kenric Kattner, Partner, *Haynes and Boone, LLP*

# Consolidation and Restructuring in North America –

## The Oil and Gas Bust

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# CURRENT ENERGY INDUSTRY TRENDS

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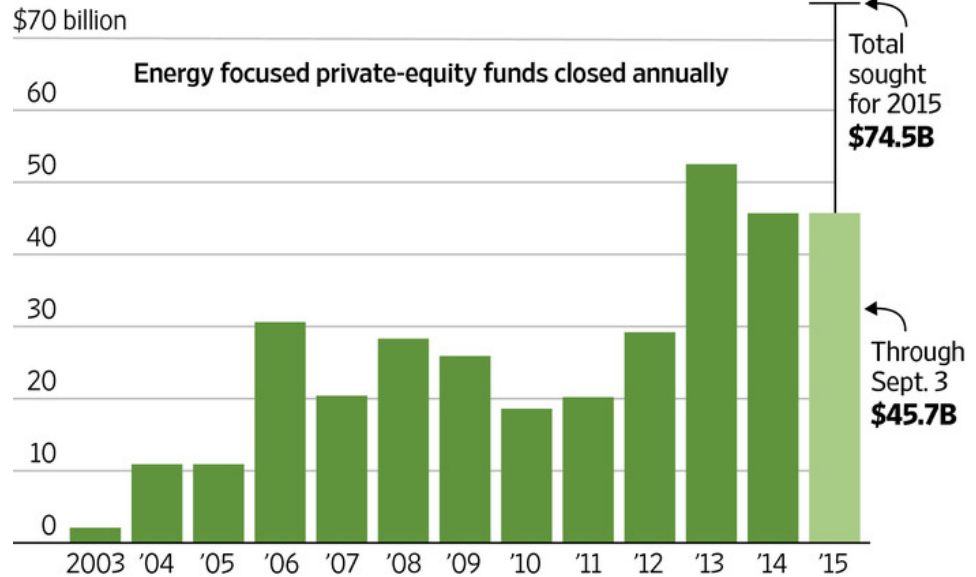
- Growing consensus that commodity prices will stay low for some time
- Bank regulators are pressuring senior energy lenders to redline large parts of their loan portfolio, requiring much larger bank reserves and rendering these loans unprofitable
- Regulators are extending this pressure to bank affiliates that have been second lien lenders
- Result: funding gap to be filled by non-bank lenders and significant opportunities for distressed M&A

# CURRENT ENERGY INDUSTRY TRENDS

- **\$115.6 billion** of PE dedicated to new energy deals and 67 energy focused funds trying to raise \$29 billion more. Including leverage, energy funds have **\$300 billion** to spend\*.

## Greasing the Skids

Private-equity firms are looking to raise more than \$70 billion for energy investments this year.



Source: Preqin

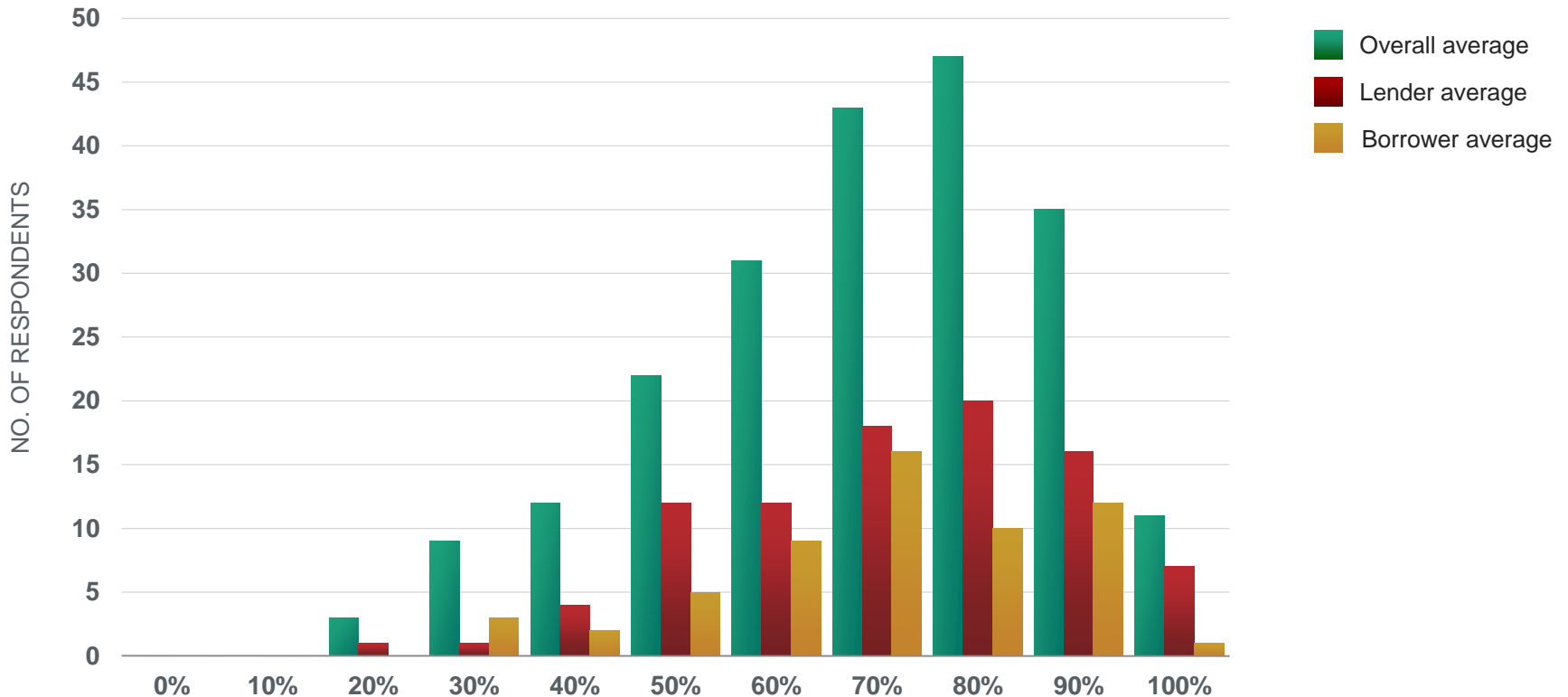
THE WALL STREET JOURNAL.

\*Private-Equity Firms Plunge Back Into the Oil Patch, *Wall Street Journal*, September 4, 2015.

## Haynes and Boone Borrowing Base Survey - Question 2:

What percentage of E&P borrowers do you anticipate will see a decrease in their borrowing base redeterminations in spring 2016?

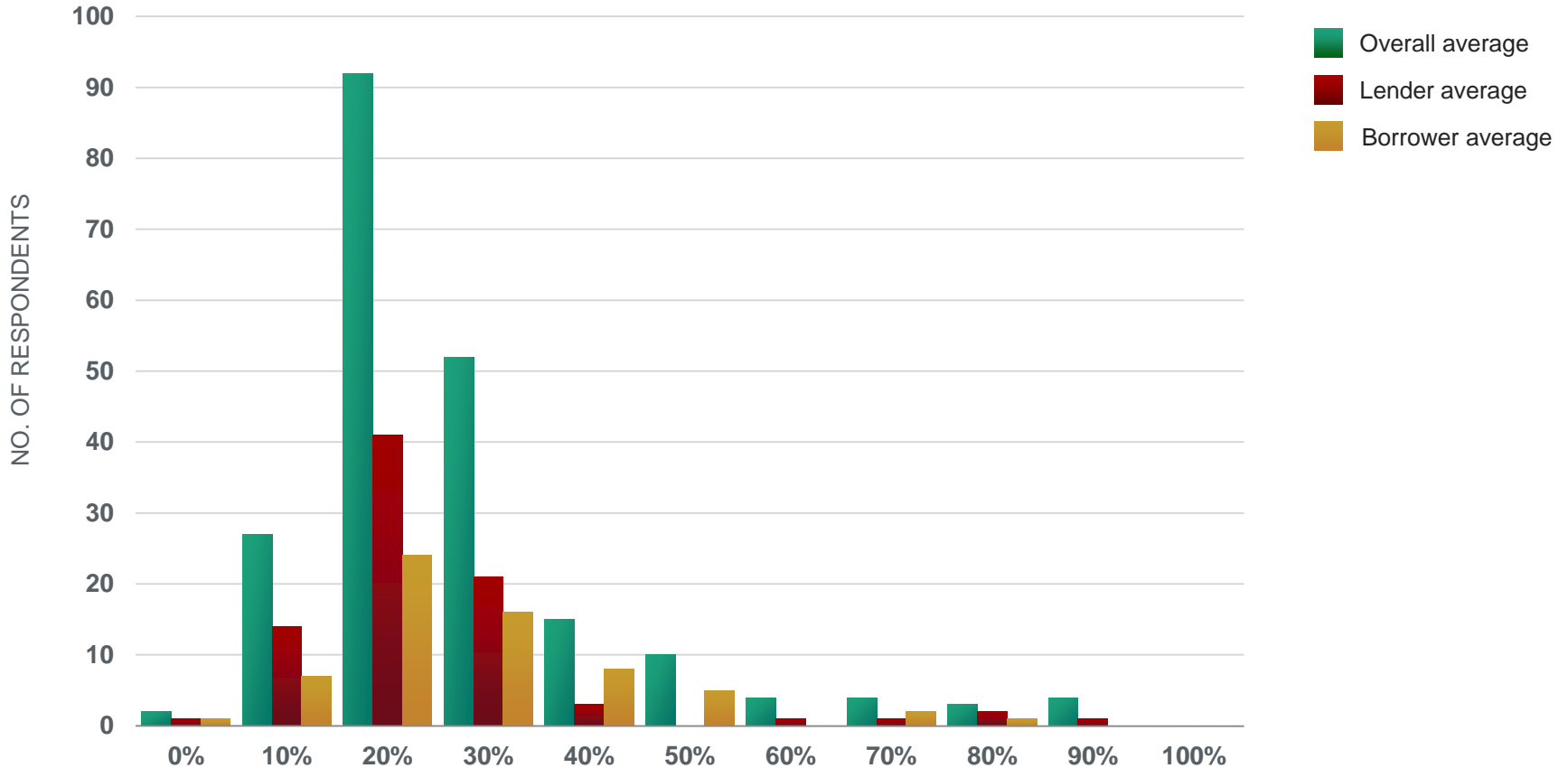
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In this survey, respondents on average overall expect 79% of the borrowers to see a decrease. Lenders response was approx. 70% and borrowers was approx. 67%.

