To Whom It May Concern:

The following letter prepared by Comyns, Smith McClare & Deaver, LLP, is intended to validate the rationale behind the active and passive investment options and their associated potential tax benefits. Please be advised that Resolute Capital Partners does not provide tax advice for any jurisdiction. Please consult your tax advisor regarding the potential tax deductions and how they affect your tax liability.

Thank you,
Resolute Capital Partners
November 20, 2019

Resolute Capital Partners Ltd, LLC
675 Sierra Rose Drive
Reno, NV 89511

Dear Resolute Capital Partners Ltd, LLC,

Overview

It is the intent of the Funds, Strategic Energy Assets VIII Referral Fund, LLC, Strategic Energy Assets VIII Access Fund, LLC and Strategic Energy Assets VIII Ria Fund, LLC to acquire limited liability interests in SEA VIII Master Fund wherein all investors elect active or passive upon subscription to one of the feeder funds. If they elect passive, their investment will be subject to the passive activity loss rules and they will not have unlimited liability because they are not required to make unlimited additional capital contributions. For those who elect active, their investment would not be subject to the passive loss activity rules, and they will have unlimited liability because they are required to make unlimited additional capital contributions. It is anticipated that these interests will be converted to interests with limited liability at some point in the future upon issuance of a Conversion Notice. If and when this conversion occurs, those active investors who elected to be subject to unlimited liability will now be treated as passive members, subject to the passive activity loss rules, with limited liability.

Organization of the Funds

Each of the Funds are organized as limited liability companies electing to be taxed as partnerships. As such, the income and deductions will flow through to the investors. The Funds will not be structured or considered as Publicly Traded Partnerships (PTP’s).

Passive Activity Exclusion

So long as investors have unlimited liability to make unlimited additional capital contributions they will be considered as active, non-passive investors. As such, they will be in compliance with IRC §469(c)(3)(A). This section provides an exception unique to working interests in oil and gas from the passive activity rules. This means that investors can deduct the intangible drilling costs (IDC’s) and tangible drilling costs (TDC’s) without passive activity loss limitations. To qualify for this exception to the passive activity rules, the investor must own the interest directly or through an entity that does not limit the investor’s liability in the drilling or operation of such well pursuant to such working interest. See Regs §1.469-1T(e)(4)(ii)(A) and (B). Apart from this temporary regulation, there are no other authoritative interpretations in terms of cases, private letter rulings, Technical Advice Memoranda.
Intangible Drilling Costs

Intangible drilling costs (IDC) are costs to develop an oil or gas well or the elements that are not a part of the final operating well. Intangible drilling costs include all expenses made by an operator incidental to and necessary in the drilling and preparation of wells for the production of oil and gas, such as survey work, ground clearing, drainage, wages, fuel, repairs, supplies and so on. Broadly speaking, expenditures are classified as intangible drilling costs if they have no salvage value. Since intangible drilling costs include all real and actual expenses except for the drilling equipment, the word "intangible" is something of a misnomer.

Small Producers Tax Exemption

The 199C Tax Act provided some special tax advantages for the typical investor in oil and gas drilling projects. This “Small Producers Exemption” allows up to 100% of an investors net income from an oil and gas investment to be tax free. This tax incentive, known as the “Percentage Depletion Allowance”, is specifically intended to encourage the small investor to participate in oil and gas drilling. This tax benefit is not available to large oil companies or taxpayers who sell oil or natural gas through retail outlets or those who engage in refining crude oil with runs of more than 1,000 barrels of oil (or 6,000,000 cubic feet of gas) average daily production. The “Small Producers Exemption” specifically allows 15% of the gross income from an oil and gas producing property to be tax free.

As discussed above, once the Master Fund interests are converted to interests with limited liability, at that time the investors would be considered passive investors going forward. As such, they would not qualify for the working interest in oil and gas exception to the passive activity rules from the date of conversion.

Compliance Issues

My advice is to add the following language to each K-1 where the investor qualifies for the exception to the passive activity rules:

The member of this LLC has agreed by contract and in the operating agreement to be liable to make unlimited additional capital contributions to fund any and all deficits incurred by the Master Fund. Since there is no limit to the member’s liability, he qualifies for the exception to the passive activity rules for oil and gas working interests. As a result, the income and losses reflected on this K-1 are not subject to the passive activity rules. Please consult your own tax advisor.

Additionally, if the plan is to convert the fund from one where liabilities are not limited to one where liabilities are limited, it would be best and simplest if the conversion took place at the end of a calendar year. Otherwise, it may be necessary to issue two K-1’s to each investor, one non-passive and one passive, doubling up on compliance costs.

Tax Opinion

In my opinion, although not free from challenge by the Internal Revenue Service, it’s more likely than not that the income tax benefits as outlined in the Fund’s private placement memorandum as described above are correct as described and will be sustained.
Please call me at 925.385.2023 if you have any questions.

Sincerely,

[Signature]

Steven P. Smith, CPA