### Haynes and Boone Borrowing Base Survey - Question 3:

What percentage below fall 2015 borrowing bases do you expect spring 2016 borrowing bases to be?

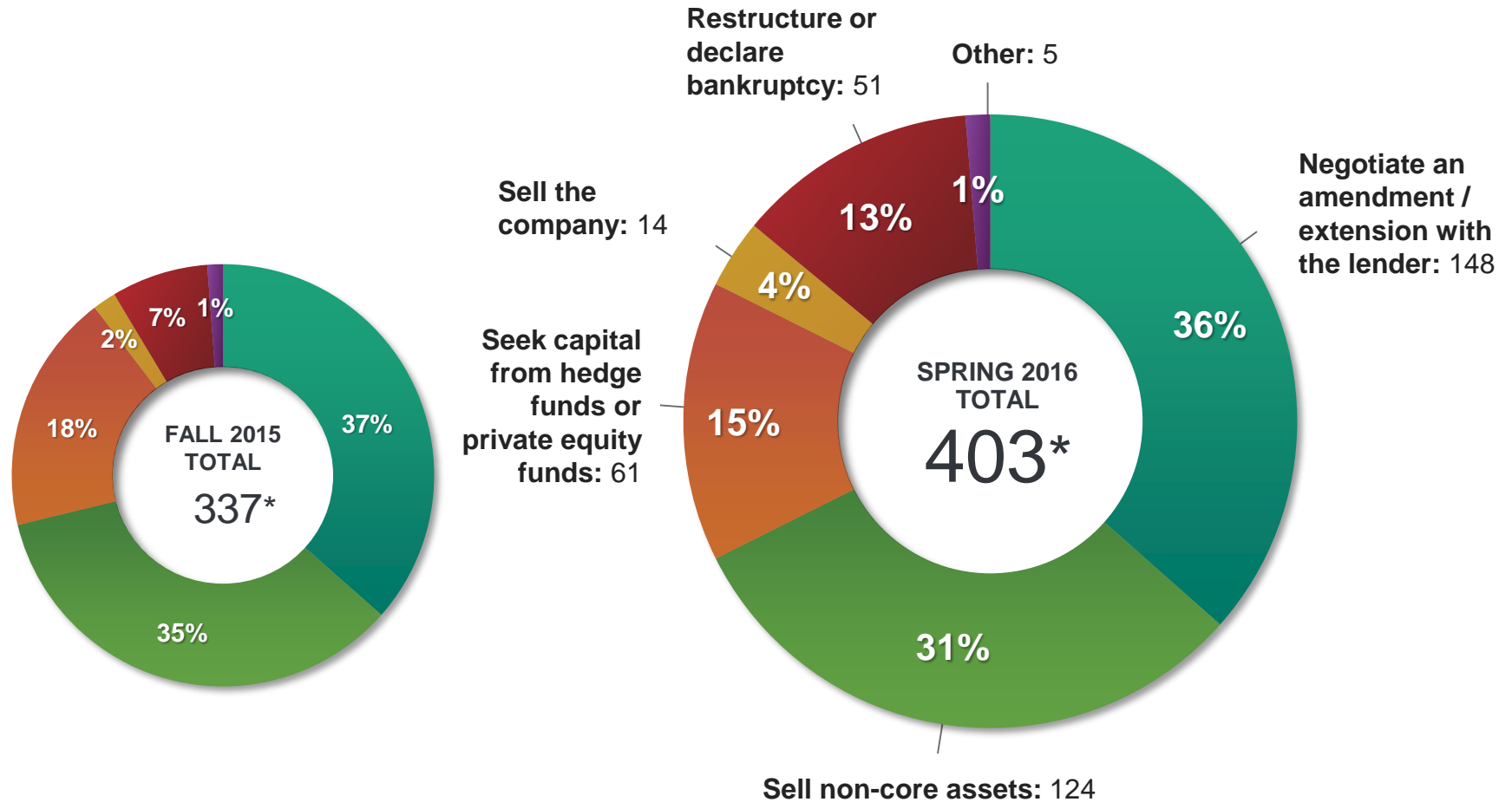


In this survey, respondents on average overall expect a 38% decrease. Lenders expect a 25% decrease and borrowers expect a 28% decrease.

## Haynes and Boone Borrowing Base Survey - Question 4:

Which one or two of the following options do you think will be the most likely path that lenders and borrowers will take if faced with a borrowing base deficiency in spring 2016?

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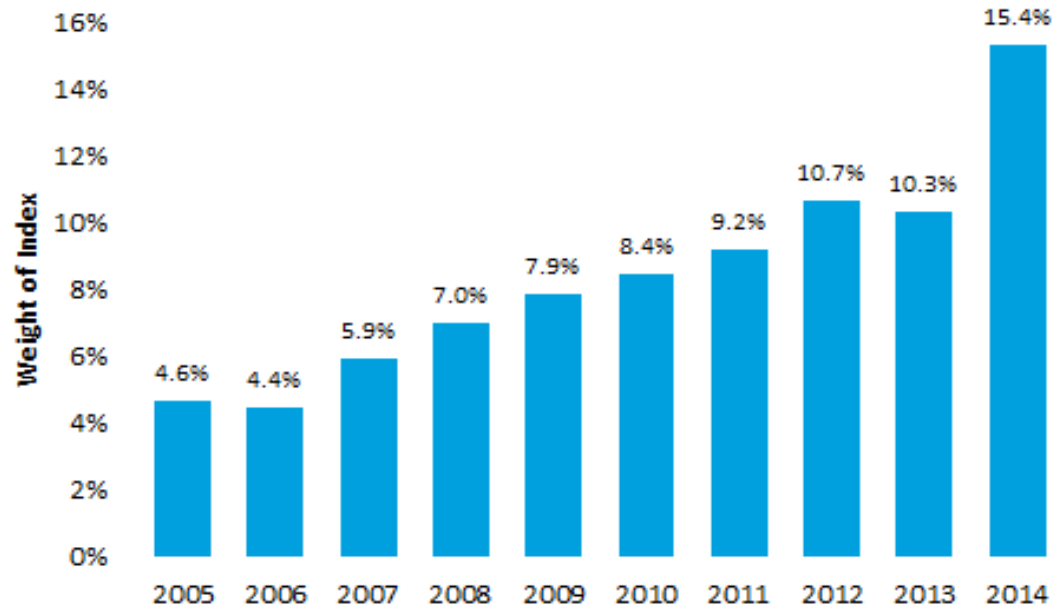


\*Up to two options could be selected.



# THE RUSH FOR CAPITAL

Energy companies make up a rising share of the high-yield bond market

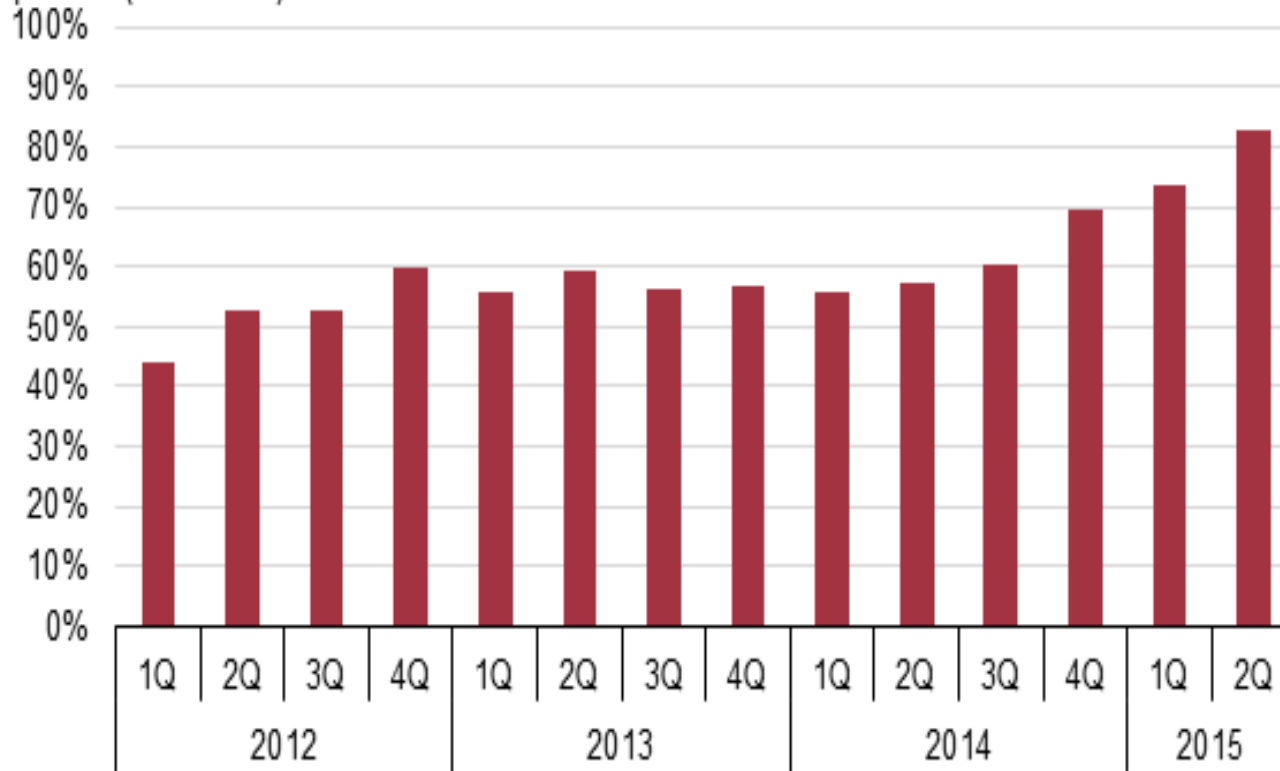


Source: Barclays U.S. Corporate High Yield Bond Index. Columns represent the weight of the energy sector in the index. All columns represent year-end values, except 2014, which is as of October 17, 2014.



# DEBT EATS UP OPERATING CASH FLOW

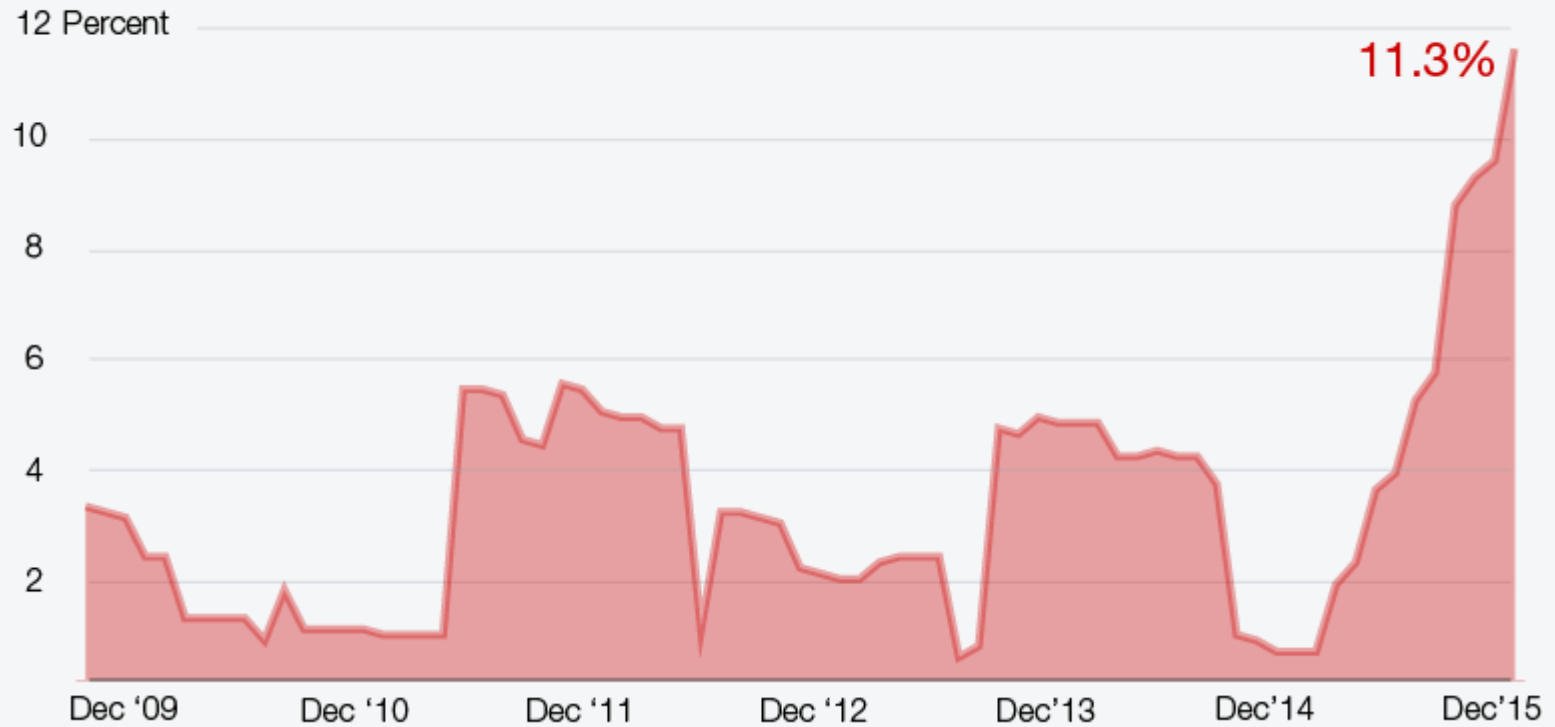
U.S. onshore oil producers' debt service as a share of operating cash flow  
percent (annualized)



# DEFAULTS ON THE RISE

## Red flag: Defaults are rising

Energy exploration and production company defaults in past 12 months

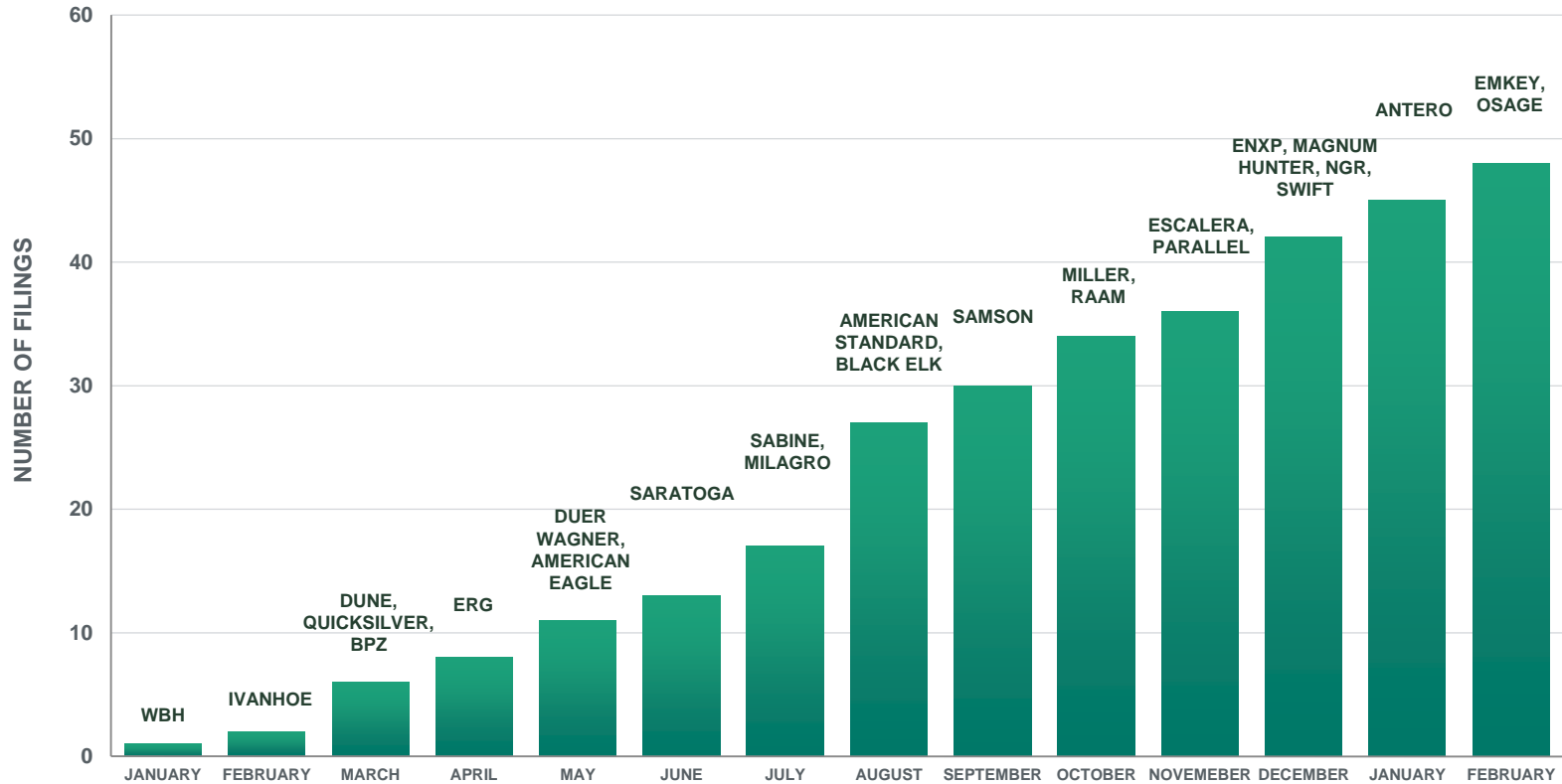


SOURCE: FITCH RATINGS



# 2015-2016 CUMULATIVE NORTH AMERICAN E&P BANKRUPTCY FILINGS

## HAYNES AND BOONE OIL PATCH BANKRUPTCY MONITOR

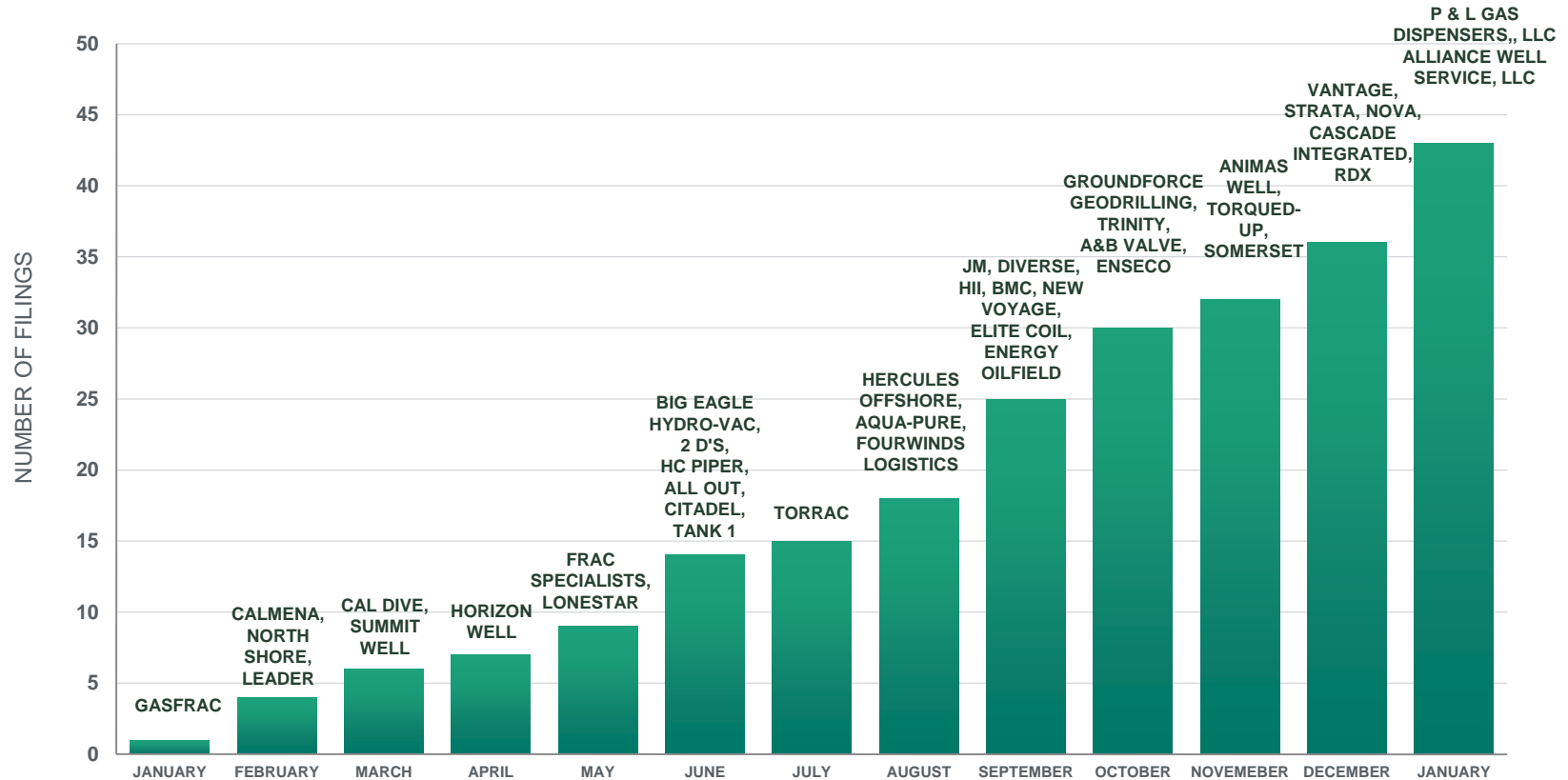


The chart above includes the names of some of the representative E&P bankruptcies filed in 2015-2016. See pages 6-7 for a complete list of bankruptcies. (As of February 7, 2016)



# 2015-2016 CUMULATIVE NORTH AMERICAN MIDDLE-MARKET OILFIELD SERVICES BANKRUPTCY FILINGS

## HAYNES AND BOONE OILFIELD SERVICES BANKRUPTCY TRACKER



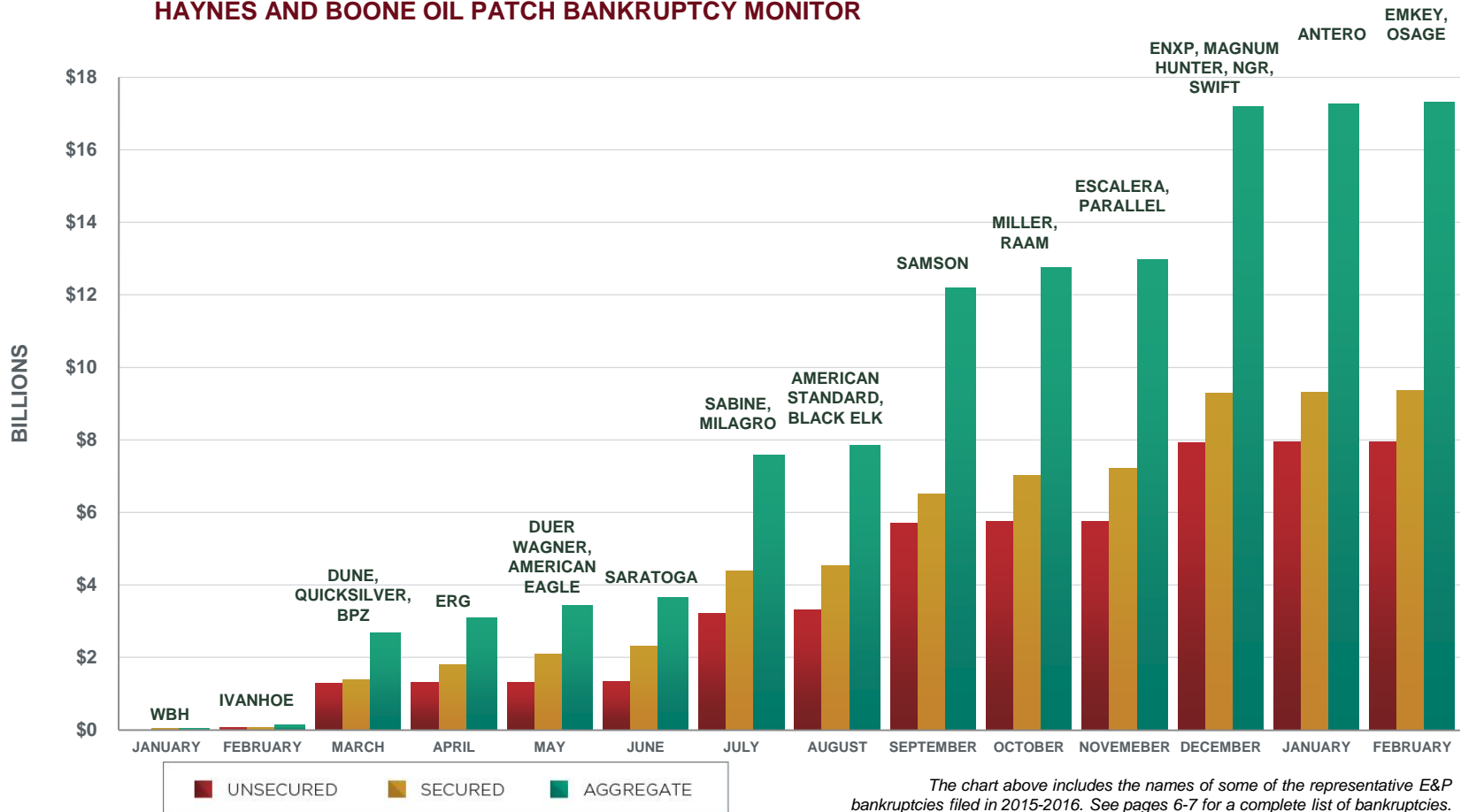
The chart above includes the names of some of the representative oilfield services bankruptcies filed in 2015-2016. See page 6-7 for a complete list of bankruptcies. (As of February 7, 2016)





# E&P COMPANIES - 2015-2016 CUMULATIVE UNSECURED DEBT, SECURED DEBT AND AGGREGATE DEBT

## HAYNES AND BOONE OIL PATCH BANKRUPTCY MONITOR

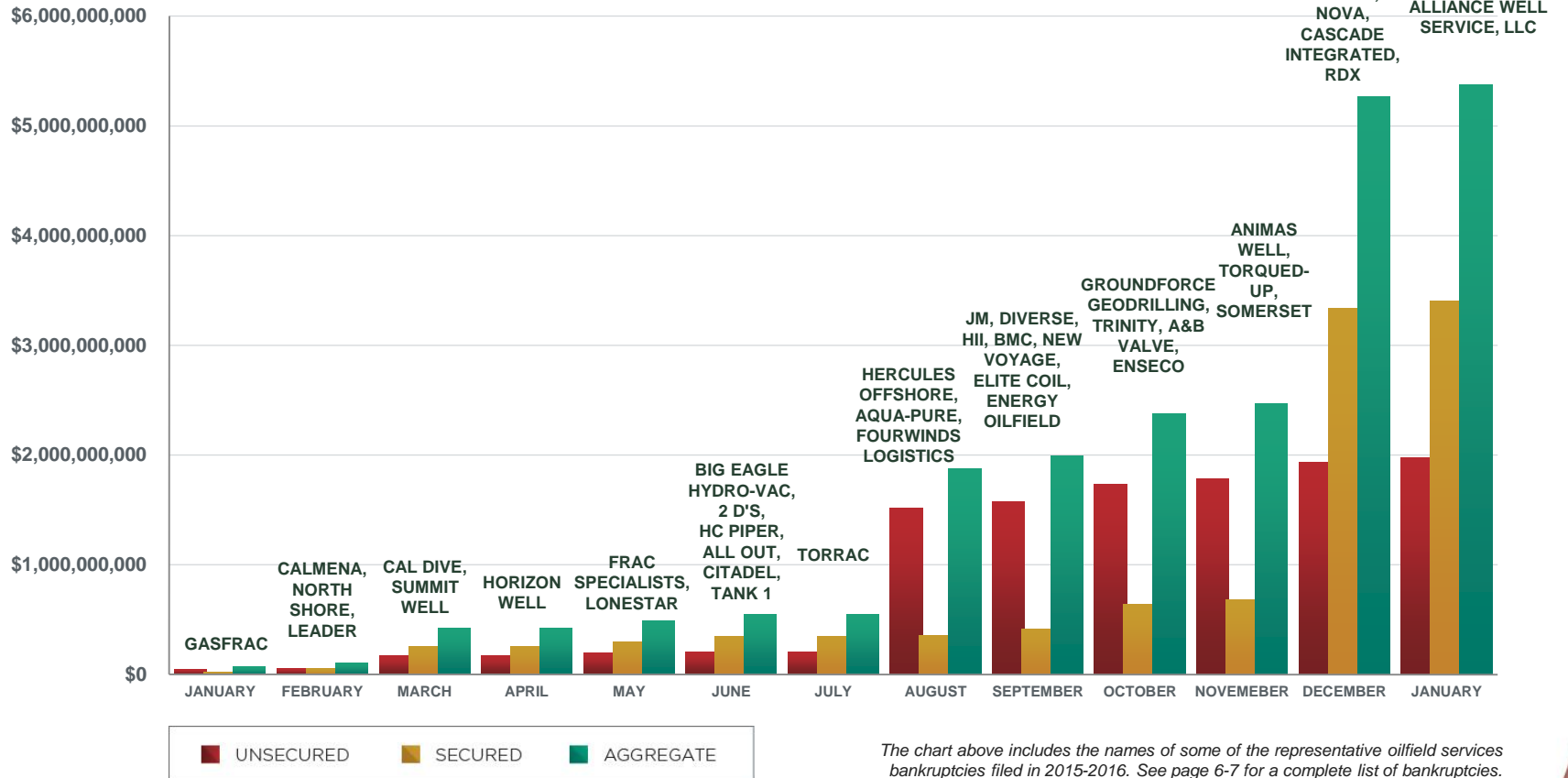


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# MID-MARKET OILFIELD SERVICE COMPANIES - 2015-2016 CUMULATIVE UNSECURED DEBT, SECURED DEBT, AND AGGREGATE DEBT

## HAYNES AND BOONE OILFIELD SERVICES BANKRUPTCY TRACKER

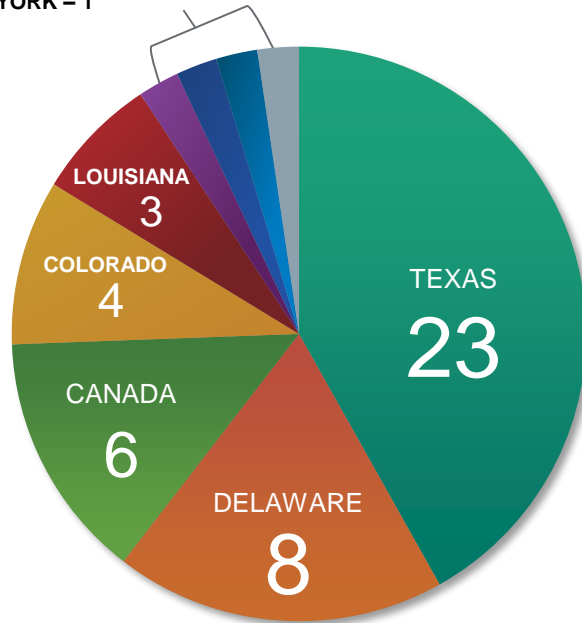


The chart above includes the names of some of the representative oilfield services bankruptcies filed in 2015-2016. See page 6-7 for a complete list of bankruptcies. (As of February 7, 2016)



## 2015-2016 E&P BANKRUPTCY FILINGS BY LOCATION

ALASKA – 1  
 OKLAHOMA – 1  
 MASSACHUSETTS – 1  
 NEW YORK – 1



**HAYNES AND BOONE OIL PATCH BANKRUPTCY MONITOR**

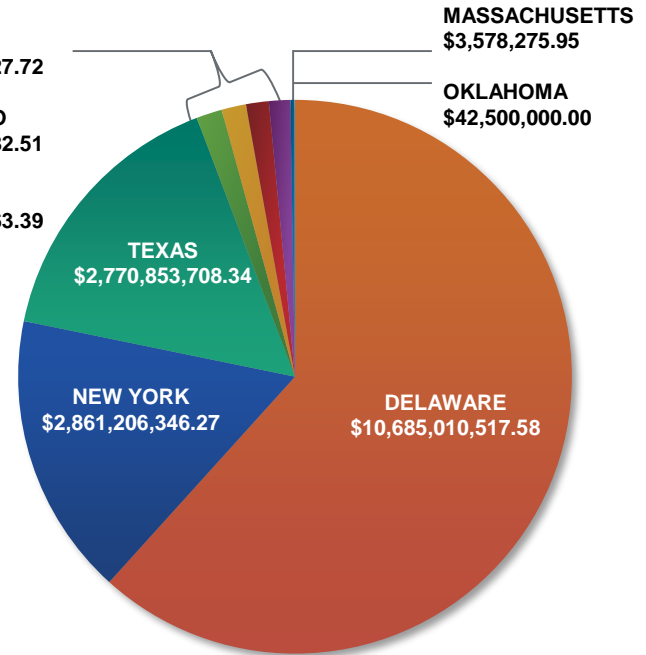
## 2015-2016 E&P SECURED AND UNSECURED DEBT BY FILING LOCATION

ALASKA  
 \$215,547,716.56

CANADA  
 \$260,786,827.72

COLORADO  
 \$248,137,782.51

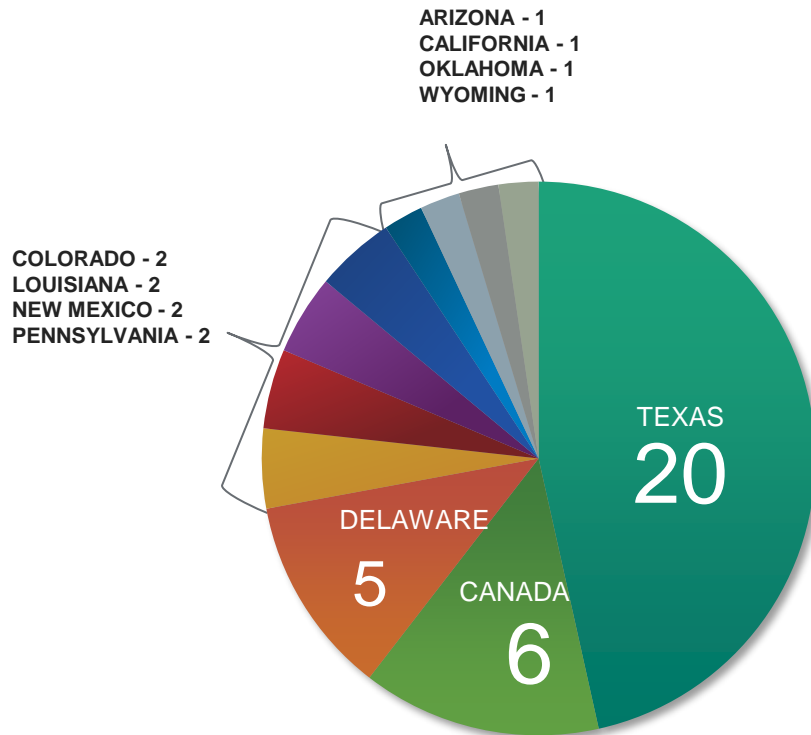
LOUISIANA  
 \$229,720,963.39



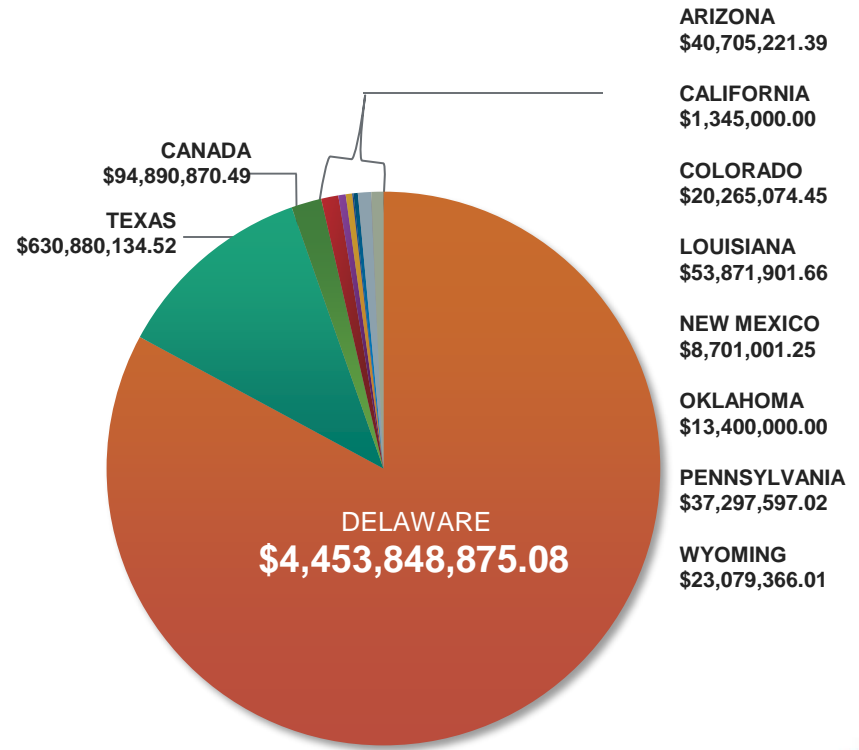
**HAYNES AND BOONE OIL PATCH BANKRUPTCY MONITOR**



## 2015-2016 CUMULATIVE NORTH AMERICAN MIDDLE-MARKET OILFIELD SERVICES BANKRUPTCY FILINGS BY LOCATION



## 2015-2016 CUMULATIVE NORTH AMERICAN MIDDLE-MARKET OILFIELD SERVICES AGGREGATE DEBT BY FILING LOCATION



# NORTH AMERICAN ENERGY RELATED BANKRUPTCIES 2015-2016

## E&P COMPANIES

FILING DATE	COURT	CASE NUMBER	DEBTOR	SECURED	UNSECURED	TOTAL	
43	1/11/2016	S.D. Tex.	16-30218	AURORA OPERATING, LLC	\$ -	\$ 2,353,102.84	\$ 2,353,102.84
44	1/18/2016	S.D. Tex.	16-50010	*MOG PRODUCING, LP	\$ 3,331,924.00	\$ 961,648.00	\$ 4,293,572.00
45	1/25/2016	N.D. Tex.	16-30308	*ANTERO ENERGY PARTNERS, LLC	\$ 25,900,032.56	\$ 748,267.51	\$ 26,648,300.07
46	2/3/2016	N.D. Tex.	16-30548	*EMKEY RESOURCES, LLC	\$ 14,687,218.00	\$ -	\$ 14,687,218.00
47	2/3/2016	W.D. Okl.	16-10308	*OSAGE EXPLORATION AND DEVELOPMENT, INC.	\$ 35,000,000.00	\$ 7,500,000.00	\$ 42,500,000.00
48	2/4/2016	S.D. Tex.	16-30678	GINGER OIL COMPANY	\$ 3,231,238.02	\$ 3,246,485.35	\$ 6,477,723.37
<b>TOTAL 2016</b>				<b>\$ 82,150,412.58</b>	<b>\$ 14,809,503.70</b>	<b>\$ 96,959,916.28</b>	
<b>TOTAL 2015-2016</b>				<b>\$ 9,362,344,552.01</b>	<b>\$ 7,954,997,586.31</b>	<b>\$ 17,317,342,138.32</b>	

## OIL FIELD SERVICE COMPANIES

FILING DATE	COURT	CASE NUMBER	DEBTOR	SECURED	UNSECURED	TOTAL	
40	1/5/2016	SD TEXAS	16-30165	P & L GAS DISPENSERS, LLC ****	\$ 0	\$ 0	\$ 0
41	1/19/2016	NEW MEX.	16-10078	ALLIANCE WELL SERVICE, LLC	\$ 3,536,467	\$ 986,010	\$ 4,522,477
42	1/20/2016	ED CAL.	16-10137	J & J CLEAN UP SERVICES, INC. *	\$ 0	\$ 0	\$ 1,345,000
43	1/31/2016	DELAWARE	16-10221	EXTREME PLASTICS PLUS INC. *	\$ 49,480,677	\$ 9,500,000	\$ 58,980,677
<b>TOTAL 2016</b>				<b>\$ 53,017,144</b>	<b>10,486,010</b>	<b>64,848,154</b>	
<b>TOTAL 2015-2016</b>				<b>\$ 3,400,912,187</b>	<b>\$ 1,974,939,592</b>	<b>\$ 5,377,196,790</b>	

\*Debts estimated based on First Day Declarations or other filings; schedules not yet available  
(As of February 7, 2016)



# ENERGY M&A OPPORTUNITIES

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- Seller / Buyer pricing gap
- Low reserve valuations – where's the bottom?
- PE Investment
- Distressed debt acquisitions / Loan to own strategies
- Reserve based lender wants out / tension with second lien
- Debt for equity exchange in chapter 11 – where's the fulcrum security now?
- Asset divestitures
- 363 sales in chapter 11
- Service company rollups, combinations and liquidations (too much capacity)

# CROSS-BORDER EXAMPLE - CHAPTER 15

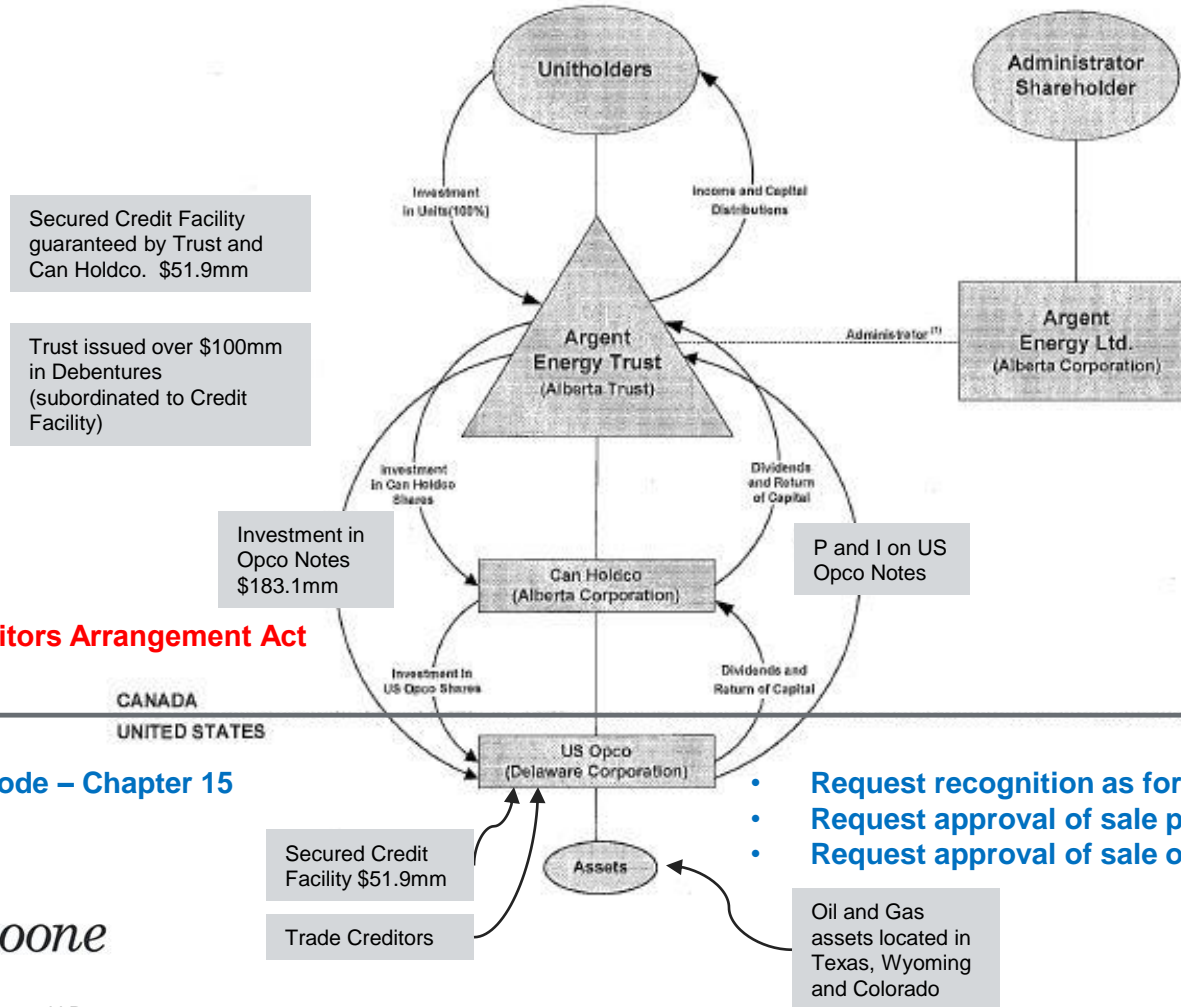
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- Chapter 15 is based on the Model Law on Cross Border Insolvency prepared by United Nations Commission on International Trade Law (UNCITRAL)
- Chapter 15 establishes procedures for foreign representatives to obtain relief in US bankruptcy courts
- Chapter 15 case is commenced by a foreign representative filing a petition to seek recognition of the foreign proceeding.
- Main and Non-Main Foreign Proceedings –
  - Foreign main proceeding is a proceeding pending in a country where the debtor has the center of its main interests (location of registered office).
  - Foreign non-main proceeding – where the debtor has an establishment
- Upon recognition of a foreign main proceeding, foreign representative has most of the rights available under chapter 11



# CROSS-BORDER EXAMPLE

ORGANIZATIONAL CHART OF AGENT ENERGY TRUST



Secured Credit Facility guaranteed by Trust and Can Holdco. \$51.9mm

Trust issued over \$100mm in Debentures (subordinated to Credit Facility)

Investment in Opco Notes \$183.1mm

P and I on US Opco Notes

Companies' Creditors Arrangement Act (CCAA) (Calgary)

US Bankruptcy Code – Chapter 15 (Corpus Christi)

- Request recognition as foreign main proceeding
- Request approval of sale procedures / process
- Request approval of sale of US assets

Oil and Gas assets located in Texas, Wyoming and Colorado

# CHRONOLOGY TO CROSS-BORDER M&A DEAL

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- October 2014 - Argent initiated process to explore strategic alternatives – asset sales, merger or business combination, sale of Argent as a whole, joint venture or farmout of assets
- January 2015 – Marvel field in Texas was sold for \$20.5mm, proceeds used to pay down Credit Facility.
- Other bids from strategic review process were too low and not acceptable
- April 2015 Trust suspended distributions to unitholders
- Marketing of assets continued – sale of assets in Kansas and Oklahoma yielded \$20mm – proceeds paid down Credit Facility
- November 2015 Credit Facility borrowing base re-determined to \$45mm, but outstanding debt was \$66.3mm
- Argent had 60 days to pay down the \$21.3mm shortfall
- December 2015 – Trust failed to make interest payment on Subordinated Debentures
- January 2015 - Defaults under Credit Facility and Subordinated Debentures not cured
- February – Credit Facility accelerated

# CHRONOLOGY TO CROSS-BORDER M&A DEAL

- February 17, 2015 CCAA proceeding commenced in Canada (Calgary) and Chapter 15 case commenced in Texas
- Argent contacted a number of parties to manage a sale process for remaining US assets
- Oil and Gas Clearing House (OGAC) was selected to sell all the equity interests of Argent US or some or all of its oil and gas properties.
- Canadian Court has approved sale procedures
- Sale will be free and clear of all liens and interests pursuant to section 36(6) of the CCAA and section 363 of the USBC
- Sale Process Timeline:

Task	Completion Date
Kick-off Meeting	January 20
Finalize VDR and Marketing Info	February 17
Launch Marketing Process	February 18
Initial Bids Due	March 17
Final Bids Due	March 24
Environmental/title due diligence	April 13
Sign Purchase Agreement	April 14
Seek Court approval and close	May 17

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# Market Trends Affecting Consolidation and Restructuring

**Sergio Michelsen Jaramillo**, Partner, *Brigard & Urrutia*

# M&A and Insolvency Proceedings

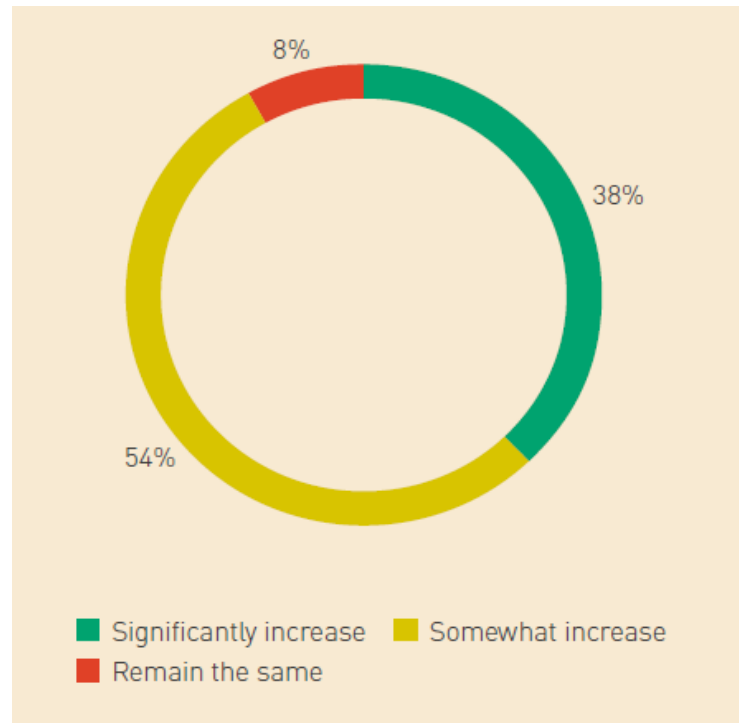
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In Colombia and Latin America

BRIGARD &  
URRUTIA  
ABOGADOS

# Expected 2016 M&A activity in Latin America

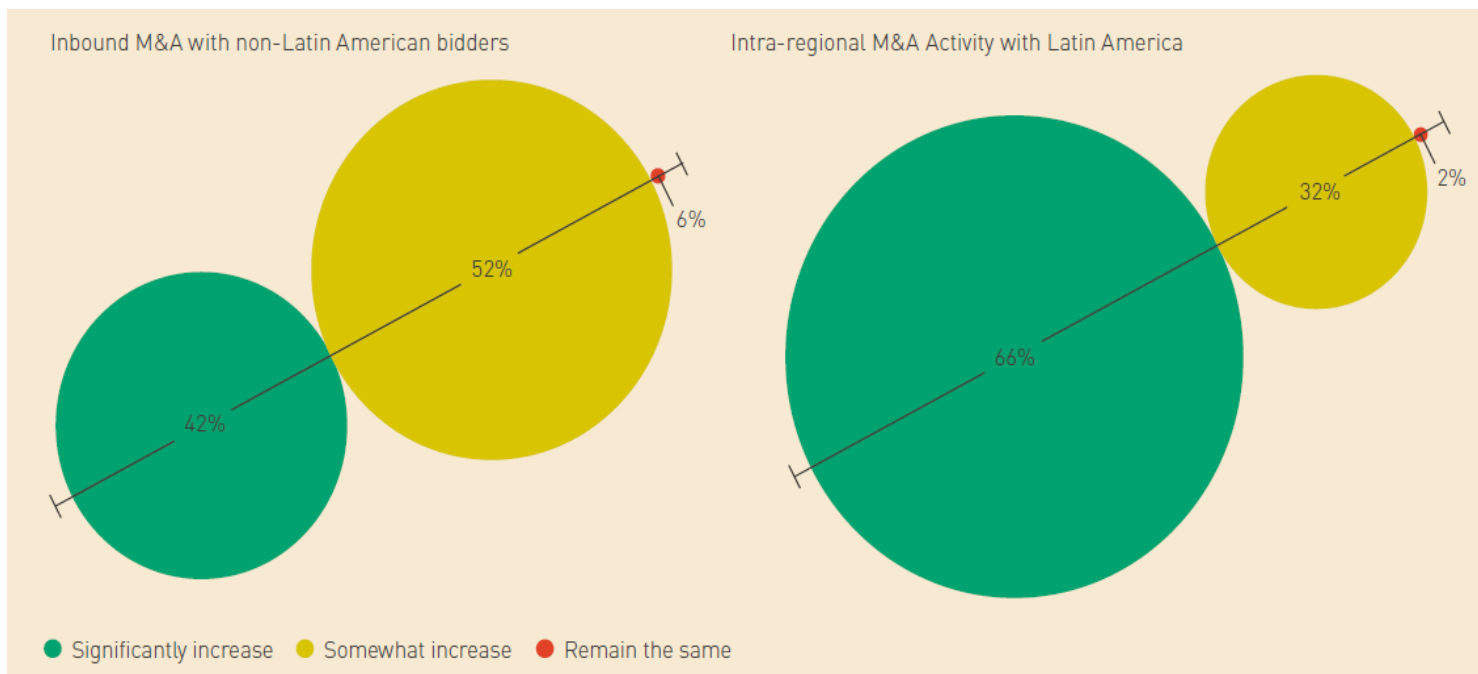
Overall



Latin America M&A Spotlight. MergerMarket and Greenberg Traurig, February 2016.



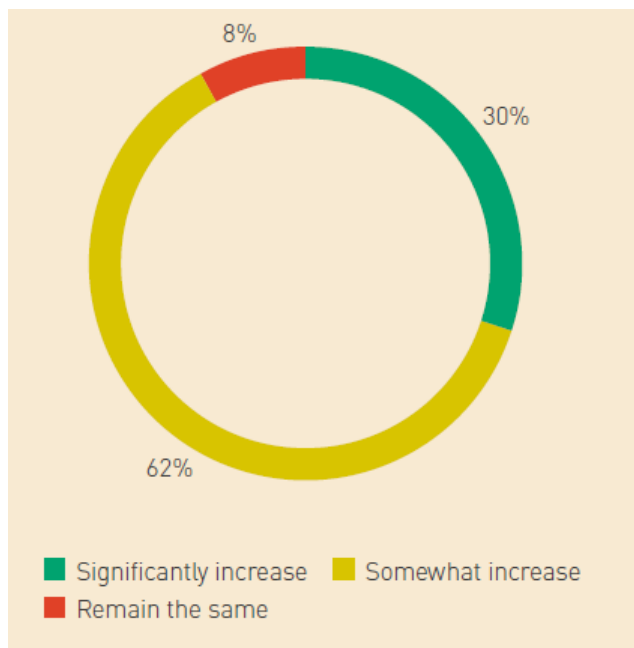
# Expected 2016 M&A activity in Latin America



Latin America M&A Spotlight. MergerMarket and Greenberg Traurig, February 2016.

# Expected 2016 M&A activity in Latin America

## Outbound



Latin America M&A Spotlight. MergerMarket and Greenberg Traurig, February 2016.

# Which industries?

Colombia	México	Panamá
Infrastructure	Oil and gas	Financial sector
		

# Industries that are Hot

## Colombia

- Energy
- BPO (Business Process Outsourcing)
- Telecommunications
- Private Equity
- Infrastructure
- Software and IT services
- Automotive
- Biofuels

<http://www.inviertaencolombia.com.co/p-or-que-colombia.html>

## Mexico

- Automotive
- Processed foods
- Biotechnology
- Medical Devices
- Pharmaceutical
- Electronics
- Renewable energy
- Telecommunications

## Panama

- Some real estate segments
- Services
- Food industry
- Non-cyclical consumer goods
- Renewable energies

# Role of US bankruptcy courts for non-US companies

## Colombia

- U.S. Bankruptcy Courts play a role with non-US companies in cases where they have undertaken obligations under US law.

## Mexico

- In Mexico US Bankruptcy courts have no authority.

## Panama

- U.S. Bankruptcy Courts play a role with non-US companies in cases where they have undertaken obligations under US law.

# Insolvency Proceedings in Colombia

(Law 1116 of 2006)

## I. Business Reorganization

**Purpose:** to preserve and reorganize sustainable businesses.

## II. Judicial Liquidation

**Purpose:** to orderly liquidate the assets of unsustainable business, in order to pay the greater amount of liabilities possible.

## III. Cross-Border Insolvency

Colombia adopted the Model Law on Cross-Border Insolvency of the UNCITRAL.

**Purpose:** to establish cooperation mechanisms for cross-border insolvency cases.

# Business Reorganization in Colombia

1. **Qualifying Conditions:** (i) cessation of payments or (ii) imminent inability to pay obligations due in less than a year
2. **Automatic Stay (upon filing):** (i) amendment to bylaws; (ii) disposition of assets, (iii) granting security interests over assets, (iv) payment of pre-petition claims and (v) entering into agreements related to pre-petition claims.
3. **Secured claims:** have priority over unsecured claims. However, enforcement of security interests requires authorization from the court.
4. **“DIP financing”:** No regulation, but recognition of priority to post-petition claims.
5. **Claw back actions:** avoidance of transactions performed prior to the insolvency proceeding in the relevant time frame.
6. **Secondary liability of the parent company:** rebuttable presumption but the parent company bears the burden of proof.



# Business Reorganization in Latin America

	Argentina	Brazil	Chile	Costa Rica	Colombia	Mexico	Paraguay	Peru	Uruguay
Reorganization process	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Prepacks	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Specialized insolvency court	No	No	No	Yes	Yes	No	No	Yes	Yes
Qualifying conditions	Cessation of payments	Debtor has exercised regular activities for more than two (2) years	None	(i) Surmountable financial difficulties and (ii) adverse social consequences in case of bankruptcy	(i) Cessation of payments or (ii) imminent payment inability	(i) Cessation of payments or (ii) imminent payment inability	(i) Default on one or more obligations or (ii) inability to comply regularly with obligations	(i) Cessation of payments and (ii) financial sustainability	State of insolvency: inability to pay debts. Law establishes rebuttable and non-rebuttable presumptions.

\* **Panama** has no business reorganization proceeding.

# Business Reorganization in Latin America

	Argentina	Brazil	Chile	Costa Rica	Colombia	Mexico	Paraguay	Peru	Uruguay
Standing	Only the debtor	Only the debtor	Only the debtor	(i) Debtor or (ii) one or more creditors	(i) Debtor, (ii) one or more creditors, or (iii) ex-officio	(i) Debtor, (ii) any creditor, or (iii) Public Ministry	No	Only the debtor	(i) Debtor, (ii) any creditor, (iii) manager of the debtor, (iv) shareholders or (v) co-debtors or guarantors.
Automatic stay	Yes. Labor lawsuits and enforcement of security rights shall not be stayed.	Yes. For 120 days, extensible at the court's discretion	Yes. For 30 days, extensible to another 60 days pending on approval of the creditors.	Yes. Labor suits and enforcement of encumbrances over non-essential assets shall not be stayed.	Yes. From the filling of the reorganization petition and during the entire proceeding.	Yes. Labor lawsuits shall not be stayed.	No	Yes. Labor lawsuits and enforcement of security rights shall not be stayed.	Yes. Enforcement of security rights shall only be stayed for 120 days.

# Business Reorganization in Latin America

	Argentina	Brazil	Chile	Costa Rica	Colombia	Mexico	Paraguay	Peru	Uruguay
Claw back actions	No	No	Yes. Some actions do not require proving bad faith, nor lack of good faith.	No	Yes. Some actions require proving lack of good faith.	Yes. Some actions require proving bad faith on part of the debtor and the third party involved.	Yes. Actions do not require proving bad faith, nor lack of good faith.	Yes. Actions do not require proving bad faith, nor lack of good faith.	Yes. Some actions require proving bad faith. Law establishes rebuttable presumption of bad faith in case of business groups.

# Business Reorganization in Latin America

	Argentina	Brazil	Chile	Costa Rica	Colombia	Mexico	Paraguay	Peru	Uruguay
Parent-liability and insolvency of business-groups	Yes. No rule relating to the liability of the parent company.	Yes.	No	No	Yes	Yes. No rule relating to the liability of the parent company.	No	No	No
Cross-border insolvency	Yes, but very restrictive.	Yes, but very restrictive.	Yes. Law Model on Cross-Border Insolvency of the UNCITRAL.	Yes, but very restrictive.	Yes. Law Model on Cross-Border Insolvency of the UNCITRAL.	Yes. Law Model on Cross-Border Insolvency of the UNCITRAL.	Yes, but very restrictive.	Yes, but very restrictive.	Yes, but very restrictive.

# Cross-Border Insolvency in Latin America

The Model Law on Cross-Border Insolvency of the UNCITRAL seeks to promote fairness and efficiency on cross-border insolvency proceedings.

Chile, Colombia and Mexico are the **only** countries in Latin America who have adopted the Model Law.



## Conclusion

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Colombia offers one of the best regulations regarding business reorganization in Latin America in terms of effectiveness, protection of creditors and financial opportunities for debtors.

Colombian insolvency law includes regulation on (i) pre-packs, (ii) reorganization of business groups and (iii) cross-border insolvency.



This presentation was made in collaboration with:



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# Market Trends Affecting Consolidation and Restructuring

David Allard, Partner, *Lawson Lundell LLP*

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**WSG 2016 Meeting of the Americas**  
**Canadian M&A Developments**  
**(Consolidation and Restructuring)**

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# WSG 2016 Meeting of the Americas

## Canadian M&A Developments

### Canadian Market Experience in 2015:

- ❖ One of the strongest outbound M&A markets in years
- ❖ Canadian companies made more than US\$225 billion of investments in M&A activity abroad
- ❖ Domestic internal and inbound activity was a different story
- ❖ Internal and inbound Canadian M&A significantly decreased from prior years
- ❖ Some bright spots in domestic mid market and PE activity

# WSG 2016 Meeting of the Americas

## Canadian M&A Developments

### Major Factor in 2015 Domestic Activity - Uncertainties:

- ❖ Lower and falling Canadian dollar
- ❖ Prolonged federal election and new government in Alberta
- ❖ Uncertain regulatory environment after political change
- ❖ Continuing slide in oil prices and certain other commodities
- ❖ Lack of success of important resource infrastructure – e.g. – intra-national pipelines and Keystone XL
- ❖ Surprisingly lacklustre US investment activity in Canada

# WSG 2016 Meeting of the Americas

## Canadian M&A Developments

### Expected Factors in Domestic Activity for 2016:

- ❖ Continued weakness of Canadian dollar and oil prices
- ❖ Possible consolidation and restructuring in the oil industry, tempered by uncertainty over infrastructure and regulation
- ❖ Increased interest from US and other international investors across industry sectors, tempered by concern over dollar
- ❖ Export driven improved performance of manufacturing sector



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